



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Ensuring the safety of chemicals

Tribal Pesticide Enforcement Comes Close to Achieving EPA Goals, but “Circuit Rider” Inspector Guidance Needed

Report No. 20-P-0012

October 29, 2019



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Abbreviations

EPA	U.S. Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FY	Fiscal Year
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
U.S.C.	United States Code

Cover Photo: Farm workers on Navajo Nation land. (EPA photo)

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At a Glance

Why We Did This Project

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) conducted this audit to determine whether the EPA's negotiation, review and approval of tribal pesticide enforcement work plans—required as part of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) cooperative agreements—support the achievement of agency goals and requirements.

The goal of the EPA national pesticide program, consistent with FIFRA, is to ensure that pesticides are made available for use and are properly sold, distributed and used in a way that is protective of human health and the environment. The EPA enters into cooperative agreements with tribes that fund compliance and enforcement activities under FIFRA. According to the EPA, the FIFRA enforcement cooperative agreements are important in promoting environmental justice and the welfare of tribes and the quality of their environments.

This report addresses the following:

- Ensuring the safety of chemicals.

Address inquiries to our public affairs office at (202) 566-2391 or [OIG WEBCOMMENTS@epa.oig](mailto:OIG_WEBCOMMENTS@epa.oig).

List of [OIG reports](#).

Tribal Pesticide Enforcement Comes Close to Achieving EPA Goals, but “Circuit Rider” Inspector Guidance Needed

What We Found

The EPA's negotiation, review and approval of tribal pesticide cooperative agreement work plans were close to supporting achievement of the agency's goals and requirements. We found that for the period covered by fiscal years 2016–2017, the 17 participating tribes completed 87 percent of projected inspections and met 86 percent of applicable work-plan requirements. Some tribes indicated they did not complete the projected number of inspections and enforcement activities in their cooperative agreements due to staff turnover. According to EPA program staff, some tribes have only one inspector, and if the inspector departs the tribe must re-start its pesticide compliance and enforcement program after a replacement inspector is found and trained.

Improvements in the “circuit rider” program can enable the EPA to better detect and prevent pesticide misuse and unnecessary risks to human health and the environment in Indian country.

If a tribe is interested in establishing a pesticide cooperative enforcement agreement with the EPA but does not have enough inspectable entities, such as certified applicators or producing establishments, to justify its own cooperative agreement, the EPA guidance suggests investigating whether the tribe can affiliate with a circuit rider—an inspector who provides inspections to other tribes as well as his/her own. We found, however, that tribes which use circuit riders may not be fully aware of the scope or outcome of activities circuit riders conduct. The agency's tribal pesticide circuit rider agreements can be improved by setting clear performance expectations between circuit riders and the tribes they serve, developing priority-setting plans, and providing opportunities for the tribes to provide feedback directly to the EPA regarding performance and concerns. Without these improvements, EPA regions are not able to gather feedback and concerns from tribes about circuit rider performance.

Recommendations and Planned Agency Corrective Actions

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance require circuit riders to include the pesticide needs and risks of each tribe in the development of their own priority-setting plans, develop and implement tribal pesticide circuit rider guidance to detail expectation-setting and communication plans with tribes served by circuit riders, and establish regional processes to receive feedback from tribes served by circuit riders. The agency agreed with our recommendations and provided acceptable corrective actions.



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

OFFICE OF
INSPECTOR GENERAL

October 29, 2019

MEMORANDUM

SUBJECT: Tribal Pesticide Enforcement Comes Close to Achieving EPA Goals,
but "Circuit Rider" Inspector Guidance Needed
Report No. 20-P-0012

FROM: Charles J. Sheehan, Acting Inspector General

A handwritten signature in blue ink that reads "Charles J. Sheehan".

TO: Susan Parker Bodine, Assistant Administrator
Office of Enforcement and Compliance Assurance

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA&E-FY18-0285. This report contains findings that describe problems the OIG identified and corrective actions the OIG recommends. This report presents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of Enforcement and Compliance Assurance's Office of Compliance and Office of Civil Enforcement have primary responsibility for the subjects covered in this audit.

In accordance with EPA Manual 2750, your office provided acceptable corrective actions and milestone dates in response to OIG recommendations. All recommendations are resolved, and no final response to this report is required. However, if you submit a response, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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Chapter 1

Introduction

Purpose

The U.S. Environmental Protection Agency’s (EPA’s) Office of Inspector General (OIG) conducted this audit to determine whether the EPA’s negotiation, review and approval of tribal enforcement work plans—required as part of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) cooperative agreements—support the achievement of agency goals and requirements.

