



**STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL**

**A PERFORMANCE AUDIT  
OF THE**

**STRUCTURAL PEST CONTROL BOARD**

**SEPTEMBER 1983**

**A REPORT TO THE  
ARIZONA STATE LEGISLATURE**



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STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL

September 19, 1983

Members of the Arizona Legislature  
The Honorable Bruce Babbitt, Governor  
Mr. Wayne Earley, Chairman  
Structural Pest Control Board

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Structural Pest Control Board. This report is in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the Structural Pest Control Board is found on the yellow pages preceding the appendices.

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

Douglas R. Norton  
Auditor General

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OFFICE OF THE AUDITOR GENERAL

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REPORT 83-16

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## SUMMARY

The Office of the Auditor General has completed a performance audit of the Arizona Structural Pest Control Board in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset Review process set forth in A.R.S. §§41-2351 through 41-2379.

The Structural Pest Control Board, established in 1965, is comprised of five members who are appointed by the Governor. Three of the five Board members' principal businesses must have been structural pest control for at least five years preceeding their appointments. The remaining two Board members are public members who must be well versed in the field of public health, pesticides, entomology or structural pest control practices. The purpose of the Board is to administer license and certification exams, renew licenses and certifications annually, conduct both Federal use and regular State inspections, investigate consumer complaints and hold hearings if necessary. The Board's full-time staff consists of an executive secretary, two typists and two inspectors.

### Need for Continued and Strengthened Regulation (Page 13)

The State should continue to regulate the structural pest control industry to protect the public from potentially serious chemical harm and structural damage. Pest control operators (PCOs) use many pesticides which can be deadly to humans and animals; furthermore, inadequate treatment by PCOs can and does result in costly damage to property.

In addition, the Board's current regulatory powers over the termite-control portion of the industry\* should be strengthened to allow for more effective discipline. Presently, the Board is unable to adequately control

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\* See Appendix for information on termites.

unethical or incompetent termite treatment practices. The Board needs to develop 1) enforceable termite treatment standards and 2) more informative reporting requirements for termite inspections.

Business Licenses (Page 25)

The Structural Pest Control Board needs to license both individuals and businesses. The current system of regulating the business through the individual's license is based on vague statutes and does not allow for effective industry control. Unscrupulous companies can continue as long as the owning management can find licensees to qualify the business. Unprofessional licensees may continue to operate since the business may not be held ultimately responsible for the licensee's actions. The Structural Pest Control Board statutes should be revised to establish a licensing or registration system for both companies and individuals.

Strengthened Enforcement  
Activities Needed (Page 33)

Although the Board acts aggressively on many consumer complaints, some improvements are needed to protect the public more fully.

- Current procedures used by the Board to issue consent orders are misleading and could be considered unfair to licensees. As a result of the procedures, a licensee may feel intimidated into signing a consent order as originally offered without knowing he has other options available. The Board should follow consent order procedures described by the Attorney General's Office.
- Board members and staff could benefit from training adequately in gathering and presenting evidence necessary to properly dispose of complaints.

- The Board's current procedures for informally disposing of complaints can be made potentially more beneficial to consumers and/or simpler for the Board. The Board needs to consider requiring refunds or training more often through its consent order process, as well as a simpler alternative to consent orders for minor violations.

Licensing Fee Schedule (Page 43)

The current licensing fee schedule is inequitable and will require restructuring if businesses are licensed. Although larger companies generate more costs for the Board, the same license fee is charged to each "qualifying party" licensee regardless of the size of the company with which he is associated. If businesses are licensed, Board statutes should be amended to allow for a more equitable fee structure based on company size.



## INTRODUCTION AND BACKGROUND

The Office of the Auditor General has completed a performance audit of the Arizona Structural Pest Control Board (SPCB) in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset Review process set forth in A.R.S. §§41-2351 through 41-2379.

### Structural Pest Control

Structural pest control is defined by A.R.S. §32-2301, paragraph 4 as

" . . . controlling household pests, wood destroying pests or organisms, other pests which may invade households or other structures, including railroad cars, boats, docks, trucks, airplanes or the contents thereof, or pests, including weeds, which exist in, near or around structures, in lawns or ornamental shrubs or trees. . . ."

This effectively includes most commercial exterminations of virtually all kinds of common pests (e.g., insects, termites, rodents) as well as residential weed control or lawn spraying.

### Board Composition

The Structural Pest Control Board, established in 1965, is comprised of five members who are appointed by the Governor. Three of the five Board members' principal businesses must have been structural pest control for at least five years preceeding their appointments. The remaining two Board members are public members who must be well versed in the field of public health, pesticides, entomology or structural pest control practices. The duties of the Board include administering license and certification exams, renewing licenses and certifications annually, con-

ducting both Federal use and regular State inspections,\* investigating consumer complaints and holding hearings if necessary. The Board's full-time staff consists of an executive secretary, two typists and two inspectors.

#### Requirements for Licensure

In order to be granted a license to practice pest control in Arizona applicants must 1) be of good moral character, 2) possess the necessary practical experience, 3) pass the Board-administered examinations in the area of pest control to be conducted, 4) not have violated any Board statute rule or regulation, and 5) pay the appropriate fees. Licensees are also required to be either insured or bonded for a minimum of \$100,000 for property damage and public liability.

The Board must hold two examinations a year, one in March and one in September. Additional examinations may be held as the Board deems necessary. Currently, there are approximately 350 licensees. The Board renews licenses on an annual basis.

Licensure Categories - The Board issues one license which may include one or more of the following classifications:

1. General pest control (not including the control of wood-destroying insects or organisms, weed control and fumigation),
2. Control of wood-destroying insects and organisms,
3. Weed control,
4. Fumigation, and
5. Turf and ornamental horticulture pest control.

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\* Federal use inspections consist of Board inspectors monitoring the actual application of pesticides, especially restricted-use pesticides. State inspections consist of Board inspectors visiting structural pest control business establishments and checking for compliance with statutes and rules addressing company records, pesticide storage, application equipment, truck markings, etc.

The Board also issues a license which encompasses all the categories of pest control listed. Licensees and the companies they qualify (see discussion, page 25) may practice only those types of pest control in which they have been licensed. For instance, a licensee with only a weed control license may not perform termite control work.

#### Requirements for Certification

The Board also certifies pest control operators and applicators to regulate and assure minimum qualifications of persons applying restricted-use pesticides.\* (Pest control operators are licensed, applicators are not.) Applicants who pass an examination and pay the associated fees are granted certification. Pest control operators do not have to be licensed to be certified or vice versa. The Board currently conducts training for and administers the certification examination on a monthly basis. The Board has certified approximately 1,300 applicators.

#### Funding

Ninety percent of the examination and license fees collected by the Board are deposited in a special Board fund to support its operation. Additionally, the Board has received Federal grant monies annually from the Environmental Protection Agency since October 1978 to supplement its certification and enforcement programs. The Board's current EPA grants will terminate September 30, 1983. Recent budget cutbacks at EPA diminishes the likelihood of SPCB continuing to receive Federal funds.

Table 1 reports Board revenues and expenditures for fiscal years 1978-79 through 1982-83. Table 2 shows the Board's activity levels during this period.

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\* The Environmental Protection Agency (EPA) determines which pesticides are designated restricted use based on guidelines established in the 1972 Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The Board of Pesticide Control has this authority on the State level. (See discussion of restricted-use pesticides on page 14.)

TABLE 1\*

ACTUAL REVENUES AND EXPENDITURES FOR FISCAL YEARS 1979-80 THROUGH  
1982-83 AND ESTIMATED REVENUES AND EXPENDITURES FOR FISCAL  
YEAR 1983-84: STATE AND FEDERAL FUNDS

	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>Estimated 1983-84</u>
<u>State Revenues</u>					
Balance forward from prior year	\$29,274	\$26,224	\$ 21,680	\$ 31,965	\$ 31,965
90 percent of collections	<u>54,840</u>	<u>66,118</u>	<u>78,959</u>	<u>112,452</u>	<u>157,100</u>
Total State funds	<u>\$84,114</u>	<u>\$92,342</u>	<u>\$100,639</u>	<u>\$144,417</u>	<u>\$189,065</u>
<u>State Expenditures</u>					
Personal services	\$ 27,200	\$ 31,085	\$ 36,084	\$ 77,269	\$ 91,338
Employee-related expenses	4,950	5,900	7,000	17,108	20,700
Professional and outside services	215	185	614	226	2,600
Travel	7,350	14,035	4,410	5,268	12,700
Other operating	11,650	18,065	20,202	19,895	21,900
Other	<u>530</u>	<u>1,425</u>	<u>362</u>	<u>818</u>	<u>7,862</u>
Total State funds	<u>51,895</u>	<u>70,700</u>	<u>68,670</u>	<u>120,584</u>	<u>157,100</u>
<u>Federal Expenditures</u>					
Personal services	37,095	41,082	45,645	38,000	-0-
Employee-related expenses	8,004	9,283	10,780	8,800	-0-
Professional and outside services	75	-0-	-0-	-0-	-0-
Travel	7,344	1,870	11,895	8,000	-0-
Other operating	6,272	600	1,300	3,000	-0-
Equipment	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>2,200</u>	<u>-0-</u>
Total Federal funds	<u>58,790</u>	<u>52,835</u>	<u>69,620</u>	<u>60,000</u>	<u>-0-</u>
TOTAL PROGRAM	<u>\$110,685</u>	<u>\$123,535</u>	<u>\$138,290</u>	<u>\$180,584</u>	<u>\$157,100</u>

\* Source: Structural Pest Control Board's budget requests for fiscal years 1981-82. Computation errors in these documents were corrected where possible.

