

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

Texas Structural Pest Control Board

**A Staff Report
to the
Sunset Advisory Commission**

1991

TEXAS SUNSET ADVISORY COMMISSION

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TEXAS STRUCTURAL PEST CONTROL BOARD

December 1989

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BACKGROUND

Creation and Powers

The Texas Structural Pest Control Board (SPCB) was established by the 62nd Legislature in 1971. The law was first changed in 1977 to comply with provisions of the first federal act regulating the sale and use of pesticides in the United States. Several subsequent legislatures have adopted additional amendments, including the addition of public members on the board in 1979 and 1989, the training and licensing of technicians in 1987 and the increase of minimum insurance coverage and the granting of administrative penalty authority in 1989.

The purpose of the act is to protect the health and welfare of the citizens of the state, to protect the environment against the misuse of pesticides and to promote a more professional standard for the structural pest control industry. To achieve these goals, the agency sets standards for licensing of pest control businesses and applicators, sets some application procedures, inspects licensees performing pest control work, investigates all complaints of improper application or other alleged violations of the act, and administers mandatory continuing education for certified applicators.

Policy-making Body

The board is composed of nine members, six of whom are appointed by the governor and confirmed by the senate for staggered six-year terms. With the enactment of H.B. 1367 by the 71st Legislature, three members must represent the general public and three members must be licensed applicators who have been engaged in the pest control industry for at least five years preceding appointment. The remaining three are voting ex-officio members representing the commissioner of agriculture, the commissioner of health and the chair of the Department of Entomology at Texas A&M University. The chair of the commission is selected by the commission members.

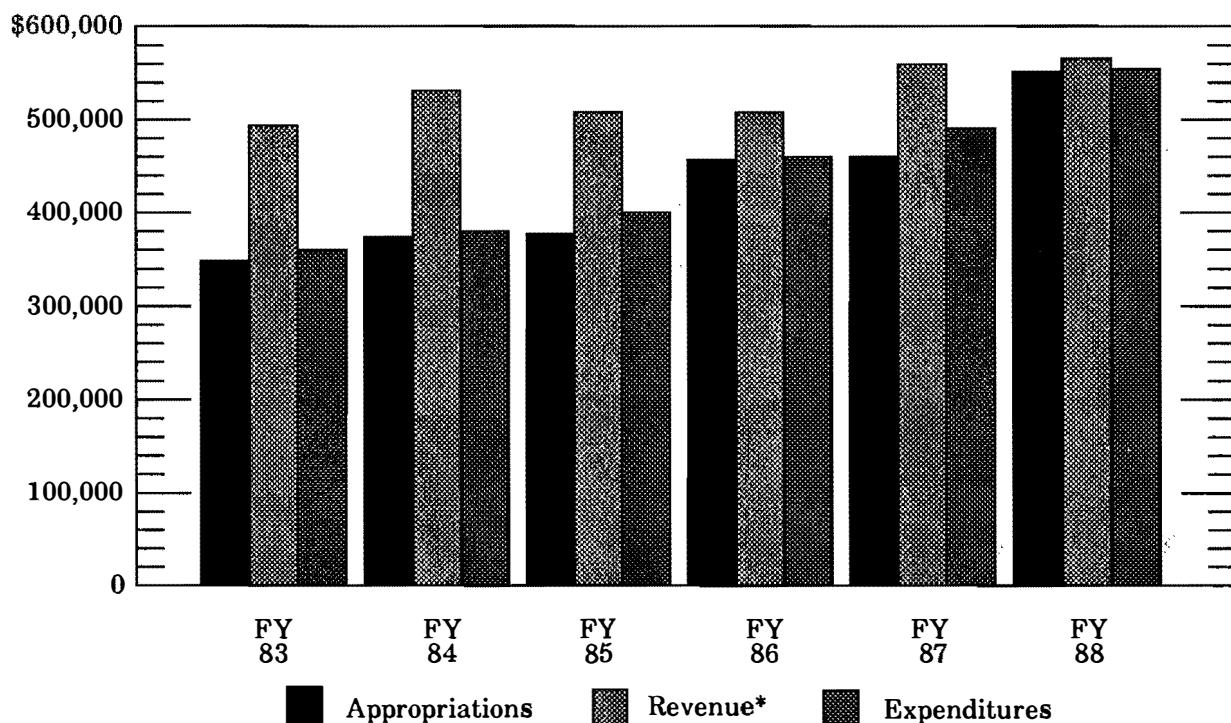
The board is authorized to pass rules and regulations to set licensing, examination and training standards and to enforce the mandatory continuing education requirement for certified applicators. By statute, the board is required to meet at least four times each year. Most board meetings are held in the agency's Austin office. Members do not receive compensation but are entitled to reimbursement for expenses.

Funding and Organization

All licensing and testing fees are deposited into the Structural Pest Control Fund 424. With the exception of a \$90,000 federal grant from the U.S. Environmental Protection Agency (EPA), all funding for the agency comes from the fees it collects. The SPCB budget for fiscal year 1989 was \$628,582, which included a \$76,000 emergency appropriation to pay the cost of licensing and regulating lawn and ornamental applicators transferred from the Texas Department of Agriculture (TDA). The appropriation for fiscal year 1990 is \$772,813. The increased appropriation by the 71st Legislature enabled the board to hire three additional investigators and a staff attorney.

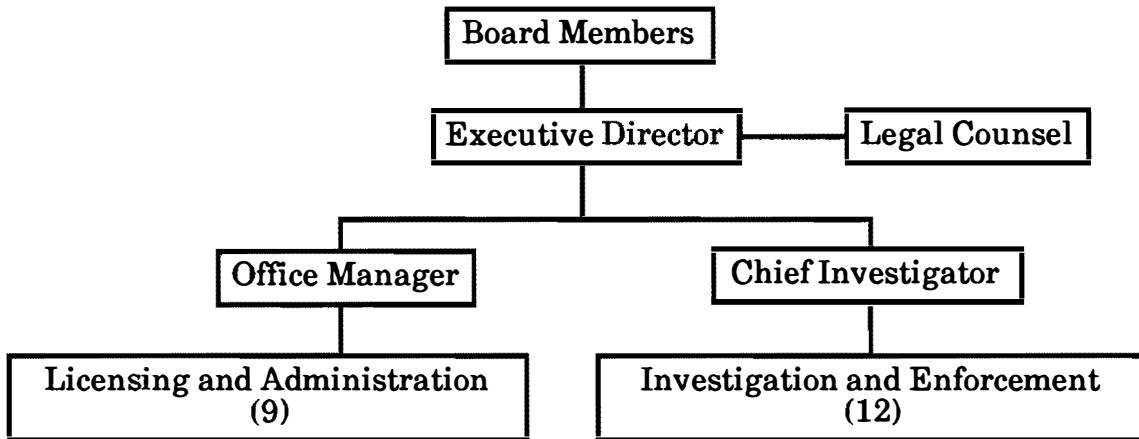
Exhibit 1 shows agency appropriations, expenditures and revenues for fiscal years 1983 through 1988. As the exhibit demonstrates, agency revenues have consistently exceeded appropriations, allowing the agency to maintain a positive fund balance.

Exhibit 1
Revenues and Expenditures
Fiscal Years 1983 - 1988



*Revenue figures include a grant from the U.S. Environmental Protection Agency passed through the Texas Department of Agriculture.

The agency employs 25 people and operates from its headquarters in Austin. A total of 13 FTEs are located in the Austin office, including the executive director, legal counsel and chief investigator. Twelve investigators, operating in twelve territories, work out of their homes. Exhibit 2 shows the organizational structure of the agency.

Exhibit 2**Texas Structural Pest Control Board
Organization Chart**

Numbers in parentheses indicate number of employees

Programs and Functions

Licensing and Administration

The licensing and administration staff of the agency is responsible for initial and renewal licensing of structural pest control businesses and applicators in the state. The SPCB licenses for-hire applicators who use general or restricted-use pesticides in and around a structure, including homes, office buildings, restaurants, shops and warehouses. A not-for-hire applicator who wants to use restricted-use products must also be licensed. Those persons who use general-use pesticides in and around structures on a not-for-hire basis are exempt from the act.

The agency issues three types of licenses. First, each separate business location engaged in structural pest control in the state, even those under the same ownership, must have a license and must carry current and continuous liability insurance to cover any property damage and personal injury caused by any employee of the business. The business must maintain training records for each employee for at least a year after the termination of the employee. Each business location must also keep, for a period of two years, all records of pesticide use for each application, including the name and amount of chemical used. A total of 3,062 business licenses were issued in fiscal year 1988.

Second, each business location must employ a certified applicator, as designated by the act, who has passed a competency exam on the pesticide law, general pesticide use, and any additional license category of structural pest control work in which the business operates. No work may be performed by any employee of the business unless a certified applicator is on staff who has passed the examination in that category of application. Examinations and licenses are offered in six categories: 1) pest control, 2) termite control, 3) fumigation, 4) lawn and ornamental, 5) weed, and 6) wood preservation. In fiscal year 1988, there were 5,774 applicators certified by

the board. The number and percentage of all certified applicators licensed in each category is shown in Exhibit 3.

Exhibit 3

<u>Pesticide Use Category</u>	<u>Number of Applicators Licensed in the Category</u>	<u>Percent of Applicators Licensed in the Category</u>
Pest Control	5,350	93%
Termite	3,578	62%
Lawn and Ornamental	2,645	46%
Weed	1,534	27%
Fumigation	913	16%
Wood Preservation	<u>130</u>	2%
Total Category Licenses Held	14,150	

To become licensed as a certified applicator, an applicant (with few exceptions) must have been a licensed technician for six months and must have worked under the supervision of a certified applicator for 12 of the preceding 24 months. The applicant must take an exam in general pest control and in any category in which the applicant wants to work. Since product labels are not required to be published in more than one language, the board requires applicants to be able to read and write English. Generally, the board offers the exams every two months in Austin. In fiscal year 1988, the board gave 3,223 examinations.

Third, in addition to certified applicators the SPCB also licenses technicians. With a few exceptions, technicians apply and use pesticides as do certified applicators; however, certified applicators must be available to help and offer advice when needed. Technicians must be employed by licensed businesses and, according to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), must work under the "direct supervision" of a certified applicator. FIFRA defines direct supervision as being available by normal and reasonable means of communication when needed. By rule, the board further specifies direct supervision to be personal contact between the technician and certified applicator at least three days per week.

