



Special Board Caucus Meeting

Wednesday, June 16, 2021, 2:00pm

This meeting was held via web conference

Meeting Minutes

CAUCUS ATTENDEES

Chair David Postman
Member Ollie Garrett
Member Russ Hauge
Dustin Dickson, Executive Assistant

GUESTS

Rick Garza, Director
Justin Nordhorn, Policy and External Affairs Director
Chandra Brady, Director of Enforcement and Education
Brian Smith, Communications Director
Kathy Hoffman, Policy and Rules Coordinator
Geoff Allen, Assistant Attorney General

Due to unforeseen technical difficulties, the meeting convened at 2:12pm

HEMP-DERIVED DELTA-9 THC

Chair Postman: This is a Special Caucus meeting called initially by Board Member Russ Hauge who is with us. We are also joined by our third Member, Ollie Garrett. I'll turn it over to Member Hauge to give us an overview of the issue he wants to bring forward. We've got quite a few staff who have also joined us today as well as about 50 members of the public. Staff will give a presentation then the Board will have an opportunity to both discuss and ask questions of staff or of Member Hauge, of course. With that, I'll turn it over to you, Member Hauge.

Member Hauge: Thank you. As you know, I was tasked as the Board representative to investigate the issues surrounding hemp-based cannabinoids being introduced into our system. Specifically, Delta-8 and Delta-9. I did not pay too much attention to Delta-8, quite frankly that seemed to be a fairly straightforward issue, but as I learned in my investigations – mostly talking to people and reading – Delta-9 created from hemp-based biomass was being, it looked like, into our system. I talked with the Director shortly after I came to that conclusion. He suggested that I talk with staff, particularly the Marijuana Examiners Unit, to get a better picture. I did so and I became convinced that there was no doubt that hemp-based Delta-9 was being introduced into the regulated market by licensees. I don't know how many or who.

I spoke again with the Director and the head of policy, Mr. Nordhorn, and the Director asked me to send a note to the Director of Enforcement, Chandra Brady, asking for an investigation through our enforcement arm. I did so and approximately one week later I was called to a meeting by the Director, the Director of Policy and the Director of Enforcement and was informed that no enforcement action had been started given the concerns that our policy statement may have impaired or put us in a position where going forward was not a straight forward matter.

I also learned in that conversation that through efforts by staff we absolutely had no doubt that Delta-9 created not from hemp, not from hemp grown in Washington, but Delta-9 created from CBD isolate purchased on the open market, was being introduced into the regulated system and being sold by a processor or processors to other processors or perhaps to retailers.

Given the concern by staff that we would not perhaps be on steady ground going forward given the policy statement that we put together and the qualifier that we put on there at the insistence of members of the industry, I sought legal counsel and talked with Geoff Allen primarily to determine whether we could have this discussion in the context of a particular violation or whether we should have this discussion generally. Given that there was no enforcement action and provided that we did not discuss any particular license holder in the context of the meeting, with his advice I decided that the best course would be to have this discussion in public. To set up the meeting, I sent out an email to our Executive Assistant, Dustin Dickson, and he called this meeting together. That email, I understand, has been shared with you, David, and you Ollie – have you had a chance to look at it?

Chair Postman: Yes, I saw it.

Member Garrett: Yes.

Member Hauge: The question, as I see it, is that we have a clear statutory direction from the legislature that CBD can be utilized if comes from outside the system, but it can only be used to enhance CBD content of products. And, without question now, we have our licensed processors utilizing CBD sourced on the open market, meaning it could come from anywhere in the world, being turned into Delta-9 which is then again being sold into the regulated system.

The question that I'm asking is why are we not pursuing enforcement action. That is the question that I understand from my conversations with staff is what they would like the Board to decide – whether we should pursue enforcement action, not generally, but on this specific issue: If a license holder is creating Delta-9 from something other than cannabis, cannabis coming from our market which is how the system is designed, and then introducing that Delta-9 into the system, should we respond.

