

PERFORMANCE AUDIT

PESTICIDE REGULATION

INDUSTRIAL COMMISSION

Report to the Arizona Legislature
By the Auditor General
November 1990
90-9

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

LINDA J. BLESSING, CPA
DEPUTY AUDITOR GENERAL

November 30, 1990

Members of the Legislature
State of Arizona

The Honorable Rose Mofford
Governor of the State of Arizona

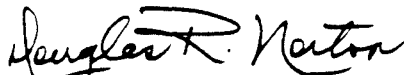
Mr. Larry Etchechury, Director
Industrial Commission of Arizona

Transmitted herewith is a report of the Auditor General, A Performance Audit of Pesticide Regulation: Industrial Commission of Arizona. This report is the fourth in a series of five reports on Pesticide regulation and is in response to Chapter 162, Section 7, of the 1989 Session Laws.

The report addresses the Industrial Commission's limited enforcement of the pesticide worker safety rules. The report also addresses some revisions which may be needed in the pesticide worker safety rules to improve worker safety.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,


Douglas R. Norton
Auditor General

DRN:lmn

STAFF: William Thomson
Peter N. Francis
Arthur E. Heikkila
Jerome E. Miller
Dennis B. Murphy
Shan D. Hays

SUMMARY

The Office of the Auditor General has conducted a performance audit of the Industrial Commission of Arizona's activities related to the Pesticide Worker Safety Inspection Program. This audit was conducted in response to Chapter 162, Section 7, of the 1989 Session Laws which directed us to review the State's pesticide regulatory program administered by four State agencies including the Industrial Commission of Arizona (ICA).

The Environmental Quality Act requires ICA to adopt rules prescribing safe work practices for employees exposed to or handling pesticides. In addition, Arizona Revised Statutes (A.R.S.) §23-434 directs ICA to develop and implement a pesticide worker safety inspection program. Our audit suggests changes are needed in inspection practices and the recently adopted pesticide worker safety rules. However, recent legislative changes that transfer pesticide inspection to the new Department of Agriculture effective January 1, 1991, will require that Department to implement our recommendations instead of ICA.

ICA Has Done Little To Enforce Pesticide Worker Safety Rules (see pages 3 through 7)

Although allocated 5 Full-Time Equivalent (FTE) inspector positions by the Legislature to enforce the pesticide worker safety rules, the majority of the activities of these five positions were not related to pesticides. Instead, ICA has devoted only 1.1 FTEs to this program. Even after allowing for position vacancies, the Commission should have been able to conduct more than two and one-half times the number of pesticide inspections that were actually completed.

ICA inspector field presence has also been minimal. Although inspectors go to agricultural sites to investigate complaints, as a rule, inspectors are not in the field on a daily basis. In contrast, inspectors in California perform daily inspection and monitoring activities. Because

farmworkers move from field to field and inspectors spend little time in the field, pesticide violations may not be identified.

**Some Revisions To Worker
Safety Rules May Be Needed (see pages 9 through 14)**

Arizona should consider revising its pesticide worker safety rules. The rules were adopted to prescribe safe work practices for persons exposed to or handling pesticides. Although the rules have been implemented only recently and experience in enforcing the rules has been limited, a panel of experts found that the notification and posting rule needs revision. A majority of the experts felt that this rule, which requires that workers receive warnings regarding reentering areas treated with pesticide, does not ensure workers have sufficient information. Other comments by the panel suggest possible rule revisions in the areas of training, reentry intervals, washing and decontamination facilities, and personal protective equipment.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Industrial Commission of Arizona's activities related to the Pesticide Work Safety Inspection Program. This audit was conducted in response to Chapter 162, Section 7, of the 1989 Session Laws, which directed us to review the State's pesticide regulatory program administered by four State agencies, including the Industrial Commission of Arizona (ICA).

