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**NEWS RELEASE**

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FOR RELEASE March 19, 2012

Auditor of State David A. Vaudt today released a report on a review of the Pesticide Bureau (Bureau) of the Iowa Department of Agriculture and Land Stewardship (Department) for the period July 1, 2007 through June 30, 2010. The review was conducted in conjunction with the audit of the financial statements of the State of Iowa and in accordance with Chapter 11 of the *Code of Iowa* to determine if the Bureau was in compliance with the *Code* and Department policies and procedures governing the Bureau. In addition, the review included an analysis of the fees collected by the Bureau compared to operating costs of the Bureau.

The Bureau is responsible for the licensing and certification of commercial applicators of pesticides, the certification of private applicators, the licensing of pesticide dealers and the registration of pesticide products sold or distributed in Iowa. The Bureau is also responsible for investigating alleged pesticide misuse and assessing and collecting civil penalties for those entities or individuals who violate the Pesticide Act found in Chapter 206 of the *Code of Iowa*. All fees collected by the Bureau are required to be deposited to the State's General Fund.

The Department includes the budgeted costs of the Bureau in its annual budgeting process. After receiving its appropriation from the State's General Fund, the Department allocates a portion of its General Fund appropriation to cover the costs of the Bureau. In addition, the Bureau receives federal funding and a transfer for a portion of the fees collected and deposited in the State's General Fund by the Bureau. For fiscal year 2008 and 2009, the Department allocated additional resources to the Bureau to cover excess expenditures of \$91,549 and \$74,948, respectively. For fiscal year 2010, the Bureau ended the year with unexpended funds of \$29,701. As a result, the Department reallocated the unexpended funds to other Bureaus or programs administered by the Department.

Vaudt reported the Bureau would have ended fiscal year 2008 with unexpended funds of \$63,227 if the Bureau had been allowed to retain the fees collected instead of relying on an allocation from the Department's General Fund appropriation. However, in fiscal years 2009 and 2010, the Bureau would have ended the fiscal year with a deficit balance of \$147,917 and \$44,233, respectively, under the same conditions.

Vaudt recommended the Bureau implement procedures to ensure delinquent licenses, certifications and registrations are assessed the proper penalties. Vaudt also recommended procedures be implemented which ensure compliance with requirements established by the *Code of Iowa* and improve internal controls over the following:

- Collection of fees – the Bureau should implement procedures to ensure one person is not responsible for opening mail, processing applications, recording receipts in the Bureau’s databases, preparing the deposit and taking the deposit to the Accounting Bureau.
- Cost analysis – the Bureau should establish procedures to track financial information to ensure the amount allocated from the Department’s General Fund appropriation is sufficient to cover the operating costs of the Bureau.
- Application process – the Bureau should implement procedures to ensure the required forms are submitted and the proper fees are collected.
- Code compliance – the Bureau should comply with section 206.10 of the *Code of Iowa* requiring delinquent fees be assessed when licenses and certifications are not filed by January 1.

The Bureau implemented a new Pesticide Product database in November 2010. The database will allow the Bureau to improve tracking payments from companies and improve reporting on the pesticides registered in the State. The system has also improved search capabilities. The Department has also entered into a contract extension with Kelly Registration Services which will expire on June 30, 2012.

A copy of the report is available for review in the Office of Auditor of State and on the Auditor of State’s web site at: <http://auditor.iowa.gov/specials/1160-0090-B091.pdf>.

# # #

**A REVIEW OF  
THE PESTICIDE BUREAU OF THE  
IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP  
FOR THE PERIOD  
JULY 1, 2007 THROUGH JUNE 30, 2010**

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Auditor's Transmittal Letter

To the Governor, Members of the General Assembly and  
the Secretary of the Iowa Department of Agriculture and Land Stewardship:

In conjunction with our audit of the financial statements of the State of Iowa for the year ended June 30, 2010 and in accordance with Chapter 11 of the *Code of Iowa*, we have conducted a review of the Pesticide Bureau (Bureau) of the Iowa Department of Agriculture and Land Stewardship (Department). We reviewed Bureau activity and compliance with laws and regulations governing the Bureau for the period July 1, 2007 through June 30, 2010. The review was conducted to determine if the Bureau complied with the *Code of Iowa* and applicable administrative rules. We also determined if the fees deposited in the State's General Fund were sufficient to pay the costs of the Bureau. In conducting our review of the Bureau, we performed the following procedures:

- (1) Interviewed Department personnel and reviewed related information to obtain an understanding of the administration of the Bureau, including, but not limited to, licensing and certification requirements, fee structure, funding sources, reporting and internal controls over license and certification receipt collection.
- (2) Reviewed applicable sections of the *Code of Iowa* and the Iowa Administrative Code to determine compliance with State requirements regarding the administration and operation of the Bureau.
- (3) Evaluated the procedures used by the Bureau to collect and account for the fees received and to determine whether the Bureau complied with Department policies for depositing the fees collected.
- (4) Determined if the Bureau established adequate controls over fees received, including reconciliations between collections recorded on the Bureau's databases and amounts deposited.
- (5) Determined if the Bureau enforced and collected penalties for delinquent licenses, certifications and registrations for the period July 1, 2007 through June 30, 2010.
- (6) Determined if the Bureau was assessed any fees associated with the On-line Renewal Program administered by Kelly Registration Systems, Inc. and if the Bureau reconciled the amount collected through the On-line Renewal Program to the amount remitted to the Bureau for the period July 1, 2007 through June 30, 2010.
- (7) Reviewed the Bureau's Pesticide Enforcement Response Policy and determined whether the Bureau investigated and completed misuse complaints within the timeframes outlined in the Pesticide Enforcement Response Policy.
- (8) Compared the Department's fees to the operating costs associated with the Bureau to determine whether the fees collected covered the cost of the Bureau for the period July 1, 2007 through June 30, 2010.

Based on these procedures, we have developed certain recommendations and other relevant information we believe should be considered by the Iowa Department of Agriculture and Land Stewardship, the Governor and the General Assembly.

We extend our appreciation to the personnel of the Iowa Department of Agriculture and Land Stewardship for the courtesy, cooperation and assistance provided to us during this review.



DAVID A. VAUDT, CPA  
Auditor of State



WARREN G. JENKINS, CPA  
Chief Deputy Auditor of State

July 13, 2011

### **Bureau Summary**

The Iowa Department of Agriculture and Land Stewardship's (Department) mission is to provide leadership for all aspects of agriculture in Iowa, ensure consumer protection and promote the responsible use of our natural resources. The Department is responsible for overseeing a wide range of programs affecting the quality of life of every Iowan, including a wide variety of consumer protection, land stewardship and agriculture promotion programs. These programs include providing funds and expertise to prevent erosion and protect the State's waterways, regulating meat processing, commercial feed and fertilizer, pesticide application, weights and measures and dairy production and processing. In addition, the Department is responsible for promoting farmers' markets and administering the Farmers' Market Nutrition Program for seniors and WIC program participants.

The Department's Pesticide Bureau (Bureau) is responsible for administering and enforcing the Pesticide Act found in Chapter 206 of the *Code of Iowa*. The Pesticide Act gives the Secretary of Agriculture regulatory responsibility to protect Iowa's environment from the adverse effects of pesticide exposure by assuring pesticides are produced and applied in accordance with chemical formulations and approved labeling. In addition, the Bureau is responsible for enforcement of Federal regulations and the Administrative Rules developed by the Department pertaining to pesticides and on-site containment of pesticides, fertilizers and soil conditioners. These rules and regulations require the Bureau to:

- License and certify applicators of pesticides.
- Certify private applicators.
- License pesticide dealers.
- Register pesticide products sold or distributed in Iowa.
- Investigate alleged pesticide misuse cases and, if necessary, assess civil penalties to violators of the Pesticide Act or rules.
- Perform inspections of entities and individuals responsible for pesticide use and distribution in the State.
- Assess and collect civil penalties to entities or individuals who violate the Pesticide Act, Chapter 206 of the *Code of Iowa*.

The costs to operate the Bureau are paid by funds received from the Environmental Protection Agency (EPA), the U.S. Department of Agriculture (USDA) and the portion of the Department's General Fund appropriation allocated to the Bureau. The amount allocated is based on the budget for the Bureau. The Bureau also collects fees for the issuance of licenses, certifications and product registrations. These fees are not retained by the Bureau, but are deposited to the State's General Fund. A portion of the fees associated with dealer licenses is then transferred to the Department in accordance with the *Code of Iowa*.

### **Scope**

As stated previously, the Bureau is responsible for administering, implementing and enforcing the Pesticide Act and to regulate pesticide use and distribution. For purposes of this report, we limited our review to the following:

- to determine if the fees collected by the Bureau are adequate to cover the operating costs of the Bureau,
- to determine if the procedures for issuing licenses and certifications and the collection of the related fees comply with the *Code of Iowa* and the Iowa Administrative Code (IAC),

**A Review of the Pesticide Bureau of the Iowa Department of Agriculture and Land Stewardship**

- to determine if procedures over product registration and the collection of the related fees comply with the *Code of Iowa* and the IAC and
- to determine if the Bureau is following its procedures for investigating complaints of the misuse of pesticides.