TABLE 2\*

SUMMARY OF ACTUAL BOARD ACTIVITIES FOR FISCAL YEARS 1979-80  
THROUGH 1982-83 AND ESTIMATED BOARD ACTIVITIES FOR  
FISCAL YEAR AND 1983-84

	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>Estimated 1983-84</u>
<b>Inspections:</b>					
State pest control companies	2,366	1,123	1,665	1,665	2,000
Federal use	386	472	488	442	500
Samples collected	10	11	19	42	50
Complaints	594	856	878	912	1,200
Certified applicants	N/A	70	176	320	500
<b>Disciplinary Actions:</b>					
Hearings	15	19	27	8	25
Revocation or suspension	5	8	2	1	10
Consent agreements	41	49	52	70	125
<b>PCO** - Examination &amp; License</b>					
PCO examination	60	77	87	96	150
PCO licenses	30	52	53	84	125
PCO license renewal	325	362	375	406	550
<b>Certification:</b>					
Certification	224	261	427	484	550
Recertification	1,051	1,089	1,106	1,139	1,500

\* Source: Structural Pest Control Board's budget requests for fiscal years 1981-82 through 1983-84

\*\* Pest Control Operator

Scope of Audit

Our audit of the Structural Pest Control Board addressed issues set forth in the 11 Sunset Factors in A.R.S. §41-2354. Additional detailed work was conducted on the following issues:

1. The need for continued regulation of the pest control industry,
2. The appropriateness of the current level and manner of regulation,
3. The effectiveness of the Board's current enforcement policies and actions, and
4. The appropriateness of the current licensure fee structure.

Due to time constraints, we were unable to address several other issues of concern. See page 51 for a description of areas for further audit work.

The Auditor General and staff express appreciation to the members of the Structural Pest Control Board, its executive secretary and staff for their cooperation and assistance during the course of this audit.

## SUNSET FACTORS

In accordance with A.R.S. §41-2354, the Legislature should consider the following 11 factors in determining whether to continue or terminate the Arizona Structural Pest Control Board.

### 1. Objective and purpose in establishing the Board

The Legislature's intent in establishing the Structural Pest Control Board is specified in the statutes as public protection from 1) chemical harm and 2) harm resulting from inadequate structural pest control. A.R.S. §32-2302 states:

"Statement of legislative policy. It is recognized that the business known as 'structural pest control' is a desirable and honorable pursuit and of great public benefit. It is further recognized that the chemicals and other devices used in connection with said business can be harmful to public health and safety when applied by persons not under the supervision of persons possessing proper training and knowledge in the proper uses of such devices. It is further recognized that unqualified persons may attempt to identify and eradicate certain conditions involving structural pests and that members of the general public may not receive the best results from attempts at identification and eradication by such unqualified persons."

The Board fulfills this intent by examining license applicants for both initial and renewed licenses, inspecting pest control companies, investigating complaints and disciplining licensees.

The Board is also empowered by statute to enforce the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The purpose of FIFRA is to regulate pesticides restricted in use by the U.S. Environmental Protection Agency. To accomplish this the Board examines, certifies, investigates and disciplines structural commercial applicators in the use of federally restricted chemicals.

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

The Board has examined and licensed qualified structural pest control applicants. It has also inspected each of approximately 350 licensed pest control operators (PCOs) an average of three times annually. In addition, the Board investigates approximately 900 complaints per year.

However, three factors have limited the Board's effectiveness and efficiency. First, the Board's regulatory powers are weak in the area of termite control, limiting the effectiveness of consumer protection activities (Finding I, page 13). Second, the current licensing structure does not allow for comprehensive regulation of the industry. (Finding II, page 25). Finally, the Board's enforcement actions need to be improved and additional training provided to produce fairer and simpler dispositions (Finding III, page 33).

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

The Board has acted aggressively on many consumer complaints and violations noted during routine inspections. The Board's general view is that it is a policing and not a conciliatory Board. Its policy is to act on every reported statutory violation, regardless of whether the complaint was settled to the consumer's satisfaction.

During our review we discovered three instances where it appeared the Board was slow in considering whether to suspend or revoke PCOs' licenses. However, each of these cases involved complicating factors. Given the circumstances surrounding each case, we concluded that in general the Board acts promptly.



4. The extent to which rules and regulations promulgated by the Board are consistent with the legislative mandate

The Board's rules and regulations were reviewed for consistency with statutes and were approved by the Attorney General.

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

The Board files notices with the Secretary of State regarding rules and regulations hearings. For instance, before rule promulgation in June 1983, the Board held a hearing at which public input was solicited.

The Board also sends copies of proposed legislation to each licensee and invites the licensees to discuss the legislation at a regular Board meeting.

The Board appears to have complied with Open Meeting Law requirements. Meetings have been properly noticed and minutes adequately maintained.

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

The Board's executive secretary indicates that all complaints received are investigated unless the matter is resolved prior to its scheduled investigation. The Board resolves complaints either 1) with the assistance of Board inspectors prior to Board intervention, 2) informally through the use of consent orders, or 3) formally by a hearing before the Board.

However, the Board has not resolved all complaints adequately because 1) it lacks enforceable termite treatment guidelines and inspection reporting requirements (see page 18), and 2) its licensure structure is vague and does not allow for effective discipline (Finding II, page 25).

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. §32-2323 establishes criminal penalties for violation of the structural pest control statutes. Violations are a class 3 misdemeanor unless another classification is specified. Violations may be prosecuted by the Attorney General or the County Attorney.

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

The Board has made numerous attempts to address deficiencies in its enabling statutes. The following list, though not comprehensive, describes legislation introduced within the last four years:

- HB 2099 (1982 - passed) clarified the procedure a licensee must follow when disassociating from a company;
- HB 2006 (1981 - failed) provided for licensing termite inspectors and established recovery of civil penalties through superior court;
- HB 2282 (1980 - failed) provided for registering termite inspectors; and
- HB 2013 (1979 - passed) addressed changes in the Board's fee schedule, expanded upon the criteria for revocation or suspension of a license and provided that inspections be conducted prior to issuing a contract for wood-destroying insect pest control.

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

Substantial changes are needed in Board statutes. The Legislature should consider:

- Revising Title 32, Chapter 22, Article 1 to clarify the Board's licensure structure (Finding II, page 25);
- Revising the licensure fee structure to reflect the changes we recommend in licensure structure and to make licensure fees equitable based on company size (Finding IV, page 43); and
- Allowing the Board to issue administrative warnings (Finding III, page 33).

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

Termination of the Board could significantly harm the public health, safety and welfare. Inadequate pest control services could result in 1) serious chemical harm, including fatalities and 2) costly structural damage (Finding I, page 13).

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

The level of regulation exercised by the Board should be increased. The Board's statutes need to be clarified to allow it to regulate both the pest control companies and their responsible parties (Finding II, page 25).

## FINDING I

### REGULATION OF THE STRUCTURAL PEST CONTROL INDUSTRY SHOULD BE CONTINUED AND STRENGTHENED.

The Structural Pest Control Board should be continued and its statutes strengthened to provide adequate public protection. Pest control operators (PCOs) use many pesticides which can be deadly to humans, and inadequate treatment by PCOs can and does result in costly structural damage. However, the Board's current regulatory powers are inadequate in that it cannot effectively discipline PCOs for inadequate or unethical termite treatment practices.\*

#### Regulation Is Needed

The adverse physical effects of chemical contamination as well as the financial impact of unethical practices justify continued regulation of PCOs. While the effects of pesticide poisoning will depend on the type of chemical and the manner in which it is ingested, several chemicals commonly used for structural pest control can be fatal. The consumer can be subject to considerable financial harm as the result of fraudulent, unethical or inadequate pest control practices, especially in the termite-control area. The Board's complaint work load and the serious nature of many of the complaints received is further evidence of the need for regulation of pest control operators.

Pest Control Chemicals Can Cause Death - Many of the chemicals commonly used in structural pest control can be immediately fatal to humans, and poisoning can occur through several different means of ingestion. Moreover, some chemicals may be linked to cancer. Proper pesticide application is essential to prevent poisoning.

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\* See Appendix for information on termites.

