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AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

October 28, 2010

The Honorable Janice K. Brewer, Governor

The Honorable Robert Burns, President of the Senate

The Honorable Kirk Adams, Speaker of the House of Representatives

Ellis M. Jones, Acting Director
Office of Pest Management

The Office of the Auditor General has conducted a performance audit of the Office of Pest Management's (Office) regulation of the nonagricultural pest management industry to identify recommendations for the regulation of the industry in a manner that most effectively provides protection to the general public, pursuant to Laws 2008, Ch. 309, §23. This audit is conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §41-1279.03. Further, as directed by Laws 2008, Ch. 309, §23, the Office of the Auditor General also conducted a performance audit on the reorganization and restructuring of the Office, including a recommendation regarding oversight by another state agency, department, or board (see Auditor General Report No. 10-01).

Together, Arizona's statutes and the Office's regulations effectively regulate the nonagricultural pest management industry, but the Legislature should consider modifying statutes to strengthen enforcement over pesticide misuse by unlicensed people and, if it agrees with the Office, to further limit exemptions to licensing requirements. To make this determination, auditors reviewed and compared the Office's regulations with federal pesticide control regulations and the pest management regulatory practices of ten other states in three areas:¹

- **Licensing**—the licensing of nonagricultural pest management businesses and pesticide applicators, and the training requirements for applicators;

¹ Auditors compared Arizona's nonagricultural pest management regulations with the pest management regulatory practices of California, Delaware, Florida, Georgia, Indiana, Maryland, Nevada, New Mexico, South Carolina, and Texas. These states are considered to have best practices or are comparable to Arizona in terms of pest management industry size and pests. Best practice and comparable states were determined with input from representatives of the U.S. EPA Region 9 office and the National Pest Management Association.

- **Compliance**—the oversight of licensed businesses and applicators through inspections and investigations of complaints; and
- **Enforcement**—disciplinary action established by law, including revocation or suspension of a license, administrative warnings, probation, and civil penalties.

Introduction and Background

The Office is responsible for regulating nonagricultural pest management, including structural pest control in and around buildings and control of public health pests, aquatic pests, and pests—including weeds—in ornamental shrubs and trees, on golf courses, and along rights-of-way.¹ Its mission is:

To advocate and promote, through education, training and enforcement, the safe application of pest control technologies, which will result in the maximization of the health and safety of the residents of Arizona, and the protection of their property and the environment.

To accomplish this mission, the Office issues licenses to individuals and companies that engage in the application of nonagricultural pesticides. In addition, it provides training classes and materials, certifies applicators, and inspects pest management businesses to ensure proper pest management practices throughout the State. It also performs enforcement activities, such as investigating potential violations of statute and disciplining licensees who have committed violations. The Office also maintains a database with information from the statutorily required Termite Action Registration Forms (TARF) that companies must submit within 30 days of inspecting or treating a structure for termites. The database is available on the Office's Web site to help the public and pest control companies with home purchase and termite treatment decisions.

Arizona regulations meet federal standards, but statutes could be strengthened in one way

The Office is responsible for enforcing federal pesticide standards regarding nonagricultural pest management. Its practices and Arizona laws and regulations meet and in some ways exceed the federal standards. However, the Legislature could consider a statutory change to strengthen the Office's enforcement authority when an unlicensed person misuses a pesticide.

¹ The Arizona Department of Agriculture registers pesticides and regulates agricultural pesticide use.

EPA has delegated authority to the Office—By performing its functions, the Office also performs the State’s nonagricultural responsibilities under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which establishes the minimum standards for pesticide regulation. FIFRA is enforced at the federal level by the U.S. Environmental Protection Agency (EPA). However, FIFRA assigns primary enforcement authority to the states, provided that the EPA has determined that the state has adopted adequate pesticide use laws and regulations and has adopted and is implementing adequate procedures for enforcement of those laws and regulations. In addition, federal regulations allow states to certify applicators of restricted-use pesticides (see textbox) if the EPA has approved a state plan that covers elements such as state standards for certification that conform to federally prescribed standards and a responsible state agency that has the necessary legal authority and qualified personnel. If there is no approved state or tribal certification plan, the EPA may certify applicators. The Office has gained regulatory authority over nonagricultural pesticides in Arizona through EPA approval. According to an EPA official, all 50 states have received approval to certify applicators. Finally, under a cooperative agreement with the Office, the EPA provides partial funding for the Office’s certification and training program and enforcement activities.