The Environmental Quality Act passed by the Legislature during the Second Regular Session in 1986, requires ICA to adopt rules prescribing safe work practices for employees exposed to or handling pesticides. In July 1989, after considerable input from affected parties, ICA officially promulgated rules governing worker safety. Prior to the passage of these rules mandated by the Environmental Quality Act, the administrative rules adopted by the Pesticide Control Board relating to worker safety remained in effect.

Arizona Revised Statutes (A.R.S.) §23-434 directs ICA to develop and implement a pesticide worker safety inspection program. In order to hire staff and maintain the inspection program, ICA was appropriated \$210,000 by the Legislature for five inspectors and clerical staff. The Commission has assigned the inspectors and Agency staff the responsibility for enforcing A.R.S. §23-434, regarding pesticides and worker safety. Responsibility for the program is placed in the Commission's Division of Occupational Safety and Health.

Staffing And Budget

Although ICA has been allocated funding for five full-time inspectors to conduct pesticide inspections and investigate worker safety accidents, it was not until recently that the Commission was able to fill all five positions. In the past, ICA has been able to maintain, on average, a staff of only three inspectors. According to the Director, low salaries and the lack of qualified candidates has limited ICA's ability to hire more staff.

TABLE 1
INDUSTRIAL COMMISSION OF ARIZONA
PESTICIDE WORKER SAFETY PROGRAM
WORKLOAD AND ESTIMATED PESTICIDE-RELATED EXPENDITURES
FOR FISCAL YEARS 1987-88 THROUGH 1989-90
(unaudited)

	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
Inspections	88	132	82
Estimated Expenditures	\$24,994	\$37,491	\$23,290

Source: The Industrial Commission of Arizona, Division of Administration

Initially, ICA received a specific State appropriation for its Pesticide Worker Safety Inspection Program. However, now two inspector positions are funded through a Federal grant from the Occupational Safety and Health Administration (OSHA), while the other three positions and an administrative secretary are funded through monies from the State's Workers' Compensation premiums.

Scope Of Audit

Our audit focused on the performance of ICA's pesticide inspectors, their overall activities, and workload. In addition, we examined the adequacy of the pesticide worker safety rules. Our report presents detailed findings in two areas:

- the adequacy of ICA's enforcement of the worker safety rules, and
- revisions of the worker safety rules relating to pesticide exposure.

Our audit was conducted in accordance with generally accepted government auditing standards.

The Auditor General and staff express appreciation to the Director and staff of the Industrial Commission of Arizona for their cooperation and assistance during the audit.

FINDING I

ICA HAS DONE LITTLE TO ENFORCE PESTICIDE WORKER SAFETY RULES

Enforcement of the pesticide worker safety rules by the Industrial Commission of Arizona has been limited. We found very few pesticide inspections have been performed, and there has been an underutilization of the legislatively mandated, Full-Time Equivalent (FTE) inspector allocations. ICA has not implemented a routine schedule for inspections, and inspectors spend very little time in the field.

A.R.S. §23-434, directs ICA to administer and enforce statutory provisions relating to the Pesticide Worker Safety Inspection Program. The Environmental Quality Act provided initial funding in 1986. Thereafter, ICA was responsible for continued financial support of the Pesticide Worker Safety Inspection Program. This includes maintaining five pesticide inspector positions and clerical staff.

ICA Enforcement Has Been Limited

Although ICA is required by law to enforce the Pesticide Worker Safety Inspection Program, enforcement has been limited, and very few pesticide inspections have been done. In our analysis of ICA data, we found that only 19 percent of all inspection activities were pesticide-related, and very few inspections resulted in a citation or fine. Although authorized by the Legislature to hire 5 FTEs to conduct pesticide inspections, we found that the total number of such activities conducted by ICA was only 1.1 FTEs.

