

PERFORMANCE AUDIT REPORT

**Department of Agriculture:
A K-GOAL Audit of the
Kansas Pesticide and Fertilizer Program**

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
November 2001**

Legislative Post Audit Committee

Legislative Division of Post Audit

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October 26, 2001

To: Members, Legislative Post Audit Committee

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This report contains the findings, conclusions, and recommendations from our completed performance audit, *Department of Agriculture: A K-GOAL Audit of the Kansas Pesticide and Fertilizer Program*.

The report also contains appendices showing the fees charged and the penalties imposed in Kansas under these programs, with information about similar fees and penalties imposed by Iowa, Nebraska, and Oklahoma.

The report includes a recommendation for the House and Senate Agriculture Committees. We would be happy to discuss this recommendation or any other items in the report with any legislative committees, individual legislators, or other State officials.

Barbara J. Hinton
Legislative Post Auditor

EXECUTIVE SUMMARY

LEGISLATIVE DIVISION OF POST AUDIT

Question: How Do Kansas' Laws and Regulations Regarding The Sale and Use of Fertilizers and Pesticides Compare With Laws and Regulations in Other Midwestern Agricultural States

The Department of Agriculture regulates the use of pesticides and fertilizers in Kansas. page 3
The goal of the Department's Pesticide and Fertilizer Program is to protect the environment, people, and their property from harm caused by the inappropriate handling and use of pesticides and fertilizers. The Program administers several laws including the Kansas Pesticide Law and the Kansas Commercial Fertilizer Law.

In general, we found that Kansas has adopted the minimum federal requirements for pesticides, and that its laws and regulations are similar in most respects to those of Iowa, Nebraska, and Oklahoma. page 5
The Federal Insecticide, Fungicide, and Rodenticide Act sets out minimum requirements for state pesticide laws. Kansas exceeds those minimum standards in a number of ways, and it is more stringent than the other states in 2 ways: government agencies that apply restricted-use pesticides to the property of others must be registered, and certified pesticide applicators must be at least 18 years old if they work for a pesticide company. Conversely, we identified one area in which Kansas is less stringent than one of those states: Kansas doesn't require commercial pesticide applicators to post a public notice after they begin applying pesticides in an urban area.

Kansas laws and regulations concerning fertilizers implement all the major provisions in national models, and they're generally in line with those of other states. page 7
We identified one area in which Kansas regulations are more stringent: in Kansas, mobile fertilizer storage containers must be made of the same materials as stationary storage containers, must include certain equipment, and must be clearly labeled. We also found that Nebraska and Oklahoma require smaller spills to be reported than Kansas does. The Department of Agriculture and the Department of Health and Environment share responsibility for handling spills.

Although there isn't a comprehensive federal law regarding anhydrous ammonia use, Iowa and Nebraska have adopted the 1989 edition of national standards developed by the Compressed Gas Association. Kansas regulations, for the most part, follow these standards as well. However, there are a few areas in which Kansas is less stringent:

- *State regulations don't require the use of hydrostatic relief valves, which provide an additional safety measure to prevent pressure build-up when an ammonia tank isn't in use.*

- *Kansas regulations don't require break-away couplings at the ends of hoses. Program officials said these devices are widely used to help prevent spills.*
- *Kansas regulations don't require emergency shut-off valves on storage tanks, but Program staff said situations requiring their use don't arise very often.*

Working groups made up of Department officials and industry representatives are addressing changes to both the pesticide and fertilizer laws and regulations. pages 7, 10

Kansas law contains all the major provisions of the national model chemigation law. *Of the 3 other states we looked at, only Nebraska has a comprehensive chemigation law. Kansas requires people who violate chemigation laws to cease operations immediately, while Nebraska gives violators 10 days to come into compliance. Conversely, we found Kansas is less stringent than Nebraska because it doesn't require people to post signs on fields being chemigated with restricted-use pesticides, and it doesn't require chemigation equipment to be inspected before a person gets an initial permit to chemigate.* page 10

Most Kansas fees are about the same as those in the other states, but Kansas' civil and criminal penalties differ. *For both pesticides and fertilizers, the states charge fees to register products, certify applicators, license businesses, and the like. Most fees Kansas charges are very similar to those in Iowa, Nebraska, and Oklahoma, but some Kansas pesticide fees are higher and one fertilizer fee is lower. Department officials are reviewing fees to determine whether they're sufficient to meet the costs of the various programs.* page 11

Like 2 of the other 3 states, Kansas law doesn't give the Department statutory authority to impose civil penalties on people who violate fertilizer laws. Agriculture officials we talked with thought such penalties would be a helpful enforcement tool. At present, violations must be prosecuted through the court system. All 4 states have criminal penalties, but they vary significantly in terms of the amounts of fines and whether or not a violator can be sentenced to imprisonment. page 12

Conclusion:	page 14
Recommendation:	page 14
APPENDIX A: <i>Scope Statement</i>	page 15
APPENDIX B: <i>Table of Fees Assessed Under Pesticide, Fertilizer, and Chemigation Laws</i>	page 18
APPENDIX C: <i>Table of Penalties Assessed Under Pesticide, Fertilizer, and Chemigation Laws</i>	page 20
APPENDIX D: <i>Agency Response</i>	page 22

