

OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

Official Audit Report – Issued June 12, 2024

Massachusetts Department of Agricultural Resources

For the period July 1, 2020 through June 30, 2022



OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

June 12, 2024

Ashley Randle, Commissioner
Massachusetts Department of Agricultural Resources
225 Turnpike Road
Southborough, MA 01772

Dear Commissioner Randle:

I am pleased to provide to you the results of the enclosed performance audit of the Massachusetts Department of Agricultural Resources. As is typically the case, this report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2020 through June 30, 2022. As you know, my audit team discussed the contents of this report with agency managers. This report reflects those comments.

I appreciate you and all your efforts at the Massachusetts Department of Agricultural Resources. The cooperation and assistance provided to my staff during the audit went a long way toward a smooth process. Thank you for encouraging and making available your team. I am available to discuss this audit if you or your team have any questions.

Best regards,



Diana DiZoglio
Auditor of the Commonwealth

cc: Rebecca Tepper, Secretary of the Executive Office of Energy and Environmental Affairs

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LIST OF ABBREVIATIONS

CMR	Code of Massachusetts Regulations
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
MDAR	Massachusetts Department of Agricultural Resources
MPCA	Massachusetts Pesticide Control Act
ROW	right(s)-of-way, Rights of Way
VMP	Vegetation Management Plan
YOP	Yearly Operational Plan

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Massachusetts Department of Agricultural Resources (MDAR) for the period July 1, 2020 through June 30, 2022.

The purpose of our audit was to determine the following:

- whether MDAR ensured that pesticide applicators who used pesticide(s) for the purpose of either clearing and/or maintaining a right-of-way (ROW) had licenses in accordance with Section 11.03(1) of Title 333 of the Code of Massachusetts Regulations (CMR);
- whether MDAR conducted investigations to ensure the proper use of pesticides on ROWs in accordance with Section VI of MDAR's "Standard Operating Procedures for the Pesticides Enforcement Program";
- whether MDAR educated the general public and pesticide applicators on the proper use and handling of pesticides on ROWs in accordance with Section I(4) of MDAR's "Standard Operating Procedures for the Pesticides Enforcement Program";
- whether MDAR ensured that applicants to the ROW Program submitted Vegetation Management Plans in accordance with 333 CMR 11.05(2); and
- whether MDAR ensured that applicants to the ROW Program submitted Yearly Operational Plans in accordance with 333 CMR 11.06(2).

In addition to the conclusions we reached regarding our audit objectives, we also identified issues not specifically addressed by our objectives. See [Other Matters](#) for more information.

Below is a summary of our finding and recommendations, with links to each page listed.

Finding 1 Page 13	MDAR did not conduct sufficient outreach to educate entities that own or maintain ROWs on safe pesticide use.
Recommendations Page 14	<ol style="list-style-type: none">1. MDAR should conduct outreach to educate entities that own or maintain ROWs on safe pesticide use.2. MDAR should maintain a complete and up-to-date list of entities that own or maintain ROWs.

OVERVIEW OF AUDITED ENTITY

The Massachusetts Department of Agricultural Resources (MDAR), an agency under the Executive Office of Energy and Environmental Affairs, was established by Section 1 of Chapter 20 of the Massachusetts General Laws. This section of the General Laws also established the Massachusetts Board of Agriculture, which oversees MDAR's operations. The Massachusetts Board of Agriculture consists of 13 members who are appointed by the Governor and who are composed of farmers and other members of the public. The Massachusetts Board of Agriculture presents MDAR with current agricultural topics and provides input on policies and budgets.

According to MDAR's website, "[MDAR's] mission is to help keep the Massachusetts food supply safe and secure, and to work to keep Massachusetts agriculture economically and environmentally sound." The secretary of the Executive Office of Energy and Environmental Affairs appoints MDAR's commissioner, who oversees MDAR's day-to-day operations. MDAR has the following five operating divisions: Produce Safety, Agricultural Markets, Animal Health, Crop and Pest Services, and Agricultural Conservation and Technical Assistance.

MDAR received state appropriations to fund its programs and operations, totaling \$40,073,221 in fiscal year 2021 and \$41,804,192 in fiscal year 2022. As of September 22, 2023, MDAR had approximately 105 employees.

Pesticide Regulation

According to MDAR's website,

Pesticides are substances or mixture of substances that prevent, destroy, repel or mitigate pests, or defoliate, desiccate or regulate plants. Pests for example can be insects, fungi, weeds, snails and slugs, mold and mildew. So insecticides, fungicides and herbicides and even common disinfectants are pesticides.

According to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as well as Chapter 132B of the General Laws—the Massachusetts Pesticide Control Act (MPCA)—MDAR is responsible for enforcing pesticide regulations. The MPCA established MDAR as the sole authority in regulating pesticides within the Commonwealth. The MPCA also created the Massachusetts Pesticide Board and the Massachusetts Pesticide Board Subcommittee. The board advises MDAR's commissioner on the administration and

implementation of pesticide laws and acts as an appellate body for MDAR's decisions and actions regarding pesticides.