Few pesticide inspections conducted - Our examination of pesticide inspection records revealed that very few inspections are being conducted. Between February 1987 and November 1989, only 321 agricultural pesticide inspections were conducted. Thus, on average, only 116 pesticide inspections are being conducted annually. Many employers licensed and regulated by the pesticide worker safety rules have not been inspected. For example, of the 1,430 permitted growers in the State, only 108 (less than 10 percent) have been inspected in over two years.

Even when inspections were conducted, citations were rarely issued. Of the 321 cases we reviewed (some with multiple violations), only 29 citations were issued. Four of these citations included a monetary penalty. Some of the violations cited but not fined, include exposing workers to pesticide drift, employee failure to wear protective clothing, lack of proper posting, failure to provide pesticide training for workers, and failure to provide prior arrangements for proper emergency medical care. Penalty fees for the four violations assessed fines were from \$50 to \$120 per offense. The maximum penalty per individual worker safety violation is \$1,000. However, willful or repeated violations can result in penalties up to \$10,000.

Allocated positions have not been used solely for pesticide inspections -

The reason the number of pesticide inspections is so low is because the Commission has not used its allocated positions exclusively for pesticide inspections. Although allocated 5 FTEs to perform inspections, the Commission conducted relatively few inspections during a 33-month period since February 1987. Based on the number of inspections performed and the average time needed per inspection, we calculated that the Commission allocated only 1.1 FTE to the inspection function. During this same time period, ICA has filled from three to five inspector positions, and maintained an average inspection staff of three. Even with three inspection staff available, ICA should have been able to conduct more than two and one-half times the number of inspections actually completed.

Pesticide inspections have not been an Agency priority, and inspectors hired exclusively to perform pesticide inspections have been used elsewhere in the Department. Our analysis indicates that many inspectors hired to perform pesticide-related activities, spent a majority of their time performing other functions.

We reviewed ICA data on the inspectors the Commission hired specifically to fill the legislatively mandated pesticide inspection positions and found that 77 percent of their activities were not related to pesticides. These inspectors were used to conduct other activities within ICA. For example, of the 210 inspections conducted by one pesticide inspector, only one was a pesticide inspection. Another

pesticide inspector conducted 109 inspections, only 17 of which were pesticide-related. Finally, a third inspector performed 298 inspections, but only 67 involved pesticides. ICA officials acknowledge pesticide inspectors spend some of their time performing other activities. According to Agency officials, pesticide inspector positions were often used interchangeably so staff inspectors could perform other types of worker safety inspections.

Several reasons cited - ICA officials provided several reasons why inspection activity has been limited. Prior to July 1989, inspections were conducted under ACAH rules which were in effect at the time ICA picked up responsibility for the program. According to ICA, the rules were limited in scope and difficult to enforce. In addition, the Commission had problems finding staff to conduct inspections. When the pesticide worker safety program was established, the Commission placed advertising in trade journals in an attempt to find qualified candidates. However, not until the summer of 1990 was ICA able to fill all five positions because, in their opinion, the salaries they offered were too low. ICA also noted they have not been able to hire a sufficient number of Spanish-speaking inspectors. Finally, when it learned in mid 1989 about a legislative proposal to move the worker safety function to the new Department of Agriculture, it decided not to increase its inspection efforts.

However, we question ICA's commitment to enforcement of worker safety regulations based on its performance record. While the old ACAH rules were more limited in scope than the new rules, they did address the responsibilities of farm owners, growers, employers and applicators relative to the application of pesticides and protection from exposure. In addition, management and staff involved in the program told us that the agricultural inspection program was a low priority. As a result, few inspection resources have been allocated to the program since ICA assumed program responsibility in August 1986.

ICA Has Not Established
Effective Inspection Procedures

ICA has not established effective procedures for implementing the Pesticide Worker Safety Inspection Program. For example, inspection

schedules have not been adopted. In addition, inspector visibility in the different agricultural areas throughout the State has been low.

