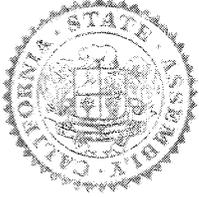


REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

235.6

REVIEW OF THE CALIFORNIA
PESTICIDE REGULATORY PROGRAM

MARCH 1977



Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature



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March 21, 1977

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's review of the California Pesticide Regulatory Program.

The review describes a myriad of varied county procedures, duplication of procedures by federal and state government, infrequent audits and a growing imbalance of reimbursements to county government resulting in tax detriment to property owners.

Standing committees to which this report is referred may wish to make the following inquiries:

1. What was the legislative intent when the program was authorized?
2. What program goals have been defined by the Department?
3. What standards of measurement for the achievement of these goals have been established?
4. Have the benefits equalled or exceeded the program costs?
5. What has been the impact on the needs that instigated the program?

By copy of this letter, the Department is requested to advise the Joint Legislative Audit Committee within sixty days of the status of implementation of the recommendations of the Auditor General that are within the statutory authority of the Department.

The auditors are Ross Luna and Dennis Sequeira.

Respectfully submitted,

MIKE CULLEN
Chairman

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SUMMARY

Pesticides protect agricultural crops and increase crop yields. Pesticides have, therefore, become an economic expediency for the agricultural and pest control industries of California. The state pesticides program is administered by the Department of Food and Agriculture, and implemented at the county level. The program is supported by fees and taxes levied by the State on the pesticide industry.

A large volume of pesticides used in California carry a wide toxicity range with potentially adverse environmental effects. The enforcement of appropriate controls over pesticide use is a major concern of state and local pesticide regulatory agencies.

The responsibility of the federal Environmental Protection Agency (EPA) has been expanded to include registration of pesticides distributed both in interstate and intrastate commerce. Although the registration and labeling activities are now included in federal jurisdiction, the State Department of Food and Agriculture has maintained its existing registration staff level, as though there had been no change in EPA responsibilities.

The counties are primarily responsible for monitoring pesticide use. The broad variations among the counties in enforcement activities appear to result (1) from the lack of Departmental authority to withhold state support funds, and (2) from the substantial decline in the rate of reimbursement of county costs. The inclusion of a number of products which are not agricultural pesticides in the state tax base inhibits the counties' recoveries of sufficient revenues to finance county costs and adds needlessly to the present state surplus.

We found that audits of pesticide registrants are completely inadequate, and if they continue to be performed at the current rate, it will take 35 years to audit each registrant once. Audits of county operations have not been performed for several years.

We also found that the two present methods used to report pesticide illnesses are ineffective. One method reports most, but not all illnesses, and involves a lengthy delay between the time reports are submitted and the investigations are performed. The second method is faster, but only a small percentage of the total illnesses are thereby reported.

INTRODUCTION

In response to a legislative request, we have examined the Department of Food and Agriculture's administration and enforcement of the California Pesticide Regulatory Program (CPRP). This examination was conducted under authority vested in the Auditor General by Section 10527 of the Government Code.

The purpose of this examination was to measure the effectiveness of two major areas of the CPRP:

1. Evaluation of pesticide use and monitoring activities statewide in regard to existing laws and regulations on pesticides.
2. Identification and appraisal of problem areas affecting the pesticide program, agricultural and pest control industries, the public and the environment in general.

In performing the review of the CPRP, we selected a cross-section of ten northern, central and southern counties involved in various agricultural activities.

Many county agricultural commissioners indicated that working closely with the agricultural pest control staff, growers, workers and the public in general; getting their cooperation; and

acquainting them with the laws and regulations on pesticide use were important tools in the effective enforcement of the program in the counties. Based upon discussions and available data, we believe these enforcement tools were used in most counties visited.

The Director of Food and Agriculture and his enforcement staff contributed toward major changes and improvements in the laws and regulations on pesticide use. The recent changes in regulations have resolved some of the problems that confronted the agricultural and pest control industries in the counties. However, a number of unresolved problems still remain. Examples are (1) unexpended surplus state monies, (2) increasing unreimbursed county costs, (3) inadequate reporting systems for pesticide-related illnesses and injuries, (4) insufficient audits of pesticide registrants, and (5) lack of uniformity in enforcement among the counties.

Appendix A shows the sources and uses of CPRP funds from July 1, 1971 through June 30, 1976. During the five-year span, the program collected \$12.3 million and disbursed \$10.7 million. Of the \$12.3 million collected, \$8.7 million represented mill tax assessments received from economic poison registrants. Of the \$10.7 million disbursed, \$4.7 million was paid to the counties to reimburse pesticide use enforcement expenditures.

Appendix B tabulates by fiscal years 1972-73 through 1975-76 the source and uses of funds of the pesticide residue program. The pesticide residue funds are appropriated from the State General Fund.

AUDIT RESULTS

DUPLICATE REGISTRATION
AND LABELING ACTIVITIES

Prior to the enactment of the 1972 amendments to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), pesticides sold, distributed and used entirely within a state were exempt from federal regulations. The regulations which took effect on August 4, 1975, require Environmental Protection Agency (EPA) registration of all pesticides, whether sold or distributed in interstate or intrastate commerce.

In effect, the FIFRA amendment prohibits the states from registering or using any pesticide products after August 4, 1975, which were not registered by EPA. Currently, EPA registers 33,000 to 40,000 pesticide products and reviews between 5,000 and 6,200 labels.

The State Department of Food and Agriculture (DFA) also registers pesticides prior to sale and use. The DFA registration process requires evaluation of each pesticide label claim for clarity, technical accuracy and compliance with pesticide laws and regulations. Pesticide products are inspected and tested to assure that they are registered and properly labeled. In order

to review the registration and labeling, the DFA employs a staff of 24. They register approximately 10,000 pesticides and review 7,850 to 8,000 labels annually.

In its November 13, 1975 news bulletin, the DFA stated:

Federal responsibility for pesticide use has expanded in recent years. The 1972 Amendment to the Federal Insecticide, Fungicide and Rodenticide Act extended Federal authority from merely a labeling program to include authority over pesticide misuse, applicator certification, and expanded penalties for violation. These new authorities overlapped in some areas with existing State and county pesticide controls in California, thus leading to the Cooperative Working Agreement.

The full impact of requiring EPA registration of all pesticide products upon the DFA's registration and labeling workload has not been determined. The DFA should reevaluate its registration and labeling procedures for California pesticides. Since all pesticides are now required to be registered with the EPA, DFA performance of these functions is a duplication of effort. The reevaluation should determine if the DFA's registration workload still justifies the present staffing level, or if reduction in the number of registration and labeling staff is warranted by the federal change.

CONCLUSION

Federal preemption of pesticide registration and labeling activities has not resulted in a reduction in the State Department of Food and Agriculture's workforce performing these same activities.

RECOMMENDATIONS

We recommend that the Director of Food and Agriculture:

- Evaluate the Department's registration and labeling procedures to ascertain activities which now duplicate the functions of the federal Environmental Protection Agency.
- Eliminate the duplicative positions.

SAVINGS

Depending on the number of positions determined to be unnecessary, savings up to \$300,000 annually could be achieved.

DIVERSITY OF ENFORCEMENT

Differences in enforcement activities among the ten counties we reviewed include (1) circumstances for which permits are required, (2) methods of handling violations, (3) container disposal procedures, and (4) methods of report filing. These differences are described below and tabulated in Appendix C.

Permit System

One county requires a dual permit system for restricted materials. Both grower and pest control operator (PCO) are required to have permits. The permits are usually issued on a yearly basis. Notices of intent are required on certain pesticide application jobs.

Another county requires a permit for both restricted and nonrestricted materials (most counties audited do not require permits for nonrestricted pesticides). Permits are issued on a yearly basis for PCOs and on a job basis for growers. No notice of intent is required.

Yet another county issues most permits on a job basis to both growers and PCOs. No notice of intent is required.