Now, I suggest that we should, simply as a matter of law. Also, if we allow this to go forward, then we are rendering mute our canopy limitations because this CBD, or hemp-based biomass that is being turned into CBD which is being turned into Delta-9, comes from outside that canopy. It's not being utilized from the canopy. It also makes irrelevant our distinctions between Tier I, Tier II and Tier III producers, because again, a processor can simply buy a jug of CBD on the open market and bypass all those producers.

It also impacts, I think, our efforts at equity because this will create a substantial – if it continues, it already has – but if it continues it will create a substantial disruption in the market and I don't know what opportunities may be left for the state to share in this regulated system if we decide to leave this door open. And, again, that door is to hemp-based biomass that is being turned into Delta-9, that is being utilized by processors and retailers and being sold right now to customers.

So, the question before the Board is what should we do. Look the other way or shall we do something about this.

Chair Postman: I was going to turn to staff, but first, Member Garrett, anything you'd like to add or ask at this point?

Member Garrett: I was going to ask what staff is saying, so I'll let you continue on.

Chair Postman: I think we'll do that and after the three of us have had the chance to ask staff questions we can come back for further discussion. I'm going to ask Director Rick Garza to take over here, and I'm not sure who on staff is on, but we're hoping for an overview of the issues raised by Member Hauge and then the opportunity to ask questions if we could.

Rick Garza: Thank you Chair Postman and staff. I did have a couple statements. I'm not sure that as staff last week, Russ, we asked the Board to take action or that the Board had to take enforcement action. The issue began when you had gotten some information regarding the process that you just talked about. I had suggested, as you recall, that we bring staff in – Justin, Kathy and enforcement – and you had sent an email sharing specific information that you had received in your discussion with others and I asked Chandra not to investigate, but I did as Chandra to look into the email that you had sent, Russ, to determine what the facts were around that. I'll pause because I see your hand up, Russ.

Member Hauge: That email was written by me to the Director of Enforcement at your direction. It was at a meeting that I had with you and Justin Nordhorn where we decided, I thought, that enforcement was the appropriate action and that it should be referred to Enforcement. I thought it was a little unusual that you were asking me to give direction to the Director of Enforcement. That's not the job of a Board member. But, at your request, I did so and in that email I pointed out that I did so at your direction after discussion the matter with you and Mr. Nordhorn.

I apologize if I got the wrong impression, but in our discussion before I sent that email I was pretty well persuaded and I wrote that with the understanding that you were supporting enforcement action at that time. I did not learn that I was on my own until a meeting the following week when you, Ms. Brady and Mr. Nordhorn told me that you did not think that enforcement action was appropriate at that time.

Mr. Garza: I'm sorry, Russ, I didn't look at this as – you had brought information to me as the Director. I was providing that information to Justin and to Enforcement to look into the issue. Not to formally create an investigation into this, but just simply to take the information that you gave us and validate if that information was correct. We then had a subsequent meeting where we shared that there were some discrepancies in some of the information that you had provided about entities where "Orion" was in there and it was actually a different entity.

I don't know that that matters so much for us, I guess what I would say is, I turn us to the policy statement that was written on April 29, and then subsequently the clarifying document on May 3 which had to do with Delta-8, obviously, where the Board and the agency made quite clear that we needed to look more closely, that there was conflicting information coming from different industry members – and in general this whole issue around Delta-8 is not only seeing itself here in our state but throughout the country.

I thought we'd made a decision at that point, and that's why we counseled last week with Russ, that we bring this issue as well as the Delta-8 issue to staff to continue to look into. When I look – I'll just read the clarifying statement we made, because I think it's really the advice that we have as we continue to look into it:

"The LCB's intent is to open public discussion around this issue. While the Board has broad rulemaking authority to act quickly when the public health, safety or welfare is at risk, the Board's intention is to approach the issue conservatively and transparently, collecting input, and actively

collaborating with stakeholders until the LCB has reached a conclusion through the public rulemaking process whether to draft rules to create enforceable requirements regarding products containing Delta-8.”

And so, it was at that point that I thought what we were doing as an agency – that’s why Kathy then had a “deliberative dialogue” with members of the industry to better understand the chemistry around Delta-8 and cannabinoids, all cannabinoids, that we were moving in that direction.

