

STRUCTURAL PEST CONTROL ADVISORY COMMITTEE

MINUTES

Meeting Date: July 23, 2020
Meeting No. 3

Place: Stephen F. Austin Building
Skype Meeting

MEETING ATTENDANCE:

Advisory Committee Members

Warren Remmey
Jeffrey Sheets
Brien Binford
Roger Borgelt
Clint Lehew
Dr. Robert Puckett
Dr. Ketki Patel
Randy McCarty
Nancy Zaiontz
Robert Schoppe – unable to attend
Dr. Nancy Crider

Agency Staff

Michael Kelly
Aaron Curiel
Leslie Smith
David Castillo

Affiliation

TDA
TDA
TDA
TDA

Program

ACP
ACP
ACP
GC

Interested Parties

Todd Kercheval
Brianna Saenz
Bob Davis
Debbie Aguirre
Santos Portugal
Dale Burnett

Affiliation

TPCA
TPCA
BASF
Elite Exterminating
ABC Home and Commercial Services
Burnett Pest Control

I. Call to order

The meeting was called to order at 9:05 a.m. by Roger Borgelt, Chairman of Structural Pest Control Advisory Committee, he asked if there were any interested parties in attendance that would be making public comment.

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 representing The Coastal Bend Pest Control Association and Bob Davis representing BASF. Later in the meeting Dale Burnett with Burnett Pest Control and Santos Portugal with ABC Home and Commercial Services were also identified as wanting to make public comment.

II. Review and approval of minutes of the April 23, 2020 meeting

Nancy Crider motioned to approve the minutes from the April 23, 2020 meeting. Randy McCarty seconded the motion.

III. Summary of Pesticide Drift Project and CDC/NIOSH SENSOR UPDATE

a. CDC/NIOSH Sensor Update

Dr. Ketki Patel informed the committee that the CDC/NIOSH SENSOR meeting, usually held in person, was scheduled to be in Texas this year but was not held in person due to COVID 19. Instead virtual meetings were held in April, June and scheduled for August. She explained that most states have seen a dip in human exposure in agriculture workers. She noted that there has been a spike in disinfectant cleaning agent use and there has been a 70% spike in calls to poison control centers regarding issues with hand sanitizers and disinfectant chemicals. Some pest control companies are getting involved in providing disinfectant services or selling disinfectant materials to the consumer. There have been reports that some of these disinfectants are being sold in different containers than the original packaging, which has led to public exposure. Two exposures required trips to the hospital , a 6-year-old and a person in the workplace. Health advisories have been issued by the Texas Department of State Health Services regarding hand sanitizer and disinfectant chemical exposure.

b. Summary of the California Pesticide Drift Project

Dr. Ketki Patel explained that this study was performed by the California Department of Public Health with cooperation from the California Department of Pesticide Regulation. The departments collected data from 2000-2010 on pesticide use and human exposure. Data from pesticide applications that took place within one quarter mile of school properties and school location data were compiled to map drift exposure in 15 counties in California. The key observation was that most schools did not apply much pesticide. A small percentage of schools did have pesticides applied in their vicinity. Those schools were distributed throughout multiple counties. The study did not assess the impact on school pesticide use restrictions. The study did not measure any children's exposure to pesticides during this project. The result of this project guided policy level decisions on the application of pesticides to school districts and businesses.

Roger Borgelt asked if this study was 100% agriculture exposure. Dr. Patel said that this study took place in heavy agriculture rural locations with mostly Hispanic population. Roger Borgelt asked if there is Texas specific data regarding disinfectant issues. Dr. Patel responded that disinfectant and other green chemical exposures are being monitored daily and to date there are a lot of exposure to children but starting to see more exposure to adults and more hand sanitizer exposures. Randy McCarty mentioned that he is seeing a lot of pest control companies offering control services for the virus and making claims such as 90-day control. Dr. Patel said that people seem to be misusing the products and selling them to consumers, which is causing lots of human exposure and hospital visits. She mentioned that it may be a good idea to release a health advisory to the pest control industry regarding disinfectants, and that she is working with Janet Hurley's group on health advisories for daycares.

Roger Borgelt agreed with this and that ads for 90-day protection are deceptive and stated that this issue may have to be addressed by the legislature.

