

TEXAS STRUCTURAL PEST CONTROL BOARD

Staff Report

to the

Sunset Advisory Commission

April 20, 1978

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INTRODUCTION

This report is submitted pursuant to Section 1.06, Subsection (3) of the Texas Sunset Act and contains a review of the operations of the Structural Pest Control Board. Termination of the Structural Pest Control Board has been scheduled for September 1, 1979 unless it is continued by law.

The material contained in the report is divided into three major sections: Background, Review of Operations and Conclusions. The Background section contains a brief history of legislative intent and a discussion of the original need for the Structural Pest Control Board. The Review of Operations section contains a review of the operation of the agency, and uses the self-evaluation report submitted by the agency as the basis of review unless noted. The information contained in the self-evaluation report was verified, and additional data were obtained through interviews and review of agency files and other data sources. The Conclusions section summarizes the import of material developed in the individual criteria, from the standpoint of whether or not Sunset criteria are being met, and develops approaches relative to these findings.

This report is designed to provide an objective view of agency operations, based on the evaluation techniques utilized to date. Together with pertinent information obtained from public hearings, a factual base for the final recommendations to the Legislature will be provided.

BACKGROUND

HISTORICAL DEVELOPMENT

The marketing of pesticides in interstate commerce has been regulated for over 30 years by the federal government. Federal regulation of the use and application of pesticides began with the enactment of the Federal Environmental Pesticide Control Act of 1972. This Act also significantly modified the regulation of the production and marketing of pesticides. Anticipating federal action, the Sixty-second Legislature in 1971 passed the Texas Structural Pest Control Act. Prior to that time, the use and application of pesticides, and specifically the structural pest control industry, had not been subject to regulation in Texas.

The Federal Environmental Pesticide Control Act of 1972 set up the following framework for enforcement in Texas. The United States Environmental Protection Agency is responsible for administering the provisions of the federal act. The Texas Structural Pest Control Board is responsible for the state's efforts in regulation of the structural pest control industry, while the Texas Department of Agriculture is the state's "lead agency" in achieving overall compliance with the provisions of the Federal Environmental Pesticide Control Act of 1972.

In addition, the federal legislation required several modifications to the initial provisions of the Texas Structural Pest Control Act. Major adjustments included the requirement that persons using or supervising the use of restricted-use pesticides demonstrate competence through an approved examination process. Further, these pesticides must be used only under the direct supervision of a licensed "Certified Applicator." The state must exhibit evidence of its capability to enforce the provisions of both state and federal law; therefore, additional penalties were provided in state law.

Administration

The Texas Structural Pest Control Board (SPCB) is composed of seven members. Four of the members are appointed by the Governor with the advice and consent of the Senate. These members serve two-year terms and must have been engaged in the business of structural pest control for at least five years, but no two members may represent the same business entity. The remaining three ex officio members represent the Commissioner of Agriculture, the Commissioner of Health, and the Chairman of the Department of Entomology at Texas A&M University. The ex officio members have full voting privileges; however, the chairman must be one of the appointed members.

The first months of the Board's operation were devoted to notifying people who were engaged in the structural pest control business of the requirements of the law and issuing licenses to those who qualified under the "grandfather clause." In addition, examinations were designed and administered to those who were in business but did not qualify under the grandfather clause. Prior to January 17, 1972, two examinations were administered and licenses were issued to approximately 20 applicants. By January 17, 1972, a total of 1553 licenses had been issued.

The second phase of SPCB activity involved development of detailed rules and regulations which would govern the Board in its administration and enforcement of the law. At the same time, the Board began to employ investigators and enforce the licensing requirement.

After enactment of the federal law, the Board was required to examine those people who had been licensed under the grandfather clause. Therefore, the Board was again in a phase of heavy emphasis on examining applicants and issuing licenses by examination.

The activities of the Board and its staff presently center on administering both the examination and licensing function and the investigation and enforcement function.

The original staff of the Board consisted of only the executive director. In July 1972, the Board employed its present executive director, who had previously been the Commissioner of Agriculture's representative on the Board. Additionally, a secretary and an investigator were employed, and the administrative office was moved from College Station, Texas to Austin, Texas. The investigative staff grew to four by the end of 1973 and to six by June 1974.

The SPCB presently employs a staff of 11 people -- the executive director, three secretaries and seven investigators. The executive director and secretaries are stationed in Austin. The executive director is responsible for supervising all operations of the staff. The secretarial staff performs many of the day-to-day administrative activities of the agency under the direct supervision of the executive director. The investigators, stationed in regions around the state, make regular reports to the Austin office.

Responsibilities

The Texas Structural Pest Control Board is responsible for the regulation of the structural pest control industry. The statute specifies that

a person shall be deemed to be engaged in the business of structural pest control if he engages in, offers to engage in, advertises for, solicits, or performs any of the following services for compensation:

(1) identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations of:

(A) arthropods (insects, spiders, mites, ticks, and related pests), wood-infesting organisms, rodents, weeds, nuisance birds, and any other obnoxious or undesirable animals which may infest households, railroad cars, ships, docks, trucks, airplanes, or other structures, or the contents thereof, or

(B) pests or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street;

(2) making inspection reports, recommendations, estimates, or bids, whether oral or written, with respect to such infestations; or

(3) making contracts, or submitting bids for, or performing services designed to prevent, control, or eliminate such infestations by the use of insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances or mechanical devices.

The Federal Environmental Pesticide Control Act of 1972 requires states to regulate the production, distribution and use of pesticides. The Texas Department of Agriculture is responsible for the regulation of the production and distribution of pesticides. Further, this Department, as the state's "lead agency," is responsible for submitting a state plan to the U.S. Environmental Protection Agency (EPA) for approval. Under this state plan, as well as state law, the Texas Department of Agriculture is responsible for the regulation of the use of restricted-use pesticides and state-limited-use pesticides for agricultural purposes. In comparison, the Structural Pest Control Board is responsible for the regulation of the use and application of restricted-use and state-limited-use pesticides for other purposes. Pesticides are designated as "restricted-use" by the administrator of EPA and as "state-limited-use" by the Texas Commissioner of Agriculture.

As required in the law, the Board issues licenses to "certified applicators," individuals determined to be competent to use or supervise the use of restricted-use and state-limited-use pesticides. The Board also issues business licenses. A business license entitles a person and his employees to engage in the business of structural pest control under the direct supervision of a certified applicator. A business license must be issued for each place of business, including branch offices, which offers pest control services. The law provides for the collection of fees from licensees and applicants and requires annual renewals of the licenses. A provision effective in 1976 requires certification that a business has a liability insurance policy of at least \$30,000 in effect as a condition for licensing.

In carrying out its licensing function, the Board must develop standards and criteria under which licenses are to be issued. Further, the Board is required to promulgate rules and regulations governing the methods and practices of structural pest control when it determines that the public "health and welfare necessitates such regulations in order to prevent adverse effects on human life and the environment." These regulations must be in compliance with federal and state standards.

The enforcement authority of the Board includes the alternatives of suspension and revocation of a license, refusal to examine or license an applicant and refusal to renew a license. In addition, the law provides both civil and criminal penalties for violation of the provisions of the Structural Pest Control Act. In seeking to enforce the provisions of the Act, the Board's investigative staff monitors advertising and other types of solicitations, conducts periodic inspections of business operations and responds to complaints concerning pest control business activities.

Funding

Fees for licenses, renewals, and employee identification cards are deposited in the Structural Pest Control Fund (Fund Number 424). The fee structure is specified in the law, with some flexibility left to the Board in setting the fees in some categories. Although license fees must accompany applications, the fees are not deposited directly into the Structural Pest Control Fund. These fees are deposited in a suspense fund until the applicant has met the licensing requirements. The fees are then transferred to the Structural Pest Control Fund. If the balance in the Structural Pest Control Fund at the end of any fiscal biennium exceeds the appropriation for the next fiscal biennium, the difference must be transferred to the General Revenue Fund.

Expenditures from the Structural Pest Control Fund may only be made when authorized through appropriation by the Legislature. The SPCB is the only agency funded by the Structural Pest Control Fund, and no other state funds are appropriated to the agency. In order to begin the agency's operations, the Board members each paid the license fees required in the statute and the executive director's first pay warrant was delayed until additional fees could be collected. Assistance in the printing of licenses was provided by the Department of Agriculture.

In the first fiscal year of operation (1972), the SPCB collected approximately \$197,000 in revenues and expended approximately \$54,000. Revenues have grown to just over \$247,000 in fiscal year 1977 and expenditures, to about \$217,000.

COMPARATIVE ANALYSIS

To determine the pattern of regulation of the structural pest control industry within the United States, a survey of the 50 states was conducted to determine how this has been addressed in other states.

The need to regulate the structural pest control industry is currently expressed through licensing requirements imposed by all of the 50 states surveyed. From the standpoint of organizational patterns, seven states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In one state, the function is carried out through a governmental department charged with the regulation of multiple occupations.

In those states which utilize independent boards and commissions, three require that appointees be confirmed by the Legislature; no states limit membership to persons who are licensed members of the occupation. In Texas, appointees are confirmed by the Legislature and membership is not limited to persons who are licensed members of the occupation. Thirty percent of the states, as does Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the revenue sources of the regulatory body, regardless of organizational form, were derived from fees collected. Thirty-six of the 50 states, including Texas, indicated that these bodies were not solely supported by fees and charges of the agency.

None of the states regulating the structural pest control industry administer national examinations. Each state develops and administers its own examination. The examination is required only once in 45 of the states, including Texas. In 40 states, licensees are required to renew their licenses annually. Texas licenses for

one year. Enforcement activities in 50 states, including Texas, involve investigation of complaints from consumers and others engaged in the structural pest control industry. Hearings are conducted inside the regulating agency in all states. In Texas, hearings are conducted by the Structural Pest Control Board.

States which regulate the structural pest control industry indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement. These basic functions also constitute the primary elements of the operations of the Structural Pest Control Board and are examined in light of specific criteria required in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion I

The efficiency with which the agency or advisory committee operates.

The review under this criterion centered on financial data and other records of the agency. This information was analyzed to determine if funds available to the agency had been utilized in a reasonable manner to achieve the purposes for which the agency was created and to determine if areas existed in which greater efficiency of operations could be achieved.

Information developed under this criterion is presented in two major divisions. The first deals with the administrative efficiency of the agency, while the second part covers the general topic of funding efficiency .

Administration

The review of the administrative functions of the Structural Pest Control Board is directed at two levels of activity: 1) the administrative operations of the seven-member Board; and 2) the administrative activities of the agency's staff. For purposes of this review, each of these levels of activity is examined separately.

Board Administration. The Structural Pest Control Board is composed of seven members: four appointed members represent the pest control industry; and three are ex officio members representing state agency officials. Members of the Board representing the industry serve terms of two years each. Exhibit I-1 indicates the present membership of the Board, each member's term of office, and the record of attendance for each member.

With respect to the operations of the Board members, a review of the Board minutes and interviews with both the executive director and Board members

EXHIBIT I-1

Board Members Attendance
Fiscal Years 1975-1977
Texas Structural Pest Control Board

Current Board Members	Term of Office	Attendance at Meetings		
		1975 (11)	1976 (6)	1977 (7)
Mr. W. D. Bedingfield (industry representative)	November 26, 1973 to August 30, 1979	10	6	7
Mr. Ernest Cantrell (industry representative)	June 25, 1976 to August 30, 1979		3	7
Mr. Louis McClish (industry representative)	January 9, 1976 to August 30, 1979		6	7
Mr. William Spitz (industry representative)	November 26, 1973 to August 30, 1979	10	6	7
Representative of Entomology Department, Texas A&M University	ex officio	10	4	4
Representative of Texas Department of Agriculture	ex officio	11	6	7
Representative of Texas Department of Health	ex officio	10	6	6
<hr/>				
Past Members				
George Novy, Jr. (industry representative)	March 8, 1974 to *May 24, 1976	11	3	
L. Leo Holder (industry representative)	November 26, 1973 to August 30, 1975	11		

*Deceased

indicate that the Board is concerned with: 1) policy-making; 2) promulgation of the rules and regulations; 3) staff guidance; 4) monitoring examinations; and 5) hearings. In developing policy, the Board considers changes in its rules and regulations through the public hearing process. All changes and notices of change are filed with the Secretary of State. The Board adopts rules and regulations under provisions in the Structural Pest Control Act.

Assistance is provided to the staff by the Board in interpreting Board policies and regulations.

Members of the Board assist in administering and monitoring examinations when needed. However, they do not ordinarily participate in the grading process.

Staff Administration. The SPCB staff performs administrative functions relative to general office operations and its major functions of licensing and enforcement. Administrative processes associated with these operations are discussed below.

1. General Office Operations. Basic administrative functions within this grouping include records maintenance, report preparation, and accounting. These functions are the responsibility of the executive director and three secretaries.

With regard to records maintenance, the agency maintains general correspondence files, personnel files, accounting records, daily and weekly inspector's reports, licensed certified applicator files and licensed pest control business files. Financial and other data requested from accounting records and personnel files was produced without delay throughout the course of the review. It was noted, however, that the method of filing complaints resulted in difficulties in gathering comprehensive information. Written complaints are placed in the file of the business licensee, together with other information pertaining to that licensee. However, many complaints are received by telephone by the inspectors or

executive director. The inspectors report such complaints on their daily reports, but no procedure exists for collecting complaints into a central file. Resolution of complaints is generally reported on the daily reports; however, no central file is maintained to indicate that a complaint has been closed or what action is finally taken.

Regarding report preparation, major reporting responsibilities of the SPCB include budget requests and performance reports and annual reports. These reports are submitted by the director to the Board as information items, without formal action.

In the area of accounting, SPCB funds management functions involve use of both the Structural Pest Control Fund (Fund Number 424) and a suspense fund for clearance of fees deposited. Agency revenues are subject to periodic audit by the State Auditor's Office. Interviews with that office and review of the audit reports through fiscal year 1977 revealed no major problems in the agency's accounting procedures. It was also verified that no management letters had been issued to the SPCB during the last two fiscal years.

2. Program Operations. General office administrative tasks are performed in support of operations in the agency's two basic functional areas: 1) licensing, and 2) enforcement. The specific objectives and tasks associated with these functions represent the basic focus of the overall evaluation and will be addressed in greater detail throughout the remainder of this report. However, each of these separate functions entail particular operational processes which were reviewed from the standpoint of administrative efficiency.

With regard to licensing, processes utilized relate to handling of informational requests, monitoring and the issuance of new and renewal licenses. In the area of informational requests, all inquiries are handled in a timely fashion and

procedures have been developed to insure that prospective and current licensees are informed of the particular information required of them in completing forms required by the agency. Monitoring of the status of liability insurance required of licensees to insure current coverage is also carried out by the agency staff. Issuance of renewal licenses takes place during January and February of each year, with new licenses being issued throughout the course of each fiscal year.

Under the present arrangement, renewal notices are mailed in early January to all license holders. The license holders have until March 1 of each year to submit renewal applications and fees. The staff, therefore, experiences a heavy workload period during the first two months of each calendar year. The agency has never exercised its statutory authority to stagger renewal expiration dates. It appears, however, that by distributing the renewals throughout the year, more efficient use of staff time could be achieved.

Exhibit I-2 indicates the workloads for the administrative staff for each month during the period beginning March 1, 1977 and continuing through March 31, 1978 as determined from agency files and reports. The number of complaints were not documented on a monthly basis, but it is assumed that some seasonal variations do exist in the number of complaints received. As seen in Exhibits I-3 and I-4, the procedures for renewals involve basically the same steps as the procedures for issuing new licenses to businesses and certified applicators and the two processes could easily be consolidated.

