



State of Arizona
Office
of the
Auditor General

PERFORMANCE AUDIT

**STRUCTURAL PEST
CONTROL COMMISSION**

Report to the Arizona Legislature
By Douglas R. Norton
Auditor General
December 1996
Report 96-18



STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

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December 2, 1996

Members of the Arizona Legislature

The Honorable Fife Symington, Governor

Dr. Wes Clayton, Chairman
Structural Pest Control Commission

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Structural Pest Control Commission. This report is in response to a May 29, 1995, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the Sunset review set forth in A.R.S. §§41-2951 through 41-2957.

We found that the Commission's most pressing need is to establish a more comprehensive approach for protecting homeowners against ineffective termite pretreatments. Currently, there are built-in financial incentives to builders and pest control companies that may discourage quality treatment work. Although the Commission devotes significant resources to regulating pretreatments, its attempts to deter poor work through staff observations are limited by the large number of pretreatments performed. Further, when Commission staff observe faulty pretreatments, they are unable to halt a home's construction and ensure that problems are corrected. The Commission should consider increasing entry requirements for those who wish to be authorized to perform pretreatments, and should seek statutory authority to halt a home's construction when a poor pretreatment is observed.

The report also addresses the need to improve collection of information and fees from pest control companies, and to strengthen the Commission's inspection program. Finally, if the Legislature continues to mandate that the Commission provide training to the pest control industry, we recommend that the Commission consider recovering the costs by charging attendees a fee.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on December 3, 1996.

Sincerely,

A handwritten signature in cursive script that reads "Douglas R. Norton".

Douglas R. Norton
Auditor General

Enclosure

SUMMARY

The Office of the Auditor General has conducted a performance audit and Sunset review of the Structural Pest Control Commission, pursuant to a May 29, 1995, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the Sunset review as set forth in Arizona Revised Statutes (A.R.S.) §§41-2951 through 41-2957.

The Structural Pest Control Commission, overseen by a seven-member Commission appointed by the Governor, is responsible for protecting the public health and safety by regulating the practices of structural pest control companies and their employees. The Commission exercises this responsibility by:

- Inspecting, examining, licensing, and certifying pest control companies and applicators;
- Renewing credentials annually and investigating and resolving complaints;
- Providing initial training to assist licensees to prepare for certification examinations as well as continuing education for those already certified; and
- Disciplining licensees or certificate holders who violate statutory conduct standards.

The Commission Can Take Steps to Better Protect the Public from Inadequate Termite Pretreatments (See pages 7 through 13)

Although it is recognized as a national leader in regulating the pretreatment industry, the Commission needs a comprehensive approach to ensure that pest control companies properly perform termite pretreatments and do not burden homeowners with costly and inconvenient termite damage. Currently, the Commission's approach is limited to staff observations of pretreatments, which are intended to detect violations and deter pest control companies from performing inadequate pretreatments. However, due to the large number of pretreatments performed and limited market incentives for pest control companies to perform quality work, Commission inspectors cannot systematically deter poor pretreatments. Additionally, even though Commission inspectors identify violations during almost half of all pretreatment observations, they often do not initiate a formal complaint against the applicator or company that performed the pretreatment.

The Commission could strengthen its termite pretreatment program by adopting a more comprehensive approach to detecting and deterring inadequate pretreatments. First, the Commission should determine whether its current entry and training requirements into the pretreatment field are appropriate. Other states have practical training available for those in the field, and one state requires pretreatment applicators to provide proof of financial responsibility to cover damages from negligence. Second, the Commission could seek statutory authority for its inspectors to halt the construction of a home when a poor termite pretreatment is observed. Finally, the Commission can improve its observation program by improving its pretreatment site selection process, systematically sampling soil and pesticides during observations, and conducting more observations.

**The Commission Can Improve
Collection of Fees and Information
from Pest Control Companies
(See pages 15 through 17)**

Termite Action Registration Forms provide important information to both the public and pest control companies, and their associated fees provide the Commission with significant revenues. However, the Commission does not ensure that pest control companies file the forms with the Commission. In addition, the Commission makes few efforts to monitor the accuracy or completeness of this data. Further, even when the Commission detects unfiled or late forms, it often takes lenient enforcement action against pest control companies.

The Commission can do more to ensure that forms are filed and that their data is recorded accurately. The Commission should consider conducting audits of pest control companies' termite treatment records to determine if they are submitting the forms appropriately.

**The Commission Can Improve
Its Inspection Program
(See pages 19 through 22)**

The Commission does not adequately ensure that its inspectors regularly inspect pest control companies. Although inadequate pest control practices can expose the public to harmful conditions, a review of Commission records found that many pest control companies were not inspected by Commission staff in 1995. Further, the Commission has also not conducted enough inspections to satisfy its inspection responsibilities as negotiated with the Environmental Protection Agency (EPA).

Several reasons, including the lack of written time frames for inspections, lack of an effective and accurate inspection tracking system, and insufficient supervisory oversight, contribute to the Commission's inability to inspect many pest control companies. For example, although the Commission used to have a written plan that established inspection time frames and the EPA

recommends that each state have one, the Commission has no such plan. Additionally, the Commission's computer system is unable to determine which companies have been inspected or to identify companies due for an inspection. Further, Commission management neglects to hold inspectors accountable for the number of inspections they conduct.

Finally, for the Commission to ensure that pest control companies receive regular inspections, management should establish written time frames for inspections, improve its inspection tracking system, and exercise additional oversight over inspectors. In contrast to the Commission, Texas' Structural Pest Control Board tracks inspections by generating regular reports. Additionally, North Carolina and South Carolina hold inspectors accountable for the number of inspections they conduct.

**If the Commission Continues to
Provide Training, It Should
Consider Charging a Fee
(See pages 23 through 25)**

The Commission is required by statute to provide initial and continuing training sessions each year for industry and potential industry members. Although it is authorized by statute to charge a fee, it has never done so. However, by providing training, the Commission incurs facility rental costs as well as lost staff time to teach the classes.

If the Commission stopped providing training, industry members could still meet their training requirements, since several other entities provide training. Moreover, several other states' pest control agencies do not provide training to current or potential industry members. Additionally, Arizona state agencies generally do not provide any training to current or potential industry members. Instead, industry members must satisfy their training requirements through other sources. Further, since the Commission provides training for free, it prevents private entities from providing training to industry members.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit and Sunset review of the Structural Pest Control Commission (Commission), pursuant to a May 29, 1995, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the Sunset review as set forth in Arizona Revised Statutes (A.R.S.) §§41-2951 through 41-2957.

Commission's Responsibilities

In 1988, the Legislature established the Structural Pest Control Commission. Structural pest control refers to the control of household pests, wood-destroying pests, and weeds in places such as buildings and golf courses, among ornamental trees and shrubs, and along rights-of-way. The Commission is authorized by statute to regulate the practices of nonagricultural structural pest control companies and their employees by examining, licensing, and certifying companies and applicators, renewing credentials annually, and investigating and resolving complaints. Additionally, the Commission is charged with providing initial training to assist licensees in preparation for certification examinations as well as continuing education for those already certified.

The Commission is also responsible for disciplining individuals and companies that violate statutory conduct standards. A.R.S. §32-2321 authorizes the Commission to revoke or suspend an individual's or company's credentials, as well as impose probation requirements, civil penalties, or administrative warnings against violators.

The Commission issues five types of credentials to people who perform structural pest control work. These are:

- **Business License**—These licensees are entitled to engage in and advertise to perform structural pest control work. Potential business licensees must furnish the Commission with proof of financial responsibility, which can be liability insurance, a deposit of money, a surety bond, or a certified check. In addition, the licensee must employ a qualifying party, as described below.
- **Qualifying Party Qualifications**—These individuals supervise the daily operations of a structural pest control business. To obtain this qualification, they must pass an examination administered by the Commission, and have either practical or academic experience in structural pest control.

- **Pest Control Advisor License**—After successfully completing an examination, these licensees can make recommendations to consumers in regard to controlling pests.
- **Applicator Certificates**—Individuals may obtain certification by passing an examination in one or a combination of several categories, including general pest control, wood-destroying pests, and weed control. Registration allows an employee to work up to 90 days before becoming a certified applicator. Any individual who works for a pest control company must obtain this certification within 90 days and must also be registered as described below.
- **Employee Registrations**—In addition to obtaining required certification or licensure, each employee of a pest control company who performs structural pest control activities is required to register with the Commission before beginning work. New registered employees may work up to 90 days before obtaining certification.

With the exception of registered employees, each of the above credentials is valid for one year. The Commission does not currently require that those renewing a credential take an examination, but qualifying parties, certified applicators, and pest control advisors are statutorily required to demonstrate that they have annually completed at least six hours of continuing education.

The Commission reported 10,183 active credentials, including employee registrations, as of July 1996, as shown in Figure 1 (see page 3).

