

NOTICE OF OPEN MEETING SUBMISSION

DATE OF SUBMISSION: October 14, 2022
NAME OF AGENCY: Texas Department of Agriculture
BOARD:
COMMITTEE: Structural Pest Control Advisory Committee
DATE OF MEETING: October 27, 2022
TIME OF MEETING: 9:00 AM
STREET LOCATION: Stephen F. Austin Building
Room 1104A
1700 North Congress Avenue
CITY LOCATION: Austin, Texas 78701

STRUCTURAL PEST CONTROL ADVISORY COMMITTEE

MINUTES

Meeting Date: October 27, 2022

Place: Stephen F. Austin Building

Meeting No.

In-Person/Teleconference/Microsoft Teams Meeting

MEETING ATTENDANCE:

Advisory Committee Members

Roger Borgelt - unable to attend.

Dr. Nancy Crider - unable to attend.

Dr. Ketki Patel

Randy McCarty

Dr. Bob Davis

Brien Binford

Dr. Robert Puckett

Mike Brooks

Clint Lehew – unable to attend.

Tommy Kezar

Robert Schoppe

<u>Agency Staff</u>	<u>Affiliation</u>	<u>Program</u>
Allison Cuellar	TDA	ACP
Rebecca Senski	TDA	ACP
Michael Kelly	TDA	ACP
Aaron Curiel	TDA	ACP
Robin Johns	TDA	ACP
Charlene Farias	TDA	ACP
Chris Gee	TDA	GC
David Castillo	TDA	GC
Morris Karam	TDA	GC

<u>Interested Parties</u>	<u>Affiliation</u>
<u>Janet Hurley</u>	<u>Texas A&M Agrilife Extension Service</u>
Colby McCarty	Veseris
Travis Gates	ABC Home and Commercial Services
Santos Portugal	ABC Home and Commercial Services
Kim Engler	ABC Home and Commercial Services
Bart Foster	Bill Clark Pest Control
Debbie Aguirre	Elite Exterminating Inc.
Veronica Showalter	Arrow Exterminating
Andrew Graf	Ecosafe Pest Control
Emery Matts	RenttoKil North America Inc.

I. Call to Order

- a. Chairman Roger Borgelt was absent from the meeting. Dr. Robert Davis was the committee member present at the Stephen F Austin building for the meeting and chaired this meeting
- b. The meeting was called to order by Dr. Davis at 09:06 AM on October 27, 2022

II. Review and Approval of Minutes for the July 21, 2022 Meeting.

- a. No discussion among the committee on the minutes from the previous meeting

- b. Dr. Patel made the motion to accept the minutes. The motioned was seconded by Mr. Kezar

III. TDA Update

a. Review of Inspection Enforcement Data for 4th Quarter of FY 2022- *Allison Cuellar*

- i. The inspection numbers for FY 2022 range from September 2021 through August 2022. The FY22 commercial inspection goal was 980 and 984 commercial business inspections were completed for 100.4% of the goal. Noncommercial business inspections had a goal of 460 and 445 were completed for 96.7% of the goal. There was a goal of 250 school inspections and 265 school inspections were completed for 106% of the goal. There was a goal of 190 Use Observations and 192 were completed for 101.1% of the goal.
 - 1. Ms. Cuellar stated that the inspection goals are set by the Legislative Budget Board and there is a goal range of +/- 5%
 - 2. There were congratulations to the regions on completion of their goals, and some discussion of TDA staff turnover rates.
- ii. Enforcement data for the 4th Quarter of FY 2022 was reviewed.
 - 1. There was a total of 53 notice of violations (NOVs). The highest amount of NOVs were for “operating without a business license” with 21 NOVs. The second highest was “other” with 18 NOVs, a breakdown of “other” was shown. There was a total of 3 warnings, 1 for “incomplete use records” and 2 “others”. A breakdown of “other” was shown. Total actions for the 4th Quarter FY 2022 were 56, and the total penalties assessed and collected were shown.
 - 2. There was discussion among the committee about NOVs and “operating without a business license”. A full year of enforcement data was requested.
 - 3. Mr. Karam wanted to offer comments on the NOVs stating that something like “operating without a business license” will be higher due to the fact that there are multiple ways you can operate without a license.