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Department of Agriculture:

A K-GOAL Audit of the Kansas Pesticide and Fertilizer Program

A number of State and federal laws have been passed to help protect the environment, people, and property from damages caused by the inappropriate use and handling of pesticides and fertilizers. Among those laws are the Kansas Pesticide Law, the Kansas Chemigation Safety Law, the Kansas Agricultural Chemical Act, the Kansas Commercial Fertilizer Law, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Department of Agriculture's Pesticide and Fertilizer Program is charged with enforcing these laws. Some of the ways the Department enforces the laws include

- certifying those who apply pesticides,
- licensing those who apply pesticides to another person's property, or who perform pest control for compensation,
- regulating certain pesticide and fertilizer storage facilities,
- registering pesticides and fertilizers being sold in the State,
- registering dealers who sell pesticides,
- permitting and certifying those involved in chemigation (the process of adding pesticides, fertilizers, or animal wastes to irrigation water before it's applied to land or crops), and
- licensing those who blend custom fertilizers for sale.

Recently, legislators have expressed an interest in knowing how Kansas' laws and regulations related to fertilizers and pesticides compare with laws and regulations in other states and at the federal level. This performance audit answers the following question:

How do Kansas' laws and regulations regarding the sale and use of fertilizers and pesticides compare with laws and regulations in other Midwestern agricultural states and with federal or national standards?

To answer this question, we reviewed the pesticide, fertilizer, and chemigation laws and regulations of Kansas, Nebraska, Iowa, and Oklahoma. We also spoke with officials in various departments in those states. We also reviewed model laws and regulations prepared by the Association of American Plant Food Control Officials for fertilizers and chemigation, and portions of the Federal Insecticide, Fungicide, and Rodenticide Act, which covers pesticides. Because of the number and complexity of the various laws and regulations, we focused our attention on the areas in which the states differed from the federal requirements for

pesticides or the model requirements for fertilizers and chemigation.

Other officials we spoke with include representatives of the Environmental Protection Agency, the Kansas Fertilizer and Chemical Association, Kansas Farm Bureau, the Kansas Pest Control Association, and the Kansas Extension Agents Association.

In conducting this audit, we followed all applicable government auditing standards.

Question: How Do Kansas' Laws and Regulations Regarding the Sale and Use of Fertilizers and Pesticides Compare with Laws and Regulations in Other Midwestern Agricultural States?

Kansas' requirements generally meet those in federal law or national standards. Sometimes they're tougher and sometimes they're weaker than the requirements of Iowa, Nebraska, and Oklahoma, but most are the same. Kansas is more stringent in several ways: it requires government agencies whose workers apply pesticides to register, mobile fertilizer tanks must meet the same construction requirements as non-mobile tanks, and violators of the State's chemigation laws must cease chemigation immediately. Kansas has weaker requirements than its neighbors for notifying the public when pesticides are applied and reporting fertilizer spills, and its requirements for inspecting chemigation equipment are significantly different. Kansas, like 2 of the other 3 states, doesn't have the authority to impose civil penalties for violations of fertilizer law. These and related findings are discussed in more detail in the sections that follow.

The Department of Agriculture Regulates The Use of Pesticides and Fertilizers in Kansas

The goal of the Department of Agriculture's Pesticide and Fertilizer Program is to protect the environment, people, and their property from harm caused by the inappropriate handling and use of pesticides and fertilizers. To achieve this goal, Program staff administer 5 separate statutes: the Kansas Pesticide Law, the Kansas Chemigation Safety Law, the Kansas Agricultural Chemical Act, the Kansas Commercial Fertilizer Law, and the Federal Insecticide, Fungicide, and Rodenticide Act.

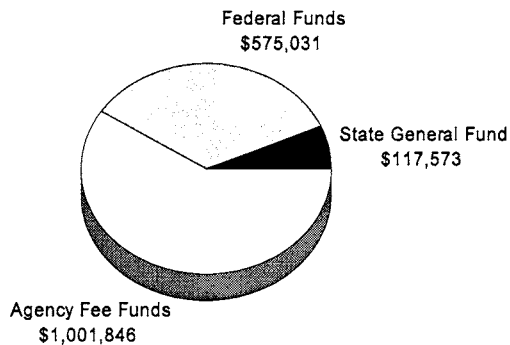
These statutes regulate individuals and businesses that manufacture, distribute, transport, store, and apply pesticides and fertilizers. The Department administers these laws in a number of ways, including registering products, licensing businesses, certifying applicators, inspecting facilities and application, and investigating problems.

The box on [page 4](#) provides additional information about the program, its employees, and its budget.

The Kansas Pesticide and Fertilizer Program AT A GLANCE

- Authority:** The Pesticide and Fertilizer Program was formed in April 2000. Before then, pesticides and fertilizers were regulated by separate programs. The reorganization was intended to make regulation more efficient because pesticides and fertilizers are generally sold, stored, and used in the same location. It also reflected a national trend for improved water quality, control of non-point source pollution, and integration of agricultural chemicals with other agronomic and crop protection tools.
- Staffing:** The Pesticide and Fertilizer Program had 28 full-time equivalent positions in fiscal year 2001.
- Budget:** The majority of the Pesticide and Fertilizer Program's funding comes from the fees it collects from pesticide and fertilizer businesses and pesticide applicators and from federal grant monies. Only 7% of its funding is from State General Fund monies.