We did not review the Bureau’s inspection procedures or compliance with Federal regulations. The following sections discuss in more detail the areas included as part of this review.

**Funding**

As previously stated, the Bureau receives an allocation from the Department’s General Fund appropriation. The allocation is based on the Bureau’s budget. **Table 1** shows the amount allocated to the Bureau by the Department for fiscal years 2008 through 2010.

**Table 1**

Fiscal Year	Appropriation Allocation
2008	\$ 1,011,030
2009	1,196,891
2010	1,217,567
Total	\$ 3,425,488

As shown in the **Table**, the amount allocated from the Department’s General Fund appropriation has increased each year. This is a result of increases in operating costs. The funding provided by the General Fund allocation is to be used to cover those costs not covered by the Federal funding received from the EPA and the USDA.

The federal funds received from the EPA are for a Performance Partnership Grant. These funds are used to administer pesticide programs in Iowa while promoting program flexibility. The core areas of the grant are pesticide enforcement, certification, water quality protection, endangered species protection and worker protection outreach. The Bureau also receives funding from the USDA. Under its agreement with the USDA, the Bureau is responsible for conducting record compliance inspections of all private applicators. Private applicators are required to keep records of their use of federally restricted use pesticides for a period of two years.

**Table 2** shows the amounts received from the EPA, USDA and other federal sources passed through Iowa State University (ISU) for fiscal years 2008 through 2010.

**Table 2**

Fiscal Year	EPA	USDA	Passed Through ISU	Total
2008	\$ 961,314	54,957	2,209	1,018,480
2009	841,043	50,757	-	891,800
2010	858,740	46,851	-	905,591
Total	\$ 2,661,097	152,565	2,209	2,815,871

In accordance with Chapter 206 of the *Code of Iowa*, the Bureau charges fees for the issuance of licenses, certifications and product registration. The following is a summary of the various fees charged by the Bureau.

- Applicator license - a \$25.00 annual license fee for a commercial or non-commercial entity to apply pesticides to the lands or property of another. In order to receive an applicator license, the entity must employ an individual who is certified to apply pesticides. There is no cost for a State agency, county, municipal corporation, other government agency or golf course.
- Applicator certification:
  - Commercial or non-commercial applicator certification – a \$30.00 fee for a 1-year certification or \$75.00 for a 3-year certification. The certification fee is required for an individual who applies or uses a pesticide or device on any property of another for compensation. The applicator must work for a licensed entity.
  - Aerial applicator certification – a \$30.00 fee for a 1-year certification or \$75.00 for a 3-year certification. The certification fee is required for an individual who applies pesticide aerially. The applicator must work for a licensed entity.
  - Public official, State agency or golf course applicator certification – a \$10.00 fee for a 1-year certification or \$15.00 for a 3-year certification. The fee is required for any employee of a State agency, county, municipal corporation or other government agency who applies pesticides. The applicator must work for a licensed entity.
- Private applicator certification – a \$15.00 fee for a 3-year certification. This fee is charged for an individual who uses or supervises the use of any pesticide which is classified for restricted use on property owned or rented by the applicator or the applicator’s employer or applied without compensation.
- Dealer license – a \$25.00 fee is charged for an initial dealer license. Renewal of a dealer license is based on annual gross retail sales in the previous year. If annual gross retail sales were less than \$100,000 in the previous year, pesticide dealers have the option of paying either 0.1% of the annual gross retail sales or a license fee according to the following:
  - Less than \$25,000 in gross retail sales - \$25.00,
  - \$25,000 to \$50,000 in gross retail sales - \$50.00,
  - \$50,000 to \$75,000 in gross retail sales - \$75.00,
  - \$75,000 to \$100,000 in gross retail sales - \$100.00, or
  - More than \$100,000 in gross retail sales - 0.1% of gross retail sales in the previous year.
- Product registration – a \$250.00 fee is charged for a new or initial registration of a pesticide product. Renewals are charged 0.2% of gross sales within the State of Iowa, with a minimum fee of \$250.00 and a maximum fee of \$3,000.00.

As previously stated, the Bureau deposits all fees to the State’s General Fund. Once deposited in the State’s General Fund, a portion of the fees are transferred back to the Bureau and to the Groundwater Protection Fund in accordance with the *Code of Iowa*. The following summarizes how the fees are allocated.

- Applicator license – The fees are deposited and retained by the State’s General Fund.
- Applicator certification – The fees are deposited and retained by the State’s General Fund.

## A Review of the Pesticide Bureau of the Iowa Department of Agriculture and Land Stewardship

- Private applicator certification – The fees are deposited and retained by the State’s General Fund.
- Dealer license – The fees are initially deposited to the State’s General Fund. The Bureau is allowed to request a transfer of \$25.00 for each license. The remaining balance is transferred to the Groundwater Protection Fund, usually at the end of the fiscal year by the Department of Management.
- Product registration – The fees are initially deposited to the State’s General Fund. The General Fund retains \$50.00 of each registration. The remaining balance is required to be transferred to the Groundwater Protection Fund. Each month, the Department calculates the amount to be transferred and submits the transfer request to the Department of Management.

The Groundwater Protection Fund was created to provide funding for operational costs and research and development for ground water protection projects. The amount transferred from the fees is set by the Legislature each year.

**Table 3** shows how the license, certification and registration fees collected by the Bureau are allocated between the State’s General Fund, the Groundwater Protection Fund and the Bureau for fiscal years 2008 through 2010.

Fiscal Year	State’s General Fund	Groundwater Protection Fund	Pesticide Bureau	Total
2008 (Adjusted)	\$ 1,104,509	3,308,855	40,868	4,454,232
2009	1,117,492	3,184,233	36,678	4,338,403
2010	1,131,964	3,779,743	38,397	4,950,104
Total	\$ 3,353,965	10,272,831	115,943	13,742,739

As illustrated by **Table 3**, the Groundwater Protection Fund and the State’s General Fund received a total of \$10,272,831 and \$3,353,965, respectively, for the 3 fiscal years ended June 30, 2010. The fiscal year 2008 amount has been adjusted to reflect the amounts which should have been reported if the Department had made the correct transfers in fiscal years 2007 and 2008. These transfers are discussed below. See **Finding A**.

- Dealer license transfer – the Department’s Accounting Bureau should have initiated a transfer of \$40,868 from the State’s General Fund to the Bureau from the fees associated with dealer licenses. However, the Accounting Bureau inadvertently did not initiate the transfer from the State’s General Fund during fiscal year 2008.
- Dealer license/Product registration transfer - The Department’s Accounting Bureau initiated a transfer of \$668,797 of dealer license/product registration fees in fiscal year 2008 from the State’s General Fund to the Groundwater Protection Fund. This was the result of the Department failing to initiate monthly transfers for April through June 2007 to the Groundwater Protection Fund. When the Department noticed the oversight, it made the transfer to the Groundwater Protection Fund in fiscal year 2008.

In addition to the license, certification and registration fees, the Bureau also assesses and collects civil penalties from entities and individuals who violate Chapter 206 of the *Code of Iowa*. These penalties are deposited to the State’s General Fund and totaled \$20,430.00, \$6,430.00 and \$11,680.00 for fiscal years 2008, 2009 and 2010, respectively.

The fees and any civil penalties are deposited to the State’s General Fund. The Bureau is funded from an allocation from the Department’s General Fund appropriation and funds received from the EPA, USDA and dealer license fees transferred back to the Bureau.

**Table 4** compares the total expenditures not funded by grant funds from the EPA and USDA and the portion of dealer license fees transferred to the Bureau from the State’s General Fund to the amount the Department allocates from its General Fund appropriation.

**Table 4**

Description	Amount by Fiscal Year			Total
	2008	2009	2010	
Original appropriation allocation	\$ 1,011,030	1,196,891	1,217,567	3,425,488
Fee transfer	-	36,678	38,397	75,075
Other	333	224	504	1,061
Total revenue (a)	1,011,363	1,233,793	1,256,468	3,501,624
Total expenditures	2,121,392	2,200,541	2,132,358	6,454,291
Less:				
Federal funds	1,018,480	891,800	905,591	2,815,871
Remaining expenditures (b)	1,102,912	1,308,741	1,226,767	3,638,420
Excess revenue/(expenditures) (a-b)	(91,549)	(74,948)	29,701	(136,796)
Reallocation of Department funds	\$ 91,549	74,948	(29,701)	136,796

The **Table** shows the amount originally allocated to the Bureau from the Department’s General Fund appropriation in fiscal years 2008 and 2009 was not sufficient to cover the related expenditures. As a result, the Department reallocated funds from other sources to cover the additional expenditures in fiscal years 2008 and 2009. In fiscal year 2010, the Bureau was able to reallocate the excess funds not needed to cover the operating costs of the Bureau to other Divisions, Bureaus and programs administered by the Department. See **Finding B**.

