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NATIONAL QUALITATIVE REVIEW OF THE FY 89 STATE PESTICIDE

ENFORCEMENT COOPERATIVE AGREEMENT PROGRAM

The information which follows is based on the FY 89 end-of-year evaluation reports submitted by the EPA Regional Pesticide Branches. These end-of-year evaluations, completed by the Regions, focussed on the work conducted by the States, Tribes and Territories under the FY 89 pesticide enforcement cooperative agreements. This report was first circulated in draft form, for review, to the EPA Regional Offices in November, 1990. This final report incorporates comments received by the Office of Compliance Monitoring's Grants and Evaluation Branch.

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NATIONAL QUALITATIVE REVIEW OF THE FY 89 STATE PESTICIDE

ENFORCEMENT COOPERATIVE AGREEMENT PROGRAM

I. Introduction

This report is the result of a national qualitative review of the FY 89 state pesticide enforcement cooperative agreement program. It is based solely on the state/tribal end-of-year evaluation reports submitted by the Regions on each pesticide enforcement cooperative agreement program. More specifically, this qualitative assessment focusses on the narrative portion of the evaluations, which contain a wealth of information analyzed. The areas of state/tribal enforcement addressed in this report include: enforcement priorities, the coordination of programs, the quality of inspections and case development, the quality of enforcement actions, state program needs, EPA's performance, and recommendations from FY 89 end-of-year evaluation reports.

This document is based on fifty-six evaluations received from all ten Regions. (The review of the Inter Tribal Council of Arizona's program effectively includes six individual tribes.) The end-of-year evaluation reports reviews varied in length and detail depending on the reviewer and the Region. The variations in the completeness of the reviews tend to weaken their usefulness in any effort to compare the performance of one state with another, or one Region with another. But the mass of detail provided by the end-of-year evaluations should give us a clearer general picture of any national trends and of areas where the program as a whole is weak or working well.

The process for completing such national qualitative reviews should become more straightforward in the future. In upcoming end-of-year state reviews, all Regions will be addressing the same particular topics in each of their evaluations, in addition to any state specific or regional specific issues which need to be addressed based on the Region's expertise and knowledge of individual pesticide enforcement programs.

The purpose of the national qualitative review was to determine what we could learn about the implementation of the program nationally from the individual FY 89 end-of-year evaluations. The results of this review follow in the highlights/summary section and subsequent pages.



II. Follow-up Activities

From now on, a national qualitative review of the state pesticide enforcement cooperative agreement program will be completed at least annually. OCM will continue to use the Regions' end-of-year evaluation reports on state programs as the primary source of data for the national review, along with other pertinent tools/sources of data available to the office.

With regard to this particular review of the national FY 89 program, OCM's Grants and Evaluation Branch found that the information on state priorities, quality of inspections, state legislative developments and EPA's approach toward conducting semi-annual evaluations, could be factored into this year's and next year's development, implementation and evaluation of the state pesticide enforcement cooperative agreement program. More specifically, the results of the review are being fed into followup activities focussing on: 1) state inspector training; 2) further consistency in EPA's approach toward and protocol for conducting semi-annual evaluations of state pesticide enforcement programs; 3) followup on the results of EPA's individual semi-annual evaluations of state programs; 4) the development of an oversight manual for state pesticide programs; 5) development of next years's annual cooperative agreement guidance; 6) responding to Congressional requests for information on state priorities; 7) further justifying budget requests; and 8) future national qualitative reviews. The highlights and results of the review follow.

III. Highlights/Summary Section

This section includes the highlights and summary information on most of the specific subject areas addressed in this report. More detailed information is included in sections III - IX.

Priorities: Thirty-five of the 56 FY 89 end-of-year reviews discussed the priorities of the State/Tribal lead agency. Followup on cancellations/suspensions of pesticides was the national enforcement priority which EPA included in its FY 89 national state pesticide cooperative agreement guidance. The states had their own, additional priorities. Based on these 35 end-of-year evaluations, the following were the top four areas listed as FY 89 state priorities for enforcement:

- 1) monitoring suspended and cancelled pesticides;
- 2) handling, storage and disposal of pesticides;
- 3) pesticide drift; and
- 4) pest control operations (particularly structural pest control operations)

Coordination of Programs: Twenty-six end-of-year evaluations commented on the quality and development of cooperation between agencies within a State or Tribe. Remarks in the reports were generally positive, especially with regard to State Lead Agency relationships with their respective Cooperative Extension Services.

However, this national review did highlight the importance of ensuring that "coordination of programs", including coordination between States and Tribes, is specifically addressed in every future end-of-year evaluation and the resulting reports. A separate discussion on "End-of-Year Evaluations Completed by EPA Regional Offices" is included at the end of the highlights section and identifies areas which generally need to be addressed further in EPA's end-of-year reviews.

Success in Meeting Inspection Projections: Nationally, states and tribes completed 189% of their inspectional commitments (14,513 projected versus 27,392 completed). It seems that projections negotiated by the States with the Regions are normally conservative, a circumstance that partly accounts for this high percentage of inspections completed. Only one Region fell short on its overall state grant commitments. Forty-three state and tribal lead agencies (SLAs) did not meet projections (95% or less) in at least one inspectional category. Thirty-two of these were reported to have conducted significantly fewer (66% or less) than the number projected in at least one category.

The types of inspections where states and tribes were most likely to fall short of projections were experimental use, non-agricultural use and agricultural use inspections.

Most of the reviews did not fully explain why a state or tribe did not complete the number of inspections projected. Of those that did provide explanations, ten referred to understaffing; three states pointed to other, more pressing priorities; three states indicated that they did not complete follow-up inspection projections because they received fewer complaints than expected.

Quality of Inspections and Case Development: Fifty end-of-year reviews commented in some way on the quality of the State Lead Agencies (SLAs) and Tribes' inspectional and case review activities. The following information is based on these 50 reports.

Twenty states and tribes (or 40%) found investigation files to be complete and properly documented. Weaknesses in one or more aspects of the quality of inspections and case development were found in thirty states and tribes.

Weaknesses in the documentation of inspections (photographs, maps, affidavits, etc.) were identified in reviews of 14 state enforcement programs (or 28% of the reviews). Several of these problems involved documentary samples, especially the collection of product labels. The other problems noted are discussed later in the report.

Very few reviews noted problems in the area of timeliness of reports, responses to complaints and case reviews.

Seven reviews identified problems in the quality of the inspection reports, and seven SLAs were reported to have not used or improperly used certain forms associated with inspections (i.e. NOIs).

Two reviews from two different Regions noted delays in the Regions' processing of referrals from the State, while difficulties in referrals from the Region were identified in five states.

Quality of Enforcement Actions: Thirty-three reviews commented on some aspect of the quality of the SLAs' enforcement actions. Approximately two-thirds of these reviews made generally positive comments about the enforcement actions being taken and did not indicate significant areas needing improvement.

The remaining third (of these 33 reviews) identified problems including the following: unavailability of attorneys to address enforcement issues; delays in taking enforcement actions; enforcement actions inconsistent with state enforcement response policies; inconsistent application of the state's penalty matrix; and a deficiency in the state taking enforcement actions.

Analytical Activities: Fourteen of the thirty-eight reviews (or 39% of the reviews) that addressed lab performance identified a problem in the timely provision of sample analyses.

Not many reasons for the slowness of sample turn around time were given in the evaluations. Five states indicated, however, that the unavailability of suitable methodology and standards had slowed analysis. One state in particular claimed that residue samples were delayed due to lack of available methods and standards to analyze many newer pesticides, while another cited the lack of a suitable methodology for the analysis of active ingredients for their delay in providing the results of formulation samples.

Eight state labs identified a need for additional equipment, although not all of them specified what type. Five state labs said they needed a gas or liquid chromatograph, or both; another specified a GPC cleaning system. Three labs identified a need for additional personnel or for reassigning personnel to conduct pesticide analyses. One reviewer commented that unless something is done to change the career structure and salary in a particular state's lab, it seemed that personnel shortages would be a perpetual problem. Two labs identified a need for additional training for their chemists. Other needs: material safety data sheets (1 state), updating of ASD sample tracking system (1), a geographic information system (1), increased laboratory resources (1).

State Legislative Developments: Nearly all the reviews addressed the section on legislative and regulatory developments in the states and tribes. The reviews did indicate that there is significant movement nationally towards instituting or increasing states' civil penalty authorities, which sixteen of the reviews addressed. Six reviews reported that their states gained civil penalty authority in FY 89; six others report that civil penalty authority had been proposed or recommended; and four states obtained or sought in FY 89 modifications in their civil penalty authority.

State Program Needs: In the FY 89 end-of-years, twenty-one States and Tribes expressed the need for additional training. Fifteen of these requests were for training for field inspectors. Nine SLAs expressed a need for guidance or training on the new pesticide initiatives (groundwater, endangered species and worker protection).

Review of EPA's Performance: Eighteen reviews addressed the views of the SLAs toward EPA. Nine SLAs commented on the shortcomings in EPA's communication with States. Seven of the nine comments came from States in two Regions.

Recommendations included in End-of-Year Evaluations of State Programs:

Forty-four of the reviews included Regional recommendations on how the State

could improve its performance in some way. The categories for recommendations included the following: 1) suggestions for procedural changes; 2) updating required grant-related documents within the state; 3) improved performance; 4) training; 5) analytical; 6) legislative or regulatory changes; 7) personnel changes; 8) tracking/data systems; 9) improved coordination within State/Tribe; and 10) increased coordination with EPA. It was interesting to note that many of the problems identified in previous sections of the individual evaluation reports were not followed by specific recommendations to the State or Tribe in the "recommendations" sections.

Areas Needing More Attention by EPA When Conducting Future End-of-Year Evaluations

This national qualitative review indicated that EPA needs to focus more attention, in general, on certain areas when conducting semi-annual evaluations of state pesticide enforcement grant programs. Some of these areas include the following:

- a) All aspects of a state program outlined in the format for conducting end-of-year reviews (in the annual cooperative agreement guidance) should be addressed. If a particular area does not apply to a state or tribe, then the evaluation report should state so; b) all significant problems identified in any aspect of the state or tribe's program should be addressed in the recommendations, as mentioned earlier; c) more detailed information needs to be provided on whether or not State and national priorities were addressed; d) in discussing the quality of inspection reports, case files, case development activities and enforcement actions, the Region needs to be specific about the areas in which a state/tribe is weak, if any (i.e., information missing from reports, timeliness of enforcement actions; etc.) in discussing the state's analytical performance, the review should indicate the average turn-around time for sample analyses.

The national protocol for conducting FY 91 and future end-of-year evaluations will be revised based on the information gained through this review and circulated to the EPA Regional Pesticide Branches for comment. The national protocol will not limit a Region's evaluation; it simply helps to ensure that certain topics are address, as a minimum, in every end-of-year evaluation.

IV. STATE PRIORITIES

Thirty-five of the fifty-six reviews discussed or referenced the priorities of the state/tribal lead agency. Three Regions did not provide enough information on state priorities in their reviews to be included in this section. (The Priorities for tribes in Region VIII are determined, as necessary, by the Region.)

The top national enforcement priority to be addressed by the states for FY 89 was cancellation/compliance inspections; these were defined by EPA in the FY 89 Cooperative Agreement Guidance as followup on major cancellation actions, suspensions, changes in classifications and stop sale, stop use or removal orders. In addition to this, each state is required to have its own priorities, some of which overlap with the national priority.

Each of a state or tribe's listed priorities were grouped with similar priorities from other states and tribes to identify the most significant state priorities nationally, based on the 35 reviews, and to determine if certain priorities were focussed primarily in any particular Region. As stated, the following is based on 35 end-of-year evaluation reports. In the parentheses next to each title, we have indicated the number and percentage of states listing this topic as priority.

MONITOR SUSPENDED AND CANCELLED PESTICIDES (19 states/tribes or 49% of the states and tribes whose priorities were listed)

Seventeen of the state and tribal lead agencies identified as one of their own priorities in the reviews. (This is 49% of the states from whom information was available in the evaluations.) Most of these SLAs are located in Regions IV and V. Based on a review of cooperative agreement applications by the Grants and Evaluation Branch, it is recognized that the majority of other states commit to following up on compliance with suspensions and cancellations in their agreements; these states simply did not list follow-up in this area as one of their state priorities.

HANDLING, STORAGE AND DISPOSAL (15 or 43%)

Fifteen SLAs (or 43%) identified the handling, storage and disposal of pesticides as a top priority, with most of these citing only disposal of pesticide containers as the predominate concern. The distribution of this priority was spread fairly evenly throughout the country. For example, North Dakota emphasized addressing the disposal of pesticides wastes and containers in coordination with RCRA; Indiana identified runoff from pesticide storage and loading facilities and bulk handling and distribution facilities as a major concern; Colorado planned to develop an enforcement program for the storage of pesticides and containers.

DRIFT (14 or 40%)

Fourteen states (or 40%) identified drift from both aerial and ground spraying as a major concern. Regions IV, V and VII each had three states with drift as a priority.

PEST CONTROL INDUSTRY (12 or 34%)

Twelve states (or 34%) identified the monitoring of Pest Control Operators or PCOs as a priority. Six of these specifically targeted the structural pest control industry, with all of these states focussing on mis-use. Indiana, for example, was concerned with below standard application techniques, but they also emphasized planned use investigations to ensure compliance with registration requirements for technicians. Maryland also emphasized termite inspection certificates. The distribution of this priority was focussed in Regions V and VI, but Regions III and VIII each had more than one state prioritizing PCOs.

GROUNDWATER (11 or 31%)

Eleven states identified groundwater protection as a priority.

MIS-USE (7 or 20%)

Seven states identified general mis-use investigations as a priority without focussing on a particular type of mis-use. Three Region IV states emphasized "strengthened enforcement activities regarding the investigation of alleged pesticide misuse. All but one of these SLAs were from Regions IV and X.

WORKER PROTECTION (6 or 17%)

Six states identified worker protection as a priority for FY 89, although only two of these specifically mentioned the planning for implementation and enforcement of the revised Worker Protection Standards. New Mexico emphasized involuntary exposure to agricultural workers or applicators to pesticides, while Washington specifically mentioned farmworker exposure. (Planning for worker protection enforcement became a national priority in FY 90.)

Distribution: 3 of the 6 states in Region IV, and the rest in different Regions.

RUP DEALER INSPECTIONS (5 or 14%)

Distribution: 3 of the 5 states in Region V, and the rest in different Regions.

Four SLAs identified misuse in urban areas as a priority.

Distribution: 4 different Regions

PROPER LICENSING (4 or 11%)

Emphasis on proper licensing in general was indicated for 4 states.

Distribution: 2 from Region VI and the rest in different Regions

MAJOR SPRAY PROGRAMS (3 or 9%)

Three SLAs emphasized pesticide use problems associated with major spray programs, such as the Gypsy Moth Quarantine and Control Programs.

Distribution: 2 from Region V and the rest in different Regions

HOME MIS-USE AND INCIDENTS (3 or 9%)

Georgia listed mis-use around the home as a priority, while Utah specified the home mis-use of 2,4-D. Pennsylvania zeroed in on home yard incidents.

PEI INSPECTIONS (2 or 6%)

TRAINING NEEDS (2 or 6%)

PROTECT DOMESTIC ANIMALS (2 or 6%)

ENVIRONMENTAL EFFECTS (2 or 6%)

ENDANGERED SPECIES (2 or 6%)

FOOD SAFETY (2 or 6%)

NON-AG INDUSTRY (2 or 6%)



V. COORDINATION OF PROGRAMS

For the purposes of this report, the coordination of state and tribal pesticide enforcement programs with other agencies has been divided into three levels: a) coordination between agencies within the same state; b) coordination between different states and between states and tribes, and c) coordination between state and federal agencies (excluding EPA, a topic which will be addressed in later sections addressing EPA's performance and state needs).

A. COORDINATION BETWEEN INTER-STATE (OR TRIBAL) AGENCIES

A total of 26 Regional reviews commented on the quality and development of cooperation between agencies within a state or tribe.

Remarks were generally positive, especially in regard to SLA relationships with their respective Extension Service (13 comments). Most of these concerned the continuing cooperation with Extension on certification activities, particularly concerning the updating and development of training and testing materials. In Nevada the SLA and the Cooperative Extension services shared information on violation rates, while in Colorado the SLA was working with Extension Specialists, along with agricultural producers, pesticide applicators and industry representatives, in an effort to evaluate and resolve problems surrounding the misapplication of sulfonyl urea.

Eight reviews mentioned positive coordination with state Departments of Health. Three SLAs reported that they contact their departments of health when certain pesticide-related instances arise; in North Dakota and in Hawaii, for example, MOUs exist to ensure cooperation on the disposal of household and farm hazardous wastes.

Groundwater was also a prominent area for cooperation between agencies, with seven reviews explicitly mentioning cooperation. The agencies involved varied, however. Montana's SLA was designated to work with the state Department of Health and Environmental Sciences to set water quality standards for the new agri-chemicals in groundwater programs. In Arizona, efforts on groundwater were coordinated between the Office of State Chemist and the Department of Environmental Quality. In Texas, it was anticipated that in 1990 there would be efforts to establish an MOU with the Texas Water Commission on issues relating to groundwater. Washington's SLA developed MOUs with the State Department of Ecology and the Department of Health to develop and implement an agricultural chemical in groundwater management plan. The Navaho SLA exchanged information with the Drinking Water Program on livestock dipping vats, well water and vulnerable ground water areas.

