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**INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN ACTIVITIES OF THE
PESTICIDE BUREAU WITHIN THE
DEPARTMENT OF AGRICULTURAL RESOURCES
JULY 1, 2004 TO JUNE 30, 2006**

**OFFICIAL AUDIT
REPORT
AUGUST 9, 2007**

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The Pesticide Bureau within the Division of Regulatory and Consumer Services of the Department of Agricultural Resources is responsible for the protection of public health and the environment by licensing and monitoring the activities of over 8,100 companies and individuals and over 5,900 schools, daycare centers, and school-age child-care program facilities at which pesticides are applied or may be applied. The bureau also protects the public drinking water supply; registers chemicals used in the Commonwealth; provides guidelines for mixing, loading, storing, and disposal of pesticides; and investigates allegations of pesticide misuse. The bureau is responsible for the administration and enforcement of Chapter 132B of the Massachusetts General Laws (the Massachusetts Pesticide Control Act). Effective November 1, 2000, Chapter 132B was amended by Chapter 85 of the Acts of 2000, “An Act Protecting Children and Families from Harmful Pesticides” (the Children’s Protection Act). Under this Act, all schools and most daycare centers and school-age child-care program facilities are responsible for preparing and submitting to the bureau their Integrated Pest Management (IPM) plans that set forth definitive information on any pest problem that exists, the pesticides being proposed for application, and the applicator who will apply such pesticides. These entities are required to submit IPM plans to the bureau even if they do not contemplate using pesticides at the current time.

The purpose of this audit was to determine what corrective actions were taken by the bureau regarding the issues contained in our prior audit report (No. 2003-0091-3S), which disclosed that improvements were needed in the bureau's (1) on-site inspection procedures for pesticide dealers and applicators and (2) monitoring and enforcing the submission of required IPMs by schools and daycare centers.

AUDIT RESULTS

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1. PRIOR AUDIT RESULTS RESOLVED – ON-SITE INSPECTION PROCEDURES

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Our prior audit indicated that the bureau's on-site inspection procedures for pesticide dealers and applicators did not include a review of documents supporting the purchase and sale of restricted-use pesticides and did not include any verification that the quantities on hand are reconcilable with the quantities purchased and sold. Without such reviews, there is inadequate assurance that pesticide dealers and applicators are properly controlling and accounting for restricted-use pesticides. We recommended that the bureau expand its on-site inspection procedures of dealers and applicators to include a review of the control systems used to document the purchase, sale, use, and quantities on hand of restricted-use pesticides. In addition, we recommended that the bureau use annual reports submitted by these dealers and applicators in their inspection test process. Finally, we urged the bureau to conduct a workload study to determine the appropriate staffing levels necessary to meet its field inspection responsibilities.

Our follow-up review disclosed that the bureau had successfully implemented our recommendations for corrective actions in the above-mentioned areas.

2. PRIOR AUDIT RESULT UNRESOLVED – IMPROVEMENTS NEEDED IN SUBMISSION OF REQUIRED INTEGRATED PEST MANAGEMENT PLAN (IPM) 5

Our prior audit disclosed that over 71% of the Commonwealth’s public and private schools and 90% of daycare centers had not complied with Chapter 85 of the Acts of 2000, which requires them to submit definitive IPM plans of pesticide use to the bureau. We recommended that the bureau work with both the Office of Child Care Services and the Department of Education to assist in contacting these entities to help ensure compliance with the IPM reporting requirement, impose penalties on those who fail to comply, conduct field inspections at selected facilities, and conduct a workload study to determine the appropriate staffing levels necessary to meet the mandates of the Children's Protection Act.

Our follow-up review determined that although progress has been made, as of June 30, 2006, 648 (24%) of public and private school facilities and 1,881 (59%) of day care facilities were still not in full compliance with the Children's Protection Act. It was also disclosed that the bureau has developed and implemented a Corrective Action Plan (CAP) in cooperation with the Early Education Commission and the Attorney General's Office that requires the filing of a current IPM plan with the bureau before a day care renewal license is issued. However, as the two-year licensing cycle for these facilities does not expire until September 30, 2008, improved compliance cannot be assessed until then. As a result, until the fall of 2008, there is inadequate assurance that only authorized pesticides are being applied, that the application of pesticides is performed only by licensed and knowledgeable applicators, that children and staff are being protected during and after the application, and that parents and the general public have been notified in advance of the use of pesticides as required by the law.

In addition, because this license renewal plan deals only with day care providers and does not address the issue of noncompliance by public and private schools, the Pesticide Bureau needs to work cooperatively with DOE to help further school compliance.

