



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL



Enforcement and Compliance

Quick Reaction Report: EPA Pesticide Inspections Must Resume in North Dakota to Determine Compliance and Protect Human Health and the Environment

Report No. 15-P-0099

February 23, 2015



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Abbreviations

EPA U.S. Environmental Protection Agency
FIFRA Federal Insecticide, Fungicide, and Rodenticide Act
OECA Office of Enforcement and Compliance Assurance
OIG Office of Inspector General

Cover photo: Pesticide products. (EPA photo)

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At a Glance

Why We Did This Review

This is a quick reaction report that addresses lapses in the U.S. Environmental Protection Agency's (EPA's) pesticide inspections in North Dakota. This issue came to our attention during the course of ongoing work to assess the EPA's oversight of state inspections required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

FIFRA regulates the sale and use of pesticides in the United States through the registration and labeling of pesticide products. Pesticides are widely used in agricultural, commercial and household settings and have the potential to pollute air, water and land. An EPA inspector or a credentialed state inspector conducts inspections of pesticide establishments and imported pesticides to ensure compliance with FIFRA.

This report addresses the following EPA goal or cross-agency strategy:

- *Ensuring the safety of chemicals and preventing pollution.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit <http://www.epa.gov/oig>.

The full report is at:
www.epa.gov/oig/reports/2015/20150223-15-P-0099.pdf

Quick Reaction Report: EPA Pesticide Inspections Must Resume in North Dakota to Determine Compliance and Protect Human Health and the Environment

What We Found

EPA Region 8 is not conducting inspections at establishments that produce pesticides in North Dakota. Further, North Dakota does not have a state inspector with qualifications equivalent to a federal inspector to conduct inspections on the EPA's behalf. As a result, federal inspections of establishments that produce pesticides in North Dakota have not occurred for 14 years.

EPA Region 8 staff stated that FIFRA inspections have not been conducted because North Dakota officials do not want federal inspections conducted in their state. The failure to conduct inspections increases the risk that pesticides are not in compliance with federal law, which could result in potential risks from toxics being undetected and adverse human health and environmental impacts occurring.

Since 2011, EPA Region 8 has also failed to conduct inspections of pesticides imported into North Dakota. Since that time, approximately 1,300 pesticide imports to the United States have come through North Dakota and none have been inspected. EPA Region 8's failure to inspect imported pesticides to ensure compliance with federal law creates a potential risk not only for residents in North Dakota but residents in other states and locations in the United States.

The long-standing lapse in conducting FIFRA inspections in North Dakota may result in exposure to unsafe pesticides and pose risks to human health and the environment.

Recommendations and Planned Corrective Actions

We recommend that the Regional Administrator, Region 8, immediately initiate FIFRA producer establishment and import inspections in North Dakota, establish an inspection plan, and compile a list of the number of producer establishments and import inspections conducted annually in Region 8. We also recommend that the Office of Enforcement and Compliance Assurance review Region 8's fiscal year 2015 End-of-Year report and confirm that inspections in North Dakota have been initiated.

The agency agreed with our recommendations and has proposed acceptable corrective actions. All recommendations are resolved.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

February 23, 2015

MEMORANDUM:

SUBJECT: Quick Reaction Report: EPA Pesticide Inspections Must Resume in North Dakota to Determine Compliance and Protect Human Health and the Environment
Report No. 15-P-0099

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance

Shaun McGrath, Regional Administrator
EPA Region 8

This is a quick reaction report prepared by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report addresses EPA Region 8's failure to ensure that Federal Insecticide, Fungicide, and Rodenticide Act inspections are fully implemented in North Dakota. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The offices responsible for the issues evaluated in this report are the Office of Enforcement and Compliance Assurance's Office of Compliance and EPA Region 8's Office of Enforcement, Compliance and Environmental Justice.

You are not required to provide a written response to this final report because you provided agreed-to corrective actions and planned completion dates for the report recommendations. The OIG may make periodic inquiries on your progress in implementing these corrective actions. Should you choose to provide a final response, we will post your response on the OIG's public website, along with our memorandum commenting on your response. You should provide your response as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended.

