

# The DEA has been seizing hemp shipped to this Wilmington CBD producer. Here's why

*State law directly contradicts federal law on the legality of CBD oil, and the situation is made more complicated by the roll-back on Obama-era directives*

By **Benjamin Schachtman** - June 12, 2018



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WILMINGTON—Port City Releaf is a Wilmington-based company that produces a variety of cannabis-based products that are legal under state law. But recently, shipments of hemp used to manufacture those products have been seized by the Drug Enforcement Administration.

According to Owners Johnson Butler and Sean Flynn, **Port City Releaf** imports hemp plants which contain negligible amounts of THC—the major psychoactive chemical in the cannabis plant—from several states, including Oregon and Colorado.

On three occasions, Butler said, shipments via FedEx, UPS and the United States Post Office were intercepted and destroyed by the DEA; shipments were intercepted both in Oregon and en route at a Greensboro shipping depot.

“We’re a new company, and obviously this has been a financial setback for us—we’re out of money, the producer is out of money. We had all the appropriate paperwork, so we don’t understand,” Butler said.

## CBD oil is legal, except that it’s not

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Port City Releaf produces, among other products, CBD oil, an extract of cannabis plant that is legal in the state of North Carolina as long as it contains less than .3 percent THC and at least 5 percent non-psychoactive cannabinoid by weight.

CBD oil is purported to have a wide variety of health benefits. Even the FDA, which has kept cannabis-based medicine at arm's length, **recently recommended the approval of Cannabidiol**, a medicine which—like CBD oil—contains very low or no THC and would be used as an anti-epileptic.

Port City Releaf makes CBD oil from hemp plants, a varietal of *ger r e f m w e x z e* that contains very low levels of THC. North Carolina considers hemp distinct from marijuana, the common name for varietals of the plant that have evolved—and been deliberately bred—to contain much higher THC levels.

The problem is, the federal government doesn't make that distinction.

According to Barbara Carreno, spokeswoman for the DEA, “as far as the federal government is concerned, CBD oil is illegal.”

In early 2017, the **DEA created a new schedule I category for all cannabis extracts**, regardless of THC level. The move was challenged by the Hemp Industries Association, which claimed the DEA overstepped its authority. However, on April 30, the 9th U.S. Circuit of Appeals dismissed the challenge.

The DEA takes the same attitude towards the unprocessed plant.

## Hemp is legal, but not for human consumption

The **2014 Farm Bill** made hemp legal for some industries, like textiles and manufacturing, provided the plant contains no more than 0.3 percent THC by dry weight. However, the DEA considers nearly all hemp products designed for human consumption to be illegal.

This creates some confusion, as the plant's legality apparently depends upon how the DEA believes it will be used.

"People sometimes think that, because there's little or no THC, that it's legal, but the plant, if it's intended for human consumption it's illegal – with very few exceptions, for example sterile seeds, which people toast and put on their salads," Carreno said.

Sterilized hemp seeds are also used to make hemp milk, which is why the dairy alternative is legal. Just about any other hemp-based product made for human consumption is considered a schedule I drug by the DEA; that's one reason the DEA might have seized Port City Releaf's hemp.

## Hemp trafficking?

Carreno could not speak directly to the DEA's enforcement actions against Port City Releaf, and other contacts for the DEA declined to comment.

However, there's a clear parallel between how the DEA handles hemp and marijuana, especially since the agency considers them to be the same thing.

Under Obama-era directives marijuana was deprioritized, essentially removing DEA and Department of Justice involvement with the plant in states that legalized it, like California, Oregon and Colorado. The DEA did remain involved in cases involving interstate and international trafficking.

***IF YOU SHIP IT – THEN THAT'S INTERSTATE COMMERCE, THAT'S TRAFFICKING, AND SO THAT'S A PROBLEM.***

***– DEA SPOKESPERSON***

In January, Attorney General Jeff Sessions rolled back Obama's directives, although the agency continues to pursue trafficking over small-scale state-sanctioned operations. In other words, while the DEA could in theory shut down all of Colorado's dispensaries and arrest everyone possessing marijuana, it doesn't; that's at least in part because, without cooperation from state and local authorities, it doesn't have the manpower.

Likewise, the DEA could also shut down Wilmington's CBD oil dispensaries and arrest anyone in possession of hemp-based products designed for human consumption. But again, it doesn't.

However, shipping the hemp across state lines – like marijuana trafficking – may be enough to attract the DEA's attention, according to Carreno.

"It's legal under state law in Colorado, and it's legal in North Carolina, but that doesn't matter—marijuana is legal under state law in Colorado, but not the DEA. The plant, for human consumption, is illegal, bottom line. If you ship it—then that's interstate commerce, that's trafficking, and so that's a problem," Carreno said.

A DEA spokesperson said there was pending litigation of the enforcement of hemp or hemp-related products but declined to comment further. Butler said he had been in contact with an attorney over the Port City Releaf seizures, but had not formally filed suit.

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