

STRUCTURAL PEST CONTROL ADVISORY COMMITTEE

MINUTES

Meeting Date: July 22, 2021

Place: Stephen F. Austin Building

Meeting No.

Microsoft Teams Meeting

MEETING ATTENDANCE:

Advisory Committee Members

Roger Borgelt

Dr. Nancy Crider

Dr. Ketki Patel

Randy McCarty

Warren Remmey

Brien Binford

Dr. Robert Puckett

Jeffrey Sheets – unable to attend

Clint Lehew – unable to attend

Nancy Zaiontz – unable to attend

Robert Schoppe – unable to attend

Agency Staff

Affiliation

Program

Michael Kelly

TDA

ACP

Allison Cuellar

TDA

ACP

Leslie Smith

TDA

ACP

Rebecca Senski

TDA

ACP

Morris Karam

TDA

GC

Chris Gee

TDA

GC

David Castillo

TDA

GC

Interested Parties

Affiliation

Dr. Bob Davis

BASF

Kevin Lipscomb

Pest Inspection Network

Mike Zambrano	Pest Inspection Network
Debbie Aguirre	Elite Exterminating
Santos Portugal	ABC Home and Commercial Services
Shelly Branstetter	Texas Association of School Boards

I. Call to Order

The meeting was called to order at 9:11 a.m. by Roger Borgelt, Chairman of Structural Pest Control Advisory Committee

Mike Kelly of the TDA took roll of attending committee members, TDA staff, and public attendees; and identified the following individuals wanting to make public comment:

Debbie Aguirre with Elite Exterminating, Kevin Lipscomb with Pest Inspection Network, and Dr. Bob Davis with BASF.

II. Review and Approval of Minutes of the April 22, 2021 meeting

The minutes were motioned to be approved by Mr. Randy McCarty and seconded by Dr. Ketki Patel.

III. TDA Update

**a. Review of Inspection and Enforcement Data for Third Quarter of FY 2021-
Mike Kelly, Director for Consumer Service Protection**

- i. Mr. Mike Kelly reviewed the SPCS Third Quarter FY21 Inspection Numbers as well as the Inspection Numbers as of June.
- ii. Mr. Mike Kelly reviewed the enforcement data
 1. There were 89 notices of violations
 - a. 9 for failure to comply with advertising requirements
 - b. 14 for failure to comply with training and supervision requirements
 - c. 22 for operating without a license
 - d. The rest are broken down in the “other” category of the report
 2. There were 9 warnings
 - a. These are broken down and explained
 3. There was a total of 98 warnings and notices of violations
 - a. Assessed \$54,480 worth of penalties and collected \$36,480 worth of penalties
- iii. No questions were posed

b. General Rule Review-*Morris Karam, Assistant General Counsel*

- i. Mr. Morris Karam explained the Enforcement Division is in the process of reviewing the Rules of Subchapter H of the Administrative Code. These

are the Structural Rules, and this is a once every 4-year requirement set by statute.

1. There will be a general rule announcement with an open public comment period with a minimum 30-day deadline to the public and invites all input. Enforcement will then gather all this input from the public then decide if this input would meet some sort of threshold to make any additional amendments to the rules at which this process of rule review will be gone through again by the Advisory Committee. This notice should be published in the August 6th edition of the register. This will be provided by an official notice to the committee. On the notice that will go out to the register, Mr. Karam will be the official point of contact for any comments from the public. Any comments or information that may be beneficial to rule changes would be brought to the Committee.
2. There is no action needed from the Advisory Committee at this time.

IV. **Discussion and Possible Action**

Chairman Borgelt suggested the meeting begin with the Suggested Rule Revision due to time and possible quorum constraints.

a. **Suggested Rule Revision, Review, and Comment(s)- *Allison Cuellar, Coordinator for SPCS***

Before beginning, Dr. Ketki Patel posed a question asking for clarification on the definition of daycare center. Dr. Patel asked if when daycares are mentioned is SPCS only focusing on large centers or are home-based day-care centers included in this. Ms. Cuellar responded, stating that per the definition in our statute, home-based day-care centers are not within the purview of the Structural Pest Control Act, this act will focus on daycare centers outside of someone's home. Dr. Patel was curious how TDA works with the agencies creating minimum standards for licensing and childcare. Ms. Cuellar quoted Chapter 42 of Texas Human Resources Code to answer the question on daycare facilities.

