



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Chemical Safety

EPA's Oversight of State Pesticide Inspections Needs Improvement to Better Ensure Safeguards for Workers, Public and Environment Are Enforced

Report No. 15-P-0156

May 15, 2015



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Abbreviations

EOY	end-of-year
EPA	U.S. Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FY	Fiscal Year
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
WPS	Worker Protection Standard

Cover photo: Pesticides being applied. (EPA photo)

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At a Glance

Why We Did This Review

We conducted this review to determine how U.S. Environmental Protection Agency (EPA) oversight of state pesticide inspections ensures the quality of state-performed Worker Protection Standard and certification inspections. We evaluated how the EPA selects inspection reports for oversight, documents its reviews, and conducts follow-up on oversight findings.

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Worker Protection Standard inspections aim to protect agricultural workers from the effects of exposure to pesticides. FIFRA certification inspections ensure that all applicators of pesticides are certified and are applying pesticides in certified areas.

This report addresses the following EPA goal or cross-agency strategy:

- *Ensuring the safety of chemicals and preventing pollution.*

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The full report is at:
www.epa.gov/oig/reports/2015/20150515-15-P-0156.pdf

EPA's Oversight of State Pesticide Inspections Needs Improvement to Better Ensure Safeguards for Workers, Public and Environment Are Enforced

What We Found

The EPA regions we reviewed did not consistently document or retain evidence of the quality of state-performed FIFRA Worker Protection Standard and certification inspections. It was difficult to analyze EPA project officer oversight reviews for adequacy because of an overall lack of records and transparency on how issues associated with state inspections are addressed. Specifically:

- EPA reviewers did not consistently document, report or retain records of issues found during reviews.
- EPA files did not provide specific documentation on how state enforcement actions were consistent with state enforcement policies and procedures.
- EPA often relied on the state agency to select inspection reports for review, which may introduce bias.
- Most EPA regions did not provide or document formal feedback on issues found during reviews so that states could improve their inspections.

EPA oversight weaknesses occurred because of inadequate guidance and training. Improvements are needed to increase assurance that standards for workers who handle pesticides, as well as standards concerning pesticide application and use, are being met and risks to human health and the environment are being managed.

Improvements in the EPA's inspection report review process will increase assurance that state inspections are preventing unreasonable risk to human health and the environment from pesticides.

Recommendations and Planned Agency Corrective Actions

We recommend that the EPA revise the FIFRA Project Officer Manual to include specific requirements for selecting inspections; reporting, documenting and retaining inspection review records; documenting states' consistency with enforcement policies; and communicating results of regional inspection reviews. We also recommend that the agency require periodic project officer training and ensure the above requirements are included in the training.

The agency agreed with our recommendations. This report contains one resolved recommendation with corrective actions pending and one unresolved recommendation needing further planned corrective actions and an estimated completion date.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

May 15, 2015

MEMORANDUM

SUBJECT: EPA's Oversight of State Pesticide Inspections Needs Improvement to Better Ensure Safeguards for Workers, Public and Environment Are Enforced
Report No. 15-P-0156

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Jim Jones, Assistant Administrator
Office of Chemical Safety and Pollution Prevention

Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The EPA offices having primary responsibility for the issues evaluated in this report are the Office of Chemical Safety and Pollution Prevention's Office of Pesticide Programs and the Office of Enforcement and Compliance Assurance's Office of Compliance.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 60 calendar days. You should include planned corrective actions and a completion date for the unresolved recommendation. Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at <http://www.epa.gov/oig>.

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Chapter 1

Introduction

Purpose

We conducted this review to determine how U.S. Environmental Protection Agency (EPA) oversight ensures the quality of state-performed Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Worker Protection Standard (WPS) and certification inspections¹ regarding pesticides. We evaluated how the agency selects inspection reports for oversight, documents its reviews, and conducts follow-up on oversight findings.

Background

FIFRA

FIFRA provides the EPA authority to regulate the registration, sale and use of pesticides. Under FIFRA, pesticides must be registered with the EPA in order to be sold or distributed. The EPA will register a pesticide if the applicant shows, among other things, that the pesticide will not generally cause unreasonable adverse effects on human health or the environment when used in accordance with specifications. Under the authority of FIFRA, the EPA established the WPS in 1992 aimed at reducing the risk of pesticide poisoning and injury among millions of agricultural workers and pesticide handlers.