IV. Discussion and Possible Action

a. Insurance Claims Related to Structural Pest Control

Nancy Zaiontz, discussed insurance claims related to pest control companies. She noted that she gathered about 20 years of data and had only 25-30 policies for WDIR only companies and has probably insured over 1500 pest control companies in the same amount of time. From this data she determined that the 25-30 WDIR companies had greater monetary claims than the pest control companies that offered different types of pest control services. For this reason many insurance carriers will not insure companies that have more than 25% WDIR sales.

Randy McCarty asked how long have the insurance amounts that the state requires been around. Mike Kelly responded that the required insurance amounts have been this way for a long time, and that perhaps it's time to consider a change, while we are discussing this in committee.

Nancy Zaiontz commented that the insurance data supports the need to expand the Termite Category, not to have an additional WDIR termite category. Bob Davis and Randy McCarty agreed that if we established a new WDIR category the training should focus only on inspecting. Mike Kelly suggested that the category should not be a standalone category but an expansion of the existing termite category with more training focused on inspections. Randy McCarty agreed that more emphasis on inspection training would be good for the industry. Robert Puckett agreed but

questioned why those only doing inspection would need to sit through hours of training on termiticide active ingredients and treatment standards.

Roger Borgelt commented that the discussion was going into other topics on the agenda and steered the conversation back to the insurance data. He asked how can the committee go about figuring out what would be the right minimum insurance requirements and is there a way to survey coverage in the industry? Mike Kelly said that we would have to look at the law to see if specific amounts are specified. Roger Borgelt said we would also need data to determine what amount would provide sufficient coverage so that a company does not exhaust their coverage from one occurrence. Mike Kelly said that Section 1951.312 sets the liability insurance amounts in law as a minimum requirement. Roger Borgelt said it may take legislation, but we can make recommendations. He asked that Mike Kelly and Nancy Zaiontz discuss this matter offline and perhaps bring back more information for next meeting.

b. Electronic Posting Notification and Language

Mike Kelly was approached by the industry and asked for clarification regarding the notice of pest control/posting notification for indoor treatments. Currently the law requires the sign be posted in an area of common access for certain types of buildings, for example a laundry room or main office. The question posed by the industry was, can these signs be posted electronically, perhaps in a chat room or a community website. Warren Remmey gave an example of providing the posting to the building manager via email. Roger Borgelt said the law is the starting point of how much leeway we have. It seems there is no issue with providing the sign to the property owner, employer or building manager by email but he doesn't see how we can get around the requirements of the managers to post the sign in an area of common access 48 hours before each planned treatment. Mike Kelly asked if posting the sign in an area of common access could mean posting it electronically to a site or community chat room. Roger Borgelt said TDA general counsel would have to determine if that is okay, but he did not see an issue with an area of common access being an electronic community bulletin board or website but not all people have internet access so that would have to be kept in mind.

Mike Kelly brought up an additional question that was posed by the pest control industry regarding the posting language, what would be considered extenuating circumstance that may require unplanned treatments? How would possible extenuating circumstance be compared to the rule which states posting may be waived if the customer and certified applicator sign a statement attesting to the fact an emergency exists which requires immediate treatment? Roger Borgelt could see where things such as trucks breaking down, weather events and other unforeseen events could qualify as extenuating circumstances. In this instance you can return to the site the following day with a new posting and not be required to wait an additional 48

hours before treatment. Randy McCarty asked to clarify that this meant if our service vehicle breaks down we can return the next day with a new posting and complete the service due to extenuating circumstance. He said it would probably be good practice to alert the manager to the situation so that management can make occupants aware of the change in service dates. Mike Kelly explained his understanding is the reason it is worded in this manner is because you are not posting for an emergency treatment you are using an emergency waiver to waive the posting requirement. The extenuating circumstance that may require unplanned treatments are emergencies defined as an imminent hazard to health such as stinging, biting insects limited to the localized area of the emergency. Things such as a truck breaking down or weather events causing the cancellation of a treatment should be rescheduled and posted 48 hours prior to treatment. The whole idea is that individuals be made aware of indoor treatments so they can make arrangements not to be there if they don't want to be.

Roger Borgelt said that if we can make provisions for electronic posting within the rule to the extent we can then we should try and do it. Mike Kelly said he would consult with TDA general counsel regarding electronic posting.

c. Separate Category for WDIR Inspection Only

Mike Kelly stated that this topic has been discussed in two prior meetings and the committee is interested in addressing this issue, so it was added to today's agenda. Roger Borgelt thought if a separate category is made, then it may be worthwhile to make the category more difficult to get, by having more difficult testing requirements and/or higher insurance for those wanting this category. Randy McCarty's concerns are that a home inspector can currently obtain a termite license with minimum amount of time in the field and they do not gain the knowledge to recognize wood destroying insects. Robert Puckett mentioned that the home inspectors are asking to train to do WDIR inspection, not pest management and that we may need to take a different approach if we are building a separate category. Roger Borgelt noted that there seems to be agreement in increasing the training requirements for a WDIR only license.

