

NOTICE OF OPEN MEETING SUBMISSION

DATE OF SUBMISSION: January 12, 2024  
NAME OF AGENCY: Texas Department of Agriculture  
BOARD: N/A  
COMMITTEE: Structural Pest Control Advisory Committee  
DATE OF MEETING: January 25, 2024  
TIME OF MEETING: 9:00 AM  
STREET LOCATION: Stephen F. Austin Building  
Room 1003A  
1700 North Congress Avenue  
CITY LOCATION: Austin, Texas 78701

**STRUCTURAL PEST CONTROL ADVISORY COMMITTEE**

**MINUTES**

**Meeting Date: January 25, 2024**

**Place: Stephen F. Austin Building**

**Meeting No.**

**In-Person/Teleconference/Microsoft Teams Meeting**

**MEETING ATTENDANCE:**

**Advisory Committee Members**

Roger Borgelt

Dr. Nancy Crider

Elyes Benantar

Randy McCarty

Dr. Bob Davis

Brien Binford

Dr. Robert Puckett

Mike Brooks

Clint Lehew

Tommy Kezar - unable to attend.

<b><u>Agency Staff</u></b>	<b><u>Affiliation</u></b>	<b><u>Program</u></b>
Allison Cuellar	TDA	ACP
Michael Kelly	TDA	ACP
Robert Thompson	TDA	ACP
David Castillo	TDA	GC
Marshall Webb	TDA	Communications
Maddison Jaureguito	TDA	Communications
Robin Johns	TDA	Communications
Barbara Strickland	TDA	Communications
Cori Schrader	TDA	Communications
Kristi Shuey	TDA	Communications

<b><u>Interested Parties</u></b>	<b><u>Affiliation</u></b>
Eric Nystrom	EPA
Debbie Aguirre	Elite Exterminating
Collin Nowak	WDI Science
Colby McCarty	Veseris
Janet Hurley	Texas A&M Agrilife Extension Service
John Hebert	Potential Licensee

**I. Call to Order**

- a. Tommy Kezar was not able to attend the meeting.
- b. Nine members of the committee were either virtual or present at the Stephen F Austin building for the meeting, have quorum to start and chair this meeting.
- c. The meeting was called to order by The Chairman Mr. Roger Borgelt at 09:01 AM on January 25, 2024

## **II. Review and Approval of Minutes of the October 2023, meeting.**

- a) Question about Meeting Attendance.
- b) Randy McCarty makes a motion to approve the Minutes, the motion was seconded by DR. Bob Davis, and all were in favor.

## **III. TDA Update**

### **a) Communication Team introduction/Presentation YouTube Video Update**

TDA has the largest state audience in the nation and would like to be ten times larger, Daily market roundup commissioner reports on agriculture commodities and General Market. Commissioners TV show Texas agriculture matters has aired 11 seasons 80 episodes and has not repeated a topic yet. Family Land Heritage Program 50<sup>TH</sup> anniversary. The Communication Division is in the process of hiring a videographer and hopes within the next few months to get the departments How-to YouTube Videos complete.

- i. Randy McCarty asked how TDA decided the content for a video regarding pest control.
  - ii. The Communications Team responded all topics were presented by the SPCS program and currently they have three topics queued up.
  - iii. Mike Kelly states topics will always be vetted through committee and in the future, we will solicit topics directly from committee members.
  - iv. Allison Cuellar informs of the current videos waiting to be finished **E-apply online application system., How to fill out The VTR, How to apply for an Apprentice registration.**
  - v. Nancy Crider suggests for a future topic having videos currently recorded by AgriLife also be made available through TDA's Site; and the ability to suggest future video topics.
- b) Review of Inspection and Enforcement Data for 1<sup>st</sup> Quarter of FY24 – Mike Kelly and Allison Cuellar**
- 1. The inspection numbers for FY 2024 range from September 2023 through November 2024 were presented. The FY24 commercial inspection goal is 1065 and 282 commercial business inspections have been completed for 26.5% of the goal. Noncommercial business inspections have a goal of 460 and 124 have been completed, 31% of the goal. There is a goal of 225 school inspections and 98 school inspections have been completed for 43.6% of the goal. There is a goal of 190 Use Observations and 34 have been completed for 17.9% of the goal.