To determine if fees collected by the Bureau would cover the costs of operating the Bureau, we compared the fees collected to the total expenditures not funded by grants received from the EPA and USDA to the fees collected by the Bureau. **Table 5** shows the results of the comparison.

**Table 5**

Description	Amount by Fiscal Year			Total
	2008	2009	2010	
Total fees and penalties collected	\$ 4,474,994	4,345,057	4,962,287	13,782,338
Less: Transfer to Groundwater				
Protection Fund	(3,308,855)	(3,184,233)	(3,779,743)	(10,272,831)
Remaining revenue	1,166,139	1,160,824	1,182,544	3,509,507
Expenditures ^	1,102,912	1,308,741	1,226,767	3,638,420
Excess revenue/(expenditures)	\$ 63,227	(147,917)	(44,223)	(128,913)

^ - Total expenditures adjusted for federal funds (see **Table 4**).

As illustrated in **Table 5**, if the Bureau was allowed to retain the fees and civil penalties remaining after the required transfer to the Groundwater Protection Fund, the Bureau would have had a deficit balance in fiscal years 2009 and 2010. The fees collected would have been sufficient to cover the expenditures in fiscal year 2008.

Because the fees collected were not sufficient to cover costs, we reviewed the number of licenses, certifications and registrations issued and the fees received for each to determine the reason for the difference in collections per year. **Table 6** summarizes this information for fiscal years 2008 through 2010.

**Table 6**

	<b>Applicator License</b>	<b>Applicator Certification</b>	<b>Private Applicator Certification</b>	<b>Dealer License</b>	<b>Product Registration</b>	<b>Total</b>
<u>Fiscal year 2008</u>						
Number issued	3,079	7,038	9,720	1,784	11,781	33,402
Revenue	\$ 78,976	297,316	145,800	549,862	3,399,074	4,471,028
<u>Fiscal year 2009</u>						
Number issued	3,056	7,583	7,175	1,915	11,047	30,776
Revenue	\$ 77,234	331,735	107,635	607,523	3,194,537	4,318,664
<u>Fiscal Year 2010</u>						
Number issued	3,346	7,573	6,223	1,934	12,485	31,561
Revenue	\$ 85,295	316,685	93,370	774,509	3,682,610	4,952,469
<u>Total</u>						
Number issued	9,481	22,194	23,118	5,633	35,31	95,739
Revenue <sup>^</sup>	\$ 241,505	945,736	346,805	1,931,894	10,275,221	13,742,161

<sup>^</sup> - In total, the revenue is \$578 less than the total revenue shown in **Table 3**.

As shown by the **Table**, the main source of revenue is product registration fees. This fee is based on a percentage of gross sales of each pesticide registered. The amount collected will fluctuate based on sales each year and the number of products registered. The applicator licenses and certifications and dealer licenses also fluctuate and are based, in part, on the needs of the general public and farmers for various pesticide products. According to Bureau staff, the fees established by the *Code of Iowa* were last changed as follows:

- Applicator license – 1974
- Applicator certification – 1987
- Private applicator certification – 1989
- Dealer license – 1987
- Product registration - 1987

Because costs continue to rise and fees have not increased to cover the costs, the Department should evaluate the fees charged to determine if fees should be adjusted in order to cover the expenditures of the Bureau.

**Licenses, Certifications and Registrations**

As previously stated, the Bureau charges several fees related to licenses, certifications and registrations. The initial license, certification or registration is submitted to the Bureau and processed by the administrative assistant assigned to the particular type of license, certification or registration. We reviewed the Bureau’s procedures for collecting fees and identified the following:

- There are 2 administrative assistants in the Bureau and each is assigned specific licenses, certifications and/or registrations to process. The employees have control over the incoming mail receipts, posting the receipts, recording the receipts in the appropriate database, preparing and delivering the deposit to the Accounting Bureau and issuing the appropriate license, certification or registration.

- The Bureau does not reconcile the amount deposited to the listings prepared by the Department to ensure all funds were properly deposited.
- The individual who collects the fees is also responsible for sending renewal notices.
- Receipts were not provided to the Accounting Bureau within 1 week of collection as required by the Department's policies and procedures.

Because collection, posting and depositing duties are not properly segregated, fees received may be applied to the wrong license, certification or registration or not be deposited. See **Finding C**.

Applicator licenses - The Bureau is responsible for licensing any commercial entity, non-commercial entity, State agency, county, municipal corporation, other government agency or golf course which applies pesticides. For the remainder of this section, these are referred to as applicator licenses, unless specified otherwise.

Applicator licenses expire on December 31 each year. Licenses processed prior to October 1 are valid for the current calendar year. Licenses processed after October 1 are valid for the remainder of the calendar year and for the next calendar year. Before the Bureau can issue an applicator license, the applicant must:

- Complete an application and submit the required fee for each location.
  - \$25.00 annual fee per location for commercial and non-commercial companies.
  - No fee for public officials, if it is part of their job duties.
  - No fee for golf courses.
- Certify they are in compliance with the secondary containment provisions for pesticides, as specified in the Iowa Administrative Code, 21—Chapter 44(206). If the applicant is exempt from those requirements, the applicant must provide adequate documentation to support the exemption.
- Provide evidence of financial responsibility in the form of a certificate of insurance or a properly executed surety bond. Coverage must provide at least \$50,000 for property damage and \$50,000 for public liability. Proof of financial responsibility is waived for non-commercial companies, State agencies, counties, municipal corporations, other government agencies and golf courses provided any applicator is a full-time employee who is not publicly claiming to be a commercial applicator or engaging in the business of applying pesticides other than as an employee on the employer's property.
- Entities outside of Iowa applying for an applicator license must file a notarized power of attorney designating the Iowa Secretary of State as the duly authorized agent upon whom service of process may be had in the event of any suit against the non-resident entity.

Applicator certifications - The Bureau is responsible for the certification of any individual who applies any pesticide. Certifications apply to commercial, non-commercial, public official and golf course applicators. For the remainder of this section, these are referred to as applicator certifications, unless specified otherwise.

Individuals applying for an applicator certification may select a 1-year or 3-year certification. Both certifications expire on December 31. If a new 1-year or 3-year applicator certification is processed before October 1, the certification applies for the current calendar year and, in the case of a 3-year certification, it will apply for the next 2 calendar years. If the certification is processed after October 1, the certification applies for the remaining time in the current calendar year and the next calendar year. In the case of a 3-year certification, the certification includes the remainder of the current year and the next 3 calendar years. **Table 7** shows the fees related to applicator certifications.

**Table 7**

<b>Type of Certification</b>	<b>1-year Certification</b>	<b>3-year Certification</b>
Commercial	\$ 30.00	75.00
Non-commercial	30.00	75.00
Public official	10.00	15.00
State agency	10.00	15.00
Golf course	10.00	15.00

All first time applicants must complete a written core examination with a score of 80% or greater. The core examination covers general standards for all categories of pesticide use as outlined in the federal register. Topics include general standards such as safety, labeling comprehension, equipment, application techniques, environmental consequences of use and misuse and laws and regulations.

In addition, an applicant must pass any examination specific to the categories for which he or she needs to be certified. There are no additional charges if a certified applicator chooses to add additional categories. A certified applicator may add additional categories at any time. The category added will carry the same expiration date as the certification to which it was added.

Once the initial applicator certification is granted, the applicator is placed on a 3-year “re-certification cycle” regardless of whether or not the applicator paid for a 1-year or 3-year certification. During those 3 years, an applicator may either attend 2 hours of continuing instruction each year or complete the applicable written tests at the end of the third year. If the applicator chooses to attend continuing instructional courses, the applicator must declare at least 2 hours of continuing instruction has been completed for each of the previous 3 years. Applicators are required to attend continuing instructional courses for each certified application category.

Verification of the training must be on file with the applicator’s employer. The Bureau does not require the applicator to submit proof of continuing instruction. The Bureau only requires the applicator to declare whether or not they have completed the continuing instruction requirements. The continuing instruction requirement is based on a calendar year. If an applicator misses a year of training, they are required to re-test to complete the re-certification process. See **Finding D**.

As illustrated by **Table 8**, the Bureau issued 11,845 1-year applicator certifications and 10,318 3-year applicator certifications between fiscal year 2008 and fiscal year 2010.

**Table 8**

<b>Fiscal Year</b>	<b>1-year Certification</b>	<b>3-year Certification</b>	<b>Total</b>
2008	3,767	3,271	7,038
2009	3,885	3,817	7,702
2010	4,193	3,230	7,423
<b>Total</b>	<b>11,845</b>	<b>10,318</b>	<b>22,163</b>

As previously stated, the Bureau receives \$10.00 for a 1-year public official, State agency or golf course applicator certification and \$30.00 for a 1-year commercial or non-commercial applicator certification. In addition, the Bureau receives \$15.00 for a 3-year public official, State agency or golf course applicator certification and \$75.00 for a 3-year commercial or non-commercial applicator certification. Prior to implementation of the 1989 *Code of Iowa*, the Bureau only offered

3-year applicator certifications for \$10.00 regardless of the type of certification. According to Bureau personnel, the introduction of a 1-year applicator certification in the 1989 *Code of Iowa* was because of the high applicator turnover in certain industries and to reduce the economic impact associated with the increase in the applicable fees.

