



Evidence Collection Errors and Challenges: How to Avoid Both

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Pesticide Enforcement Manager



Topics

- Complaints
- Investigations-
 - Evidence- how to collect
 - Documentary
 - Physical
 - Testimony
 - Analysis-issues with evidence
 - Hearings-issues with evidence

**COLORADO
DEPARTMENT OF
AGRICULTURE**





CDA in the News!

Latest pot recalls: Sticky Buds, Northern Lights Cannabis Co.

<https://www.thecannabist.co/2016/04/01/sticky-buds-northern-lights...co/51247/> ▼

Apr 1, 2016 - "We have a strong suspicion that the Department of Agriculture's shoddy process of taking samples has something to do with this," Woolhiser said. "My business partner watched them remove a dirty multi tool from his pocket – a Leatherman-type tool, and it had visible red hairs and resin on it from prior ...

We begged them to use our instrument, but they wouldn't. Their cart had visible dirt and plant material on it too.

We're in the process of exploring our rights as they pertain to the Department of Agriculture ... We're considering joining a lawsuit with other interested parties."



Development of Sampling Guidelines

- **Guidelines vs Procedures**
- **Changing dynamics**
- **Investigator buy-In**






Lights, Camera, Action!

Everyone has camera today!





Lights, Camera, Action!

 [REDACTED] Attorney LLC < [REDACTED]  3/30/16   

to me 

Hi Matt—

After fully reviewing the footage from the inspection of [REDACTED] it appears your inspectors did in fact combine the samples at the premises. My clients employee was incorrect in asserting that there were 12 bags. I apologize for any miscommunication, as I had been misinformed.

I will give you a call later this week to discuss other matters. I am eternally optimistic we can come up with a fair protocol between the CDA and the MED so that businesses may retest composite samples and have an opportunity for some due process in the administrative hold procedure. At this point, Mj businesses are being found guilty with no way to prove innocence.

I also believe treating cannabis like you would a field of corn (e.g. composite sampling) is an incorrect way to determine a contamination. Cannabis is grown in separate rooms for the purposes of preventing outbreaks or problems and therefore each room is likely to be treated differently. I am sure the industry would appreciate such considerations by the CDA.

Please also see the attached report from OR's Health Authority on Contaminate testing of cannabis.



Utility of Evidence

- **Best**
- **Corroborating**
- **Supporting**
- **Refuting**
- **Other**



The Department Consistently Failed to Fulfill Its Duty to Investigate this Matter in a Thorough and Objective Manner By:

- (i) notifying [complainant] of the product sprayed on the target site,
- (ii) notifying [complainant] of the intended sampling locations
- (iii) failing to investigate what "systemic fungicide" the [complainant] used on their property and when it was used,
- (iv) failing to investigate whether the Homes Owners' Association or the [other] Home Owners' Association had used products containing propiconazole or difenoconazole on their common area properties,



The Department Consistently Failed to Fulfill Its Duty to Investigate this Matter in a Thorough and Objective Manner By:

- (v) failing to investigate inconsistencies in its laboratory results, and
- (vi) failing to investigate whether there might have been alternative dispersal mechanisms that were more consistent with all the evidence in this matter,
- (vii) abdicating its duty to investigate in a thorough and objective manner by turning the decision on what evidence to collect over to [complainants] who were biased and had a material interest in the outcome of the Department's investigation.



Evidence in hearings

- What are attorneys looking for?
- How “good” evidence is made to look “bad”



How to ensure that your evidence doesn't end up in the "bad" pile

- Document your actions
- Follow your procedures/guidelines
- When unsure, ask legal for help



Questions ?

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