FY 2001 Funding Sources



FY 2001 Expenditures

Type	Amount	% of Total
Salaries/Wages	\$1,306,682	77%
Contractual Services	277,824	17%
Commodities	23,160	1%
Capital Outlay	86,784	5%

Total Funding: \$1,694,450

Total Expenses: \$1,694,450 100%

Source: Kansas Department of Agriculture Fiscal Staff

LAWS AND REGULATIONS RELATED TO PESTICIDES

The Federal Insecticide, Fungicide, and Rodenticide Act of 1972 establishes federal jurisdiction over pesticides. Its requirements cover such things as

- registration of pesticides by the federal Environmental Protection Agency,
- federal approval of pesticide labels (labels specify how a pesticide is to be used so that the pesticide won't cause unreasonable harm to the environment),
- distribution of pesticides, and
- transportation of pesticides.

States may enforce their own pesticide laws and regulations if their requirements are at least as strict as federal requirements.

We compared Kansas' laws and regulations with these federal requirements and with the requirements established by 3 neighboring states: Iowa, Nebraska, and Oklahoma. We also asked various knowledgeable people inside and outside the Department about some of the differences we found.

In general, we found that Kansas has adopted the minimum federal requirements, and that its laws and regulations are similar in most respects to those of the 3 other states. All of the states we looked at have requirements that meet the minimum standards set forth in the federal law and exceed those requirements in some areas. Kansas exceeds those minimum standards by

- requiring registration of all pesticides sold, distributed, or transported in the State,
- requiring licensing of people who apply pesticides to the property of others,
- requiring written exams for people to be certified to apply the more dangerous pesticides on their own property,
- requiring proof of financial responsibility for pesticide businesses,
- requiring marking of vehicles and airplanes belonging to pesticide businesses,
- requiring pesticide applicators to treat termites in specific ways,
- placing additional restrictions on specific pesticides in specific geographic areas, and
- granting authority for inspectors to investigate complaints and observe the application of pesticides.

We identified 2 areas in which Kansas laws and regulations are more stringent than those of neighboring states:

- Kansas law requires government agencies that apply restricted-use pesticides to the property of others to be registered. “Restricted-use” pesticides are those pesticides that, even when used according to directions, may cause unreasonable harm to the applicator or the environment. Such pesticides include Atrazine, strychnine, creosote, and Lorsban. None of the other states have this requirement. According to Department officials, this requirement allows the Department to be aware of all entities that apply pesticides and take appropriate actions in case of misuse. [K.S.A. 2-2440(e)]
- Kansas regulations require certified pesticide applicators to be at least 18 years old if they work for a pesticide company. None of the other states have established a minimum age requirement. Department and organization officials told us they thought this requirement was important to protect children from exposure to pesticides. However, a person under 18 still could work under supervision as a pest control technician. [K.A.R. 4-13-12]

We identified 1 area in which Kansas laws and regulations are less stringent than neighboring states:

- Unlike Iowa, Kansas doesn’t require commercial pesticide applicators to post a public notice after they begin applying pesticides in an urban area. Department officials told us Kansas doesn’t have this requirement because of privacy concerns and because Kansas requires that each customer receive detailed information about the pesticide application. However, they said a requirement for posting a notice in public areas may be justifiable. The organizations we contacted were divided on this issue. Officials with the Pest Control Association said these notices weren’t necessary. Officials with the Farm Bureau said it’s a sound practice that provides public protection.

Still another area in which the states differ is whether to allow people who aren’t certified to apply pesticides. Unlike Iowa and Nebraska, Kansas allows registered technicians to apply restricted-use pesticides as employees of pest-control companies. Under State law, registered technicians must have received training and must work under supervision of a certified applicator. Industry and

Extension officials told us that whether technicians are more or less likely than certified applicators to handle pesticides safely depends on the training they receive.

Current proposals to change Kansas' pesticide regulations also are in line with requirements in other states. Working groups that include Department and industry representatives are developing these proposals. The proposed changes relate to the storage and handling of bulk pesticides, and continuing education for commercial pesticide applicators, areas of regulation for which there are no federal minimum standards.

LAWS AND REGULATIONS RELATED TO FERTILIZERS

Unlike pesticides, fertilizers aren't regulated by federal laws. However, the Association of American Plant Food Control Officials has developed model state laws and regulations in this area. Those model laws and regulations cover such things as

- the nutrient and quantity disclosures that must be made on product labels,
- the ways in which products can be handled and stored safely, and
- the types and frequencies of inspections.

Anhydrous ammonia, a potentially dangerous but commonly used nitrogen fertilizer, is the subject of national standards developed by the Compressed Gas Association. These national standards specify training practices and the design, installation, and marking of containers, hoses, and the like. Federal authorities do enforce some provisions in the federal Clean Air Act and the Emergency Planning and Community Right-to-Know Act that have to do with anhydrous ammonia.