In addition, basic steps involved in the processes covering monitoring of insurance coverage and the renewal of licenses could be converted from the current manual system to an automated system.

In the area of inspection and enforcement, the staff of seven inspectors is responsible for carrying out most of the investigative functions, responding to

EXHIBIT I-2

Structural Pest Control Board - Workloads
 March 1, 1977 through March 31, 1978

	Board Meetings	Exams Administered and Graded	Renewals
March		748	
April	4-8-77		
May		388	
June	6-13-77		
July		333	
August	8-11-77 8-12-77		
September		68	
October		420	
November		108	
December	12-15-77		
January	1-24-78		} 4,416
February			
March	3-17-78	633	

Exhibit I-3
 Procedure for Issuing New and Renewal
 Certified Applicator Licenses

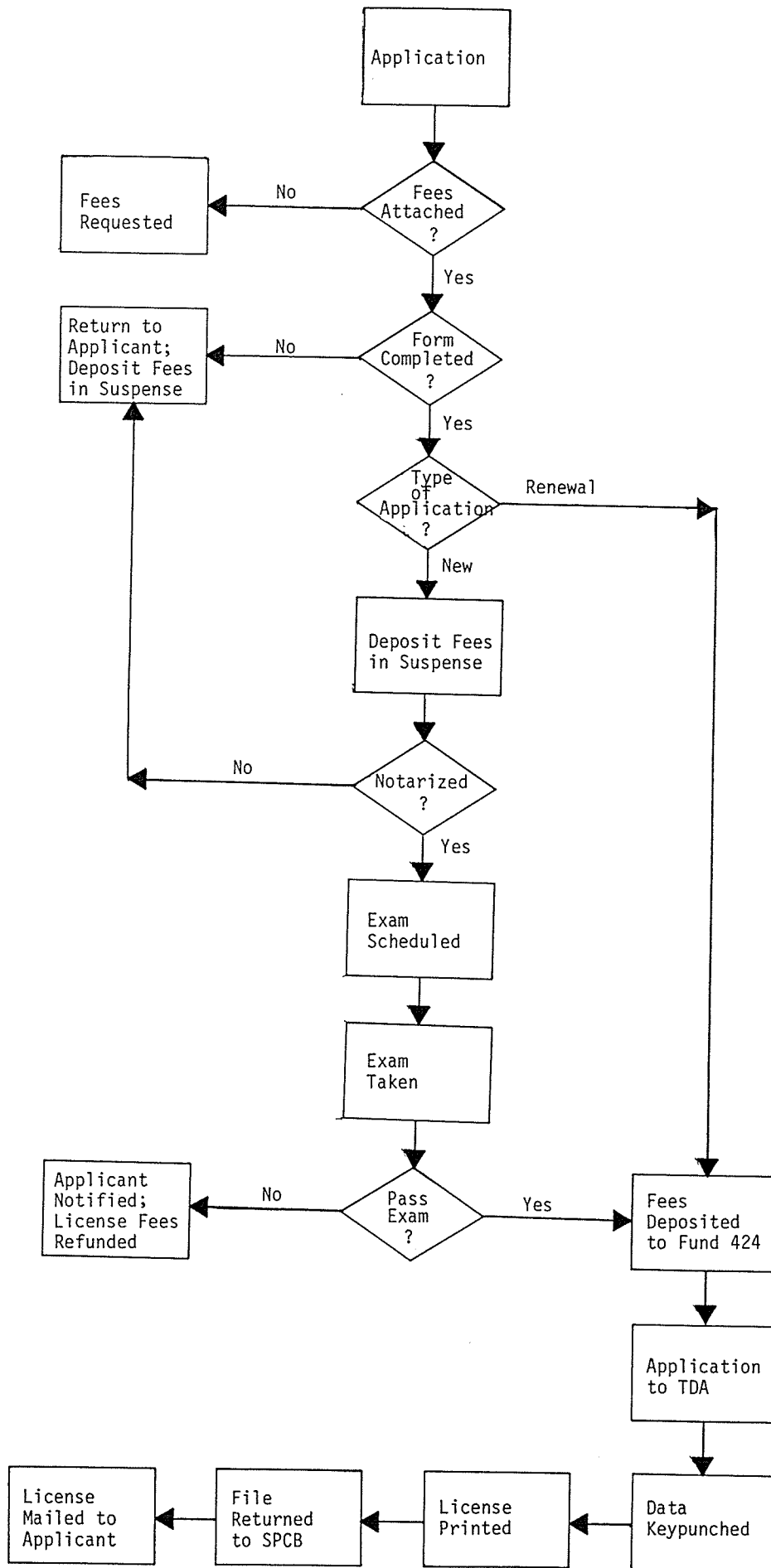
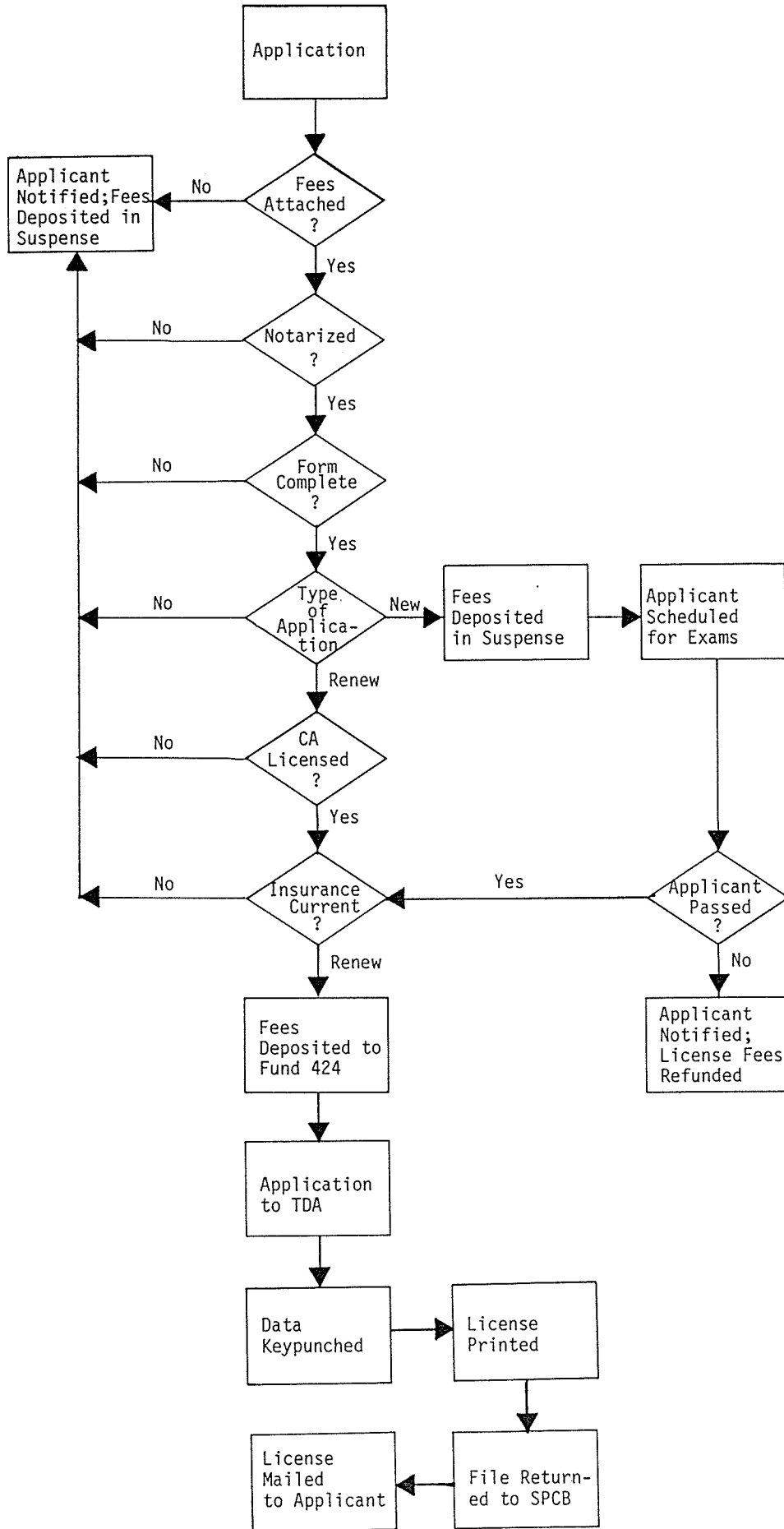


EXHIBIT 1-4
 Procedure for Issuing New and Renewal
 Business Licenses



complaints and conducting routine inspections. While there is no established pattern regarding the schedule of activities for inspectors, each is expected to respond to all complaints received and to work the required 40-hour work week. The inspectors spend 70 percent of their work time handling routine inspections and administrative matters and the remaining 30 percent investigating complaints, according to estimates made by the executive director. Weekly reports of inspectors indicate an average of 20 hours per week spent on "certification." This involves routine checking of licenses, records, and labeling. It is assumed that additional time is routinely devoted to paperwork, monitoring pesticide use and other activities.

Inspectors are assigned territories of responsibility and must be familiar with the pest control activities in the area. Exhibit I-5 shows the territories and home city of each inspector. The inspectors operate out of their homes and two of the seven use answering services to receive calls while they are away. According to the executive director, the telephone listings are in the inspector's names only and there is no organized effort to publicize the name and telephone numbers to members of the general public.

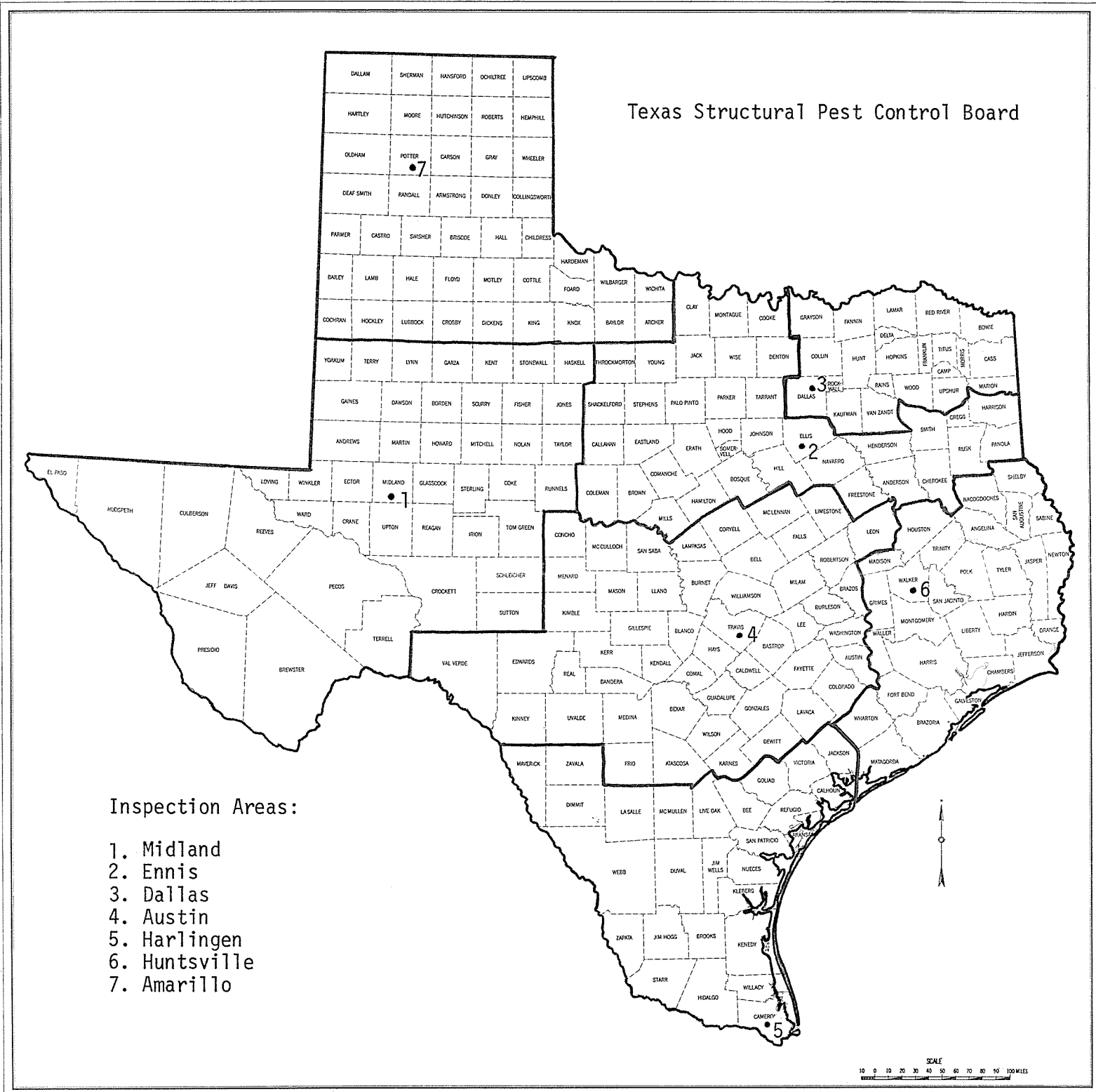
Inspectors are in regular contact with the executive director by telephone on at least a weekly basis, and a meeting of all inspectors is held in Austin approximately twice a year. Inspectors also come to Austin for hearings on cases they investigated. Based on the inspectors' weekly reports for the first half of fiscal year 1978, the inspectors stationed outside Austin spend an average of five days per year in Austin.

Funding

The Structural Pest Control Board receives funds from two sources -- legislative appropriation of fees from Fund Number 424 and federal funds. These funds

EXHIBIT I-5

Inspection Areas
Structural Pest Control Board



are used to support all functions of the SPCB. The law provides that any balances in the agency's special fund at the end of any biennium in excess of those appropriated for the succeeding biennium will revert to General Revenue.

Revenue Sources

The primary source of revenues for the SPCB is fees for licenses and examinations. The schedule of current fees and statutory limits is shown in Exhibit I-6. Of the four categories in which the Board has discretionary power in establishing the fees charged, only the Business License Fee is set at the legal maximum. Each of the other three is substantially below the statutory limit.

The second source of funding for the Board is federal grants. These grants are for specified components of activities required under the state plan. The only grant of this type received to date is for \$50,000 in 1977; approval of a \$25,000 grant is presently pending.

Revenues from fees in 1972 amounted to \$195,000, as shown in Exhibit I-7. These revenues had increased by 1977 to almost \$250,000 per year. Projections of revenues from fees indicate that by 1981 these revenues will exceed \$500,000 if current trends in licensees continue and the fee schedule remains unchanged.

Expenditures

Although the SPCB appears to have statutory authority to receive funds appropriated from the General Revenue Fund, none have ever been appropriated. Therefore, all operating funds are derived from fees and grants deposited in the agency's special fund (Fund Number 424). As Exhibit I-8 indicates, the major item of expense for the SPCB is personnel -- 71 percent of the total is expended for salaries and benefits. The second major expense item is travel. Both Board members and employees receive reimbursement for mileage, airfare, and other expenses associated with travel on agency business. Exhibit I-9 contains detailed

EXHIBIT I-6

Texas Structural Pest Control Board
Schedule of Current Fees

Item	Fiscal Year 1977	Statutory Limit
Business License Fee	\$ 50.00	\$ NTE 50.00
Certified Applicator Licensee Fee	20.00	NTE 50.00
Employee Identification Card Fee	10.00	5.00-15.00
Examination Fee	10.00	NTE 25.00(A)
Name Change Fee	10.00	--
Late Renewal Penalties:		
Payments Through March 30	25.00	25.00
Payments After April 1	50.00	50.00
Duplicate License Fee	10.00	10.00

(A) effective 9/30/76

EXHIBIT I-7

An Analysis of Revenues, Expenditures and Fund Balances
Structural Pest Control Fund

Fiscal Year	Revenues			Expenditures	Fund Balance
	Licenses & Fees	Federal Grant	Total		
1972	\$194,866		\$194,866	\$ 44,039	\$ 150,827
1973	136,071		136,071	133,911	152,987
1974	136,679		135,719	169,819	118,887
1975	165,401		165,489	178,524	105,852
1976	198,059		198,059	204,567	99,344
1977	247,283	\$50,000	295,985	215,990	179,339
			<u>Projections</u>		
1978	309,104	25,000	334,104	264,946	248,497
1979	386,380		386,380	267,785	367,092
1980	443,337		443,337	320,385	490,044
1981	509,838		509,838	329,997	669,885
1982	586,314		586,314	387,666	868,533
1983	674,261		674,261	399,296	1,143,498 (A)

(A) A reversion to General Revenue at this point is a distinct possibility of the magnitude of \$190,000.

