

The Legal Conundrums Presented by the Use of Pesticides in the Cultivation of Marijuana

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Social Evolution: Majority Support for Legalization

Pew Research Center [October 16, 2016]

57% of adults favor legalization v 37% opposed
10 years earlier: 32% in favor v 60% opposed

Gallup Poll Social Series [October 19, 2016]

60% of adults favor legalization
47 year trend favoring legalization

State Legalization of Marijuana

Routes to Legalization

- Medicinal: Legislative

Adult use: Referenda except DC where legislative; in CO referendum amended state constitution

- Medicinal:

States: 29 plus DC

Method of Administration: oral, ingestible, edible, smokeable

- Adult Use (Recreational):

Personal cultivation: 8 states plus DC

Commercial Sales: 4 states

Source of Legal Conflicts Over Marijuana

Controlled Substances Act, 21 USC 812(b)(1): Schedule 1 Narcotic

(A) The drug has a high potential for abuse.

(B) The drug has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug under medical supervision.

Manufacture, possession and distribution are prohibited.

Areas of Legal Conflicts Over Marijuana

- Legal Representation
- Banking
- FIFRA and State Pesticide Law
- National Organic Program
- Local Land Use Regulation
- Neighboring State Objections:
Oklahoma and Nebraska v. Colorado,
[U.S. Supreme Court Original Case No. 144]

Federal Criminal Responses to State Marijuana Legalization

Department of Justice Memoranda from Deputy Attorney General Cole to All United States Attorneys: Guidance on Marijuana Enforcement

June 11, 2011; August 29, 2013; February 14, 2014

Department of the Treasury Financial Crimes Enforcement Network Guidance
FIN-2014-G001, February 14, 2014

- Set priorities for marijuana related prosecutions under the Controlled Substances Act and the Bank Secrecy Act;
- Should not prosecute where conduct is in compliance with a strong and effective state regulatory system

Congressional Response to State Legalization of Marijuana

- Rohrabacher (R-CA) - Farr (D-CA) Amendment to the Consolidated Appropriations Act [Effective through April 28, 2017]
- No expenditure of Federal Funds for enforcement against conduct compliant with state medical marijuana program
- US v McIntosh, _ F 3rd _ (9th Cir. August 16, 2016): Expenditure prohibition precludes prosecutions of individuals in the medical marijuana business
- US v Nixon, _ F 3rd _ (9th Cir. October 17, 2016): Expenditure prohibition does not preclude characterizing use of medical marijuana as probation violation

EPA Response Pesticide Use in State Marijuana Programs

- Environmental Protection Agency Policy Statement: Pesticide Use on Marijuana
January 27, 2016
- Letter from Director of the EPA Office of Pesticide Programs to the Colorado Department of Agriculture
May 19, 2015

Conclusion: States may issue Special Local Needs registrations to address needs of local marijuana programs

New York Bar Response to Enactment of NY Compassionate Care Act

New York State Bar Association Ethics Opinion 1024:
Counseling Clients in Illegal Conduct; Medical Marijuana Law
[September 29, 2014]

In light of current Federal enforcement policy, the NY Rule of Professional Conduct permit a lawyer to assist a client in conduct designed to comply with state medical marijuana law, notwithstanding that Federal narcotics law prohibits the delivery, sale, possession and use of marijuana and makes no exception for medical marijuana. [emphasis added]

New York Compassionate Care Act

- Only specified diagnoses qualify; chronic pain recently added
- Ingestible oil and vapors only
- Mandatory vertical integration: cultivate, process, dispense
- 5 Registered Organizations; 20 authorized dispensaries [4 each]
- 750 doctors authorized to order; must undergo pre-training
- 10,730 patients who must register with State Health Department

Pesticide Issue: The Label is the Law

- Every pesticide product must be registered with EPA and states
- Products may be used only on target plants listed on the label
- Due to Schedule 1 classification, no registered pesticide is labeled for application to marijuana.
- Federal and state law mandate compliance with product label in using a pesticide
- Thus no pesticide may be lawfully applied to marijuana

Thank you

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Department of
Environmental
Conservation

Medical Marijuana and Pesticide Use

January 27, 2017

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Marijuana

- Federally illegal
 - Marijuana is considered a Schedule I drug
 - Same class as heroin and LSD
- EPA will not register pesticide labels for marijuana use



Medical Marijuana

- Legal in New York State
- Regulated by DOH
- DEC is responsible for proper pesticide use
- Discussions at the national level
 - Many states allow marijuana use



Medical Marijuana

- No pesticides registered specifically for cannabis
- Use in NYS requires registered pesticides or Minimum Risk Pesticides
 - Work closely with DOH and Registered Organizations
- EPA recommends Special Local Need (SLN) registrations for pesticides with similar uses



Federal Guidance

Any SLN request must be for a pesticide with the following:

- Food-tolerances or exemptions
- Same or similar type of application method
- Similar crops - to protect workers entering areas of pesticide application
- Similar use site/structure - to protect handlers applying pesticides

SLN registrations have not been requested in New York State



Current Products for Medical Marijuana

- Follow other states and recognize the SLN recommendations
 - Colorado has a list of products
- Similar uses on food crops and crops with similar characteristics to cannabis
 - Hops, mint, tobacco
- Similar application methods and use patterns
- For example a product for use in a greenhouse with a tolerance exemption



