



AUDITOR GENERAL

WILLIAM O. MONROE, CPA



DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

INSPECTION PROGRAMS

Operational Audit

SUMMARY

This operational audit, for the period July 2003 through February 2005, focused on food safety inspections; petroleum quality inspections; feed, seed, and fertilizer inspections; and pesticide dealer and applicator inspections. As indicated by the following, our audit disclosed some opportunities for improvement:

Finding No. 1: The Department's current policies and procedures regarding employee conflicts of interest do not require employees with inspection or enforcement responsibilities to submit annual statements disclosing all conflicts of interest or otherwise affirming the absence of any such impairments.

Finding No. 2: The Department did not conduct food establishment inspections as frequently as required by its internal inspection frequency guidelines.

Finding No. 3: Audit tests disclosed that many fertilizer manufacturers had not timely submitted monthly reports and fees and that the Department had done little to enforce provisions of law and rule designed to encourage timely licensee reporting and fee remittance. Unassessed and uncollected penalties totaled approximately \$173,000.

Finding No. 4: The Department had not conducted a risk assessment for the programs regulated by the Division of Agricultural Environmental Services, Bureau of Compliance Monitoring. The Bureau is responsible for regulating approximately 3,000 distributors of feed, seed, and fertilizer products; 15,000 feed, seed, and fertilizer retailers; and 12,000 pesticide dealers and applicators.

BACKGROUND

The Department is responsible for ensuring the safety and quality of food and certain consumer products, and in connection with this responsibility, the Department administers various inspection and product testing programs. The scope of our audit of the Department focused on several of these inspection programs, including food safety inspections performed by the Division of Food Safety; petroleum quality inspections administered by the Division of Standards; feed, seed, and fertilizer inspections conducted by the Division of Agricultural Environmental Services; and pesticide dealer and applicator inspections administered by the Division of Agricultural Environmental Services.

As described in Finding Nos. 2 through 4, our audit disclosed for some of these inspection programs opportunities for improvement. Finding No. 1 describes a procedural issue relevant to all Department compliance monitoring and enforcement activities.

FINDINGS AND RECOMMENDATIONS

Finding No. 1: Conflicts of Interest

Due to the importance of Department inspection programs in protecting the safety and well-being of the public, policies and procedures that contribute to and encourage program integrity and effectiveness are imperative. Such policies and procedures should,

among other matters, identify and require disclosure of circumstances, activities, and relationships that might constitute a conflict of interest for employees involved in inspection and related enforcement activities. Information derived from these disclosures can then be used to adjust inspection assignments, as needed, to ensure that all potential conflicts of interest may be avoided.

The Department has established written policies and procedures addressing conflicts of interest. Those policies and procedures require that employees report conflicts of interest, and define conflicts of interest as including employment, contractual relationships, or financial interests that may conflict with official duties or instances in which an employee has received a gift from a Department-regulated entity. The current policies and procedures also address the impact of familial or other close personal relationships.

Department policies require that, upon employment, all employees sign a form acknowledging receipt of the conflict of interest policy. Each year thereafter, employees are required to sign an outside employment form indicating whether or not they are currently engaged in outside employment or other activities. The instructions for the outside employment form remind employees to be familiar with the Department's Administrative Policies and Procedures No. 1-1, Conflicts of Interest.

Department policies and procedures require disclosure of conflicts of interest on an exception basis, that is, only when the employee believes that a conflict exists. Under such an approach, it is to be assumed that those employees who have not reported a conflict of interest do not have a conflict of interest that could jeopardize the actual or publicly-perceived objectivity of the employee. Department records indicate that during the period July 2003 through June 2005, only one of its employees had reported a potential conflict of interest.

Because an undisclosed conflict of interest can have a detrimental effect on both the integrity of a particular inspection, and the integrity of the Department's inspection and enforcement programs as a whole, the

exception-basis reporting now required may not be sufficient.

Recommendation: To identify the extent to which potentially problematic conflicts of interest may exist, we recommend that the Department survey all employees with inspection or enforcement responsibilities. The information from the survey should then be used to evaluate the effectiveness of the currently used exception-basis of reporting. If a significant number of potential conflicts of interest are disclosed, the Department should consider amending its policies and procedures to require employees with inspection or enforcement responsibilities to submit an annual statement disclosing all conflicts of interest or affirming the absence of such impairments. This information should then be used by Department management to schedule regulatory assignments in a manner that avoids all actual or potential conflicts of interest.