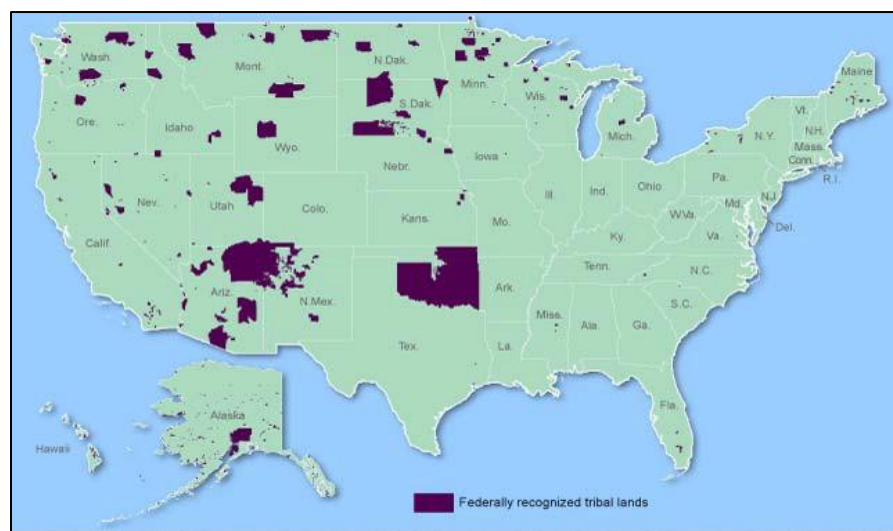
Background

Under FIFRA, the EPA has the authority to regulate how pesticides are registered, distributed and sold, and whether they are used appropriately. Section 23(a)(1) of FIFRA also authorizes the EPA to enter into cooperative agreements with states, territories and Indian tribes to conduct pesticide enforcement programs.

EPA Tribal Pesticide Program

As of fiscal year (FY) 2018, there were 573 federally recognized American Indian tribes. Tribes occupy approximately 60 million acres of trust land¹ in Indian country (Figure 1).

Figure 1: Map of federally recognized tribal lands



Source: Government Accountability Office, [GAO-18-630](#).

¹ “Trust lands” are defined in 25 U.S.C. § 2201 as those lands where the title is held in trust by the United States for the benefit of an American Indian tribe or individual American Indians.

According to the EPA, 43 percent of the Indian population resides in rural areas compared to 21 percent of the overall U.S. population. Because American Indians are more likely to report farming as their primary occupation, American Indian farmworkers and their families face greater risks of exposure to agricultural pesticides.

Unlike states, tribes are not granted primary enforcement² responsibility under FIFRA. The EPA is responsible for implementing and enforcing FIFRA in Indian country. The EPA considers unique tribal lifestyles and exposure patterns when registering pesticides and works with tribal governments to implement pesticide programs under FIFRA, including providing tribes with expertise, training and opportunities for partnership when pesticide issues affect their lands. The federal government has a unique relationship with federally recognized tribes, recognizing the importance of tribal sovereignty over tribal members and their territories.

According to the EPA, the goal of the national pesticide program, consistent with FIFRA, is to “assure that pesticides are made available for use, and are properly sold, distributed and used, in a way that is protective of human health and the environment.”³ To support this goal, the EPA enters into cooperative agreements with tribes that fund pesticide compliance and enforcement activities, including compliance assistance, inspections, case development and enforcement. The EPA goal is achieved primarily through the completion of negotiated tribal pesticide inspections and other enforcement-related activities (e.g., reporting of enforcement results, and providing outreach and compliance assistance). According to the EPA, the FIFRA enforcement cooperative agreements are important in promoting environmental justice and the welfare of tribes and the quality of their environments.

Tribal “Circuit Rider” Approach

If a tribe is interested in establishing a pesticide cooperative enforcement agreement with the EPA but does not have enough inspectable entities⁴ to justify its own cooperative agreement, the EPA guidance suggests investigating whether the tribe can affiliate with a circuit rider. Under this agreement, the EPA provides funding through

Pesticide Exposure

Pesticides are designed to harm insects, weeds, disease-causing organisms and other pests, and have the potential to harm people and the environment.

Potential risks include:

- **Worker exposure during pesticide use and application.**
- **Water contamination.**
- **Potential pesticide drift of sprays and dusts to nearby farms, homes, schools and playgrounds.**

² Section 26 of FIFRA authorizes the EPA to grant to a qualifying state the primary enforcement responsibility for pesticide use violations.

³ EPA Office of Pesticide Programs and EPA Office of Enforcement and Compliance Assurance (OECA), *2015-2017 FIFRA Cooperative Agreement Guidance* (March 6, 2014), p. 1.