Physical harm resulting from pesticide poisoning is dependent upon the chemical's means of entry into the body and the type of chemical. There are three routes by which any chemical can enter the body: the dermal (skin), the gastrointestinal system or the respiratory system. Poisoning symptoms will vary depending on the exposure route. Also, the nature of the chemical itself is significant in considering exposure problems. Table 3 provides information about the immediate poisoning effects of pesticides commonly used for each class of pest control license.

Certain structural pesticides are so toxic that Federal regulations require only certified applicators be allowed to use them, hence the term "restricted-use pesticides." However, as the table indicates, the effects of nonrestricted-use pesticides can also be serious.

Aside from the immediate adverse physical effects of these pesticides, the long-term impact of at least the termiticides--chlordane, termide, aldrin --is unknown at this time. Tests have proven them to be carcinogenic in certain mouse strains, but no data exists to support these carcinogenic effects in humans. Because these termiticides are organochlorines, they do not break down readily when exposed to various environmental conditions (sunlight, high temperatures, soil microorganisms, enzymes). Thus, they are referred to as "persistent" chemicals. Organochlorines do not dissolve in water and are readily soluble in oils. As a result, these chemicals dissolve and accumulate in animals' and humans' fat tissues. Animals can get a further buildup or accumulation of chemicals when they consume other animals or plants contaminated with organochlorines.

Proper application of pesticides can curb the potential dangers associated with their use. It is important that the pesticide applicator have knowledge of appropriate pesticide usage and application techniques. The incidence of poisoning is controlled to a large degree by container label directions and warnings. Applying these chemicals according to their "intended use" limits the possibility of poisoning.

TABLE 3

PESTICIDE POISONING INFORMATION:  
IMMEDIATE EFFECTS

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<u>Type of License</u>	<u>Chemical</u>	<u>Label Warning</u>	<u>Poisoning Symptoms</u>
General Pest Control	Diazinon	May be fatal if swallowed.	Headache, dizziness, weakness, incoordination, muscle twitching tremor, nausea, abdominal cramps, diarrhea, sweating. Blurred or dark vision, confusion, wheezing. Unconsciousness and convulsions indicate very severe poisoning. Respiratory depression may be fatal.
	Dursban	May be fatal if swallowed.	
Wood-Destroying Insect and Organism Control (Termiticides)	Chlordane	May be fatal if swallowed. Contact with skin may cause toxic symptoms.	Apprehension, excitability, dizziness, headache, disorientation weakness, muscle twitching, convulsions when absorbed dermally. Unconsciousness may also occur.
	Termide	Contact with skin causes fatal symptoms.	Same as for Chlordane.
	Aldrin	May be fatal if swallowed.	Same as for Chlordane.
Weed Control	Roundup		Irritant to eyes and respiratory tract.
	Princep	Harmful if swallowed, inhaled or absorbed through skin.	Mildly irritating to skin, eyes and upper respiratory tract. Systematic toxicity is unlikely unless very large amounts have been ingested.
	Surflan	May be harmful if swallowed.	Slightly to moderately irritating to skin, eyes, and mucous membranes.
	Dacthal	Harmful if swallowed.	Mild irritant.
Fumigation	Phostoxin*	Poisonous if inhaled or swallowed. DANGER - POISON	Headache, dizziness, nausea, vomiting are early symptoms of excessive exposure. Drowsiness, tremors, double vision and weakness are early manifestations of central nervous system impairment. Tremors may progress to generalized seizures, unconsciousness and death. Those who survive the acute phase suffer liver injury and kidney damage.
	Methyl-Bromide*	Inhalation may be fatal or cause delayed lung injury.	(See discussion for Phostoxin, Fumigation License.)
	Vikane**	May be fatal if inhaled. DANGER - POISON	(See discussion for Phostoxin, Fumigation License.)
Turf and Ornamental Horticulture Pest Control	Malathion	Harmful if swallowed.	(See discussion for Diazinon, General Pest Control License.)
	Dursban	May be fatal if swallowed.	(See discussion for General Pest Control License.)
	Diazinon	May be fatal if swallowed.	(See discussion for General Pest Control License.)

\* Restricted-use chemicals

\*\* Manufacturer has limited use to professional fumigators.

Source: Recognition and Management of Pesticide Poisonings - U.S. Environmental Protection Agency

Financial Impact Is Significant - The financial impact of unethical or incompetent pest control practices is significant and appears to be concentrated primarily in the termite control segment of the industry. Structures in Arizona are particularly subject to termite infestation. Fraudulent, unethical or inadequate termite treatment practices can result in considerable financial harm for the public.

Structures built in Arizona are quite susceptible to termite infestations. The relatively warm year-round temperatures do little to discourage termite population growth. In addition, central heating in most buildings helps keep termites "comfortable" during the cooler seasons. In uncultivated desert areas, where much of the state's growth is being absorbed, as many as 17 to 20 termite colonies exist per acre.

Termites are capable of causing considerable damage. A normal termite colony with a population of 90,000 can consume a 2-foot section of a two-by-four in one year. (Termite damage, however, is rarely that concentrated and most normally will exist throughout a structure.) According to one estimate, damage due to termites amounts to about \$1.2 billion annually in the U.S.

The following case examples taken from Board files illustrates 1) the extent of damage possible from termite infestation and 2) the possible consequences to the homeowner of improper or unethical treatment practices.

#### Case 1

On May 21, 1980, a wood infestation report (WIR\*) was issued for a home in Phoenix. The WIR indicated no visible evidence of active termite infestation existed, and escrow closed. The adobe home was valued at \$55,000. The new owner moved in on May 23 and began inspecting his new home. His testimony from a Board discussion of the complaint follows.

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\* See page 20 for an explanation of the WIR.

". . . I started scraping down the things . . . that I thought were a little irregular and things just began to pulverize underneath the scraper . . . I also pulled off this paneling . . . on an interior adobe wall . . . and there was a gigantic hole back there. . . . The wall itself is about a foot thick and this hole was about halfway through the wall. And there was what looked like little tiny tunnels running through this wall. . . . I think there is more than cosmetic damage because I can stick a screwdriver clear through the woodwork, actual structural woodwork around the doorjams, in the ceilings and roof rafters as well as evidence of infestation in the center adobe wall-supporting structure of the house. . . . There's lots of evidence of the ceiling crashing and the fact that recently, the owners sprayed the ceiling full of material to cover up a lot of cracks in the ceiling itself . . . is evidence to me that there's been a lot of settling in the ceiling rafters."

The complainant received repair estimations from contractors that ranged from \$31,000 to \$48,000. The company that issued the WIR had treated the home for termites a year before the WIR was issued at close of escrow.

In October of 1980, the complainant settled in civil court for 1) seller paying \$14,139.66 (down payment, closing costs) together with 10 percent interest from the date of close of escrow and 2) seller assuming buyer's real estate loan of \$44,000.\*

#### Case 2

Improper preventative treatment of new homes apparently caused widespread damage in this case. Between January 1980 and October 1982, the Board received approximately 130 complaints from homeowners against one pest control company. The company had performed the pretreats on approximately 90 of the homes in question. The ages of

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\* The Board revoked the PCO's license in this case.



these homes ranged anywhere from six months to six years. All were infested with termites. In addition, many of the homes had been retreated at least once. Consumer statements on many of the complaints indicated entire neighborhoods pretreated by this company had termite problems.

Complaint Activity - The large number of serious complaints handled by the Board is also an indication of the need for continued regulation. Since fiscal year 1979-80, the Board has handled over 2,300 consumer complaints. This figure does not include any violations the inspectors may have encountered during routine inspections. Many of the complaints received can be considered serious, either pertaining to chemical contamination or, as Cases 1 and 2 illustrate, significant financial harm. According to a Board report submitted to the U.S. Environmental Protection Agency, the Board received 41 complaints of serious chemical contamination by restricted-use pesticides alone between 1977 and 1982.

Regulation of the Termite-Control  
Industry Needs to Be Strengthened

The Board needs to strengthen rules and regulations governing the termite-control industry to better protect the public. Although termite-related complaints are numerous, the Board lacks the ability to effectively discipline the industry for poor termite treatment practices. In addition, although the Board takes action on many complaints involving WIRs, the Board is unable to protect the public because 1) reporting requirements are inadequate and 2) consumers may overestimate the WIR's role.

Background: Description of Available Termite Services and Termite-Related Complaints - Subterranean termite control services fall into three categories: pretreats, treatments of existing structures, and Wood Infestation Reports (WIRs). Following is a description of each:

Pre-treats - During building construction, certain preventive measures can be taken to discourage termite infestation. Prior to laying the slab, the soil beneath the structure may be treated with a termiticide (i.e., chlordane, aldrin or termide). This process, a "pretreat," establishes a chemical barrier between the soil and the structure which prevents subterranean termites from entering the structure to find a food supply (i.e., wood and wood products). The chemicals used in pretreats have been proven to have protective capabilities for up to 25 years.

Treatments of Existing Structures - Chemicals used to prevent subterranean termites from attacking buildings can also be used to check existing infestations in buildings. There are too many variations in construction to permit a detailed discussion here of chemical treatments for use in all possible situations. As in pretreats, the purpose of treatments in existing buildings is to establish a barrier of treated soil adjacent to the foundation through which termites cannot pass.