Although each of the ten counties we reviewed requires a permit for restricted pesticides, the permit forms used and the manner in which they are issued varies from county to county.

Counties interpret the law differently. One county requires individual permits for each crop that is to be treated by a restricted material because the law states that no permit shall be issued for use in any manner other than pursuant to its registration. Therefore, for the crop to be compatible with each pesticide listed on the permit, each crop requires a permit. However, another county issues permits which might list various crops and various pesticides all not being compatible with one another. The county personnel believe they are complying with the law because issued permits state that the pesticides are only to be used in accordance with the label.

Notice of Violation

One county writes a notice of violation for any violation observed; whereas, another county gives a warning notice for the same type of violation.

Disposal of Pesticide Containers

Not all counties have Class I or Class II dump sites.* Therefore, the disposal of empty pesticide containers in accordance with the regulations is a continuous problem.

*Class I dump sites are disposal sites at which complete protection is provided for all times for the quality of ground and surface waters from all wastes deposited therein against hazard to public health and wildlife resources.

Class II dump sites are disposal sites at which protection is provided to water quality from Group II and Group III wastes. Group II wastes consist of chemically or biologically decomposable material which does not include toxic substances nor those capable of significantly impairing the quality of usable waters. Group III wastes consist entirely of nonwater soluble, nondecomposable inert solids.

Containers which have held less than 28 gallons of liquid pesticides are required to be rinsed and drained by the users at the time of use. In counties where empty containers are disposed of at Class I dump sites, the regulation is not enforced because the State Water Resources Control Board allows unrinsed pesticide containers to be disposed of at Class I dump sites.

Use Reports

Most counties require submission of pesticides use reports within the seven-day filing period after application of the pesticides. However, one county requires growers and PCOs to submit the use reports by the tenth day of each month.

Section 2465 of Title 3, California Administrative Code states:

The holder of a restricted material use permit shall make a report within seven days after any use on a form and in a manner required by the director to the agricultural commissioner of the county where the permit was issued or to the director in any county where there is no commissioner. This report is not required if material is applied by a licensed agricultural pest control operator, and included in the operator's report. (Emphasis added)

Many pesticide users in the counties were in violation of the above provision of the Code.

Tests in the ten counties audited showed that 60 percent of the reports were not filed within seven days after application of the restricted pesticides. The time period during which users filed the reports ranged from 9 days to 30 days, an average of 16 days after application of the pesticides.

Two of ten counties did not stamp or note the dates of receipt on the use reports. We were told that the use reports were checked to see that the users were complying with the seven-day filing requirement. If the users were not in compliance, one county denied issuance of restricted use permits until the use reports in question were submitted to the agricultural commissioner's office.

Difficulties in Achieving Uniform Enforcement

Problems in achieving uniform enforcement have plagued the program since its inception. Beginning with the analysis of the 1971-72 budget bill, the Legislative Analyst recommended that all counties use citations for pesticide enforcement. The following is from the 1973-74 analysis:

The reason for our recommendation last year was partly as a response to the recent substantial increase in the workload of counties in pesticide control. There appeared to be a lack of reasonable uniformity in the enforcement of pesticide law. The existing enforcement tools, such as the 'notice of warning' generally appeared ineffective, and formal prosecution was too cumbersome and costly. Citations seemed to be well suited to field enforcement use and had the advantage

of being both quick and inexpensive. The county commissioners which we have interviewed in a recent report on pesticide use control found advantages in the use of citations.

The state Department of Food and Agriculture has proceeded slowly in the use of citations for pesticide enforcement and has initiated a pilot citation program only in Fresno County. The slowness with which the department has implemented this program and the apparent low priority assigned it is not commensurate with its importance. There is substantial agreement that citations could be the most effective, simple and inexpensive enforcement tool for both county and state enforcement of pesticide quality and use laws. In addition, the Legislature directed last year that four counties be used as pilot programs for citations, not just Fresno County. We believe the department should not delay implementation of such an effective enforcement tool. The federal Environmental Protection Agency in California has shown a recent willingness to vigorously prosecute pesticide violations.

Only three of the ten counties we reviewed use the citation system.

Limited Authority

Diversity of enforcement is a logical consequence of the DFA's limited authority to enforce compliance. Although the State provides financial support to the counties, the DFA is unable to require uniform operations. At the national level, the federal Environmental Protection Agency is responsible for both pesticides and air pollution. At the state level, these programs are administered by the CPRP and the Air Resources Board, respectively. The Air Resources Board is authorized to withhold and cease payments of subsidies to air pollution control districts for noncompliance; the CPRP is not so empowered with regard to pesticides. The State finances its own pesticide and air pollution

activities and also provides substantial amounts to support both operations at the local level. Yet the DFA is required to pay counties for pesticide enforcement activities regardless of the degree of compliance with its guidelines. The relevant code sections are compared in Appendix D.

CONCLUSION

Enforcement activities differ measurably from county to county. The DFA does not have the authority to withhold payments to counties and must make them regardless of the degree of compliance with its guidelines.

RECOMMENDATIONS

The DFA should establish regulations and require county compliance in the same manner as if enforcement activities were being performed by DFA employees.

The Legislature should consider providing DFA with authority to withhold payments to counties for noncompliance with regulations similar to that of the Air Resources Board.

BENEFIT

Diversity of enforcement actions among the counties would diminish.

THE STATE ACCUMULATES
PROGRAM SURPLUSES WHILE
COUNTIES INCUR DEFICITS

Approximately two-thirds of the state program revenue is derived from the mill tax levied on product sales. The State shares the mill tax and certain license fees with the counties but retains all other revenues, which are principally registration and licensing fees. The State retains 37.5 percent of the mill tax and distributes 62.5 percent to the counties. All counties are reimbursed the same percentage of their total program costs.

The levy and allocation of the mill tax simultaneously increase the State's surplus and the counties' deficits. While 99 percent of the counties' pesticide activities relate to agricultural pesticides, the mill tax is also levied on the sale of household products such as disinfectants, cleansers, toilet bowl products, bleaches, flea collars, contact lens solutions and wood preservatives. The inclusion of such products in the tax base effectively reduces the mill tax rate while producing a desired level of revenue. However, these products require little or no enforcement effort by the county. Therefore, including them in the tax base may contribute to inadequate funding of the increasing cost of county operations, because it is difficult to raise the tax rate on products that do not cause the problem for which solution is sought.

Decline in County
Cost Reimbursement

The counties were reimbursed for the first year of program operation, 1971-72, for 92 percent of their costs. Since then costs have escalated more rapidly than the revenues available to reimburse the counties. The counties' ratio of reimbursed costs to total costs declined to 75 percent for 1972-73, 60 percent for 1973-74, and last year the counties received 54 percent reimbursement of their prior year's (1974-75) costs. Meanwhile, state operations from mill tax assessments have resulted in surpluses each year. The June 30, 1976 program surplus balance was \$1.6 million.

This state/county disparity occurs, in part, because of the difference in activities being performed. The State is primarily concerned with registering and testing products and licensing individuals and businesses. The number of products and entities is the primary influence on the State's workload. In contrast, the counties' workloads are primarily affected by the extent to which products are used. Agricultural commissioners observe ground and aerial pesticide applications, investigate complaints, determine if activities are being performed by unlicensed persons and enforce disciplinary actions.

The State pays for only the agricultural pesticide activities which benefit the general public from the General Fund. Those activities which either primarily benefit the agricultural

community or are directed to solving problems caused by agriculture are paid from program revenues derived from the industry. Thus, the cost of testing field and orchard crops to determine pesticide residue levels is paid from the State's General Fund (Appendix B), while revenues from registration, license fees and the mill tax, all of which are paid by the industry, are used for enforcement of all other pesticide regulations (Appendix A).

While the State is able to employ a logical basis to segregate the activities to be paid by the general taxpayers from those to be paid by the industry, the counties do not have this authority. They therefore must pay the program costs in excess of state subvented revenue from general county revenues. This is done primarily through the property tax. Consequently, property owners are absorbing most of the added local costs caused by the decline in state reimbursements. During 1975-76, property taxes were 93 percent of total county taxes.