Finding No. 2: Food Establishment Inspections

One of the stated purposes of Chapter 500, Florida Statutes, is to safeguard the public health and promote the public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit flowing from intrastate commerce in food. Consistent with this statutory objective, Section 500.147, Florida Statutes, authorizes the Department to inspect all entities (food establishments) permitted under Chapter 500, Florida Statutes.¹

The Department has established internal inspection frequency guidelines that provide for routine inspections of approximately 40,000 food establishments from one to three times each year, depending on the food safety risk assessment of the Department. Our review of the inspection records for 16 food establishments disclosed that 3 (19 percent) were not inspected as frequently as required by Department guidelines. Two of the food establishments were required to be inspected three times per year; however, they were only inspected two

¹ Food establishments permitted under Chapter 500, Florida Statutes, include supermarkets, convenience stores, food storage warehouses, and mobile vendors.

times per year. One of the food establishments was required to be inspected two times per year; however, it was only inspected once.

While further analysis disclosed that most food establishments were inspected, we did identify 32 food establishments possessing active food permits during the period July 1, 2003, through February 28, 2005, that had not been inspected at all during that time period. Nine of the food establishments were required to be inspected at least two times each year; and 23 of the food establishments were required to be inspected at least once each year.

The following table classifies these 32 food establishments by business type and required inspection frequency:

Business Type	Number of Entities	Required Inspections Per Year
Convenience Store - Limited Sales	1	2
Minor Outlet Limited Sales	1	2
Dry Storage/Warehouse	3	2
Soft Drink Distributor/Warehouse	1	2
Warehouse/Food Storage	2	2
Warehouse/Distribution	1	2
Specialty Limited Sales	1	1
Minor Outlet Without Perishables	1	1
Shopping Center Kiosk	1	1
Flea Market Kiosk	3	1
Mobile Vehicle/Vendor	14	1
Mobile Vendor/Limited Sales	3	1
Total	32	

An analysis of the Department’s database also disclosed that, contrary to Rule 5K-4.020(5)(a), Florida Administrative Code, 12 permits had been issued to new owners of existing businesses without completion of an initial inspection. Rule 5K-4.020(5)(a), Florida Administrative Code, requires, in part, that if the ownership of a food establishment changes during a calendar year, a satisfactory inspection report is required before a food permit can be issued to the new owner.

In September 2001, we reported similar findings in audit report No. 02-046. Absent the conduct of inspections at established, reasonably frequent intervals, violations of food safety standards may not be subject to timely detection and resolution. Such violations may result in establishments operating with sanitation deficiencies that present significant health risks to the public.

Recommendation: We recommend that the Department take steps to ensure that food establishment inspections are performed in accordance with established rules and guidelines.

Finding No. 3: Fertilizer Manufacturer Reports

Section 576.041, Florida Statutes, requires licensed fertilizer manufacturers to submit monthly tonnage reports of fertilizer sold in the State and to pay inspection fees, the amount of which is to be based on the number of tons of fertilizer sold.² The approximately 450 licensees reported in excess of 3.8 million tons of fertilizer sold in Florida during the period July 1, 2003, through February 25, 2005. Tonnage fees collected for the period of July 1, 2003, through June 30, 2004, totaled approximately \$2.7 million.

The law requires that if the inspection fee is not submitted by the 15th day of the month succeeding the month covered by a licensee’s report, the Department is required to assess the licensee a penalty of 1.5 percent of the inspection fee due for each month or portion of a month in which the inspection fee is unpaid. If the monthly report and inspection fees due are not filed and paid timely, the Department is also required to assess a penalty in an amount equal to 10 percent of the inspection fee due or \$25, whichever is greater. Department accounting records indicate that only \$825 in self-assessed penalties was collected during the period covered by our audit.

To guarantee the performance of licensees in meeting the reporting requirements of Chapter 576, Florida Statutes, and to cover the fees for any reporting period, Section 576.041(6), Florida Statutes, requires the Department to obtain a surety bond, in an amount set by the Department, of not less than \$1,000 from each licensee. Rule 5E-1.012(4), Florida Administrative Code, established \$1,000 as the amount of surety bond required of all licensees.

² Normal fertilizer inspection fee is 75 cents per ton. The fee for phosphate, gypsum, limestone, and dolomite is 30 cents per ton. The fee for fertilizer containing nitrogen or phosphorus is an additional 50 cents per ton.

In addition to the penalties required by statute, Rule 5E-1.012(5), Florida Administrative Code, also requires any licensee who does not timely submit the monthly report of fertilizer sold, accompanied by the inspection fee, to provide the Department an increased surety bond. This Rule establishes a schedule showing the bond deposit required based on the amounts of monthly fees remitted during the preceding year.

