



Episode Title: Pesticide Use on Cannabis in Colorado -- A Conversation with Brenna Finn

Episode Number: 20210513

Publication Date: May 13, 2021

All Things Chemical[®] is a podcast produced by Bergeson & Campbell, P.C., a Washington, D.C., law firm focusing on chemical law, business, and litigation matters.

This podcast transcript has been lightly edited for accuracy. It is an approximation of the podcast audio, and the audio recording remains the definitive record.

Let us know about any topics you would like to hear about in future episodes at podcast@lawbc.com.

A full recording of the podcast is available at <https://www.lawbc.com/podcasts/pesticide-use-on-cannabis-in-colorado-a-conversation-with-brenna-finn>.

Lynn L. Bergeson (LLB): Hello and welcome to All Things Chemical, a podcast produced by Bergeson & Campbell, P.C. (B&C[®]) a Washington, D.C., law firm focusing on chemical law, business, and litigation matters. I'm Lynn Bergeson.

This week I sat down with Brenna Finn, Assistant Attorney General in the Colorado Department of Law. I'm proud to report that Brenna was a Law Intern here at the firm years ago, as she began her legal career. I'm pleased to report that her experience with the firm focused her career in part on chemical regulation. Brenna's substantive skills in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Toxic Substances Control Act (TSCA) regulation have served her well in private practice and prepared her for her career with the state of Colorado Attorney General's office, where Brenna now heads up the Agricultural unit in the Business and Licensing Section of the Colorado Department of Law. Importantly, Brenna enforces the department's pesticide registration and application laws, among other responsibilities.

Brenna is also an Adjunct Law Professor at the University of Denver Sturm College of Law, where she teaches food and pesticide regulation. After briefly summarizing Brenna's successful career, we discuss Colorado's regulation of pesticides used on cannabis and the key enforcement issues on which Brenna's unit focuses. We also review other enforcement priorities in the state, as Colorado grows many crops in addition to cannabis. Now here is my conversation with Brenna Finn.

Brenna, welcome to the studio. I am *really* thrilled that you're with us today. You've had an amazing career thus far, and I really am proud to say I knew you when, as that expression goes. You clerked for the firm, and now you are Assistant Attorney General for Colorado and a Professor of Law. It's amazing what you have done in a very short period of time. Why don't you let our listeners know a little bit about your career track and how you have achieved so much so quickly?

Brenna Finn (BF): Well, thanks, Lynn. And it really is true. You knew me when, but I knew you when, too. So it's an absolute blast for me to see you now. I think we're going on -- I think

we decided that it had been more than a decade, if not close to two. I think so much comes from -- I have always been a person to set intention. And you set that intention and you visualize it, even when it's not necessarily what you wanted.

I started, obviously, in D.C. with you as a legal assistant and focused on chemical and pesticide regulation. Then I learned in law school that that experience was really going to shape my trajectory. I went to Washington College of Law at American University in D.C., and after my first few classes in law school, I decided that I was going to be an immigration attorney. At which point in time, my advisor said, "No, you're not. You've been doing niche work in a really interesting area for a long time. And you're going to be an environmental lawyer." And I said, "Okay. I'll do that immigration or other pro bono work at a different point in time."

Life, in the end, pushed me out of D.C. It pushed me out West, where my family was. And at that point in time, I had been working at a firm in D.C., but we had family issues that pushed me out. And at that point I decided, okay, Colorado. I actually talked with you, Lynn. You gave me the names of some firms in Denver. And at that point I said to my ex-husband, "We're moving to Colorado."

And he said, "Get a job." And I said, "Fine. I will." And I interviewed. I got first interviews and second interviews, but nobody was picking me up. I looked back at that intention and I said, "By God, I'm getting to Colorado." So I took the bar exam because I knew that that would be something to help me. I took it in February, passed it in May, got my interview at Thanksgiving, and the firm at that point said, "Can you start on December 9?"

And I said, "Well, that's really quick. How about the 13th?"

LLB: Wow.

BF: Aim for what you want, and don't stop until you get it. In the end, I am *an* Assistant Attorney General for the Colorado Department of Law. I work with a team of three other really phenomenal attorneys in the Business and Licensing Section. I work under a Deputy and a Senior Assistant Attorney General, but all of us focus on different areas at the department, and we'll talk about that in a little bit.

But I think what I'd really like to say now and sort of end up here is the idea that I found a place. Part of the reason I have gotten where I am is because I have found a place where it was okay and even completely necessary to be unabashedly me. I walked into an interview with 12 people at the Department of Agriculture (CDA). They were all seated at a long table, there with my cup of coffee at the front. And one of the attorneys I had first interviewed with said to the Commissioner of Agriculture and the Deputy Commissioner of Agriculture and the head of every possible program at the department, "Brenna, when you get this job, what are the first three things you're going to do?"

And I opened my mouth, and I smiled, and I said, "I'm going to call my mom."

LLB: It's an honest, accurate response.

