Message

From: Baptist, Erik [Baptist.Erik@epa.gov]
Sent: 8/11/2018 2:27:04 AM
To: Hayley.C.Conklin Ex. 6 - Personal Privacy
CC: Beck, Nancy [Beck.Nancy@epa.gov]
Subject: Marijuana PCC Follow-up
Attachments: EPA and Marijuana_8.10_18 final .docx

Hayley,

Attached please find EPA's response to the information requested below. Please accept my apologies for not getting the document to you sooner today.

Have a great weekend.

Best,

Erik Baptist
Senior Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

From: "Conklin, Hayley C. EOP/ONDCP" Ex. 6 - Personal Privacy
Date: August 1, 2018 at 8:41:44 AM EDT
To: "Conklin, Hayley C. EOP/ONDCP" Ex. 6 - Personal Privacy
Cc: "Kourtides, Christine A. EOP/ONDCP" Ex. 6 - Personal Privacy "Talento, Kathryn F. EOP/WHO" Ex. 6 - Personal Privacy
Subject: Marijuana PCC Follow-up

Good morning,

Attached you will find the finalized SOC. As previously discussed, we are asking each agency to provide information on marijuana. The attached guidance document will assist you and your agency in providing the appropriate information. **Please provide your submission by close of business on Friday, August 10th.**

If you have any questions regarding the SOC or your agency's submission, please do not hesitate to reach out. Thank you for your assistance.

Best regards,
Hayley

Hayley C. Conklin
Office of National Drug Control Policy
Ex. 6 - Personal Privacy

Environmental Protection Agency: Cannabis and Pesticides
August 10, 2018

Policy Coordination Committee (PCC) Objective: To identify marijuana threats; issues created by state marijuana initiatives; and consequences of use, production, and trafficking on national health, safety, and security.

Background:

- There are no pesticides registered by EPA specifically for use on marijuana.
- Currently, EPA has not established any tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA) for cannabis because it is classified as a Schedule I controlled substance under the Controlled Substances Act (CSA). EPA does not have methodologies for assessing risk from the various cannabis products, nor does cannabis fit into an existing crop group.
- In Spring 2017, California, Vermont, Washington, and Nevada each issued FIFRA Section 24(c), or Special Local Needs (SLN), registrations for pesticide products to be used on cannabis. In June 2017, EPA sent letters to these states notifying them that the Agency intended to disapprove the registrations, as cannabis is a Schedule I drug under the Controlled Substances Act (CSA). California, Vermont, and Washington withdrew their registrations, and EPA disapproved Nevada's registration on July 3, 2017.
- Under FIFRA, it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling for any person to distribute or sell a pesticide that is not registered. Therefore, use of a registered pesticide on marijuana, or distribution or sale of an unregistered pesticide for use on marijuana, may be a violation of FIFRA.

Issues:

- EPA is concerned about the use of unregistered pesticides on cannabis because it poses potential and unknown human health concerns where pesticides are illegally used on cannabis plants that are later inhaled, applied dermally, and/or ingested. Illegal pesticide residues have been found on cannabis being grown for both medical and recreational uses. Given EPA's mission to protect both health and the environment, the Agency considers the illegal use of pesticides on cannabis to be a threat to EPA's mission and pesticides program.
- Numerous news articles have been published on the illegal residues of registered and unregistered pesticides found on cannabis.[1]
- Some states have established "action levels" for pesticide residues that may remain in cannabis products after the pesticides are applied, and exceedance of a state action level can result in an enforcement action from the state. Unlike tolerances established by EPA, state action levels may

[1] For example, the articles "[HYPERLINK "https://www.theatlantic.com/health/archive/2015/08/pot-marijuana-pesticide-legalization/401771/"]," published on August 31, 2015 by *The Atlantic* and "[HYPERLINK "https://www.reuters.com/article/us-usa-marijuana-environment/banned-pesticides-from-illegal-pot-farms-seep-into-california-water-idUSKCN1BJ13W"]", published on September 8, 2017 by *Reuters*.

not have supporting risk assessments that confirm residue levels do not pose a risk to human health.