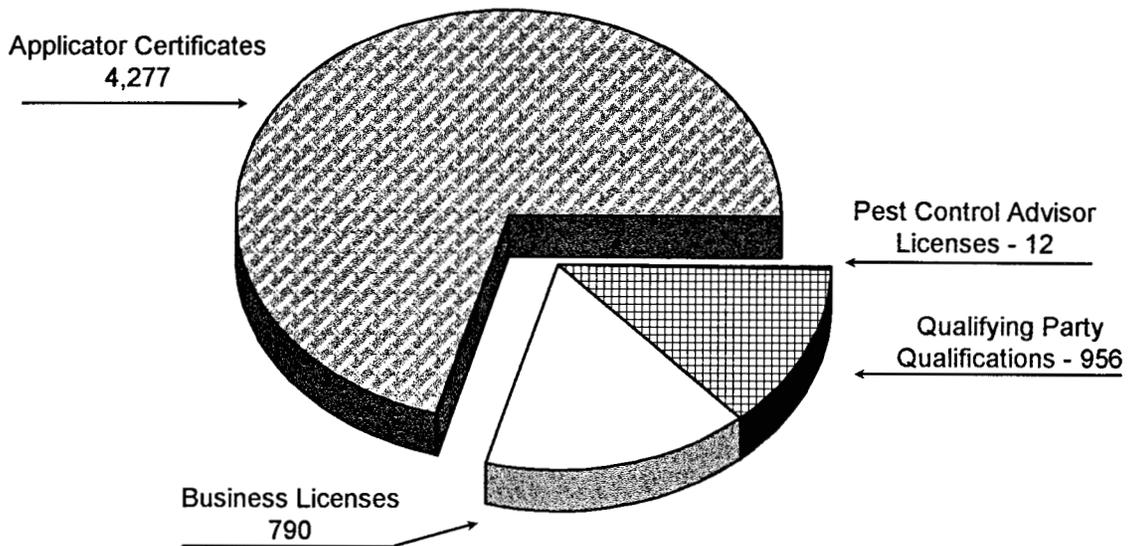
Staffing and Budget

The seven-member Commission, appointed by the Governor, is comprised of three industry members holding active licenses, three public members, and one member who is a toxicologist, doctor, or holds a degree in public or occupational health. The Commission employs an executive director who oversees agency operations. For fiscal year 1997, the Commission was authorized 34 full-time equivalent (FTE) employees to carry out its investigative (17), licensing (5), and administrative duties (12).

The Commission is self-supporting, and the Legislature approved approximately \$1.4 million for its operations in fiscal year 1997. These revenues are from license, renewal, and termite action registration fees, and federal grants. Table 1 (see page 4) summarizes the Commission's actual revenues and expenditures for fiscal years 1995 and 1996, and the Commission's estimated expenditures for fiscal year 1997.

Figure 1

**Structural Pest Control Commission
Active Credential by Type
As of July 1996¹**



¹ There are also 4,148 registered employees of pest control companies. These individuals may hold Applicator Certificates, Qualifying Party Qualifications, or Pest Control Advisor Licenses.

Source: Structural Pest Control Commission database of credential holders.

1983 Report Follow-up and Update

As part of the current audit, we revisited the concerns identified in our 1983 performance audit report of the Structural Pest Control Board (Auditor General Report 83-16). The 1983 report recommended that the Board begin licensing pest control companies as well as individuals, establish a more equitable fee structure, and increase its oversight of the termite control industry. The report also recommended that the Legislature consider creating an administrative warning for the Board to use in cases involving minor violations.

Table 1

Structural Pest Control Commission
Statement of Revenues, Expenditures,
and Changes in Fund Balances
Years Ended or Ending June 30, 1995 through 1997
(Unaudited)

	1995 (Actual)	1996 (Actual)	1997 (Estimated)
Gross revenues ¹	<u>\$1,473,697</u>	<u>\$1,712,837</u>	<u>\$1,752,400</u>
Expenditures:			
Personal services	672,271	776,830	714,600
Employee related	166,094	193,211	184,900
Professional and outside services	93,231	129,615	116,200
Travel, in-state	101,442	103,661	91,500
Travel, out-of-state	13,137	17,167	11,900
Equipment	4,867	39,404	8,000
Other operating	<u>201,037</u>	<u>264,201</u>	<u>250,000</u>
Total expenditures	<u>1,252,079</u>	<u>1,524,089</u>	<u>1,377,100</u>
Excess of revenues over expenditures	221,618	188,748	375,300
Remittances to State General Fund	<u>323,404</u>	<u>77,108</u>	<u>62,400</u>
Excess of revenues over (under) expenditures and remittances	(101,786)	111,640	312,900
Fund balance beginning of year, as adjusted for 1996	<u>561,508</u>	<u>459,722</u>	<u>571,362</u>
Fund balance, end of year	<u>\$ 459,722</u>	<u>\$ 571,362</u>	<u>\$ 884,262</u>

¹ As a 90/10 agency, the Commission remits 10 percent of its gross revenues from the Structural Pest Control Commission Fund to the General Fund. The Commission also remits the balance of Termite Action Registration Form fees in excess of \$100,000 to the General Fund at the end of the fiscal year.

Source: The Uniform Statewide Accounting System *Revenues and Expenditures by Fund, Program, Organization, and Object* and *Trial Balance by Fund* reports for the years ended June 30, 1995 and 1996, and Commission revenue projections and the *State of Arizona Appropriations Report* for the year ending June 30, 1997.

Although the Board and its successor, the Commission, have made progress regarding all issues raised in the 1983 report, the termite oversight program still needs improvement. The Commission now licenses companies and uses a modified fee structure. In addition, the Legislature has amended the Commission's statutes to allow use of an administrative warning as a disciplinary option for minor violations. The termite oversight program has been strengthened by including termite control industry standards in rules and by requiring pest control companies to submit more complete information to the Commission. However, as reported in Finding I (see pages 7 through 13), the current audit found the Commission still needs to increase its efforts to protect the public from the consequences of inadequate termite pretreatments.

Audit Scope and Methodology

This audit focused on the Commission's ability to ensure that pest control companies and applicators safely and effectively perform structural pest control work. A combination of several methods was used to study the issues addressed in this audit. For example, we:

- Surveyed each Commission inspector to determine how much time was spent observing termite pretreatments and performing other duties;
- Randomly selected 25 large and 25 small pest control companies' inspection files the Commission maintained to determine if each was inspected by a Commission inspector during calendar years 1994 and 1995;
- Interviewed Commissioners and Commission staff;
- Compared the number of inspections performed to the goals established by the EPA and Commission management;
- Accompanied inspectors on 12 termite pretreatment observations to determine the nature and effectiveness of the Commission's pretreatment observation program;
- Reviewed 60 complaint files to determine the adequacy of complaint investigation and disposition;
- Conducted a review of literature, including journal articles and reports from other states;

- Contacted 9 other states' structural pest control agencies and national organizations, including the National Pest Control Association, the Association of American Pesticide Control Officials, and the Arizona Pest Control Association¹; and
- Interviewed 9 pest control industry members, 5 homebuilders, 7 representatives from other agencies that interact with the Commission, and 3 consumer advocacy groups.

This report presents findings and recommendations in four areas:

- The need for a comprehensive and strengthened approach to ensuring the effectiveness of termite pretreatments so the public is better protected from inadequate pretreatments.
- The need for stronger controls over the pest control companies' filing of Termite Action Registration Forms.
- The need for a tracking and prioritization system to ensure that the Commission's inspection efforts are appropriately focused.
- The appropriateness of the Commission's providing initial and continuing training at no cost to industry and potential industry members.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the Structural Pest Control Commissioners, the Executive Director, and Commission staff for their cooperation and assistance throughout the audit.

¹ Pesticide officials in states with desert climates similar to Arizona's were contacted, in addition to states with exemplary structural pest control agencies according to other state agencies and Commission management. States contacted were California, Georgia, Indiana, Louisiana, Mississippi, New Mexico, North Carolina, South Carolina, and Texas.

FINDING I

THE COMMISSION CAN TAKE STEPS TO BETTER PROTECT THE PUBLIC FROM INADEQUATE TERMITE PRETREATMENTS

The Structural Pest Control Commission needs a comprehensive approach to better protect the public from ineffective termite pretreatments. Currently, the Commission's approach is limited to staff observations of pretreatments, which are intended to detect violations and deter pest control companies from performing inadequate pretreatments. Due to the sheer number of pretreatments performed annually, the Commission's observations are not sufficient to deter poor pretreatment work. Because the Commission cannot observe every pretreatment, it should adopt an approach that both detects inadequate pretreatments and deters violators. In addition to large-scale changes such as increasing entry requirements into the industry and seeking statutory authority to halt a home's construction until a poor pretreatment is corrected, the Commission should improve its pretreatment observation program.

Background

Termite pretreatments are performed before homes are constructed and are designed to protect the homes from termite infestations. Pest control applicators apply a termite-detering pesticide, known as termiticide, before builders pour the concrete foundation of a house or other structure. A properly performed termite pretreatment creates a chemical barrier between soil and the structure's concrete foundation, preventing termites from infesting its wood. According to the United States Department of Agriculture, the best and least expensive time to protect against termite infestation is during the planning and construction of a building. Although pretreatments do not guarantee that a home will remain termite-free, they reduce the likelihood of an infestation and possible structural damage.