State Primacy for Enforcement of Pesticide Use

Under FIFRA, states may receive primary enforcement responsibility (primacy) for pesticide use enforcement. All the states except Wyoming have primacy. In each primacy state, the EPA has an oversight role to ensure the adequacy of the state pesticide use program, the achievement of federal laws, and a level playing field for states. States with primacy conduct most compliance monitoring activities within their jurisdictions.

Regarding pesticide use enforcement, FIFRA Section 12(a)(2)(G) states: "...it shall be unlawful for any person ... to use any registered pesticide in a manner inconsistent with its labeling...." For example, if an inspector finds a person using a pesticide outdoors that is labeled "for indoor use only," the person has used the pesticide "in a manner inconsistent with its labeling" in violation of FIFRA.

¹ The term "certification inspection" does not refer to a specific FIFRA inspection. The Office of Inspector General (OIG) used the term because certifications are a component of most FIFRA inspections. We focused on a representative selection of state FIFRA inspections reviewed by EPA regional project officers.

Pesticide use violations can have detrimental effects. In the largest FIFRA criminal penalty in history to date, the Scotts Miracle-Gro Company—a producer of pesticides for commercial and consumer lawn and garden uses—was sentenced in federal district court in Columbus, Ohio, to pay a \$4 million fine and perform community service for 11 criminal violations of FIFRA. Scotts pleaded guilty in February 2012 to illegally applying insecticides to its wild bird food products that are toxic to birds, falsifying pesticide registration documents, distributing pesticides with misleading and unapproved labels, and distributing unregistered pesticides.

Categories of FIFRA Pesticide Inspections

There are 12 types of FIFRA pesticide inspections. We reviewed the EPA’s oversight of six of the 12 state-conducted inspections.² EPA regional offices perform oversight of state-conducted inspections. In addition to the WPS inspections, certifications are also a component of most FIFRA inspections. Below we provide a brief description of the WPS inspection and the five non-WPS inspection categories that the OIG referred to as “certification inspections.” All of the inspections listed below include a review of certifications associated with applicators and handlers.

WPS Inspections: The WPS is aimed at reducing the risk of pesticide poisoning and injury among agricultural workers and pesticide handlers. Routine WPS inspections are conducted at agricultural establishments. The inspections are designed to ensure pesticide users subject to WPS comply with product label requirements. Inspectors examine practices of employers and employees to ensure compliance with:

The WPS Helps Protect Agricultural Workers and Pesticide Handlers

According to the EPA, associations between pesticide exposure and certain cancer and non-cancer chronic health effects are well documented. Reducing these chronic health effects is an important FIFRA goal. The WPS is intended to prevent unreasonable adverse effects from pesticide exposures among agricultural workers and pesticide handlers, as well as such vulnerable groups as minority and low-income populations, child farmworkers, and farmworker families.



A WPS-compliant warning sign. (From EPA website)

- Product-specific worker protection requirements included on product labeling, such as need for personal protective equipment, restricted entry intervals, and oral and posted warnings used at the establishment.
- Other WPS requirements, such as providing pesticide safety information, decontamination supplies, safety training, emergency assistance and worker notification requirements.

Use Inspections: Use inspections encompass a wide variety of pesticide use circumstances and inspection sites. Although many

² The six FIFRA inspections that we did not review are: Good Laboratory Program inspections, import/export inspections, experimental-use permit inspections, restricted-use applicator inspections, establishment inspections, and cancellation and suspension inspections.

aspects of pesticide compliance are involved, the primary focus is on use inconsistent with the label and the WPS.

For Cause Inspections: For cause inspections substantiate and document alleged pesticide misuse. They are usually initiated in response to a complaint, damage report, referral or tip following a pesticide application.

Certified Applicator License and Records Inspections: Normally conducted at a pesticide applicator's place of business, this type of inspection determines whether: (1) the applicator is properly certified and/or licensed, (2) the required records are being maintained, (3) the applicator is applying pesticides only in those areas for which certification has been issued, and (4) the records indicate that all applications have been made in compliance with all applicable laws and regulations.

Restricted-Use Pesticide Dealer Inspection: These inspections are conducted to determine compliance with FIFRA recordkeeping requirements regarding sales and distribution of Restricted-Use Pesticides and to ensure that such pesticides are sold only to certified applicators or non-certified persons for application by a certified applicator who is specifically certified for use of the particular Restricted-Use Pesticide.