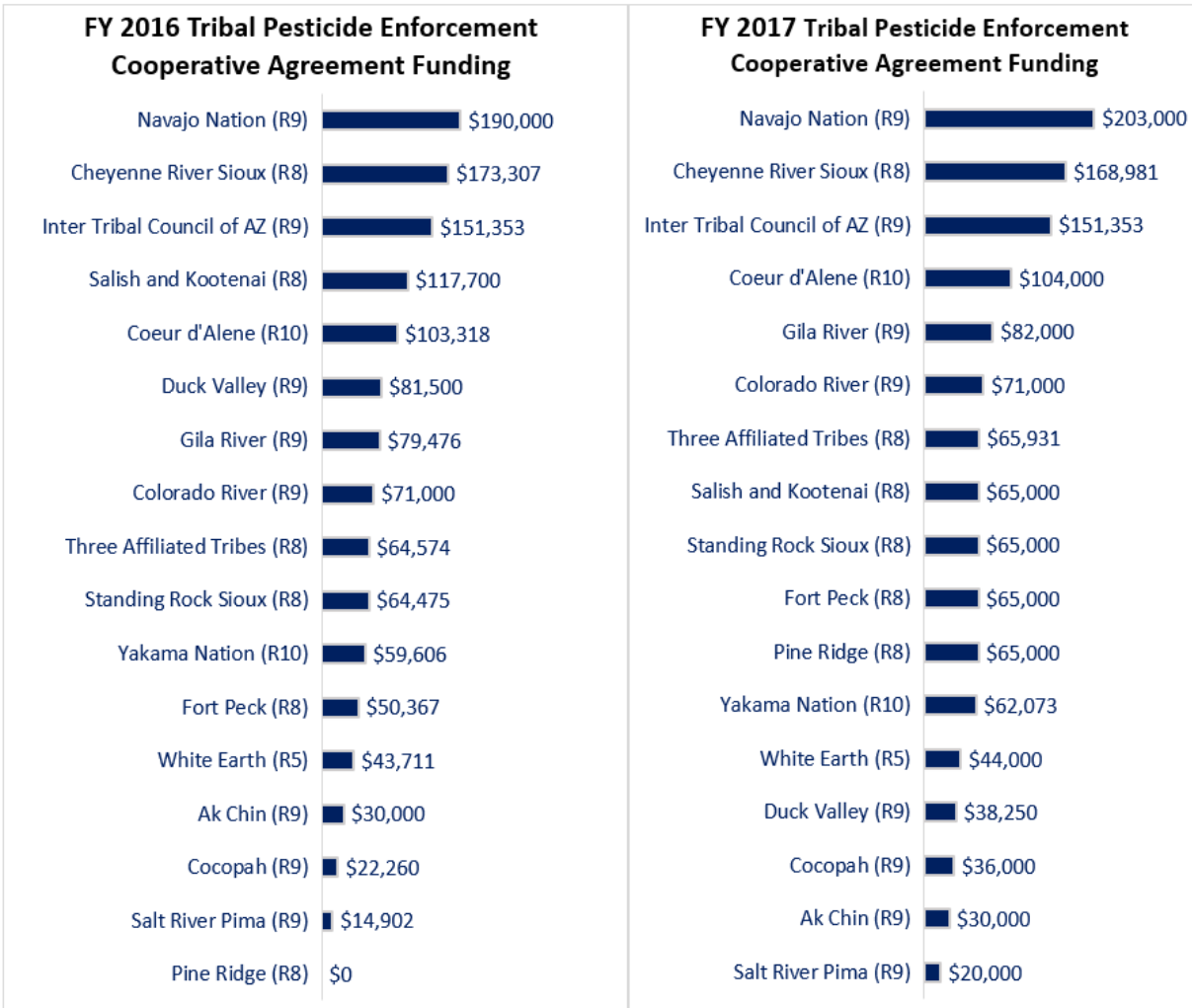
⁴ EPA regions determine if there is a sufficient number of inspection targets (names and addresses) to justify a compliance and enforcement component of cooperative agreements. According to the EPA guidance, “the tribe must have enough targets to ensure a minimum of 25 inspections of a mix and workload commensurate with the financial resources and tribal capacity provided each year.”

a cooperative agreement to a tribe to conduct pesticide program activities on behalf of the EPA within its tribal boundaries, as well as for other nearby participating tribes. This tribal inspector is known as a “circuit rider.” The EPA encourages the tribal circuit rider approach whenever feasible because it provides pesticide program assistance to a broader area than a single tribal program. Also, it allows those tribes that may not want to have or are not well suited to having a single tribe pesticide enforcement program to receive tribal pesticide enforcement assistance.

Work Plans

In FYs 2016 and 2017, the EPA funded 16 tribes and one inter-tribal organization (hereafter referred to as “tribes”) a total of \$1.3 million each year for pesticide enforcement cooperative agreements. Details are in Figure 2.

Figure 2: EPA funding to tribes for pesticide enforcement cooperative agreements in FYs 2016 and 2017



Source: EPA OECA’s Office of Compliance and EPA Regions 5, 8, 9 and 10.

Note: In the figure, after the name of each tribe, the “R” in the parentheses stands for “Region.” For example, “R9” represents “Region 9.”

EPA FIFRA project officers in regional offices oversee tribal pesticide enforcement cooperative agreements, negotiate work plans, monitor progress of work-plan activities and provide fiduciary oversight. The EPA recognizes that available resources, program capacity and needs for many tribes are very different from those of most state pesticide programs. EPA FIFRA project officers and tribal grantees negotiate work-plan activities based on priorities and the needs of the tribes and the EPA. Each cooperative agreement with a tribe must be accompanied by a completed FIFRA cooperative agreement work-plan that must include:

- The work-plan components to be funded under the grant.
- Estimated work years and funding amounts for each work-plan component.
- A performance evaluation process and reporting schedule.
- The roles and responsibilities of the applicant and the EPA in carrying out the work-plan commitments.

As a part of the work plan, tribes agree to conduct compliance and/or enforcement activities under FIFRA. Tribes can conduct 10 types of FIFRA inspections (Table 1).

Table 1: Types of FIFRA inspections

Inspection type	Description
1. Use	Typically, an observation of an agricultural or non-agricultural pesticide application or an inspection following an application.
2. For cause	Initiated in response to a complaint, damage report, referral, tip, or known or suspected noncompliance.
3. Marketplace	Ensure industry compliance with product registration, formulation, packaging and labeling requirements.
4. Producer establishment	Conducted at an establishment where pesticides or devices are produced and held for distribution or sale.
5. Certified applicator license and records	Normally conducted at a pesticide applicator's place of business to determine whether the (1) applicator is properly certified and/or licensed, (2) required records are being maintained, (3) applicator is applying pesticides only in those areas with a certification, and (4) records indicate that all applications have been made in compliance with all applicable laws and regulations.
6. Restricted-use pesticide dealer	Determine compliance with FIFRA record-keeping requirements regarding sales and distribution of restricted-use pesticides.
7. Import and export	Ensure that pesticides and devices (e.g., insect traps) imported into or exported from the United States comply with FIFRA.
8. Experimental-use permit	Determine whether the terms and conditions of the permit avoid unreasonable adverse effects on the environment and whether the terms and conditions of the permit are being met.
9. Worker Protection Standard	Involve examining practices of agricultural and pesticide handler employers and their employees to assess compliance.
10. Cancellation and suspension	Determine compliance with EPA's orders concerning suspended and/or canceled products.

