

Opening statement and information

Entrepreneurs in the pest industry have started marketing their licensing and training services to licensed home inspection professionals. Trace Pharis is the owner of 'Inspector's Service Group' (ISG) the first and largest of these new business models. I am a licensed Professional Home Inspector and Mr. Pharis' company holds my Structural Pest Control Service Certified Applicator (CA) license. I am his Regional Certified Applicator for his Round Rock office. I am also owner of the software company that he uses for the management of his Wood Destroying Insect Reports. The name of my software company is 'SwarmForm' operating at www.homeservicessuite.com.

Given my past experience in government Mr. Pharis has asked me to help him put into words and present facts to the Sunset Review process. It is his hope that the many fallacies that are present in the TDA Structural Pest Control Service (SPCS) can be exposed and remedied through this process.

I personally am motivated to present to you evidence for misfeasance and malfeasance in this program because I have now been a victim of what I believe is fraud and incompetence with no recourse.

There is a long and contentious relationship between Mr. Pharis and the SPCS. Mr. Pharis has been in the pest control business for over 40 years and most of the contentiousness stems from his acute knowledge of the industry and the Administrative Code. This account of facts will show that the SPCS has acted with misfeasance, malfeasance and with retaliation towards Mr. Pharis' businesses and to other license holders non affiliated with his business in similar ways.

This information submission will show;

- * SPCS' primary goal is to generate revenue and not responsibly regulate the pest industry.***
- * SPCS has not been accurately reviewed by the Sunset Commission in the last 15 years because of the timing of transfer to TDA.***
- * That the SPCS is operating in a way that actively and purposely tries to defraud its licensees.***
- * That SPCS business operations are designed to be murky and deceptive for the purpose of subjective action not based in administrative code.***
- * When a mistake is made by the SPCS it is covered up and not cleared up.***
- * That SPCS staff "make ups and reverses" administrative code and policy on a whim.***
- * That SPCS staff may have a financial gain in assessing fines and levies.***
- * That the old 'Structural Pest Control Board' was more efficient and thorough 15 years ago than the current Department of Agriculture is with the program.***

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- * That the different divisions in the SPCS do not communicate with each other either on purpose or effectively in order to justify fines.*
- * That the SPCS is unable to justifiably show a process or chronology of work when requested and/or just ignore the request.*
- * That there is more technology associated with the tracking of a library book than with the SPCS management of a pest control state license.*
- * That SPCS creates unnecessary hardships to create revenue generation.*
- * SPCS staff will only communicate with you by phone call and not email because there would be a history of the information/communication.*
- * SPCS staff practices illegal retaliatory actions to cover up mistakes.*

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Previous Sunset issues and information

It would be impossible to submit this information packet to the Sunset Review without covering the issues that were present during the last Sunset report first. This information packet will show that the suggestions and recommendations were either a failure or manipulated into a non binding policy standard.

Issue 7

Key Elements of TDA's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Nonstandard enforcement provisions of TDA's statute could reduce the agency's effectiveness in protecting consumers.

- * **Complaint procedures.** Agencies should provide sufficient information to members of the public and licensees about procedures for filing complaints and what to expect if they have a complaint filed against them so they can adequately participate in their defense. Clearly communicated procedures in rules, brochures, and websites promote awareness both among members of the public and within the regulated community. While TDA has a pesticide brochure that defines some aspects of how a complaint is handled, they do not clearly lay out all of opportunities for the respondent to participate in the process. In addition, this information is not available for complainants and respondents in TDA's other regulatory programs, such as cotton stalk destruction.

You will see in this report that this is even a more murky process now.

- * **Informal settlement conferences.** The Legislature, through legislation regarding alternative dispute resolution, has encouraged agencies to settle enforcement cases using informal proceedings. Informal settlement conferences allow an agency to explore resolution without resorting to contested case hearings at the State Office of Administrative Hearings (SOAH), thus saving time and resources. While TDA informs the licensee in a notice of violation of the opportunity to call to informally negotiate a settlement, this opportunity is not clear in subsequent explanations of the complaint and investigation process. TDA will informally negotiate with licensees over the phone, but they are offered limited opportunity to discuss details of the case in person. If the licensee refuses to sign the resulting proposed order, TDA forwards the case to SOAH. By more clearly indicating the opportunity for informal settlement as a venue for negotiating agreed orders, TDA could more easily and fairly resolve complaints.

This always sounds like a good idea to cut time but it does not adhere to a standard policy of procedures and tracking of work and information. It has led to a policy of no traceable evidence of what SPCS staff has told one licensee verses another whether it concerns enforcement or any other area of management. In short, if you talk to one SPCS employee they will tell you one thing but in talking to another SPCS employee you may get a totally different response.

Sunset Recommendations that were adopted by TDA

7.7 Require TDA to clearly outline its enforcement process and make information about the process accessible to licensees.

This recommendation would promote a better understanding of TDA's enforcement process and help licensees accused of violations prepare a response. TDA must outline its enforcement process and the steps a complaint would take from initial filing until final disposition, including appeal options, various hearings, and a licensee's ability to obtain copies of complaint files. Information should be made available in the agency's brochures and website and any other available resources. TDA must also make information about allegations and TDA's investigation available to licensees in time for them to adequately participate in their defense.

You will see in my violation letters that this was not done.

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7.8 Require TDA to offer respondents the opportunity to settle contested cases through informal settlement.

Under this recommendation, TDA would provide sufficient opportunity for a respondent to indicate whether the terms of a proposed order are acceptable, and would clearly state this opportunity in its notices of violation. Respondents who do not agree to proposed orders, would be able to request an informal settlement conference so they can present their case to the agency in person. TDA would also be able to conduct informal settlement conferences over the phone.

All these recommendations were put into effect with the expectation that staff had nothing to gain by fines being assessed to license holders. These recommendations were intended to speed up a process by not having to go to the State Office of Administrative Hearings (SOAH) But you will see in this information packet's SOAH's judgement case that it was the only option for an objective and reasonable solution.

You will see after this report that the recommendations from the last Sunset Review have been manipulated, disregarded or just out right not done.