EXHIBIT I-8

Texas Structural Pest Control Board
 Summary of Expenditures by Category
 Fiscal Year 1977

<u>Category and Item of Expenditure</u>	<u>Amount</u>	<u>Percent of Total</u>
<u>Personnel Costs</u>		
Salaries	\$135,201	62
Benefits	<u>19,223</u>	<u>9</u>
Total, Personnel Costs	<u>\$154,424</u>	<u>71</u>
<u>Travel</u>		
Board Members	3,629	2
Employees	<u>37,614</u>	<u>17</u>
Total, Travel	<u>41,243</u>	<u>19</u>
<u>Other Operating Expenses</u>		
Office Rent	5,184	2
Postage	3,692	2
Printing and Duplicating	4,497	2
Office Supplies	1,641	1
Telephone	3,378	2
Professional Fees	370	*
Repairs and Maintenance	394	*
Answering Service	260	*
Audit Fee - Office of the State Auditor	<u>1,298</u>	<u>1</u>
Total, Other Operating Expenses	<u>20,714</u>	<u>10</u>
Acquisition of Fixed Assets	<u>422</u>	<u>*</u>
TOTAL EXPENDITURES	<u>216,803</u>	<u>100</u>

*less than .5%

EXHIBIT I-9

Travel Expenses
Structural Pest Control Board
FY 1977

	<u>Mileage</u>	<u>Per Diem</u>	<u>Air Fares</u>	<u>Other</u>	<u>Total</u>
<u>Board Members</u>					
W. D. Bedingfield	\$ 679.36	\$ 496.55	\$ 0	\$ 0	\$1,175.91
Ernest Cantrell	441.28	384.98	0	0	826.26
Louis McClish	942.72	466.59	333.00	0	1,743.31
William Spitz	58.68	105.80	250.00	5.00	412.48
<u>Employees</u>					
Charlie Chapman	\$1,518.56	\$ 701.04	\$ 110.00	\$15.00	\$2,344.00
Elmer Van Brock, Jr.	3,890.72	1,275.20	0	0	4,721.38
Joseph Clark	4,904.50	612.70	78.00	0	5,594.70
John D. Copeland	4,510.44	3,123.50	0	0	7,634.54
Fred M. Menton	3,476.96	880.25	0	0	4,457.21
Crescencio Trevino	2,970.40	1,080.00	102.00	0	4,152.40
Wayne H. Ward, Jr.	2,434.00	1,281.50	0	0	4,716.00

information regarding the travel expenses of Board members and employees for fiscal year 1977 from travel vouchers contained in agency files.

All other operating expenses account for 10 percent of the total expenses of the agency. Included in these operating expenses are all costs associated with office rent, postage, supplies, telephone and other items incidental to the functions of the agency. For planning purposes, the inspectors are allotted approximately \$50 per month for operating expenses including postage, office supplies, and film, but excluding telephone calls and answering services.

During the review, it was noted that telephone expenses included a substantial number of credit card calls and other long distance calls. These calls are primarily between inspectors and the executive director. The agency is served by two telephone lines, but has not been connected with the Tex-An network. An analysis by the Board of Control staff indicates that savings to the state amounting to \$1,200 per year could be achieved if the agency utilized one Tex-An line and credit card calls were discontinued. In the event that the agency chose not to use Tex-An a lesser amount could be saved if credit card calls were eliminated in favor of direct distance dialing.

Summary

The efficiency of the Structural Pest Control Board can be examined in two areas: administration and funding. In the area of administration, it was noted that the agency's seven-member board generally restricts its activity to policy-making, promulgation of rules, staff guidance, monitoring exams and hearings, but leaves the day-to-day administrative tasks to the executive director.

The administrative tasks overseen by the executive director include: 1) the general office operations of records maintenance, report preparation and accounting, and 2) the agency's functional programs of licensing and enforcement. With

regard to general office operations, the agency's basic accounting and reporting procedures function adequately. The filing system also functions adequately except in the area of complaint information. It was noted that no systematic method of gathering information regarding types of complaints, followup or resolution of complaints had been established.

Concerning the program areas of licensing and enforcement, the procedures which have been established are clear; however, there are some opportunities for increased efficiency which should be explored. Extensions to the data maintained on computer files would allow more efficient and timely determination of insurance expirations. The need to totally disregard the existing computer files on licensee renewals and to manually reconstruct this information each year to create a new computer file should be reexamined. Staggering of renewal dates is authorized by law but has not been implemented and it appears that an even workload could be achieved if the agency began a staggered renewal process.

The enforcement staff consists of seven inspectors who operate in assigned territories. No effort has been documented which would cause the general public to be aware of the purpose and function of these inspectors. Although there is no established pattern of activity, the inspectors are estimated to spend approximately 30 percent of their time in responding to complaints and conducting investigations initiated as a result of complaints.

In the area of funding the Structural Pest Control Board, the agency receives its operating revenues from fees for licenses and examinations and has received limited federal grant funds. The discretionary fees have reached their statutory maximum in only one category. If current trends in licenses and expenditures continue, it is expected that revenues will be more than sufficient to maintain the present level of operations over the next five years. The major items of

expenditure for the agency are personnel and travel. It was noted in the review that telephone expenses could be substantially reduced if the agency were to install a line on the Tèx-An network, rather than utilizing credit card calling to communicate between inspectors and the Austin office.

Criterion 2

An identification of the objectives intended for the agency or advisory committee and the problem or need which the agency or advisory committee was intended to address, the extent to which the objectives have been achieved and any activities of the agency in addition to those granted by statute and the authority for these activities.

The review under this criterion centered on an identification of the agency's statutory objectives as they related to the perceived need and the extent to which agency methods used can reasonably be expected to achieve those objectives. Statutes were reviewed to determine if objectives described in the self-evaluation report presented an accurate reflection of statutory duties. Agency viewpoints were sought to provide additional clarification; and appropriate files were reviewed to collect and verify selected data presented under this criterion.

Licensing

Licensing activities of the Structural Pest Control Board are directed at fulfilling two somewhat distinct objectives:

1. To assure that the persons who use pesticides are qualified to perform pest control work in accordance with state and EPA standards and label directions for the protection of the public and the environment.
2. To assure that those persons who operate businesses and solicit pest control work from the public maintain at least a minimum standard of staff competency and financial responsibility for damages.

The means of achieving these two objectives include issuing licenses to: 1) persons who use or supervise the use of restricted-use or state-limited-use pesticides, and 2) businesses which perform pest control work for the public. State law requires both types of licenses to be issued; whereas, the federal law only requires licensing

of the pesticide users.

Certified Applicator Licenses. Both state law and SPCB regulations define a certified applicator as

an individual who has been licensed and determined by the Board to be competent to use or supervise the use of any restricted-use and state-limited-use pesticide covered by his currently valid certified applicator license.

The Board's licensing of applicators appears to be directed at licensing all persons who use or supervise the use of pesticides--both general and restricted. The only exception to this is that persons who perform pest control work, but do not use restricted-use pesticides, on their employer's premises as part of their regular duties of employment were specifically excluded from licensing by the Sixty-fifth Legislature.

The assumption that the Board's regulation is directed at all pesticide users is based on several factors. First, EPA issued the initial restricted-use pesticide list in February 1978. Prior to that time, under the definition, a determination of competency could only be based on pesticides currently in use or those which were under EPA consideration for restriction. Also, the structural pest control business is defined, for purposes of regulation, without regard to the type of pesticides which might be used by the employees. In order to be licensed, however, a business must have a licensed certified applicator employed at all times. Further, although there are no data readily available concerning the number of applicators or businesses which do not use restricted-use pesticides, the fact that legislative action was sought in 1977 is evidence that some types of pest control work might not require restricted-use pesticides. Moreover, the content of the examinations is not substantially directed at the use of restricted-use pesticides. Finally, the categories covered by the certified applicator license refer to types of work which

the licensee may perform rather than which pesticides he may use. While it is understood that the categories delineate to some extent, the pesticides which will be used because of the nature of the work, the Board has issued no rules or regulations regarding what chemicals could or should be used in the various categories.

The Board is directed by Section 4(a) of the Texas Structural Pest Control Act to "develop standards and criteria for licensing individuals engaged in the business of structural pest control." In response to this provision, the Board has issued regulations that individuals must "take an examination which shall be in written form, and in general cover the subject of the services designated in the application. . . A grade of seventy (70) percent will be the minimum grade required for passing. . . . The applicant must be able to read and write the English Language." The examinations test the applicants in four major subject areas: 1) identification of pests, 2) knowledge of the state law and regulations, 3) use of pesticides according to label information, and 4) appropriate uses of pesticides. Examinations are administered in five categories by the SPCB: 1) pest, 2) termite, 3) lawn and ornamental, 4) fumigation and 5) weed control. These categories, as defined in the Rules and Regulations, appear to appropriately categorize the types of pest control contemplated in the state law. Similar questions regarding knowledge of the law and regulations are included in the examinations in each category.

Examinations are given at least once each calendar quarter for each of the categories. An applicant may take one or more tests during any test period and may take tests in additional categories during any test period after being licensed. Exhibit II-1 shows the numbers of persons taking exams and the number passing in each category for the fiscal years 1973 through 1978. Data prior to 1973 are not

EXHIBIT II-1

Structural Pest Control Board
 Test Results for Fiscal Years
 1973 - 1977

Test Category	FY 1973		FY 1974		FY 1975		FY 1976		1976 Grandfathers		FY 1977	
	Number Tested	% Passing	Number Tested	% Passing	Number Tested	% Passing	Number Tested	% Passing	Number Tested	% Passing	Number Tested	% Passing
Pest	480	51.7	341	65.9	393	62.3	618	79.1	1,055	96.7	606	64.2
Termite	407	48.9	355	56.9	424	45.1	633	71.1	989	92.7	455	47.7
Lawn & Ornamental	412	35.4	366	45.4	401	34.7	552	71.7	920	91.2	455	55.2
Fumigation	108	31.5	89	24.7	98	35.7	238	57.1	409	82.4	157	32.5
Weed	165	44.2	127	44.1	137	44.5	258	78.3	490	85.7	303	51.8

readily available. As indicated in Exhibit II-1, the pass rates vary significantly among the categories. The highest pass rates occurred in 1976. During fiscal year 1976, all licensees who had previously qualified for a license on the basis of experience (grandfathered) were required by federal law to take an examination. The data on these examinations are shown separately and are not included in the other fiscal year 1976 data. This experience could serve as an indication of the validity of experience as a prerequisite to licensing. The February, March and April 1976 examinations was taken almost entirely by grandfathered licensees and of the 3,863 examinations administered, scores were above 70 percent on 3,533 (91.5 percent).

Since the Board's inception the number of individuals licensed by the SPCB has risen from 1,864 as of July 1972 to 3,264 licenses issued during fiscal year 1977. Exhibit II-2 shows the number of individuals receiving licenses in each fiscal year since 1972.

EXHIBIT II-2

Number of Individuals Licensed by the Structural Pest Control Board

Fiscal Year	Number of Individuals Licensed	Percent of Increase
1972	*1,864	-
1973	*1,947	4
1974	2,283	17
1975	2,459	8
1976	2,227	-10
1977	3,264	46

* Figures as of July of each fiscal year.

Business Licenses. All individuals who perform structural pest control work are licensed by the Board and most are employed by businesses which perform pest control services for the public. These businesses are involved not only in the actual use of pesticides, but also in advertising their services, soliciting business on an individual basis and gaining entry and access to private homes. The law provides protection to the public through the requirement that a person who "engages in, offers to engage in, advertises for, solicits, or performs (pest control). . . services for compensation" shall be deemed to be engaged in the business of structural pest control and must possess a structural pest control business license. Each place of business, including branch offices, offering pest control services or information must be separately licensed, according to Sec. 4(b) of the Structural Pest Control Act. This requirement also appears in the rules and regulations, with the added provision that "no person shall advertise in any manner to render services or solicit business within the meaning of the Act without first obtaining a license." Other requirements for a business license specified in state law include:

1. employment of a licensed certified applicator by each licensee;
2. evidence of property damage insurance; and
3. registration of employees.

The requirement that pesticides be applied by or under the direct supervision of a licensed certified applicator is contained in federal law. In compliance with this provision, as well as Texas law, the SPCB requires that a licensed certified applicator be employed by each licensed business. Procedures for reviewing applications for business licenses and issuing the licenses appear to effectively assure compliance with these provisions. Amendments to the Texas Structural Pest Control Act require that structural pest control businesses assume financial

responsibility for potential damage occurring as a result of employee actions through the following provision:

Section 7A. (a) After February 29, 1976, the board may not issue or renew a Structural Pest Control Business License until the license applicant:

(1) files with the board a policy or contract of insurance approved, as to sufficiency, by the board in an amount of not less than \$30,000, insuring him against liability for damages occurring as a result of operations performed in the course of the business of structural pest control to premises under his care, custody, or control; or

(2) files with the board a certificate or other evidence from an insurance company, in the case of an applicant who has an unexpired and uncanceled insurance policy or contract on file with the board, stating that the policy or contract insures the applicant against liability for acts and damage as described in Subdivision (1) of this section and that the amount of coverage is not less than \$30,000.

(b) The policy or contract shall be maintained at all times in an amount not less than \$30,000. Failure to renew the policy or contract or maintain it in the required amount is a ground for suspension or revocation of a Structural Pest Control Business License. (Emphasis added).

Rules and Regulations of the Structural Pest Control Board dated November 24, 1975 include the following provisions regarding the insurance requirement:

(2) Effective February 29, 1976, each business license applicant whether applying for an initial license or for a renewal, shall accompany his application with an insurance policy or contract in the amount of \$30,000 for board approval. This policy will provide liability insurance for damage claims arising as a result of activities carried out during the course of the business of structural pest control. This policy shall contain a cancellation provision whereby notification of cancellation is received by the Board not less than thirty (30) days prior to cancellation.

A review of Board minutes was conducted to determine whether the Board had established guidelines regarding the sufficiency of insurance policies as directed by statute. No policies other than the above regulation were found. This regulation includes the specific amount of insurance and suggests that the insurance policy will be subject to Board approval. No actions of the Board concerning approval of insurance policies as to sufficiency were discovered in the

minutes. The staff of the Board routinely verifies the existence in agency files of evidence of current insurance in the amount of at least \$30,000.

In an opinion (H-888) dated October 25, 1976, the Attorney General responded to an inquiry regarding the sufficiency of a policy for \$5,000 property damage and \$25,000 bodily injury liability. The summary of that opinion is as follows:

The Structural Pest Control Board may not issue a Structural Pest Control Business license or renew such a license if the amount of property damage liability coverage shown by the certificate presented by the applicant is less than \$30,000. (Emphasis added).

