



## EPA-CID REGION 9 Talking Paper

### Congressman LaMalfa Staff

#### “Environmental Damage Resulting From Marijuana Grows in California”

October 6, 2016

#### I. Who is OCEFT/EPA-CID/EPA-CID Region 9 and where are we located

- Office of Criminal Enforcement, Forensics, and Training (OCEFT) - 375 professionals - special agents, scientists, attorneys, and administrative specialists - work with Federal, state, tribal partners to investigate environmental and related crimes
- EPA’s Criminal Investigation Division (EPA-CID), a division of OCEFT – Authorized 200 special agents with full law enforcement authority - carry firearms, execute warrants, make arrests for any offenses against the U.S. – authority codified at 18 U.S.C. 3063
- Currently less than 120 case carrying special agents nationwide
- Special agents supported by National Enforcement investigations Center (NEIC) - 95 scientists and other staff at EPA’s NEIC in Denver, CO - fully accredited forensics laboratory - criminal and civil cases
- Legal Counsel Division - 45 attorneys: 15 in Headquarters - 30 Regional Criminal Enforcement Counsels (RCECs) attorneys located in EPA Regional offices
- **EPA-CID Region 9** - 6 offices total (San Francisco Area Office and five Resident Offices, 1 each in Sacramento, Honolulu, Los Angeles, Phoenix and San Diego), 2 supervisors, 15 agents, 2 administrative specialists, 3 RCECs, 1 NEIC RTC

#### II. Marijuana Grows in California – Framing the issue

- 2010 EPA-CID Region 9 began receiving information from our State and Federal partners about the environmental harm encountered during marijuana eradication operations being conducted in California’s Northern and Eastern Judicial Districts
  - ❖ Stream alterations, direct discharges and water diversions; various unlabeled pesticides and fertilizers including “chemical fences” which sickened agents; destruction of Federal lands including land grading and clear cutting; animal deaths; tons of solid waste and some potential hazardous wastes
- Opportunities for environmental criminal enforcement were explored:
  - ❖ Federal Clean Water Act (CWA) criminal violation cases were/are possible. The resources needed to make a legal argument that a stream (like the type being encountered by Federal, State and local law enforcement engaged in marijuana grow enforcement) is a jurisdictional water of the United States would be significant; a CWA criminal charge would not likely increase the sentencing of illegal marijuana growers as they would already be facing a significant mandatory sentencing
  - ❖ Resource Conservation and Recovery Act (RCRA) criminal violation cases appeared to be difficult as much of the waste left behind by the marijuana growers is solid waste but not Federally-defined hazardous waste
  - ❖ The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) contains criminal charges available for the distribution of unregistered pesticides, which were being encountered at most illegal marijuana grow sites. FIFRA presented a path for adding environmental crimes charges to illegal marijuana grow cases
- Additionally, EPA is not provided with resources specific to investigating illegal marijuana grow sites on Federal lands or to clean-up wastes or repair the environmental degradation associated with illegal marijuana grow sites – however, being aware of the problem faced by our Federal, State and local law enforcement partners, EPA-CID Region 9 looked for opportunities to assist



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### III. Marijuana Grows in California - EPA-CID Region 9’s past involvement

- October of 2010, upon request of California Organized Crime Drug Enforcement Task Force (OCDETF) Federal prosecutors, EPA-CID Region 9 provided training to OCDETF prosecutors and investigators on “Marijuana Grows and the Potential for Federal Environmental Crimes”
  - ❖ Training focused on potential CWA, RCRA/CERCLA, and FIFRA violations - and Depredation of Federal Property (18 U.S.C. 1361); including proof needed and pitfalls to prosecution
  - ❖ OCDETF interest in adding environmental charges
  - ❖ OCDETF interest in having EPA-CID agents participate in eradication operations
  - ❖ OCDETF interest in EPA’s ability to help remediate sites
  - ❖ It was explained that due to EPA-CID’s core environmental crimes focus and size, full-time “boots on the ground” participation during a grow season eradication operation would not be possible - and site remediation is not a reason to enlist EPA-CID
- As a result of new contacts, EPA-CID provided an “on-call” agent during forthcoming grow season eradication operations; provided field guidance sheets for the identification/investigation of encountered pesticides; and provided limited/qualified on-site environmental crimes investigation
- June 2011 established the California Environmental Enforcement Roundtable Forum’s (CEERF) [NDCA Federal Environmental Taskforce] “Marijuana Grow Subcommittee” to provide training, share intel and investigative/prosecutorial strategies
- May 7-10, 2012, spoke to California’s County Agricultural Commissioners about EPA-CID and about notifying EPA-CID about potential FIFRA violations at marijuana grows
- June 20, 2012, met with the Fresno County Agricultural Commissioner, local law enforcement and the EDCA USAO OCDETF prosecutor to specifically discuss pesticide use enforcement at California illegal marijuana grow sites
- July 11, 2012, EPA-CID Region 9 was contacted by EDCA OCDETF prosecutor regarding charged defendant Hernan Cortez Villasenor. It was alleged that Villasenor was distributing unregistered pesticides (specifically thirty [30] - one hundred [100] milligram containers of the Mexican labeled pesticide “Ratone” or zinc phosphide) to a marijuana grow site located in the Sequoia National Forest. EPA-CID joined the investigation and opened case **Villasenor/0900-0444**. On September 27, 2012, a superseding indictment was obtained charging defendant Hernan Cortez Villasenor with violating FIFRA’s prohibition against the sale and/or distribution of an unregistered pesticide. On July 7, 2014, defendant Hernan Cortez Villasenor, pursuant to the terms of a negotiated plea agreement, pleaded guilty to Count One of the superseding indictment (21 U.S.C. 846, 841(a)(1), 841(b)(1)(A) -Conspiracy to Manufacture, to Distribute, and to Possess with the Intent to Distribute Marijuana) and Count Six (7 U.S.C. 136j(a)(1)(A), 136l(b)(1)(B) - Unlawful Distribution of an Unregistered Pesticide). On December 1, 2014, defendant Hernan Cortez Villasenor was sentenced to serve a **ten year term of incarceration** and was ordered to pay \$3,328 in restitution to the U.S. Forest Service for the damage caused by his marijuana cultivation operation.
- July 11, 2012, EPA-CID Region 9 was contacted by EDCA OCDETF prosecutor regarding charged defendants Marcelina Botello Charles and Julio Cesar Villanueva-Cornejo. It was alleged that Charles and Cornejo were distributing unregistered pesticides (Ratone, Fosforo de Zinc [zinc phosphide], QuFuran [carbofuran]) to a marijuana grow site located in the Sequoia National Forest. EPA-CID joined the investigation and opened case **Charles-Cornejo/0900-0445**. On September 27, 2012, a superseding indictment was obtained charging defendants Marcelina Botello Charles