Marketplace Inspections: Marketplace inspections ensure industry compliance with product registration, formulation, packaging and labeling requirements; and that products are correctly distributed through trade channels.

EPA Review of State FIFRA Inspection/Enforcement Files

The EPA partners with states to regulate pesticides and funds cooperative agreements and grants that help states implement pesticide programs. According to the agency's FIFRA Project Officer Manual, the EPA regions conduct annual end-of-year (EOY) evaluations to assess state performance in running their pesticide programs. Five major factors for why the evaluations are necessary are because they:

- Ensure that state pesticide programs are being implemented consistent with the intent of federal, state or tribal law.
- Identify strengths of state programs, recognizing the goals, achievements and contributions made to the pesticide program.
- Identify any weaknesses of or obstacles to state programs.
- Identify performance problem obstacles to completing negotiated tasks.
- Make recommendations for improvements or resolution of any deficiencies or problem areas.

During the EOY evaluation, EPA regional project officers review all aspects of the state's pesticide program. The oversight evaluation includes an in-depth look at the state's activities, such as inspection reports and enforcement actions.

Regional reviews determine whether the state is taking appropriate enforcement action where warranted and achieving compliance from the regulated community. For example, if the state is conducting inspections under the cooperative agreement, the project officer should review a selected number of the state's inspection files to determine whether the state is conducting inspections properly, appropriate inspection procedures are followed, and sufficient evidence is collected.

For WPS inspection reviews, regional focus is on the following compliance areas:

- Notification and posting of pesticide application.
- Application and entry restrictions.
- Personal protective equipment and pesticide handling equipment.
- Pesticide safety training.
- Pesticide safety information.
- Decontamination supplies.
- Emergency assistance.
- Retaliation.

For non-WPS inspection reviews, the regional focus relates to the specific type of inspection. For example, the regional review of marketplace inspections focuses on assurances that industry complied with product registration, formulation, packaging and labeling requirements; and that products are correctly distributed. The regional review of Certified Applicator License and Records Inspections focuses on determining whether the applicator is properly certified and is applying pesticides in accordance with certification, maintaining records, and making all applications in compliance with all applicable laws.

Responsible Offices

The EPA offices having primary responsibility for the issues evaluated in this report are the Office of Chemical Safety and Pollution Prevention's Office of Pesticide Programs and Office of Enforcement and Compliance Assurance's (OECA's) Office of Compliance.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our results based upon our objectives. We conducted this audit from December 2013 to February 2015.

We reviewed relevant materials, including laws, regulations, procedures and guidance. Our review included the following documents: Office of Pesticide

Program/OECA 2015–2017 FIFRA Cooperative Agreement Guidance, 2002 FIFRA Project Officer Manual, 2013 FIFRA Inspection Manual, 2013 and 2014 Office of Chemical Safety and Pollution Prevention National Program Manager Guidance, and the 2012 WPS Agricultural Inspection Guidance.

We selected four EPA regional offices (Regions 1, 4, 7 and 8) as the focus of our evaluation. We selected individual case files to review at the state offices from regional lists of case file reviews they conducted in fiscal years (FYs) 2012 and 2013. We judgmentally chose for review one or two states within each of the four selected EPA regions based on the number and type of cases reviewed, issues found during project officer review, and location. The states selected were Massachusetts in Region 1, Georgia and North Carolina in Region 4, Missouri in Region 7, and Colorado and North Dakota in Region 8. Table 1 summarizes the different types of FIFRA inspection case files we reviewed at the different regions and states.

Table 1: Summary of case file reviews

Region	State	Type of inspection reviewed						Total
		WPS	Use	Market-place	For Cause	Certified Applicator	Restricted-Use	
1	MA	5			2	3		10
4	GA	5	1	2		1	1	10
	NC		2	1				3
7	MO	6	2		2		2	12
8	CO	7				1	3	11
	ND	6		1			2	9
TOTAL		29	5	4	4	5	8	55

Source: OIG analysis.

We interviewed Office of Pesticide Programs and OECA headquarters managers, and EPA regional pesticide and enforcement managers. We also interviewed regional project officers to better understand the case file review process. We compared regional project officer notes with the content of the inspection reports. We collected and reviewed FY 2012 and 2013 EOY reports for the six states that were part of our evaluation. We also interviewed state staff from state departments of agriculture to gather information on working relationships with EPA regions and their role in the inspection report review process.