You are correct, Russ, I think the thing that we said last week was that we didn’t feel that there was a need to move forward with any type of enforcement actions, but that I guess what I would suggest is that we bring this Delta-9 issue also into the larger discussion.

Chair Postman: Let’s let Russ respond, then we’ll try to get to more staff. Go ahead, Russ.

Member Hauge: First off, I do not see any place for discussions of Delta-8 on this agenda. What I’m discussion, or what I want to discuss, is what are we going to be doing with license holders taking CBD produced outside the system from hemp-based biomass, turning that into Delta-9 and selling it into the system. That’s all I’m concerned about.

Next, please clarify for me, Director, isn’t it true that at the meeting we had where you told me that you thought enforcement action was not appropriate, that you and Mr. Nordhorn had developed information directly from a license holder to the effect that they were indeed buying CBD on the open market from other sources, turning it into Delta-9 and selling it into the system. Isn’t that true?

Mr. Garza: I don’t think we honestly said that there should be no enforcement action. What we said is we needed to dig a little deeper into the issue.

Member Hauge: The question is have you found conclusively that we have license holders using CBD from outside the system, turning it into Delta-9 and then selling it into the system. Is that true?

Mr. Garza: I think we need to validate that.

Chair Postman: I have a question before we get into this, because – and maybe counsel has to help us here – I don’t think we should be talking about individual licensees or operators in any way. We sit as the final judge on those things, as you know best. If we want to talk about this as a policy, we should. Geoff Allen, correct me if I’m wrong, but I think we need to talk about the policy and the bigger picture.

Rick, I think it would be good to have staff respond to some of the more specific issues that Member Hauge raised. I’ll try and steer it a little bit. I think one of the big questions is what does the law say specifically about the scenario that Member Hauge has just laid out, which is somebody buying CBD on the open market, perhaps out of state, and converting it to a product sold in our regulated system. Is that a fair enough summary Russ?

Member Hauge: Yes, but I would like to have a lawyer answer that question, not staff.

Chair Postman: I know Geoff is on the line, but he’s the Board member’s counsel as opposed to counsel to staff. Geoff are you able to respond to the question about 69.50.326? I know our other Attorneys General are not in town today.

When I read it I do have a question – I'm not hearing Geoff.

Mr. Garza: Dustin, were we able to get Penny on the line?

Dustin Dickson: No, she is unavailable.

Chair Postman: I think I understand your issue, Russ. I would like to hear from the staff who has to implement these laws how they read that statute and I will stipulate that is not a legal analysis, but I think it could help us understand what the staff position is on this, and hear from Rick or one of his staff on what that 69.50.326 says. Rick, I don't know who would be best for that, but I'd like to give it a try at least and then obviously Member Hauge would have an opportunity to ask follow up questions.

Member Garrett: David, I saw Chandra on with her hand raised.

Chair Postman: Great, thank you. Sorry I did not see that. Director Brady, are you trying to speak, if so please do.

Chandra Brady: I was going to speak to what the request was to Board member Hauge, or at least the response was from the Enforcement perspective, not necessarily to an interpretation of RCW.

Chair Postman: Let's hold on that. I would like to try and get to how we view this RCW if anybody can. Help us all if I need to be the one who does it.

Mr. Garza: I think Justin, probably Justin and/or Kathy can help us with this.

Chair Postman: If one of you could as policy leads that would be helpful. If you could just tell us how both in the past – I see Justin has appeared, good – how we've used that, have we ever enforced this and how does this scenario of distillate being transformed into something sold in the regulated market. Justin, can you help us with that?

Justin Nordhorn: From a non-legal person and perspective, I can only offer my perspective on this. Let me start by saying that I don't think it's clear cut. I'm not saying that it's legal and I'm not saying that it's illegal. I think that as Member Hauge expressed, legal opinions on this most certainly need to be included in this conversation because it's going to be getting into the nuances of that statute.