EPA pesticide classifications

General use—A pesticide that will not generally cause unreasonable adverse effects on the environment when applied in accordance with directions.

Restricted use—A pesticide that, without additional regulatory restrictions, may generally cause unreasonable adverse effects on the environment or injury to the applicator when applied in accordance with directions.

Source: Auditor General staff analysis of 7 U.S.C.A. §136a (d)(1)(C).

Arizona statutes and office regulatory activities meet or exceed federal requirements—The EPA’s delegation of authority to the Office is based on its determination that Arizona’s regulatory authority and enforcement practices meet or exceed federal standards. For example, A.R.S. §32-2312 establishes ten pesticide applicator license categories, including six categories FIFRA established. Additionally, as a condition for licensure, Arizona law requires applicators to pass an examination that conforms to federal regulations regarding applicator competency. Further, the EPA’s annual year-end reviews for federal fiscal years 2006 through 2008 found that the Office and its predecessor, the Structural Pest Control Commission, met or exceeded the cooperative agreement’s core requirements.

Although FIFRA provides the minimum standards for pesticide regulations, states may adopt additional or more stringent standards. Auditors’ review of FIFRA and Arizona’s nonagricultural pesticide regulations determined that the State goes beyond FIFRA in a few key areas. For example:

- **Arizona requires background check**—A.R.S. §32-2304(D) allows the Office to require licensure applicants to submit fingerprints for the purpose of obtaining a criminal records check, and A.R.S. §32-2312(D) states that an

applicator must be of good moral character. To make this determination, the Office requires each applicant to undergo a criminal background check and then considers whether the applicant has committed an act that would be grounds for disciplinary action if the person were licensed, has been convicted of a felony or misdemeanor, or has cheated on a licensing examination. Federal regulations do not require either of these standards for licensure. According to the Office, these requirements are important to help ensure the safety of people who obtain pesticide services.

- **Licensing required for general-use pesticides**—Similarly to all of the other ten states auditors reviewed, Arizona statutes and regulations require a license for applying any pesticides for hire, except for certain exemptions specified by A.R.S. §32-2311 such as utility employees and some lawn maintenance service providers. In contrast, FIFRA requires a license only for applying restricted-use pesticides. According to the Office, this requirement is important because all pesticides, not just restricted-use pesticides, can be harmful or fatal if used improperly. For example, the Office has handled complaints where damage to crops has occurred because of misuse of a general-use herbicide.

In addition, the Office has strengthened its enforcement in accordance with an EPA recommendation. Specifically, in annual reviews of its cooperative agreement with the Office in 2006 through 2008, the EPA recommended that the Office amend its Enforcement Response Policy (ERP). An agency's ERP contains guidance for determining the appropriate response and penalty for violations of FIFRA. Previously, according to the EPA, the Office's ERP did not allow taking adequate action in certain situations because a violation would have to have three types of impact—human health, economic, and environmental—to produce the maximum penalty instead of only one of these impacts. However, the Office revised its ERP in December 2009 and according to an EPA official, the revised ERP allows the Office to take adequate and appropriate action for violations of pesticide regulations.

Regulation of unlicensed people misusing pesticides could be strengthened—The EPA has identified one way in which Arizona's nonagricultural pest management regulation is weaker than federal regulations, although referring cases to the EPA can overcome this weakness. Specifically, FIFRA prohibits using any registered pesticide in a manner inconsistent with its labeling. However, in its 2006 and 2007 annual cooperative agreement reviews, the EPA commented that Arizona law does not allow the Office to pursue penalties for misuse of pesticides by unlicensed people. The EPA noted that the Office can impose a penalty for unlicensed activity, but can cite a person for misuse of pesticides only if the person is licensed. Because penalties are assessed for each individual violation, this could mean a licensee receives a larger penalty than an unlicensed person for the same type of incident. In contrast to the Office, the Arizona Department of Agriculture can cite people for misuse of agricultural

pesticides regardless of whether they are licensed or unlicensed. Although the Office can refer to the EPA cases where unlicensed people misuse pesticides, according to office officials, they rarely have a case that they need to refer. However, the Legislature should consider strengthening statutes regarding structural pest management so that the Office can cite unlicensed people for pesticide misuse, similarly to statutes that apply to agricultural pest management. Because the Office's EPA-approved investigative protocol already includes examining whether pesticide use is consistent with label directions, no additional resources should be required if the Legislature makes this change.