Relations with other state agencies and reorganizations with the SLA were also frequently reported in the reviews. On the Navaho reservation, the Division of

Resources and the Division of Water Resources were merged into the Division of Natural Resources. In Oregon the legislature established the Pesticide Analytical and Response Center (PARC) as a mechanism for coordinating investigation of pesticide complaints involving human health or environmental effects among various state agencies, including of course the pesticide SLA; the SLA conducted investigations as requested by the Director of PARC. In New Mexico, the SLA was considering doing an MOU with the State Highway Department regarding licensing. Texas developed an MOU with the Texas Department of Corrections, which agreed to conduct inspections to determine whether Federal/State pesticide laws and standards were currently being met in the state's prisons. Washington State had a MOU with the Washington Department of Labor and Industries for the purpose of defining roles and responsibilities of each party for the protection of workers from pesticide exposure; similarly, Oregon was planning to enter into an MOU with the state OSHA regarding investigation of cases involving pesticides and procedures for referrals. In Rhode Island, the state Relief Advisory Board appointed by the legislature meets with the director of the state pesticide program to make recommendations regarding pesticide legislation and regulations.

One review remarked that a state with several field offices was not processing cases uniformly. No elaboration on this problem was given in the review.

B. COORDINATION BETWEEN STATES AND BETWEEN STATES AND TRIBES

Two reviews from Region 4 commented on relations between states. One review noted that Kentucky had reciprocal agreements in place with Indiana and Tennessee regarding certification, and also said that MOUs may be necessary with neighboring states for inter-state violation procedures. Tennessee had a special project in FY 89 to examine Certification Reciprocity in Region IV and explore the possible development of a plan to combine exam information from all Region IV states into a common pool of questions. These could then be used by all states independently, resulting in a certification process that would then allow applicators to operate between states using the same license.

Four reviews touched on state/tribal relations. The Cheyenne River Indian Tribe mentioned that occasional joint inspections, using tribal authority, are conducted on the reservation with state South Dakota inspectors. Other states have developed agreements with tribes. Washington's reviewer noted that even though a good working relation existed between the state and various tribes, there had been a move toward formal written agreements instead of the traditional verbal agreements. One verbal agreement with the Yakima Indian Tribal Council allowed state inspectors to enforce state law on the reservation. A formal MOU was anticipated for FY 91. One reviewer recommended cooperation between North Dakota and Ft. Berthold to ensure a consistent program within state boundaries.

C. COORDINATION BETWEEN STATES/TRIBES AND FEDERAL AGENCIES

A few reviews mentioned coordination between SLA's and federal agencies other than EPA. Region IV recommended increased cooperation between the Tennessee Department of Agriculture and the Food and Drug Administration (FDA). The review noted the two agencies needed to inform each other to facilitate the coordination of inspection schedules; the reviewer also remarked that it may be necessary to develop an MOU similar to the one that exists between EPA and FDA. Louisiana's SLA had plans underway to work with various agencies, such as the FDA and the USDA, in connection with the state's new Food Safety Plan. Louisiana was also working with the state's Environmental Quality agency and the U.S. Geological Survey on a statewide advisory committee on groundwater; necessary MOUs were in the works. New Mexico had MOUs in place with several federal agencies, including the USDA's Animal Damage Control and the U.S. Forest Service, regarding training, testing and licensing.



VI. SUCCESS IN MEETING INSPECTION PROJECTIONS

Nationally, states and tribes completed 189% of their inspectional commitments (14,513 projected versus 27,392 completed). Projections negotiated by the States with the Regions are normally very conservative, a circumstance that partly accounts for the high percentage of inspections completed. Only one Region (VII) fell short on its overall state grant commitments.

Forty-three state and tribal lead agencies, however, did not meet projections (95% or less) in at least one inspectional category. Thirty-two of these were reported to have conducted significantly fewer (66% or less) than the number projected in at least one category.

The types of inspections where states and tribes were most likely to fall short of projections were experimental use inspections (18 states and tribes), non-agricultural use (17) and agricultural use (16). The following chart gives the number of states/tribes that did not accomplish projected outputs, by inspection category.

	<u>STATES/TRIBES</u>
Experimental Use	18
Non-Ag Use	17
Ag Use	16
Producer	14
Non-Ag Followup	11
Dealer Records	10
Certified Applicator	10
Ag Use Followup	8
Marketplace	8
Import	4

The categories in which significant (66% or less) shortfalls were reported include:

	<u>STATES/TRIBES</u>
Experimental Use:	16
Non-Agricultural Use:	11
Agricultural Use:	11
Producer Establishment	7
Certified Applicators:	6
Agricultural Follow-up:	5
Non-Ag Use Follow-up:	3
Import:	3

STATES NOT MEETING PROJECTIONS IN MORE THAN ONE CATEGORY

Some states failed to meet inspection commitments in more than one category. The following chart describes how many states and tribes failed to fulfill their projections in one or more categories.

	<u>Number of Categories</u>					
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
Number of States/Tribes Not Meeting Projections	11	10	9	9	3	1

The number of states that fell significantly short of projections in more than one category also varied.

	<u>Number of Categories</u>					
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
Number of States/Tribes Not Meeting Projections	12	8	7	5	-	-

REASONS FOR INSPECTIONAL SHORTFALLS

A majority of the reviews gave little or no explanation for why a state did not complete the number of inspections projected. Those that were given, however, cited a number of similar circumstances:

- ten evaluations pointed to understaffing. Five of these situations were caused by one or more inspectors leaving the program unexpectedly. One state was reported to be undergoing a severe fiscal crises, which had depleted the staff.
- three evaluations reported other priorities preventing a state from completing inspections in certain categories. Two states, for example, were unable to complete all its producer establishment inspections because the number of follow-up inspections exceeded the number projected. The third state simply claimed that other priorities (Alar, food safety, insecticide chalk, etc.) interfered.
- three states claimed that they didn't complete the non-agricultural use follow-up inspections projected because they received fewer complaints than they expected. Similarly, one state did not have any occasion to perform any of the four experimental use inspections projected.

- one SLA mentioned its reorganization as a reason for falling short of projections in several categories.

- two SLAs had problems with reporting their inspection numbers to EPA. One of these states said that they had changed from reporting the number of inspections initiated to the number of inspections completed, which resulted in lower reported accomplishments.

- one state attributed the shortfall in the number of certified applicator inspections conducted to a planning oversight; many of their State inspections could have been conducted as federal inspections instead.



VII. QUALITY OF INSPECTIONS AND CASE DEVELOPMENT

Fifty of the fifty-six reviews made comments on the quality of the SLAs' inspectional and case review activities. The comments are grouped below according to the subject addressed: 1) documentation; 2) quality of inspection reports; 3) use of proper forms; 4) completeness of inspection; 4) enforcement actions; 5) timeliness of response to complaints and tips; 6) timeliness of inspection reports, case review; and 7) referrals.

Twenty of the fifty reviews made generally positive comments on the quality of inspections and case development, with at least 17 reviews (40%) finding the investigation files to be complete and properly documented. Weaknesses in at least one aspect of inspections and case development were noted in 27 states and tribes. The depth of the Regional analyses of these problems, however, varied more in this area than in others. Some Regions (such as Region V) seemed to have performed an exhaustive review of the case files, and noted the slightest inconsistency or weakness, while some other Regions made only very general comments. It could be difficult to draw any firm conclusions from any comparison of the performance of one state against other states, since this might be more a measure of the depth and detail of the review itself rather than the performance of the state. The value of this assessment on weaknesses in the quality of inspections and case development, therefore, lies mainly with the identification of problems that were most frequently reported.

DOCUMENTATION

Weaknesses in the documentation of inspections were identified in fourteen SLAs (28% of the review). Several of these problems involved documentary samples, especially the collection of product labels. The "documentation" problems identified included the following:

- some inspectors in one state were relying on specimen labels from their office files, rather than pulling the label, whenever possible, from the actual pesticide product applied by users;
- in one state, many marketplace inspection reports lacked shipping documentation;
- in a different state, the general evidence gathered was adequate except for lack of product labels;
- two states were not uniformly completing inspection reports within the same state;

- two Tribes were not documenting all their inspections properly;
- in one state, some cases were noted where the inspection form indicated a possible problem, but not enough information was presented to evaluate whether an enforcement action was warranted;
- in another state, maps were not properly labeled or lacked complete information, and not all observed violations were documented;
- three states in one Region were reported to have significant problems with documentation. A review of the files indicated a lack of documented chain of custody for samples, lack of written statements by interviewers, inconsistencies on photographic evidence and its authentication, and incomplete documentary samples.

QUALITY OF INSPECTION REPORTS

Weaknesses in inspection reports were identified in six SLAs, with all the comments focussing on the narrative. In one state, for example, the reviewer found that statements as to whether or not producer facilities were in compliance were used instead of concise, clear and objective narratives on the observations made and the questions/answers obtained during the inspection. In two other states also in the same Region, the narratives were found lacking; in one, a number of inspection files did not contain narratives for sufficient case review and enforcement disposition, and in the other, the narratives of marketplace inspections were incomplete. The narratives in three other states were also weak. In one state, most case files were lacking a narrative; the narratives in another were difficult to understand due to poor organization and the inclusion of irrelevant information; in a third state no descriptive information beyond a checklist was provided in reports. One Indian Tribes was also reported to have done incomplete reports in several inspection types, not including narratives or any kind of description about the kind of inspection activities taking place and about the site of the inspection itself.

USE OF PROPER FORMS

Six SLAs were reported to have not used or improperly used certain forms associated with inspections. Four of the six involved Notices of Inspection (NOIs). In one case reviewed in one state, an NOI and Facility Inspection form was not used. In three states, NOIs were not being used on a routine basis. Another state has continued to use an outdated NOI form that lacks a place to enter current inspection category numbers.

COMPLETENESS OF INSPECTIONS

Two SLAs were reported to have not completed a significant number of investigations. In another state, several cases were closed on the basis of insufficient evidence, yet the investigations themselves were incomplete. One review of a tribe said that more thorough inspections could be conducted in cases such as pesticide exposure incidents, fish kill, drift of pesticides over residential areas, etc., to determine the type of violation that may have taken place.

REFERRALS

Difficulties with referrals from Regions to States were found in five states, three of which are in the same Region. In one state the turn around time on inspections had almost always been adequate, but there were a couple of special request referrals that were not completed and returned to the Region in time to meet Headquarters' deadlines.

Two review from two Regions noted delays in the Regions' processing of referrals coming from the state. One Region was reportedly far from its goal of taking action on state referrals within 60 days of receipt.

TIMELINESS OF REPORTS, RESPONSE TO COMPLAINTS AND CASE REVIEW

Very few reviews noted problems in this area. Two states were noted for their slowness in generating inspection reports, although in one case this was apparently due to a backlog of complaints. Two states were also found to be slow to develop their cases, although the reviews provided no elaboration on this. One reviewer noted the State's slow response to follow-up on cases.

AVERAGE TIME TAKEN TO RESPOND TO COMPLAINTS

Seventeen reviews provided at least some information on the average time an SLA took to respond to complaints, and all of the comments were positive. Some reviews simply called the response time "adequate" or "prompt," but others provided rough or exact (Region III) numbers of the average response time.



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VIII. QUALITY OF ENFORCEMENT ACTIONS

Thirty-three reviews commented on some aspect of the quality of the SLA's enforcement actions. Approximately two-thirds of these comments were positive.

Four states were reported to be having trouble keeping up with enforcement actions. In two of these states, the unavailability of an attorney to address enforcement issues delayed enforcement actions, or attorney time was not always available, and bottlenecks developed during peak season periods. A third state also had trouble keeping up with case development load since a case development position was lost several years before due to budget cuts. One state reported that violative cases were generally handled promptly, except when they were delayed awaiting completion of sample analyses. One review included a graph indicating a 60% deficiency in the state initiating enforcement actions within agreed-up timeframes.

Eight reviews touched on the SLA's Enforcement Response Policy (ERP) or Enforcement Matrix. Three states were reported to have taken actions inconsistent with their respective penalty matrices. One state was apparently not following its penalty matrix at all; in a second state there were inconsistencies in penalties issued for the same violation; and in the third the reviewer found a significant number of cases where it seemed that the state was not consistently applying the penalty matrix and issuing less stringent actions than the matrix prescribes. The other comments on ERPs reported developments of new penalty matrices or made suggestions on how to redraft the current ERP. One state, for example, was advised to remove the subjectivity of the enforcement guidance document and to expand the violation type/gravity matrices.

With regard to the other enforcement problems noted in individual states and tribes, in one state, several cases which appeared to contain adequate evidence and documentation of violations were left incomplete without any indication of the state's intent to pursue remedies or enforcement actions, and less than 10% of the total enforcement actions reported to EPA were verified by documents contained in the case files; another state had no authority to issue minor enforcement actions; and for another state the evaluation suggested that the state consider changing the language of its warning letters from requesting changes of compliance to more stringent enforcement action.

IX. MAINTAINING FILES AND TRACKING

Seventeen reviews (in only four of the ten Regions submitting reviews) commented directly on the quality of the files and the tracking systems in the SLAs. Eight of these did not identify any problems. Nine of them, however, reported modest to significant problems that need to be addressed by the states concerned. In two states the tracking systems were reportedly in severe disarray. In one case, no real correlation could be made between the inspections and actions recorded in the quarterly reports due to the inconsistencies within the tracking procedures. In the other, the tracking system did not maintain specific information on individual inspections; it could not distinguish between routine inspections and complaint or misuse inspections, and case files were assembled without regard to sequence or order. Tracking systems in two other states were also found to be inadequate. Two additional states were having trouble completing their PETS projects because of difficulties in getting the program on-line. One state's conversion of its system to a mainframe computer was not entirely successful; information was accessible only on a crisis basis.

X. ANALYTICAL ACTIVITIES

Thirty-eight of the fifty-six end-of-year evaluation reports addressed one aspect or another of the performance of the State's laboratory. Areas addressed included timeliness of sample analyses, minimal standards, and laboratory needs.

TIMELINESS OF SAMPLE ANALYSES

Fourteen of the thirty-eight reviews that touched on at least on aspect of lab performance (37%) identified a problem in the timely provision of sample analyses.

Eight reviews specifically mentioned that a sample backlog was found, although two of these labs were behind in residue samples and not formulations samples. Another lab was behind only in formulation samples. (Most of the reviews did not distinguish between formulation and residue samples.) Three of these reviews identified the length of the backlog: three months, four weeks and two weeks.

Eighteen evaluations commented on the average turn around time for sample analyses, although six of these did not provide an average number. Of the remaining twelve evaluations that did provide a number, one state lab's turn around time averaged less than a week; five averaged less than a month; four averaged less than two months; and three averaged more than three months. (Only two of the states identified as having sample backlogs are included in these figures.) One review commented that several of the lab's samples were processed so slowly (the state averaged 42.7 days for residue, 59.2 days for formulations) that the results could not be considered reliable and possible enforcement actions were dismissed on the basis of inadequate laboratory data.

Not many reasons for the slowness of sample turn around time were given in the evaluations. Five states indicated, however, that the unavailability of suitable methodology and standards had slowed analysis. One state in particular claimed that residue samples were delayed due to lack of available methods and standards to analyze many newer pesticides, while another cited the lack of a suitable methodology for the analysis of active ingredients for their delay in providing the results of formulation samples. One state was behind on its formulation sample because the large number of residue samples being collected during the 3rd and 4th quarters of the project period required chemists to be temporarily reassigned to meet that demand.

MINIMAL STANDARDS

Four reviews identified problems with a lab's minimal standards or standard operating procedures, although details were sketchy. One state lab did not have standard operating procedures in place. A reviewer for another state (in the same

Region) referenced an earlier NEIC report on that state's program which questioned the legal defensibility of cases for which laboratory results were crucial evidence; the state needed to refrigerate vegetative samples during shipment and document sample chain-of-custody beginning at the time of collection, rather than upon receipt by the lab.

STATE LAB NEEDS

- a) Equipment: eight state labs identified a need for additional equipment, although not all of them specified what type. Five state labs said they needed a gas or liquid chromatograph, or both; another specified a GPC cleaning system.
- b) Three labs appeared to be having problems obtaining needed standard samples, and one of these labs also needed information on what to do with residue sample disposal.
- c) Three labs identified a need for additional personnel or for reassigning personnel to conduct pesticide analyses. One reviewer commented that unless something is done to change the career structure and salary in a particular state's lab, it seems that personnel shortages would be a perpetual problem.
- d) Two labs identified a need for additional training for their chemists.
- e) Other needs: material safety data sheets (1 state), updating of ASD sample tracking system (1), a geographic information system (1), increased laboratory resources (1).

XI. STATE LEGISLATIVE DEVELOPMENTS

All but three of the reviews addressed some aspect of changes made or proposed to state pesticide laws, regulations or procedures. Of these, sixteen review addressed the state's civil penalty authority.

Six reviews reported that the respective SLAs were granted or began using authority to administer civil penalties in FY 89.

Another six reviews reported that civil penalty authority had been proposed or recommended in the state. In one state, for example, the Pesticide Review Board was planning to take drafts of the revised pesticide laws, including a measure to establish civil penalty authority, to the state legislature. In another state, an amendment allowing for this authority had already been submitted to the legislature.

The reviews also revealed that four states have obtained or are seeking modifications in the civil penalty authority. In one state, for example, at least two bills were to be submitted to the legislature requesting an increase in the maximum penalty under a civil action from \$500 to \$5,000. In another state a bill passed that expanded the SLA's enforcement authority by giving it a consistently broad range of administrative penalties.

XII. STATE PROGRAM NEEDS

As part of the recommended format for FY 89 and 90 end-of-year reviews, there was a section on state program needs. These are not recommendations on what a state needs to do to improve its program, but rather areas where a state or tribe feels it needs assistance or resources from outside sources, i.e., EPA. State program needs were broken down into five categories: 1) training; 2) equipment; 3) personnel; 4) funding; and 5) miscellaneous.

TRAINING AND GUIDANCE

Twenty-one states and tribes expressed the need for additional training. Fifteen of these requests were for training of field inspectors. Six of these came from one Region which has since held additional inspector training sessions. Five requests came from a second Region. One state expressed a particular interest in training for agricultural use, non-agricultural use and producer inspections. Another state would like to have training in "up-to-date" inspection and investigation techniques, and an Indian tribe, similarly, would like to have advanced inspector training. Two SLAs would like to have training in personal safety for their inspectors. Three states in three different Regions would like to have case development training.