Methods of application include drilling either through 1) the slab close to the points where the termites are or where they may be entering and applying the chemicals through the holes or 2) exterior foundation walls to the soil just underneath the slab and introducing the chemicals through the holes. Structures with crawl spaces and basements are treated by digging a trench adjacent to the wall around the perimeter of the structure ("trenching"). The chemical is poured into the trenches and allowed to seep into the soil. If necessary, crowbar, pipe or rod holes are extended from the bottom of the trench. This "rodding" ensures seepage of the chemical as far as necessary.

WIRs - Wood Infestation Reports are required by the Federal Housing Administration (FHA) and the Veteran's Administration (VA) for approval of home loans. The purpose of the report form is to ascertain, by inspection, whether any visible evidence exists of current or previous termite infestation or damage. The real estate agent selling the property, and not the prospective buyer, commonly selects the PCO to perform the inspection and issue the report. FHA and VA require that the buyer receive a copy of the WIR.

Audit staff conducted an analysis of service-related complaints for 102\* randomly selected pest control companies. Of a total of 94 service-related complaints received by the Board regarding these companies between July 1, 1980, and April 25, 1983, over half were related to termite control services. Of those related to termites, half (25) involved allegedly incorrect or false Wood Infestation Reports (WIRs), which the Board disposed of as follows:

- 14 consent orders (including fines),
- 3 dismissed,
- 7 no action, and
- 1 no record of action.

The Board took no disciplinary action on the remaining 25 termite-related complaints. Instead, the Board acted as follows:

- 2 warning letters,
- 11 dismissed, and
- 12 no action.

Need for Enforceable Standards - Board failure to act on termite-related complaints is due at least in part to a lack of treatment standards, the violation of which could result in disciplinary action. Although the Board recently adopted treatment standards as informal guidelines,

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\* Out of a possible 398 active companies existing in 1983, 1982 and/or 1981 (not sold to another existing company during this period)

according to its Attorney General representative it cannot use them to bring enforcement action because it did not promulgate the standards into its rules and regulations. Several states have treatment standards in their rules and regulations, among them California and Arkansas.

Although termiticide labels provide some instruction in their use, the successful application of these chemicals to a structure requires a certain amount of technical knowledge regarding several factors, including soil composition and construction types. Disregarding these factors, even while following the label's general instructions, can result in ineffective treatment and/or chemical harm to homeowners. For example:

1. Arizona's soil is highly alkaline, which causes termiticides to break down more rapidly than normal. Failing to take this fact into account, while merely following the label's mixing instructions,\* could render the treatment ineffective in a relatively short time.
  
2. Several cases of termiticide contamination were recently reported in New York. In at least one case, the home in question was tested, declared uninhabitable and destroyed after the resident family reported illness. The homeowner claimed the PCO misapplied the termiticide, allowing it to seep into the home.

Recently the Board adopted minimum treatment standards as informal guidelines for PCOs to use in performing termite treatments. These guidelines were the result of considerable deliberation with members of the pest control industry through several public hearings. A committee of Board and industry members drafted a set of termite treatment standards which received overwhelming opposition from the industry. As a result, a committee of industry members drafted an alternate set of standards. The Board recognized these standards as guidelines but did not adopt them as rules. According to the Board, the standards submitted by the industry committee do not provide sufficient public protection.

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\* The chemicals are diluted with water according to a specified ratio.

Moreover, according to the Board's Attorney General representative, informal guidelines cannot be used to bring disciplinary action against a licensee who "violates" these guidelines. In effect, then, these guidelines serve only as suggestions which PCOs may or may not choose to follow. Therefore, the current lack of action on termite treatment complaints could continue.\*

California and Arkansas are two of several states which have promulgated treatment standards as rules and regulations. Both states' standards specify in detail application techniques based on existing conditions such as the type and size of structure to be treated. These specifications include 1) appropriate chemical dosage, with regard to both chemical-to-water ratio and amount of chemical mixture to be applied and 2) drilling, trenching or rodding procedures required for the structure type.

Wood Infestation Reports Should Be Improved - Although the Board acts on problems involving WIRs, the WIR has limited value and may be misleading to consumers. This report would be more useful and meaningful to consumers if it provided additional information and included a disclaimer.

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\* In 1981 the Board promulgated a rule (R4-29-15) prescribing requirements for pretreats. The rule provides some standards based on construction types. However, it does not specify chemical dosage. Instead it relies on the FIFRA specification, which allows any percentage of chemical up to or below that specified on the chemical label. The rule is silent regarding termite treatments other than pretreats.

Consumers may assume incorrectly that a negative or "clean" WIR guarantees that their home is free from termites. In fact, the WIR is of very limited benefit to the consumer. The Kansas Termite and Pest Control Association (the state's professional association) issued the following statement concerning WIRs:

"The Termite Control Specialist's report is a factual investigative statement as to the visible evidence of current and previous termite infestation and damage, based upon a thorough visual inspection of accessible areas. By its very tenor, the report is limited to visible and accessible areas, and does not include the status of any structures or areas which are hidden, inaccessible, or behind accessible areas. It is not a guarantee that infestation or damage does not exist, nor is it a guarantee that future infestation or damage will not occur. It is an objective statement, based upon reasonably ascertainable evidence, of the current status of a structure with regard to the presence or absence of wood-destroying organisms in visible and accessible areas only." (emphasis added)

Since an estimated 70 percent of any home is not readily accessible (for example, inside walls and under floor coverings), the WIR cannot ensure a home's freedom from termites. Moreover, an FHA official stated the WIR carries no guarantee or effect past the day on which it is issued.

The reporting format for the WIR required by FHA and VA could be improved to better highlight for the consumer any evidence of conditions which may invite termite infestation. These conditions include, for example, earth-to-wood contact (e.g., a pillar or post set in the ground instead of on concrete) and dry rot. The FHA/VA form does not provide a space for this information which the consumer can readily note. Instead, the form allows only that the PCO add this information to its reverse side, and this could be easily overlooked by the consumer. One Board member indicated information regarding conditions conducive was perhaps the most valuable information that could be given to the consumer, because it could indicate a need to take corrective measures to prevent termite infestation.

Arizona's Board agrees that the WIR is of minimal benefit to the homebuyer and should be made to require more specific information regarding 1) problem conditions at the inspection site and 2) the form's intended use. The Kansas Termite and Pest Control Association, after studying the legal history of termite control, developed a model WIR and standards prescribing its use. The model WIR contains an item requiring the inspector to describe any visual evidence of conditions conducive to infestation. It also carries a disclaimer which states explicitly the form's purpose and limitations.

#### CONCLUSION

The State should continue to regulate the structural pest control industry to protect the public from potentially serious chemical harm and structural damage. In addition, the Board's current regulatory powers over the termite-control portion of the industry should be strengthened to allow for more effective discipline for inadequate or unethical termite treatment practices.

#### RECOMMENDATIONS

1. The Legislature should renew the Structural Pest Control Board's enabling statutes.
  
2. The Board should amend its rules and regulations to
  - a. Include specific termite treatment standards and
  - b. Revise the current WIR to include, in addition to FHA/VA requirements, 1) information regarding conditions conducive to termite infestation and 2) an appropriate disclaimer advising consumers of its intended use. The Board should require PCOs to use this State form.

## FINDING II

### THE BOARD NEEDS TO LICENSE COMPANIES AS WELL AS INDIVIDUALS.

The Structural Pest Control Board needs to license both individuals and companies. The current regulatory scheme of issuing licenses to individuals only does not provide adequate means to monitor pest control companies and, to a degree, licensees. The Board's statutes do not specifically delineate the licensing structure required for the structural pest control industry. Other states have clearer licensing statutes and more effective licensing systems.

#### Current Licensing System

The Board attempts to regulate both companies and individuals through a single license. Pest control companies in Arizona are required to identify a licensee who will act as the qualifying party for that business to operate. The qualifying party licensee 1) qualifies that business to operate and 2) is responsible for the pest control activities of that company. If the owner of the company is a licensee, he may serve as the qualifying party for the business. However, the owner of the company is not necessarily licensed to practice pest control. In these cases, a licensed employee will be designated as the responsible party.

The Board has established this dependent relationship between licensee and company in an effort to monitor the entire industry. In essence, the license of any individual is invalid unless that license is 1) formally connected with a business and 2) supported by a public liability insurance policy or a bond. The business, on the other hand, cannot operate unless



a licensee has been designated as the responsible party. In the event a licensee chooses not to be formally connected with a company, the Board provides the licensee the option to put his license on "nonworking" status.\*

Inadequate Regulation of  
the Pest Control Industry

The current regulatory scheme of only issuing licenses to individuals does not provide adequate means to monitor pest control companies and, to a degree, licensees. This scheme is deficient because 1) unscrupulous companies can continue as long as the owning management can find licensees to qualify the business, and 2) unprofessional licensees may continue to operate since the business is not held ultimately responsible for the licensee's actions.