The Rules and Regulations of the Structural Pest Control Board contain no reference to "property damage" or damage "to premises under his care, custody and control." In verifying compliance with the statutory provision and the ruling of the Attorney General, agency files were reviewed to determine the amounts of property damage insurance accepted for issuance of business licenses. The coverage for property damages was \$25,000 in over 15 percent of the 150 insurance certificates reviewed including those filed by three board members. The executive director indicated that since the combined sums of the property damage and bodily injury coverages in these cases was over \$30,000, the policies were accepted and licenses were issued.

Although no reference to the "care, custody or control" provision is included in Board Regulations, a policy has been adopted which requires that the "care, custody or control exclusion" must be deleted from standard liability insurance policies and that in other cases a statement specifically including that coverage be included in the certificate or other instrument of evidence filed with the agency. Review of the files indicated that this policy had been strictly observed.

The third statutory requirement placed upon business licenses is that all employees engaged in the sale or application of pesticides be registered with the

Board. Rules and regulations have been adopted by the Board governing the notification of the Board of employment and termination of persons engaged in the sale or application of pesticides and the issuance of employee identification cards. Included in the renewal procedures of the agency is the verification that employee identification card fees are collected and cards are issued for each employee listed on the business license renewal application. According to agency personnel, no verification procedures exist within the licensing structure to assure consistency or completeness of the information on employees contained in the applications processed by the Board. Such verification, however, is part of the enforcement activity of the Board.

In addition to these statutory requirements, the Board is instructed by law that:

The board shall develop standards and criteria for issuing Structural Pest Control Licenses to persons engaged in the business of structural pest control.

This general direction has not resulted in rules concerning standards or criteria for issuing licenses beyond those specifically directed by law. This authority can be interpreted, however, to provide a basis for the Agency's practice of requiring that applications for business licenses or renewals be notarized.

During the first three years of the Board's operation, only one type of license was issued qualifying an individual to engage in the structural pest control business. Exhibit II-3 shows the numbers of valid business licenses issued during each fiscal year since the Board's inception. These data indicate that, although there was a substantial increase in 1974, the number of business licenses has remained almost constant over the last four years. This does not imply, however, that no new licenses were issued, but suggests that the number of new licenses closely approximated the number of licenses cancelled or not renewed during the year.

EXHIBIT II-3

Number and Growth of Structural Pest Control
Business Licenses

Fiscal Year	Number of Business Licenses	Percent Increase/ Decrease
1972	1,864	-
1973	1,947	4
1974	2,283	17
1975	2,459	8
1976	2,141	-1
1977	2,149	-0-

Enforcement

The objectives of the enforcement activity of the Structural Pest Control Board appear to be:

1. to fairly and impartially enforce the statutory requirements that any individual who uses or supervises the use of restricted-use pesticides be licensed and that any business which offers structural pest control services to the public be licensed, and
2. to implement investigative procedures through which all claims of fraud, misuse of pesticides and below contract level jobs that are reported to the SPCB can be thoroughly and fairly settled.

The board employs a staff of seven inspectors, in addition to the executive director, for the purpose of carrying out the enforcement objectives. The inspectors are stationed in designated areas around the state and perform two types of enforcement functions. First, the inspectors spend part of their time conducting investigations designed to identify persons who are operating without a license. These activities involve review of newspaper, yellow page and other types of

advertising to determine whether the businesses which are advertising have appropriate licenses. The inspectors also utilize information reported by law enforcement agencies, other local organizations, the public and licensees. In 1977, the agency received 188 complaints regarding unlicensed individuals.

Prior to 1975 the only sanction available to the Board in enforcing the licensing requirement was to seek an injunction against an individual to prohibit his operating without a license. Present sanctions include criminal and civil penalties as well as injunctions. When an inspector has evidence of a person operating without a license, he files a case in either district court or justice of the peace court. No action on the part of the Board is required. Exhibit II-4 summarizes the information reported in the SPCB Annual Reports, the self-evaluation report, and other information concerning cases filed in district or justice of the peace court and their disposition.

EXHIBIT II-4

Summary of Court Actions on Cases Filed by the Structural Pest Control Board

Year	Court Cases Filed	Temporary Injunctions Granted	Permanent Injunctions Granted	Agreed Judgment
1973	9	1	2	
1974	*		2	
1975	*	at least 12	**	1
1976	7	at least 12		
1977	35***	at least 12		

*The total number of cases filed in 1974 and 1975 was not determined.

**Violation of a permanent injunction resulted in a penalty of six months in jail and a \$500 fine.

***The final action in these cases was not determined.

The inspectors also spend significant amounts of time in contacting licensees, verifying that licensing requirements continue to be met, and investigating complaints regarding misuse of pesticides or fraudulent practices by licensees. In 1977, there were 596 complaints filed with or by the agency against licensees. These activities are directed toward achievement of the second objective.

The sanctions which may be imposed for violation of the law or regulations by licensees include both disciplinary action by the Board and civil and criminal penalties. According to reported data in the agency's Annual Report and minutes of board meetings, the SPCB appears to apply disciplinary sanctions in most cases of violations by licensees. These actions include issuing warnings or reprimands, suspension and revocations of licenses. Exhibit II-5 indicates the number of violations which were brought to the Board for disciplinary action and the disposition as reported in the Annual Reports of the agency.

EXHIBIT II-5

Disciplinary Actions of the Structural Pest Control Board Fiscal Years 1973 - 1977

Year	Cases Heard by Board	Licenses Revoked	Licenses Suspended	Reprimand, Warning or Other Action by the Board
1973	17	5	6	6
1974	20	4	8	8
1975	12	2	3	7
1976	7	4	3	0
1977	<u>10</u>	<u>4</u>	<u>4</u>	<u>2</u>
Total	66 (100%)	19 (29%)	24 (36%)	23 (35%)

Examination of Board minutes revealed that most of the revocations occurred for non-payment of renewal fees because of returned checks. Many of the suspensions reported in Exhibit II-5 resulted from failure to file a current insurance certificate. These suspensions remained in effect until the certificate was filed. Of the other suspensions reported, the duration ranged from 10 days to about six months. During the period of the license suspension, the licensee was prohibited from engaging in any structural pest control work. The types of action referred to in the final column of Exhibit II-5 include simple reprimands, warnings that the license will be revoked if the licensee is found in violation again, direction to develop a study plan for the licensee and his employees with a follow-up report to the Board, and, in two cases, referral of the alleged violation to the Attorney General for investigation and possible court action.

In the instances in which serious charges are brought by the staff to the Board for action, it is not clear why more severe disciplinary actions are not imposed. There are at least three possible reasons for this pattern:

1. the evidence presented by the staff might not be strong enough to "prove" the case to the Board's satisfaction;
2. the Board might believe that penalties of the types imposed are sufficient to deter further action; and
3. the Board might be hesitant to make rulings which could be appealed to the district court, since the Board has no staff attorney or other legal expertise.

It appears from general discussions with the staff, board members and staff of the Attorney General's Office and from the self-evaluation report, that all of these are factors governing the Board's action. Until early 1977, the Attorney General's Environmental Protection Division assigned a staff attorney to routinely assist the Board during hearings and in the development of court cases. However, because of some conflicts which arose during the course of a hearing in 1977, the

Attorney General's staff has been assigned to assist in hearings and other matters only upon request and no representative of the Attorney General's Office has attended a board meeting since April 1977.

Procedures. The Rules and Regulations regarding violations for which the Board may take disciplinary action provide the following:

The following are grounds for revocation, suspension, reprimanding, refusal to examine, refusal to issue or renew licenses:

- (a) Misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage;
- (b) Intentional misrepresentation in any application for a license;
- (c) Fraudulent or misleading advertising or advertising in an unauthorized category;
- (d) Has been convicted or has plead guilty to a violation of this Act as amended, or any rule or regulation adopted hereunder, or any of the laws or rules and regulations of any other state, relating to the licensing of pest control operators;
- (e) Has been convicted of, or has plead guilty to a felony or misdemeanor, involving moral turpitude, under the law of this state and other states of the United States within seven (7) years prior to the date of application, provided that when the applicant is a defendant in any action in which the defendant is charged with a felony or a misdemeanor involving moral turpitude, the Board may delay processing of the application until final disposition of any such criminal proceedings;
- (f) Failure of the licensee to supply the Board or its authorized representative, upon request, with true and accurate information concerning methods and materials used, or work performed, or other information essential to the public health and welfare and to the administration and enforcement of this Act;
- (g) Engaging in pest control practices in a manner that could be injurious to the public health, safety or to the environment;
- (h) Failure to comply with contract specifications;
- (i) Performing work in a category for which the certified applicator licensee is not certified;
- (j) Failure of business licensee to register employees or failure to pay license fees for employees;
- (k) Making a pesticide application inconsistent with the labeling of any pesticide as registered by the Environmental Protection Agency, the United States Department of Agriculture, or the State registration for that pesticide, or in violation of any condition or restriction placed upon the use of that pesticide by the Environmental Protection Agency, the United States Department of Agriculture, or the State;
- (l) Failure to make records of pesticide use and keep them available as required by the Act, as amended, and rule 406.04.04.001 of the rules and regulations.

If an inspector finds that a licensee has not complied fully with contract specifications, he often attempts to negotiate a fair settlement between the parties. Inspectors may direct the resolution of these complaints by ordering either refunds or retreatments. In fiscal year 1977, \$12,718 was refunded to customers as a result of enforcement efforts of the SPCB staff, and 36 jobs were redone by licensees. If restitution cannot be accomplished by the agency staff in negotiation with the parties involved, a hearing before the Board is initiated.

Most Board actions concerning licensees involve failure to comply with contract specifications (h). Charges of operating out of category (i), and misuse of pesticides (k). While the Board has authority to receive Department of Public Safety records concerning any licensee or applicant, this authority has rarely been exercised.

When an inspector, in cooperation with the executive director, determines that a licensee is operating in violation of the law and regulations, the process of developing evidence begins in preparation for a Board hearing. The typical kinds of evidence developed include statements of parties involved in the violation situation, photographs, soil samples and lab reports, and copies of any other relevant documents.

The licensee who is alleged to be in violation is notified by certified mail of the date, time and place for the Board hearing and the charges being brought against him. The hearings are held during the course of regular Board meetings. At the time specified in the licensee's letter, the Board recesses for a short period of time (two to ten minutes usually) and the parties to the case are invited to come into the Board room and sit at the table opposite the Chairman. The Chairman acts as the hearing officer and the agency's case is presented by the executive director

and the agency inspectors. The procedures for questioning and admission of evidence are informal and appear to be ruled on by common consent of the parties involved.

Summary

The licensing activities of the Structural Pest Control Board are directed at both individuals and businesses. The Board's licensing of individuals involves all persons who use or supervise the use of pesticides in structural pest control work. The licensing requirement in the law refers to users of restricted-use pesticides; however, the license categories designate the types of pest control services which may be performed by the licensee. No distinction is made as to the type of pesticides used, and the Board has issued no rules and regulations regarding the use of various types of pesticides under various license categories. Examinations are the basic method for achieving the objective of admitting qualified people into the industry.

The review indicates that, while the examination does act as a screening device, the screening takes place on the basis of knowledge of the law and recognition of pests, as well as the use and application of restricted-use pesticides. Therefore, the examination is broader in scope than the definition implies. Since a large overlap exists between individual and business licensees this type of selection device serves to screen individuals who are applying for business licenses as well.

The law provides three basic requirements for business licensees. The agency has instituted workable procedures and policies concerning the requirements for employment of at least one certified applicator and registration of employees. The agency, however, has not instituted regulations in accordance with the law regarding the requirement that each business licensee must have \$30,000 in property damage liability insurance. Further, the review could not document

actions taken by the Board in reviewing insurance policies as to sufficiency, as directed by law. Under its charge to develop standards and criteria for issuing business licenses, the agency requires that business applications be notarized.

The law and regulations provide for disciplinary action by the Board, injunctions, and civil and criminal penalties for violations of the law and regulations. Enforcement of the licensing requirement is carried out through injunctions against unlicensed individuals who are performing pest control work. Enforcement against licensees is conducted largely through the efforts of agency staff and Board action. According to the agency self-evaluation report, all complaints are investigated. Of the violations heard by the Board, penalties involved revocations in 29 percent of the cases, suspension in 36 percent of the cases, and lesser penalties in 35 percent of the cases. Most of the revocations were for nonpayment of license fees. The other penalties were for various violations--most frequently operating out of appropriate category, below contract level work and misuse of pesticides. The penalties assessed violators appear to be consistent; and no evidence was discovered confirming or denying the effectiveness of the penalties assessed in deterring violations. A comparison of the volume of Board actions and the number of complaints, suggests that enforcement activities should be directed toward response to complaints and less emphasis should be placed on routine inspections. This is further supported by the fact that most Board actions are on cases initiated due to a complaint by a consumer or outside party.

Criterion 3

An assessment of less restrictive or other alternative methods of performing any regulation that the agency performs which could adequately protect the public.

The review under this criterion centered on analyses of the agency's regulatory functions in terms of 1) changes over time in the restrictive nature of agency functions, as seen in the agency's statutory history; 2) less restrictive methods which could be used; and 3) alternative methods of performing the agency's regulatory tasks. These analyses were obtained through the agency's self-evaluation report, literature concerning occupational licensing, and surveys of similar licensing functions in other states.

Restrictiveness of agency functions includes both restrictions prior to licensure and restrictions on the practices of licensees. The SPCB restricts entry into the pest control industry by 1) the examination requirement, 2) the requirement that businesses, as well as individuals, be licensed, 3) the insurance requirement, and 4) the fees charged. On the other hand, exemption and reciprocity provisions lessen the restrictiveness of the agency's functions. The practices of licensees are restricted by: 1) the renewal requirements, 2) the requirement that service employees have identification cards issued by the Board, 3) the requirement that employees be under the direct supervision of a certified applicator at all times, 4) the requirement that records of pesticide use be kept, and 5) the regulations governing the manner in which license numbers must be displayed on service vehicles.