2. Enforcement data for the 1<sup>st</sup> Quarter of FY 2024 was reviewed. There was a total of 44 notices of violations (NOVs). The highest amount of NOVs were for “Other” with 18 NOVs. breakdown of “other” was shown 3- Use inconsistent with labeling, 2- Failure to maintain Technician and/or apprentice training records, 3-Operating without a license, 4-incomplete termite disclosure document/termite disclosure document violations, 1- Failure to provide info/records, 3 Failure to meet minimum continuing education requirements, 1- Failure to cooperate/allow inspection, - 1- Any violation of the label instructions regarding storage or disposal. The second highest was “operating without a business license” with 10 NOVs.
  
3. There was a total of 54 warnings 4-Failure to comply with Training or supervision requirements, 2- Failure to comply with IPM Requirements, 1- Failure to maintain insurance, 1- Failure to provide notice of employee separation, 4-Failure to timely register employees, 5- Incomplete pesticide use records, 13 operating without a license, 24- “Other”. A breakdown of “other” was shown. Total actions for the 1st Quarter FY 2024 were 98, and the total penalties assessed were \$19,600 and collected were shown \$17,100.
  - i. Dr. Bob Davis questioned why Failure to cooperate/allow inspection is a NOV and not just a Warning.
  - ii. Michael Kelly informed it may be due to repeated uncooperating “dodging inspection” the department works with licensees in various ways to get them to comply with inspections.
  - iii. Allison Cuellar states the NOV for Failure to cooperate/allow inspection is probably from a complaint, some individuals just won’t meet with the department.
  - iv. There was discussion among the committee about operating a business without a license being a warning.
  - v. Allison Cuellar stated we had a few incidents included in Operating without a license from inspection-based incident that could just have been a small lapse found during inspection.
  - vi. David Castillo explains they look at all warnings and violations individually and take all circumstances into consideration. If more information on these cases is needed we can provide more information during next meeting after talking to Morris and Chris.
  - vii. Dr. Pucket asked after the warning are the company’s given a period to correct the issues.
  - viii. Mike Kelly explains most likely the company has already come into compliance and the warning is for the period they operated without.

### **c) Exam updates**

- 1.** Exam Portion Pass Report for CY23 was reviewed 7172 exams taken 4327 exams Passed (60.33%) 2845 Exams Failed (39.67%) the exam failed at the highest rate was Tx Structural Fumigation Technician and TX wood Preservation Technician (66.67%) the exam with the Highest pass rate was TX Weed Control Technician (90%)
- 2.** Exam Portion Pass Report for CY22 was reviewed 7226 exams taken 4301 exams Passed (59.52%) 2925 Exams Failed (40.48%) the exam failed at the highest rate was Tx Pest Control Certified Applicator (56.69%) the exam with the Highest pass rate was TX Wood Preservation Technician (87.50%)
  - i.** Discussion about category pass fail rate.
  - ii.** Dr. Bob Davis asks if the department has a failure retake report.
  - iii.** Mike Kelly states we do have a report for that.
  - iv.** Dr Puckett asked if this report contains retakes.
  - v.** Allison Cuellar states it does, this is the total number of exams administered; if someone takes the test 3 times due to failing, those 3 exams administered are included in this report. Allison also showed CY21 report for reference.
  - vi.** Mike Kelly states the department will partner with PSI to investigate individual questions and how frequently a question is missed and present the topic at the next meeting and will present the initial pass-fail retake rate report as well.
  - vii.** Dr Bob Davis asked if the committee could use the data to determine what categories to look at first, or will the department just look at all exams.
  - viii.** Mike Kelly says the department would be using the data we have and see what exam has the highest pass-fail rate and investigate individual questions for changing.
  - ix.** Randy McCarty asks if the pool of questions has changed in the last three years or has it been the same.
  - x.** Allison Cuellar states they are the same but, in the future, we would like to work with Texas AgriLife on building Question banks.
  - xi.** Brien Binford states the images on the exam are of poor quality.
  - xii.** Mike Kelly states the department will investigate image quality.

### **d) Insurance update – Allison Cuellar**

- 1.** Mrs. Cuellar explained updates about insurance on website and where to find the new ALS-1101 also explained that the old ALS-1101 is available. Allison

explains the process of accepting new forms and how the department flags accounts sending in the old form. Allison explains the 3 changes on the new form 1) revised the insurance amount totals, 2) Changed section A, TDA license number, to TPCL Number. 3) changed the revision dates and added instructions to help with completing the new form.