Technicians are not required to take an exam. To qualify for a technician's license, an individual must be 16 years old and must fulfill the training requirements of the board. The specific training program is left to the discretion of the licensed pest control business, provided each applicant receives at least 20 hours of classroom training, 60 hours of general on-the-job training, and 10 hours of on-the-job training in any category in which the technician is going to work. A total of 4,215 technicians were licensed by the board in fiscal year 1988.

In addition to certified applicators and licensed technicians, many pest control businesses hire trainees to help in the application of pesticides. There are an estimated 1,631 trainees working in the state. Trainees are not licensed under the

act but, by board rule, must always work under the on-site supervision of a licensed technician or certified applicator. Generally, these are employees are training to become technicians.

Inspections and Enforcement

Complaints

The SPCB has authority to conduct investigations for compliance and to take enforcement action for violations of the act and board rules. The staff of 12 investigators visits businesses in response to consumer complaints and, when their schedules permit, performs periodic inspections of pest control businesses and applications. The agency estimates the investigators visit approximately 60 percent of licensed business locations once a year. At the business location, the investigator will verify the posting of all current licenses, check employee training records, pesticide and pest control service records, and vehicle identification tags. The investigators will also perform unannounced use inspections by watching an applicator actually apply pesticides. These inspections ensure that licensees are using pesticides in a manner consistent with the label, fulfilling their contractual obligations and not making false or misleading statements to consumers.

The agency's investigative staff spends over 75 percent of their time investigating consumer complaints. A total of 626 complaints were investigated in fiscal year 1988. Most complaints come into the Austin office, though some are received in the field and some are referred to the board by the Texas Department of Agriculture, the Texas Department of Health or the EPA. One complaint in fiscal year 1988 was referred by the Texas Water Commission. The agency requests that all consumer complaints be submitted in writing, except where there appears to be an immediate danger to health or the environment. Agency investigators try to be on-site within 48 hours for any health-related incident.

Investigation of virtually all complaints involves many steps including taking statements from the complainant, the applicator who performed the service, the business owner and certified applicator as well as a visit to the pest control business to verify service and training records. It takes an average of 31 days to investigate a complaint from the time the complaint is received until the investigation is completed.

If a misapplication of a pesticide is suspected, the inspector may take residue samples in and around the structure. These are sent for analysis to the TDA laboratories in Brenham or San Juan. Detailed procedures for the taking and handling of these samples are reviewed and approved by the EPA. Sampling is done carefully to preserve the integrity of the sample as an indicator of the actual application and for documentation in court.

Enforcement

The board is authorized to refuse to examine an applicant and refuse to issue or renew a license. The board is also authorized to suspend or revoke a license. In 1989, the agency was also given the authority to assess administrative penalties against persons in violation of the act. In addition, the board can seek Class C (for a first offense) and Class B (for a second offense) misdemeanor criminal penalties. Injunctive relief and civil penalties of not less than \$50 nor more than \$2,000 for

each act and each day of violation may be sought in district court through the attorney general's office.

Agency investigators handle some enforcement actions in the field. For minor violations, written warnings are issued to licensees at the site. Copies of the warnings are forwarded to the Austin office and the executive director follows up with a letter stating that continued violation may be grounds for more stringent sanctions. In fiscal year 1988, 184 warning notices were issued.

The investigators are also authorized by the board to refer licensees to Justice of the Peace Court for violations which, in consultation with the chief investigator and/or executive director, warrant this action. A total of 120 cases were referred to JP Court in fiscal year 1988. The range of assessed penalties was \$9.50 to \$200. These cases are filed within 10 days of the notice of violation. A summary of these violations is shown in Exhibit 4 below.

Exhibit 4

Summary of Cases Filed in Justice of the Peace Courts Fiscal Year 1988

<u>Violation</u>	<u>Number</u>
Pesticide use	
Use of a pesticide inconsistent with label directions	17
Use of a pesticide injurious to public health	1
Failure to supervise employees or technicians	8
Performing without a license	
Performing pest control without a valid license	44
Performing pest control without the required category license	7
Improper licensing	
Failure to register employees or technicians	7
Failure to notify the board of proper business address	5
Insurance	
Failure to have or continuously maintain required insurance	15
Other	
Failure to keep complete records	
Failure to keep pesticides properly stored and secured	3
Misrepresentation in pest control services	3
Failure to make a complete wood destroying insect report	2
Total	120

Additionally, the investigators often negotiate informal agreements with licensees who, in the judgment of the investigator, have not fulfilled their contractual obligations with the complainant. Through these agreements, licensees offer to re-treat the home, refund money for services not performed or repair damage done. In fiscal year 1988, 100 retreatments were performed and 80 refunds were

secured by the agency's actions, totaling an estimated value of \$176,430 returned to consumers.

Hearings

In an attempt to reduce the number of enforcement hearings heard by the full board, agency staff settle as many disciplinary actions as possible in an informal hearing setting. These informal hearings are attended by the executive director, the agency's legal counsel, the investigator who worked on the case, the licensee, and licensee's counsel, if any. If agreement can be reached on the violation and appropriate penalty, the parties sign a voluntary consent agreement. All of the penalty options are available to and have been used by the agency in these agreements. Nineteen cases were negotiated by consent agreement in fiscal year 1988 and are summarized in Exhibit 5.

Exhibit 5

Summary of Actions Taken Through Consent Agreements* Fiscal Year 1988

Violation		Action Taken	
Use of a pesticide inconsistent with label directions	13	Additional training required	9
		Re-examination of license	6
Misrepresentation for the purpose of fraud	1	Monetary refund	6
Performing pest control services out of category	1	Voluntary cancellation (revocation) of business license	3
Failure to notify board of proper business address	2	Voluntary suspension of a license category (10 days to 2 years)	12
Use of a pesticide in a manner that could be injurious to public health	1	Voluntary suspension of a business license (45 days to 2 years)	4
Failure to adequately supervise employees or technicians	5	Additional training for employees	5
Failure to give a complete disclosure statement	1	Suspension of a technician license	2
Misrepresentation on an application for a license	1		

* Multiple violations and actions may be involved in each case so the total number of violations does not equal the total number of actions taken.

If an informal hearing is not held or a resolution is not forthcoming, the case is scheduled for a formal hearing. Before any disciplinary action may be taken a licensee is entitled to a full hearing before the board, conducted in accordance with the Administrative Procedure and Texas Register Act. Generally, the executive director presents the agency's case and the attorney from the attorney general's

office assigned to the agency sits in attendance and advises the board chairman on rules of evidence and procedure. As of September 1989, however, the board's recently-hired general counsel will act as prosecutor. Eight hearings were held in fiscal year 1988. Exhibit 6 summarizes the nature of each case and the ruling by the board.

Exhibit 6
Summary of Actions Taken in Board Hearings
Fiscal Year 1988

Subject of Hearing	Action Taken
Failure to maintain insurance coverage	License revocation Suspension of license
Failure to honor contract warranty and ineffective treatment	Re-examination of license
Use of a pesticide inconsistent with label directions	Denial of opportunity to take exam
Relicensure after previous violation and license revocation	Granting of opportunity to take exam
Licensure of persons with criminal background	

* Multiple violations and actions may be involved in each case so the total number of violations does not equal the total number of actions taken.

Based on decisions in the board's hearings, the agency referred five cases to the attorney general's office in fiscal year 1988 for prosecution and recovery of civil penalties. These violations involved use inconsistent with the label, performing pest control services without a valid license, and fraudulent misrepresentation. Three cases involving the use of Chlordane after the effective voluntary cancellation of that product were referred to the EPA for enforcement.

RESULTS OF REVIEW

Overall Approach to the Review

Overall Approach to the Review

Previous Sunset Review

As part of the review of the Texas Structural Pest Control Board, the 1979 staff report to the Sunset Advisory Commission was reviewed. In addition, the recommendations adopted by the Sunset Commission were examined and compared to the current activities of the agency.

In 1979, the initial sunset review determined that regulation of structural pest control was necessary for the protection of the public and environment, although the review concluded that the agency had not been diligent in implementing the consumer protection aspects of its mandate. Because of this and similarities of the regulation with the Texas Department of Agriculture's (TDA) regulation of agricultural pesticide application, the sunset staff concluded that the functions of the agency could be transferred to TDA. The proposal provided for the board to continue as a quasi-judicial body, administratively attached to TDA, to hear enforcement cases.

Other operational changes recommended by the sunset staff in 1979 included:

- stricter enforcement of the statutory insurance requirements including broader coverage to include personal injury;
- tracking of pesticide-related insurance claims for analysis of the adequacy of statutory minimum coverage;
- implementation of the statutorily-authorized staggering of license renewals;
- reduction of telephone costs;
- greater implementation of computer technology to streamline administrative procedures as well as to collect and analyze data for trends in pesticide use and enforcement;
- greater attention and emphasis on public information regarding the agency's existence and functions;
- improved tracking and documentation of investigation and complaint procedures;
- increased efforts to make applicants aware of training materials available from TDA and the Texas Agricultural Extension Service; and
- removal of the requirement for a business license.

The Sunset Commission, in 1979, agreed with the staff's finding that the agency's functions could be consolidated within another agency and recommended that the agency should be abolished and the administrative operations of the agency

transferred to the Texas Department of Agriculture. The commission also adopted the staff's recommendations to stagger license renewals, enforce insurance requirements and delete the separate pest control business license.

The sunset bill finally passed by the 66th Legislature did not adopt all of the recommendations made by the Sunset Commission. The commission's recommendation to consolidate the board with TDA was not adopted and the autonomous board was retained but public members were added (a Sunset Commission across-the-board recommendation). The commission's recommendation related to insurance requirements was adopted.

Approach to Current Review

The review of the SPCB focused on whether regulation of the pest control industry is still needed, whether consolidation with another agency would improve the administration and enforcement of the regulation, and whether any changes are necessary to improve the efficiency and effectiveness of the agency, as well as an examination of the findings and recommendations of the 1979 sunset staff report.

To assess these general areas, a number of efforts were undertaken. These included:

- review of previous sunset staff recommendations;
- review of documents developed by the agency, legislative reports, and other state reports;
- review of federal reports, including documents of the U.S. Environmental Protection Agency and the U.S. General Accounting Office;
- interviews with agency staff in the Austin office;
- participation in a complaint investigation, including interviews with the consumer, business owner, certified applicator and technician;
- attendance at a regular board meeting;
- interviews with other state agency personnel who interact with the agency;
- phone interviews with other states and with the EPA office in Dallas;
- meetings with interest groups and individuals affected by the agency;
- review of studies and data on pesticides and pesticide use in the structural setting;
- review of complaint and enforcement files at the SPCB and the Texas Department of Agriculture;
- review of case files of the consumer group, Citizens Against Pesticide Misuse; and

- review of other state statutes and the raw data from a nationwide survey of structural pest regulation conducted by the Pesticide Public Policy Foundation.