- The State FIFRA Issues Research and Evaluation Group (SFIREG) [2] has expressed concerns over action levels on behalf of state pesticide lead agencies. SFIREG asserts that the establishment of action levels has allowed for the proliferation of illegal pesticide use on cannabis and impinges on state pesticide lead agencies' ability to effectively enforce misuse.
- Some pesticides are exempt from FIFRA registration requirements and could potentially be applied to cannabis without violating FIFRA. For example, FIFRA Section 25(b) exempts certain "minimum risk pesticides" from the registration requirement. Because EPA does not register such products, no EPA risk assessments are conducted and, therefore, it is unknown if the application of these pesticides to cannabis represents a risk to human health or the environment.
- Some states have provided lists of EPA-registered products that have broad enough label language to be inferred by states as allowable for use on cannabis.[3] It is unknown if the application of these pesticides to cannabis represents a risk to human health or the environment.
- Most states (except WY) have primary enforcement responsibility (primacy) for pesticide use violations as long as the state pesticide use laws are consistent with FIFRA. Primacy is outlined in EPA's Final Interpretive Rule of FIFRA Sections 26 and 27. EPA oversees the cooperative agreement program that confers primacy to the states for pesticide use and enforcement.
- EPA has not yet taken a position on any state laws pertaining to pesticide use on cannabis, the effect on a state's primacy, or how EPA would respond to any identified violations. EPA has maintained that any unregistered use of a pesticide constitutes a violation of FIFRA; however, the Agency has not adopted a formal position on state initiatives designed in response to cannabis legalization due to political considerations and potential resource implications.

EPA and Hemp:

- The 2014 federal Farm Bill, codified at 7 U.S.C. Section 5940, allows for production of industrial hemp if (1) the industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research and (2) it is allowed under state law. As of August 2018, EPA has not received any applications for industrial hemp grown in accordance with the 2014 Farm Bill.
- EPA has received requests to add hemp as a use site generally, which it currently denies. Twelve products, involving 4 different active ingredients, have been identified with hemp uses on the EPA-approved master label, which is not in accordance with EPA's current approach. Most of these products are biochemicals/biological pesticides that have tolerance exemptions.

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[2] SFIREG, which is funded through a cooperative agreement with EPA, is a committee of the Association of American Pesticide Control Officials (AAPCO) that is charged with acting on AAPCO's behalf to maintain information exchange and policy coordination between the states with input from and discussion with EPA where appropriate.

[3] [HYPERLINK "https://www.oregon.gov/ODA/shared/Documents/Publications/PesticidesPARC/GuidelistPesticideCannabis.pdf"]

Message

From: Baptist, Erik [Baptist.Erik@epa.gov]
Sent: 8/16/2018 6:40:45 PM
To: Udutha, Pranay K. EOP/WHO [Ex. 6 - Personal Privacy] Beck, Nancy [Beck.Nancy@epa.gov]; Lovell, Will (William) [lovell.william@epa.gov]
CC: Bolen, Derrick [bolen.derrick@epa.gov]
Subject: RE: Marijuana policy

Hi Pranay,

Below please find EPA's responses to your follow-up questions:

- *Under the 2014 Farm Bill pilot program for industrial hemp production- you mention EPA has not received any applications for hemp under this law. Does that mean that only broad spectrum pesticides are being used (if any pesticides are being used) on any industrial hemp grown under the 2014 Farm Bill? No pesticides that would need to be registered under FIFRA (because they are more toxic to humans/the environment) are being legally used on these hemp grows?*
    - Clarification – As of August 2018, EPA has not received any **pesticide** applications for industrial hemp grown in accordance with the 2014 Farm Bill.

Ex. 5 Deliberative Process (DP)

Broad spectrum pesticides are also required to be registered under FIFRA. However there are some labels that have broad label language that is being interpreted by states to not preclude use on cannabis (both marijuana and hemp) because the use sites are not specific. Because "the label is the law" for FIFRA enforcement purposes, use of these pesticides on industrial hemp or marijuana may not constitute a violation under FIFRA. These pesticides are primarily pesticides that have tolerance exemptions for all food uses and therefore do not necessarily list out every potential crop use on the label. Generally, most conventional pesticides do not qualify for a tolerance exemption and must have a tolerance for each food use, so each approved food use is required to be listed on the label.

- *You mentioned that ~12 "labels" currently list hemp as an approved site- does this mean that there are about 12 sites producing hemp under the 2014 Farm Bill? I may just be confused given that I do not know the terminology here.*
    - No. EPA does not register crop production sites, EPA registers pesticides for use. Approximately twelve pesticide products have industrial hemp listed as an approved use. Pesticide uses, which are specific to each product, identify (1) crops on which the pesticide will be used and (2) where the product will be used (such as a building, airplane, etc.). For example, several of the labels with hemp listed as a use site state that the product can be applied to "Other Agronomic Crops, including: Artichoke, Asparagus, Coffee, Cotton, Grass grown for seed, Hops, Industrial Hemp, Jojoba, Papaya, Pistachio, Sesame, Sunflower, Tea, Mint, Spearmint."

