

# **Self-Evaluation Report**

## **Texas Structural Pest Control Board**



**PRESENTED TO THE**

**SUNSET ADVISORY COMMISSION**

**AUGUST 2005**

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## Texas Structural Pest Control Board

### I. Agency Contact Information

<b>Texas Structural Pest Control Board Exhibit 1: Agency Contacts</b>				
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## II. Key Functions and Performance

### A. Provide an overview of your agency's mission, objectives, and key functions.

In 1971, the 62<sup>nd</sup> Regular Session of the Legislature enacted the Texas Structural Pest Control Act (the Act), V.A.T.S. 135b-6, thus creating the first state agency with the authority to set standards and license pesticide applicators. The purpose of the Act is to carry out the rights and duties of the State, to protect the health, safety, and welfare of the citizens, to protect the environment against the misuse of pesticides and to promote professional standards for the structural pest control industry. The Act was later amended during the regular sessions of the Legislature in 1975, 1979, 1987, 1989, 1991, 1993, 1997, and 2003.

The Board provides vital functions in the protection of the health, safety and welfare of the citizens of Texas and the environment by licensing, regulating, and setting standards and criteria for structural pest control. The administration of this mission and of the Texas Structural Pest Control Act requires:

- examination and licensure of pest control operators,
- renewal of licenses on an annual basis,
- approval of continuing education courses and monitoring continuing education hours,
- investigation and enforcement of compliance with the Act,
- responding to questions, concerns and complaints of the general public and licensees,
- operating the administrative functions of the agency to facilitate the listed activities.

#### **Goal A**

To appropriately license and educate all individuals in commercial and noncommercial pest control.

Objective: License all eligible applicators, and continue to ensure that technicians are licensed; ensure appropriate education standards for applicators; encourage licensed individuals to achieve the highest level of demonstrated competence of which they are capable; and ensure approved continuing education courses meet or exceed minimum standards.

#### **Goal B**

To ensure compliance with regulations therefore providing environmentally sound and effective pest control.

Objective: Continue to ensure fair and efficient processing and resolution of complaints. Inspect pest control businesses at least once every two years; encourage a better relationship with licensees and the citizens of Texas through

enhanced communication; enhance voluntary compliance; and enforce laws and regulations in an impartial and cost efficient manner.

**Goal C**

To provide for the education and awareness to the citizenry of Texas concerning matters relating to pest control, with emphasis on Integrated Pest Management in Texas public schools.

Objective: Increase public access to information by making information available to interested citizens of Texas and noncommercial applicators by providing information concerning Integrated Pest Management to Texas public schools.

**B. Do each of your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?**

Each function continues to serve a clear and ongoing objective. No other agency has statutory authority for structural pest control. All citizens of Texas use pesticides and or come into contact with areas treated with pesticides.

**Examination and Licensing**

This function continues to serve a clear and ongoing objective and it is still needed because the statute and the public expect licensees to have knowledge of the pest control principles, pesticide safety, and health issues. Examination of persons provides a measurement of that competency. The agency provides several examination categories to measure competency in specific pest control areas. After examination, the agency's administration of issuing new and renewed licenses provides a review of such issues as the licensees' insurance and potential criminal background status. Licensing functions are directly linked with inspection, investigation and enforcement functions. Examples of the agency's constant and seamless interaction between licensing functions and other functions include:

- licensing staff send lapsed insurance referrals to investigators
- enforcement staff send failure to pay enforcement penalty notices to licensing so that license renewals will be flagged and halted
- investigators review current and past licensing history to prepare for more thorough inspections and investigations
- random criminal background checks conducted by licensing staff are referred to enforcement staff when criminal histories are found on licensees

**Continuing Education**

The statute and the public expect that licensees should maintain and improve their knowledge of pest control principles, pesticide safety and health issues. The agency's review, approval, and monitoring of continuing education courses ensure that minimum standards, consistent with the agency's mission, will be met. The agency review

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includes standards for the presenter's education, presenter's experience, and course content. The agency does not allow "promotional" or "product sales" topics to be counted toward the continuing education requirements.

If these tasks were no longer performed there would be a decline in pesticide applicator proficiency, a decline in liability insurance protection for citizens, an increase in applicators with criminal backgrounds, and fewer funds collected for the state's general revenue.

### **Inspections, Investigations, Enforcement**

This function continues to serve clear and ongoing objectives because inspections and complaint investigations are statutory requirements and vital for protection of health, safety and property. Examples of health, safety and property issues include, but are not limited to:

- Human exposure risks to misuse – Additional TSPCB-approved licensee training, in conjunction with consistent enforcement efforts, has resulted in lower numbers of reported human exposure pesticide complaints in the 1990's and 2000's compared to the 1970's and 1980's. However, human exposure complaints from inhalation, dermal contact and ingestion will continue to occur. Structural fumigation activities, where houses are tented and highly toxic gas is inserted, pose the highest risk. Mishaps can result in explosions and death. One of the more commonly used fumigants has a use instruction manual that is over 70 pages in length. Recent human exposure complaint investigations have included both licensed and unlicensed. Examples include the illegal use of sodium cyanide to kill bees in structures, illegal use of rat poison in a home improvement center and at a movie theater, illegal use of pesticides at a major airport terminal. The movie theater and airport terminal cases resulted in emergency medical treatment needs. This work needs to continue and be performed by highly trained investigators.
- Health risks – TSPCB licensees are hired by consumers to protect against sickness and diseases carried by pests. Examples include mosquitoes, roaches, fleas, and ticks. Mosquitoes, while carrying diseases such as West Nile virus, encephalitis, and malaria, are said to kill more people worldwide than any other single source. Roaches spread salmonella and their droppings can result in allergic reactions. Ticks carry Lyme disease and Rocky Mountain fever. Fleas carry bubonic plague, typhus and occasionally tape worms. Food processing plants rely on TSPCB licensees to meet stringent U.S.D.A. requirements. TSPCB investigators conduct thousands of inspections and investigations each year to ensure that licensees are knowledgeable and in compliance.
- Property risks - Homes usually represent the largest single investment for persons. Nation-wide estimates include over \$2 billion in damage per year from termites. Texas A&M Department of Entomology has stated that there is over \$400 million annually in damage in Texas alone. The National Pest Management Association's web site states: More than 365,000 homes will need the fire department this year, but over 2 million homes will require termite treatment. TSPCB investigators find numerous pesticide application activities that are fraudulent and performed by unlicensed persons. Investigators conduct both overt and covert use observations.

With this large-scale property damage, such work obviates the need for specialized investigators.

- Pesticide product labels - TSPCB responsibilities include understanding, interpreting and enforcement of over 10,000 ever-changing complex pesticide labels with over 13,000 licensees. These labels are an extension of the law. Many labels today are dozens of pages in length. The labels, human exposure complaints, and large property risks necessitate specialized on-going investigator training.
- Federal grants – Changing the TSPCB statutory requirements would require reworking of agreements with the U.S. Environmental Protection Agency. Not only will this consume staff time, but it might lead to more uncertainty in the flow of federal grant funds. Recent grant work has included funds for criminal enforcement, school integrated pest management, and urban water sampling for pesticides.
- Protection of treated public areas – The statute requires the agency to provide information, examination, inspection and investigation efforts for pesticide use in several public places including: day cares, nursing homes, hospitals, public schools, food processing plants, apartment complexes, warehouses, motels/hotels, and state government or other political subdivision property.

#### Enforcement

The agency's enforcement function is critical to deterring violations that effect the public's health, safety and welfare regarding pesticide use. Without this function, licensing and public protection would cease. While performing this function, the agency has had a consistent and balanced enforcement effort.

The Board has adopted a penalty policy/matrix for administrative penalties. The matrix allows for most first time offenses to be handled as written warnings. The penalties increase with violation severity and repeat offenses. The consistent use of the matrix serves to deter future violations and protects human health, public safety and welfare. The agency assesses fines in about 150 cases per year. Examples of administrative penalty cases include:

- Performing commercial pest control without a business license - company in Bell County case \$90,000 penalty; company in Harris County case with a \$12,000 penalty and individual license revocation; company in Lubbock county case with a \$5,500 penalty and two newspaper ads stating agency's authority.
- Using pesticides in a manner that could be injurious to others - company in Bexar county case with rodenticide misuse with a \$35,000 penalty, retraining personnel, 2 licenses surrendered and development of rodenticide training materials; company in Bryan, Texas case with a \$10,900 penalty; company in Spring, Texas incident with a \$1,000 penalty.
- Failure to properly supervise workers - company in Odessa, Texas case with a \$6,000 penalty.
- Failure to maintain pesticide application records – company in Sherman, Texas with \$10,100 penalty.
- Failure to register pest control employees- out-of-state company \$99,200; out-of-state company \$10,000.

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- Pre-construction termite treatment violations - company in Bandera, Texas case with a \$7,000 penalty.
- Failing to maintain liability insurance - company in Van, Texas case with a \$500 penalty.
- In addition, individuals and businesses that are chronic and repeat offenders (those not deterred by administrative penalties) have been investigated and prosecuted through civil and criminal courts. The agency works jointly with the Attorney General's Office on civil matters. Recent civil enforcement actions have included a penalty of over \$460,000 and permanent debarment for a person who refused to be licensed. The agency has conducted several cases that have statewide impacts. One example involves a nation-wide company that paid \$90,000 in civil penalties and \$700,000 in restitution to customers and a permanent injunction.
- Over the past four years, the agency's investigative efforts have included criminal enforcement actions for the worst offenders. While some of the recent criminal sentences have involved 1 or 2 day jail time (e.g. Kaminiski, Grande), these actions also include a person receiving jail time of 140 days and work to pay restitution to victims.
- The agency has earned the confidence of industry and consumers with its handling of some of the more difficult cases. As a result of this confidence, more complaints regarding unlicensed applicators have been made. The agency's investigations in this regard have tripled from 2001(35) to 2005 (100+).
- Without the inspection, investigation and enforcement function, compliance with statutory requirements (e.g. licensing, insurance), public protection would cease.

### **Public Information**

The statute requires that the agency provide information and inspections related to pesticide treatment of public schools, day cares, nursing homes, hospitals, motels/hotels, food processing plants, warehouses, and apartment complexes. The statute also requires posting of treatment information in these places so that persons are aware of scheduled treatments. This allows the public to take the necessary precautions that are appropriate for their personal health and safety concerns. Without this requirement and agency function, persons would have less opportunity and less choice in protecting their personal health and safety.

Although the agency has sole statutory regulatory authority regarding integrated pest management in schools, the agency has investigated several pesticide misuse cases at schools over the years. One of the catalysts for the statutory requirement for public school integrated pest management information (IPM) was a misuse of a cattle pesticide spray (lindane) in a public school in Chilicothe, Texas. The statute now requires that the least toxic pest control treatment be considered before using higher toxicity treatments. The agency's public information efforts have lead to an increase in noncommercial licenses.

In a July 2005 article published in Journal of the American Medical Association, authors Dr. Walter Alarcon and Dr. Geoffrey Calvert write about pesticide exposure to school children. Dr. Calvert states the following about his article: "I don't think we want to overwhelm people, but the study does provide evidence that pesticides at schools is not



innocuous and that there are better ways to use pesticides.” Without this agency function, school children would be at an increased health and safety risk regarding pesticide use.

**C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?**

The agency is very efficient, lean and effective with the resources it is given. However, the agency would be more efficient and more effective if given additional resources to perform its tasks. The examples are numerous:

The agency currently brings in about \$2.1 million in fees (and another \$2-300,000 in fines) and is appropriated about \$1.3 million. There is about another \$.4 million that is known as “Other direct and indirect costs” that helps pay items such as fringe benefits, building space maintenance, state auditor, and comptroller office expenses. That still leaves a differential of \$400,000 to \$600,000. The Arizona Structural Pest Control Commission’s budget is twice as large as TSPCB while serving an Arizona population of one-fourth the size of Texas.

The agency absorbed a 23% increase in mileage rate reimbursement in FY 2002. Fees were not raised and no additional appropriations were provided by the legislature for this rate increase. The agency does not own any state vehicles. Investigators are reimbursed mileage for their personal vehicles. The then-new Executive Director (E.D.) worked with Field Operations staff to create more efficient investigation and inspection routing. The E.D. also reduced the historical travel spending of the executive director’s position by over 60% by having local field investigators (rather than the E.D.) conduct continuing education classes on the laws and regulations for smaller audiences. The investigators travel directly from their residences to their investigation and inspection sites. While these mileage rate increases were absorbed through identifying efficiencies, the agency cannot absorb future mileage rate increases without a parallel increase in funding.

Unlike most other agencies, TSPCB does not have the funding to replace its computers on a scheduled replacement basis. While the agency obtains a few of its computer replacements through its base operating funds, the agency has had to seek other replacements through less dependable means. For example, some of the agency’s computer replacements have been through undependable federal grant discretionary funds and by seeking older computers from the Texas Department of Insurance (TDI). Federal discretionary money has been trending downward. The key word is “discretionary”. It is provided by the Environmental Protection Agency at their discretion. By obtaining older computers from TDI, the agency is hoping to get a few more months out of the older TDI computers. At this time, it is not known if the older TDI computers will prove to be an effective and efficient method to obtain computers because of the potential TSPCB labor costs that might be needed to rework, repair or modify the computers. Without funding for its own replacements, the agency is forced to seek

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replacement computers that another agency believes are too costly because of the potential repair costs.

The agency is using Foxpro software. While this is a 20-year-old-system, the agency has not had the funding or the staff to quickly convert the system to a more updated language. The staff has sought help from the Hobby IT Building Working Group and is conducting a pilot to see if the TSPCB part-time help-desk person can make the conversion. If the Foxpro software is not converted to an updated software language (e.g. Access) in FY 2005 through the Hobby Building IT working group's efforts or through staff's own technical abilities, then funds need to be obtained for conversion through a contractor. Estimated contractor costs are about \$30,000. While this is partly a fiscal issue, without such improvements, programmatic problems occur.

No funding was given to the agency in 1991 when School Integrated Pest Management (IPM) or noncommercial law segments (day cares, nursing homes, hospitals, apartments, warehouses, food processors, and hotels) were added. These additional assignments further stretched the agency's resources. These assignments have been partially dealt with as federal discretionary funds have been secured to conduct inspections of small cross-sections of these noncommercial entities. The discretionary funds are usually one-time funding opportunities not likely to be repeated for these purposes anytime in the foreseeable future. There is a downward trend in EPA discretionary funding (see recent news article).

The legislature reduced the agency's FY 04 budget by 12.5%. This resulted in a 20.5% reduction in agency staff for the FY 04-05 biennium. The staff reduction was more than the percentage cut because the agency was at least 8% behind in its funding needs before the legislative cut. The issues are well documented in the last several Strategic Plans and Legislative Appropriations Requests. Budget issues continue with rising postage costs, rising computer replacement costs, inflation on supplies such as printing ink, fewer federal discretionary funds are predicted, and legislative approved retirement incentives that are paid from the agency's budget. While the agency staff and budget have been shrinking, the state's population and structures continue to grow. Texas' population has increased from 17 million people in 1990 to over 22 million people in 2004. According to Texas A&M University, Texas adds over 100,000 new homes each year that are subject to termite treatments and other pest control needs. The number of new commercial buildings treated for termite prevention stands at least 10,000 new structures per year according to the number of notices received at the agency. Unlike several other agencies, the agency does not currently have the authority to raise fees to offset these issues. The agency could raise the fees but it does not receive the funds unless the legislature also appropriates the funds.

Surprises/Trends/Unknowns - Surprises occur to everyone whether as individuals, families, businesses or government agencies. Good planning would dictate that the resource needs be available even though the agency might not be able to know years in advance what the need might be "named". Likewise, trends are not always seen in the early stages. Who knew 10 years ago that West Nile virus would be a hot issue in 2002 and beyond? Three years ago, who knew that home-based mosquito-misting systems

would proliferate and generate the volume of complaint investigations, human exposure concerns, and state and federal-level interest? Prior to the year 2000, who knew that the progression of the Formosan termite would be so wide spread and that the devastation that they cause would be so much higher than the states' indigenous termites? Who knew five years ago that the International Residential Code would create issues in the pest control industry in Texas? Most recently, we were surprised about an unlicensed operator using sodium cyanide to fumigate houses. The investigation took hundreds of hours of investigative and legal resources to get the operator stopped immediately on this high-risk case. This case is of national concern with EPA. We are participating in monthly phone conferences with EPA.

Staffing – As mentioned above, the agency staffing level was cut 20.5% in FY 04. Eight (8) employees positions were reduced. The cuts were made in every area of the agency including licensing (1 1/2), accounting (1), computer technology (1/2), administration (1), enforcement (2), and field investigations (2). The E.D. testified to the legislature that the agency was already lean and effective, and that any cuts would mean doing less with less. In 2001, the new E.D. began making plans to shift more staff from licensing, administration, and accounting positions to Field and Enforcement positions. There was reason to believe that at least two positions could be moved to Enforcement and four positions could be moved to Field operations. In FY 2002, two positions had been moved to Enforcement, one position had been moved to Field, one-half of a position had been moved to improve computer technology efficiencies. The trend was expected to continue but the 2003 and 2004 budget cuts eliminated the trend and the flexibility.

Employee Wages and Turnover – The UT anonymous employee survey of 2003 showed that the employees gave the agency high marks in all categories except “Fair Pay”. Turnover has been at or above 30% in 2 of the last 4 years. Three investigators, with 2, 5 and 11 years experience, quit within three months in the winter/spring of 2005. All expressed in writing a deep regret that they had to leave but had to do so to make enough money to take care of their families or because their territory was so big they were away from their family too much. Agency employees average \$8,000 less than Texas Department of Agriculture (TDA) or Texas Department of Licensing & Regulation (TDLR) employees. Career ladders are futile without funding. It is very inefficient and ineffective to routinely train new investigators.

Despite many challenges with regard to budget cuts, staff cuts, and staff turnover, the agency has been effective with the resources it has been given. In addition to the numerous enforcement case examples listed in “B”, the agency has protected the public health, safety and welfare while conducting investigations regarding 1) imposters entering businesses posing as licensees for theft purposes 2) methyl parathion (cotton insecticide) misuse in homes along the Texas/Mexico border 3) pre-construction termite treatment fraud at public schools and other government structures 4) unlicensed bee control companies that performed incompetent and incomplete treatments leading to operator, customer and bystander endangerment 5) false advertising statements from mosquito misting system companies 6) sodium cyanide misuse in homes.

**D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions? Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?**

Yes, the agency's enabling law continues to correctly reflect the mission, objectives and approach to performing agency functions.

However, the agency recommended enhancing noncommercial business inspections with resources that could be directly offset by more compliance with an increase in licenses. The FY 03 recommendation was not accepted.

In FY 03 and FY 05, the agency also recommended that its operational funding be increased because of staff turnover rates related to salary needs, rising inflation costs on supplies (e.g. stamps, paper), computer replacement costs, downward trend of federal discretionary funding, and rising mileage reimbursement rates. While the agency received increased funding (\$8,000) for mileage for the 2006–2007 biennium, all other FY 03 and FY 05 increase recommendations were not accepted.

Through the current Sunset process the Board is recommending several changes to its enabling law later in this document in section "L".

**E. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?**

The Board's key functions are statutorily separate from functions of the TDA and Texas Department of State Health Services (DSHS) with only three narrow issue exceptions:

**Lawn/Ornamental/Turf pest treatment industry**

TDA and TSPCB have shared the regulation of this industry or "category". With regard to this category, the agencies have different experience/education qualifications for exams, different supervisory requirements, different fees, different record-keeping requirements, different inspection intervals, different vehicle marking requirements, and different insurance requirements.

**Pest Control at Grain Elevators**

TDA's Farm Storage Pest Control and Fumigation category includes vertebrate pest control at facilities where raw agricultural products are stored. The TSPCB Pest category and Commodity Fumigation category provide for control of pests in manufactured and processed commodities. While there is not a direct overlap, some pest control operators may need to license with both agencies if treating both raw and processed commodities at the same grain elevator.

Board recommends continuing this to allow licensees at either agency the opportunity to perform this work.

### **Mosquito treatments – Vector Control and Pest Control**

The Texas Structural Pest Control Act requires commercial operators to be licensed when conducting pest control at structures or the plantings around the structure. This is required regardless of the classification of the pesticide (e.g. general use, restricted use, state-limited use.) The TSPC Act also requires that government employees be licensed if conducting this work. The DSHS provides mosquito identification and monitoring services in selected geographical areas, particularly those areas associated with West Nile virus. DSHS also has a Vector Control licensing category for health-related mosquito and rodent control. The Agriculture Code, which pertains to DSHS in this area, only requires a license from DSHS if restricted-use or state-limited-use pesticides are used. Each agency has allowed governmental agencies to choose either agency for Vector control operations. TSPCB allows mosquito control and rodent control under the Pest category and DSHS allows it under Vector Control. However, government personnel that also perform general pest control (scorpions, ants, roaches, etc) or weed control in near structures or fumigate pests must be licensed with TSPCB. The Board recommends that the DSHS provide services that are focused on health-related pest control. TSPCB has the larger population of licensees. While TSPCB licensees' pest control work has a definite effect on health-related pests, TSPCB licensees also affect nuisance type pests. The Board recommends leaving the overlap and avoid many from being dually licensed.

The agency is clearly separated statutorily. No other agency has regulatory oversight of structural pest control. The Board member makeup allows for input from the TDA, DSHS, and the Texas A&M University/Department of Entomology (A&M). The Board meets four times per year.

The mission of the agency provides direction. The agency's mission is to provide a vital function in the protection of health, safety and welfare of the citizens of Texas and the environment by licensing, regulating and setting standards for structural pest control.

Agency staff has consistently met with staff from TDA, DSHS and A&M to discuss training, examination, licensing, federal grant requirements, and other regulatory issues as related to each agency's functions. The staff level in-person meetings have occurred as frequently as four times a year. Agency staff frequently shares information by phone and email with these agencies between meetings.

The statute, Board member makeup, mission statement, and consistent staff level communication ensure against duplication with other related agencies.

#### **F. In general, how do other states carry out similar functions?**

All states license applicators that use pesticides labeled "restricted" by the Environmental Protection Agency (EPA). However, the licensing requirements for

application of general use pesticides or for persons in the business of pest control vary from state to state. For instance, Hawaii only requires that a person in the business of pest control be licensed if they are using a restricted use pesticide. Most other states, like Texas, require that all individuals who apply pesticides commercially for structural uses, regardless of the pesticide or device used, must be licensed.