In addition, the Bureau is responsible for the certification of individuals who engage in aerial application of pesticides. The initial aerial applicator certification and the renewal of an aerial applicator certification are processed in a similar manner as new and renewal applicator certifications.

If an aerial applicator does not work for a licensed employer in the State of Iowa, the employee or designated agent is required to get an applicator license. In addition, the employee or designated agent is also required to:

- Provide evidence of financial responsibility, in the form of a certificate of insurance, to provide for damages resulting from the employer's pesticide application operations, including comprehensive chemical coverage.
- Submit an Operating Certificate from the U.S. Department of Transportation, Federal Aviation Administration documenting the requirements of the Federal Aviation Act of 1958 has been met.
- Certify the employer is in compliance with the secondary containment provisions for pesticides by including a Letter of Certification from a registered engineer documenting the employer has met the applicable requirements and provide specifications, plans and invoices to the Bureau or it must show it has an agreement with another entity to provide containment.

The process to become certified for aerial application for a resident of the State of Iowa is different than the process for a non-resident or a non-resident who already has a certificate in a surrounding state.

An Iowa resident is required to complete either a full aerial certification test or a partial aerial certification test, depending on whether they have an applicator certification. If an Iowa resident has already taken the core certification test, they are only required to take a partial aerial certification test. The individual is also required to submit an Aircraft Registration Certificate from the Iowa Department of Transportation, Office of Aviation documenting its aircraft has been registered with the State of Iowa.

A non-resident is required to complete a full or partial aerial certification test, depending on which state the non-resident is certified in. The only exception is for residents of Minnesota, Nebraska or Wisconsin, who are not required to take a test since those states have equivalent certifications. The individual is also required to submit an Aircraft Registration Certificate from the Iowa Department of Transportation, Office of Aviation documenting their aircraft has been registered with the State of Iowa.

Both residents and non-residents must have a registered consultant working with them to ensure safety standards are followed. In order to be a consultant, a licensed applicator must reside in the State or work for an Iowa-based business. In order for a resident to receive an Applicator Aerial Certification, their consultant must complete an Aerial Applicator Consultant Registration for Iowa Aerial Pesticide Applicator Form. A non-resident must complete a Verification Form for Aerial Applicator Consultant which is completed and signed by both the consultant and the non-resident aerial applicator. The Bureau does not require this form to be submitted to the Bureau. However, the consultant must maintain this form for 3 years. If consultant services are terminated, both the non-resident aerial applicator and the aerial applicator consultant must sign the form documenting termination. A copy of the form is to be mailed to the Bureau. An Iowa resident can be their own consultant, but they must still complete the Aerial Applicator Consultant Registration for Iowa Aerial Pesticide Applicator Form.

Private applicator certifications - The Bureau is responsible for the certification of any individual who uses or supervises the use of any pesticide which is classified for restricted use on property owned or rented by the applicator or the applicator's employer or applied without compensation, other than trading of personal services between producers of agricultural commodities, on the property of another person. Private applicator certifications expire on December 31 and are valid for 3 years. If the certification is processed before October 1, the certification applies for the current calendar year and the following two calendar years. If the certification is processed after October 1, the certification applies for the remaining time in the current calendar year and the next 3 calendar years. Written examinations are required for all first-time private applicators. Private applicators must either pass the core examination test or the private applicator examination test. As mentioned previously, the fee for a 3-year private applicator certification is \$15.00.

Each private applicator is placed on a 3-year "re-certification cycle." During those 3 years, a private applicator may either attend 2 hours of continuing instruction each calendar year or complete testing every 3 years. According to Bureau personnel, a private applicator can use continuing instruction earned after their certification has expired as part of their 6 hours of required continuing instruction over 3 years. See **Finding E**.

Renewals of private applicators are processed similar to new private applicators. Renewal forms are not mailed and it is the responsibility of the private applicator to renew their certification. Private applicators are responsible for either submitting proof of continuing instructional courses or take a written examination. The Bureau has assigned a staff person to ensure private applicators who are renewing their certification have taken the necessary continuing instructional courses.

Dealer licenses - The Bureau is responsible for licensing any entity which distributes any amount of restricted use pesticides, any pesticide for use by an applicator or more than \$10,000.00 of gross annual retail sales of general use pesticides labeled for agricultural or lawn and garden use. A license is required for each location or outlet located within the State where pesticides are distributed. In addition, the Bureau is responsible for the license of any entity which manufactures or distributes pesticides directly into the State but is not engaged in the retail sale of pesticides.

Dealer licenses are on a fiscal year basis and expire June 30 of each year. If a new dealer license is processed before June 1, the license applies for the current fiscal year. If a new dealer license is processed after June 1, the license applies for the remaining time in the current fiscal year and for the next fiscal year.

As previously stated, the initial dealer license fee is \$25.00. When a dealer renews the license, the fee is based on the dealer's annual gross retail sales from the previous year. **Table 9** summarizes the fees based on annual gross sales.

**Table 9**

<b>Gross Annual Sales</b>	<b>Renewal Fee</b>
\$ 0 - 25,000	\$ 25.00
25,001 - 50,000	50.00
50,001 - 75,000	75.00
75,001 - 100,000	100.00
100,001 and over	0.1% of gross sales

Renewals of dealer licenses are processed similar to new dealer licenses. Renewal forms are mailed to the dealers in May of each year by the Bureau. The dealer is responsible for providing the gross retail sales in Iowa for the previous fiscal year and calculating the dealer license fee due to the Bureau. The Bureau does not require the dealer to submit any documentation to support annual gross retail sales. The Bureau requires annual sales data for each dealer licensed in Iowa to be maintained on file for a minimum of 3 years by the dealer and must be made available for inspection upon the request of the Bureau. The Bureau does not verify the gross retail sales unless a concern is noted during an inspection or if a complaint is filed with the Bureau. See **Finding F**.

As previously stated, dealer licenses are issued on a fiscal year basis and expire on June 30 of each year. Pursuant to section 206.8 of the *Code of Iowa*, a 3-month grace period is provided. License renewals submitted after the grace period ends on September 30 are subject to the late fees outlined in **Table 10**.

**Table 10**

<b>Annual Gross Sales Submitted</b>	<b>Late Fee</b>
Gross sales less than \$100,000 submitted by:	
October 1	\$ 10.00
November 30	15.00
December 31 or after	25.00
Gross sales exceeding \$100,000 submitted by:	
October 1	2% of license fee
November 30	4% of license fee
December 31 or after	5% of license fee

Product registrations - The Bureau is responsible for the registration of every pesticide distributed, sold or offered for sale for use within Iowa. Product registrations are on a calendar year basis and expire December 31 of each year. If a new product registration is processed before November 1, the registration applies for the current calendar year. If the new product registration is processed after November 1, the registration applies for the remaining time in the current calendar year and for the next calendar year.

For a new registration of a pesticide, the product registration fee is \$250.00. The fee for renewing a product registration is one-fifth of 1% of the gross sales within the state, with a minimum fee of \$250.00 and a maximum fee of \$3,000.00 for each and every brand name and grade offered for sale. Discontinued product registrations must be renewed for a minimum of 2 years after the product is discontinued unless a registrant submits a written statement declaring the product no longer remains in any channels of trade in the state.

There are also 2 classifications for exempt product registrations. The first is “Manufacture Use Products”, which are used to formulate another registered product, and the second is “Low Toxicity”, which are products with a low toxicity level and kill less than half of the test population.

Pursuant to section 206.12 of the *Code of Iowa*, the registrant must file a statement with the Bureau containing the:

- Name and address of the registration and the name and address of the person whose name will appear on the label, if other than the registrant.
- Name of the pesticide.
- An ingredient statement in which the accepted common name and percentage by weight of each active ingredient is listed, as well as the percentage of inert ingredients in the pesticides.

- A complete copy of the labeling accompanying the pesticide and a statement of all claims made and to be made for it, including directions for use. Pursuant to section 206.11 of the *Code of Iowa*, the following items are required to be included on the label:
  - net weight or measure of the contents,
  - name, brand or trademark,
  - ingredient or guaranteed analysis statement,
  - name and address of manufacturer, registrant or distributor,
  - instructions for use,
  - warning or caution statement where necessary,
  - EPA registration number unless exempt and
  - additional information if highly toxic to humans.
  
- A full description of the tests made and results thereof upon which the claims are based.

According to Bureau personnel, the Bureau no longer requires a registrant to submit an ingredient statement including both active and inert ingredients as required by section 206.12 of the *Code of Iowa* because the information is readily available at the dealer. See **Finding G**.

