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Too much pot and not enough stores: Growers fear oversupply woes as openings are delayed

Samantha Christmann; The Buffalo News, N.Y.

Dec. 18—Like other cannabis growers across New York, Paal Elfstrum was thrilled to harvest his first legal marijuana crop this fall at Wheatfield Gardens in North Tonawanda.

But that joy soon turned to uncertainty when a lawsuit led to an injunction pausing adult-use retail sales in five regions of the state, including Western New York.

Now, Elfstrum and other New York growers are fearful that they will now face a glut of legally grown marijuana and not enough state-sanctioned stores to buy it.

"I've talked to so many people in this industry that were just so excited that this is finally happening, and now for it to be on hold is kind of disappointing," said Elfstrum, Wheatfield Gardens' CEO.

It's a lot of pot, too. The state's cultivators and processors are sitting on an estimated \$1.5 billion of marijuana, with fewer than half the expected dispensaries in which to sell it.

Now, growers across the state are scrambling. With 63 licensed shops taken off the market (11 of them in Western New York), they are tasked with making new retail connections — fast — and find themselves competing with every other grower in the state to sell their cannabis to the unaffected regions.

If that fails, they must figure out a way to store their crops until sales go live in Western New York and elsewhere. Federal regulations make it impossible for the state's growers to offer their crops for sale across state lines.

It puts New York's cannabis market at risk of what has been one of the industry's biggest problems in other states: oversupply. That oversupply has proven time and again in other markets to send prices plummeting.

Though Elfstrum and others expect the delay to be temporary, the early disruption in supply and demand can take a while to correct itself.

"Market fluctuations are sure to come with any new market and it's really amplified with cannabis," said Elfstrum, whose company also grows vegetables such as butter lettuce. "Oversupply leads to undersupply and it takes a while to figure out what the actual demand is."

The Office of Cannabis Management couldn't have foreseen the lawsuit but took precautions against oversupply as best as it could after seeing it wreak havoc elsewhere.

"The state's doing a great job of rolling it out, giving the opportunity to the existing farms like ours and establishing a supply with that so we don't run into what other states have, where they just let an unlimited amount of people grow," Elfstrum said.

Recently in Massachusetts, an increase in cultivator licenses sent recreational cannabis pricing plunging. While the price of a gram of cannabis flower peaked above \$14 last year in the state, it dropped to a record low of \$7.76 in October, shortly after dozens of cultivation facilities entered the market.

"Oversupply leads to the crashing of prices because people are trying to recoup their investment," Elfstrum said. "A lot of times it'll lead to a needed sale that sold for less than it costs to produce. They just need the revenue."

Like Wheatfield Gardens' locally grown produce, its cannabis had been destined for customers in Western New York. So now, the company has been reaching out to other retail contacts in parts of the state that have not been put on hold.

It is one of the few companies in the state to hold dual cultivator and processor licenses. So, while it's waiting for the local market to open up, it is processing its cannabis into things like oil and edibles — things that preserve better than the raw flower. It's also letting other cultivators know it can do the same for them.

"Storage is key. Cannabis in flower form just oxidizes over time, so it loses its potency," Elfstrum said. "In most cases, it's not like wine where it gets better over time. It actually gets worse."

The lawsuit holding up recreational cannabis sales in places such as Western New York has added more challenges to small businesses that are already trying to navigate a difficult path, said Patrick Hines, a partner at the Buffalo law firm Hodgson Russ.

"With 63 fewer places to sell, the state has expressed concern that demand will be depressed," he said.

Business owners could be faced with making drastic decisions.

"Those who end up with excess product, and who cannot properly preserve it, are faced with the difficult choice to either remediate the product and sell it as hemp biomass at a discount, or discard the product entirely," Hines said.

Even if the outcome is not that extreme, the delay is costing cannabis companies money.

If they can sell their products outside the dormant regions they had already planned for, just getting it there will be more difficult.

"Their products have to travel farther to get to market, adding an increased cost of doing business," he said.

Cannabis businesses already face high tax burdens due to federal rules.

"That's compounded by additional state taxes on cannabis products imposed by the Marijuana Regulation and Taxation Act that are among the highest in the country," he said.

Processors especially have potentially laid out significant dollars to build their facilities, and increased costs could cut into the bottom line.

The company that brought the lawsuit, Variscite NY One, said it meets the requirement of majority ownership by a "justice involved" person — someone convicted of a cannabis-related offense — but was excluded from applying for a license because it is not based in New York and its cannabis-related conviction occurred out of state.

Variscite says New York discriminates against citizens from other states in violation of a constitutional concept called the "dormant commerce clause" which it says means the state cannot favor its own residents over others. Variscite said it will be irreparably harmed if it's forced to wait for a license behind preferred New York applicants.

While the case is pending, Judge Gary L. Sharpe from the U.S. District Court in Syracuse ruled the state cannot issue licenses in the regions cited in the lawsuit: Brooklyn, Central New York, the Finger Lakes, the Mid-Hudson area and Western New York. Those are the preferred operating locations Variscite listed in its application for a CAURD license.

--- **Index References** ---

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