Although it is charged with regulating the entire structural pest control industry, one of the Commission's highest priorities is to ensure the effectiveness of termite pretreatments, since termite damage is known to result in significant cost and inconvenience to homeowners. The Commission devotes significant resources to its pretreatment observation program, which is considered to be one of the leading programs in the country. Commission staff monitor pretreatments through overt observations, when inspectors openly observe pretreatments, and covert observations, when inspectors conceal their presence. Additionally, the Commission requires pesticides to be applied in a stronger concentration than is required under federal law.

Other states have sought the Commission's expertise on regulating the pretreatment industry. For example, a representative from the Commission recently visited Oklahoma's Department of Agriculture to present strategies on how to effectively ensure adequate pretreatments. Further, a recently issued federal regulation requires other states to adopt the higher Arizona pesticide concentration.

Numerous Problems Hamper Commission's Approach

Despite being recognized as a national leader in regulating the pretreatment industry, the Commission faces several limitations in ensuring that termite pretreatments are performed adequately. First, there are built-in financial incentives to builders and pest control companies that discourage quality pretreatment work. Additionally, the Commission cannot feasibly observe every pretreatment that occurs due to both the large number of pretreatments and weaknesses in the Commission's observation program. Finally, even when Commission inspectors observe an inadequate pretreatment, they often do not initiate enforcement action.

Process lacks built-in incentives for good work— Instead of providing automatic incentives for good work, the pretreatment marketplace may reward inadequate work. First, the person most interested in ensuring an adequate pretreatment—the home's buyer—is rarely involved in the selection of the termite pretreatment company. Instead, the home's builder, whose priority may be to minimize costs, selects the company. However, should a home sustain structural damage resulting from termite infestation, the home's buyer, not the builder, faces the inconvenience and expense of termite damage and a possible reduction in the home's value.

Because the pretreatment business is highly competitive and includes many pest control companies from which homebuilders may choose, the companies have an incentive to bid jobs as low as possible. Although termiticide material costs approximately 15 cents per square foot, some pest control companies bid and win jobs at less than 13 cents per square foot. If adequate pretreatments were consistently performed at such low prices, pest control companies would lose money on every job. Three pest control companies contacted during the audit stated that they perform few pretreatments because they are only minimally profitable.

Further, if homebuilders find that a pretreatment is poorly done, it may be inconvenient and expensive if they choose to correct the problem. Usually, builders arrange for a home's cement foundation to be poured immediately after the pretreatment is completed. If the foundation pour were delayed until after pretreatment problems were corrected, the builder would face additional costs of rescheduling other steps in the home's progression. Instead of correcting problems when the Commission notifies them of a poor pretreatment, builders sometimes continue a home's construction even after the Commission notifies them of a substandard pretreatment, possibly leaving the home unprotected against termite infestations.

Pest control companies and applicators have little direct financial risk if they perform a poor pretreatment. Although termite control financially impacts consumers more than any other

aspect of pest control, the Commission has few special requirements for practicing termite control. To perform termite control work, a pest control company must provide proof of a \$50,000 bond or a liability insurance rider to cover termite damage due to negligent treatment, in addition to the \$200,000 requirement for performing any other pest control work. According to one insurance company, a \$50,000 bond costs a company about \$2,500, and a liability insurance rider costs a company about \$50. However, it is often difficult for a homeowner to prove a company's negligence and receive a claim, since homeowners can unintentionally become responsible for termite damage. For example, homeowners adding landscaping may install it too close to the home or may add concrete for patios, garages, or carports without notifying the pest control company. These improvements can disturb the pretreatment's chemical barrier and make it difficult for a homeowner to prove that a termite infestation resulted from a pest control company's negligence or inadequate pretreatment.

Finally, licensing requirements for termite control are not particularly difficult. Applicators who perform termite control face the same requirements as any other pest control applicator. They must pass an examination, as they do for any other pest control specialty, and obtain an hour of termite-related continuing education each year.

Commission cannot observe all pretreatments—The Commission cannot rely on its observation program to detect and deter poor pretreatments, since Commission staff cannot feasibly observe every pretreatment. First, the large number of pretreatments completed prevents the Commission from observing more than a small fraction of all pretreatments performed. According to the Commission, at least 57,000 pretreatments were performed in Arizona during 1995 by approximately 283 pest control companies.¹ However, the Commission observed only 182 pretreatments during 1995. This means the Commission observed only approximately 3 pretreatments for every 1,000 performed during 1995.

The Commission's unsystematic process for selecting pretreatment sites to observe also prevents it from observing more pretreatments. Currently, inspectors spend considerable time and effort locating potential pretreatment sites before observations are performed. Inspectors encounter these sites when they are driving around new home construction sites checking the notices companies post upon completion of a pretreatment. This method results in extremely time-consuming observations. Not knowing when companies will be making applications, inspectors often spend several hours waiting for the applicator's arrival. In addition, some applicators never arrive on the site, resulting in wasted time and effort. During the audit, Auditor General staff accompanied Commission inspectors on several time-consuming observations. One observation lasted over 9 hours, including 8 hours spent waiting for the applicator to arrive. During another observation, Auditor General staff and 2 inspectors waited 6 hours for an applicator who never arrived. Further, the selection process does not ensure all companies are observed. One enforcement staff member estimated that at least 30 to 40 companies have never been observed due to weaknesses in the Commission's site selection process.

¹ However, according to Commission staff, not all of these companies perform pretreatment work. Some of them perform other termite-related work, including wood infestation reports.

Difficulties in proving violations and correcting problems— Although Commission inspectors identify violations during almost half of all pretreatment observations, they often do not take necessary action to penalize violators or correct the problems. Inspectors documented safety violations in almost 15 percent of all observed pretreatments during 1995, and issued de minimus violations in 39 percent of these cases, but they initiated formal complaints against companies or applicators in fewer than 10 percent of the cases with violations. According to inspection staff, inspectors sometimes do not initiate complaints because they believe the violators will correct the problem after a conversation at the pretreatment site. About one-third of the violations observed involved pest control workers using improper quantities of pesticide, which can lead to inadequate chemical barriers and potential termite infestation.

The Commission's lack of authority to halt construction after witnessing a substandard pretreatment also hinders its ability to protect the public. Commission inspectors witness and document pretreatment violations, but are powerless to stop the progression of a home and ensure that the pest control company or homebuilder corrects any observed deficiencies. If construction on a home proceeds without action being taken to correct a pretreatment inadequacy, a significant burden may be placed on the homeowner in the form of unnecessary cost and inconvenience resulting from termite damage.

A Comprehensive Approach Is Needed to Ensure Effective Pretreatments

The Commission needs to employ a thorough and innovative approach to deterring poor pretreatments in order to ensure that the public receives quality pretreatments. Changes on a large scale that would affect the Commission, pest control companies, and builders are needed to help ensure that pretreatments are performed adequately. By improving the pretreatment program and using a more comprehensive approach, the expense and inconvenience of deficient pretreatments could be transferred away from homeowners. Further, the Commission should modify its pretreatment observation program to improve its overall effectiveness.

Increasing entry requirements— A comprehensive approach to improving pretreatments should include the determination of whether the current entry requirements into the pretreatment field are too lenient. Although the Commission requires companies performing termite-related work to provide proof of financial responsibility, the Commission does not require those who actually perform the pretreatment to provide such proof. In contrast, Arkansas requires individual applicators who perform termite-related work to provide proof of a \$5,000 bond to cover damages resulting from negligence.¹ According to the manager of the Arkansas State Plant Board, the bond was established to protect consumers from applicator negligence.

¹ A similar bond would cost an Arizona applicator \$100 annually.

The Commission should also consider requiring practical training for those who perform pretreatment work. Currently, the Commission requires individuals performing termite-related work to obtain only one hour of continuing education about termites annually, with little practical training available. In contrast, some states have already implemented training programs specifically geared toward pretreatment work. For example, South Carolina's Department of Pesticide Regulation at Clemson University has an initial pretreatment training program and an advanced pretreatment training program; both employ practical pretreatment application methods. Additionally, Indiana's Purdue University Cooperative Extension Service offers a training program that includes practical pretreatment application methods. South Carolina's program lasts two days, and Purdue's lasts three days. According to a recent *Pest Control* article, research indicates that practical training can lead to better termite treatments.

Authority to halt construction could better protect homeowners— The ability to halt a home's construction could have far-reaching effects and could be the most immediate method of protecting the public from improper pretreatments. Currently, the Commission has no statutory authority to halt the construction of homes whose pretreatments were performed inadequately. In contrast, city and county building inspectors can halt a new home's construction if builders and subcontractors do not adhere to minimum building standards. Such inspections ensure that structural deficiencies, such as unsafe electrical wiring, are corrected before construction continues. Although Commission inspectors often witness inadequacies that could result in future termite infestations, they cannot require pest control companies or homebuilders to immediately correct these deficiencies.