BF: And I looked up, and people were hiding behind their hands, smiling. And I thought to myself, "Oh, my God, I have ruined this. They either think I am the stupidest woman to ever walk into 305 Interlocken Parkway, or they find me very endearing." As it turned out, they found me very endearing because it was a unanimous vote to bring me onto the team. And

really, that being me, that being safe and comfortable, it let me thrive being comfortable. And that led to confidence. And at this point, I've been confident enough to try new things and to move beyond my own comfort zones.

I've recently taken on a General Counsel role for a board here in Colorado that deals with access and affordability for health care. I am not an insurance attorney. I don't do insurance work. I have insurance. That's about the size of it. But it is; it's that comfort that leads to confidence -- and working with a team of people you really enjoy.

LLB: Those are all just excellent points. I've made a point my whole life of trying to mentor young women, moving up the ranks, and everything you said, Brenna, is the God's honest truth. Set your sights high, know you can do it, and just do it, right? And you did!

I have a pretty good idea of what you did in the private sector, in the law firms, including our own, that you worked in, and you have developed and you continue to demonstrate that every single day an impressive set of skills in the chemical regulatory area, which is, as you suggest, very niche. Those skills seem to be really, really supporting your client, the state of Colorado, right now, but I'm a little less clear exactly how those legal skills are deployed as an Assistant Attorney General. Tell us what it is you do exactly, heading up the Agricultural Unit in the Business and Licensing Section in the Colorado Department of Law.

BF: Sure. As I said, I work with a team, so I am not a head per se. That teamwork is absolutely critical for me. It fosters collaboration and cooperation in a way that I didn't necessarily see when I was in private practice. But the long and short of it is, at the CDA, at the time I joined the Department of Law, they were basically advertising for a self-proclaimed pesticide nerd. I raised my hand and I said, "Me, me!"

LLB: Guilty as charged, right?

BF: "Love me!" Anything dealing with plants is my side of the house. The CDA, many people would not necessarily realize it, but it's not just plants, right? We've got livestock. We've got animal health, the Bureau of Animal Protection. We get market orders, market orders for milk and corn, the Mined Land Reclamation Board. There's a lot of stuff in the department beyond just food products. But, that being said, the side of the house that really is mine is anything dealing with plants. I do general counsel work for various boards and commissions at the CDA, and programs.

During that work, we really do a deep dive into statutory and regulatory requirements for seed potatoes, the seed program, seed certification, the nursery program, registration. I do a lot with the Pest Control Act and quarantines. Obviously, the pesticide registration program, the Pesticide Applicators Act, where we enforce the pesticide laws in Colorado. Noxious weeds as well. We have a program here to control noxious weeds in Colorado. The department sets state management requirements, but it's really the counties and local entities who work through that program.

But complaints will come in, or questions will come in, and invariably those questions and issues are routed to me. We look at whether or not -- half the time I get a file of evidence, and I review that evidence for sufficiency to determine whether or not it's appropriate to move forward with a violation of "insert plant based act," and we move forward. For example, I never -- in my wildest dreams when I was in law school, I never thought that at least 25 percent of my time would be spent even saying the word "cannabis" or "marijuana."

LLB: Right.

BF: But now, especially given hemp and the legalization of hemp nationally, we do a lot of work with pesticide application, worker protection standard (WPS) compliance for those things, and the other programs, Lynn. It's really not surprising. Registrations, licensing, recordkeeping, audits. We work with those, but we also try for people who want to come participate in those programs -- we'll probably talk about this a bit later, too -- I really see myself as a public servant.

Yes, I have a client who is statutorily required to use me, but I view myself as both protecting my client but promoting the needs of Coloradans. And we do that. For example, making sure that seed is labeled for -- if it says it's going to be a 90 percent germination rate, it should perform at 90 percent germination. So really, it's to protect consumers in Colorado by promoting the laws that regulate certain behaviors.

LLB: Got it. You do a lot, Brenna. It's a very large portfolio. And since you've mentioned it, Colorado regulates pesticide use on cannabis, which is a decision the federal government, at least thus far, under this Administration and certainly under the Trump Administration, has elected not to do. Can you tell our listeners a little bit about what considerations went into the decision to regulate pesticide use on cannabis in the state of Colorado?

BF: Yes, and we can talk a little bit more about the nuts and bolts of how it actually happens. But I would say that really there were four main buckets, or themes, that the department needed to address, because at this point, still to this day, we don't have -- cannabis is an illegal commodity at the federal level. It's a controlled substance. So just like I tell my students, for the same reason that pesticide labels don't say "Not for use on heroin," they don't say "Not for use on cannabis."

LLB: Right.

BF: But because the federal government really had no guidance on this, states were really left up to their own, for states that had both medical and/or recreational cannabis markets, with respect to what to do. Pesticide regulation, we have to consider public health and safety implications, but how do we do that without data? In our world, when we were working together registering pesticides under Section 3 of FIFRA, or looking at [Section] 25(b) minimum-risk products, we had data. We had a crop upon which something could be applied. That didn't exist here.