Inadequate Control Over Companies - The following case example illustrates how the current licensing strategy prevents the Board from disciplining companies as long as they employ qualifying party licensees:

Case 1

Company B was established in 1976 by a nonlicensee owner. In the six years between 1976 and 1982, Company B had at least seven different qualifying party licensees. In that same period, the company had numerous, serious complaints lodged against it.

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\* Nonworking status allows the licensee the option of not being formally associated with a business. The required proof of financial responsibility may lapse but the licensee continues to pay a yearly license renewal fee. The license may be "reactivated" at any time by 1) proving financial responsibility and 2) becoming the qualifying party licensee for a business. In addition the licensee does not have to retake the licensing exam. However, a June 3, 1983, Arizona Legislative Council Opinion indicates the Board does not have statutory authority to offer this status.

- The Board attempted to bring action against Company B for issuing a false Wood Infestation Report which resulted in the homeowner absorbing thousands of dollars worth of damages. However, because the company was operating without a license at the time, the Board had no jurisdiction. The complainant sought relief through the small claims court.
- Company B operated without a licensee at least five times between 1976 and 1982 for periods of up to four months.
- Company B misrepresented itself as the new owners of the accounts of another company which had just gone out of business. (Generally, the accounts of companies that go out of business are purchased by another pest control company). Company B approached customers of the then-defunct company, performed the necessary treatments and received payment. The following day, the pest control company which had actually purchased the accounts approached these same customers, expecting to treat their homes and be paid. The customers refused to receive or pay for what appeared to be a double treatment.

The Board tried on several occasions to bring charges against this company based on its practicing without a qualifying party licensee. Because the Board licenses individuals, not companies, its own statutes provided no disciplinary recourse. Companies practicing without a qualifying party licensee can only be prosecuted through the Courts. The Board's first attempt was rejected by the City Prosecutor's Office because more than a year had lapsed from the date of the company's offense to the date the Board filed the charges. The Board then gathered evidence on a more recent incident. The City Prosecutor's Office returned the materials based on insufficient evidence. The case was finally prosecuted almost a year later. The Court ruled against the City Prosecutor's Office because the structural pest licensing statutes were vague concerning the difference between practicing without a license and allowing a company 90 days to replace a qualifying party licensee.

According to Board records, Company B was sold to another nonlicensee owner in 1982. The name of the company was changed. Had the Board required business licenses, it could have revoked the business license resulting in public record of disciplinary action against the original nonlicensee owner.

Ineffective Control Over Individual Licensees - The Board's licensing scheme may not always encourage companies to hire competent licensees. The Board receives complaints against companies, not licensees. Consumers are generally unaware that companies even have licensees. Movement of licensees among companies is common. Therefore, the Board may have difficulty bringing action against the responsible licensee. Consider the following scenario:

A pest control operator (PCO) is the qualifying party licensee for Company A. Company A is owned by a nonlicensee who has provided the capital to start the business. The PCO possesses a termite license and proceeds to perform numerous inadequate pretreat and retreat applications during his six-month employment at Company A. The PCO then leaves Company A, and Company A is forced to find a new qualifying party licensee. One year later the Board begins to receive complaints lodged against Company A from customers serviced by the original PCO.

The Board can attempt to bring action against the original qualifying party who may have 1) become a licensee for another company, 2) put his license on nonworking status, or 3) not renewed his license.

Licensing companies would provide the Board the additional option of reprimanding the business as well, if necessary. This option may increase nonlicensee owners' desires to hire competent licensees.

Current Licensing Structure  
and Statutory Language Unclear

The Board's statutes do not specifically delineate the licensing structure required for the structural pest control industry. The statutes themselves make reference to licensing persons, partnerships, corporations or associations but do not state whether natural persons, businesses or both actually receive a license. The inherent ambiguity of the Board's statutes has prompted Board legal counsel to redirect the Board as to what the licensing structure should be.

Licensing Statutes - The licensing statutes refer to the "licensee" in a variety of ways. In some sections, the statutes mention individuals only. In other sections, the statutes refer to partnerships, corporations or associations as licensure applicants while still other sections refer to both. Exactly who or what is being licensed is never specified. The following table summarizes the various references to the licensee in the statutes.

TABLE 4

STATUTORY AMBIGUITY: EXAMPLES OF VARIOUS REFERENCES  
TO LICENSE RECIPIENTS

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<u>Statutes</u>	<u>Statutory Language</u>
A.R.S. 32-2321	Licenses to engage in the business of structural pest control
A.R.S. 32-2313 32-2314	Individual applicants on their own behalf and as responsible persons licensed on behalf of a partnership, corporation or association
A.R.S. 32-2303 32-2313.A.I. 32-2322.C. 32-2325	Partnerships, corporations, firms or associations
A.R.S. 32-2313.A. 32-2313.H. 32-2322.B.	Licensure applicant - partnership, corporation or association
A.R.S. 32-2313.D. 32-2313.F. 32-2313.G.	Licensure applicant - someone who has practical experience and takes and passes the examination
A.R.S. 32-2321.A.	Licensure applicant must submit proof of financial responsibility
A.R.S. 32-2321.B.	License of the applicator

This ambiguity in the licensing statutes was noted in a June 3, 1983, Arizona Legislative Council Opinion. The opinion stated, in part

"Since licensure and who or what is licensed is referred to in different manners . . . the statutes are not clear and can lead to confusion in interpretation."

Conflicting Legal Advice - The Board's legal counsel has advised the Board to change its licensing structure at least once due to ambiguous statutory language. Prior to 1981, on the advice of its assistant attorney general, the Board should have required both businesses and individuals to obtain separate licenses. Each license type had a separate numerical scheme and separate fees were collected for each.\* According to the Board's executive secretary, the assignment of a new assistant attorney general in 1981 resulted in a different interpretation of the Board's statutes. The new assistant attorney general advised the Board that it did not have the statutory authority to require licenses of both entities. Since that interpretation was rendered, the Board has licensed persons only. An interpretation conflict on such a major point strongly suggests that problems exist in the language of the licensing statutes.

#### Regulatory Schemes in Other States

Other states have clearer and more effective licensing statutes. These states specifically define schemes which include both individual and business licensing. Licensing of both the individual and the business allows for more effective regulation of all aspects of the pest control industry.

The pest control laws of California and Texas provide examples of clear licensing statutes. California statutes clearly define who is licensed and who will be the responsible party in all situations. Also, the statutes contain definitions of "person" and "branch office," for instance, to further clarify the licensing scheme.

\* However, the Board never actually issued a business license to the companies and never brought disciplinary action against a business.

The Structural Pest Control Act of Texas leaves no question as to who or what is licensed. Texas' licensing structure is stated this simply:

"(b) The board shall develop standards and criteria for issuing Structural Pest Control Business Licenses to persons engaged in the business of structural pest control. Persons engaged in the business of structural pest control must possess a Structural Pest Control Business License for each place of said business, including each branch office. Each structural pest control business licensee shall have in his employment at all times a certified applicator."

For increased clarification, the statutes include definitions of "person," "branch office," "certified applicator" and "structural pest control business license."

Other states can more effectively regulate both individuals and companies because both are either licensed or registered.\* The systems vary from state to state; but California, Texas, Nevada and Florida all have licensing structures which include 1) licensing or registering the business and 2) licensing or certifying qualifying parties for the business.

This type of licensing scheme provides for greater control of the major components of the pest control industry and increased disciplinary options for regulatory agencies. Regulatory officials in California and Florida, for instance, stated that action may be brought against the business license, the individual license or both, if necessary.

#### CONCLUSION

The Structural Pest Control Board needs to license both individuals and businesses. The current system of regulating both through the individual's license is based on vague statutes and does not allow for effective control of the industry.

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\* The states surveyed were recommended by Board members, their staff and entomologists knowledgeable about structural pesticide enforcement.

RECOMMENDATION

The Legislature should consider a comprehensive revision of the Structural Pest Control Board statutes to establish a licensing or registration system for both companies and individuals.

### FINDING III

#### THE BOARD CAN IMPROVE ITS ENFORCEMENT ACTIVITIES TO BETTER PROTECT THE PUBLIC.

Although the Board acts aggressively on many consumer complaints, some improvements are needed to protect the public more fully. Board procedures for issuing consent orders could be considered unfair to licensees. In addition, the Board could benefit from legal training in case development. The Board should also use other dispositional options, such as requiring training more often or issuing warnings, which could more directly aid consumers harmed by pest control operators (PCOs) or allow the Board to dispose of minor violations more simply.

#### Substantial Board Action on Consumer Complaints

The Board has taken considerable action on many consumer complaints. The Board's general viewpoint is that it must act on every reported statutory violation, regardless of whether the consumer and the PCO resolve the complaint.

Board disciplinary action has consisted mainly of issuing consent orders which usually include civil penalties. During fiscal years 1980-81, 1981-82 and part of 1982-83,\* the Board issued 119 consent orders and charged a total of \$14,810 in civil penalties and investigative costs.\*\* As shown in Table 2 on page 5, the Board revoked 11 licenses during fiscal years 1980-81 through 1982-83.

