

SUNSET EVALUATION REPORT
PEST CONTROL OPERATORS
Chapter 460J, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the
Legislative Auditor of the State of Hawaii

Report No. 86-1
January 1986

FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of pest control operators under Chapter 460J, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate pest control operators to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

We acknowledge the cooperation and assistance extended to our staff by the Pest Control Board, the Department of Commerce and Consumer Affairs, and other officials contacted during the course of our examination.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

January 1986

TABLE OF CONTENTS

<i>Chapter</i>		<i>Page</i>
1	INTRODUCTION	1
	Objective of the Evaluation	1
	Scope of the Evaluation	1
	Organization of the Report	2
	Framework for Evaluation	2
2	BACKGROUND	7
	Occupational Characteristics	7
	History of Regulation in Hawaii	9
	Nature of Regulation	13
3	EVALUATION OF THE REGULATION OF PEST CONTROL OPERATORS	25
	Summary of Findings	25
	Need for Regulation	26
	Need to Centralize Regulation	31
	Regulatory Operations	41
	Recommendations	49
Appendix: Responses of Affected Agencies		51

LIST OF TABLES

<i>Table</i>		<i>Page</i>
2.1	Pest Control Board, Individual Licenses and Licensing Requirements	16
2.2	Other Agencies With Key Regulatory Functions Affecting Pest Control Operators	21
3.1	Analysis of Complaints Relating to Pest Control, January 1982 Through September 1985, Department of Commerce and Consumer Affairs, Regulated Industries Complaints Office	37
3.2	Penalties Against Pest Control Operations, Board of Agriculture, 1980 to 1984	38

Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 occupational licensing programs over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 460J, Hawaii Revised Statutes.

Scope of the Evaluation

This report examines the history of the statute on the regulation of pest control operators and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Chapter 2

BACKGROUND

Chapter 460J, Hawaii Revised Statutes, prohibits persons from acting or assuming to act as pest control operators or fumigators unless licensed by the State. The Pest Control Board and the current licensing program were established in 1972. This chapter provides some background information on the occupation and its regulation.

Occupational Characteristics

Pest control operators (sometimes called exterminators) eliminate and control undesirable insects and animals such as ants, fleas, termites, cockroaches, and rodents, in and around structures. In some states, pest control operators are also known as structural pest control operators.

History. Since ancient times, people have needed to protect health and property from disease-carrying and destructive pests. As early as 1200 B.C., fumes of sulfur were used to purify the air in times of "public sickness."¹ Later, other forms of pest control were devised to limit the spread of epidemic diseases such as bubonic plague, typhus, and other pest borne illnesses.²

In 1432, Venice established a quarantine station to isolate for 40 days those ships, passengers, and goods believed to be infected with major diseases such as the bubonic plague or yellow fever.

1. Arnold Mallis, *Handbook of Pest Control*, 3d ed., New York, MacNair-Dorland Co., 1960, p. 1059.

2. Peter L. G. Bateman, *Household Pests*, Polle, Eng., Blandford Press, 1979, pp. 38-39.

Trapping was one of the earliest forms of pest control; poisons also were used early. Socrates mixed copper arsenate with bran to kill cockroaches. In 1680, herbal recipes and suggestions for ridding the home of pests were given to the English household in the text *Vermin Killer*.³

Modern pest control began in the twentieth century. In 1933, the National Pest Control Association (NPCA) was formed to represent the pest control industry. Since World War II, pest control has grown into a major industry.

Description of occupation. Pest control involves the use of a variety of techniques to combat pests in and around structures. Pest control operators inspect structures to identify infestations of pests, make inspection reports and recommendations, develop estimates and bids, and contract with customers to use chemicals or mechanical devices to eliminate pests.⁴ Operators also manage their own pest control businesses and supervise the activities of pest control workers.

There are no standardized academic training programs for pest control operators. Their educational backgrounds may range from grade school to graduate college degrees. Most obtain their training from working on the job under the supervision of experienced pest control operators. Many also take supplemental classroom training courses or seminars in pest control operations which are given by various universities, professional organizations, and chemical companies.

Most individuals working in the field of pest control are employed by firms specializing in pest control. These businesses may be small independent firms or branches of a nationwide chain. According to the NPCA, 70 percent of its member companies, which number over 2,000, are small businesses with annual sales of

3. *Ibid.*, p. 39.

4. In states like California, pest control operators can also make structural repairs or replacements.

\$100,000 or less.⁵ In 1977, NPCA member firms employed 30,000 persons throughout the United States.

Forty-nine states administer programs regulating pest control operators, but the form of regulation, the scope of practice, and the administering agencies vary among the states.

In Hawaii, the activities of pest control operators, responsible managing employees, pest control field representatives, and businesses offering pest control services are regulated by the Pest Control Board. Individuals licensed as pest control operators are sole proprietors of pest control businesses, while responsible managing employees are persons hired by pest control firms to manage a pest control company. Field representatives are persons working on behalf of a licensed company to do such work as solicit pest control business and make inspections.

According to the licensing records of the Department of Commerce and Consumer Affairs (DCCA), there are currently 75 licensed field representatives, 85 licensed responsible managing employees, and 91 licensed pest control businesses in Hawaii.⁶

History of Regulation in Hawaii

Act 134, SLH 1972, codified as Chapter 460J, HRS, established the State's current licensing program for pest control operators. Prior to 1972, pest control operators and fumigators were regulated by the Department of Health (DOH) and the Contractors' Licensing Board.

5. National Pest Control Association, *National Pest Control Association Staff Manual (Draft)*, Dunn Loring, Va., National Pest Control Association, 1985, p. 2.

6. Hawaii, Department of Commerce and Consumer Affairs, *Geographic Report*, Honolulu, October 9, 1985.

The Board of Health of the Territory of Hawaii adopted rules regulating fumigators in 1937 following the accidental deaths of two teenage boys who died upon entering a boat being fumigated with hydrocyanide gas.⁷ Under the Board of Health's rules, those doing business in fumigation had to be licensed. The rules also established classifications of licenses, set standards for fumigation work, and established a Board of Fumigation Examiners to administer the licensing examinations and to investigate accidents, deaths, or complaints involving the use of hydrocyanic acid gas or cyanogen products.⁸

Twenty years after the Board of Health began licensing fumigators, it was determined that the board had the power to control improper fumigation but it lacked the authority to examine persons applying for a fumigation license.⁹ In 1957, the Legislature passed Act 153 (later codified as Chapter 450, HRS) to give the Board of Health clear authority to examine fumigators and to establish additional requirements for licensure.

