



At a Glance

Why We Did This Review

The purpose of this review was to evaluate how the U.S. Environmental Protection Agency's (EPA's) Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Toxic Substances Control Act (TSCA) enforcement tools achieve intended outcomes; and whether penalty negotiations are managed to protect human health and the environment. This briefing report contains findings and recommendations related to FIFRA and TSCA good faith reductions and ability to pay penalties. FIFRA regulates the distribution, sale and use of pesticides. TSCA provides the EPA with authority to require reporting, recordkeeping and testing requirements, and restrictions to chemical substances and mixtures.

This report addresses the following EPA theme:

- *Taking action on toxics and chemical safety.*

For further information, contact our public affairs office at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2013/20130926-13-P-0431.pdf

EPA Needs to Update Its Pesticide and Chemical Enforcement Penalty Policies and Practices

What We Found

We found that EPA regions differed in how they documented decisions and justified penalties related to FIFRA and TSCA enforcement penalty reductions. EPA regions generally did not consistently determine and document reductions in proposed penalties based on good faith of the violators, and in some regions reductions appeared automatic without adequate justification. The lack of adequate guidance for determining good faith reductions and supporting documentation for good faith reductions creates a risk that violators may not be treated equitably. In addition, EPA may be losing opportunities to fully collect all penalties due.

We found that the EPA lacks a sufficient policy to address violators who are unable to pay FIFRA and TSCA penalties. The current "ability to pay" model and policy are limited to cases where an individual may not have the cash to pay a penalty. However, no guidance exists for applying non-monetary penalty alternatives such as public service for FIFRA and TSCA inability to pay cases when cash is not available to pay a penalty. Also, training for enforcement staff needs to be updated to include more guidance on ability to pay cases. Therefore EPA's enforcement actions for FIFRA and TSCA ability to pay cases may be limited by its outdated policy, model and training, which could impact the regions' consistent handling of the growing number of ability to pay claims being received from individuals.

Recommendations and Planned Corrective Actions

We recommend that the EPA provide adequate guidance for determining a good faith reduction, develop a systematic approach to ensure that justifications for good faith reductions are documented, revise the EPA's ability to pay penalty policy and evaluate the individual violator model, and provide regional staff with updated training for case development.

The Office of Enforcement and Compliance Assurance agreed with two of our five recommendations and provided alternative actions that meet the intent of the remaining recommendations. All recommendations are resolved and open with corrective actions underway. No further response to this report is required.