Forty states regulate their structural pest control industries through an agricultural agency or department. Six states license and regulate pesticide applications through either a state health department or an environmental protection agency. Within these larger agencies, pesticide regulation and enforcement is further compartmentalized to a pesticide or environmental health division. These divisions are then typically responsible for licensing and regulating pesticides used in both agriculture and structural situations. However, Georgia, Illinois, Louisiana and North Carolina have specific structural pest control divisions or commissions within their agricultural departments. While the California Structural Pest Control Board is technically within the California Department of Consumer Affairs, it has policy autonomy and sets its own procedures, and regulations. Arizona is similar to Texas with an autonomous agency solely responsible for licensing and regulating structural pest control.

In their leadership, organization, jurisdiction, and regulations, both the Arizona Structural Pest Commission and the California Structural Pest Control Board are very similar to the Texas Structural Pest Control Board. While the number of members varies between the three states, a board or commission whose members are appointed by that state's governor heads each agency. Each of these boards is also comprised of members who represent both the public and the pest control industry. Each agency certifies applicators through an examination process and offers licenses in varying categories. The regulations enacted by these three boards and their enforcement procedures are, for the most part, noticeably similar and all three agencies investigate consumer complaints.

**G. What key obstacles impair your agency's ability to achieve its objectives?**

**Surprises/Trends/Unknowns**

Surprises occur to everyone whether it as individuals, families, businesses or government agencies. Good planning would dictate that the resource needs be available even though the agency might not be able to know years in advance what the need might be "named". Likewise, trends are not always seen in the early stages. Who knew 10 years ago that West Nile virus would be a hot issue in 2002 and beyond? Three years ago, who knew that home-based mosquito-misting systems would proliferate and generate the volume of complaint investigations, human exposure concerns, and state and federal-level interest? Prior to the year 2000, who knew that the progression of the Formosan termite would be so wide spread and that the devastation that they cause would be so much higher than the states' indigenous termites? Who knew five years ago that the International Residential Code would create issues in the pest control industry in Texas? Most recently, we were surprised about an unlicensed operator using sodium cyanide to fumigate houses. The investigation is in

its early stages but we have already spent hundreds of hours of investigative and legal resources to get the operator stopped immediately on this high-risk case. This case is of national concern with EPA. We are participating in monthly phone conferences with EPA.

### **Staffing**

As mentioned above, the agency staffing level was cut 20.5% in FY 04. 8 employees positions were reduced. The cuts were made in every area of the agency including licensing (1 1/2), accounting (1), computer technology (1/2), administration (1), enforcement (2), and field investigations (2). The E.D. testified to the legislature that the agency was already lean and effective, and that any cuts would mean doing less with less. In 2001, the new E.D. began making plans to shift more staff from licensing, administration, and accounting positions to Field and Enforcement positions. There was reason to believe that at least two positions could be moved to Enforcement and four positions could be moved to Field operations. In FY 2002, two positions had been moved to Enforcement, one position had been moved to Field, one-half of a position had been moved to improve computer technology efficiencies. The trend was expected to continue but the 2003 and 2004 budget cuts eliminated the trend and the flexibility. The Board recommends that the positions be restored. It is believed that five would be used by the Field Division, two would be used by Enforcement, and one would be used for computer maintenance and technology improvements.

### **Employee Wages and Turnover**

The UT anonymous employee survey of 2003 showed that the employees gave the agency high marks in all categories except "Fair Pay". Turnover has been at or above 30% in 2 of the last 4 years. Three investigators, with 2, 5 and 11 years experience, quit within three months in the winter/spring of 2005. All expressed in writing a deep regret that they had to leave but had to do so to make enough money to take care of their families or because their territory was so big they were away from their family too much. Agency employees average \$8,000 less than TDA or TDLR employees. Career ladders are futile without funding. It is very inefficient and ineffective to routinely train new investigators.

<p><b>H. Discuss any changes that could impact your agency's key functions in the future (e.g., changes in federal law or outstanding court cases).</b></p>
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1. The primary federal act that the Board utilizes is the Federal Insecticide, Fungicide & Rodenticide Act (FIFRA), 7 U.S.C. §136. No significant legislative changes have been made to FIFRA recently. However, Federal school IPM bills continue to be filed (2001, 2002, 2004). The bills have had onerous reporting requirement cost. Other federal acts that may impact the Board due to interaction with FIFRA would include the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §1251 and the Clean Air Act (CAA), 42 U.S.C. §7401.
2. Bates, et al v. Dow Agrosciences, LLC, No. 03-388, slip op. (U.S. Supreme Court, April 27, 2005). The impact of Bates on the agency should be minimum. The decision in Bates will primarily affect an individual's causes of action. The

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Board's authority remained intact. The reasoning in Bates and its impact is listed below.

- a. The U.S. Supreme Court ruled in Bates that under FIFRA a manufacturer must obtain permission to market a pesticide by submitting a proposed label and supporting data to EPA to register. A pesticide is "misbranded" if its label contains a statement that is "false or misleading," or lacks adequate instructions or warnings.
  - b. FIFRA's federal pre-emption provision applies only to state-law "requirements for labeling or packaging." The U. Supreme Court ruled that the 5th Circuit erred in supposing that petitioners' defective design, defective manufacture, negligent testing, and breach of express warranty claims were premised on requirements for labeling or packaging. The U.S. Supreme Court also ruled that the Fifth Circuit reached a contrary conclusion by reasoning that a finding of liability on these claims would induce Dow to alter its label. The Fifth Circuit's reasoning was in error because the prohibitions of FIFRA apply only to a rule of law issues. The proper inquiry in this case calls for an examination of the elements of the common-law duty at issue.
  - c. Petitioners' fraud and negligent-failure-to-warn claims, by contrast, are based on common-law rules that qualify as "requirements for labeling or packaging," since these rules set a standard for a product's labeling that Dow is alleged to have violated. The U.S. Supreme Court ruled in contrast to the Fifth Circuit that while these common-law rules are subject to FIFRA, it does not automatically follow that they are pre-empted.
3. DM 221 (2005) is a request for an opinion letter from the office of the Attorney General. The question stated to the Attorney General is whether the Texas Structural Pest Control Board may regulate the removal of vertebrate animals from the vicinity of structures. No decision has been received at this time.
  4. No. GN-400375; Pyranha, Inc., et al vs. Texas Structural Pest Control Board; in the 126th Judicial District, Travis County, Texas. This case involved the question on whether the Board had jurisdiction to regulate mosquito-misting companies. Pyranha, Inc. and others felt they could install and load a pesticide for use in killing mosquitoes without obtaining a license from the Board. The Plaintiffs filed a motion for declaratory judgment. The Board asked the Office of the Attorney General to defend the Board against the lawsuit. After preliminary meetings, the Plaintiffs decided to accept the Board's interpretation of the Texas Structural Pest Control Act and dismissed their lawsuit without a final adjudication.
  5. RQ-0314-GA (1993) is a request for an opinion letter from the Office of the Attorney General. The question stated to the Attorney General is whether the City of Greenville pesticides ordinance is preempted by the Texas Structural Pest Control Act (Tex. Rev. Civ.Stat. Ann. art. 135b-6, now codified as Occ. Code, Chpt.1951). The Attorney General concluded that the Texas Structural Pest Control Act did preempt local regulation of individuals licensed to perform pest control services.
  6. JC-0324 (2001) is a request for an opinion letter from the office of the Attorney General. The question stated to the Attorney General is whether the Board may regulate contract language. Except for language describing its jurisdiction and instructing consumers how to file a complaint, the Texas Structural Pest Control



Board may not regulate the language of contracts between structural pest control service providers and consumers. The Board may not require a licensee to perform services he or she contracted with a consumer to perform, although the Board may oversee informal settlement negotiations in which the parties agree to perform the contract.

**I. What are your agency's biggest opportunities for improvement in the future?**

The agency is very efficient, lean and effective with the resources it is given. However, the agency would be more efficient and more effective if given additional resources to perform its tasks. The examples are numerous:

The agency currently brings in about \$2.1 million in fees (and another \$2-300,000 in fines) and is appropriated about \$1.3 million. There is about another \$.4 million that is known as "Other direct and indirect costs" that helps pay items such as fringe benefits, building space maintenance, state auditor, and comptroller office expenses. That still leaves a differential of \$400,000 to \$600,000. The Arizona Structural Pest Control Commission's budget is twice as large as TSPCB while serving an Arizona population of one-fourth the size of Texas.

The agency absorbed a 23% increase in mileage rate reimbursement in FY 2002. Fees were not raised and no additional appropriations were provided by the legislature for this rate increase. The agency does not own any state vehicles. Investigators are reimbursed mileage for their personal vehicles. The then-new Executive Director (E.D.) worked with Field Operations staff to create more efficient investigation and inspection routing. The E.D. also reduced the historical travel spending of the executive director's position by over 60% by having local field investigators (rather than the E.D.) conduct continuing education classes on the laws and regulations for smaller audiences. The investigators travel directly from their residences to their investigation and inspection sites. While these mileage rate increases were absorbed through identifying efficiencies, the agency cannot absorb future mileage rate increases without a parallel increase in funding.

Unlike most other agencies, TSPCB does not have the funding to replace its computers on a scheduled replacement basis. While the agency obtains a few of its computer replacements through its base operating funds, the agency has had to seek other replacements through less dependable means. For example, some of the agency's computer replacements have been through undependable federal grant discretionary funds and by seeking older computers from the TDI. Federal discretionary money has been trending downward. The key word is "discretionary". It is provided by the Environmental Protection Agency at their discretion. By obtaining older computers from TDI, the agency is hoping to get a few more months out of the older TDI computers. At this time, it is not known if the older TDI computers will prove to be an effective and efficient method to obtain computers because of the potential TSPCB labor costs that might be needed to rework, repair or modify the computers. Without funding for its own

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replacements, the agency is forced to seek replacement computers that another agency believes are too costly because of the potential repair costs.

The agency is using Foxpro software. While this is a 20-year-old-system, the agency has not had the funding or the staff to quickly convert the system to a more an updated language. The staff has sought help from the Hobby IT Building Working Group and is conducting a pilot to see if the TSPCB part-time help-desk person can make the conversion. If the Foxpro software is not converted to an updated software language (e.g. Access) in FY2005 through the Hobby Building IT working group's efforts or through staff's own technical abilities, then funds need to be obtained for conversion through a contractor. Estimated contractor costs are about \$30,000. While this is partly a fiscal issue, without such improvements, programmatic problems occur.

No funding was given to the agency in 1991 when School Integrated Pest Management (IPM) or noncommercial law segments (day cares, nursing homes, hospitals, apartments, warehouses, food processors, hotels) were added. These additional assignments further stretched the agency's resources. These assignments have been partially dealt with as federal discretionary funds have been secured to conduct inspections of small cross-sections of these noncommercial entities. The discretionary funds are usually one-time funding opportunities not likely to be repeated for these purposes anytime in the foreseeable future. There is a downward trend in EPA discretionary funding.

The legislature reduced the agency's FY 04 budget by 12.5%. This resulted in a 20.5% reduction in agency staff for the FY 04-05 biennium. The staff reduction was more than the percentage cut because the agency was at least 8% behind in its funding needs before the legislative cut. The issues are well documented in the last several Strategic Plans and Legislative Appropriations Requests. Budget issues continue with rising postage costs, rising computer replacement costs, inflation on supplies such as printing ink, fewer federal discretionary funds are predicted, and legislative approved retirement incentives that are paid from the agency's budget. While the agency staff and budget have been shrinking, the state's population and structures continue to grow. Texas' population has increased from 17 million people in 1990 to over 22 million people in 2004. According to Texas A&M University, Texas adds over 100,000 new homes each year that are subject to termite treatments and other pest control needs. The number of new commercial buildings treated for termite prevention stands at least 10,000 new structures per year according to the number of notices received at the agency. Unlike several other agencies, the agency does not currently have the authority to raise fees to offset these issues. The agency could raise the fees but it does not receive the funds unless the legislature also appropriates the funds.

Surprises/Trends/Unknowns - Surprises occur to everyone whether it as individuals, families, businesses or government agencies. Good planning would dictate that the resource needs be available even though the agency might not be able to know years in advance what the need might be "named". Likewise, trends are not always seen in the early stages. Who knew 10 years ago that West Nile virus would be a hot issue in 2002 and beyond? Three years ago, who knew that home-based mosquito-misting systems

would proliferate and generate the volume of complaint investigations, human exposure concerns, and state and federal-level interest? Prior to the year 2000, who knew that the progression of the Formosan termite would be so wide spread and that the devastation that they cause would be so much higher than the states' indigenous termites? Who knew five years ago that the International Residential Code would create issues in the pest control industry in Texas? Most recently, we were surprised about an unlicensed operator using sodium cyanide to fumigate houses. The investigation is in its early stages but we have already spent hundreds of hours of investigative and legal resources to get the operator stopped immediately on this high-risk case. This case is of national concern with EPA. We are participating in monthly phone conferences with EPA.

Staffing – As mentioned above, the agency staffing level was cut 20.5% in FY 04. Eight employees positions were reduced. The cuts were made in every area of the agency including licensing (1 1/2), accounting (1), computer technology (1/2), administration (1), enforcement (2), and field investigations (2). The E.D. testified to the legislature that the agency was already lean and effective, and that any cuts would mean doing less with less. In 2001, the new E.D. began making plans to shift more staff from licensing, administration, and accounting positions to Field and Enforcement positions. There was reason to believe that at least two positions could be moved to Enforcement and four positions could be moved to Field operations. In FY 2002, two positions had been moved to Enforcement, one position had been moved to Field, one-half of a position had been moved to improve computer technology efficiencies. The trend was expected to continue but the 2003 and 2004 budget cuts eliminated the trend and the flexibility. The Board recommends that the positions be restored. It is believed that five would be used by the Field Division, two would be used by Enforcement, and one would be used for computer technology maintenance and improvements.

Employee Wages and Turnover – The UT anonymous employee survey of 2003 showed that the employees gave the agency high marks in all categories except “Fair Pay”. Turnover has been at or above 30% in 2 of the last 4 years. Three investigators, with 2, 5 and 11 years experience, quit within three months in the winter/spring of 2005. All expressed in writing a deep regret that they had to leave but had to do so to make enough money to take care of their families or because their territory was so big they were away from their family too much. Agency employees average \$8,000 less than TDA or TDLR employees. Career ladders are futile without funding. It is very inefficient and ineffective to routinely train new investigators.

The agency is highly efficient with the resources it is currently given. However to be more efficient and more effective, the Board recommends that the agency be allowed to either be:

Self-funded/self-leveling status to make adjustments as needed with continued Board member approval for fee increases or decreases

**or**

To be funded with the current agency needs which total at least \$450,000.

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Either way, fees need to be raised to satisfactorily meet the agency's mission.

Approximate-round number costs beginning in 2007 and beyond: (More details are on a separate page)

- Restore 8 FTE's \$225,000  
5 Investigators, 1 Computer Technology person, 2 Enforcement (1 coordinator, 1 admin assistant)
  - Computer Technology \$55,000
  - Promotion and Merit funding beginning in 2007 and beyond (\$90,000)
  - Investigator Mileage funding to match legislative-approved rate (\$14,000)
  - Computer technology – software language conversion \$30,000 if pilot unsuccessful
  - Operating expenses \$38,000
  - Offset rate increases on postage
  - Offset rate increases on daily supplies (e.g. paper)
  - Offset increases associated with restoration of 8 FTE's
- 

### **Approximately \$450,000**

- Computer-based examinations at non-agency sites (pilot & researching now)  
(Fee caps will need to be evaluated and possibly increased)

**J. In the following chart, provide information regarding your agency's key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures.**

<b>Texas Structural Pest Control Board Exhibit 2: Key Performance Measures Fiscal Year 2004</b>			
<b>Key Performance Measures</b>	<b>FY 2004 Target</b>	<b>FY 2004 Actual Performance</b>	<b>FY 2004 % of Annual Target</b>
<b>Goal 01, Output 03</b> Number of New Licenses Issued to Individuals	5,510	5,942	107.84%
<b>Goal 01, Output 04</b> Number of Licenses Renewed (Individuals)	12,825	14,554	113.48%
<b>Goal 01, Efficiency 01</b> Average Licenses Cost Per Individual License Issued	\$25.00	\$17.28	69.12%
<b>Goal 01, Outcome 02</b> Percent of Licensees with No recent violations	98%	95.62%	96.34%
<b>Goal 01, Outcome 03</b> Percent of licensees who renew online	10%	9.12%	91.20%
<b>Goal 01, Outcome 04</b> Percent of New Individual Licenses Issued Online	0%	0%	100%
<b>Goal 02, Output 01</b> Number of Complaints Resolved	805	776	96.40%
<b>Goal 02, Output 02</b> Number of Inspections Performed	1,520	2,157	141.91%
<b>Goal 02, Efficiency 01</b> Average Time for Complaint Resolution (Days)	75	76.28	101.7%
<b>Goal 02, Outcome 04</b> Percent of Complaints Resolved within Six Months	65%	87.76%	135.02%
<b>Goal 03, Output 01</b> Number of School Inspections	200	238	119%
<b>Goal 03, Outcome 01</b> Percent of ISDs Reviewed Regarding IPM	15%	21.92%	146.13%

### III. History and Major Events

- 1971:** The 62<sup>nd</sup> Regular Session of the Legislature enacted the Texas Structural Pest Control Act (the Act), V.A.T.S. 135b-6, thus creating the first state agency with the authority to set standards and license pesticide applicators. The purpose of the Act is to carry out the rights and duties of the State, to protect the health, safety, and welfare of the citizens, to protect the environment against the misuse of pesticides and to promote professional standards for the structural pest control industry. The Act was later amended during the regular sessions of the Legislature in 1975, 1979, 1987, 1989, 1991, 1993, 1997, and 2003.
- 1975:** Significant changes were made to the Act, mainly as a result of the Federal Environmental Pesticide Control Act of 1972. These changes included the addition of civil and criminal penalties, mandatory record keeping for pesticide applications, mandatory certification of all pesticide applicators who use restricted-use pesticides through written examination, and the establishment of minimum insurance requirements for pest control operators.
- 1979:** The first Sunset Commission Review of the Texas Structural Pest Control Board (TSPCB or the Board) resulted in the expansion of the Board by the addition of two public members.
- 1984:** The Board made a complete revision to all rules to make them more easily understood. These revisions included new standards for requiring TSPCB approval of termite treatment material, products, or methods; required safety and operational procedures for structural fumigation, and a twelve month apprenticeship period before an applicant could be examined for a certified applicators license.
- 1985:** All certified applicators licensed in the termite category were required to attend a special Board approved training program as a prerequisite for license renewal. The exams were revised to include more specific questions about current practices for each category. A new general standards exam was developed to test applicants in greater detail about the law, safety and environmental hazards.
- 1987:** The Board adopted official standards for termite inspections, reports and treatments. The new rules were the first to mandate the issuance of a consumer disclosure statement and to require the posting of the notice of treatment and inspection. The Act further was amended to provide the TSPCB with the authority to establish comprehensive training and licensing standards for service technicians. Minimum insurance requirements were also increased from \$30,000 to a \$100,000 aggregate.
- 1988:** The Board began requiring certified applicators to attend TSPCB approved continuing education courses for license re-certification. Annual licensing periods were also changed so that a company's business license expiration would correspond with their liability insurance expiration

**1989:** The Legislature amended the Act to eliminate one industry board member and to add one public member to provide equal representation from the industry and consumers. It also amended the Act to raise the minimum aggregate liability insurance to \$300,000 and to give the TSPCB authority to assess administrative fines. The Board also obtained funding to employ an attorney to assist with enforcement matters.

The TSPCB also assumed the responsibility for licensing all commercial pesticide applicators (with the exception of nurserymen) providing pest control services in the lawn & ornamental category. The TSPCB and the Texas Department of Agriculture (TDA) had previously shared this responsibility.

**1991:** The Sunset Commission review of the Texas Structural Pest Control Board resulted in several new legislative mandates and responsibilities as passed during the 72nd Regular Session of the Texas Legislature. The noncommercial license category was created and included individuals who perform structural pest control as a duty of their employment with state, county and municipal governments, apartment buildings, day care centers, hospitals, nursing homes, hotels, motels, lodges, commodity warehouses, food processing establishments, and schools. A record of all pesticide applications by noncommercial applicators also became required.

The Legislature also created an Integrated Pest Management (IPM) program for schools. The Board was given the responsibility to develop standards and criteria for the use of pesticides and other related chemical agents at school buildings and other facilities of school districts.

\*In 1991 the legislature withdrew \$600,000 from the TSPCB fund for other uses.

**1993:** The Legislature amended the Act to allow a technician license to be issued to individuals working under the supervision of noncommercial applicators; the Board was given the ability to enter into memoranda of agreement with other state agencies; an incidental use situation section provided the Board with the authority to define and set standards for the application of occasional, isolated, site specific pesticide use; specific license requirements for governmental employees were added; a registration system and license requirements for beekeepers using pesticides were developed; and applications to buildings, including both the inside and outside of apartment buildings, were designated to be provided by noncommercial applicators or licensed companies.

**1997:** The Board began a greatly expanded enforcement program to address the industry's concerns about fraudulent pre-construction termite treatments. The Board created a regulation that requires a pest control company to notify the TSPCB prior to performing a commercial pre-construction termite treatment for buildings other than single-family dwellings. This allows the agency the ability to

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monitor some commercial pre-construction termite treatments at the time of termiticide application.

**1999:** The Legislature allowed the agency to employ additional investigators. This enabled the TSPCB to have greater coverage in the lower Rio Grande Valley and El Paso areas.

**2003:** The Act was re-codified to the Texas Occupations Code Chapter 1951, a change that went into effect June 1, 2003.

The Legislature made an amendment to the act regarding the insurance requirements for companies doing wood preservation. The Legislature also cut the agency's budget by 7% for the remainder of FY 2003 and 12.5% for FY 2004. Due to these budget cuts, the agency was downsized 20.5% from 39 full-time employees (FTEs), as authorized in September 2002, to 31 FTEs as of September 1, 2003.