The results of the analysis of each of these areas are outlined in the recommendations which follow.

Assessment of Need to Regulate

Assessment of Need to Regulate

ISSUE I: The state should continue to license and regulate the structural pest control industry.

BACKGROUND

Government regulation of an occupation is not justified unless at least three conditions are present. First, the unlicensed practice of the occupation should pose a serious risk to the public's health, safety or economic well-being. Second, the benefits to the public should clearly outweigh any potential effects, such as a decrease in the availability of practitioners. Finally, the duties of the occupation should be of a complexity that consumers cannot properly evaluate the appropriateness of the service and the qualifications of the practitioners. To determine the need to continue the regulation of structural pest control, the review examined the functions and activities of the agency with attention to each of these three criteria.

The use of pesticides and herbicides to control unwanted pests and weeds in and around homes and other buildings grew dramatically with the movement of Americans from the cities to the suburbs beginning in the 1940s. City dwellers encountered new kinds of pests and the chemicals for their control were becoming widely available. The federal government first became involved in the regulation of pesticides in 1947 with the passage of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Texas first became involved in the regulation of the structural pest control industry with the establishment of the board by the 62nd Legislature in 1971.

The Federal Insecticide, Fungicide, and Rodenticide Act sets standards for and oversees the marketing of pesticide products in the country and establishes a framework for states to use to ensure all pesticide applicators meet minimum standards of competence. All pesticides sold in the U.S. must be registered by the EPA, which is authorized to specify the terms and conditions of their use before they may be sold and to remove unreasonably hazardous pesticides from the marketplace. Each product sold must have an EPA-approved label that specifies the conditions for its use, handling and disposal, plus any necessary safety precautions. All directions for use on the label are federal law, enforceable by the EPA. However, compliance with the label is generally handled by the states in their role as the enforcement arm of the EPA.

Under FIFRA, all insecticides, fungicides and rodenticides are classified in one of two ways: general-use and restricted-use. General-use pesticides are those that the EPA has determined will not, when used according to the label, cause acute poisoning or unreasonable adverse effects on the environment. General-use products are available for purchase by any consumer and are available in garden shops, hardware stores, and grocery stores. Restricted-used pesticides are those the EPA has determined require regulatory restrictions beyond those that can be included on a label, to prevent unreasonable adverse effects on the environment.

and injury to the applicator. A person must be trained and certified according to FIFRA guidelines to purchase and use any product labeled as restricted-use.

FIFRA requires each state to develop a plan and pass state laws for the regulation of pesticides and applicators. The state plan must be approved by the EPA. Each state is responsible for regulating the sale and use of pesticides in the state, certifying pesticide applicators, and enforcing state law regarding pesticide use violations. The federal guidelines serve only as minimum standards; state regulatory programs may be more stringent. Some federal money is provided to assist the states' enforcement efforts.

According to the Texas Pesticide Control Act of 1975, the Texas Department of Agriculture is designated as the lead agency for pesticide regulation in the state. TDA is given authority for registering the products and enforcing their sale. TDA also licenses private and commercial agricultural applicators. The Structural Pest Control Board is one of the state agencies with responsibility for a part of the state's regulation of pesticides. Each agency's responsibilities are included in the state's plan for the regulation of pesticides and their applicators.

The Structural Pest Control Board sets standards for licensing of structural pest control businesses and applicators, sets some application procedures, inspects licensees performing pest control work, investigates all complaints of improper application or other alleged violations of the act, and administers mandatory continuing education for certified applicators.

The state should continue the regulatory functions currently provided through the SPCB. Improper use of pesticides poses a clear danger to the public that warrants state regulation. This conclusion is based on the following findings:

- ▶ Improper use of pesticides poses a serious risk to the health and well-being of the public, so the state needs to continue regulation to ensure that applicators have a certain degree of competency when using these chemicals. Pesticides are toxic chemicals which, in the extreme, can poison humans, pets and wildlife.
- ▶ Because of a lack of conclusive scientific information regarding the effects of pesticides on human health, their use should be regulated to diminish the risk to the public. Original registration of pesticide products was accompanied by some test data; however, emphasis was put on the effectiveness of the product and on acute (sudden) health effects. Subsequent research has indicated that pesticides may also have chronic effects causing long-term illness. The U.S. Congress has recently required the EPA to begin recertification of all the chemical pesticides currently on the market by reassessing their toxicity as well as the chronic risks involved in their use in accordance with current scientific standards. Further, continued regulation is warranted due to the significant amount of scientific information that is simply not available regarding the use of pesticides in a structural setting, such as the rate of chemical breakdown in the absence of direct sunlight and the levels of pesticides in which it is considered safe to live or work. The research needed to answer some of the most basic safety questions raised by consumers and the scientific community is a lengthy, complex and very expensive process. Data collection is not slated for completion until the first decade of the twenty-

first century. Even after the EPA completes the recertification, pesticide use will not be risk-free and federal regulation is not intended to and will not replace the weighing of risks and benefits by consumers of pest control services.

- ▶ Even if the SPCB were abolished, federal law would require most of the functions of the agency to continue. Presumably TDA would assume the regulation of structural applicators by virtue of its role as the state's lead agency for pesticides. This change would need to be written into the state plan for review and approval by the EPA. As long as the proposed regulation meets federal requirements and the EPA determines that the new agency could properly administer and enforce the regulation, EPA approval would be granted and federal funding would continue. If another state agency were not to assume regulation, the EPA would become the state's regulatory agency for structural applicators. In this event, not only would federal funds to the board be discontinued but the level of regulation could decrease, since the statute and rules of the SPCB are more stringent than those required under FIFRA. Among other things, the requirements for mandatory continuing education, licensing of technicians, licensing of pest control businesses and liability insurance coverage would be discontinued. The review found each of these licensing requirements to be beneficial to the effectiveness of the regulation.
- ▶ Structural pest control is regulated by state laws in 49 states. The federal government administers and enforces the regulation of pesticides in only one state, Nebraska.
- ▶ Another indication of the need for regulation is the high number of complaints the Structural Pest Control Board receives and investigates compared to other state occupational licensing agencies. These complaints are initiated by both consumers and agency investigators. In fiscal year 1988, 626 complaints were investigated. Approximately one-third of these complaints involved suspected contamination or health incidents.

RECOMMENDATION

- **The state should continue to license and regulate the structural pest control industry.**
-

This recommendation would allow the state to continue regulation of structural pest control applicators and businesses. If this recommendation is not adopted, regulation would be assumed by another state agency or by the federal government since federal law requires the licensing and enforcement of structural applicators. If the federal government assumed regulation, the strength of regulation would be decreased because many of the state's requirements are not included in the basic federal requirements.

FISCAL IMPACT

Licensing fees and a grant from the EPA for enforcement are deposited into the Structural Pest Control Fund. No fiscal impact will be caused by continuing regulation. If the state discontinued structural pest regulation, the state would lose federal grant funds, which have amounted to \$40,000 each year until fiscal 1989, when the grant amount was raised to \$90,000.

Assessment of Organizational Alternatives

Organizational Alternatives

ISSUE 2: The Structural Pest Control Board should be continued as a separate agency.

BACKGROUND

The review of the SPCB examined two organizational alternatives for the regulation of the structural pest control industry. First, centralization under the Texas Department of Licensing and Regulation was considered based on an expectation of increased efficiency and reduction in duplicate administrative costs. Second, consolidation of the pesticide regulation under the Texas Department of Agriculture was considered for increased efficiency of administrative functions and effectiveness of enforcement.

Last legislative session the Texas Department of Licensing and Regulation's (TDLR) statute was modified to structure one of its divisions to serve as a centralized licensing agency. This division is set up to process applications and renewals for certificates and licenses for numerous and diverse regulated occupations and businesses and to investigate and enforce the laws and rules related to those regulated groups.

The second alternative, to merge the functions of the board under TDA, was also examined. Of the two options examined for an organizational alternative, this was the more logical and would offer some advantages. The Texas Department of Agriculture is the lead agency for pesticide regulation in the state under the EPA's federal regulation. Consolidation would place almost all pesticide applicator regulation in one agency. Applicators dealing with public health issues and the eradication of pests for disease control are regulated under the Texas Department of Health (TDH); otherwise, all pesticide applicators are regulated by either SPCB or TDA. A merger with TDA would bring Texas in line with most other states for regulating structural and agricultural applicators in one place. Only one other state, Arizona, has a completely free-standing agency for structural pest control regulation. Texas, however, because of its size, climate, and geography has a much larger pest control industry than most other states. Also, many states do not make a statutory differentiation between structural and agricultural applicators.

The review of both organizational alternatives indicated the following:

- ▶ Review of TDLR identified some similar elements in regulation between TDLR and the board. However, based on a comparison of benefits and drawbacks, transfer of the board's functions to TDLR was not considered as a viable option.
 - The effective investigation of pesticide complaints requires a significant amount of training and technical expertise that could not be easily assumed by TDLR investigators. The Structural Pest

Control Board's investigators receive two weeks of training initially and periodic subsequent training on pesticide sampling procedures and other enforcement techniques.