Two SLAs expressed an interest in computer training, one for an improved tracking system and the other on EPA computer classes relating to risk assessment and decision-making. Other types of training needs include toxicity and hazard communication, additional training for chemists, and groundwater training.

Nine SLAs expressed a need for guidance or training on the new pesticide initiatives (worker protection, groundwater and endangered species). Most of the remarks about the guidance needed suggested that general training and information on the initiatives would suffice. One state, however, specifically requested information regarding the specific endangered species located in that state, and another requires specific guidance on developing a state groundwater protection plan. Five of the 9 states requesting guidance and/or training on the new initiatives are in one Region.

One state would like clearer guidelines on EPA compliance Strategies. Three states needed better up-to-date information on suspended/cancelled products from EPA.

EQUIPMENT

Eight SLAs expressed a need for more or improved equipment, with four of these specifying computers. One state needs an improved/new telephone system, and another needs lab equipment.

ADDITIONAL FUNDING

Nine SLAs expressed a need for additional funding. Three states and one tribe needed funding to hire additional staff, and another state (Texas) expressed a pressing need for more funding in their enforcement program. Region 1 reviews indicated that the two of their states appear to be under-funded at the state level.

PERSONNEL

Eight SLAs identified a need for additional personnel. Three of these states are in one Region, and two others are in a second Region.

OTHER

Three states in one Region expressed a need for continued visits by the Project Officers; one of these states wanted to see, in particular, EPA participation in commercial applicator training sessions.

Two states expressed a need for help in lab analyses. One of these states was interested in EPA re-establishing a chemistry lab for disinfectant testing, saying that the lack of established standards has hampered state efforts. The second state needed help in analyzing "difficult/problem" samples.

XIII. REVIEW OF EPA'S PERFORMANCE

Eighteen reviews addressed the views of their respective SLAs towards EPA. Comments fell into four categories: 1) State/Region communication; 2) EPA guidance; 3) EPA Financial Assistance; and 4) miscellaneous.

STATE/REGION COMMUNICATION

Nine SLAs commented on perceived shortcomings in EPA's communication with the states. Four states in one Region said that a better line of communication was needed with the Region, with one state hoping that the managerial changes then underway would make for better communication with both agencies. One state complained of the slow response on the part of the Region to SFIREG requests for training of inspectors and case development staff.

Three states in another Region expressed concern over problems in state/EPA communication. One of these states discussed the lack of feedback from other EPA Regions on referrals sent to them and poor responsiveness to inquiries from other Regions. Another commented on the tardy arrival of training course notices/advisories from Washington. The third state did not feel that EPA should announce anticipated publication for new rules, etc., because it forces the states to make commitments which usually are not met because of EPA delays/postponements of the target date.

EPA GUIDANCE

Three SLAs had comments on EPA's guidance (this subject was also partly addressed in the section on State Program Needs). Two states in one Region had interesting comments. One state expressed a need for the more timely provision of the grant guidance; another said that the lack of adequate EPA FIFRA and RCRA guidance has deterred effective response to potentially serious environmental problems. The state found that current label directions on wood preservative products were too vague to prevent continued soil and water contamination.

EPA FINANCIAL ASSISTANCE

Four states from four Regions had various comments on EPA's financial assistance. One state complained of delays in receiving grant funds, and another, in a related vein, expressed concern over the slow congressional budget process. One state remarked that its success in obtaining matching funds from the state legislature has prevented them from receiving federal funds in the past.

MISCELLANEOUS

Three states in the Region requested that EPA reassess the Section 18 review process, saying that it is currently too cumbersome and that approval for state exemptions should be faster. One state was disappointed with cancellation of EBDC as potato seed treatment and of aerial applications to potatoes.

Another said that while the backlog of cases referred to the Region for review and action has decreased, the Region is far from meeting its goal to take action on these cases within 60 days of receipt. This state also suggested that EPA acknowledge how the state contributes more than what is reflected in the present reporting system, and that EPA should work with AAPCO to develop such a reporting system for "State only" activity.

One State Program Director was frustrated with 55 gallon minimum for bulk containers as well as with 2,4-D pad requirements.

XIV. RECOMMENDATIONS

Forty-four of the reviews included Regional recommendations on how the state or tribe could improve its performance. In three Regions, brief, bullet-like recommendations were given, while recommendations from the other Regions tended to be lengthier and more numerous.

Recommendations for each state and tribal program were grouped into different categories according to the type of subject addressed. The categories included recommendations for: A) procedural changes; B) updating grants-related documents; C) improved performance; D) training; E) analytical; F) legislative or regulatory changes; G) tracking/data systems; H) improved coordination within the state/tribe; and I) increased coordination with EPA; and J) personnel changes. A few recommendations fit into more than one category. The numbers within the parentheses next to the titles indicate how many states or tribes received recommendations in that area based on the forty-four FY 89 end-of-year reviews received by HQ. It was interesting to note that many of the problems identified in previous sections of the evaluation were not followed by specific recommendations to the state or tribe in the recommendations section of the report.

A. PROCEDURAL CHANGES (25 states and tribes)

Recommendations for procedural changes in a state/tribal program ranged from the development of a new inspectional form to suggested changes in a tracking system. Virtually all the suggested changes pointed to weaknesses or potential problems with the system itself, not with the quality of actions performed under that system. Recommendations for procedural change have been grouped for the purposes of this report into categories addressing similar problems: 1) documentation, 2) reporting; 3) tracking; 4) enforcement; and 5) inspections.

1. Documentation (6 recommendations)

Six reviews, three of which are from one Region, recommended changes in the SLA's procedures for documenting violations. Four of them emphasized the importance of collecting labels as part of a complete investigation. The two other recommendations concerned better documentation of the receipt of samples to show proper chain of custody and, in another state, to show if samples were obtained from pesticides and devices that were packaged, labeled and released for shipment.

2. Tracking (6)

Six SLAs were recommended to change their data bases or their procedures for tracking. One state was advised to develop a mechanism to record enforcement actions taken on inspections and investigations conducted in earlier quarters. Another state's files should denote if violations are federal or state. It was recommended that one tribal group carefully track inspectional activities for each of its member tribes and renegotiate if these tribes could not meet projections.

3. Reporting (6)

Six SLAs in four Regions were asked to change their reporting procedures. It was strongly recommended to one state to report all inspectional outputs, not just enough to meet projected grant outputs; the Region argued that this practice does give not an overall view of the state's progress compared to other states. It was recommended to another state to re-examine with EPA the state practice of including both state and federally funded inspections in reporting agricultural use inspections. Another was advised to properly report follow-up inspections and to speed up submissions of inspection reports to EPA; another to consider adopting uniform inspectional procedures and reporting formats; a fifth to submit quarterly reports on the 5700-33H form; and a sixth state's lab was asked to provide a more detailed annual quality assurance report.

4. Enforcement actions (5)

Five SLAs in four different Regions were asked to change minor aspects of their enforcement procedures. One state was advised to report violations at the site of the inspections; another to review its protocol of assessing penalties and to better document procedures for following the penalty matrix; a third state was advised to institute a penalty worksheet documenting and providing a rationale for the proceedings; another SLA was asked to send all enforcement correspondence by mail; and the fifth state was advised to begin an aggressive enforcement program to track violations and take enforcement actions on multiple violators.

5. Inspectional Procedures (5)

It was recommended to four states (two from one Region) that they adjust various aspects of their inspectional procedures, including the following: to have all investigation reports reviewed by the field supervisors prior to being finalized; to review more closely inspection reports to ensure consistency in documentation and to reference all documentary samples taken in narrative

reports; to consider discontinuing the use of the Miranda Warning in affidavit forms; and to make general improvements in their inspection procedures. One tribe was recommended to include brief narratives in their inspection reports.

B. GRANTS-RELATED DOCUMENTS (12)

It was recommended to seven SLAs that they amend or finalize their Enforcement Response Policies or their penalty matrices; four SLAs (all of them in one Region) were asked to revise Quality Assurance Plans; and only one state was asked to develop a new priority-setting plan.

C. IMPROVED PERFORMANCE (10)

Specific recommendations to improve an SLA's performance in a particular area numbered ten. Four SLAs were specifically advised to improve the quality of documentation of violations. One state was advised to speed up the time it takes to initiate an enforcement action. Two states were asked to review inspection reports more carefully. One SLA was advised to improve the files; and one to communicate better on product violations.

D. TRAINING (10)

There were ten recommendations for training in the reviews. Seven addressed increased training for inspectors (three of them for tribes in one Region). It was recommended to one state to educate the relevant staff in the proper handling of pesticides; and for another to seek additional training for chemists.

E. ANALYTICAL (9)

Nine recommendations touched on issues relating to state labs. Two labs were asked to speed up the time it takes to conduct sample analysis. Another lab's performance was seriously below acceptable standards. Six labs were advised to review procedures, with the states in one Region being specifically advised to revise or update their QA plans.

F. LEGISLATIVE OR REGULATORY CHANGES (8)

Eight reviews contained recommendations to initiate, or complete some kind of change in pesticide legislation or recommendations. These recommendations for states included the following: to establish Administrative Civil Penalties; to vigorously pursue amendments to state statutes to include civil penalties; to provide an update to EPA on the status of submission of civil penalty package to the Governor; to simply establish civil penalty authority; to amend their state's authority to issue minor

enforcement actions and to revise the state plan in accord with 40 CFR changes; to draft amendments (unspecified) to their pesticide law; and to continue efforts to pass rules and regulations on recertification of private applicators.

G. TRACKING AND DATA COLLECTION (8)

Eight reviews contained recommendations on how to improve the quality and reliability of tracking systems or data collection.

H. IMPROVED COORDINATION WITHIN THE STATE (7)

Seven reviews recommended that the SLA improve coordination with other state agencies or within the SLA itself. Four states in one Region were advised to improve in this area: to improve communications between different program and project staff members; to accelerate planning of their role in the state if they plan to apply for groundwater monies; strive to develop a working relationship with the state's agricultural extension service; and to consider realignment of one of its bureaus to assure expeditious resolution of cases. In other Regions, it was recommended to one state to continue to participate on the different task forces and work with other state agencies involved in groundwater protection. Another state was asked to continue to coordinate and finalized its interaction with other agencies to avoid duplication of effort.

I. INCREASED COORDINATION WITH EPA (7)

EPA recommended to seven states that they increase their coordination/communication with Regional offices on various aspects of the state's program, including the following: 1) Regional involvement in reviewing sample jackets and conducting joint inspections; 2) EPA assistance in the development of training material and training programs to assist the field inspectors; 3) establishment of a single set of criteria for conducting State and EPA inspections; 4) continuing to work with EPA to targeting producer inspections; 5) continuing to work with EPA on the new initiatives; 6) in the case of one state lab, the need to continue to interact with EPA and NEIC to resolve problems of documentation; and 7) defining detailed program responsibilities.

J. PERSONNEL CHANGES (6)

Five states and one tribe were given recommendations to either hire new personnel or reorganize the staff. Two reviews stressed the importance of maintaining an adequate number of inspectors. Two states needed additional help with case support activities; one review recommended that a case review officer be hired, while the second suggested that a field inspector be used part-time to review cases. Another

review suggested that the state consider filling an administrative vacancy or create new manager positions so as to improve the overall efficiency of the enforcement program. An Indian tribe was recommended to put in a budget request for secretarial help.

Note : This data will only be sent to the EPA Regions.

ATTACHMENT - DATA FOR FY 89 PESTICIDE END-OF-YEAR REPORTS

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DATA FOR FY 89 PESTICIDE END-OF-YEAR REPORTS

The information for this worksheet is to be gathered from the Regions' FY 89 End-of-Year Reviews of State pesticide enforcement programs.

Region: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

Reviews: ME, NH, VT, MA, RI, VI, PR, NY, NJ, MD, VA, DC, PA, WV, DE, KY, AL, NCSPCD (Structural Pest Control Division), NCDA, MS, TN, GA, FLDA (Dept. of Agriculture and Consumer Services), FDHRS (Dept. of Health and Rehabilitative Services), SC, MN, IN, MI, OH, WI, LA, NM, AR, TX, OK, IA, KS, UT, ND, SD, CO, Pine Ridge (PR), Rosebud (RB), Cheyenne River (CR), MO, AZ (S&P), AZ (A&H), CA, HI, ITCA (Colorado River, Fort Mohave, Gila River, Quechan, Cocopah and Salt River Tribes), Navajo, NV, WA, AK, OR, ID

MANAGEMENT OF PROGRAM

1. Identify any significant problems or developments involving coordination of the State agencies involved in enforcement, certification, etc.

- ME: Good coordination with the Cooperative Extension service in regards to program planning and development.
- RI: The Pesticide Relief Advisory Board appointed by the legislature meets with the Director of the DEM and makes recommendations regarding pesticide legislation and regs."
- NY: Coordination being developed between BPN and Cornell Cooperative Extension Service.
- KY: Good relationship with the University of KY and County Extension Agents. Cooperative effort with University of Kentucky and county extension agents to update certification tests and materials
Cooperation between KDA and State Health Dept., which contacts KDA when pesticide related instances arise.
May be necessary to develop MOUs with neighboring states for inter-state violation procedures.
- AL: Beginning to coordinate groundwater pesticide program with other state agencies.
"It appears ADAI has developed a good working relationship with the state certification and training programs. The program staff assists in certification activities such as updating and developing training materials. The Department is also beginning to coordinate the groundwater protection program with other state local agencies."
- NCSPCD: NCDA maintains close cooperation and collaboration with Extension service updating training and testing materials.
- NCDA: Close cooperation and collaboration with the Cooperative Extension Service of the University of North Carolina have aided in updating training and testing materials for certification and recertification of applicators.
- MS: Reviewer reports cooperative effort between SLA and the Extension Service has begun to develop.

TN: Healthy relationship between State Health Department and TDA.
 GA: No problem -- good coordination with Extension.
 KS: The applicant now has authority to restrict the use of Pesticides in certain areas of the state. (should benefit endangered species program)
 ND: MOU between NDDA and Extension Service maintained; NDDA and DOH work cooperatively on disposal. NPPA informs DOH of container wastes observed.
 SD: SDDA contracts certification training to the Cooperative Extension Service; South Dakota State University provides analytical support to state under contract with Dept. of Health; responsibility for pesticide accidents and emergency response is shared among all possible agencies. An agreement exists for one of four agencies, including SDDA, to take the lead depending on the type of incident.
 CO: program managers worked in cooperation with agricultural producers... Cooperative Extension Specialists, pesticide applicators and industry representatives, in an effort to evaluate and resolve misapplication of sulfonyl urea.
 CR: "Occasional joint inspections are conducted on Reservation with State inspector... using Tribal authority."
 MT: "The Montana State University Cooperative Extension Service trains and determines the qualification of farm (private) pesticide applicators; the Department of Health and Environmental Sciences has been designated to set water quality standards for the new agrichemicals in ground water program."
 AZ (S&P): AZ (S&P) along with the State Pest. Coordinator have revised the (certification) test to make machine grade
 AZ (A&H): Coordinated efforts of AZ ground water legislation requires coordination between the Office of State Chemist and Dept. of Env. Quality.
 CA: Project Officer meets bi-monthly with CDFA liaison for training and oversight inspections
 HI: Not a MOU but the dept. of ag assisted the dept. of health in disposal program for household and farm haz. waste.
 ITCA: Functions as a coordinator among several tribes. Each tribe negotiates with ITCA on the No.# of inspections they will conduct.
 Navajo: Pest Reg. program and the Drinking Water Program will continue to exchange info on livestock dipping vats, Drinking water well, and vulnerable ground water areas.
 NV: Coordination between Coop. Ext. Service and Dept. of Ag. on info especially regarding violation rates and other data.
 MD: Region/State interaction has been good, there were no complaints
 VA: There are currently no problems in the current Federal/State relationship.

2. How have the problems raised in the most recent review been addressed by the State? Compare recommendations in FY 89 End-of-Year Reports to those in FY 88 to see if there are continuing problems that have not been adequately addressed by the state.

- VI Region waiting for draft report on the ERP that was past due. 17% below no.# of projected inspections. Samples were 70% below that projected. Inspector position still vacant. Problem obtaining petty cash for sample purchases. Lack of safety equipment previously bought.
- PR Turnover of inspectors is a persistent problem.
- NJ: Repeated recommendations: Producer establishment inspections need improvement; narratives were too short- brief and not well documented; Section 18 and 24(c) inspections not meeting projections.
- MN: Review indicates that all 8 recommendations from FY 88 review have been acted upon, but there is a similar recommendation in 88 and in 89 to use 5700-33H form; lab still lacks list of formulated products for which analytical methods don't exist
- MI: ERP still needs to be amended, as recommended in 88 review
- WI: WI still recommended to improve quality of reports, as in 88; "... many of the significant issues that were outlined in the FY 88 Year-End Evaluation of the FIFRA Cooperative Agreements have been addressed by WDATCP during FY 89."
- IL: Repeated recommendation in 89 to work closely with EPA in targeting producer inspections; repeated recommendation that labs should ensure up-to-date QA plans
- KS: Program has improved considerably and should receive reduced review. Some areas improved over the mid year review. Extra effort by program management and staff could prove an excellent inspection program. Additional attention to statements and narratives. Too much time to prepare reports. Too much time to complete enforcement actions. Certified applicator record inspections need to be more fully completed.
- MD: Continuing problems for Maryland in FY 87, FY 88, and FY 89 appear to be in reference to the turn-around-time on sample analysis and the subsequent backlog.
- VA: Long, consistent, turn-around-time for residue/formulation sample analysis in FY 87, FY 88, and FY 89.
- NH: "Revision of commercial examinations, for aquatic insect control applicators at operational and supervisory levels, originally targeted for FY 89, was completed in October."
- NY: Confusion of how Ag use inspections should be conducted (issue resolved)
- LA: (1) Quarterly laboratory reports are being provided and coordinated with EPA in a timely fashion.
(2) ISSUE: LDAF has not finalized their Enforcement Response Policy as promised. Repeatedly, EPA has emphasized the importance of this matter and during the FY 89 Mid-Year Assessment it was requested to be received by October 31, 1989 but to no avail.
(3) ISSUE: The State still needs to rewrite their updated

State Plan for Certification of Pesticide Applicators to include categories for consultants and salespersons as well as to include the new Federal regulation changes.