The Contractors' Licensing Board, established in 1957, amended its rules in the early 1960s to include *structural pest control contractors* as specialty contractors. A few years later, it also added *pest control contractors* as a category of specialty contractors. Under the rules of the Contractors' Licensing Board, a pest control contractor could determine the location of household and wood destroying pests and use appropriate methods to rid a building of such pests. A structural pest control

7. "Two Boys Die On Yacht; Deaths Held Accident," *Honolulu Star-Bulletin*, January 6, 1937.

8. Rules of the Territory of Hawaii, Board of Health, Chapter 11, Fumigation, October 22, 1937.

9. Report to the Governor on House Bill No. 533, submitted by David L. Mui, Deputy Attorney General, Territory of Hawaii, May 24, 1957.

contractor could do the work of a pest control contractor and could also do structural repairs of any damage caused by the pests.

The current licensing statute, enacted in 1972, created a seven-member Pest Control Board made up of four industry members and three ex-officio members from the DOH, Department of Agriculture (DOA), and the University of Hawaii, Department of Entomology. The law established licensing standards and prohibited anyone from acting, assuming to act, or advertising as a pest control operator or fumigator without a license. The purpose for the licensing law was to "provide for the proper and effective regulating of pest control, pest control operators and the use of fumigation and other means of pest control."¹⁰

Soon after the Pest Control Board was established in 1972, the Contractors' Licensing Board discontinued enforcement of its rules relating to pest control operators. Once the Pest Control Board's licensing program began operations, DOH also discontinued enforcement of Chapter 450 and its rules on fumigation.¹¹

Chapter 460J has been amended 12 times since its enactment. Some of the more significant amendments follow.

In 1978, the statute was amended by adding a requirement that manufacturers of nonchemical pest control devices submit efficacy and safety data to the DOA for evaluation. Such devices could be sold in the State only with DOA approval.

Act 125, SLH 1980, added "conviction of an offense described in Chapter 708 committed while in the performance of the person's regular occupation as a pest control operator or fumigator" as grounds for disciplinary action. (Act 708, HRS,

10. Senate Standing Committee Report No. 399 on Senate Bill No. 1659-72, Regular Session of 1972.

11. Through what appears to be an oversight, Chapter 450 has never been repealed. However, it is not being enforced by the Department of Health.

covers offenses against property rights.) The Act also amended the law to require persons doing fumigation work to have minimum liability insurance of \$50,000.

In 1984, Act 9 amended the definition of pest control operator to prevent persons from practicing pest control if it is not their prime occupation or if they do it for free.

In addition to the statutory changes, the board made significant changes to its rules which were approved in August 1985, including the following:

- . changing the title of responsible managing officer to responsible managing employee and the addition of a new requirement designating the responsible managing employee as responsible for the *direct* supervision of a pest control business (rather than *general* supervision);
- . reducing the amount of experience required for operator and responsible managing employee licenses from four years to two years and the experience required for field representative licenses from one year to six months; and
- . requiring applicants for operator or responsible managing employee licenses to be certified under the Hawaii Pesticides Law for at least one year prior to submission of an application.

Also, vault fumigation business licenses were eliminated as well as registration of fumigator apprentices and three classes of licenses for fumigation. Prior to the rule changes, the board required businesses which fumigated goods, wares, or merchandise in a vault to obtain vault fumigation licenses from the board. In addition, the old rules required fumigation apprentices to be registered and divided fumigation licenses into three classes: (1) first class, (2) second class, and (3) third class. Each license class had different requirements and different scopes of practice.

Nature of Regulation

Pest Control Board. The licensing of pest control operators is regulated by a seven-member Pest Control Board and placed for administrative purposes in DCCA. The department provides the board with an executive secretary, staff, and a meeting place.

Four of the board members are appointed by the Governor, and they must have been actively engaged in the business of pest control for at least five years prior to the date of their appointment. The remaining three board members serve on an ex-officio voting basis. They are: "the director of the department of agriculture or his representative, the director of the department of health or his representatives, and the chairman of the department of entomology of the college of tropical agriculture of the University of Hawaii or his representative." No two members of the board may be employed by or associated with the same pest control business.

The board has powers to grant licenses to operators, promulgate rules and regulations to carry out the purpose of the chapter, enforce its statutes and rules, suspend or revoke licenses, refuse to grant licenses for established cause, and direct their executive secretary to publish and distribute appropriate pamphlets and circulars. The board may also investigate, classify, and qualify applicants for operator's licenses.

Definition of pest control. Pest control of household or wood destroying pests, or other pests which may invade households or other structures, is defined in the statute as the engaging in, offering to engage in, advertising for, soliciting, or performing the following: (1) identifying infestations or infections; (2) making an inspection to identify infestations or infections of pests that invade structures; (3) making inspection reports, recommendations, estimates, and bids; and (4) making contracts, or submitting bids for, the use of insecticides, pesticides, rodenticides,

fumigants, or allied chemicals or substances, or mechanical devices, for the purpose of eliminating, exterminating, controlling, or preventing infestations or infections of such pests.

Classifications of pest control and pest control licenses. The statute divides pest control into three branches:

Branch 1. Fumigation: The practice relating to the control of household and wood destroying pests by fumigation with poisonous or lethal gases.

Branch 2. General Pest: The practice relating to the control of household pests, other than termites, excluding fumigation with poisonous or lethal gases.

Branch 3. Termite: The practice relating to the control of wood destroying pests by the use of insecticides and corrections, excluding fumigation with poisonous or lethal gases.

The board has adopted rules specifying the kinds of experience required for licensing in each branch. For example, valid experience for a fumigation operator includes fumigation of structures using tents. Applicants for general pest control operator licenses must have experience which includes the control of cockroaches, fleas, ants, rodents, and other household pests. Termite control operators must have experience in pre-slab treatment and remedial control of subterranean termites and the control of drywood termites using methods other than fumigation.

The board issues licenses to individual operators, responsible managing employees, and field representatives in each of the three branches. The board may issue a single license for a combination of two or more branches for which an applicant qualifies. Thus, if an applicant meets all the qualifications for Branches 1 and 2, only one license will be issued and one licensing fee will be charged.