When I look at the statute – when we talked about the whole Delta-8 issue, and I know this conversation isn't around that, but the exploratory conversations we had with stakeholders is around similar concepts of hemp-derived product being converted into other product. That kind of leads us into the Delta-9 issue that we have before us. When we're looking at the statute, if a licensee were to purchase hemp-based product on the open market and they have it tested and it comes in as an additive, that I think is clear that it is legal. What's unclear is after they use it as an additive, can they do something else with that product. I would speculate that the legislature most likely never intended for the production to be in that manner, and I would agree with some of the analysis of the impacts regarding the canopy.

But I also don't think that it's clear that it's clearly prohibited if it's continued to be processed under a processor's license, and they take that CBD infused product and then they are processing it further into another product that's legal to be sold under the license. That's where I think it gets a little confusing. I'm not saying that it's legal, and I wouldn't say it's clear-cut illegal, and that's where the staff hesitation is on the recommendations and why we're before you.

This is a fairly complicate issue, and I think that there are differing viewpoints on this that we need to be looking at. We certainly are trying to figure out a solution because this does have some widespread ramifications, but that's kind of the position that we've looked at. And, we are hesitant about conducting enforcement when we are trying to – based on exploratory understanding and trying to get an understanding of what's actually going on for purposes of policy development.

I'll leave it at that and answer any questions, thank you.

Chair Postman: Thank you. I see Member Garrett; we'll get right back to you Member Hauge.

Member Garrett: In saying what you are saying, Justin, and then knowing the impact that it's having with the licensees and the concerns that we are hearing and the harm is being done – and this is also for us, David – with it being unclear, but either direction it seems like it's equal whether it's legal or not legal, does the Board have the authority to do something at this point, even if it is something temporary, until we can get a handle on this?

Mr. Nordhorn: I would have to defer to Geoff –

Member Garrett: I see Geoff is on the call, can you help us with this? It sounds like, when we started talking about studying this, we were referred to the Delta-8 issue. But now that this has come up, and it's impacting the way it's impacting and things have been brought to our attention, what action are we authorized to take at this point in time on that subject?

Chair Postman: Geoff will join us. Member Hauge, go ahead.

Member Hauge: I am currently not licensed to practice. I let my license lapse, however I was a member in good standing of the Washington State Bar Association between 1983 and 2019. The statute that we are talking about is RCW 69.50.326. In relevant part it says, first line:

“Licensed marijuana producers and licensed marijuana processors may use a CBD product as an additive for the purpose of enhancing the cannabidiol concentration of any product authorized for production, processing, and sale under this chapter.”

Subsection (2):

“Subject to the requirements set forth in (a) and (b) of this subsection, and for the purpose of enhancing the cannabidiol concentration of any product authorized for production, processing, or sale under this chapter, licensed marijuana producers and licensed marijuana processors may use a CBD product obtained from a source not licensed under this chapter, provided the CBD product...”

...is not cannabis, and has been tested for contaminants. And then we have rules.

So it's very clear. There is nothing to suggest that cannabidiol, CBD, from China or wherever, can then be turned into some other product that we rely on licensees to produce, and to supplant what those licensees are producing. There's no authority there for that. There are certainly lawyers who make lots more money than I could find arguments within statutes on behalf of their clients to come around to the point that the clients want to get to. That's not our job. Our job is to look at what the law says and then to

take steps necessary to give that law shape. If we chose to do nothing here, we're not just ignoring this portion of the law, we're ignoring the whole organization of the 502 marketplace. The canopy, the tiers, everything.

Chair Postman: I would just say that I don't, from the conversation we've had so far, I don't see this as only a binary conversation. It's not whether we do something or we throw up our hands. I think we always know there's a lot of different approaches we can take, working with staff and as a Board, whether it's a policy, an interim policy, rulemaking or whatever it is, I think we have a list of options. But, I'd be interested, Justin, when I read this – not a lawyer, never been a member of the bar in good standing – 69.50.326 says “the processor may use CBD product...”, it doesn't specifically prohibit. But then the part that Member Hauge was just reading, when you get to (a) and (b) under (2), does appear to be – here are the, provided the CBD product meets those standards. Where is the, we'll call it the “Hauge interpretation”, where is it not clear? Is he right, there? And is it just a matter that we don't have rulemaking around it specifically, or, what are we missing in the (a) and (b) of Subsection (2)?