MDAR's commissioner appoints a director who is responsible for the day-to-day administration of the implementation of the Pesticide Enforcement Program in accordance with Chapter 132B of Title 333 of the Code of Massachusetts Regulations (CMR). Since 1980, MDAR has been in a cooperative agreement with the Environmental Protection Agency to enforce the MPCA and the FIFRA. Under this agreement, the Commonwealth has primary enforcement responsibility for pesticide use violations.

Rights of Way Program

A right-of-way (ROW), according to 333 CMR 11.02, is "any roadway, or thoroughfare on which public passage is made and any corridor of land over which facilities such as railroads, powerlines, pipelines, conduits, channels or communication lines or bicycle paths are located."

MDAR established the ROW Program to ensure that entities that own or maintain ROWs use pesticides in accordance with 333 CMR 11.00. MDAR requires applicants to the ROW Program to develop and submit Vegetation Management Plans (VMPs) and Yearly Operational Plans (YOPs) for review and approval. (See the "VMPs" and "YOPs" sections for more information regarding these plans.) MDAR's ROW Program coordinator oversees the organization and management of VMPs and YOPs throughout the review and approval process.

MDAR's ROW Program coordinator is also responsible for conducting inspections to ensure that applicants to the ROW Program use the types and amounts of pesticides outlined in their VMPs and YOPs. During each of these inspections, the ROW Program coordinator prepares a Pesticide Use Observation Report and a General Inspection Report. These reports include details such as the name of the applicant to the ROW Program, the pesticide applicator's name and license number, and the pesticide types and amounts used by the pesticide applicator.

According to MDAR's website,¹

[MDAR] has regulatory jurisdiction over herbicide application in rights-of-way areas. The regulations (333 CMR 11.00) contain provisions for the use of herbicides as part of vegetation

1. Sensitive areas, according to 333 CMR 11.02 and as referenced in this regulation, are "any areas within Rights-of-Way, including No-Spray and Limited-Spray Areas, in which public health, environmental or agricultural concerns warrant special protection to further minimize risks of unreasonable adverse effects."

management in support of the functioning and use of rights-of-way areas while minimizing the potential impacts of . . . herbicides on human health and the environment. Specific restrictions exist for the use of herbicides in sensitive areas, which include water supplies, wetlands, state-listed species habitat, and inhabited and agricultural areas. [MDAR] maintains a list of herbicides approved for use in these sensitive areas. [MDAR] also reviews and approves Vegetation Management Plans (VMPs) and Yearly Operational Plans (YOPs) submitted by entities involved in rights-of-way management.

See the [Appendix](#) for a list of applicants to the ROW Program during the audit period.

According to MDAR's "Standard Operating Procedures for the Pesticide Enforcement Program," the Division of Crop and Pest Services performs the following five major functions:

- 1. Licensing/Certification Program.** *[The Pesticide Enforcement Program] maintains a division to license and/or certify individuals who wish to use pesticides commercially, sell restricted-use pesticides, or to purchase and use restricted-use pesticides. There are four categories of licensing or certification:*

Commercial Applicator- *allows individuals to use a general use pesticide on a property that is not their own and/or use restricted use pesticides under the direct supervision of someone with a certification.*

Commercial Certification- *allows individuals to use or supervise the use of restricted use pesticides.*

Private Certification- *allows individuals to use or supervise the use of restricted use pesticides in the production of a commodity.*

Dealers License- *allows individuals to distribute restricted use or state-limited use pesticides. . . .*

- 2. Enforcement.** *[The Pesticide Enforcement Program] enforces FIFRA and MPCA by conducting routine inspections and investigations of pesticide use/misuse.*

Routine inspections include but are not limited to inspecting pesticide producing establishments, retail outlets selling general use pesticides and outlets managed by licensed dealers distributing restricted use pesticides, and conducting inspections with licensed individuals and their business, and schools.

Use/misuse investigations involve answering consumer complaints and/or following up on any alleged violations of the pesticide regulations.

- 3. Registration.** *[The Pesticide Enforcement Program] processes fees and within certain limits approves pesticide re-registration.*

4. Education. *[The Pesticide Enforcement Program] is committed to educating the general public and licensed applicators on the proper use and handling of pesticides by means of distributing information literature, providing speakers etc.*

5. Staff to the Pesticide Board and Pesticide Board Subcommittee. *[The Pesticide Enforcement Program] provides the support staff for the Board and Subcommittee.*

Licensed applicators,² as referenced in the above standard operating procedures, are individuals who have obtained a valid license to use, sell, or purchase pesticides.