Restrictiveness is governed by both statutory provisions and the implementation of these provisions in regulations. Exhibit III-1 contains details concerning the statutory history of the SPCB. The restrictiveness with which an occupation or

EXHIBIT III-1

Changes to Laws Relating to Structural Pest Control 1971-1977

Year	Licensing	Enforcement	Administration
1971	<p><u>Fees:</u> Initial License - NTE \$50 Renewal - NTE \$50 Duplicate - \$50 Employee - \$5 to \$15</p> <p><u>Regulation of:</u> - Individuals engaged in pest control business. Separate license required for each place of business the individual operates. Employee identification cards issued to employees of licensees.</p> <p><u>Exemptions</u> 1. Employee of governmental or educational agency who performs pest control services as part of his duties of employment. 2. Person or his regular employee who performs pest control work upon property which he owns, leases, or rents. 3. Employee of a person licensed to engage in the business of structural pest control. 4. Person or his employee who is engaged in the business of agriculture or aerial application or custom application of pesticide to agricultural lands.</p> <p><u>Grandfather Clause:</u> - Temporary license may be issued to anyone who has been engaged in the structural pest control business for two years immediately preceding effective date, if application is made within 90 days of effective date of Act.</p> <p><u>Requirements:</u> - Board may require applicants to pass an examination demonstrating competence.</p>	<p><u>Penalties:</u> - Suspend or revoke license - Refuse to examine an applicant - Refuse to issue a license - Refuse to renew a license - Injunction (suit brought by Attorney General)</p> <p><u>Appeal of Board Action:</u> - To district court in Travis County or county in which licensee resides. - De Novo</p> <p><u>Cause for Action:</u> - Finding that applicant or licensee has substantially failed to comply with the standards and rules and regulations established by the Board.</p>	<p><u>Special Fund</u> - Structural Pest Control Fund (Fund 424). - Agency never a charge to General Revenue. - Balance at end of fiscal biennium in excess of next biennium appropriation goes to General Revenue.</p> <p><u>Expiration Date</u> - March 1, for all licenses issued.</p> <p><u>Regulations:</u> - Must comply with federal law and regulations.</p>

EXHIBIT III-1
 Changes to Laws Relating to Structural Pest Control 1971-1977
 (continued)

Year	Licensing	Enforcement	Administration
1973			<u>Expiration Dates:</u> - Authority to stagger license expiration dates.
1975	<u>Fees:</u> Late Renewal - first 30 days - \$25 Late Renewal - second 30 days - \$50 Testing fee - NTE \$25/test <u>Regulation of:</u> - Businesses (each branch office must have separate license). - Certified Applicators (individuals). <u>Exemptions:</u> - Exemption 2 (1971) modified: person who performs pest control work upon property which he owns, leases, or rents as his dwelling. - Nurseryman, certified under Art. 126 and 126a, when doing pest control work on growing plants, shrubs, grass, etc. <u>Reciprocity</u> - Board may waive exam requirements on reciprocal basis with any other state or federal agency which has substantially the same standards.	<u>Civil Penalties:</u> - Executive director may institute suit for civil penalties or injunctive relief or both in district court. - \$50 to \$1,000 for each act of violation and for each day of violation. - Cause for action: violation of any provision of SPC Act or any rule, regulation or order of the SPCB or threat of violation. - At request of Board, the Attorney General shall bring suit in name of the State of Texas. <u>Criminal Penalties:</u> - Cause for action: a) Operating without a license b) Violating board rules or regulations c) Intentionally making false statement in license application or otherwise fraudulently obtaining or attempting to obtain a license. - \$50 - \$200 for each offense (each day of violation a separate offense). <u>Appeal of Board Action</u> - To district court in Travis County only. - Substantial evidence rule. - Must be filed within 30 days of issuance of order by SPCB.	<u>Special Fund:</u> - Provision prohibiting charge against General Revenue deleted. <u>Regulations:</u> - Must comply with standards established by state Commissioner of Agriculture. <u>Authority:</u> - SPCB is sole authority in Texas for licensing persons engaged in the business of structural pest control.

EXHIBIT III-1

Changes to Laws Relating to Structural Pest Control 1971-1977
(continued)

Year	Licensing	Enforcement	Administration
1975 Cont.	<u>Requirements</u> - Employees must be under direct supervision of a licensed Certified Applicator at all times. - Each business or branch must employ a licensed Certified Applicator at all times. - Business must file evidence of policy of insurance in an amount not less than \$30,000, insuring him against liability for damages. This coverage must be maintained at all times. - Board may require that records concerning use of pesticides be maintained. These records must be maintained at least two years on business premises and made available for inspection by SPCB. - Reexamination on new developments in industry is permitted.	<u>DPS Records</u> - Requires DPS to supply, on request, the arrest and conviction records of individuals applying for or holding licenses issued by SPCB.	
1977	<u>Exemption</u> - Person or his regular employee may, on his own premises, use pesticides, other than restricted-use or state-limited-use pesticides.		

industry is regulated may also be determined in part by the enforcement capabilities and level of enforcement activity of the regulatory agency.

Examination Requirements

Presently, applicants for the certified applicator license must score at least 70 percent on a written examination in order to qualify for the license. The original SPCB law allowed licensure without examination for applicants who had been in the pest control business for two years, but federal law and regulations mandated that except for private applicators, all applicators of restricted-use pesticides be licensed by examination after October 1, 1977. A Texas Attorney General Opinion interpreted provisions in the 1975 Texas law as requiring compliance with this process, and all licensees who had previously qualified on the basis of experience were required by the Board to pass the written examination prior to renewal of their licenses. Based on a survey of other states, over half of the states have failure rates under 20 percent. The average reported failure rate for other states is 20 percent. The failure rate in Colorado for the EPA test is about 35 percent. In comparison, the SPCB failure rate for all examination categories averages 55 percent. Similar to 10 other states, there is no limit on the number of times an applicant may take any examination in Texas.

There are no education or experience requirements for taking the examinations or for being licensed in Texas. Thirteen other states, however, have experience requirements, ranging from one to five years. Seventeen states have education requirements. Some states allow substitutions between experience and education. Although it might be expected that the states which have pre-licensing experience and education requirements would have lower failure rates, this does not appear to be the case. No pattern is found in relating these requirements to the failure rates on the examinations.

In addition to the criteria related to qualifying for the examination or license and the actual passing of the examination, aspects of the examination's availability could serve to restrict entry into the pest control industry. These aspects of examination availability include: 1) location at which the examination is given, 2) frequency with which the examinations are given, and 3) the availability of the examination in Spanish.

The SPCB has, on only a few occasions, given examinations outside of Austin. In the process of examining licensees who had been licensed on the basis of experience, examinations were given in various locations around the state. The Board has adopted a general policy that if a group of 50 or more individuals request an examination at a location outside Austin, the request will be honored. The Department of Agriculture, however, routinely administers license examinations in district offices throughout the state for pesticide users who must be licensed by the Department of Agriculture.

Examinations are given by the SPCB once during each calendar quarter in all categories. Individuals are scheduled for morning or afternoon sessions on one of the two days set for examinations. By comparison the Department of Agriculture administers pesticide-use examinations on request. Further, of 47 states reporting the frequency of examinations, 30 administer the examination on request and seven others schedule examinations more frequently than Texas.

It is the Board's policy to have examinations translated into Spanish upon request. However, none are presently available. The agency indicates that there has never been such a request. No evidence has been found to indicate that the availability of these examinations has been publicized.

Business License

Included in the 1975 amendment to the Structural Pest Control Act was a requirement that in addition to the certified applicator license required under the federal law for all persons using or supervising the use of restricted-use pesticides, any person in the business of soliciting or performing structural pest control work would be required to obtain a business license. About half of the other states have this dual licensing requirement for structural pest control operators.

The business license application must be notarized and indicate the name of the licensed certified applicator who will serve as manager. Further, each separate place of business or branch office must, at all times, have a manager who is a licensed certified applicator pursuant to federal law.

Liability Insurance

In addition to the other requirements for a business license, each business must maintain \$30,000 in property damage liability insurance. This insurance was required by the Sixty-fourth Legislature to assure that pest control operators would be financially responsible for damages to premises under their care, custody and control. Requirements related to financial responsibility vary significantly in other states. These include requirements for property damage and bodily injury liability insurance and performance or surety bond requirements. Six states require property damage insurance of less than \$25,000; and nine states require \$25,000. Three other states require property damage liability insurance in amounts of \$50,000, \$100,000 and \$200,000 respectively. Other states have no property damage liability insurance requirements, but some of these do have surety or performance bond requirements.

Fees

As indicated in Exhibit III-1, most of the fees charged by the SPCB are subject to a maximum set by law. The statutory limits for fees established in 1971 remain unchanged. The fees set by the Board are \$20 for a certified applicator license and \$50 for a business license. In 1975, the legislature provided additional fee categories for late renewals and testing. Certified applicator license fees in 15 states are lower than in Texas and equal to those in Texas in three states. On the other hand, of the 25 states who reported charging a fee for business licenses, only three are higher than the fee charged in Texas. Fourteen states charge lower fees for business licenses than Texas and two states do not charge a fee for a business license. As shown in Exhibit III-2, fees charged by other Texas State Plan agencies are higher than the SPCB fees for initial licenses.

EXHIBIT III-2

Comparison of Fees Currently Charged by Texas State Plan Agencies

<u>State Plan Agency</u>	<u>Fee per Test</u>	<u>Private Applicators License</u>	<u>Commercial Applicators License</u>	<u>Business License</u>
Texas Department of Agriculture	\$ 10	\$50	\$75	NA
Texas Animal Health Commission	\$ 10	\$50	\$75	NA
Texas Department of Water Resources	\$ 10	\$50	\$75	NA
Texas Department of Health Resources	\$ 10	\$50	\$75	NA
Texas Structural Pest Control Board	\$ 10	NA	\$20	\$50

Note: In all state plan agencies except the SPCB there is no charge for testing or licensing of public employees.

Fees for renewal of certified applicator licenses are higher than Texas fees in 20 states and lower in 21 states. Fees charged for renewal of business licenses are lower in 12 other states and equal in seven other states to the fees in Texas.

Since 1975, the SPCB has had authority to charge a fee for each examination administered. Presently, this fee is set at \$10 per examination. Fees of this type are charged by 19 other states. The other Texas State Plan agencies also charge a testing fee of \$10 (Exhibit III-2).

Exemptions and Reciprocity

Exemptions to the Structural Pest Control Act are presently similar to the original provisions. Nurserymen, who were not subject to the original act according to a judicial decision, are now specifically exempted and subject to licensing by the Department of Agriculture. Persons who use restricted-use pesticides as a regular duty of employment on the premises of their employer must now be licensed, according to federal law. However, persons are exempted from licensing in Texas if their duties require the use of general-use pesticides only under the 1977 amendment to the Texas Structural Pest Control Act. Although there is wide variation among other states regarding the specific exemptions of this type, many states do have a similar exemption provision.

The Texas law was also amended in 1975 to include provisions for reciprocity. The implementation of this provision includes the stipulation that before a person who is not a Texas resident may do business in Texas, he must comply with all license requirements and have a resident agent. While there are provisions in statutes of other states which allow reciprocity, the executive director of the SPCB indicates that none of the states have actually implemented reciprocal agreements with other states. Conversations with personnel in other state plan

agencies and the SPCB indicate that a reciprocal arrangement exists between those agencies and the SPCB in categories which overlap. Therefore, there should be no dual licensing in the overlapping categories.

Practice Requirements

As reported above, the SPCB requires annual renewal of both certified applicator and business licenses. Renewals are required on an annual basis in 40 other states. Two states require renewal every two years and three states require renewals less frequently. Examinations are required for renewals of certified applicator licenses in five states.

All service employees are required to have employee identification cards issued by the SPCB. The employee's name, address, driver's license number and social security number must be reported to the SPCB by the manager immediately after the employee is hired. The business is required to pay a fee of \$10 for each employee identification card. Approximately 12 other states require employee registration and charge fees for each employee registered.

Both state and federal law require that restricted-use pesticides be applied only under the direct supervision of a licensed certified applicator. Further, records of pesticide use must be kept by each business for a period of two years.

Regulations of the SPCB include a requirement that the business license number must be displayed on all service vehicles. The numbers must be two inches high, permanently affixed and in a color which contrasts with the background.

Summary

The statutory history of the SPCB reveals some increase in restrictiveness. This increase is attributed in part to the federal legislation which finally became effective in 1977, after delays by EPA. Regulation of the Texas pest control

industry is less restrictive than many other states in terms of entrance requirements relating to experience and education. These requirements make the comparison of the restrictiveness of the examination processes suspect. Fees in Texas are generally above the average for other states. The Board regulates businesses as well as individuals in a manner similar to about half of the other states. The SPCB has few formal requirements regarding an individual's activity after he is licensed. The Board must rely primarily on enforcement activities and other procedures to guarantee that the public is adequately protected following issuance of a license.

Criterion 4

The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.

The review of this criterion was directed at evaluating the agency's definition of its target population. The existence of other similar populations was explored and the extent of any overlap and duplication of services offered was analyzed. When applicable, the review also dealt with any efforts to establish coordinative relationships between agencies serving similar target groups and to minimize any duplication of services. This information was collected through discussions with agency personnel, review of statutes and rules, and the identification of other agencies with the potential ability to offer these same services.

The Structural Pest Control Board is one of five Texas State Plan agencies having the responsibility of licensing pesticide applicators in the categories specified by EPA. As indicated in the state plan, the SPCB will license "commercial and non-commercial applicators involved in industrial, institutional, structural, and health related pest control." This includes five subcategories: 1) pest; 2) termite; 3) lawn and ornamental; 4) fumigation; and 5) weed pest control. The self-evaluation report acknowledges the similarity of the activities performed by the SPCB and the other four state plan agencies, and the populations they regulate.

Target Populations

EPA has established 10 certification categories under which all users of restricted-use pesticides may be classified. Each of the five agencies covered by

the state plan regulates components which fall within these categories. Exhibit IV-1 shows the responsibilities of each of these agencies by category.

The target groups of the five agencies may also be classified according to whether the licensee functions as a commercial or non-commercial applicator. Commercial applicators are those who solicit business and perform work for the public on a "for hire" basis. Non-commercial applicators include private applicators (those who apply pesticides on their own property), public employees, and employees who use restricted-use pesticides as a part of their regular duties of employment. Exhibit IV-2 indicates the target populations and numbers of licensees in these categories.

State Plan Agency Functions

Under the Texas Pesticide Control Act, the state plan agencies are responsible for controlling the use of restricted-use pesticides. There are several regulatory functions common to all five of the state plan agencies in complying with this responsibility. All of the agencies are responsible for the functions of licensing and enforcement in some EPA categories.

The SPCB and the Texas Department of Agriculture (TDA) regulatory functions overlap somewhat. Both departments offer certification of lawn and ornamental, fumigation, and weed control applicators. The SPCB's efforts are primarily in the commercial sector, while the TDA is mainly concerned with the private agricultural users. The Texas Agricultural Extension Service offers training sessions through their county agents. The SPCB does not hold training classes, but does provide a reading list to applicants. Except for the SPCB, each of the state plan agencies utilizes the training offered by the Texas Agricultural Extension Service and follows the training sessions with exams for the relevant categories. Each participating agency provides staff for this testing function.

EXHIBIT IV-1

State Plan Agency Responsibilities within EPA Certification Categories

Agency	Agricultural Pest Control	Forest Pest Control	Ornamental and Turf Pest Control	Seed Treatment	Aquatic Pest Control	Right-of- way Pest Control	Industrial, Institutional, Structural & Health Related Pest Control	Public Health Pest Control	Regula- tory Pest Control	Demonst- ration and Research Pest Control
Texas Structural Pest Control Board	X	X	X				X			
Texas Department of Agriculture	X	X	X	X		X			X	X
Texas Animal Health Commission	X									
Texas Water Resources Board					X					
Texas Department of Health								X		

EXHIBIT IV-2

Number of Licensees by Type of Business Arrangement
State Plan Agencies

Agency	Commercial Licensees	Non-Commercial Licensees	
		Public Employees and Other	Private
Texas Structural Pest Control Board	2,149 Businesses, 3,264 Individual Certified Applicators	***	0
Texas **Dept. of Agriculture	1,699	2,515	102,000
Texas Animal Health Commission	14	921	0
*Texas Dept. of Water Resources	8	337	0
*Texas Dept. of Health	0	229	0

*Figures as of April 1, 1978.

**Figures as of Jan 1, 1978.

***Included in commercial individual certified applicators.

Under provisions of the Texas Pesticide Control Act, the head of any one of the state plan agencies "may waive part or all of any licensing examination requirements on a reciprocal basis with any other state or federal agency which has substantially the same examination standards." In addition, the Board's rules and regulations reflect this policy. The Texas Department of Health (TDH) technically shares responsibility for the category of "Industrial, Institutional, Structural and Health Related Pest Control," with the SPCB. However, according to Health Department personnel, all commercial licensing is presently deferred to the SPCB. The Texas Department of Water Resources (TDWR) certifies both commercial and non-commercial applicators in the Aquatic Pest Control category. There are about eight commercial certifications through this agency. The Animal Health Commission (AHC) certifies 14 commercial applicators under their jurisdiction, for the same fees as TDA, TDH, and TDWR. Other than the SPCB, the exam and license fees charged by all state plan agencies are the same. These fees are shown in Exhibit III-2.