Source: EPA OECA's Office of Compliance.

EPA FIFRA project officers conduct post-award monitoring to assess the status of work being completed during that fiscal year. Tribes must report inspection accomplishments to the EPA annually or as negotiated by the region. At the end of the fiscal year, EPA FIFRA project officers conduct required end-of-year evaluations of tribal performance under the agreements. In the end-of-year enforcement evaluation, the EPA reviews accomplishments and discusses the status of actual inspections compared to projected inspections. The evaluation also addresses the status of the work-plan-required activities and documents any issues or areas of concern. Project officers may also hold mid-year evaluations or check-ins.

Responsible Offices

Within the EPA's OECA, the Office of Compliance and the Office of Civil Enforcement develop national compliance monitoring and enforcement policies, priorities and strategies for FIFRA. Pesticide enforcement grants are administered by the Office of Compliance to support tribal pesticide inspection programs (and tribal enforcement as described in the cooperative enforcement agreement). EPA FIFRA project officers in regional offices oversee tribal pesticide enforcement cooperative agreements.

Scope and Methodology

We conducted our work from September 2018 through July 2019. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We reviewed relevant materials, including FIFRA, applicable regulations, guidance documents and policy documents. We also interviewed OECA headquarters staff and staff in the Office of Chemical Safety and Pollution Prevention's Office of Pesticide Programs to understand the FIFRA pesticide cooperative agreements, work-plan negotiation and review process, and overall goals of the program at the national level.

We attended the Tribal Pesticide Program Council's full council meeting in October 2018. The meeting provided information on current pesticide issues in Indian country and updates from OECA and Office of Pesticide Programs staff.

We judgmentally selected two EPA regional offices (Regions 8 and 9) and two tribes (the Cheyenne River Sioux Tribe in Region 8 and the Gila River Indian Community in Region 9). We interviewed staff from these regions and tribes about FIFRA tribal enforcement work plans and the negotiation process. We

collected additional information from pesticide and enforcement staff in EPA Regions 5 and 10.

We also interviewed and collected information from four tribal pesticide circuit riders (the Cheyenne River Sioux Tribe in Region 8, the Confederated Salish and Kootenai Tribes in Region 8, the Inter Tribal Council of Arizona in Region 9, and the Coeur d'Alene Tribe in Region 10). Further, we sent email questionnaires to each of the participating tribes to gain a better understanding of their expectations of the program and their experiences with circuit riders and EPA regional staff.

Prior Report

In EPA OIG Report No. [18-P-0079](#), *EPA Can Better Manage State Pesticide Cooperative Agreements to More Effectively Use Funds and Reduce Risk of Pesticide Misuse*, issued February 13, 2018, we evaluated whether the EPA's negotiation, and review and approval of state work plans for compliance inspections—which are required as part of FIFRA cooperative agreements—support the achievement of agency goals and requirements. We identified weaknesses in the processes that underlie the development and monitoring of FIFRA compliance inspection work plans. We recommended that the agency evaluate the reasonableness of work-plan funding and conduct a national review to verify consistent program implementation. The EPA OIG agreed to a set of agency corrective actions. The recommendations are considered resolved with corrective actions pending.

Chapter 2

Tribal Pesticide Enforcement Comes Close to Achieving EPA Goals, but Circuit Rider Inspector Guidance Needed

The EPA's negotiation, review and approval of tribal pesticide cooperative agreement work plans were close to supporting the achievement of the agency's goals and requirements. For the FYs 2016–2017 period, we found that the 17 participating tribes completed 87 percent of projected inspections and met 86 percent of applicable work-plan requirements. For four of the 17 cooperative agreements where the EPA provides funding to a tribe to conduct pesticide program activities on behalf of the EPA within their tribal boundaries (as well as for other nearby participating tribes), we found that the EPA can improve planning and communication with tribes using pesticide circuit riders by developing priority-setting plans, setting clear expectations and providing feedback opportunities for these tribes about circuit rider performance and pesticide-related concerns.

EPA's Tribal Pesticide Enforcement Work Plans Come Close to Achieving Agency Goals and Requirements

The EPA's negotiation, review and approval of tribal pesticide cooperative agreement work plans were close to supporting the achievement of agency goals, primarily through negotiated tribal pesticide inspections and resulting enforcement actions.