The first issue that the department really had to confront was -- we all know under FIFRA, the label is the law. We know that pesticide regulation is based on the labeling of that pesticide product, the labeling of which is enforceable both under FIFRA and under the Pesticide Applicators Act in Colorado. So, because cannabis was not specifically a listed crop on any label currently registered with the department or under Section 3, products with broad label statements that didn't prohibit use on cannabis were really the only things that the department could look at. When I say that, we're talking -- certain pesticide labels might say "For use on wheat," as opposed to "For use on grain crops." Obviously, if something is as specific as wheat only, you can't use it on rye or barley or something else, so we had to find, as the department, labels that said things like "flowering plants," "greenhouse crops." We really had to find something that could be broad enough to include cannabis. That was the first issue the department saw.

The second really -- the second and third -- really come together and relate to data and what we could say about human health and what was protective of human health. So tolerances -- we know that pesticide residue tolerances are the maximum amount of the active ingredient of a pesticide product that's allowed to remain in or on a food crop, residues after application of the product. The tolerances for a given active ingredient typically vary depending on the specific food crop to which the product is applied. Now, we know [the U.S. Environmental Protection Agency] EPA sets tolerances by determining that there's a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue at the tolerance levels established for those crops, but we don't know about cannabis as a crop.

So because the department didn't have tolerances for cannabis as a crop, exemptions from tolerance became critical. In the end, the department determined that for Section 3 products, as well as having label statements that were broad enough to permit use on cannabis, the active ingredient needed to have an exemption from a tolerance, specifically because -- and when I say we, I mean the department -- we knew that EPA had determined that for those active ingredients determined to be tolerance-exempt, the total quantity of the pesticide chemical in or on all raw agricultural commodities would involve no hazard to public health.

That similarly relates to another requirement. We had to come up with a way to identify the cannabis is -- exposure to cannabis or pesticides on cannabis would be different depending upon how that product was consumed, how it was processed and sold after harvest, for example. We know cannabis can be consumed through inhalation, smoking it. Ingesting it, edibles, or even through dermal exposure through creams and lotions applied topically. But, as we do, I think most often -- and I told my students this just last week -- half the time, you're never going to find a case that's directly on point, so you have to be able to argue by analogy.

And you'll do a deep dive on Westlaw, but you're not going to find one that's 100 percent where you want to be. We had to look at what crops have exposure patterns that are somewhat similar to cannabis, and the best one that we could find was tobacco. What we noticed was EPA often requires that a pyrolysis study, one that looks at decomposition brought about by high temperatures, was often conducted during the risk assessment process for products intended to be smoked, such as tobacco. That became particularly critical because early on, when this was all beginning, there was -- the city of Denver had actually put on hold a large quantity of marijuana that came back with myclobutanil residues.

The person whose crop had been held was obviously upset. You're not getting any benefit from your product and --

LLB: No revenue. Right.

BF: And that person argued in court that myclobutanil was safe for consumption, when on marijuana that was smoked. It's -- a study from 2015, however, came out after the fact that basically said when myclobutanil is heated at say, above 200 Celsius -- it's about 400 Celsius in a vape machine, it turns to hydrogen cyanide. And while true that the levels would not be fatal when smoked from myclobutanil on leaf residue that then is smoked, it has -- it's enough to be clinically significant. For that reason, the department decided that again, labels broad enough for use on cannabis, active ingredients in a Section 3 product have an exemption from a tolerance. And then also they have an approved use on tobacco.

And the last bucket that we all really had to deal with was the idea that -- look, is cannabis food? Or is it not? Is it a leaf? Is it an herb? EPA has specifically said cannabis is not an herb or a spice. I'll tell you that right now. So, again, we had to look at the statutory framework that existed in Colorado to determine whether or not cannabis would be a food. And the Colorado Food and Drug Act gives our sister agency, the Colorado Department of Public Health and Environment, specific authority over unsafe pesticide chemicals in raw agricultural commodities. And we had determined that the definition of raw agricultural commodity was broad enough to include cannabis, which is grown, harvested, and then processed and sold for consumption through various means, including ingestion as a component of food in an edible.

That was interesting. Some folks really didn't want to see it as a food. Some folks only wanted to see it as a food at certain periods of time. But again, with that theme of protection of human health and the environment, this was one of the best ways that the department could see that the approach for regulating pesticide use in order to prevent contamination of cannabis is the same as EPA would apply to other multipurpose agricultural commodities that can be used in food after harvest, like cotton.

Those were the four main issues that CDA really -- that Colorado had to consider, most specifically when regulating pesticide use on cannabis. We've got three different agencies that all regulate different parts of marijuana use here in Colorado, but ours is the pesticide world.

