

Contamination, PFAS, and the Cannabis Industry

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Per- and polyfluoroalkyl substances (PFAS) are a class of man-made chemicals used in various industries, such as food packaging, cosmetics, and household products. More than 10,000 chemical substances can be classified as PFAS in the United States. However, despite their broad use, several studies have identified potential health risks associated with these chemicals.

According to Bloomberg Law, there has been a seismic shift over the last two years in the legal landscape surrounding health and environmental damage as awareness of PFAS has expanded. Consequently, there has been a [surge of lawsuits](#) and additional enforcement risks. These developments have led to growing concern regarding the potential impact of regulatory focus on the cannabis industry. (See articles specific to the [manufacturing](#) and [food/beverage](#) industries.)

Recent Suspected Contamination in the Cannabis Industry

The cannabis industry is no exception to potential risks of PFAS contamination lawsuits. In fact, according to an alert from the Washington State Liquor and Cannabis Board (WSLCB), “[t]he cannabis crop possesses a unique vulnerability with respect to environmental contamination” because “[t]he plants can absorb contaminants [...] to a much higher degree than many other plants.” The WSLCB further noted that it had detected a chemical which may be harmful in the soil of a particular region of the state, known as dichlorodiphenyldichloroethylene (DDE).

The WSLCB placed administrative holds on licensees operating in the relevant geographic area following the detection of DDE. It also requested lists of all products produced by licensees in the previous eight months, and further requested that licensees conduct a recall on all products. Additionally, the WSLCB disclosed that it will be testing potentially affected products currently on retail shelves and stated that further (unknown) action can be expected. The result has devastated the affected businesses, despite no improper conduct of their own. While they wait for the agency to act and for the potential health and legal implications to play out in the longer term, their very viability hangs in the balance.

Cannabis industry participants are well-advised to anticipate similar actions with respect to other contaminants, including PFAS. Potential PFAS contamination can enter cannabis products through various pathways such as irrigation water, fertigation, nutrient delivery systems, and soil, increasing the need for regular and ongoing testing to mitigate the possible risks of exposure.

The cannabis industry is still relatively new, and there are currently no specific federal regulations or comprehensive guidelines in place to address potential PFAS contamination. However, both federal and state

regulators are highly attuned to these issues. In fact, federal regulators have increasingly taken action against cannabis companies for health and safety violations in recent years, despite the [lack of specific standards](#) and marijuana's classification as a [Schedule I controlled substance](#) under the federal Controlled Substances Act. To avoid exposure to litigation and protect customers and employees from potential health risks, cannabis licensees are encouraged to conduct frequent testing on water and soil to detect and mitigate possible contamination.

The Impact of PFAS on the Cannabis Industry

The possibility of PFAS contamination has the potential to greatly impact the cannabis industry, leading to legal, economic, and reputational ramifications. Cannabis companies, which are held to strict standards to ensure the safety of their products, can face significant financial losses if their products are found to be contaminated.

The industry's increasing acceptance, as demonstrated by the dramatic rise in marijuana legalization across the states within a decade, along with ongoing efforts toward legalization, can be attributed, in part, to its commitment to providing safe and regulated products. However, without businesses actively monitoring their products, contamination could threaten this progress by, including but not limited to, prompting legislators (and/or regulators, as their authority permits) to implement rules or restrictions that could put many operators out of business. Additionally, it could instill a lack of confidence in the industry among consumers and investors.

Addressing Contamination in the Cannabis Industry

The continued success of the cannabis industry as a whole in the United States, as well as for individual operators, necessitates diligent safety monitoring. The cannabis industry should take steps to mitigate the impact of potential chemical contamination. Some of the steps that can be taken are:

1. Conducting Regular Testing

Frequent testing of soil and water sources can help identify the presence of contaminants, allowing licensees to implement necessary precautions and controls.

2. Reducing Risk of PFAS Contamination

Cannabis cultivators and producers can reduce the risk of potential PFAS contamination by minimizing the use of synthetic fertilizers, avoiding the reuse of wastewater, and employing best practices for water management.

3. Following Industry-Specific Guidelines

The cannabis industry as a whole may want to develop, monitor, and actively update a single set of industry-specific guidelines and regulations to address the presence of potential contaminants in products, in the interest of protecting consumers and the industry from potential backlash.

The Bottom Line

Contamination can be a threat to the safety and quality of cannabis products, the health of consumers and the environment, and the cannabis industry as a whole. To mitigate its impact, cannabis companies should consider

prioritizing safety standards through regular testing, actively reducing the risk of contamination, and following industry-specific guidelines. By taking these actions, cannabis industry participants can keep their products safe, consistent, and reliable, thereby establishing trust with investors and consumers and setting the stage for long-term growth and success. Taking these steps is not only a good practice for protecting the interests of any cannabis business but also for remaining a good corporate citizen.

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