b. How-to YouTube Videos Updates

- i. Ms. Cuellar stated that some individuals from the TDA who were helping with the creation of the YouTube videos have resigned from the agency. There is a plan with work with TDA communications to discuss the budget of hiring an individual from outside the agency to help create the videos.

c. Update on Processing of Rules

- i. Ms. Cuellar stated that as of 9/30, the proposed rules have gone to the register and the website has been updated with the proposed changes. The rules are open for comment for 30 days. Monday, October 31, 2022 is the deadline for public comment. After the comment period closes, the rules

can be filed for adoption. The rules will become effective 20 dates after filing.

- ii. Ms. Cuellar stated that some things such as insurance requirements, will not be implemented immediately since TDA will need to update forms; and to give time for industry to update their policies.
 - 1. Other proposed rules will be implemented immediately such as the requirement for EPA registration number and product name. Ms. Cuellar stated that this is a minor issue and can be discussed during inspections.
 - 2. There will be updates posted to the TDA website at www.texasagriculture.gov/SPCS
 - iii. Dr. Davis asked questions regarding the comments received and the time period where these comments will be discussed.
 - 1. Mr. Karam stated that he has not received any comments. Mr. Karam stated that enforcement staff in conjunction with program would discuss the comments and would not file for rule adoption until a determination on how to proceed was made. Mr. Karam went on to state that if comments that were determined to not need any action at this time were received, the rational behind this would be included.
 - iv. There was some discussion over the penalty matrix after a question regarding the difference between NOV and warning.
 - 1. Ms. Debbie Aguirre expressed concerns over businesses operating without a license and when does this become a criminal action.
 - 2. Mr. Karam stated that criminal actions are significantly and substantially more than operating without a license such as something environmentally related, something involving competitive bidding, or fraud.
 - 3. Ms. Aguirre expressed additional concerns over businesses operating without a license
- d. Update on School IPM – Aaron Curiel**
- i. Mr. Curiel provided the top 10 Non-commercial school instances cited for FY 2022. Mr. Curiel stated that the top instance cited was “records for approval of yellow category pesticide use are not maintained” with 31 violations. The second was “IPM Coordinator has not obtained at least six hours of IPM continuing education units at least every three years” with 26 violations. Mr. Curiel read through the remainder of the list
 - 1. Stated that many of these are marked during an inspection, the system will automatically require a re-inspection whereas there are some that will automatically refer to enforcement such as IPM Coordinator not obtaining continuing education and missing the 48 hours posting notice.

IV. Discussions and Possible Action

a. Discussion on What Can be Done to Improve School IPM

- i.** Mr. Curiel stated that there are plans to do regional visits with ISDs to present IPM laws and regulations and familiarize districts with the agency. Potential training spaces include TDA regional offices and possibly AgriLife Extension offices.
- ii.** Mr. Curiel stressed the importance of education to internal and external customers such as teachers and cafeteria staff. Stated that there are presentations, “Stop School Pests”, available from a university in Arizona that can be condensed down and be placed on the TDA website for IPM Coordinators to use in their school. The idea is for IPM Coordinators to modify these presentations for their school district.
 - 1.** Mr. Mike Brooks stated that there are over 1,000 school districts in the state of Texas and many of these have less than 500 students. Mr. Brooks expressed concerns about some of the smaller district IPM Coordinators being able to do the training themselves and that we may need to reach out to superintendents.
 - a.** Ms. Janet Hurley expressed concern over needing help from the TDA to provide more IPM training.
 - i.** Ms. Cuellar stated that there have been discussions over TDA providing trainings but due to the pandemic and staffing constraints the TDA has not been able to implement this yet
 - iii.** There was further discussion by the committee about TDA lead IPM talks in the regions

b. Update and Discussion of Technician Training Course Strawman Rule (4 TAC §7.136

- i.** Ms. Cuellar showed the strawman rule to the committee
 - 1.** It was discussed that course providers can send things either electronically or through the mail, but it is strongly suggested that all information be sent electronically.
 - 2.** Dr. Davis stated that number 5 in parentheses should be deleted
 - 3.** There were questions regarding the course numbers for Technician’s Training courses
 - a.** Ms. Cuellar stated that at this time, the system does not allow for the ability to provide course numbers, but hopefully in the future system there will be the ability to issue course numbers for the Technician Training course.
 - 4.** Dr. Robert Puckett made the motion to accept the changes, and this was seconded by Dr. Patel
 - 5.** Ms. Cuellar stated that the virtual Technician Training course allowance will expire on 12/31/2022.