\*Among the changes was that Section 8 of Art. 135b-6 was omitted. This omission removed the requirement that all fees collected would go toward the Texas Structural Pest Control Fund and could only be used for administration and enforcement of the provisions of the Act.



## IV. Policymaking Structure

**A. Complete the following chart providing information on your policymaking body members.**

<b>Texas Structural Pest Control Board Exhibit 3: Policymaking Body</b>			
<b>Member Name</b>	<b>Term/Appointment Dates/ Appointed by ___ (e.g., Governor, Lt. Governor, Speaker)</b>	<b>Qualification (e.g., public member, industry representative)</b>	<b>City</b>
John Lee Morrison <i>Chair</i>	2001 – 2007 Governor	Industry Representative	San Antonio
Madeline Kirven- Gamble <i>Vice Chair</i>	1999 – 2005 Governor	Public Member	Dallas
Richard Rogers	2003 – 2009 Governor	Industry Representative	Richardson
Charles Brown	2001 – 2007 Governor	Public Member	Bryan
Tomas Cantu	1999 – 2005 Governor	Industry Representative	McAllen
Brenda Hill	2003 – 2009 Governor	Public Member	Nacogdoches
Dr. Thandi Kiqubu- Page ( <i>through 8/31/05</i> )	Representing Commissioner, Department of State Health Services	Ex-Officio Member	Austin
Dr. Roger Gold	Representing Head of Department of Entomology, Texas A&M University	Ex-Officio Member	College Station
Randy Rivera	Representing Commissioner of Agriculture	Ex-Officio Member	Austin

**B. Describe the primary role and responsibilities of your policymaking body.**

The primary role and responsibilities of the policymaking body are to make decisions regarding board policy, approve board rules, grant licenses, and approve disciplinary actions against licensees.

**C. How is the chair selected?**

The Governor appoints the Chair of the Board pursuant to Occ. Code, §1951.101.

**D. List any special circumstances or unique features about your policymaking body or its responsibilities.**

The Texas Structural Pest Control Board has rulemaking authority, grants licenses and reviews the Executive Director's management of the agency. The Board is unique in that it has exceptional expertise due to three industry members, three public members and three ex-officio members who are appointed by the Commissioner of Agriculture, the Commissioner of State Health Services and head of the Dept. of Entomology at Texas A&M University. In addition to environmental protection, the agency is unique because it protects consumer health and welfare.

**E. In general, how often does your policymaking body meet? How many times did it meet in FY 2004? in FY 2005?**

The Texas Structural Pest Control Board usually meets four times per year. In FY 04, the Texas Structural Pest Control Board met four times. The Strategic Plan Committee met three times in FY 04. In FY 05, the Texas Structural Pest Control Board will meet six times because of its regular meetings plus the need to meet new legislative fee requirements and to select a new Executive Director. The Sunset Committee of the Board will meet at least five times in FY 05 and the Evaluation Criteria Committee met one time in FY 05.

**F. What type of training do members of your agency's policymaking body receive?**

Prior to serving, Board members receive training in the following areas: 1) enabling statute of the Board (Texas Structural Pest Control Act); 2) agency programs; 3) Board rules; 4) role and functions of the board and the departments of the agency; 5) agency budget; 6) requirements of open meetings, open records, and administrative procedure laws; 7) requirements of other applicable laws and policies relating to public officials, including conflict of interest laws and ethics policies; 8) travel reimbursement procedures; 9) what to expect at a Board meeting; 10) how much time is involved in serving on the Board; and 11) working with other governmental agencies, including the

legislature. Members attend the Governor's Office training. The Executive Director and various staff members also provide some of this training.

**G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.**

The Board establishes regulations and policies. The Executive Director establishes procedures and practices. Formal communication between the Board and staff is through respective Board members to the Executive Director. (See Subchapter D.)

**H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?**

At every Board meeting the Executive Director and other staff apprise the Board on performance measures, legislation, enforcement and policy related issues. The Executive Director also communicates on a regular basis to all Board members on these important topics as they arise by email, memorandum, or by phone.

**I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?**

The agency encourages public participation when making rules and decisions. A public comment period is held near the beginning of each quarterly Board meeting. Persons are encouraged to speak and/or submit written comments. Board members frequently ask questions and seek clarification from persons that speak at the Board meetings.

Persons interested in participating in the Board actions are encouraged to participate in the agency's free email-server list. The email-server list was implemented in May 2002. Since then, subscription encouragement and process details have appeared in numerous magazine articles authored by the Executive Director, in numerous continuing education courses provided by the Executive Director, and in a September 2002 hard copy news bulletin to all licensed businesses. As a result, there are about 1500 subscribers at this time. Subscribers receive email notices of Board agendas, Board meeting minutes, proposed and adopted regulation changes, and other Board-related updates.

Persons that do not choose to participate through in the email server list, may still read the same information by reviewing the agency's web site. After beginning the email server list opportunity, we also began a list for persons that have requested information only in hard copy form. Through March 2005, only one person has asked to be on a separate hard-copy-only list.

While the agency has efficiently and effectively reduced its information mailing costs while providing more timely updates to interested persons electronically, the agency

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occasionally still sends hard copy bulletins. Examples include a September 2002 relocation newsletter and an October 2003 fumigation newsletter. Another newsletter is planned for September 2005 for Quadrennial Regulation Review updates. A hard copy newsletter is still necessary from time to time to reach all businesses because not all are connected by the Internet to the agency.

The agency consistently notifies Consumer's Union and the Texas Pest Control Association of Board information through email, regular mail, and phone calls.

The agency properly posts its quarterly meetings and occasional committee meetings through the Texas Register.

The agency follows Sunset guidelines for committee appointments therefore it only includes Board appointees on committees unless more expertise is needed. In the past four years, only one committee was formed that included non-Board appointees. Then-Chair Dr. Stone appointed a committee to review fumigation issues. The Board reviewed the issues for two years and took public comment during the process.

**J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart.**

By statute, the agency has authorization for two advisory committees. The first committee reference is found in Occupational Code 1951.212 (b). This states that the agency **shall** use an advisory committee to assist the board in developing the standards for the Integrated Pest Management program (IPM). The agency accomplished this by using an advisory committee when preparing the IPM regulations in the 1990's. A citizen-activist and a consumer association representative were among those on the advisory committee. If the standards need to be revised as a result of new legislation, the agency will again utilize the IPM advisory committee.

The second committee reference is found in Occupational Code 1951.254 (b). This states that the agency **may** create a public information program advisory committee to assist in the development of a public information program. Therefore, the statute has allowed for an advisory committee, but not required a committee in this instance. The agency has utilized an advisory committee when developing the Consumer Information Sheet and later revisions.

The agency follows Sunset guidelines for other committee appointments. Therefore, it only includes Board appointees on committees unless more expertise is needed. In the past four years, only one committee was formed that included a non-Board member. Then-Chair Dr. Jay Stone appointed a committee to review fumigation issues. He asked non-Board members to be on the committee because more expertise was needed to provide input to the Board.

Occ. Code, Chpt. 1951.351 gives the Board the option of creating a technician training program advisory committee to assist the Board in developing the training program

required by this section. It was used for 1991 Sunset revisions. This option is not currently used.

<b>Texas Structural Pest Control Board Exhibit 4: Subcommittees and Advisory Committees</b>			
<b>Name of Subcommittee or Advisory Committee</b>	<b>Size/Composition/How are members appointed?</b>	<b>Purpose/Duties</b>	<b>Legal Basis for Committee</b>
Fumigation Advisory Committee	5 members: appointed by Board Chair.	The purpose was to assess training and certification standards in structural fumigation.	Occ. Code 1951.158
Evaluation Criteria Committee	4 Board members: appointed by Board Chair	The purpose of the committee was to develop guidance for termite treatment standards involved with Board Rule 599.1(2)	Occ. Code 1951.158
Sunset Committee	4 members: appointed by Board Chair	The purpose of the Committee was to develop Self-Evaluation Report guidance.	Occ. Code 1951.158
Strategic Plan Committee	3 members: appointed by Board Chair	The purpose of the Committee was to develop Self-Evaluation Report guidance.	Occ. Code 1951.158

## V. Funding

**A. Provide a brief description of your agency's funding.**

The agency is funded through the General Appropriations Act (GAA). The agency is a regulatory agency under Art. VIII of the GAA and therefore appropriations are limited to revenue collections. Method of financing is provided through the general revenue fund, federal funds and appropriated receipts.

**B. List all riders that significantly impact your agency's budget.**

N/A

**C. Show your agency's expenditures by strategy.**

Texas Structural Pest Control Board Exhibit 5: Expenditures by Strategy Fiscal Year 2004 (Actual)	
Goal/Strategy	Amount
Licensing	\$498,728.61
Enforcement	890,325.35
Education	61,237.45
<b>GRAND TOTAL:</b>	<b>\$1,450,291.41</b>

**D. Show your agency's objects of expense for each category of expense listed for your agency in the General Appropriations Act FY 2005-2006.**

<b>Texas Structural Pest Control Board Exhibit 6: Objects of Expense by Program Fiscal Year 2005</b>			
<b>Object-of-Expense</b>	<b>Licensing</b>	<b>Enforcement</b>	<b>Education</b>
Salaries and Wages	\$324,617.00	\$659,375.000	\$69,254.00
Other Personnel Costs	14,231.00	20,289.00	1,916.00
Operating Costs	57,625.00	0	0
Consumable Supplies	4,160.00	8,450.00	390.00
Rent – Building	520.00	1,056.00	49.00
Rent – Machine & Other	2,153.00	4,374.00	202.00
Travel	1,240.00	122,747.00	0
Utilities	2,576.00	5,233.00	242.00
Other Operating Expenses	24,942.00	35,024.00	9,597.00
<b>Total</b>	<b>\$432,064.00</b>	<b>\$856,548.00</b>	<b>\$81,650.00</b>

<b>Texas Structural Pest Control Board Exhibit 6: Objects of Expense by Program Fiscal Year 2006</b>			
<b>Object-of-Expense</b>	<b>Licensing</b>	<b>Enforcement</b>	<b>Education</b>
Salaries and Wages	\$308,936.00	\$696,824.00	\$50,712.00
Other Personnel Costs	10,440.00	17,708.00	0
Professional Fees and Svcs	3,710.00	0	0
Consumable Supplies	5,053.00	5,054.00	0
Rent – Building	1,540.00	0	0
Rent – Machine & Other	6,239.00	0	0
Travel	0	131,920.00	0
Utilities	0	9,456.000	0
Other Operating Expenses	83,700.00	47,882.00	0
Grants	0	9,000.00	0
<b>Total</b>	<b>\$419,618.00</b>	<b>\$917,844.00</b>	<b>\$50,712.00</b>

**E. Show your agency's sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines.**

<b>Texas Structural Pest Control Board Exhibit 7: Sources of Revenue Fiscal Year 2004 (Actual)</b>	
<b>Source</b>	<b>Amount</b>
Original Appropriations	\$1,156,867.00
Additional Appropriations	370,376.26
Federal Revenue	281,733.50
Licenses, Fees and Permits	98,947.63
Sales of Goods and Services (Appropriated Receipts)	864.00
Administrative Penalties	143,281.01
<b>TOTAL</b>	<b>\$2,052,069.40</b>

**F. If you receive funds from multiple federal programs, show the types of federal funding sources.**

<b>Texas Structural Pest Control Board Exhibit 8: Federal Funds Fiscal Year 2004 (Actual)</b>				
<b>Type of Fund</b>	<b>State/Federal Match Ratio</b>	<b>State Share</b>	<b>Federal Share</b>	<b>Total Funding</b>
Consolidated Pesticide Enforcement, Certification and Training Cooperative Agreement	23/77	\$56,918.00	\$194,200.00	\$281,118.00
Consolidated Pesticide Compliance Monitoring	0/100	0.00	63,700.00	63,700.00
PESP Regional Grant	50/50	40,000.00	40,000.00	80,000.00
<b>TOTAL</b>		<b>\$96,918.00</b>	<b>\$297,900.00</b>	<b>\$394,818.00</b>



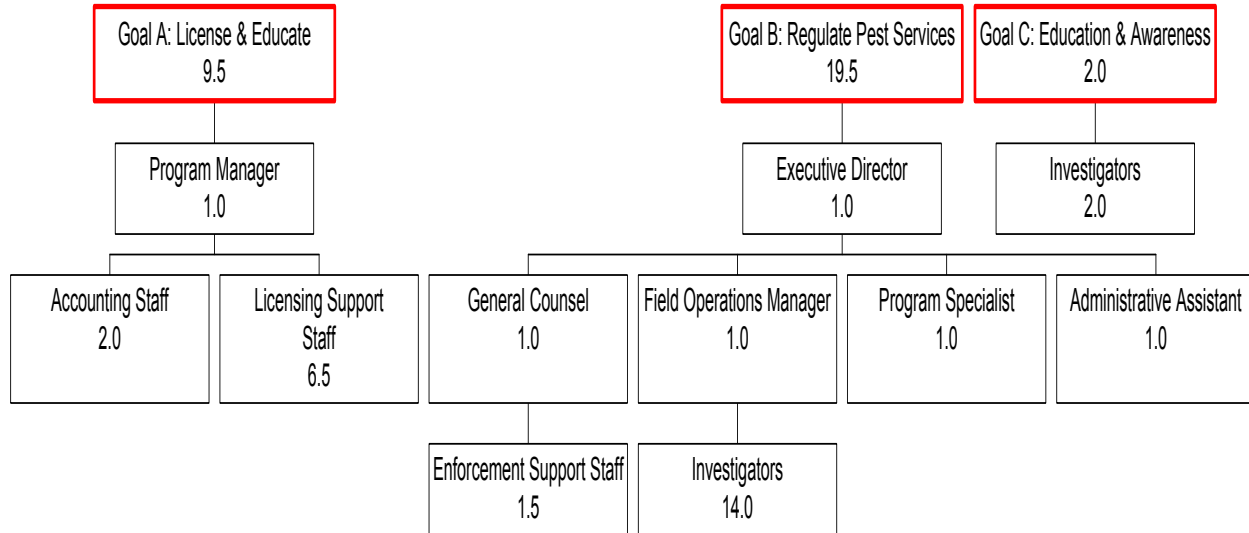
**G. If applicable, provide detailed information on fees collected by your agency.**

<b>Texas Structural Pest Control Board Exhibit 9: Fee Revenue Fiscal Year 2004</b>				
<b>Fee Description/ Program/ Statutory Citation</b>	<b>Current Fee/ Statutory maximum</b>	<b>Number of persons or entities paying fee</b>	<b>Fee Revenue</b>	<b>Where Fee Revenue is Deposited (e.g., General Revenue Fund)</b>
<b>Texas Occupations Code Ch 1951</b>				
Business License	\$175 /\$180	3,214	\$588,222.37	General Revenue Fund
Certified Applicator	\$80/\$112.50	7,789	\$63,087.37	General Revenue Fund
Technician License	\$60/\$84	6,578	\$422,857.50	General Revenue Fund
Duplicate License	\$30/\$30	215	\$18,360	General Revenue Fund
Late Renewal fee – 30 days or less	\$37.50/\$37.50	337	\$12,637.50	General Revenue Fund
Late Renewal fee – more than 30 days less than 60	\$75/\$75	102	\$7,650	General Revenue Fund
Testing Fee	\$40/\$50	5,464	\$207,640	General Revenue Fund
Continuing Education	\$40/\$75	258	\$10,320	General Revenue Fund
Administrative Penalties	\$300 to \$5,000	100	\$143,281.01	General Revenue Fund
<b>Tx Gov't Code 552.261, 603.004, et al.</b>				
Copies of Records	\$.10/page	21	\$455.72	GR – after \$300 – agy approp
<b>Tx Gov't Code 2052.301</b>				
Sale of publications	\$9	96	\$864	GR – after \$300 – agy approp
<b>Tx Bus. &amp; Com Code 3.506, Tx Crim Proc Code 102.007(e), 102.0071</b>				
Returned Check Fee	\$25	21	\$525	General Revenue Fund

## VI. Organization

**A. Provide an organizational chart that includes major programs and divisions, and shows the number of FTEs in each program or division.**

### Texas Structural Pest Control Board Major Program and Divisions



**B. If applicable, fill in the chart below listing field or regional offices.**

Texas Structural Pest Control Board Exhibit 10: FTEs by Location Fiscal Year 2004			
Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs, FY 2004	Number of Actual FTEs as of August 31, 2004
Headquarters	Austin	31.0	30.83
Field Office	Investigators are headquartered at residences. No state field offices paid for by the state.		
<b>TOTAL</b>		31.0	30.8

**C. What are your agency's FTE caps for fiscal years 2004 - 2007?**

31.0

**D. How many temporary or contract employees did your agency have as of August 31, 2004?**

0

**E. List each of your agency's key programs or functions, along with expenditures and FTEs by program.**

Texas Structural Pest Control Board Exhibit 11: List of Program FTEs and Expenditures Fiscal Year 2004		
Program	FTEs as of August 31, 2004	Actual Expenditures
License and Educate	9.5	\$498,728.61
Regulate Pest Services	19.5	890,635.35
Education and Awareness	2.0	61,237.45
<b>TOTAL</b>	31	\$1,450,291.41

## VII. Guide to Agency Programs

Complete this section for **each** agency program (or each agency function, activity, or service if more appropriate).

**A. Provide the following information at the beginning of each program description.**

### GOAL 01 – LICENSE AND EDUCATE

<b>Name of Program or Function</b>	<b>Goal 01:</b> License and Educate Appropriately License Applicators; Encourage Competence thru Education
<b>Location/Division</b>	Austin/Licensing & Administration
<b>Contact Name</b>	Rita Martinez – Program Manager
<b>Actual Expenditures, FY 2004</b>	\$498,728.61
<b>Number of FTEs as of August 31, 2004</b>	9.5

**B. What is the objective of this program or function? Describe the major activities performed under this program.**

Objective: License all eligible applicators; and continue to ensure that technicians are licensed; ensure appropriate education standards for applicators; encourage licensed individuals to achieve the highest level of demonstrated competence of which they are capable; and ensure approved continuing education courses meet or exceed minimum standards.

Major activities include two functions:

- Licensing:
  - o Process all licensing applications, which include initial, renewal, additional licensure and duplicate licenses
  - o Process applications for examination and assists with administering state examination
  - o Answer calls from the public regarding licensing processes
  - o Verify individual/business license inquiries
  
- Administration:
  - o Payroll, purchasing, administration of budget
  - o Deposits all license fees
  - o Accounts payable
  - o Board meeting logistics and rule adoption
  - o Compliance with statutory requirements (reports, statistical tabulation, maintaining agency records)

- Human resources
- Information technology

**C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.**

The agency processes license renewals in a matter of about five days. Despite a reduction of FTEs in September 2003 this program was still able to meet or exceed all key performance measures, with the exception of Outcome 03 – Percent of licensees who renew online. The exception was due to the delay in implementation by the Texas Online Authority. With the agency’s multi-faceted marketing success, Texas Online use reached over 40% in November 04.

See table of key measures for Goal 1 - FY 2004.

<b>Texas Structural Pest Control Board Exhibit 2: Key Performance Measures Goal 1 - Fiscal Year 2004</b>			
<b>Key Performance Measures</b>	<b>FY 2004 Target</b>	<b>FY 2004 Actual Performance</b>	<b>FY 2004 % of Annual Target</b>
<b>Goal 01, Output 03</b> - Number of New Licenses Issued to Individuals	5,510	5,942	107.84%
<b>Goal 01, Output 04</b> - Number of Licenses Renewed (Individuals)	12,825	14,554	113.48%
<b>Goal 01, Efficiency 01</b> - Average Licenses Cost Per Individual License Issued	\$25.00	\$17.28	69.12%
<b>Goal 01, Outcome 02</b> - Percent of Licensees with No recent violations	98%	94.41%	98.34%
<b>Goal 01, Outcome 03</b> - Percent of licensees who renew online	10%	9.12%	91.20%

**D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

The Texas Structural Pest Control Act was enacted by the Texas Legislature in 1971 after several attempts by the Texas Pest Control Association to have an agency created to combat fraud and unsafe practices in the structural pest control industry. The TSPCB became the first Texas agency to license pesticide applicators. This action took place prior to amendments to FIFRA in 1972 and federal requirements for applicator certification to use or supervise use of restricted use pesticides beginning in 1976. There has been no significant variance from the original intent of the Texas Structural

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Pest Control Act as enacted in 1971; however, performance of the investigative and enforcement functions has increased in scope and difficulty with additional federal requirements, state requirements adding regulation of certain businesses (estimated to be in excess of 28,000 business establishments) and state employees as well as school IPM in 1991 (1,040 public school districts), advances in technology, and addition of new pesticide products. With population growth, increases in pest control businesses and licensed applicators, continued introductions and expansion of invasive foreign pests (Formosan subterranean termites, red imported fire ants, argentine ants, white footed ants, Asian tiger mosquito, etc.), and a small percentage of people who are willing to commit fraud or use unsafe practices, there will continue to be a need for inspections, investigations, and enforcement.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

Individuals seeking licensure and those who own and operate a commercial/noncommercial business/entity. Licensed certified applicators, technicians, and apprentices.

Applicants for licensure must meet the qualifications as listed in the Texas Occupational Code, Subtitle B. Practices related to Health and Safety, Chapter 1951, Structural Pest Control, Subchapter G and I.

Commercial Businesses – 3,484  
Certified applicators - 8,351  
Technicians – 3,460  
Apprentices – 2,411

**F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.**

### **Business License Flow**

Definition: Any person engaged in structural pest control must secure a business license from the Board for each business location, including branch offices, in accordance with the Texas Structural Pest Control Act and the regulations of the Board. Each business license holder must designate a responsible certified commercial applicator for each business location who is not also serving as a responsible certified commercial applicator for any other business licensee or any other business location. No person shall engage in, offer to engage in, advertise for, solicit, or perform any of the services identified in Section 1951.002 of the Texas Structural Pest Control Act, for compensation, without first obtaining a business license and having a certified commercial applicator certified in each license category in which business is conducted.