Mr. Nordhorn: On the (a) and (b) I don't think there's necessarily anything missing there. I think it goes back up to Subsection (1) that gives some pause, is that if you are in compliance with all of this – and I think most people would agree – that if you have a CBD isolate coming outside the system, it comes in and gets tested and gets added to a product, at that point there is compliance according to the RCW. The way that this is written talks about enhancing the cannabidiol concentration of any product authorized for production, processing and sale under the chapter. So, they've created a product that is authorized for sale under this chapter. It doesn't say anything that they can't do anything more to that particular product. I think that's where the pause comes in.

I'd like to circle back, and again this is just a perspective issue having been with the Board for quite a while in the rule development area, going back to Member Garrett's question about “can we do something”. I think because this is a Delta-9 issue, I do believe the Board has rulemaking authority to be able to clarify these points on how Delta-9 should be addressed within the licensed system. And I think that is certainly something that is within the wheelhouse of the Board to be looking at because of how the construction has come about on rulemaking for cannabis products.

The policy statement, again, I know we're not talking about it, was really talking about “other than Delta-9”, this is a Delta-9 topic so I think that we do have the ability and the rulemaking authority for that. Again, I'd defer to the legal counsel for definitive answers, but that would be my take.

Chair Postman: Member Hauge, go ahead.

Member Hauge: The clarifying statement to our original statement of policy was meant to reassure some of our license holders and interest groups that we weren't going to do anything too precipitous. However, at that time, I certainly had no idea that licensed processors were taking CBD from the open market and turning it into Delta-9 and then selling it as Delta-9. So, at a minimum, I think we need to reexamine that policy statement in light of what we now know is happening. Again, if we defer, if we discuss, if we bend over backwards to make sure that we don't offend anyone, then we're going to allow a lot of damage to occur in the market.

I saw an email yesterday that was quite, quite, illuminating to me. I requested Dustin not share it with the other Board members because there was a reference to a named processor. But my understanding is that it was sent to you by the originator anyway. This named processor is purchasing regulated products, basically the things you would expect a processor to purchase, for amounts of about five figures, \$90,000,

\$45,000, something like that. His sales, in our traceability system show that he is selling licensed products worth millions of dollars. The differential is explained by the difference between the cost of producing Delta-9 from cannabis, which is what our system was set up to do, and producing Delta-9 from CBD isolate from God knows where.

I don't feel, for that purpose alone, we should be bound by any statement that we might have made in the absence of good information. Again, I don't consider good information to be necessarily adopting the argument of the lawyers for the people who are trying to game the system.

Chair Postman: I have to say, Member Hauge, I understand what you are saying about that statement. I can tell you that the industry people who complained the most about the initial, were equally unhappy about the clarifying statement and came in front of the Board to tell us so. Some may view that as a way to try to appease somebody, if it was, it didn't work. It just made it worse, so let's not assume motive there. There was confusion around the initial statement. And I think we've all tried to endeavor here to clarify not just our current view but what we're looking at further down the line. There's this process we're going to go through between now and what I believe won't end until the end of the 2022 legislative session, because we're going to need legislative help, here.

Clearly, industry from all different sides have been very agitated about this. Some have made it quite clear to us, publically and in many ways, but I don't believe that follow up statement was solely for – and if it was it failed.

Member Garrett and then Director Garza, please.

Member Garrett: I'm getting to the point to say, set aside the follow-up statement, Delta-8, etc. and getting to where we are to date on why we are having this call. What is it – it sounds like we are in agreement that something needs to be done, and done now. Where do we go without getting into all of the other conversations because we know that something needs to be done and something needs to be done now.

In listening to what Justin said, and his interpretation, there is, without Geoffrey telling us otherwise, we have the authority to do something as a Board. So, what do we want to do or instruct staff to bring back to us is where I think we should be going with this.

Chair Postman: At this point, I'm not sure what it is we should do. I think there's serious questions here that need to be explored. I don't believe that we have the legal ability to take any vote for an action. I would again ask Geoff or Dustin to correct me if I'm wrong, because the agenda that was posted a day ago didn't say that we would take action on anything. I'll wait to hear back on that, we have to be mindful of that.