Inspection schedules never established - ICA has not established systematic scheduling procedures. According to ICA officials, there are no formal, routine pesticide inspection schedules. As a result, inspections are not scheduled to conform with the agricultural growing seasons Statewide. For example, during the lettuce growing season (August through November), inspections are not specifically planned in Yuma and Central Arizona. Developing inspection schedules would help ensure that staff are utilized efficiently and effectively.

Schedules are also needed to appropriately allocate inspection resources to each of the various types of employers governed by the worker safety rules. As noted earlier, few of the "permitted" growers Statewide have been inspected. However, 98 inspections of the State's 59 commercial applicators have been conducted. A systematic inspection schedule would provide better balance in the types of inspections performed.

Increased field presence needed - ICA inspectors also need to spend time in the field where employers are located. Although the major agricultural areas of the State are in Yuma and Central Arizona, pesticide inspectors are located only in Phoenix and Tucson. Also, inspectors only conduct field visits approximately one day a month; consequently, ICA's field presence is somewhat limited.

Several community and State social service groups representing farmworkers feel this limited coverage reduces an inspector's ability to respond to a pesticide complaint in a timely manner. For example, a Department of Economic Security Outreach worker who interacts daily with farmworkers in Yuma, feels the lack of an on-site inspector there hampers ICA's abilities to respond immediately to complaints. Once a complaint is filed with ICA's Tucson office, before it can be investigated, the inspector must travel three hours to Yuma. As a result, potential violators may leave the State before the inspector arrives.

ICA's pesticide inspectors currently conduct random investigations in the field only one day a month. In contrast, inspectors in California are in

the field more frequently because the state has been divided into separate districts, and uses county personnel to enforce pesticide regulations. According to the state's pesticide enforcement manager, this was done to increase inspector visibility. With agricultural inspectors in the field to spot violators and follow up on complaints on a daily basis, the chances for identifying and fining violators are much greater. This is especially important because of the migratory nature of farmworkers. For example, a farmworker may be in California one day and in another state the next. Because California inspectors are in the fields daily, the department has no formal schedule for inspections. However, the enforcement manager feels that because of daily inspection and monitoring activities, all agricultural areas within the state are being adequately covered. Arizona's use of inspectors in specific areas during particular growing seasons could increase visibility and identify potential pesticide violators.

Department Of Agriculture Should Develop Changes In Inspection Practices

Because Chapter 374, Section 445, of the 1990 Session Laws transfers the responsibility for pesticide inspection from ICA to the new Department of Agriculture effective January 1, 1991, it seems appropriate that changes in the program should be made after the transfer. Recent interviews with ICA officials indicate that the positions will not transfer to the Department, only the responsibilities for enforcement. As a result, the basis for determining the resources needed for the inspection program should be considered by the agency enforcing the worker safety rules.

RECOMMENDATIONS

1. The new Department of Agriculture should develop criteria for determining the number of FTEs needed to conduct pesticide worker safety inspections. In developing these criteria, the Department should consider the following:
 - providing routine schedules for the inspection of all categories of employers required to comply with the worker safety regulations;
 - increasing the field presence of inspectors, especially in the large agricultural regions of the State; and
 - scheduling inspections to coincide with the specific growing seasons throughout Arizona.

FINDING II

SOME REVISIONS TO WORKER SAFETY RULES MAY BE NEEDED

Arizona should consider revising its worker safety rules relating to pesticide exposure. Arizona is one of only six states to adopt measures designed to protect workers exposed to pesticides. Although the rules are relatively new and largely untested, comments submitted by a panel of experts commissioned by our Office suggest that revisions may be needed in notification and posting requirements, and perhaps other provisions that address worker training, field reentry, decontamination, and protective equipment.