Arizona's nonagricultural pesticide regulations compare favorably with other states' regulations, but the Office believes limiting statutory exemptions is advisable

Auditors' comparison of Arizona's nonagricultural pest management regulation with the pest management regulatory practices of ten other states found that Arizona is similar to these other states in most areas. However, the Legislature may wish to consider revising the statute that exempts certain pesticide users from regulatory requirements. Auditors interviewed representatives and reviewed statutes and other information from ten states to determine if Arizona was providing more, less, or similar nonagricultural pest management regulation as these other states. Auditors focused on three key aspects of pest management regulation: licensing, compliance, and enforcement.

Licensing requirements similar to other states', but two exemptions could be further limited—Arizona's nonagricultural pesticide licensing requirements are similar to those in other states (see Table 1, page 6). For example, seven of the ten states require licensure for all of the licensing categories specified in FIFRA. In addition, similar to Arizona, none of the ten states limit licensure requirements to only restricted-use pesticides. For example, Georgia requires licensure for anyone who fumigates or applies any pesticides on a for-hire basis to control household pests or wood-destroying organisms. Further, like Arizona, all ten states require a surety bond or insurance against liability for damage to people or property. Finally, Nevada and Texas share Arizona's requirement for a criminal background check.

However, the Legislature could consider modifying Arizona's statutory exemptions for certain pesticide users. Like all ten other states reviewed, Arizona does not require licensure for certain users of general pesticides (see Table 2, page 7). According to the Office, two of these exemptions are too broad. Specifically:

Table 1: State Comparison of Nonagricultural Pesticide Regulations—Licensing
As of Calendar Year 2010

Descriptions	AZ	CA	DE	FL	GA	IN	MD	NV	NM	SC	TX
License or Certification Required¹											
Users of restricted-use pesticides	√	√	√	√	√	√	√	√	√	√	√
Users of general-use pesticides for hire and/or specific uses	√	√	√	√	√	√	√	√	√	√	√
Requirements for initial licensure or certification											
Surety bond or liability insurance	√	√	√	√	√	√	√	√	√	√	√
Mandatory training (category-specific)	√			√		√ ²	√	√		√	√
Background check/fingerprinting	√							√			√
Requirements for unlicensed or uncertified employees											
Direct supervision required ³	√	√	√	√	√	√	√	√	√	√	√
Supervisors need experience and/or education	√	√	√	√	√	√	√	√	√	√	√
Recertification Requirements											
Frequency (years)	1	3	1	1	2 ⁴	1 (business) 5 (applicator)	1 (business) 3 (private)	1 (business) 4 (applicator)	1	5	1
Applicator continuing education or training required	√	√	√	√	√	√	√	√	√	√	√
Technician/employee continuing education or training required	√	√		√	√	√	√	√			√

¹ See Table 2, page 7, for exemptions from licensing requirements.

² Indiana requires category-specific training for termite and turf.

³ Immediate, on-site supervision is required when the pesticide label requires it. Otherwise, direct supervision may mean immediate availability by radio or telephone and within a defined distance or ground travel time from the site. Arizona requires immediate supervision for all termite treatment by unlicensed employees.

⁴ Georgia requires renewal every 2 years but applicators have 5 years to accrue their continuing education hours.

Source: Auditor General staff summary of interviews with agency officials and review of pesticide-related statutes, regulations, and information published on Web sites for Arizona, California, Delaware, Florida, Georgia, Indiana, Maryland, Nevada, New Mexico, South Carolina, and Texas.

Table 2: State Comparison of People or Establishments Exempted by Law From Needing a Nonagricultural Pesticide Application License or Certification As of Calendar Year 2010

Descriptions	AZ	CA	DE	FL	GA	IN	MD	NV	NM	SC	TX
Owner/occupier of a structure	√	√	√	√ ¹	√	√ ²	√ ³	√ ²	√		√ ⁴
Laboratory/research establishments	√	√	√	√		√	√		√		
Veterinarians and/or medical doctors	√	√	√			√	√			√	
Weed control	√			√ ⁵		√ ⁶		√ ⁷			
Government employees		√			√	√ ⁶		√			
Architects and civil engineers ⁸		√		√			√				
Live capture and removal; falconers; other nonpesticide pest or weed removal activities		√					√				√
People using a nonrestricted ready-to-use disinfectant, sanitizer, or deodorizer	√		√	√		√	√				√
Public utilities/utility employees	√	√				√ ⁶					
Emergency responders	√			√			√				√
Volunteers of political subdivisions	√					√ ⁶	√				
Day-care centers			√			√ ⁶	√				