Change in the WDIR industry -

There has been a shift in the Pest Control industry of Wood Destroying Insect Reports (WDIR's). In the last few years more and more Licensed Home Inspectors have obtained their WDIR license. At the time of this report's submission there were about 500 licensed home inspectors also licensed to WDIR's (an estimate derived from cross referencing licensee list' from the Texas Real Estate Commission).

The shift in the industry from pest companies to home inspectors is due to the SPCS administrative code stating; the **'Texas Wood Destroying Insect report is only to be done for the purpose of a real estate transaction'**. I.e. Only when purchasing or selling a property.

If you already own a home and want to know if there are wood destroying insects present the pest company would not use the SPCS T4/T5 form to show the findings because the house is not involved in a real estate sale. A separate SPCS form would be used.

The shifting to licensed home inspectors doing WDIR's is two fold; Convenience for real estate professionals and profitability for pest companies.

Convenience - During the process of a real estate transaction multiple inspections must be performed on a home in a very short period of time. After contracts are signed the option periods usually average 5 to 7 days. The most common inspections to be done in this time period include: General home inspection, septic inspection, well/water inspections, pool inspections and the wood destroying insect report.

WDIR's are required for about 75% of all home sales. Licensed home inspectors can be certified and licensed for all of these inspections and the WDIR is the second most common of the inspections behind the home inspection. Having the home inspector perform most of these inspections is very convenient for all parties involved, mostly for the realtors.

Pest Company Profitability - Pest Companies have traditionally done the WDIR's but are moving away from doing them because they cost more money to perform than they make. The average cost of a WDIR is \$85-\$100 traditionally. Pest companies are doing less and less of them because an active infestation is only found around 10% of the time. (See Statistical information section from 'SwarmForm') The national companies, like Orkin have strategically made the price of their WDIR's so high that they are almost never called to do them. Their price's are about \$300.

Pest Companies - "Treatments... That's where the money is"

Home inspectors licensed to perform WDIR's have no interest in performing pest treatments. If an active infestation is found then the buyers/sellers start calling pest companies for quotes. The pest companies then can actively market and sell their services knowing there is an infestation and they never had the cost of "missing" on 90% of the WDIR's they would have performed. The average cost of an insect treatment ranges from \$750 to \$2000 depending on the damage and issues.

The pest industry is divided into two separate basic functions; Inspections and Treatments. However, inspections have two types; (1) for the purpose of a real estate sale and (2) for the purpose of "just seeing if insects are present".

The rules and compliance are different for each inspection. Very simply, one has a purpose designed for real estate business and one has compliance for pest company business. It's the

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same inspection but the rules for conducting them are different, along with different forms. The WDIR is much more scrutinized. SPCS tries to apply the rules of one to the other.

Licensing - Issues of Licensing -

There is more efficiency with the tracking of a library book than the licensing process from TDA's Structural Pest Control Service.

The original Structural Pest Control **Board** only took 3 days to renew licenses 15 years ago (see 2005 Sunset response) and they were doing them basically by hand. Every person and entity that has to deal with the SPCS knows that the licensing division is an abhorrent mess.

SPCS uses an unnecessary amount of time and a murky licensing renewal process in order to create situations where fines can be assessed.

It takes the SPCS 60 days to renew a pest company's licensees *and no new licenses are allowed* to be issued during the renewal process for apprentices or technicians. No one knows why... And traditionally they use all of the 60 days time.

If you are applying for a new license, and the company you are going to work for is up for renewal, then you are going to wait 4 months to get your license even though you are done with your training and passed your test.

Training and testing can take as little as 10 days for a new employee. However, according to the TAC a new *traditional pest company employee* can be on the job, work with chemicals and perform other duties and get paid without a SPCS license.

In regards to a home inspector obtaining a license to do WDIR's;

During the licensing process the home inspector is not allowed to perform any inspections until they are given notice of their license and number. But the "yet to be licensed" pest company employee is allowed to actively work for the pest company and do chemical treatments.

So if you submit all your paperwork and pass your test on January 1 you will not receive your license notification and number until May 1, at least.

In today's day and time the SPCS will make a business "shut down" for 4 out of 12 months in hiring new employees during that business's license renewal.

Whimsical enforcement and interpretation - example

License requirement 7.133

“A technician must be “physically” present to get “verbal” instructions once a week”.

There are no parameters for what they must do, practice, perform, or even talk about. The way the code is written now a license holder could be fined for being out sick and not meeting with their certified applicator during that week and it would be totally subjective on the part of SPCS staff to do so.

When this issue was brought up by Mr. Pharis to Mike Kelly of the SPCS his response was “Just do your best...”.

Rules of Recertification state that; **Face to face contact at a “work location” is required.** The work location can be a job site or a classroom and the technician must show demonstrated competency in the evaluation from the certified applicator.

The interpretation of this rule by SPCS is that a technician **can not use online training** for either their weekly or yearly educational requirements unless they have a certified applicator “physically” present next to them.

Mr. Pharis brought this to the attention to Allison Cuellar of the SPCS and her response was; “The certified applicator needs to stand next to the technician when they check their email then...”.

Mr. Pharis also argued that the work place can not be limited to the field or pest office because many inspectors gather their data in the field and finish their paperwork at home. Ms. Cuellar stated that was not allowed. Mr. Pharis asked where it was in the TAC and Ms. Cuellar stated:

“It doesn’t need to be in the TAC I just told you so...”

In today’s day and time you can be evaluated for a medical condition and prescribed pharmaceutical drugs from a web based conference call on your phone or computer. But your weekly meeting requirements are only met when you are looking at bugs or talking about bugs on a computer when a certified applicator is “physically” standing next to you.

Murky business practices -

In December 2017 I performed a home inspection and a WDIR on a home in Rockdale, TX for a Mr. Kevin Cruthirds and recommended a termite treatment based upon the conditions that I found. I followed the procedures that are applied to wood destroying insect reports. The customer, Mr. Cruthirds didn't take my recommendation for treatment and found termites 3 months later during a bathroom remodel. He made a complaint to TDA/SPCS and an investigation was done.

SPCS could not find an error in my inspection or recommendations. The fine was from a discrepancy in my licensing from what the SPCS had on file as apposed to what Mr. Pharis' company 'Inspector's Service Group' (ISG) had in their records. ISG showed they sent in the proper forms and paid the licensing fees. SPCS even showed "a credit balance" for some reason that was the exact amount for my and several others' licensing cost.