Halting a home's progression after a poor pretreatment was observed could influence builders to more carefully choose pest control companies and oversee their work to ensure the adequacy of treatments on the homes. If Commission inspectors halted, or "red-tagged" a construction site, the home's construction could not proceed until the pretreatment deficiencies were adequately corrected. Because builders would likely incur additional costs due to construction delays, they might be more careful when selecting the pretreatment company to help ensure that the pretreatment is performed adequately.

Finally, the Commission needs to increase its communication with the Registrar of Contractors, since the Registrar is responsible for enforcing standards for homebuilders. If builders knowingly continue construction after a substandard pretreatment, they could face license suspension or revocation by the Registrar of Contractors. However, the Commission rarely reports observed pretreatment violations to the Registrar because Commission staff believe the Registrar will take no action. According to the Supervisor of Investigations at the Registrar of Contractors, however, the Registrar of Contractors will take the appropriate action against a licensed builder who knowingly continues a home's construction after being notified that the pretreatment was inadequate.

Commission can improve its observation program— A comprehensive approach to improving pretreatment could include several improvements to the Commission's pretreatment observation

program. By improving its site selection process, systematically sampling applicators' pesticides, and increasing observations, the Commission may enhance the observation program's effectiveness.

- **Systematic approach to observations**—A more systematic approach to selecting pretreatment sites could increase the number of pretreatments Commission inspectors observe. Currently, the Commission's unsystematic site selection process limits inspectors' ability to observe all companies' pretreatments. To address this problem, the Commission could require companies performing pretreatments to notify it in advance as to when and where all pretreatments will occur. As part of its complaint resolution process, the Commission already requires two pest control companies to prenotify prior to performing pretreatments. The Commission could expand the prenotification to include more pest control companies. Requiring companies to prenotify the Commission in this manner could allow staff to locate all companies performing pretreatments, thus increasing the observation program's overall effectiveness.

Although the Commission's Executive Director has expressed concern over the limitations of prenotification, Louisiana has experienced success with such a program. This state's prenotification program requires all pest control companies to notify the Department of Agriculture and Forestry at least one hour before performing a pretreatment. Consequently, the additional information the Department of Agriculture and Forestry gains from prenotification has increased its ability to focus its observation resources, increasing the program's overall effectiveness. While this program may not be suitable for Arizona, the Commission could consider a modified form of the program, such as sampling by geographic region.

- **Systematically sampling pesticides**—To better detect pretreatment violations involving improper pesticide concentration, Commission inspectors should systematically take samples of applicators' pesticides. Although the Commission is allowed through its agreement with the Arizona Department of Agriculture's State Agricultural Laboratory to have 290 samples analyzed annually, it had only 173 analyzed in 1995. Further, Commission inspectors took samples during only 20 percent of all pretreatment observations in 1995, even though they documented violations involving improper pesticide quantities in over one-third of all observations.

According to guidelines established by the Association of Structural Pest Control Regulatory Officials (ASPCRO), and the Commission, inspectors should take samples to determine if a pretreatment was performed adequately. According to the Commission, inspectors should always take a sample if a pretreatment applicator arrives at a site with pesticide that is already mixed with water, because the pesticide may be improperly diluted, or if the Commission has never observed the pretreatment company. Additionally, ASPCRO recommends that inspectors follow a comprehensive protocol that includes taking no fewer than two samples from certain areas on pretreatment sites.

- **Increase observations**— Although the Commission cannot rely entirely on its observations to ensure adequate pretreatments, a comprehensive approach could include increasing the number of pretreatment observations the Commission performs. First, management could ensure that inspectors spend enough time observing pretreatments. According to an Auditor General survey administered to all inspectors during the audit, inspectors spent only 11 hours during each 40-hour week on pretreatment observations. In contrast, approximately 12 hours of inspectors' weekly time was reportedly spent on training and administrative duties. Further, establishing observation requirements could also help ensure that more observations are completed and that inspectors sufficiently focus their efforts on pretreatment work. The Commission once used its computer system to track the amount of time each inspector devoted to pretreatment work. However, management has not used this system since 1994.

To conduct more observations, the Commission could also explore the possibility of hiring additional inspectors. According to the Commission's Executive Director, the Commission would benefit from having additional inspectors to observe pretreatments occurring in the northern and western areas of the State. Additionally, the Commission is required by statute to have one inspector for every 200 industry members; however, it is well below this requirement with 1 inspector for every 425 industry members. To comply with this statutory requirement, the Commission would need 26 inspectors instead of the 12 it currently has. However, as part of its most recent budget request, the Commission is requesting 2 additional inspectors.

Recommendations

1. The Commission should increase entry requirements for applicators who perform termite pretreatments. The Commission should require applicators to provide proof of a bond to cover damages resulting from negligence, and require practical training for those who perform pretreatment work.
2. The Legislature should consider modifying A.R.S. §§32-2301 through 32-2339 to add a provision that allows the Commission to halt construction when it observes substandard termite pretreatments.
3. The Commission should notify the Registrar of Contractors when it observes substandard termite pretreatments.
4. The Commission should improve its termite pretreatment observation program by:
 - a. Considering requiring pest control companies to notify it before performing pretreatments; and
 - b. Increasing the number of observations it performs by ensuring that inspectors spend enough time on pretreatment observation duties.

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FINDING II

THE COMMISSION CAN IMPROVE COLLECTION OF FEES AND INFORMATION FROM PEST CONTROL COMPANIES

The Commission can do more to ensure that Termite Action Registration Forms (TARFs) are filed and that information is properly recorded. These forms provide valuable information to both the public and pest control companies, and the associated filing fees provide significant monies to the Commission. However, limited filing incentives for pest control companies and weak information controls by the Commission may result in lost information and revenue. Although the Commission's current penalties for failing to submit forms provide little deterrence, it could use other methods to increase filing incentives.

Background

The Commission maintains a Termite Action Registration Forms database for the public's benefit, as required by statute.¹ Database information includes the termite history of a home and any prior termite treatments performed. The public requests this information to make decisions about buying homes. Additionally, pest control companies use the information to determine prior termite treatments and the appropriate course of action for retreatments. Consequently, unfiled forms limit the public and pest control companies' ability to obtain accurate termite information about homes and other structures.

According to A.R.S. §32-2304(D) and Commission rules, each time a pest control company inspects or treats a structure for termites, it must submit a form and an \$8 filing fee to the Commission within 30 days.² The Commission relies heavily on TARF filing fees to support its operations. In fact, in 1995, the fees accounted for 62 percent, or \$908,600, of the Commission's revenues. The Commission received, on average, 11,577 forms per month in 1995.

¹ According to A.R.S. §32-2304(A)(15), "The commission shall...Maintain a computer system which records...on pretreatment projects, initial termite corrective projects, preventative termite treatments, and wood infestation reports."

² Prior to January 1, 1996, the Commission charged a \$7 filing fee for each form. Currently, the Commission charges an \$8 filing fee, plus a late fee of \$8 for each form submitted after the 30-day filing deadline.

Many Forms Unfiled, Due to Several Factors

Although TARFs and the associated fees are important, the Commission does not ensure that companies submit them and that information from the forms is properly recorded on its computer system. Despite the significance of filing these forms, the Commission's methods to detect unfiled forms are ineffective. Moreover, the Commission's enforcement responses after detecting unfiled forms appear lenient.

Companies fail to file forms—Pest control companies do not always submit their forms to the Commission, resulting in lost information and revenue. Companies' failure to file has reached high levels, in some cases. For example, in a 1995 case, a pest control company failed to submit almost 1,600 forms, an omission that was discovered when the pest control company owner contacted the Commission and wanted to make restitution. Original and late fees for these forms amounted to \$22,309. In a second pest control company case, Commission inspectors examined 177 records and found 146 forms were unfiled, which is an 83 percent non-filing rate. Commission inspectors discovered this problem during an unrelated inspection of company records. According to the Commission's Executive Director, between 1 and 20 percent of all forms may not be filed by pest control companies. One Commissioner places this estimate at approximately 40 percent.

Commission provides few controls—The Commission's efforts to monitor the filing of forms are ineffective. While Commission staff record the prenumbered blank forms issued to pest control companies, they do not monitor which forms are actually filed or returned as voided or unused. Therefore, the Commission does not know which forms are actually missing. For instance, Auditor General staff discovered a block of 33 missing forms that the Commission had lost. In this case, the pest control company claims to have submitted the forms, but the Commission had not noticed they were missing. If Commission staff routinely record form numbers as they are submitted, its staff could easily determine if forms are missing. Commission staff could then ask pest control companies to explain the discrepancies or resubmit any missing forms.

Further, the Commission cannot rely on its computer system to detect unfiled forms, since information contained on the database may be inaccurate or incomplete. TAD Technical Services, a private vendor, enters information from forms that pest control companies submit to the Commission database. However, Commission staff do not validate any data entry of the forms, leaving the Commission with no assurance as to the accuracy or completeness of the data. During the audit, Auditor General staff discovered several data entry problems. For example, vendor staff sometimes incorrectly enter information or neglect to enter entire forms.