- 1 Florida exempts people applying pesticides, except for fumigation, on their own residential property, but not other owners and occupiers.
- 2 Indiana and Nevada exempt farmers applying pesticides on their own or their neighbors' property under specific conditions.
- 3 Maryland requires a not-for-hire license for an owner or employees of a facility where the property is open to or routinely used by the public. Owners of private facilities such as private hospitals and private schools do not require a license.
- 4 Texas exempts people performing pest control work on their own or employers' premises, except for specific types of facilities including workplaces, in addition to exempting people doing pest control in their owned or leased dwelling.
- 5 Florida requires licensure for lawn weed control and offers limited certification for ornamental plant bed weed control. However, yard workers who do not hold themselves out as being engaged in pest control are exempt when applying owner-supplied pesticide to an individual residential property.
- 6 Exemptions only apply to general-use pesticides.
- 7 Nevada exempts lawn and yard care workers using hand-powered equipment to apply pesticides as an incidental part of their business if they do not hold themselves out as being in the business of pest control and the cost of pesticide application is no more than 20 percent of their total remuneration.
- 8 Architects and civil engineers are only exempt when making recommendations as part of specifications for construction.

Source: Auditor General staff summary of interviews with agency officials and review of pesticide-related statutes, regulations, and information published on Web sites for Arizona, California, Delaware, Florida, Georgia, Indiana, Maryland, Nevada, New Mexico, South Carolina, and Texas.

- **Owner-occupier exemption**—A.R.S. §32-2311(A)(2) provides an exemption from licensure for people applying pesticides on property that they own and occupy. Office officials believe that this exemption should only apply to homeowners, but the statute also applies to employees of corporations that own property, such as churches and retail stores. Office officials explained that this exemption allows people who may not understand how pesticides work to apply them in public places, thereby creating potential harm to human health or the environment.

Other states vary in how they exempt owners and occupiers from license requirements. For example:

- Maryland regulations specify that if a property is open to or routinely used by members of the public, such as private golf courses or country clubs, the facility must have a not-for-hire license and employ at least one certified person, but other types of private facilities—including private hospitals and private schools—do not need such a license or employee unless they are applying a restricted-use pesticide.¹
- Florida statute exempts “pest control, except for fumigation, performed by a person upon her or his own individual residential property,” but it does not exempt other owners and occupiers.²
- Indiana and Nevada do not exempt owners and occupiers except for farmers using ground equipment to apply general-use pesticides on their own or their neighbors’ property.³
- Texas explicitly exempts individuals performing pest control work on their own or employers’ premises—except for apartment buildings, day-care centers, hospitals, and other specific types of facilities including other noncommercial entities such as workplaces—in addition to exempting people doing pest control in their owned or leased dwelling.⁴
- Georgia law exempts people doing work on their own or their employers’ properties, provided that they do not endanger public health and safety.⁵

Finally, California, Delaware, and New Mexico do not require licenses for people applying pesticides to land or property they own and occupy, similar to Arizona’s exemption.

- **Weed control exemption**—A.R.S. §32-2311(A)(6) exempts from licensure people using herbicides (pesticides that kill weeds and other unwanted plants) for weed control under specific conditions, including using small amounts of nonliquid herbicide, or small-capacity equipment for liquid herbicide, and using only herbicides generally available to the public. However, the Office has investigated complaints against some companies that have misinterpreted this exemption and performed unlawful weed control work by using more than the allowable amount of herbicide. For example, in August 2010, the Office reached a settlement agreement to issue a cease-and-desist order and a \$250 civil penalty against a landscape company that was using a 100-gallon tank to

¹ Code of Maryland Regulations (COMAR) 15.05.01.10

² Florida Statutes Annotated (F.S.A.) §482.211(1)

³ Indiana Code §15-16-5-55 and Nevada Revised Statutes (N.R.S.) §555.277(1)

⁴ Texas Title 12, Subtitle B, Ch. 1951, §1951.051

⁵ Official Code of Georgia Annotated §43-45-21

apply a general-use herbicide to its landscaping business clients' properties. The business president had believed his company's use of pesticides was exempt from licensing requirements under the weed control exemption. Officials believe that a statutory change to specify the total amount of liquid herbicide that can be applied to a property under this exemption would help to clarify statute and ensure compliance.