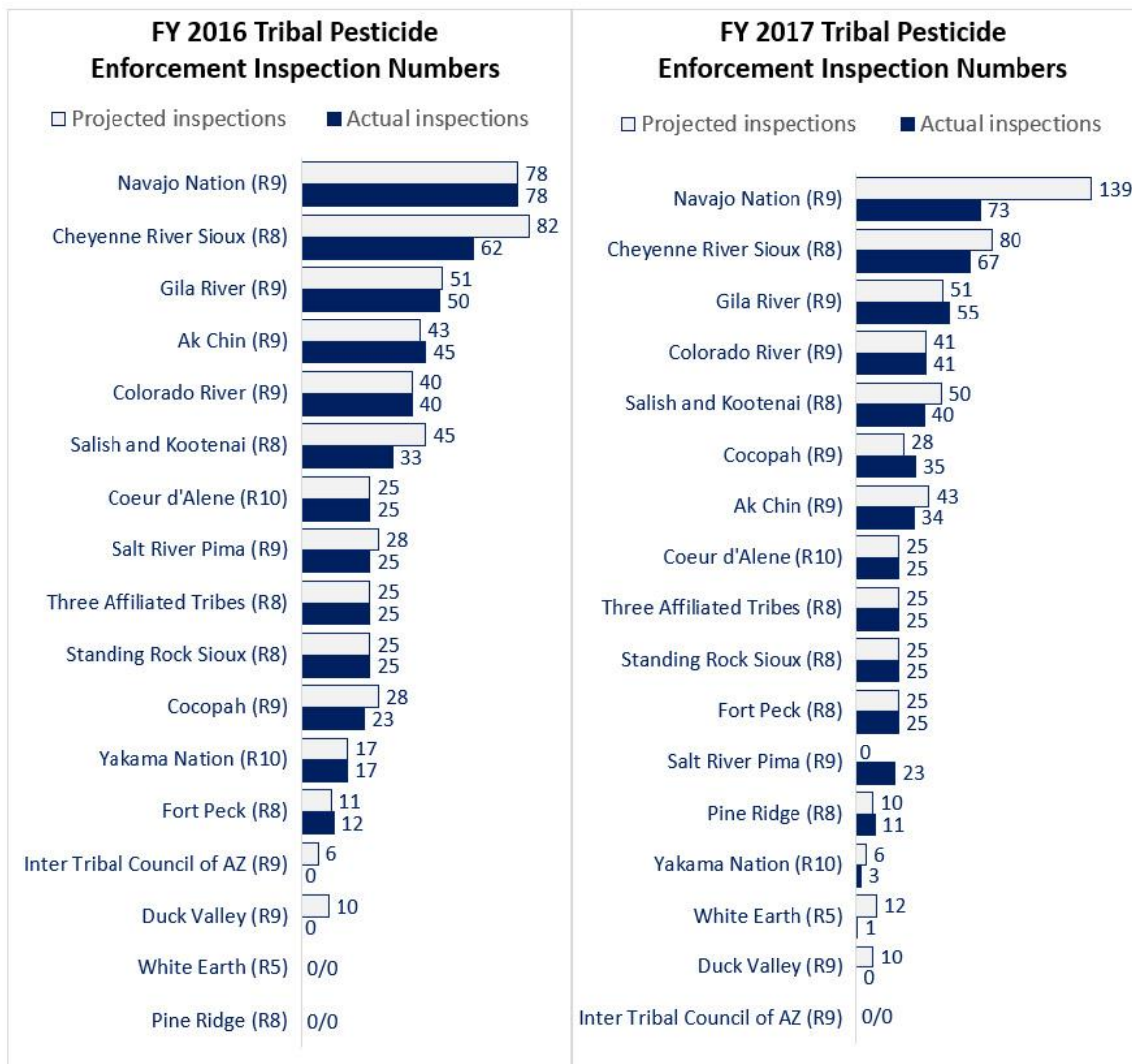
Based on negotiations with EPA FIFRA project officers, we found that the 17 participating tribes:

- Projected to conduct 529 pesticide inspections in FY 2017 and completed 491 (93 percent).
- Projected to conduct 584 pesticide inspections in FY 2016 and completed 472 (81 percent).

Figure 3 provides details. Four of 17 tribes indicated that they did not complete the projected amount of inspections due to staff turnover. According to the EPA 2011 *Guidance for Funding Development and Administration of Tribal Pesticide Field Program and Enforcement Cooperative Agreements*, “staff turnover may create serious difficulties for the tribal pesticide program.” One EPA FIFRA project officer said that due to staff turnover some tribes must re-start their compliance and enforcement programs (i.e., hire a new inspector and then ensure the inspector receives all necessary training and obtains federal inspector

credentials). According to an OECA staff member, this is a lengthy process that negatively impacts tribal enforcement performance. For example, the EPA Region 9’s FY 2017 End-of-Year Evaluation Report for the Shoshone-Paiute of Duck Valley Tribe details the following: “The vacancy of the pesticide coordinator position resulted in the lack of measurable results.”

Figure 3: FYs 2016 and 2017 projected and actual pesticide enforcement inspection totals



Source: EPA OECA’s Office of Compliance and EPA Regions 5, 8, 9 and 10.

Note: In the figure, after the name of each tribe, the “R” in the parentheses stands for “Region.” For example, “R9” represents “Region 9.”

In the EPA’s 2011 *Guidance for Funding Development and Administration of Tribal Pesticide Field Program and Enforcement Cooperative Agreements*, the agency suggested that “to mitigate the impact of staffing changes on the viability of the tribe’s program a tribe should consider:

- “Cross-training its staff to enlarge the pool of skilled staff members available to implement its pesticide program.
- “Encouraging ‘peer matching’ where personnel holding similar pesticide program responsibilities in different tribes agree to support each other by sharing experiences and challenges and providing a forum for problem solving.
- “Investigating the feasibility of using a circuit rider for pesticide field programs and/or compliance and enforcement programs.”

Our review of agency data showed that tribes conducted nine types of pesticide inspections in FYs 2016 and 2017. Use (agricultural and non-agricultural) and marketplace inspections made up 88 percent of all completed inspection types for FYs 2016 and 2017. (The two inspection types made up 90 percent of what the tribes committed to in their negotiations with the EPA.) The types of inspections conducted were based on identified priority risks to each participating tribe, and accomplished inspections mirrored the numbers projected in the work plans.