INTRODUCTION

Background

The Pesticide Bureau within the Division of Regulatory and Consumer Services of the Department of Agricultural Resources is responsible for the protection of public health and the environment by licensing and monitoring the activities of over 8,100 companies and individuals and over 5,900 schools, daycare centers, and school-age child-care program facilities at which pesticides are applied or may be applied. The bureau also protects the public drinking water supply; registers chemicals used in the Commonwealth; provides guidelines for the mixing, loading, storing, transporting and disposal of pesticides; and investigates allegations of pesticide misuse. In addition, the bureau is responsible for the administration and enforcement of Chapter 132B of the Massachusetts General Laws (the Massachusetts Pesticide Control Act). Effective November 1, 2000, Chapter 132B was amended by Chapter 85 of the Acts of 2000, “An Act Protecting Children and Families from Harmful Pesticides” (the Children’s Protection Act). Under this Act, all schools and most daycare centers and school-age child-care program facilities are responsible for preparing and submitting to the bureau their Integrated Pest Management (IPM) plans, which set forth definitive information on any pest problem that exists, the pesticides being proposed for application, and the applicator who will apply such pesticides. These entities are required to submit IPM plans to the bureau even if they do not contemplate using pesticides at the current time.

The bureau has a staff of 12 employees and one contract person. The staff includes four persons who are responsible for field inspections of approximately 130 dealers and over 7,500 licensed applicators. The bureau also acts as a support staff for the Pesticide Board, which was established under the provisions of Section 3 of Chapter 132B and has a responsibility to advise the Commissioner of the Department of Agricultural Resources (DAR) with respect to the implementation and administration of Chapter 132B. The board includes 13 persons, including the Commissioner of the DAR, five other Commissioners or Directors (or their designees) of other large departments, and seven other persons appointed by the Governor. A subcommittee of the board, consisting of four board members and one person appointed by the Governor, was established under Section 3A of Chapter 132B. This subcommittee is responsible for registering all pesticides (i.e., classifying them based on their potential harm to the environment or general public).

Audit Scope, Objectives, and Methodology

The scope of our audit was to examine the various administrative and operational activities of the bureau and to determine whether the bureau was efficiently administering and enforcing pesticide laws and regulations. Our audit, which covered the period July 1, 2004 to June 30, 2006 and was conducted in accordance with applicable generally accepted government auditing standards for performance audits as issued by the Comptroller General of the United States, included such procedures and tests we considered necessary to meet these standards.

Our audit objectives were to determine whether:

- The bureau is administering and enforcing state pesticide laws and regulations.
- The bureau has established and implemented procedures to monitor the activities of companies, public agencies, and individuals who sell or apply pesticides to ensure that these entities comply with the law and other requirements set forth by the bureau.
- The bureau is enforcing the Children’s Protection Act.
- The field inspections of pesticide dealers and applicators provides adequate assurance that these entities have established and are utilizing control systems to ensure that pesticide purchases, sales, and applications are properly accounted for.
- The bureau responds appropriately to allegations of pesticide misuse.
- The licensing process for applicators and dealers conforms to state laws and education requirements are met.
- The bureau has taken appropriate corrective actions for those issues cited in our prior Audit Report (No. 2003-0091-3S).

In order to achieve our objectives, we examined the bureau’s IPM plans along with related documentation, such as notices of inspection, school IPM checklists, inspection reports (including product reconciliations), and related correspondence. For on-site inspections we reviewed notices of inspection, inspection reports, and related correspondence. Also, we reviewed the processes used by the bureau to ensure that schools, daycare centers, and school-age child-care program facilities are conforming to the requirements of the Children’s Protection Act. We reviewed the Corrective Action Plan (CAP) that the bureau developed and implemented to resolve entities’ noncompliance with the IPM. We also observed a field inspection of a pesticide dealer and a pesticide applicator and reviewed the procedures used to ensure that the dealers and applicators fully accounted for the

purchase, sale, use, and inventories of restricted-use pesticides. Finally, we reviewed applicable laws, rules, and regulations and interviewed appropriate bureau personnel.

Our review indicated that, except as noted in the Audit Results section of this report, the bureau had adequate internal controls over its administrative and operational functions and has complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

1. PRIOR AUDIT RESULTS RESOLVED – ON-SITE INSPECTION PROCEDURES

Our prior audit indicated that the Pesticide Bureau did not include a review of documents supporting the purchase and sale of restricted-use pesticides in its on-site inspection procedures for pesticide dealers and applicators, and did not include any verification that the quantities possessed by the dealers and applicators are reconcilable with the quantities purchased and sold. Without such reviews, there is inadequate assurance that pesticide dealers and applicators are properly controlling and accounting for restricted-use pesticides. We recommended that the bureau expand its on-site inspection procedures of dealers and applicators to include a review of the control systems used to document the purchase, sale, use, and quantities on hand of restricted-use pesticides. In addition, we recommended that the bureau use annual reports submitted by these dealers and applicators in their inspection test process. Finally, we urged the bureau to conduct a workload study to determine the appropriate staffing levels necessary to meet its field inspection responsibilities.

Our follow-up review disclosed that the bureau has successfully implemented our recommendations for corrective actions in the above-mentioned areas. We noted that the bureau has redirected its inspectional services efforts to address the need to properly obtain and review documents that support the purchase and sale of restricted-use pesticides and to reconcile the quantities on hand to the quantities purchased and sold. We witnessed these changes during an on-site inspection conducted by the bureau.

Finally, the bureau has reviewed its workload and staffing for its inspection responsibilities and provided us with the following summary information for inspections conducted during the two fiscal years ended June 30, 2006.