- No cost efficiencies would be gained in the investigative function since the over 600 complaints investigated each year by the board could not be absorbed by the TDLR staff. The entire SPCB investigative staff would need to be transferred to pursue all the complaints in a timely manner.
- ▶ The review found that, although the regulation administered by TDA and SPCB is similar in nature, transfer of the board's functions to TDA would not significantly impact regulation by improving the effectiveness of enforcement.
- Transferring the functions of the SPCB to TDA would not provide the consistency of policy that can be found under a free-standing agency. Because the TDA commissioner is elected at large every four years, substantial policy variations can occur every few years as the commissioner changes.
- Because FIFRA is the foundation for all pesticide regulation and the EPA enforces this act and oversees regulation of pesticides and pesticide use in the state, significant variation in procedures between agencies cannot occur. The Environmental Protection Agency staff monitors the enforcement procedures of both TDA and the SPCB on a quarterly basis. If regulation were ever to fall below the standards set by FIFRA, the federal government would step in and assume the regulation.
- A review of the complaint files of TDA and SPCB did not indicate substantial variation between the processes used and actions taken on alleged misapplications.
- Because of limitations in scientific methods and knowledge, neither agency is any more or less equipped to substantiate and enforce misapplication of pesticides. The inaccuracy of the methods used for sampling and the lack of scientific guidelines for interpreting these data hamper any governmental body in determining misapplication and the consequences of that misapplication with enough certainty to take enforcement action. Surface and soil residue testing is rarely accurate enough to pinpoint the chemical concentration the applicator used, particularly in a structural setting. However, even when the data suggest overapplication, few standards exist for the levels in which it is safe to live. The National Academy of Science and chemical manufacturers have guidelines for some chemicals but these are not conclusive and have not been tested in court for widespread use in regulation.
- ▶ Another problem involved in interpreting residue test results is the advances that have been made in the detection of chemical compounds in a substance. Scientists, until recently, had only been able to detect one part in a million. Now, scientists can routinely detect the presence

of a substance in parts per billion. This scientific achievement has only added to the uncertainty in the pesticide debate. Contaminants that previously could not be detected, and therefore were assumed not to exist, now show up in residue test results. Yet since the understanding of the effect of these levels on human health has not similarly advanced, the pesticide-related regulatory bodies have difficulty developing appropriate guidelines for enforcement.

RECOMMENDATION

- **The Structural Pest Control Board should be continued as a separate agency.**
-
-

The advantages of a merger with the Texas Department of Agriculture would not offer the public a dramatically higher level of protection and would decrease visibility and stability of the regulation by placing it inside another agency. A free-standing board would keep the agency and the regulation in a position of prominence, subject to legislative oversight and public scrutiny.

FISCAL IMPACT

Because fees collected exceed expenditures of the board, no fiscal impact will result from the board's continuation.

Recommendations if the Agency is Continued

Summary of Recommendations

The recommendations that follow are consistent with and go beyond the scope of the findings and recommendations that resulted from the sunset process 12 years ago. The primary finding that the regulation of the pest control industry should be continued is consistent with the last review. However, improvements in the agency's administration and a critical analysis of the advantages of remaining a free-standing body, with significant changes, caused the review to deviate from the previous recommendation regarding the administration of the regulation.

The current sunset review found that a number of changes have occurred in the regulation of the pest control industry in the 12 years since the first review. The agency pursues licensees' adherence with the insurance requirements. Recently, the agency has begun to stagger the renewal of licenses linked to the annual renewal of liability insurance which serves as an extra check on continuous insurance coverage. The tracking of complaints and enforcement cases has also significantly improved due to computerization. Finally, the agency informs all applicants for the certified applicator license that training materials are available from the Texas Agricultural Extension Service.

Policy-making Body

As a standard part of the sunset review the agency's policy-making body was examined. The review concluded that the governor should designate the chair of the board as is currently the case in many other agencies.

Overall Administration

A second area of inquiry relates to the administrative operations of the board. Despite a directive placed in statute during the sunset review of 1979, the agency has not made a strong effort to publish and distribute information to consumers on the role and functions of the board as well as general information on pesticides and their use. A recommendation follows that addresses the need for consumers to be provided with balanced information on the pest control industry.

Second, the review examined the areas of homeowner and liability insurance in an attempt to increase recovery by consumers after a severe misapplication. The review found one area, the per occurrence liability limit, which could be changed to immediately redress the problems experienced by consumers who claim large losses.

Programs

Licensing

The review of this area focused on the extent of regulation as well as the effectiveness of the licensing requirements. First, the review found the education and training requirements for structural pest control applicators should be strengthened. A recommendation follows to improve the consistency, quality, level and verifiability of training for licensed applicators.

Second, the review found pesticide applicators who are currently exempt from licensing provisions of the law. Under one exemption, health care facilities, schools, day care centers and multi-family dwellings may use their own employees to apply pesticides. The review concluded that proper application in these kinds of facilities is critical enough to warrant a requirement for full licensure. Another recommendation addresses the repeal of the exemption for nurserymen who hold a nursery/floral certificate from the Texas Department of Agriculture.

Enforcement

The review of this area focused on the procedures and content of enforcement actions taken by the agency. Although the agency is able to track inspections and enforcement actions, the actual procedures used for investigations are not formalized enough to prevent inconsistencies between investigators in the field. Also, the statutory authorization for conducting inspections should be clearly established. A recommendation to address these concerns is included in the report.

Second, the review concluded that the board does not provide oversight of enforcement actions taken by the staff. Also, agreements negotiated by the staff to help consumers recover money from licensees for ineffective treatments or careless workmanship are not specifically authorized in statute and a recommendation follows that addresses the statutory authority for, and board oversight of, these negotiated agreements.

Finally, statutory authority for revocation and board oversight of the actions taken by staff regarding licensees whose licenses have been revoked were found to be weak. A recommendation addressing revocation authority follows.

No recommendation contained in this section of the report would have a significant fiscal impact. Any resulting costs to the agency would be offset by license fees and other charges for cost recovery.

ISSUE 3: The statute should require that the governor designate the chair of the board.**BACKGROUND**

The chair of the Structural Pest Control Board is currently elected by the members of the board and serves as chair for one year. Although the term of chairmanship is not specified in statute, the average tenure in the past 12 years has been between two and two and one-half years.

The Sunset Commission has routinely recommended that the governor appoint the chair to improve the board's accountability to the governor. Except in unusual circumstances, this provision has been included in the statutes of agencies reviewed as a result of sunset recommendations. The governor selects the chair in 42 other state agencies, including the Texas State Board of Insurance, the Texas Department of Mental Health and Mental Retardation, the Texas Air Control Board, the Texas Water Commission, and the Texas Department of Human Services. Most agencies reviewed by the Sunset Commission for the 71st Legislature had this provision in statute. Where it was not in statute, it was added as a result of sunset action.

PROBLEM

The election of the chair by the commission members each year does not provide the best method of ensuring a continuity of policy or accountability between the board and the governor.

RECOMMENDATION

- **The statute should be changed so the governor designates the chair of the Texas Structural Pest Control Board.**

The person appointed as chair would continue in that position at the pleasure of the governor. This would promote accountability between the board and governor.

FISCAL IMPACT

No fiscal impact would occur as a result of the recommendation.

ISSUE 4: The SPCH should develop and distribute information about pesticides and pest control and require licensees to issue information to all consumers of pest control services.

BACKGROUND

Texans spend an estimated \$1 billion on pest control every year. Over the past several decades, pesticides have been widely and effectively used to kill unwanted pests in and around homes and businesses and have contributed to the eradication of some diseases. In recent years, however, the use of chemical pesticides in and around homes has come under increasing scrutiny and attack because of a growing concern over the potential harm to human health and the environment.

In the midst of the controversy are the consumers who typically do not have the kind of factual, balanced information necessary to make a decision they are comfortable with about pest control. Consumers are also generally unaware of the precautions that should be taken in handling toxic substances or that effective alternatives to chemical pesticides exist.

The Structural Pest Control Board has a statutory requirement, added during the sunset review of 1979, to establish a public information program to inform people about the practice and regulation of structural pest control in the state. To date, the board has done very little to comply with this mandate. Austin staff answer telephone inquiries but the agency has not developed any written information for consumers' use.

A number of other states have developed a public information program and required this information to be given to consumers.

Because of the nature of pesticides and the fact that the board regulates persons applying chemicals in people's homes and places of work and recreation, it is important for this board to make every effort to act in the public interest for the protection of the health and welfare of the citizens of this state.

A review of the information available to consumers and the board's role in providing information indicated the following:

- ▶ The board has not prepared general information sheets on pesticides, common pest control techniques, health and safety precautions, or factors a consumer should consider before hiring a pest control company. The board requires the use of a consumer disclosure form dealing with treatment techniques and elements of contract warranties for termite and other wood destroying insect treatments. However, this form does not provide any general information about pesticide use and safety.

- ▶ The agency does not keep track of the number of requests received for general information and does not have a policy to guide responses to requests received. In response to more technical questions, the agency sometimes refers callers to other agencies that might be able to answer their questions, such as the Texas Agricultural Extension Service.
- ▶ Information sheets have been developed by others, which are sometimes used by pest control operators:
 - The Texas Pest Control Association has a consumer information sheet which it estimates 60-75 percent of its members routinely give to consumers. It includes a general discussion on the history of pesticide use in agriculture and in homes, requirements applicators must meet to be licensed, a discussion of chemical concentrations, safety precautions and organizations to call in an emergency.
 - The Texas Department of Agriculture adopted a rule in 1987 that required all SPCB licensees to issue TDA's informational sheet on termite control to consumers of termite services. SPCB licensees used these sheets for about a year until an attorney general's opinion ruled against the department's authority to adopt rules affecting licensees of the SPCB. Some pest control companies may continue to distribute TDA's termite sheet.
 - Consumer material is also published by chemical manufacturers, universities, and other states' regulatory agencies. The Texas Agricultural Extension Service has detailed brochures on common pests and methods of control. Through their offices in nearly every county in the state agricultural extension agents perform an extensive outreach service.
- ▶ The volume of consumer complaints involving potential misapplication, misuse and human exposure warrants information to the public on what to expect from the pest control treatment and of the potential dangers involved. The SPCB received and investigated 626 consumer complaints in fiscal year 1988. Between 15 and 30 percent involved potential misuse, misapplication or human exposure.
- ▶ Additional consumer information is needed to clarify and counteract the incorrect and unlawful claims being disseminated by some pest control businesses. The General Accounting Office (GAO) found in a study of nonagricultural pesticide use that structural pest applicators publish unlawful information about the safety of pesticides, including statements suggesting that the pesticide is "approved" by the EPA or that its use is safe and harmless.

- ▶ A demand exists for information on pesticides and pest control. For example, after an initial printing of 30,000 termite sheets printed by TDA, an additional 20,000 were printed to keep up with the demand from individuals and groups. TDA also distributed the information through its extensive media and outreach programs.
- ▶ Eighteen states provide information to consumers:
 - Three other states, Connecticut, Maryland, and New Jersey, require information sheets to be given to all consumers.
 - Four states, North Carolina, Pennsylvania, Delaware and South Dakota, require consumers to be provided with the product label.
 - Eleven others require licensees to give information on request, such as the product label or manufacturer's safety data sheet.

PROBLEM

Consumers do not have ready access to factual, balanced information about pesticides and the pest control industry. Furthermore, the board has not fully complied with its statutory mandate to develop a public information program and does not provide general pesticide use information to the consuming public on a routine basis.