I received two letters from TDA's Enforcement division dated November 12, 2018, not Inspector's Service Group or Mr. Pharis, but me personally. Both letters had the same **Incident No. 5001-00038487** and **IQ No. 863944**. One was a "Notice of Violation" and the other was a "Warning Letter". I sent the letters to Mr. Pharis and we concluded from the Incident and IQ numbers matching that it was the left hand not knowing what the right hand was doing.

On a letter dated March 1, 2019 I received a "Default Order" letter from TDA's Enforcement Division with the **Case No. 05011-00038487. The exact same number on the warning letter.** It stated I was receiving the letter because I had failed to respond to the Notice of Violation for this case within the required time period and if payment wasn't received within 30 days more fines and loss of license would be imminent.

Based upon the information of the letters from TDA, I and Mr. Pharis interpreted the issue as being resolved. I didn't move forward with any appeals process that was allowed because the second letter stated it was a warning.

Now, "as a violator" I had no recourse. I had to stay in compliance and pay the fine in order to maintain my license. There was no other review or consideration that I could take advantage of. I now wasn't eligible to have my case heard by the State Office of Administrative Hearings (SOAH).

I sent a check for the amount of the fine along with all letters to the attorney who signed the letters, Christopher Gee and two SPCS staff members Allison Cuellar and Mike Kelley. I informed them that there was a mis-communication on SPCS's part. A response from the attorney, Mr. Gee just "doubled down" on the violation letter. I heard nothing from Ms. Cuellar or Mr. Kelley and the check was deposited by TDA.

At this point I didn't know what else to do so I made a complaint with the Attorney General's office against SPCS for fraud. A representative from the AG's office called me and stated that they didn't have any authority over the matter and recommended a complaint be made to the State Auditor's Office, which I did.

I have placed all documents that I have the ability to obtain in this report.

Home inspectors Vs. Pest Company licenses

When a technician or CA wants to change employers they (or the new employer) have 10 days to do so. They have to fill out form SPCA 1 or 2 or both, depending on the circumstances. However, SPCS does not acknowledge the start date **until they process the license transfer**. Therefore a gap is present in the date that the form is filled out and submitted to when SPCS “acknowledges” a start date. That license holder is in limbo and “legally and technically” not allowed to work until SPCS’s in-house paperwork is complete. Then there is the amount of time it takes to mail the notice to the new employer.

For a home inspector to transfer his WDI license to from one company to another it will take a minimum of 60 days for SPCS to “acknowledge” the transfer.

During this time SPCS has the subjective authority too fine a company for not having someone licensed “appropriately”. So legally, you can work without a license for a traditional pest company as a “not yet” apprentice and do chemical treatments but you are not allowed to **continue** to do WDIR’s after you have already been licensed and transferring companies until you are notified by SPCS that your paperwork has been completed.

There is no process of “releasing” of an employee from an employer. You only need to file the SPCS 1/2. When this is completed by SPCS the employee is then transferred. There is no “trading this guy for that guy” scenario when employees transfer.

According to chapter 7.121 of the TAC technicians and CA’s can be with multiple branch offices with the same employer. They are not required to hold a separate license for branch offices if those offices are under one LLC.

SPCS tried to fine Mr. Pharis’ company for technicians not being registered with the Austin office when they were registered with the San Antonio office. This was during the process of renewal and opening the new Austin branch office. (see SOAH judgment example)

SPCS charged that those technicians were “inactive” and not “registered with the appropriate office”. By the TAC those technicians were licensed and registered with the San Antonio office by default until SPCS “acknowledged” their placement in the new office but SPCS just disregarded their own administrative code.

This is where my fine from SPCS is from. I was fined by SPCS because **THEY** did not complete the SPCS transfer form and paperwork. And there was a “credit in the books” for Mr. Pharis’ company at the time in the amount of licensees renewal fees that they couldn’t explain.

SPCS states that fines are assessed base upon a preponderance of the evidence but they only consider **THEIR** evidence and even disregard evidence in **THEIR** possession that proves there was an error, like the credit balance of the licensing fees.

Delays in SPCS licensing division is used to fine license holders

SPCS licensing division is broken but is not being addressed because it suites the condition for revenue generation by the enforcement division. The following happened to Mr. Pharis and is an example of how (1) the SPCS licensing division is woefully bogged down and behind (2) how the enforcement division uses the delays in the licensing division to assess penalties to license holders and (3) will not show a chronology of work when requested (4) does not know the laws/procedures for transferring a license holder.

This incident took place in the Dallas office of Mr. Pharis' Inspector Service Group Company.

January 16 - Mr. Pharis submitted the proper paperwork for a license transfer of an employee, Colin Dunford, from another company 'Bugout' to his ISG group to be the regional CA for his Dallas office.

- Every office is required to have a CA.

ISG renewal period was not until January 31, so the paperwork was submitted by the deadline.

- No new employee can be added during renewal.

End of January 2018- Mr. Pharis contacts SPCS and asks why Mr. Dunford had not been transferred yet. A letter from SPCS stated that Mr. Dunford "... had not been released from his previous employer...".

- There is no such process or procedure of an employer "releasing" an employee so they can go to another company.

Mid February - A second letter from SPCS stated that they can't transfer Mr. Dunford because the previous employer (Bugout) did not have a replacement for him yet.

- This is absurd. That is not ISG's problem or even procedural on SPCS's part.
- Mr. Pharis contacted the owner of Bugout, Scott Meyers. Mr. Meyers stated that was not correct. Mr. Meyers had submitted the proper paperwork naming himself as the new CA for his regional office.

Mid February - SPCS now informs Mr. Pharis that Bugout is in renewal. This will delay things even further.

An entire month has passed with no action being taken on issuances of new or existing licenses.

Mr. Pharis calls Bennet LeChance, head of licensing for SPCS. Mr. Pharis demands a chronology of work for the day to day activity of this issue. Mr. Pharis informed Mr. LeChance that there would be an issue with the enforcement division about his business operating without a regional CA because of the delays in the licensing process.