Total Inspections	1,196
Total Complaints	121
Violations as a Result of Complaints	92
Violations as a Result of Routine Inspections	235

The bureau has four inspectors; therefore, the workload for each inspector during this time period averaged approximately 150 inspections per employee per year.

2. PRIOR AUDIT RESULT UNRESOLVED – IMPROVEMENTS NEEDED IN SUBMISSION OF REQUIRED INTEGRATED PEST MANAGEMENT PLAN (IPM)

All schools and most daycare centers and facilities that operate school-age child-care programs are required to conform to the provisions of Chapter 85 of the Acts of 2000, the Children's Protection Act, to strengthen controls over the application of pesticides at these facilities. The Act requires that each facility prepare and submit a written plan to the bureau identifying any existing pest problem, the pesticides being proposed for application, and the applicator who will apply the pesticide. The written plan is known as an Integrated Pest Management (IPM) plan, which must be submitted for indoor and outdoor applications. The purpose of this legislation is to prevent unnecessary exposure of children to chemical pesticides and to ensure that clear and accurate notification concerning the use of pesticides in schools, daycare centers, and school-age child-care programs be made available to parents and employees to address pest problems while protecting children and adults.

Our prior audit disclosed that over 71% of the Commonwealth's public and private schools and 90% of daycare centers had not complied with Chapter 85 of the Acts of 2000, which requires them to submit definitive IPM plans of pesticide use to the bureau. We recommended that the bureau work with both the Office of Child Care Services and the Department of Education to assist in contacting these entities to help ensure compliance with the IPM reporting requirement, impose penalties on those who fail to comply, conduct field inspections at selected facilities, and conduct a workload study to determine the appropriate staffing levels necessary to meet the mandates of the Children's Protection Act.

Our follow-up review disclosed that the bureau has developed and implemented a Corrective Action Plan (CAP) in cooperation with the Early Education Commission of the Department of Education (DOE) and the Attorney General's Office. The purpose of this plan is to ensure compliance by daycare centers and early education programs by withholding operating license renewals (required every two years) unless a current IPM plan has been filed with the bureau. However, the bureau informed us that this plan will not take effect until the end of the next licensing cycle on September 30, 2008. As a result, until this plan has been fully implemented, there is inadequate assurance that only authorized pesticides are being applied, the application of pesticides is performed only by licensed and knowledgeable applicators, children and staff are being protected during and after the application, and parents and the general public have been

notified in advance of the use of pesticides as required by the law. Moreover, we noted that this plan still does not address the need for compliance by public and private schools, for which this licensing requirement does not apply.

In addition, we determined that, as of June 30, 2006, approximately 648 (24%) of public and private school facilities and 1,881 (59%) of daycare facilities were still not in full compliance with the Children's Protection Act.

Recommendation

The bureau should:

- Continue to implement the CAP and continue to work with the DOE to ensure full compliance for all public and private schools and all daycare and child-care facilities,
- Inform all noncomplying entities of the fines and penalties that can be imposed, and
- Refer those entities that continue to be in violation of the law to the Attorney General's Office.

Auditee's Response

As the referenced document identifies, the Massachusetts Department of Agricultural Resources Pesticide Bureau is responsible for the protection of public health and environment related to the use and application of pesticides through the licensing and monitoring of activities of over 8,100 companies and individuals and over 5,900 schools, daycare centers and school-age child-care program facilities. The responsibility for licensing, monitoring and inspection service is distributed across 12 employees, four of which are responsible for compliance monitoring. Accordingly, although we are working toward improving staff capacity that will enable a greater regulatory response for pesticide use and monitoring in Massachusetts, I am confident in the ability of our Pesticide Bureau to correct any deficiencies related to our ability to ensure compliance with statutory mandate. To that end, the subject audit report has captured our success toward addressing deficiencies that were identified in a prior audit as well as the steps that we have taken to insure successful resolution of unresolved findings.

The referenced document indicates that we have successfully resolved deficiencies noted in a prior audit relative to on-site inspection procedures. To that end we have modified our compliance assurance procedures and have reviewed workload and staffing responsibilities to provide more efficient inspectional services. The referenced document has also identified an unresolved deficiency related to compliance with the provisions of Chapter 85 of the Acts of 2000 (i.e. the Children's Protection Act). The Department is aware of this deficiency and has taken action through the development and implementation of a Corrective Action Plan (CAP) in cooperation with the Early Education Commission of the Department of Education (DOE) that is currently working to resolve this matter as daycare's seek licensure or renewal of operating licenses through DOE. Although a two year license cycle prevents our ability to insure 100% compliance at this

time, we are confident that our inspectional activities and the requirements for licensure associated with our CAP will insure 100% compliance of licensed daycare facilities by September 30, 2008. As the referenced document recommends, we intend to continue implementation of the CAP and shall continue our work with DOE to ensure full compliance for all public and private schools and all licensed daycare and child-care facilities. We also intend to inform all non-compliant entities of fines and penalties that may be imposed and to refer chronic violations to the Massachusetts Office of the Attorney General for further action as necessary.