LLB: You just gave a master class, Brenna, on how the state went about regulating pesticide use on cannabis. One of my questions in thinking through what we were going to discuss is, "Gee, do you think the Biden Administration might or should revisit earlier attempts to fashion allowable registration uses when pesticide is legal?" It sounds like Colorado has been there, done that, and it is -- is it kind of irrelevant what the feds do? Or are you looking at that, or you've got your program, you're getting on with life, and do what you want to do, but we're doing it now, our way.

BF: We're doing it now, and we do it in a way that is not dissimilar to other states, as it has turned out. Oregon, for example, has the same requirements about use on tobacco, broad label language, and the exemption from tolerance. But I would say that we do hope that -- or as opposed to we, let me say I -- Brenna Finn, hope that the Biden Administration revisits an earlier attempt to find a way. What we are seeing is development of patchwork regulations, so it's fine in Colorado, but when you think about this as a question for industry writ large, uniformity -- I think uniformity and predictability would help industry move this market forward because with guidance, with national guidance and standards, it would be easier for those in the cannabis market to know, "When I walk into Colorado, it means X versus when I walk into California, it means Y. For example, California, which -- we all know, California has its own -- it's its own land, and --.

LLB: -- it's its own nation-state --.

BF: -- in many respects. California, for example, doesn't require that tobacco use requirement because California has come up with its own pesticide residue tolerances. I think if we had a national framework where we didn't have to worry about patchwork regulation, it would be easier for the industry and for an ability to enter the market for other folks. We talk a lot about patchwork regulation when we talk about preemption and other things, but that's really what strikes me as -- not only would it, from the federal perspective, lend support to this market -- it could make it easier for industry participants as well. And if Colorado or

Oregon or Arizona ended up having to change its regulatory structure in some way, it would do so. I do think that our system works pretty well.

LLB: Yes, in that regard, you mention Oregon has a very similar system. Are the states that authorize the application of pesticide use on cannabis, are they similar to the -- is there the Colorado approach versus the California approach? Does it -- do the states that are there already fall into any categories, or is the Denver way, or the Colorado way, the presumptive model here?

BF: I don't know if I would call it a presumptive model, but I would say that it's instructive. From the requirements that we spoke about earlier for Section 3 products, Colorado also allows minimum-risk pesticide products to be used on cannabis as long as the pesticide product label allows use on the intended site and allows use on crops or plants intended for human consumption. That "intended for use on human consumption" is both important for minimum-risk products and Section 3 products, but many states have that similar requirement.

What this results in are lists, state lists that come out -- in Colorado, for example. Colorado has developed a list of pesticides approved for use on cannabis, and it's intended to assist Colorado cannabis growers in identifying which pesticides can be used legally in accordance with the act and the rules. Oregon has this; Arizona has this. But I think the theme for Colorado, at the very least, is, these lists are instructive, and they have to be consulted, but understand that the lists aren't an endorsement of any specific product, because those products haven't been specifically tested on cannabis.

CDA makes no assurances of their safety or effectiveness when used on cannabis. And like growers do in other states, growers in Colorado should check that list continuously, because it changes as registrants decide to register or not register products or to change their labels. Maybe it's a chicken or the egg question, Lynn, whether other states follow Colorado's model in this list or whether they all came about simultaneously, because I think the lessons learned are the same. It's important, for me at the very least, that folks -- particularly folks who have not been involved in this market before -- understand that this list isn't intended to be restrictive for you all. It's intended to help you. And so, when I tell you, check that list, because if -- one of the common pitfalls we find are folks using products that are not on the list. That's a violation of applicable statutes and rules here in Colorado, just as it is, for example, in Oregon.

I said it's chicken or the egg, too, Lynn, but I'll also add that no one in this space could do this alone. And so when, for example, a while ago, Oregon tested certain products that were supposed to be all natural, [Section] 25(b), it was supposed to have only, say, lemongrass oil, other natural oils in it. But what we found was there was actually a nastier pesticide active ingredient that the manufacturer had been adding to that natural product to make it more effective. Well, when Oregon found out, Oregon reached out to sister agencies in other states to let them know that this was happening. Regulators talk, and they talk because we know that though this isn't a recognized national market, it is.

LLB: And it is an important one, and a growing -- I read a while back where I think we had been approached on a question, that in California, isn't it the largest cash crop? Cannabis? It's *huge*.

BF: It's huge.

LLB: You bring up a really interesting point that I wanted to ask you about. Since more states are moving to legalize cannabis, what are the mechanisms, formal or informal, for coordination between and among states that might wish to get into this space? You just indicated that in the Oregon experience, when a pesticide residue was found that would clearly not be on the [Section] 25(b) list, Oregon reached out and let you know. Do you guys talk among state agencies? What's working, what's not, and what could be improved, versus what should you avoid? How do you do that?