The tribes also committed to perform other enforcement-related activities in addition to the above inspections. For example, tribes agreed to manage and report results of their agreements to the EPA, build staff expertise on pesticide issues, provide outreach and compliance assistance, and maintain access to adequate laboratory support.

We found that tribes met 86 percent of applicable work-plan commitments. Fourteen percent of applicable commitments were “incomplete,” with the most common work-plan activities not being fully completed being the requirements to maintain and follow Quality Management Plans and Quality Assurance Project Plans. Nine of the 17 tribes were in the process of developing these plans.

Inspection-related activities made up 20 of the 25 required work-plan activities. As a result, for four of the 17 tribes, many required work-plan activities were noted in work plans as “incomplete” or “not applicable” due to the need to replace and train a new inspector as a result of unforeseen turnover. Tribal inspections conducted in FYs 2016 and 2017 resulted in eight EPA regional enforcement actions. An example of an EPA enforcement action taken based on an inspection conducted by a tribal pesticide circuit rider is detailed below.

Case Example: Pesticide Spray Drift Triggers “For Cause” Inspection and Civil Penalty

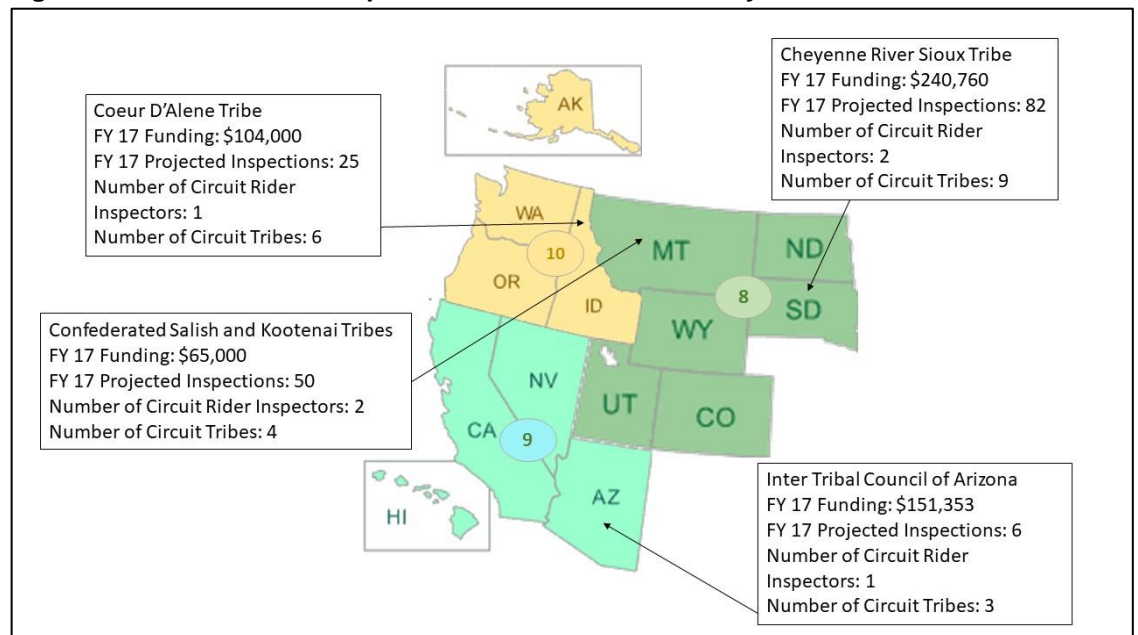
According to the EPA, “the drift of spray from pesticide applications can expose people, wildlife and the environment to pesticide residues that can cause health and environmental effects.” Staff and students at a tribe’s elementary school saw a plane that was spraying pesticides overhead near the playground area. Some staff said that they smelled chemicals and had headaches, and one staff member said that his/her car was wet from the plane’s pesticide spray. School staff contacted the EPA and the EPA’s tribal circuit rider inspector about possible pesticide contamination of the school, teachers and students. The EPA’s circuit rider inspector then conducted “for cause” inspections at both the elementary school and the location of the business that owned the plane. Samples taken from playground equipment during the inspection by the EPA circuit rider tested positive for the pesticides that were being sprayed by the plane (see EPA photo on right). This was a violation of the pesticide label language that states “Do not apply the product in a way that will contact workers or other persons, either directly or through drift. ... Avoiding spray drift is the responsibility of the applicator.” EPA filed an enforcement action and the violator agreed to pay a \$1,000 civil penalty.



EPA Can Improve Planning and Communication with Tribes Using Pesticide Circuit Riders

In FYs 2016 and 2017, the EPA funded four tribal enforcement cooperative agreements that included a circuit rider: Cheyenne River Sioux Tribe (Region 8), Confederated Salish and Kootenai Tribes (Region 8), Inter Tribal Council of Arizona (Region 9) and Coeur D’Alene Tribe (Region 10), as shown in Figure 4.

Figure 4: FY 2017 EPA tribal pesticide circuit rider summary



Source: EPA’s OECA Office of Compliance.

We found three areas where the EPA can improve its planning and communication with tribes using pesticide circuit riders for FIFRA enforcement cooperative agreements:

- The EPA did not require circuit riders to include tribes on their circuits in plans for inspections to be conducted under cooperative agreements.
- The EPA lacks guidance for circuit riders on communicating with tribes on their circuit about work-plan activities and inspections.
- The EPA did not solicit feedback from all participating tribes about circuit rider inspector activities, performance or pesticide needs.