- Complete application for business license and submit to agency along with any appropriate application fees.
- Each business license applicant and certified noncommercial applicator license applicant must submit a certificate of insurance with proof of coverage on the form provided by the Board in the amount of not less than \$200,000 for bodily injury and property damage coverage with a minimum total annual aggregate of \$300,000 for all occurrences. The insurance policy must insure applicant for damage to persons or property occurring as a result of operations performed in the course of the business of structural pest control to premises or any other property under applicant's care, custody, or control. No new business license will be issued until insurance requirements are met. Policies must contain a cancellation provision for notification to the Board not less than thirty (30) days prior to cancellation.
- Certified applicators and technicians that will be working for this business will complete appropriate applications to facilitate changes and/or issuance of new licenses under this business license.
- Individuals requiring apprentice cards to work under this business license number must complete an Application for Technician license, pay all appropriate fees and obtain all required training and examinations.
- Applications for business license that reside outside of the state of Texas, must indicate a resident agent for process of service within the state. The Secretary of States office may be so designated.
- Agency performs review of files and criminal background review, if necessary.
- Upon approval business license will be issued to coincide with expiration date of insurance policy.
- Licenses must be renewed by submitting an application to the Board, paying the required fee, and meeting any additional requirements of the Board, 30 days prior to the license expiration date. Renewal applications received after the license expiration date are subject to the late fees prescribed in the Texas Structural Pest Control Act, Section 1951.310. An application is not considered to be submitted unless it is in substantially correct form with the correct fees. Incomplete renewal applications received on or before the license expiration date may also be subject to late fees.
- In the event of disability, incapacity, or death of the business license holder or certified applicator, if they are the same person, upon application of heir or license holder electing to continue the business or noncommercial operation, the Board may issue a temporary hardship license to be valid for a period not to exceed six (6) months. The heir or license holder must notify the Board in writing within twenty (20)

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business days of the disability, incapacity or death of the business license holder or certified applicator.

Upon the loss, disability or incapacity of a certified applicator, the business license holder or noncommercial operation may request the Board allow the operation to continue operating until the next state examination date. The licensee must notify the Board in writing within twenty (20) business days of the date of the loss, disability or incapacity of the certified applicator.

### **Individual License Flow (Apprentice, Technician, Certified Applicator)**

#### **Apprentice**

An individual with no pest control experience may become licensed by first beginning as an apprentice working under the supervision of a currently licensed individual. That process is described below. Commercial and noncommercial apprentice requirements are the same.

- Within 10 days of individual beginning training company submits an Application for Technician license.
- Agency performs review of files and criminal background review, if necessary.
- Apprentice card issued for one year from date individual began training.
- Classroom and on the job training must include: 20 hours classroom training in the General Standards, 8 hours of classroom training in each category seeking licensure, 40 hours of on the job training in each category seeking licensure. On site supervision until training has been completed.
- Upon completion of classroom and on the job training an apprentice may provide pest control services in the categories that all training has been completed, under the direct supervision of a certified applicator.
- An apprentice may advance licensure status to technician by meeting the eligibility requirements for that license. If licensure status is not advanced by expiration date of apprentice card, the process shown above must be repeated yearly.

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#### **Technician**

- Commercial and noncommercial technician requirements are the same.
- Technician examination must be passed prior to the expiration date of the apprentice card. May retest as many times as needed during 12-month period.



- Submit an Application for Technician Exam on or before the deadline for desired examination date. Apprentice must successfully complete an examination of competency in each category desired to receive a technician license. Apprentice must attend and participate in a board approved technician-training course.
- A technician license will be issued when the exam is passed. The expiration date of the technician license will be based upon the expiration date of the business or noncommercial certified applicator.
- As a licensed technician may provide pest control services under direct supervision and receive instructions at least three (3) days per week from a certified applicator.
- A licensed technician may maintain their license by submitting a yearly license renewal certifying that they have completed 8 hours of verifiable training for the preceding twelve months of the renewal.
  1. Two (2) hours of the eight (8) hours of training may be on-the-job training or hands-on-training verified by the responsible certified applicator.
  2. Internet training or videotape training may be used if the certified applicator certifies that the training is the appropriate training.
  3. A technician will receive an hour for hour credit if a Board approved continuing education unit course is completed.
  4. No courses may be repeated for credit within the same recertification year.
  5. Upon written request, the Executive Director may grant a hardship extension to a technician due to extenuating circumstances.
- Licenses must be renewed by submitting an application to the Board, paying the required fee, and meeting any additional requirements of the Board, 30 days prior to the license expiration date. Renewal applications received after the license expiration date are subject to the late fees prescribed in the Texas Structural Pest Control Act, Section 1951.310. An application is not considered to be submitted unless it is in substantially correct form with the correct fees. Incomplete renewal applications received on or before the license expiration date may also be subject to late fees.
- A license will not be renewed if an individual has defaulted on a guaranteed student loan.
- A technician may continue to operate as a technician indefinitely as long as yearly renewal requirements are met; however, the technician may advance licensure status to certified applicator by meeting the eligibility requirements for that license.

### **Certified Applicator**

In order to qualify to take the Board examination for obtaining a certified applicators license, the applicant must meet one of the following requirements as noncommercial or commercial.

#### **Noncommercial**

Definition: The person, who as an employee, is responsible for providing pest control services to a governmental entity, apartment building, day-care center, hospital, nursing home, hotel, motel, lodge, warehouse, food-processing establishment, school or educational institution and other noncommercial entities. The person licensed as a noncommercial certified applicator shall be responsible to ensure training and direct supervision for pest inspections, identifications, and control measures of a noncommercial entity. A certified noncommercial applicator must be licensed for every business entity for which the certified noncommercial applicator is employed.

1. Have a degree or certificate in an area of the biological sciences related to pest control from an accredited two (2) or four (4) year college or university; or
  2. Have verifiable employment experience in the pest control industry, including out-of-state experience in pest control of at least twelve (12) months out of the past twenty-four (24) months from a previous occupation. The proof of experience must be provided by the applicant in the form of a notarized statement or a letter from the appropriate licensing entity.
  3. Complete a Board approved minimum six (6) hour certified noncommercial technician training course;
  4. Have verifiable employment in the pest control industry under the supervision of a licensed certified applicator for at least twelve (12) months out of the past twenty-four (24) months and must have possessed a technician license for at least six (6) months.
- A certified noncommercial applicator's employer is required to carry liability insurance unless the certified noncommercial applicator is employed by a governmental entity.
  - A certified noncommercial applicator is restricted from performing structural pest control other than on the property of the noncommercial applicator's employer.
  - Certified noncommercial applicators who have been licensed for a minimum of one year may become certified commercial applicators by requesting an additional license or change of license and paying the required license fee. Certified commercial applicators may become certified noncommercial applicators by requesting an additional license or change of license and paying the required license fee.

#### **Commercial:**

Definition: The person licensed as a certified commercial applicator who can perform pest control services, identifications and control measures without direct supervision. A certified commercial applicator must be licensed for every business location for which the certified commercial applicator is employed.

1. Have verifiable employment in the pest control industry under the supervision of a licensed certified applicator for at least twelve (12) months out of the past twenty-four (24) months and must have possessed a technician license for at least six (6) months.
  2. Furnish proof of previous verifiable employment, experience in the pest control industry, including out-of-state experience in pest control of at least twelve (12) months out of the past twenty-four (24) months from a previous occupation. The proof of experience must be provided by the applicant in the form of a notarized statement or a letter from the appropriate licensing entity.
  3. Have a degree or certificate in an area of the biological sciences, related to pest control, from an accredited two (2) or four (4) year college or university;
  4. An applicant with equivalent technical pest or pesticide field experience from a previous occupation; and
  5. Qualifies under the hardship clause outlined in §593.8 of this title (relating to Loss of Certified Applicator or Business License Holder).
- Each applicant testing for a certified applicator license must pass the general standards examination administered by the Board to be eligible to be licensed in any of the categories in this Section 595.11, Categories of Examinations
  - Complete and submit Application for Exam and Certified Applicator License along with exam fees on or before the registration deadline for the selected exam date.
  - A Department of Public Safety background check will be performed if a criminal arrest is indicated on the application.
  - A licensed applicator who resides outside of the state shall designate in writing a resident agent for service.
  - There are eight categories for which examinations will be issued: pest control, termite control, lawn & ornamental, weed control, structural fumigation, commodity fumigation, and wood preservation.
  - A license shall expire twelve months from the date issued or the date the business liability insurance expires, whichever comes first.
  - A certified applicator may maintain their license by submitting a yearly license renewal certifying that they have completed required CEU training for the preceding twelve months of the renewal.
  - Continuing Education units are required on an annual basis. This certification must

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be completed upon each renewal of the certified applicator's license.

- A. Two points will be required in the general category.
  - B. One point will be required in every category for which a certified applicator is certified.
- Certified Applicator licenses must be renewed by submitting an application to the Board, paying the required fee, and meeting any additional requirements of the Board, 30 days prior to the license expiration date. Renewal applications received after the license expiration date are subject to the late fees prescribed in the Texas Structural Pest Control Act, Section 1951.310. An application is not considered to be submitted unless it is in substantially correct form with the correct fees. Incomplete renewal applications received on or before the license expiration date may also be subject to late fees.
  - A license will not be renewed if an individual has defaulted on a guaranteed student loan.

There are no field offices.

**H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.**

The agency approves courses that are submitted by external course providers. The agency is the sole approval authority. As a condition to renewal of each certified applicator license, the Board requires that the licensee certify to the Board that the licensee has completed Board approved continuing education units (CEUs) that correspond with the applicator's category(ies) of certification for the preceding twelve (12) months. Each certified applicator is required to obtain two (2) units in general training and one (1) unit in each category in which the applicator is certified.

**I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The Board and the Texas Department of Agriculture refer any violations involving the other agency's licensees to that agency. The Board also exchanges complaints as appropriate with the Texas Department of State Health Services. Coordination is also fostered by having through the composition of the Board that includes the Commissioner of Agriculture and the Commissioner of Health or their representative. Personnel from all three agencies attend two U.S. Environmental Agency Regional meetings and a minimum of two meetings with the Texas Cooperative Extension as required in U.S. Environmental Protection Agency agreements.

While the Board and Texas Department of State Health Services have shared jurisdiction, the two agencies for the most part license two different groups. The Board licenses businesses that deal on a one on one basis with individuals as well as contracting with neighborhood associations and governmental entities for ground applications. Most government employees performing vector control and licensed by the TSPCB also perform pest control for additional purposes. The Texas Department of State Health Services licenses only governmental entities that will affect large geographic areas with any pesticide applications and other vector control activities.

The Board entered into a memorandum of understanding with this association in 1993, renewed in 2003, exempting any licensee who is a Board Certified Entomologist (BCE), from the continuing education requirement, therefore avoiding the duplication of service.

The Board currently has one Memorandum of Understanding (MOU) with Texas Parks & Wildlife concerning the handling of certain animals. An opinion from the Attorney General has been requested interpreting the law discussed in that MOU.

The Board has a MOU with the Texas Department of Transportation concerning licensing of persons performing pest control for maintenance of right-of-way and roadside parks. This MOU prevents duplication of licensing and enforcement with TDA.

The Board also has a memorandum of agreement with the Texas Dept. of Transportation (TXDOT) concerning licensing requirements of TXDOT employees. TXDOT employees do not need to be licensed with the Board if they are working in highway settings.

**J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.**

Section 23 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) allows a state to enter into an agreement with EPA for certification of pesticide applicators by the state, and Section 26 of FIFRA grants a state primary enforcement authority for pesticide use violations if the state has adopted adequate laws, adopts and implements adequate enforcement procedures, keeps records and files reports. As lead agency for the State of Texas, the Texas Department of Agriculture with the cooperation of TSPCB has entered into an agreement with the Administrator of EPA that qualifies TSPCB to certify applicators, take pesticide misuse enforcement actions under FIFRA, and qualify for federal grant funding. The Texas Structural Pest Control Board has used grant monies primarily to perform federal activities that overlap state mandates.

**K. If this program or function is contracted out, provide a description of how you ensure accountability for funding and performance.**

N/A. This function is not contracted out.

**L. What statutory changes could be made to assist this program in performing its functions? Explain.**

The Texas Structural Pest Control Board would like the ability to bid for other on-line licensing services to determine potential savings to the state and better overall service.

In addition to being efficient and effective, the agency has worked with Texas Online staff and its contractors for over four years to develop a functional system. The agency has consistently and aggressively advertised Texas Online for the renewal of agency licenses. The agency has: placed flyers in renewal mail-outs, made this part of investigators' inspections, presented the information to thousands of licensees in annual continuing education courses, had a staff person attend 3 major continuing education courses to provide hands-on training, had internal staff contests for highest renewal recruitment, had the executive director meet with presidents and vice presidents of major corporations, incorporated this in enforcement agreements as a requirement for companies that failed to license on time. The agency's efforts have resulted in a steady increase of licensee use of the system. Within 6 months of having a functional individual and business renewal (Dec 03-June 04), the agency was averaging double-digit use in the summer of 2004. By November 2004, use was at an all time one month high of over 43%. However, the system still does not offer a "shopping-cart" feature to load numerous licensees at the same sitting. The agency has repeatedly asked for this feature verbally and in writing. Texas Online staff have repeatedly made forecasts about when the feature would be available but it has not materialized. Complaints about the system include customers getting "bumped off" and "frozen" in the system. Online services would be utilized much more, and the agency licensing staff would be more efficient, if the shopping cart feature were available and effective.

**M. Provide any additional information needed to gain a preliminary understanding of the program or function.**

The agency requires that all individual licensees indicate information regarding any criminal background. As stated earlier, the agency conducts random criminal background checks. However, the agency does not have the resources to check the criminal backgrounds on every licensee.

The agency began a computer-based licensee examination pilot in January 2005. The first segment of the pilot was limited to the Austin headquarters because of the need to make any necessary adjustments and to monitor licensee acceptance of this approach. The initial segment has been successful with adjustments being few and licensees readily accepting this approach. The agency does not have the statutory authority to require computer-based testing but is currently pursuing opportunities to expand the service to other cities. The service could save many licensees travel costs and time and reduce the number of hard-copy examination sessions that the agency conducts.

**N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Regulation review occurs on a quadrennial basis. The Board will complete this process in August 2005.

Licensed entities are inspected at least once every two years as defined by Occ. Code §1951.207.

When an investigator inspects a company and believes follow-up activity is necessary, another visit may be scheduled. An investigator may also do a follow-up visit after the Board has settled a complaint as a condition of the settlement.

The Board uses a penalty matrix to make penalty determinations. Sanctions go up if violations are repetitive during a three-year period. For more difficult violators, referral to the Office of the Attorney General for injunctive relief can take place and as a final step, criminal prosecution can occur.

The Board has an investigators' manual that describes procedures for handling consumer/public complaints with licensees. A copy is attached. A complaint is sent to the Board and received by the Enforcement staff. The complaint is analyzed to determine if the complaint is jurisdictional or not, and more information may be requested from the complainant before this determination is made. If a complaint is determined to be non-jurisdictional, the complainant is notified of this decision.

If a complaint is determined to be jurisdictional, it is assigned to a field investigator by the Enforcement staff. The subject, licensee or party is informed that a complaint has been opened. The field investigator gathers all pertinent information and evidence relating to the complaint. The field investigator then writes a final report with an assessment of any possible violations. The report will then be reviewed by the enforcement staff to see if further action needs to be taken on the complaint.

When a case investigation is finished and sent to the Enforcement staff, the complaint is reviewed. After review, a decision is made as to punishment, if any. A reviewer may send the complaint back for further investigation if necessary. If the case is accepted by the Enforcement staff, it is handled by the enforcement department with assistance from the Investigation staff.

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In addition to the above, the complainant, the subject, and licensee are informed of the status of the complaint every 90 days.

**O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.**

The Board has an investigators' manual that describes procedures for handling consumer/public complaints with licensees. A copy is attached.

A complaint is sent to the Board and received by the Enforcement staff. The complaint is analyzed to determine if the complaint is jurisdictional or not, and more information may be requested from the complainant before this determination is made. If a complaint is determined to be non-jurisdictional, the complainant is notified of this decision.

If a complaint is determined to be jurisdictional, it is assigned to a field investigator by the Enforcement staff. The subject, licensee or party is informed that a complaint has been opened. The field investigator gathers all pertinent information and evidence relating to the complaint. The field investigator then writes a final report with an assessment of any possible violations. The report will then be reviewed by the enforcement staff to see if further action needs to be taken on the complaint.

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In addition to the above, the complainant, the subject, and licensee are informed of the status of the complaint every 90 days.



**A. Provide the following information at the beginning of each program description.**

**GOAL 02: REGULATE PEST SERVICES**

<b>Name of Program or Function</b>	<b>Goal 02: Regulate Pest Services</b> Mandate Compliance with Regulations and Methods of Providing Services
<b>Location/Division</b>	Investigations and Enforcement
<b>Contact Name</b>	Murray Walton – Field Operations Manager <i>until 8/31/05</i> Frank Crull – General Counsel
<b>Actual Expenditures, FY 2004</b>	\$890,325.35
<b>Number of FTEs as of August 31, 2004</b>	19.5

**B. What is the objective of this program or function? Describe the major activities performed under this program.**

The objectives of this program are to 1) ensure fair and efficient resolution of complaints, 2) enforce laws and regulations in an impartial and cost efficient manner, 3) inspect all licensed pest control businesses at least once every two years as required by § 1951.207 of the Texas Structural Pest Control Act and Board policy, 4) increase voluntary compliance, and 5) encourage a better relationship with licensees and the citizens of Texas through enhanced communication.

A complaint is sent to the Board and received by the Enforcement staff. The complaint is analyzed to determine if the complaint is jurisdictional or not, and more information may be requested from the complainant before this determination is made. If a complaint is determined to be non-jurisdictional, the complainant is notified of this decision.

If a complaint is determined to be jurisdictional, it is assigned to a field investigator by the Enforcement staff. The subject, licensee or party is informed that a complaint has been opened. The field investigator gathers all pertinent information and evidence relating to the complaint. The field investigator then writes a final report with an assessment of any possible violations. The report will then be reviewed by the enforcement staff to see if further action needs to be taken on the complaint.

When a case investigation is finished and sent to the Enforcement staff, the complaint is reviewed. After review, a decision is made as to punishment, if any. A reviewer may send the complaint back for further investigation if necessary. If the case is accepted to the Enforcement staff, it handled by the enforcement department with assistance from the Investigation staff.

In addition to the above, the complainant, the subject, and licensee are informed of the status of the complaint every 90 days.

Activities include measures to implement §§1951.501-1951.599 of the Texas Structural Pest Control Act. In addition to meeting requirements to investigate misapplication of pesticides as required in §1951.208 and complaints as required by §1951.252 of the Texas Structural Pest Control Act and ensure compliance with licensing requirements in the Act and regulations of the Board, complaint investigation and enforcement are conducted to comply with the Texas State Plan for Certification of Pesticide Applicators approved by the U.S. Environmental Protection Agency as a condition for state agencies to certify applicators and to comply with cooperative grant requirements which include cost sharing.

Establishment inspections of licensed pest control businesses are conducted at least every two years as required by state statute and to fulfill U.S. Environmental Protection Agency cooperative grant requirements. Inspections include pesticide application records, pesticide storage, application equipment, training records, licensing records, vehicles, contracts, and other documents to ensure proper use and handling of pesticides and compliance with laws and regulations. Establishment inspections also provide opportunities for compliance assistance.

In addition to licensed pest control businesses, the TSPCB also conducts a lesser number of inspections of certified noncommercial applicators and business required to have pest control work performed by licensed pest control businesses or applicators. These include, facilities owned by the state or political subdivisions of the state, apartment buildings, day-care centers, hospitals, nursing homes, hotel, motels, and lodges, warehouses, food-producing establishments (other than a restaurant, retail food, or food service establishments), and schools as provided by

§1951.051, §1951.303 and §1951.459 of the Texas Structural Pest Control Act. Inspections of public school districts include compliance assistance and enforcement for §1951.212 of the Texas Structural Pest Control Act and regulations adopted for implementation (TSPCB Regs, §§595.11 & 595.17. Noncommercial applicator licensing and public school district IPM were added to the TSPCB's responsibilities in the Sunset Act for the agency passed in 1991.

Another type of inspection performed by the TSPCB is called a use observation. Use observations involve actual observation of the application of a pesticide or some portion of the use process for an application. This type of inspection may be covert or announced. Use observations provide actual visual confirmation applicator and collection of physical evidence to measure compliance with label requirements and regulations to protect human health and welfare and the environment.

The TSPCB monitors a small percent of applicator training programs to ensure that these programs meet the requirements in §593.24 of the TSPCB Regulations and serve the intent of promoting compliance, competence, and proper use of pesticides.

Additionally, the staff gives a limited number of presentations on laws and regulations, licensing requirements, and school IPM as time allows.

A small but growing source of complaint investigations and enforcement actions is detection of suspected violations found in various media and advertising sources such as television and newspaper articles, yellow page advertisements, internet advertisements, and web pages. Complaints and enforcement actions may originate from information and evidence obtained during all types of inspection and monitoring activities conducted by the agency. In the last 10 years, the annual number of complaints have varied from approximately 1,100 to 850. Even though a majority of structural pest control companies are one-person owner/operator, there is an increasing number of large and multiple-branch companies in the industry. Investigations and inspections of large companies ordinarily take more time to complete.