Renewals of product registrations are processed in a similar manner as new product registrations. Renewal forms are mailed to the registrants in November of each year by an administrative assistant. Renewal forms include a list of all products already registered by the registrant. The registrant is responsible for updating the status of the product on the form. If a registrant is adding a product, the renewal form must contain the same information as mentioned previously for new product registrations. In addition, if the label of a registered product has changed, the registrant is responsible for submitting a new label to the Bureau.

The registrant is also responsible for entering the gross sales in Iowa for the previous calendar year and calculating the product registration fee due to the Bureau. The Bureau does not require the registrant to submit any supporting documentation of annual gross sales. The Bureau does require annual sales data for each pesticide product registered in Iowa to be maintained on file for a minimum of 3 years by the registrant and must be made available for audit upon request by the Bureau. The Bureau does not verify the gross sales unless a concern is noted. See **Finding H**.

**Table 11** summarizes the number of certifications issued for fiscal years 2008 through 2010. The **Table** excludes the exempt certifications issued for the period. Exempt certifications issued were 209, 233 and 253 for fiscal year 2008, 2009 and 2010, respectively.

**Table 11**

	Product Registration Fees					Total (excludes exempt)
	\$ 0- 250	\$ 251- 500	\$ 501- 1,000	\$1,001- 2,000	\$2,001- 3,000	
<u>Fiscal year 2008</u>						
Number issued	10,520	173	111	75	111	10,990
Revenue	\$ 2,630,000	62,073	78,000	106,348	318,740	3,195,161
Average (rounded)	\$ 250	359	703	1,418	2,872	291
<u>Fiscal Year 2009</u>						
Number issued	10,218	142	104	73	112	10,649
Revenue	\$ 2,554,500	52,176	73,353	103,420	319,147	3,102,596
Average (rounded)	\$ 250	367	705	1,417	2,850	291
<u>Fiscal Year 2010</u>						
Number issued	10,782	168	117	82	133	11,282
Revenue	\$ 2,695,500	60,254	81,142	116,666	380,102	3,333,664
Average (rounded)	\$ 250	359	990	1,423	2,858	295

There was approximately a 3% decline between 2008 and 2009 in the number of registrations issued and the fees collected. Between 2009 and 2010, the number of registrations increased approximately 6%. Increases and decreases in fees are dependent on the gross sales of the companies.

As part of our procedures, we tested selected licenses, certifications and registrations issued by the Bureau to determine if the Bureau is following its policies and procedures for issuing licenses, certifications and registrations. As a result of the procedures performed, we identified several concerns relating to the issuance of licenses, certifications and registrations. The concerns include receipts not being deposited with the Accounting Bureau timely, applications not being reviewed timely and incomplete applications. See **Finding I**.

In November 2010, the Bureau implemented a new Pesticide Product Database. The database is a relational database system which integrates payment information with the individual product registrations and the companies registering the products. The system also provides enhanced reporting and search capabilities.

**Delinquent Fees**

Section 206.10 of the *Code of Iowa* states, in part, “If the application for renewal of a license provided for in this chapter, other than a pesticide dealer license, is not filed prior to the first of January in any year, a delinquent fee of twenty-five percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license is issued.” This section of the *Code of Iowa* pertains to applicator licenses, product registrations, applicator certifications and private applicator certifications. As a result, the Bureau should be assessing a 25% fee effective on January 1 for those licenses, certifications and registrations listed. According to Bureau staff we spoke with, the Bureau allows a 30-day grace period from the date of expiration for applicator licenses and applicator certifications and does not assess any penalties on late private applicator certification renewals.

Section 206.10 of the *Code of Iowa* also applies to product registrations. However, section 45.3(6) of the IAC states in part, “A registrant shall be granted a grace period ending on the first day of March of each year for registration renewal. A registrant shall be assessed a late fee equaling 25 percent of the registration fees due by the registrant delivering an application for registration renewal after the first day of March of each year.”

According to Bureau personnel we spoke with, companies are reporting gross annual sales through December 31. Therefore, they are unable to comply with section 206.10 of the *Code*. As a result, the Department included the March deadline in the Administrative Rules. This allows companies to accurately report the product registrations and sales figures. The Department should implement and enforce the *Code of Iowa* or seek amendment of the *Code* to conform with current reporting practices. See **Finding J**.

### **Kelly Registration System®**

The Bureau has contracted with Kelly Registration Systems, Inc. (KRS) to provide an on-line renewal program for dealer licenses and product registrations. The Bureau was unable to locate a copy of the contract and had to request a copy from KRS. According to the contract, the term of the agreement was from December 10, 2002 to December 10, 2006. According to Bureau personnel, there have not been any extensions to the contract and a new agreement has not been signed. Absent a contract, KRS and the Department have been operating under the expired agreement.

A dealer may choose to apply for a license or complete product registrations on-line or by filing the required forms with the Bureau. If they choose to apply on-line, the dealer will be charged a 3% convenience fee by KRS. According to the contract which expired on December 10, 2006, the convenience fee is retained by KRS as compensation for the creation, implementation, hosting and administration of the on-line renewal program. The 3% fee is calculated on the total fee paid to the State with a minimum convenience fee of \$7.00. Under the terms of the contract, the convenience fee is 10% of the State fee, with a maximum of \$7.00. In addition, KRS allows label and material safety data sheets to be submitted electronically.

Fees collected by KRS, excluding the convenience fee, are remitted electronically to the Bureau weekly. Monthly reconciliations are performed between the amount collected by KRS and the amount remitted to the Bureau. Reports obtained from KRS include a detailed listing of fees collected. Until the Bureau is notified a payment has been made and received, it will not process any dealer licenses or product registrations which have been submitted on-line.

In addition, KRS provides an on-line data search of registered pesticide products, licensed pesticide dealers, applicator licenses, applicators and private applicators. The Bureau is not charged a fee for this on-line data search.

The Department of Administrative Services (DAS) established rules related to service contracts which are required to be followed by all State Departments unless a waiver is granted. Section 11-106.11 of the IAC requires the following:

- Contracts shall have a specific start and end date.
- Contracts are not to be self-renewing or fail to have a specific end date.
- The contract, including all optional renewals, shall not exceed 6 years.

Because the contract ended on December 10, 2006 and was not renewed, the Department is not in compliance with DAS rules concerning service contracting. The Department subsequently entered into a contract amendment with KRS on October 25, 2011. The amendment extends the original contract terms to June 30, 2012. See **Finding K**.

### **Misuse Complaints and Civil Penalties**

The Performance Partnership Grant with the EPA requires the Bureau to investigate and enforce complaints of all alleged pesticide misuse cases. Complaints can be filed with the Bureau by phone or e-mail. Once a complaint is filed, the Bureau completes a Report of Information on a Pesticide Account, Incident or Loss. The report includes information regarding when the complaint was received, information on the complainant, information regarding the incident and

special instructions to the investigator. The information is entered into a misuse complaint database and an investigator is assigned.

The Federal Insecticide, Fungicide and Rodenticide Act requires states to establish an enforcement response policy. The Bureau adopted a Pesticide Enforcement Response Policy on October 22, 1986 and amended the policy on August 17, 2006. The Pesticide Enforcement Response Policy outlines guidelines for time frames on follow-ups of misuse cases. The guidelines vary depending on whether or not samples are taken and processed by the Iowa Laboratory Facility of the Department.

No Samples Taken - The guidelines applicable when samples are not taken are included in **Appendix A**. As illustrated by the **Appendix**, after a complaint of an alleged pesticide misuse is made, the initiation of the inspection should occur within 5 days. The investigation should be completed and the inspection report should be submitted to the Investigator's Supervisor within 37 days after the initial inspection. The Supervisor has an additional 90 days to review the investigation file documentation, recommendation and determine whether to initiate regulatory action. If regulatory action is initiated, completion of the regulatory action should be completed within 60 days. The total enforcement process should take no more than 132 days if no regulatory action is taken, and no more than 192 days if regulatory action is taken.

Samples Taken - The guidelines applicable when a sample is taken are included in **Appendix B**. As illustrated by the **Appendix**, after a complaint of an alleged pesticide misuse is made, the initiation of the inspection should occur within 5 days. Samples should be sent to the Iowa Laboratory Facility within 7 days of the initial inspection. The investigation should be completed and the inspection report should be submitted to the Investigator's Supervisor within 37 days after the initial inspection. The Iowa Laboratory Facility has a goal of 50 days to analyze the sample and provide the Analysis Report back to the Bureau. Once the Analysis Report has been received, the Supervisor has an additional 90 days to review the investigation file documentation, Analysis Report, recommendation and determine whether to initiate regulatory action. If regulatory action is initiated, completion of the regulatory action should be completed within 60 days. The total enforcement process should take no more than 152 days if no regulatory action is taken, and no more than 212 days if regulatory action is taken.

A total of 369 misuse cases were initiated and investigated between July 1, 2007 and June 30, 2010. Civil penalties were collected in 666 cases during this period. The Bureau was not always within the time schedule guidelines established by the Pesticide Enforcement Response Policy. See **Finding L**.

