

**Exhibit 4-1 - FIFRA Enforcement Policy****FIFRA ENFORCEMENT POLICY****Referral of State Misuse Cases to EPA, Section 26.2(b)****Issue:**

Is it legally permissible for the Environmental Protection Agency to prosecute Federal pesticide misuse violations which are based on evidence collected by State inspectors following State procedures?

**Policy:** Yes, as long as States follow basic Constitutional evidentiary procedures, evidence collected under State authority can be used to prosecute violations of Federal pesticides laws.

**Discussion:**

Pursuant to section 26 of FIFRA, most States now exercise primary enforcement responsibility for pesticide misuse violations. Although the Federal government retains concurrent authority with the States to prosecute misuse violations, this power is not ordinarily exercised.

Accordingly, States with primacy generally conduct use inspections under the authority of State law. In the usual pesticide misuse case, State law provides ample enforcement authority for the State to effectively prosecute misuse violations. Consequently, the States need not generally refer misuse cases to the EPA for prosecution under the parallel Federal authorities.

However, there are two instances where the States may choose to refer misuse cases to EPA for Federal prosecution:


- 1) When the misuse is prohibited by Federal law, but not by State law and,
- 2) When both State and Federal law prohibit the misuse, but the State lacks adequate resources to pursue prosecution.

When either of these types of misuse cases is referred to EPA for action, the Agency will review the case file to ensure that the State inspection procedures adhere to basic Constitutional guarantees. Information collected by State inspectors is not excluded in court merely because it is gathered by State inspectors; instead it is subject to the common law rules of evidence or to the Federal Rules of Evidence. The issue of the admissibility of evidence derived from State Inspections involves the analysis of two questions: (1) was the information and evidence obtained by State inspectors legally

obtained and (2) is that evidence within the scope of admissible evidence.

If both of these questions can be answered for any given information, then that evidence may be properly introduced into civil proceeding to enforce a violation of the FIFRA.

Accordingly the wide variety of State inspection procedures do not affect the capacity of the Agency to accept a misuse case for prosecution. States may follow their own inspection procedures without regard to whether or not the misuse case will be referred to the Agency. The eventual referral of the case to the Agency for prosecution does not require a State inspector to change any existing State inspection procedures.

  
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Date