In the performance of the enforcement function, the state plan agencies have little or no overlap. The SPCB conducts inspections in seven designated areas and employs seven staff for this function. TDA performs enforcement through three regional and 12 district offices, utilizing personnel who were in place prior to the effective date of the new EPA regulations. TDWR has 12 district offices through which this function will be carried out. AHC and TDH have no inspectors for this purpose, at this time, but do plan to develop enforcement capabilities.

Other Regulatory Agencies

Many of the functions performed by the SPCB are similar to those of other regulatory agencies. Exhibit IV-3 provides a comparison of the regulatory functions performed by the SPCB and selected other regulatory agencies.

EXHIBIT IV-3

Comparative Regulatory Functions

Barber Examiners	Cosmetologists	Motor Vehicle Commission	Nursing Home Administrators	Public Accountancy	Structural Pest Control Board	
X	X	X	X		X	establish qualification standards independently
			X			qualification standards suggested by national organization
X	X		X		X	develop written examinations
			X	X		utilize national exams
X	X		X	X	X	process exam applications
X	X		X	X	X	evaluate qualifications for examination
X	X		X			prepare and send candidate ID cards
X	X		X	X	X	collect and process exam fees
						administer exams annually
				X		administer exams semi-annually
X	X		X		X	administer exams on multiple occasions
X	X		X		X	administer multiple exams
			X	X		national exam grading procedure
X	X		X		X	agency exam grading procedure
X	X		X	X	X	record and report grades
X	X		X	X	X	prepare and distribute certificates of registration
X	X	X	X	X	X	process annual license renewal
X	X	X	X	X	X	collect renewal fees
		X		X	X	mail notification of delinquency
X	X		X	X		reciprocal registration processed independently
						reciprocal registration processed thru national org.
X	X		X	X		collect reciprocal registration fees
X	X	X	X	X	X	receive and investigate complaints
X	X				X	field investigation capability
X	X	X	X	X	X	issue warnings
X	X	X	X	X	X	consult legal counsel reference violations
X	X	X		X	X	invoke injunctive powers
X	X	X	X	X	X	arrange agendas for Board meetings
X	X		X	X	X	administer Board meetings
			X	X		prepare roster
			X	X		distribute roster
	X		X	X		coordinate activities with educational institutions

Summary

The responsibilities for regulation of pesticide use is divided among five state agencies, according to the state plan approved by EPA. Under the state plan, the SPCB shares responsibilities for the licensing of pesticide users with the other state plan agencies. In particular, the licensing responsibilities of the Department of Agriculture appear to overlap those of the SPCB in three of the 10 major EPA-established categories. Further overlap occurs between the SPCB functions and the functions of the other three agencies to the extent that each is responsible for licensing commercial applicators in specified categories. While a mechanism for reciprocity exists among the five agencies, the major cooperative efforts appear to rely on informal communications. Overlap and duplication in enforcement activities appears to be limited because of both the nature and level of enforcement activities undertaken to date. In addition, many types of activities of the SPCB are the same as those performed by other regulatory agencies.

Criterion 5

Whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates.

The review under this criterion centered on statutory changes which affect the operations of the agency. In the period covering the last three legislative sessions, all proposed changes in the law were adopted. In analyzing these changes, the approach was taken that a statutory modification must be of clear benefit to the state's citizens to be considered to be in the interest of the public.

The Texas Structural Pest Control Board is a relatively new agency -- created in 1971. During each legislative session since 1971, changes have been enacted in the statute governing regulation of the structural pest control industry. A major revamping of this regulatory function came in 1975 partly in response to federal action. The regulatory function and major changes can be analyzed in three major categories: licensing, enforcement, and administration. Exhibit III-1 contains a summary of the provisions and changes in the structural pest control law.

Licensing

The 1971 law included provisions for regulating individuals. This provision was modified in 1975 to require that businesses as well as individuals be issued licenses.

Those fees established in 1971 have not been changed. However, the 1975 amendments added two additional categories of fees: late renewal fees and an examination fee.

Based on federal requirements, licensing exemptions were modified in 1975. The basic issue was whether an individual not engaged in the pest control business

could assign a regular employee to do pest control work without a license on the individual's dwelling or business property. The original law exempted employees in this situation from regulation. In contrast, the 1975 amendment required licensing of these employees and exempted individuals doing pest control work on their own dwellings only. Changes to the statute made in 1977, in effect, allow employees to do pest control work without a license except for the application of restricted-use pesticides. According to the agency's self-evaluation report, the 1977 amendment was sponsored by the Texas Restaurant Association and the Apartment House Association and was opposed by the Board.

Because of changes in other Texas laws, nurserymen are exempted from the Structural Pest Control Act, if they are certified by the Commissioner of Agriculture. The Commissioner of Agriculture is required to license nurserymen in conjunction with the licensing of other agricultural applicators. This function has only been in operation a few months.

Finally, the other major area of change in the licensing function is in requirements for qualifying for a license. Initially, an examination was the only screening device prior to licensing. In 1975, associated with the addition of a separate business license, several licensing requirements were enacted. The most significant of these is the financial responsibility provision. Each business is required to secure a liability insurance policy in the amount of at least \$30,000 prior to issuance of a license. This provision is a clear attempt to protect the public.

Enforcement

Enforcement provisions in the original law were limited to Board actions against licensees or applicants and injunctive relief through suits filed by the Attorney General in district court. These provisions were significantly expanded in

1975 and now include both civil and criminal penalties. Civil actions may be initiated by the Attorney General or the Board, while criminal actions may be initiated by the Board or the executive director.

Another significant change from the 1971 law was the requirement that appeals be governed by the substantial evidence rule rather than being de novo. An independent hearing officer is needed to conduct the hearing impartially. The Attorney General's office has, on occasion, provided personnel to function in this capacity for the Board. However, no permanent arrangement for independent hearing officers has been achieved.

Appeals have been further restricted under the 1975 amendments in two ways. First, appeals are now required to be filed in district court in Travis County only. Also, an appeal must be filed within 30 days of the issuance of the Board's ruling. The effects of these changes are difficult to determine since few Board rulings have ever been appealed. Also, the complexities of these restrictions coupled with the change to the substantial evidence rule tend to make any evaluation of the effects of either change somewhat tenuous.

Finally, the SPCB in 1975, received statutory authority to request and be supplied with arrest and conviction records of applicants and licensees from the Department of Public Safety.

Administration

Only one major change affecting the administration of the SPCB has been enacted. Authority was granted in 1973 to stagger license renewal dates throughout the year. This authority has not been implemented to date. Criterion 1 includes further data regarding renewals and what effect implementation of this provision might have on the agency and the industry.

Summary

The major modifications to the structural pest control law were enacted in 1975 and related to licensing and enforcement. The Structural Pest Control Board supported the 1975 amendments.

Criterion 6

The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The review under this criterion centered on: 1) an identification of the type and frequency of complaints received by the agency, 2) the adequacy of administrative procedures used to process these complaints, and 3) the appropriateness and patterns of actions taken to address the complaints. Information for the review was obtained through interviewing agency staff, examining complaint files, and analyzing data presented in the agency's self-evaluation report.

The Board has the statutory authority to suspend, revoke or refuse to renew a license. Civil penalties are provided in the statute for violations of the statute or of regulations promulgated by the Board. The Board also has injunctive power.

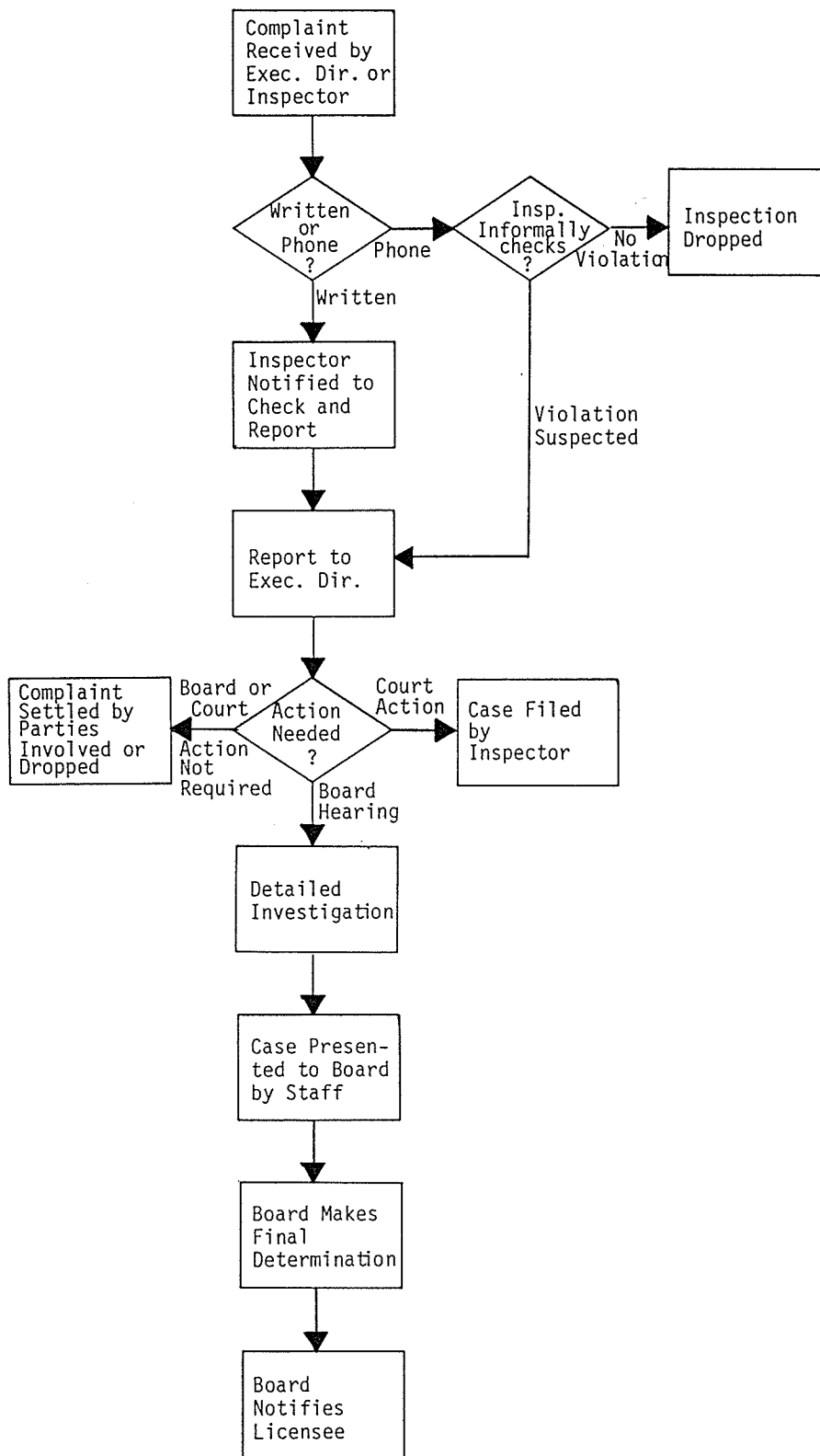
The agency's complaint process is diagrammed in Exhibit VI-1.

Personnel and Their Functions

The coordinator of complaint investigations is the Executive Director. The Executive Director and inspectors receive complaints by telephone and in writing. The Executive Director is generally responsible for all correspondence relative to complaints and oversees investigations of complaints. The agency has developed no written procedural requirements for investigating and documenting evidence.

The performance of the last task has not been accomplished in a systematic fashion. No compilation of complaint information uncovered during routine inspections could be documented and complaints received through other channels were not systematically documented. Many files were incomplete. In many instances, it was difficult or impossible to determine from documents maintained whether an investigation had been started or completed or whether the agency or

Exhibit VI-1
 Process for Handling Complaints
 Structural Pest Control Board



Board had taken final action on a case. Complete working files on all complaints received would be useful to the agency head as a management tool in setting performance goals and developing time schedules. These files could also assist the Board in developing a consistent, systematic procedure for processing complaints and dealing with violators.

The second important category of personnel activity is performed by the field representatives. The seven individuals holding these positions investigate complaints with minimal supervision. Inspection reports are prepared on a daily basis by the field representatives, with a weekly summarization of the number and type of contacts made. While the daily reports do contain detailed complaint information, no effort is made to collect or maintain that information in a separate complaint file. As a result, retrieval of complaint information is unnecessarily difficult and verification of disposition of complaints is difficult.

Since there are no standard operating procedures for inspections, information gathered by inspectors varies considerably. This is understandable to some extent since each complaint is unique. However, certain information is common to all complaints and necessary for effective analysis and control of the investigation objectives of the agency.

Types and Frequency of Complaints

The incomplete nature of material maintained in agency complaint files prevented a complete, thorough analysis and profile of complaints. The bulk of the analysis of the material presented in this section stems from the agency's self-evaluation report. According to the executive director, these data are estimates, based on data in the inspector's daily and weekly report summaries. No attempt was made to verify the accuracy or completeness of these data.

Complaints received include charges of fraud, misuse of pesticides, failure to follow pesticide labels, failure to comply with contract specifications, operating without an appropriate license and any other reported violation of regulations. Frequency of occurrences of the different types of complaints could not be ascertained due to the lack of a centralized system of detailed complaint documentation.

Information found in the agency's self-evaluation report on complaints indicated that the majority of complaints fall into two categories -- those originating from the general public and those uncovered during inspections. Exhibit VI-2 presents details of actions resulting from these two categories.

As evidenced by information contained in Exhibit VI-2, a significant difference in disposition of complaints initiated by consumers and by the agency is apparent.

For fiscal years 1975 through 1977, the incidence of non-action on consumer complaints averaged 50 percent, as compared to 24 percent for inspection (agency) complaints. For agency complaints, the most common action taken was the issuance of a warning which occurred 66 percent of the time. No formal sanctions were issued as the result of a consumer complaint.

Data contained in the self-evaluation report indicate that most actions on complaints are completed in a timely manner by the agency. The agency has referred 32 complaints to other state agencies in the last three fiscal years and has received referrals of 15 complaints from EPA.

Summary

The process for responding to complaints is supervised and coordinated by the executive director. Complaints are received by the Austin office and by the inspectors in either written or oral form. Documentation of complaints received

EXHIBIT VI-2

Summary of Complaints Received and the
Final Disposition as Reported in the
Structural Pest Control Board's Self-evaluation Report

Complainant	Total	ACTION TAKEN			
		Warning Issued	No Action Required	Other Legal ¹ Action	Formal ² Sanction
<u>1975</u>					
Public ³	355	43	212	100	0
Agency ⁴	1,066	698	272	91	5
<u>1976</u>					
Public ³	223	97	82	44	0
Agency ⁴	755	512	191	45	7
<u>1977</u>					
Public ³	163	21	80	62	0
Agency ⁴	693	456	151	78	8

¹Includes filing in justice of the peace court and county court and Board hearings that did not result in formal sanctions or warnings, according to the executive director.

²Includes license suspension or revocation.

³Includes complaints against licensees and against inspectors.

⁴Includes complaints against licensees and unlicensed individuals.

and their disposition is not centralized or systematized; therefore, verification of types and numbers of complaints received was not completed. It was noted that files concerning cases heard by the Board were fairly complete. The agency's self-evaluation report indicates that incidence of non-action was much higher in complaints initiated by the public. No formal sanctions were issued as a result of a consumer complaint during the last three fiscal years.

Criterion 7

The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates, and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The review under this criterion began with a determination of the statutory requirements regarding public participation both in the agency's enabling law and general statutes. The agency's procedures were reviewed to determine compliance with these statutes. The agency files and self-evaluation report were reviewed to determine the nature and extent of public participation and any results which might be attributed to public participation.