While all counties are reimbursed the same percentage of program costs each year, there are substantial variations in the amounts of reimbursement the counties receive. The 21 largest agricultural counties receive 78 percent of the total reimbursements. Thirty-three counties share the remaining 22 percent, with four counties not participating in the program. The payments to 11 counties receiving the smallest amounts during the period of our review ranged between \$260 and \$2,800. The largest payment to a single county was \$128,000, or nearly 500 times greater than the smallest payment.

Variations in
County Expenditures

The annual financial statements prepared by the county agricultural commissioners and submitted to the Department of Food and Agriculture showed that the pesticide use enforcement costs varied substantially among counties.

The variations in the amount of county program expenditures range between \$1.47 and \$60.84 per farm and between \$0.01 and \$2.56 per acre of cropland harvested. In part, these variances result from the substantial differences among the counties in the per man-day expenditures. Two counties have per man-day enforcement costs that are more than four times that of the lowest cost county.

For example, during fiscal years 1973-74 and 1974-75 Napa and Siskiyou Counties had the highest per man-day enforcement costs, with \$231 and \$256 per man-day, respectively. Mendocino County had the lowest enforcement costs, with \$48 per man-day in 1973-74 and \$55 per man-day in 1974-75. The average enforcement costs for all counties amounted to \$85 per man-day in 1973-74 and \$97 per man-day in 1974-75.

The variances in enforcement costs result in part from the following factors:

- Errors in reporting by some counties of the number of hours spent by the commissioner's staff for pesticide use enforcement.

- Differences in the bases for allocation of the expenditures for the various activities of the agricultural commissioners.
- Failure by county supervisory personnel to check the propriety and accuracy of the dollar expenditures and the hours reported in the agricultural commissioners' records.
- Salary differentials among the counties for employees performing the same enforcement work.
- Inclusion or noninclusion of employees' fringe benefits in the calculation of chargeable or prorated expenditures for pesticide use enforcement.
- Inclusion or noninclusion of nonproductive time such as vacation and sick hours, and the employees' compensation in the computation of expenditures chargeable under the pesticide program.

If the State assumed responsibility for the pesticide activities now performed by the counties, the variations in enforcement activities and costs would probably diminish. However, an increase in revenues from the industry would be required to continue the state policy of industry funding of those pesticide programs which create a substantial adverse impact on either the agricultural industry or the general public with consequent necessary enforcement.

In order to equitably obtain these funds from the industry, separate tax rates should distinguish the agricultural products, which require county enforcement actions, from the household products, for which there is little or no county enforcement and oversight activity.

CONCLUSION

The proportions of county costs absorbed by subvented state revenues derived from the industry has declined, thereby forcing a larger burden on local property owners. The levy of the state tax on a number of products which require little or no enforcement action impedes adjusting the tax rate to finance necessary program activities.

RECOMMENDATION

We recommend that the Legislature consider establishing separate tax rates which distinguish agricultural products requiring county enforcement actions, from household products, which require little or no county enforcement activity.

BENEFIT

The equity of financing the enforcement activities between the State and counties would be improved.

INSUFFICIENT AUDITS
OF ECONOMIC POISON
MANUFACTURERS AND
COUNTY OPERATIONS

The DFA has not conducted sufficient audits of economic poison manufacturers, especially those whose records are maintained outside California. Audits of county operations have also been insufficient.

Since the DFA began auditing economic poison manufacturers in April 1974, there have been 75 audits of approximately 1,134 registrants as of June 1976. Of these 75 audits, only one concerned a manufacturer whose records were maintained outside California, although 48 percent of the total mill assessment receipts are from out-of-state manufacturers.

Section 12842 of the Food and Agricultural Code states: "Each registrant shall maintain in this state, or with the director's permission at another location, an accurate record of all transactions subject to assessment. Such records shall be subject to audit by the director." The DFA's policy has been that records may be maintained outside the State provided that the registrants make them available within California when necessary for audit purposes.

Two requests have been made to out-of-state manufacturers to have their records made available in California. In both instances, the DFA auditor was unable to perform adequate audits

with the records furnished by the manufacturers. DFA officials felt that proper audits could be performed if their auditors had access to all of the companies' sales records. In many instances, this would necessitate out-of-state travel to examine records maintained outside the State. The Department felt, however, that the present administration would not authorize any out-of-state travel.

Nearly \$90,000 has been recovered from the 75 audits. These audits were conducted by one auditor who spent approximately one-third of the available time on these. If the audits were to continue at this rate, it would take 35 years to audit all registered manufacturers.

The last audits of county operations were performed for the 1972-73 fiscal year. The counties' reports of costs and activities have been accepted without audit, even though, as noted in a prior section of this report, there are substantial cost variations among the counties.

Under interagency audit contract, the State Controller audits counties for several subvention programs for other state agencies. County pesticide operations could be examined in conjunction with the Controller's other audits of the counties. This would involve less travel time and cost than if the Department independently performs these audits. To improve the audit

independence, the Legislative Analyst has recommended that funds be appropriated directly to the Controller rather than to the involved agency, thereby eliminating the interagency audit contract.

CONCLUSION

The DFA has not performed sufficient audits of economic poison manufacturers or of the counties receiving state reimbursements.

RECOMMENDATIONS

The DFA should:

- Audit all economic poison manufacturers subject to the mill assessments at least every third year.
- Enforce the provisions of Section 12842 of the Food and Agricultural Code by requiring out-of-state manufacturers to either provide records to enable an adequate audit by the State or to pay the out-of-state costs of audits.

The State Controller should budget for an perform pesticide audits of the counties.

BENEFIT

Implementing the above recommendations will ensure proper collection of mill tax assessments from economic poison manufacturers and independent verification of county costs.

INSUFFICIENT REPORTING
OF PESTICIDE ILLNESS

Pesticide illnesses are reported to local health officers through Workers' Compensation reports and by physicians. The first method is time consuming and reports only part of the total pesticide illnesses that occur. The second method results in only a small percentage of cases being reported, although the Health and Safety Code, Section 2950, requires physicians to report such incidences of poisoning.

Under the Workers' Compensation reporting system, physicians complete "The Doctor's First Report of Work Injury" form as required under Section 6409 of the Labor Code. The reports go through the following steps before going to the counties for investigation:

- Doctor examines patient and completes a report.
- Report goes to the State Division of Labor Statistics and Research, San Francisco.
- Report is forwarded to the Bureau of Occupational Health and Environmental Epidemiology, Berkeley.
- Report forwarded to Epidemiological Studies Laboratory, Berkeley.
- Department of Food and Agriculture receives the report.

- Report forwarded to the county agricultural commissioners for investigation.

The average delay between the date of injury and the date the county agricultural commissioners received the report was 68 days for the ten counties we reviewed. This delay makes it difficult for the counties to perform a meaningful follow-up investigation and obtain all the facts about the illness. In many instances, the victims were unavailable for comment at the time of investigation. This prevents the investigator from obtaining complete first-hand facts to ascertain the cause of the pesticide-related illness or accident.

Not all pesticide illnesses are reported on "The Doctor's First Report of Work Injury." Only employees covered under the Workers' Compensation Insurance Law are included in this report. The report excludes those who are self-employed and who do their own work, such as agricultural pest control operators, structural pest control operators and farmers. Also excluded are individuals who become ill while applying pesticides around their own dwellings. The Workers' Compensation reporting system does not therefore provide an accurate assessment of the total pesticide illness cases. Such information is essential to develop meaningful regulations on pesticide workers' welfare and safety.

Section 2950 which was added to the Health and Safety Code in 1970 requires physicians to report all cases of pesticide poisoning to local health officers. The county health officers are required to notify within seven days the county agricultural commissioner, the Director of Food and Agriculture and the Director of Health. This system, if properly used, would provide prompt reporting of all pesticide illnesses treated by physicians. However, Department of Health personnel estimated that only two percent of the pesticide illnesses are currently reported under this system, and they believe that doctors have not been complying because there is no penalty for failure to report.