March 8 - Burnett LeChance calls Mr. Pharis and states that "... he had the ISG Dallas office squared away". Mr. Pharis demanded a chronology of what had happened with the history of Colin Dunford, the now established regional CA according to the head of licensing.

From January 16 to March 8 the SPCS database did not show that ISG had a regional CA for the Dallas office.

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Burnett LeChance emails Mr. Pharis and stated Colin Dunford's first day at ISG as the regional CA was February 21. ISG's submitted paperwork was dated January 16.

It is now established with SPCS that ISG did not have a regional CA from January 16 to February 21.

Early March - Colin Dunford notifies Mr. Pharis that he can't wait any longer and has to find other work.

March 10 - Mr. Pharis receives a call from SPCS investigator, Joe Mallon, stating there had been a complaint filed by a competitor, Kevin Lipscomb. Mr. Lipscomb had seen from the posted excel file on the TDA website that ISG didn't have a regional CA for the Dallas office listed. Mr. Mallon demanded an emergency meeting the next day.

During the meeting Mr. Pharis explained what had transpired with licensing and with Mr. LeChance. Joe Mallon stated that Colin Dunford had never been a regional CA. Mr. Mallon also demands to talk to Mr. Dunford about his time serving as the Dallas CA. Even though Mr. Mallon just stated that Mr. Dunford had never served as the Dallas CA.

Mr. Mallon demanded training and other records done under Mr. Dunford going all the way back to January 31, even though he wasn't installed until February 21.

Mr. Pharis asks; "... What does Colin have to do with records that existed before he was installed?"

Mr. Mallon's response: "... Colin was responsible for things before he got there..."

Mr. Pharis didn't allow Colin Dunford to talk to Mr. Mallon because Mr. Dunford never got a license or a chance to work for ISG. And because of the issues with SPCS licensing Mr. Dunford moved on because he couldn't work for almost 3 months.

Investigator Mallon filed a complaint against ISG for refusing to cooperate with an investigation.

Mid March - Sanjay Chandrahas and ISG submits paperwork for him to be the regional CA.

End of March - SPCS notifies ISG that Mr. Chandrahas hadn't been released from his previous employer yet...

1st. Week of May - Mr. Chandrahas appears as the regional CA in the excel file posted on the TDA website.

I wish that this just shows a cascade of incompetence but I'm afraid it shows motive against a license holder so that charges and fines could be assessed. Mr. Pharis would like to expand upon this experience and others like it to the Sunset Review.

State Office of Administrative Hearing Summary

Court date: July 25, 2019

Docket No. 551-19-3397

Texas Department of Agriculture Vs. Inspector's Service Group, LLC

Administrative Law Judge presiding: Sarah Starnes

Statement of Findings: September 20, 2019

3 attorneys and 5 SPCS staff had to explain their justification of fines and bring their evidence to the SOAH. The SPCS was trying to assess several thousand dollars in penalties for a wide range of violations. In the end only \$300 was found to be justified by the Judge. And on that violation the judge recognized the confusing stipulations that are present in the administrative code and reduced the penalty down based upon TDA's own penalty matrix, which they were not using to access Mr. Pharis' fines anyway. Mr. Pharis freely admitted; " ... I just had a brain freeze that day and signed in the wrong place".

You will see a pattern very quickly of "... evidence failed to establish...". How can a legal "team" and decades of program experience not be able to follow their own rules and simply "create" fines out of thin air? There were multiple times during testimony, under oath, that staff had to contradict their allegations against Mr. Pharis based upon what the administrative code stated.

At the end of the day, and before judgement was known, everyone knew that the hearing did not go well for the SPCS. Two business days after the hearing SPCS pulled Mr. Pharis' training license without giving him the three notifications that are required by the 'Texas Department of Agriculture License Suspension and Revocation Guidelines'

<https://www.texasagriculture.gov/Portals/0/Publications/REG/Weights/License%20Suspension%20and%20Revocation%20Guidelines.pdf>

SPCS staff was embarrassed that an impartial judge found all of their accusations to be unjustified or unreasonable. The SPCS staff acted in retaliation for the "bad day in court". This has been a substantial business loss for Mr. Pharis.

The entire proposal for decision from SOAH is attached but below are the summaries for each ruling. This is intended to show that the **SPCS is conducting its business to purposely defraud license holders by bringing fines that are not justified in administrative code.**

It also shows that this state agency has shown to be incompetent in the management of its licensing, enforcement and legal divisions. SPCS staff has been shown to act outside of good judgement and practice.

B) Accuracy of training records - Rule 7.133

- Apprentices were not mis-represented on records because SPCS licensing division hadn't issued those licenses yet...
- SPCS was not aware that a trainee's Lic. No. was not required to be on the training record...
- Mr. Pharis' "brain freeze" issue was in this section.

Submitted by: Trace Pharis and Rance McDonald

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C) Failure to register employees - Rule 7.142

- SPCS staff failed to meet a burden of proof...
- Mr. Pharis gave “more than adequate notice” of employees registration, but because of delays in how SPCS processes and maintains its records the mistake was on them.
- This incident took place in 2016 (different from the example on page 8). This hearing took place in 2019. Ms. Cuellar has worked for the SPCS for about 10 years. And she states; “... because she works in enforcement, she wasn’t aware of any problems or delays experienced in the Department’s licensing division in 2016...” Pages 12/13.
- Ms. Cuellar, and all of the staff at SPCS, and every license holder in the state knows that the licensing division is always behind.

D) Maintenance of correct and accurate records Rule 7.144 & Interference with investigation - Rule 7.156

- 7.144 - SPCS investigator demanded 11 months of records in paper form, thousands of documents. Mr. Pharis keeps records in electronic format and presented a zip drive of the records a few short days later.
- SOAH judge - “... given the breadth of the document request and the number of responsive documents ISG was reasonable under the circumstances”. “Nothing in rule 7.144 states that a business must maintain records in paper form.
- 7.156 - Interfering with investigation
- SOAH Judge - “all staff evidence shows is that SPCS investigator, Darin McDaniel, was dissatisfied because he expected to see paper records...”.