BF: Yes. It's a -- I would call it more of an informal consultation process, in part because every state law governing this space is slightly different. Colorado, just for example, it's unlawful in Colorado to use a pesticide product in an unsafe manner. Now, that requirement doesn't exist in many other state laws. Colorado has a different sort of regulatory path, in addition to use inconsistent with the label. So part of the reason I would call it a more informal consultation is because obviously the state regulatory structures are different, but I think what has been important for Colorado's experience and other people's experience as well, is we're learning from the experience of others. We wouldn't have known about the Guardian product, for example, had Oregon not put out an alert. At that point, it required us in Colorado to do a deep dive into what makes an adulterated product. Yes, but also, are we seeing it here? Or is this something that is only happening in Oregon? Is this a lot issue, or is it a product-wide issue?

And so folks talk to raise issues that come up. I think it's our job as attorneys advising regulators to identify whether or not that issue is relevant in our jurisdiction. But they do, and I know that it's not much different from -- what is it? AAPCO [Association of American Pesticide Control Officials]. It's like a state association of pesticide control officials. Everybody gets together, and they talk about these things as well. I think if people don't think states are talking, for example, that's not -- you would be thinking --.

LLB: Think again. Well, no. And I'm familiar with AAPCO. I just imagine there are a variety of, as you suggest, informal mechanisms where people that need to know have a way of exchanging relevant information because it's efficient and very desirable to do so.

Let's move on to another area of your job, which is the enforcement side. What are the key issues that you address, you and your colleagues, with regard to not just the cannabis piece, but what are your enforcement priorities right now in Colorado in your beat?

BF: Yes, we fall into pretty much three buckets. So what happens often -- for listeners -- I get a file from the department, and that file is either born of an investigation that came about from a complaint -- whether it's a private party's or an employee -- a complaint, or the department conducts its own inspections for compliance with the Pesticide Applicators Act, mostly WPS issues, or audits, records audits. For example, on sale of restricted-use pesticides. In Colorado, audits are done about once a year to make sure that you're only selling or distributing restricted-use pesticides to persons who are appropriately licensed to purchase or use them. Through that mechanism, really, I see three different enforcement buckets, or pitfalls, or problems that folks fall into, again, not just in the cannabis space.

The first would be WPS compliance. Some of this, I think, stems from -- we've got some large industrial-size farms here in Colorado. Agriculture is huge. We'll talk about that a little bit later, I'm sure. But we've got folks, in the cannabis space in particular, who entered this market thinking it is a way to perhaps make money quickly. The WPS is not easy to follow, even for you and me. We see WPS compliance issues, where there will be missing application records, more often than not, missing critical pieces of information on those

application records. No EPA registration number, no start and stop time. Restricted entry interval (REI) that just says two hours down the line, when the REI, the restricted entry interval, is 24. No warning signs when pesticide applications have been made.

And this is not something at all specific to Colorado. We saw it with Syngenta in Hawaii. The warning signs were up, meaning no one could tell that the pesticide application had been made. And the other one that we find, more I think now because of cannabis, is a failure to comply with REI or ventilation requirements following pesticide applications. And some of that is -- we've got a lot of spaces here in Colorado where you're turning an old warehouse into a greenhouse, and your light switch happens to be at the back of the room behind your rows of plants, and you make your pesticide application, but you forget to turn off the lights. So you're entering back in without the necessary training or without the necessary personal protective equipment (PPE). WPS compliance would be one.

The second that we see most often -- and again, not just in the cannabis space -- is use of pesticides inconsistent with the labeling. This would look like, we've got a list of pesticide products for use in cannabis, but that label says for residential use only, as opposed to for commercial use. Or what we often see is folks wanting to be, I would say, efficient or creative. We've got foggers to deal with fungus or certain insects in rooms, but those foggers are intended to be used on foliage, on plants, but they remove the plants from the room and then fog the room. It's not meant for -- it's not a structural application.

Most often we see use of pesticides without appropriate PPE. This can be difficult, right? You've got a requirement to wear chemical-resistant gloves. So, fine. The bottom side of your glove has to have rubber, but the top side has cloth. Well, I get that you're trying, but it's not technically chemical resistant.

And then use of a product whose label is too specific for its use site. They use it on strawberries when it can only be used on flowering fruit trees. And the last would be use of pesticides that aren't registered as pesticides with the CDA. A lot of folks don't realize, or they haven't taken the time to review the statute, that although minimum-risk pesticides aren't required to be registered under FIFRA with EPA, they *are* required to be registered here in Colorado. So we get a lot of folks who say, "But it's a [Section] 25(b) exempt product. I don't have to register it." Well, no, you do. And now you're selling it at Home Depot, or Big Five, or some other space, and you've just -- you're distributing an unregistered pesticide.

Those are -- I would say those are the ones that we see most often, and I would probably say that most of the work that I do ends up coming from complaints. Colorado has grown. The population here has grown exponentially, and so we are starting to see, for example, just an outgrowth of residential homes bumping right up against farmland. I think we can all see the conflict there: "I was here first."