**C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.**

Performance Measure	FY 2003 Target	FY 2003 YTD Total	FY 2003 % of YTD Target	FY 2004 Target	FY 2004 YTD Total	FY 2004 % of YTD Target
Number of Complaints Resolved	920	689	74.89%	805	776	96.40%
Number of Inspections Performed	1,600	1401	87.56%	1,520	2157	141.91%
Total Number Noncommercial Inspections, Excluding IPM	600	197	32.83%	480	427	88.96%
Number of Enforcement Actions Taken that Result from Complaints	520	562	108.08%	416	588	141.35%
Average Time For Complaint Resolution (Days)	66	59.55	90.23%	75	76.28	101.70%
Average Cost Per Complaint Resolved	\$ 300.00	\$394.58	131.53%	\$ 400.00	\$318.80	79.70%
Percent of Complaints Resulting in Disciplinary Action	65%	74.02%	113.88%	50%	72.42%	144.84%
Percent of Pest Control Businesses Inspected	50%	31.67%	63.34%	50%	63.62%	127.24%
Recidivism Rate for Those Receiving Disciplinary Action (Percent)	25%	19.42%	77.68%	30%	16.78%	55.93%
Percent of Complaints Resolved within Six Months	65%	92.31%	142.02%	65%	87.76%	135.02%
Number of Jurisdictional Complaints Received	920	816	88.70%	805	809	100.50%
Number of Non-Jurisdictional Complaints Received	10	6	60.00%	10	8	80.00%
Total Number of Use Observations Performed	600	398	66.33%	200	219	109.50%

**D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

The Texas Structural Pest Control Act was enacted by the Texas Legislature in 1971 after several attempts by the Texas Pest Control Association to have an agency created to combat fraud and unsafe practices in the structural pest control industry. The TSPCB

became the first Texas agency to license pesticide applicators. This action took place prior to amendments to FIFRA in 1972 and federal requirements for applicator certification to use or supervise use of restricted use pesticides beginning in 1976. There has been no significant variance from the original intent of the Texas Structural Pest Control Act as enacted in 1971; however, performance of the investigative and enforcement functions has increased in scope and difficulty with additional federal requirements, state requirements adding regulation of certain businesses (estimated to be in excess of 28,000 business establishments) and state employees as well as school IPM in 1991 (1,040 public school districts), advances in technology, and addition of new pesticide products. With population growth, increases in pest control businesses and licensed applicators, continued introductions and expansion of invasive foreign pests (Formosan subterranean termites, red imported fire ants, argentine ants, white footed ants, Asian tiger mosquito, etc.), and a small percentage of people who are willing to commit fraud or use unsafe practices, there will continue to be a need for inspections, investigations, and enforcement.

These departments were created with the enabling Act to investigate complaints received by the Board, including communicating with complainants, licensees, and other governmental agencies about the complaints. Employment of a General Counsel is required by §1951.153 of the Texas Structural Pest Control Act. The statutes that pertain to this department are in the Texas Structural Pest Control Act, Chpts. 1951.501-505 and 1951.551-1951.559. Section 26 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) gives states the primary enforcement responsibility for pesticide use if the Administrator of the U.S. Environmental Protection Agency determines the state has adequate pesticide use laws and regulations, has adopted and implemented adequate enforcement procedures, is keeping records, and reporting enforcement activities. Section 27 of FIFRA provides for federal action by the U.S. Environmental Protection Agency if a state fails to act expeditiously on pesticide use complaints.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

All citizens either use and/or come into contact with areas treated with pesticides. Therefore, Investigations and Enforcement will affect all the citizens of the State of Texas and every licensee of the Texas Structural Pest Control Board. It is the function of these two divisions to identify those individuals that present a danger to the public and provide the necessary evidence and information to allow for the appropriate actions to be taken with regard to these licensees. Every citizen, including licensees, could be a complainant or a witness. Additionally, any licensee could be the subject of a complaint brought before the board. Enforcement action as defined under 22 T.A.C. 595.21 can be taken against any licensed or unlicensed party. The attached charts reflect the enforcement actions taken in FY 03 and FY 04.

Persons who engage in the business of structural pest control as defined in §1951.003 must license with the TSPCB. To become a TSPCB licensee, a person must meet the following requirements:

### **Structural Pest Control Categories**

The Texas Structural Pest Control Board licenses applicators in the following categories:

- Pest Control
- Termite Control
- Lawn and Ornamental Pest Control
- Structural fumigation
- Commodity fumigation
- Weed Control
- Wood Preservation

### **Commercial vs. Noncommercial**

A commercial applicator operates a business or is an employee of a business that offers pest control services for hire or compensation.

A noncommercial applicator is a person not affiliated with a business that performs structural pest control for hire but is required to license because they perform pest control:

- 1) as an employee of a political subdivision of the state,
- 2) as an employee (or volunteer) of a business or institution required by law to have pest control performed by a licensed applicator, or
- 3) in some other capacity involving structural pest control, they use restricted use or state-limited-use pesticides.

### **Licensing Requirements**

In order to obtain a business license, the applicant must either be a certified commercial applicator or employ.

To qualify for the certified applicator series of exams, the applicant must meet one of the following qualifications:

- has held a technician license for at least six (6) months and has been employed with duties including pest control services under the supervision of a licensed certified applicator for at least twelve (12) months out of the last twenty-four (24) months,
- has a degree in a biological science, or
- has twelve- (12) months' verifiable technical field experience out of the past twenty-four (24) months from another occupation, or
- as an additional alternative, applicants to become a certified noncommercial applicator may attend a board approved noncommercial applicator training course.

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In order to obtain a certified applicator license in the categories regulated by the Structural Pest Control Board a person must submit a completed Application for Exam and Certified Applicator License to the Board and pass a general exam examination and an exam for each certification category requested.

A technician is defined as the person who, under the direct supervision of a certified applicator, performs pest control services. Prior to registering to take the exam for a technician license, the applicant must first be registered as an apprentice and complete all apprentice training requirements. The technician level examinations must be passed within 12 months of registration as an apprentice or retraining is required.

In order to be registered as an apprentice, the applicant must complete and submit to the Board, within 10 days of employment or within 10 days of beginning pest control services an Application for Technician License.

### **Fees**

Each Exam	\$50.00 (effective 9/1/05)
Apprentice	\$60.00
Technician	\$60.00
Certified Applicator	\$80.00
Pest Control Business	\$180.00

TSPCB licenses expire one year from date of issue or when insurance expires whichever comes first.

### **Financial Responsibility**

Commercial applicator businesses and businesses employing noncommercial applicators must file with the Board a policy or contract of insurance in an amount not less than \$200,000 bodily injury and property damage with a minimum total aggregate of \$300,000 for all occurrences for damage to persons or property under care, custody, or control.

### **Other**

Three additional state agencies share responsibility for pesticide applicator certification and licensing.

The Texas Department of Agriculture (TDA) licenses applicators using restricted-use and state-limited-use pesticides and regulated herbicides in agricultural and special-use categories. TDA does not require a license for applying general-use pesticides, except for the state-limited-use list contained in the Texas Pesticide Regulations. Nurserymen, employees of schools, cemeteries, or city, county or state governments who apply pesticides on lawns, trees or shrubs outdoors may license with either TDA or TSPCB.

The Texas Department of State Health Services (DSHS) certifies applicators for vector control (health-related pests) and only licenses government employees.

Texas Cooperative Extension provides training and training materials. Continuing education credits in approved course work are required for recertification of applicators by the TSPCB, TDA, and DSHS.

Additional information on pesticide applicator licensing and regulation in Texas may be found in Occupations Code Ch. 1951, Agriculture Code Ch. 76, and Texas Administrative Code Title 4, Part 1, Ch. 7, Title 22, Part 25, and Title 25, Part 1, Ch. 267.

Currently, there are approximately 3,400-licensed pest control businesses and over 20,000 licensed and registered applicators (see chart below).

#### **TSPCB Licenses Issued**

<b>Fiscal Year</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Business Licenses Issued	3,433	3,527	3,430	3,657
Certified Applicator Licenses Issued	8,663	8,774	8,484	8,985
Technician Licenses Issued	4,015	3,919	3,951	4,038
Total Licenses Issued	16,111	16,220	15,865	16,680
Apprentice Registrations	3,277	3,556	3,401	3,816
Total	19,388	19,776	19,266	20,496

Historically, less than 5% of all licensees have a recent (within the last 3 years) violation.

A measure of the TSPCB's effectiveness in its efforts to protect human health through appropriate standards of pesticide applicator competence, training requirements, and enforcement is the number of human pesticide exposure complaints received. In FY 1997, the Board received 39 human exposure complaints, in FY 1998 there were 36 such complaints, and 27 in FY 1999. The Board received 26 human exposure complaints in FY 2000 and 25 human exposure complaints were received in FY 2001. By FY 2002 the number of human exposure complaints rose again to 28, but was down in FY 2003 to 16, and only 14 in 2004. This reduction occurred during a period in which the population of Texas grew by approximately 10%. Training on safety and IPM, availability of effective new bait formulations, consumer education, and compliance assistance contribute to preventing human exposures and claims of exposure. That this reduction in human exposure has taken place during a period of slight expansion in the pest control industry and continued coverage of pesticides in news reports is highly indicative of progress. However, as long as there are human exposure risks and complaints, work continues to be needed.

Because of fraudulent practices in the pre-construction termite treatment (pretreat) industry, the Texas Structural Pest Control Board began a program in 1997 of required notification to the agency of all liquid pretreats other than to single family dwellings and increased monitoring of applications. Since that program began, the Board has taken more than 80 enforcement actions including 48 penalties (fines) and five license revocations for violations involving pretreats. The Board's action has served to reduce

## Self-Evaluation Report

illegal practices; however, adoption of SB 365 by the Texas Legislature in 2001 changed the number of pretreats performed throughout the state. This legal requirement increased the demand for a service with a history of fraudulent practices. The TSPCB has taken numerous steps to meet this need for increased regulatory oversight of pretreat providers, including increased surveillance of and investigations into known or suspected pretreat violators. Pretreats are performed on approximately 10,000 commercial structures and a much greater but unknown number of single-family dwellings. Despite considerable priority on pretreat enforcement, consumer protection is thought to be inadequate in this area as reported prices of pretreats are often below valid costs.

Enforcement of the school IPM requirements affects approximately 1,040 public school districts and is intended to protect the health and safety of approximately 4,311,502 students.

**F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.**

### **Complaint Investigation**

The normal process for a citizen's complaint is for a compliant to be sent to the Board and received by the Enforcement staff. The complaint is analyzed to determine if the complaint is jurisdictional or not, and more information may be requested from the complainant before this determination is made. If a compliant is determined to be non-jurisdictional, the complainant is notified of this decision.

If a complaint is determined to be jurisdictional, it is assigned to a field investigator by the Enforcement staff. Field Investigators are strategically located around the state and work from their homes. The subject, licensee or party is informed that a compliant has been opened. The field investigator gathers all pertinent information and evidence relating to the compliant. The field investigator then writes a final report with an assessment of any possible violations. The report will then be reviewed by the enforcement staff to see if further action needs to be taken on the complaint.

When a case investigation is finished and sent to the Enforcement staff, the complaint is reviewed. After review, a decision is made as to punishment, if any. A reviewer may send the complaint back for further investigation if necessary. If the case is accepted to the Enforcement staff, it handled by the enforcement department with assistance from the Investigation staff.

In addition to the above, the complainant, the subject, and licensee are informed of the status of the complaint every 90 days.

The date of the last inspection of a commercial business, noncommercial licensees, and public school districts is tracked in the TSPCB's licensing. This date is used as a basis



to schedule routine inspections. More frequent inspections may be made at businesses having a poor compliance history.

### **Establishment Inspection**

(Routine)

Section 1951.207 of the Occupations Code “requires a business holding a structural pest control business license to be inspected by a field inspector at least once every two years.” Additional inspections are frequently conducted within the first year of a company’s existence or at businesses with a history of violations. Approximately 1,800 licensed pest control businesses are inspected each year.

#### ***Inspection Procedures:***

Whenever possible, inspections are made with prior notice. Prior notice of an inspection might not be given for such reasons as, but not limited to: it is determined that such prior notice might preclude the ability of the investigator to collect needed information or evidence, the appearance that a licensee might be trying to avoid inspection, the licensee has previously demonstrated a lack of candor toward government regulators, the licensee is a repeat offender or is likely to be a repeat offender, or the inspection is in relation to a complaint. All inspections are conducted with proper permission and ordinarily during normal business hours, which is defined as normal working hours when the company ordinarily is open for business. Some inspections are scheduled at other times for the convenience of licensees or establishments being inspected. A “Notice of Inspection” outlining the reason for an inspection is ordinarily issued at the beginning of the inspection.

The establishment inspection should be thorough, but conducted in a manner that allows efficient use of the investigator’s time and does not unnecessarily inconvenience licensees or business owners. The TSPCB has a goal of conducting an in-depth, enhanced inspection on 1 out of 10 inspections. Candidates for enhanced inspections are targeted based on prior enforcement problems or reasons to believe problems exist.

Establishment inspection forms with the business and employee information are routinely generated by investigators from the agency’s computer database. Steps for an inspection are as follows:

1. Introduce himself/herself to owner, operator or agent in charge. Investigator shall wear their picture ID and provide their TSPCB business card.
2. Check business license-Sec. 595.1 (a).
  - A. License holder and number
  - B. Expiration date
3. Insurance - (Date on license may not be the same as the date on the insurance certificate)

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4. Request list of all employees who are working as of that date. Compare that list to the employees listed on the establishment inspection report, noting any discrepancies.
  - A. Name
  - B. Date of hire
  - C. Status, i.e. certified applicator, technician and apprentice
5. Check all certified applicator's licenses
  - A. Expiration date
  - B. Categories
  - C. CEU's required (after the first year licensed as a certified applicator and prior to the last two renewal dates)
6. Technician License
  - A. Expiration date
  - B. Categories
  - C. Required eight hour training (after the first year licensed as a technician)
7. Check all apprentice records of verifiable training.
  - A. Name and I.D. number
  - B. Date employed
  - C. Subjects covered
  - D. Classroom and on-the-job training hours
  - E. Trainer license number
8. Chemical use records – 595.4
  - A. Name, address (billing address if different), date of application
  - B. Name of chemical used (common name of pesticide)
  - C. Total amount of solution applied (rate/dilution %)
  - D. Target pest
9. W.D.I. Reports
  - A. Current form.
  - B. Inspector (licensed technician or certified applicator)
  - C. Areas that are incomplete and/or appear inaccurate (including diagram).
  - D. Signatures of inspector and certified applicator
10. Chemical Storage - (Refer to the label for storage requirements, including ventilation and spill control.)
11. Vehicle Identification and Chemical Storage
  - A. TPCL Numbers on front door or front fender
  - B. Chemical should be stored on vehicle according to label directions
  - C. Backflow device (only if label requires)

12. Disposal of empty pesticide containers. - (Refer to label for disposal requirements. The operator's trash or dumpster can be observed for signs of proper disposal of containers.)

Unless otherwise noted, the procedures mentioned above refer to those records/documents that TSPCB Law and Regulations specifically require to be kept in the business files. The procedures also reflect the most common items that an investigator is likely to encounter during the majority of his/her commercial establishment inspections. Remember that companies that perform pre-construction termite treatments and structural fumigations are also required to keep certain records and documents that are not mentioned above. Please refer to the appropriate Sec. (currently Sec.'s 599.3, 599.4 and 599.11) for these requirements. If available, the investigator shall also check documents such as contracts, consumer information sheets, notice of pest control signs, termite disclosure documents, etc. However, keep in mind that, while the law may require specific information to be on these documents, if the documents are given to a customer, they do not have to be kept in the company's business files.

### **Noncommercial and School IPM Inspections**

A similar procedure is followed for noncommercial establishment inspections and public school district IPM inspections, but a different form is used for the IPM inspections to reflect some of the special requirements for public school districts. A minimum of 400 noncommercial business establishments and 208 school IPM inspections (20% of all districts) are inspected each year. Compliance assistance is usually a major component of these inspections.

### **Use Observations**

Use observations are generally performed on an opportunistic basis as time allows. However, the Board adopted regulations that became effective in 1997 to require notice to the agency of commercial pre-construction termite treatments (TSPCB Reg. §599.3) and amended TSPCB Reg. §599.11 in 2003 to require notice of structural fumigations. The TSPCB Austin headquarters provides information received from notices to Field Investigators. Because of the history of fraud in these segments of the pest control industry and special safety concerns for structural fumigations, experienced investigators have been assigned to set aside selected days each month to be on call specifically for use observations on pretreats and structural fumigation. This arrangement is in keeping with risk evaluation and priorities for enforcement developed by the agency. Unless the use observation is a covert observation, a Notice of Inspection is issued. A simple form with blanks and check boxes for required information is used to record the applicator and pertinent information. Pesticide labels, photographs, statements, and pesticide residue samples may be taken as evidence. A minimum of 200 use observations are conducted each year.

**G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

Funding for inspection, investigation and enforcement functions are from general fund appropriations and U.S. Environmental Protection Agency cooperative grants (so called base funding) and occasionally from discretionary grants from the U.S. Environmental Protection Agency. Current funding includes \$706,548.00 from general fund appropriations and \$150,000 from the Environmental Protection Agency cooperative grant funding for enforcement. License fee revenue collected by the TSPCB that goes into the general fund is far in excess of agency expenditures. Additionally, all revenues from monetary penalties are paid into the general fund.

**H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.**

For licensees or unlicensed individuals that commit a crime, other law enforcement agencies may chose to assist with the investigation of a licensee. However, such agencies often chose not to pursue such cases. When law enforcement agencies do pursue a case, it is for a violation of criminal law while the Board is investigating possible violations of the Texas Structural Pest Control Act.

The Texas Commission on Environmental Quality (TCEQ) has state jurisdiction for waste disposal and administers several federal programs for regulating waste disposal and environmental protection. The TSPCB may enforce label language concerning disposal by its licensees. TCEQ usually only becomes involved if large quantities of material or significant contamination is involved. Likewise, the TSPCB enforces label requirements concerning prevention of exposure or harm to fish and wildlife specified on labels while the Texas Parks and Wildlife Department may also take enforcement action for adverse affects on fish and wildlife.

**Lawn/Ornamental/Turf pest treatment industry**

TDA and TSPCB have shared the regulation of this industry or “category”. With regard to this category, the agencies have different experience/education qualifications for exam, different supervisory requirements, different fees, different record-keeping requirements, different inspection intervals, different vehicle marking requirements, and different insurance requirements.

**Pest Control at Grain Elevators**

TDA’s Farm Storage Pest Control and Fumigation category includes vertebrate pest control at facilities where raw agricultural products are stored. The TSPCB Pest category and Commodity Fumigation category provide for control of pests in manufactured and processed commodities. While there is not a direct overlap, some pest control operators may need to license with both agencies if treating both raw and

processed commodities at the same grain elevator. The Board recommends that this continue.

### **Mosquito treatments – Vector Control and Pest Control**

The Texas Structural Pest Control Act requires commercial operators to be licensed when conducting pest control at structures or the plantings around the structure. This is required regardless of the classification of the pesticide (e.g. general use, restricted use, state-limited use.) The SPC Act also requires that government employees be licensed if conducting this work. The Texas Department of State Health Services (DSHS) provides mosquito identification and monitoring services in selected geographical areas, particularly those areas associated with West Nile virus. DSHS also has a Vector Control licensing category for health-related mosquito and rodent control. The Agriculture Code, which pertains to DSHS in this area, only requires a license from DSHS if restricted-use or state-limited-use pesticides. Each agency has allowed governmental agencies to choose either agency for Vector control operations. TSPCB allows mosquito control and rodent control under the Pest category and DSHS allows it under Vector Control. However, government personnel that also perform general pest control (scorpions, ants, roaches, etc) or weed control in near structures or fumigate pests must be licensed with TSPCB.

DSHS is providing services that are focused on health-related pest control. TSPCB has the larger population of licensees. While TSPCB licensees' pest control work has a definite effect on health-related pests, TSPCB licensees also affect nuisance type pests. The Board recommends that the overlap remains and avoid many from being dually licensed.

Additional information on pesticide applicator licensing and regulation in Texas may be found in Occ. Code Ch. 1951, Agriculture Code Ch. 76 (Texas Pesticide Law) and Texas Administrative Code Title 4, Part 1, Ch. 7, Title 22, Part 25, and Title 25, Part 1, Ch. 267.

**I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The Board and the Texas Department of Agriculture refer any violations involving the other agency's licensees to that agency. The Board also exchanges complaints as appropriate with the Texas Department of State Health Services. Coordination is also fostered by having through the composition of the Board that includes the Commissioner of Agriculture and the Commissioner of Health or their representative. Personnel from all three agencies attend two U.S. Environmental Agency Regional meetings and a minimum of two meetings with the Texas Cooperative Extension as required in U.S. Environmental Protection Agency agreements.

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While the Board and Texas Department of State Health Services have shared jurisdiction, the two agencies for the most part license two different groups. The Board licenses businesses that deal on a one on one basis with individuals as well as contracting with neighborhood associations and governmental entities for ground applications. Most government employees performing vector control and licensed by the TSPCB also perform pest control for additional purposes. The Texas Department of State Health Services licenses only governmental entities that will affect large geographic areas with any pesticide applications and other vector control activities.

The Board entered into a memorandum of understanding with this association in 1993, renewed in 2003, exempting any licensee who is a BCE, from the continuing education requirement, therefore avoiding the duplication of service.

The Board currently has one MOU with Texas Parks & Wildlife concerning the handling of certain animals. An opinion from the Attorney General has been requested interpreting the law discussed in that MOU.

The Board has a MOU with the Texas Department of Transportation concerning licensing of persons performing pest control for maintenance of right-of-way and roadside parks. This MOU prevents duplication of licensing and enforcement with TDA.

<b>J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.</b>
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The Board works primarily with the U.S. Environmental Protection Agency (EPA). EPA's mission is the establishment and enforcement of environmental protection standards consistent with national environmental goals, to conduct research on the adverse effects of pollution and on methods for controlling pollution, the gathering of information on pollution, and the use of this information in strengthening environmental protection programs and assisting others, through grants, technical assistance and other means, in arresting pollution of the environment.

EPA through the Federal Insecticide, Fungicide & Rodenticide Act gives the Board licensing authority so the appropriate party can obtain a license from the Board to apply pesticides around a structure. The Board also receives some federal money as part of a yearly grant from EPA.

The TSPCB participates in the Environmental Crimes Task Force chaired by the Texas Commission on Environmental Quality. Other participants include the Attorney General's Office, Texas Parks and Wildlife Department, Railroad Commission, and the U.S. Environmental Agency Criminal Investigations Division.

The TSPCB cooperates and coordinates with the Texas Cooperative Extension in regard to training materials and training programs for pesticide applicators. The cooperative agreement with the U.S. Environmental Protection Agency requires that we meet at a minimum of twice per year. To better facilitate coordination and avoid

duplication, the TSPCB, TDA, State Department of Health Services, and Texas Cooperative Extension meet together two to four times per year.

The TSPCB serves on the Pesticide Subcommittee of the Ground Water Task Force chaired by the Texas Committee on Environmental Quality. The subcommittee coordinates efforts to protect groundwater from pesticide contamination and develops a state plan for addressing pesticide issues relating to groundwater as required by the U.S. Environmental Protection Agency.

The TSPCB is working with cities to prevent conflicts with termiticide regulations and International Residential Code amendments.