RECOMMENDATION

- The agency's statute should be modified to:
 - require the board to develop information on pest control and pesticides for distribution to the public;
 - require the board to appoint an advisory committee consisting of members representing consumers, the industry and the sciences related to pesticides to help develop the information;
 - require structural pest control business licensees to provide the approved consumer information to all consumers who contract for services; and
 - require the board to provide its consumer information to the Texas Department of Agriculture and the Texas Agricultural Extension Service for distribution.

This recommendation would require the board to develop a policy for the mandatory distribution of information to all consumers of pest control services. Business licensees would be required to provide this information before entering into a verbal or written contract.

RECOMMENDATION (cont.)

This recommendation directs the board, with the advice of an advisory committee, to develop clear, factual and balanced information on the pest control industry, chemicals used in structural pest control, general health and safety issues, precautions to take during and after application, and steps to take if a misapplication (including underapplication) is suspected. Information is available from a number of sources the board and the advisory committee could use to develop the required information sheets.

The industry has a genuine concern that poorly-prepared consumer information may be harmful because it could alarm the public. The review concluded, however, that the best way to guard against this is for the agency to be proactive in distributing clear, factual, and balanced information about the risks and benefits of pesticide use.

Similar to the brochure developed by the Texas Pest Control Association, the information presented to the consumer should include the names and telephone numbers of the SPCB, TDA, TDH and the pesticide hotline at Texas Technological College (Texas Tech). The board should also include a statement telling consumers that state law, under the Deceptive Trade Practices and Consumer Protection Act (Section 17.55A, Texas Business and Commerce Code), allows a consumer to void any contract during a three day "cooling-off" period.

Finally, distribution of the consumer materials through the extensive outreach programs of the Texas Department of Agriculture and the Texas Agricultural Extension Service will benefit homeowners who use pesticides themselves and help guard against homeowner misuse.

FISCAL IMPACT

Although there would be staff time involved in developing the required materials, the committee can draw heavily on existing information. The board would have to print a sufficient number of the materials to give to consumers on request, to all business licensees (3,062), to TDA and to the Extension Service for distribution. The cost to TDA to develop and print 50,000 termite sheets was \$800 and can be used as an indicator of the cost for the SPCB information sheet. The board would provide the informational sheet to the business licensees who would print enough to distribute to their customers. The termite disclosure form is distributed using a similar method. The cost to print 4,000 single-page sheets is approximately \$150 at a commercial printing business. In addition, committee members would be reimbursed for expenses incurred in developing the materials. Reimbursement would be provided at the same rate as state employees. Exact costs were not developed because of the uncertainty as to the size of the committee or the number of times it would meet. Finally, the increased visibility that this type of information will provide may lead to some increased investigative and enforcement efforts. It is not anticipated, however, that additional inspectors would need to be hired to accomplish the additional inspections.

ISSUE 5: The minimum per occurrence liability insurance coverage should be raised from \$100,000 to \$200,000 per year.**BACKGROUND**

The Structural Pest Control Act requires each business location to carry liability insurance to cover property damage and bodily injury caused by any applicator employed by the business in the course of pest control work.

The current minimum required coverage set in statute is \$100,000 for property damage and bodily injury, per occurrence, and \$300,000 aggregate. The per occurrence limit of \$100,000 means that any single claim is covered up to that dollar amount. The \$300,000 minimum aggregate figure is the total amount of liability coverage carried by the business location for all claims paid during a one-year period. This means that, over the course of one year, the insurance company may either pay up to three claims for \$100,000 each or they may pay an unlimited number of claims, provided the total amount paid out does not exceed \$300,000 for the business location.

The current required coverage appears to be sufficient to cover most claims submitted by pest control businesses. The vast majority of claims involve property damage due simply to carelessness, such as a dent made in a door or a hole drilled in the heating and air conditioning duct system. Some claims involve professional cleaning costs after an accidental pesticide spill.

Less frequent but more critical are the cases where the consumer claims a total or near total loss of his home and belongings due to contamination from a severe misapplication. Unless the insurer pays the claim without contention, the homeowner must hire an attorney to negotiate with the insurance company and/or take the case to court. The experience of consumers indicates that after attorneys' contingency fees and additional court and expert witness fees are paid, the homeowner may receive less than half of the total insurance settlement.

A review of the nature and frequency of insurance claims and the impact of a change in insurance requirements indicated the following:

- ▶ Most claims fall well below the minimum insurance limits. In 1986, the board conducted a survey of structural pest control insurers which found the highest claim reported in this survey was \$10,000. However, most claims were reported to be under \$1,000.
- ▶ When large misapplication claims are filed, the current minimum insurance level is not sufficient to cover the average mortgage and other costs that can result from severe misapplication, such as temporary living expenses, a second mortgage, replacement of any or all belongings that are left behind and medical costs. A homeowner who has to hire an attorney, and possibly go to court, to settle a total loss claim may recover less than half of the settlement. According to

consumers, attorney contingency fees in pesticide misapplication cases are approximately 40 percent of the settlement. Court costs and expert witness fees vary but can amount to several thousand dollars. Therefore, a claimant may receive less than \$50,000 of the \$100,000 minimum insurance limit. The statewide median price of a home is \$72,171, according to a 1989 survey by the Real Estate Center at Texas A&M University.

- ▶ Highly publicized cases involving a total loss have occurred at a rate of about one per year over the last few years where consumers were required to fight a case in court. These consumers recovered less than half of the settlement. For example:
 - One family received a jury award of \$220,000, yet the family received only \$19,000 after paying court costs and attorney fees. Another family was awarded just under \$400,000 and received about \$162,000.
- ▶ Raising the minimum insurance coverage will not significantly impact the breadth of coverage or the percentage of claimants receiving a settlement. Two problems confront consumers filing a contamination-related claim. First, the insurer must decide that misapplication according to the label did, in fact, occur. Scientific determination of misapplication is very difficult, as discussed in the Organizational Alternatives section of the report, and an insurer would have only the same data and guidelines available as would the board. Although interpretation of the data could vary, the process is the same. Second, insurers are reluctant to pay any contamination claims because of the precedent that could be set for other environmental pollution liability suits. Third, insurers fear that admission of liability in a short-term misuse claim could make them liable to a long-term contamination claim in the future.
- ▶ Many businesses already carry coverage in excess of the \$100,000 minimum per occurrence. A review of the agency files found that 35 percent of all business locations were carrying above the minimum liability coverage before the increased levels passed by the 71st Legislature went into effect. A total of 370 business locations (or 12 percent), including the largest franchised companies, were carrying coverage of \$1 million or more. Less than ten percent of business locations carried the minimum coverage for both the per occurrence and aggregate levels. Some companies do not distinguish between the levels and choose, instead, to carry a combined single limit policy whereby the aggregate level is, in effect, the amount available for each claim. By board rule, if the business suffers claims to reduce coverage below a certain level, the business must reinstate the coverage.
- ▶ Raising the per occurrence limit would, of course, affect the cost of insurance premiums. The State Board of Insurance estimates that raising the per occurrence limit to \$200,000 would raise the average premium by 14 percent annually.

PROBLEM

The per occurrence minimum liability insurance coverage is too low to adequately cover the relatively rare, but large, misapplication claims.

RECOMMENDATION

- The statute should be changed to raise the minimum per occurrence liability insurance coverage to \$200,000 for property damage and bodily injury.

This change would help cover homeowners and other property owners against significant financial loss in the case of a misapplication where the structure is determined to be unsafe to continue to live or work in. This recommendation addresses the aspect of liability coverage, the per occurrence amount, that could most directly help consumers facing financial loss without putting a heavy burden on the pest control industry to pay dramatically higher insurance premiums. Since the majority of pest control businesses currently carry coverage above the statutory minimum levels, this change would affect only a small portion of the industry.

This change, however, would not cause the number of claimants receiving a settlement to substantially increase. As discussed above, there are systemic problems in the pesticide liability insurance industry that have hampered consumers in getting satisfactory resolutions to their insurance claims involving misapplication. The issues at the root of those problems are not addressed, and will not be resolved, by this recommendation.

Finally, questions have arisen recently concerning coverage by a homeowner's insurance policy for pesticide contamination. Interpretation of a contamination exclusion clause in these policies is currently being debated in the courts. The review concluded that a process is in place under the State Board of Insurance for the exclusions to be rewritten, if needed, after judgments on the current wording are ruled on by the courts.

FISCAL IMPACT

No fiscal impact to the state is anticipated from this recommendation. Liability insurance premiums for the average pest control business location is estimated to increase between \$300 and \$3,600, or 14 percent of estimated current premiums, depending on the size and gross sales of the company.

ISSUE 6: The board should require all licensed technicians to use board-developed or approved training materials.**BACKGROUND**

Pesticides have, over the past several decades, been used as an effective way to eradicate disease, control lawn weeds, and eliminate general and household pests. Pesticides can also cause considerable harm to health and the environment if used without due regard for the dangers associated with misuse of these toxic substances.

To deal with this risk, the federal government and the state have established a regulatory scheme that includes education and training, examination and licensing, and enforcement. Education and training are critical elements of the regulatory scheme since, with few exceptions, the 4,214 technicians apply pesticides without supervision exactly as would the nearly 6,000 certified applicators. This means that the competence of technicians is essential for protection of themselves and the public.

The Structural Pest Control Act mandates that the board require special training or testing of technicians before licensure. By rule, the board has set training standards but does not require testing. Board rules require at least two hours of classroom training for technician applicants on each of the following topics: federal and state law; recognition of pests and pest damage; pesticide labels; safety; environmental protection; application equipment and techniques; pesticide formulations and actions; and, emergency procedures and pesticide cleanup. In addition, technician applicants must also receive 60 hours of on-the-job training. The new mandatory continuing education program for certified applicators will build on the technician training, help maintain proficiency, and well as keep up with any technological advances in the industry.

However, the current training scheme is not sufficient to ensure a reasonable, even basic, level of competence. Only very broad curriculum guidelines are set by the board and verification of training is weak. The only control exercised by the board is by checking records at the business location, which indicates the number of hours, not necessarily the content, of the training.

A review of the existing training requirements, other state programs and other agency statutes found the following:

- ▶ The training provided to technicians lacks standardization. Technicians are trained by the certified applicator employing them. Therefore, the quality, content, testing method, materials used and relevance of this training will vary depending on the certified applicator.