Few States Have Worker Safety Rules

The Environmental Quality Act directed the Industrial Commission to adopt rules prescribing safe work practices for employees exposed to or handling pesticides. After a lengthy negotiation process begun in October 1986, the Industrial Commission adopted worker safety rules. To develop these rules, an agricultural subcommittee of the Occupational Safety and Health Advisory Committee was established. This three-member subcommittee was comprised of a representative of the agricultural community, a representative of the labor community, and a public representative who served as its chairman. After ten public meetings, the subcommittee was able to reach agreement on most of the rules. Recommendations were submitted in May 1988, and the rules were officially promulgated effective July 1989.

These rules address several areas important to worker safety:

- training for workers who mix, load, apply, or otherwise handle pesticides;
- medical monitoring and medical care for workers exposed to pesticides;
- notification of workers, and posting of fields treated with pesticides;

- prohibiting work in fields immediately after pesticide applications;
- washing and decontamination facilities in the event of direct exposure;
- personal protective measures that may be needed such as protective clothing or equipment; and
- restrictions on working alone with especially dangerous pesticides.

In adopting worker safety rules, Arizona joined a group of only five other states that have established programs designed to protect farmworkers or other agricultural industry employees subject to the occupational hazards of pesticides.⁽¹⁾ Under authority granted by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Environmental Protection Agency (EPA) proposed worker safety rules in July 1988, but has not yet finalized regulations that would be applicable nationwide. Many of the provisions contained in Arizona's rules are based either on rules in effect in California or on those proposed by the EPA.

Some Rule Revisions May Be Needed

Although Arizona's rules are new and have yet to be fully tested, comments submitted by a panel commissioned by our Office indicate the requirements addressing worker notification and field posting need revision. (A listing of the panel members and their qualifications is presented in the Appendix.) Based on the comments of individual panelists, other rule provisions should be studied to determine if additional changes may be needed.

Panel commissioned to comment on rules - We asked a panel of experts representing various perspectives to provide written comments on the worker safety rules in the following areas: the adequacy and completeness of the rules, their impact on agricultural employers and the agricultural industry, the clarity and enforceability of the provisions, and any other pertinent aspects or issues they cared to address.

(1) The other states are California, Texas, Washington, Oregon, and Pennsylvania.

Generally, comments reflected the perspective of each panel member. While representatives from the agricultural industry questioned the need for several of the rules or felt rules went too far, other panelists argued that the same rules needed to be expanded or strengthened to more effectively protect workers. The full text of all comments submitted to us may be obtained from our Office upon request.

Even discounting panelists' varied perspectives, reaching agreement on the adequacy and appropriateness of the worker safety rules as a whole may not be possible at this time, for three reasons. First, the rules have been in effect only one year; therefore, employers have had limited time to learn about the new requirements and comply. Second, as previously noted, enforcement has been limited. Therefore, any problems that emerge as a result of expanded enforcement activities may not yet be evident. Finally, much is still unknown about the health effects of pesticides, especially the effects of long-term, chronic exposure. This knowledge gap makes it difficult to determine what measures need to be taken (e.g., what reentry intervals are needed) to adequately protect workers. However, despite these limitations, there was general agreement that the notification and posting rule needs revision.

Notification and posting rule needs revision - Requirements governing the worker notification and field posting elicited substantive comments and criticisms from our panelists, and several said the information on the postings is insufficient to make them meaningful.

Administrative Rule R4-13-704 requires that employers verbally warn fieldworkers about areas being treated with pesticides for which the reentry interval (the length of time after application when exposure to pesticide residue no longer poses a health hazard) has not expired. For certain crops (broccoli, cauliflower, celery, lettuce, grapes, nectarines, peaches, plums, strawberries, flowers, and ornamentals), if the reentry interval is 48 hours or more, warning signs must be posted at the usual points of worker entry.

Four commentators stated that the current posting requirement does not ensure workers have sufficient information. While the signs state

"DANGER" and "PESTICIDES", they do not indicate the pesticide applied, the date of application, or the date and time the reentry interval expires. This information is especially useful if a worker experiences symptoms of pesticide poisoning. As noted in our report on the Department of Health Services (Report No. 90-10, page 6), clinics have difficulty diagnosing pesticide-related illnesses. Worker knowledge of pesticide exposure could aid in proper diagnosis and treatment.