**K. If this program or function is contracted out, provide a description of how you ensure accountability for funding and performance.**

The Board does not currently contract out any enforcement or investigative services other than analysis of pesticide samples and pesticide residue samples by the TDA laboratory in College Station. All samples are assigned numbers and recorded on collection reports and tracking forms. The TSPCB's Quality Assurance Manager is responsible for assuring proper performance and files an annual report with the U.S. Environmental Protection Agency.

**L. What statutory changes could be made to assist this program in performing its functions? Explain.**

**Insurance-Errors & Omissions** - Since the last Sunset review in 1991, the phrase "errors and omissions" (*E&O*) has become a common term in the insurance world. It is not entirely clear in the agency's act if the TSPCB can require the inclusion of such coverage. Should the law be clarified to reflect the inclusion or exclusion option? The Board has communicated with Texas Department of Insurance staff on the issue. Several complainants and licensees have been affected by this insurance industry practice. One complainant from New Braunfels, Texas has volunteered to provide information to the Sunset staff. A survey was conducted after the second committee meeting in April 2005. A summary of the results is shown in Attachment I. The results are mixed. Some insurance companies are focused on providing (selling it with the policy or as an add on cost) *E&O* and others are not focused on providing it. This shows the importance of resolving whether this should be required or not required. The Board recommends clear statutory requirement for *E&O*.

**Insurance** – Minimum coverage – The minimums have not been raised since 1991. Should they be raised to better protect the public as well as licensees? The next likely time for this to be thoroughly reviewed is 2019. A survey was conducted in April 2005. A summary of the results is attached. With the exception of Hooper & Hines, most insurance companies are providing higher coverage minimums to half or more of their customers. The Board recommends that the minimums be raised, but need more data on the amount.

**Law clarification for Occupational Code 1951.303 (b) (2) (F) Warehouses**

Is this only referring to stand alone warehouses or would include large (how large?) storage areas attached to wholesale/retail outlets? Would this include warehouses where people rent to store their personal and business items? The Board recommends that a definition is needed.

**Criminal Offenses** – The Board has ample authority to take civil and administrative penalty actions. However, the current law allows for criminal penalties of only Class C types on first offenses and Class B types on subsequent offenses of the same violation. Class C penalties are the equivalent of a traffic ticket. The Board recommends change the law to include Class B type offenses for first time offenders that intentionally violate licensing requirements.

**School IPM law terminology** – The word “list” is used throughout the law. Would the word “category” be a better word? Board recommends that the word be changed category and criteria.

**Law clarification for definition of school**

Does “school” include “charter” schools? The Board recommends that a definition is needed. The Board would like the legislature to clarify whether charter schools or private schools (with or without state funds) or home-based schools should be included or not.

**School IPM Terminology and Reentry Periods**

Section 1951.212. of the Structural Pest Control Act (formerly section 4J before recodification) was adopted by the Texas Legislature in 1991 as part of Sunset changes. This section of the Act (along with the Board’s rules adopted to implement school integrated pest control (IPM) programs) has contributed significantly to improvements in pest control practices in Texas Public school districts and reductions in the exposure of students and faculty to pesticides. However, one provision of the act is virtually impossible to fairly administer (product list), another provision is antiquated in regard to current pest control products and technology (no students present for 12 hours rule), and the Board is uncertain on application of the law to public schools other than school districts (charter schools and state schools). The Board believes some simple amendments to section 1951.212 of the Texas Structural Pest Control Act can remedy the first two problems.

Because of the large number of pesticides registered with the U.S. Environmental Protection Agency and the Texas Department of Agriculture (more than 15,000), the rapidity with which products come and go in the market place, and FIFRA section 25(b) pesticides that do not require registration, it is impossible to equitably produce a list with any certainty that all eligible products are included. The Board has developed categories and criteria that meet the intent of the statute but use of the word list creates expectations that cannot be reasonably and fairly met over any extended length of time. By directing the Board to develop criteria and categories for pesticides that may be used at schools, the confusion is removed and no one manufacturer’s product that meets the



standards is favored over another's nor does the Board have to constantly be adding and subtracting products from a list. Additionally, this approach gives greater emphasis to use of least toxic alternatives.

The current requirement that in the statute prohibiting pesticide application to school facilities and grounds except when students will not be present for organized activities for 12 hours is not appropriate for all types of pesticide applications. Changes in pest control practices, pesticide products, and application methods make it possible to make applications without subjecting students and staff to exposure. For instance, non-volatile baits in tamper resistance containers do not present an exposure risk. This change will help school personnel as well as pest control operators in that it will allow reasonable uses that do not pose a hazard to students or faculty during regular work hours thus resulting in savings to public schools. Additionally, the proposal will make it easier to address emergency situations such as swarms of bees or wasps, or fire ant invasions.

Suggest amendments are as follows with additions in *italics* and deletions in brackets[ ]:

§ 1951.212. INTEGRATED PEST MANAGEMENT PROGRAMS FOR SCHOOL DISTRICTS.

- (c) The board shall include in standards adopted under this section:
  - (1) a requirement to use the least toxic methods available to control pests, rodents, insects, and weeds; and
  - (2) [list of] *criteria and categories* for products that a school district is allowed to use in its applications.
- (d) The board shall *adopt rules* [require] *concerning when* [that] a pesticide may be applied to a school building or on school grounds [only when students are not expected to be present for normal academic instruction or organized extracurricular activities for at least 12 hours] and *reentry periods* after the application.
- (e) A school district shall adopt an integrated pest management program that incorporates the standards established by the board under this section.

**Inspection and Investigation Authority**

The current law provides inspection and investigation authority to the Board. However, except for its subpoena authority, additional details on its authority would be useful for the Board, the public and the industry. The Board recommends the following additions to the Texas Structural Pest Control Act that were mostly borrowed from Chapter 76 of the Ag Code used by the Texas Department of Agriculture:

Sec. ENTRY POWER.

- (a) For the purpose of inspection, examination, or sampling, the board is entitled to enter at reasonable hours any building or place owned, controlled, or operated by a licensee or person performing structural pest control unlawfully if from probable cause it appears that the building or place contains a pesticide or application equipment.
- (b) The agency is entitled to enter any public or private premises at reasonable times to:

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(1) inspect any equipment authorized or required to be inspected under this chapter or to inspect the premises on which the equipment is kept or stored;

(2) *inspect* or sample land exposed or reported to be exposed to a pesticide;

(3) inspect an area where a pesticide is disposed of or stored; or

(4) observe the use and application of a pesticide.

(c) If the board is denied access to any land to which access was sought at a reasonable time for any of the purposes listed in Subsection (b) of this section, the head of the regulatory agency may apply to a magistrate for a warrant authorizing access to the land for any of those purposes. On a showing of probable cause to believe that a violation of a rule relating to a purpose listed in Subsection (b) of this section has occurred, the magistrate shall issue the search warrant for the purposes requested.

In instances where EPA decides to phase out a structural pesticide, this language would be very useful in fulfilling our mission. Examples include the past phase out of chlordane and the current phase out of Dursban. Future phase out that EPA has discussed include methyl bromide.

### Sec. STOP SALE, STOP USE, STOP DISTRIBUTION, OR REMOVAL ORDER.

(a) If the agency has reason to believe that a pesticide, a product treated with a pesticide, or the use of a pesticide is in violation of any provision of this chapter or of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the board may issue and enforce a written or printed order to stop the use or distribution of the pesticide or pesticide treated product or requiring the pesticide or pesticide treated product to be removed and secured from further distribution. The board shall present the order to the owner or custodian of the pesticide or pesticide treated product. The person who receives the order may not sell, distribute, or use the pesticide until the board determines that the pesticide:

(1) is in compliance with this chapter; or

(2) does not present a hazard to the public health, safety, or welfare.

(b) This section does not limit the right of the board to proceed as authorized by another section of this chapter.

### Sec. APPEAL OF STOP SALE, STOP USE, STOP DISTRIBUTION, OR REMOVAL ORDER.

(a) The owner or custodian of a pesticide or pesticide product to which a stop use, stop distribution, or removal order is imposed under Section 76.153 may appeal the order to a district court of Travis county.

(b) Appeal under this section is by trial de novo.

**M. Provide any additional information needed to gain a preliminary understanding of the program or function.**

As mentioned previously, a complaint is sent to the Board and received by the Enforcement staff. The complaint is analyzed to determine if the complaint is jurisdictional or not, and more information may be requested from the complainant before this determination is made. If a complaint is determined to be non-jurisdictional, the complainant is notified of this decision.

If a complaint is determined to be jurisdictional, it is assigned to a field investigator by the Enforcement staff. The subject, licensee or party is informed that a complaint has been opened. The field investigator gathers all pertinent information and evidence relating to the complaint. The field investigator then writes a final report with an assessment of any possible violations. The report will then be reviewed by the Enforcement staff to see if further action needs to be taken on the complaint.

When a case investigation is finished and sent to the Enforcement staff, the complaint is reviewed. After review, a decision is made as to punishment, if any. A reviewer may send the complaint back for further investigation if necessary. If the case is accepted by the Enforcement staff, it is handled by the Enforcement department with assistance from the Investigation staff.

In addition to the above, the complainant, the subject, and licensee are informed of the status of the complaint every 90 days.

**N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Regulation review occurs on a quadrennial basis. The Board will complete this current review process in August 2005.

Licensed entities are inspected at least once every two years as defined by Occ. Code §1951.207.

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When an investigator inspects a company and believes follow-up activity is necessary, another visit may be scheduled. An investigator may also do a follow-up visit after the Board has settled a complaint as a condition of settlement.

The Board uses a penalty matrix to make penalty determinations. Sanctions go up if violations are repetitive during a three-year period. For more difficult violators, referral to the Office of the Attorney General for injunctive relief can take place and as a final step, criminal prosecution can occur.

The Board has an investigator's manual that discusses procedures for handling consumer/public complaints against licensees. A copy is attached.

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In addition to the above, the complainant, the subject, and licensee are informed of the status of the complaint every 90 days.

**O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.**

<b>Texas Structural Pest Control Board Regulates Pest Services Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2003 and 2004</b>		
	<b>FY 2003</b>	<b>FY 2004</b>
Total number of regulated persons	13,769	14,356
Total number of regulated commercial entities	3,366	3,458
Total number of school districts regulated	1,040	1,040
Approximate number of noncommercial entities regulated	28,000	28,000
Total number of entities inspected	1,401	2,157
Total number of complaints received from the public	198	203
Total number of complaints initiated by agency	619	604
Number of complaints pending from prior years	1	25* appx. (year still open)
Number of complaints found to be non-jurisdictional	6	8
Number of jurisdictional complaints found to be without merit	133	113
Number of complaints resolved	813	782
Average number of days for complaint resolution	56.4	73.9
Complaints resulting in disciplinary action:	402	332
administrative penalty	95	100
reprimand	269	223
probation	4	7
suspension	1	1
revocation	2	3
other	193	296

**A. Provide the following information at the beginning of each program description.**

**GOAL 3: EDUCATION AND AWARENESS**

<b>Name of Program or Function</b>	<b>Goal 03: Education and Awareness</b> Provide for Public Education and Awareness of Pest Control Matters
<b>Location/Division</b>	Austin/
<b>Contact Name</b>	Jeff Isler – Program Specialist
<b>Actual Expenditures, FY 2004</b>	\$61,237.45

<b>Number of FTEs as of August 31, 2004</b>	2.0
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**B. What is the objective of this program or function? Describe the major activities performed under this program.**

The objective of this function is to provide for the education and awareness to the citizenry of Texas concerning matters relating to pest control, with emphasis on integrated pest management (IPM) in Texas public schools. The major activities performed under this program include:

1. Providing education and information to the public and the pest control industry through personal, written and electronic communication.
2. Responding to requests for information from the public and the pest control industry in a timely manner.
3. Monitoring and inspecting public schools to ensure compliance with regulations regarding IPM.

**C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.**

**Key Performance Measures  
Education & Awareness  
FY 2000 – FY 2004**

<b>Output Measure</b>	<b>FY 2000</b>	<b>FY 2001</b>	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>
<b>Number of Information Requests Filled</b>	3,765	4,180	17,616	7,066	77,395
<b>Average Days to Fill Information Requests</b>	1.9	2.1	2.1	3.7	3.3
<b>Number of Public School Inspections</b>	307	242	922	366	238
<b>Percentage of Independent School District's Reviewed Regarding IPM</b>	26.57%	17.54%	80.84%	29.55%	21.92%

Due to staff turnover and reductions in force, measures enacted because of budget cuts, meeting all FY 2000-2004 goals required extraordinary effort and considerable overtime. Nonetheless, TSPCB met or exceeded projections of annual performance measures for Education & Awareness for the last five years with few exceptions. A misunderstanding between Legislative Budget Board (LBB) and the agency concerning the targeted number of public school district IPM inspections for FY 2002 placed considerable demands on investigator time and travel; however, by shifting away from other noncommercial applicator inspections, the TSPCB accomplished this performance goal. In FY 2003, reduction in force, legislative mandated budget cuts, and increased

operating costs hampered the TSPCB in accomplishing some of its performance measures at the high levels of past years. During the 78<sup>th</sup> Regular Texas Legislative Session, the LBB decreased some of the measure numbers it requires the TSPCB to report.

**D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

As mentioned in the general agency history section, the Texas Legislature created an integrated pest management (IPM) program for schools in 1991. The Board was given the responsibility to develop standards and criteria for the use of pesticides and other related chemical agents at school buildings and other facilities of school districts. During the 1993, 1995, 1999, and 2001 sessions of the Legislature, TSPCB sought additional funding for the IPM mandate in public schools. Minimal state funding has been received for the continuing responsibility of IPM in schools. With the assistance of federal funds and partnering with the school associations and the Texas Cooperative Extension, the State of Texas has made progress toward school IPM. The program has excelled in providing information on the least toxic, realistic and economical pest control for schools. While compliance assistance has helped most school districts comply, the Board has had to take enforcement action on approximately 4% (4 year average) of the public school districts. Most actions consisted of warnings.

In 1991, the Texas Structural Pest Control Board was also mandated and given the responsibility to establish a public information program and to develop a clear, factual and balanced Consumer Information Sheet and posting requirements for the workplace 48 hours prior to the application of pesticides.

TSPCB's web site was totally revamped during 1999 to make it user-friendlier. The Board has received numerous comments on the amount of useful material and ease of navigating the site.

In FY 2000, TSPCB surveyed integrated pest management programs in 292 Texas public schools. TSPCB provided compliance assistance to improve IPM plans, to reduce pesticide exposure of children, and to reduce environmental contamination (multimedia) was provided during visits to 300 school districts. A vast majority of districts demonstrated excellent compliance with school IPM requirements.

In FY 2001, TSPCB completed a project to develop a PowerPoint presentation on school IPM and has distributed it nationally via two list serves. Also in 2001, TSPCB in cooperation with the Bastrop, Ector County, and Houston Independent School Districts completed a school IPM demonstration project (a companion project was conducted by the Louisiana Department of Agriculture) to evaluate the effectiveness of IPM treatments. The IPM demonstration project was originally scheduled for completion in FY 2000, but due to loss of key staff members, an extension was obtained from EPA for continuation of the project in FY 2001.

In May 2002, the agency added a feature to the web site that allows both the public and industry members to search for all TSPCB licensees. Additionally, the agency added a feature to the web site that allows both the public and industry members to search for all TSPCB licensees. In June 2002, the agency launched an e-mail list server program to communicate news about the agency to all interested persons. In the first two months that the service was in operation, 100 new persons were added to the list. By the fall 2003, the list totaled 1,300 subscribers.

In FY 2004, the TSPCB undertook numerous actions to alert the public about potential fraudulent or harmful pesticide applications through various media such as newspapers, radio and television. On July 1, 2004, the TSPCB released a news bulletin alerting consumers in the San Antonio area about an unlicensed company performing fraudulent treatments for oak wilt. That news release was picked-up by several San Antonio area newspapers and one local newscast. In FY 2004, the TSPCB also released consumer alerts regarding the fraudulent activities of one Dallas area termite pre-construction applicator. In FY 2005, the deceptive advertising of automated mosquito misting systems, and an imposter posing as a pest control operator.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

The Education & Awareness program potentially affects all the citizens of the state of Texas. This includes consumers of pest control services, structural pest control licensees, and the employees of government agencies, educational institutions, apartment buildings, day-care centers, hospitals, nursing homes, hotels, motels, lodges, warehouses, and food-processing establishments (other than a restaurant, retail food, or food service establishment).

The U.S. Census Bureau, Census 2000 indicates that the Texas population is 20,851,820. Special target populations include the approximately 3,400 structural pest control businesses, 14,000 licensed applicators, 1,040 public school districts, and 22,000 other establishments (apartment buildings, day-care centers, hospitals, nursing homes, hotels, motels, lodges, warehouses, food-processing establishments, and educational institutions) under jurisdiction of the Board in regard to pest control.

The IPM component of this program immediately affects the approximate 1,040 public school districts in the state of Texas required to implement IPM programs, those school employees who are designated as IPM coordinators (at least one employee per district) or are licensed to perform pest control at schools, and the commercial pest control licensees who are contracted with school districts to perform pest control at schools. In requiring certain posting and notification procedures and providing information on the least toxic, realistic and economical pest control methods for schools, this program also affects all employees and students of a public school district and the parents or guardians of those students.



There are no qualifications or eligibility requirements for any citizen of the State of Texas to receive general information from TSPCB. Information retained by the Board is subject to Section 552.301(c), Government Code (Texas Public Information Act). Persons seeking information on a pending complaint; complaint history of a pest control company, or operator; licensees; and licensing history; must file a request with the Board's Public Information Office. (If a complaint is currently pending or being reviewed by the Board, the information may or may not be released until the Board's investigation is complete depending on whether the release would jeopardize the enforcement actions.) The Board staff reviews all other requests for information to determine whether the information requested meets the criteria for records accessible to the public.

**F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.**

Although two FTE's are designated for the Education and Awareness program, this is the equivalent of the total work hours for a variety of TSPCB employees who work toward program goals. For instance, almost all employees answer requests for general information as part of their regular duties. This may simply be answering the phone or replying to letters and e-mail, but can include updating the web site, mailing out brochures and information packets, or providing spoken presentations to groups and associations. While specific individuals are designated to provide specialized information, such as legal or technical data, other employees are capable of answering these requests when the designated person is unavailable.

The function of the Public Information Office is handled by individuals from the enforcement and licensing divisions who review requests and provide the appropriate information in addition to other duties performed under other programs. The requests can either be submitted electronically or in writing. That information is then distributed through a variety of media, depending on the nature of the request.

Education and awareness is also disseminated through the agency's 16 field investigators while providing continuing education classes, conducting routine inspections, or investigating consumer complaints. The field investigators are a key factor in realizing the integrated pest management component of this goal, since they are the employees who must ensure compliance at public schools on a regular basis.

The Board has implemented a web site, which has allowed us to provide more customer-related materials and information via the Internet. The web site serves as a general starting point for public access to those with Internet access and who are interested in structural pest control in the State of Texas. Pest control operators can obtain updated forms, information on exam dates and Board meetings and regulation changes on the web site. Complainants can obtain information concerning complaint resolution procedures, complaint forms, and consent forms for release of confidential medical information through the TSPCB web site. Additionally, the public can obtain

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information on various aspects of structural pest control and Board services from the Board's web site. An e-mail news list system was also implemented to provide timely information to agency customers.

The TSPCB receives inquiries and comments from the public including the regulated sectors via telephone, fax, mail, and e-mail. The agency can be contacted by e-mail and through its web site. Agency staff also attends and make presentations at numerous training sessions and association meetings. Other major sources of contact are at examination sites and during the more than 2,500 inspections and use observations conducted annually. The TSPCB receives input from the public via complaints concerning activities of licensees or applicators who should be licensed. Knowledge of whom and where to file such complaints is facilitated by Board requirements concerning jurisdiction statements on contracts, service agreements, and warranties and various requirements for posting signs, and consumer information sheets, and termite treatment disclosures. Additionally, the Board conducts a minimum of four (4) public meetings each year that provide for public input.

The TSPCB customer service effectiveness for the consumers and pest control industry of Texas improved with an upgrade in the office telephone system in FY 2002. Providing a toll-free number has been a frequent request; however, the cost of implementation has not been included in the agency's budget.

The TSPCB has also developed and published a Spanish language brochure entitled "Uso del Manejo Integrado de Plagas para Combatir las Plagas Domesticas" concerning household IPM and the hazards of using agricultural pesticides in the home. TSPCB investigators distributed the brochure to pest control companies, government agencies, and the public. English and Spanish versions are posted on the TSPCB web site.

Customer satisfaction as measured by surveys conducted in 2002 and 2004 and based on the tabulation of the surveys received, the Texas Structural Pest Control Board feels the overall response was positive.

**G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

For FY 2004 – 2005, the Legislature appropriated \$1,370,262 to TSPCB of which \$81,650 was appropriated specifically for the Education and Awareness program. Federal funds are deposited into general revenue and then distributed across all TSPCB programs as needed. In FY 2004, TSPCB received a total of \$281,733 in federal funds for all programs.

**H. Identify any programs, internal or external to your agency, that provides identical or similar services or functions. Describe the similarities and differences.**

There are no agencies that provide identical structural pest control regulatory functions. The Texas Cooperative Extension (TCE) as a whole provides education and information on variety of subjects including 4-H and youth, family and consumer sciences, community development and agriculture and natural resources, conservation fiber production, home gardening, and public health. Although (TCE) has no statutory authority to regulate the pest control industry or enforce compliance with state laws, TCE provides pest control related information to the citizens of Texas. TCE serves every county in Texas with 250 offices and 1,400 personnel. TCE is supported by the Texas A&M University system and is staffed by trained entomologists and educators. TEC's Agricultural and Environmental Safety division offers pesticide education and training to many of the individuals licensed with the TSPCB. However, this division must split its resources between agricultural and structural pesticide applicators. Not every county office staff's individuals with specialized knowledge of structural pests and pest control methods.

In the spring of 2001, EPA provided grant money to TCE to create a center to promote IPM and provide technical support and IPM resources to schools and childcare facilities in Texas, Oklahoma and New Mexico. This center, the Southwest Technical Resource Center for IPM in Schools and Childcare centers also provides education and training to individuals subject to TSPCB regulations regarding IPM in public schools. Like TCE, the Southwest Technical Resource Center has no authority to regulate pest control in public school districts or enforce compliance with state laws.