Best,

Erik Baptist

Senior Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

From: Udutha, Pranay K. EOP/WHO Ex. 6 - Personal Privacy
Sent: Monday, August 13, 2018 10:18 AM
To: Baptist, Erik <Baptist.Erik@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>
Cc: Bolen, Derrick <bolen.derrick@epa.gov>
Subject: RE: Marijuana policy

Hi Erik,

Thanks very much for your responses on the below. A few clarifications- I very much appreciate you helping me digest this information!

Under the 2014 Farm Bill pilot program for industrial hemp production- you mention EPA has not received any applications for hemp under this law. Does that mean that only broad spectrum pesticides are being used (if any pesticides are being used) on any industrial hemp grown under the 2014 Farm Bill? No pesticides that would need to be registered under FIFRA (because they are more toxic to humans/the environment) are being legally used on these hemp grows?

You mentioned that ~12 "labels" currently list hemp as an approved site- does this mean that there are about 12 sites producing hemp under the 2014 Farm Bill? I may just be confused given that I do not know the terminology here.

Sincerely,

Pranay

Pranay K. Udutha
Policy Advisor
Office of the Senior Counselor to the President

From: Baptist, Erik <Baptist.Erik@epa.gov>
Sent: Friday, August 10, 2018 4:32 PM
To: Udutha, Pranay K. EOP/WHO Ex. 6 - Personal Privacy Beck, Nancy <Beck.Nancy@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>
Cc: Bolen, Derrick <bolen.derrick@epa.gov>
Subject: RE: Marijuana policy

Pranay,

Below please find EPA's responses to your follow-up questions:

-You mention that states have primary responsibility for pesticide use violations. Do states have the resources to effectively investigate illegal marijuana cultivation? While state resources vary, they generally have the capacity to effectively investigate marijuana cultivation. Other factors, however, complicate their ability to fully cover this area including: state political considerations, jurisdictional considerations, and lack of EPA partnership in this area. States

have contacted EPA about their concerns with illegal pesticide use and have encouraged us to act to give them legal tools.

- Sounds like general pesticides used for bedding etc and those that do not have to be registered under FIFRA would be the legal options today. Is any pesticide that needs to be registered under FIFRA, and is not a pesticide for a broad class of plants, more harmful to human/wildlife health? Unknown. There may be pesticides that are being illegally applied to marijuana growing, where the health impacts have not been evaluated. This includes pesticide products that have registered uses in the U.S., and products that are no longer registered in the U.S., such as carbofuran. Illegal pesticide residues have been found on cannabis being grown for both medical and recreational uses. These pesticides have unknown health consequences when used on cannabis, and may pose serious risks to public health.

-Also, do we have an estimate of what percent of marijuana cultivation use pesticides that are totally illegal for outdoor use? Unknown, but it is likely that a significant portion of the pesticide use is illegal.

-Just confirming: for hemp cultivation, per the 2014 farm bill pilot program, there are already some pesticides indicated as safe for outdoor hemp cultivation- is this correct? The 2014 federal Farm Bill allows for production of industrial hemp only if (1) the industrial hemp is cultivated for purposes of research and (2) it is allowed under state law. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- Are these the most commonly used pesticides for marijuana cultivation? Unknown. Industrial Hemp and marijuana pose different risk profiles based on the way in which they are used. The lack of registered pesticides for use on cannabis poses pest control challenges and potential and unknown human health concerns where pesticides are illegally used on cannabis plants that are later inhaled, applied dermally, and/or ingested.

Please let us know if you have additional questions.

Best,

Erik Baptist
Senior Deputy General Counsel
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U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

-----Original Message-----
From: Udutha, Pranay K. EOP/WHO Ex. 6 - Personal Privacy
Sent: Friday, August 3, 2018 12:23 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>
Cc: Baptist, Erik <Baptist.Erik@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>
Subject: RE: Marijuana policy

Nancy,

Great, thank you very much for that background! Very helpful. I will add Erik Baptist to the wg as well, and look forward to reviewing your team's comments for the PCC.