Two of the ten states auditors reviewed—Florida and Nevada—also have licensure exemptions for lawn and garden maintenance workers. Specifically, Florida law exempts “a yard worker when applying a pesticide to the lawn or ornamental plants of an individual residential property owner using pesticides owned and supplied by the individual residential property owner” and specifies additional limitations including that the person may use only a handheld container and cannot hold himself out to the public as being engaged in pest control.¹ In Nevada, the statutory exemption applies to “any person using hand-powered equipment, devices or contrivances to apply pesticides to lawns or to ornamental shrubs and trees as an incidental part of the person's business of taking care of lawns and yards for remuneration, if that person does not publicly hold himself or herself out as being in the business of applying pesticides and the cost of applying the pesticides does not exceed 20 percent of the total remuneration received.”²

Office officials have drafted revised statutory language regarding both of these exemptions and reported that they plan to seek legislation that would make these revisions in the 2011 legislative session.

Compliance inspection requirements generally similar to other states¹—Similarly to the other ten states auditors reviewed, the Office conducts several types of inspections both routinely and in response to complaints (see Table 3, page 10). For example, similarly to Arizona, all ten states conduct business inspections (see textbox), and all of the states also conduct inspections in response to complaints. FIFRA does not mandate inspection frequency, and neither Arizona nor nine of the ten other states auditors reviewed have mandatory inspection frequencies in statute. Inspection frequency varies across the states, from every 4 to 5 years in Texas to using a risk-based approach for planning inspections in five states.

Inspection types

Use inspections verify proper and safe pesticide applications.

Business inspections include verifying that licensed pest management companies properly maintain required records.

Vehicle inspections include verifying that the chemical storage and safety equipment on vehicles is properly maintained.

Source: Auditor General staff analysis of Arizona Administrative Code R4-29-702.

¹ F.S.A. §482.211(11)

² N.R.S. §555.277(2)

**Table 3: State Comparison of Nonagricultural Pesticide Regulations—
Inspections and Reporting Requirements
As of Calendar Year 2010**

Descriptions	AZ	CA	DE	FL	GA	IN	MD	NV	NM	SC	TX
Inspection Types											
Use—proper/safe application	√		√	√	√	√	√	√	√	√	√
Business—recordkeeping and other requirements	√	√	√	√	√	√	√	√	√	√	√
Vehicle—chemical storage & safety equipment	√		√	√	√	√		√	√	√	√
Complaint response	√	√	√	√	√	√	√	√	√	√	√
Inspection Frequency											
Frequency in years ¹	2	3	2-3			1-5	2			2	4-5
Frequency mandated by statute	No	No	No	No	No	No	No	No	No	No	Yes
Record Retention											
Number of years	3 or 5 ²	3	2	3	2	2 or 5 ³	2	2 or 5 ³	2	2 or 5 ³	2
Termite Reporting Responsibility											
Inspections	√	√			√	√	√	√	√	√	√
Pesticide treatment	√	√		√	√	√		√			

¹ Florida, Georgia, Nevada, and New Mexico use a risk-based inspection schedule based on factors such as a new business, history of problems, or specific industry. In addition, Indiana uses a risk-based approach to determine inspection frequency within a 1- to 5-year time frame.

² Arizona requires 3 years for general pesticide records and 5 years for termite records.

³ Indiana, Nevada, and South Carolina require 2 years for restricted-use pesticide applications and 5 years for termite applications.

Source: Auditor General staff summary of interviews with agency officials and review of pesticide-related statutes, regulations, and information published on Web sites for Arizona, California, Delaware, Florida, Georgia, Indiana, Maryland, Nevada, New Mexico, South Carolina, and Texas.

Arizona’s recordkeeping requirement duration for nontermite records is longer than the requirements in eight of the other states reviewed. Arizona requires pest control companies to retain many specific documents, including records of pesticides purchased and used, pest management services provided, and personnel records. Arizona Administrative Code requires most of these records to be retained for 3 years. By comparison, with the exceptions of California and Florida, the other states reviewed require record retention for 2 years. Similarly to Arizona, Indiana, Nevada, and South Carolina require termite application records to be retained for 5 years.