Individuals may apply for licenses as: (1) fumigation operator, Branch 1; (2) general pest control operator, Branch 2; (3) termite control operator, Branch 3; (4) responsible managing employee, Branches 1, 2, or 3; and (5) field representative, Branches 1, 2, or 3.

Licensing requirements. Table 2.1 lists the various individual licenses issued by the board and summarizes their respective licensing requirements.

As Table 2.1 indicates, pest control operators and responsible managing employees share the same requirements for licensure in each of the three branches. The difference between the two is that the pest control operator is typically a sole proprietor of a pest control business while a responsible managing employee is a manager of a pest control business. A responsible managing employee could also share ownership of the business. Applicants for either license must be at least 18 years old, pass a written board examination, and be appropriately certified by DOA under the Hawaii Pesticides Law for at least one year prior to applying for a board license. In addition, they must have two years of experience of which one year was in a supervisory capacity in the branch in which the license is sought. During the two-year period, the applicant is required to have participated in at least 100 jobs.

A pest control field representative is an individual who solicits pest control work, identifies infestations or infections, makes inspections, submits bids, or signs contracts on behalf of a licensed operator. To be licensed as a pest control field representative, an individual must be at least 18 years old, pass a written board examination, and have at least six months experience in the branch in which a license is sought. During the six-month period, the applicant must have participated in at least 25 jobs.

Table 2.1

Pest Control Board
Individual Licenses and Licensing Requirements

<i>Branches</i>	<i>Licenses</i>		
	<i>Operator</i>	<i>Responsible Managing Employee</i>	<i>Field Representative</i>
<p>Branch 1. Fumigation.</p> <p>The practice relating to the control of household and wood destroying pests by fumigation with poisonous or lethal gases.</p>	<p>Eighteen years or more.</p> <p>Pass board written examination.</p> <p>Two years experience in Branch 1, of which one year shall be in supervisory capacity. During two-year period, participated in at least 100 jobs.</p> <p>Certified applicator in fumigation pest control under Hawaii Pesticides Law for at least one year.</p>	<p>Requirements the same as those for Fumigation Operator.</p>	<p>Eighteen years or more.</p> <p>Pass board written examination.</p> <p>Six months experience in Branch 1. During six-month period, participated in at least 25 jobs.</p>
<p>Branch 2. General Pest.</p> <p>The practice relating to the control of household pests, other than termites, excluding fumigation with poisonous or lethal gases.</p>	<p>Eighteen years or more.</p> <p>Pass board written examination.</p> <p>Two years experience in Branch 2, of which one year shall be in a supervisory capacity. During two-year period, participated in at least 100 jobs.</p> <p>Certified applicator in general pest control under Hawaii Pesticides Law for at least one year.</p>	<p>Requirements the same as those for General Pest Control Operator.</p>	<p>Eighteen years or more.</p> <p>Pass board written examination.</p> <p>Six months experience in Branch 2. During six-month period, participated in at least 25 jobs.</p>
<p>Branch 3. Termite.</p> <p>The practice relating to the control of wood destroying pests by the use of insecticides and corrections, excluding fumigation with poisonous or lethal gases.</p>	<p>Eighteen years or more.</p> <p>Pass board written examination.</p> <p>Two years experience in Branch 3, of which one year shall be in a supervisory capacity. During two-year period, participated in at least 100 jobs.</p> <p>Certified applicator in termite control under Hawaii Pesticides Law for at least one year.</p>	<p>Requirements the same as those for Termite Control Operator.</p>	<p>Eighteen years or more.</p> <p>Pass board written examination.</p> <p>Six months experience in Branch 3. During six-month period, participated in at least 25 jobs.</p>

Under its rules, the board has the power to approve certain technical training or business administration training as acceptable experience for operators, responsible managing employees, and field representatives. However, the training can count for no more than one year of experience. The board also can accept any reasonably equivalent knowledge, training, or experience of an applicant to substitute for a specific experience requirement if upon investigation, the board makes a detailed finding to that effect.

All applicants must take a written examination which assesses the applicant's knowledge of the English language; applicable building and safety laws of the State or counties; state labor laws; provisions of Chapter 460J; poisonous and other dangerous chemicals used in pest control; theory and practice of pest control in the branch in which an applicant is seeking licensure; and other state laws, safety or health measures, or practices which are reasonably within the scope of pest control.

The examination is administered quarterly and is divided into two parts. Part I is common to all three branches and must be taken by all applicants. It tests knowledge of laws and rules relating to pest control. Part II of the examination tests applicants in a particular branch of pest control. By law, an applicant must score a general average of 70 percent to pass the examination.

Business licenses. Businesses such as sole proprietorships, partnerships, corporations, and joint ventures must be licensed to practice in any of the three branches of pest control. Businesses qualify for licensure through a responsible managing employee or operator.

In order for a partnership or joint venture to be licensed, one member of the partnership or joint venture must actively participate in the pest control business and hold an appropriate license. Chapter 460J also requires corporations to be under the direct management of an officer holding an appropriate license.

To be licensed, applicants must submit:

- . A current financial statement prepared by a registered certified public accountant or accountant service;
- . A current policy of workers' compensation insurance or a statement from the insurer that the policy is in force. If self-insured, a copy of the "Order of Self-Insurance;"
- . A certificate from the Business Registration Division of DCCA showing that a corporation or partnership is properly registered;
- . A certificate of insurance showing a coverage of general liability insurance with a minimum amount of \$20,000 for any one claim and a minimum aggregate amount of not less than \$50,000 for all claims, and for fumigation work in the minimum amount of \$50,000 for all claims;¹²
- . A corporate resolution designating the responsible managing employee if the business is a corporation; and
- . Verification from the county building department that the place of business is in an area zoned to allow such a business.

Specific requirements for wood destroying pests, fumigation, and soil treatment work. The licensing statute also contains certain practice requirements for wood destroying pests, fumigation, and soil treatment work. The requirements include: (1) with regards to wood destroying pests, a written inspection report to be given to the person requesting an inspection prior to beginning work on a contract; (2) fumigation to be performed under the direct supervision of an operator licensed in Branch 1; (3) a log of each fumigation job to be kept and preserved for two years;

12. In lieu of the general liability insurance policy, an applicant can submit either a \$50,000 cash bond or a financial statement verifying that the applicant's net worth is equal to or greater than \$50,000.

and (4) a licensed contractor being allowed to contract for the performance of soil treatment work provided that the actual performance of the work is done by a pest control operator. The statute also permits a pest control operator to hire or employ individuals who are not licensed under Chapter 460J to perform work on contracts.