E) False, misleading or deceptive advertising Rule 7.152

- ISG offers a warranty with an insecticide called ‘Termidor’ with a treatment type called a “suppression treatment”. This warranty is based upon what the chemical label states: “the product is intended, ‘inter alia’”, which means to prevent and control infestations.
- SOAH judge- Had to inform SPCS staff that “suppression” is defined as the act of repressing, stopping, or arresting something... ISG is just promoting what the chemical label is stating”.

F) Errors in WDIR’s Rules 7.175 - .177

- SPCS investigator found errors in 13 out of about 10,000 WDIRs. Violations were not found to be harmful because of the immaterial nature of the mistakes.
 - SOAH Judge- deemed these “violations” as very minor considering the number audited.
- *SPCS staff was unaware* that license numbers were not required to be on a WDIR according to rule 7.175.
- SPCS staff Allison Cuellar under testimony - “... it’s not a violation to make a formatting change on the form, we care about content not formatting”.

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- SOAH Judge - “the addition of a logo and contact information is merely a formatting change, that is not prohibited by your own testimony...”.
- SPCS staff believed that if an inspector was registered to an Austin office that they were only permitted to work in the Austin area. SPCS coordinator Allison Cuellar’s testimony under oath stated: “since the business tax ID’s are the same for all offices then it would be permitted...”
 - *This is the second time that Ms. Cuellar under oath had to contradict herself and cite the very administrative code that they claimed Mr. Pharis violated. And she was aware of this and didn’t omit or change the accusation until the judge called her on it.*
- SPCS investigator found irregularities in name of inspectors on a WDIR along with date of inspections. The name of the inspector does not match the name on the sticker and the dates are different on the stickers.
 - SPCS staff was unaware of the process of how mortgage lenders require another inspection after the initial inspection justified having a treatment done. The “irregularity” is most likely that the house needed two inspections and a treatment with sticker placements that occurs over the course of several days.
- SOAH Judge - Mr. Pharis credibly explained the alleged discrepancies and the evidence does not show that ISG failed to post stickers on the dates of inspections.

Another issue that we wish the Sunset Review process would take into consideration is the fact that TDA does not have to abide by the decision that SOAH has reached. The agency can simply disregard the decision and assess penalties anyway. We believe that this would have already happened if the Sunset Review was not slated at this time and Mr. Pharis has made it clear all along that his treatment was going to be brought to the Sunset process.

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SPCS Short Sightedness

How much time, resources and money is SPCS wasting to generate what they bring in for fines? Just in the SOAH case you had at least 3 attorneys and 7 or 8 staff work on a 4 inch book of allegations that netted them \$300.

This type of regulatory philosophy is extremely outdated. But its genesis is not in an antiquated mind set of “an old bureaucrat”. This is a policy directed by SPCS coordinator Allison Cuellar. Her resume states she has a Masters in Public administration and was a compliance specialist for 3 years. The misfeasance and malfeasance of the the Structural Pest Control Service is not indicative of the education and experience that Ms. Cuellar has.

It’s got to be one of two answers:

(1) It is personal somehow.

If not to Mr. Pharis but to the shift in the industry that is happening with more Licensed home inspectors performing WDI reports. There is no logical reason for the harassment that has taken place against home inspectors who perform WDI’s except that staff just dislikes Mr. Pharis personally who created the business model and is successful at defending it.

I understand the need for privacy in salary and bonuses, I use to work for the state myself, but I would like to ask the Sunset Review to at least ask the question of does any staff receive any bonuses based off of enforcement division fines.

(2) The operational philosophy of SPCS can’t be changed.

The culture of the SPCS has taken on an identity of revenue generation at all cost. SPCS is a regulatory authority with the ability to fine license holders and must do so because it can’t be solvent without the “income”. It is a little program that no one pays attention to so it can be a money grabber for the agency and the fallout will be minimal.

New proposed “Inspection only” License

There is a new inspection only type of license being considered by SPCS. The issue is when you establish a new license that is 100% for real estate, then the business flow of real estate must be taken into consideration. Which it has not. No real estate industry professional has been engaged in the proposal of this new license.

When you create a new inspection only license then you have to discuss the WDIR form, because you can not have one without the other. The new T5 WDIR form is an entrapment device for home inspectors. It is not a document meant to be used for the purpose of a real estate WDI inspection. It is designed to capture and fine license holders.

Please see the ‘**WDIR information and issues**’ section after this one”

On January 23, the SPCS advisory committee met to discuss and consider the new inspection only license. Mr. Pharis and I attended and got to speak at the public comment section. But only after the Chairman had tried to call a motion and vote on the agenda item before public comment. There was pushback from several in the crowd for not getting to speak before the item was discussed and voted on. The Chairman relented.

I believe Mr. Pharis, myself, and several other public commenters disrupted the anticipated outcome of the meeting by bringing opinions and facts to the table that the advisory committee hadn’t heard or been aware of.

Below is my comment to the advisory committee with my request and suggestions.

January 23, 2019 Comments to the TDA SPCS Advisory Committee

My name is Rance McDonald and I am a Professional Home Inspector and also a Licensed Certified Applicator with the SPCS. The new licensing designation that you are considering today is designed for professionals like myself.

I’m a dual license holder but I also have 11 years experience in local and state government where I helped create and management administrative code and policy.

I would first and foremost like to make it known that I am a proponent of this new license designation. It makes good sense. It’s intended to facilitate the licensing process of an emerging business model.

However, with emerging business models comes new players, processes and technologies in the industry. Those players need to be engaged in the development of the regulation for it. There is an old saying in government; If you are not at the table, you are on the menu.

Currently, there are about 500 home inspectors with a license to perform WDI reports. No one really knows for sure because the only way to come to this number is by cross referencing Excel files from the Texas Real Estate Commission and the SPCS.

There has been a heavy pushback of online education from SPCS in the past because of the traditional pest company’s need to train employees on chemical usage and application. I whole heartedly agree that if you work with dangerous chemicals then you need one on one training on how to use and operate those chemicals.

But with a new “inspection only” license there needs to be a revision of the “physically present” educational requirements that are left over from the traditional pest company rules. (Rule 7.133)

Weekly online training must be a reconsidered now. My WDI software has over 8,500 pictures of active infestations and conducive conditions from the 14,000 inspections in our database. Those pictures would be an incredible

Submitted by: Trace Pharis and Rance McDonald

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teaching tool for our inspectors. But as the rules are right now those pictures are useless because of the restrictions of “physically present only” training requirements.