As a result, tribes using a pesticide circuit rider may not be fully aware of the scope or outcome of activities circuit riders conducted and the EPA may not be aware of changing pesticide needs or risks for these tribes. Improving planning and communication with tribes using pesticide circuit riders could help the agency identify tribal enforcement needs and pesticide risks, and measure the progress and impacts of work-plan activities. Details follow.

Tribes Using Circuit Riders are Not Always Included in Priority-Setting Plans for Inspections

EPA regions that oversee tribes with pesticide enforcement cooperative agreements did not require priority-setting plans to include consideration of tribes being serviced by circuit riders. Tribes are required to submit priority-setting plans for regional review with their enforcement cooperative agreement application. Priority-setting plans are to include:

- A list of the priorities.
- An explanation of the criteria for establishing priorities.
- A review of information sources and listing of problem areas.
- A ranking of problem areas to be addressed.
- A distribution of available resources to the problem areas based upon the magnitude of the problem.

EPA regional staff said that the cooperative agreement guidance and priority-setting plans requirement only apply to the grantee (circuit rider and host tribe). Staff in three regions said it is up to the circuit rider to determine if or how the needs of the other tribes on their circuit are included in priority-setting plans. For example, one circuit rider said he/she did not have an overall or circuit-wide priority-setting plan; instead, the inspector proposed that each tribe on the circuit develop and implement

Promising Practice

According to EPA Region 8 staff, development is underway for documents and lists of specific inspection entities (names and addresses) for Region 8 tribes (and states) for FY 2019. This initiative addresses regional concerns about tribes inspecting the same locations for many years and adding variety in the types of inspections conducted by tribes.

its own priority-setting plans. Another circuit rider used a priority-setting plan but the plan did not explain how tribes are prioritized. As a result, tribes on a circuit may not be consistently included when circuit riders are developing priority-setting plans for pesticide inspections.

EPA Can Improve Circuit Rider Guidance on Communicating with Tribes

An OIG email questionnaire sent to the 17 tribes that use circuit riders found that four of the five tribes that responded were generally satisfied but had varying expectations for the services provided by their circuit rider. One tribe said its expectations for the circuit rider were based on annual work-plan activities in the tribal enforcement cooperative agreement. Three tribes said their circuit rider discussed work-plan activities and inspections with them at an annual meeting. However, the remaining tribe said that when it joined the program the EPA did not provide it with any information on the role of the circuit rider and what to expect.

According to the EPA, for each tribal pesticide enforcement agreement that includes a circuit rider, the EPA enters into a cooperative enforcement agreement with the tribe that will be hosting the inspector. According to the agency, the EPA also requires written agreements among the EPA, the tribe with the circuit rider cooperative agreement, and all tribes that agree to allow the circuit rider to conduct inspections on their tribal lands.

We found that the enforcement agreements between the EPA and the circuit riders only provide information on the circuit riders' roles and responsibilities associated with conducting pesticide inspections and general conditions for carrying out the agreement with the EPA and the host tribe.⁵ As a result, some circuit tribes may not know how and when to expect circuit riders to communicate with them about EPA-related work-plan activities, inspections and other pesticide incidents that may affect their communities.

EPA Can Improve Feedback Opportunities for Participating Tribes

None of the circuit riders or tribes that use circuit riders we spoke with said they were aware of the EPA or a regional office contacting the tribes on their circuits to ask them for feedback on either inspector performance or how effective the program had been in addressing their pesticide needs and risks.⁶ EPA regional staff told us that they instead rely on circuit riders for continuous feedback during the year about the activities with the tribes they serve. The circuit riders

⁵ The 2016 authorization agreement between EPA Region 9 and the Inter Tribal Council of Arizona Inc. has a section that details EPA Region 9's role in communicating inspection results to participating tribes. According to EPA Region 9 staff, no feedback has been provided to participating tribes due to delays in receiving inspection reports from the council.

⁶ According to the agency, EPA Region 10 staff meet with all circuit rider tribes and the tribal inspector annually at an in-person meeting.

we spoke with said they receive ongoing feedback from these tribes about their services throughout the year while in the field, at tribal events and trainings, and through on-the-job communications and other interactions with tribal staff.

As a result, the EPA may not be aware of changes in pesticide program needs or risk for tribes on a pesticide circuit. For example, two tribes we heard from said that using a circuit rider no longer meets their pesticide enforcement needs and they would like to transition toward administering their own pesticide enforcement programs. One of these tribes recently entered into its own enforcement cooperative agreement with the region. Feedback from tribes that use circuit riders could help the EPA track progress toward achieving national and regional goals; identify exposure and risk in tribal lands; and help support necessary changes to individual pesticide enforcement cooperative agreements and work plans.

Conclusion

Tribes with pesticide enforcement cooperative agreement work plans were close to supporting the achievement of the EPA's goals and requirements for pesticide enforcement. We found that for the FYs 2016–2017 period, the 17 tribes completed 87 percent of projected inspections and met 86 percent of applicable work-plan requirements, some with assistance from tribal circuit riders. To improve the circuit rider process, the EPA needs to set clear expectations, develop priority-setting plans, and provide feedback opportunities for tribes serviced by circuit riders. These actions should help the EPA identify tribal pesticide risks, measure progress toward goals, and support work-plan changes. Such action should enable the EPA to better detect and prevent pesticide misuse and unnecessary risks to human health and the environment in Indian country.