(4) The overall inspection and sampling accomplishments far exceeded the FY 89 grant projections and the only shortage was three Marketplace samples.

NM: (1) ISSUE: The Director/Secretary of NMDA has assured EPA during the FY 89 final assessment that NMDA will try to obtain civil penalty authority during the next 1990 legislative session.

(2) Efforts to obtain a qualified and available legal expertise as soon as possible has been a problem. The reason is that the State statute says a State Agency cannot hire their own attorney but they must come out of the Attorney General Office. The Director plans to hire an assistant who is also an attorney, so NMDA should have a qualified legal assistant on their staff soon.

(3) The SLA feels that some inspections are strictly State inspections and do not warrant a Notice of Inspection, however a new form has been devised and will be issued now on all inspections. It was pointed out that an NOI is required by Federal law and would enhance State cases referred to EPA.

AR: (1) ISSUE: The recommendation that the State should contain a copy of a label in a follow-up investigation report has apparently not yet been adhered to.

(2) The State needs to follow through that the complaint form, developed to facilitate gathering information concerning citizen complaints of suspected misuse of pesticides, is approved by the Board

(3) ISSUE: The State was to review the existing Penalty Assessment Guidelines with regard to the Agricultural use/follow-up investigations, PEI's, and Dealer Records Inspections and ensure that current enforcement decisions are made in the context of the guidelines or modify these policies as necessary. This review has not yet been accomplished.

TX: (1) Efforts to revise the State Plan to provide recertification of private applicators are underway.

(2) The SPCB has increased inspectional and legal resources to address administrative penalties and other legalities involved in pesticide enforcement.

(3) Pesticide Grant commitments have been met.

OK: (1) Each of the recommendations made during FY 88 E-O-Y Report have been addressed.

(2) Agency has completed the number of PEI's projected.

IA: Sample results have longer delays at the time of the end of year, than at the mid year review. Percentage of cases reviewed during the end of year review were 17% more delays in responding along the time-lines spell out in the ERP

UT: QA/QC manual was not drafted by end of fiscal year as set out in mid-year review; did not improve tracking and filing and documentation of violations

ND: Most recommendations followed up on. Repeated recommendation in 89 to improve accessibility to registration files and to implement accurate protocol acceptable to state accounting department. More work needed on quality of writing reports, quality of written notification to violators, accessibility of product labels, participation of program director in the state ground water protection effort; NDDA did not follow up on specific cases mentioned in previous review.

SD: Three out of four recommendations were met. "SDDA did not observe the recommendation to involve Extension in FY 90 workplan development process."

CO: No recommendations made in previous review, but 88 end-of-year review recommendations were addressed.

RB: Well.

CR: Fair. Documentation of violations improved; the problems of legal representation and secretarial help was not solved.

MT: Well.

AZ (A&H): A portion of grant monies were recommended to be shifted toward funding state labs. This was done by increasing the award.

AZ (S&P): The establishment of a liaison to work with EPA will be developed in the upcoming year

HI: Case development officer will direct inspection efforts to those categories that are below projections to ensure projections are being met.

NV: State has implemented recommendations from previous evaluations.

WA: (1) WSDA has agreed to continue work on the dealer/distributor neutral inspection scheme.
 (2) Development of a standard operating procedure to cover program policies and procedures was discontinued in FY 89 due to increased workload of higher priority. Both NIS and SOPs are scheduled for development during the FY 1990 grant year.
 (3) Issue: Timely completion of investigation reports continue to be a problem. The department's reorganization has created a shortage of trained investigators. It is anticipated that a backlog of cases will result until wsda can fill vacancies and train new investigators.

AK: ADEC has made arrangements with the Washington State Agricultural Lab to run Alaska's pesticide enforcement samples. In the past the integrity of Alaska pesticide samples collected and analyzed has been questioned by EPA. This action resolves this concern.

OR: The State has addressed the following recommendations made during the previous Review:
 (1) Timeliness of laboratory analysis has been addressed by the funding of an additional chemist for FY 91, transferring 10 - 15 samples to NEIC for analysis, and new residue analysis equipment likely will facilitate residue sample analysis.
 (2) Import inspection coordination has been discussed among the State and Region.
 (3) A public participation program has been developed and

incorporated into the 1990 Cooperative Agreement.

(4) Region 10 is and will be placing greater emphasis on working with the Department to support their program and less on traditional oversight activities.

ID: State has upgraded the strength of evidentiary documentation in inspection reports.

ISDA was very cooperative on Section 27 cases referrals during FY 89. The Bureau did a thorough job of notifying EPA Region X about potential significant cases for possible referral and also consulting with the Region before commencing enforcement action on these cases.

Improved communication between ISDA and Region X regarding unregistered or misbranded products found in the marketplace or in applicator's stocks.

3. Identify any specific cross-jurisdictional developments or problems (between states and tribes, state agencies, states and states, states and feds, etc.)

VT Dept. of Ag inspectors are also trained to collect water samples as part of the Department's Well Monitoring program.

RI: The DEM mee s with Rhode Island State Extension service on a biweekly basis, as well as with the Hazardous Materials Division of DEM (for development of air and disposal regs), the Groundwater Protection Division of DEM and the Water Resources Division of the Rhode Island Dept. of Public Health. Program Coordination with US Dept. of Defense permitting DOD personnel to monitor the applications the property in accordance with this agreement.

NY Not all regions are processing cases uniformly

TN: "During routine inspections, FDA or TDA may receive information which indicates the other agency should become involved. It is very important in order for enforcement activities to proceed in the most productive manner, that the two agencies cooperated by informing each other as soon as possible to facilitate the coordination of inspection schedules. It may be necessary to develop a MOU between the two agencies as exists between EPA and FDA."

"TDA had a special project to examine Certification Reciprocity in Region IV and explore the possible development of a plan to combine exam information from all Region IV states into a common pool of questions. These could then be used by all states independently, resulting in a certification process that would then be satisfactory allowing applicators to operate freely between states."

SC: "All potential cross-jurisdictional situations in SC have been avoided through the development and maintenance of close working relationships with several state agencies..."

TX: A recent opinion involved an issue between the Structural Pest Control Board and the Texas Department of Agricultural on who had the authority to license, certify, and regulate

applicators of termaticides who do not work for commercial pest control businesses but who wish to apply for a Federal restricted use or a State restricted pesticide in non-agricultural settings.

ND: Reviewer recommends cooperation with Ft. Berthold to ensure consistent program within state boundaries.

Navajo: Reorganization of the Tribal agencies, the Division of Resources and the Division of Water Resources were merged into the Division of Natural Resources with a mandate to manage Navajo resources to the maximum benefit of the Navajo Nation.

WA: Good working relationship exists between the various parties. However, a move toward formal written agreements appears to be advocated instead of the traditional verbal agreements between the State and the Indian tribes.

AK: Not addressed in the report.

OR: The Oregon Legislature has established the Pesticide Analytical and Response Center (PARC) as a mechanism for coordinating investigation of pesticide complaints involving human health or environmental effects among various State agencies. The Department is a member of PARC and Departmental inspectors conduct investigations as requested by the Director of PARC.

4. Include a description of any formal agreements such as Memorandums of Understanding.

KY: Reciprocal agreement in place between Kentucky and Indiana as well as Tennessee regarding certification.

LA: LDAF coordinates with other States and Federal agencies in carrying out their commitments to maintain an effective enforcement and certification and training program. Plans are underway in the State's new Food Safety Plan and LDAF is working with various agencies such as FDA, LDH, and possibly USDA to mesh together the MOUs needed. On the groundwater plan, LDAF is working with LDEQ and the U.S. Geological Survey on a Statewide advisory committee and each agency will contribute to the overall Plan. Necessary MOUs are also in the works.

NM: The Agency is considering doing an MOU with the State Highway Department regarding licensing. There are MOUs with several agencies (such as USDA's Animal Damage Control and U.S. Forest Service) regarding training testing and licensing). NMDA also has a cooperative agreement with the Navajo Agricultural Products Industries.

TX: One recent MOU developed was between the Texas Department of Agricultural (TDA) and the Texas Department of Corrections (TDC). TDC agreed to conduct inspections as deemed necessary to determine whether Federal/State pesticide laws and standards are currently being met in the State's Prisons. It is anticipated that sometime in 1990, there will be efforts to establish a MOU with the Texas Water Commission (TWC)

relating to ground water.

ND: see #1

SD: see #1

WA: Currently a verbal agreement exists with the WSDA and the Yakima Indian Tribal Council which allows the WSDA to come on to the reservation land and enforce State law. A formal MOU between the two parties is anticipated for FY 91. It is also anticipated that a formal MOU will exist between WSDA and the USDA Extension Service with regards to pesticide training. WSDA currently has MOUs with the State Department of Ecology and Department of Health to develop and implement an agricultural chemical in ground water management plan and with the Washington Department of Labor and Industries for the purpose of defining roles and responsibilities of each party for the protection of workers from pesticide exposure.

OR: The Department is entering into a MOU with the Oregon Health Division and the Oregon Occupational Safety and Health Division regarding investigation of cases involving pesticides and referral of those cases to the appropriate agency when violations are suspected.

5. List the enforcement priorities provided in the end-of-year reviews in order of precedence, if possible, for each state and tribe.

VT: "Previous priority areas included off target drift, groundwater contamination, disposal of obsolete pesticides and triple rinsing of containers and disposal of rinsates... Based on recent findings of a number of use violations by PCO's, the state is directing more of an enforcement effort in the area."

KY: Priorities not ranked: Monitor canceled and suspended pesticides in pesticide use areas, strengthen enforcement activities regarding the investigation of alleged pesticide misuse and continued routine monitoring efforts, right-of-way incidents, PEI inspections, updating educational materials, training needs, C&T updates.

AL: Priorities not ranked: Monitor cancelled and suspended pesticides and strengthened enforcement activities regarding misuse of pesticides by pest control operators and ground/aerial applicators; groundwater contamination by pesticides; disposal of pesticide containers and rinseat.

NCSPCD: 1) help ensure compliance with major pesticide reg. actions in pesticide use areas; 2) maintain current level of compliance monitoring with respect to applicators engaged in structural pest control industry; protect domestic animals, ensure public health.

NCDA: 1) help ensure compliance with major pesticide regulatory actions; and 2) plan for implementation and enforcement of the revised Worker Protection Standards for pesticides and associated labeling requirements; assure public health, protect domestic animals, and prevent and/or eliminate the indiscriminate and unlimited use of pesticides that may pose a serious adverse environmental

effect.

- TN: "The department monitored canceled and suspended pesticides in pesticide use areas under its purview. They strengthened enforcement activities regarding the investigation of alleged pesticide misuse and continued routine monitoring efforts.
- GA: 1) Cancellations/suspensions; 2) Planning for worker protection enforcement; 3) Misuse in and around home; 4) Drift complaints; 5) Sale of RUPs to uncertified applicators.
- FL: Ag-use followups and no-ag-use followups; other priorities not identified in review.
- FLDHRS: Cancelled/suspended pesticides.
- SC: 1) Education to prevent violations involving illegal sale or use of canceled, suspended and/or restricted pesticides, and stop sale use or removal orders issued under Section 3(c)(2)(B)., and compliance with the provisions of FIFRA, SPCPA, and the SC chemigation law; 2) Improper or unnecessary use by PCOs; 3) education and enforcement against misuse resulting in groundwater contamination; 4) involuntary exposure to homeowners to termaticides; 5) appropriate responses to non-priority complaints; 6) drift and worker exposure.
- MN: From FY 89 application: 1) Improper handling and storage, 2) groundwater monitoring for pesticides, 3) pesticide drift and over-spray concerns, 4) pesticide container disposal, 5) purchase of restricted-use pesticides by, or for use by individuals not properly certified; 6) structural pest control, commercial turf care, and aerial applicators; 7) cancellation compliance inspection.
- IN: 1) Planned use investigations of lawn pest control industry; 2) below standard application techniques by structural pest control industry; 3) planned use investigations of the structural pest control industry to ensure compliance with the requirement to register technicians; 4) misuse that could result in the exposure of ground water to pesticides; 5) disposal of pesticides and pesticide containers; 6) runoff from pesticide storage and loading facilities; 7) marketplace inspections for the purpose of regulating ultrasonic pest control devices, electrocution devices, water treatment devices and swimming pool products; 8) improper sale, distribution, and use of recently restricted, suspended or cancelled pesticides; 9) bulk handling and distribution facilities; and 10) drift and overspray
- MI: 1) Compliance monitoring of nationally suspended and/or cancelled pesticide registrations; 2) unauthorized sales of RUPs by dealer establishments; 3) drift; 4) misuse that may result in point source or non-point source pollution of ground and surface water; 5) worker protection; 6) compliance monitoring of major spray programs; 7) surveillance of pesticide use at nursing homes, schools, city park departments, and county road commissions; 8) misuse in urban areas; 9) disposal of pesticides and containers.
- OH: 1) Misuse by structural pest control operators; 2) drift; 3)

disposal of containers; 4) storage and transportation of bulk pesticides; 5) RUP dealer inspections; 6) suspended, cancelled, nonregistered or recently restricted pesticide products; 7) ODA's Gypsy Moth Quarantine and Control Program; and 8) Surveillance of structural PCOs to ensure that chlordane is not being used.

LA: The significant priorities in the pesticide use/misuse activities were ranked as follows: (a) aerial application at agricultural sites; (b) surveillance of pest control operators; and (c) agricultural incidents not involving applications of pesticides. The State's highest priorities in non-use related activities were as follows: (a) regular market place monitoring; and b) regular conduct of training programs and public participation in regulatory programs. The National enforcement priorities, as outlined in the FY 89 Grant Guidance, have been incorporated in the State's workprogram.

NM: The significant priorities in the pesticide use/misuse activities were ranked as follows:

- (a) Damage caused by pesticides moving off target;
- (b) Misuse by pest control operators during structural applications at residential sites;
- (c) Incidents involving other urban applications;
- (d) Improper storage, transportation, and disposal; and
- (e) Involuntary exposure of homeowners, agricultural workers or applicators to pesticides.

The State's highest priorities in non-use related groups were as follows:

- (a) Producer establishments;
- (b) marketplace establishments;
- (c) monitoring the certification program in Applicator License/Records Inspections and Dealer Restricted Use Pesticide Records Inspections; and
- (d) Commercial Applicator Liability Insurance Requirements.

TX: The significant priorities identified in the non-use priority setting plan are as follows:

- (a) prior violators;
- (b) those not inspected the previous year;
- (c) dealers who did not relicense; and
- (d) volume of sales.

In pesticide use, the priorities are still in the agricultural area. The pesticide priority plans are updated annually.

OK: Significant priorities identified in the State's priority setting plan are as follows:

- (a) Nonagricultural applicators (structural pest control-termiticides) and agricultural applicators (aerial-phenoxy herbicides).

UT: 1) Home misuse of 2,4-D; 2) Disposal of Pesticide Wastes and Containers 3) groundwater protection 4) major regulatory

actions 5) drift 6) develop Endangered Species Program

ND: Disposal of Pesticide Wastes and Containers in coordination with RCRA; groundwater protection; uniform implementation of State Pesticide Act;

SD: Misuse by PCOs in homes; Bulk handling and distribution facilities; storage of Pesticides and containers; disposal of Pesticide waste and containers; drift; proper licencing and recordkeeping;

CO: develop enforcement program for storage of pesticides and containers; upgrading of laboratory facilities; maintain comprehensive administrative evaluation program; review pest. applicators Act in accordance with 1990 Sunset provision and regulatory review; drift caused by commercial applicators

PR: priorities set by Region by negotiation with tribe

RB: priorities set by Region by negotiation with tribe

CR: priorities set by Region by negotiation with tribe

AZ (S&P): pretreatment facilities
 Bad public opinion
 Changes in Administrative procedures

NV: High no.# of violative products being held or sold

Navajo: Livestock dipping locations

WA: The following are WSDA's enforcement priorities:
 (1) agricultural aerial insecticide drift/misuse;
 (2) agricultural aerial phenoxy herbicides drift/misuse;
 (3) groundwater contamination;
 (4) agricultural ground phenoxy herbicide drift/misuse;
 (5) PCO misuse cases (including both structural and other in-structure pest control);
 (6) agricultural ground insecticide drift/misuse;
 (7) ornamental/residential pesticide drift/misuse;
 (8) aerial/ground forest environment misuse;
 (9) farmworker exposure;
 (10) cancellation compliance inspection;
 (11) aquatic use/misuse;
 (12) product problems (misbranding, etc.)
 (13) storage/transportation/disposal problems;
 (14) pesticide use problems associated with major spray programs;

AK: The following are Alaska's enforcement priorities:
 (1) Disposal of pesticides and pesticide containers;
 (2) Groundwater contamination;
 (3) Pesticide misuse;
 (4) Endangered Species concerns;
 (5) Suspended and cancelled pesticide products;
 (6) Restricted-use pesticides; and
 (7) Greenhouse inspections.