Nancy Crider asked if anyone knew how many home inspectors are actually performing WDIR inspections. Mike Kelly responded that this is an inquiry we get on a regular basis. There are a lot of home inspectors wanting to add this to their service. There are also some companies built around training home inspectors to get licensed to do WDIR inspections. Robert Puckett asked then why are they learning how to apply termiticides and Roger Borgelt suggested why not have them go through WDIR training and not termite treatment training. Clint Lehew mentioned that for businesses doing 25% or

more WDIR work insurance companies don't want to insure them, and that's up to the carrier; the carrier is taking into account the risk.

Nancy asked Dr. Puckett how much time is spent on inspection vs. treatment training at Texas A&M's Termite School. Dr. Puckett stated that out of 16 hours of training about 45 minutes is spent of WDIR's and about an hour and a half on doing inspection. Bob Davis stated that about 1/3 of the manual is about inspection of WDI's and Termites and about 2/3 on treatment.

Aaron Curiel suggested that perhaps the current termite exam is too easy, as it is only 50 questions. Maybe the test should be more extensive and possibly expanded to 150 questions; or maybe we require a longer training period for those wanting to do inspections. Roger said maybe they have to be a licensed technician for three months or more before being able to complete a WDIR.

Roger Borgelt requested that the agency bring in a proposal of what a separate WDIR category would look like in terms of regulation requirements, training and supervision. A proposed idea of how that would work and the things that would need to be addressed to accomplish this.

V. TDA Update

a. Review of Inspection and Enforcement Data for Third Quarter of FY 2020

Mike Kelly provided a review of inspection totals and enforcement data for the third quarter of fiscal year 2020.

VI. Discussion and action- Topics to be placed on agenda for upcoming meeting(s)

Roger Borgelt mentioned that it seems like all three topics discussed today would be placed on the agenda for the next meeting. Mike Kelly clarified that these topics are the new insurance amounts for businesses, WDIR only license category, and electronic notification addressed by rule and existing law. In addition, the structural Lawn and Ornamental and Weed categories vs. the Ag Pest Landscape maintenance and vegetation management categories.

VII. Public Comment

Debbie Aguirre representing Coastal Bend Pest Control Association expressed concern over companies that are popping up and providing disinfecting services.

She is curious of how state agencies are going to regulate this and if a new license category will be created for this. Roger Borgelt stated that currently the TDA only only has authority over a misapplication of these products.

She also expressed concern over home inspectors and the fraud being committed by them and real estate agents who they are in cahoots with. She knows of home inspectors who are hiring license termite inspectors to perform wdir and selling the report to the consumer. She has witnessed a lot of bad inspections by these home inspectors and knows of a homeowner who filed a complaint and it took over a year to resolve. She felt like the TDA inspector did an adequate job and does not understand how the TDA enforcement found insufficient evidence to determine fault. She does not understand how the TDA functions and feels there is need for proper monetary penalties.

Bob Davis representing BASF updated the committee on the virtual training the TDA has allowed to take place. He commended the TDA on this decision and informed that because of this he has been able to provide training to almost 1000 people. He informed the TDA that he will be creating a preconstruction treatment training and invited the TDA inspectors to participate in this training.

Dale Burnett representing Burnett's Consulting expressed that he thinks that a WDIR category could work but it would need to be more focused on training and cannot be a short cut method. He also mentioned that posting notifications are accomplished by email and paper and his company is doing both. Posting electronic is best and common access is electronic these days; posting with hard copy is not effective in many cases and hopes the TDA will update these regulations.

Santos Portugal representing ABC in Austin stated that if they are not able to make a previously posted treatment, that they would post a new notice and wait an additional 48 hours to be certain the consumer has been made aware of the change in service date.

VIII. Confirmation of Next Meeting Date

After discussion by the Committee, the date for the next meeting is October 22, 2020.

IX. Adjourn

At 11:56 am Roger Borgelt moved to adjourn the meeting; Warren Remyey seconded the motion.

