

# HEMP CONTRACTS



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# New York boosts state hemp industry with new rules, regulations and testing for CBD products

New York Daily News by [Denis Slattery](#) Dec 09, 2019

There are currently more than 400 farms across New York licensed to grow industrial hemp, up from just about 100 two years ago, according to the state.

Laurie Villasuso, CEO of the Orange County IDA, said the hemp industry has “helped farmers across the Hudson Valley and has created businesses that hire New Yorkers and send products around the country.” “This is truly a win for New York”.

<https://www.nydailynews.com/news/politics/ny-hemp-marijuana-cbd-oil-sales-20191209-y6ecnvogefcphoc2tv3koa67y-story.html>

## Oregon hemp production lawsuits may offer lessons for farmers

Published May 29, 2019 | By [Laura Drotleff](#)

Big Bush Farms of Marion County, Oregon, is suing three farms it hired to grow hemp.

<https://hempindustrydaily.com/oregon-hemp-production-lawsuits-may-offer-lessons-for-farmers/>

# Hemp Industry Daily

Boones Ferry Berry Farm of Hubbard, Oregon, failed to deliver more than 100,000 pounds of dried biomass from 27,000 plants in exchange for \$25 per pound plus \$1 per pound in addition to a bonus of \$1 per pound for every 2% of CBD content over 10%. Big Bush is seeking \$267 million for the breach.

Harlam Family Farm II of Brooks, Oregon, failed to deliver 43,500 pounds of hemp biomass from a 10-acre hemp crop in exchange for \$25 per pound for dried biomass with a bonus for higher CBD content yield above 10%. Big Bush is seeking more than \$16 million.

Scenic Valley Farms of Gervais, Oregon, failed to deliver 79,428 pounds of hemp biomass from 19,000 plants under a sharecropping agreement in which Big Bush Farms would pay all crop production costs, recoup its expenses, then split the remaining balance with Scenic Valley Farms for crops sold at \$25 per pound. Big Bush is seeking more than \$112 million.

<https://hempindustrydaily.com/oregon-hemp-production-lawsuits-may-offer-lessons-for-farmers/>

The agreements required “best farm practices, knowledge and experience” to produce and deliver high-quality product with a minimum of 10% on average CBD oil content.

Farmers can use these cases and others like them to learn how to avoid litigation.

- ⦿ “Growers need to draft their contracts very carefully to provide the adequate protections in terms of things like who is going to cover the cost of production and where and when CBD testing is going to be performed,”
- ⦿ Best farming practices haven’t been standardized for hemp yet, leaving that terminology open to translation by the parties involved in a contract.
- ⦿ growers are being stuck with ‘best farming practices’ and then having to live up to standards or requirements that are really vague.

Canopy, US hemp grower head to court over  
dismal crop, missed payments

Published October 10, 2019 | By [Renzo Pipoli](#)

Go Farm Hemp filed a [\\$1.9 million federal  
suit](#) in New York accusing Ontario-based  
Canopy of failing to pay some of the money it  
agreed to advance Go Farm Hemp for the  
crop.

<https://hempindustrydaily.com/canopy-u-s-hemp-grower-head-to-court-over-dismal-crop-missed-payments/>

Canopy Growth said it contracted for 1,115 acres but only 275 acres were viable.

Canopy said that Go Farm Hemp “did not possess the skill, knowledge or necessary experience to farm over 1,000 acres of hemp” and that it fraudulently blamed a poor harvest on “hail, grasshoppers and biblical rain.”

Go Farm Hemp said it “at all times used reasonable cultivation practices.”





## **Devil in the Details: Hemp Contracts Crucial as Litigation Jumps** - Chris Bennett November 4, 2019

Expect litigation to rise as the 2019 hemp crop comes in during the first harvest since legal hurdles were lowered in the 2018 farm bill. In many cases, as growers, seed dealers and processors point fingers or hurl accusations of fraud, failure, theft and breach of contract—one lesson, among many, is increasingly clear: Hemp is a crop unto itself and a solid contract is crucial from the get-go.

<https://www.agprofessional.com/article/devil-details-hemp-contracts-crucial-litigation-jumps>



# The Wall Street Journal

## Farmers Rushed Into Hemp. Now They Face a Glut.

Prices for the crops are falling, and some growers are struggling to unload their product

By [Arian Campo-Flores](#) and [Cameron McWhirter](#) Nov. 30, 2019

[A rush of farmers seeking to grow hemp](#), which became legal to cultivate in the U.S. last year, [is creating a glut, damping prices](#) and leaving some farmers struggling to unload their product. It is among the growing pains in the industry for hemp-derived products—a potentially lucrative market, but one beset by regulatory uncertainty, financing constraints and other challenges.

# Elemental Processing LLC vs. HP Farms LLC

September 2019, Elemental hemp company sued HP Farms for \$44 million in a contract dispute. Elemental accused HP Farms of providing it with seeds that weren't feminized. The seed ruined the crops planned for CBD production.

HP Farms said the contract didn't guarantee seeds would be feminized and asked for \$3.7 million in damages.

# Boring Hemp Company vs. Natural Health Resources, Terry Vickery and Chris Kiernan

- On July 9, 2019, Boring sued for breach of contract for not less than \$563,200.
- In January 2019, NHR signed a “Hemp Purchase Agreement” with Boring and agreed to buy 9,000-14,000 lb. of hemp at \$50 per pound. The agreement did not specify CBD percentage or the moisture content of the hemp. The precise weight of the hemp was to be determined on delivery via a certified scale. Further, if payment wasn’t received by BHC in 30 days, plus an additional 10-day grace period, a 10% penalty would be shouldered by NHR.
- NHR didn’t pay after it picked up the hemp crop.