OR: The general policy of the Department has been the investigation of all alleged pesticide misuse situations and inappropriate pesticide distribution situations brought to its attention. In general terms, the Department has ranked investigative activities as follows:
 (1) PARC investigations (human and environmental concerns);

- (2) Report of Loss investigations;
 - (3) Investigation of other specific public concerns;
 - (4) Intra-departmental referrals
 - (5) EPA Referrals
 - (6) Referrals from other State agencies;
 - (7) Followup to other investigations;
 - (8) Routine investigations as detailed in EPA agreement
 - (9) Routine investigations as detailed in the Oregon Revised Statutes; and
 - (10) Other investigations
- ID: State priorities have been identified as follows:
- (1) Drift;
 - (2) Urban Sprayers;
 - (3) Disposal;
 - (4) Misapplication;
 - (5) Suspended/Cancelled Products; and
 - (6) Chemigation
- VA: Virginia's enforcement priorities are the following:
- (1) Non-agricultural industry;
 - (2) Right-of-way applicator; and
 - (3) Lawn care companies
 - (4) Virginia is being asked to conduct more pesticide monitoring programs related to food safety.
- DC: DC's enforcement priorities are the following:
- (1) Use/misuse activities;
 - (2) Applicator/Operator license record inspection; and
 - (3) Disposal of pesticides and pesticide containers.
- PA: Pennsylvania's enforcement priorities are the following:
- (1) Home yard incidents;
 - (2) Urban incidents;
 - (3) Right-of-way;
 - (4) Ag. incidents; and
 - (5) Woodland
 - (6) PA has begun to check barber and beauty shops for products which are not properly labeled.
- WV: West Virginia's enforcement priorities are the following:
- (1) Non-agricultural industry;
 - (2) Pest Control operators;
 - (3) Right-of-way applicators; and
 - (4) Lawn care companies.
- DE: Delaware's enforcement priorities are as follows:
- (1) Agricultural drift;
 - (2) Lawn care applications;
 - (3) Groundwater contamination; and
 - (4) Pesticide residues in food.

6. Did the Regional reviewer indicate that any of the State's priorities were not addressed by the State?

RI: "The goals established by their priorities as listed in the Cooperative Agreement are being addressed although limited by a lack of personnel."

TN: outputs did not always meet projections

IN: yes, see # 7
UT: Yes. Accomplishments do not reflect program consideration of priorities on misuse of 2,4-D by homeowners, disposal and drift.
RB: yes, the tribe did not meet their projected number of inspections in most of the inspection categories. This was due to the learning curve of the new inspector.
CR: yes
CA: Use of "triggers" to initiate action was not clear as to how inspections are selected.
Priorities far exceed request

7. Did the State indicate that its priorities were seriously effected by seasonal fluctuations, emergencies, changes in personnel or other extenuating circumstances? If so, explain.

VI The Governor of the VI imposed a hiring freeze which would not allow filling the inspector position on St. Thomas.

PR Continuous turnover of inspectors results in achievements below projections- not resolved.

Deficient in experience for case review officer and supervisory inspector

PR: Hurricane Hugo forced the End of yr. evaluation to be conducted via telephone, in addition to delaying work projected for the project.

NCSPCD: "...the Division was under-staffed by one inspector for a period of 5 months during the latter part of FY89."

TN: "Accomplishments were considerable behind projections at the Mid Year point, due to the fact that at the end of first quarter and the beginning of the second quarter, all inspectional activities came to a virtual standstill while fiscal procedures were studied and amended."

FLDHRS: State did not receive sufficient number of complaints to meet projected non-ag followups.

IN: disparity between the projected and accomplished numbers of inspections due to personnel loss and reorganization.

MI: personnel changes and increased workload on existing staff made it difficult to achieve all of its projections.

LA: The Director commented that they have not yet looked at Worker Protection yet. LDAF's FY 90 Workprogram commits to the development of program activities to address the revised agricultural Worker Protection Standard.

ND: Small staff and lack of administrative support make it difficult for inspectors to provide an adequate enforcement presence.

PR: less number of agriculture and structural use inspections carried out at beginning of the year due to the large number of compliant inspections carried out.

RB: time spent training new inspector made it difficult to address all priorities.

CR: "1989 was a drought year in the Dakotas; consequently, fewer pesticide applications were made in 1989 than in normal years. Further, the Tribe's Pesticide Officer resigned in the fourth

quarter of FY 89 to accept another Tribal position."

MO: Loss of personnel effected quality of program.

AZ (S&P): Struggling to survive after years of operating under a crisis situation from accusations of mismanagement.

AZ (A&H): Undergoing a 6 month state audit mandated by legislature

ITCA: Personnel turnover is the primary reason for not attaining enforcement priorities

AK: The Exxon Valdez spill put a significant strain on Washington's pesticide program. The forward momentum that the program tried to maintain was slowed.

MD: No, but it was recommended that the State should carefully review its priority setting process to target inspections toward high harm hazard areas, probably non-ag. use.

VA: The program staff underwent, in FY 89-90, a reorganization which has created an Office of Pesticide Management under the Division of Product & Industry Regulation. Agricultural and aerial applicators are also on the increase.

DC: No, however, DC has had difficult time keeping staff members, particularly inspectors.

INSPECTIONS

8. For each type of inspection, list those states/tribes that did not meet projected outputs, providing the number accomplished versus the number projected (x/y) and documenting the reasons given for not meeting the projections.

Producer Establishment Inspections:

ME

VT: 0/2

RI: 1/4

VI 168/300;

PR 4/12

MS: Completed 21 out of 25 completed.

FLDA: Completed 231 out of 352 projected

IN: completed 12 out of 15;

MI: completed 22 out of 30

OH: completed 183 out of 200 projected

UT: completed 6 out of 8 projected, since follow-up investigations doubled the # projected.

ND: 6 out of 8 projected

AZ (A&H) 2/3

WV: No reason cited. 11/15

Marketplace Inspections:

NCDA: The discrepancy in the Market Plan occurred as a result of the States only targeting these establishments which revealed EPA suspected violations; i.e., not done unless violation suspected. 19/30

IN: completed 240 out of 250 projected

PR: completed 9 out of 16 projected

RB: completed 10 out of 16 projected

CR: completed 2 out of 12 projected

WV: No reason cited. 33/35

Ft. Mohave: 1/2

Salt River: 1/4

Agriculture Use:

NH: completed 5 out of 8

MA: 2/15

RI: 12/30

PR 64/81

NY 21/54

MS: Completed 45 out of 50 projected

FLDA: Completed 142 out of 220 projected

KS: 4/60

CR: completed 1 out of 20 projected; 1989 was a drought year, which meant fewer pesticide inspections; inspector quit in 4th quarter.

PR: completed 15 out of 17 projected.

RB: completed 14 out of 18 projected

WA: Not specifically mentioned, but reorganization did take place within the Department in 1989. 7/16

MD: No reason cited. 6/16

WV: No reason cited. 9/10

AK: 1/6

SALT RIVER: 51/77

Agriculture Follow-up:

NH: completed 12 out of 22

MA: 1/10

RI: 1/4

VI: 0/10;

NY 24/39

WI: completed 60 out of 80 projected

WV: 9/10

KS: 44/60

Non-Ag Use:

MA: 16/40

RI: 45/60

VI: 15/35;

PR: 36/68

TN: "This was due to the loss of three pest control employees."

OH: completed 17 out of 30

WI: completed 11 out of 16 projected

MO: 39 completed out of 44 projected. "This is a number that cannot be accurately projected since it is dependent on the number of complaints received."

ND: 5 out of 6 projected

PR: completed 33 out of 53 projected

CR: completed 43 out of 47 projected

WA: Not specifically mentioned, but reorganization did take place within the Department in 1989. 6/8

DC: Lack of adequate staff. 46/50

Colorado River: 3/13, due to high number of ag-use inspections.

Gila River: 4/16

Quechan: 1/8

Salt River: 1/8

Non-Ag Use Follow-up:

ME: completed 10 out of 12

MA: 35/65

VI 0/20

NCSPCD: completed 65 out of 72 projected. "Non-Ag Follow-up inspections are dependent upon consumer complaints, a situation over which the Division has no control. In addition it should be pointed out that the Division was under-staffed by one inspector for a period of 5 months during the latter part of FY 89."

MS: Completed 22 out of 25 projected.

FLDHRS: 36 out of projected, due to low number of complaints

SC: 15 out of 16 projected

IN: completed 52 out of 65 projected

KS: 43/60

MT: 13 out of 15 projected. "The number of followup inspections is difficult to project."

DC: 13/17

Experimental Use:

ME: 0/2

NH: 0/2

VT: 1/4

RI: 0/2

PR 0/2;

NY 5/6

FLDA: completed 17 out of 28 projected

SC: completed 3 out of 8 projected

IN: completed 0 out of 5 projected

NM: The State had projected four inspections but did not have an occasion to perform any during FY 89. 0/4

UT: 1 out of 3 projected. No reason given for shortfall in review.

AZ (A&H) 2/4

WA: Not specifically mentioned, but reorganization did take place within the Department in 1989. 0/2

MD: No reason cited. 1/2

VA: No reason cited. 4/5

WV: No reason cited. 2/4

KS: 2/4

Colorado River: 1/3

Import:

ME: 0/1

VI 14/15

AZ (A&H) 0/1

FLDA: completed 6 out of 12 projected.

Pesticide Dealer:

NH: completed 17 out of 23

MA: 18/20

PR 64/92

SC: completed 270 out of 300 projected
 CR: completed 4 out of 8 projected
 HI 64/80
 WA: Not specifically mentioned, but reorganization did take place within the Department in 1989. 19/25
 AK: No reason cited in the report. 0/3
 KS: 108/116
 Colorado River: 1/2
Certified Applicators
 PR 127/136
 OH: completed 215 out of 300 projected
 IL: completed 24 out of 50 projected. "Because of other priorities, (e.g. Alar, food safety, insecticide chalk, etc.) IDA completed only 24 RUP inspection during the fiscal year."
 MT: 41 out of 60 projected. "This was apparently a planning oversight since 44 State inspections were conducted as well; many of which could have been conducted as Federal inspections."
 AZ(A&H): 27/50
 CA: 59/70
 HI: 28/50
 AK: 0/3
 Gila River: 6/16
 Quechan: 0/4
Details on above:
 MA "... due primarily to a fiscal crises which affected state. As a result, the staff has been seriously depleted. This coupled with hiring freeze has created a serious personnel shortage in the Bureau. The State did not request amending their output, because they did not anticipate the inability to hire replacement personnel."
 VI no.# of inspections completed did not meet the no.# projected due to the vacant inspection position on St. Thomas. -14%
 PR due to inspector turnover
 NY Confusion as to how these (AG. use) should be conducted.(this has been resolved).
 KY: Accomplishments considerably ahead of projections (1549 projected/ 5210 accomplished).
 AL: Accomplishments exceeded projections.
 NCDA: An increased number of outputs were (approx. 3 times projections) reported in the categories of Agriculture and Non-Ag. follow-up inspections/samples were due to the State counting all inspections initiated prior to 9/30/89, not previously reported. There was an apparent misunderstanding of EPA's uniform reporting requirements. The problem has been resolved.
 TN: review did not include complete information on the type of inspections projected versus the number completed.
 GA: all projections met
 FLDA: state far exceeded commitments in other categories; consistent with priorities which give follow-ups top priority at expense of other categories if appropriate.

IN: competed 594 out of a total of 535 projected; shortfall in some projections due to the loss of one inspector and a shuffling of the others.

AR: All inspections and sampling commitments were met or exceeded.

TX: TDA exceeded the commitments in inspection and sampling.

OK: Inspection/sampling have been completed in a timely manner and are acceptable. However, E-O-Y did not have attached Chart 1, listing the # of inspections projected and accomplished.

KS: had a very large no.# of complaints which took away from commitments. Marketplace and RUP commitments were reduced due to personnel having to take over administrative duties.

CO: "The program met or exceeded all certification and enforcement activity projections."

ITCA: Overall pest. programs show low no.# of accomplished inspections in the areas of Non-Ag., Certified applicator and marketplace. Commitments were not met for most of the tribes. Several tribes concentrated on Ag. use inspections and completed far beyond those originally projected. One of the tribes (Cocopah) did not have the inspector position filled during '89. Ft. Mojave exceeded their commitments by 200%.

OR: The number of inspections completed was significantly lower than the number projected for agricultural use, experiments use, and producing establishment inspections. During FY 89, the Department changed from reporting the number of inspections initiated to the number of inspections completed. Inspections are considered completed when the inspection report has been reviewed and found to be acceptable. This change resulted in lower reported accomplishments this year. By the end of FY 90, it is anticipated that this situation will be rectified.

ID: ISDA came up short 2 use inspections due to a loss of two of the four State inspectors for a few months during FY 89.

PA: All commitments were fulfilled.

WV: Although not every specific category of inspection and sampling commitments were fulfilled, the total number of inspections and samples were more than the commitment totals, and many categories were well above the committed rate.

DE: No reason stated for the two categories that did not meet the commitments. However, the total number of inspections (359) were more than the predicted total (305).

9. Briefly note comments by the Regional reviewer, if any, on the quality of the State's enforcement actions (for example: Were warning letters well written?).

ME "Documentation included with each inspection file was found to be well prepared and complete enabling the case reviewer to systematically determine the merits of the case.

NH "Case files were found to be in good order, very well documented for enforcement actions and consistent with EPA policy. Violative cases were generally handled promptly during DY 89 except when they were delayed awaiting the

completion of sample analysis."

VT: "Enforcement actions taken by the state were appropriate and timely and in conformance with existing state enforcement policies." Of 143 inspections a total of 42 enforcement actions were taken.

NJ Penalties are being assessed on a timely basis

PR Little experience in case development (sample jackets will be sent to Region II once complete)

KY: Progress from previous years in violations ratio. "Reorganization has allowed any backlog in case review to be addressed. A management scheme has been put in place to prevent any future backlogs from occurring."

AL: Operating within ERP. Good quality -- all files include info on prior violations.

NCDA: Lack of records violations result of 1) those violations usually detected as result of use-related investigations, therefore reported as use; 2) state record-keeping requirements are minimal and generally do not result in detection of violations.

MS: Violations ratio doubled from 11% to 20% from FY 89 to FY 90. "MDAC is operating within the stated Enforcement Response Policy and the quality of the enforcement actions continues to improve.

TN: "It was noted that a few inconsistencies remain in the Enforcement response Policy."

FLDA: quality of enforcement actions continues to be good

FLDHRS: "The Dept. is operating within the stated ERP, and the quality of the enforcement actions continues to improve."

SC: "Case preparation is well done and the evidentiary quality is generally good." Standard affidavit form amended to include a Miranda warning, to be used only after a person had been taken into custody." Dept. recommended adoption of a new Enforcement matrix.

MN: MDA should cite information on violations/penalties for the 75 enforcement orders concluded in FY 89 as part of its ERP. Percentage of enforcement actions very high.

MI: "both agencies worked on redrafting and strengthening the ERP during the second quarter of FY 89, in order to remove the 'subjectiveness' of the enforcement guidance document and expand the violation type/gravity matrices."

OH: "The ODA has the ability to refer significant violations to its Criminal Investigation Division for enforcement. The Grant funds one position in the CID for the purpose of enforcing state and federal pesticide laws... This program continues to be very successful."

WI: "Enforcement actions taken by WDATCP during FY 89 also increased, mainly due to an increase in the number of warning letters issued to commercial application firms for failure to maintain proper books and records."

OK: No major significant deficiencies.

IA: review included a graph which indicates a greater than 60% deficiency in the state initiating enforcement actions within

timeframes

- UT: "Several cases which appeared to contain adequate evidence and documentation of violations were left incomplete without any indication of the Dept.'s intent to pursue remedies or enforcement actions..."; Dept. apparently not following penalty matrix; less than 10% of total enforcement actions reported to EPA were verified by documents contained in case files.
- ND: "NDDA developed a new penalty matrix which included provisions for record keeping and specific label violation." "Warning letters should be issued immediately, not held until problem has been corrected. Actionable inspections on ag. use inspections surprisingly low (only 7 warning letters for 181 inspections). No reason given in review.
- SD: Unavailability of an attorney to address SDDA enforcement issues delayed enforcement actions "SDDA cases are being neglected" due to the attorney's "involvement in a large Dept. of Water and Natural Resources' case"
- CO: "Attorney time is not always available, therefore, a bottleneck develops during peak season periods when the number of cases, etc., far exceeds the available legal staff." "...since the accomplishment for inspections and investigations are reported differently to the grant it is not possible to establish an accurate relationship between the number of inspections or investigations conducted and enforcement actions taken by dept."
- MT: Trouble keeping up with case development load, since case development officer position was lost several years ago due to budget cuts. Bureau chief overwhelmed with work.
- AZ (S&P): Has no authority to issue minor enforcement actions very burdensome process
- AZ (A&H): Case review was complete with sufficient evidence to document violations.
- CA: Excellent job in taking a large no.# of enforcement actions. Ag commission has authority to issue civil penalties, but there has been inconsistencies in penalties issued for the same violation. EPA has provided initial guidance on when to issue actions.
- NV: Inspectors are increasing focus on information needed to develop proper enforcement actions. Emphasis has been placed on marketplace and producer estab. inspections due to the history of violations.
- WA: WSDA is following their enforcement response policy. There are 1988 case reports that are still incomplete.
- OR: Based on cases reviewed, it appears that the Department is taking appropriate enforcement actions within the penalty policy that was in effect during FY 89. However it was suggested that the State consider changing the language on its warning letters from requesting changing of compliance to more stringent enforcement language.
- ID: The Region found a significant number of cases where it seems

that the Bureau is not consistently applying the penalty matrix and issuing less stringent actions than the matrix prescribes. The large number of cases where the Region and Bureau differ in response selection indicates that better guidelines and instructions for applying the matrix are needed.

- MD: Enforcement actions taken by the State were appropriate and complied with the Maryland penalty matrix. The level of enforcement actions compared to inspections was 4.3% as compared with a regional average of 18.4%.
- VA: Total enforcement actions during FY 89 total 104 which gives a rate of 8.8%. While it is less than the Regional average of 28.3%, the VDA is pursuing enforcement within the scope of their present regulations and has shown an increase in enforcement actions taken compared to FY 88 performance. VDACS is revising their Enforcement Response Policy to incorporate the new statutory provisions.
- DC: There were a total of 217 inspections during the year, with actionable inspections totaling 128. This gives an actionable rate of 59%, compared with a regional average of 18.4%.
- PA: Inspections totaled 864. Actionable inspections totaled 148, which gave a rate of 17.1%, compared with a regional average of 18.4%.
- WV: Total actionable inspections were 7.1% of the total inspections (382), compared with a regional average of 28.3%.
- DE: Total inspections of 359 included 56 (15.6%) actionable inspections, compared to a regional average of 28.3%.