- ▶ The average score for the certified applicator exam categories varies between 48.6 percent and 79.9 percent. This wide range points to a variation in the training since all the people taking the exam have gone through training and have worked as a technician applicator for at least six months.
- ▶ The legislature commonly requires occupational licensing agencies to oversee training, approve curricula, and establish other educational and training goals. However, unlike SPCB, the training is usually in the form of an educational requirement where the teaching is in a formal classroom setting, such as a proprietary school or college, where exams are given and training is verified. The formal setting and state oversight help assure standardized and uniform education.

PROBLEM

The structure for the education and training of structural pest control technicians is not adequate to ensure competence.

RECOMMENDATION

- The agency's statute should be modified to:
 - require the board, within two years, to develop education and training materials for technicians with the advice of an advisory committee consisting of members who represent consumers, the pesticide industry, and others who have expertise related to training and the sciences related to pesticides;
 - require the board to publish and distribute the material in conjunction with the Texas Agricultural Extension Service;
 - require every applicant for a technician license to complete the board's training course or an alternative course approved by the board and verify the training; and
 - require all currently licensed technicians to complete the training within five years of the passage of the act.

This change would constitute a significant step toward ensuring the competence of the persons applying pesticides in and around homes and places of work and recreation. It would require the board to develop a comprehensive training program and a written and/or practical evaluation form to check the applicant's retention of the information. The evaluation would not be intended to deny applicants the opportunity for licensure but would require them to re-take the training until they can demonstrate sufficiency in each of the topics as verified by the evaluation form.

In deciding what subjects should be included in the training materials, the board should review previous examination results and address those areas where applicants consistently had difficulty. It is anticipated that the recommended training course would include the topics listed in rules (discussed previously) as well as basic instruction in mathematics, chemistry, toxicology, and entomology and non-chemical alternatives to pest control, including biological, mechanical and prevention techniques.

The board would be authorized to approve any existing course of instruction as an alternative to the board-developed materials.

Within five years, all currently licensed technicians would have to read and view these materials, unless they choose to become certified during the five-year period. They would not be required to pass any test, unless required by their employer.

It is anticipated that the board could use existing training materials as a guideline for its program. For instance, at least one of the larger franchised pest control companies has developed its own training materials, including videocassettes, workbooks and detailed technical manuals. The Texas Agricultural Extension Service has developed a detailed set of information booklets as study guides for the certified applicator exam. North Carolina also publishes a videocassette and workbook for the state's registered technicians and Maryland is in the process of developing training materials funded by an EPA grant. It may be possible for Texas to use those materials, once completed.

FISCAL IMPACT

The cost to the state of developing and producing these materials could be recovered through sales and lending fees for the training materials to pest control businesses. The anticipated cost to the 3,062 pest control businesses will vary based on whether they use an existing program approved by the board and whether they choose to buy or borrow the materials.

ISSUE 7: Exemptions to licensure under the act should be narrowed so that not-for-hire applicators in health care facilities, day care centers, schools and multi-family dwellings are licensed under the act.

BACKGROUND

Currently, the Structural Pest Control Act contains an exemption that allows any property owner to apply pesticides to his property without being trained or licensed. This exemption allows homeowners and small business owners to do their own pest control. The exemption also allows employees of the property owner, whether as a part of their other duties or as their full-time responsibility, to apply pesticides on and around the property, provided it is a not-for-hire (non-commercial) transaction. Under this exemption, many places such as nursing homes, hospitals, schools and apartments are outside the scope of the law. People either live in or are confined to these places and can be exposed for long periods of time to pesticides applied in these structures.

Proponents of the current exemption argue that these applicators are exempt only if they use general-use pesticides exclusively, since anyone who uses restricted or state-limited-use pesticides must be licensed as a pesticide applicator with either the Structural Pest Control Board or the Texas Department of Agriculture. Thus, they are currently treated as others applying pesticides on their own property. However, all structural pest control operators, whether commercial or non-commercial, use general-use pesticides almost exclusively since these are the pesticides labeled and intended for structural use, including the most common, such as Dursban, diazinon, and Demon. Most restricted-use pesticides registered in the state are primarily for agricultural use. Even when licensed, a structural applicator would rarely use restricted-use chemicals. Both general-use and restricted-use pesticides are labeled; the label prohibits certain uses and dictates concentrations, use procedures and safety precautions.

In spite of the distinction between chemicals used, the legislature has supported a regulatory scheme since 1971 to protect the health and safety of its citizens and the environment from the misapplication of pesticides by training and licensing commercial applicators. According to the logic of this regulation, the state should also oversee non-commercial applicators who apply pesticides where people live or in places where people are particularly vulnerable to the possible ill effects of chemical pesticides due to long-term exposure.

Unlike a more typical residential setting where the homeowner has a choice about whether to use chemical pesticides and then can take any desired precautions, a tenant in an apartment, a parent who leaves a child in day care, or a patient in a hospital is not aware of when pesticides are applied. Furthermore, patients in hospitals and residents in nursing homes cannot simply decide to leave the premises during the application.

Not-for-hire applications account for a significant portion of urban pest control use, according to the U.S. General Accounting Office (GAO). In a 1986 study of non-agricultural pesticide use, the GAO estimated that three-quarters of all non-agricultural pesticide applications are made on a not-for-hire basis. Furthermore, the U.S. Environmental Protection Agency (EPA) estimates that non-residential use of pesticides is three times higher than residential. Although these are nationwide studies, the figures indicate that the most significant portion of urban pest control work is exempted from regulation.

The GAO study mentioned above found that roughly one-third of the states set at least some standards for not-for-hire applicators. A 1989 survey done by a structural pest control industry group indicated that only a few states specifically exempt property owners.

A review of the pest control practices of private and public facilities, of other states' policies in this area, of the current regulation under TDA, and of the use of pesticides in non-residential settings found the following:

- ▶ Although accurate data was not available during the review, pest control applicators as well as representatives of the business community indicated to sunset staff that the majority of currently exempt facilities in Texas hire professional pest control companies or maintain a licensed certified applicator on staff. A small telephone survey of local exempt businesses found three basic approaches to pest control. First, some businesses simply choose to have their employees apply pesticides without any contact with the board. Second, others opt to have their primary applicator licensed as a certified applicator with the SPCB. A third group contracts for professional services.
- ▶ The Texas Department of Agriculture licenses both commercial and non-commercial agricultural pesticide applicators with few differences between the regulation of these two groups.
- ▶ The agency received approximately 80 complaints in fiscal year 1988 involving exempt, unlicensed applicators for structural and lawn applications. This number represents about 16 percent of the total received by the board each year. Complaints regarding unlicensed applicators received by the board are partially investigated and/or referred for investigation and enforcement to TDA which serves as the EPA's enforcement arm and the state's leading agency for pesticides.
- ▶ A review of the complaint and enforcement files at the SPCB and TDA found the following:
 - Three violations were investigated involving secondary school or college employees spraying Chlordane on and around the exterior of buildings for fire ant control. Chlordane, before it was banned, was required to be buried under the ground only; spraying was not allowed.
 - At Hope Christian School in Henderson a 15-year-old student was told by the principal to spray Chlordane and diazinon under and in buildings, recreational rooms, and classrooms. The Texas Department

of Agriculture determined misapplication and referred the case to the attorney general's office for prosecution.

- A Dickinson Independent School District employee was hospitalized for a week after spraying playing fields with a faulty pressure sprayer. He had received no training in the use of the sprayer or the pesticide.
- Two separate violations were investigated involving apartment complex employees who sprayed Chlordane inside tenants' apartments. Indoor use of Chlordane was prohibited by the label when the product was still on the market.
- ▶ Fifteen states, according to the GAO's 1986 survey, have either licensure or some lesser requirements for not-for-hire applicators. Indiana has one of the stronger state regulations in this area, including a not-for-hire licensure category, a requirement of 90 days experience as a registered technician, a training program and an exam.
- ▶ While the licensing exemption authorizes all private businesses, including restaurants, shops and grocery stores, to perform their own primary pest control, the review could not determine the impact of removing the exemption across the board for all these businesses. Further, a review of complaint files showed problems with the applicators addressed by the recommendation. The review could not conclude from these files, however, that a problem existed with the other types of businesses.

PROBLEM

A significant number of complaints received by the board involve unlicensed applicators who apply pesticides on a not-for-hire basis in health care facilities, schools, day care centers and apartment complexes or other multi-family dwellings.

RECOMMENDATION

- The statute should be changed to remove the exemption that allows the following facilities to be treated with pesticides by unlicensed individuals:
 - hospitals, nursing homes, intermediate care facilities and inpatient rehabilitation facilities, as defined in Article 4418h, Section 1.03(9) (V.T.C.S.);
 - day care facilities, licensed by the Texas Department of Human Services;
 - public and private schools under the jurisdiction of the Texas Education Agency; and
 - apartments and other multi-family dwellings.

RECOMMENDATION (cont.)

This change is intended to provide greater protection for the most vulnerable individuals from the possibility and effects of pesticide misapplication. Also protection is extended to residents of rental property who may have little to no control over the use of pesticides in their homes.

Under this recommendation, public and private health care facilities, schools, licensed day care centers and apartment complexes and multi-family dwellings would be required to either hire professional pest control services or to have a person on staff who has been trained and licensed according to the act.

This recommendation would not affect any other private or public business or facility that is currently exempt from the law.

Consumer complaints involving exempt applicators are currently investigated by TDA, in its role as the EPA's enforcement arm and as the state's lead agency for pesticides. TDA is authorized to pursue civil or administrative penalties for a violation of the label. By this recommendation, enforcement of pesticide applications made in the facilities listed above would shift to the SPCB. TDA would continue to enforce violations for any applicators who do not come under the board's jurisdiction.

FISCAL IMPACT

There is no anticipated fiscal impact to the state from this recommendation. According to data from the Texas Employment Commission, this recommendation would affect approximately 6,000 local, state and private health care facilities (as defined above), child day care centers and secondary and post-secondary schools in the state. Using estimates of the industry and business community, if half of these facilities currently use professional pest control services, approximately 3,000 facilities would have to license a pest control operator or hire a professional company under this recommendation. However, administration and enforcement costs associated with licensing the additional applicators would be recovered through licensing fees.

ISSUE 8: The statutory exemption that allows holders of the Texas Department of Agriculture's nursery/floral certificate to apply pesticides on a for-hire basis should be removed.

BACKGROUND

The Structural Pest Control Act requires any individual who applies pesticides for compensation in and around homes and office buildings to be licensed by the board. A provision in the act, however, exempts current holders of the nursery/floral certificate issued by the Texas Department of Agriculture which allows them to offer their services as a pest control applicator on a for-hire basis. They may not, however, apply restricted-use pesticides for-hire unless they are licensed as a pesticide applicator by either TDA or the SPCB.