A reform on this new license’ training requirements is necessary. A weekly meeting between a technician and his CA is already required but no documentation is required of that meeting. A tracked and catalogued short weekly training would produce better inspectors.

If you create a “Real Estate Only” license, then you are now in the real estate business. However, SPCS does not have a grasp on the the real estate business flow. It is especially seen in the difficulty of the mortgage industry with the current and proposed WDI form.

SPCS needs to engage the real estate community. To my knowledge there was no real estate industry professionals input sought about the new license or the new WDI form.

I do not believe that the new license or WDI form has been properly vetted. Yes, it has been talked about for quite some time. But only a small circle of people in the regulatory pest industry, not Real Estate.

I’m here to ask the committee to table this new license and WDI form until after the Sunset Review process. It is common knowledge that SPCS has very serious issues with its licensing division. To create a new license at this time would be asking people to board a sinking ship.

An objective Sunset Review will bring into light the fallacies that are present in the SPCS and Identify the areas that need to be changed and updated. Technically there has not been a SPCS Sunset review in 15 years. Please allow the Sunset review process do what it was intended to do.

In closing;

As I stated earlier, I am a proponent of this new license. But I am also acutely aware that this agenda item has been calendared one week before the Sunset Review deadline for information submission. I do not think it would be prudent to move forward on this until Sunset has had a chance to “clean up” the issues that the SPCS has.

If you have any questions on the references materials I would be happy to answer them.

Thank you,

Rance McDonald
Austin, TX

WDI software data information (SwarmForm)

Results of findings

Created	Paid	Sent	DL	WDI	Pest	Comp	Clear	Prevent	Correct
3140	3087	1152	2275	3087	0	0	600	2109	378
5733	5648	3899	2097	5648	0	0	1417	3751	480
3436	3369	945	2487	3369	0	0	1104	1905	360
1973	1939	594	1500	1939	0	0	590	1129	220
66	64	32	42	64	0	0	20	34	10
14348	14107	6622	8401	14107	0	0	3731	8928	1448

Total WDIR's	Date Range	2018-01-22	2020-01-22	Update	Export	26 %	62 %	10%
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(Further discussion during my public comment)

Under the current training guidelines SPCS staff believes the only true training is "hands on" at a work place. Traditionally SPCS believes that an inspector needs to see at least 40 active infestations to be properly trained.

At an active infestation rate of 10% the inspector trainee would have to go on about 400 inspections to see the required 40. With the capabilities of WDI software companies the inspector could see more than that in one day with webinar training.

There are currently 8,500 pictures of active infestations and conducive conditions in our database.

A suggested requirement -

*A 15-30 minute weekly webinar training could produce an exponential amount of quality training time for an inspector. Technicians are required to meet weekly with their CA's now and the time isn't required to be logged or documented in any way. The weekly webinars could produce 13 - 26 hours of yearly training for the inspector. **I am a proponent of the training time being logged and turned into SPCS.** This can be in addition to already standard CEU requirements.*

It is also suggested that SPCS staff have a presence on the webinar, free of charge, at least once a month so that they may keep up with current trends in the industry and give input and guidance for the new licensing designation.

Mr. Pharis also spoke on the issues of the T5 WDIR form during public comment. After the conclusion of public comments the Chairman made the motion to vote again and at least two committee members spoke up with concerns about not having enough information about making a decision after hearing from members of the crowd.

One committee member even asked for clarification of "what exactly was Sunset Review...". The Chairman simply played off the question by saying "... it's just something that is ongoing".

I would like to publicly call into question how the staff of a state agency can be coy about an impending Sunset Review to its advisory committee and the Chairman can quickly brush away any concern or question about it to a fellow committee member like it was something that didn't happen every 12 years, 15 in this case.

That Chairman is an attorney and serves for the interest of the public trust. It is in my own personal opinion that SPCS staff was trying to push something through in the 11th hour, with the help of the Chairman, and keep the advisory committee in the dark about the true intentions of the license and the new WDIR form.

Mr. Pharis and I missed the opportunity to bring out the fallacies of the new T5 WDIR form because we were unaware of its proposal and timing earlier in the year. From now on we will be at every meeting and offering information to the advisory committee. I do not believe that the SPCS staff is presenting all the information to the committee so that they can make good policy decisions.

Submitted by: Trace Pharis and Rance McDonald

Wood Destroying Insect Reports (WDIR) Information and Issues

The Legality:

- The only time a WDIR is to be done is for the purpose of a real estate transaction.

The Reason why it's different from the other SPCS forms:

-It is a real estate document. This form's only intent is to let the realtor and mortgage underwriters know if a house has an infestation or a previous infestation, no other.

A lack of management of the industry:

- It is estimated that between 750,000 to 1 million WDIR's are done in Texas each year. Just in WDIR business that is a 100 million dollar business.
- SPCS doesn't keep any records pertaining to the inspection, document, or tracking.

Texas WDIR in comparison to other states

- 35 states use the HUD generated pest form called the National Pest Management Form 33, or the **NPMA-33**. It supersedes all state forms when it comes to mortgage underwriting. Simply, if a state wants to have its own WDI form they can but the NPMA-33 will always be accepted.
 - 14 states have their own form (Maryland's WDI form is identical to the NPMA-33 except for a few added questions).
 - The Oklahoma form is the longest at 5 pages.
 - The Texas and Washington state WDIR's are the next longest with 3 pages (new T5 is 4)
 - The most heavily regulated state in the country, California has a 1 page form and you can fill it out and submit online so the state can track the empirical data that it collects.
 - The state most protective of its environment, Hawaii is only 2 pages.