Because the national standards for anhydrous ammonia and for other types of fertilizer were developed separately and because Kansas regulations for the 2 also are separate, we'll discuss general fertilizers first and then anhydrous ammonia.

Kansas laws and regulations implement all the major provisions of the fertilizer model act, and they generally are in line with those of other states. We found only a few significant variations.

We identified one requirement related to storage containers for which Kansas regulations are more stringent than those of neighboring states:

- Kansas regulations require mobile fertilizer storage containers to be made of the same materials as other storage containers, to include certain equipment, and to be clearly labeled. Oklahoma has labeling requirements, but none of the 3 other states have the other requirements. Department officials told us they thought these requirements were important to preventing tank failure and subsequent environmental damage. [K.A.R. 4-4-901 et seq.]

We identified one area in which Kansas laws and regulations are less stringent than those of neighboring states:

- Unlike Nebraska and Oklahoma, Kansas doesn't require smaller fertilizer spills to be reported. [K.A.R. 4-4-954] The following table shows these requirements:

Reporting of Fertilizer Spills				
	Kansas	Iowa	Nebraska	Oklahoma
Minimum size that must be reported	1,000 pounds of dry fertilizer 100 gallons of liquid fertilizer	no spill reporting requirement	no minimum listed; all must be reported	200 pounds of dry fertilizer 55 gallons of liquid fertilizer
Time limit for reporting	48 hours	N/A	no time listed	24 hours

Department officials told us Kansas was the first of these states to decide which size of spills should be reported to the Department of Agriculture, and the limits haven't been revisited. They noted that Department of Health and Environment regulations require reporting of any amount that threatens to contaminate water or pollute soil. Both agencies said inter-agency cooperation for handling spills is good. The Department of Agriculture handles the conditions that led to a spill, such as improper equipment, and the Department of Health and Environment handles any remediation that might be required.

We also noted that Kansas is more flexible—but neither more nor less stringent—than the other states in the designs it will allow for structures (such as dikes) that are supposed to protect the environment from spills of bulk liquid fertilizer. Department staff may approve designs not listed in the regulations if they determine the design will provide at least as much protection for the environment as do those listed in the regulations.

This flexibility in the regulations seems to us to be a common-sense way to allow for improvements in available technologies

without requiring regulatory changes. Also, Department officials who worked on the regulations when they were being drafted in the mid-1980s said that the model regulations in effect at that time called for allowing alternative designs.

Although there isn't a comprehensive federal law regarding anhydrous ammonia use, Iowa and Nebraska have adopted the national standards mentioned above. Both of these states adopt the 1989 version of the standards by reference in their regulations. Kansas regulations don't adopt the standards, but according to Department officials, when the regulations were written in the mid-1980s, they were based on the edition of the standards current at that time.

We found that Kansas regulations, for the most part, follow the 1989 version of the standards. However, State regulations varied significantly from those of neighboring states and the national standards in several areas.

We identified one area (not mentioned in the national standards) in which Kansas is more stringent than neighboring states:

- Kansas regulations allow a vehicle to pull only one anhydrous ammonia nurse tank at a time. Nebraska and Iowa allow 2, while Oklahoma has no limit. [K.A.R. 4-10-6(e)(3)]

Kansas is less stringent than Iowa and Nebraska because it hasn't adopted standards in areas listed below:

- Kansas regulations currently don't require the use of hydrostatic relief valves. Those valves would be located on the ends of a hose to prevent pressure build-up when both valves are shut and the tank isn't in use. This additional safety measure would cost about \$15 per hose. Program officials said they would like to see this requirement added to the regulations. A few additional pressure relief devices and valves specified in the standards also don't appear to be required by Kansas regulations.
- Kansas regulations currently don't require break-away couplings at the ends of hoses. These devices, which are encouraged and widely used by facilities, prevent a spill of anhydrous ammonia by closing the hose end if there's excessive force on the hose, such as when an operator forgets to unhook the hose ends before pulling away from a tank. If a break-away coupling is used, then the coupling gives, rather than the hose,

and the coupling seals off the hose, preventing a spill. Program officials said they would like to see this requirement added to the regulations.

- Kansas regulations currently don't require emergency shut-off valves on storage tanks. Shut-off valves help protect against accidental releases. Program staff said situations requiring their use don't arise very often.

We also noted that Kansas differs in its requirements for underground storage tanks. The national standards have specific standards that underground tanks should meet, whereas Kansas sets the same standards for all tanks. Department officials told us they weren't aware of any underground anhydrous ammonia storage tanks in the State.

The Department is meeting with industry representatives to gather their ideas for changing fertilizer containment regulations. This group began meeting in July. No one we contacted reported significant problems with the current laws and regulations, but one Kansas industry group has proposed lessening some requirements for storage facilities to record the results of required monthly inspections. The group also proposes bans on new underground storage of fluid fertilizer and on asphalt as a surface for areas where fluids are collected or are likely to be spilled.

LAWS AND REGULATIONS RELATED TO CHEMIGATION

“Chemigation” means any process to apply pesticides, fertilizers, or other chemicals or animal wastes to land or crops through an irrigation system. Kansas has a separate law, the Kansas Chemigation Safety Law, that sets standards for equipment and practices to prevent pollution from chemigation.