Chapter 2

Improvements to EPA Oversight of State Inspections Needed

The EPA regions we reviewed did not consistently document or retain evidence of the quality of state-performed FIFRA WPS and certification inspections. It was difficult to analyze EPA project officer oversight reviews for adequacy because of an overall lack of records and transparency in how issues associated with state inspections are addressed. In the sample we reviewed, we found the following:

- EPA reviewers did not consistently report, document or retain records of issues found during their review.
- None of the EPA regional review notes provided specific documentation on how the states' enforcement actions were consistent with state enforcement policies and procedures.
- EPA regions often relied on the state agency to select inspection reports for review, which may introduce bias.
- Three of the four EPA regions did not provide or document formal feedback on issues found during reviews so that states could improve their inspections. Region 4 provided feedback to North Carolina but not Georgia.

Regional oversight of FIFRA inspections are intended to protect humans and the environment from adverse pesticide use. However, EPA oversight weaknesses occurred because of inadequate guidance and training. Improvements are needed to increase assurance that pesticides are not misused and do not pose unnecessary risks to human health and the environment.

Improvements in Oversight by EPA Project Officers Needed

EPA Project Officers Did Not Consistently Report, Document or Retain Records of Issues Identified During Reviews

In most instances, the information contained in regional inspection report review notes and the information reported in the respective EOY reports differed. The FIFRA Project Officer Manual states that the EOY reports will detail a “discussion of problems and proposed resolutions, including specific recommendations for each problem identified.” For example, the Region 4 FY 2013 EOY for Georgia said, “The reviewer did not find any cases that did not meet the minimum standards set by the EPA.” However, the regional review notes for this period stated that “...some photos were fuzzy...” and noted “...potential violation in worker interview...” The Region 7 FY 2012 EOY for Missouri said “Inspection files were complete and detailed...” but the regional project officer’s

notes for that period said “Appears to have incorrect date on inspection narrative...” and “...date of inspection and inspection number are different...” The agency stated that most of the issues the OIG found in the review notes of the project officers are addressed through “informal” channels (email, phone calls, etc.) and are not documented in the EOY reports. However, without documentation on how issues detailed in the project officer review notes are addressed, the resolution of issues is unverifiable.

Only one state EOY report in our sample described quality or compliance issues found during the project officer’s file review. The Region 4 Georgia FY 2012 EOY report contained information such as “...the EPA found that some inspection narratives required more clarity” and “legible photographs from pesticide labels continue to be an area warranting improvement.” The remainder of the EOY reports generally described the files reviewed as complete but did not describe issues found during project officer review. For example, the Region 1 Massachusetts FY 2013 EOY stated that “...enforcement documentation and inspection records were complete...” but the project officer’s notes regarding a particular file stated “Target pest not listed on use observation form.” When regional project officers do not include the issues found during their reviews in the EOY reports or explain in reports why the issues are not relevant, it raises questions as to whether the EPA is holding the states accountable.

We also found some regional documentation of file reviews to be minimal or absent. An OECA manager said that in addition to documenting which and how many case files were reviewed, project officers are to note any concerns they observe. The FIFRA Project Officer Manual provides worksheets for project officers to record and summarize comments on each case file reviewed. In several instances, the EPA project officer did not document any notes on any form. For example, North Carolina WPS inspection reports reviewed during FYs 2012 and 2013 did not have any notes because the project officer reviewed the electronic inspection reports on a state-designated computer. The project officer recorded the number of inspection reports reviewed but did not take notes or identify specific reports reviewed. Additionally, the North Dakota EPA project officer said he did not document notes for inspection reports reviewed during FYs 2012 and 2013 because North Dakota sent him case files electronically so he did not see the need to keep notes of his review. The absence of recorded review notes and comments impedes oversight of project officer reviews, and institutional knowledge cannot be passed on when project officers retire or leave the agency.