Finally, similarly to most of the other states that auditors reviewed, Arizona has specific recordkeeping and reporting requirements related to termite inspections and/or treatment. A.R.S. §32-2304(A)(6) requires the Office to maintain a computer system for the public’s benefit and protection that includes information about termite treatments done before or during construction as well as later preventative or corrective treatments and inspections. Similarly to Arizona, nine of the ten states reviewed have reporting requirements for either termite inspections or treatments.

Enforcement options similar to other states—Similarly to the other ten states reviewed, the Office has various enforcement options it can use. For example, as shown in Table 4, the Office can impose civil penalties, refer cases to the EPA, and impose penalties on unlicensed applicators. Arizona can impose a maximum civil penalty of up to \$1,000 per violation, which is the same as the maximum civil penalties that three of the other ten states reviewed can impose. Seven of the other states can impose higher civil penalties for pesticide violations than Arizona, including Georgia, which has a maximum civil penalty of \$10,000 per violation, and four states that have a maximum civil penalty of \$5,000. In addition, in contrast to other states, Arizona law does not provide criminal penalties for violation of nonagricultural pest management regulations.¹ Officials in some states for which auditors obtained information about the use of criminal penalties indicated they rarely pursue this option. A Maryland official indicated his state had filed criminal charges in a situation involving fraud. In that case, an unlicensed person falsely told an elderly widow that she had wood-destroying beetles in her attic and charged her \$8,000 to treat the infestation, when in fact the larvae he showed her were meal worms and the product he used was lawn fertilizer. In Arizona, the Attorney General or a county attorney could prosecute such a fraud under the criminal statutes of the State.

Table 4: State Comparison of Nonagricultural Pesticide Regulations—Enforcement As of Calendar Year 2010

Descriptions	AZ	CA	DE	FL	GA	IN	MD	NV	NM	SC	TX
Enforcement Actions Against Licensees											
Maximum civil penalty amount per violation	\$1,000	\$5,000	\$2,500	\$5,000	\$10,000	\$1,000	\$5,000	\$5,000	\$1,000	\$1,000	\$2,000
Misdemeanor criminal penalty		√	√	√	√	√	√	√	√	√	√
Refer to U.S. EPA ¹	Rarely	Rarely	Rarely	Rarely	Rarely	Rarely	Rarely	Yes	Yes	Rarely	No
Enforcement Actions Against Unlicensed or Uncertified Applications											
Civil penalties	\$500 or \$2,000 ²	\$5,000	\$2,500	\$5,000	\$10,000	\$1,000	\$5,000	\$5,000	\$1,000	\$1,000	\$2,000
Misdemeanor criminal penalty		√	√	√	√	√	√	√	√	√	√

¹ All states can refer cases to the EPA for enforcement. Information in this table reflects officials' statements about whether and how frequently these states refer cases.

² A.R.S. §32-2311 establishes a maximum penalty of \$500 for a third or subsequent violation of recordkeeping requirements by persons exempted under the weed control provision of the statute. A.R.S. §32-2301 establishes a maximum penalty of \$2,000 for a second or subsequent occurrence of unlicensed activity.

Source: Auditor General staff summary of interviews with agency officials and review of pesticide-related statutes, regulations, and information published on Web sites for Arizona, California, Delaware, Florida, Georgia, Indiana, Maryland, Nevada, New Mexico, South Carolina, and Texas.

¹ A.R.S. §32-2326, which defined violations of the chapter as a class 3 misdemeanor, and §32-2328, which defined engaging in structural pest control without a license as a class 6 felony, were repealed by Laws 2002, Ch. 115, §22, which modified several provisions of the statutes regarding structural pest control. An earlier version of the 2002 law would have instead increased the penalty for unlicensed activity to a class 5 felony, but the Governor vetoed that version for unrelated reasons.