Example Product

- 5% Pyrethrin product
- OMRI Listed, tolerance exempt, PPE and WPS
- Labeled for use in a greenhouse
- Large list of target insects
- Broad label statements:
 - Crop groupings include the phrase “including, but not limited to” and then lists a number of crops



Medical Marijuana - Compliance Concerns

- Requests for non-pesticide products to be used as pesticides
 - Rubbing alcohol, hydrogen peroxide as antimicrobials
 - Not allowed under the statute and regulations
- Crop tolerance or exempt from tolerances
 - Most Minimum Risk Pesticides are exempt from tolerances, but not all
- Worker Protection Standard labeling



Medical Marijuana Pesticide Certification

- Private applicator certification for RUPs
- No certification needed for general use pesticides or minimum risk pesticides
- Handler and worker training
- Recordkeeping required by DEC and DOH



Future of Medical Marijuana

- As program expands, registrants will want to market to the pesticide users
- Registrants will seek SLN registrations
- Start with biopesticides, neem oil and other “softer” active ingredients



Questions?



Thank You

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PESTICIDES AND MARIJUANA

Working with the NY Regulations



Keeley Peckham
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Overview

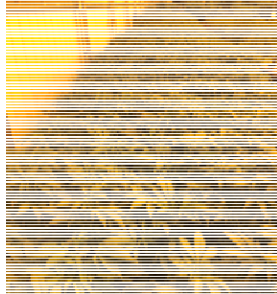
- Marijuana Basics
- New York Regulations
- Realities of the MMJ Industry
- Effective and Safe Pest Control
- Complications
- National Implications





Marijuana Basics

- **Variable Growth Time**
- **Two Stages of Growth**
 - Vegetative (24 hours of light)
 - Flower (12 hours of light)
- **Uptake Capabilities**
 - Heavy Metals
 - Pesticides



Marijuana Basics

- | | |
|---|---|
| Flower/Bud | Concentrates |
| <ul style="list-style-type: none">• Aesthetics Matter<ul style="list-style-type: none">– Large flowers mean long growth times• Low Pesticide and Heavy Metal Concentration• Irregular Cannabinoid Concentration | <ul style="list-style-type: none">• Focus on Oil Concentration<ul style="list-style-type: none">– Not all marijuana is created equal• All Components Are Concentrated• Consistent Product |



Marijuana Basics



New York Regulations

- **§1004.10.c.8.i – General Requirements**
 - Maintain Records for 5 Years
- **§1004.11.e.3 – Manufacturing Requirements**
 - RO's must use only NYS approved pesticides
- **§1004.14.g - Lab Testing Requirements**
 - NYS Lab will test for residual contaminants



Realities of the MMJ Industry

- Most Grows Lack Oversight and Accountability
- Lack of Federal Approval
 - Halts Development and Progress
 - Inhibits Attempts to Enforce Accountability
- High Risk + High Cost = Overreaction to Pests



Effective and Safe Pest Control

- Strain Choice
- Utilize IPM
- Minimal Harm Pesticides
- Application Timing
- Avoid Systemics
- Test Excipients



Complications

- **Heavy Metals**
 - “Bud Boosters”
- **Carbenzadim**
 - Earthworm Castings
- **Myclobutanil**
 - Coconut Coir



National Implications

- Market Size
- Increased Regulations
- 3rd Party Testing
- Scientific Influence
- Progress for Patients



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**New York State Bar Association
Annual Meeting Environmental Section Program
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Supporting Documents**

Department of Justice Memorandum from Deputy Attorney General Cole to All United States Attorneys: Guidance on Marijuana Enforcement, June 11, 2011

<https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/dag-guidance-2011-for-medical-marijuana-use.pdf>

Department of Justice Memorandum from Deputy Attorney General Cole to All United States Attorneys: Guidance on Marijuana Enforcement, August 29, 2013

<https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

Department of Justice Memorandum from Deputy Attorney General Cole to All United States Attorneys: Guidance on Marijuana Enforcement, February 14, 2014

[https://www.justice.gov/sites/default/files/usao-wdwa/legacy/2014/02/14/DAG%20Memo%20-%20Guidance%20Regarding%20Marijuana%20Related%20Financial%20Crimes%20%2014%2014%20\(2\).pdf](https://www.justice.gov/sites/default/files/usao-wdwa/legacy/2014/02/14/DAG%20Memo%20-%20Guidance%20Regarding%20Marijuana%20Related%20Financial%20Crimes%20%2014%2014%20(2).pdf)

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<https://www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf>

Environmental Protection Agency Policy Statement: Pesticide Use on Marijuana, January 27, 2016

<https://www.epa.gov/pesticide-registration/pesticide-use-marijuana>

Letter from Director of the EPA Office of Pesticide Programs to the Colorado Department of Agriculture, May 19, 2015

https://www.epa.gov/sites/production/files/2016-01/documents/epa_letter_to_cda_5-19-15_slns_for_marijuana.pdf

New York State Bar Association Ethics Opinion 1024 [September 29, 2014]: Counseling Clients in Illegal Conduct; Medical Marijuana Law

<http://www.nysba.org/CustomTemplates/Content.aspx?id=52179>

The National Academies of Science, Engineering and Medicine: The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research [January 2017]

<http://nationalacademies.org/hmd/reports/2017/health-effects-of-cannabis-and-cannabinoids.aspx>