VMPs

A VMP, according to 333 CMR 11.02, is “a long term management plan for the applicant’s right-of-way system which describes the intended program for vegetation control over a five year period.”

According to MDAR’s “Vegetation Management Plan (“VMP”) Process Step By Step Pursuant To 333 CMR 11.00” document, each applicant to the ROW Program submits its VMP through either email or postal service to MDAR’s ROW Program coordinator by September 1 before the calendar year of the first year of the applicant’s proposed timeframe.

MDAR’s ROW Program coordinator initially reviews each VMP to verify that all the elements required by 333 CMR 11.05(2) (as stated in the requirements for submission of VMP section below) are incorporated into the plan. The ROW Program coordinator publishes a notice regarding the public hearing(s) at least 21 days before each scheduled hearing in local publications. The ROW Program coordinator then contacts each municipality covered by the plan, as well as each municipality’s chief elected official, board of health, and conservation commission. Written comments from the public are accepted up to 45 days after the ROW Program coordinator posts the hearing notice. Within 30 days of the end of the public’s comment period, MDAR distributes copies of the VMP and the public’s submitted comments to the ROW Advisory Panel for its review of and recommendation for each VMP.

The ROW Advisory Panel communicates any questions and modification requests through email to each applicant to the ROW Program and the ROW Program coordinator. During this recommendation period, MDAR provides open lines of communication between the ROW Advisory Panel and the applicant to ensure that the VMP is in compliance with 333 CMR 11.05. After the ROW Advisory Panel has had all of

2. For the purposes of this audit report, we use the term pesticide applicators to refer to licensed applicators (unless stated otherwise).

its concerns regarding the proposed VMP addressed, it typically recommends that MDAR approve the VMP. The ROW Program coordinator sends the VMP and the ROW Advisory Panel's recommendations to MDAR's commissioner for final approval.

During the audit period, 57 applicants to the ROW Program submitted a total of 78 proposed VMPs. These applicants comprised 32 Commonwealth cities and towns and 25 Commonwealth businesses.

VMP Requirements

VMP requirements are listed in 333 CMR 11.05(2) as the following:

- (a) General statement of goals and objectives of the VMP.*
- (b) Identification of target vegetation.*
- (c) Intended methods of vegetation management and rationale for use. . . .*
- (d) Discussion of justification for proposed herbicide applications. . . .*
- (e) Methods, references and sources for identifying sensitive areas and control strategies proposed for sensitive areas. . . .*
- (f) Operational guidelines for applicators relative to herbicide use.*
- (g) Identification and qualifications of individuals developing and submitting a plan.*
- (h) A detailed description of the [Integrated Pest Management] Program, showing how it will minimize the amount and frequency of herbicide application.*
- (i) Description of alternative land use provisions or agreements that may be established with individuals, state, federal or municipal agencies that would minimize the need for herbicides, including the rationale for accepting or denying any reasonable request made by any individual.*
- (j) Description of a remedial plan to address spills and related accidents.*
- (k) For [certain] state agencies and authorities . . . a description of the applicant's policy to eliminate or, if necessary, reduce the use of pesticides for any vegetation management purpose along roadways, and a demonstration that, for the proposed application, the costs of non-chemical vegetation control significantly outweigh the benefits.*

YOPs

A YOP, according to 333 CMR 11.02, is “the yearly operational plan which describes the detailed vegetation management operation for the calendar year consistent with the terms of the long term Vegetation Management Plan.” If, for whatever reason, an entity that owns or maintains a ROW does not apply pesticides to applicable ROWs in any given year that falls under its approved VMP, then it does not have to submit a YOP for that corresponding year.

According to MDAR’s “Yearly Operational Plan (“YOP”) Process Step By Step Pursuant to 333 CMR 11.00” document,³ the steps for submitting a YOP are as follows:

1. *YOP submitted via email or direct mail by the applicant (“Applicant”) to the Massachusetts Department of Agricultural Resources (“MDAR”) Rights-of-Way (“ROW”) Coordinator (“ROW Coordinator”).*
2. *Applicant sends notice of submission is provided to the local board of health, Conservation Commission, Chief Elected Official, [Massachusetts Water Resources Authority] (where applicable) and [Department of Conservation and Recreation] (where applicable).*
3. *ROW Coordinator gives preliminary reviews to ensure that all the elements required by 333 CMR 11.00 and other applicable laws are incorporated into the YOP.*
4. *ROW Coordinator reviews YOP to ensure it is consistent with the VMP and applicable laws. If changes are needed, the ROW Coordinator works with the Applicant to ensure the changes are made.*
5. *ROW Coordinator posts a notice of submission and 45-day public comment period in Environmental Monitor and to interested parties. . . .*
6. *ROW Coordinator, and other MDAR staff as necessary, review the YOP and public comments to make a recommendation to the Commissioner of MDAR.*
7. *Notification of the decision is sent to the Applicant.*

During the audit period, 51 applicants submitted a total of 123 YOPs to the ROW Program. These applicants comprised 27 Commonwealth cities and towns and 24 Commonwealth businesses.