Canopy Growth gets green light to move forward  
with suit against CA hemp farm

Published November 14, 2019

In April 2019, the companies signed an agreement in which Canopy would give 55,000 hemp seedlings to RDF to grow and harvest on a contract basis. Canopy said RDF killed the hemp plants.

RDF claimed that Canopy didn't abide by contract terms and interfered with the project.



Canopy Growth says it will defend itself vigorously against lawsuits alleging securities fraud. Published: Nov 21, 2019

Law firm Pomerantz LLP said Wednesday it was investigating claims on behalf of Canopy investors relating to concerns about the company and certain of its officers and/or directors regarding possible securities fraud and other unlawful business practices.

<https://www.marketwatch.com/story/canopy-growth-says-it-will-defend-itself-vigorously-against-lawsuits-alleging-securities-fraud-2019-11-21>

# *Market*Watch

The cannabis sector has been slammed for several months as the Canadian legal market is developing far more slowly than expected and companies are still struggling to sell cannabis and make money. Canopy shares have fallen 34% in 2019.

# Canopy Growth projects 75 employees for Kirkwood plant by third year, well below estimate

[Jeff Platsky](#), Binghamton Press & Sun-Bulletin Published Jan. 18, 2020

In the interim, however, Canopy Growth has encountered difficult growing pains as the company struggles to find its foot in the fledgling cannabis marketplace, including the firing of the chief that hatched that Broome County initiative. Financially, too, the company has underperformed expectations, with a \$1.27 billion (U.S.) loss in the first half of the 2020 fiscal year.

<https://www.pressconnects.com/story/news/local/2020/01/18/canopy-growth-scales-down-broome-county-employment-projections/4442090002/>



# Concerns

Recognize the business atmosphere you are in.

The market for hemp is immature.

Many growers, buyers and processors are still inexperienced.

Growers must strongly evaluate the risks.

Contract provisions will be tested.

# Duties

- Define Grower duties and delete if inapplicable: plant, grow, fertilize, weed, harvest, dry, pack, deliver, shuck, decorticate, etc.
- Define Buyer duties: supplies, fertilizer, seed, technical or agronomist services, equipment, harvest, transport, testing THC and CBD, Grower's NYS hemp license fee, etc.

# Expenses

Define Grower expenses and delete if inapplicable: material, equipment, herbicides, pesticides, chemical products, labor, water, supplies, cultivating, irrigating, weeding, thinning, hoeing, dusting, spraying, fertilizing, testing, etc.

# Payment Terms

- Clearly define how and when a grower will be paid.
- Define time of payments – no later than 15 days after delivery. Exclude buyer's acceptance time.
- Get as much as possible up front or periodic draws.
- Late Charges.
- Verify acreage throughout contract on acreage based contracts.
- Abandonment of title - ability to sell crop or use seed if not accepted, harvested or paid for by Buyer.

# Testing and Inspections

- Agree on an independent 3<sup>rd</sup> party testing facility in advance.
- Grower should Independently test for THC, CBD and weight.
- Require your presence for test samples, inspections and weight and moisture.
- How are testing disputes resolved?

# Minimum Payment

- Exclude high THC or low CBD content.
- Maintain all expense records.
- Timing of payment
- Dispute resolution

# Representations and Warranties

- Seed: To the best of Buyer's knowledge, the Seeds are fit for their intended purpose under this Agreement
- Avoid Grower warranties.



# Carefully Examine & Revise

- ⦿ Best farming practices definition
- ⦿ Delivery. Who transports and delivers? Define delivery point or limit distance.
- ⦿ Exclusive dealing provisions. Grower should have the freedom to enter into other contracts on his/her land as long as grower is not utilizing Buyer's plant materials.
- ⦿ Remove contiguous lands from contract
- ⦿ Delete rights of first refusal
- ⦿ Confidentiality Clauses

# Force Majeure

Acts of God may exclude performance of each party.

Exclude all issues within the Buyer's control such as storage, processing and cooling facilities.

# Insurance and Indemnification

- ⦿ Indemnification – carefully draft each parties indemnification obligations.
- ⦿ Insurance
  - Does it cover your indemnification?
  - Does the Buyer cover the Grower?
  - What are the limits?
  - Check your insurance costs in advance.
- ⦿ Consider forming a Limited Liability Company or Corporation to protect your personal assets.

# Crop Insurance



**USDA issues new crop insurance program for 2020 hemp production season.** Published December 23, 2019

Provides Actual Production History coverage - insures farmers against yield losses associated with natural causes like drought and disease.

Eligibility for the MPCl pilot program and other USDA-administered programs will require that hemp producers are:

- Compliant with applicable regulations for hemp production.
- Experienced with hemp -produced crop for at least one year.
- Under contract for sale of the insured hemp crop.
- Licensed to produce hemp.

<https://hempindustrydaily.com/usda-issues-new-crop-insurance-program-for-2020-hemp-production-season/>

# Consequential Damages

Limit Consequential Damages. The Parties agree that neither the Grower nor Buyer shall be liable to the other Party for claims for consequential, incidental, special, indirect, punitive or exemplary damages including with respect to the indemnification set forth in the Agreement.

# Contract Term and Fees

- Contract term should be one growing season, not one year.
- Attorney's fees and expenses for litigation

# Work Together!





THANK YOU