Our audit tests disclosed that many of the fertilizer manufacturers had not timely submitted reports and fees and that the Department had done little to enforce provisions of law and rule designed to encourage timely licensee reporting and fee remittances:

- The Department did not impose the required penalties for late filing of reports and payment of fees. We selected for testing a monthly report filed by each of 17 licensees. Seven of the reports (41 percent) and the associated inspection fees were not submitted by the 15th day of the following month and no penalties were imposed. For the reports tested, the amount of uncollected penalties totaled \$7,701.

Further examination of Department records relating to all licensees disclosed that unassessed and uncollected penalties associated with tonnage reports, for the period July 1, 2003, through June 30, 2004, were estimated by us to be approximately \$173,000.³

- For 6 of the monthly reports selected for testing, the Department did not enforce the provisions of Rule 5E-1.012(5), Florida Administrative Code, by requiring an increase in the amount of the licensee's surety bond when monthly reports and fees were not timely submitted. Based on the license fees due in these instances, the Department should have requested that the existing \$1,000 surety bonds be increased to amounts ranging from \$3,000 to \$15,000. (One late-filing licensee tested had associated fees of less than \$1,000

which did not require an increased surety bond.)

In explaining the failure to assess the penalties due, the Department indicated that its fertilizer inspections system does not provide for the automatic assessment of penalties and that modification to the system would be requested.

Recommendation: We recommend that the Department make the necessary changes to its fertilizer inspection system and adopt procedures reasonably ensuring the timely identification of late reports and the assessment and collection of the late filing and payment penalties required by law. We also recommend that the Department enforce the requirements of Rule 5E-1.012(5), Florida Administrative Code, by requiring an increase in the surety bond amount when a licensee is late in reporting.

Finding No. 4: Risk Assessments

The Division of Agricultural Environmental Services, Bureau of Compliance Monitoring, is responsible for ensuring that over 3,000 distributors of feed, seed, and fertilizer products are registered or licensed and that products meet current regulatory standards and label guarantees. In addition, the Bureau is also responsible for conducting inspections at approximately 15,000 retail and consumer locations for feed, seed, and fertilizer products.

The Bureau also regulates the distribution and use of pesticides by over 12,000 pesticide dealers and applicators. With respect to pesticide distribution and use, the Bureau is responsible for enforcing the Federal Worker Protection Standard, a Federal regulatory standard adopted by the U. S. Environmental Protection Agency in 1992 to ensure the health and safety of agricultural workers and handlers who work with pesticides or in pesticide-treated areas on agricultural establishments. The Bureau also investigates complaints involving the pesticide producers, distributors, and applicators at agricultural and nonagricultural establishments.

During the 2003-04 fiscal year, the Division of Agricultural Environmental Services, Bureau of

³ Department records do not capture postmark dates. Accordingly, for estimation purposes, we considered reports and accompanying fees to be delinquent if the fee validation date, as recorded in the Revenue Receipts Reporting System, was more than six days after the due date. We applied statutory penalties to these delinquent reports.

Compliance Monitoring, employed approximately 40 inspectors who conducted approximately 11,000 feed, seed, and fertilizer regulated entity inspections and approximately 800 pesticide entity inspections. Generally, the Department's policy is that all locations subject to regulation are to be monitored with as regular a frequency as is practical based on resource availability. Entities inspected are generally selected based on the volume of product manufactured, distributed, or consumed.

As a regulator, the Department has a responsibility to ensure that regulated entities operate in accordance with governing laws and rules designed to ensure the safety and welfare of employees and consumers. In accepting this responsibility, the Department also accepts a substantial amount of risk that regulated entities may violate governing provisions of law or rule, that such violations may escape the Department's detection, and that consumers and employees may be injured as a result of the violation. To measure and provide a basis for the control of this risk, the Department should conduct and document a risk assessment for each of the Bureau's regulatory programs.

The risk assessment should consider, among other matters, the potential consequences of violations of governing laws or rules, the number of regulated entities, the complexity of the governing laws and rules, the results of previous inspections, the extent to which laws and rules may be new, security issues, the extent to which the entities may be also subject to active regulation at the Federal and local levels, and the findings of Department investigations of complaints. The findings of the risk assessment for each regulatory program should then be used to prepare inspection schedules showing inspection frequency and to determine resource needs.

Our audit disclosed that the Department had not conducted a risk assessment for the programs regulated by the Bureau of Compliance Monitoring. Absent a risk assessment, the Department lacks the information needed to demonstrate that the risks associated with assigned areas of regulation have been

measured and that, to address those risks, plans and strategies have been developed and resources have been appropriately allocated.