Alabama	1	Georgia	1	Mississippi	2	South Carolina	2
Arizona	1/2	Hawaii	2	Nevada.	1	Texas	3&4
California	1	Louisiana	1	North Carolina	2	Washington	3
Florida	2	Maryland	1	Oklahoma.	5		

- If the Texas WDIR form were to go away there would not be any disruption in the real estate industry because the NPMA-33 is recognized and preferred by mortgage companies.
- Because of its uniqueness in the law the Texas WDIR can be used as a tool to bypass code interpretation. It has become a "wild card" for creating fines. Historically it is used as an entrapment device because SPCS can make up policy on a whim without notifying the public or licensees of changes that are required to the form. (see issues with T5 form below).
 - Example 1: The SOAH ALJ found that SPCS had no evidence that a fine should be levied because Mr. Pharis chose to put the contact information of the inspector on the WDIR. The statutes didn't address this issue.

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- Example 2: The SOAH ALJ found that the SPCS had no evidence that a fine should be levied because the license number of the inspector didn't appear on the WDIR. The statutes didn't address this issue.
- There are many other examples of this type of whimsical interpretation but the only one's cited are from the SOAH because they are documented. Many more can be provided if required.
- The regulation of the WDIR form has been more similar to "common law" or "common knowledge" and when SPCS makes a change in the policy of the WDIR the information is very slow to matriculate down to the license holders. Thus giving SPCS the cushion that it needs to assess fines and penalties.
 - *In February 2019 SPCS employee Frank R. recommended to Lea Batey of H & L Pest Control in Temple, TX to stop doing WDIR's "...because they were going to be costly in the future..." H & L Pest Control has not done any since that time.*
 - *The new T5 Form was initiated 6 months later.*
- The WDIR is a real estate document and SPCS doesn't understand the process of real estate business in Texas.
 - *Part of the SPCS SOAH judgement was that names and dates on inspection stickers didn't match. Mr. Pharis had to explain to the judge and SPCS that there is a process of re-inspection when active or conducive conditions are found and that rarely is the same inspector used for both inspections and never on the same day because the treatment will be several days after the original inspection.*

The issues with the Texas WDI form T4 & T5

The first and most egregious issue with the WDIR is that SPCS created the new T5 WDIR form knowing that they were going to later create a new "inspection only license" designed for home inspectors. As you read further you will see that there is a concerted effort to set them up to fail so that SPCS may have the ability to assess fines for not meeting the requirements of the form's new treatment disclosure requirements.

The overall issue with the WDIR form is that it was not effectively changed over the course of its history, it was simply added on to to try and make up for whatever issue at the time needed to be adjusted. The purpose of the form is for an inspection for a real estate transaction. But it has mutated into a homogenized entrapment tool that circumvents administrative code restrictions on SPCS. See the SOAH judgment above reference.

T4 (Current WDIR form)

It asks questions that the inspector just can't reasonably answer while performing a real estate inspection for wood destroying insects.

- Question 9: "Will be or has been mechanically corrected by inspecting company"
 - There is no way for an inspector to know this information when they show up to do an inspection. If the inspector is a technician with inspection only designation (as

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identified by the proposed new license) then the inspector must answer a question that he can not legally answer.

- Question 10A: “This company has treated or is treating the structure for the following wood destroying insects”
 - It asks what kind of treatments were done for the type of termite. How is the inspector suppose reasonably know this information? If the inspector notes signs of a treatment but there is not sticker/information then no information can be given.
- Question 10B: Date of Treatment, common name of insect, name of pesticide.
 - The only way to know this information is if a sticker is still present in one of the designated places. If the sticker is removed by anyone and there is an investigation by SPCS then the inspector will be fined for not providing the information.

Issues with proposed T5 WDIR form

- The new T5 form has inspection requirements that are not safe and not reasonable for the inspector.
- It has questions that open litigation up for individuals who may not have had anything to do with the inspection.
- SPCS staff has tried to make the WDIR a training record outside of its already established training guidelines. SPCS believes that the only way to be trained on the inspection of WDI's is “on the job” but there is no definition of what a work place is in statute.

Mr. Pharis argued that the work place can not be limited to the field or pest office because many inspectors gather their data in the field and finish their paperwork at home. Ms. Cuellar stated that was not allowed. Mr. Pharis asked where it was in the TAC and Ms. Cuellar stated:

“It doesn't need to be in the TAC I just told you so...”

- To reach the preferred 40 active infestation inspections the trainee would have to go on almost 400 inspections. **See SwarmForm data.**

Specific issues from the T5 - Instructions page

3) Name of the owner or seller of the structure to be inspected

- *Why does a realtor or mortgage underwriter need to know this?*
- *It is strongly advised in the real estate business that buyers and sellers do not know each other's names or have any contact with each other.*
- *This information is private and the WDI inspector doesn't have the ability to readily know this. A home inspector doesn't even have this knowledge. In fact, It is recommended that the home inspector doesn't know the*

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names of sellers because it could create a conflict. Why does the SPCS need to know this information if they don't keep any records concerning the outcome of the inspection? The WDIR is the property of the buyer. In the history of WDIR's being done in Texas why does SPCS need to know the names of the sellers now?

- Because if the the information is not on the WDIR then they can be fined.

6A) List the name of the specific wood destroying insect(s) that treatment is being performed to control. Mark the type of treatment as part of the treatment disclosure. Treatment disclosure documents must be provided as part of any estimate for treatment.

- So now this inspection only, real estate transaction document has become conjoined with the treatment disclosure documents that aren't even a part of an inspection. These are two separate administrative code programs but SPCS is trying to make the WDIR subject to a treatment document.

- Why does a realtor or mortgage underwriter need to know this?

- What are realtors and mortgage underwriters suppose to do now? How do they interpret a treatment disclosure form on an inspection form that has no conducive conditions and no active infestation?

- This item was put into motion about the same time that the SOAH hearing (mentioned earlier) judge found that the suppression warranty provided was exactly as the chemical Label had listed and so there was no grounds for false advertising.

6B) Date of treatment, common name of pesticide, bait and/or method of treatment are noted in this section along with contract or warranty information.

- How is an inspector suppose to have this information or get this information when the inspection was done when the sellers were not present during the inspection? Even if the sellers are present and tell you they have a treatment plan with a warranty they most likely can't give you any other information that who the treatment company is.

-So now the sellers have disclosed to you they have a treatment service plan but you are out of compliance because they can't give you a copy.

- How is a WDI inspector suppose to get this information?

- If there is a sticker stating a treatment was done it is noted in the WDI report and the realtor knows to get more information regarding the previous treatment. Why does the inspector need to do a task that realtors already perform because it helps their negotiation leverage?

