

TIPS ON PREPARING FOR INSPECTION WITH FEDERAL OR STATE INSPECTOR

- Engage applicable regulatory and compliance authorities when they aren't enforcing
- Conduct robust self-auditing and disclosure where appropriate (EPA and state programs)
- Know the limits of each agency's jurisdiction and authority
- Have systems to track inquiries by regulators and responses to those inquiries
- Keep a copy of everything provided to the regulators
- Make sure responses to different regulatory agencies are coordinated and not conflicting or contradictory
- Confirm you have timely, accurately, and fully responded to government entities
- Dedicate the resources necessary to ensure timely and coordinated responses

"RED FLAGS" WHICH MAY PROMPT ADDITIONAL SCRUTINY

- Conflicting stories between management and workers
- Evasive answers, lack of openness, or inconsistencies by employees
- Conflicting data such as two sets of books, unsubstantiated data or no data, or important documents are "missing"
- Data too good to be true
- Claim of ignorance about requirements (yet knowledge is documented)
- Trying to lead the inspector or agent during the inspection
- Concealment of misconduct
- Data falsification or tampering with monitoring equipment
- Missing sample results, bench sheets, lab Standard Operating Procedures, and/or calibration logs

EXPLORE OUR RESOURCES

A History of EPA's Regulation of Pesticide Use on Cannabis Pesticide Compliance in the Cannabis Industry

COMING SOON

PACKAGING, WATER, WASTE, AIR,
PROCESSING AND EXTRACTIONS



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QUESTIONS? IDEAS?

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PESTICIDE COMPLIANCE IN THE CANNABIS INDUSTRY

Pesticide residues on retail cannabis products are often found at levels exceeding the allowable levels on any agricultural product

- Indoor and outdoor grow operations and downstream operations face challenging, confusing federal, state and local environmental regulations for pesticides (as well as air, water, waste, and emergency planning)
- Failure to comply with these overlapping regulations can be devastating to cannabis related businesses and their owners, workers, and customers with significant financial costs and serious harm to human health and environment

This pamphlet provides an overview and should not replace consulting an attorney.

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DO PESTICIDE REGULATIONS APPLY TO ME?

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) grants states primary enforcement responsibility for violations involving the misuse of pesticides. EPA partners with states to regulate pesticides and funds cooperative agreements to help states implement their pesticide programs.

EPA, as of this date has not approved any pesticide product specifically for use on cannabis. Unfortunately, most state lists of approved registered pesticides are not effective on many pests, and growers resort to unlawful use of dangerous pesticides to prevent or mitigate pest damage.

FIFRA § 136j or Section 12 contains the unlawful pesticide acts including:

- Engaging applicable regulatory and compliance authorities prior to enforcement
- Detaching or altering the labeling of a pesticide
- Refusing to prepare, maintain, or submit required records, or to submit required reports
- Refusing to allow an EPA inspector to enter or inspect a facility, copy records, or conduct sampling
- Using a pesticide in a manner inconsistent with its labeling
- Violating any “stop sale, use, or removal” order issued under FIFRA Section 13
- Violating requirements for the transportation, storage, and disposal of a pesticide and its container

WHAT ARE THE ENFORCEMENT RISKS FACED BY INDIVIDUALS AND COMPANIES?

State Rules and State Pesticide Lists

Under certain state rules, a small number of registered pesticide products can be applied to cannabis if the active ingredients found in the product are exempt from residue tolerance requirements and the product or active ingredient is on the state’s list of approved products/ingredients. *However, persons using state “approved” pesticides are generally still subject to federal pesticide requirements and a potential enforcement action for misuse of that pesticide.*

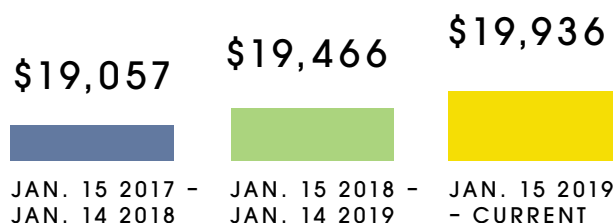
EPA’s Worker Protection Standard May Apply to Cannabis Growers

State and federal laws require employers to protect their employees from the risk of pesticide poisoning and injury. When a pesticide label contains an agricultural use requirements box, certain agricultural employers and handler employers must abide by the Worker Protection Standards (WPS). Under FIFRA section 12(a)(2)(G), it is unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling.” A person who has a duty under this part, as referenced on the pesticide product labeling, and who fails to perform that duty, violates FIFRA section 12(a)(2)(G) and may be subject to a civil penalty or criminal sanctions.

POTENTIAL CIVIL, CRIMINAL, AND NON-JUDICIAL CONSEQUENCES TO GROWERS AND OTHERS FROM VIOLATING EPA’S PESTICIDE REQUIREMENTS

- Civil monetary penalties and criminal fines
- Injunctive relief
- Stop Sale, Use, and Removal Orders
- Imprisonment
- Product seizure
- Asset forfeiture
- Tort liability
- Reputation risk and loss of customer acceptance

Maximum Per Violation Civil Penalties Under FIFRA 7 U.S.C. § 136l(a)(1) for violations occurring after November 2, 2015



Civil liability is strict and results from simply the occurrence of the environmental violation. It does not take into consideration what the responsible party knew about the law or regulation they violated. A civil violation may be caused by an accident or a mistake. On the other hand, **environmental criminal liability** is triggered through some level of intent.