10. Indicate with a check any deficiencies noted in the general quality of the following inspectional and case review activities listed below, specifying if possible in which type of inspection the weakness was found. Comments might also address any noteworthy or outstanding achievements.

a) Use of proper forms (ex. Notice of Inspection)

- MN: In one non-ag followup inspection, NOI and Facility Inspection from not used.
- MI: "13 marketplace inspection files did not contain the correct, complete compliment of official documents and the majority of the inspections were not conducted uniformly by the inspectors across the State."
- NM: The forms and procedures used by the inspectors complied with the EPA Inspector's Manual with the exception of the absence of the Notice of Inspection forms which have not been use on a routine basis. However, the SLA has a new Notice of Pesticides Inspection form which is now being
- ND: "Violations are frequently stated unclearly or are entirely lacking on forms provided to the violator."
- SD: Notice of inspections not always issued to owner, operator, or agent in charge at each inspection site; forms should be filled out completely; some misunderstanding of terms on the forms (dilation rate, amount of diluted material per acre,

etc.); documents should be signed and dated.

MT: One inspectors has continued to use an outdated NOI form., which lacks a place to enter current inspection category numbers.a

b) Use of proper sampling procedures (ex. Chain of Custody)
 VA: See comment below.
 WV: See comment below.

c) Proper documentation (photos, maps, affidavits, etc.)
 GA: documentation not always identified properly
 SC: "Some inspectors were using specimen labels from the Department's office files for Documentary samples. The disadvantages of this practice was discussed with management, along with the necessity of verifying the actual pesticide applied by the user. The Department has begun the process of changing its
 MI: five PEI inspections so poorly documented they were not included in the final count. Uniform completion of inspection documents not methodically done by all the state inspectors.
 MN: "collection of product labels for followup activities appears to be reduced." "Significant information missing from a number of the market place inspections included batch codes or lot numbers present on the product containers sampled, establishment of a link between the information on shipping records and invoices to the products sampled, and narratives on the preparation of samples collected."
 OH: For MPIs, many inspection reports are lacking shipping documentation. Some marketplace inspections did not contain Dealer Affidavits, Invoices and/or Shipping Records, and proper Receipt for Samples, even though physical samples were obtained.
 WI: "... methodical and uniform completion of the documents was lacking."
 AR: In general evidence gathered was adequate with the notable exception of the lack of a product label. A photo of the label or a suitable copy is vital to the successful prosecution of a "use inconsistent with the label" type of violation.
 UT: "Inspectors not documenting their inspections of dealers or marketplaces with NOIs; few case files contained photos or other important evidence"
 ND: maps not properly labeled or lack complete info; not all observed violations documented.
 PR: "... not all inspections properly documented. For example, in the quarterly reports there are a total of 11 market inspections recorded."
 CR: "Violations need better documentat'on." CR "needs to make more extensive use of photos, copies of invoices, affidavits, samples and narrative descriptions."
 MT: "Some cases were noted where the inspection form indicated a possible problem, but not enough information was presented to

evaluate whether an enforcement action was called for."

WV: discrepancies involved chain of custody records and documentary samples.

DE: Inconsistencies on photographic evidence and its authentication and incomplete documentary samples were discovered upon review of the misuse investigation files.

d) **Completeness of inspection**

UT: "Several cases were closed on the basis of insufficient evidence, yet investigation itself was incomplete."

WA: After review of a number of inspection reports it was noted that several Marketplace inspection reports, Restricted-use pesticide dealer inspection reports, agricultural, and pesticide establishment inspection reports were not complete;

VA: See comment below.

Colorado River: More thorough inspections could be conducted in cases such as pesticide exposure incidents, fish kills, drift of pesticides over residential areas to determine the type of violations that may have taken place.

e) **Prompt response to complaints and tips**

ND: Slow response to follow-up on cases

f) **Timeliness of Inspection Reports**

NY:

KS: Backlog of complaints

g) **Quality of reports**

WI: Statements as to whether or not producer facilities were in compliance were used instead of concise, clear and objective narratives on the observations made and the questions/answers obtained during the inspection. Narratives of marketplace inspections need to include 1) the type and extent of pesticide marketing for each establishment; 2) compliance with Title 40 CFR, Part 156; 3) compliance with major FIFRA registration suspension and/or cancellation actions; 4) compliance with changes in the classification of pesticide products under FIFRA.

MI: A number of inspection files did not contain narratives for an efficient case review and enforcement disposition.

UT: "Most case files were lacking narrative."

ND: "difficult to understand due to poor organization, inclusion of irrelevant information, charts and maps frequently not labeled or lack complete information"

MT: "In many cases, no descriptive information, beyond the checklist, is provided."

Colorado River: Summary reports did not contain narratives or any kind of description about the kind of inspection activities taking place and about the site of the inspection itself.

h) **Timeliness of Case Review**

NY:

IA:

i) **Enforcement Actions consistent with enforcement response policy**

IA:

AZ (S&P):

NV:

j) — **Timely Enforcement actions**

IA:

CO: bottle neck at attorney general's office develops during peak season periods when the number of cases ready for review and disposition far exceeds the available legal staff support available to complete the process, expeditiously.

SD: unavailability of an attorney to address SDDA enforcement issues. This problem stems from the attorney's involvement in a large DWNR case. SDDA cases are being neglected during this period since no one is assisting with the backlog.

k) — **Referrals from Region to State**

LA: The turn around time on inspections has almost always been adequate; however, there have been a couple of special request referrals that were not completed and returned to EPA Region VI in time to meet Headquarters' deadlines.

IA:

CA: Not adequately tracked and submitted

AZ (S&P):

NV:

l) — **Referrals from State to Region**

OH: Several MPI cases "were forwarded to Region V to enforce label violations. However, Region V is experiencing a backlog in enforcement cases and has not yet taken action on these cases."

OR: The backlog of cases referred to Region X for review and action has improved somewhat. However, the Region is far from meeting its goal to take action on these cases within 60 days of receipt.

General Comments:

VT: "The quality of the cases was excellent and the files all well organized."

RI: files all organized and proper inspectional and sampling procedures were followed and investigations adequately documented.

NJ: All inspection and sampling projections were either met or exceeded (jackets well prepared)

PR: all categories suffer due to the lack of a core inspection program

NY: sample jackets were filled out correctly- but there was only one for a recent inspection. Only one inspection was completed over the past six months. Quality of sample jackets improved over previous yrs.- but it was decided that regional reviews and joint inspections would be made of '90.

KY: "With few exceptions, the case files generally met minimum data requirements as negotiated in the CEA. Inspectional formats and reports developed at the mid year review in an effort to standardize procedures and reporting have been very

successful.

AL: "exceeded minimum data requirements as negotiated in the Cooperative Agreement."

NCSPCD: "The case files met or exceeded minimum data requirements as negotiated in the CEA and were of good quality."

NCDA: "The files were found in most instances to be complete and in good order." "...all other case files reviewed appeared to meet the minimum data requirements." The state recordkeeping requirements for dealers and applicators are minimal and generally do not result in the detection of many violations."

MS: files reviewed met or exceeded the minimum data requirements as negotiated in the cooperative agreement.

TN: "With few exceptions, the case files generally met minimum data requirements as negotiated in the CEA."

FLDA: Reviewer said reports of high quality.

FLDHRS: "Case files reviewed met or exceeded the minimum data requirements as negotiated in the cooperative agreement."

IN: reviewer reports that all types of inspections adequately performed.

LA: The State continues to do a good job of compiling cases with all necessary documentation and photographs intact.

NM: The State does a good job of compiling enforcement cases with all necessary documentation and photographs intact.

AR: The enforcement outputs were reviewed and there were no deficiencies in the enforcement accomplishments.

TX: Twenty case files were selected at random for review and all had adequate documentation to support enforcement actions at the Federal and State levels.

Overall, inspectional and case activities appear to be excellent.

OK: No major significant deficiencies.

AZ (S&P): all cases no matter how minor must be presented before the seven member commission

HI: One firm was inspected four times within 30 days. This need to be discussed with the inspector to avoid this in the future.

CA: special request have not been completed in a timely manor

NV: Dept. of ag. was using a 3 yr old ERP policy that was submitted for comment by the attorney generals office. As of this review a new/revised policy was submitted

Navajo: Inspection Reports are adequately filled out.

OR: Overall, the quality of the inspection reports that were randomly selected were good. However, it was suggested that the State should consider developing a notice inspection form for use and misuse investigations. Based on the cases reviewed, it appears that the minimum standards for inspectional activities are being met or exceeded.

ID: Based upon the inspection evaluations, most reports met applicable FIFRA procedures.

MD: The quality of the inspection reports that were randomly selected were good.

VA: Review of files indicated a lack of documented chain of custody for samples, lack of written statements by interviewers, inconsistencies on photographic evidence and its authentication, and incomplete documentary samples.
DC: A review was made of the misuse investigation files. They were found to be complete and properly documented. Files were also reviewed for producer establishment, market place, and dealer record inspections.
PA: Files appeared to be complete and properly documented.

11. What is the average time taken to respond to complaints of pesticide violations?

MA: "adequate"
RI: "sufficient"
NCDA: 1-2 days
LA: "Adequate"
NM: Adequate and within timeframes set by EPA on referrals.
AR: "Timely and satisfactory"
TX: "Prompt"
OK: "Reasonable"
IA: 3.6 days
SD: approximately 2 to 3 days
AZ (S&P): 2 days maximum
WA: Usually within 2 days.
ID: Usually within 2 or 3 days.
MD: 1.4 days
VA: 2.9 days
DC: 1.0 days
PA: 3.0 days
WV: 4.3 days
DE: 1.7 days

12. List any inspection or related forms developed by the State.

NH: Revised the private applicator examination and developed a new supervisory level commercial class examination for turf pest control applicators.
ME: Revised Core Level examination for applicators, adopted the Pennsylvania Core Level Training Manual, revised to meet Maine's needs, and development of several new subcategory training manuals. GA: state forms currently under revision (reviewer does not say what forms); state inspectors manual also being revised;
SC: revised criminal and civil affidavit forms, providing place for the title of the person giving statement.
MI: new inspectional form developed in '89 allowing for more thorough documentation of pesticide use (included as attachment to review)
NM: The State has developed a new Notice of Pesticides Inspection form which is now being utilized on all inspections.
AR: A complaint form has been developed to facilitate gathering

information concerning citizen complaints of suspected misuse of pesticides.

- TX: New State forms, (4), have been developed for use by the field inspectors. All four forms are acceptable by EPA for use in the enforcement program.
- OK: State is developing guidelines for handling pesticide waste and rules/regulations for handling "Hazardous Waste"; also, State has developed an environmental complaint program which encompasses several State agencies. This directs complaints to the proper agency for investigation and follow-up so that complaints are brought to a proper conclusion.
- ID: ISDA has developed a new marketplace inspection form.

ANALYTICAL

13. Check if there were any problems noted in the following areas, and then elaborate, if possible.

a) **Completeness of Laboratory Reports:**

UT: Lab needs to improve documentation procedures related to chain-of-custody.

b) **Timeliness of Sample Analysis (turn around time)**

KY: "not optimum"; "delayed" "...turn around times have not been optimum and samples have been delayed."

NCDA: "o.k."

MI: 3 months for formulation samples, 2 months for residues. A few of the formulation samples were pending at year-end, because the lab did not have suitable methodology for the analysis of the active ingredients.

AR: Inspections and sample analyses have been completed in a "timely fashion and are acceptable".

OK: Completed in a timely fashion and are acceptable.

IA: 85 days. Many did not meet the 45 day turn around

KS: 45 day maximum, 41 day average. They have been functioning within the required 45 day turn around time but more samples are coming in so they may fall behind.

AZ (A&H): within 6 months

HI: Formulation 1-2 weeks, residue 2 weeks

NV: 13 day ave.

WA: "Turnaround time has not been a problem." The WSDA laboratory has requested that product samples be collected and submitted for analysis during the winter months when there is no backlog of residue samples.

OR: Analytical activities cannot be accurately evaluated based on random sampling of cases for review. The review indicates that analytical timeliness may be improving but one analysis took over six months to complete. The EPA check sample program indicates that analytical results continue to be excellent.

MD: 35.5 days (this was due in part to a long term illness of one of the residue chemists); Formulation time - 14.2 days.

VA: 42.7 days for residue chemistry; 59.2 days for formulation lab. Both the formulation and residue labs continue to perform poorly in providing laboratory support for the pesticides program. Several samples were processed so slowly that the results could not be considered reliable and possible enforcement actions were dismissed on the basis of inadequate laboratory data. A concern has been raised as to whether or not the laboratory is capable to adequately support the pesticide program and meet the regulatory obligations under the grant and cooperative enforcement agreement.

DC: Turn around time for residue and formulation chemistry averaged 17 and 16 days respectively.

PA: 18 Days

WV: Residue - 9.25 days; Formulation - 22.38 days

DE: Residue - 21.9 days; Formulation - 23.5 days

IN: residue samples delayed due to lack of available methods and standards to analyze many newer pesticides.

SD: poor

CA:

1. Did the reviewer find a sample backlog?

KY: yes

MN: yes, in formulations. This was due to the large number of residue samples being collected during the project period and especially during 3rd and 4th quarters, requiring chemists to be temporarily reassigned to meet the demand; thus formulation samples accumulated.

IN: no in the formulation laboratory; yes, there was a backlog of 130 samples in residue lab.

MI: 15 formulation and 41 residue samples

OH: formulation: no

residue: yes (66 samples)

SD: yes--40 days

MD: Yes.

PA: Yes

2. If yes, how many days?

KY: not specified in reviewed

OH: 90 days

MD: Four week backlog.

PA: 2 weeks

c) Minimal Standards:

KY: Results of NEIC check sample program indicated deficiencies in laboratory abilities and controls.

IA: several samples did not met their commitments

UT: Lab needs to develop standard operating procedures. Lab needs to improve overall recordkeeping system, improve the use of instruments and equipment log books, and improve the analytical reference standard tracking procedures.

SD: NEIC reviewer "was particularly concerned with the legal defensibility of cases for which laboratory results are crucial evidence."

HI: Unavailability of standards has slowed analysis

Lab needs information on what to do with residue sample disposal

NV: standard samples not available

WV: The lab staff expressed concern over the difficulty in obtaining standards for new chemicals.

ID: Sampling procedures should be standardized to avoid potential sample contamination. ISDA does not have a sampling quality assurance plan in place and should develop one that addresses these procedural and chain-of-custody issues.

d) **Other:**

PR — Total collection of samples was 9% below that projected.

VI No indication on quality of sample handling. Total samples 84% below projections

NY The lab was not fully functioning until well into their project period. It is now fully operating.

AL: "The total number of samples collected exceeded the total projected, although the distribution of samples collected was not as projected in several categories." [Ag. use, non-Ag use, marketplace, certified applicator records, restricted use pesticide dealers.]

WI: a revised QAPP to be submitted by June 1990

LA: ISSUE: One major concern regarding the lab is that the building has been condemned and may be rebuilt, resulting in a possible shutdown of laboratory activity in the summer of 1990. This factor was taken into consideration during the FY 90 grant negotiations.

NM: The EPA's Office of Quality Assurance requested NMDA to provide a much more in-depth report and suggested they use Louisiana's FY 89 QA Report to serve as a guidance for their FY 90 submission.

AR: An in-depth review of the laboratory was not conducted at this time. A review was conducted in April 1989 by the Regional QA Office and no major deficiencies were noted.

TX: The State has submitted the annual Quality Assurance Report, and it was accepted by the EPA Regional Office.

OK: An in-depth review of the laboratory was not conducted at this time. A review was conducted during the year by the Regional QA office and no major deficiencies were noted.

MT: The department should re-evaluate our analytical method for strychnine analyses.

CA: difficulty in detection of residue samples at extremely low levels

HI: Obsolete spectrophotometer is being replaced

WA: The WSDA laboratory is in the process of revising their quality assurance project plan.

14. Did the reviewer identify any laboratory needs, such as more personnel or upgrading of equipment? If yes, elaborate.

NC: Could benefit by additional GC and a LC pump;

MN: "ASD sample tracking system is badly in need of maintenance and updating."

IN: "Experiencing difficulty in obtaining Material Safety Data

Sheets."

- OH: residue lab plagued by personnel shortages over past several years. "Unless something is done to change the career structure and salary in the lab, it seems that personnel shortages will be a perpetual problem."
- LA: The lab still badly needs some equipment such as the GC-Mass Spectrophotometer.
- NM: The laboratory has adequate equipment and appears to be well run. They indicated the possibility of hiring a student technician to assist the chemist.
- OK: In need of a Geographic Information System.
- SD: More training needed for SDSO chemists at federally-sponsored trainings. Reviewer noted lack of attendance on the part of SD chemists in 1989. NEIC said SD needs to refrigerate vegetative samples during shipment; and document sample chain-of-custody beginning at the time of collection, rather than upon receipt by laboratory.
- MT: "The NEIC auditors felt that EPA should consider supplying new equipment to Montana..."
- AZ (A&H): resources were limited and unable to analyze some pest.
- NV: Replacing old equipment with a H.P. residue sampler
- OR: Need is for increase laboratory resources.
- MD: The oldest liquid chromatograph is more than 16 years old; There is a need for additional training of the chemists.
- PA: There is a need for a GPC cleaning system to be added to the lab to help process samples.
- WV: New equipment was mentioned as a need.
- DE: The HPLC is more than 10 years old and is currently down with no parts yet available, however, alternative equipment is available until new equipment is purchased. In addition, DDA expects to formally transfer one chemist to the pesticides section who will do all the pesticide analytical work.