Commission's actions are lenient when unfiled forms detected—Even when the Commission detects unfiled or late forms, it takes a lenient approach to nonfilers that does not provide adequate deterrence against pest control companies who fail to submit forms. Once detected, pest control companies pay only the original \$8 per form filing fee, plus an \$8 late fee. Although the Commission may assess up to a \$100 late fee per form, and it may assess a penalty of up

to \$1,000 for not filing a form, it has taken neither action since 1991.¹ Pest control companies who do not file forms may face only a non-serious violation from the Commission. Under such a violation, pest control companies receive a warning letter but are not assessed any monetary penalties.

Commission Could Conduct Audits to Help Ensure Forms Are Filed

In addition to improved tracking, the Commission should consider conducting audits of companies' termite treatment records to increase the numbers of forms filed. In such audits, enforcement staff would inspect pest control companies' termite-related forms and determine if they are submitted as required. Further, they would compare chemical purchase records with termite work records to determine if pest control companies have filed all forms. According to the Commission's Executive Director, Commissioners do not believe audits of these forms fall within the scope of their proper review, unless a complaint has been filed or other justification exists in the particular case. However, the Commission's Attorney General representative stated that no legal barriers prevent Commission staff from auditing these forms.

Recommendations

1. The Commission should improve controls over forms by:
 - a. Tracking blank forms received by pest control companies versus forms actually filed by those companies; and
 - b. Tracking forms sent to and returned by the Commission's data entry contractor.
2. The Commission should assess higher late filing fees to encourage pest control companies to file forms within the 30-day statutory deadline.
3. The Commission should conduct audits of forms to ensure pest control companies file the forms and pay the filing fees.

¹ According to A.R.S. §32-2304(D), "The commission may assess a penalty of not to exceed one hundred dollars per form for failing to submit the required form and fee within thirty days." Additionally, A.R.S. §32-2321(A) authorizes the Commission to "impose a civil penalty of not more than one thousand dollars for each [unfiled TARE]."

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FINDING III

THE COMMISSION CAN IMPROVE ITS INSPECTION PROGRAM

Inspections of pest control companies should occur at regular intervals to protect licensees and the public from unsafe pesticide application and storage. However, the Commission does not effectively ensure inspections are conducted. The lack of inspection guidelines, an inadequate computer tracking system, and insufficient supervisory oversight contribute to ineffective management of company inspections. The Commission's management can more effectively ensure inspections are conducted by establishing an inspection schedule, improving its inspection tracking system, and strengthening its supervisory efforts.

Background

As authorized by statute, the Commission conducts inspections of pest control companies to ensure compliance with state laws and rules.¹ In addition to the oversight of pesticide use such as pretreatment observations, the Commission inspects pest control company facilities to verify that records and safety equipment are properly maintained. For example, Commission inspectors determine if hazardous chemicals are properly stored by pest control companies, that trucks do not leak, and that applicators have adequate protective equipment. Additionally, the Commission conducts inspections to satisfy federal requirements. Specifically, the Commission has entered into an agreement with the EPA under the Federal Insecticide, Fungicide and Rodenticide Act. The EPA provides the Commission with monies to conduct certain inspections, including inspections of federal facilities. Each year, the two agencies negotiate the inspections the Commission will be required to conduct. For fiscal year 1995, the EPA awarded the Commission \$69,500 to conduct 132 inspections.

The Commission Does Not Ensure That Inspections Are Routinely Conducted

Despite the importance of inspections, the Commission does not regularly inspect pest control companies. A review of Commission records identified many pest control companies that have

¹ Pursuant to A.R.S. §32-2304(A) and A.R.S. §32-2304(B), the Structural Pest Control Commission is authorized to conduct regular facility inspections of Arizona licensed pest control companies.

not been inspected within the last two years by Commission staff. Additionally, the Commission has not conducted enough inspections to satisfy its EPA requirements.

Not all companies are inspected—The Commission has not met its internal goal of inspecting every licensed pest control company annually. Commission management estimate approximately 20 percent of the 790 licensed pest control companies in Arizona were not inspected in 1995. A review of 25 medium-to-large and 25 small, randomly selected pest control companies found that 5 medium-to-large and 14 small companies had not been inspected during calendar year 1995.¹ Of these 19, 11 had not been inspected in the prior year, and 9 of these 11 had still not been inspected as of July 1996.

EPA requirements not met—The Commission also has not conducted enough inspections to meet its EPA negotiated responsibilities. In its evaluation report for fiscal year 1995, the EPA noted that the Commission failed to meet its inspection targets in two of the three categories of inspections it is required to conduct. Specifically, it reported that in fiscal year 1995, the Commission conducted only 9 of 12 (75 percent) required inspections of pest control operations at federal facilities and 14 of 20 (70 percent) inspections of employees at these facilities to determine whether they are properly certified to handle restricted pesticides. The EPA can withhold monies from the Commission if it fails to meet federal inspection requirements.

The Commission's Inspection Management Could Be Strengthened

Management weaknesses contribute to inadequate inspections. First, the Commission lacks a written plan regarding company inspections and inspector productivity. Second, the Commission lacks a systematic method for tracking pest control company and applicator inspections. Finally, insufficient supervision of inspectors further contributes to the Commission's inability to ensure that inspections are completed and that inspection data is appropriately recorded.

Lack of a written plan hinders inspections—The Commission lacks a written plan establishing inspection time frames for pest control companies. Although such a policy existed previously, Commission management replaced it in 1994 with an unwritten and more flexible goal of inspecting each company annually. However, the EPA recommends that each state establish a written inspection plan to prioritize inspections and discover companies that are not in compliance with state and federal laws.

Further, the Commission lacks written standards concerning productivity and recordkeeping. If the Commission required each inspector to conduct approximately 5 inspections per month, each of the 790 licensed pest control companies could receive an inspection annually.

¹ The Commission defines medium-to-large pest control companies as those with six or more certified applicators, and small pest control companies as those with five or fewer certified applicators.

Additionally, the Commission does not have written policies requiring inspectors to record inspection results within a specified time period after an inspection is completed.

Aware of the need to establish a more precise inspection schedule, supervisory staff report that the Commission plans to initiate a scheduling process to ensure that its inspection goals are met. This plan would prioritize companies with the longest wait since their last inspection, and assign each inspector a list of companies to inspect within a specified time period. Although the plan appears promising, its success will depend upon management oversight and improving the accuracy of information on the inspection database.

Lack of effective and accurate tracking system—As a result of inadequate data entry, Commission management cannot rely upon its computer system to determine which companies have been inspected or to identify companies due for inspection. To determine whether inspection data is properly recorded, a separate review of 33 randomly selected company inspection files was conducted. The review found that 12 of the 33 files contained evidence of inspections conducted in 1995 that were not recorded in the computer system. Commission management reported that inspectors do not always enter data into the system appropriately. Many records showed different spellings or abbreviations of the company name or business license number. Although the Commission maintains a manual describing the correct methods for entering data, management reported that it is not currently used.

In contrast to the Commission's system, the Texas Structural Pest Control Board requires all inspectors to enter inspection results into its computer database weekly. Data is recorded under the inspected company's business license number. To ensure that the data on the system is accurate, supervisors regularly verify recorded information. Additionally, the Board generates a weekly report of the overall number of inspections conducted in the previous week, the name of the pest control companies inspected, and the type of inspections conducted. Further, the Board generates monthly and quarterly reports to help track inspections of pest control companies. To ensure that all companies receive an inspection every two years, Board personnel are able to generate a report indicating which companies have and have not been inspected within a specified period of time.

Supervisory oversight could be improved—The lack of effective supervision also impacts the Commission's ability to manage inspections. First, inspections are conducted at the inspectors' discretion with little supervisory oversight to ensure that they are completed. Follow-up inspections are also conducted at the inspector's discretion, although the EPA says that follow-up inspections are a necessary component of a state's enforcement program. Second, Commission supervisory staff report that they track and verify a company's inspection status by periodically checking inspection data maintained by inspectors. However, several inspectors report that their records have either not been inspected, or that it has been several months since they have received a supervisory review.

Additionally, management neglects to hold inspectors accountable for their productivity. All inspectors are responsible for conducting inspections; yet the number of inspections each

inspector conducted varies. Further, the Commission's performance evaluation form does not document the number of inspections completed.

The Commission should strengthen its supervision of inspectors to both manage inspections and hold inspectors accountable for their productivity. In contrast to the Commission's evaluation tool, the North Carolina Structural Pest Control Division and the South Carolina Department of Pesticide Regulation consider the number of inspections conducted when evaluating inspectors' performance.