We will post this report to our website at <http://www.epa.gov/oig>.

Purpose, Scope and Methodology

During our ongoing evaluation of the U.S. Environmental Protection Agency's (EPA's) oversight of state implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), we discovered lapses in conducting federal inspections in North Dakota. The EPA has a responsibility for determining compliance with FIFRA regulations at producer establishments and for pesticide imports.

We conducted this performance audit from September through December 2014 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 conclusions based on our audit objectives.

To evaluate Region 8's oversight of FIFRA, we reviewed FIFRA regulations, agency policy and guidance documents, and Region 8 inspection data. We conducted interviews with officials from the EPA's Office of Enforcement and Compliance Assurance (OECA), Office of Chemical Safety and Pollution Prevention, and Region 8; and the North Dakota Department of Agriculture.

Background

EPA's Responsibility to Conduct Producer Establishment and Import Inspections

The EPA has primary responsibility for determining compliance with FIFRA regulations at producer establishments¹ and for pesticide imports inspections. The EPA uses establishment inspections to identify areas of potential future harm to humans and the environment, such as the identification of the establishment involved in a recall or stop sale order. These inspections can result in enforcement action, including suspension or cancellation of a pesticide product use or sale. In addition, these inspections collect and develop evidence to support legal actions when violations of the Act are found at establishments that produce, distribute and sell pesticides.

Import inspections are done to ensure that imported pesticides comply with the requirements of FIFRA. Pesticides found not in compliance are detained and brought into compliance, or refused entry.

¹North Dakota, like other states, has state pesticide regulations. North Dakota conducts producer establishment inspections following its state regulations and using state credentials. However, these state-performed producer establishment inspections cannot be substituted for or conducted in lieu of federal inspections. In addition to other substantive legal differences between the state and federal standards, the reach of the state law applies only within the state and access to proprietary business information by the state is limited.

Federal-Credentialed State Inspectors

According to OECA managers, FIFRA producer establishment and import inspections must be conducted by either an EPA inspector or a qualified state inspector (also called “federal credentialed”). States need federal credentials to conduct inspections on behalf of the EPA when there is no state authority to conduct the inspection or when the EPA requests that states use federal authorities despite having state authority to inspect.

Significant Long-Standing Lapses in EPA Region 8 FIFRA Producer Establishment and Import Inspections in North Dakota

According to EPA Region 8 FIFRA managers, the region has not conducted FIFRA producer establishment inspections in North Dakota for at least 14 years. In contrast, Region 8 conducts inspections of all pesticide-producing facilities in Colorado on a 3-year review cycle. We were told that while the North Dakota Department of Agriculture conducts its own state inspections of pesticide producer establishments, these inspections cannot replace federal inspections. Given the lapse in Region 8 FIFRA producer establishment inspections, there is increased risk to human health and the environment in that pesticides being produced, mixed, formulated or repackaged in North Dakota may not be in compliance with all FIFRA rules for safe packaging, handling, labeling and sampling to verify that each compound matches its label.

The last FIFRA import inspection conducted by a Region 8 inspector in North Dakota was in 2010. Since 2011, the EPA has received approximately 1,300 notices that pesticides were coming into North Dakota from other countries and none have been inspected, according to the region’s data. EPA Region 8 staff explained that FIFRA import inspections are “inspections of opportunity.”² Failure to conduct import inspections increases the risk that pesticide products entering the United States through North Dakota are not in compliance with FIFRA rules for registration, labeling and sampling to verify the compound matches its label. Also, without such inspections, residents in other states and locations in the United States in addition to North Dakota could be at risk.