The nursery/floral certificate has little to do with pesticide use and only represents authority for nurserymen to grow and sell plants in the state as well as to ship them out of state. The TDA certificate certifies to receiving states that the plants are free from pests. The program is completely separate from the commercial, non-commercial and private pesticide applicator licenses issued by the department and carries no assurance of training or knowledge of chemical pesticides.

An examination into this exemption revealed the following:

- ▶ Provided only general-use pesticides are used, nurserymen are not restricted from using pesticides on their own plants while they are maturing, before sale. Once the plants leave the nursery, pesticide and herbicide treatments are regulated the same as any other applications performed on a for-hire basis. Nurserymen sometimes provide a warranty-type of transaction for consumers whereby they apply pesticides to plants they sold that were infested with pests. For instance, if a consumer buys a pallet of sod that is infested with fire ants, the nurseryman may go to the home or business and treat the sod. These applications are not for-hire and are part of the service some nurseries provide.
- ▶ The wording of the exemption, however, allows a TDA-certified nurseryman to provide a whole range of yard and garden services, including the use of pesticides, to consumers on a for-hire basis completely separate from his role as retail or wholesale merchant of plants. The exemption does not extend to pesticide use inside a structure.
- ▶ All pesticide applications are regulated to the extent that the people who apply them must follow the EPA-approved label. However, all pesticide applications made, unless by a person or employee on his own private property, are regulated by the act. All other applicators providing this type of service are required to have a license from the

SPCB. Further, chemical lawn treatments can be a particular source of concern to some consumer groups because children and pets can be directly exposed to the chemical on the yard without awareness of the potential dangers of direct and prolonged exposure.

- ▶ Of the 143 board-licensed applicators in the lawn and ornamental category, 42 also held a nursery/floral certificate from TDA. This number indicates that people are performing the kinds of services described here and are properly licensed.
- ▶ In fiscal year 1988, the board received 41 complaints (or just under 10 percent of the total) in the lawn and ornamental and the weed categories. Although these involved licensees, the figure points to the relative volume of outdoor applications.
- ▶ Survey data for 32 states, provided by the Pesticide Public Policy Foundation, a structural pest control industry group, indicated that no other state exempts nurserymen from their pesticide applicator laws.

PROBLEM

The current exemption for holders of TDA's nursery/floral certificate is worded so nurserymen may offer a range of for-hire pesticide services to the general public without being licensed by the board.

RECOMMENDATION

- The statutory exemption should be removed that allows holders of the Texas Department of Agriculture's nursery/floral certificate to apply pesticides on a for-hire basis without a license from the board.

This change would require any person or business certified under the nursery/floral program of the Texas Department of Agriculture who applies pesticides for-hire to be licensed by the board in the lawn and ornamental and/or weed categories. Licensing requirements will be the same as that for all other certified applicators and technicians licensed under the act, including training and examination. Unfortunately, because of the exemption, accurate figures on the number of nurserymen applying pesticides on a for-hire basis under this exemption were unavailable.

This recommendation will not impact the service or warranty transactions that nurseries may choose to provide whereby a nurseryman may treat a plant with pesticides after it is sold. This is a not-for-hire transaction that does not come under the current law. However, these applications are limited to the plants sold by the TDA-registered nurseryman and may not extend to all plants on the consumer's property.

FISCAL IMPACT

No fiscal impact is anticipated from this recommendation. License fees are expected to cover the cost of licensing the additional applicators and businesses who will be brought under the act.

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ISSUE 9: The agency's statute should be modified to include a biennial inspection requirement and a requirement for the board to adopt investigation procedures in rules.

BACKGROUND

The agency has no requirement in statute for conducting inspections. To determine if licensees are complying with the law, however, the agency does conduct inspections of the pest control businesses and applicators licensed under the act. The agency has 12 investigators on staff who conduct routine inspections and investigate consumer complaints across the state.

Regulatory agencies generally have a statutory requirement to perform periodic routine inspections with guidelines and procedures for the inspections defined in rules. These inspections are intended to ensure compliance with the requirements of the law and regulations. Ideally, the agency should be able to track, and through the inspections concentrate on, those licensees who have been weak in complying with the law, including licensees on probation.

While not intending to restrict the operations of the agency, the rules adopted by the board should be clear and specific about the board's policy on inspections, the timeliness of follow-up inspections, and the procedures that should be followed based on the circumstances found by the inspector in the field.

A review of the agency's policies and procedures regarding inspections indicated the following:

- ▶ Though not specifically required to, the agency has a strong commitment to the timely investigation of consumer complaints and actual pesticide use. In fiscal year 1988, agency staff investigated 626 complaints. The average number of days between the opening and final investigation of all consumer complaints was 31 days.
- ▶ Inspection routines vary according to the region. In urban areas, consumer complaints generally dictate the inspectors' schedules. Activities include visits with the complainant, the business owner and the licensee who was responsible for the application. The inspector also verifies chemical use records, personnel training records and current licenses while at the business location.
- ▶ In rural areas, the inspectors' time is generally spent doing more routine business inspections. As with a complaint investigation, the inspector verifies chemical and personnel records at the business office. Both kinds of business location visits serve to check compliance with the regulations that are not accomplished through administrative functions in the Austin office. In fiscal year 1988, investigators checked 2,263 chemical use records and 3,622 current licenses at the business offices.

- ▶ In addition, field investigators check for required identification tags on pest control vehicles and watch licensees making actual applications during random unannounced use inspections. In fiscal year 1988, investigators made 388 use inspections.
- ▶ Although the SPCB does not have a statutory timeframe for completing random inspections of its licensees, the agency estimates that inspectors, in the course of their activities, visit approximately sixty percent of business licensees each fiscal year.
- ▶ The agency's inspection process lacks a system to track inspections to determine, in any given year, which businesses have not been visited and which need re-inspection for compliance monitoring.
- ▶ The agency has a computer system and staff who could install a program to regularly track previous inspections and alert the inspectors of the businesses due for a routine or special inspection. The agency uses a similar procedure to notify the inspectors of a licensee in their territory whose insurance has lapsed or license has expired so contact can be made to bring the licensee into compliance.
- ▶ Other regulatory or occupational programs commonly have statutory inspection requirements. For instance, most of the licensing programs administered by the Texas Department of Licensing and Regulation have either annual or biennial inspections. TDA has a biennial requirement in the weights and measures and nursery/floral certification programs. The Texas Proprietary School Act requires annual inspection of school facilities for recertification.
- ▶ Although the agency's track record indicates its commitment to investigating consumer complaints, many of the procedures are not formalized and uniform and objective investigations are not ensured. Some of the procedures used in the documenting of pesticide use violations are reviewed and approved by the EPA. When soil or surface residue samples are taken, these procedures are, and need to be, consistently and uniformly done in every investigation. Other aspects of the investigation are more subject to the judgment of the investigator. For example, in suspected misuse cases, the board has no rules governing when to take residue samples; when to have air samples taken; under what circumstances an inspector should go immediately to the site; when to recommend clean-up and, if so, what procedures to recommend.
- ▶ The consequences of pesticide misuse and the debate that exists between the industry and some consumer groups makes it even more imperative that these procedures are formalized and adopted in rules to avoid variability and questions of bias and to provide an opportunity for public input in their development. Adoption of rules will inform homeowners of expected and accepted practices and help alleviate the confusion and frustration of some consumers because they could not assess the quality or thoroughness of the investigation they received.

PROBLEM

The agency does not have either a statutory requirement or a written policy to guide the frequency and method of conducting routine and complaint inspections. Therefore, schedules and procedures can be inconsistent, altered without board review and are not subject to public review and comment.

RECOMMENDATION

- The agency's statute should be modified to:
 - require a biennial inspection of all pesticide businesses; and
 - require the agency to adopt in rules guidelines and procedures for routine inspections and complaint investigations.

This recommendation will require agency field inspectors to visit each licensed business location and check on the procedures of that business' licensees at least once every two years. This timeframe will provide the agency with enough flexibility to continue current efforts on consumer investigations while providing assurance that all businesses are, in fact, reviewed periodically.

In implementing this requirement, the agency should adopt in rules a policy for routine inspections, including a policy for initiating more frequent and intensive inspections for those businesses and applicators that have shown non-compliance with the law.

Additionally, the agency should adopt in rules a policy for the conduct of the investigations, including but not limited to, a) procedures used in investigating misuse, contamination and human exposure complaints; b) guidelines for referring cases to the Texas Department of Health and the Texas Water Commission, where needed; c) guidelines for when and what to recommend to consumers and applicators regarding clean-up after a spill or misapplication, including when to defer to the judgment of the chemical manufacturer; and d) guidelines for when to take residue samples and the timeframe for collecting the sample.

These rules should be written so as to give the agency flexibility to respond to complaints in an expeditious and prudent way, but they should also serve to inform all licensees and members of the public of the policies of the agency and allow opportunity for public comment in this area of the agency's activities.

FISCAL IMPACT

There is no anticipated fiscal impact from this recommendation. Since over half of all business locations are currently investigated annually, there should be no additional cost to inspecting each business every two years.

ISSUE 10: The agency's statute should be modified to require the board to approve informal disciplinary agreements made by agency staff with licensees and require adoption of procedures for negotiations.

BACKGROUND

Occupational licensing agencies are created to set standards of practice for persons engaged in occupations that the state feels a need to control by virtue of health, safety, or consumer protection aspects of the occupation. In this role, the legislature delegates to these agencies quasi-legislative authority in the rule-making process and quasi-judicial authority in the administrative hearings process.

Accountability exists because those responsible for final rule-making and enforcement decisions within the agencies are appointed by the governor and confirmed by the senate. This line of accountability weakens dramatically when, in an effort to be timely and efficient, functions that are given to the governing body in statute are handled by staff without board review.

The board is authorized to assess a range of disciplinary sanctions against a licensee found in violation of the act. However, the Administrative Procedure and Texas Register Act (APTRA) provides an opportunity for any contested case to be settled at an informal hearing. Generally, informal hearings are an opportunity for agency personnel and the licensee to meet and discuss the violation and agree on an appropriate disciplinary sanction without the time, expense and formal procedure involved in a full board hearing. However, in order to maintain the accountability of the board, disciplinary actions taken at informal hearings by agency staff should be reviewed and approved by the board.