2. Mike Kelly Explains why the older form is still active on the website. And will be removed when not needed.

#### **e) Drone Update-Mike Kelly**

1. Mike Kelly provides AAPCO committee information on drones to provide information on how other states are responding to drone applications. States TDA policy as a structural applicator you need to have the category the application is being made in and the drone is application equipment. Asked EPA drone committee for guidance but Nothing from EPA drone committee at this time. Mentions Dr. Pucket and Texas A&M Engineering department has a Presentation about applying pesticides with drones & would like to get them to present to the committee.
  - i. Drone Discussion
  - ii. Mr. Roger Borgelt expresses concern over applying pesticides with drones without clarification on the label.
  - iii. Mike Kelly states the Department stance is if label doesn't prohibit it and mixing rates are correct then the application would be approved.
  - iv. The committee confirms they would like Texas A&M Engineering to present the drone instructional at the next meeting.

#### **f) Barcode scanner for scanning licenses update-Allison Cuellar**

1. Mrs. Cuellar informs the committee about meeting with IT about the barcode already on the license and the possibility of getting the PA-418 to have the functionality to scan the license barcode and have the licensee information populate on the roster. IT states it would be possible, estimates time needed 3-4 weeks to build, the provider would need a scanner and all individuals would need to have licenses on their person.
2. Mike Kelly cites a conversation with Tommy Kezar about the barcode scanner not useful for remote virtual learning providers.
3. The committee agrees it would be a good tool to have for those who would benefit and choose to use the scanner.

4. Dr. Bob Davis asked would the scanner tool work for all license across the board.
5. Mrs. Cuellar confirms it will work for the CA licensees, will determine with IT if it works for Techs and apprentices. States the only licensees required to take CEUs would be Certified Applicators
6. Dr. Bob Davis asks for clarification on how long it would take to get this tool up and running.
7. Mrs. Cuellar responds that 3-4 weeks would be the time it would take to complete tool then a trial/test would need to be run within the department.

**g) How to complete VTR (verifiable training record)- Allison Cuellar**

1. Allison Cuellar shares slide show and gives direction for completing the VTR and mentions by rule (§7.132& §7.133) The VTR is required. Apprentices will have a VTR, Technician will create a new VTR form. Date of training must be exact, training subject/category for that date must be listed, must indicate classroom or OTJ, must indicate how many hours of training in the subject completed on that date, in house training must print and sign name with license number, Training Events/CEUs must be listed and have attached certificate.

**A. What needs to be recorded on the Apprentice VTR form.**

- 40hrs on-the-job training in each license category they will provide service/test in. Use records or WDIRs should reflect the apprentices name and registration number to support the VTR.
- 8 hours classroom training in each license category they will provide service/test in.
- Two (2) hours classroom training in each of the general standard subjects totaling 20 hours of classroom training.
  - i. Mr. Roger Borgelt presented a question about why the driver's license is required on the form? Also asked why the listed website has no purpose.
  - ii. Mike Kelly stated the purpose is for licensees who haven't received registration or card prior to attending training to have a way to record they were present for training and the Driver's license photo can be used as verification.
  - iii. Allison states the department is hoping to finish instructions to take VTR form entirely electronic in the future.

**B. What needs to be recorded on the Technician VTR form**

- 8 hours of training in General Standards subjects. 2 of the 8hrs may be on-the-job (OJT) all remaining must be classroom.

- i. Dr. Bob Davis presents a question, how do you associate training done at a CEU course or event not listed in the A-J general standards.
- ii. Allison states you would need to determine the most appropriate category for that training subject. Example given (a course labeled scorpions if its covering control and biology) you would select general standard (B) Recognition of pest and pest Damage.
- iii. Mike Kelly informs the committee that one of the YouTube videos will be how to complete the VTR.