Revocation, suspension, and refusal of renewal of licenses. The statute authorizes the board to revoke, suspend, or refuse to renew a license for any of 14 specific grounds. Some of the grounds which arise out of the nature of the pest control business include: disregard and violation of any law of the State or counties relating to building, including violation of any applicable DOH rule or regulation, or safety or labor law; misrepresentation of a material fact in obtaining a license; negligent handling or use of any poisonous exterminating agent without regard to public safety; and conviction of any offense against property rights committed while performing as a fumigator or pest control operator.

No license can be *suspended* for more than two years. If a license is *revoked*, the person is not eligible to apply for a new license until two years have expired.

The statute prohibits a person from serving as an officer, director, associate, partner, or responsible managing employee of a pest control business if the person has: (1) been denied a license; (2) had a license revoked; (3) a license under suspension; or (4) failed to renew a license while it was under suspension. This prohibition also applies to persons who, while acting as a member, officer, director, associate, or responsible managing employee of any partnership, corporation, firm, or association, had knowledge of or participated in any of the prohibited acts for which a license was denied, revoked, or suspended.

Filing of accusations against licensees. All accusations against licensees are required to be filed within two years after the act or omission. In cases of possible misrepresentation of a material fact in obtaining a license, an accusation may be

filed within two years after the board discovers the alleged facts constituting the fraud or misrepresentation.¹³

Penalties. Anyone who violates Chapter 460J is subject to a fine of not less than \$500 or imprisonment for not more than six months, or both.

Exemptions. Chapter 460J does not apply to officials of the federal government on military reservations; personnel of the U.S. Department of Agriculture, the U.S. Public Health Service, DOA, and the Department of Land and Natural Resources; qualified scientific personnel specially exempted by the board; and persons engaged in pest control for agricultural purposes.

Other regulation. In addition to the Pest Control Board, other agencies have regulatory functions which affect pest control operators. Table 2.2 provides a brief summary of these agencies and their functions.

At the federal level, the Environmental Protection Agency (EPA) is the key agency that regulates the use of pesticides. Under provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), all pesticides are classified by the EPA for general use or restricted use. When used properly, general use pesticides are reported to pose a low risk to the applicator or environment. These pesticides are available to the general public. Restricted pesticides are potentially more hazardous, and may cause "unreasonable adverse effects on the environment, including injury to the applicator."¹⁴ FIFRA requires all restricted use pesticides to be applied by or under the supervision of certified applicators. Many of the chemicals used by pest control operators are classified as restricted use pesticides.

13. This interpretation of the law is based on an analysis of the statutory history of this section and not as it is currently codified in Chapter 460J. Act 204, SLH 1974, renumbered portions of Section 460J-15 but failed to make an appropriate change in a reference to that section contained in Section 460J-18.

14. 7 USCS Section 136a(d)(C).

Table 2.2
Other Agencies With Key Regulatory Functions
Affecting Pest Control Operators

<i>Agency</i>	<i>Function</i>
Federal	
Environmental Protection Agency (EPA)	Administers the Federal Insecticide, Fungicide and Rodenticide Act which authorizes EPA to classify pesticides for general or restricted use. Restricted use pesticides can only be used by persons certified by EPA or an EPA certified state program. Administers the Resource Conservation and Recovery Act (RCRA) which relates to the regulation of the generation, transportation, treatment, storage, and disposal of hazardous wastes. Under 1984 amendments, many pest control operators must now comply with certain provisions of RCRA.
State	
Department of Agriculture	Administers the Hawaii Pesticides Law which includes the State's certification program for applicators of restricted pesticides. Also investigates complaints and inspects pesticide use to assure compliance with state and federal law.
Department of Health	
Noise and radiation branch	Conducts RCRA compliance inspections relating to the generation, transportation, treatment, storage, and disposal of hazardous wastes.
Vector control branch	Sets and enforces standards for the inspection and abatement of vectors.
Department of Labor and Industrial Relations	
Occupational Safety and Health Division	Inspects workplaces to determine compliance with regulations on worker safety.

The EPA also administers provisions of the Resource Conservation and Recovery Act (RCRA) which governs the management of solid and hazardous wastes. Under changes made to RCRA under the Hazardous and Solid Waste Amendments of 1984, pest control operators who generate 100 kilograms (220 pounds) of hazardous waste each month will have to comply with requirements covering the transportation and disposal of hazardous wastes. Wastes produced by pest control operators include empty pesticide containers, unused or unidentifiable pesticides, water used to rinse application equipment and product containers, and contaminated soil or other material contaminated from spills.

The DOA administers the Hawaii Pesticides Law, which mirrors many of the provisions of FIFRA. The DOA is responsible for the State's certification program for applicators of restricted pesticides. To be certified, applicants must pass a two-part written examination on subjects including pesticide labels, safety, and calibration of equipment. Applicators must be recertified every five years either by taking an examination or by taking a minimum number of training course hours during the five-year period.

The DOA also monitors and inspects the activities of pesticide applicators under a cooperative agreement with the EPA. The department conducts "spot check" inspections as well as inspections based on complaints. Under state law, the DOA is authorized to inspect application methods and equipment and collect and examine samples of plants, soil, and other material.¹⁵

The noise and radiation branch of DOH conducts RCRA compliance inspections under a cooperative agreement with the EPA.¹⁶ The vector control branch sets standards for the inspection and abatement of vectors. Vectors are organisms that are capable of transmitting diseases and include houseflies, fleas, and mosquitoes. Individuals and businesses cited by vector control inspectors generally rely on pest control operators to eliminate vectors and to place them in compliance with state law.

Inspectors from the Occupational Safety and Health Division of the Department of Labor and Industrial Relations enforce state safety laws relating to worker safety.

15. Hawaii, Legislative Reference Bureau, *The Feasibility of Environmental Reorganization for Hawaii*, Report No. 1, 1985, Honolulu, p. 41.