**I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

TSPCB meets with representatives from TCE and other Texas agencies involved with pesticide regulations on a quarterly basis to discuss training and certification issues. While TCE publishes study materials for TSPCB licensing exams (this is a stipulation of a grant administered to TCE by EPA) and TSPCB aids TCE in developing this material, there are no MOU's, contracts or formal agreements between these two entities.

**J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.**

Section 23 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) allows a state to enter into an agreement with EPA for certification of pesticide applicators by the state, and Section 26 of FIFRA grants a state primary enforcement authority for pesticide use violations if the state has adopted adequate laws, adopts and implements

adequate enforcement procedures, keeps records and files reports. As lead agency for the State of Texas, the Texas Department of Agriculture with the cooperation of TSPCB has entered into an agreement with the Administrator of EPA that qualifies TSPCB to certify applicators, take pesticide misuse enforcement actions under FIFRA, and qualify for federal grant funding. The Texas Structural Pest Control Board has used grant monies primarily to perform federal activities that overlap state mandates.

**K. If this program or function is contracted out, provide a description of how you ensure accountability for funding and performance.**

N/A

**L. What statutory changes could be made to assist this program in performing its functions? Explain.**

School IPM law terminology – The word “list” is used throughout the law. Would the word “category” be a better word? The Board recommends: Change the word to category and criteria.

Does “school” include “charter” schools? The Board recommends that a definition is needed. The Board would like the legislature to clarify whether charter schools or private schools (with or without state funds) or home-based schools should be included or not.

School IPM additions in *italics*; deletions in [ ]. Changes for doing away with “list” and the standard 12 hr. reentry.

(1) a requirement to use the least toxic methods available to control pests, rodents, insects, and weeds; and

(2) [list of] *criteria and categories* for products that a school district is allowed to use in its applications.

(e) A school district shall adopt an integrated pest management program that incorporates the standards established by the board under this section.

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Customer satisfaction as measured by surveys conducted in 2002 and 2004 and based on the tabulation of the surveys received, the Texas Structural Pest Control Board feels the overall response was substantially positive.

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- **why the regulation is needed;**
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- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

The statute requires that the agency provide information and inspections related to pesticide treatment of public schools, day cares, nursing homes, hospitals,

## Self-Evaluation Report

motels/hotels, food processing plants, warehouses, and apartment complexes. The statute also requires posting of treatment information in these places so that persons are aware of scheduled treatments. This allows the public to take the necessary precautions that are appropriate for their personal health and safety concerns. Without this requirement and agency function, persons would have less opportunity and less choice in protecting their personal health and safety.

Although the agency has sole statutory regulatory authority regarding integrated pest management in schools, the agency has investigated several pesticide misuse cases at schools over the years. One of the catalysts for the statutory requirement for public school integrated pest management information (IPM) was a misuse of a cattle pesticide spray (Lindane) in a public school in Chillicothe, Texas. The statute now requires that the least toxic pest control treatment be considered before using higher toxicity treatments. The agency's public information efforts have led to an increase in noncommercial licenses.

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When a case investigation is finished and sent to the Enforcement staff, the complaint is reviewed. After review, a decision is made as to punishment, if any. A reviewer may send the complaint back for further investigation if necessary. If the case is accepted by the Enforcement staff, it is handled by the Enforcement department with assistance from the Investigation staff.

In addition to the above, the complainant, the subject, and licensee are informed of the status of the complaint every 90 days.

**O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.**

As mentioned previously, a complaint is sent to the Board and received by the Enforcement staff. The complaint is analyzed to determine if the complaint is jurisdictional or not, and more information may be requested from the complainant before this determination is made. If a complaint is determined to be non-jurisdictional, the complainant is notified of this decision.

If a complaint is determined to be jurisdictional, it is assigned to a field investigator by the Enforcement staff. The subject, licensee or party is informed that a complaint has been opened. The field investigator gathers all pertinent information and evidence relating to the complaint. The field investigator then writes a final report with an assessment of any possible violations. The report will then be reviewed by the Enforcement staff to see if further action needs to be taken on the complaint.

When a case investigation is finished and sent to the Enforcement staff, the complaint is reviewed. After review, a decision is made as to punishment, if any. A reviewer may send the complaint back for further investigation if necessary. If the case is accepted to the Enforcement staff, it handled by the Enforcement department with assistance from the Investigation staff.

In addition to the above, the complainant, the subject, and licensee are informed of the status of the complaint every 90 days.

### VIII. Statutory Authority and Recent Legislation

**A. Fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact your agency. Do not include general state statutes that apply to all agencies, such as the Public Information Act, the Open Meetings Act, or the Administrative Procedure Act. Provide information on Attorney General opinions from FY 2001 - 2005, or earlier significant Attorney General opinions, that affect your agency's operations.**

<b>Texas Structural Pest Control Board Exhibit 13: Statutes/Attorney General Opinions</b>	
<b>Statutes</b>	
<b>Citation/Title</b>	<b>Authority/Impact on Agency</b> (e.g., "provides authority to license and regulate nursing home administrators")
Chapter 1951, Occupations Code, Texas Structural Pest Control Act	Enabling act: licensing application, examination, renewal, continuing education, complaints, enforcement and discipline, specific requirements of practice
Chapter 131, Agriculture Code	Beekeepers
Chapter 76, Agriculture Code	Local Regulation of Pesticide Sale or Use
Chapter 71, Agriculture Code	Person Performing Pest Control Work Regulated by Department of Agriculture
7 U.S.C. §136	Federal Insecticide, Fungicide & Rodenticide Act (FIFRA)

<b>Attorney General Opinions</b>	
<b>Attorney General Opinion No.</b>	<b>Impact on Agency</b>
City of Greenville - DM-221 (1993)	Regulation by state supercedes regulation by municipality
Contracts - JC-0324 (2001)	The amount of jurisdiction that the Board has in contract matters.



**B. Provide a summary of recent legislation regarding your agency by filling in the chart below or attaching information already available in an agency-developed format. Briefly summarize the key provisions. For bills that did not pass, briefly explain the key provisions and issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation).**

<b>Texas Structural Pest Control Board Exhibit 14: 79th Legislative Session Chart</b>		
<b>Legislation Enacted - 79th Legislative Session</b>		
<b>Bill Number</b>	<b>Author</b>	<b>Summary of Key Provisions</b>
HB 2018	Swinford	The bill clarified regulatory agencies participation in Texas Online. TSPCB was already and remains a participant.

<b>Legislation Not Passed - 79th Legislative Session</b>		
<b>Bill Number</b>	<b>Author</b>	<b>Summary of Key Provisions/Reason the Bill Did Not Pass</b>
HB 3318	B. Brown	The bill addressed continuing education (CEU) requirements. The bill did not pass because most licensees currently obtain the CEU's and the Board has authority to increase CEU's as needed.

## IX. Policy Issues

### A. Brief Description of Issue #1

Should pest control operators need to be licensed by both TSPB and TDA if treating both raw and processed commodities at the same grain elevator?

### B. Discussion

TDA's Farm Storage Pest Control and Fumigation category includes vertebrate pest control at facilities where raw agricultural products are stored. The TSPCB Pest category and Commodity Fumigation category provide for control of pests in manufactured and processed commodities. While there is not a direct overlap, some pest control operators may need to license with both agencies if treating both raw and processed commodities at the same grain elevator.

### C. Possible Solutions and Impact

Board recommends continuing this so that licensees at either agency the opportunity to perform this work. This would not cause any change. Treating raw commodities has different considerations from treating processed commodities.

### A. Brief Description of Issue # 2

Should mosquito treatments be regulated by both DSHS (vector control) and TSPCB (pest control)?

### B. Discussion

The Texas Structural Pest Control Act requires commercial operators to be licensed when conducting pest control at structures or the plantings around the structure. This is required regardless of the classification of the pesticide (e.g. general use, restricted use, state-limited use.) The TSPC Act also requires that government employees be licensed if conducting this work.

The Department of State Health Services (DSHS) provides mosquito identification and monitoring services in selected geographical areas, particularly those areas associated with West Nile virus. DSHS also has a Vector Control licensing category for health-related mosquito and rodent control. The Agriculture Code, which pertains to DSHS in this area, only requires a license from DSHS if restricted-use or state-limited-use pesticides. Each agency has allowed governmental agencies to choose either agency for Vector control operations. TSPCB allows mosquito control and rodent control under the Pest category and DSHS allows it under Vector Control. However, government

personnel that also perform general pest control (scorpions, ants, roaches, etc) or weed control in near structures or fumigate pests must be licensed with TSPCB.

**C. Possible Solutions and Impact**

The Board recommends that the DSHS provide services that are focused on health-related pest control. TSPCB has the larger population of licensees. While TSPCB licensees' pest control work has a definite effect on health-related pests, TSPCB licensees also affect nuisance type pests. The Board recommends leaving the overlap and avoids many from being dually licensed.

**A. Brief Description of Issue #3**

Should the Texas Structural Pest Control Act be amended from Class C to Class B Misdemeanor penalties on unlicensed persons that intentionally violate the Act?

**B. Discussion**

The Board has ample authority to take civil and administrative penalty actions. The current law also allows for criminal penalties of Class C types on first offenses and Class B types on subsequent offenses of the same violation. Class C penalties are often the equivalent of a traffic ticket. With serious and repeat violators that are not deterred by administrative or civil penalties, criminal penalties are a more appropriate remedy.

**C. Possible Solutions and Impact**

The Board recommends changing the law to include Class B type offenses for first time offenders that intentionally violate licensing requirements.

**A. Brief Description of Issue #4**

Should the agency's resources be increased to more readily meet current and future demands from a growing Texas population and growing licensee population?

**B. Discussion**

The agency is very efficient, lean and effective with the resources it is given. However, the agency would be more efficient and more effective if given additional resources to perform its tasks. The examples are numerous:

The agency currently brings in about \$2.1 million in fees (and another \$2-300,000 in fines) and is appropriated about \$1.3 million. There is about another \$.4 million that is known as "Other direct and indirect costs" that helps pay items such as fringe benefits, building space maintenance, state auditor, and comptroller office expenses. That still leaves a differential of \$400,000 to \$600,000. The Arizona Structural Pest Control Commission's budget is twice as large as TSPCB while serving an Arizona population of one-fourth the size of Texas.

The agency absorbed a 23% increase in mileage rate reimbursement in FY 2002. Fees were not raised and no additional appropriations were provided by the legislature for this rate increase. The agency does not own any state vehicles. Investigators are reimbursed mileage for their personal vehicles. The then-new Executive Director (E.D.) worked with Field Operations staff to create more efficient investigation and inspection routing. The E.D. also reduced the historical travel spending of the executive director's position by over 60% by having local field investigators (rather than the E.D.) conduct continuing education classes on the laws and regulations for smaller audiences. The investigators travel directly from their residences to their investigation and inspection sites. While these mileage rate increases were absorbed through identifying efficiencies, the agency cannot absorb future mileage rate increases without a parallel increase in funding.

Unlike most other agencies, TSPCB does not have the funding to replace its computers on a scheduled replacement basis. While the agency obtains a few of its computer replacements through its base operating funds, the agency has had to seek other replacements through less dependable means. For example, some of the agency's computer replacements have been through undependable federal grant discretionary funds and by seeking older computers from the Texas Department of Insurance (TDI). Federal discretionary money has been trending downward. The key word is "discretionary". It is provided by the Environmental Protection Agency at their discretion. By obtaining older computers from TDI, the agency is hoping to get a few more months out of the older TDI computers. At this time, it is not known if the older TDI computers will prove to be an effective and efficient method to obtain computers because of the potential TSPCB labor costs that might be needed to rework, repair or modify the computers. Without funding for its own replacements, the agency is forced to seek replacement computers that another agency believes are too costly because of the potential repair costs.

The agency is using Foxpro software. While this is a 20-year-old-system, the agency has not had the funding or the staff to quickly convert the system to a more an updated language. The staff has sought help from the Hobby IT Building Working Group and is conducting a pilot to see if the TSPCB part-time help-desk person can make the conversion. If the Foxpro software is not converted to an updated software language (e.g. Access) in FY2005 through the Hobby Building IT working group's efforts or through staff's own technical abilities, then funds need to be obtained for conversion through a contractor. Estimated contractor costs are about \$30,000. While this is partly a fiscal issue, without such improvements, programmatic problems occur.

No funding was given to the agency in 1991 when School Integrated Pest Management (IPM) or noncommercial law segments (day cares, nursing homes, hospitals, apartments, warehouses, food processors, and hotels) were added. These additional assignments further stretched the agency's resources. These assignments have been partially dealt with as federal discretionary funds have been secured to conduct inspections of small cross-sections of these noncommercial entities. The discretionary funds are usually one-time funding opportunities not likely to be repeated for these purposes anytime in the foreseeable future. There is a downward trend in EPA discretionary funding.

The legislature reduced the agency's FY 04 budget by 12.5%. This resulted in a 20.5% reduction in agency staff for the FY 04-05 biennium. The staff reduction was more than the percentage cut because the agency was at least 8% behind in its funding needs before the legislative cut. The issues are well documented in the last several Strategic Plans and Legislative Appropriations Requests. Budget issues continue with rising postage costs, rising computer replacement costs, inflation on supplies such as printing ink, fewer federal discretionary funds are predicted, and legislative approved retirement incentives that are paid from the agency's budget. While the agency staff and budget have been shrinking, the state's population and structures continue to grow. Texas' population has increased from 17 million people in 1990 to over 22 million people in 2004. According to Texas A&M University, Texas adds over 100,000 new homes each year that are subject to termite treatments and other pest control needs. The number of new commercial buildings treated for termite prevention stands at least 10,000 new structures per year according to the number of notices received at the agency. Unlike several other agencies, the agency does not currently have the authority to raise fees to offset these issues. The agency could raise the fees but it does not receive the funds unless the legislature also appropriates the funds.

Surprises/Trends/Unknowns - Surprises occur to everyone whether it as individuals, families, businesses or government agencies. Good planning would dictate that the resource needs be available even though the agency might not be able to know years in advance what the need might be "named". Likewise, trends are not always seen in the early stages. Who knew 10 years ago that West Nile virus would be a hot issue in 2002 and beyond? Three years ago, who knew that home-based mosquito-misting systems would proliferate and generate the volume of complaint investigations, human exposure concerns, and state and federal-level interest? Prior to the year 2000, who knew that the progression of the Formosan termite would be so wide spread and that the devastation that they cause would be so much higher than the states' indigenous termites? Who knew five years ago that the International Residential Code would create issues in the pest control industry in Texas? Most recently, we were surprised about an unlicensed operator using sodium cyanide to fumigate houses. The investigation is in its early stages but we have already spent hundreds of hours of investigative and legal resources to get the operator stopped immediately on this high-risk case. This case is of national concern with EPA. We are participating in monthly phone conferences with EPA.

## Self-Evaluation Report

Staffing – As mentioned above, the agency staffing level was cut 20.5% in FY 04. 8 employees positions were reduced. The cuts were made in every area of the agency including licensing (1 1/2), accounting (1), computer technology (1/2), administration (1), enforcement (2), and field investigations (2). The E.D. testified to the legislature that the agency was already lean and effective, and that any cuts would mean doing less with less. In 2001, the new E.D. began making plans to shift more staff from licensing, administration, and accounting positions to Field and Enforcement positions. There was reason to believe that at least two positions could be moved to Enforcement and four positions could be moved to Field operations. In FY 2002, two positions had been moved to Enforcement, one position had been moved to Field, one-half of a position had been moved to improve computer technology efficiencies. The trend was expected to continue but the 2003 and 2004 budget cuts eliminated the trend and the flexibility. The Board recommends that the positions need to be restored. It is believed that five would go to the Field Division, two would go to Enforcement, and one would be used for computer technology improvements.

Employee Wages and Turnover – The UT anonymous employee survey of 2003 showed that the employees gave the agency high marks in all categories except “Fair Pay”. Turnover has been at or above 30% in 2 of the last 4 years. Three investigators, with 2, 5 and 11 years experience, quit within three months in the winter/spring of 2005. All expressed in writing a deep regret that they had to leave but had to do so to make enough money to take care of their families or because their territory was so big they were away from their family too much. Agency employees average \$8,000 less than TDA or TDLR employees. Career ladders are futile without funding. It is very inefficient and ineffective to routinely train new investigators.

### **C. Possible Solutions and Impact**

The agency is highly efficient with the resources it is currently given. However, to be more efficient and more effective, the Board recommends that the agency be allowed to either be:

Self-funded/self-leveling status to make adjustments as needed with continued Board member approval for fee increases or decreases

**or**

To be funded with the current agency needs which total at least \$450,000.

Either way, fees need to be raised to satisfactorily meet the agency’s mission.

Approximate-round number costs beginning in 2007 and beyond:

Restore 8 FTE’s \$225,000 - 5 Investigators, 1 Computer Technology person, 2 Enforcement (1 coordinator, 1 admin assistant)

- Computer Technology \$55,000
- Promotion and Merit funding beginning in 2007 and beyond (\$90,000)
- Investigator Mileage funding to match legislative-approved rate (\$14,000)

- Computer technology – software language conversion \$30,000 if pilot unsuccessful
- Operating expenses \$38,000
- Offset rate increases on postage
- Offset rate increases on daily supplies (e.g. paper)
- Offset increases associated with restoration of 8 FTE's

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**Approximately \$450,000**

- Computer-based examinations at non-agency sites (pilot & researching now)  
(Fee caps will need to be evaluated and possibly increased)

**A. Brief Description of Issue # 5**

Should School Integrated Pest Management terminology be changed in the statute to 1) better reflect pesticide toxicity information and 2) provide reentry flexibility for lower risk products and methods?

**B. Discussion**

Because of the large number of pesticides registered with the U.S. Environmental Protection Agency and the Texas Department of Agriculture (more than 15,000), the rapidity with which products come and go in the market place, and FIFRA section 25(b) pesticides that do not require registration, it is impossible to equitably produce a list with any certainty that all eligible products are included. The Board has developed categories and criteria that meet the intent of the statute but use of the word list creates expectations that cannot be reasonably and fairly met over any extended length of time. By directing the Board to develop criteria and categories for pesticides that may be used at schools, the confusion is removed and no one manufacturer's product that meets the standards is favored over another's nor does the Board have to constantly be adding and subtracting products from a list. Additionally, this approach gives greater emphasis to use of least toxic alternatives.

The current requirement that in the statute prohibiting pesticide application to school facilities and grounds except when students will not be present for organized activities for 12 hours is not appropriate for all types of pesticide applications. Changes in pest control practices, pesticide products, and application methods make it possible to make applications without subjecting students and staff to exposure. For instance, non-volatile baits in tamper resistance containers do not present an exposure risk. This change will help school personnel as well as pest control operators in that it will allow reasonable uses that do not pose a hazard to students or faculty during regular work hours thus resulting in savings to public schools. Additionally, the proposal will make it easier to address emergency situations such as swarms of bees or wasps, or fire ant invasions.

## Self-Evaluation Report

Section 1951.212. of the Texas Structural Pest Control Act (formerly section 4J before recodification) was adopted by the Texas Legislature in 1991 as part of Sunset changes. This section of the Act (along with the Board's rules adopted to implement school integrated pest control (IPM) programs) has contributed significantly to improvements in pest control practices in Texas Public school districts and reductions in the exposure of students and faculty to pesticides. However, one provisions of the act is virtually impossible to fairly administer (product list), another provision is antiquated in regard to current pest control products and technology (no students present for 12 hours rule), and the Board is uncertain on application of the law to public schools other than school districts (charter schools and state schools).

### C. Possible Solutions and Impact

The Board believes some simple amendments to section 1951.212 of the Structural Pest Control Act can remedy the first two problems.

The Board recommends the following law changes:

School IPM additions in *italics*; deletions in [ ]. Changes for doing away with "list" and the standard 12 hr. reentry.

#### § 1951.212. INTEGRATED PEST MANAGEMENT PROGRAMS FOR SCHOOL DISTRICTS.

(c) The board shall include in standards adopted under this section:

(1) a requirement to use the least toxic methods available to control pests, rodents, insects, and weeds; and

(2) [list of] *criteria and categories* for products that a school district is allowed to use in its applications.

(d) The board shall *adopt rules* [require] *concerning when* [that] a pesticide may be applied to a school building or on school grounds [only when students are not expected to be present for normal academic instruction or organized extracurricular activities for at least 12 hours] and *reentry periods* after the application.

(e) A school district shall adopt an integrated pest management

### A. Brief Description of Issue # 6

Should the definition of "school" include "charter" schools?

### B. Discussion

Charter schools have grown in number since the 1990's. The agency is unsure if the legislature prefers that charter schools have the same IPM requirements as traditional public schools.



### C. Possible Solutions and Impact

The Board recommends that a definition is needed. The Board would like the legislature to clarify whether charter schools or private schools (with or without state funds) or home-based schools should be included or not.

If charter schools were included, charter school personnel would need to attend an eight-hour training class. Charter school students would have lower pesticide risk.

### A. Brief Description of Issue # 7

Should the Board's inspection and investigative entry authority be better defined?

### B. Discussion

The current law provides inspection and investigation authority to the Board. However, except for its subpoena authority, additional details on its authority would be useful for the Board, the public and the industry.

### C. Possible Solutions and Impact

The Board recommends the following additions to the Texas Structural Pest Control Act that were mostly borrowed from Chapter 76 of the Ag Code used by the Texas Department of Agriculture:

#### Sec. ENTRY POWER.

(a) For the purpose of inspection, examination, or sampling, the board is entitled to enter at reasonable hours any building or place owned, controlled, or operated by a licensee or person performing structural pest control unlawfully if from probable cause it appears that the building or place contains a pesticide or application equipment.

(b) The agency is entitled to enter any public or private premises at reasonable times to:

(1) inspect any equipment authorized or required to be inspected under this chapter or to inspect the premises on which the equipment is kept or stored;

(2) inspect or sample land exposed or reported to be exposed to a pesticide;

(3) inspect an area where a pesticide is disposed of or stored; or

(4) observe the use and application of a pesticide.

(c) If the board is denied access to any land to which access was sought at a reasonable time for any of the purposes listed in Subsection (b) of this section, the head of the regulatory agency may apply to a magistrate for a warrant authorizing access to the land for any of those purposes. On a showing of probable cause to believe that a

violation of a rule relating to a purpose listed in Subsection (b) of this section has occurred, the magistrate shall issue the search warrant for the purposes requested.