One Arizona panelist stated that the posting regulation is virtually impossible to enforce, and that the lack of information on the signs rendered them "of minimal practical value, except to put someone on notice that a pesticide application of some type may have taken place (or is planned) on this field at some time in the past or future by some unknown entity!" He suggested putting a phone number on the posting where necessary information could be obtained.

Other problems with worker notification were identified by individual panel members. For example, Arizona's rule on posting does not prohibit reentry into fields while warning signs are still posted. One panel member stated that Arizona workers have been told to reenter and work in fields while signs are still in place. By contrast, California's posting rule includes specific language prohibiting reentry into posted fields; signs must be taken down before workers are allowed to enter the field.

Other comments suggest that farmworkers need to be better informed about the meaning of notices. One panelist said farm labor contractors should assume responsibility for informing workers about posted signs and reentry intervals. Our interviews with Community Legal Services and DES Outreach workers indicate farmworkers are not well informed about the pesticides to which they are exposed.

Arizona may wish to consider an approach taken by Texas to inform farmworkers of the hazards of pesticides. Under the state's "Right to Know Program," employers must provide workers with "crop sheets" listing the pesticides most frequently applied to the crops they will be handling. The "crop sheets," written in English and Spanish, provide both written and graphic information on the most common symptoms of

illness the worker may experience as a result of exposure to each pesticide, and the safety precautions that may be necessary.

Other rule provisions should be studied - While there was no unanimous agreement on most of the other rule provisions, individual comments suggested several areas where possible rule revisions may be needed. These include the following:

- **Training** - Three panelists said training requirements should be expanded to include employees not already covered. Employees handling pesticides must be given training annually in the hazards of pesticides, safety procedures, clothing and protective equipment, medical care and related areas. Fieldworkers who plant, cultivate, and harvest crops are not covered.
- **Reentry intervals** - Both out-of-state commentators said reentry requirements were not long enough to protect workers. One stated that reentry intervals will be sufficient to avoid the acute effects of exposure, but inadequate to assure protection against reproductive toxicity and oncogenicity (production of tumors). Based on scientific research, California has set many pesticide-specific reentry intervals longer than those required in Arizona. Arizona's reentry rule is based primarily on proposed Federal regulations, as Arizona does not presently have the resources to conduct similar research.
- **Washing and decontamination facilities** - Both out-of-state panelists also said provisions for water and accessibility to water were insufficient. Arizona's rule requires that at least 5 gallons of water for one employee and at least 10 gallons for two or more be available at the site where employees mix and load pesticides. A supply of water within one-quarter mile of the site is sufficient to meet the requirements of the regulation. By contrast, California requires a minimum of 10-20 gallons, or an alternative supply within 100 feet.
- **Personal protective measures** - Three commentators recommended revising Arizona's rule to permit use of safety glasses with temple and brow protection. Currently, the rule requires the use of goggles when eye protection is needed.

Finally, one Arizona panelist recommended ways to promote greater compliance with the rules by providing information to employers. There is no way to easily determine from a pesticide label what reentry interval may apply, or whether posting would be required. It was suggested that the State could publish and make available to its

licensees a list of products that require posting. The State could also publish a listing of specific products with a reentry interval based on Arizona rules, rather than the reentry interval specified on the product label.

Department of Agriculture should address revisions - Because, pursuant to Chapter 374, Section 445, of the 1990 Session Laws, worker safety functions relating to pesticide exposure will be transferred shortly from ICA to the new Department of Agriculture, it seems appropriate that any revisions should be made after the transfer. Therefore, our recommendations are directed to the Department of Agriculture.