- a. Dr. Davis put forth a motion to extend the allowance of the virtual Technician Training Course for another year or until the rule is adopted
 - i. The motion was seconded by Mr. Randy McCarty
 - ii. The committee was all in favor. Mr. Tommy Kezar abstained from voting.
- b. There was a comment requesting an explanation of the strawman rule. Ms. Cuellar stated that the strawman rule is written for discussion purposes and is not a proposed regulation. This strawman rule was written to discuss the option for a virtual Technician Training Courses.

ii. Interpretation and Discussion of Specimen Label vs. State Approved Label to Meet Requirement of Rule 4 §7.174(b)(4)

1. Ms. Charlene Farias is the coordinator for the Product Registration program. There was background given on the rule being discussed. Per rule there is the requirement for a label to be given to the customer at the time the time of disclosure. Some businesses have been distributing specimen labels, but the agency recommends that the pesticide product's label be provided with the disclosure.
2. Enforcement provided a legal interpretation; Ms. Cuellar stated that enforcement advised a specimen label can fall within the framework of this rule from a legal perspective.
3. A conversation about the difference between a state approved pesticide product label and a specimen label took place among the committee.
 - a. Dr. Davis stated that in the past many PMPs have been providing specimen labels at the time of disclosures. This was a question that was posed in the previous meeting.
4. Ms. Farias started by saying that the state will not accept specimen labels, and there is a specific watermark that is present on specimen labels. Ms. Farias stated that a specimen label is not necessarily the final label
 - a. Information in a specimen label can differ from the approved label. An approved label will be compared against the EPA stamped label
 - b. Ms. Farias stated that Section 18 labels will have headers, and that the state also has supplemental labels on file.
5. Dr. Davis stated that the specimen label is not a legal label, and the specimen label is just an informational piece.
6. There was further discussion between the committee and Ms. Cuellar

7. It was reiterated that the intent of providing the specimen label is for the licensee to provide a label along with disclosure documents so the consumer can have more information on the treatment
8. There was a question from the committee inquiring how to obtain a copy of the state approved label.
 - a. Resources on how to obtain state approved and legal labels were discussed
9. Mr. Randy McCarty stated that he had an inspection done by the TDA and he received comments from the inspector about using a specimen label. He suggested updating the definition of a label
 - a. He stated that he did not receive a fine for this, but the inspector provided guidance on not using specimen labels
10. Ms. Cuellar wanted to stress that this discussion is only involving the label that is given to the consumer for disclosure document information purposes only, and in any other situation a specimen label will not be accepted.
11. It was determined that the current language in the rule can support the use of specimen labels for disclosure paperwork only.
 - a. Ms. Cuellar stated that this could be discussed with the inspectors and the legal interpretation will be shared
12. Mr. Randy McCarty stated that he wanted to stress he did not receive a fine at his inspection for using specimen labels, he just received comments from the inspector.

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

- a. Mr. Kezar wants the committee and program staff to look at and discuss the requirements for business to notify the TDA within 20 days when there is a loss of the certified applicator.
 - i. Ms. Cuellar stated that they have processed business hardships 60 days out, but is willing to discuss Rule §7.129
- b. Dr. Davis offered comments regarding the TDA having an informational piece for sole proprietorships for succession of the business after the death of the sole proprietor. Mr. Kelly stated that the TDA does not currently have this
- c. The committee requested an update on the YouTube videos
- d. The committee requested a full year of enforcement data
- e. It was discussed that the 4th Quarter for FY 2022 inspection data was not shown. Ms. Cuellar shared the inspection data with the committee at this time.