- b. Ms. Allison Cuellar began her presentation on Suggested Rule Revision and Review. The document presented listed the division, rule number, rule, and proposed changes. Anything that was not listed on this document does not have suggested revisions.

i. **Division I:**

1. **Rule 7.114- Definition of Terms**

- a. Mr. Borgelt had questions pertaining to the requirements for the definition of *physically present*. He was concerned as to why TDA is being strict in the zoom era on physically present meaning face-to-face, excluding video and audio calls. Ms. Allison Cuellar clarified that the committee, back

in 2015, decided to reduce the amount of supervision for a technician from 3 days a week to 1 day a week, but kept the supervision of an apprentice at 3 days a week. She went on to mention that the rule is structured the way it is to ensure that supervision is close by to those who are still learning. The rule is being clarified due to there being issues with individuals being hours away from their Responsible Certified Applicator, and supervision is not being done. There are specific things you cannot see from a phone, whether that be in a video or a picture, for example, certain damage done by wood destroying insects. Ms. Cuellar clarified the requirements for apprentice training are the requirements to work alone and stated that this rule does not mean that there must be hours upon hours of supervision after training is complete, they just must meet the minimum supervision requirements stated by rule.

2. Rule 7.115- Structural Pest Control Penalty Matrix

- a. This table is used by the Structural Pest Control Service enforcement team to assess penalties. Ms. Cuellar stated that the changes are not to the tables, but the revisions are to the violations/ non-compliances. Chairman Borgelt stated that the rule numbers are being corrected. Ms. Cuellar said in addition to correcting the rule numbers, the SPCS is adding violations/ non-compliances that are clearly stated in rule, but were not present on the penalty matrix, for example, *operating without a responsible certified applicator*. Dr. Patel posed the question, where are the definitions of minor, moderate, and major hazard potential. Ms. Cuellar pointed to the definition at the top of the page where it states, “Within the tables of Minor, Moderate, or Major designations take into consideration the Nature, Circumstances, Extent, and Gravity (NCEG) of the situation, which resulted in the noncompliant finding.” Mr. Randy McCarty then asked for some clarification on the definition of timely in Division 3 where it states, “Failure to timely register an employee”. Ms. Cuellar stated that in Rule 7.132, as well as 7.142, an employee must be registered within 10 days. Mr. Brien Binford then asked, when a new employee is hired, can you begin counting their hours on that day, or do you need to wait until they are registered? Ms. Cuellar stated that the employer can begin counting hours on the first day they start, but the employee must be registered within 10 days. It was clarified that 10

days means 10 calendar days. Dr. Patel was asking for more clarification if there was a written way to determine minor/moderate/major in a non-compliance or is this determined on a case-by-case basis based on the inspections officer's judgement? Dr. Patel suggested if there was the possibility to link an external document or address this in another part of the current document that will detail these criteria. Ms. Cuellar stated that she was hesitant to put that into our regulation, and Chairman Borgelt also agreed saying that it is good to have flexibility in these situations. Mr. David Castillo clarified saying that this is determined on a case-by-case basis, and a specific thing cannot be pinned down as to what will make a violation/non-compliance a minor, moderate, or major. If enforcement was made to be pinned down by a specific set of circumstances that would make a violation/non-compliance minor/moderate/major, this would hinder and cause issues when trying to determine what penalties should be. Mr. Castillo explained that there is no possible way to set out a specific definition of minor/moderate/major that will encompass every set of circumstances that are had, and there will always be a different set of circumstances in each case.

ii. Division II:

1. Rule 7.121- Types and Requirements of Licenses

- a. Chairman Borgelt stated that this change seems like a clarification, and Ms. Cuellar stated that, yes, it was a clarification to assist Rule 7.161(10). There were no additional questions or comments.

2. Rule 7.122- Applications for Licensing, Registration, Certification, and Approval

- a. There were no questions or discussion of this change.