"I'm here now. Your area -- You are aerially applying to your soybeans, and it's getting on my grill." What do you do? And that's an issue that has existed in the past that will continue to exist tomorrow and in a few years. But those are the ones that we see, and then we separate them.

When they come into the department, they're usually separated into complaints dealing with human health and human exposure versus something else. And in many cases, unfortunately, it's really difficult to prosecute those human endangerment cases, as we'll

call them, because folks, for example, will -- they won't keep their clothes. There's no way to test to make sure of it, so we're still working on that.

Really the only way -- what we have found that tends to work is we've got a list here in Colorado for pesticide-sensitive registrants. And so if you are on that list, you have to be notified if you are adjacent to an area that's going to be applied by the commercial applicator, that an application will be occurring within 24 hours. That gives you the option of staying home or leaving. Obviously, with each requirement you trip up into inadequate notification or no notification. But again, it's a -- I view my job, again, as a public servant to try to help the department, but also to help all Coloradans. And so I also try to be nice when I send nastygrams to people telling them that they've tripped up here or there. I would like to believe that when people get cease and desist orders from me, they now know that, no, it doesn't mean you have to stop your entire operation. It just means you need to pay attention.

LLB: Two points, because I know in our pesticide practice here, clients literally daily continue to be shocked by the growing number of states that require registration of minimum or the [Section] 25(b) chemicals, and I think the list now is well over 12. It's an opportunity for revenue. It reflects a growing sophistication of states in this space, which perhaps historically has been the unique domain of the federal government. I don't see that abating any time soon. So that was my first point.

My second one was on the private complaints. Do you see a growing number of complaints derivative of more of a commercial competitive issue in addition to just consumers who are concerned about aerial application of pesticides over their property? With a growing demographic, as you have in the state of Colorado, I could imagine that complaints of both sorts might be on the uptick.

BF: Yes, it's interesting. We do; it is not uncommon to receive complaints from folks who are appropriately licensed to apply pesticides commercially. In Colorado, if you want to apply pesticides for hire, you must be licensed as a commercial applicator, meaning you have to have the requisite amount of training. For folks who have had that training, who have spent the money and the time on that training, when they see unlicensed applicators. We do get pictures, videos. The department checks its licensing database and says, "You, sir, have not been licensed."

We've had only one, if not two, that I can count a handful, where unlicensed applicators have not become appropriately licensed. In that situation, we had a gentleman who was unlicensed. The complaint had come in from a competitor, and we sent him a cease and desist order. He did not cease and desist from making commercial applications, so then we sent him a fine, a stipulation, an order, fined him for making unlicensed applications. He did not stop, so we sent a second stipulation. And then finally, I sought a stipulated permanent injunction to prohibit him from making pesticide applications unlicensed. The court -- he ended up signing it, and the court granted it as a final disposition of the matter.

But that's one of two cases where we've actually had to go that far for folks who were continuing to make unlicensed applications. But to your point, I would say still a majority come from private sort of interpersonal complaints. And it's not just aerial applicators. We have neighbor disputes, often.

LLB: I'm sure you do.

BF: Someone saying so-and-so is dumping pesticides on my property because they hate me. We go in, and we try to investigate it. Every once in a while, somebody is completely uncooperative, and then we determine we have the authority under our act to have administrative warrants or subpoenas. So we've moved in that direction one or two times, but usually people tend to cooperate. Nobody wants a sheriff showing up, saying, "I'm going to go in your garage now and see if you've got Roundup in the corner."

LLB: Right. No, that's -- it's helpful, Brenna. Remind me, enforcement against activities along the lines you're talking, those are civil and administrative. Do you also engage in criminal stuff, or is that handled by a different office?

BF: We have the authority to levy criminal sanctions, but we -- it is not something we normally do. The best way to really think about it is in the marijuana or the hemp world, for example. If you in Colorado want to grow industrial hemp for commercial purposes, you have to be registered. We get often folks who -- not often, but there have been situations where folks are growing marijuana under cover of industrial hemp. At that point, we refer -- when we get the THC [tetrahydrocannabinol] content, it's over 0.3 percent THC, say, it's 9 percent THC. We'll refer that to either the DEA [Drug Enforcement Administration], Colorado Bureau of Investigation, or the appropriate law enforcement agency.

But in my -- I will have been at the department for four years coming up in the next month or so. And I have never had a criminal issue, though actually that -- it's not technically true. We did have one with COVID. We had someone -- you might remember that at a certain point our former president suggested that ingestion of disinfectant might prove effective against COVID. We had someone who was basically selling bleach --

LLB: Oh my God.

BF: -- and suggesting in testimonials and videos that it could be ingested. We received the complaint. It was an unregistered pesticide product. It combined two registered pesticide products to sell as a third that was unregistered. We actually got that referral from EPA's Criminal Investigation Division.

LLB: No kidding?

BF: But again, we don't -- at that point, our authority was really limited. We didn't know where the product had been distributed. We ended up issuing a cease and desist order demanding that the company pull down its website because it was an unregistered product. But the criminal side of things continued from the EPA side, not our side.

