

Nipped in the Bud: Massachusetts Regulators Send Strong Message to Cannabis Industry About Using Unapproved Pesticides On Cannabis Plants



Following a larger national trend in enforcing pesticide regulations on the nascent cannabis industry, Massachusetts regulators shut down two Massachusetts dispensaries for selling cannabis grown at a facility that used pesticides that were not approved for use on cannabis.

M3 Ventures, which owned the dispensaries, had grown the cannabis at their own in-state cultivation facility. The facility used two pesticide active ingredients (permethrin and piperonyl butoxide) which have long been approved for other uses, but not on cannabis. Massachusetts authorities were unpersuaded by M3's argument that these pesticides were used sparingly, in lesser quantities than on fruits and vegetables, and only at the early stage of the plant's life cycle. Instead, the Massachusetts Department of Health issued an immediate cease and desist order, finding that the cannabis grown by M3 Ventures "could pose an immediate or serious threat to the public's health, safety, or welfare." Health officials issued the cease and desist order because Massachusetts regulations prohibit the use of pesticides on medical cannabis. The case will likely be referred to the Massachusetts Department of Agricultural Resources.

This follows a September incident, in which Colorado-based medical cannabis company Good Chemistry, was cited in Massachusetts for similar pesticide-use issues. Good Chemistry's Massachusetts growing and processing facility used three natural pesticides: sulfur, pyrethrins and *Reynoutria sachalinensis* (the latter of which is a giant knotweed extract). Good Chemistry contended that those pesticides pose no safety risk and their use is standard in the industry. The three pesticides, in some form, are approved for use on cannabis plants in Colorado, Nevada, Washington, and Oregon.

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While Massachusetts disapproves the use of any pesticide on medical cannabis plants, other state programs are less stringent. Oregon and Colorado, for example, have developed guide lists for which pesticides may be used on cannabis plants. Both states require growers to submit regularly cannabis products for pesticide testing, and products that test positive for pesticides not on the list cannot be sold. Oregon's Department of Agriculture also recently issued an alert noting it is investigating why some cannabis samples include high levels of permethrin and piperonyl butoxide, in exceedance of Oregon Health Authority action levels.

As more and more states continue to legalize cannabis, pesticide use will become a familiar compliance issue for companies interested in bringing cannabis products to market. New York is the next battleground, where Governor Andrew Cuomo announced on December 17 his intent to legalize recreational cannabis. States have been loathe to permit pesticide use on cannabis plants largely because illegality under the Federal Controlled Substances Act has preclude registration of pesticides for use on cannabis at the Federal level. Passage of the 2018 Farm Bill, which goes into effect January 1, 2019, could be a game changer for federal and state restrictions on pesticide use on cannabis plants. This is because for the first time in modern history, industrial hemp will be legalized and outside the constraints of the Federal Controlled Substances Act. Industrial hemp is any part of the cannabis plant with no more than 0.3 percent of tetrahydrocannabinol (THC) on a dry weight basis. Pesticide manufacturers will now be free to file applications to register products for use on industrial hemp.

**The 2018 Farm Bill
goes into effect
January 1, 2019.**

Beveridge & Diamond's [Industrial Hemp & Cannabis](#) industry group assists cannabis-based businesses with state-level environmental compliance, product liability, project planning, environmental risk avoidance, and, where appropriate, litigation services and defense against state-level environmental enforcement actions. For more information, please contact the authors.

Possession, use, distribution, and sale of cannabis may be a federal crime. This alert is not intended to provide any guidance or assistance in violating federal law, or in providing guidance or assistance in complying with federal law.