3. According to the Massachusetts Environment Policy Act website, the *Environmental Monitor*, as referenced in the quoted document, “is a bi-weekly publication that provides notice of new projects that have been submitted to the [Massachusetts Environment Policy Act] Office for review, other projects currently under review, certificates, and public notices.”

YOP Requirements

According to 333 CMR 11.06(2),

The YOP shall include but not be limited to the following:

- (a) Maps locating the rights-of-way and sensitive areas not readily identifiable in the field;*
- (b) Herbicides proposed including Environmental Protection Agency (EPA) Registration numbers, application rates, carriers and adjuvants;*
- (c) Herbicide application techniques and alternative control procedures proposed.*
- (d) The name, address and phone number of the company which will perform any herbicide treatment;*
- (e) Identification of target vegetation;*
- (f) The name, address and phone number of the individual representing the YOP applicant;*
- (g) Description of methods used to flag or otherwise designate sensitive areas on the right of-way;*
- (h) Herbicide Fact Sheets as approved by [MDAR]; and*
- (i) Procedures and locations for handling, mixing and loading of herbicide concentrates.*

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Massachusetts Department of Agricultural Resources (MDAR) for the period July 1, 2020 through June 30, 2022.

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 audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Did MDAR ensure that pesticide applicators who used pesticide(s) for the purpose of either clearing and/or maintaining a right-of-way (ROW) had licenses in accordance with Section 11.03(1) of Title 333 of the Code of Massachusetts Regulations (CMR)?	Yes
2. Did MDAR conduct investigations to ensure the proper use of pesticides on ROWs in accordance with Section VI of MDAR's "Standard Operating Procedures for the Pesticides Enforcement Program"?	Yes
3. Did MDAR educate the general public and pesticide applicators on the proper use and handling of pesticides on ROWs in accordance with Section I(4) of MDAR's "Standard Operating Procedures for the Pesticides Enforcement Program"?	No; see Finding <u>1</u>
4. Did MDAR ensure that applicants to the ROW Program submitted Vegetation Management Plans (VMPs) in accordance with 333 CMR 11.05(2)?	Yes
5. Did MDAR ensure that applicants to the ROW Program submitted Yearly Operational Plans (YOPs) in accordance with 333 CMR 11.06(2)?	Yes

To accomplish our audit objectives, we gained an understanding of the aspects of MDAR's internal control environment relevant to our objectives by reviewing MDAR's applicable policies and procedures, as well as its internal control plan; interviewing MDAR management and employees; and performing walkthroughs of the processes related to the ROW Program. We also evaluated the operating effectiveness of the relevant controls for the review and approval of VMPs and YOPs.

Licensing of Pesticide Applicators

To determine whether MDAR ensured that pesticide applicators who used pesticide(s) for the purpose of either clearing and/or maintaining an ROW had licenses in accordance with 333 CMR 11.03(1), we obtained and reviewed a list of the 57 applicants to the ROW Program that applied during our audit period. (See the [Appendix](#) for more information on these applicants.) We identified a total of 25 investigations that MDAR conducted during the audit period. We reviewed each investigation's Pesticide Use Observation Report and General Inspection Report to determine whether MDAR reviewed the pesticide applicator's license to ensure that the pesticide applicator's license was valid and that the pesticide applicator had a valid license before they applied pesticides to ROWs. We obtained each pesticide applicator's information (i.e., their name and license number) from the ROW Program coordinator's copy of each pesticide applicator's Pesticide Use Observation Report and General Inspection Report and determined the validity of the pesticide applicator's license by reviewing evidence from the Executive Office of Energy and Environmental Affairs' online platform (i.e., documentation regarding licensing, permitting, and certification services).

We noted no exceptions in our testing; therefore, we conclude that, during the audit period, MDAR ensured that pesticide applicators who used pesticide(s) for the purpose of either clearing and/or maintaining an ROW had licenses in accordance with 333 CMR 11.03(1).

Investigations into Proper Use of Pesticides

To determine whether MDAR conducted investigations to ensure the proper use of pesticides on ROWs in accordance with Section VI of MDAR's "Standard Operating Procedures for the Pesticides Enforcement Program," we obtained and reviewed a list of the 57 applicants to the ROW Program that applied during our audit period. We identified a total of 25 investigations conducted during the audit period and reviewed each investigation's Pesticide Use Observation Report and General Inspection Report. From these documents, we captured certain information regarding each investigation (i.e., the date of the investigation, the name of the entity the ROW Program coordinator investigated, the pesticide applicator's contact information, any pesticides used, and any violations noted during the investigations).