3. Rule 7.124- Structural License Categories

- a. Ms. Cuellar stated that this change came as a result of a public comment at the last advisory committee meeting, and that public input is considered and appreciated. Randy McCarty stated this is great. Chairman Borgelt said it fixes a long-stemmed problem.

4. Rule 7.132- Requirements for Apprentice Registration

- a. There were no questions. Chairman Borgelt stated that this clarifies when training counts; it was what was already being done, now it's just written down.

5. Rule 7.133- Technician License Requirements

- a. Chairman Borgelt stated that this change looks to be a clarification, but Ms. Cuellar corrected him and stated that this change is new. Ms. Cuellar gave background on why this change was being made, stating that at one time the Structural Pest Control Board had required, somewhere in their rule, that technicians need to do classroom and on-the-job training to add additional categories to their license. When those rules came over to the Department, there was nothing written in rule requiring this. In the realm of pesticide stewardship and consumer protection, it is prudent for technicians to continue education and training to add a category in which they wish to preform services. Chairman Borgelt confirmed that this was in the old rules but is unsure of where it was located. Dr. Nancy Crider feels this is also an important change. Mr. McCarty also believes that this change makes sense. No additional questions or comments.

6. Rule 7.134- Continuing Education Requirements for Certified Applicators

- a. Chairman Borgelt asked for clarification on the change. Ms. Cuellar explained it as, the person giving the CEU cannot count the CEU they are presenting as one of their own CEU requirements for the year, they have to attend a CEU they did not give. They will have to hear information from someone else and attend another CEU. Mr. McCarty asked what is the rationale behind this decision? Ms. Cuellar described the rationale as there being a concern with echo chambers, where if the provider is only giving courses they provide, they may miss new and changing information. Another reason for the change is due to the fact that the person giving the presentation did not always write that presentation. Dr. Crider suggested that this change should be numbered separately from "(c) No approved course may be repeated for credit within the same calendar year. No certified applicator who is also a course provider can satisfy their CEU requirements through a course she/he provides". Chairman Borgelt agreed with Dr. Crider that this change needs to be a separate section. Chairman Borgelt suggested changing a course provider to

the course provider, it would offer additional clarification. Dr. Bob Davis suggested an update from course **provider** to course **presenter**, along with updating a course she/he **provides** to a course she/he **presents**. Chairman Borgelt and Dr. Crider said they cannot get credit for a CEU they present in their professions either. Ms. Cuellar appreciated the feedback. No additional questions or comments were made on this rule change.

7. Rule 7.135- Criteria and Evaluation of Continuing Education Training

- a. Mr. McCarty suggested sticking to the same language as the previous rule and changing **provider** to **presenter**. Ms. Cuellar offered clarification saying that this rule is a bit different. She offered an example of PCO Conference (Urban Entomology Conference) from Texas A&M University, in this case Texas A&M is the course provider, but there are multiple presenters at this conference. No changes were made, and no additional questions or comments were made regarding this rule.

8. Rule 7.136- Criteria and Evaluation of Technician/Noncommercial Certified Applicators Training

- a. Ms. Cuellar explained that the changes made in this rule are very similar to the changes being made in the previous rule, 7.135. Chairman Borgelt asked why they are referred to as CEU course. Ms. Cuellar described this as a great catch and will update the language to make this rule clearer by changing CEU to **Technician/ Noncommercial Certified Applicators Training Course**. No additional questions or comments posed.

iii. Division III:

1. Rule 7.142- Notice of Employment or Termination

- a. Ms. Cuellar explained that this change is a clarification to the rule, the TDA form already states the requirements, but it needed to be added to the rule for there to be consistency and clarity for all.
- b. Dr. Crider and Chairman Borgelt suggested after reading this change, to update the penalty matrix wording for **timely** to **10 days** to be clear and specific.
- c. There were no additional questions or comments.