16. Memorandum of Understanding Between the United States Environmental Protection Agency, Region 9, and the Hawaii State Department of Health, approved January 16, 1985.

In addition to the preceding agencies, it should be noted that in the case of pesticide spills, the U.S. Coast Guard responds to hazardous land and sea spills in Hawaii under the Comprehensive Environmental Response Compensation and Liability Act. Also, the Office of Environmental Quality Control is currently involved in establishing an integrated pesticides policy and is mandated to coordinate government agency responsibilities and programs in the areas of pesticide use and environmental quality, among other aspects.¹⁷

17. Act 127, SLH 1985.

Chapter 3

EVALUATION OF THE REGULATION OF PEST CONTROL OPERATORS

This chapter contains our evaluation of the regulation of pest control operators under Chapter 460J, Hawaii Revised Statutes. It includes our assessment of the need for regulation, the regulatory operations of the Pest Control Board, and our recommendations on continued regulation of the occupation.

Summary of Findings

We find as follows:

1. There is significant potential for harm to the public health, safety, and welfare from the activities of pest control operators. Therefore, regulation of the occupation should continue but under a different form.
2. Current regulation under Chapter 460J is of questionable value. Any additional protection provided to consumers under Chapter 460J is diminished by problems of coordination and communication with other more important agencies regulating pesticide use such as the Department of Agriculture (DOA).
3. There are several problems in the board's licensing program that warrant attention. These include ambiguities in the statutory definition of pest control and unnecessary or inappropriate licensing requirements.
4. Enforcement is weakened because there is little coordination and information reporting between the Department of Commerce and Consumer Affairs (DCCA) and DOA on violations of state law by pest control operators.
5. Certain current provisions relating to grounds for disciplinary action, statute of limitations, and penalties impair the effectiveness of the enforcement program and should be changed.

Need for Regulation

Potential harm. The activities of pest control operators pose a significant potential for harm to the public health, safety, and welfare. Pest control operators try to eliminate disease-carrying and destructive pests by using chemical and nonchemical means. Unskilled, negligent, or dishonest pest control operators can seriously endanger the public health and environment as well as cause significant property damage and financial loss to consumers.

Regulation of pest control operators is necessary because they handle toxic materials which, if misused, can be harmful to humans, animals, and the environment. In 1974, pesticides applied by pest control operators accounted for approximately 2.5 percent of all pesticides used in the United States and about 80 percent of all the chlorinated hydrocarbons applied in the country.¹ Chlorinated hydrocarbons, which include chemicals such as chlordane, heptachlor, and aldrin, have been criticized for their persistence in the environment and for suspected long-term adverse health effects.²

Some contend that exposure to pesticides and the attendant health problems constitute the central public health issue of the 1980s. Studies have reported impotence, chromosome aberrations, and higher incidence of certain cancers to be associated with exposure to pesticides.³

1. U.S., Office of Pesticide Programs, *Pesticide Usage Survey of Agricultural, Governmental, and Industrial Sectors in the United States, 1974*, Washington, D.C., June 1977, pp. 8 and 32.

2. "Beyond Heptachlor," *Honolulu Magazine*, June 1983, p. 70.

3. U.S., Congress, House, Committee on Agriculture, *Federal Insecticide, Fungicide and Rodenticide Act and Pesticide Import and Export Act of 1983, Hearings before the Subcommittee on Department Operations, Research, and Foreign Agriculture*, 98th Cong., 1st sess., held October 6 and November 2, 1983, p. 189.

The toxicity of pesticides to humans depends on several factors including the dosage, route of exposure, and the chemical compound. According to one expert:

"By necessity, pesticides are poisons, but the toxic hazards of different compounds vary greatly. As far as the possible risks associated with the use of pesticides are concerned, we can distinguish between two types: First, acute poisoning, resulting from the handling and application of toxic materials; and second, chronic risks from long-term exposure to small quantities of materials or from ingestion of them."⁴

Acute or chronic exposure to toxic compounds can occur through absorption into the skin or through inhalation or ingestion.

According to DOA officials, pesticides commonly used by the three different categories of the Hawaii pest control industry are: (1) sulfuryl fluoride (Vikane) and methyl bromide for fumigation; (2) chlordane, heptachlor, and aldrin for termite control; and (3) malathion and diazinon for general pest control. Of the above, all but malathion and diazinon are classified as restricted pesticides by the U.S. Environmental Protection Agency (EPA) and can only be applied by certified applicators.

Symptoms of poisoning from exposure to these chemicals range from headaches, dizziness, and nausea to convulsions, coma, and, in some cases, death.⁵

According to EPA estimates, 45,000 people are treated for pesticide poisoning annually. California reported a 27 percent increase in poisoning in 1982 and a 78 percent increase in the number of days poison victims required hospital care.⁶

4. George Whitaker Ware, *Complete Guide to Pest Control: With and Without Chemicals*, Fresno, Calif., Thompson Publications, 1980, p. 229.

5. U.S., Office of Pesticide Programs, *Recognition and Management of Pesticide Poisonings*, 2d ed., Washington, D.C., August 1977.

6. U.S., Congress, *Hearings*, p. 188.

During fiscal year 1985, there were 758 pesticide-related calls to the Hawaii Poison Center. Whether any of these calls were connected to pesticide applications by pest control operators is not known, however.

There have been five pest control-related deaths in Hawaii since 1937. Two teenage boys died after entering a boat being fumigated in 1937. In 1969, one soldier died after breaking into a house being fumigated. And in 1980, an elderly woman and her son died after reentering their apartment while it was being fumigated.

In addition to the harm which can be inflicted on individuals, pest control operators can also harm the environment through misuse of pesticides, pesticide spills, and improper disposal of pesticides and pesticide containers. While there have been no reports that serious chemical contamination of the environment has resulted from the activities of *licensed pest control operators*, there is a potential of such danger.

Ineffective pest control can also lead to substantial damage to property. According to one estimate, termites alone cause between \$60 million and \$75 million damage in Hawaii each year.⁷ Ineffective pest control can add to this cost.

Consumers can incur financial loss from inaccurate termite inspection reports. Pest control operators are required to prepare termite inspection reports indicating whether termites are present prior to beginning work on a termite control contract. Inaccurate reports can lead consumers to purchase unnecessary pest control services.

7. "Troublesome Termites," *Honolulu Magazine*, August 1985, p. HG 26.