#### **Pesticide Applicator Peer Review Panel**

The Department is responsible for establishing a Pesticide Applicator Peer Review Panel (Panel). Pursuant to Iowa Administrative Code, 21-Chapter 45, the Panel was created by section 206.23a of the *Code of Iowa* and is charged with the responsibility of assisting the Bureau in assessing or collecting a civil penalty pursuant to section 206.19(5) of the *Code of Iowa*. The Panel is required to meet annually to elect a chairperson, but may meet at other times at the call of the chairperson or upon written request to the chairperson by 2 or more members. However, per discussion with the Bureau, the Panel did not meet during fiscal year 2009 or fiscal year 2010.

Section 206.23a of the *Code of Iowa* requires members of the Panel to be appointed by the Secretary of Agriculture to 4-year terms. The appointments of all members expired on August 20, 2008 and new appointments were not made until June 15, 2009. See **Finding M**.

## **Findings and Recommendations**

We reviewed the Pesticide Bureau to determine if the Bureau is in compliance with the *Code of Iowa* and Department policies and procedures governing the Bureau. As a result, we identified certain findings and recommendations regarding the Bureau which should be considered by the Governor, Members of the General Assembly and the Department. Our findings and recommendations are summarized below.

### **Finding A – Transfers**

In accordance with section 206.8 and section 206.12 of the *Code of Iowa*, the first \$50.00 received from a product registration and 100% of the dealer license fee is deposited into the State's General Fund. The Department is allowed to transfer \$25.00 per dealer license back to the Bureau. The remaining dealer license fee and product registration fees are then transferred to the State's Agriculture Management Account of the Groundwater Protection Fund.

Each month the Department calculates the amount to be transferred to the Bureau for the Dealer license fees and the amount to be transferred to the Groundwater Protection Fund from the product registration fees. Once calculated, the Department submits the request to the Department of Management (DOM) which transfers the funds. It is DOM's responsibility to process all transfers from the State's General Fund.

The Department did not request the transfers on a timely basis.

- Dealer license transfer - The Accounting Bureau did not request DOM transfer \$40,868.00 from the State's General Fund to the Bureau from the fees associated with dealer licenses. As a result, the Department did not comply with section 206.8 of the *Code of Iowa*.
- Groundwater Protection Fund transfer – The Department did not request the required transfer to the Groundwater Protection Fund for April through June 2007. When the Department noticed the oversight, it requested DOM make the transfer in fiscal year 2008. The Department transferred \$668,797.00 in fiscal year 2008 to the Groundwater Protection Fund. The transfer should have been a fiscal year 2007 transfer.

**Recommendation** – The Department should ensure all transfers between the State's General Fund and State's Groundwater Protection Fund are requested timely within the correct fiscal year or hold-open period. In addition, the Department should ensure up to \$25.00 of each annual dealer license is transferred to the Department

**Response** – The Groundwater Protection Fund transfer that did not occur for the April through June 2007 timeframe was due to human error. When the problem was discovered, the transfer was completed. An additional task reminder has been established on the monthly calendar to ensure this does not happen again.

The Department's General Fund appropriation was sufficient to cover the operating costs of the Pesticide Bureau; therefore, the allowable amount that could have been maintained in SFY2008 of the Dealer License fees was not transferred back to the Pesticide Bureau. Had the Department maintained these fees, they would have reverted back to the State's General Fund at the end of the fiscal year, which is where they were originally deposited. This netted the same result.

**Conclusion** – Response acknowledged. The Department should ensure all transfers are made as required by the *Code of Iowa*.

**Finding B – Cost Analysis**

The Bureau is allowed to charge fees for each license, certification or registration issued. The fees are to be deposited in the State’s General Fund. The Bureau is allocated a portion of the Department’s General Fund appropriation each year to cover the operating expenses not covered by the federal funds received. We compared the fees collected by the Bureau, after adjusting for the required transfer to the Groundwater Protection Fund, to determine if the fees would cover the costs associated with operating the Bureau and enforcing the Pesticide Act. In addition, the fees are used to cover operational costs and research and development for ground water protection projects.

The cost of operating the Bureau exceeded the fees remaining after the required transfers by \$147,917 and \$44,223 for fiscal years 2009 and 2010, respectively. The comparison included only those fees deposited into the Bureau or the State’s General Fund. The comparison did not include those fees required to be transferred to the Groundwater Protection Fund. As stated previously, fees have not changed since 1989 or before.

**Recommendation** – The Bureau should evaluate whether the fees retained by the State’s General Fund are adequate to cover the costs associated with running the Bureau and enforcing the Pesticide Act and if the fees should be adjusted in order to cover the costs.

**Response** – The Department does not have statutory authority to raise fees to meet program expenditures. The fees are statutorily required to be deposited in the State’s general fund and, therefore, the Department is not allowed to keep the fees. The Department used to have a trust fund account where these funds were maintained, but the trust fund was closed by the State and all funds were transferred into the State’s General Fund. The Department would be agreeable to being able to maintain the fees collected by the Pesticide program within the Department for the administration of program activities.

**Conclusion** – Response acknowledged. The Department should work with Legislature to ensure fees are adequate to cover the costs of running the Bureau.

**Finding C – Segregation of Duties**

To safeguard assets, duties should be segregated to prevent an individual employee from handling duties which are incompatible. This segregation of duties helps to prevent losses from employee error or dishonesty.

The Bureau has 2 administrative assistants responsible for the processing of applications and collection of fees. One administrative assistant is responsible for all process associated with applicator licenses, applicator certifications and dealer licenses. The other administrative assistant is responsible for all processes associated with private applicator certifications and product registrations. The following were identified during our review:

- One person is responsible for opening mail, processing applications, recording receipts in the Bureau’s databases, preparing the deposit and taking the deposit to the Accounting Bureau. An initial listing of receipts is not prepared by the mail opener and later compared to the deposit by an independent person. In addition, the Bureau did not perform a reconciliation to determine if the appropriate fees were remitted and deposited.
- The Accounting Bureau returns the original applications to the Bureau, which does not perform a reconciliation to determine if all fees were properly deposited. Additionally, the Bureau does not reconcile licenses, certifications and product registrations issued to fees collected.
- The individual who collects fees for licenses, certifications and product registrations is responsible for mailing licenses, certifications and product registrations and is responsible for mailing renewal forms.

**Recommendation** – The Department should ensure duties within the Bureau are segregated to the extent possible, including collections, mailing of renewal forms and mailing of licenses, certifications and product registrations. The Bureau should perform monthly reconciliations between the amount recorded as collected on the Bureau’s databases and the amount deposited and reported on the Integrated Information for Iowa (I/3) system, the State’s financial accounting system, to ensure the amount recorded as collected on the databases is deposited to I/3.

**Response** – Funding limitations constrict full segregation of duties; however, the Department has made changes to some of the departmental processes that will help further segregate some of the duties discussed in this comment. The incoming mail is now being opened by the Department receptionist. Monthly summaries of fees collected are currently generated by the Bureau and submitted to accounting, based on daily validation reports from accounting and KRS ACH transactions. This task has been ongoing for the last several years in order to calculate transfer to the Ag Management account.

The Department will review segregation of duties within the various bureaus as it pertains to fee collection and handling. The Department will review the processing of fees in several bureaus to determine if there may be more effective or efficient methods to process these fees. The Department may consider cross-training among bureaus to allow for a second person to be involved in the fee collection, handling, and deposit process.

In addition, in SFY2012, the Department will implement a new desktop deposit system. This new deposit system will allow for deposits to be completed in an overnight process rather than a weekly deposit of fees. This deposit system will close the loop between the program staff and accounting staff. When fee batches are sent to accounting a copy of the I/3 cash receipt will be returned to the individual bureaus with a copy its batch spreadsheet. This will allow for better reconciliation between the bureaus and accounting. Additionally, there will be training provided to assist bureaus in analyzing its deposit summary information to ensure proper amounts are being collected.

Segregation of duties will be reviewed to determine if any further segregation can be accomplished for the duties discussed.

**Conclusion** – Response accepted.

#### **Finding D – Continuing Instruction – Applicator Certifications**

Pursuant to section 206.5 of the *Code of Iowa*, “After initial certification the commercial, public, or private applicator must renew the certification by completing the educational program which shall consist of either an examination or continuing instructional courses. The commercial, public, or private applicator must pass the examination each third year following initial certification or may elect to attend two hours of continuing instructional courses each year.” If the applicator chooses to attend continuing instructional courses, the applicator must declare at least two hours of continuing instruction for each certified application category has been received for each of the previous three years and verification of having received training is on file with the applicator’s employer. The Bureau does not verify the training requirements have been met unless a concern is noted during an inspection or a complaint is filed.

**Recommendation** – The Bureau should develop policies and procedures to ensure applicants are complying with the *Code of Iowa*. These procedures may include selecting a sample of applicants and verifying they have completed the educational requirements.

**Response** – Commercial applicator CIC record keeping is addressed in IAC 21-45(6)b.

#### **45.22(6) Report of licensee.**

b. The licensee shall maintain a file of the certificates of completion required under subrule 45.52(4) for each employee recertifying by attending continuing instruction courses. The file shall contain the certificates of completion for the period covering the previous

certification period and current certification period for each employee receiving continuing instruction courses.