2. Rule 7.144- Pest Control Use Records

- a. Mr. Mike Kelly brought attention to a question pertaining to why bait applications are excluded. Ms. Cuellar explained that bait applications are excluded because after researching the label for bait applications, there are specific distances for placing the bait stations, but here are differences for when you put in the bait, and how often you check it. There is nothing in the label to clarify how square feet are being treated. This rule asked for the approximate area being treated per application, and this is why they are excluded. Chairman Borgelt noted that there was a comment made stating that there are linear foot measurements for bait applications, and the linear foot could be required. Dr. Crider suggested, the change be worded as the **appropriate unit of measurement for the application site**. Ms. Cuellar went on to clarify that it is believed that the unit of measurement will not help because this rule covered the use records which is for after the application, and prior to application they must do a disclosure. The disclosure will have the measurement of the structure and the minimum number of bait stations to be installed, the math can be done from the disclosure and the bait stations will be visible to see whether this worked. Whereas with trenching, if there is a complaint afterward the application cannot always be seen. No change and no additional questions or comments were made.

3. Rule 7.156- Entry and Access

- a. No questions or comments on this change.

iv. Division IV: Unlawful Acts and Grounds for Revocation

1. Rule 7.161- Grounds for Revocation, Suspension, Penalties, Reprimanding, Refusal to Examine, Refusal to Issue or Renew Licenses

- a. No questions or revisions to the suggested rule change.

v. Division V: Treatment Standards

1. Rule 7.172- Subterranean Termite Post Construction Treatments

- a. No questions or revisions to the suggested rule change.

2. Rule 7.173- Subterranean Termite Pre-Construction Treatments

- a. No questions or revisions to the suggested rule change.

3. Rule 7.174- Subterranean Termite, Dry wood Termite and Related Wood Destroying Insect Treatment Disclosure Documents

- a. Suggested rule revision is to the title of the rule, eliminating the words **Subterranean Termite, Dry Wood Termite and Related** from the title.
- b. Dr. Crider posed a question on the changes being made to the title, asking for clarification as to why this was the only rule where **Subterranean Termite, Dry Wood Termite and Related** was removed from the title. Ms. Cuellar stated that it was done to make the title less wordy and less redundant. This was done to keep the wording consistent with suggested rule changes in the previous rules. No addition questions or revisions to the suggested rule change.

4. Rule 7.176- Real Estate Transaction Inspection Reports

- a. No questions or revisions to the suggested rule change.

5. Rule 7.178- Structural Fumigation Requirements

- a. Ms. Cuellar stated that TDA has reached out to the fumigators in the state from which we have received notifications in the last year, to alert them the EPA is looking to make changes at the federal level for structural fumigation. There was an extension granted for the comment period, which would have ended July 26, 2021, there are an extra 60 days added from this July 26, 2021, date. There may be additional changes made to this rule as a result of the possible EPA changes, but as of now these are all the changes that are being suggested.

vi. Division VII: Integrated Pest Management Program for School Districts

1. Rule 7.201- Responsibility of School Districts to Adopt IPM Program

- a. Dr. Bob asked for clarification on the definition of a school district. Ms. Cuellar pointed him to the Texas Education Agency (TEA) and stated that she would suggest looking there for the most precise definition. Ms. Cuellar's understanding of the definition of a public school district is, it provides education, and it is given tax money. Anything that is an ISD or a CISD would be included as a school district. Mr. Castillo stated that the definition of a school district would be in the Texas Education Code and TDA would reference that material.
- b. Dr. Crider suggested the wording be changed in number (2). She suggested changes to the word remove, stating it could have various meanings within the context it is being used, and suggested an edit for the coordinator versus