**h) Department of State Health Services Pesticide Exposure Data-Elyes Benantar DSHS**

1. The Annual number of reported Acute Occupational Pesticide Poisonings (AOPP) for Texas between 2006-2021 was 2,723 with 2006 being the highest with 263 reported and 2010 being the lowest with 85 reported. Number of AOPP by Gender, 989 Female 1718 Male, 16 Unknown. The rate of AOPP by gender was 1.26 per 100,000 FTE workers for females and 1.54 per FTE workers for male. Race/ Ethnicity breakdown provided 1313 missing data, 719 Non-Hispanic White, 540 Hispanic or Latino, 83 Non-Hispanic Black, 68 all other races. Rate of AOPP by Race/Ethnicity per 100,000 FTE Workers .57 All other races, .79 Hispanic or Latino, .4 black non-Hispanic, .81 White non-Hispanic. The number of AOPP by age Group 25-34 was the highest at 765 and 65+ was the lowest at 71. The Rate of AOPP per 100,000 FTE Workers by age group was the highest among 16-17 at 7.02 and the lowest was 55-64 at 0.83. The number of AOPP by industry sector was the highest for unknown/ not reported at 1683, The highest known was Services at 445 with the lowest cases reported from mining at 13. The number of AOPP by occupation group unknown had the highest at 1646, service was the highest known occupation group at 456, sales and related was the lowest with 128.
2. The Number of AOPP by exposure route was 1,023 inhalation, 796 Route Unknown, 549 Ocular, 246 Dermal, 109 Ingestion
3. Number of AOPP by exposure site: 1,053 Unknown/missing, 558 non-manufacturing commercial facilities, 285 institutions, 270 other, 235 Agricultural, 165 Private residence, 141 Manufacturing, 12 Not applicable, 4 more than one site. Number of AOPP by contributing Factor: 1341 unknown case were the highest, 328 spill/splash of liquid or dust was the highest known factor, illegal pesticide used/illegal dumping was the lowest factor.
4. Number of AOPP by severity of Illness or injury: low severity 2183, moderate severity 392, unknown 87, evaluated not applicable 33, High severity 26, Death 2.
5. Number of AOPP by treatment site: Advice from Poison Control Center 1,666, Emergency Department 416, Unknown/missing 400, Physician office or medical care clinic 59, Other 55, Declined to seek medical care 53, onsite by emergency responder 30, Employee health clinic 24, Hospital for inpatient care 20.
6. Program is working on a data summary of acute occupational pesticide poisoning in Texas from 2006 to 2021.



- i. Mr. Roger Borgelt requested DSHS send the “acute occupational pesticide poisoning in Texas from 2006 to 2021 report” to the committee when it becomes available.
- ii. Mr. Benantar states Yes, this report should be up before the next committee meeting, and he will send it to Mike.
- iii. Randy McCarty presents a question about the 50% reduction of cases from 2015-2021 is there a root cause? How can we duplicate that moving forward?
- iv. Elyes Benantar states he would investigate/ find a way to find out cause of the fluctuation but as of now doesn’t have an answer of why.
- v. Dr. Nancy Crider states her surprise at the lack of agriculture cases.
- vi. Mr. Benantar states Agriculture tends to come up more in other states and the low numbers for agriculture could be due to cases being categorized as unknown/unreported.
- vii. Dr. Pucket questions the category of exposure of inhalation and different types of exposure pertaining to pesticides.
- viii. Mr. Benantar clarifies he has coded some scenarios with multiple variables occurring in the same case.

No further Questions.

#### **IV. Discussion on Possible Action Items**

##### **a) Current Policy of allowing treatment using the PEST category for possible stinging/biting lawn and ornamental pests (Tussock moth larva).**

1. Mike Kelly states This discussion was brought to the department by an individual in L&O industry, Tussock moth is an L&O pest, but the consumer is more concerned by the possible sting of the larva. Individual in the L&O industry doesn’t believe pest category individuals should be able to treat the larvae because it doesn’t sting, the department reached out to Wizzy Brown and received clarification some sting and some don’t so it is difficult to determine which species they are dealing with, a species determination would need to be made. The department has allowed individuals with pest category to treat potential stinging larvae in the past.
  - i. Mr. Roger Borgelt presents the question does someone with the pest control category have the proper education and training to treat these pests? And if so then we should allow them to do it.
  - ii. DR. Puckett points out the larvae are not stinging they have hairs that cause irritating rash but have no venom and questions if someone in the pest category would have the education to treat them.