Recommendation: We recommend that the Department conduct a risk assessment for the regulatory responsibilities of the Bureau of Compliance Monitoring and evaluate whether the Bureau's regulatory efforts, and related resource uses, reasonably assure the safety and welfare of both consumers and the employees of regulated entities.

OBJECTIVES, SCOPE, AND METHODOLOGY

The scope of this audit focused on petroleum quality inspections; feed, seed, and fertilizer inspections; pesticide dealer and applicator inspections; and food safety inspections.

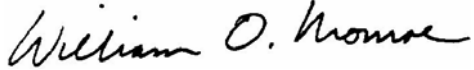
Objectives of the audit were:

- To evaluate selected internal controls relevant to the conduct of inspections and the collection of related fees.
- To evaluate the extent to which the Department has complied with significant governing laws.

In conducting our audit, we interviewed Department personnel, observed selected operations, tested selected Department records, and completed various analyses and other procedures. Our audit included examinations of various documents (as well as events and conditions) applicable to the period July 1, 2003, through February 28, 2005.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



William O. Monroe, CPA
Auditor General

AUDITEE RESPONSE

In a letter dated October 27, 2005, the Commissioner provided responses to our findings. The letter is included in its entirety at the end of this report as Exhibit A.

To promote accountability in government and improvement in government operations, the Auditor General makes operational audits of selected programs, activities, and functions of State agencies. This operational audit was made in accordance with applicable *Governmental Auditing Standards* issued by the Comptroller General of the United States. This audit was conducted by Richard Munson, CPA, and supervised by Don Reeder, Jr., CPA. Please address inquiries regarding this report to Don Hancock, CPA, Audit Manager, via email at donhancock@aud.state.fl.us or by telephone at (850) 487-9037.

This report, as well as other audit reports prepared by the Auditor General, can be obtained on our Web site (<http://www.state.fl.us/audgen>); by telephone (850) 487-9024; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

EXHIBIT A

AUDITEE RESPONSE



Florida Department of Agriculture and Consumer Services
CHARLES H. BRONSON, Commissioner
The Capitol • Tallahassee, FL 32399-0800

Please Respond to:
Office of Inspector General
Terry L. Rhodes Bldg, Ste., E
2005 Apalachee Parkway
Tallahassee, FL 32399-6500

October 27, 2005

William O. Monroe, CPA
Auditor General
111 West Madison Street
Claude Pepper Building, G-74D
Tallahassee, Florida 32399

Dear Mr. Monroe:

The following comments are provided in response to the preliminary and tentative findings and recommendations in your audit of "Inspection Programs" in the Department of Agriculture and Consumer Services.

Your risk based selection of the Food Safety; Petroleum Quality; Feed, Seed, and Fertilizer; and Pesticide Dealers and Applicators inspection programs confirms their importance. The few issues resulting from your comprehensive testing confirms our belief that these programs are being carried out in an effective manner. Without minimizing the issues identified in your report, a few clarifying comments and observations are warranted.

Finding 1: Conflicts of Interest

No circumstances or evidence indicates that our current, "conflicts of interest," policies and procedures are not effective. Our governance strategy, however, includes periodic reviews of policies and your recommendation will be considered.

Finding 2: Food Establishment Inspections

Process improvements are an integral part of our food safety quality assurance activities. Since your previous audit, major enhancements have been implemented which focus on quality inspections at a level which is sufficient to provide greater assurances that program objectives are achieved. In our opinion, the exceptions, in regard to the minor number and type of food establishment inspections are not considered to be a significant risk and in fact, an overall 99.9% inspection rate of food establishments provides that assurance.



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EXHIBIT A

AUDITEE RESPONSE (CONTINUED)

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Auditor General
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Finding 3: Fertilizer Manufacturer Reports

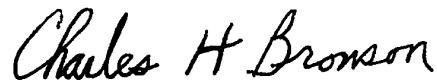
Corrective actions are underway to assess penalties and adjust surety bonds for late payments of fertilizer fees. We believe the financial impact would have been less, but unfortunately, an amount cannot be presented without making assumptions about filing behavior modifications (i.e. subsequent timely submissions) that might have occurred had penalties been assessed on the initial late payment.

Finding 4: Risk Assessments

The effective regulation of the Feed, Seed, and Fertilizer and Pesticide Dealers and Applicators programs is certainly contingent on the sufficiency of resources. We appreciate this observation and will continue efforts to analyze and request adequate resources to carry out our mission to assure the safety and welfare of the consumers and employees of regulated entities.

I appreciate the interest and efforts of your staff and the professionalism they exhibited in helping to improve operations of state government.

Sincerely,



CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE

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