EPA Region 8 staff stated that producer establishment and import inspections have not been conducted in North Dakota because North Dakota officials do not want federal inspections conducted in their state. The North Dakota Director of the Pesticides and Fertilizer Division asserted that its state producer establishment inspections were sufficient to ensure FIFRA compliance, and that Region 8

²According to Region 8, inspectors should conduct import inspections based on issues or concerns with ‘Notices of Arrivals’ of imported pesticides or if Region 8 is following up on a request from another region or EPA headquarters related to a particular shipment or shipper. According to the agency’s 2013 FIFRA Inspection Manual, upon receipt of the Notice of Arrival, the region should determine whether to inspect and/or sample based on: (1) pesticides suspected of noncompliance, (2) pesticides with a violative history, or (3) first-time import of a pesticide to the region.

officials were also in agreement. However, EPA Region 8 has the responsibility to conduct FIFRA producer establishment and import inspections in all of Region 8's states, including North Dakota. The state's preference that federal inspections not be carried out in North Dakota should not be accepted by Region 8.

North Dakota Does Not Have a Federal-Credentialed State Inspector

North Dakota does not currently have a federal-credentialed state inspector and has not had one since the inspector with credentials retired in 2013.³ A 2013 EPA memorandum on this issue states, “due to the interstate nature of FIFRA, it would be inefficient to have a state-by-state, patchwork approach to inspection authorities and especially detrimental should there be an exigent need for Federal inspection. Therefore, all State Lead Agencies must have at least one inspector with a Federal credential.” The same 2013 memorandum regarding the use of credentials by state inspectors says that “the failure to have at least one inspector with a Federal credential may affect inspection-related funding under a cooperative agreement.” EPA Region 8 has not reduced funding under the Region 8 cooperative agreement with North Dakota since the position's vacancy in 2013. The North Dakota Director agreed that the state needs a federal-credentialed inspector for import inspections. According to EPA Region 8 staff, in accordance with the 2015 Cooperative Agreement between EPA Region 8 and North Dakota, the state agreed to add at least one federal-credentialed inspector and has verbally agreed to adding two additional federal-credentialed inspectors.

Recommendations

We recommend that the Regional Administrator, Region 8:

1. Immediately initiate FIFRA producer establishment and import inspections in North Dakota that are conducted by Region 8 inspectors or by federal-credentialed North Dakota inspectors.
2. Establish and submit to OECA a multi-year inspection plan for producer establishments operating in North Dakota and for pesticide imports entering the United States through North Dakota.
3. Compile a list of the number of producer establishment and import inspections that are conducted in the state annually in Region 8's North Dakota End-of-Year report.

³ The March 24, 2006, cooperative agreement between EPA Region 8 and North Dakota states: “It is agreed that it is in the best interest of this cooperative effort for EPA to authorize employees of the North Dakota Department of Agriculture to conduct inspections using EPA credentials.”

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

4. Review Region 8's fiscal year 2015 North Dakota End-of-Year report and confirm that FIFRA producer establishment and import inspections in North Dakota have been initiated.

Agency Comments and OIG Evaluation

The EPA agreed with our findings and recommendations and provided corrective actions and estimated completion dates for the report recommendations. All recommendations are resolved and no final response from the agency is required.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	3	Immediately initiate FIFRA producer establishment and import inspections in North Dakota that are conducted by Region 8 inspectors or by federal-credentialed North Dakota inspectors.	O	Regional Administrator, Region 8	9/30/15		
2	3	Establish and submit to OECA a multi-year inspection plan for producer establishments operating in North Dakota and for pesticide imports entering the United States through North Dakota.	O	Regional Administrator, Region 8	4/15/15		
3	3	Compile a list of the number of producer establishment and import inspections that are conducted in the state annually in Region 8's North Dakota End-of-Year report.	O	Regional Administrator, Region 8	3/15/16		
4	4	Review Region 8's fiscal year 2015 North Dakota End-of-Year report and confirm that FIFRA producer establishment and import inspections in North Dakota have been initiated.	O	Assistant Administrator for Enforcement and Compliance Assurance	4/15/16		

¹ O = Recommendation is open with agreed-to corrective actions pending.
 C = Recommendation is closed with all agreed-to actions completed.
 U = Recommendation is unresolved with resolution efforts in progress.

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