LLB: Got it. You alluded a bit ago, Brenna, to the fact that Colorado grows much more than cannabis. What are some of the major crops in the state? And given the seasonality of the growing season, how does that affect the agenda or day-to-day issues confronting your office?

BF: Yes. So what has been amazing to me is, yes, I came to this space with a regulatory focus, chemicals and pesticides. But I am from -- I was born in Chicago. I'm from a town south of Cleveland. I am not a farmer. I am not a rancher. And it -- one of the coolest things I've really been able to learn here representing the department is about how Colorado's diverse agricultural and food industry plays a role in the state's vitality.

As of 2016, for example, just to put a number on it, Colorado's agricultural industry contributed over \$41 billion to Colorado's overall economy.

LLB: Really?

BF: Yes, exports are a major driver of that industry, with food and agricultural products being imported by more than 130 countries from Colorado.

LLB: I had no idea.

BF: Yes, so Colorado maintains a really strong reputation for large production agriculture, as well as organic and natural foods. For example, Colorado is a leading producer of specialty products, including fresh market potatoes, barley, cantaloupe, lettuce, sweet corn, and winter wheat. A lot of people don't either know that Colorado is a leader in dairy production and number of cattle and lambs fed, so for sort of -- I was going to say younger folks, but maybe it's everybody. At this point, Colorado has more than 200 breweries, for example, and it's among the top states for number of breweries per capita and economic impact. And Colorado has its own distilleries and wineries that have significant growth potential. We've got two wine regions that are already generating significant economic activity annually for wine-based tourism.

LLB: It must be a mecca for younger people, cannabis and breweries and vineyards. What's not to love?

BF: Right. My brother comes, and he's in Chicago, and I love being able to take him to places with -- "Here are my special hops that I grew in my basement." I feel very cool, which is not the way I feel often.

With all of these products, obviously we protect -- the CDA serves to protect these products and those markets, for pesticides, yes, but also for quarantines for specific pests. So for example, the San Luis Valley in Colorado is one of the only places this side of the West that has no incidence of late blight in potatoes, meaning the Irish potato famine. So we have a quarantine for any potatoes imported into the San Luis Valley to ensure that there is no infestation with late blight. Because if there were, it would -- if late blight were to enter the valley, the San Luis Valley, it would decimate that entire sector of the agricultural economy in Colorado.

And it's not only late blight; we have Palisade peaches, cantaloupes, we have quarantines for specific pests so that we can try to ensure that -- for example, we've got Japanese beetle here. I'm on the east side of the Rocky Mountains, but on the west side, the western slope is where all those peaches are grown. We have Japanese beetle here in Denver, but we don't have it on the western slope. And Japanese beetle could decimate those stone fruit populations, and so we protect them through enforcement of quarantine. And I really -- from an organic perspective -- I work with the organic program as well. Colorado, the Department of Agriculture is a certifying agency, so we help people in that market as well. It's really interesting because I think we think of ag, and we think of corn and soybeans. Again, but who's thinking of 200 breweries or lambs and cattle and everything else?

LLB: The diversity that you've just outlined so articulately, Brenna, is astonishing. I'm floored. I had no idea. But let me circle back to that worker protection issue, because I know the Biden Administration has stated about 100 times its emphasis on environmental justice. In the pesticide area, I would expect that to play out very emphatically in WPS generally. Is

this an issue that you would expect your office to be engaged in, or are you ramping up, or how are you responding to that expected emphasis on environmental justice out of our new Administration?

BF: Well, yes, and it's something that we see. A lot of the -- we know that environmental justice issues move far beyond just race. It's a socioeconomic issue. It is a cultural ethnicity issue. It is an age issue. We see so often, for example, in the cannabis space, in the worker protection space, particularly, folks who are doing those hand labor tasks, picking the flower off the bud. They are -- oftentimes they are younger. Oftentimes they are minimum wage. Oftentimes they don't speak English as a first language.

Part of I think what we -- all of us we -- need to start thinking about is if we were to ignore these worker protection issues, if we were to ignore these complaints, we're very clearly not necessarily protecting workers, but are there susceptible populations that need more protection from us in that regard? It's certainly something that we are more now thinking about than before, particularly the -- it's more an issue on the East Coast. But the migrant worker population to come in and pick on the east coast of Florida, up to North Carolina. We know that 75 percent of that population is from Mexico, for example. It's a remarkable number, something like 4 million people. People are coming for seasonal agricultural work.

We get some of that in Colorado as well. The question -- I raised the issue of worker protection earlier with Syngenta in Hawaii. I think that instance, where there were something like 30 workers in the field during or immediately after application of Lorsban at Syngenta fields in Hawaii. And initially, EPA identified more than 300 issues with use of a pesticide inconsistent with the labeling.