RECOMMENDATIONS

1. The Department of Agriculture should consider revising Administrative Rule R4-13-704 on notification and posting, to provide for the communication of additional information on pesticide applications to workers.
2. The Department should study the need to amend or modify rules governing training, reentry intervals, washing and decontamination facilities, and personal protective measures.
3. The Department should consider publishing lists of products with applicable reentry intervals and posting requirements, and making them available to growers, applicators, and pest control advisors.

APPENDIX

The following persons served as our panel of experts and submitted written comments on the Arizona Worker Safety Rules.

- **William B. Embree** - president of Compliance Consultants, a consulting firm based in Yuma that assists agricultural and industrial firms in complying with laws regulating chemicals and hazardous waste; former chairman of the Arizona Commission of Agriculture and Horticulture, and the Pesticide Control Board;
- **William T. Keane** - an attorney and toxicologist who represents numerous state and national agricultural industry and trade associations including the Arizona Aerial Applicators Association, and the Agricultural Chemical Association;
- **Robert I. Krieger** - chief of the Worker Health and Safety Branch of the California Department of Food and Agriculture; former professor of toxicology at the University of California, Davis, and Washington State University;
- **Sandra Martinez** - director of the "Right to Know" Program administered by the Texas Department of Agriculture; former assistant director of the Texas Department of Agriculture's Pesticide Evaluation Program; present mayor of Kyle, Texas;
- **Joel Meister** - director of the Rural Health Office, professor in the Department of Family and Community Medicine, and research associate at the Southwest Border Rural Health Research Center at the University of Arizona;
- **Colin L. (Bill) Scott** - partner and operator of the Marathon Farming Company which owns 8,000 acres and several farms in Stanfield and Maricopa, Arizona; director and former president of the Arizona Cotton Growers Association; director or member of numerous other agricultural trade associations and research committees.

THE INDUSTRIAL COMMISSION OF ARIZONA

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P. O. BOX 19070
PHOENIX, ARIZONA 85005-9070



LARRY ETCHECURY, DIRECTOR
(602) 542-4411

MARY T. LAMB, SECRETARY

November 21, 1990

Mr. Douglas Norton,
Auditor General
Office of the Auditor General
2700 N. Central Avenue
Phoenix, Arizona 85004

Dear Mr. Norton:

This document represents the Industrial Commission's (ICA) formal response to the November 16, 1990 Auditor General's audit of the Pesticide Worker Safety Program.

The audit is critical of the ICA in two specific areas:

1. Lack of commitment to its enforcement responsibilities; and,
2. Regulations adopted were not effective

We, of course, disagree with the Auditor General's assertions and will establish that not only was the agency committed to an effective pesticide program, but that the regulation adopted by the agency provides an excellent foundation for an effective program, irrespective of which agency enforces them.

As the auditor's report indicated, because of the qualifications for our industrial hygienists, we did recruit nationally.¹ For a variety of reasons, which are adequately detailed in the report, we were delayed in the hiring of our full complement of FTEs. This certainly contributed to the problem but it was not the major reason that there was a less than an effective inspection program. The major reason, simply put, was that there were no interim regulations applicable to growers, which comprised the overwhelming majority of firms we were required to inspect.

With the creation of a Pesticide Worker Safety Program, the Industrial Commission was given the statutory authority to utilize and enforce applicable portions of the Agriculture & Horticulture Commission's (AHC) existing regulations, until the ICA was able to develop and adopt their own. What we found, early into our inspection program, however, was that AHC's regulations did not match the scope of the ICA's Pesticide Worker Safety Statute.

1. Our industrial hygienists are college trained individuals with Master degrees in Industrial Hygiene or an equivalent science. Because of this program, we added a preference that the applicants speak Spanish.

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This statute provides coverage to workers applying pesticides commercially and workers applying pesticides on behalf of growers. AHC's performance regulations (not regulations involving licensing), apply only to commercial applications and not growers.² As a result, we inspected all of the commercial applicators, but we were unable to inspect the growers. Consequently, even if we had a full complement of industrial hygienists early in the program, we still could not have had an effective inspection program until we developed and adopted our own regulations. Accordingly, the agency's priorities shifted from inspection to the rule promulgation process.