Termite inspection reports are also provided to potential buyers in real estate transactions. Consumers may purchase infested properties on the basis of inaccurate inspection reports and then incur unexpected pest control costs and possible structural repair costs. Moreover, once a structure is known to have been infested with termites, resale of the property may be made more difficult.

In extreme cases, misuse of pesticides by pest control operators have resulted in the contamination of structures, rendering them uninhabitable and causing consumers considerable financial loss. In April 1983, eight homes on Long Island, New York, were found to have been contaminated with the chemicals, chlordane and aldrin.⁸ Although authorized for use only in subsoil applications, the pesticides were sprayed in heating ducts, crawl spaces, and in some cases, directly onto clothes in closets. All of the occupants were advised to leave their homes. In one case, a home was demolished to remove the contaminated structure and its contents from the property. Subsequent investigations turned up hundreds of violations of state law, 250 of which were committed by ten pest control companies.

The public health can also be endangered by the unsuccessful elimination of vectors or improper use of pesticides, especially in restaurants and other areas where food is served or stored. Flies, cockroaches, mice, and other pests carry disease bacteria which can cause food poisoning and more serious illnesses.⁹

Need to license operators, responsible managing employees, and field representatives. Currently, pest control operators, responsible managing employees, and field representatives working for pest control businesses must be licensed in

8. "8 L.I. Homes Contaminated by Pesticides, the State says," *New York Times*, April 2, 1983.

9. Peter L. G. Bateman, *Household Pests*, Poole, Eng., Blandford Press, 1979, p. 17.

order to practice pest control. These individuals should continue to be regulated. Operators and responsible managing employees oversee the operations of pest control businesses. They conduct inspections, supervise contracts, and train and supervise inexperienced workers. Field representatives solicit pest control work, identify infestations, make inspections, and submit bids or sign contracts on behalf of a pest control business.

Licensing of these individuals will continue to provide minimum standards to practice pest control. There are currently no nationally standardized training programs for pest control operators, responsible managing employees, and field representatives. Most learn the trade on the job while working under the supervision of an experienced operator or responsible managing employee. Establishing minimum requirements for the practice of pest control would provide consumers with some assurance that individuals providing services have a minimum level of competency to do a safe job.

Licensing is also necessary to help prevent those who have shown themselves to be incompetent or unscrupulous from continuing to operate in responsible positions in pest control businesses.

Need to regulate businesses. Businesses should continue to be regulated to ensure their financial capability to meet potential liability claims, to hold businesses responsible for the actions of their employees, and to provide a means to close down operations endangering the public health, safety, or welfare. Requiring businesses to be bonded or insured would help to ensure that consumers can receive compensation for losses suffered. Licensing authority over businesses and their practices would establish more clearly their responsibilities for safe performance.

The licensing of pest control businesses is supported by experience in Arizona where businesses were not regulated until recently. In a 1983 audit of the Arizona Structural Pest Control Board, the auditors noted:

"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. The 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."¹⁰

The auditors recommended that pest control businesses be licensed. Subsequent to the report, the Arizona Legislature amended its state law to require licensing of pest control businesses.

Summary. Because of the significant dangers posed by the practice of pest control, regulation must be continued. Pest control operators and businesses should continue to be regulated.

Although we find that regulation of pest control should be continued and strengthened, Chapter 460J should not be reenacted for longer than a transition period. Licensing of pest control operators and businesses by the Pest Control Board at DCCA has led to confusion and a lack of coordination between DCCA and DOA. A centralized regulatory program under DOA would provide greater protection for the public health, safety, and welfare.

Need to Centralize Regulation

There has been considerable concern in recent years over the lack of coordination in environmental programs. In 1984, the Legislature requested the

10. Arizona, Office of the Auditor General, *A Performance Audit of the Structural Pest Control Board*, Phoenix, September 1983, p. 26.

Legislative Reference Bureau to study the feasibility of establishing a state environmental protection agency to coordinate and address matters of environmental quality. The Legislature noted dangers posed to the environment from toxic wastes, pesticides, and other hazardous substances, and the great need to coordinate environmental monitoring and risk assessment functions.

The resulting study from the Legislative Reference Bureau pointed out that the problems in the current system are the result of a fragmented program approach with resources concentrated primarily on program implementation and with little or no attention given to interagency planning and public education.¹¹

We find that the current regulation of pest control operators under Chapter 460J is another example of fragmentation. Instead of making regulation of pesticide use more efficient and effective, Chapter 460J operates as an offshoot which is not coordinated with other more important pesticide control activities.

Chapter 460J focuses primarily on establishing the competency of pest control operators and regulating their business practices. Responsibility for ensuring the safe use of pesticides rests with DOA. The two functions can and should be combined under DOA to avoid redundancy and improve program effectiveness.

Current role of board. The Pest Control Board serves three primary functions. It sets standards for the safe practice of pest control; licenses individuals and businesses to practice pest control; and takes disciplinary action against incompetent or unscrupulous licensees endangering the public health, safety, or welfare. To carry out these functions, the board reviews and approves applications, develops written licensing examinations, promulgates rules and regulations, and

11. Hawaii, Legislative Reference Bureau, *The Feasibility of Environmental Reorganization for Hawaii*, Report No. 1, Honolulu, 1985, p. 84.

makes final decisions on disciplinary action against licensees. DCCA provides staff support in such areas as examination administration, recordkeeping, and complaint handling.

The board's activities have been of questionable value. As will be discussed later, the board's licensing standards and examinations are of questionable validity. Disciplinary actions taken by the board are few and far between. The records show that the board has never revoked any licenses. It suspended two licenses for brief periods in 1977. The board's only disciplinary action in recent years was to assess a fine of \$500 (\$250 of which was suspended) against a business that did not have an appropriately licensed responsible managing employee supervising its fumigation contracts.

Role of the Department of Agriculture. DOA is the lead state agency for regulating the proper and safe use of pesticides under the Hawaii Pesticides Law and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

DOA issues licenses for pesticides sold, offered, distributed, or transported within the State if they meet labeling requirements. The department also issues permits to sellers and distributors of restricted pesticides, and examines and certifies persons to use restricted pesticides.

DOA is responsible for monitoring and inspecting pesticide use under a cooperative agreement with EPA. The department is authorized to examine and inspect application methods and to examine and collect samples of plants, soil, and other materials. It investigates complaints and makes inspections to ensure compliance with label directions by pest control operators.