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\* This figure includes only those consent orders issued in 1982-83 for which records were available at the time of review.

\*\* The Board is allowed to keep its civil penalty monies.



### Use of Consent Orders

Current procedures used by the Board to offer consent orders could be considered unfair to licensees. As a result of Board procedures, a licensee may feel forced to sign a consent order as originally offered without knowing he has other options available. The Board should follow consent order procedures described by the Attorney General's Office.

Background - The Board began using consent orders about five years ago in an attempt to provide, through informal means, a less severe penalty than revocation or suspension (the only formal penalties allowed by statute at that time). The statutes were amended at the same time to allow the Board to issue civil penalties of up to \$1,000 for violations of the general structural pest control statutes. The Board now routinely charges civil penalties and investigative costs through its consent orders.

The Board offers consent orders based on either 1) a preliminary investigation following a formal complaint or 2) a routine inspection by Board staff. In the first case, the Board investigates the complaint and notifies the respondent by mail that a complaint has been filed. In the second case, the respondent is required to sign the initial violation notice at the time of the inspection. The Board also notifies the respondent by mail that a violation was discovered. In both cases the Board asks the respondent to contact the Board regarding the matter within 10 days. The respondent is not notified when the Board will discuss his case or what action may result.

The Board proceeds with either situation by discussing it at a regularly scheduled meeting, at which time it may vote to offer a consent order. If so, Board staff sends the consent order to the respondent. Prior to this the Board makes no formal attempt to notify the licensee that a consent will be offered.

Misleading Procedures - Board procedures can mislead licensees regarding both the nature of the consent order and the resulting Board action if the licensee refuses to sign the consent order. Although the Board uses consent orders to discover facts surrounding alleged violations, it does not notify the respondents that they can discuss the allegations and terms contained in the orders with the Board. Instead, the Board sends a cover letter with each order which implies that the respondent may either 1) sign the consent order and return it within 10 days or 2) go to a formal hearing. Because of these procedures, respondents can and have assumed that the consent order offer is final and its terms cannot be negotiated. This assumption is incorrect and may serve to intimidate respondents into signing consent orders they otherwise would not have signed.

The Board stated that it uses the consent order partly as a fact-finding tool,\* its purpose being to avoid the cost of verifying facts through the formal hearing process.\*\* Therefore, the Board relies on the respondent's acceptance or denial of the consent order as verification regarding the allegations. The Board considers a consent order an admission of guilt if the respondent signs and returns it.

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\* In a review of seven recently challenged consent orders, we found three were rescinded during formal hearings because Board evidence did not support the findings of facts stated in the consent orders. According to Board members this occurred because the consent order is used in some cases as a means of establishing the facts.

\*\* Consent orders also serve as a revenue-raising tool since the Board may impose civil penalties up to \$1,000 for each violation. These civil penalties are placed in the Board's funds.

The Board claimed it does not deny respondents an opportunity to discuss the consent and negotiate its allegations or terms. In fact, we reviewed several instances where licensees had successfully negotiated consent order allegations or terms.\* However, we also found that in six of nine cases we reviewed, the respondents were not aware that they could have discussed and negotiated the consent orders with the Board prior to signing them.

The following case example describes one licensee's experience with the Board's consent order procedures.

Case 1

In 1982 the Board offered Respondent A a consent order alleging that he had violated A.R.S. §32-2321 by allowing his insurance to lapse and charging him \$100. In a recent interview, Respondent A told us he was unaware that he could have discussed and negotiated the consent order with the Board. He had assumed that his choice was to either pay the \$100 or go out of business. However, in at least one instance the Board voided an insurance-related consent order once the licensee corrected the problem.

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\* In most of the cases we reviewed, the licensees had hired attorneys to represent them in these matters.

Board Should Adopt Recommended Procedures - The Attorney General's Office suggests that consent orders be discussed and negotiated prior to being formalized. The Arizona Agency Handbook\* discusses consent orders as follows:

"12.4.1.5 Consent Orders. A consent order imposes some type of disciplinary sanction or remedial action. It is entered by the decision maker with the consent of the licensee or other affected party. The consent order is generally not the result of the decision maker's deliberations, but represents the decision maker's acceptance of an agreement reached between the agency staff and the licensee. The consent order is issued by the decision maker to carry out the parties' agreement and generally involves a licensee's consent to some form of discipline or corrective action. The consent order must be in writing and approved by the licensee.

"Consent orders should contain findings of fact and conclusions of law which have been agreed to by the parties. This insures against a question being later raised by the licensee or others concerning either culpability or the reasons for the issuance of such consent order. At a minimum, the agency should not allow the issuance of a consent order without findings of fact, unless the licensee specifically states in the order that he neither admits nor denies allegations that have been made against him by the agency. Some agencies have specific rules which prohibit the issuance of consent orders where the licensee maintains his innocence of any wrongdoing." (emphasis added)

Legislative Council endorses the Arizona Agency Handbook recommendations, emphasizing the importance of fairness to the alleged violator. In a memorandum dated June 6, 1983, Legislative Council stated:

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\* In 1982, the Attorney General's Office published the Arizona Agency Handbook which, in layman's language, explains the major State laws governing the operation of State agencies. One section of the handbook discusses procedures for civil enforcement and use of consent orders.

"The board's procedure for issuing consent orders is not the most proper procedure that can be utilized. . . . A licensee who refuses to sign a consent order offered pursuant to the board's deliberations . . . may not receive a fair hearing by the board when formal proceedings commence. The board may have already decided or prejudged the licensee's guilt without the licensee being able to defend himself. Unfortunately this is a common problem with administrative agencies because they must act as both prosecutors and judges. The board's procedure could be improved by following the Arizona Agency Handbook." (emphasis added)

#### Training in Evidentiary Matters Is Needed

Board members and staff have not been trained adequately in gathering and presenting evidence necessary to properly dispose of complaints. However, the Board often deals with legally sophisticated cases. Other State inspectors have received training on rules of evidence and case development, and such training could be of benefit to the Board and its staff.

Following proper evidentiary procedures is especially important in the case of the Structural Pest Control Board, since many of its actions are challenged by attorneys and several have resulted in court action. Since 1979, the Board has been sued twice, its decisions appealed four times and its investigative activities halted by a temporary restraining order once.

Inspectors from the Commission on Agriculture and Horticulture, whose duties involve agricultural pesticide control, have received training from the Phoenix Police Department regarding rules of evidence and case development. Such training could assist the Board and its staff in assuring better case documentation.

Available Options for  
Complaint Disposition Not Used

The Board's current procedures for informally disposing of complaints can be made potentially more beneficial to consumers and simpler for the Board. The Board should consider requiring refunds or training more often through its consent order process, which may be more beneficial to the consumer than the civil penalty. In addition, the Board should consider a simpler alternative to consent orders for minor violations.

Board Should Consider Additions or Alternatives to Civil Penalties - The Board can expand the actions it takes through consent orders to include requiring refunds or training more often as alternatives or additions to civil penalties. Such actions may benefit consumers more directly than civil penalties alone. Legislative Council states that remedial actions are allowed when complaints are handled informally:

"An informal disposition by consent order may involve an agreement between the board and a licensee which requires the licensee to take some kind of remedial action such as attending training or providing conciliation or restitution."

Disposition of Minor Violations Can Be Made Simpler - The Board can use a simpler alternative to consent orders, the "administrative warning," to dispose of minor violations. Use of the administrative warning has reportedly been used successfully in New York State to dispose of minor cases quickly and efficiently but with consideration of fairness to the professional. The administrative warning consists simply of a warning letter which can be kept on file for three years; if the violator repeats the offense during that time he can be brought to a formal hearing for both the first and second offenses. The Executive Director for the New York State Office of Professional Discipline described the procedure as follows:

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\* Prior to this the Board had the authority to issue civil penalties for violations of the statutes dealing specifically with those pesticides restricted in use by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

"Since a warning is not an adjudication, a professional may not be entitled to a due process hearing before it is issued. Once we are convinced that a violation is minor or technical in nature, we simply send a letter that describes the conduct that we believe is offensive and direct the licensee to stop doing it.

"We keep the issuance of the Administrative Warning on file for three years. If there is a similar violation by the professional during that time, he can be prosecuted through the adjudicative process for both the initial and subsequent violations."\*

The Board of Medical Examiners (BOMEX) has used administrative warnings for approximately three years with reported success. According to BOMEX's Executive Director, the administrative warning (Letter of Concern, or LOC) has provided the Board a midpoint for Board action between dismissing a case and penalizing a licensee. BOMEX issues LOCs for minor violations which the Board believes the licensee should note and correct but for which he should not be assessed a penalty unless he repeats the violation. BOMEX has the authority to issue LOCs without holding a formal hearing. The Executive Director reported that the LOC has not been challenged legally.