The original fine was something like \$4.5 or \$4.9 million. After much talk, it resulted in \$150,000 civil penalty at EPA and an education program that Syngenta was going to have for its workers. So the question there becomes, is that justice for those farmworker populations, those people who entered the fields? Seven ended up in the hospital. I think that's a question that nobody has really answered. Is it justice if the fine is high enough? Is the fine justice at all? I think these are issues that EPA, and particularly the Biden Administration, if it really looks at it, will continue to face. And I told my students the other day that I think so much of this will require an educational sea change because sure, you can have, for example, worker protection training for companies. But if workers don't feel important enough, or don't feel that they have a voice, or don't feel safe enough to say, "I'm only being given a mask when I need a respirator," those issues aren't going to be addressed. What do we do about that?

LLB: Yes, well, I think all of those issues will be the subject of lots and lots of discussion in the context of FIFRA and a government-whole commitment to achieving environmental justice by eliminating environmental injustice.

Is there anything in particular that keeps you up at night in your job?

BF: Yes, but it keeps me up for a good reason. I will say that when I was in private practice, very often I felt like my value -- I didn't know my value. I didn't know how to value myself. I didn't know how to value my advice. I found more and more that if my value was based upon my billable rate or the number of clients I was bringing in, that it wasn't really my value. And now that I am in this position, I stay up at night and I think to myself that my value is my work product. My value is my advice, and it is completely untethered. I know

that my value and the role I play is broader than me and that it is truly based upon my interaction with others.

It's been hard during COVID, because we have had to continue to enforce, for example, environmental laws. And we have a bunch of folks who tried to get into the hemp market in 2020, either because they thought it would be easy, or they didn't really understand that growing hemp is just as difficult as growing corn, particularly in a place where it's going to snow six inches on April 19. It breaks my heart sometimes because I do represent the department. But it's important to me that people feel heard, and I've had to learn not to spend hours on the phone with respondents who I don't myself like to represent. But when someone comes to me and says, "Yes, I grew hemp, and yes, it was technically illegal cannabis, but I didn't mean to. And I have cancer and I can't pay my rent. And can you do anything about this fine?" And at that point, all I can say is, "Sir or ma'am, when you agreed to participate in a regulatory program, you agreed to be bound by the confines of that program. This was a risky venture, and I want you to know, though I could have fined you \$2,500, I'm fining you 15, because you grew illegal cannabis."

I often ask for payment plans in that case. It's not something that we're supposed to do, but I do feel like, again, it's my job to protect and represent my department, but protect the people of Colorado as well. And I really -- I want them to know that, yes, I'm a lawyer, but I'm not a horrible person. I had one gentleman a few years ago tell me that he had told his wife about me at dinner and that he said that "You are almost human!" And I said, "Well, I --

LLB: Praise the lawyers!

BF: "-- thank you very much." Yes, what keeps me up is both good and bad. It's the idea that I actually have that ability here, to yes, I have to take a hard line, because, yes, that is the enforcement policy of the department. And yes, that is the statutory maximum. But I'm really trying to find a way -- like, help me help you, because I think, again, it's that value. It's not. It's not you're a great Senior Associate because you bill \$540 an hour. You're a great Senior Associate because you've got two books -- you've got two huge books of business. It's all based upon what I do, and the relationships that I have with my clients, who I love. I love not working with lawyers every day, I mean. Yes, that's what -- so it keeps me up smiling, and sometimes it keeps me up sad, because I have a gentleman who said, "I have cancer. I can't pay this." And the best I could offer him was three months of a payment plan at \$500 each. But that's something, as opposed to nothing.

LLB: It sure is. Well, the state of Colorado, Brenna, is lucky to have you. Your humanity, your compassion, your legal brilliance, your -- just your approach to problem solving. And you've just been a delight to have in the studio today. And I've enjoyed every second of preparing for this podcast and of knowing you personally, Brenna.

BF: Oh, me too, Lynn. And truly, for all listeners, Lynn knew me when, when I was a baby lawyer before I could be a lawyer, a real lawyer, and it was through time with Lynn when I realized, "You know what? I could do this law school thing, I could do this!"

LLB: You have, and you've done it well.

BF: Mentoring is important. And Lynn is the greatest mentor that I have had. And so I am what I am today, really, Lynn, because of you and the lessons that you taught me, both with respect

to how to analyze legal issues, but how to be a compassionate, kind, and caring attorney. So thank you.

LLB: Well, that's very kind of you to say, Brenna. All my very best. Love you to pieces. And thanks for being here.

BF: Bye, Lynn.

LLB: Take care now. My thanks again to Brenna Finn for speaking with me today about her career, which started here at Bergeson & Campbell and her work now on regulating the use of pesticides on cannabis in Colorado.

All Things Chemical is produced by Jackson Bierfeldt of Bierfeldt Audio LLC.

All materials in this podcast are provided solely for informational and entertainment purposes. The materials are not intended to constitute legal advice or the provision of legal services. All legal questions should be answered directly by a licensed attorney practicing in the applicable area of law.