We noted no exceptions in our testing; therefore, we conclude that, during the audit period, MDAR conducted investigations to ensure the proper use of pesticides on ROWs in accordance with Section VI of MDAR's "Standard Operating Procedures for the Pesticides Enforcement Program."

Education on Proper Use of Pesticides

We determined whether MDAR educated the general public and pesticide applicators on the proper use and handling of pesticides on ROWs in accordance with Section I(4) of MDAR's "Standard Operating Procedures for the Pesticides Enforcement Program." To do this, we obtained and reviewed presentation materials prepared by MDAR officials and emails from applicants to the ROW Program that directly requested educational materials regarding the ROW Program. We also reviewed the Pesticide Examination and Licensing Information Bulletin and publications regarding the Pesticide Enforcement Program that MDAR distributed to pesticide applicators as evidence of education provided to pesticide applicators.

Based on the result of our testing, we determined that, during the audit period, MDAR did not conduct outreach to educate entities that own or maintain ROWs on the proper use of pesticides on ROWs. See Finding 1 for more information.

Submission of VMPs

To determine whether MDAR ensured that applicants to the ROW Program submitted VMPs in accordance with 333 CMR 11.05(2), we obtained and reviewed a list of all 57 applicants to the ROW Program that applied during our audit period. We noted that these applicants submitted a total of 78 VMPs during the audit period. We selected a random, nonstatistical sample of 20 VMPs and reviewed each VMP in our sample to ensure that the VMPs included the requirements set forth in 333 CMR 11.05(2). (See "VMP Requirements" in the Overview for more information regarding these requirements.)

We used nonstatistical sampling methods for testing and therefore did not project the results of our testing to any population.

We noted no exceptions in our testing; therefore, we conclude that, during the audit period, MDAR ensured that applicants to the ROW Program submitted VMPs in accordance with 333 CMR 11.05(2).

Submission of YOPs

To determine whether MDAR ensured that applicants to the ROW Program submitted YOPs in accordance with 333 CMR 11.06(2), we obtained and reviewed a list of the 57 applicants to the ROW Program that applied during our audit period. We noted that these applicants submitted a total of 123 YOPs during the audit period. We selected a random, nonstatistical sample of 35 YOPs and reviewed each YOP in our

sample to ensure that the YOPs included the requirements set forth in 333 CMR 11.06(2). See the “YOP Requirements” section in the Overview for more information regarding these requirements.

We used nonstatistical sampling methods for testing and therefore did not project the results of our testing to any population.

We noted no exceptions in our testing; therefore, we conclude that, during the audit period, MDAR ensured that applicants to the ROW Program submitted YOPs in accordance with 333 CMR 11.06(2).

Data Reliability Assessment

To determine the reliability of the list of applicants to the ROW Program (which MDAR supplied to us in a Microsoft Excel spreadsheet), we performed the following procedures.

- We compared the cities and towns on this list (of which there were 32) provided by MDAR to the list of cities and towns we obtained from the Secretary of the Commonwealth’s website (of which there were 351) to identify the cities and towns that had not applied to the ROW Program. Our comparison revealed that 319 cities did not apply to the program. We then selected a sample of 22 of the 319 cities and towns not on the list provided by MDAR and made direct calls to the corresponding public works directors and conservation agents in each of those cities and towns to see if they were aware of the ROW Program and the reason(s) as to why they did not apply to the program. We noted that 9 of the 22 cities and towns in our sample did not respond to our inquiry. The 13 that responded confirmed that they did not apply to the ROW Program.
- We traced all the VMPs and YOPs on the list to the VMPs and YOPs stored on the ROW Program coordinator’s flash drive (see Other Matters).
- We selected a random sample of 20 applicants from the list and determined whether the approval date on each VMP and YOP in our sample agreed with the date on the decision notification that MDAR provided to the applicant regarding their VMP and/or YOP.
- We analyzed the list by testing for missing dates, duplicate records, hidden columns and rows, and data outside of the audit period.

To determine the reliability of the data from the Executive Office of Energy and Environmental Affairs’ online platform, we tested certain information system controls (i.e., user access management, password complexity requirements, password expiration, and computer lockout settings).

MDAR’s list of applicants to the ROW Program was the only source of data available for our audit testing (see Finding 1).

Based on the results of the data reliability assessment procedures described above, we determined that the information obtained for our audit period was sufficiently reliable for the purposes of our audit.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Massachusetts Department of Agricultural Resources did not conduct sufficient outreach to educate entities that own or maintain rights-of-way on safe pesticide use.

The Massachusetts Department of Agricultural Resources (MDAR) did not conduct sufficient outreach to educate entities that own or maintain rights-of-way (ROWs) on the requirements of the ROW Program and safe use of pesticides to treat unwanted vegetation on ROWs. During our audit, five cities and towns told us that they were unaware of MDAR's ROW Program. We also noted that MDAR did not maintain a list of entities that own or maintain ROWs. MDAR could use such a list to communicate ROW Program requirements to officials at entities that own or maintain ROWs (such as railroads and energy companies).