- iii. Mr. Roger Borgelt asks if there are any specific questions pertinent to this insect on the pest category exam.
- iv. Allison Cuellar states the pest category has no questions on the exam pertaining to this insect, the only questions pertain to nuisance pest that can sting and bite.
- v. Allison clarifies the issue at hand is the larvae of the tussock moth not the adult moth, the adult moth is L&O pest only.
- vi. Mike Kelly identifies the issues is when the larvae cross the threshold of being a pest on the structure not in the tree.
- vii. The committee's instruction is to treat with the pest category if the larvae is on a horizontal surface near the structure when it has become a possible nuisance pest.

**b) A review of the necessity for a definition of on-the-job training.**

- 1. Allison Cuellar informs the department doesn't have a definition of on-the-job training, what we are telling individuals its training that your employee receives while on the job, typically at a customer or an address where they're doing services, sales, inspections, or identification of pest. Is a definition necessary?
  - i. The committee takes the stance that if they are out in the field then it's on the job training.

**c) Self-Assessment Questionnaire**

- 1. Chairman Borgelt postpones topic and sets deadline for April 1, 2024

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

- a. Additional Topics for the You tube videos/ information from communication team about YouTube videos-Nancy Crider**
- b. Exam Updates Failure rate and exam Questions integrity info with notes**
  - i. DR Bob Davis would like to check failure rates and check the two-pest control exams.
  - ii. Mike Kelly confirms the department will look at the pass-fail rate and the integrity of the questions on the two pest exams. The department will also look at the images on the exam for quality.
- c. Texas A&M drone information/presentation**
- d. Bar Scan Update on progress being made for the tool.**
- e. Reciprocal license from other States.**
  - i. Randy McCarthy states he gets questions about Reciprocal licenses often and would like to discuss the topic among the committee.
- f. DSHS public safety Outreach Handout/Information.**
  - i. Nancy Crider states there was some material not long ago that was made available before and would like to have the material available again.
  - ii. Mike Kelly states this was a project taken on by the department a few years ago for the state fair and outreach material was created,

and we could revisit that material, and we can vet it out through the committee.

## **VI. Public Comment**

### **a) Mr. John Hebert representing himself stated the following:**

- i. I'm currently trying to start a business. I have reached out to Allison Cuellar and Nancy Crider who recommended I speak with the committee to get clarification. What I'm trying to do is start a trapping company for pocket gophers and according to the law as it reads now since its not a live trap it still falls under the structural pest control licensing and he would need to get that license, I know of several companies in the state that exist that do this service and don't advertise having a structural license. But I'm a police officer. So, I can't really get caught up in doing something illegal. But I know as far as occupation code 1951.059 says that y'all can make rulings on different things, different activities that provide minimal risk or harm to human beings and pets and so forth. So, I guess I'm just trying to get clarification on that particular ruling on that activity that I'm trying to do. I wouldn't be using any pesticides. It would mainly be "speed" the mechanical traps is what I'd be wanting to do, so there will be no pesticides involved and if you're familiar with the Gopher traps you place the into the tunnels so there's minimal risk that anybody would actually be harmed by doing that.
  - i. Mr. Roger Borgelt states the advisory committee has limited authority and he's not sure the committee can make a ruling but rather make a recommendation to the agency or to the commissioner. Ask if he was using all live traps?
  - ii. John Herbert clarifies they are killing traps made by Victor.
  - iii. Mike Kelly states the only experience he has is following the exemptions in the law and or what the law describes as engaging in the act of structural pest control, which includes using devices.
  - iv. DR Puckett asked MR. Hebert, "Are you wanting to do this on residential properties or in agricultural settings?"
  - v. John Hebert stated Both.
  - vi. Mike Kelly States this would be fine under the AG side.

- vii. Dr. Bob Davis asked if he can do it for money on that side?
- viii. Allison Cuellar provides information about Agriculture code and the fact no License would be required for performing this service on the AG side.
- ix. Committee Chairman would like to Put the issue on the next agenda for further discussion.
- x. Allison Cuellar states we have had other companies doing this without a license that we have caught, and they were referred to enforcement.
- xi. David Castillo States “no we can’t make an exception at this time due to the fact we are enforcing the issue”.
- xii. The committee Decision is Mr. John Hebert is “good to go” on the AG side, and the topic will be placed on a future agenda for further discussion.

**VII. Confirmation of Next Meeting Date – April 18, 2024**

- a) The meeting date was confirmed.

**VIII. Adjourned**

- a) Dr. Bob Davis made the motion to adjourn the meeting at 12:16 PM