Since the Board has a heavy complaint work load (approximately 900 complaints per year), the administrative warning could help the Board dispose of several minor complaints effectively while reducing the time spent on each.

#### CONCLUSION

The Board should improve its enforcement activities. Informal dispositions can be made fairer, more beneficial and simpler through the use of properly issued consent orders, training or refund requirements and administrative warnings. In addition, the Board could benefit from legal training in gathering and presenting evidence.

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\* William L. Wood, Jr., "Guest Editorial," Discipline, May 1983.

## RECOMMENDATIONS

1. The Board should
  - a. Adopt the consent order procedures recommended in the Arizona Agency Handbook, Section 12.4.1.5;
  - b. Seek training for both Board members and staff in evidence gathering and case development; and
  - c. Expand actions taken through consent orders to include requiring refunds or training.
  
2. The Legislature should amend Board statutes to authorize the Board to issue administrative warnings in cases involving minor violations.



## FINDING IV

### THE BOARD'S CURRENT FEE STRUCTURE IS INEQUITABLE.

Statutory changes are needed in the Board's licensing fee structure, especially if businesses are licensed as recommended in Finding II. The current fee structure is inequitable. Although larger companies generate more costs for the Board, the same license fee is charged to each qualifying party licensee of every company. Fee schedules established in several other states are designed to more equitably allocate regulatory costs.

#### All Licensees Pay Same Fee

Under current statutes and Board rules, all individual licensees pay an initial licensing fee of \$150 and an annual renewal fee of \$130. The current flat-rate fee schedule contains no provisions for flexibility in determining the fee paid. The same fee is paid whether the licensee is qualifying a "one-man operation" or a company with over fifty applicators and several branch offices. The Board does not require fees from companies because they are not licensed.

This flat-rate fee system is unfair to the licensees of smaller companies. In effect, fees paid by individual licensees qualifying smaller companies subsidize the extra costs associated with regulating the larger companies, since larger companies appear to generate more activity and costs for the Board. Board records as well as Board staff indicated larger companies create more everyday paperwork processing costs than smaller companies. For example, the Board maintains records on the number of applicators at each company and must process their I.D. cards and certification paperwork. Larger companies result in greater inspection costs in that each branch office must be visited. In addition, larger companies, because they service more consumers, generate more complaints which must be investigated and resolved by the Board. For instance, the

Board has received 22 complaints (formal and telephone) since June 1981 against one of the largest companies which employs 56 applicators. Some of the smaller companies have never received a complaint. Board staff estimates the cost of each complaint investigation to be approximately \$105.

As shown in Table 5, most (85 percent) of the Board's licensees qualify companies with five or fewer pesticide control applicators. By contrast, 2 companies employ more than 50 applicators and maintain several branch offices.

TABLE 5  
SIZE OF STRUCTURAL PEST CONTROL COMPANIES  
AS OF MAY 1983

<u>Number of Applicators</u>	<u>Number of Companies</u>	<u>Percentage of Total</u>
1-5	295	85%
6-10	40	11
11-50	12	3
Over 50	<u>2</u>	<u>1</u>
Total	<u>349</u>	<u>100%</u>

#### Alternate Fee Schedules

More equitable fee schedules developed in other states distribute regulatory costs based on company size. As shown in Table 6, for example, Nevada, Kansas, Texas and California assess licensure fees based on the number of business locations and/or the number of employees. In addition, Kansas charges a license fee for each category of practice.\* In Tennessee, license fees are based on a company's gross revenue. Renewal fees range from \$50 to \$200 as shown in Table 7. These systems take into account the relationship between company size and regulatory costs.

\* See discussion of pest control license categories on page 2 of Introduction and Background.

TABLE 6  
BUSINESS FEE STRUCTURES IN OTHER STATES

<u>State</u>	<u>Basis for Business Fee*</u>	<u>Fee</u>
Nevada	Business	\$25
	Each employee	10
Kansas	Business - each license category in which the company intends to practice	50
	Each unlicensed employee	5
Texas	Each business location	75
	Each employee	20
California	Each business location - Principal office	50
	Branch office	25

\* Individuals' license fees are assessed separately from business fees. In this manner, a separate fee is collected from each entity being regulated. This system reinforces the separate status of the business and the licensee and provides for the equitable distribution of regulatory costs.

TABLE 7  
BUSINESS FEE STRUCTURE IN TENNESSEE

<u>Gross Amount of Revenue</u>	<u>Fee</u>
\$1 to \$50,000	\$ 50
\$50,001 to \$100,000	100
\$100,001 to \$150,000	150
\$150,001 and above	200

The Arizona Structural Pest Control Board already maintains statistics on the number of employees and branch offices of each company. Therefore, basing fees on number of employees and/or number of business locations may be more feasible than basing fees on company revenue.

## CONCLUSION

Changes are required in the Board's licensing fee structure, especially if businesses are licensed as recommended in Finding II. The current flat-rate fee charged each qualifying party licensee is inequitable in that larger companies generate more costs for the Board. Fee schedules in other states assess an individual license fee as well as a business fee based on company size.

## RECOMMENDATION

The legislature should consider amending Board statutes to allow the Board to establish a more equitable fee structure. Fees could be based on the number of business locations and/or the number of applicators employed by the company.

## OTHER PERTINENT INFORMATION

During the course of our audit, we reviewed the following additional information pertinent to the Structural Pest Control Board.

### Little Consumer Protection Against Termite Damage

Currently the consumer has little, if any, recourse in cases of termite damage where the PCO may have been responsible. In most cases if a consumer's home is damaged by termites because of inadequate treatment, the consumer would have to sue the PCO to recover any damages. The insurance or bond currently required by statute does not cover termite damage. In addition, federally required pretreat warranties offer only limited protection against termite damage.

Insurance and Bonding - A.R.S. §32-2321 requires that licensees carry either liability insurance or a bond in the amount of at least \$100,000. Neither the insurance nor the bond protect the treated home against termite damage resulting from poor treatment. Instead, the insurance covers the PCO's general liability in cases of direct damage to the home or its contents (e.g., a vase broken by the applicator), and the bond covers employee actions such as theft.\*

Some states require their licensed PCOs to obtain surety bonds to cover termite damage due to inadequate treatment. The surety bond requires little state involvement; however, its effect in Arizona could be to restrict the number of small businesses, depending on the bonding limit set. California's structural pest control agency is seeking to increase its bonding limit from the current \$2,000 to \$4,000 to provide more consumer relief. However, an Arkansas official stated that while its

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\* The Board's executive secretary states that none of the current licensees carry a bond because it is more costly than insurance.

current limit of \$1,500 is too low to provide adequate relief, raising the limit to \$5,000 could exclude small PCOs because they may not be able to qualify for the bond.

Pretreat Warranties - The Federal Housing Authority (FHA) and the Veteran's Administration (VA) require that new construction sites be pretreated if the loan is to be FHA or VA-approved. However, no State law exists which requires pretreating of all new construction. Consumers who pay cash or have conventional mortgages receive whatever pretreat guarantee the contractor and PCO agree on, if any.

The guarantee FHA and VA offer to consumers concerning pretreats may not be sufficient. The builder is liable and must pay for any termite damage received during the first year after the pretreat. While the builder must pay to have the structure completely retreated should termites occur during the first five years after construction, he is not obligated to repair any damages after the first-year period. If damages occur after this one-year period, the consumer must pursue civil litigation to recover any damages caused by termites.

Penalty for Unlicensed  
Practice Is Ineffective

A.R.S. §32-2303 prohibits the practice of structural pest control for profit without a license issued by the Board. A.R.S. §32-2323 establishes the penalty for violation of chapter provisions as a class 3 misdemeanor, which carries a maximum \$500 fine or 30 days in jail.

The Board's ability to act on a complaint regarding unlicensed activity is limited to filing a complaint through the State Attorney General\* or the

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\* The Board's executive secretary reports that due to staffing and time limitations the Attorney General's Office has requested that the Board file the injunctions with the county and city prosecutors.

county or city prosecutor. After filing the complaint, the Board has no authority to pursue the issue further.

The courts view these complaints received from the Board as lower in priority than violations carrying stiffer penalties. Thus, after the courts issue the arrest warrants on unlicensed PCOs,\* the police make only one attempt to locate the violators. If the police are unable to locate them, the warrants are issued only if the violators are stopped or apprehended for another reason. Many warrants therefore go unserved,\*\* and as a result they are an ineffective deterrent to practicing structural pest control without a license.

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\* The courts issue warrants if the violators fail to appear at the scheduled trial.

\*\* The Board's executive secretary indicates she receives about 25 complaints of unlicensed activity per year. She estimates that approximately 1 in 10 are prosecuted.

## AREAS FOR FURTHER AUDIT WORK

During the course of our review of the Board of Structural Pest Control, we identified several issues for further audit work. These issues, which were beyond the scope of our review due to time constraints, include:

1. The need for revising Board membership to include experts from related fields (e.g., toxicologists, entomologists);
2. The adequacy of statutes and provisions for disposing of pesticide containers;
3. The advisability of allowing PCOs to store toxic and flammable chemicals in residential areas;
4. The need for consumer protection measures (see Other Pertinent Information, page 47); and
5. The advisability of breaking down the license fee by licensure classification so that the applicant is paying only for those categories in which he will be operating.