Upon our request, MDAR created a list of applicants to the ROW Program that applied during our audit period. This list contained 32 cities and towns and 25 businesses. To identify the cities and towns that did not apply to the ROW Program, we compared the list provided by MDAR to a list of cities and towns in Massachusetts we obtained from the Secretary of the Commonwealth's website, and we determined that 319 of the 351 cities and towns in Massachusetts did not apply to the program during our audit period. Nine of the 22 cities and towns in our sample did not respond to our inquiries. Of the 13 that responded to our inquiry, 5 of the cities and towns were unaware of MDAR's ROW Program. Of these 5 cities and towns, 1 told us that it applied pesticides to treat unwanted vegetation on multiple ROWs. The remaining 8 of the 13 cities and towns knowledgeable about the ROW Program learned about it through working with a pesticide applicator or through enrollment in other programs that MDAR offers.

While MDAR publishes program materials on its website and provides these materials to applicants to the ROW Program who directly request them, MDAR does not conduct outreach regarding ROW Program requirements to entities that own or maintain ROWs. A lack of outreach on the safe use of pesticides on ROWs could result in harmful use of pesticides by entities that own or maintain ROWs but that are unaware of ROW Program requirements. Given this, the public may treat unwanted vegetation in an unsafe manner, which could have a negative impact on Massachusetts residents' health and the environment.

Authoritative Guidance

Section I(4) of MDAR's "Standard Operating Procedures for the Pesticides Enforcement Program" states, "The [Pesticide Enforcement] Program is committed to educating the general public and licensed applicators on the proper use and handling of pesticides by means of distributing information literature, providing speakers etc."

In order to educate the general public and pesticide applicators on the proper use and handling of pesticides on ROWs, we believe that MDAR should maintain a list of entities that own or maintain ROWs so it can educate them about the ROW Program. This will help ensure that only licensed applicators are used in the application of pesticides on ROWs within Massachusetts.

Reasons for Issue

According to MDAR officials, applicants to the ROW Program would know about the rules and regulations pertaining to the use of pesticides through neighboring towns and cities. Specifically, applicants would hire a pesticide applicator who is licensed by MDAR and, through MDAR's pesticide applicator licensing program, made aware of the requirements of the program, including the applicants' submission of and MDAR's approval of a Vegetation Management Plan and a Yearly Operational Plan.

Recommendations

1. MDAR should conduct outreach to educate entities that own or maintain ROWs on safe pesticide use.
2. MDAR should maintain a complete and up-to-date list of entities that own or maintain ROWs.

Auditee's Response

This finding is solely a policy disagreement with MDAR and is not a proper subject of an audit finding. In addition, MDAR is conducting education consistent with its policy statement, and the finding is inconsistent with the MDAR policy statement and not supported by evidence.

This finding is based solely on a policy disagreement with MDAR and not on any deficiency with respect to any appropriate authoritative requirement. The finding is based on alleged "authoritative guidance" that is not a law, regulation, contract, grant agreement, or any other mandatory requirement in any form: it is solely a general, hortatory statement of MDAR's program goals. MDAR's Standard Operating Procedures for the Pesticides Enforcement Program, where the statement is found, does not include any specific procedure or requirement regarding the implementation of education the policy, nor does the Audit Report identify one or suggest that MDAR has failed to comply with it. Instead, the finding is based solely on a disagreement with MDAR about how the Department should carry out its own, purely discretionary, policy goal. As the audit finding is not based on authoritative guidance, and implementation of discretionary goals

is not an appropriate subject of an audit, the audit finding should be removed from the Audit Report.

In practice, MDAR is effectively carrying out its general educational policy goal as stated in the [standard operating procedures]. The Audit Report recognizes this: it relies extensively on MDAR educational material, including quoting material from MDAR's website, and notes that the audit team reviewed other educational material provided by the Department. . . .

See [the "Education on Proper Use of Pesticides" section of this audit report], stating the audit team reviewed "presentation materials prepared by MDAR officials and emails from applicants to the ROW Program that directly requested educational materials regarding the ROW Program. We also reviewed The Pesticide Examination and Licensing Information Bulletin and publications regarding the Pesticide Enforcement Program that MDAR distributed to pesticide applicators as evidence of education provided to pesticide applicators." . . .

The Department provides extensive training in connection with licensing requirements upon request from companies, associations, retailers, and extension services. Many times, these trainings have hundreds of attendees that include all types of applicators, including those that perform work on rights-of-way ("ROWs"). Through these practices, MDAR is carrying out its expressed intention of educating the general public and licensed applicators regarding the use and handling of pesticides. MDAR's choices about where and how to deploy educational resources are based on internal, purely discretionary, policy decisions, such as its expert judgment about the audiences and topics of greatest need and its available resources.