Section 12980 of the Food and Agriculture Code provides that the development of regulations relating to pesticide workers' safety shall be the joint responsibility of the Department of Food and Agriculture and the Department of Health. Since pesticide illness statistics are essential to the development of pesticide laws and regulations, we urge that the Department of Food and Agriculture and the Department of Health enforce the provision of Section 2950 of the Health and Safety Code to develop an accurate reporting system on pesticide illnesses and injuries.

CONCLUSION

The reporting system based on Workers' Compensation reports fails to provide timely and complete information. Implementation of Health and Safety Code, Section 2950, requiring doctors to report to local health officers, if implemented in full compliance with law, would provide a better reporting system.

RECOMMENDATIONS

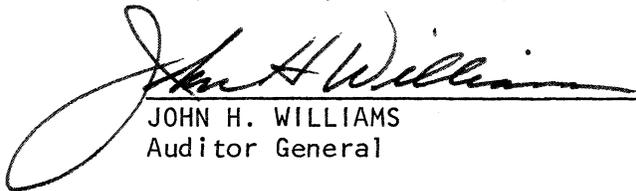
We recommend that the Department of Food and Agriculture and the Department of Health:

- Provide current information to physicians, hospitals, medical societies and institutions regarding enforcement of the provisions of Section 2950 of the Health and Safety Code.
- If the above recommendation fails to produce compliance, seek legislation to impose monetary penalties similar to those specified for Workers' Compensation Insurance under Section 6413.5 of the Labor Code.

BENEFITS

Implementation of the above recommendations will provide a complete and timely pesticide illness reporting system which is necessary to evaluate the causes and consequences of pesticide illnesses and injuries.

Respectfully submitted,


JOHN H. WILLIAMS
Auditor General

March 18, 1977

Staff: Ross Luna
Dennis Sequeira

DEPARTMENT OF FOOD AND AGRICULTURE

1220 N Street
Sacramento
95814



March 21, 1977

Mr. John H. Williams
Auditor General
925 L Street, Suite 750
Sacramento, California 95814

Dear Mr. Williams

On March 18 we delivered a preliminary draft of our response to your report on the Department's pesticide program.

Our comments were somewhat extended and I am submitting this summary of the response in case it can be helpful.

Duplicate Registration and Labeling Activities

We agree with the conclusion but disagree in part with the recommendations. It is vitally important for the Department to conduct the full review of new products and the continuous evaluation of registered products required by law. Only by these reviews can we have a detailed knowledge of the characteristics of the pesticides sold and used in the State. The data required for registration provide the basis for the Department's comprehensive system of regulations for worker safety, pest control operations, protection of the environment and safe use in general. The staff is also engaged in making evaluations in connection with registration for special local needs and "crisis exemptions," and providing information to counties. Since this is a transitional period for EPA and the States in registration activities, we are looking carefully at the workload in relation to the staffing.

Diversity of Enforcement

We agree that there are differences in enforcement procedures and activities and that the Department does not have authority to withhold payments to counties. Some of the differences are due to the widely varying agricultural production, population and environmental situations among counties. The Department has a number of procedures in effect to provide information and training to achieve uniformity. Three Field Supervisors are being added this month to increase the staff working with the counties and support them in attaining performance standards. We believe we can work with the counties to achieve acceptable uniformity without having to withhold mill assessment funds.

The State Accumulates Program Surpluses While Counties Incur Deficits

We do not agree with the conclusion as set forth in the draft report nor do we believe the mill assessment should be lowered for household pesticides.

Mr. John H. Williams
Page Two
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The mill assessment was enacted to assist the counties in carrying out additional responsibilities and not to reimburse them for all pesticide enforcement activities. Since subventions began in 1972, they have increased steadily so that funds subvented in 1975-76 were actually in excess of the increased county expenditures. We do not believe it would be appropriate to lower the assessment on household pesticides because there are some county activities related to them and it may be that in the future the counties will need to devote more attention to regulation of use of these products.

Insufficient Audits of Economic Poison Manufacturers and County Operations

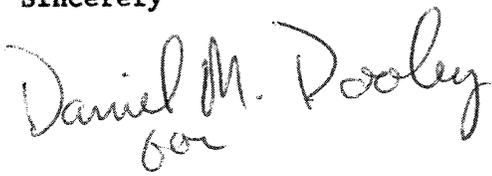
We concur with your conclusion that the Department has not performed sufficient audits of economic poison manufacturers or of the counties. We have already planned to increase audits of out-of-state firms. We plan to make an analysis of the audit program requirements and determine the audit frequency of most benefit to the State. We believe it would be more efficient for the Department to increase its auditing of counties than for the State Controller to undertake this responsibility and the Department will make a review of the auditing needs and cost-benefit of increased auditing of counties.

Insufficient Reporting of Pesticide Illness

We agree with the conclusion that there is too much delay in getting the information about illnesses and that physicians are not complying satisfactorily in reporting pesticide related illnesses. A meeting has been held with the Departments of Health and Industrial Relations and the Board of Medical Quality Assurance to facilitate the reporting. Imposing penalties on physicians could be counterproductive.

Attached is a preliminary draft of our detailed comments.

Sincerely

Handwritten signature of Daniel M. Dooley in cursive script. Below the signature, the word "for" is written in a smaller, simpler script.

James G. Youde
Acting Director
445-7126

Attachment

RESPONSE TO DRAFT REPORT
OF THE AUDITOR GENERAL REVIEW
OF THE CALIFORNIA PESTICIDE REGULATORY PROGRAM

The response of the California Department of Food and Agriculture will follow the format of subheadings used by the Auditor General in his Draft Report on California's Pesticide Regulatory Program. The preliminary draft of our response follows:

CONCLUSION

Federal preemption of pesticide registration and labeling activities has not resulted in a reduction in the State Department of Food and Agriculture's workforce performing these same activities.

RESPONSE TO CONCLUSION

The Department is of the opinion that a reduction in workforce is not warranted at this time because of workload requirements which are not duplicative of EPA.

DUPLICATE REGISTRATION AND LABELING ACTIVITIES

RECOMMENDATIONS: We recommend that the Director of Food and Agriculture: Evaluate the Department's registration and labeling procedures to ascertain activities which now duplicate the functions of the federal Environmental Protection Agency, eliminate duplicate positions.

RESPONSE TO RECOMMENDATION

Under the provisions of Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations adopted pursuant to it, all pesticide products were required to be registered with the Environmental Protection Agency by October 4, 1975. At that time, EPA required all persons selling pesticide products intrastate to submit a notice of intent for any pesticide products previously produced and marketed intrastate and registered only with the State. Such notice of intent to register was submitted for several thousand pesticide products; however, the EPA has not been able to register more than a handful during the past year and a half. EPA estimates that barring substantial changes in the Federal law, this registration process may not be completed within 10 years.

Section 12811 of the Food and Agricultural Code requires that all pesticide products be registered with the Department before they are offered for sale in California. Section 12881(e) requires that each label to be used on a pesticide must be approved by the Director.

Section 12824, 12825 and 12826 of the Food and Agricultural Code require a thorough review of all pesticide products submitted for registration in California as well as a continuous reevaluation of all currently registered products. In addition, it is vital that the Department know what pesticide products are being offered for sale in California, in order

to impose restrictions on their uses to protect man and the environment. Without maintaining a full registration review, we would not have the data and knowledge about the biological, chemical and physical characteristics of the pesticides marketed in the State and would be unable to impose appropriate use restrictions, protect the public health and safety, for the protection of fish and wildlife, protection of bees, protection of crops from pesticide drift, protection of workers and achieve similar important goals. The EPA recognizes the need for states to continue this type of function and specifically provides that they may further regulate the sale and use of a pesticide according to the needs of their state.