The Structural Pest Control Board publishes a yearly newsletter. It has included changes in regulation of pesticides by the Environmental Protection Agency, reports on investigations and hearings of important cases, reminders about licensing and renewal requirements, and information about educational seminars. These newsletters are sent to licensees each year, usually at the end of August.

The agency has conducted no seminars, conferences or training sessions which might be available to the public. Information is provided to licensees in newsletters concerning training sessions held by Texas A&M University, Texas Tech University and various chemical companies. The executive director participates regularly in these training sessions.

The agency does not distribute consumer-oriented information to the public concerning its purposes or functions. The law and rules and regulations are copied and distributed at no cost to individuals desiring to enter the structural pest control industry. The Board also provides a list of suggested reading materials for those persons interested in studying for the exams. No additional educational materials are printed or distributed.

The agency published annual rosters of licensed structural pest control applicators for each year 1972 through 1974. These rosters were distributed at no cost to licensees, police departments, chambers of commerce and others throughout the state. The practice of issuing the roster has been discontinued.

When first organized, the SPCB made use of newspaper advertising which they purchased to inform all pest control operators of the licensing and examination requirements. A public hearing was held in Austin on November 24, 1975 for the purpose of reviewing rules and regulations of the Board. Thirty-three people attended this hearing. The proposed rules were adopted without modifications on the day of their official presentation to the Board. On one other occasion, the Board made a change in the wording of the rules and regulations at a regular Board meeting. Official minutes record very little participation in these two meetings by licensees and none by the general public. Although licensees have, on occasion, appeared at regular Board meetings to request rule changes, there is no evidence of any attempts to solicit suggestions for rule changes.

None of the Board's publications are bilingual nor have there been any attempts at developing this type of capability. However, in July 1976, the Board approved a motion to translate two or three examinations in each test category into Spanish and it is their intent to make them available on request by persons taking the tests.

Summary

Review of the agency's activities regarding general public participation in the development of rules and regulations indicates that little effort has been made to encourage participation by the public; however, direct participation by the public in this type of agency is unlikely under usual circumstances.

Criterion 8

The extent to which the agency has complied with applicable requirements of an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals.

The review under this criterion centered on an identification of agency Equal Employment Opportunity reporting requirements and policies regarding the rights and privacy of individuals. Federal and state statutes were reviewed; agency policies and procedures were documented; and appropriate agency files were inspected to determine the adequacy of records maintained to verify the data presented under this criterion. The Governor's Office of Personnel and Equal Employment Opportunity was consulted. The general procedures regarding personnel actions and protection of the rights and privacy of individuals were examined through interviews and review of files.

Employment Procedures

This agency's Affirmative Action Plan (AAP) was approved by the Governor's Personnel and Equal Employment Opportunity Office on May 13, 1974. The effective date of the plan was January 1, 1974 through December 31, 1975. No subsequent AAP's or updates of this original plan have been received by the Governor's Office. Employment data have been filed with the Governor's Office on two occasions since that time.

Initial review by the EEO Office in May 1974 indicated deficiencies in three categories of the plan. First, in the area of personnel action, the agency's attempts at ensuring that recruitment literature was relevant to women and members of minority groups were inadequate. The performance appraisal system did not

include a mechanism for rating managers' and supervisors' execution of their EEO program responsibilities. Next, in the category of training, the plan did not provide for a review to ensure that training opportunities were being offered to employees. Finally, under the category of internal evaluation of the AAP and EEO Program, inadequacies included: 1) no provision for review and evaluation of EEO affirmative action programs; 2) no provision for internal reporting on EEO problems and progress, and no provision for distribution of such reports; and 3) no provision for annual review and revision of their AAP in light of social change or future growth.

Annual EEO reports have been filed with the Governor's Personnel and Equal Employment Opportunity Office for the six agency field offices. The March 1, 1978 semi-annual EEO report reflects that the agency presently employs seven inspectors and three secretaries. One inspector is of Hispanic origin and one is of American Indian origin. All of the inspectors employed by the SPCB are male and all three of the secretaries are female. Documentation in the agency files indicates that the secretaries have been given the opportunity, on at least one occasion, to be promoted to inspector when an opening existed.

To comply with legislation passed by the Sixty-fifth Legislature, state agencies in Travis County must submit information on any job openings in their agency to both TEC and the Governor's Personnel and Equal Employment Opportunity Office. The SPCB has filled two new openings during fiscal year 1978. One position was secretarial, the other was an additional inspector. Both positions were filed with TEC and the Governor's Office.

Privacy of Individuals

The provisions of the Open Records Act allow for confidentiality of individual personnel records. The agency has no specific rules governing administration of this provision; however, informal procedures are in effect which appear to maintain the privacy of these records. No challenges or problems with these procedures are apparent from review of agency files and discussions with agency personnel.

Summary

The agency appears to be in substantial compliance with the requirements regarding both equal employment opportunities and the privacy of individual records.

Criterion 9

The extent to which the agency issues and enforces rules relating to potential conflict of interests of its employees.

The review under this criterion centered on an identification of documented agency practices and procedures regarding the filing of individual financial statements and affidavits with the Office of the Secretary of State. The provisions of the statute (Article 6252-9b, V.A.C.S.) were reviewed and agency interpretations of the nature and intent of the provisions of the Act were sought. Records maintained by the agency and the Secretary of State under the authority of the legislation concerned with conflict of interest were reviewed to determine the extent of agency compliance with the letter and intent of the Act and to verify the accuracy of the data presented under this criterion. In addition, inquiries were directed to selected areas where conflicts of interest might exist that could not be discerned through review of official documents.

As of January 1, 1974, the executive director is required to file a financial statement relating to his and his family's financial activity for the preceding year. This statement is to be filed with the Secretary of State, reviewed and updated in April each year (Sections 3 and 4, Article 6252-9b, V.A.C.S.). Board members are required to disclose business interests regulated by the state through affidavits filed with the Secretary of State (Sec. 5. 6252-9b, V.A.C.S.). In addition, Section 6 required Board members having a personal or private interest in any measure, proposal or decision pending before the Board to publicly disclose the fact to the Board in an open meeting (as defined in Article 6252-17, V.A.C.S.) and to refrain from voting or otherwise participating in the decision. This disclosure is to be

entered in the minutes of the meeting.

Section 8 (c), Article 6252-9b, V.A.C.S. reads:

No state officer or state employee should accept other employment or compensation which could reasonably be expected to impair his independence of judgment in the performance of his official duties.

Filing Compliance

Under provisions of Article 6252-9b, the executive director of the SPCB has filed a financial statement with the Secretary of State. The latest statement, dated April 18, 1977, appears to satisfy all legal requirements. All appointed members of the Board have filed affidavits with the Secretary of State. Each of these members acknowledges ownership of, or being an officer of, a practicing structural pest control business in the State of Texas. This does not present a conflict of interest since, in order to qualify as Board members, they must each have "engaged in the business of structural pest control for at least five years." The Structural Pest Control Act further stipulates that no two members shall represent the same business entity. The affidavits indicate that the Board is in compliance with this provision.

In the course of the Board's enforcement, it is possible that conflicts would arise in situations involving complaints either made by a Board member's business or against a Board member's business. A review of Board minutes indicates that this has occurred only once in the Board's history. In that case, the Board member involved did not participate in any deliberations or decision-making relating to the case.

The agency has no rules or policies governing employment in the pest control business either before or after employment with the Board. The self-evaluation report indicated that all employees receive copies of Articles 6252-9b and 6252-6. Review of agency files indicated that the acknowledgments of receipt of these

materials had been signed by seven of the eleven Board employees.

Summary

Both the executive director and Board members have filed the required statements regarding their financial and business interests. In the only case of apparent conflict which was heard by the Board, the member involved refrained from participating.

Criterion 10

The extent to which the agency complies with the Open Records Act and the Open Meetings Act.

Examination of elements under this criterion was separated into components dealing with responsibilities for making agency documents available to the public under open records requirements and responsibilities for public notification of proposed agency actions. Under the area of open records, statutes were reviewed in relation to written or unwritten policies used by the agency. Where written policies did not exist, interviews were conducted to determine actual compliance. Materials contained in the self-evaluation report were verified and open records decisions reviewed. Open meetings compliance was verified through review of agency written and unwritten policies to determine if they accurately reflected statutory requirements. Interviews with agency personnel were conducted in instances where written policies were lacking or information contained in minutes of meetings was incomplete or unclear. Records in the Office of the Secretary of State were reviewed on a selected basis to determine compliance with posting and informational requirements.

Open Records

The Structural Pest Control Board Rules and Regulations state, "all official records of the Board, except files relating to applications for employment, or confidential records of investigation or other sensitive records, shall be public records..." In addition to the provisions in their rules and regulations, the agency refers to specific provisions of the Open Records Act and Attorney General's Opinions. According to the SPCB self-evaluation report, the agency has never

received a formal request for information in agency files, and no complaint relating to a refusal to provide requested information has ever been received. However, the report indicates that information and records are made available in a routine manner, and records are available to persons wishing to personally inspect their records held by the agency. Further, the executive director has instituted an informal policy of suggesting that individuals who fail the examinations come to his office and review their examinations and discuss the correct answers with him.

Conversations with the executive director indicate that he formally discusses most requests for records with the Attorney General's Office to assure that appropriate records are made available to the public, individual applicants or licensees. Under these procedures, the Board does not ordinarily provide copies of documents to individuals and has not developed a schedule of reasonable charges should an individual indicate a willingness to pay the reproduction costs of documents. On at least one occasion, however, a hearing transcript was requested by the licensee involved. In that instance the cost of preparation of the transcript was estimated and charged to the licensee. No accurate measure of the volume or type of other requests could be determined as data of this nature are not compiled. Interviews with staff of the Board indicate that the number of such requests, in the past, has been very low.

A review of the types of files maintained by the Board indicates that several contain information to which the public is not entitled access or is entitled only to limited access. Files received from the Department of Public Safety (DPS) contain information which cannot be released to the public. Files relating to complaints under investigation include reports from investigative personnel and correspondence relating to these complaints which may also be excluded from review by the public prior to resolution of the complaint. To determine compliance with the

stated informal policy, interviews were conducted with staff of the Board and appropriate files relating to these practices were reviewed. This review revealed no indication of improper handling of material in the DPS files or investigation reports.

A review of procedures utilized by other agencies of comparable size and nature in the area of open records indicates that simple written procedures have been developed that offer basic guidelines for control of documents. A range of charges relating to reproduction of copies can be obtained through the Board of Control.

Open Meetings

The Structural Pest Control Board is required by statute to hold meetings quarterly and at other times the chairman may deem necessary. Meetings have generally been held every thirty to sixty days. Except for three meetings held in Giddings, Texas, the Board holds its meetings in Austin. All scheduled meetings have been registered with the Secretary of State.

Regular meetings frequently involve formal hearings on violations of the Structural Pest Control Act or SPCB Rules and Regulations, the review of new federal rulings on pesticide use, as well as the discussion of general administrative affairs of the Board. The agency reports that all meetings are open to the public and there are no indications that closed or executive sessions have been held since the Open Meetings Act became effective. Minutes of Board meetings and hearings prior to 1974 indicate that individuals charged with violations were only allowed time before the Board to present their case and answer questions. Briefings were commonly presented before the licensee was admitted to the hearing, and deliberations and decisions were deferred for consideration by the Board later during the meeting. In such cases, the licensee was informed at the conclusion of his

testimony that a notice of the Board's action would be sent by certified mail at a later date.

Currently, the licensee involved in a hearing may be present at the Board meeting during the time specified for a hearing on a violation. The entire meeting is open to the public, and the agency states that no limit is placed on the attendance of any persons involved. However, the Board decision is still deferred until later during the meeting, and agency records indicate that many licensees do not remain for the Board deliberation and final action.

Minutes of each meeting are filed with the Executive and Legislative Budget Offices and the Legislative Reference Library. The specific violation with which the licensee is charged is stated in the minutes of meetings held since 1974, although these minutes do not contain detailed information regarding the origin of the complaint or arguments presented by the licensee, inspector and other witnesses. The agency reports that attendance at meetings usually consists of Board members, staff and individuals specifically involved in hearings or other Board activities.

Notification Procedures

The SPCB files formal notices of hearings and Board meetings with the Texas Register Division of the Secretary of State's Office. All such notifications by the agency have been made in accordance with the Open Meetings Act.

The budget for the agency does not include a specific allocation for notice of meetings through media advertising. Therefore, the SPCB does not make use of this form of notice on a regular basis. There have been times when this method was used to inform the registrants as well as the general public of special hearings. According to Board minutes, these notices have been placed in newspapers in

Houston, Dallas, Lubbock, El Paso, San Antonio, and Harlingen.

Other advance notification of Board meetings usually appears in the pest control association publications. The agency passes such information on to the association officials who in turn place notice in association newsletters.

Summary

The agency appears to be in compliance with the provisions of the Open Records Act, although there is a potential problem regarding maintaining the confidentiality of certain files. The agency appears to have complied with the notification requirements of the Open Meetings Act.

Criterion 11

The impact in terms of federal intervention or loss of federal funds if the agency is abolished.

Generally, the licensing of occupations is a function which the federal government has left to the states to initiate. However, in certain instances, the federal government has prescribed minimum requirements, as they have for the use of pesticides, in order to protect the public and the environment. Federal funds are also available in support of these mandates.

Federal Requirements

The Federal Environmental Pesticide Control Act of 1972 states:

The Administrator shall prescribe standards for the certification of applicators of pesticides. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by such individuals' certification.

Further, if a state wishes to perform this function, it must submit a state plan to the administrator of the Environmental Protection Agency (EPA) for approval. This plan must include examinations by which applicants demonstrate their competency as pesticide users. The process generally referred to by state laws as "licensing" must include a test which "certifies" competency, in order to be approved by EPA as part of the state plan.

The overall thrust of the Federal Environmental Pesticide Control Act of 1972 and of EPA's activities in implementing the Act is toward the regulation of the production and use of certain pesticides which could be harmful to the public or the environment. Therefore, the regulation of pesticide uses by structural pest control operators is only one component in the scope of federal regulation of

pesticides. The Texas Department of Agriculture is the state's "lead agency" in the regulation of pesticides and is responsible for submitting a state plan for the regulation of pesticides to EPA. In addition to the Texas Department of Agriculture and the SPCB, other state agencies charged with responsibilities for regulating pesticide users are the Texas Animal Health Commission, the Texas Department of Health and the Texas Water Quality Board (Department of Water Resources).

Federal Funds

Under provisions of the Texas Pesticide Control Act (Art. 135b-5a, V.A.C.S.) each of these five agencies is permitted to receive funds and negotiate contracts with any other state agency or any federal agency for the purposes specified in the Act. During fiscal years 1977 and 1978, the SPCB received direct grants from EPA in support of certification, testing and development of the state plan (Exhibit XI-1). Other federal funds have been received by the Department of Agriculture and distributed to the other three agencies or used by the Agriculture Department.

The Department of Agriculture has made an application which has been tentatively approved by EPA for an enforcement grant of \$403,522 for part of fiscal year 1978. The Structural Pest Control Board will be eligible to receive funds under this grant if a request is made to the Department of Agriculture by the Board.

Record-keeping requirements regarding the use of the federal funds to date have been slight. The inspectors are required to include, on their weekly reports to the director, the estimated number of hours spent on activities such as verification that pest control operators are licensed and assisting in the administration of examinations.