Under its agreement with EPA, DOA is also responsible for certifying pesticide applicators who use restricted pesticides. This program includes:

- . developing a state plan for the training and certification of applicators;
- . establishing applicator categories and standards;
- . establishing certification provisions; and
- . serving as the liaison agency with EPA on certification.

DOA must ensure that the training programs meet FIFRA standards. It contracts with the Cooperative Extension Service of the University of Hawaii to develop training materials, schedule teaching programs, and review written examinations for certification.

As part of its agreement with the EPA, DOA must submit an annual work plan with goals and tasks to be accomplished by the department. It must submit periodic status reports to EPA and, in turn, EPA conducts onsite visits twice a year to review DOA's progress under the cooperative agreement.

The latest EPA evaluation of DOA's program was made in May 1985. While the report found areas where improvements could be made, EPA reported:

"The Department of Agriculture has demonstrated a serious effort to develop a good pesticide enforcement program. Though the program has not in every instance taken an enforcement action that the EPA would have taken, the past record of the program indicates that DOA has made a good faith effort to develop an effective program for the State of Hawaii. This is reflected in part by the number and types of enforcement cases that have been addressed. . . ."12

DOA has significant authority to act against violators. Under the Hawaii Pesticides Law, DOA may issue warning notices for a first violation. Commercial applicators who continue to violate the law may be fined up to \$5,000 for each subsequent offense. Those who knowingly violate the law can be fined up to \$25,000 and imprisoned for up to one year or both if convicted.

12. U.S., Environmental Protection Agency, Region 9, *Hawaii Department of Agriculture. FY 85 Pesticides Cooperative Agreement Mid Year Evaluation Report*, May 1985, p. 1.

Because of DOA's scope of responsibility and its greater expertise in pesticides, we believe pest control operators can be regulated more effectively by DOA. If regulatory functions were centralized, complaints handling and enforcement functions would be strengthened.

Need to centralize complaints. Instead of adding to consumer protection, the board may be detracting from regulatory effectiveness. As will be shown later, certain enforcement activities may be falling between the cracks because information is not communicated between DCCA and DOA and the public may be confused about regulatory responsibilities.

The report from the Governor's Panel on Pesticides in August 1985 identified this concern: "The public perceives difficulty in finding out which agency is responsible for specific sectors of pesticide management, and this appears to be a major area of public frustration. . . ." ¹³ The committee recommended that it would be useful to have a single office designed to receive complaints and questions. While the context of the committee's recommendation was not that of the Pest Control Board and its relationship to DOA, we believe that it is also applicable to the current situation.

There is little evidence that the public is aware of the role of the Pest Control Board and the kinds of recourses that the board offers to consumers. Consumer complaints are directed both to the board and to DOA.

Complaints handling would be improved if this function were transferred to DOA because DOA has greater expertise in assessing whether pesticides have been misused or whether complaints related to their use are justified. Complaints made

13. Hawaii, Governor's Investigatory Panel on Pesticides, *Final Report of the Governor's Investigatory Panel on Pesticides*, Honolulu, August 20, 1985, p. 15.

to the board under Chapter 460J are handled by the Regulated Industries Complaints Office (RICO) of DCCA. RICO investigators are generalists who are also responsible for handling complaints for all of the other 38 occupational licensing programs administered by DCCA, including such diverse occupations as engineers, port pilots, barbers, and physicians. A review of RICO complaint files indicates that sometimes the investigators cannot determine whether certain complaints dealing with pests such as termite damage are justified because of their lack of expertise in the field.

Complaint records at DCCA indicate that consumers would not be hurt if the function were transferred to DOA. Table 3.1 shows the number and kinds of complaints that were made between January 1982 and September 1985. Most of these complaints were not of a serious nature. In over half of the cases, or 59.2 percent, RICO decided that it had no jurisdiction or there was no violation of Chapter 460J. Another 24.5 percent of the cases were either resolved or withdrawn. This left a total of eight cases—six related to unlicensed activity, one related to a business operating without an appropriately licensed responsible managing employee, and only one involving the misuse of pesticides. In this last case, a warning letter was issued based on inspection findings and information provided to DCCA by DOA.

In contrast, we find that DOA has taken strong enforcement action against applicators, including assessing substantive fines and suspending their certificates. (See Table 3.2.) However, DOA does not routinely forward this information to the board, and the board is unaware of serious violations that occur. In all seven cases listed in Table 3.2, the violators were licensed by the Pest Control Board.

Table 3.1

**Analysis of Complaints Relating to Pest Control
January 1982 Through September 1985
Department of Commerce and Consumer Affairs
Regulated Industries Complaints Office**

<i>Complaint</i>	<i>No Violation/ No Jurisdiction</i>	<i>Resolved/ Settled/ Withdrawn</i>	<i>Advisory Letter</i>	<i>Fined</i>	<i>Other</i>	<i>Total</i>
Contract dispute						
Warranty	8	3	—	—	—	11
Billing	1	—	—	—	—	1
Termite inspection report	2	6	—	—	—	8
Nonpayment (subcontractor)	1	—	—	—	—	1
Unlicensed activity	2	2	4	1 ^a	1 ^b	10
Ineffective treatments	2	—	—	—	—	2
Advertising	2	—	—	—	—	2
Damage to property	5	1	—	—	—	6
Violation of zoning requirements	2	—	—	—	—	2
No responsible managing employee	—	—	—	1 ^c	—	1
Negligence	2	—	—	—	—	2
Misuse of chemicals	—	—	1 ^d	—	—	1
Employer asked employee to do unlicensed activity	1	—	—	—	—	1
Illegal entry	1	—	—	—	—	1
TOTAL	29	12	5	2	1	49
Percent	59.2	24.5	10.2	4.1	2.0	100.0

^aFine was based on violation of the contractors' licensing law.

^bRespondent left the State.

^cA fine of \$500 levied, \$250 of which was suspended.

^dBased on Department of Agriculture inspection findings.

Source: Department of Commerce and Consumer Affairs, Regulated Industries Complaints Office, closed complaint files.

