

Nathan A. Lennon Comments on the Legality of Delta-8 THC, Delta-10 THC, and HHC

This interview was conducted by CBD Oracle via email on March 10, 2023.

About Nathan A. Lennon:

Nathan is the Co-Chair of Reminger's Cannabis and Hemp Law practice group, where he utilizes his national and complex litigation experience to counsel marijuana and hemp cultivators, dispensers, and suppliers.

You can read Nathan's full bio here: <https://www.reminger.com/attorneys-Nathan-Lennon>

CBD Oracle: *Is hemp-derived delta-8 legal under federal law?*

Nathan Lennon: A growing body of opinions and law suggest that the federal government's current position is that Delta-8 derived from hemp is not a controlled substance. A May 19, 2022 federal appeals court decision from California, *AK Futures LLC v. Boyd St. Distro, LLC*, concluded that hemp-derived delta-8 was in fact legal under the plain language of the Farm Bill. This is the first federal court that I'm aware of to reach this conclusion at the appellate level. An interesting aspect of this case is that the federal government was not a party, and it was not a criminal case. Instead, the court had to determine whether hemp-derived Delta-8 was legal in order to further determine whether one of the parties to the lawsuit could maintain an intellectual property interest in a Delta-8 product.

Prior correspondence from the DEA in response to requests for comment is very similar to the Ninth Circuit's analysis. In response to a request for information, the DEA indicated in September 15, 2021 correspondence that "cannabinoids extracted from the cannabis plant that have a Delta 9-THC concentration of not more than 0.3 percent on a dry weight basis meet the definition of "hemp" and thus are not controlled under the CSA."

CBD Oracle: *How about delta-10?*

Nathan Lennon: Per the DEA's reasoning in its September 15, 2021 statement, the answer would appear to be the same for Delta-10, so long as the substance is hemp-derived, and does not contain more than 0.3 percent Delta-9 as a byproduct of production. Again, the focus is not on the chemical makeup of the product, but only on it being derived from hemp, and not also being mixed with an otherwise-illegal amount of Delta-9.

CBD Oracle: *What about HHC? Do you know of any states that have explicitly banned HHC?*

Nathan Lennon: HHC (hexahydrocannabinol), is yet another minor cannabinoid that occurs naturally in small concentrations in the cannabis plant. It can also be derived from hemp through chemical processing. Basically all of the commercially available HHC on the market today is derived through processing this way. Consumers report that HHC's pharmacological effects lie somewhere on a spectrum between what they would experience with Delta-9 and Delta-8. As with hemp-derived Delta-8, HHC likely falls within the DEA's reasoning expressed regarding legality, because it occurs naturally in hemp, and can be produced without also being accompanied by an illegal level of Delta-9.

As of today's date, I'm not aware of any state law specifically targeting HHC by name or chemical composition as a banned substance. That being said, I would fully expect that some states that have aggressively moved to regulate hemp-derived substances (for instance, Colorado or Utah) would take the position that HHC is not legal. Thus, in any state that takes a position on Delta-8 that is inconsistent with the DEA's current analysis, businesses and consumers would be well-advised to proceed with caution regarding HHC products.

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