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AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

WILLIAM THOMSON
DEPUTY AUDITOR GENERAL

December 3, 2002

The Honorable Roberta L. Voss, Chair
Joint Legislative Audit Committee

The Honorable Ken Bennett, Vice Chair
Joint Legislative Audit Committee

Dear Representative Voss and Senator Bennett:

Our Office has recently completed a 24-month followup of the Department of Agriculture—Pesticide Compliance and Worker Safety Program regarding the implementation status of the 5 audit recommendations (including sub-parts of the recommendations) presented in the performance audit report released in September 2000 (Auditor General Report No. 00-16). As the attached grid indicates:

- 1 of the 4 agency recommendations is in the process of being implemented;
- 3 agency recommendations have not been implemented; and
- 1 legislative recommendation has not been implemented.

Unless otherwise directed by the Joint Legislative Audit Committee, this report concludes our follow-up work on the Department's efforts to implement the recommendations resulting from the September 2000 performance audit report.

Sincerely,

Debbie Davenport
Auditor General

Attachment

cc:	Mr. Sheldon R. Jones, Director Department of Agriculture	JLAC Members
	Senate Natural Resources, Agriculture & Environment Members	House Natural Resources & Agriculture Members
	Ms. Kerri Morey Senate Committee Analyst	Ms. Kathi Knox House Committee Analyst
	Ms. Nadine Sapien Senate Research Analyst	Ms. Tami Stowe House Research Analyst

AZ DEPARTMENT OF AGRICULTURE
Pesticide Compliance and Worker Safety Program
24-Month Follow-Up Report To
Auditor General Report No. 00-16

FINDING I: Department Lacks Sufficient Civil Penalty Authority

Recommendation	Status of Implementing Recommendation	Explanation for Recommendations That Have Not Been Implemented
1. The Legislature should consider revising A.R.S §3-370 to increase the maximum penalty for nonserious violations of pesticide laws from \$500 to \$1,000.	Not Implemented	During the 2001 legislative session, legislation was not introduced to address this recommendation.
2. The Department should revise Administrative Rule R3-3-501 to expand the definition of a serious violation and make it consistent with the statutory definition.	Not Implemented	A.R.S. §3-363(11) requires the Department to establish a nonexclusive list of acts and omissions that constitute serious, nonserious, and de minimis violations. Rules R3-3-502 and 503 list nonserious and de minimis violations, but Rule R3-3-501 does not create a list for serious violations and redefines “serious violation” in a manner that limits the types of violations that could be considered serious. The Department originally indicated that it would implement this recommendation in a different manner. However, the Department has proposed to basically restructure the rule without any substantive change.

AZ DEPARTMENT OF AGRICULTURE
Pesticide Compliance and Worker Safety Program
24-Month Follow-Up Report To
Auditor General Report No. 00-16

FINDING I: Department Lacks Sufficient Civil Penalty Authority (Concl'd)

<p>3. The Department should revise the point/penalty system set forth in Administrative Rule R3-3-506 by:</p> <ul style="list-style-type: none">a. Including additional factors and assigning appropriate points for (1) the potential for harm; and (2) the specific violation committed to consider when it determines penalties for pesticide law violators; andb. Revising the point ranges for each of the system's factors to enable it to assign higher point totals that better reflect the seriousness of violations committed.	<p style="text-align: center; color: red;">Not Implemented</p> <p style="text-align: center;">Implementation in Process</p>	<p style="color: red;">While the Department had proposed changes to this rule, we disagreed with the Department that its recommended changes addressed the potential for harm to humans, the environment, or property. In addition, the proposed rule changes did not increase penalty points for wrongful conduct, which would address our concern regarding points for violating a pesticide rule or law. The Department reports that it has since withdrawn and resubmitted its rules package; however, the proposed changes still do not address the recommendation.</p>
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AZ DEPARTMENT OF AGRICULTURE
Pesticide Compliance and Worker Safety Program
18-Month Follow-Up Report To
Auditor General Report No. 00-16

FINDING II: Department Should Focus Pesticide Application Monitoring Efforts on Pesticide Law Violators

Recommendation	Status of Implementing Recommendation	Explanation for Recommendations That Have Not Been Implemented
1. The Department should require, as part of its enforcement penalties, custom and private applicators who commit violations to provide advance notice of pesticide applications for a specified period of time, based on the magnitude of the violation committed and the applicator's violation history.	Not Implemented	While the Department reports that it will consider taking this action against repeat violators or where an egregious violation occurs, it has yet to impose such an action or adopt this recommendation into policy or rule.