The information and evaluations required in the registration activity provide the data base for all the other pesticide regulatory activities. Without information on the types, composition, uses, labeling and effects of the pesticides used in the State, the Restricted Materials, Restricted Herbicide, Licensing and Use Enforcement, Worker Safety, Pesticide Product Quality, Residue and Environmental Protection programs would become inoperable. Regulations and enforcement in these areas would not be effective or up-to-date without maintaining a full pre-registration review and evaluation of the characteristics of these chemicals.

In addition, the Department has been delegated authority by EPA to register products for "special local needs" pursuant to Section 24(c) of FIFRA. This is an important function of the registration staff by which we are able to authorize use of certain pest control measures which are either safer and more effective than existing techniques or required to prevent public health hazards or severe loss in agricultural production. To date, approximately 50% of all the special local need registrations issued nationwide have been issued by California. This percentage reflects the extensive and highly complex pest control situations occurring within the State. We have also been able to request a "crisis exemption" from EPA, pursuant to Section 18 of FIFRA, to allow use of a pesticide for a pest for which no other control technique is available. These activities have been undertaken since October 1975 and require substantial amounts of time from the registration staff.

With the establishment of its Office of Special Pesticide Review, EPA has commenced a systematic review of a large number of pesticides which have some undesirable characteristics. Pursuant to Section 3 regulations of FIFRA, EPA does not attempt to collect information about the usefulness and benefits of these chemicals. Under carefully regulated conditions, some uses of these chemicals may be vital to the production of certain crops in California. California is one of the most intensive and diverse agricultural areas in the world. Geographic and climatic variation within the State allow production of over 200 different crops. Agriculture in California is intensive, yielding 9% of the nation's production on 2% of the farms. These conditions produce many unique pest control problems. Many crops, such as broccoli and artichokes, may be minor on a national scale but important in California. In other crops, such as alfalfa and wheat, California's share of national production may be minor; however, special pest problems are encountered in California that occur nowhere else. EPA and USDA has specifically asked for such data. Our registration staff is assembling information about the use, restrictions, benefits and problems associated with these chemicals in order that EPA have the best possible information on which to base a regulatory decision.

The registration unit is involved in a significant information activity. The Pesticide Information Center maintains extensive files of information on registered pesticides utilizing microfilm and remote computer access as well as general files. Several thousand inquiries from within the Department, from enforcement personnel of the cooperative county agricultural commissioner's office, from other State agencies and from the general public are handled each year. With new pesticides, regulations and concerns, the time devoted to this activity has expanded continuously since its inception.

The Department has been reviewing the registration and labeling activities continuously since July 1974 to determine which activities within the registration function may duplicate those conducted on the federal level. Several activities within the function have been either altered or reduced. We expect to continue this review indefinitely.

During the last several years, the pesticide registration program of the Department has had to expand its activities in several areas in response to additional needs. These additional needs relate to worker safety, to more stringent requirements concerning pesticide use enforcement, to increased emphasis on evaluation of the human and environmental effects of pesticides, to increased federal involvement in pesticide regulation and to greater general public interest in pesticides. As a result of these expanded activities, the registration had become severely understaffed.

CONCLUSION

We will continue to review all activities for duplication; however, considering current activities, a reduction in staffing is not feasible at this time.

DIVERSITY OF ENFORCEMENT

CONCLUSION

Enforcement activities differ measurably from county to county. The DFA does not have the authority to withhold payments to counties and must make them regardless of the degree of compliance with its guidelines.

RECOMMENDATIONS

The DFA should establish regulations and require county compliance in the same manner as if enforcement activities were being performed by DFA employees.

The Legislature should consider providing DFA with authority to withhold payments to counties for noncompliance with regulations similar to that of the Air Resources Board.

RESPONSE TO RECOMMENDATIONS

The Department recognizes that there are differences in processes and procedures in enforcement activities among counties. The Department also recognizes that differences in levels of enforcement do exist among counties. In certain instances differences may occur because of needs for protection of crops, public health and safety or environmental concerns which also vary among counties.

The Department concurs with the Auditor General's conclusion that DFA does not have authority to withhold payments to counties.

RESPONSE TO RECOMMENDATIONS

The Department has published regulations which provide guidance in enforcement by counties. In addition, the Department provides training, supervision and coordination to counties. Also the Department provides a Pesticide Management Manual to counties which contains laws, regulations, policies, procedures, guidelines, forms and other information to guide counties in enforcement. The Department and County Agricultural Commissioners Association share a mutual goal of progressively working together to achieve greater uniformity in regulatory activities.

The Department would be supportive of studies to consider alternative methods or criteria for payments to counties.

BASIS FOR RESPONSE

I. Diversity in Enforcement

A. General Program Information

California is unique in that each county in the State (except Alpine, Mariposa and Trinity where the Director acts as County Agricultural Commissioner) has a

department of agriculture which is managed by the County Agricultural Commissioner. According to local conditions, the Commissioner enforces California laws and regulations pertaining to pest control and pesticide use by private and commercial applicators.

Section 2281 of the Food and Agricultural Code specifies the following enforcement responsibilities for both the Department and Commissioners when the Code places joint responsibility on both agencies. The Commissioner is responsible for local administration of the enforcement program. The eleven major categories of enforcement by the counties are: 1) issuance of restricted material possession and use permits, 2) regulating sale of restricted use pesticides, 3) regulation of pest control and pesticide recommendations, 4) pesticide use surveillance, 5) registration of agricultural pest control operators, 6) regulation of pesticide storage and disposal, 7) regulation of pesticide use reports, 8) pesticide damage, accident and illness investigations, 9) enforcement of safety intervals and preharvest intervals, 10) protection of bees, and 11) pesticide worker safety.

The Department is responsible for overall statewide enforcement through the issuance of procedural instructions and recommendations; by providing assistance in training, forms, special services and equipment, statewide publicity and planning, and emergencies; and by providing for uniformity and coordination.

In carrying out its responsibilities the Department has provided to the County Agricultural Commissioners and their staffs copies of the Pesticide Management Manual. This manual is comprised of laws, regulations, policies, procedural guidelines, interpretations, forms and instructions, lists of regulated firms and persons, related pesticide and safety information and special local need registrations. The purpose of the manual is to provide guidance and increased uniformity to Commissioners and their staffs. In addition, the Department has increased its staffing of Field Supervisors from five to eight to provide increased training, supervision and coordination to counties.

B. Diversity of Agriculture and Environmental Settings

California is unique as it relates to diversity of agricultural production and environmental factors. In California there are over 250 different commercial crops grown. This diversity of crops is permitted due to a diversity of environmental factors including: climate, rainfall, topography, and soils. This results in a wide range of varying pest problems and pest management needs which significantly impact on the use of pesticides. This diversity coupled with an ever expanding population encroaching into agricultural areas and needs to protect public health and safety, water quality, fish and wildlife pose a unique set of problems on safe use of pesticides.

C. Permit System

The draft report generally centered on differences in processes used by various counties in issuing restricted use permits rather than whether the purpose and intent of laws and regulations have been complied with. Because of the diversity of agricultural crops and the diversity of environmental settings that exist within a county or between counties

or between regions in the state, identical processes may not be totally feasible. Flexibility is needed in the permit process to permit an adequate level of protection to environmentally sensitive areas and situations. For example, a county with a large population and a large varied agricultural production has a different set of needs than a mountain county with a low population density and nonextensive agriculture such as timber production or livestock rangeland.

The Department has developed guidelines to aid counties in the design of permit forms and in issuing permits. These guidelines are published in the Pesticide Management Manual. The current regulations do provide for flexibility in County processes. Permits may be issued for a single use, several uses, or for a season but never in excess of twelve months. Commissioners have authority to specify conditions and use for restricted pesticides based upon criteria set forth in Section 14006.5. Commissioners also may require that a "notice of intent" is submitted to his office prior to use of a restricted material to allow for his inspection of the application.