VI. Public Comment

- a. Ms. Janet Hurley, Texas A&M AgriLife Senior Extension Program Specialist. Ms. Hurley stated that she has made a public information request asking for 10 years' worth of school inspection data. Ms. Hurley stated that she will be requesting information from DSHS on human exposure. She stated she will then take the data and review it to see how far school IPM has come in the 30 years since it has been adopted. Ms. Hurley stated that so far she has found that about 5

districts have been seen once in a 10 year period where as there are a few districts that have been seen 6 to 8 times in a 10 year period.

- b.** Ms. Debbie Aguirre, Elite Exterminating. Ms. Aguirre stated that she is speaking as director of the Costal Bend Pest Control Association and on November 29, 2022, there is a live workshop being given and please spread the work. Ms. Aguirre stated that she is now speaking on behalf of Elite Exterminating, and she would like to give TDA legal a heads up, she will be providing comments on the proposed rules. Ms. Aguirre requested clarification on the proposed increase in insurance requirements. Ms. Aguirre stated that most operators are one-man operators, and they only do pest control. She expressed her concerns over what the smaller shops will have to sacrifice to meet the new minimum insurance requirements
 - i.** Mr. Kelly stated that the decision to increase the insurance requirements came to fruition over about 1.5 years, and the insurance requirements have not changed in around 30 years. He went on to state that the increase is to be sure consumers as well as operators are protected now that property values are much higher than they used to be. Mr. Kelly stated that the increase in insurance is something that has been vetted through the committee for some time.
 - ii.** Dr. Davis stated that he joined the committee in the middle of the discussion on insurance, and he believes that someone had stated that it would be affordable to pest control operators.
 - iii.** Ms. Cuellar stated that she believes Ms. Nancy Zaiontz attended a meeting to provide more information on insurance requirements and Ms. Zaiontz worked in insurance sales.
 - 1.** Ms. Aguirre expressed concerns over an insurance salesperson suggesting an increase in insurance coverage for pest control operators.
 - 2.** Dr. Davis stated that as he recalled Ms. Zaiontz provided quotes on the cost of insurance policies. Mr. Kelly stated that Ms. Zaiontz was not recommending there be an increase in insurance and the increase was collectively decided on by the committee.
 - iv.** Ms. Aguirre also expressed concerns over if this increase is due to insurance companies having to pay out more money for claims. Ms. Aguirre requested documents showing the comparison in cost from the current insurance requirements to the proposed insurance requirements
 - 1.** Mr. Kelly stated that there were no documents like this given to the committee, but this information was recorded and is likely in the minutes.
 - v.** Ms. Aguirre expressed concerns over home inspectors that do not have the required training to do WDIRs. She would like to discuss what the minimum education and training that should be required for home

inspectors entering into the pest control industry should be. She stated that this is causing issues within the industry.

1. Dr. Puckett stated that the committee decided to table this discussion.
2. Ms. Cuellar stated that the TDA must follow the statute. One of the requests was to split the categories by avoiding training in applications and only focusing on inspection requirements for those who wish to be home inspectors. After further discussion it was determined that it is not possible to avoid the training in applications because the statute sets forth this requirement. Ultimately it was tabled.
3. Ms. Aguirre stated that she is not in favor of splitting the categories. She stated that she has seen reports that are incorrect. She expressed concerns over the time it takes for individuals to complete the required apprentice training and would like this to be a topic of conversation.
 - a. Dr. Puckett stated that this has been a topic of discussion and there was significant pushback from those within the industry.
 - b. Ms. Cuellar stated that if an individual is only testing in one category and they manage to schedule the technician's training course within that first month, it is possible to complete all required training within a month. The training for one category consists of 68 hours, which can be done within the business, plus the technician's training course adds up to less than two weeks. Ms. Cuellar stated that she is not arguing whether the training was completed, just that it is possible. She also stated that if Ms. Aguirre has concerns and sufficient information, she can always file a complaint.
 - c. Mr. Kelly stated that nobody is allowed to bypass any business license or training requirements. Issues have been addressed as they appear.
- c. After discussion by the committee, Dr. Davis asked if TDA staff members are evaluated on enforcement data
 - i. Mr. Kelly and Ms. Cuellar stated that no they are not.

VII. Conformation of Next Meeting Date – January 19, 2023

- a. The meeting date was confirmed

VIII. Adjourned

- a. Mr. McCarty made the motion to adjourn the meeting at 11:27 AM