I've got more in my head about timing and what needs to be done, but Rick has been waiting to speak.

Mr. Garza: I want to be really brief because it gets back to Ollie's question of how do we move forward and what are the next steps. It's not the first time over all the years that we've had industry in a different place on this issue, Delta-8, the whole cannabinoid issue.

In the past what we've done, is, when we've been in this situation is call for a work session of the Board and staff and allow the industry to continue to give us information. We've heard from one particular side with respect to this, and we know that there's division within the industry with respect to this. I thought Justin articulated the position that staff has with respect to this, I don't know that I'd necessarily disagree

with Member Hauge, I just don't think it's as clear cut as he does. He's a lawyer and it's great if he believes that, but my thought was that the next step would be to have a work session. That way all three Board members can be present with staff and begin to dig deeper into this issue with our legal counsel present to figure out what the next step is.

Member Garrett: That's all well and done, but what is the time frame on this?

Chair Postman: What I wonder about, something like a work session would be certainly valuable for me. I think there's a lot we don't – I don't – know. I'd like the opportunity to be able to dive deeper with staff about this very specific question. I do think – I have had conversations with policy and others about this issue of "synthetic" and different processes. Even though our statement has been very much focused on Delta-8, which is sort of the nomenclature that has taken on all different – variations are coming under that umbrella – about all these other things. What happens with Delta-9, what happens with Delta-10, whatever the next thing is.

My feeling has been that this effort, and Kathy if she's able can weigh in on this, is a process to educate ourselves and the public and the industry about this. The "deliberative dialogue" was a step in that direction. I don't believe we've done anything in our CR 101 that would exclude us from considering and talking about and taking action on this synthetic thing if in fact we choose to do that. So, it seems to me like we have a process in place.

I do think that the idea of a work session where the three of us could all be there, it has to be a public meeting, and be able to drill down these questions. For this one we only had 24-hours' notice and we're missing some key counsel. I don't think in this situation we're in we want Board counsel giving advice in this setting. We have a way to do that. I certainly don't think the Board should take any vote today. I think if we have a consensus that staff should schedule and organize a work session that Member Hauge can help shape as our lead on the issue, we should do that and try to answer this question. I will pause and see if the other Board members have any comments.

I see Geoff Allen has raised his hand, please jump in.

Geoffrey Allen: I just wanted to add that I am here, there was a muting problem earlier, but I've been listening to the conversation. With respect to giving any type of legal opinion, I'm hesitant to do so in a public forum. It presents certain difficulties, so it's probably best to get a legal opinion in writing which can then be discussed in some type of closed session with the Board and counsel.

I hope that helps. If you have any other questions I'd be glad to answer them, but as far as the comments about "final action" I would concur that any final action should be at a later date rather than now given the urgency with which this special meeting was called.

Chair Postman: Member Hauge has comment, Geoff.

Member Hauge: I think that counsel's idea is a logical next step. And that is we get together with our legal counsel. We take the time to be more fully informed. We get from staff the information that they have as to how this is happening, how CBD based Delta-9 is being introduced into the system. We get specifics, if we can, without naming names so that we understand the process and we get on it right away. The economic damage to the market that we have now, and I've been told many times it's not the Board's job to protect the market, fine. But, we have to admit that this is destructive to the current market. And it puts

in jeopardy our future plans for the market as we've been discussing in the context of equity and other things. So we need to move on this.

I guess that's the most important thing I want to communicate is that this is not something we can bat around among ourselves for a period of weeks or months. This is something that's relatively straight forward. Delta-9 – what can be done with it once it's in the system, after it's come from hemp, and move on from there.

Member Garrett: With the passion that Russ has on the subject and with him already being our lead, I think I will be comfortable with him staying as the lead – this will get done and looked into timely for our next steps.

Chair Postman: Yes, I have no doubt it can be dealt with in a timely manner. I would just say that I would feel more comfortable if we can get this into our system – I want to hear from the AGs who know this statute, I want to hear from our Policy people, I want to hear from the Enforcement people who've been out there and have the history of it. I don't think I feel comfortable as a Board member being out there leading that. I have no idea what the right step would be at this point, I have to just say.