A review of the agency's informal disciplinary practices revealed the following:

- ▶ The agency's informal hearings are attended by the executive director, legal counsel, the investigator who conducted the inspection, the licensee and the licensee's counsel. In these meetings, the licensee agrees to a certain sanction or action in order to avoid the time, expense and uncertainty of going before the board for a full disciplinary hearing. The results of the negotiations are written into a document called a consent agreement. These agreements are signed by the executive director and the licensee and take effect without the oversight or approval of the board, although the results are reported to the board at the next scheduled board hearing.
- ▶ In fiscal year 1988, 19 consent agreements were negotiated. The nature of the violations and actions taken are listed in Exhibit 5 in the background section of the report.

- ▶ Agency staff also negotiate another kind of informal agreement in the field between investigators and licensees. These are agreements for a refund or for a retreatment of chemicals because the consumer complained that the pest control operator had not performed the agreed service. Between one-third and one-half of all complaints received by the board involve inadequate treatments where the unwanted pests are still present.
- ▶ No rules or written procedures govern these field-negotiated agreements. The Austin office staff is informed of the negotiations but the board does not vote on or approve these agreements.
- ▶ These informal field agreements (and the consent agreements which involve a monetary refund or retreatment) place the agency in an uncommon position for an occupational licensing agency. Instead of prosecuting an enforcement case on behalf of the consumer, the agency essentially acts as arbiter between the licensee and consumer ruling on the fulfillment of terms of a contract.
- ▶ The review determined that these informal negotiated agreements serve the consumer well because they return money to the consumer that would have probably been lost were it not for the agency's involvement. When administrative penalties are assessed for violations of the act, the money is deposited into general revenue; no money is returned to the consumer. Also, this process is more expedient and efficient for the consumer than resolving a contract dispute in court.
- ▶ In fiscal year 1988, 100 retreatments and 80 refunds were secured by the agency for pest control consumers, with a value of \$176,430 returned to consumers.
- ▶ The review found that the existing authority under APTRA for informal hearings cannot be assumed to extend to this more unique role of negotiated settlements and, therefore, the procedure should be established in statute to protect what is a valuable service to consumers. However, the authority should not extend beyond the terms and dollar value of the contract. Any penalties or damages assessed beyond the value of the contract become punitive in nature. The awarding of damages has generally been reserved for the judicial system.

PROBLEM

Agency staff negotiate consent agreements in informal disciplinary hearings with licensees by which sanctions are taken on a licensee without the board having an opportunity to vote on the agreement. Furthermore, agency staff, in the field and in informal hearings, are interceding between consumers and licensees to settle contract disputes without specific statutory authority and without procedures governing the negotiations in rules.

RECOMMENDATION

- The agency's statute should be modified to:
 - require the board to approve all consent agreements;
 - authorize the agency to order retreatments and/or refunds by licensees to consumers not to exceed the value of the contract in dispute; and
 - require the board to adopt rules governing procedures for monetary refunds and retreatments.

This change would require the board to become more involved in the informal disciplinary proceedings negotiated by staff, both in the Austin office and in the field. This recommendation would not require the agency to curtail negotiating of consent agreements; however, the board would have to adopt procedures for these agreements in rules and approve all consent agreements before they go into effect. The recommendation would not require prior approval of all field-negotiated refunds and retreatments but would require the board to establish rules to guide these negotiations. The statute should prohibit a monetary refund negotiated in any consent, or other informal, agreement from exceeding the dollar value of the original contract in dispute. Finally, the statute should be clear that any agreement to refund or re-treat entered into with the agency's involvement would in no manner release the pest control licensee from any liability or responsibility resulting from any application made by the licensee or his employee.

FISCAL IMPACT

No fiscal impact is anticipated from this recommendation.

ISSUE 11: The board's statute should be changed to provide the board with additional powers over a person whose license has been revoked.

BACKGROUND

The SPCB, like most licensing agencies, has the authority to prevent unqualified or disreputable persons from becoming licensed and to assess administrative sanctions for violations of the act. A range of punitive actions are typically authorized to allow the agency flexibility in applying sanctions of gradually increasing severity including: denying the opportunity to take an exam or denying granting of a license; issuing a warning letter, reprimand, and administrative penalties; and probation, suspension and revocation.

The most stringent sanction, revocation, is typically not used very often and only when the violation is so severe that the board is uncomfortable with allowing the person to continue practice. Revocation is generally considered permanent.

The legislature has usually provided licensing agencies with the ability to relicense people after a specified period of time if the applicant proves a willingness and ability to comply with the law. To be relicensed, the person must go through the application process as would any initial applicant.

Generally, decisions concerning enforcement and the disposition of a license should be made by the policy body of an agency which is appointed by the governor and is accountable to the governor and the legislature. The line of accountability is not maintained when agency staff make decisions reserved for the board.

In the case of the Structural Pest Control Board, the act authorizes the agency to revoke a license but does not specify the terms of revocation or if and when a person is entitled to reapply to the board for licensure. In practice, when the board revokes a license, it sets the period of revocation in the ruling and the person may only reapply after that time. The board does not, however, get involved in the decision to reinstate the license upon reapplication.

A review of the agency's policy regarding revocation and reinstatement of licenses indicated the following:

- ▶ In fiscal year 1988 the board revoked one license, setting the period of revocation for two years. In addition, four licenses were revoked by consent agreement in an informal hearing, with a two-year revocation period.
- ▶ A review of 10 health and occupational licensing agencies found the following may not reissue a license for one year: Board of Chiropractic Examiners, Texas Funeral Service Commission, Board of Examiners of Psychologists, Board of Nurse Examiners, State Board of Pharmacy,

Texas Optometry Board, Texas State Board of Podiatry Examiners, and State Board of Medical Examiners. Two agencies, the Board of Nursing Home Administrators and the Board of Registration for Professional Engineers, may reissue a revoked license upon petition.

- ▶ The Structural Pest Control Board is not required to vote on whether to reinstate a license. This decision in the past has been made at the staff level by the executive director, although if the applicant requests a hearing, the case will be voted on by the full board. For example:
 - A certified applicator who misapplied Chlordane while practicing out of category, breached his contract with the homeowner and lied to the board inspector, had his certified applicator's license in all categories revoked for two years. Approximately one year later he applied to the board for a technician license. The executive director accepted the petition without the board's involvement and granted him a technician's license limited to pest control work. This individual, however, never activated the technician's license.
- ▶ The board issues three types of licenses and six categories of pesticide applications. Theoretically, and in practice, a licensee can have one type and/or one category revoked without any other category being affected at all. This allows a person who has shown bad faith in complying with state and federal law to continue to practice in other areas of the pest control business. For instance:
 - A certified applicator misapplied Chlordane, leaving residue inside a home. His termite category license was suspended by consent agreement for six months; however, his pest and lawn and ornamental categories had no action taken against them.

PROBLEM

The agency's statute gives authority for revocation of a license but does not specify whether the revocation is a permanent measure and if the individual may reapply after a specified time. In addition, the board lacks authority to take action against an applicator if one category of application has been revoked but the applicator is also approved to work in other areas of pest control.

RECOMMENDATION

- The statute should be modified to:
 - indicate that revocation is permanent but that a person may reapply after a period of one year;
 - require the board's approval before granting a license in any category to a person whose initial license has been revoked; and
 - authorize the board to put on probation the category license of any applicator whose license in one category has been revoked.
-

This change would clarify the board's authority and responsibility in an area of the agency's enforcement authority and establish in statute the policy for reinstating previously revoked pest control applicators and businesses. Since the board has typically set the revocation period for longer than one year, this change will not alter the agency's informal policy in this area.

This change would require the board to become involved in the decision to allow a person whose license has been previously revoked to again practice the business of pest control. Also the board would be able to put other categories of licenses on administrative probation if warranted. The authority to put a license on probation is included in the Across-the-Board Recommendations section of the report. This would allow the agency to more closely watch the actions of those licensees who have previously shown disregard for the law in one area.

FISCAL IMPACT

There is no fiscal impact anticipated from this recommendation.

Across the Board Recommendations

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies are denoted in abbreviated chart form.

Texas Structural Pest Control Board

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. GENERAL			
x			1. Require public membership on boards and commissions.
x			2. Require specific provisions relating to conflicts of interest.
		*	3. Provide that a person registered as a lobbyist under Article 6252-9e, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		*	4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.
x			5. Specify grounds for removal of a board member.
		*	6. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute.
x			7. Require the board to establish skill-oriented career ladders.
x			8. Require a system of merit pay based on documented employee performance.
x			9. Provide for notification and information to the public concerning board activities.
x			10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
		*	11. Require files to be maintained on complaints.
		*	12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
x			13. Require development of an E.E.O. policy.
x			14. Require the agency to provide information on standards of conduct to board members and employees.
x			15. Provide for public testimony at agency meetings.
x			16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
x			17. Require development of accessibility plan.

*Already in law.

Texas Structural Pest Control Board

(cont.)

Applied	Modified	Not Applied	Across-the-Board Recommendations
B. LICENSING			
		*	<ol style="list-style-type: none"> 1. Require standard time frames for licensees who are delinquent in renewal of licenses.
x			<ol style="list-style-type: none"> 2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
x			<ol style="list-style-type: none"> 3. Provide an analysis, on request, to individuals failing the examination.
		x	<ol style="list-style-type: none"> 4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		*	<ol style="list-style-type: none"> 5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		*	<ol style="list-style-type: none"> 6. Authorize the staggered renewal of licenses.
x			<ol style="list-style-type: none"> 7. Authorize agencies to use a full range of penalties.
x			<ol style="list-style-type: none"> 8. Specify board hearing requirements.
x			<ol style="list-style-type: none"> 9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		*	<ol style="list-style-type: none"> 10. Authorize the board to adopt a system of voluntary continuing education.

*Already in law.

Minor Statutory Modifications

Discussions with agency personnel concerning the agency and its statute indicated a need to make minor statutory changes. The changes are non-substantive in nature and are made to comply with federal requirements or to remove out-dated references. The following material provides a description of the needed changes and the rationale for each.

**Minor Modifications to the
Texas Structural Pest Control Board Statute**

Change	Reason	Location in Statute
Delete authorization for committees of the legislature to overrule adoption of a commission rule.	To delete language that may be unconstitutional.	Section 4(h)
Delete language requiring the state auditor to audit the financial transactions of the board.	To delete language superseded by a general statutory requirement for periodic audits by the state auditor.	Section 8(c)
Delete transitional provisions.	To remove outdated language.	Section 12

Texas Structural Pest Control Board

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