The Association of American Plant Food Control Officials also developed model state laws (but not regulations) for chemigation. Those model laws cover such things as

- equipment used to prevent chemicals or animal wastes from getting into the water supply, and
- installation and maintenance of chemigation equipment.

Kansas law contains all the major provisions of the model act, and it is similar to Nebraska's chemigation law. Of the 3 other states we looked at, only Nebraska has a comprehensive chemigation law.

In our comparison, we found Kansas is more stringent than Nebraska in one area:

- Kansans who violate the chemigation law must cease chemigation immediately. Nebraska gives violators 10 days to come into compliance.

Kansas is less stringent than Nebraska in 2 areas:

- Unlike Nebraska, Kansas doesn't require signs on fields that are being chemigated with restricted-use pesticides. Because labels for the pesticides known to be most dangerous to people already require notices to be posted, Kansas officials said this additional requirement wouldn't increase human safety.
- Unlike Nebraska, Kansas doesn't require chemigation equipment to be inspected before a person gets an initial permit to chemigate. Kansas requires irrigators to assure the State the equipment meets the State's standards, but it doesn't require them to get that equipment inspected before using it. Department officials told us they thought new chemigation equipment likely would be installed correctly, and adding this inspection requirement likely would subject someone using chemigation to a lengthy wait for inspection, or result in an increase in fees to pay for more inspectors.

Most of Kansas' Fees Are About the Same as Those In the Other States, But Its Civil and Criminal Penalties Differ

For both pesticides and fertilizers, the states charge fees to register products, certify applicators, license businesses, and the like. The states also penalize those who violate their pesticide, fertilizer, and chemigation laws, through civil penalties imposed by an agency or criminal penalties imposed through the state's courts.

Most fees Kansas charges are very similar to the amounts charged for those fees in Iowa, Nebraska, and Oklahoma. However, as the following table shows, some Kansas pesticide fees are higher than the other states, while some fertilizer and chemigation fees are lower. They're listed in the table on the next page. Additional details about fees are provided in Appendix B, and details about penalties are provided in Appendix C.

Fees for Which Kansas Differs Significantly from Other States					
	Type of fee	Kansas	Iowa	Nebraska	Oklahoma
Pesticides	commercial applicator examination fee	\$25 for each category (a) <i>Kansas is highest</i>	none	none	\$20 for each examination
	registered technician applicator fee	\$25 <i>Kansas is higher</i>	NA (doesn't have registered technicians)	NA (doesn't have registered technicians)	\$10
	government agency registration fee	\$35 <i>Kansas is only one to charge</i>	none	none	none
Fertilizers	fertilizer registration fee	\$5 for all types <i>Kansas is lower</i>	\$100 for certain types	none	none
Chemigation	user permit fee	\$5 a year plus \$10 a year for each add'l water source	N/A	\$30 for initial permit plus \$10 for each annual renewal	N/A
<small>(a) Kansas' pesticide application categories are agricultural pest control; forest pest control; ornamental and turf pest control; seed treatment; aquatic pest control; right-of-way pest control; industrial, institutional, structural and health-related pest control; public health pest control; regulatory pest control; and demonstration and research pest control. These categories are used in certification and licensing. All states have categories of pesticides for regulation purposes.</small>					

Business license fees differ significantly, but they're difficult to compare across the states. Kansas bases its fee on the number of pesticide application categories for which the business is licensed: \$100 for each category. Other states base their fees on the number of locations the business has: \$20 per location in Oklahoma, and \$25 per location in Iowa and Nebraska.

Nearly three-fourths of Kansas' fees haven't been changed for more than 13

years, and none were updated during the 1990s. Department officials told us they were in the initial stages of an agency-wide review of fees to determine whether fees were sufficient to meet the costs of the various programs. Program officials told us that, although some of those fertilizer fees are low compared with neighboring states, those fees are sufficient to pay for the fertilizer program.

Like 2 of the other 3 states, Kansas law doesn't give the Department statutory authority to impose civil penalties on people who violate fertilizer laws, but agriculture officials we talked with thought such penalties would be a helpful enforcement tool. That and other differences in civil penalties are summarized in the table on the next page.

Industry representatives, Department of Agriculture officials, and officials in agriculture departments in other states told us that allowing the Department to assess civil penalties would be very helpful in enforcing fertilizer laws. A bill introduced during the 2001 session would allow the Department to assess a civil penalty of no more than \$5,000 for any violation of the Kansas Commercial Fertilizer Law, but that bill is still in committee.

Agriculture and pesticide industry groups we contacted said they thought civil penalties for pesticide violations were high enough, but they were divided over whether those civil penalties should apply to private applicators.

All 4 states have criminal penalties for various aspects of their pesticide, fertilizer, and chemigation laws. We found 3 significant differences in the criminal penalties:

- Oklahoma may impose a fine of up to \$10,000 for a violation of any pesticide law; Kansas, Nebraska, and Iowa set the limit at \$500, \$1,000, and \$1,500, respectively.
- Violations of fertilizer law not specific to anhydrous ammonia in both Kansas and Nebraska can result in misdemeanor convictions with possible fines. In Nebraska, violators can also be jailed. However, Iowa and Oklahoma have no criminal penalties for such fertilizer violations.
- Kansas can assess violators of its chemigation law up to \$5,000. Nebraska (the only other state in our sample with a chemigation law) limits that fine to \$1,000 but allows a jail sentence.