Member Garrett: I agree, and what I'm saying that if Russ takes the lead I'm hoping he can get that scheduled – get whatever needs to be scheduled, scheduled, and have things brought back to us to start pursuing.

Chair Postman: I think we can clearly make this a priority. My sense is that Director Garza and the staff understand that it is a priority right now and that it behooves us to jump at it and address it. I think we can talk offline with staff on the best way to do that in the quickest possible way. Whether that is a work session with staff and the Board or whether we take industry input at that point, if there is an allegation of wrong-doing that has to be handled in a different way, that is not for public discussion and certainly not for Board discussion. I think that's what we'll do, Member Hauge in your role you can continue to have that conversation and I will as well.

I know we're already getting emails from the industry saying the "lack of enforcement looks an awful lot like regulatory capture here". I just have to say, I would ask for some understanding of what this is. This is a special meeting held on short notice about a complicated emerging issue, with some obvious disagreement in interpretation. It behooves us to answer those questions. This is not something the Board could act on, legally, today, and I don't believe should act on, legally, today. I'm sorry if some see that as inherent wrongdoing. It is not. It is the Board's desire to handle these things in as a transparent and thorough manner as possible. That's what we've done up to this point, and when another side of the industry came to us we said the same thing.

My feeling is we should continue to do these things as we do which is based on the law and we're going to look at rulemaking, when we do, based on what science exists around these things. The industry clearly is ahead of the regulators in coming up with new things. To Member Hauge's point, when we talked about this, even six weeks ago, nobody even asked us "what about this Delta-9 creation". We were talking about something different. We have to get knowledgeable about it. We need to be open and fair about it, and we will. We'll be deliberative and frankly, I have to say, people accusing that – looking at the process and seeing some wrongdoing – really eats at me. I see that Justin has his hand up, did you want to add something here?

Mr. Nordhorn: I wanted to offer to the Board, as far as next steps – and it can run concurrently with whatever you decide as well – but we have the open CR 101 and have already had a “deliberative dialogue” on plant chemistry and those types of things, so that is open and I believe this topic can be folded into that particular rulemaking. So we could have public engagement in that fashion as well. I just wanted to offer that up as a possibility.

Chair Postman: I think that’s good, but let’s have a conversation soon with staff about this in a public setting because I think if this is to be a part of that then maybe we need a statement about this.

Back to Member Hauge’s initial question and then we need to talk about what the agency would do. I don’t think we could – I couldn’t answer that question today. Director Garza, is there anything more you need from the three of us in terms of direction that we are looking for and our expectation for further work on this with us?

Mr. Garza: No, I don’t think so. Appreciate the discussion, and again, recognizing that this is a complicated area, maybe for some of us more than others, it appears. We’re here, engaged and ready to work with the Board on the issue. Thanks.

Chair Postman: Thanks. Member Hauge, thoughts?

Member Hauge: I think we’re focused on the introduction of Delta-9 in to the regulated system – Delta-9 from hemp-based biomass. That’s really what I wanted to accomplish with this meeting. It is a problem of some urgency and I think going forward as suggested I will use my best efforts to set up an executive session with our counsel so we can get into the nuances freely, as soon as I can. What step we’ll take after that will be determined by the three of us together.

Chair Postman: I think that’s great. I think there’s consensus that we want to have more conversations. I understand counsel’s concern about doing this publically, so let’s get a [written] legal opinion so we can get some advice on that. I think there’s clearly a part of this that will in fact be a public discussion, like every other part of the Delta-8 issue has been, we will be back before the public.

Let me pause to see if staff or the Board have anything else to add. Hearing none, we will adjourn the Special Board Caucus for June 16. Thanks to everyone, we appreciate it.

Meeting adjourned at 3:03pm.

Minutes approved this 29th day of June, 2021.



David Postman
Board Chair



Ollie Garrett
Board Member



Russ Hauge
Board Member

Minutes Prepared by: Dustin Dickson, Executive Assistant to the Board