Some EPA regional project officers said there is little guidance on how long to retain records of file reviews. One regional project officer disposed of review notes for FYs 2001 through 2012 as part of an agencywide records management effort. The regional project officer was unable to identify which inspection reports were reviewed during those years. This action was a violation of the agency’s record retention policy. According to OECA headquarters managers, per EPA Record Schedule 1003, grant and other agreement oversight records are to be

retained for 10 years after agreement closeout. These records of project officer file reviews are important to support and monitor any determination of a state's ongoing adequacy to maintain primacy and/or requests to improve any issues found. When regional project officers do not adequately report, document and retain the records of their case file reviews, there is no assurance that the EPA's oversight of state pesticide inspections is helping to prevent unreasonable risks to human health and the environment.

Project Officers Did Not Provide Evidence That State Enforcement Actions Were Consistent With State Policies

While some regions reported in EOY reports that state enforcement actions taken were in accordance with state enforcement response policies, none of the regional review notes provided evidence of how the states' enforcement actions were consistent with state enforcement policies and procedures that implement FIFRA.

Some of the regional review notes in our sample included generic statements indicating that enforcement action was appropriate. There was no documentary evidence that the regional project officers validated whether the enforcement action taken by the state was in accordance with the state's enforcement response policy. According to the FIFRA Project Officer Manual, "the project officer should ensure that the state's or tribe's enforcement actions are consistent with its enforcement policies and procedures, and that inspections and enforcement actions are consistent with the recipient's policies and procedures approved by EPA." That manual, however, does not specifically state the region should also provide documentation that the enforcement action was in accordance with the state's policies.

An OECA Associate Director said one of the most important reasons for a project officer to review inspection reports and case files is to ensure that the state is able to take appropriate enforcement actions to maintain primacy. An OECA chief stated that consistency with the enforcement response policies is "self-evident." However, what is "self-evident" depends on the skills, knowledge and experience of individuals. Providing documentation to support that a state acted in accordance with its own enforcement response policies is a more robust control.

Project Officers Allowed States to Select Files for Review

EPA regional project officers often requested the state departments of agriculture to select inspection reports to be reviewed on their behalf. The FIFRA Project Officer Manual language is vague on the selection process, noting "inspection reports should be selected and reviewed in accordance with national and regional guidance and must include files from each category of inspection activity." EPA regional project officers interviewed said they generally request the state agency to select inspection reports randomly for review. One regional project officer said this was done in the interest of time. Two regional project officers said they may

request the state to pull inspection reports that profile “significant cases” of human health and environmental violations. However, in most instances, the state departments of agriculture select the inspection reports for review. There is a potential for bias in inspection report selection if the state agency is allowed to select inspection reports for the EPA’s review.

Project Officers Did Not Document Closeout Meetings

EPA regional project officers did not document communication with state agencies about discrepancies or problems regarding inspection reports or methods to improve the reports. According to the FIFRA Project Officer Manual, “a closing discussion among review participants should be held upon completion of the evaluation. The project officer should discuss findings and recommendations, including any unresolved problems identified in prior evaluations.”

Most state agencies said the EPA regional project officer will ask questions or make comments during the review process. These feedback sessions are not documented, nor is documentation suggested in the FIFRA Project Officer Manual. Many regional project officers said their findings are conveyed in the EOY report. As noted earlier, all but one EOY report in our sample commented on issues found during their review. Only one regional project officer sent an email with findings during the review separate from the EOY. While not required by the FIFRA manual, it is good business practice for regions to document feedback and the topics discussed, to prevent conflicting explanations of issues associated with inspections and to ensure information is retained and available.

Inadequate Guidance and Lack of EPA Regional Project Officer Training Contributed to Inadequate Oversight Reviews

In addition to the inadequate guidance, as discussed in the prior sections, we found that EPA regional project officers had not been trained on their oversight duties in over 10 years. Training will help regional project officers ensure quality of state FIFRA inspections. According to the agency, FIFRA project officer training was offered in March 2015, and a plan for future training was in development.

State Review Framework-Type Approaches Could Be Applied to FIFRA Reviews

In 2005, the EPA implemented the State Review Framework, designed to bring a systematic and consistent approach to regional enforcement oversight of state programs for air, water and waste. The framework established standard protocols and procedures for conducting state oversight reviews—including an established methodology for selecting files for review and having consistent file review discussion guides—and required a consistent level of management involvement. The State Review Framework also focuses on communication with a state

throughout the process, starting with an opening letter to the state from senior EPA management through entrance and exit conferences, and concluding with draft and final report processes. The EPA's FIFRA state oversight review process currently lacks consistency in how state oversight reviews are planned, performed and documented. To ensure national consistency in EPA oversight practices and that states are conducting inspections appropriately, the EPA should establish a more systematic approach to FIFRA reviews similar to the State Review Framework.