Recommendations

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

1. Require circuit riders to include the pesticide needs and risks of each tribe on their circuit in the development of their priority-setting plans, which are a required component of tribal pesticide enforcement cooperative agreements.
2. Develop and implement tribal circuit rider guidance for pesticide inspectors that includes expectation-setting and communication with tribes that are being served under a tribal pesticide enforcement cooperative agreement.
3. Develop and implement regional processes to receive feedback directly from tribes using pesticide circuit riders.

Agency Response and OIG Evaluation

The agency agreed with our recommendations and provided acceptable corrective actions and completion dates for all three recommendations. The agency's response to our draft report is in Appendix A.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	13	Require circuit riders to include the pesticide needs and risks of each tribe on their circuit in the development of their priority-setting plans, which are a required component of tribal pesticide enforcement cooperative agreements.	R	Assistant Administrator for Enforcement and Compliance Assurance	12/31/22	
2	13	Develop and implement tribal circuit rider guidance for pesticide inspectors that includes expectation-setting and communication with tribes that are being served under a tribal pesticide enforcement cooperative agreement.	R	Assistant Administrator for Enforcement and Compliance Assurance	12/31/22	
3	13	Develop and implement regional processes to receive feedback directly from tribes using pesticide circuit riders.	R	Assistant Administrator for Enforcement and Compliance Assurance	12/31/22	

¹ C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

Agency's Response to Draft Report




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

AUG 29 2019

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Response to the Office of Inspector General Draft Report: Tribal Pesticide Enforcement Comes Close to Achieving EPA Goals, But Circuit Rider Inspector Guidance Needed; Project No. OA&E-FY18-0285

FROM: Susan Parker Bodine 

TO: Jeffrey K. Harris, Director
Toxics, Chemical Management and Pollution Prevention Directorate
Office of Audit and Evaluation

Thank you for the opportunity to respond to the draft findings and recommendations presented in the Office of Inspector General (OIG) draft report, "Tribal Pesticide Enforcement Comes Close to Achieving EPA Goals, But Circuit Rider Inspector Guidance Needed" (Report). The Office of Enforcement and Compliance Assurance's (OECA's) comments are provided below for your consideration in revising the draft report. A mark-up of the draft report, with minor corrections to the text, is also attached.

Background and Summary Comments

This draft report focuses on whether the Environmental Protection Agency's negotiations, review and approval of tribal enforcement work plans for Federal Insecticide, Fungicide, and Rodenticide Act cooperative agreements support the achievement of agency goals and requirements. Based on our review of the draft report, OECA supports the OIG's draft findings and recommendations and appreciates the revisions to the draft based on OECA's previous comments.

Response to Recommendations

The OIG's draft report contains the following recommendations:

1. Require circuit riders to include the pesticide needs and risks of each tribe on their circuit in the development of their priority-setting plans, which are a required component of tribal pesticide enforcement cooperative agreements.
2. Develop and implement tribal circuit rider guidance for pesticide inspectors that includes expectation-setting and communication with circuit tribes that are being served under a tribal pesticide enforcement cooperative agreement.
3. Develop and implement regional processes to receive feedback directly from tribes using pesticide circuit riders.

OECA agrees with the draft report’s recommendations. While the EPA’s guidance on tribal cooperative agreements does not explicitly require joint priority setting or establish specific expectations for communication with circuit rider tribes, OECA is confident that the regions and circuit riders understand the importance of providing high-quality service to the circuit rider tribes and the need for ongoing, substantive communication. In the absence of specific guidance, however, the regions and circuit riders address those goals in various ways.

In coordination with the regions, the Office of Pesticide Programs, and tribal representatives, OECA will develop guidance to the regions on establishing efficient and effective communication between the circuit riders and the tribes they visit and among the EPA regions, the circuit riders and the tribes participating in the circuit rider program. The guidance will specify that part of regular communication among these parties will be a focus on inspection priorities, compliance assurance needs, and feedback on the services provided by the circuit rider. Because of the inter-office coordination and tribal consultation that will be necessary, OECA commits to completing the development of interim guidance by December 31, 2020. OECA also commits to evaluating implementation of the interim guidance before finalizing the guidance by December 2022.

Recommendation	Corrective Action	Date
1. Require circuit riders to include the pesticide needs and risks of each tribe on their circuit in the development of priority-setting plans, which are required component of tribal pesticide enforcement cooperative agreements.	OECA agrees to develop guidance which will require circuit riders to include the needs and risks of each tribe on their circuit in the development of priority-setting plans, which are required component of tribal pesticide enforcement cooperative agreements.	Interim Guidance by 12/31/20. Final Guidance by 12/31/22.
2. Develop and implement tribal circuit rider guidance for pesticide inspectors that includes expectation-setting and communication with circuit tribes that are being served under a tribal pesticide enforcement cooperative agreement.	OECA agrees to develop guidance for pesticide inspectors that includes expectation-setting and communication with circuit tribes that are being served under a tribal pesticide enforcement cooperative agreement.	Interim Guidance by 12/31/20. Final Guidance by 12/31/22.

3. Develop and implement regional processes to receive feedback directly from tribes using pesticide circuit riders.	OECA agrees to develop regional processes to receive feedback directly from tribes using pesticide circuit riders.	Interim Guidance by 12/31/20. Final Guidance by 12/31/22.
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OIG Response: In a subsequent correspondence, OECA confirmed that it would develop and implement the guidances and processes agreed to in its corrective actions in response to all three recommendations.

Contact Information

If you have any questions or concerns regarding this response, please contact the OECA Audit Liaison, Gwendolyn Spriggs, at (202) 564-2439.

Attachment

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