MAINTAINING FILES AND TRACKING

15. List any problems with regard to maintaining files and tracking mentioned in the review.

- KY: Tracking system in good order. "Clear correlations could be made between the inspections and actions recorded in the manual tracking charts and what was reported in the quarterly reports."
- AL: "The States method of filing (tracking system) appears to be sufficient."
- NCSPCD: Division participating in a pilot program that involves the development of a computerized tracking system called PETS. Information on the pros and cons of the system will be available during FY 90.
- NCDA: "State reports that there have been problems with [PETS] system," and is not performing as expected.
- MS: computer tracking system meets all requirements of the CEA

Guidance.

TN: "The tracking system utilized by the Pest Control section appears to still be in disarray. No real correlation could be made between the inspections and actions recorded in the quarterly reports due to the inconsistencies within the tracking procedures."

GA: no problems; well-maintained and efficiently tracked.

FLDHRS: files well maintained

SC: files met minimal requirements

IN: ISCO converted its system from a mainframe computer to an in-house system. The conversion was not as successful as it should have been. "Currently, the information in the computer is either inaccessible or accessible only on a crisis basis."

WI: WDATCP was unable to complete the PETS Project, because of difficulties in getting the program on-line.

UT: Tracking System does not maintain specific information on individual inspections; not possible to confirm the 107 enforcement action reported by Dept.; not files for every reported case; tracking system can't distinguish between routine inspections and complaint or misuse inspections; case files assembled without regard to sequence or order.

ND: "Inadequate tracking system."

CO: "The delay of follow-up actions is due in part to lack of an adequate tracking system...A computer purchased for case tracking should improve this situation."

MT: "Montana is working on an internal enforcement tracking system. This project will ultimately result in revision of the inspection forms, laboratory data handling procedures, and quality assurance documents. The development of EPA's pilot enforcement tracking system had slowed progress on the State tracking system until recently."

The file review revealed a significant number of book keeping errors in the tracking of routine inspections.

AZ (S&P): Federal use inspection information on companies is not being added to the SPCC data bank

NV: since the last evaluation report, files are better organized

16. Note any remarks concerning referrals from the Region.

KY: "Significant referrals were handled expeditiously, other referrals are addressed as time allows." "Backlogs in data entry." "Significant referrals are completed within thirty days and complaints coming into the state office are assigned and initiated within 24 hours."

AL: "Significant referrals were completed within thirty days. All other Headquarter/Regional requests and referrals were completed in a timely manner."

FLDA: State is following procedures negotiated with the Region.

MN: Five PEI inspections referred from Region; completed by MN on

timely basis in accordance with EPA protocol.

LA: The turn around time on inspections has almost always been adequate; however, there have been a couple of special request referrals that were not completed and returned to EPA Region VI in time to meet Headquarters' deadlines.

AR: The response to special requests by the EPA Regional Office have been timely and satisfactory.

TX: Turnaround time at the SPCB is prompt. When referrals are made, inspectors proceed immediately to conduct the inspection and submit results to the regional office. Cases are processed without any backlogs.

OK: Completed in a timely and satisfactory manner.

CA: Not adequately tracked and submitted

NV: Recommendations in '87 & '88 were that inspections better understand enforcement policy and matrix, sect. 12 and the referral procedures. Work has shown improvement.

ID: The Bureau was very "conscientious" about informing the Region about misuse cases that seemed to meet Section 27 significant case criteria. Response time ranged from 14 days to 77 days.

WA: The State has been "responsive" to Regional referrals.

MD: Maryland responded to 8 formal referrals from the regional office.

VA: Virginia responded to 14 formal referrals, of those 8 were section 27 referrals.

PA: 31 referrals were forwarded to PA and were handled correctly ar within time guidelines.

WV: WA A responded to 2 section 27 referrals and 4 other investigation requests.

DE: DDA responded to 5 formal referrals and investigation requests.

17. Is the State's tracking system automated, and if not, is it in the process of being automated?

KY: Not addressed in review, but 88 end-of-year review says an automated system was implemented.

NCSPCD: yes

NCDA: yes

MS: yes

MN: yes, it is automate..

IN: yes

MI: not mentioned in review

OH: yes (PETS)

WI: yes (PETS)

LA: Automated

NM: The tracking system is still being done manually.

AR: Automated, but needs to be upgraded with increased memory and add the capability to communicate via telephone with other computers.

TX: Automated, TDA has a case tracking system by computer entitled "Pesticide Investigation Tracking System".

OK: The OSDA complaint tracking system is good and enables them to easily located a completed file or complaint investigation

in progress and determine the status of the investigation.
(Do not know if the system is automated or not.)

ND: computer recently purchased for tracking
SD: yes
CO: yes
PR: no
OR: In the process of being automated.
ID: In the process of being automated.
VA: Automated
WV: Automated.

FISCAL REVIEW

18. How much, if any, money was left at the end of the fiscal year?

KY: \$0
AL: \$0
NCSPCD: \$2,115
NCDA: 1,098.14 --carry over requested by state
MS: \$20,000
TN: \$4,383.31
GA: \$1,632.27
SC: \$0
IN: \$0
MI: \$0
OH: \$0
IL: \$2,115
LA: No unexpended cooperative agreement carryover funds for FY 89.
NM: None
AR: None
TX: Not specifically identified. TX has financial recordkeeping in place.
OK: None
RB: \$14,250
DE: \$7,000 - \$8,000 to be returned.

19. Identify any problems with financial recordkeeping.

CO: Pete Menda of Region 8 Grants Office recommended that the "recipient review and revise present travel allocation method in order to directly charge travel per diem costs to the appropriate cost centers based on employer's timesheets and travel vouchers."
HI: After an IG inspection/assessment, HI implemented monthly reports from accounting office and general services. Must breakdown into FFY, develop a manual worksheet to track expenditures.
WA: Recordkeeping is adequate;
DC: DC has had problems, because the final FSR's do not come out until after December. There is a risk every year of losing funding for this reason, and because drawdowns are not made frequently enough.
WV: Changes to time forms are being made to improve accountability

of time for the FY 90 grant commitment.

20. Explain any problems the State has with the cooperative agreement.

DC: Inadequate staff (need more staff);
Inadequate telephone system; and
Financial status report (FSR) problems.

LEGISLATION

21. Identify in general terms any changes made or proposed to the State's pesticide laws, regulations or procedures effecting pesticide enforcement program. Look especially for any changes in civil penalties.

ME "At least two (2) bills are in preparation for a later submission to the next session of legislature that would increase maximum penalty under a civil action from \$500.00 to \$5,000.00.

NH No new legislation proposed. However, they are revising and updating the Pesticide Regulations for review by next session of the legislation.

VT: not addressed in review

MA "The Department has completed staffing of its Right of Way Management Program which now consists of four full-time persons. They have also revised their Public Water Supply regs."

RI: no changes to pesticides control law during this period. However, the Rhode Island Governor and the General Assembly have established a task force to overhaul the Dept. of Environmental Management. Among several initial recommendations is the proposal to move Pesticide Control and Enforcement out of Dept. of Ag.

VI: Little progress made toward amending their pesticide law; during the mid-year-review a meeting was scheduled to write comments on draft amendments to pesticide law. Written comments were not sent to Reg. II.
Recommend comments be prepared and sent to Reg. II by January.

NY Only three parts of the NY state notification regs. are in effect. The remaining parts will be decided at the result of a law suit.

KY: "No changes to Kentucky statutes or regulations during grant period. KDA is working to completely revise their sections 217/217b. [Not explained what this is in review.] It is hoped that this will be completed during the next grant period."

AL: No changes to Alabama Pesticide Law during grant period.

NCSPCD: "Several changes to the North Carolina Structural Pest Control Law were enacted by the N.C. General Assembly during the 1989 Session." What these changes are is not explained in review.

NCDA: No new legislation enacted during FY 89.

MS: Amendment to regs governing pest control operators finalized. Requires verifiable training of technicians and owners or employees of pest control companies who apply pesticides and/or conduct service inspections. Also establishes training standards and sets forth mechanics for implementing such training requirements.
Department also proposing an amendment to the pesticide law to include civil penalty provisions.

TN: State laws changed to allow the issuance of civil complaints by the entire enforcement program. TDA is just beginning to incorporate this ability into the program and are actively working out the mechanics.
Liability Insurance requirements were raised to require coverage up to \$50,000 for an individual, \$100,000 per accident, and \$300,000 total per company.

GA: No legislative changes made. A change in insurance requirements for commercial applicators is anticipated.

FLDA: No legislative changes made.

FLDHRS: no new or proposed legislation was enacted during this reporting period.

SC: Amendments passed: 1) Dept.'s attorneys may represent inspectors in criminal cases; 2) Dept. is authorized to issue civil penalties; 3) extends Dept.'s ability to regulate pest control industry.

MN: Amendment to Pesticide Control Law changes private applicator certification period from 5 to 3 years, distribution restrictions, registration licensing fees.
Groundwater Protection Act of 1989 develops educational and training programs, develops pesticide management plan, groundwater management plan, establishes pesticide container and recycling pilot project.

IN: No amendments made, but the Pesticide Review Board Law Committee made a number of recommendations, and it seems likely that they will take the drafts of the revised laws to the Legislature: the addition of civil penalty authority; changing the expiration date of pesticide applicators from March 31 to December 31.; addition of definitions such as "chemigation" and "pesticide consultant"; adopting the EPA RUP list by reference rather than publishing the restricted use products in the law.

MI: Gov. Blanchard signed into law '88 Amendments to the Michigan Pesticide Control Act. Administrative rules and regs based on the amendments will address certification training, registered technicians of commercial application firms, best management practices/ integrated pest management guidance, and administrative procedures for the issuance of civil complaints.

OH: Lawn care regs approved and published; no action on another

bill that would have added additional requirements to the ODA's lawn care regs.

OMNIBUS Bill including authority for the ODA to issue civil penalties for violations of the Ohio Pest. Law introduced into legislature.

Proposed legislation drafted by ODA to: 1) change membership of the Interagency Pesticide Advisory Council; 2) give Council authority to designate non-attainment areas where pesticide levels exceed maximum contaminant levels or preventive action levels; require persons applying specified pesticides in those areas to obtain an integrated pest manage license.

WI: WDATCP finalized amendments to Pesticide Law and submitted the Rule Implementation Report. "Amendments deal primarily with clarifying and expanding commercial applicator certification and licensing requirements and requiring specific chemigation equipment/design requirements."

IL: 1) Passage of Lawn Care Products Application and Notice Act which requires lawn markers, notification on golf courses, information to customers, prior notification of application to lawn; prior notification of application for golf courses; 1st offence: \$100, 2nd: \$200, 3rd: \$500.

2) IDPH revising rules and regs for Structural Pest Control Code. New rules effective 2/3/89. New rules establish 1) minimum storage requirements; 2) storage requirements and handling in vehicles; 3) more recordkeeping for general and RUPs; 4) stricter procedures for applications around health care and food areas; 5) mandatory reporting of hazardous situations.

LA: The Louisiana Pesticide Law was amended in 1988 to include a Part giving LDAF authority to monitor the waters of the State for pesticides and to take remedial action as warranted with penalties up to \$25,000. In addition it requires the filing of Material Safety Data Sheet for each product as part of the State's registration program. Penalties for Structural Pest Control violations have been increased to \$5,000 maximum. The State is also working on a ticket citation program for minor violations.

NM: NMDA did not submit proposed legislation in 1989 to give them administrative civil penalty authority; however, it is EPA's understanding that this will be introduced in January 1990 through the Governor, since only the Governor can submit new legislation in even numbered years.

AR: There have been no legislative changes since the last evaluation and none are anticipated.

TX: TDA's Sunset Bill passed the legislature in late May 1989; This expands TDA's enforcement authority by giving TDA a consistent broad range of administrative penalties.

OK: No changes made or proposed.

UT: A sunrise/sunset review of Utah Pesticide Control Act was conducted. Results not available at time of review.

ND: 1) Program budget increased from 23,776 (1987-89) to \$45,238 (89-91); 2) provision for allowing application of RUPs by non-

certified applicators under supervision of certified applicators eliminated; 3) Licensing requirement for certified commercial applicators eliminated; 4) bill proposed to require beekeepers to register their hives with NDDA and aerial applicators to notify beekeepers before spraying; 5) Pest control board approved mandatory applications of private applicators for certification and recertification.

SD: 1) "The Centennial Environmental Protection Act was passed for protection of state water resources. The Act ... addresses threats from agricultural practices, mining and solid waste. Pesticide registration fees raised from \$25 to \$75, \$25 of which is targeted for groundwater research. 2) SDDA will propose changing "pesticide application" to "pesticide use" in its Pesticide Statute, so that FIFRA can be enforced with all label specification, not just applications. 3) Judicial ruling, effective July 1, 1989, required new facilities involved in mixing pesticides and fertilizers to conduct mixing, loading and rinsing over impervious pad. Existing facilities have until Feb. 1, 1992, to comply.

MT: Legislature passed the "Montana Agricultural Chemical Ground Water Protection Act" which directs the Board of Health to adopt ground water quality standards for certain agricultural chemicals and directs the Department of Agriculture to develop ground water management plans. The Department of Agriculture is also to develop field sampling and laboratory quality assurance procedures to and to assess administrative civil penalties against violators of the act. The Act is to be funded by increases in pesticide registration fees by \$15 per year; etc. ; increase annual pest. registration fees from \$50 to \$90, and to increase Commercial Applicator and Dealer License fees from \$35 to \$45.

CO: Sunrise/Sunset review proposed a) rewriting Act to place specific commercial and public pesticide applicator classifications under Departmental authority and clarifying regulatory scheme; b) require that all consumer invoices issued by commercial for hire applicator companies to state that the company is licenced by CDA; c) require that a co. be responsible for training its pesticide applicator technicians; d) expand the types of notification Aquatic and ornamental/turf applicators must provide to include posting signs on properties when the pesticide is applied; e) other recommendations: provide commissioner with authority to use administrative law judges, order civil penalties for violations strengthen enforcement authority when conducting investigation of misleading safety claims by applicators.

PR: Tribal Pesticide Code passed by Tribal Council was redrafted.

RB: Tribe revised pesticide code. Revisions not mentioned in review.

CR: "Tribal Pesticide Code updated in FY 89 and submitted to EPA for final approval long with Applicator Certification Plan.

AZ (A&H): Az legislature passed law in May '89 that established

state Dept. of Ag. It will incorporate many existing entities regulating pesticides. Dept. of Ag should be in place by Jan '91. Worker protection laws passed June '89 name authority with Industrial commission. Points and penalty system was adopted Sept.'89

- MD: Maryland began, in FY 89, the use of the civil penalty as an enforcement tool.
- VA: Passage of new pesticide statute. Virginia pesticide law underwent major revisions during FY 89. The new law is a very comprehensive statute which should significantly strengthen the pesticide program in VA.
- DC: The civil infractions law will be revised within a year.
- PA: New pesticide regulations to go with Act 1986-87 are in nearly final form. The regulations will require increased reporting, business licenses, increased penalties, as well as the certification of many more applicators.
- WV: WVDA is interested in pushing the current legislation for several changes to the statute and regulations.
- KS: Pesticide and chemigation laws were both amended in FY89. (allows the Secretary to establish pesticide management areas to reduce the Health and Env. threat of pesticides in that area)
- IA: Proposed rule to implement ground water protection act (held public hearing). Adopted other rules (licence fees for dealers, distributors, manufact., pest. regist., standards and notification.
- AZ (S&P): new pest control law passed July '88; needs authority to issue minor enforcement actions
- HI: Waiting for public hearing of Pest. regs. that are being reviewed by attorney generals office (no details)
- Navajo: Navajo nation's proposed pest. regs. have been reviewed by the tribal attorney's office and EPA project officer. The draft will be submitted to the resource committee for review and approval. Tribal council passed pest. code July '86.
- WA: A House Bill was adopted in April 1989. Provisions of this bill that affect the pesticide enforcement program include:
- (1) Change in licensing fees for pesticide applicators and operators;
 - (2) A complaint response time has been established. Depending on the seriousness of the incident, a response will be initiated immediately or within 48 hours;
 - (3) Retention time for recordkeeping requirements has been extended to seven years for licensed dealers and certified applicators. All other persons applying pesticides to more than one acre of agricultural land are required to keep records for seven years; and
 - (4) The maximum civil penalty has been raised to \$7,500 per violation.
- W: In 1989 the Department received significant new authorities and responsibilities in the following areas:
- civil penalty authority

- ground water protection legislation
- increased pesticide registration fees
- authority for opening of eastern Oregon field office
- authority for hiring of additional inspection and support staff

ID: Legislation activities have taken place in Chemigation, which requires all users who fertilize or apply pesticides through chemigation systems to be licensed.

22. Has the reviewer identified any changes that need to be made in State law, regulations or procedures? Explain.

NY: Need to amend other parts and make enforceable provisions

KY: nothing specified by reviewer, except that changes may be needed to 217/217b. The review does not explain what this is.

NCDA: State says recent amendments to FIFRA may require changes to NC's statutes. The state recordkeeping requirements for dealers and applicators are minimal and generally do not result in the detection of many violations."

MS: Program should vigorously pursue amendments to state statutes to include civil penalties

FLDA: changes in certification examination once EPA promulgates new 40 CFR 171 regs.

MI: MDA has self-imposed deadlines to complete technical standards and regs covering the registered technician category and for the development of State worker protection regs. Develop key administrative rules for Bulk Chemical Facilities and Chemigation Standards.

AR: Establish Administrative Civil Penalties. The Division is exploring the feasibility of writing regulations to allow an administrative civil penalty. The use of an administrative penalty would make enforcement of the laws and regulations administered by the Division more effective.

PR: Certification Plan and Revised Pesticide Code should be moved through the Tribal, Dept. of Interior and EPA approval processes as quickly as possible.

RB: Need to reassess legislative needs as Worker Protection, Endangered Species and groundwater regs become effective.