The EPA has stronger sanctions available for violations of FIFRA, and like all other states, the Office can refer cases to the EPA for enforcement. Specifically, federal law provides both civil penalties of up to \$5,000 and criminal penalties of up to \$50,000 and 1 year in prison for violating pesticide regulations. According to the EPA's annual cooperative agreement reviews, the Office referred one case to the EPA in 2007, but did not refer any cases in 2006 or 2008. Office officials explained that they rarely refer cases to the EPA and do so only if the Office lacks any regulatory authority, such as the case they referred in 2007 involving a labeling issue. This is not unusual among states. According to officials in eight of the ten states auditors reviewed, those states' pesticide regulatory agencies never or rarely refer cases to the EPA. Similarly to Arizona, other states usually refer cases to the EPA only when they cover specific federal regulations or involve multiple states. For example, one state referred a case to the EPA that involved misuse of multiple pesticides in several states over a 10-year period, and the EPA's regional office is conducting a criminal investigation into the matter.

Recommendations:

- 1.1. To more closely align Arizona's structural pest management statutes with the State's agricultural pest management statutes, the Legislature should consider amending Title 32, Ch. 22, to establish penalties for misuse of pesticides by unlicensed people.
- 1.2. If the Legislature agrees with office officials regarding exemptions to licensing requirements, it should consider:
 - a. Modifying A.R.S. §32-2311(A)(2) to limit the exemption to homeowners; and
 - b. Modifying A.R.S. §32-2311(A)(6) regarding the exemption from licensing requirements for people using herbicides for weed control to specify the total quantity of liquid herbicide that can be applied to a property under the exemption.

We have discussed the results of this review with the Office of Pest Management, and the Office's response is enclosed. My staff and I will be pleased to discuss or clarify items in this letter.

Sincerely,

Debbie Davenport
Auditor General

AGENCY RESPONSE



ARIZONA

Janice K. Brewer
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October 19, 2010

The Honorable Debbie Davenport
Auditor General, State of Arizona
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018

Re: Performance Audit: Regulation of the Nonagricultural pest
management industry

Dear Auditor General Davenport:

The Office of Pest management has reviewed the performance audit of October 10, 2010, and concurs with the findings. The audit confirms our position as being in the forefront in some operational areas and on-par compared to other states.

The office supports the report's recommendations and submits the attached documentation to encourage the changes.

Sincerely,

Ellis M. Jones, M.A.
Acting Director

OPM Proposed Statute Changes

The following are the final draft of the statute changes proposed by this office regarding the exemptions and the verification of practical experience requirement.

A.R.S. § 32-2311. Persons not required to be licensed; civil penalties

- A. This chapter does not apply to:
1. A person licensed or certified pursuant to title 3, chapter 2, article 6.
 2. A person applying pesticides on residential property in which they reside.
 3. Authorized representatives of any educational institution engaged in research in the study of pest management or a state agency engaged in research or the study of pest management.
 4. Employees of political subdivisions or their designated agents while performing emergency response or rescue services.
 5. A person using a nonrestricted, ready to use disinfectant, sanitizer or deodorizer.
 6. Persons who are conducting lawn, garden, shrub or tree maintenance and who apply herbicides for the purpose of weed management, except as provided in section 32-2307. This exemption does not apply to:
 - (a) the use of herbicides that are labeled with the words "restricted use" or "danger" and that are not commercially available to the general public.
 - (b) the use of sterilants.
 - (c) a person who offers weed management as their primary service.
 - (d) a persons who uses application equipment that holds more than eight gallons or applies more than eight gallons of total mixed liquid herbicide at a site on the same day.
 - (e) a person who uses more than twenty-five pounds of a nonliquid herbicide at a site on the same day.
 - (f) a person who does not follow label and labeling directions.
 7. A utility and the utility's employees if pest management services are needed for an employee's health and safety in order for the employee to continue performing work tasks.

- B.** A person who is exempt pursuant to subsection a, paragraph 6 of this section shall provide treatment records to each customer on application of herbicides for the purpose of weed management and shall retain records containing the same information provided to customers. For the purposes of this subsection, treatment records shall include all of the following:
1. The address of the location of the herbicide application.
 2. The date of the herbicide application.
 3. The trade name or common name of the herbicide applied.
- C.** If a person is not licensed under this chapter and the person is not exempt pursuant to subsection a, paragraph 6 of this section as a result of doing something prescribed in subsection a, paragraph 6, subdivisions (a) through (f) of this section, the person is subject to section 32-2304 subsection d paragraph 12.
- D.** An employee of a political subdivision who engages in pest management:
1. Is not required to be licensed under section 32-2313 or 32-2314.
 2. Must be licensed as an applicator under section 32-2312, except as provided by subsection a, paragraph 4 of this section.

(This language was drafted prior to the Volunteer Exemption was drafted and signed into law)