

Calling All Cannabis Growers: Are you Compliant with Massachusetts' Pesticide Ban?

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In December 2018, the Massachusetts Department of Public Health ("DPH") ordered Triple M, a medical marijuana operator with dispensaries in Mashpee and Plymouth, to close due to its use of pesticides on plants at its Plymouth cultivation facility. The DPH, which previously was responsible for oversight of the state's medical marijuana program before it transitioned this responsibility to the Cannabis Control Commission at the end of 2018, determined that the marijuana grown by Triple M "could pose an immediate or serious threat to the public's health, safety, or welfare," and ordered Triple M to immediately cease the sales of medical marijuana products and quarantine its inventory.

In response to the shutdown, Triple M said in a statement that the three natural pesticides that it used were approved in all 50 states for growing produce, as well as for use on cannabis in Washington, Oregon, Nevada, Colorado, Illinois, and Ohio.

This is the second instance in recent months where the DPH issued a cease and desist and quarantine order to a medical marijuana operator due to its use of pesticides. In September 2018, Good Chemistry, a Colorado-based brand operating in Massachusetts with a cultivation facility in Bellingham and a dispensary in Worcester, experienced a similar shutdown after using certain pesticides on its plants. Although Good Chemistry said that it identified its use of the organic pesticides in its state Registered Marijuana Dispensary ("RMD") license application, the state banned the use of all pesticides on cannabis in 2017 after the Department of Agricultural Resources ("DAR") assumed oversight over this area. In December 2017, 105 CMR 725.105(B)(1)(d) was amended to make it clear that the use of any pesticide (including organic pesticide) is not permissible in Massachusetts unless otherwise approved by the DAR.

In light of Massachusetts' increased enforcement of its ban on pesticide used by cannabis cultivators, marijuana operators in the state should revisit the DAR's September 26, 2018 statement on the Use of Pesticides on Marijuana and Hemp:

Currently, the Environmental Protection Agency (EPA) does not allow the use of a registered pesticide on marijuana or hemp. The [DAR] is not aware of any registered pesticide that has a label that would allow for use on marijuana or hemp

under either federal law or Mass. Gen. Laws c. 132B. Because of this, the use of pesticides on marijuana is prohibited in Massachusetts.

The DAR further notes that products that are marketed as "organic" or are on the Organic Material Review Institute ("OMRI") list are pesticides registered for use throughout the United States; however, they cannot be used on marijuana or hemp. Finally, the DAR states that products on EPA's "25b products or Minimum Risk Pesticides" list are exempt from EPA's federal registration requirements, and while they are not currently registered in Massachusetts, using them currently would not be considered a violation of Mass. Gen. Law. C. 132B.

In view of this emerging enforcement trend, Massachusetts marijuana operators should take the following steps to foster compliance with the Massachusetts requirements:

- 1) Ensure that all cultivators are aware of the current ban on pesticides and do not use organic compounds on cannabis plants until they are approved for use by Massachusetts state health officials (even if the compounds are approved for use on organic produce and for use on cannabis in other states);
- 2) Communicate directly with the DAR if they have questions regarding whether a product is considered a pesticide; and
- 3) Confirm that their policies and procedures have been updated to reflect the current law and train the workforce accordingly.

In addition, because of the rapidly emerging regulatory regimes in states that have recently legalized marijuana, Massachusetts cultivators should continue to stay apprised of new or forthcoming requirements that could further impact their businesses.