Recommendations

1. The Commission should strengthen its inspection program by:
 - a. Implementing a written plan specifying that each licensed pest control company is to be inspected within a specific time frame and that EPA requirements are met; and
 - b. Establishing an inspection policy requiring inspectors to conduct a specific number of inspections within a specified time frame.
2. The Commission should improve its inspection database system to allow Commission staff the ability to accurately track inspections conducted at each pest control company.
3. The Commission should consider strengthening its supervision of inspectors by:
 - a. Ensuring that inspections and follow-up inspections are conducted appropriately; and
 - b. Developing a performance evaluation tool that measures/documents inspector productivity.

FINDING IV

IF THE COMMISSION CONTINUES TO PROVIDE TRAINING, IT SHOULD CONSIDER CHARGING A FEE

If it continues to provide training, the Structural Pest Control Commission should consider charging attendees a fee. Currently, the Commission provides numerous training sessions annually to industry and potential industry members. Although the Commission's statutes allow it to recover costs incurred by providing training, the Commission has never charged attendees a fee. Moreover, the industry could still meet its training requirements through many other entities if the Commission stopped providing training. Finally, since the Commission provides training for free, it inhibits competition and prevents private enterprises from offering training.

Background

The Structural Pest Control Commission is required by law to provide quarterly continuing education as well as monthly initial training to industry and potential industry members. The initial training assists applicants in preparing for certification exams, while continuing education classes ensure that all applicators and licensees can meet the requirements for renewing their credentials.¹ Both types of training are provided at no cost to attendees. The Commission uses its own staff as well as industry volunteers to conduct the training sessions, which are held at facilities throughout the State. For example, training sessions have been held in Yuma, Kingman, Globe, and Safford. According to Commission management, each initial training session is taught by at least one Commission staff member, and often two if the training is held in Phoenix or Tucson.

The Commission Provides Free Training Sessions

Although the Commission provides many initial training and continuing education sessions each year for industry and potential industry members, it has never charged attendees a fee. However, the Commission incurs costs in the form of facility rentals and staff time.

¹ Each certified applicator, qualifying party, and pest control advisor is required to complete at least six hours of continuing education every year.

Commission uses inspectors and incurs facility rental costs—Coordinating and teaching courses consumes Commission resources. The Commission conducts many training sessions annually, relying on its own staff to teach most sessions. In 1995, the Commission provided 22 training sessions, and 42 sessions are scheduled for 1996. While training costs are only a small portion of the Commission's total expenditures, the Commission incurred costs of approximately \$4,900 and \$3,100 in 1995 and 1996, respectively, to rent the facilities where those training sessions were held.

In addition, the Commission incurs costs in terms of staff time. According to Commission records, staff spent 102 classroom hours providing training in 1995, and are scheduled to provide 204 classroom hours in 1996 at estimated costs of \$1,250 and \$2,500, respectively. Additional staff time is expended preparing training materials and traveling to and from rural training sites.

The Commission could charge for training—Although the Commission provides training at no cost to the structural pest control industry, its statutes authorize it to charge attendees a fee. Specifically, A.R.S. §32-2319(C) and (D) authorize the Commission to assess a fee for each initial training class or continuing education credit hour. Since the Commission is a 90/10 agency, its fee structure is intended to cover all of its statutory responsibilities. Thus, recovering training costs from those who use the training could enable the Commission to adjust its other fees accordingly.

Training Could Be Provided by Other Sources

The structural pest control industry could meet its training requirements even if the Commission stopped providing training. Pesticide manufacturers and community colleges provide many training sessions each year. Additionally, some pest control companies provide in-house training to their employees. Further, Arizona regulatory agencies, and pest control agencies in some other states, do not provide training to their regulated industry members. Finally, the Commission's free training prevents private entities from providing training to the industry.

Other sources could fulfill training needs—Entities other than the Commission provide training to the structural pest control industry. For example, pesticide suppliers provide training sessions that industry members can use to meet their continuing education requirements. In addition, community colleges in Glendale, Mesa, and Pima County provide courses industry members can use to satisfy their continuing education requirements. Further, one pest control company has a school that provides initial and continuing training sessions.

Many Arizona agencies provide no training—Arizona state agencies generally do not provide any training to industry or potential industry members. For example, the Department of Insurance, the Registrar of Contractors, the Board of Behavioral Health Examiners, the Department of Real Estate, the Board of Psychologist Examiners, and the Board of Cosmetology do not provide initial training for applicants to prepare for certification or licensure examinations. Further, neither the Board of Psychologist Examiners nor the Board of Behavioral

Health Examiners provides continuing education, even though they require industry members to complete continuing education requirements. Instead, industry members must satisfy these requirements through other sources.

Some states' pest control agencies provide no training—Of nine states contacted, six states' pest control agencies do not provide any training to industry and potential industry members.¹ Only one state, New Mexico, provides free initial training to applicants. In addition, Georgia and South Carolina provide funds to the cooperative extension to provide training to industry members. Only two states' pest control agencies contacted, North Carolina's and Texas', provide free continuing education to industry members.

Commission's free training prevents others from providing training—Since the Commission provides training for free, it prevents private enterprises from offering training. Private training providers would have considerable difficulty competing with the Commission, since industry members can already obtain free training from the Commission. Although the state agencies are generally prohibited by A.R.S. §41-2752 from competing with private enterprises by providing the same goods or services, the Commission is exempt from this law since it is required by statute to provide training.

Recommendations

1. The Legislature should consider revising A.R.S. §32-2319 to remove the requirement that the Commission provide initial and continuing training to the pest control industry.
2. If the Commission continues to provide training, it should consider recovering its costs by charging attendees a fee as allowed by A.R.S. §32-2319(C) and (D).

¹ States contacted were California, Georgia, Indiana, Louisiana, Mississippi, New Mexico, North Carolina, South Carolina, and Texas.

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SUNSET FACTORS

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Structural Pest Control Commission should be continued or terminated.

1. Objective and purpose in establishing the Commission.

The Legislature established the Structural Pest Control Commission (Commission) in 1988, replacing the Structural Pest Control Board. The Commission was established to protect the public's health and safety against unsafe structural pest control practices. According to A.R.S. §32-2304(A)(1), the Commission shall regulate the use, storage, and application of pesticides and devices used in structural pest control. Additionally, the Commission provides public protection through standards of qualification for individuals and companies seeking to perform structural pest control work.

To carry out this responsibility, a seven-member Commission is empowered by statute to determine minimum competency standards for individuals and companies who perform structural pest control activities. The Commission is charged with issuing credentials to and collecting fees from those who meet these minimum standards. The Commission is also responsible for conducting investigations to determine the validity of complaints, and for disciplining violators of the Commission's statutes and rules. Additionally, the Commission is charged with providing initial training and continuing education to those in the pest control industry.

2. The effectiveness with which the Commission has met its objectives and purpose and the efficiency with which the Commission has operated.

Although it has generally met its objectives and purpose, the Commission can improve its effectiveness and efficiency in protecting the public from ineffective and unsafe pest control practices. First, our review found that the Commission needs a more comprehensive approach to protect the public from inadequate termite pretreatments (see Finding I, pages 7 through 13). In addition, the Commission should improve its controls over the filing and recording of termite inspection and treatment forms (see Finding II, pages 15 through 17). Despite the importance of the information the public may receive from the forms and the significant revenue the forms represent to the Commission, the Commission lacks controls to ensure that the forms are filed and that the information is accurately entered into its computer system.

Further, the Commission can improve the methods it uses to track and schedule its inspections of pest control companies. Although the Commission strives to inspect every

pest control company and each branch office at least annually, the Commission does not effectively plan and track these inspections (see Finding III, pages 19 through 22). Finally, the Legislature should consider removing the Commission's statutory requirement to provide training to the pest control industry. If the Commission continues to provide training, it should consider recovering some costs by charging attendees a fee.

3. The extent to which the Commission has operated within the public interest.

The Commission has generally operated within the public interest through its licensure and certification functions. These functions serve the public interest by ensuring that Commission-credentialed pest control companies and individuals meet minimum competency standards and that unlicensed individuals do not practice this profession except as provided by law.

However, the Commission should improve public protection against inadequate termite pretreatments. Although Commission staff observe many termite pretreatments to promote compliance with state standards and prevent termite infestations, this approach is severely limited by several factors (see Finding I, pages 7 through 13). In addition, the Commission does not possess the statutory authority to halt a home's construction and ensure that deficiencies are corrected after an inadequate pretreatment is observed (see Finding I).

Furthermore, the Commission could do more to ensure that inspections of pest control companies are conducted appropriately. Inspections uncover serious safety violations that could impact the public's health and welfare. However, the Commission has neither an inspection schedule nor a tracking system in place to ensure that its inspection efforts are directed effectively (see Finding III, pages 19 through 22).

Additionally, it should be noted that the Commission's inspectors work successfully with the Department of Health Services, the Department of Agriculture, and the Arizona Department of Environmental Quality in matters pertaining to health or environmental infractions.

4. The extent to which rules adopted by the Commission are consistent with the legislative mandate.

Rules and regulations appear consistent with the legislative mandate. According to the Commission's Attorney General representative, all required rules have been promulgated. However, as part of its five-year rule review process, the Commission is currently considering amending some of its rules. For example, a list of nonserious violations is being introduced to provide the industry with additional guidelines.