coordinators. Ms. Cuellar offered clarification on the rule stating, this rule means that a district must report their IPM Coordinator or coordinators within 90 days of appointment. Ms. Cuellar then goes on to explain, that the changes are made for when a district does not have an IPM Coordinator since there have been instances where some districts have gone 5 years without an IPM Coordinator. The idea behind this change comes from the several instances where IPM Coordinators have not been designated for a period of time, TDA wants to ensure that there is a mechanism for TDA to be more proactive in helping provide compliance to districts. This would allow TDA to get a notification when a district does not have an IPM Coordinator, as compared to the current situation where TDA does not know that a district does not have an IPM Coordinator, until an inspection is completed. Dr. Crider suggested an edit along the lines of **at no time shall a district be without a coordinator or an interim coordinator.** Ms. Cuellar is hesitant to state that, due to the inflexibility the wording would cause. What the rule is trying to state is, if a district removes the IPM Coordinator or their IPM Coordinator is no longer holding that position, they must notify the Department within 10 days (this is congruent with the time frame for licensees), and if a new IPM Coordinator is not designated immediately (there is a 90-day period to do this), an interim coordinator must be placed in that position. This interim, who may be the superintendent or someone else who can act in this position for the time being, cannot serve in this position for more than 60 days before they either must be appointed or find someone else to appoint to that position. The idea is to make sure districts always have an IPM Coordinator, but there is some flexibility present. Dr. Crider stated that this wording is not clear and stated that this rule is more toward districts that do not have an IPM Coordinator at all. Ms. Cuellar confirmed that Dr. Crider is correct and stated, this section of rule is for school districts to notify us when designating an IPM Coordinator, and these proposed changes are for districts to notify us when they lose an IPM Coordinator, and the Department would like to give them flexibility. Mr. Warren Remy suggested the beginning of the sentence be updated to include when **a school district replaces an IPM Coordinator.** Ms. Cuellar clarified that the district may not

be replacing. This is addressing when an IPM Coordinator leaves, the Department would like to receive written notification that the IPM Coordinator has left. This way, the Department is aware when a district is without an IPM Coordinator. The Department realizes that it is often difficult to find a replacement for a position over night, and the Department would like to offer flexibility to either appoint a new IPM Coordinator or appoint an interim IPM Coordinator. Having the option to appoint an interim IPM Coordinator gives flexibility to the school districts to meet the minimum requirements from the Department for a period of time, even if it is temporary. Dr Crider is suggesting edits to make this rule more clearly state that there is no IPM Coordinator present. Ms. Cuellar stated that she appreciates the help and welcomes the suggestions. This rule is stating that a school district may not be without a new or interim coordinator for more than 30 days, and the Department would like someone to be designated to be fully responsible for the IPM Coordinator position, but if an interim coordinator is appointed, they cannot serve for more than 60 days. This would give a school district 90 days to try and find someone to fill the position of IPM Coordinator. Chairman Borgelt has been thinking of ways to simplify the rule change because it seems complicated. Dr. Crider suggested some renumbering be done. Chairman Borgelt was asking for clarification on the definition and difference between and appointed IPM Coordinator and an interim IPM Coordinator. Ms. Cuellar explained that interim will be something new if this rule is adopted, but it is someone who is not fully appointed to the position they are just filling that spot, and they would be expected to come off this spot in the next 60 days or they will be fully designated to the position. Dr. Crider suggested the edit, **a district may not be without a designated IPM Coordinator for more than 30 days.** Dr. Crider and Chairman Borgelt do not believe there needs to be a distinction for an interim coordinator. Chairman Borgelt suggested the edit, **when an IPM Coordinator departs, the IPM Coordinator, Superintendent, or Superintendent's designee must notify the Department of the departure within 10 days in writing. A school district may not be without a designated IPM Coordinator for more than 30 days.** Then the last part of

suggested rule edit mentioning interim would be discarded since there will be no interim coordinators, since interim and permanent are functionally the same thing. Ms. Debbie Aguirre posed a question asking if this rule would apply to private and charter schools as well? Mr. Kelly responded by saying, the rule does not cover these schools, the definition is taken from the Texas Occupational Code, school district is specified.

2. Rule 7.202- Responsibilities of the IPM Coordinator

- a. Chairman Borgelt asked for clarifications as to why residential properties are included in this rule. Mr. Kelly stated that there are some districts that have residential properties where teachers live directly on the school district's property. Ms. Cuellar explained that statute states school district property and the Department wants to clarify that residential properties are included. No edits for this suggested rule change were posed.

3. Rule 7.203- Responsibilities of Certified Applicators and Licensed Technicians

- a. No questions or edits were made for the suggested rule changes.

4. Rule 7.204- Pesticide Use in School Districts

- a. Someone asked where nonpublic schools or private schools fit in to this rule. Ms. Cuellar explained that they will need to have a licensed applicator per 1951.459, but the buildings are treated like any other buildings where pest control is done. There are no revisions to the rule changes.