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and Julio Cesar Villanueva-Cornejo with violating FIFRA's prohibition against the sale and/or distribution of an unregistered pesticide. On February 24, 2014, defendant Julio Cesar Villanueva-Cornejo was sentenced. Pursuant to the terms of a negotiated plea agreement, defendant Villanueva-Cornejo was sentenced to serve a **six year total term of incarceration**, which includes five years incarceration for the felony violation of 18 U.S.C 924 (c)(1)(A)(i) Possession of Firearm in Furtherance of a Drug Trafficking Crime; and a term of one year incarceration for violating FIFRA's prohibition against the Sale and/or Distribution of an Unregistered Pesticide (7 U.S.C. 136j(a)(1)(A)). Additionally, defendant Cornejo was sentenced to pay \$4,294.33 in restitution to the Albuquerque Service Center, Budget/Finance fine. On May 19, 2014, a change of plea hearing was held. Pursuant to the terms of a negotiated plea agreement, defendant Marcelina Botello Charles pleaded guilty to count one of the superseding indictment (Conspiracy to Manufacture, to Distribute, and to Possess with the Intent to Distribute 50 or More Marijuana Plants in violation of 21 U.S.C. §§ 846 , 841(a)(1) and 841(b)(1)(C)); and count five of the superseding indictment (Unlawful Distribution of an Unregistered Pesticide in violation of 7 U.S.C. §§ 136j(a)(1)(A), 136l(b)(2)). On September 15, 2014, defendant Botello Charles was sentenced to serve a 50 month total term of incarceration and was ordered to pay \$4,294.33 in restitution.

- May-August, 2013, EPA-CID Region 9 continued to support California Eastern, Northern and Southern District OCDETF-led cases/leads
- In August of 2013, Attorney General Holder issued guidance to all United States Attorney's Offices (USAOs) for how/when United States Attorney's should continue to enforce marijuana crimes under the Controlled Substances Act. In the memo written by Deputy Attorney General James M. Cole, DAG Cole provided “eight enforcement priorities” in which DOJ would continue to criminally enforce crimes associated with marijuana. Among those was “Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands...”
- In Late August, 2013, the Los Angeles Times contacted EPA-CID Region 9 and discussed the “Protecting Lands Against Narcotics Trafficking (PLANT) Act” that had been (or was being proposed) by Representative Jared Huffman, U.S. Representative for California's 2nd Congressional District. Representative Huffman's bill, if enacted, would instruct the U.S. Sentencing Commission to increase sentencing penalties for individuals found guilty of cultivating marijuana on public lands that involved: the use of poisons or hazardous chemicals such as pesticides, rodenticides, or high grade fertilizers; diverted, redirected obstructed, drained or impounded local aquifers, rivers, or bodies of water; and/or where there was significant removal of vegetation or clear cutting of timber. On December 20, 2013, this bill was introduced in the Senate by California Senator Dianne Feinstein and co-sponsored by Utah Senator Orrin Hatch
- In September of 2013, Senator Dianne Feinstein's staff engaged EPA Region 9 in a discussion as to what EPA was doing regarding marijuana grows in California, on both public and private lands. EPA-CID took the lead in the discussion as the marijuana grows that Senator Feinstein's staff was inquiring about are inherently criminal operations that EPA Region 9 has no experience with. Ultimately, we had a telephone conference in September 2013 with Senator Feinstein's staff. EPA-CID Region 9 provided the meeting attendees a point paper depicting our involvement to date. Senator Feinstein then generated a congressional inquiry which was controlled to EPA Region 9 for response. On November 13, 2013, EPA Region 9 Administrator Jared Blumenfeld provided a response to Senator Feinstein



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- In January of 2014, EPA-CID Region 9 supported a U.S. Forest Service criminal case in California’s Eastern District involving illegally distributed foreign, unregistered pesticides that appeared to have been used to kill California wildlife to protect the grow site
- On April 10, 2014, based in-part on input from EPA-CID Region 9, the U.S. Sentencing Commission adopted a new sentencing penalty enhancement for marijuana cultivation operations that involve trespass onto Federal lands and lead to environmental harm on public that harm

#### **IV. Marijuana Grows in California - EPA-CID Region 9’s present/future involvement**

- EPA-CID Region 9 continues to host the CEERF Marijuana Grow Subcommittee
- Stay engaged and look for opportunities to assist Federal, State and local law enforcement/prosecutorial partners
- Continue taskforce participation and provide training