VI: Needs to draft amendments to pesticide law. EPA is looking forward to an update on the status of NMDA's submission of the administrative civil penalty package to the Governor during the FY 90 session.

TX: Continue efforts to pass rules and regulations on recertification of private applicators.

SD: amend law to require compliance with all label directions

AZ (S&P): Amend authority to issue minor enforcement actions.

CA: Revise state plan in accord with 40 CFR changes

STATE PROGRAM NEEDS

23. Check if the review has identified a need for the following:

Inspectional training

MA: enforcement training for new inspector
RI: "as much enforcement training as EPA has the resources available to accommodate.
KY: additional training for Ag. Non-Ag. use inspections plus producer inspections; instruction on report writing for pest control officers
AL: one on one training of inspectors in field for basic inspectional training; EPA should provide guidance on inspections involving new initiatives when final rules are published
NCSPCD: division expressed strong interest in additional inspector training.
MS: inspection and new initiative training and guidance.
FLDA: basic inspectional training and one-on-one training of new inspectors in the field.
FLDHRS: training in areas of inspection and the new initiatives for FY 90 of ground water, worker protection and endangered species.
IN: as much as possible for the new inspectors
MI: case development
AR: The State needs training in toxicity and hazard communication. Other training needs include additional help from EPA to aid inspectors.
UT: Inspection and investigation techniques
CO: Up-to-date inspection and investigative procedures
PR: Advanced inspector training and case development training
CR: Basic Inspector Training, personnel safety, case preparations, basic training in pesticide technology
MT: additional training is needed to improve the effectiveness and consistency of the field inspectors; plus safety procedures; groundwater training
Navajo:
WA: WSDA has expressed the need for additional training for field investigators.
MD: Need is for additional training of chemists.
VA: VDACS has asked for additional help in providing inspector training in FY 90
NM: Specialized computer training is needed in order to get their tracking system up and going. Also they have expressed interest in attending EPA pesticide training workshops such as Risk Assessment/Decision Making Courses at Region VI.

Equipment

NY: needs to upgrade its computer system
AR: The State needs to upgrade their computers with increased memory and add the capability to communicate via telephone with other computers.
OK: Need for equipment for a GIS.
SD: resources to improve lab capabilities
MT: lab equipment
OR: need for a computerized tracking system for enforcement cases

DC: Inadequate telephone system
DE: The HPLC is more than 10 years old and is currently down with no parts yet available, however, alternative equipment is available until new equipment is purchased. In addition, DDA expects to formally transfer one chemist to the pesticides section who will do all the pesticide analytical work.

Additional personnel

MA: shortage of personnel due to financial cuts
NH: need a case officer, this position has not been approved by the legislature
RI: remains understaffed
VI: inspector position needs to be filled
KY: additional support to help update certification/training materials
KS: needs an inspector
ND: needs administrative support
MT: enforcement program in need of a case preparation officer

Additional funding

MA: needs more funding from state for personnel (to make up for cuts)
RI: appears to be underfunded at state level
NY: needs \$\$ to upgrade computer from Division of Hazardous Substances
LA: LDAF's major problem is lack of resources. Presently at their staffing ceiling and are unable to hire additional staff.
NM: Lack of resources is a definite problem in New Mexico. To successfully carry out the new grant activities, NMDA is considering paying half the salary of a bilingual AES employee to assist in developing publications and training.
TX: The most pressing need at the State level is additional or more funding in the enforcement program.
CO: State complained that EPA establishes new programs without adequate funding
CR: More funding needed for secretarial and legal assistance
OR: Request for increase in laboratory resources

Other (List)

NCSPCD: Five EPA inspector Training Manuals.
NCDA: Strong interest in EPA re-establishing a chemistry lab for disinfectant testing. Lack of est. standards has hampered state efforts.
State requesting the APA(?) provide some assistance in telephone sales complaints which occur from out of state.
AL: EPA should provide guidance on inspections involving new initiatives when final rules are published
KY: Interest in EPA participation in commercial applicator training sessions
MS: Assistance in building a dept. library of Compliance Strategies, Pesticide Registration Notices, Policy and Criteria Notices, etc.

Continual regular visits by P.O.s

GA: clearer guidelines on EPA Compliance Strategies

FLDA: Additional guidance for the new initiatives for FY 90 of groundwater, worker protection and endangered species.

FLDHRS: continued regular visits by the Project Officer so as to keep the SLA "up to speed" on all the varying programs

SC: certification training materials in the special program components in an electric format as well as in video form. Information regarding the specific endangered species in SC.

IN: Better information of suspended/cancelled products from EPA

MI: case development, better up-to-date information on suspended/cancelled products from EPA

OH: "states must be kept better informed by U.S. EPA as to the status of individual pesticide products.

LA: State has requested lists of EPA sponsored computer courses, particularly workshops and schedules of Risk Assessment and Decision Making courses.

TX: SPCB has expressed interest in attending available training workshops put on by EPA.

SD: EPA reps to provide guidance on developing state groundwater protection plan

CO: Guidance on new initiatives

PR: Guidance and training on new initiatives

CR: Procedural changes: inspector needs secretarial and legal help to spend more time in field

MT: new tracking system for inspection and enforcement activities.

HI: too many meetings/travel expenses

Colorado River: Targeted the same facility's operations repeatedly during a single quarter. They need a targeting system or NAIS.

Navajo: Looking to re-evaluate the pest. tech position to allow advancement of opportunity

VA: Help in analyzing difficult/problem samples through the EPA Beltsville lab.

REVIEW OF EPA'S PERFORMANCE

24. Were any problems noted in the following areas? Provide details as available.

a) State/Region communication

NCSPCD: "It is hoped that the managerial changes that are currently being made at Region IV will make for a better communication between both agencies."

NCDA: "better line of communication" needed

MS: slow response of Region to SFIREG requests for training of inspectors, case development staff, and

GA: "It was strongly suggested that a better line of communication be established between the Regional office of EPA and the states."

Az (S&P)

VA: VDACS continues to express concern over the lack of feedback

from other EPA Regions on referrals sent to them and from poor responsiveness to inquiries from other Regions.

PA: PA is concerned about the notification of the ongoing training of inspectors that comes from EPA. These sessions normally occur each year in the fall. The only complaint involves notices/advisories which sometime come late from Washington.

DE: They also feel that EPA should not announce anticipated publication dates for new rules, etc., because it forces the States to make commitments which usually are not met because EPA delays/postpones the target date.

IN: Better information of suspended/cancelled products from EPA

b) — EPA training

c) — EPA Guidance

?: "States must be kept better informed by U.S. EPA as to the status of individual pesticide products."

SD: expressed need for more timely provision of grant guidance

MT: lack of Adequate EPA FIFRA and RCRA guidance has deterred effective response to potentially serious environmental problems. It seems that current label directions on wood preservative products are too vague to prevent continued soil and water contamination... Improved labeling would enhance enforcement efforts.

d) — EPA Financial Assistance

TX: — Delays in receiving grant funds.

ND: ND's success in obtaining matching funds from the state legislature has prevented them from receiving federal funds in the past. The Program Director expressed apprehension state funds could expire before the plan is enacted unless the Agency accelerates the approval process.

NV: for cert. and train

DE: DDA has expressed concern over the slow congressional budget process.

e) — EPA Compliance Monitoring Strategies

f) — Other:

KY: KDA was pleased with the support provided by EPA this year.

AL: "ADAI was pleased with the support and communication provided by EPA during FY 89.

MS: Pleased with the support and improved communicating provided by EPA during FY 89.

SC: Dept. "appreciative of the priority given to the CEAs by the Region."

UT: "No formal review of EPA's performance has been conducted to date."

SD: requested that EPA assess Section 18 review process. Approval for state exemptions should be faster.

ND: Program Director frustrated with 55 gallon minimum for bulk containers; also frustrated with 2,4-D pad requirement; expressed concern over slowness of Sec. 18 approvals; disappointed with cancellation of EBDC as potato seed treatment and of aerial applications to potatoes.

CO: EPA should re-evaluate Sec. 18 application procedures: "too

cumbersome."

OR: EPA should acknowledge that the State contributes more than what is reflected in the present reporting system. EPA should work with AAPCO to develop such a reporting system for "State only" activity.

RECOMMENDATIONS

25. List the major recommendations given by the EPA Regional reviewer.

ME: No major issues or concerns were mentioned
NH: Needs a case reviewer officer.
VT: none given in review
PR: Discussions with management of PR Dept. of Ag concerning poor inspection program
NY: The regional office will review sample jackets and conduct join inspections
NJ: No major issues or concerns mentioned in the letter
VI: Needs to draft amendments to pesticide law; Needs to maintain full inspector position; and needs experience in case development
KY: 1) Examine lab support and arrangements; 2) Continue field training of inspectors to reinforce classroom training.
AL: 1) Hire additional inspector; 2) EPA should provide guidance on inspections involving new initiatives when final rules are published.
NCSPCD: 1) Consider sending the inspectors to any pesticide enforcement training that may be offered in the Region by EPA; 2) EPA should assist in the development of training material and training programs to assist the field inspectors.
NCDA: none given
MS: 1) Program should establish a single set of criteria for conducting State and EPA inspections; 2) Program should vigorously pursue amendments to state statutes to include civil penalties
TN: 1) Examine the tracking procedures used by the Pest Control Section... A mechanism should also be developed to record the enforcement actions taken on inspections and investigations conducted in earlier quarters. 2) Consider the adoption of uniform inspectional procedures and reporting formats; 3) Update ERP.
GA: 1) Review more closely Inspection reports to ensure consistency in the use of site diagrams, photographs, collection of documentary samples when appropriate, and the identification of these documents would be referenced properly in the narrative report; 2) Consider filling an administrative vacancy or create new manager positions in the Division of work so as to improve on the overall efficiency of the enforcement program.
FLDA: no recommendations given in review
FLDHRS: no recommendations given in review
SC: consider the use of documentary samples as defined in

- Inspector's Manual; 2) consider discontinuing the use of the Miranda Warning of affidavit forms.
- MN: 1) Enforcement outputs should be tabulated on a more timely basis; 2) an updated and maintained list of formulated products for which analytical methods do not exist should be kept routinely and provided to field staff; 3) lab should complete revision of QA plan by 3/31/90; 4) Remind field inspectors in writing to furnish product labeling documentation.
- IN: 1) improve the quality and reliability of their data management system as soon as possible; 2) increase the number of PEI inspections projected for FY 90; 3) provide as much training to their new inspectors as they can.
- MI: 1) Improve comprehensive and objective inspectional case development. Quality of inspection documentation should continue to be improve; 2) begin documenting, in writing, sample integrity and sample custody; 3) continuing maintaining the new Lab QAPP as a comprehensive and dynamic document; 4) continue revising and updating C&T materials; 5) Amend ERP.
- OH: 1) Continue to participate on the different task forces and work with the other Ohio Agencies involved in ground water protection; 2) send all enforcement correspondence by certified mail; 3) submit quarterly number reports on the existing 5700-33H form.
- WI: 1) provide necessary guidance to inspectors on establishing comprehensive and objective inspectional case files; 2) bring PETS system into operation; 3) revise the lab's QAPP
- IL: 1) Revise receipt of sample forms to indicate if pesticide samples were obtained from pesticides or from devices that were packaged, labeled and released for shipment; 2) continue to work with EPA targeting producer inspections; 3) labs should complete review and revision of QA plan; 4) assure completion of automated data management system.
- LA: (1) The SLA's reluctance to report ALL of their inspection outputs is a problem to EPA. They report just enough to meet their grant commitments. Louisiana is the only State in the Region that does not give EPA all of their numbers and, therefore, an overall view of the State's progress compared to other States is somewhat incomplete. EPA strongly recommends that LDAF report all inspectional outputs.
- (2) LDAF still has not finalized their Enforcement Response Policy and approved the draft Violation/Penalty matrix. This has been an ongoing problem and EPA has addressed its importance since 1986.
- (3) EPA suggests that a designated holding area be made available and responsible staff be educated regarding proper handling of (pesticides) chemicals for the well being of all employees.
- (4) Further clarification is needed in the area of stop sales and releases of suspended or cancelled pesticide products.

- NM: (1) EPA recommends that the SLA get a computerized tracking system on line soon since their manual tracking is obviously deficient.
- (2) EPA is looking forward to an update on the status of NMDA's submission of the administrative civil penalty package to the Governor during the FY 90 session.
- (3) Recommended that the Laboratory provide a more detailed Annual Quality Assurance Report in FY 90.
- AR: (1) Need to upgrade computers. Two computer software programs, dbase III and Wordperfect 5.0, to be purchased to allow capability and direct communication with EPA computers.
- (2) The State should review the present Enforcement Response Policy and make revisions as necessary.
- (3) The State should begin an aggressive enforcement program to track violations and take enforcement actions on multiple violators, and establish Administrative Civil Penalties.
- (4) Improve the quality of investigations so that a copy of the product label is included in each use/misuse (follow-up) investigation.
- TX: (1) Continue efforts to pass rules and regulations on recertification of private applicators.
- (2) Violations need to be reported at the site of the inspections.
- OK: No major recommendations, review satisfactory.
- KS: KSBA and EPA need to continue to work together on new initiatives, i.e., g.w., e.s.,...
- IA: State exceeded 30 day time limit on initiating an enforcement action; conduct sample analysis within 45 days; submit inspection reports within 20 days; use part-time of field inspector to review cases.
- UT: 1) Develop new priority-setting plan; 2) Develop and implement new file review process and tracking system; 3) review protocol to assess penalties and better organize and document procedures for following penalty matrix; 4) lab must modify procedure; 5) Improve communication between different program and project staff members;
- ND: 1) Attempt to obtain administrative assistance; 2) Increase training and supervisory review of field inspectors to improve quality of inspectors and case records; 3) Improve files and develop tracking system; 4) Implement policy of obtaining labels from Registration Division; 5) Continue to refine penalty matrix; 6) Accelerate planning of NDDA role in groundwater pesticide activities if NDDA plans to apply for g.w. monies.
- SD: 1) Strive to develop working relationship between SDDA and Extension; 2) amend law to require compliance with all label directions; 3) develop and institute non-graded exam into private applicator training; 4) work to improve lab capabilities and implement sample preservation and chain of

- custody procedures; 5) lobby for back-up legal support to avoid case delays.
- CO: State lab needs to continue to interact with EPA and NEIC personnel to resolve problems of documentation.
- PR: 1) Continue to emphasize Ag. use and structural use inspections; 2) Move Cert. Plan through; 3) Continue clean-up of zinc phosphate; 4) Inspector should attend advanced inspector training course in conjunction with case development training course.
- RB: 1) Increase number of tribally certified applicators; 2) Improve inspection quantity and quality; 3) Inspection should arrange to spend one week conducting inspections with state inspector.
- CR: 1) Inspector should spend as much time as possible in the field conducting inspections and making contact with Reservation applicators; 2) Budget should include part-time secretary; 3) Training for new officer; 4) Arrangements for legal assistance should be made.
- MT: 1) The EMD should work to improve the documentation and tracking of routine inspections. 2) The EMD should finalize an enforcement response policy. 3) The EMD should consider realignment of the Field Services Bureau to assure continued expeditious resolution of cases; 4) the laboratory equipment needs of the EMD should be prioritized and formally presented to EPA; 5) revision of the applicator training manuals and exams as new programs develop should be a priority.
- AZ (A&H): EPA and CAH re-examine state practices of reporting agricultural pesticide use inspection activity to include both state and fed funded inspections; CAH should institute a penalty worksheet with rational and documentation of proceedings CAH should continue to coordinate and finalize (where appropriate) its interaction with other agencies to avoid duplication of effort.
- AZ (S&P): Amend authority to issue minor enforcement actions; Amend data base to track fed use violations
- CA: Shift some resources for Ag use inspections to other areas to ensure commitments are met; Properly report follow up inspection. Decrease time between completion of investigation and submissions to EPA; Revise state plan in accord with 40 CFR changes; Continue reviewing "goldenrod" process for private applicators
- HI: Case project officer will track and target inspections for those areas that are not being met.
- NV: Training for new and old inspectors; Files denote either Fed violation or state violation; Apply for C&T funds
- ITCA: Should carefully track inspectional activities for each tribe and re-negotiate if projections cannot be met. Develop mechanism so that the program can continue while new inspections are being trained. Colorado River Indian Tribes: The number of Ag-use inspections should be re-evaluated or inspectional activities should be spread

equally over the entire year so that the projected number of inspections are accomplished in all categories; inspection summary reports should contain brief narratives describing the kind of activities taking place during the inspection; set up tracking system or NAIS to better target its inspections over the entire year and avoid inspecting the same facilities or operations over a short period of time. Quechan Tribe: Work with ITCA to more carefully target inspections towards Non-ag and certified applicator records categories. Inspector should gain more inspectional experience by participating in training courses and conducting inspections with other tribal inspectors. Cocopah tribe: ITCA should work closely with the new inspector to familiarize him with program and identify training opportunities.

- WA: It is expected that with the reorganization now complete and new employees hired, that enforcement issues will be looked at more closely and possibly resolved. Discrepancies noted in the inspection reports should be followed up with the investigators and missing or delinquent cases should be produced. All investigation reports should be reviewed by the field supervisors prior to being finalized.
- AK: Not addressed in the report.
- OR: As resources are added for pesticide analysis, the timeliness of analysis should be evaluated to assess the impact of those additional resources. Because of the increased role of the Oregon Operations Office, additional coordination effort within the Region will be needed to define detailed program responsibilities.
- ID: Recommendations include reevaluation of the State's penalty matrix, and better communication on product violations.
- MD: Concern is that residue sample analysis has fallen behind and created a "backlog". Also need for additional training of chemists.
- VA: Laboratory performance seriously below acceptable standards.
- DC: None made in the report.
- PA: Inspectors handle a large number of programs and remember many laws. The move toward more specialization may help a little.
- WV: Improvements needed on inspection procedures by the State.



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