Commercial applicators at the end of their three-year cycle receive a renewal form with a portion to indicate whether the individual is certifying via training, testing or a combination. The Department does conduct CIC audits of employers when questions arise regarding maintenance of required CIC records. The Department will consider editing the current forms to require employer verification that certificates of completion are on file for applicators indicating renewal by training.

**Conclusion** – Response acknowledged. In addition to conducting limited CIC audits when Bureau staff are concerned about the validity of information submitted and compliance with continuing education requirements and editing forms to require employer verification of training completion, procedures should be developed which ensure Bureau staff periodically verify whether a sample of applicants are complying with the *Code of Iowa*.

### **Finding E – Continuing Instruction – Private Applicator Certifications**

Pursuant to section 206.5 of the *Code of Iowa*, “After initial certification the commercial, public, or private applicator must renew the certification by completing the educational program which shall consist of either an examination or continuing instructional courses. The commercial, public, or private applicator must pass the examination each third year following initial certification or may elect to attend two hours of continuing instructional courses each year.” According to Bureau personnel, a private applicator can use continuing instruction earned after their certification has expired as part of their six hours of required continuing instruction.

**Recommendation** – The Bureau should implement policies and procedures requiring private applicators to complete continuing instructional courses during each year certified. Continuing instructional courses taken after the private applicator certification has expired should not apply towards the private applicator continuing instruction requirements. If the continuing instruction requirements are not met, the Department should require the applicator to retake the certification exam.

**Response** – Private applicator certifications expire December 31st pursuant to section 206.10 of the *Code of Iowa*. While training may be received between January 1st and April 15th, that training is considered to be the previous year’s training. For example, certification expires December 31, 2011. Training received February 2, 2012 is 2011 training year.

**21 IAC 45.22(5)** Certification renewal periods for commercial, noncommercial, public and private applicators.

b. The renewal period for private applicators. The renewal period for a private applicator shall begin on the date a person has completed the required certification examination or instructional courses and paid the required certification fee. The renewal period shall end on April 15 of the calendar year following the certification expiration date.

c. The renewal period for a person completing initial certification requirements on October 1 or any time thereafter during a calendar year shall begin on January 1 of the following calendar year.

This is due to a conflict in statutory and administrative rule language that may need to be addressed. The Department will review *Code* language to determine whether changes need to be made. Due to the seasonal nature of the industry, allowing farmers to utilize winter/early spring training for their annual certification period is a benefit to our customers. As there is a required annual requirement for continuing instruction, whether the due date is December 31st or April 15th, the due date of the continuing instruction becomes a non-issue after the first year.

**Conclusion** – Response acknowledged. The Bureau should ensure the administrative rules are in compliance with the *Code* or seek to revise the *Code*, if appropriate.

**Finding F – Verification of Gross Sales – Dealer Licenses Renewals**

Fees for dealer license renewals are based on gross retail sales in Iowa for the previous fiscal year. The Bureau does not require the applicant to submit any supporting documentation of annual gross retail sales and the Bureau does not perform any verification of annual gross retail sales. According to Bureau personnel, verification of reported gross retail sales would be very costly and time consuming. Instead, the Bureau requires annual sales data to be maintained on file for a minimum of three years and must be made available for audit upon request by the Bureau.

**Recommendation** – Since the Bureau is not verifying annual gross retail sales, the Bureau should determine whether a flat dealer license fee should be utilized for dealer license renewals. If fees for dealer license renewals continue to be based on gross retail sales, the Bureau should establish policies and procedures to verify annual gross retail sales on a test basis.

**Response** – Statutory reference to record keeping is in reference to the APPLICATION of pesticides. Records of RUP (restricted use pesticide) distribution are required to be maintained for a period of three years, which is different from actual gross sales information. 21-IAC 45.26(1)

The dealers are required to report annual gross sales on their license renewal forms. The Department does not have the audit staff available to verify the annual gross retail sales. We are authorized to audit distribution and application records, which we do regularly. We will consider and evaluate the recommendation of the auditor regarding changing the fee structure for this program.

**Conclusion** – Response acknowledged. If a flat dealer license fee is not implemented, the Bureau should establish policies and procedures to verify annual gross retail sales on at least a test basis.

**Finding G – Ingredient Statement – Product Registration**

Section 206.12 of the *Code of Iowa* states, in part, “The registrant shall file with the department a statement containing....An ingredient statement in which the accepted common name and percentage by weight of each active ingredient is listed as well as the percentage of inert ingredients in the pesticides. A separate inert ingredient statement containing the common name of each inert ingredient listed in rank order according to weight of each inert ingredient in the pesticide shall also be submitted to the secretary.”

The Bureau does not require a registrant to submit an ingredient statement including both active and inert ingredients when registering a product. The Bureau feels this is not needed as the information is readily available for inspection at the dealer.

**Recommendation** – The Bureau should ensure all registrants submit an ingredient statement including both active and inert ingredients as required by section 206.12 of the *Code of Iowa*. Alternatively, the Department could work with the General Assembly to revise the *Code of Iowa* if the requirement is no longer needed.

**Response** – Work will be done to amend the statutory language to give us the authority to obtain the information on an as-needed basis rather than the Department being required to maintain these records on a regular basis.

**Conclusion** – Response accepted.

**Finding H – Verification of Gross Sales – Product Registration Renewals**

Fees for product registration renewals are based on gross sales in Iowa for the previous calendar year. The Bureau does not require the applicant to submit any supporting documentation of annual gross sales and the Bureau does not perform any verification of annual gross sales. According to Bureau personnel, verification of reported gross sales would be very costly and time

consuming. Instead, the Bureau requires annual sales data to be maintained on file for a minimum of three years and must be made available for audit upon request by the Bureau.

The Bureau processed 11,199, 10,882 and 11,535 product registrations during fiscal years 2008, 2009 and 2010, respectively. The average product registration fee for fiscal years 2008, 2009 and 2010 was \$291.00. The minimum product registration fee for renewals is \$250.00.

**Recommendation** – Since the Bureau is not verifying annual gross sales, the Bureau should determine whether a flat product registration fee should be utilized. If fees for renewals of product registration continue to be based on a percentage of gross sales, the Bureau should establish policies and procedures to verify annual gross sales, at least on a test basis.

**Response** – There is no record keeping requirement for registrants under Chapter 206 of the *Code of Iowa*. Furthermore, most registrants are located out of state.

The registrants are required to report annual gross sales on their product registration renewal forms. Additionally, the registrants must certify, “... *Hereby certifies that the information on this application (report) concerning gross annual sales of the pesticides named in this application, within the State of Iowa for the period January 1, [year] through December 31 [year] is true and correct as I verily believe. I understand and acknowledge that the submission of incomplete or false information may result in the denial of registration or revocation of an existing registration.*”

The Department does not have the audit staff available to verify the annual gross retail sales. We will consider and evaluate the recommendation of the auditor regarding changing the fee structure for this program.

**Conclusion** – Response acknowledged. If a flat product registration fee is not implemented, the Bureau should establish policies and procedures to verify annual gross retail sales on at least a test basis.

**Finding I – Applications and Fees**

We selected 370 applicator licenses, applicator certifications, private applicator certifications, dealer licenses and product registrations to determine if they were properly supported, mathematically accurate and if the correct fee was paid and provided to the Accounting Bureau within 1 week. The **Table** below shows the breakout of our sample selection.

	Sample Selection			
	FY 2008	FY 2009	FY 2010	Total
Applicator licenses	25	25	25	75
Applicator certifications	25	25	25	75
Private applicator certifications	20	20	20	60
Dealer licenses	20	20	20	60
Product registrations	20	20	60*	100
Total	110	110	110	370

\* - An additional 40 product registrations were tested during March 2010 due to the Accounting Bureau assisting the Bureau in processing product registrations which were not being deposited timely.

As a result of our testing, we identified the following:

- 207 (56%) were not provided to the Accounting Bureau within 1 week as required by the Department’s internal policy.
- 46 (12%) were not renewed on time and a penalty was not properly collected.
- 6 were not properly supported by an application and 12 did not have a validation stamp.

Therefore, we were unable to determine if they were properly provided to the Accounting Bureau within 1 week.

- 5 applicator licenses did not have complete applications to determine if all criteria were met.
- 2 applicator licenses did not contain any evidence the applicant is in compliance with the secondary containment provisions for pesticides.
- 2 out-of-state applicator licenses did not contain evidence of written power of attorney.
- 1 private applicator certification did not contain supporting documentation for 1 year of continuing instructional courses.

**Recommendation** – The Bureau should ensure all applicator licenses, applicator certifications, private applicator certifications, dealer licenses and product registrations are properly supported, mathematically accurate and the correct fee was paid. The Bureau should ensure all required forms are submitted with the applications. In addition, the Bureau should ensure all receipts are provided to the Accounting Bureau within 1 week as required by internal policy.