Just a few follow ups- know that we may not have perfect data, but would appreciate your team's expertise/thoughts on the below:

-You mention that states have primary responsibility for pesticide use violations. Do states have the resources to effectively investigate illegal marijuana cultivation? Sounds like general pesticides used for bedding etc and those that do not have to be registered under FIFRA would be the legal options today.
Is any pesticide that needs to be registered under FIFRA, and is not a pesticide for a broad class of plants, more harmful to human/wildlife health?

-Also, do we have an estimate of what percent of marijuana cultivation use pesticides that are totally illegal for outdoor use?

-Just confirming: for hemp cultivation, per the 2014 farm bill pilot program, there are already some pesticides indicated as safe for outdoor hemp cultivation- is this correct?
Are these the most commonly used pesticides for marijuana cultivation?

Sincerely,

Pranay

Pranay K. Udutha
Policy Advisor
Office of the Senior Counselor to the President

-----Original Message-----
From: Beck, Nancy <Beck.Nancy@epa.gov>
Sent: Friday, August 3, 2018 7:48 AM
To: Udutha, Pranay K. EOP/WHO Ex. 6 - Personal Privacy Lovell, Will (William) <lovell.william@epa.gov>
Cc: Baptist, Erik <Baptist.Erik@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>
Subject: RE: Marijuana policy

Pranay,
I've been added to the PCC email list so I think we are looped in now.
Please also add Erik Baptist to the working group as well; he is another political deputy here in OCSPP.

Just to catch you up, attached is a backgrounder on the cannabis/pesticide registration issue. Please let us know if you have any questions.
We will also work to fill out the forms as requested by the PCC.

Regards,
Nancy

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273
M: 202-731-9910
beck.nancy@epa.gov

-----Original Message-----
From: Udutha, Pranay K. EOP/WHO Ex. 6 - Personal Privacy
Sent: Tuesday, July 31, 2018 11:03 AM
To: Lovell, Will (William) <lovell.william@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>

Subject: RE: Marijuana policy

Fantastic, appreciate your help on short notice Will!

Nancy, look forward to working together. I'll have ONDCP share some information/background on what we are looking for.

As a side note, we are told that illegal marijuana growing operations are often on public lands, and drain substantial resources (water etc) from the area. Would be interested to hear if you and your team are seeing parallel information to the below. Some researchers shared with me about illegal marijuana growing in some parts of the Western US:
- Water use is astronomically high: 90 gallons per plant per year (6 gallons of water per minute is typical for these illegal farms)
- Cost of the infrastructure on an illegal marijuana farm is ~$30k-$50k; cost to law enforcement/nonprofits to remove/destroy the illegal farms is $15k-$30k
- Illegal marijuana growers often use high concentrations of pesticides, not legal for outdoor use in the USA

Pranay K. Udutha
Policy Advisor
Office of the Senior Counselor to the President

-----Original Message-----
From: Lovell, Will (William) <lovell.william@epa.gov>
Sent: Tuesday, July 31, 2018 10:46 AM
To: Udutha, Pranay K. EOP/WHO Ex. 6 - Personal Privacy
Cc: Beck, Nancy <Beck.Nancy@epa.gov>
Subject: RE: Marijuana policy

Hey, Pranay, I am cc'ing Nancy Beck, who is the POC for marijuana policy. Nancy serves as the Deputy Assistant Administrator in the Office of Chemical Safety and Pollution Prevention.

-----Original Message-----
From: Udutha, Pranay K. EOP/WHO Ex. 6 - Personal Privacy
Sent: Tuesday, July 31, 2018 9:28 AM
To: Lovell, Will (William) <lovell.william@epa.gov>
Subject: Marijuana policy

Hey Will- who at epa could discuss marijuana policy? Is there an appointee in the administrator's policy shop that could help us navigate where marijuana policy intersects w the epa's realm?

Pranay

Sent from my iPhone

Message

From: Beck, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=168ECB5184AC44DE95A913297F353745-BECK, NANCY]
Sent: 8/3/2018 11:48:15 AM
To: Udutha, Pranay K. EOP/WHO Ex. 6 Personal Privacy (PP) Lovell, Will (William) [lovell.william@epa.gov]
CC: Erik Baptist (baptist.erik@epa.gov) [baptist.erik@epa.gov]; Derrick Bolen (bolen.derrick@epa.gov) [bolen.derrick@epa.gov]
Subject: RE: Marijuana policy
Attachments: Cannabis One Pager 8.2.2018.docx

Pranay,
I've been added to the PCC email list so I think we are looped in now.
Please also add Erik Baptist to the working group as well; he is another political deputy here in OCSPP.