Maximum Civil Penalties					
		Kansas	Iowa	Nebraska	Oklahoma
Pesticides	maximum civil penalty	\$5,000	\$500	\$15,000	\$10,000
	who may receive this penalty	commercial applicators and anyone in a Pesticide Management Area	commercial applicators	commercial applicators and private applicators	commercial applicators and private applicators
Fertilizers	maximum civil penalty	no civil penalties	no civil penalties	no civil penalties	amount set during administrative hearing process
	violations for which this penalty is available	NA	NA	NA	failing to meet secondary containment requirements at storage facilities
Chemigation	maximum civil penalty	\$5,000	NA	\$1,000	NA

CONCLUSION: Kansas' pesticide laws and regulations generally meet minimum federal requirements. There are no federal requirements for fertilizers or chemigation, but Kansas generally meets those suggested in model laws and regulations. We found only a few areas in which Kansas laws or regulations contained more or fewer restrictions than other states. These restrictions address equipment and applicator requirements designed to minimize the risk to people and the environment. Deciding whether Kansas laws and regulations strike the appropriate balance is a matter of public policy. However, many people we talked with thought giving the Department of Agriculture the authority to assess civil penalties for violations of the fertilizer laws would give the State a needed enforcement tool.

RECOMMENDATIONS: To ensure that the Department of Agriculture has the enforcement tools it needs to help protect the public from fraud and the environment from contamination caused by equipment that doesn't meet requirements or is improperly maintained or inspected, the House and Senate Agriculture Committees should consider legislation that would authorize the Department to impose civil penalties for violations of fertilizer law. Substitute for SB 255, introduced during the 2001 legislative session and currently in the Senate Agriculture Committee, would give the Department this authority.

APPENDIX A

Scope Statement

This appendix contains the scope statement approved by the Legislative Post Audit Committee for this audit on May 31, 2001. This audit was requested by the Legislative Post Audit Committee.

SCOPE STATEMENT

Department of Agriculture: A K-GOAL Audit of the Kansas' Pesticide and Fertilizer Program

A number of State and federal laws have been passed to help protect the environment, people, and property from damages caused by the inappropriate use and handling of pesticides and fertilizers. Among those laws are the Kansas Pesticide Law, the Kansas Chemigation Safety Law, the Kansas Agricultural Chemical Act, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Department of Agriculture's Pesticide and Fertilizer Program is charged with enforcing these laws. Some of the ways the Department enforces the law include:

- Certifying those who are in the business of applying restricted-use pesticides, or who apply such pesticides
- Licensing those who engage in the business of applying pesticides to the property of another, or who perform pest control for compensation
- Regulating certain pesticide storage facilities
- Registering pesticides being sold in the State
- Registering dealers who sell general and restricted-use pesticides
- Permitting and certifying those involved in chemigation (the process whereby pesticides, fertilizers, or animal wastes are added to irrigation water and applied to land or crops).

Originally, these were 2 separate programs; one dealt with pesticides and one with fertilizers. In 1997, the Department made significant staffing changes within its fertilizer regulatory program because of perceptions that plans for fertilizer storage facilities were approved with a "rubber stamp." Subsequently, in April 2000 the staff responsible for enforcing fertilizer regulations were combined with the pesticide program staff to form one program.

Recently, legislators have expressed an interest in knowing how Kansas' laws and regulations related to fertilizers and pesticides compare with laws and regulations in other states and at the federal level.

A performance audit in this area would answer the following questions.

1. How do Kansas' laws and regulations regarding the sale and use of fertilizers and pesticides compare with laws and regulations in other midwestern agricultural states? To answer this question, we would review Kansas' program for regulating pesticides and fertilizers and compare it with programs in other agricultural states such as Iowa and Nebraska. Specifically, we would review laws and regulations, and interview officials in each state. We would look for areas in which Kansas' regulatory program appeared to be more or less strict than the other states and try to determine why. Also, through discussions with people in the industry, the Environmental Protection Agency, and the Department of Agriculture,

we would try to identify aspects of the regulatory system in Kansas that may no longer be needed, that aren't effective, or that could be accomplished more efficiently by some other means. We would conduct additional testwork and review other records as needed.

Estimated Time to Complete: 6-8 weeks

APPENDIX B

Table of Fees Assessed under Pesticide, Fertilizer, and Chemigation Laws

This appendix contains a table showing fees in Kansas pesticide, fertilizer, and chemigation laws. The date in brackets indicates the year this Kansas fee amount was last changed. The table also shows comparable fees in Iowa, Nebraska, and Oklahoma.

Based on comments from the Department in its response, we have modified the table. Fees collected for the Agricultural Remediation Fund are now separated and specified in footnotes.