In conclusion, the Department recognizes that permit processes may vary among counties. However, the Department and counties share a mutual goal of striving for increased uniformity. In addition, the Department in cooperation with County Agricultural Commissioners is developing a State-wide Pesticide Use Plan/Environmental Impact Report. It is expected that this report will provide guidance to counties in issuance of restricted use permits that will result in a higher level of uniformity. Currently, the Department is conducting a survey of counties to obtain information on enforcement activities, methods and procedures.

D. Notice of Violation

Enforcement guidelines are published in the Pesticide Management Manual. These guidelines indicate suggested action for first, second and third violations for both State license holders and private applicators (growers).

The action varies from a written warning noted on a routine inspection form to accusation or criminal complaint. We consider the variation in the titles (Notice of Warning or Notice of Violation) to be a minor one since they serve the same purpose which is to establish a written record that a person was informed that a certain act was not in compliance with the law. The Department-provided form is entitled "Notice of Violation".

In 1973, the Department published a "court citation procedure guide" and with the cooperation of the California State Police conducted statewide training for counties in citation procedures. When counties contacted local district attorneys, many agricultural commissioners were told that they should not issue citations but should ask for criminal complaints when this type of action is needed. Several counties are issuing citations at the present time.

E. Disposal of Pesticide Containers

The rinse regulations were developed with the aid of an interagency task force. These regulations require that most containers that have held less than 28 gallons be rinsed at time of use and the rinse water added to the spray mix. The major emphasis was placed on developing the rinse procedures to allow for disposal in Class II sites which are more numerous than Class I sites.

While there is a variation in the disposal of pesticide containers permitted in Class I dump sites, the Department's opinion is that this does not result in a problem but rather is a solution to a disposal problem.

F. Pesticide Use Reports

It is true that Sections 2451.5 and 2465 of Title 3, California Administrative Code, requires use reports be filed within seven days of use. These sections also provide that reports other than or in addition to these may be required by the commissioner.

Section 3090.2, California Administrative Code in subsection (c) provides that certain reports may be submitted by the tenth day of the following month.

Commissioners are increasing their enforcement efforts to achieve filing of reports within the time period provided.

II. Payments to Counties

Section 12844 of the Food and Agricultural Code specifies that the Director shall pay five-eighths of the mill assessment received to the counties as reimbursement for costs incurred by the counties in administration and enforcement of pesticide laws and regulations. This section further provides that such payment shall be apportioned in relation to each county's expenditures for such programs to the total amount expended by all counties for such programs.

Administrative regulations promulgated do set forth a reporting mechanism requiring monthly reports summarizing pesticide regulatory activities and a yearly financial report of counties total expenditures in this subject area. The Director has authority to audit the reports and to require substantiation.

Authority does not exist in the statutes for the Director to refuse payment to counties for work performed and reported. A revision of the statutes would be necessary to accomplish the recommendation of the report.

THE STATE ACCUMULATES PROGRAM
SURPLUSES WHILE COUNTIES INCUR DEFICITS

CONCLUSION

The proportions of county costs absorbed by subvented State revenues derived from the industry has declined thereby forcing a larger burden on local property owners.

The levy of the State tax on a number of products which require little or no enforcement action impedes adjusting the tax rate to finance necessary program activities.

RECOMMENDATION

We recommend that the Legislature consider establishing separate tax rates which distinguish agricultural products requiring county enforcement actions, from household products, which require little or no county enforcement activity.

RESPONSE TO THE CONCLUSION

The Department of Food and Agriculture does not agree with the conclusion that there has been a significant tax increase to the local property owner for pesticide use enforcement nor does it agree with the conclusion that the levy of the State tax on a number of products which require little or no enforcement action impedes adjusting the tax rate to finance necessary program activities.

RESPONSE TO RECOMMENDATION

The Department of Food and Agriculture does not agree with the recommendation that the Legislature consider establishing separate tax rates which distinguish agricultural products from household products.

BASIS FOR RESPONSE

In response to the conclusion that county costs for pesticide use enforcement were being shifted to the local property owner, one must look at the history behind this enforcement activity. County government has been regulating pesticide use in California since 1916 and received no State support for this activity until 1972. The 1972 legislation establishing the economic poisons mill assessment with five-eighths of the money earmarked to supplement county expenditures for increased enforcement activities. It was never intended to completely support the funding of county pesticide enforcement programs. At best it was designed to offset new additional enforcement responsibilities and costs required to be administered by the counties.

Using the basis that 1970-71 was the last fiscal year before enactment of the economic poisons mill assessment, it is obvious that the State revenues subvented to counties and derived from industry has more than paid all increased costs of these ongoing programs since 1972. (Note attached Appendix A). The figures show that counties have actually received

\$2,117,849 more in mill assessment subventions in the past five years than the increase in their county pesticide use enforcement programs.

The Department of Food and Agriculture believes that it would not be appropriate to seek a change in the law to establish a lower mill assessment on household pesticide products than for agricultural. The assessment was imposed equally on all products to establish a broad base to provide adequate funding.

County agricultural commissioners are involved in investigating illnesses or accidents attributed to pesticides whether household products or not. They also become involved in any complaints about misuse, and become involved in disposal of unused pesticides and used containers.

If it should be necessary to take action against a household product, agricultural commissioners might be required to assist in getting the product out of the channels of trade.

APPENDIX A

	TOTAL	1975-76	1974-75	1973-74	1972-73	1971-72	* 1970-71
TOTAL COUNTY COSTS FOR PESTICIDE USE ENFORCEMENT	9,972,132	2,894,854	2,609,350	1,889,320	1,402,035	1,176,573	1,116,607
LESS BASE PERIOD *	5,583,035	1,116,607	1,116,607	1,116,607	1,116,607	1,116,607	1,116,607
INCREASED COUNTY COSTS OVER BASE PERIOD	4,389,097	1,778,247	1,492,743	772,713	285,428	59,966	- 0 -
MILL TAX SUBVENTED TO COUNTIES	6,506,946	1,831,946	1,408,546	1,125,463	1,057,551	1,083,440	- 0 -
AMOUNT SUBVENTED TO COUNTIES EXCEEDING (NOT EXCEEDING) INCREASED COUNTY COSTS OVER BASE PERIOD	2,117,849	53,699	(84,197)	352,750	772,123	1,023,474	
PERCENTAGE OF INCREASED COUNTY COSTS SUBVENTED COUNTIES	148%	103%	94%	146%	370%	1806%	

* 1970-71 THIS IS THE AMOUNT COUNTIES WERE CONTRIBUTING TO PESTICIDE ENFORCEMENT PROGRAMS BEFORE THE ADVENT OF THE ECONOMIC POISONS MILL ASSESSMENT WHICH BECAME EFFECTIVE JANUARY 1, 1972.

INSUFFICIENT AUDITS OF ECONOMIC POISON
MANUFACTURERS AND COUNTY OPERATIONS

CONCLUSION

The Department of Food and Agriculture has not performed sufficient audits of economic poison manufacturers or of the counties receiving State reimbursements.

RECOMMENDATIONS

The Department of Food and Agriculture should:

- Audit all economic poison manufacturers subject to the mill assessments at least every third year.
- Enforce the provisions of Section 12842 of the Food and Agricultural Code by requiring out-of-state manufacturers to either provide records to enable an adequate audit by the State or to pay the out-of-state costs of audits.

The State Controller should budget for and perform pesticide audits of the counties.

RESPONSE TO CONCLUSION

The Department of Food and Agriculture concurs with the Auditor General's conclusion that we have not performed sufficient audits of economic poison manufacturers or of the counties receiving State reimbursements.

RESPONSE TO RECOMMENDATIONS

The Department of Food and Agriculture believes that the recommendation to audit all economic poison manufacturers subject to the mill assessments at least every third year is not feasible from a cost-benefit viewpoint.

The Department of Food and Agriculture agrees with part of the recommendation and will enforce provisions of Section 12842 of the Food and Agricultural Code:

"Each registrant shall maintain in this State, or with the director's permission at another location, an accurate record of all transactions subject to assessment. Such records shall be subject to audit by the director."