5. The extent to which the Commission has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

The Commission appears to encourage public input prior to adopting rules, holding public hearings, and holding regularly scheduled meetings. First, the Commission encourages public input before adopting rules and also informs the public as to its activities. In addition to providing public hearings regarding proposed rule changes, the Commission plans to notify licensees of its rule-making activities in its newsletter. As of January 1996, the Commission has sent its newsletter to all licensed pest control companies, the Arizona Pest Control Association, and other interested parties. Further, we found that the Commission has complied with open meeting law requirements. In particular, the Commission appropriately posts its meeting notices with at least 24 hours' notice and in the required location.

The Commission also keeps the public informed of its actions against pest control operators and companies. Although not done on a regular basis, the Commission occasionally notifies the media of actions taken against pest control operators. Additionally, the Commission notifies complainants before holding hearings or settlement conferences regarding their complaints.

6. The extent to which the Commission has been able to investigate and resolve complaints that are within its jurisdiction.

The Commission, which is authorized by statute to handle complaints against those who perform structural pest control work, appears to adequately investigate and resolve complaints. A.R.S. §§32-2304(A)(19) and 32-2321(A) provide that the Commission has the authority to investigate and resolve complaints of misconduct by companies and individuals. During calendar year 1995, the Commission reported that it handled 251 complaints involving poor pest control work, safety violations, unlicensed practice, and other types of violations. While some complaints were handled by dismissal, others were resolved through disciplinary actions including license suspension, probation, revocation, or an administrative warning. Additionally, over one-half of these complaints were still unresolved at the time of this audit. However, based on a review of 60 complaints, it appears that the Commission investigates and resolves complaints appropriately and in a timely manner.

7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under the enabling legislation.

A.R.S. §32-2304(A)(14) authorizes the Commission to refer all termite pretreatment cases involving alleged criminal fraud to the Attorney General's Office, and to refer any case

that the Commission determines may contain information relating to a possible felony to the proper law enforcement agency. Additionally, the Commission has specific statutory authority to assess civil penalties, or suspend or revoke a license, certificate, or qualification. A.R.S. §32-2336 requires the Attorney General to bring actions for collecting civil penalties.

8. The extent to which the Commission has addressed deficiencies in its enabling statutes which prevent it from fulfilling its statutory mandate.

The Commission's Executive Director believes that the Commission's exemption allowing gardeners to perform unlicensed pest control work is a statutory deficiency. During the 1995 legislative session, the Commission sought to introduce Senate Bill 1279, which would have stricken the exemption that allowed gardeners to perform pest control work without being required to obtain certification through the Commission. However, this bill was not voted on and thus did not pass.

In the same bill, the Commission attempted to address the statute that requires the Commission to maintain a certain level of inspection staff. Although A.R.S. §32-2304(C) requires the Commission to maintain a ratio of at least 1 inspector for every 200 industry members, the Commission's current ratio is about 1 inspector for every 425 industry members. Complying with this statute would mean that the Commission needs over twice the number of inspectors it currently has. The Commission's Executive Director does not believe that adding more inspectors would significantly impact its ability to observe more termite pretreatments.

9. The extent to which changes are necessary in the laws of the Commission to adequately comply with the factors listed in the Sunset laws.

Based on our audit work, we recommend that the Legislature consider expanding the Commission's authority (A.R.S. §32-2304) to allow it to halt a home's construction when an inadequate termite pretreatment is observed by Commission inspectors. Since the Commission is currently limited to notifying the home's builder after observing a poor pretreatment, the public is not assured that corrective action will be taken to ensure that the pretreatment is adequate. In addition, the Legislature should consider changing A.R.S. §32-2319 to eliminate the Commission's statutory requirement to provide monthly initial training and quarterly continuing education to the pest control industry. Some other states' pest control agencies and other Arizona state agencies provide no such training.

10. The extent to which the termination of the Commission would significantly harm the public health, safety, or welfare.

Termination of the Commission could harm the public by eliminating regulation of the pest control profession. The absence of regulation would create a void by removing competency requirements and an enforcement process that is necessary to protect the public from personal injury caused by dangerous pesticides, or financial loss due to unethical pest control companies and applicators. For example, several of the complaints we reviewed involved critical safety considerations, such as misuse of pesticides or improper pesticide storage. Other complaints dealt with termite pretreatments and inadequate termite inspections of homes.

11. The extent to which the level of regulation exercised by the Commission is appropriate and whether less or more stringent levels of regulation would be appropriate.

Our review found that the Commission can strengthen its termite pretreatment observation program to promote adequate pretreatment and detect violations (see Finding I, pages 7 through 13). In addition, the Commission should exercise more controls over the filing of Termite Action Registration Forms (see Finding II, pages 15 through 17).

12. The extent to which the Commission has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

The Commission has used private contractors for services it cannot provide in-house. Specifically, the Commission has contracted with the Arizona State Agricultural Laboratory for analysis of soil and pesticide samples it takes during inspections and investigations. In addition, the Commission has contracted with TAD Technical Services to perform data entry related to the Termite Action Registration Forms that companies file with the Commission after completing termite inspections or treatments. Further, A.R.S. §32-2304(A)(16) requires the Commission to contract with the Department of Administration for hearing officers that conduct its administrative hearings.

Additionally, private companies could assume the Commission's training responsibilities if the Legislature removes the statutory requirement that the Commission provide initial and continuing training (see Finding IV, pages 23 through 25). Currently, the Commission provides many initial and continuing training sessions annually at no cost to industry members. However, the Commission's provision of training at no cost prevents private entities from offering training to the industry. Although state agencies are prohibited by law from competing with private enterprises, the Commission is exempt since its own statutes require it to provide training.

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Agency Response

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STATE OF ARIZONA

Structural Pest Control Commission

FIFE SYMINGTON
Governor

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J.H. 'BUD' PAULSON
Executive Director

November 22, 1996

Mr. Douglas R. Norton
Auditor General
Office of the Auditor General
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018

Dear Mr. Norton:

We have reviewed the Structural Pest Control Commission's performance audit and Sunset review recently completed by your office. In general we are in agreement with the findings, however, on behalf of the Commission, I would like to make several general comments regarding the overall tone of the audit. The audit, in our estimation, is to examine the purpose, functions and duties of our agency in light of the objectives set by the Legislature; it is not to critique the regulated industry itself. Throughout the report there are references to "limited market incentives for pest control companies to perform quality work", "little direct financial risk", and "built-in financial incentives ...that discourage quality pretreatment work." These comments set an adversarial tone to the relationship between the Commission and the regulated industry and imply a standard of poor workmanship for the entire industry which we do not feel exists.

As correctly noted, the Commission was formed by the Legislature in 1988 after the previous Board was dissolved. The standards applied in the industry at that time were quite different than those practiced now, particularly in the area of termite pretreatments. We are proud of the work which has been accomplished since 1988 and do not believe a 1983 performance audit of the previous Board should be used as a baseline for assessing change.

The Commission offers the following comments regarding your office's findings.

FINDING I

1. The Commission should increase entry requirements for applicators who perform termite pretreatments. The Commission should require applicators to provide proof of a bond to cover

damages resulting from negligence, and require practical training for those who perform pretreatment work.

The Commission recognizes that the potential financial damage from termite destruction is significantly higher than from that of other pests and that training and entry into the specialty of termite pretreatments should be correspondingly higher. Initial testing for License "C" (termite) has been made more rigid during the past twelve months and ensures that field experience is a prerequisite. Our tracking supports this as failure rates for initial testing in this category have risen. In addition, the test for License "C" initial certification is being rewritten and will test, among other things, the ability to measure sites, determine correct volume and calibrate termiticide applications. To further ensure adequate preparation for this specialty, the Commission would support a statutory change to require five hours practical training prior to being authorized to make applications, similar to the five hours now required in statute (ARS §32-2323.B) for termite inspection training which is a requirement for preparation of treatment proposals (Wood Infestation Reports). It is the Commission's opinion that consumers are adequately protected through the insurance requirements placed upon the pest control company itself and that an individual applicator bond is not necessary. In 1994 the Commission sought and gained approval from the Legislature to strengthen the insurance requirements by requiring coverage endorsements for each licensed category of work performed. In addition, pest control companies are required by rule (R4-29-409) to re-treat a structure if there is an occurrence of subterranean termites, regardless of cause, within five years of the pretreatment. VA and FHA loans further assure that retreatment will be available if the pest control company defaults by requiring the builder to cover these costs (Form 2052). Most conventional loans also require this assurance.

2. The Legislature should consider modifying ARS §§32-2301 through 32-2339 to add a provision that allows the Commission to halt construction when it observes substandard termite pretreatments.

While the Commission is concerned about the potential effects of inadequate termite pretreatments (and post-treatments), we believe it is a more feasible solution to work to remedy poor pretreatments through the Registrar of Contractors or, through training, with the builders association and contractors. However, the Commission will consider seeking the statutory authority to "red-tag" construction sites until corrective work is accomplished. It should be noted that currently "red-tagging" is an authority carried out at the county and municipal levels.