**Response** – The Department will review the internal procedures used to process fees within the Pesticide Bureau to determine if any time efficiencies can be realized by modifying the processes used. As mentioned in response to **Finding C**, the Department is implementing a new deposit system in SFY12, which will decrease the amount of time that it takes to deposit a check once it is received in the Department. Further care will be taken to ensure all applications have the required forms submitted with payment.

**Conclusion** – Response accepted.

### **Finding J – Delinquent Fees**

Section 206.10 of the *Code of Iowa* states, “If the application for renewal of a license provided for in this chapter, other than a pesticide dealer license, is not filed prior to the first of January in any year, a delinquent fee of twenty-five percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license is issued.” We identified the following:

- The Bureau is not assessing a 25% fee for applicator licenses and applicator certifications filed after January 1. The Bureau allows a 30-day grace period before assessing the required fee.
- The Bureau is not assessing penalties on late private applicator certifications.
- The Bureau is allowing applicants a 90-day grace period before assessing penalties for product registrations.

**Recommendation** – The Bureau should ensure applicator licenses, applicator certifications and private applicator certifications are submitted timely or delinquent fees are assessed in accordance with section 206.10 of the *Code of Iowa*.

**Response** – This is due to a conflict in statutory and administrative rule language that may need to be addressed. The Department will review *Code* language to determine whether changes need to be made.

**Conclusion** – Response accepted.

### **Finding K – Kelly Registration System® (KRS)**

The Bureau has contracted with KRS to provide an on-line renewal program, Kelly Registration System®, for dealer licenses and product registrations. The Bureau did not have a signed copy of

the contract between the Bureau and KRS. In addition, the service term of the agreement was from December 10, 2002 to December 10, 2006 and, according to Bureau personnel, there have been no extensions to the contract and a new service agreement has not been entered into. According to the contract between the Bureau and KRS, the registrant renewing on-line is responsible for a convenience fee of 10% of the State fee, with a maximum of \$7.00. However, registrants are being charged a convenience fee of 3% of the State fee, with a minimum of \$7.00.

**Recommendation** – The Department should review its procedures for monitoring contracts and comply with Department of Administrative Services (DAS) administrative rules over contracting. The Department should enter into a contract with KRS or another vendor selected in accordance with DAS administrative rules.

**Response** – The Department has executed a contract amendment extending the end date of the contract with KRS. A review will be conducted in SFY12 to determine future contracting needs in this area.

**Conclusion** – Response accepted.

### **Finding L – Misuse Complaints**

The Bureau is responsible for investigating complaints of all alleged pesticide misuse cases. A Pesticide Enforcement Response Policy has been adopted by the Bureau which outlines guidelines for time frames for follow-ups of misuse cases. A total of 369 misuse cases were initiated and investigated between July 1, 2007 and June 30, 2010. Of the 369 misuse cases, we identified the following:

- Of the 301 misuse cases where samples were sent to the Iowa Laboratory Facility, 221 (73%) cases exceeded 50 days for sample analysis.
- 49 (13%) misuse cases were not initially investigated within 5 days as required by the policy.
- 37 (10%) misuse cases were not investigated and closed timely after accounting for delays at the Iowa Laboratory Facility.
- 9 (2%) misuse cases were pending. When brought to the attention of the Bureau, steps were taken by the Bureau and the misuse cases were either closed or are in the process of being closed.

**Recommendation** – The Bureau should ensure all misuse complaints are initiated, investigated and tracked timely in accordance with the Iowa Pesticide Enforcement Response Policy.

**Response** – The Department may need to review and update the above referenced EPA guidance document to set more realistic guidelines given the Department's existing reduced resources. One Residue Chemist has been deployed with the U.S. Army four times since 2006. During the busy complaint season, incident reports are prioritized according to potential risk to humans and/or the environment. For SFY08-SFY10 the average days from the report to initial investigation date was 3.12 days. While samples may be received during a relatively short timeframe (75-80% of the samples arrive during the months of June, July and August), laboratory analyses is a complex and lengthy process. Because of the complexity of pesticide compounds, not all of these analyses can be completed within the average guidelines.

**Conclusion** – Response acknowledged. The Bureau should establish a backup plan for when the Residue Chemist is on extended leave. In addition, the Bureau should ensure misuse cases are initially investigated within 5 days as required by the Bureau's policy.

**Finding M – Commercial Pesticide Applicator Peer Review Panel**

Pursuant to Iowa Administrative Code, 21—Chapter 45(101), the panel (Commercial Pesticide Applicator Peer Review Panel) meets annually to elect a chairperson, but may meet at other times at the call of the chairperson or upon written request to the chairperson by two or more members. However, per discussion with Bureau personnel, the Commercial Pesticide Applicator Peer Review Panel did not meet during fiscal year 2009 or fiscal year 2010.

In addition, section 206.23A of the *Code of Iowa* requires members of the Commercial Pesticide Applicator Peer Review Panel be appointed to four year terms. The appointments of all members expired on August 20, 2008 and new appointments were not made until June 15, 2009.

**Recommendation** – The Bureau should ensure the Commercial Pesticide Applicator Peer Review Panel is meeting annually, at a minimum. In addition, the Secretary of Agriculture should ensure members are appointed to 4 year terms, as required by the *Code of Iowa*, and reappointments or new appointments are made timely upon the expiration of appointments.

**Response** – The Department will work to comply with this *Code* requirement.

**Conclusion** – Response accepted.

Staff

This review was performed by:

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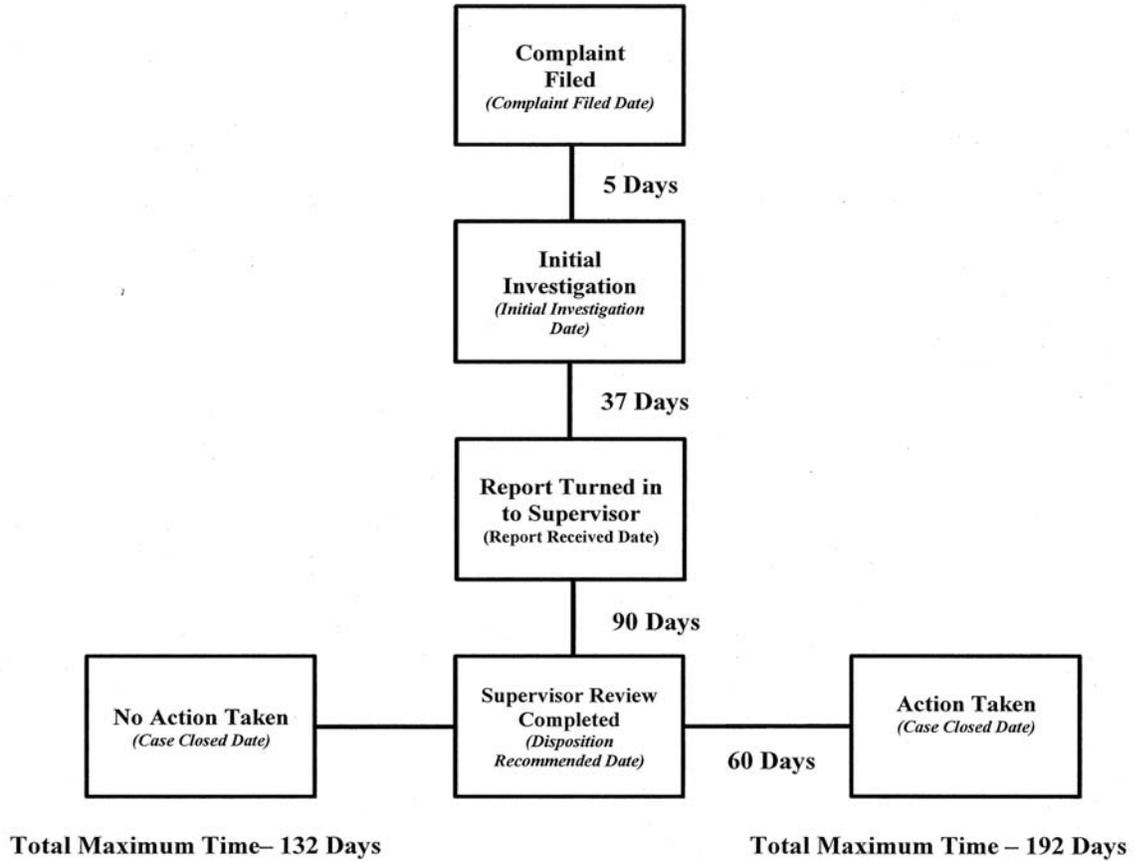
**A Review of  
the Pesticide Bureau of the  
Iowa Department of Agriculture and Land Stewardship**

## **Appendices**

**Appendix A**

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A Review of the Pesticide Bureau of the  
Iowa Department of Agriculture and Land Stewardship  
Enforcement Activity Time Schedule – No Samples Taken



A Review of the Pesticide Bureau of the  
Iowa Department of Agriculture and Land Stewardship  
Enforcement Activity Time Schedule – Samples Taken