The Department of Food and Agriculture does not agree with the part of the recommendation that out-of-state manufacturers either provide records to enable an adequate audit by the State or to pay the out-of-state costs of audits.

The Department of Food and Agriculture does not agree with the recommendation the State Controller should budget for and perform pesticide audits of the counties.

BASIS FOR RESPONSE

A. An analysis of the average quarterly assessments paid by all economic poison manufacturers indicates approximately 55% pay less than \$50.00 quarterly. The manufacturers were separated into three categories:

- I. Out-of-state companies with out-of-state addresses (484 companies).
- II. Out-of-state companies with California addresses (107 companies).
- III. California companies.

Economic Poison Manufacturers
Percentage Distribution By Average Quarterly Payment
December 31, 1976

	<u>I</u>	<u>II</u>	<u>III</u>	<u>Total</u>
New Registrants*	5%	3%	6%	5.19%
\$ 0 - 50	60%	48%	52%	54.63%
51 - 100	10%	16%	10%	10.56%
101 - 1,000	17%	19%	24%	20.26%
1,001 - 5,000	5%	7%	6%	5.98%
5,001 - 10,000	1%	4%	1%	1.73%
10,000 - over	2%	3%	1%	1.65%
	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100.00%</u>

*No reports submitted.

The Department of Food and Agriculture will continue their review and analyze the audit program requirements for Economic Poisons. It is anticipated that an expanded audit program will be established on the basis of the results of the analysis.

It is the concensus of the staff that the analysis will probably substantiate the fact that a three-year audit schedule of all companies would not be practical.

B. The Department of Food and Agriculture has established an out-of-state audit schedule for F.Y. 77-78. This schedule provides for three two-week trips to three different states. It is not known how many companies will be included in the audit. However, we estimate a minimum of 15 out-of-state companies will be audited.

Our past experience with requiring out-of-state companies to provide records for an audit revealed the records sent were inadequate and no one was available to answer questions.

Although one out-of-state company has paid the auditor's expenses, the Department of Food and Agriculture is concerned there could be a question of the auditor's independence, if the practice were continued.

- C. Due to a reduction of personnel in the audit staff and a recommendation included in the last Department of Finance Audit, the Department of Food and Agriculture is committed to a two-year cycle of revenue audits.

Because of the additional problems of budget and funding, it is not anticipated this schedule will be revised until after June 30, 1978.

The County Agricultural Commissioners are required by Section 2272 of the Food and Agricultural Code to make an annual report to the director. The reports include expenditures by the county for all programs included in the Food and Agricultural Code and a category "other" for all other programs not in the Food and Agricultural Code such as county mandated programs, air pollution, etc.

Limiting an audit to just economic poisons would not be an efficient use of manpower and auditor resources. A better solution would be to increase the audit capabilities of the Department of Food and Agriculture to where they could perform complete audits of the agricultural expenditures of all counties including the economic poisons.

The State Controller does not have sufficient staff to handle this workload at the present time. It would require recruiting additional staff and training. If funds are to be made available for this purpose, with additional staffing, the Department of Food and Agriculture could perform these audits and eliminate the possible duplication of work without having two agencies reviewing the same basic records.

The cost of maintaining and cross-utilizing an audit staff within the Department of Food and Agriculture would be less than the cost of contracting for outside services.

CONCLUSION

A review and study will be made of the alternatives and the level of audit will be dependent on the statistical analysis of the need and the cost-benefit.

The decision concerning increasing the audit staff will be based on this review.

INSUFFICIENT REPORTING OF PESTICIDE ILLNESSES

CONCLUSION

The reporting system based on Workers' Compensation reports fails to provide timely and complete information. Implementation of Health and Safety Code, Section 2950, requiring doctors to report to local health officers, if implemented in full compliance with law, would provide a better reporting system.

RECOMMENDATIONS

We recommend that the Department of Food and Agriculture and the Department of Health:

Provide current information to physicians, hospitals, medical societies and institutions regarding enforcement of the provisions of Section 2950 of the Health and Safety Code.

If the above recommendation fails to produce compliance, seek legislation to impose monetary penalties similar to those specified for Workers' Compensation Insurance under Section 6413.5 of the Labor Code.

RESPONSE TO THE CONCLUSION

The Department of Food and Agriculture concurs with the conclusion that the Doctor's First Report of Injury fails to provide timely and complete information and that full compliance with Section 2950 of the Health and Safety Code would improve the system.

RESPONSE TO RECOMMENDATIONS

The main problem with the Doctor's First Report of Injury is the delay in receiving the information. The main problem with Section 2950 of the Health and Safety Code is that physicians many times fail to fill out the forms.

Last fall the Secretary of the Agriculture and Services Agency called a meeting with representatives of the Division of Industrial Safety, the Board of Medical Quality Assurance, Department of Health and Department of Food and Agriculture to address this subject. It was agreed that the Division of Industrial Safety and the Department of Health would seek vigorously to expedite the processing of the Doctor's First Report of Injury so that the information would get to the Department of Food and Agriculture more quickly.

It was also agreed that the Board of Medical Quality Assurance would seek to work with the medical profession to obtain compliance with Section 2950 of the Health and Safety Code. We believe this is a better procedure than seeking to impose penalties on physicians in rural areas for failing to fill out government forms. Imposition of penalties would be expected to result in physicians qualifying their diagnoses in many instances to a nature that would not require reporting - perhaps to report "toxic poisoning" or diagnosis that does not specifically identify a pesticide.

We agree there is a need to get much better compliance with Section 2950 of the Health and Safety Code and will be working to that end with the agencies involved.

DEPARTMENT OF FOOD AND AGRICULTURE
CALIFORNIA PESTICIDE PROGRAM SOURCE AND
USE OF FUNDS--JULY 1, 1971 THROUGH JUNE 30, 1976
(Prepared from unaudited statements of the Department of Food and Agriculture)

	<u>Totals</u>	<u>1975-76</u>	<u>1974-75</u>	<u>1973-74</u>	<u>1972-73</u>	<u>1971-72</u>
<u>Source of Funds</u>						
Mill tax assessments	\$ 8,654,315	\$2,472,642	\$1,900,435	\$1,710,175	\$1,715,395	\$ 855,668
Registration	1,550,706	400,861	392,277	378,453	379,115	-- (Note 3)
Licensing	1,064,113	251,358	274,362	201,693	228,635	108,065
Interest on loan-building fund	80,040	19,312	20,870	20,764	14,696	4,398
Interest on surplus money invested	532,797	116,523	169,235	166,776	66,769	13,494
Reimbursements	192,266	41,725	80,317	14,573	35,882	19,769
Miscellaneous	61,185	23,890	4,470	17,977	14,848	--
Grants billed to EPA	139,029	93,086	45,943	--	--	--
Total revenues (Note 1)	<u>\$12,274,451</u>	<u>\$3,419,397</u>	<u>\$2,887,909</u>	<u>\$2,510,411</u>	<u>\$2,455,340</u>	<u>\$1,001,394</u>
<u>Use of Funds</u>						
Local assistance:						
Allocated funds to counties (Note 2)	4,675,000	1,408,546	1,125,463	1,057,551	1,083,440	--
Departmental:						
Personal services	3,057,906	1,027,006	917,617	668,304	444,979	--
General expenses	701,995	189,355	181,636	198,233	132,771	--
Travel	228,918	73,823	80,285	38,194	36,616	--
Administrative cost	300,628	98,968	89,018	63,072	49,570	--
Special items	136,494	34,492	80,082	718	21,202	--
Intradepartmental	925,585	311,770	314,776	152,064	146,975	--
Equipment cost	51,407	9,558	2,792	11,048	28,009	--
1971-72 undistributed	614,547	--	--	--	--	614,547
Total expenditures (Note 1)	<u>\$10,692,480</u>	<u>\$3,153,518</u>	<u>\$2,791,669</u>	<u>\$2,189,184</u>	<u>\$1,943,562</u>	<u>\$ 614,547</u>
Excess of revenues over expenditures	<u>\$ 1,581,971</u>	<u>\$ 265,879</u>	<u>\$ 96,240</u>	<u>\$ 321,227</u>	<u>\$ 511,778</u>	<u>\$ 386,847</u>

Note 1: The revenues and expenditures of the California Pesticide Program form only a portion of the Department of Food and Agriculture Fund. The consolidated accounts of the Fund are maintained by the Fiscal Office of the Department of Food and Agriculture.