Conclusions

The EPA needs procedures and training that provide specific direction to EPA oversight staff on selecting inspections, reporting and documenting review findings, and communicating review findings to state partners. These actions should result in consistent and more effective regional oversight of state performance, which will lead to increased assurance that the EPA's oversight process will detect pesticide misuse and unnecessary risks to human health and the environment.

Recommendations

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

1. In conjunction with the Office of Chemical Safety and Pollution Prevention, revise the FIFRA Project Officer Manual to include specific guidance for:
 - a. Reporting, documenting and retaining records from project officer inspection reviews.
 - b. Providing documentation on how a state's enforcement actions are consistent with the state's enforcement policies and procedures.
 - c. Selecting inspection files for review.
 - d. Documenting closeout meetings with states.

We recommend that the Assistant Administrator for Chemical Safety and Pollution Prevention and the Assistant Administrator for Enforcement and Compliance Assurance:

2. Ensure that required FIFRA project officer training is conducted periodically and the above guidance is included in the training.

Agency Comments and OIG Evaluation

The agency commented on our findings and conclusions and, where appropriate, we made changes in our report. The agency agreed with our recommendations.

Regarding Recommendation 1, the agency provided a corrective action plan and estimated completion date, and that recommendation is considered resolved and open with corrective action pending. Regarding Recommendation 2, while we acknowledge that the agency conducted project officer training in March 2015, during which the OIG findings were discussed, the agency is still developing plans for future trainings and will provide the plan as its corrective action. Therefore, Recommendation 2 is considered unresolved pending the providing of further corrective action plans and an estimated timeframe for completion. The agency's full response, and our embedded comments, are in Appendix A.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	10	In conjunction with the Office of Chemical Safety and Pollution Prevention, revise the FIFRA Project Officer Manual to include specific guidance for: <ul style="list-style-type: none"> a. Reporting, documenting and retaining records from project officer inspection reviews. b. Providing documentation on how a state's enforcement actions are consistent with the state's enforcement policies and procedures. c. Selecting inspection files for review. d. Documenting closeout meetings with states. 	O	Assistant Administrator for Enforcement and Compliance Assurance	6/30/17		
2	10	Ensure that required FIFRA project officer training is conducted periodically and the above guidance is included in the training.	U	Assistant Administrator for Chemical Safety and Pollution Prevention and Assistant Administrator for Enforcement and Compliance Assurance			

O = Recommendation is open with agreed-to corrective actions pending.
C = Recommendation is closed with all agreed-to actions completed.
U = Recommendation is unresolved with resolution efforts in progress

Agency Response to Draft Report

March 23, 2015

MEMORANDUM

SUBJECT: EPA Comments on Draft Report: “EPA’s Oversight of State Pesticide Inspections Needs Improvement to Ensure that Safeguards for Workers, the Public, and the Environment are Enforced,” Project No. OPE-FY14-0007

FROM: Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance

Jim Jones, Assistant Administrator
Office of Chemical Safety and Pollution Prevention

TO: Arthur A. Elkins Jr, Inspector General
Office of Inspector General

We appreciate the opportunity to provide you with comments on the draft report (OPE-FY14-0007). EPA agrees that the Office of Inspector General (OIG) evaluation of EPA’s oversight of state implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) identified opportunities for improvements to EPA’s oversight practices in the FIFRA program. We are committed to strengthening FIFRA by addressing the recommendations in this report in a timely manner.

While we agree that oversight can be strengthened, EPA does not believe that the examples cited in the OIG report demonstrate the existence of national problems or a lack of state accountability. We acknowledge that consistency across EPA regions and project officers can be improved, but EPA does not agree those individual shortcomings are a basis to “question whether EPA is holding states accountable.” Regional oversight, similar to state performance, benefits from a base level of standard procedures and training with flexibility to utilize unique approaches that account for regional and state differences. Last, statements on page six and the Conclusion on page 10 stating “improvements are needed to increase assurance that pesticides are not misused and do not pose necessary risks to human health and the environment” and “Continued weakness in the EPA’s regional oversight process may result in failure to detect pesticide misuse and unnecessary risks to human health and the environment” are not supported by the scope or findings of this OIG assessment. We respectfully request the OIG remove these statements from its report.