3. The Commission should notify the Registrar of Contractors when it observes substandard termite pretreatments.

The Commission's experience, as noted in this report, has been that notifications to the Registrar of Contractors have not resulted in responses indicating ROC has initiated appropriate action. Some of these contacts have been by telephone, others written. In the future, we will notice the Registrar

of Contractors with written reports of pretreatment violations using a turnaround form that includes their response. Pending statutory authority for the Commission to “red tag”, we will work with the appropriate county or municipal authorities and the ROC to have inadequate pretreatments halted and corrected as soon as possible.

In contrast, it should be noted that the Commission’s inspectors work successfully with the Department of Health Services, Department of Agriculture and Arizona Department of Environmental Quality in matters pertaining to health or environmental infractions.

4. The Commission should improve its termite pretreatment observation program by:

- a. Considering requiring pest control companies to notify it before performing pretreatments;**
- b. Increasing the number of observations it performs by ensuring that inspectors spend enough time on pretreatment observation duties.**

The Commission uses pretreatment notification as an enforcement tool and considers that requiring all companies to prenotify for all treatments to be an onerous and bureaucratic policy which will not accomplish the purpose for which it is intended. In FY 1995, 10 companies performed 68% of the work based on total TARF filings. Pretreatment notification is imposed when evidence from an investigation shows there have been problems in applications. Prenotification is then imposed by the Commission for a set period of time to allow inspectors to validate corrected procedures. This is a more frequently used enforcement tool than quoted in the report for their test period (two instances). The sheer quantity of pretreatments annually, 57,000 as estimated earlier in this report, will not allow us to inspect more than a very small percentage of pretreatments, whether we are aware of the locations or not. Monitoring in itself only addresses one part of our inspection program. The Commission believes that better and continuing training is critical to long-term improvement in the industry. Therefore, monitoring will always play but a part of the entire picture, albeit an important one.

As clarification of a calculation made earlier in this report by audit staff, the 182 pretreatment observations cited included overt and covert monitors and did not include tag monitors or spot checks. Including these observations increases the number of pretreatment monitors to 355. This figure in turn does not include the number of post treatment monitors which occurred in 1995. As further clarification, the term “structural damage” as used throughout this report is a specific term in the industry meaning the structural integrity of a building or its members has been damaged. In Arizona, although there is intense pressure from termite colonies, particularly in the uncultivated desert new construction areas, there is less damage than in other parts of the country because of the specific termite species. Termite destruction is not a frivolous issue, but it is quite rare to see true “structural damage” to a building here such as can be seen in the southeast, Hawaii, or parts of California.

As discussed in this report, the Commission is not in statutory compliance concerning the ratio of inspectors to industry members. At its inception, this ratio was flawed; during the FY 95 legislative session, SB 1279 was introduced by the Commission to address a variety of issues including decreasing the statutory ratio, however, after passing the House and Senate, the bill died in conference committee. To achieve compliance would require more than doubling the number of inspectors, from 12 to 26. As part of the Commission's FY 98 budget request, two additional inspectors are being requested to focus on growth areas of the state. We will continue to adjust our budget requests as the level of activity warrants.

The Commission will begin a new procedure to ensure equitable observations of pretreatment activity using random sampling techniques. This methodology and a quota of companies per week will increase the number of observations of pretreatments and do so in a manner that fairly represents the potential number of termite applications by individual company.

FINDING II

1. The Commission should improve controls over forms by:

a. Tracking blank forms received by pest control companies versus forms actually filed by these companies; and

b. Tracking forms sent to and returned by the Commissioner's data entry contractor.

The Commission concurs in finding the TARF filing and fee collection process in need of improvement. While we are pleased overall with the decision to privatize the inputting, the sheer volume of TARFs (almost 140,000 in FY 95) presents problems. Once entered in our computer system, we are able to track voided TARFs, however the system does not pick up gaps, or missing TARFs. Our greatest area of concern, however, is with the potential level of activity taking place without TARFs being completed at all, and the quality of work this may represent.

We will begin sampling inputted TARFs to proof against the original forms. We are investigating various possibilities for other improvement here, including a "deposit" slip to accompany TARF payments which would list the TARFs completed; and purchase of a hand held scanner or a separate machine to count the TARFs, to be used when sending and receiving TARFs from the data entry provider. Another improvement under consideration would be the printing of TARFs in 25 pack tablets to be issued to pest control companies. This would ease tracking somewhat. However, as of this writing, we have an approximate seven month supply of forms, costing \$2,750 . We are working to increase the proportion of TARFs being filed electronically as this greatly reduces input error. Currently, about half of all TARFs are filed by this method.

2. The Commission should assess higher late filing fees to encourage pest control companies to file forms within the 30-day statutory deadline.

The Commission does not believe that increasing the late fee will encourage prompt filing of TARFs. As an enforcement tool, the current late fee of 100%, or \$8.00, plus the added possibility of Commission disciplinary action and fines up to \$1000 provides adequate penalty. Higher penalties, we believe, will only have the effect of further TARF evasion. The Commission will consider the possibility of requiring prepayment of TARFs which will at least assure that the revenue is collected. However, as pointed out above, this will not address the issue of treatment work done without any TARF documentation, and may indeed only increase this rogue activity.

3. The Commission should conduct audits of forms to ensure pest control companies file the forms and pay the filing fees.

The Commission concurs in this finding and has begun an audit program. To devote adequate time to this program the Commission has requested an Auditor position in the FY 98 budget submittal which we believe will more than pay for itself in increased TARF collections. As clarification for a point ascribed to the Commission's Executive Director, commissioners view audits of termite treatment records and chemical purchase records *without justification and without a complaint having been filed* as outside the scope of their proper review.

FINDING III

1. The Commission should strengthen its inspection program by :

a. Implementing a written plan specifying that each licensed pest control company is to be inspected within a specific time frame and that EPA requirements are met; and

b. Establishing an inspection policy requiring inspectors to conduct a specific number of inspections within a specified time frame.

The Commission agrees that its inspection program can be strengthened through formal scheduling of inspections. "Inspections" itself requires definition, however, as a truck inspection may suffice for a small operator whose entire office is located in the truck, while an office inspection is warranted for larger operations. "Inspections" also include field monitoring. An inspection policy has been established which requires inspectors to complete a specified number of inspections within a specified time frame.

2. The Commission should improve its inspection database system to allow Commission staff the ability to accurately track inspections conducted at each pest control company.

The Commission concurs that improvements are needed in the system itself and its use and these improvements have been scheduled with the Commission's programmer.

3. The Commission should consider strengthening its supervision of inspectors by:

- a. Ensuring that inspections and follow-up inspections are conducted appropriately; and**
- b. Developing a performance evaluation tool that measures/documents inspector productivity.**

The Commission will strengthen its supervision of inspectors through development and use of a feedback form which measures/documents appropriate handling of cases and inspections.

FINDING IV

1. The Legislature should consider revising ARS §32-2319 to remove the requirement that the Commission provide initial and continuing training to the pest control industry.

The Commission believes that training is an integral part of what we do, as reflected in our mission statement: "To advocate and promote through education, training and enforcement the safe application of pest control technologies which will result in the maximization of the health and safety of the citizens of Arizona, their property, and the environment." The Commission provides initial and continuing training statewide, offering training in rural areas of the state where private contractors have not found it profitable. The regulated community outside metro Phoenix and Tucson accounts for 25% of the total certified applicators in the state (1,543 out of 6,273 at this writing). This group, many of whom work for small companies, would not be served otherwise, or would encounter unnecessarily high costs to travel to the Phoenix or Tucson area for training. While there would be cost savings to the Commission if we did not provide training, this would be offset somewhat by the increased monitoring of training providers which would be required.

Moreover, the Commission feels that the direct personal contact with industry members gained through our training is an asset to us as well as to them. In continuing education, we concentrate on test areas such as the law, environmental concerns and safety issues, while company provided training is focused more on application techniques and other practical areas. We have received concurrence from the Environmental Protection Agency for our training which is extended to all political jurisdictions, including the Native American nations. As an aside, continuing education was among the projects considered for privatization by the Office for Excellence in Government's recent Task Force on Competitive Government, however it was not selected.

2. If the Commission continues to provide training, it should consider recovering its costs by charging attendees a fee as allowed by ARS §32-2319 (C) and (D).

The Commission has considered that, since training is an integral part of its duties, costs incurred for training are recovered through the Commission's overall fee structure. In addition, as noted earlier in this report, the Commission receives federal assistance which covers part of the cost of providing certification and training. We will consider increasing the cost of initial certification training to cover the cost of providing the core instructional manual and recover directly associated training costs.

In closing, we appreciate the good work done by your audit staff and will continue to work towards improvements in the industry and our responsibilities as Commission and staff. On behalf of the Commission, I will be pleased to discuss any responses in more detail with you or the readers of this report.

Sincerely,

A handwritten signature in cursive script that reads "J.H. Paulson". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

J.H. 'Bud' Paulson
Executive Director