Note 2: In accordance with law, five-eighths of the mill assessment money received is paid to the counties as reimbursement of costs incurred by the counties in the administration and enforcement of the pesticide use program. The remaining three-eighths of the money received is spent for state administration and enforcement.

Note 3: The details of the expenditures and certain revenues for the fiscal year 1971-72 were not available at the close of our review. The accounts and records are kept by the Department based on a three-year retention of the records.

DEPARTMENT OF FOOD AND AGRICULTURE
STATE PESTICIDE RESIDUE PROGRAM SOURCE
AND USE OF FUNDS--JULY 1, 1972 THROUGH JUNE 30, 1976
(Prepared from unaudited statements of the Department of Food and Agriculture)

	<u>Totals</u>	<u>1975-76</u>	<u>1974-75</u>	<u>1973-74</u>	<u>1972-73</u>
<u>Source of Funds</u>					
State General Fund appropriation (Note 1)	\$2,846,828	\$874,593	\$759,854	\$673,062	\$539,319
<u>Use of Funds</u>					
Personal services	531,700	201,683	186,060	116,775	127,182
General expenses	286,082	54,137	75,990	92,323	63,632
Travel	62,812	17,317	18,413	12,217	14,865
Administrative cost	48,949	13,890	15,728	10,186	9,145
Special items	30,045	6,146	9,805	6,939	7,155
Intradepartmental	1,543,658	435,780	414,736	415,241	277,901
Equipment cost	13,677	--	482	3,616	9,579
Unscheduled reimbursement	(136)	--	(134)	20	(22)
Total expenditures	\$2,616,787	\$728,953	\$721,080	\$657,317	\$509,437
Excess of Revenues Over Expenditures	\$ 230,041	\$145,640	\$ 38,774	\$ 15,745	\$ 29,882

Note 1: The pesticide residue program revenues form only a minor part of the State General Fund. We did not reconcile the yearly revenues of the program with those shown by the State Controller accounts.

DEPARTMENT OF FOOD AND AGRICULTURE
PESTICIDE USE ENFORCEMENT ACTIVITIES IN
TEN COUNTIES AUDITED

<u>Enforcement Activities</u>	<u>Fresno</u>	<u>Imperial</u>	<u>Lake</u>	<u>Mendocino</u>	<u>Napa</u>	<u>Riverside</u>	<u>San Diego</u>	<u>San Joaquin</u>	<u>Tulare</u>	<u>Ventura</u>
<u>Agricultural:</u>										
Permits:										
Restricted materials	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Nonrestricted materials	no	(1) yes	no	no	no	no	no	no	no	no
Notice of intent prior to application of materials	(2) yes	no	(3) yes	no	(4) yes	(5) yes	(6) yes	no	no	(7) yes
Audits:										
Pest control applicators	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Pest control advisors	1/year	1/year	1/year	1/year	no	1/year	1/year	1/year	1/year	1/year
Pest control dealers	4/year	1/year	1/year	1/year	1/year	2/year	2/year	2/year	1/year	2/year
Registration fees:										
Pest control applicators	\$10	none	none	none	none	\$10	\$20	\$ 5	\$10	none
Pest control advisors	\$ 5	\$10	\$ 5	\$10	none	\$10	\$10	none	\$ 5	none
Inspection of equipment	yes	yes	yes	yes	no	yes	yes	yes	yes	yes
Disposal of pesticide containers:										
Class 1 dumpsite	yes	none	none	none	none	none	yes	none	none	yes
Number of locations	1	-	-	-	-	-	1	-	-	2
Class 2 dumpsite	none	yes	yes	none	none	yes	yes	yes	yes	none
Number of locations	-	6	1	-	-	10	9	3	2	-
Use reports:										
Estimated number filed in 1975	39,000	14,500	1,300	1,300	1,200	13,100	6,300	8,200	42,400	10,800
Citation system for violations	yes	no	yes	no	no	no	no	no	yes	no
<u>Nonagricultural:</u>										
Percentage of time spent in enforcing regulations on nonagricultural pesticides (disinfectants, sanitizers, etc.)	0-1%	0%	0%	0-1%	0-1%	0-1%	0-1%	0-1%	1%	0-1%

- Notes:
- (1) Permits are issued on a yearly basis.
 - (2) PCOs and growers submit written notices at least 24 hours prior to application of materials.
 - (3) Notices are filed for certain jobs.
 - (4) Notices are required from aerial applicators at least 24 hours prior to application.
 - (5) Written or oral notices required from PCOs at least 12 hours prior to application.
 - (6) Notices are required from aerial applicators and out-of-county applicators 2 hours prior to application.
 - (7) Notices are required from aerial PCOs before applying materials on raw crops.

CODE SECTION RELATIVE TO SUBVENTIONS

Air Resources

Health and Safety Code Section 39288

The board may review, as it deems necessary, the programs and expenditures by each air pollution control district receiving a subvention under this chapter to ascertain that the funds budgeted from nonstate sources are in fact being expended substantially in accordance with the budget on which the subvention was based. If the board finds that such funds are not being so expended, the board may do any of the following:

- (a) Cease any further payments under the subvention.
- (b) Withhold future subventions.
- (c) Bring an action against the district, or the counties or cities supporting the district, to recover the subvention paid that fiscal year.
- (d) Assume the powers of the district without further proceedings under other provisions of this part.

California Administrative Code, Title 17, Section 90400

90400. Withholding and Recovery of Funds. (a) The Executive Officer may review the programs and expenditures of each district receiving a subvention under the provisions of this Subchapter. If such a review discloses that the dollars budgeted or the subvention moneys granted are not being expended substantially in accordance with the budget on which the subvention was based, or that revisions have not been submitted to the Executive Officer pursuant to Section 90210, or that the district is not engaged in an active and effective program as described in Section 90115, the Executive Officer may take any or all of the following actions:

- (1) Cease all or part of any further payments of the current fiscal year's subvention;
- (2) Withhold all or part of any future subventions; and
- (3) Bring a legal action against the district to recover moneys disbursed for that fiscal year.

(b) The Executive Officer may reduce a coordinated subvention or a special subvention to an individual subvention if he finds that the provisions of Section 90120 for a coordinated basinwide program are no longer being carried out.

Pesticides

Food and Agriculture Code Section 12844

Notwithstanding Section 12784, the director shall pay five-eighths of the money received pursuant to this article to the counties as reimbursement for costs incurred by the counties in the administration and enforcement of the provisions of Division 6 (commencing with Section 11401) and Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), and Chapter 3.5 (commencing with Section 14101) of this division.

Such payment shall be apportioned to the counties by the director in relation to each county's expenditures for such programs to the total amount expended by all counties for such programs. The director shall by regulation establish procedures for the determination and payment to the counties of such funds.

California Administrative Code, Title 3, Section 2441

2441. County Reimbursement. Reimbursement to counties for costs incurred by the counties in administration and enforcement of pesticide regulatory duties as provided in section 12844 of the Agricultural Code shall be made annually on a calendar year basis. Reimbursement shall be made by April 1 of each year and shall be based on costs incurred by the county during the previous fiscal year ending June 30.

No county may receive reimbursement in excess of the costs incurred by the county the previous fiscal year in the enforcement of Division 6, Chapters 1, 2, 3, 4, 5, 6, and 7 and Division 7, Chapters 2, 3, and 3.5 of the Food and Agricultural Code, as shown in County Agricultural Commissioners' Annual Financial Statement, Item 5 entitled "Pesticide Use Enforcement".

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
California State Department Heads
Capitol Press Corps