Finally, the finding is inconsistent with the statement relied upon as authoritative guidance and unsupported by appropriate evidence. The statement addresses MDAR's commitment to educating "the general public and licensed applicators", but the finding is focused on entities that own or maintain ROWs. Entities that own or maintain ROWs may employ or contract with licensed pesticide applicators and therefore may not be the subject of training or outreach. And while MDAR makes efforts to educate non-licensed stakeholders, individuals and entities that are not addressed by statute or regulation are generally outside the scope of MDAR's stated educational goal. In addition, the finding is based on some cities and towns lacking awareness of the ROW regulations, but lack of awareness does not mean that pesticides are being used or handled improperly by the licensed applicators conducting the work. MDAR makes every effort to ensure regulated activity is conducted in accordance with statutory and regulatory requirements and the audit findings reflect this is occurring. As such, the finding that education of these entities is needed on "safe use of pesticides" is not supported by the evidence presented in the Audit Report. . . .

MDAR appreciates the view of the Office of the State Auditor on how MDAR should conduct its educational initiatives. As noted above, MDAR conducts outreach and education activities regarding the safe use and handling of pesticides pursuant to with its independent, discretionary policy determinations, which are made on the basis of the Department's expert judgment, available resources, and other factors. These ongoing efforts reach licensed applicators using and handling pesticides within ROWs, as noted above. MDAR will conduct additional outreach and education specific to ROWs as and when it determines that such an effort is appropriate. . . .

MDAR appreciates the view of the Office of the State Auditor on the policy for administration of MDAR's ROW program but disagrees with this recommendation. Development and maintenance of a list of entities that own or maintain ROWs in the Commonwealth would be time-consuming and would require a significant amount of the Pesticide Program's limited resources to collect this information and keep it current. ROWs are owned by a wide range of municipal, non-municipal, and private owners and operators, and there is no existing inventory or tool that would enable MDAR to identify them, let alone contact them once identified. Dedication of limited MDAR staff time to this task would undermine the Pesticide Program's ability to continue and to advance other legal obligations and policy priorities.

Auditor's Reply

In its response, MDAR states that the ROW Program goals set forth in its "Standard Operating Procedures for the Pesticides Enforcement Program" are at MDAR's discretion and are not based on external regulations, laws, contracts, or agreements to which MDAR must adhere. We understand that MDAR established the goals in its "Standard Operating Procedures for the Pesticides Enforcement Program" in an attempt to guide its internal operations in accordance with its mission and that these goals are not based on any external regulation. However, generally accepted government auditing standards allow the Office of the State Auditor to examine an auditee's mission, strategic plan, and goals. Specifically, Section 1.22(a) of the US Government Accountability Office's *Government Auditing Standards* states that audit objectives can include "program effectiveness and results" since they "typically measure the extent to which a program is achieving its goals and objectives."

We acknowledge that MDAR is meeting its goal to educate licensed applicators who wish to use, sell, or purchase pesticides. We also acknowledge that MDAR distributes educational materials to program applicants to the ROW Program, upon their request. However, these entities do not constitute the general public. MDAR reports that it trains "companies, associations, retailers, and extension services" and that "hundreds of attendees" attend these events. These entities are also not the general public but are rather entities that may naturally have close contact with the activities of MDAR.

We believe this wider communication is necessary, not only because MDAR requires it, but also because, in our sample, five cities and towns (ROW owners) were unaware of MDAR's ROW Program. These ROW owners are less able to hold their pesticide applicators to appropriate standards and may procure applicators without knowing they need to be licensed by MDAR. Further, one municipality told us it applied pesticides to its ROWs without knowing about MDAR's ROW Program and, therefore, likely did so as an unlicensed applicator. Expanding education to a wider group of the general public, especially ROW

owners, is a prudent step and could prevent these predictable risks, which our audit shows were realized when one ROW owner applied pesticides without knowing about MDAR's ROW Program or licensing, and by other ROW owners that do not know about the program or its requirements.

We recommend that MDAR proactively conduct outreach to entities that own or maintain ROWs, which will ensure greater compliance with and adherence to the requirements of the ROW Program. Not doing so creates a predictable risk that an entity that owns or maintains ROWs hires a licensed applicator that does not follow MDAR requirements, but that this entity is unaware of the applicator's lack of compliance or the steps to take to notify MDAR about this noncompliance. Providing the recommended outreach to entities that own or maintain ROWs is a reasonable internal control that would help reduce this risk.

MDAR also states, "Development and maintenance of a list of entities that own or maintain ROWs in the Commonwealth would be time-consuming and would require a significant amount of the Pesticide Program's limited resources to collect this information and keep it current." We acknowledge this recommendation will require MDAR to track, identify, and conduct outreach to entities that own or maintain ROWs. However, there is ample information available from state and federal government agencies that would serve as the population of entities that own or maintain ROWs for MDAR to use. We believe that creating and maintaining a list of entities that own or maintain ROWs would be invaluable in facilitating effective outreach to those entities responsible for complying with ROW Program.