Review of Board meeting minutes indicates that there has been considerable

EXHIBIT XI-1

Uses and Amounts of Federal Funds
Fiscal Years 1976 - 1978

FY	Agency	Certification	Enforcement	Development of Testing Capabilities	Development and Maintenance of State Plan	Funding Mechanism	Total Amount Federal Funds
1976	Department of Agriculture	X			X	Direct	\$ 18,600
1977	Health Resources	X		X	X	Department of Agriculture	25,000
	Animal Health Comm.	X		X	X	Department of Agriculture	25,000
	Water Quality Board	X		X	X	Department of Agriculture	25,000
	Structural Pest Control Bd.	X		X	X	Direct	50,000
	Department of Agriculture	X		X	X	Direct	<u>74,000</u>
	Total						<u>\$ 199,000</u>
1978	Health Resources	X		X	X	Department of Agriculture	\$ 25,000
	Animal Health Commission	X		X	X	Department of Agriculture	25,000
	Water Quality Board	X		X	X	Department of Agriculture	25,000
	Structural Pest Control Bd.	X		X	X	Direct	<u>14,000</u>
	Total						<u>\$ 130,000</u>
Pending Request	Department of Agriculture		X				\$ 403,522

hesitancy on the part of the Board members and staff to apply for or accept enforcement funds. The reason most often given for this hesitancy is the paper work and red-tape which would be required for an investigation to conform to EPA standards. The consensus of Board members at the March 1978 Board meeting seemed to be that the requirement to conform to EPA standards was inevitable and the agency should submit a request for enforcement funds.

Possible Intervention

If the functions of the Structural Pest Control Board were to be continued by law under some different organizational structure, the state plan would no longer be reflective of the provisions of Texas law relating to the use of restricted-use pesticides and would have to be changed to avoid loss of federal funds. It is not likely that any federal funds would be jeopardized by such an approach.

If the functions of the Structural Pest Control Board are not continued by law in Texas, the state would cease to be in compliance with EPA regulations requiring that the state have an established mechanism whereby pesticide users in all categories are required to have demonstrated their competence in the application of restricted-use pesticides. The apparent result would be that EPA would begin to perform some of the functions related to regulation of restricted-use pesticides. It seems likely that those agencies which would continue to have statutory authority in compliance with EPA regulations would continue to function. EPA would then become responsible for administering examinations and issuing "licenses" to persons in the structural pest control business. Judging from the experience of another state, EPA could also be expected to increase personnel necessary for enforcement activities. Funds to support this increase would be taken from the overall allocation to Texas for implementing the Federal Environmental Pesticide Control Act of 1972. It is unclear whether all those funds previously allocable to Texas

would be diverted in support of EPA's regulatory activities or whether only some portion of the funds would be diverted. Since Colorado is the only state without an approved state plan, the activities of EPA in that state may serve as a model for what Texas could expect if the state should cease to be in compliance.

Colorado Experience

Since Colorado has no approved state plan for regulating the use of restricted-use pesticides, the Environmental Protection Agency has assumed responsibility for this function. Colorado's state plan, as submitted to EPA, was deficient in two major areas: 1) no provision was made by the state for the regulation of use of restricted-use pesticides by a property owner on his own property ("private applicators"), and 2) no provision was made for the regulation of persons who use restricted-use pesticides on the property of an employer only as a part of the regular duties of employment ("commercial applicators" who do no pest control work "for hire"). In lieu of state regulation in these categories, EPA began certifying applicators in Colorado in October 1977.

Private applicators of restricted-use pesticides in Colorado may obtain EPA certification in three ways: 1) through training programs offered by the state extension service, 2) by passing written examinations given by EPA, or 3) by completion of a self-study program developed by EPA. Currently, there are approximately 9,000 private certified applicators in Colorado.

Commercial applicators are required to pass at least two examinations: a general exam and an exam in at least one specific category. EPA has certified about 1,100 commercial applicators in Colorado. The State of Colorado continues to license commercial applicators who do pest control work for hire but has no jurisdiction over private applicators of restricted-use pesticides.

EPA is presently making plans to begin enforcement of pesticide regulations.

Since the first restricted-use pesticide list was issued in February 1978, enforcement of regulations regarding other use was not possible until that time.

Summary

Regulation of structural pest control operators using restricted-use pesticides is mandated in federal statutes. If the state were to continue to perform the certification function through some organizational arrangement other than the SPCB, actions which would probably be required include: 1) enactment of state legislation placing responsibility for certifying structural pest control applicators with another state agency, and 2) revision of the State Plan. If the state chose not to continue to regulate pest control operators in these categories, EPA would probably perform the function, as well as enforcement. Receipt of federal funds is contingent upon the existence of an EPA-approved state plan. The absence of EPA approval could preclude the qualification of Texas for the federal funds reported in Exhibit XI-1.

CONCLUSIONS

The Texas Structural Pest Control Board was created in 1971 to regulate the pest control industry in anticipation of the enactment of federal legislation regulating pesticide use. The SPCB is one of five state agencies responsible for fulfilling federal requirements regarding pesticide use. The Structural Pest Control Act was significantly modified in 1975 as a result of the Federal Environmental Pesticide Control Act of 1972.

The Board currently functions as the policy-making body of the agency and employs a staff of an executive director, seven inspectors and three secretaries. The agency's 1977 expenditures amounted to \$217,000 and revenues from fees amounted to \$247,000. All fees are deposited to a special fund in the State Treasury and all expenditures are made from this fund. In addition, during this period the agency received federal grant funds of \$50,000. If current trends continue the special fund balance at the end of the fiscal year is projected to increase to over \$1 million by 1983. The functions of the agency are licensing of pest control operators and businesses and enforcement of the regulations dealing with licensing and pesticide use.

The Board issued 3,035 licenses in 1977 to pesticide applicators and 2,104 to pest control businesses. Of those licenses 4,416 were renewals. Each business licensee must designate a licensed certified applicator as the manager, who is responsible for the day-to-day operation of the business. Examinations are administered quarterly in each of five categories. In 1977, 1,976 examinations were administered with a 53.9 percent pass rate. All individuals who hold SPCB applicator licenses have passed the examination, however, there are no expense or education requirements as there are in many states.

In 1973, the Board was given statutory authority to stagger license renewal dates; however, this authority has not been exercised. If a staggered renewal plan

were implemented, it appears that the agency's workload would be smoother and overall efficiency would be increased.

Licenses are processed and licensee listings are printed using the Department of Agriculture's computer facilities. It was noted during the review that increased efficiencies could be achieved by automating additional components of the licensing process and utilizing existing computer files in issuing renewals.

A review of agency expenditures indicates that telephone expenses included payment for a substantial number of credit card calls. It was determined that a savings of about \$1,200 per year could be achieved by utilizing the Tex-An network for many of these calls.

Each business licensee is required by law to maintain \$30,000 in property damage liability insurance at all times and file evidence of the coverage with the Board as a prerequisite for licensing. Agency files indicate that many licensees are maintaining only \$25,000 property damage liability insurance coverage, and Board regulations imply that the coverage requirement refers to the total of personal property and bodily injury liability insurance. The statutes also require that the Board review insurance coverage as to sufficiency; however, no documentation of such activities was found.

Enforcement activities of the agency include responding to complaints and conducting routine inspections. It was noted during the review that of the complaints received during the last fiscal year 163 were from the public and 693 were initiated by agency personnel. The Board held hearings on 10 cases in 1977. Disposition of complaints included four revocations, four suspensions, 477 warnings and 140 other legal actions during fiscal year 1977. Formal sanctions were not imposed by the Board in any of the cases classified as consumer complaints. Thirty-five court cases were filed by the agency, primarily seeking injunctions

against unlicensed individuals.

The agency reports that all complaints are investigated; however, verification of the investigation of complaints was hampered because of the lack of a systematic, centralized file of complaints, investigation results and disposition. The review revealed no documentation that the agency made substantial efforts to inform the public of the agency's existence and function.

Complaints filed with the agency generally involve charges of operating without an appropriate license, failure to meet contract specifications and misuse of pesticides.

There are no standard written procedures for conducting routine inspections or for conducting investigations of charges of violations. The Board holds hearings on charges when the executive director and inspection staff determine that Board action is needed to enforce the provisions of the law. Experience indicates that most Board actions involve issuance of warnings or reprimands.

The responsibilities of the Department of Agriculture are similar to those of the SPCB in both the target populations served and the functions performed in licensing pesticide users and enforcement of licensing requirements. In carrying out the licensing function, the Department of Agriculture and Texas Agricultural Extension Service have developed a program of training in the use of pesticides and a training manual. These are available through the district offices of the Department of Agriculture. Responsibilities of the SPCB in performing licensing and enforcement functions are also similar to those performed by other regulatory agencies.

The federal law requires that pesticide users be licensed by states. In states which have chosen not to comply, the Environmental Protection Agency has intervened to perform the function and has withheld federal funds from the state.

Increases in restrictiveness of legislation governing the SPCB generally appear to result from increased federal requirements; however, it was noted that the federal law does not require business licenses in addition to individual (certified applicator) licenses.

If the legislature determines that the functions currently being performed by the Board should be continued, certain changes relating to the present operation and organization of the Board could be considered to increase the efficiency and effectiveness with which the functions are carried out.

THE LEGISLATURE COULD CONSIDER TRANSFERRING ALL FUNCTIONS PRESENTLY CONDUCTED BY THE SPCB STAFF TO THE DEPARTMENT OF AGRICULTURE AND THE BOARD COULD CONTINUE TO ACT AS A QUASI-JUDICIAL BODY TO HEAR CASES OF ALLEGED VIOLATIONS BROUGHT AGAINST LICENSEES BY INSPECTORS.

The Department of Agriculture presently administers licensing and enforcement activities covering some pesticide users through district and regional offices. The Department of Agriculture also presently performs the actual production of licenses under an interagency contract with the SPCB. A representative of the Department of Agriculture sits on the Structural Pest Control Board. It appears that the most significant addition to the workload of the Department of Agriculture's existing licensing and enforcement program would involve enforcement related to deceptive practices, fraud, and failure to meet contract specifications. By continuing to hear cases concerning alleged violations, the SPCB could continue to assist in the function of industry members policing themselves. This would also provide an administrative hearing prior to court action in many cases.

Additionally, other steps should be considered regardless of the organizational form through which the regulation is carried out.

THE CURRENT PROVISIONS REQUIRING AT LEAST \$30,000 IN PROPERTY DAMAGE LIABILITY INSURANCE OF ALL BUSINESS LICENSEES SHOULD BE STRICTLY ENFORCED.

This requirement was added to the law in 1975 and later ruled on by the Attorney General. The current regulations

and practice provide for a combined property damage and bodily injury liability insurance coverage of at least \$30,000; whereas, the statute and Attorney General Opinion refer to property damage liability.

PERIODIC REVIEWS OF CLAIMS FILED UNDER INSURANCE COVERAGE COULD BE MADE TO DETERMINE IF THE TYPE AND AMOUNTS REQUIRED PROVIDE AN APPROPRIATE MINIMUM COVERAGE IN ALL CASES.

There is no evidence that the Board has considered what level and type of insurance are needed to adequately protect the public while not imposing an undue hardship on licensees. Such information as claims filed under existing insurance coverage would provide a base for reviewing the level and type of insurance which would be an appropriate minimum.

LICENSE RENEWAL DATES COULD BE STAGGERED TO PROVIDE A MORE EVEN WORKLOAD.

The authority to stagger the expiration dates on licenses was granted by the Sixty-third Legislature. The Board has never exercised the option to do this. The effect, however, would be a more evenly distributed workload to be handled by the agency employees and a more timely return of renewed licenses to licensees.

TELEPHONE COSTS ASSOCIATED WITH THE REGULATORY FUNCTIONS COULD BE REDUCED BY UTILIZING THE TEX-AN NETWORK FOR THE MAJORITY OF LONG DISTANCE TELEPHONE CALLS.

The agency presently utilizes credit cards for many calls, particularly from inspectors. This expensive calling procedure could be replaced by utilizing Tex-An for most calls within Texas and direct distance dialing for those calls which would not be cheaper through Tex-An. Credit card calls could be limited to the calls which would be operator-assisted. It is estimated that a savings of \$1,200 per year could result from this change.

COMPUTER PROCESSES COULD BE REVISED TO ALLOW FOR ADDITIONAL USES OF THE DATA STORED AND OTHER DATA WHICH MIGHT EASILY BE ADDED TO THE SYSTEM TO INCREASE THE EFFICIENCY OF DEVELOPMENT OF MANAGEMENT INFORMATION.

The primary use of the computer processing presently is the printing of licenses and listings of licensees. The use could readily be expanded to provide for checking the expiration of insurance and if license renewals were staggered, the renewal dates for licenses. The present system could be

modified to provide for use of existing computer files instead of rekey punching data on renewals which remain unchanged from year to year.

ADDITIONAL STEPS COULD BE TAKEN TO INCREASE THE PUBLIC'S KNOWLEDGE OF THE EXISTENCE AND PURPOSE OF THE STATE'S REGULATORY AUTHORITY, INCLUDING, AT A MINIMUM, TELEPHONE LISTINGS UNDER THE NAME OF THE STRUCTURAL PEST CONTROL BOARD IN DIRECTORIES WHERE FIELD INSPECTORS ARE LOCATED.

The agency presently exerts very little effort to make information available to the public concerning its existence. It appears that listing telephone numbers of inspectors stationed nearby as agency officials would improve the potential for effective achievement of the general objective of protecting the health and welfare of the public. The cost of these listings is estimated at \$1.50 per month per listing. Thus, if inspector listings were carried in 25 cities, the annual cost would be approximately \$450.

COMPLAINT PROCEDURES COULD BE REVISED TO PROVIDE FOR A CONSISTENT METHOD OF LOGGING ALL COMPLAINTS RECEIVED AND THEIR DISPOSITION.

Presently, the complaint information is maintained in an unsystematic manner. A log of complaints received, the name of the complainant, the type of violation suspected and final disposition would provide additional management information which could be used in scheduling investigations, assigning inspectors, and reviewing agency policies.

INCREASED EFFORTS COULD BE MADE TO ENSURE THAT APPLICANTS FOR LICENSURE AND LICENSEES ARE MADE AWARE OF MATERIALS PERTINENT TO EXAMINATION OR AVAILABLE CONTINUING EDUCATION.

Currently, the Texas Agricultural Extension Service provides training through county agents for persons applying for a license as a restricted-use pesticide applicator under the jurisdiction of all state plan agencies, except the SPCB. This type of training could be expanded to cover the areas examined by the SPCB. In addition, the Environmental Protection Agency makes available a low cost self-study manual covering pesticide use which could be provided at cost to persons wishing to take the SPCB examination for licensure.

Other materials in the form of a manual for pesticide applicators is currently being prepared by the Texas Department of Agriculture. When completed this material could be made available to licensees at cost.

THE CURRENT STATUTORY REQUIREMENT OF DUAL LICENSES REQUIRED OF INDIVIDUALS WHO SERVE AS MANAGERS FOR LICENSED BUSINESSES WITH THE BUSINESS LICENSE COULD BE MODIFIED TO REQUIRE A SINGLE LICENSE.

While the federal law requires that individuals demonstrate their competence to use restricted-use pesticides, no requirement exists concerning the licensure of businesses. Since the state law is designed to assure financial responsibility for damages and contract compliance as well as proper use of pesticides generally, it appears that licensure of a certified applicator as manager of a business would allow a mechanism for achieving the objectives with less paper work in the form of application processing and license issuance. Presently, each of the 2,100 businesses is required to have a licensed certified applicator designated as manager. If the business and applicator licenses were combined in all of these cases, the agency would, under the present fee structure, experience a loss in revenue of approximately \$42,000 per year. The agency fund balance exceeded that amount in 1977 and is projected to continue to exceed that amount for the next five years.