OIG Response: The OIG edited, but did not remove, these statements.

EPA has taken several steps in the past few years to strengthen our guidance, training and oversight in the FIFRA program. An effort jointly conducted by Office of Enforcement and Compliance Assurance (OECA) and Office of Chemical Safety and Pollution Prevention (OCSPP) concluded its own two-year assessment of oversight policies and procedures of the FIFRA program that will result in improvements that will address virtually all of the issues raised in this draft report. One of the major efforts resulting from EPA's assessment is a revised Project Officer training program that does take into account the importance of documenting findings and corrective actions that come out of regional reviews. Other actions EPA has taken include revising the Cooperative Agreement Guidance, developing new measures and a new Compliance Monitoring Strategy for the FIFRA program, FIFRA e-learning courses for inspectors, and the design of a FIFRA program performance dashboard to publicly display information reported by states on the 5700 form. These steps will strengthen FIFRA program management and oversight.

EPA does have a few specific comments on the draft report. On page two of the OIG draft report, five non-WPS inspection categories are referred to as "certification inspections." EPA would like to clarify that our program does not use the term "certification inspections" to characterize a FIFRA inspection type. We do not believe the OIG needs to group and rename the FIFRA inspection types, and instead we request that you simply refer to the common inspection types.

OIG Response: The OIG included a footnote to clarify our use of the term "certification inspections."

Page nine mentions that project officers do not document closeout meetings following reviews. This is a practice that has been affected by the decline in resources available to the regions for the FIFRA program. Historically the regions have spent up to a week on file reviews. As resources have declined, this process has been streamlined to several hours, often involving the electronic submission of files to conserve state and EPA resources while still addressing EPA requirements and priorities. In conjunction with the new Project Officer Training and a future revised Project Officer Manual, EPA agrees we can highlight best practices in documenting communications with state agencies about discrepancies, problems, or improvements.

The OIG draft report explains EPA's State Review Framework (SRF), designed to bring a systematic and consistent approach to regional enforcement oversight of state programs for air, water and waste. The OIG suggests establishing a more systematic approach to FIFRA reviews similar to the SRF. EPA wants to emphasize that the resources allocated to the FIFRA program are significantly smaller than those compared to the CAA, CWA, and RCRA programs covered by the SRF process. The FIFRA program also has limitations in its ability to oversee FIFRA in the same manner as is done in CWA, CAA or RCRA due to state primary enforcement responsibility for pesticide use violations (primacy) in the FIFRA program and the lack of facility-specific reporting of state activities to EPA. The SRF process starts with media-specific data metrics that would be difficult to establish from the summary data provided to EPA for the FIFRA program areas. EPA, through its actions over the past few years, has taken a modified approach to FIFRA compliance and enforcement oversight due to these differences and limitations. These modifications will improve oversight and state accountability, and build a

foundation on which states and EPA together can consider new ways to make program implementation and management more efficient.

OIG Response: The OIG changed the title of the section to “State Review Framework-Type Approaches Could Be Applied to FIFRA Reviews,” to more clearly reflect the OIG’s intent to highlight approaches used in the State Review Framework.

The findings in this draft OIG report reinforces our work to improve Project Officer guidance and training. EPA agrees with the recommendations. EPA has recently provided and will continue to periodically provide training to regional project officers as well as our grantees. We also agree to update the Project Officer Manual so it is consistent with the new training and the FIFRA Cooperative Agreement Guidance.

Planned corrective action completion dates are:

1. Recommendation 1 – Revise the FIFRA Project Officer Manual by June 30, 2017.

OIG Response: Recommendation 1 and its inclusion of the findings of this report have been confirmed by the agency. This recommendation is resolved and open with corrective action pending.

2. Recommendation 2 – Conducted FIFRA Project Officer training on March 3-4, 2015. Conduct an additional training session by March 24, 2015.

OIG Response: The OIG received information from the agency detailing plans in development for future training sessions. This recommendation is therefore considered unresolved until the agency provides further corrective action plans and an estimated timeframe for completion.

If you have any questions concerning this response, please feel free to contact Gwendolyn Spriggs, the OECA Audit Liaison, at 202-564-2439.

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