Dr. Nancy Crider made a motion to approve going forward with the revisions as they have been reviewed today. This motion was seconded by Mr. Brien Binford.

Mr. Remmey posed a question as to why pest control operators are not notified directly of rule changes. Ms. Cuellar stated that the Department does not have the ability to send an email to all licensees, instead the TDA will post it on the website, notify the Advisory Committee, TPCA, trade organizations, and reach out to education providers. The Department also does not have the ability to send a newsletter by mail and they have not had this ability since around 2014.

No further discussion on the motion, committee was all in favor of the motion.

V. Topics to be Placed on Agenda for Upcoming Meeting(s)

There will be a bigger meeting in the fall where there will be the possibility for a larger attendance and more public comment from the industry and other stakeholders

on the following two issues. This would also be the time to propose other topics for review.

a. Structural Pest Insurance Requirements

- i. There is the possibility of raising the insurance requirements that has been discussed in the past. A draft “straw man” rule will be developed for this discussion.

b. Separating Category for WDIR Inspections Only

- i. There is the possibility for discussion on adding a separate category for WDIR inspections only. A draft “straw man” rule will be developed for this discussion.

Chairman Borgelt suggested that if this proposed meeting for the fall to discuss the above topics cannot be held in person due to the current public health situation, the meeting should be postponed. He believes that discussing such impactful changes there should be a full public meeting. Ms. Leslie Smith suggested a possible hybrid meeting.

VI. Public Comment

a. Kevin Lipscomb from Pest Inspection Network on 7.114 on definition revision on item 17

- i. Zoom meetings are being used for a variety of different situations including getting your original technician’s license and certified applicators license. Why is it so bad to use zoom for your weekly conversation with your technicians? Mr. Lipscomb is in San Antonio, and he has a technician on the South side of San Antonio that has a question about what they may be looking at, he does not want to drive 80 miles to go look at what the technician is looking at, and nobody will. He believes the wording of the change of this rule is pointed directly at him and doesn’t understand why this is such an issue because zoom works. Chairman Borgelt recommended he make public comment on the rule when the opportunity arises.

b. Debbie Aguirre with Elite Exterminating

- i. Ms. Debbie Aguirre wanted to comment on the pervious comment made by Mr. Lipscomb, she did not want to offend so she wanted to apologize in advance. She believes that if a technician or inspector needs clarification of what they are looking at, they need to get more training. She stated she feels this is one of the biggest issues in this industry with new people coming in, they lack the proper training to identify what it is that they are looking at. She believes there is not a need for zoom, but a need for more hands-on training with the certified applicators. She said the supervision needs to stay the same; old school is better, and it works.
- ii. She also had concerns over the new WDIR category and the inspections. Mr. Kelly stated that there are no revisions to the inspections and the only

revision to the WDIR section of the rule was that you cannot change the form. She clarified that she is curious of why they are looking at adding a category. Mr. Kelly stated that it was something that was brought up in public comment over a year ago, and the Committee wanted to entertain the idea. Ms. Aguirre wanted to state that this is a pest control industry and not a home inspection industry, and it is not the same thing to do a WDIR and a home inspection. She does not want to undermine her industry to satisfy another industry.

c. Dr. Bob Davis with BASF

- i.** Dr. Bob Davis is asking about the school district issue because every acre of land in Texas is under a school district, but they are not owned by the school district. In the IPM requirements should be specific to the property owned by the school, not the school district as whole. When terms like residential properties are used, legally an argument could be made that this means an individual house since it is within school districts designation, but it is not owned by the school district. This may be something to keep in mind or take it back and put it in our definitions and define what is meant by a school district for these regulations. Ms. Cuellar stated that in the law, all school district property is part of the school IPM program. Residential properties were added to make it clear that these are residential properties owned by the school district and still must follow the IPM rule.

d. No other public comments

VII. Conformation of Next Meeting Date- October 21, 2021

- a.** Chairman Borgelt will not be able to attend a meeting on October 21, 2021 and asked the Committee if they are able to change the meeting to October 28, 2021.
- b.** Next meeting set at October 28, 2021

VIII. Adjourn

- a.** Chairman Borgelt asked for a motion to adjourn at 11:08 and Dr. Crider made the motion to adjourn.