Fees Assessed under Pesticide, Fertilizer, and Chemigation Laws

[date in brackets indicates the year this Kansas fee amount was last changed]

Type of Fee	Kansas	Iowa	Nebraska	Oklahoma
PESTICIDES				
Commercial Applicator Application	\$35 for each category of application [1982]	\$30 for 1 year or \$75 for 3 years	\$90-\$150 for 3 years	\$50 for each business category, not to exceed \$250
Commercial Applicator Examination	\$25 for each category of application [1982]	NA	NA	\$20 for each examination
Private Applicator Application	\$10 for 5 years [1982]	\$15 for 3 years	\$25	\$5
Pesticide Business License	\$100 for each business category [1987]	\$25 for each business location	NA	\$20 for each business location
Uncertified Applicator Application	\$10 for each employee who isn't certified [1982]	\$10 for 1 year or \$15 for 3 years	NA	\$20 for each noncommercial applicator
Registered Technician Applicator Application	\$25 less \$10 uncertified applicator fee, if it's already been paid. [1987]	NA	NA	\$10 for each service technician
Pesticide Registration Fee	\$130 for each pesticide, defoliant, and desiccant [2000] (a)	1/5 of 1% of prior year's gross sales with a minimum of \$250 and a maximum of \$3,000 for each pesticide	1. \$200 for each regular pesticide 2. \$135 for each specialty pesticide	\$100 for each pesticide
Dealer Registration Fee	\$20 [2001] (b)	\$25 if sell < \$25,000 annually; \$50 if < \$50,000; \$75 if < \$75,000; or \$100 if < \$100,000; 1/10 of 1% of prior year's gross sales if > \$100,000.	\$25 for each business location	\$20 for each business location
Government Agency Registration Fee	\$35 [1988]	NA	NA	NA
FERTILIZERS				
Registration Fee	\$5 for each commercial fertilizer [1927] (c)	\$100 for each brand or grade sold in packages of 25 pounds or less	None	None
License and Who must obtain it	\$25 [1963] (d) custom blending businesses	\$10 all businesses that manufacture, mix, blend, sell, or distribute fertilizers	\$15 same as Iowa except that retail stores selling less than 5 tons a year are exempt	\$50 same as Iowa except doesn't apply to manufacturers or retail stores selling bagged fertilizer
Inspection Fee	\$0.23/ton [2000] (e)	\$0.17/ton or \$100 registration fee above is also the inspection fee	\$0.10/ton	\$0.65/ton
CHEMIGATION				
Registration and user permit application fee	\$50 plus \$10 for each additional point of diversion [1999]	N/A	\$30	N/A
Certification	\$10 a year [1985]	N/A	N/A	N/A

Kansas law adds fees for the Kansas Agricultural Remediation Fund, listed in footnotes (a) through (d) below.

(a) \$60 for each agricultural chemical that isn't an anti-microbial.

(b) \$5 if the dealer has sales less than \$2,500 a year, \$80 if sales exceed \$2,500

(c) \$20 for each commercial fertilizer

(d) \$100 for each custom fertilizer blending business

(e) Kansas also adds \$1.40 per ton for the State Water Plan Fund and \$.04 per ton for the Fertilizer Research Fund.

APPENDIX C

Table of Penalties Assessed under Pesticide, Fertilizer, and Chemigation Laws

This appendix contains a table showing penalties in Kansas pesticide, fertilizer, and chemigation laws. The table also shows comparable penalties in Iowa, Nebraska, and Oklahoma.

Penalties Assessed under Pesticide, Fertilizer, and Chemigation Laws

[date in brackets indicates the year this Kansas penalty amount was last changed]

Type of <u>Penalty</u>	Kansas	Iowa	Nebraska	Oklahoma
PESTICIDES				
Commercial Applicator Civil Penalty	up to \$5,000 if a <u>pesticide business licensee</u> uses a pesticide in a way that's inconsistent with its label or in a way that causes injury. [1988] All other violations of the Act carry a penalty of up to \$1,000. [1990]	up to \$500	up to \$15,000 if <u>any person</u> violates the Act; the department may levy up to \$5,000; a court may levy up to the \$15,000 limit	up to \$10,000 if <u>any person</u> violates the Act.
Private Applicator Civil Penalty	up to \$5,000 if <u>any person</u> applies pesticides in violation of an established pesticide management area plan [1989]	NA	up to \$15,000 if <u>any person</u> violates the Act.	up to \$10,000 if <u>any person</u> violates the Act.
Private Applicator Criminal Penalty	up to \$500 and conviction of a class A misdemeanor if any <u>certified private applicator</u> violates any provision of the Kansas Pesticide Act. Any other person who violates the Act shall be guilty of a class A misdemeanor. [1988]	<u>any person</u> who violates the act shall be guilty of either a simple or serious misdemeanor. The maximum penalty is a fine of \$1,500 and a year imprisonment.	<u>any person</u> who violates the act shall be guilty of a Class III or Class I misdemeanor. The maximum penalty is a fine of \$1,000 and a year imprisonment.	up to \$10,000 and 1 year in jail if <u>any person</u> violates the Act.
Manufacturer, distributor Criminal Penalty	at least \$100 but not more than \$500 and conviction of a misdemeanor [1947]	(same as above)	(same as above)	(same as above)
FERTILIZERS				
Criminal Penalty	misdemeanor conviction; fine of no more than \$100 for first conviction, \$100-\$500 on subsequent convictions	none	misdemeanor conviction; fine of no more than \$1,000 or up to 6 months imprisonment or both	none
Stop Sale Penalty	Department can stop sale of any fertilizer that doesn't comply with the requirements in State law	Department may seize any fertilizer that doesn't comply with the requirements in state law	same as Kansas	same as Kansas
Other Penalty	Department can stop use of equipment	Department can cancel product registration and/or company license; Department can require reimbursement to any consumer if fertilizer doesn't meet labeled quality	Department can cancel product registration and/or company license	Department can require consumer be paid 2 times the value of any deficiency in a fertilizer
Anhydrous Ammonia Civil and Criminal Penalties	misdemeanor punishable by fine of not more than \$500 [1969]	stop sale; court injunctions restricting use of facility or against license; no civil penalties	file non-compliance charge with county attorney; no civil penalties	use administrative hearing process to assess civil penalties; may also be filed in district court as misdemeanor
CHEMIGATION				
Criminal Penalty	misdemeanor punishable by fine of not more than \$5,000	NA	misdemeanor punishable by fine of not more than \$1,000 and 1 year imprisonment	NA
Civil Penalty	not more than \$5,000	NA	not more than \$1,000	NA