CHAIRMAN

W. Earley

VICE CHAIRMAN

T. Camp

SECRETARY

M. Rollins

MEMBERS:

F. Holly

D. Doyle

STATE OF ARIZONA

Structural Pest Control Board

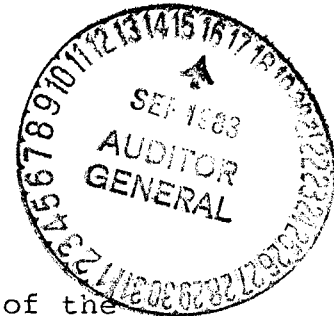
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BRUCE BABBITT  
GOVERNOR

September 16, 1983

Mr. Douglas R. Norton  
Auditor General  
111 West Monroe, Suite 600  
Phoenix, AZ 85003



Re: Comments on the Performance Audit of the  
Arizona Structural Pest Control Board

Dear Mr. Norton:

Thank you for your letter of September 9, 1983, enclosing your revised preliminary report draft of the performance audit of the Structural Pest Control Board.

The Structural Pest Control Board is pleased to express its appreciation to the Auditor General's Sunset Review Team for their handling of the review of the Board's activities. Board members have worked diligently to administer their legislative charge to protect the public health, safety and welfare as it relates to the licensing and regulation of the structural pest control industry. It is, therefore, gratifying to read in the report that "the Board acts aggressively on many consumer complaints and violations", and "the Board has taken considerable action on many consumer complaints".

In addition, the Auditor General's Sunset Review Team determined for the "Sunset Factors" that the Board has generally met its objectives and purposes effectively and efficiently. The Board wholeheartedly endorses the following conclusions in the Sunset Factors:

1. The Legislature's intent in establishing the Structural Pest Control Board is specified in the statutes as public protection from 1) chemical harm and 2) harm resulting from inadequate structural pest control. The Board fulfills this intent by examining license applicants for both initial and renewed licenses, inspecting pest control companies, investigating complaints and disciplining licensees.

2. The Board's enforcement functions service the public interest, since the Board has acted aggressively and promptly on many consumer complaints and violations noted during routine inspections.

3. The Board has encouraged input from the public before promulgating its rules and regulations and has informed the public as to its actions and their expected impact on the public by sending copies of proposed legislation to all licensees and by properly noticing meetings and adequately maintaining the minutes.

4. The Board has made numerous attempts to address deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandate.

5. Termination of the Board could significantly harm the public health, safety and welfare.

#### Recommended Legislation

The performance audit review recommends that the Legislature should consider:

1. Revising Title 32, Chapter 22, Chapter 22, Article 1 to clarify the Board's licensure structure.

##### Comment:

The Board agrees with this recommendation and feels that the licensing of both individuals and businesses will provide greater control.

2. Revising the licensure fee structure to make fees equitable based on company size.

##### Comment:

In 1980, the Board attempted to obtain legislation establishing a fee structure based on the number of business locations by licensing branch offices and in 1982, the Board attempted to obtain legislation establishing a fee structure based on the number of employees. The Board is pleased the Auditor General's evaluation recognizes the need for these changes.

3. Allowing the Board to issue administrative warnings.

Comment:

The Board has reviewed and revised its consent agreement procedures. These procedures simplify the consent agreement process allowing effective and efficient resolution of minor violations. Board feels administrative warnings are not necessary.

Findings:

Procedural recommendations were provided by the review team and documented in Findings I, II, III and IV. The Board concurs with the majority of their findings and is initiating corrective action to improve and strengthen regulations and improve enforcement action. The Board has previously attempted to obtain legislation to license both the individual and company and also to modify the fee structure.

I. REGULATION OF THE STRUCTURAL PEST CONTROL INDUSTRY SHOULD BE CONTINUED AND STRENGTHENED.

The review team has recommended that the Board amend its rules and regulations to include specific termite treatment standards and that the Board revise the current Wood Infestation Report. The Board is working on treatment standards for a more effective termite treatment control. A proposed rule has been scheduled for discussion at its October meeting. The Board is also considering the adoption of a more comprehensive Wood Infestation Report which would clearly inform the public of the scope of inspection. Approval of this form will need to be obtained from FHA/VA.

II. THE BOARD NEEDS TO LICENSE COMPANIES AS WELL AS INDIVIDUALS.

The review team has recommended that the Legislature consider a comprehensive revision of the Structural Pest Control Board's statutes to establish a licensing or registration system for both companies and individuals. As indicated previously, the Board endorses this recommendation. Licensing companies as well as individuals will provide greater control of the major components of the pest control industry and increase disciplinary options available to the Board in cases where the pest control company replaces individual licensees when complaints arise.

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September 16, 1983  
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### III. THE BOARD CAN STRENGTHEN ITS ENFORCEMENT ACTIVITIES TO BETTER PROTECT THE PUBLIC.

The review team has recommended that the Board modify its consent agreement procedures, seek additional training for Board members and staff, expand consent agreements to include refunds and training for licensees, and has recommended legislation authorizing the Board to issue administrative warnings.

As indicated previously, the Board has reviewed and revised its consent agreement procedures simplifying the effective and efficient resolution of minor violations, therefore, the Board believes that administrative warnings are unnecessary. The Board has and will continue to include training for licensees in its consent orders.

The Board and staff have attended training sessions with the Environmental Protection Agency, Secretary of State, Attorney General's Office, and Agriculture and Horticulture Commission and will continue to seek training as available.

In many cases, complaints are resolved by licensees themselves through refunds; however the Board feels that arbitration by the Board is not its proper function and complainants may seek compensatory relief through other avenues if unsatisfied by the licensee's actions.

### IV. THE BOARD'S CURRENT FEE STRUCTURE IS INEQUITABLE.

The review team has recommended that the Board's statutes be amended to establish a more equitable fee structure.

As indicated earlier, the Board sought such legislation in 1980 and 1982. The Board is pleased that the Auditor General agrees with the Board's position regarding a more equitable fee structure and has recommended these changes.

#### Other Pertinent Information:

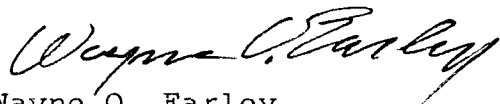
The review team reported that A.R.S. § 32-2321 requires licensees carry insurance or a bond in the amount of \$100,000 or more, but neither the insurance or the bond protects the treated home against pest or termite damage resulting from poor pest control treatment.

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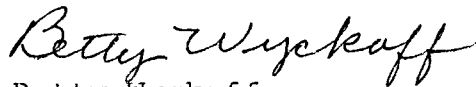
Although the review fails to recommend a solution to this problem, the Board requests that the Legislature consider changes to the statute to expand the required insurance or bond coverage to include damage caused by pests or improper applications.

The Structural Pest Control Board again thanks you and your staff for your courtesy and sincerity.

Sincerely,



Wayne O. Earley  
Chairman  
Structural Pest Control Board



Betty Wyckoff  
Executive Secretary  
Structural Pest Control Board

WOE:jm  
3893A

Subterranean termites\* - Subterranean termites are insects that live underground in nests or colonies. Each colony consists of three groups--reproductives, workers and soldiers. Reproductives, as the name implies, replenish the population of the colony. The soldiers guard the colony. The workers travel up out of the nest in search of food which they transport back to the colony.

Subterranean termites thrive in moist, warm soil containing ample food (wood or other cellulose material). Termites often flourish beneath buildings where the space below the ground floor is poorly ventilated and/or where scraps of lumber, form boards, grade stakes, stumps or roots remain in the soil. Most termite infestations in buildings occur because wood touches the ground or is close to it, especially at porches, steps or terraces. Cracks or gaps in foundations and concrete floors offer termites easy access to wood that does not actually touch the soil.

Unless termites maintain contact with the ground or some other moisture source, they will die. The workers construct galleries in the materials they attack in order to maintain moisture. Termites also construct shelter tubes which serve as passageways between the wood and soil. These tubes may measure from one-fourth to one-half inch wide.

Subterranean termites are the most destructive insects to wood. They infest buildings and other wood products in all states except Alaska but are most common, and thus most destructive, in the Country's temperate areas. Experts estimate as many as 17 to 19 colonies exist per acre in Arizona.

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\* The bulk of this information was extracted from U.S.D.A. Home and Garden Bulletin No. 64 - "Subterranean Termites: Their Prevention and Control in Buildings." Washington, D.C., 1975.

Infestations in buildings have become more common with the increased use of central heating. This, together with other changes in building practices and material use, explains why termites have caused problems in areas where formerly they were not a concern.

Drywood termites - Drywood termites, unlike subterranean forms, nest in the structure itself. Damage by drywood termites consists of clean cavities cut across the grain of solid, dry wood.