Just to catch you up, attached is a backgrounder on the cannabis/pesticide registration issue. Please let us know if you have any questions.
We will also work to fill out the forms as requested by the PCC.

Regards,
Nancy

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273
M: 202-731-9910
beck.nancy@epa.gov

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As a side note, we are told that illegal marijuana growing operations are often on public lands, and drain substantial resources (water etc) from the area. Would be interested to hear if you and your team are seeing parallel information to the below. Some researchers shared with me about illegal marijuana growing in some parts of the Western US:
- Water use is astronomically high: 90 gallons per plant per year (6 gallons of water per minute is typical for these illegal farms)
- Cost of the infrastructure on an illegal marijuana farm is ~$30k-$50k; cost to law enforcement/nonprofits to remove/destroy the illegal farms is $15k-$30k
- Illegal marijuana growers often use high concentrations of pesticides, not legal for outdoor use in the USA

Pranay K. Udutha
Policy Advisor
Office of the Senior Counselor to the President

-----Original Message-----
From: Lovell, Will (William) <lovell.william@epa.gov>
Sent: Tuesday, July 31, 2018 10:46 AM
To: Udutha, Pranay K. EOP/WHO Ex. 6 Personal Privacy (PP)
Cc: Beck, Nancy <Beck.Nancy@epa.gov>
Subject: RE: Marijuana policy

Hey, Pranay, I am cc'ing Nancy Beck, who is the POC for marijuana policy. Nancy serves as the Deputy Assistant Administrator in the Office of Chemical Safety and Pollution Prevention.

-----Original Message-----
From: Udutha, Pranay K. EOP/WHO Ex. 6 Personal Privacy (PP)
Sent: Tuesday, July 31, 2018 9:28 AM
To: Lovell, Will (William) <lovell.william@epa.gov>
Subject: Marijuana policy

Hey Will- who at epa could discuss marijuana policy? Is there an appointee in the administrator's policy shop that could help us navigate where marijuana policy intersects w the epa's realm?

Pranay

Sent from my iPhone

Cannabis Pesticide Registration

Background:

- Most states have legalized cannabis for medical use. Several states and the District of Columbia have legalized cannabis for recreational use.
- Use of pesticides must be approved by EPA for each particular crop. Thus, for pesticides to be used on cannabis they must be approved by EPA.
- FIFRA Section 24(c) permits individual states that have unusual pest management challenges to pursue a pesticide registration in their state as a Special Local Needs (SLN) registration.
- The 2014 federal Farm Bill allows for production of industrial hemp if: 1) the industrial hemp is cultivated for purposes of research; and 2) it is allowed under state law. Some pesticide labels do list industrial hemp among the crops, and EPA has previously indicated that it would consider SLNs for industrial hemp grown under the 2014 Farm Bill provisions.
- Cannabis remains classified as a Schedule I controlled substance under the federal Controlled Substances Act.
- In spring 2017, VT, NV, WA, and CA each issued four SLN registrations for pesticide products to use on cannabis.
    - In June 2017, EPA sent letters notifying the states of the agency's intent to disapprove the registrations, because the cultivation and sale of cannabis is generally illegal under federal law.
    - Three of the states decided to withdraw the SLN registrations.
    - EPA disapproved Nevada's registration on July 3, 2017.

Key Points:

- There are no pesticides registered by EPA specifically for use on marijuana Ex. 5 Deliberative Process (DP) cannabis is classified as a Schedule 1 controlled substance. There are no tolerances established for marijuana or hemp. Cannabis does not fit into an existing crop group.
- Ex. 5 Deliberative Process (DP)
- Cannabis growers have significant issues with pests. Unregistered pesticides in cannabis production are used to improve yield and profits for growers. Illegal pesticide residues have been found on cannabis being grown for both medical and recreational uses. These pesticides have unknown health consequences when used on cannabis, and may pose serious risks to public health.
- Some states have passed legislation which directly (identify specific pesticides) or indirectly (setting residue "action levels" for pesticides) allows the use of pesticides on cannabis within their state, Ex. 5 Deliberative Process (DP)
- Some states have published lists of pesticide products with broad label language that the state has determined are allowed for use on cannabis.
- Most states have primary enforcement responsibility (primacy) for pesticide use violations as long as the state pesticide use laws are consistent with FIFRA. EPA oversees the cooperative agreement program that confers primacy to the states for pesticide use and enforcement. EPA has not yet taken a position on any state laws pertaining to pesticide use on cannabis, the effect on a state's primacy, or how EPA would respond to any identified violations.