APPENDIX D

Agency Response

On October 5, 2001, we provided a copy of the draft audit report to the Department of Agriculture. The Department's response is included as this Appendix. After carefully reviewing the response, we made some minor clarifications to the draft audit that didn't affect any of our findings or conclusions.

STATE OF KANSAS

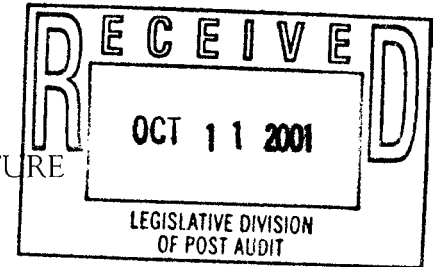
BILL GRAVES, GOVERNOR

Jamie Clover Adams, Secretary of Agriculture
109 SW 9th Street
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KANSAS DEPARTMENT OF AGRICULTURE

October 11, 2001



Barbara J. Hinton, Legislative Post Auditor
Merchants Bank Tower
800 SW Jackson, Suite 1200
Topeka, KS 66612-2212

Dear Ms. Hinton:

Thank you for the opportunity to review the draft report of the performance audit, "*Department of Agriculture: A K-GOAL Audit of the Kansas Pesticide and Fertilizer Program.*"

We appreciate the professional skills of the Legislative Post Audit staff who performed and wrote the audit. Their comparisons of Kansas laws with those of other Midwestern agricultural states have resulted in a useful tool for program management to use in assessing the efficiency and effectiveness of operations.

We also agree that additional enforcement tools, such as the authority to impose civil penalties for violations of fertilizer laws, will increase the department's abilities to protect the agricultural industry, the citizens of the state of Kansas, and the environment.

In this response we would like to expound on data in Appendix B, the comparison table of fees and penalties assessed under pesticide, fertilizer and chemigation laws in Kansas, Iowa, Nebraska and Oklahoma.

The Kansas fees noted in the tables are correct; however, in case of both fertilizers and pesticides, the Kansas Legislature has directed that only a certain portion of the fees remains in the program to fund program expenses. Another portion simply passes through the department on its way to fund other projects which protect the environment.

The Pesticide Registration Fee noted in the table (page 19) is \$190 for each product not classified as an antimicrobial and \$130 for products which are classified as antimicrobials. Those fees are distributed in this manner: \$30 to program operations and \$100 to the State Water Plan. The money collected for registration of non anti-microbials also includes \$60 which is passed on to the Kansas Agricultural Remediation Program.

Barbara J. Hinton, Legislative Post Auditor

October 11, 2001

Page 2


The table (page 19) lists the dealer registration fees as \$25 if the business sells less than \$2,500 annually and \$100 for sales of \$2,500 or more. Of this fee, \$20 is dedicated to program operations and the remaining \$5 or \$80 amount is deposited in the Kansas Agricultural Remediation Board fund.

The Fertilizer Registration Fees (page 20) are organized differently. They list the actual portion of the fee which is kept by the program for operations, not the total amount collected. In addition to the \$5 portion of the registration for each commercial grade of fertilizer kept for program operations, \$20 is collected and passed on to the Kansas Agricultural Remediation Board. The License to Distribute collects \$25 for program operations, then custom blenders pay an additional \$100 assessment which is deposited in the Kansas Agricultural Remediation Board fund.

The table lists the \$0.23/ton inspection fee received for program operations; an additional \$0.04/ton is collected for the Fertilizer Research Fund and \$1.40/ton is collected and forwarded to the State Water Plan.

In conclusion, we thank you for the Legislative Division of Post Audit's assistance as we assess and improve the efficiency and effectiveness of KDA programs. We look forward to the release of the report and the November 1, 2001 meeting of the Legislative Post Audit Committee.

Sincerely,


Jamie Clover Adams
Secretary of Agriculture