**A. Brief Description of Issue #8**

Should the Board have the authority to “stop sale” pesticide products?

**B. Discussion**

In instances where EPA decides to phase out a structural pesticide, this language would be very useful in fulfilling our mission. Examples include the past phase out of chlordane and the current phase out of dursban. Future phase out that EPA has discussed include methyl bromide.

**C. Possible Solutions and Impact**

The Board recommends the following changes:

Sec. STOP SALE, STOP USE, STOP DISTRIBUTION, OR REMOVAL ORDER.

(a) If the agency has reason to believe that a pesticide, a product treated with a pesticide, or the use of a pesticide is in violation of any provision of this chapter or of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the board may issue and enforce a written or printed order to stop the use or distribution of the pesticide or pesticide treated product or requiring the pesticide or pesticide treated product to be removed and secured from further distribution. The board shall present the order to the owner or custodian of the pesticide or pesticide treated product. The person who receives the order may not sell, distribute, or use the pesticide until the board determines that the pesticide:

- (1) is in compliance with this chapter; or
- (2) does not present a hazard to the public health, safety, or welfare.

(b) This section does not limit the right of the board to proceed as authorized by another section of this chapter.

Sec. APPEAL OF STOP SALE, STOP USE, STOP DISTRIBUTION, OR REMOVAL ORDER. (a) The owner or custodian of a pesticide or pesticide product to which a stop use, stop distribution, or removal order is imposed under Section 76.153 may appeal the order to a district court of Travis county.

(b) Appeal under this section is by trial de novo.

**A. Brief Description of Issue #9**

Should the agency name be changed from Texas Structural Pest Control Board to Texas Structural Pest Control Commission?

**B. Discussion**

A basic need is for citizens, licensees and other state agencies to first understand that we are a state agency. The word "Board" is often used with corporations and private associations. The word "Commission" is not used with corporations and private associations. Commission is clearly a government entity.

Typical conversations with entities that are not familiar with the agency include:

- Interaction with Department of Public Safety (DPS) regarding a records request. The board's staff person asked if the fee could be waived. DPS called back and asked if we were a state agency.
- Citizens frequently call thinking that the agency is a pest control company.
- Citizens and licensees get the agency name confused with the Texas Pest Control Association.
- Investigators use an undue amount of time explaining that we are a state agency.
- Investigators are occasionally ignored because of the agency name.

After reviewing numerous historical documents, there does not appear to be any guidelines regarding whether an agency is named a board or a commission.

**C. Possible Solutions and Impact**

The Board recommends that the agency be named the Texas Structural Pest Control Commission. This will reduce confusion on the part of citizens, licensees and other state agencies. There will be not be a negative impact if the transition can take place over the course of a year. A reasonable transition time will allow the agency and its licensees to make changes during normal reprinting of forms.

**A. Brief Description of Issue #10**

Should insurance requirements include "errors and omissions" coverage?

**B. Discussion**

Since the last Sunset review in 1991, the phrase “errors and omissions” (*E&O*) has become a common term in the insurance world. It is not entirely clear in the agency’s act if the TSPCB can require the inclusion of such coverage. Should the law be clarified to reflect the inclusion or exclusion option? The Board has communicated with Texas Department of Insurance staff on the issue. Several complainants and licensees have been affected by this insurance industry practice. One complainant from New Braunfels, Texas has volunteered to provide information to the Sunset staff. A survey was conducted after the second committee meeting in April 2005. A summary of the results is attached. The results are mixed. Some insurance companies are focused on providing (selling it with the policy or as an add on cost) E&O and others are not focused on providing it.

**C. Possible Solutions and Impact**

Changes in insurance coverage and the mixed survey results indicate the importance of resolving whether this should be required or not required. The Board recommends a clear statutory requirement for E&O. This will provide uniform and better risk protection of the public and licensees.

**A. Brief Description of Issue #11**

Should the minimum insurance coverage be raised?

**B. Discussion**

Insurance minimums have not been raised since 1991. If coverage is not to be raised in 2007, the next most likely time for this to be thoroughly reviewed is 2019 (next Sunset review). A survey was conducted in April 2005. A summary of the results is attached. With the exception of Hooper & Hines, most insurance companies are providing higher coverage minimums to half or more of their customers.

**C. Possible Solutions and Impact**

The Board recommends that the minimums be raised, but need more data on the amount.

**A. Brief Description of Issue #12**

The term “warehouse” in 1951.303 (b) (2) (F) is vague.

**B. Discussion**

It is unclear if “warehouse” is only referring to stand-alone warehouses or whether this would also include large storage areas attached to wholesale/retail outlets. It is unclear if this includes warehouses where people rent to store their personal and business items.

**C. Possible Solutions and Impact**

The Board recommends that a definition is needed.

## X. Other Contacts

**A. Fill in the following chart with updated information on people with an interest in your agency, and be sure to include the most recent e-mail address.**

<b>Texas Structural Pest Control Board Exhibit 15: Contacts</b>			
<b>INTEREST GROUPS</b> (groups affected by agency actions or that represent others served by or affected by agency actions)			
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>E-mail Address</b>
Ken Myers, Texas Pest Control Association (TPCA)	100 East Anderson Lane, Suite 325 Austin, TX 78752	(512) 835-2801	txpca@sbcglobal.net
Reggie James Consumers Union	1300 Guadalupe, Suite 100 Austin, TX 78701	(512) 477-4431	jamere@consumer.org
Ron Hufford Texas Forestry Association	P.O. Box 1488 Lufkin, TX 75902	(936) 632-8733	tfa@lcc.net
Mary Kelly Environmental Defense			mkelly@environmentaldefense

<b>INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS</b> (that serve as an information clearinghouse or regularly interact with your agency)			
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>E-mail Address</b>
Association of Structural Pest Control Regulatory Officials (ASPCRO)	107 Corporate Drive Frankfort, KY 40601	(502) 573-0282	info@aspcro.org

<b>LIAISONS AT OTHER STATE AGENCIES</b> (with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)			
<b>Agency Name/Relationship/ Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>E-mail Address</b>
Legislative Budget Board Nora Velasco, Analyst	1501 Congress Avenue, 5 <sup>th</sup> Floor Austin, TX 78711	475-2107	<a href="mailto:Nora.velaso@lbb.state.tx.us">Nora.velaso@lbb.state.tx.us</a>
Governor's Office of Budget, Planning and Policy Logan Spence Cecile Young, Analyst	1100 San Jacinto, Ste 4.300 Austin, TX 78701	475-2290	<a href="mailto:Cecile.young@governor.state.tx.us">Cecile.young@governor.state.tx.us</a>
Texas Department of Agriculture Randy Rivera, Director of Worker Protection & Applicator Certification & Training	1700 N. Congress, 9 <sup>th</sup> Floor Austin, TX 78701	463-7717	<a href="mailto:Randy.rivera@tda.state.tx.us">Randy.rivera@tda.state.tx.us</a>
U.S Environmental Protection Agency – Region 6 (Pesticide Section) Eugene Thilsted – Project Officer	1445 Ross Avenue (6PD-P) Dallas, TX 75202-2733	214-665-2782	<a href="mailto:Thilsted.Eugene@epamail.epa.gov">Thilsted.Eugene@epamail.epa.gov</a>
Texas Department of State Health Services Roy Burton	1100 West 49 <sup>th</sup> Street Austin, TX 78756	512-834-6773 ext. 2302	<a href="mailto:Roy.burton@tdshs.state.tx.us">Roy.burton@tdshs.state.tx.us</a>

## XI. Additional Information

**A. Fill in the following chart detailing information on complaints regarding your agency. Do not include complaints received against people or entities you regulate. The chart headings may be changed if needed to better reflect your agency's practices.**

<b>Texas Structural Pest Control Board Exhibit 16: Complaints Against the Agency Fiscal Years 2003 and 2004</b>		
	<b>FY 2003</b>	<b>FY 2004</b>
<b>Number of complaints received</b>	814	807
<b>Number of complaints resolved</b>	813	782
<b>Number of complaints dropped/found to be without merit</b>	6	8
<b>Number of complaints pending from prior years</b>	1	25* appx.
<b>Average time period for resolution of a complaint</b>	56.4	73.9

**B. Fill in the following chart detailing your agency's Historically Underutilized Business (HUB) purchases.**

<b>Texas Structural Pest Control Board Exhibit 17: Purchases from HUBs</b>				
<b>FISCAL YEAR 2002</b>				
<b>Category</b>	<b>Total \$ Spent</b>	<b>Total HUB \$ Spent</b>	<b>Percent</b>	<b>Statewide Goal</b>
<b>Heavy Construction</b>	0	0	0	11.9%
<b>Building Construction</b>	0	0	0	26.1%
<b>Special Trade</b>	0	0	0	57.2%
<b>Professional Services</b>	\$4,988	0	0	20.0%
<b>Other Services</b>	\$51,940	\$13,764	26.5%	33.0%
<b>Commodities</b>	\$34,944	\$3,914	11.2%	12.6%
<b>TOTAL</b>	<b>\$91,872</b>	<b>\$17,678</b>	<b>19.24%</b>	



FISCAL YEAR 2003				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	0	0	0	11.9%
Building Construction	0	0	0	26.1%
Special Trade	0	0	0	57.2%
Professional Services	\$8,962	0.0%	0.0%	20.0%
Other Services	\$28,737	\$1,490	5.18%	33.0%
Commodities	\$25,347	\$6,606	26.0%	12.6%
<b>TOTAL</b>	<b>\$63,047</b>	<b>\$8,096</b>	<b>12.8%</b>	

FISCAL YEAR 2004				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	0	0	0	11.9%
Building Construction	0	0	0	26.1%
Special Trade	0	0	0	57.2%
Professional Services	0	0	0	20.0%
Other Services	\$33,164	\$4,129	12.4%	33.0%
Commodities	\$37,581	\$9,815	26.1%	12.6%
<b>TOTAL</b>	<b>\$70,715</b>	<b>\$13,944</b>	<b>19.7%</b>	

**C. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy?**

Yes, on all purchases, the TSPCB strives to obtain bids from HUB certified vendors and awards bids based on comparability and price. The majority of all purchasing done by our agency falls under our “delegated purchasing authority.” For purchases that do not require quotes or bids our agency attempts to first procure the goods or services from HUB certified vendors. In addition, in order to meet the Texas Building and Procurement Commission’s adjusted HUB goals for our agency, when bidding is required, our agency will solicit, at least, two thirds of all bids from HUB certified vendors. When the quality of goods and services offered by HUB certified vendors is comparable and is the “Best Value” for the State of Texas, our agency will award the bid to HUB certified vendors.

Reasons HUB goals may not have been met may be due to the following: (1) Lack of HUB bids and quotes in which the goods and services offered were comparable in value; (2) Lack of response from HUB vendors.

**D. For agencies with contracts valued at \$100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of \$100,000 or more? (Tex. Government Code, Sec. 2161.252; TAC 111.14)**

N/A

**E. For agencies with biennial appropriations exceeding \$10 million, answer the following HUB questions.**

	<b>Response / Agency Contact</b>
1. Do you have a HUB coordinator? (Tex. Government Code, Sec. 2161.062; TAC 111.126)	<b>N/A</b>
2. Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Tex. Government Code, Sec. 2161.066; TAC 111.127)	<b>N/A</b>
3. Has your agency developed a mentor-protege program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Tex. Government Code, Sec. 2161.065; TAC 111.128)	<b>N/A</b>

**F. Fill in the chart below detailing your agency's Equal Employment Opportunity (EEO) statistics.**

**Texas Structural Pest Control Board  
Exhibit 18: Equal Employment Opportunity Statistics**

FISCAL YEAR 2002							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	2	0%	7%	50%	11%	50%	31%
Professional	4	25%	9%	25%	10%	50%	47%
Technical	0	N/A	14%	N/A	18%	N/A	39%
Protective Services	18	12%	18%	28%	21%	17%	21%
Para-Professionals	5	0%	18%	40%	31%	20%	56%
Administrative Support	14	15%	19%	50%	27%	100%	80%
Skilled Craft	0	N/A	10%	N/A	28%	N/A	10%
Service/Maintenance	0	N/A	18%	N/A	44%	N/A	26%

FISCAL YEAR 2003							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	3	0%	7%	34%	11%	34%	31%
Professional	4	25%	9%	25%	10%	50%	47%
Technical	0	N/A	14%	N/A	18%	N/A	39%
Protective Services	0	N/A	18%	N/A	21%	N/A	21%
Para-Professionals	20	10%	18%	35%	31%	20%	56%
Administrative Support	12	9%	19%	42%	27%	100%	80%
Skilled Craft	0	N/A	10%	N/A	28%	N/A	10%
Service/Maintenance	0	N/A	18%	N/A	44%	N/A	26%

Self-Evaluation Report

FISCAL YEAR 2004							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	1	0%	7%	0%	11%	0%	31%
Professional	8	12.5%	9%	37.5%	10%	37.5%	47%
Technical	1	0%	14%	0%	18%	0%	39%
Protective Services	0	0%	18%	0%	21%	0%	21%
Para-Professionals	20	10%	18%	35%	31%	30%	56%
Administrative Support	5	0%	19%	40%	27%	100%	80%
Skilled Craft	0	0%	10%	0%	28%	0%	10%
Service/Maintenance	0	0%	18%	0%	44%	0%	26%

**G. Does your agency have an equal employment opportunity policy? How does your agency address performance shortfalls related to the policy?**

Yes. Should the agency experience a shortfall; the agency would follow the procedures in the Board's Affirmative Action Plan.

## XII. Agency Comments

The agency is charged with protecting health, safety and property of Texas citizens regarding structural pest control. Due to the ongoing agency functions of licensing, inspection, enforcement, and public information, the number health and safety problems have trended downward.

Through its fiscal management practices and consistent program productivity, the agency has proven to be an excellent steward of public funds and public trust. Both industry and consumer associations have applauded the work of the agency for numerous years. The agency has done an excellent job with the resources it is given.

However, the state's population is growing (17 million people in 1990 to over 22 million people in 2004) and the amount of structural pest control fraud is growing. Licensing number trends are upward. The agency regulates an industry that has over one billion dollars in receipts each year in Texas. In addition to these dollars, there is another billion dollars in home and building construction damage as result of termites each year. Case sizes are trending upward with more thorough inspections and investigations on repeat and serious offenders.

There has been no significant variance from the original intent of the Texas Structural Pest Control Act as enacted in 1971; however, performance of the investigative and enforcement functions has increased in scope and difficulty with additional federal requirements, state requirements adding regulation of certain businesses (estimated to be in excess of 28,000 business establishments) and state employees as well as school IPM in 1991 (1,040 public school districts), advances in technology, and addition of new pesticide products. There will be an increased need for inspections, investigations, and enforcement, with population growth, increases in pest control businesses and licensed applicators, continued introductions and expansion of invasive foreign pests (Formosan subterranean termites, red imported fire ants, argentine ants, white footed ants, Asian tiger mosquito, etc.), and a percentage of people who are willing to commit fraud or use unsafe practices.

Despite good planning, surprises will also continue to occur. Good planning would dictate that the resource needs be available even though the agency might not be able to know years in advance what the next surprise or need might be "named". Formosan termite infestation spread, West Nile virus and home-based mosquito misting systems, International Residential Code adoption, illegal use of cotton insecticide in homes near the Texas-Mexico border and illegal use of sodium cyanide in homes are examples of recent surprises. Certainly there will be more demands with different names in the future. The agency's ability to act and react is directly tied to the quantity and quality of its resources.

The Board believes that the agency would be more efficient and more effective if given additional resources to perform its tasks.

### **XIII. ATTACHMENTS**

#### **Attachments Relating to Key Functions, Powers, and Duties**

**Attachment I** - agency's enabling statute.

**Attachment II** - each annual report published by the agency from FY 2000 - 2004.

**Attachment III** - **copy** of each internal or external newsletter published by the agency from FY 2003 - 2004.

**Attachment IV** - **list** of publications and brochures describing the agency.

#### **Attachments Relating to Policymaking Structure**

**Attachment VIII** - Biographical information (e.g, education, employment, affiliations, and honors) or resumes of all policymaking body members.

**Attachment IX** - A **copy** of the agency's most recent rules.

#### **Attachments Relating to Funding**

**Attachment X** - A **copy** of the agency's Legislative Appropriations Request for FY 2006-2007.

**Attachment XI** - A **copy** of each annual financial report from FY 2002 - 2004.

**Attachment XII** - A **copy** of each operating budget from FY 2003 - 2005.

#### **Attachments Relating to Organization**

**Attachment XIII** - if applicable, a map to illustrate the regional boundaries, headquarters location, and field or regional office locations.

#### **Attachments Relating to Agency Performance Evaluation**

**Attachment XIV** - A **copy** of each quarterly performance report completed by the agency in FY 2002 - 2004.

**Attachment XVI** - A **copy** of the agency's current internal audit plan.

**Attachment XVII** - A **list** of internal audit reports from FY 2001 - 2005 completed by or in progress at the agency.

**Attachment XVIII** - A **list** of State Auditor reports from FY 2001 - 2005 that relate to the agency or any of its functions.

**Attachment XIX** - A **copy** of any customer service surveys conducted by or for your agency in FY 2004.

**XIV. ATTACHMENTS REFERRED TO IN SER****Attachment I – Errors and Omissions Survey FY 2005**

<b>Insurance Agency</b>	<b>How Contacted</b>	<b>Contact Info Used</b>	<b>Question # 1</b>	<b>Question # 2</b>	<b>Question # 3</b>
A & P Insurance Center	<b>Email</b>	agent@apinsctr.com			
Allstate Insurance Company	<b>Email</b>	a038621@allstate.com	0	0	0
Brady, Chapman Holland & Associates	<b>Email</b>	anita.lenorman@bch-insurance.com	18	13	4
Troy Chestnut & Associates	<b>Email</b>	steve@troychesnut.com	30-35	25%	all
Cooper Insurance Agency	<b>Email</b>	matt@cooperinsurance.net			
Dexter & Company	<b>Email</b>	rgaskill@dextercompany.com	800	50%	90%
Glenn-Madden & Assoc. Insurance Agency, Inc.	<b>Email</b>	dmadden@glenn-maddeninsurance.com	3	3	3
GSM Insurors of San Antonio	<b>Email</b>	nzaiontz@satx.rr.com	310	Approx. 2/3 's	309
Hooper & Hines	<b>Fax &amp; Email</b>	214-348-6510 norman3@hooperhines.com	1000+	Few	WDI only
			See Email Text for more details		
Hotchkiss Insurance Agency, Inc.	<b>Email</b>	adavis@hiinc.com	Email address not working		
Gary Lawrence Insurance	<b>Email</b>	Garylance@allstate.com			
LIPCA Insurance Group	<b>Email</b>	allenfugler@lipca.com			
MFP Insurance Agency	<b>Fax</b>	614-221-2203			
Protech Insurance Agency	<b>Email</b>	info@protech-ins.com	Doesn't Track by Industry type – no answer available		
Service Insurance Group Agency	<b>Fax</b>	979-846-3031			
Sullivan Insurance Agency, LP	<b>Email</b>	charris@sullivan-insurance-sl.com	12	Maybe 4 or 5	0
Summit Global Partners of Texas Inc.	<b>Fax</b>	214-443-3900	51	32	0
Swantner & Gordon Insurance	<b>Email</b>	rfrache@s-gins.com			
Texas Insurance & Financial Services	<b>Email</b>	alford@txins.com			
Time Insurance Agency, Inc.	<b>Fax</b>	512-440-0989			
Turpin & Turpin	<b>Email</b>	turpin@idworld.net	Email address not working		
Wagner Insurance	<b>Fax</b>	281-362-9895			
B & DA Weisburger	<b>Fax</b>	914-428-0943	330	All	All
Wimberley Insurance & Financial Services	<b>Email</b>	Joshua@houstonassets.com	25	100%	0

**Survey Text:**

The TSPCB is preparing itself for review by the Texas Sunset Commission. In anticipation of some of the questions that may arise during the review please assist us by providing the following information:

1. How many pest control operators (PCOs) do you insure?
2. Of those how many have purchased more than the minimum amount of general liability coverage. (The current minimum limits are \$200,000 per occurrence, \$300,000 aggregate.)
3. How many of your insured PCOs have Errors and Omissions coverage as an integral part of their policy or added to their policy?

Your assistance in providing this information is appreciated. We would appreciate receiving your responses by close of business April 22, 2005. If you have questions regarding the information please contact me at the number shown below.



## Attachment II – Formosan Termite Research



SUSAN COMBS, COMMISSIONER

**TEXAS DEPARTMENT  
OF AGRICULTURE**

P.O. Box 12847  
AUSTIN, TEXAS 78711  
(512) 463-7476  
FAX (512) 463-1104  
FOR THE HEARING IMPAIRED:  
1-800-735-2988 (VOICE)  
1-800-735-2989 (TTY)  
[www.agr.state.tx.us](http://www.agr.state.tx.us)

*Making Texas the nation's  
leader in agriculture, while  
promoting excellence in  
children's nutrition, rural  
economic development and  
providing efficient and  
extraordinary service.*

June 15, 2005

The Honorable Mike Johanns  
Secretary  
U.S. Department of Agriculture  
Washington, D.C. 20250

Dear Secretary Johanns:

I respectfully request your support of increased efforts for research and control of Formosan Subterranean Termites.

Formosan termites are considered the most aggressive and economically devastating termites in the country, causing more than \$1 billion dollars in damage per year to the Southern United States. These termites have been identified in 22 counties in Texas.

In addition to infesting wood in use, these termites may attack and kill living trees, making them of particular concern as an urban forest pest. Formosans have been known to attack more than 47 plant species and feed on both spring growth and summer growth wood.

The work of the National Formosan Subterranean Termite Program, "Operation Full Stop," at the USDA Southern Regional Research Center is of great benefit to efforts to control these pests by providing valuable research and information. However, additional funding should be allocated to termite-related issues, including surveys to determine the extent of the infestation in the South.

In closing, I request increased resources be directed to the Formosan control and survey efforts. Please do not hesitate to contact me if I can provide further information or if you have any questions.

Sincerely,

Susan Combs  
Commissioner

SC/clb

cc: Texas Delegation  
Mr. Dale Burnett, Executive Director, Structural Pest Control Board  
Dr. Kevin Heinz, Texas A&M University

JUN 20 2005  
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SPCB