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7B) List all apprentices, technicians, certified applicators and their registration/license numbers who were present at the time of the inspection. This must be used when training individuals on how to conduct wood destroying insect inspections, and how to complete the Texas Wood Destroying Insect Report.

- *This real estate "inspection only" form has now become a verifiable training record. And to meet the expected requirements the "trainee" will need to go on 400 inspections to get the proper training. But these requirements are outside what the current SPCS training requirements state.*

- *All the people listed on the WDIR, who were training, are now open to litigation if there was a lawsuit brought about from a bad inspection. Whether they are still with the company or not.*

- *How can a good inspection be performed if it is a training also?*

- *There is no regard for the purchaser of the WDIR (or the seller for that matter) having to submit to having their home used as a training tool for several inspectors.*

8B) "... attics and crawl spaces may only be indicated as entirely inaccessible if it is physically impossible to access **for any other Inspector**.

- *What "other inspector"? Is it determined by height, weight or flexibility?*

- *Does the other inspector have to be with the same company or a different one?*

- *If there was a snake den in the crawl space and you didn't inspect it then you are in violation of the rule.*

Current WDIR issues and the Veteran's administration.

- The Veteran's Administration does not allow any conducive conditions of infestations on a WDIR report. If those conducive conditions can't be mechanically corrected, and a preventative treatment is done, then the paperwork showing the treatment is legally sufficient to remediate the conducive conditions for underwriting purposes.
 - However, most of the time the VA underwriter wants a new, clean WDIR done.
 - Even though the treatment paperwork is legally sufficient the realtor insist on having another WDIR performed because that is what mortgage underwriter wants.
 - The customer has to pay for a second WDIR "That shows clear" when it is really not necessary.
 - So there is a scenario of multiple appointments for inspections being done with treatments and new stickers placed.
- ***(This issue is highlighted in the SOAH judgement. See SOAH section F) Errors in WDIR's Rules 7.175 - .177***
 - There is now a delay in closing because of one state form.
 - This all could be more streamlined on a WDIR that has been updated for a contemporary real estate process.
- The Veteran's Administration regularly bypasses the Texas WDIR because it is not only long and confusing but because of the process exemplified above. Any inspector will tell you that the VA usually asks for the national form (NPMA-33) because they can interpret that form and be more certain of findings when underwriting the loan.
 - This issue in itself needs to be addressed by TDA's legal department. What are the limitations of liability when a mortgage company only asks for an NPMA-33 and not the state form?
 - This has happened before and does often. When a confusing form like the Texas WDIR is submitted then the underwriter has to deal with it. Many times they don't want it submitted because they don't want to deal with it.
 - Inspector's Service Group does not allow only the NPMA-33 to be submitted by it's inspectors. This has caused aggravation with inspectors and ISG but because of insurance requirements it just can't be done.
 - What is to keep a state license holder from only doing an inspection with the NPMA-33 and not using the state form?
 - It is a legal inspection, a federal form and accepted by mortgage companies.

Software Data and Tracking

The WDI management system that I created for Mr. Pharis' business has been designed to not only track everything about a WDI and its findings but also is a training program.

This is not a sales pitch to you. What I'm trying to show is that "the industry" is doing more for the management of WDI reports and training than what the state is doing. In fact, the state is prohibiting good training so that they may setup an inspector to fail and assess fines.

The information that pest industry software can generate would be invaluable to the management of the industry. Again, not just mine but anyone's software would show hard data that could lower insurance rates and track past inspections and infestations that can't be manipulated or misinterpreted so fines could subjectively be given.

In April of 2018 I insisted on giving SPCS staff a presentation of Swarm Form. They reluctantly allowed me and my business partner to give them a demonstration. I asked for feedback and received none. After the meeting I emailed Ms. Cuellar and Mr. Kelley for a list of the names that were present at the demonstration and never heard back from them. I know one of the staff present was a Deputy Commissioner.

I now have the belief that the staff became aware that they were no longer going to be able to fine license holders who used my software. In which Mr. Pharis is my only client... so their enforcement tactics became more aggressive and targeted.

Some Facts about Swarm Form:

- * All reports and findings are cataloged and recorded into an interactive database that is geo-coded (physical address and longitude and latitude).
- * There are logic sequences built into answering the questions. Simply, you can't make a mistake in filling out the form, Swarm Form won't let you.
- * 8,500 pictures of active infestations and conducive conditions have been uploaded into WDI reports in the last year and a half, but can't be used in training because of statute.
- * Active WDI infestations are found 9.88% of the time. There is no actuary table for the insurance industry to be charging what they do for pest company insurance. Insurance companies are overcharging because they don't have hard data.
- * If you want to know if a home has had a WDI you can enter the Google based address and see the findings. Forever in the cloud, not just on a sticker.

Changes in software purpose:

My design paradigm has shifted: it is no longer for ease of use in filling out the forms for inspectors but to a design of protection from fraudulent fines from SPCS based upon their own incompetence and malfeasance.

- * All SPCS business and licensing forms will be automatically filled out and submitted to SPCS with a confirmation email. Showing proof of submission, time, date, and auto tracking of the

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changes in status. This is because SPCS will not give you a chronology of its work flow with your licensing.

- * All disclosure documents and signatures will be done in correct order and a chronology of the the submissions will be catalogued so SPCS can't accuse the user of mishandling paperwork.
- * All notices of treatments will be auto sent using the formula of time submission window that SPCS requires and notification sent to SPCS.

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Thank you for your time

I know that you have a huge job ahead of you and I hope that this information will be beneficial for your review of the TDA Structural Pest Control Service.

The SPCS regulates a \$500,000,000 industry in Texas and they are woefully incompetent and nefarious in their management of it.

I've stayed away from the political side of things in this report regarding the Commissioner's past accusations of increasing fines and license fees because that wouldn't change anything. It's the prerogative of the Commissioner to do that. I want all parties that read this to know that I have tried to expose the day to day misfeasance and malfeasance of the SPCS. Base upon only the facts as they have happened to me and Mr. Pharis.

Respectfully submitted,

Trace Pharis
Rance McDonald

Submitted by: Trace Pharis and Rance McDonald