With the Pesticide Worker Safety statute providing for three additional positions on our Occupational Safety and Health Advisory Committee (one member representing agri-business, one member representing agri-labor and one member representing the public), the Commission decided to adopt regulations utilizing a negotiated rule-making process³. This subcommittee of the Advisory Committee, which was comprised of the agri-industry members, held at least 10 public meetings and conducted three hearings in Yuma, Casa Grande and Phoenix. They came to an agreement on all the issues except one - notification and posting. At that time, the full Advisory Committee met on three different occasions to attempt to resolve the impasse before producing a set of regulations. Because there was still disagreements with respect to the notification and posting requirement, the full Industrial Commission met on two separate occasions to resolve this issue. All of this took place before the state's Administrative Procedures Act was implemented to formally adopt the regulations.

2. AHC's existing Rule R3-10-03(A) states that all specific terms used in these rules and regulations shall have the same meaning as defined in A.R.S. §3-371, Chapter 210, Article 6

A.R.S. § 3-371, Article 6(4) defines "applicator" to mean any person who owns, leases or rents ...equipment or aircraft in order to make a custom application (emphasis added).

A.R.S. §3-371, Article 6(6) defines "custom application" to mean any application of pesticides for hire or any application by aircraft...

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The Commission, over the two-plus years it took to develop and adopt these regulations, has spent more time and effort and resources on these regulations than any that we have adopted. It should be readily apparent why this agency takes exception to the Auditor's statement that the agency lacked commitment.

As to the second issue, Regulations, the auditors interviewed six people who expressed various comments regarding the regulations and this formed their conclusion that changes, particularly as it related to notification and posting, were needed. In discussions with the auditors, the auditors stated that changes should be made. However, they could offer no factual basis to support a change in the regulation for notification and posting. As I indicated earlier, these regulations were the result of a compromise between the various members of the industry. The people the auditors interviewed or the organizations they represented, all participated in the process. It is not surprising that the various members would favor their original position over the one that resulted from a compromise. What is important to remember is that the final notification and posting requirements became the cornerstone of the regulations simply because of the significant differences in position that originally existed between the parties. Making a change to these regulations without a factual basis for that change could very well establish an unraveling of the tenuous coalition that existed in creating these rules. I guess, in the final analysis, the fact that all industry members (business and labor) supported the transfer of the ICA's pesticide regulations to the new Department of Agriculture, speaks to the quality of the final product.

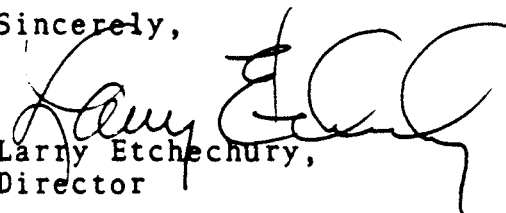
There have been many industry members who have publicly acknowledged the time, effort and resources expended by this agency, in order to produce a set of regulations that all parties can live with. While I, and others, feel that these regulations represent an excellent foundation for an effective pesticide program, everyone recognizes that as facts are developed, these rules will change.

3. Negotiated rule-making process allows the industry representatives to essentially develop the regulations without government intervention. Government's only role is to provide data upon request from the industry members. Additionally, once the essence of regulations is completed, legal advice is provided to ensure regulations are written within acceptable parameters.

Letter to Mr. Douglas R. Norton
November 21, 1990
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In conclusion, using the Auditor General's narrow criteria as a measure of the Industrial Commission's commitment, is not only unfair but incorrect. If we were not committed, we certainly would not have spent the time or resources, nor would we have provided a set of very difficult and controversial regulations that the industry can be proud of.

Sincerely,



Larry Etchechury,
Director