OTHER MATTERS

The Massachusetts Department of Agricultural Resources did not securely store all documentation related to the Rights Of Way Program.

The Massachusetts Department of Agricultural Resources (MDAR) did not store the following in a secure location: 78 Vegetation Management Plans (VMPs), 123 Yearly Operational Plans (YOPs), several Pesticide Use Observation Reports, and several General Inspection Reports.

During our audit, MDAR officials initially stated that all VMPs, YOPs, Pesticide Use Observation Reports, and General Inspection Reports were on the Rights of Way (ROW) Program coordinator's computer and in their email. However, during a follow-up meeting with MDAR officials (which was specifically to review the VMPs and YOPs on the ROW Program coordinator's desktop), we learned that all data related to the program is actually stored on a removable flash drive. This flash drive was not issued to the ROW Program coordinator by MDAR; was stored in various locations, such as the ROW Program coordinator's home office; and was not encrypted or password protected.

If MDAR does not properly secure its data, then it assumes a higher-than-acceptable risk of its data becoming lost, stolen, or destroyed.

Section 6.3.6 of the Executive Office of Technology Services and Security's Asset Management Standard IS.004 states, "Commonwealth Executive Offices and Agencies shall by default restrict removable media use for personnel. . . . Removable media use shall be granted on an exception basis when there is a compelling organizational need."

Additionally, Section 6.3.2 of the Executive Office of Technology Services and Security's Acceptable Use of Information Technology Policy IS.002 states, "The confidentiality and integrity of information must be protected at rest, in use and in transit." Section 6.3.2.1.1 of this policy specifically goes on to state that all Commonwealth agencies within the executive branch should "store all information on access-restricted and/or -controlled Shared Folders or Drives."

In response to our request for information related to the ROW Program, MDAR officials told us the following in an email dated June 7, 2023:

It was customary for field staff to use [flash] drives since [Microsoft] Teams/Cloud was not being used at that time and when in the field, staff had no way to access files that were stored on the

network. It was not until the pandemic that the agency moved over to [Microsoft] Sharepoint/OneDrive /Teams.

SharePoint, OneDrive, and Teams, as referenced in the above email, allow users to securely store and access data online from any device.

We recommend that MDAR securely store documentation related to any MDAR program in an access-restricted folder or drive on MDAR's computer network and that it does so in a manner that allows recovery or reproduction of the data if the storage medium is lost or stolen.

APPENDIX

Categories of Applicants to the Rights of Way Program

Category	Number of Applicants
City/Town	32
Business	25
Total	<u>57</u>

List of Applicants to the Rights of Way Program

Applicants	Category
Town of Acton	City/Town
Amtrak	Business
Town of Athol	City/Town
City of Attleboro	City/Town
Town of Bolton	City/Town
Town of Braintree	City/Town
Brookfield Renewable: Bear Swamp Reservoir	Business
Town of Canton	City/Town
CSX Transportation	Business
Danvers Electric	Business
Eversource: Cape Cod	Business
Eversource: Eastern/Southern/Central Massachusetts	Business
Eversource: Western Massachusetts	Business
Fore River Transportation Corporation	Business
City of Framingham	City/Town
Town of Franklin	City/Town
Grafton and Upton Railroad	Business
Great River Hydro	Business
City of Haverhill	City/Town
Town of Holden	City/Town
City of Holyoke	City/Town
Holyoke Gas and Electric	Business
The Housatonic Railroad	Business
Keolis Commuter Services	Business

Applicants	Category
City of Leominster	City/Town
City of Lowell	City/Town
Town of Mansfield	City/Town
City of Marlborough	City/Town
Massachusetts Bay Transportation Authority	Business
Mass Coastal Railroad	Business
Massachusetts Central Railroad	Business
Town of Medfield	City/Town
Town of Medway	City/Town
Town of Milford	City/Town
Town of Millbury	City/Town
Massachusetts Municipal Wholesale Electric Company	Business
National Grid	Business
Town of Natick	City/Town
New England Central Railroad	Business
NextEra Energy	Business
Town of Orleans	City/Town
Pan Am Railways	Business
Pioneer Valley Railroad	Business
Providence and Worcester Railroad	Business
City of Quincy	City/Town
Town of Southborough	City/Town
Town of Southbridge	City/Town
City of Taunton	City/Town
Tennessee Gas Pipeline Company	Business
Unitil	Business
City of Waltham	City/Town
Town of Wellesley	City/Town
Town of Westborough	City/Town
City of Westfield	City/Town
Town of Weston	City/Town
Town of Wilmington	City/Town
City of Worcester	City/Town