Table 3.2
Penalties Against Pest Control Operations
Board of Agriculture
1980 to 1984

<i>Case</i>	<i>Year</i>	<i>Main Violations</i>	<i>Civil Penalty</i>	<i>Suspension of Certificate</i>
1	1980	Use inconsistent with label; certified applicator not present or available	\$7,500	3 months
2	1981	Use inconsistent with label	500	
3	1981	Use inconsistent with label	150	
4	1983	Use of unlicensed restricted pesticide	7,000	2 months
5	1984	Use inconsistent with label	4,300	
6	1984	Use inconsistent with label	100	
7	1984	Use inconsistent with label	1,000	6 months

Source: Department of Agriculture inspection case files.

Need to strengthen enforcement. Transfer of sensitive enforcement information among agencies is currently difficult because of legal concerns about protecting individual rights to privacy. DOA is currently seeking an opinion from the Department of the Attorney General on the "legality of disclosing the Department of Agriculture's pesticide records and information to other state and federal agencies in order to assist them in carrying out their responsibilities and duties."¹⁴

The department wants to know if its reports on violations relating to the disposal of pesticides and empty pesticide containers, the misuse of pesticides that affect food, and the total amount of pesticides used by commercial wood treating companies can be shared with the Department of Health (DOH). DOA would also like to inform the Department of Labor and Industrial Relations (DLIR) of

14. Memorandum to Corinne Watanabe, Attorney General, from Jack Suwa, Chairman, Board of Agriculture, Subject: Disclosure of Records to Other Agencies, September 16, 1985.

occupational exposures to pesticides that it finds in the course of its inspection program. DOA wants to know if such disclosures would be prohibited under the State's Fair Information Practice Act.

If regulatory responsibilities were centralized under DOA, there would be no need for coordination between the agencies and there would be no problems with the disclosure of sensitive information.

For effective enforcement, serious violations of the Hawaii Pesticides Law should be shared between those who find the violation and those who have the authority to take action against the businesses in question. Those who license pest control operators must also have information on their DOA certification status.

Pest control operators must be certified by the DOA in order to use restricted pesticides. DOA requires that they be recertified every five years. The Pest Control Board requires applicants for operator or responsible managing employee licenses to be certified by DOA before they qualify for board licensure. In some cases, DOA will suspend an operator's certificate for violations of the Hawaii Pesticides Law. However, this information is not forwarded to the board. Consequently, the board does not know when one of its licensees is no longer qualified to practice.

Similarly, DOA certified applicators who do not recertify themselves in five years will have their certificates suspended. However, after the initial check on whether an applicant is certified at the time individuals apply for licensure, the board and DCCA do not require evidence of recertification for license renewals. They have no way of knowing whether operators continue to be eligible for licensure.

Finally, DOA does not inform the board when pest control operators have violated the Hawaii Pesticides Law. Consequently, no actions are taken against the licenses of these individuals and they may continue to operate. If DOA were made

responsible for licensing, disciplinary action against the license can be taken at the same time as DOA applies civil penalties against the violator.

Department of Agriculture needs access to licensing information. DCCA maintains licensing records that would be useful to the DOA pesticide enforcement program. For example, DCCA has a record of all "dbas" ("doing business as") under which a licensed company operates. It is not uncommon for a pest control business to operate under two or more names. In order to keep track of the number of violations committed by each pest control company, it is important for DOA to have access to "dba" information. Because business records are kept at DCCA, the DOA does not have easy access to information in DCCA licensing files.

Conclusion. The current regulatory system for pest control operators is inefficient. Shifting board functions to DOA should result in more efficient and effective state regulation of pesticide use.

This would mean that DOA would assume the function of reviewing and approving individual and business licenses and maintaining licensing records. As part of this function, DOA would be responsible for reviewing the appropriateness of current licensing standards, the adequacy of the examination, and enforcing certain practice requirements. DOA would continue to investigate consumer complaints, make inspections, and take disciplinary action against violators. Complaints about unfair and deceptive business practices could be forwarded by DOA to the Office of Consumer Protection of DCCA.

There would continue to be input into the program from a variety of sources. The pest control industry, the University, and the DOH would have input through the Pesticide Advisory Committee of DOA which includes two representatives from the pest control industry and representatives from DOH and the University of Hawaii Cooperative Extension Service.

Moreover, placement of the regulatory program for pest control operators in one agency is supported by regulatory programs we reviewed in several states. In New York, the program is run by the Department of Environmental Conservation. Arizona's Structural Pest Control Board is the lead agency regulating operators in that state and Colorado's Department of Agriculture recently took over the entire regulatory program for operators in Colorado.

A smooth transition from regulation by the board to DOA requires that sufficient time be given for DOA to develop a new state regulatory program for pest control operators. Therefore, Chapter 460J should be continued until the end of 1987 to give the department time for program development.

Regulatory Operations

Licensing program. Whether regulation is continued in its present form or restructured as suggested in the preceding section, there are several problems in the current licensing program that warrant attention. These include the following:

- . The statutory definition of pest control needs clarification, and other terms need to be defined.
- . The moral character requirement is unnecessary and should be eliminated.
- . The requirement for financial statements is unnecessary and should be eliminated.
- . The minimum levels of insurance coverage required have not been updated in nearly 20 years and should be reviewed.
- . The board's examination is out of date, and while it is currently being revised, we doubt whether the task analysis questionnaire developed for the board will produce a valid examination.

Definition of pest control. The definition of pest control in Chapter 460J is ambiguous and should be clarified. The identification of "infestations and infections" of household and wood destroying pests is currently included in the statutory definition of pest control. Board members and other persons knowledgeable about the pest control industry say that the precise meaning of the term "infections" as used in the statute is unclear. Most thought the term referred to fungal infections such as dry rot. The problem with this interpretation is that the board believes identification and treatment of dry rot is not currently included in the training of a pest control operator.¹⁵

It should also be noted that there is currently no definition for responsible managing employee and pest control field representative in Chapter 460J although both terms are referred to in the chapter and are also defined in the board's rules. Definitions for infections, responsible managing employee, and field representative should be added to the statute to clarify the Legislature's intent.

Licensing requirements. To be licensed, pest control businesses must have a licensed operator or responsible managing employee and must also submit verification of liability and workers' compensation insurance, as well as other documents. Individuals seeking licensure must be 18 years old and must meet certain experience requirements and pass a written examination. In addition, applicants for operator and responsible managing employee licenses must submit verification that they have been appropriately certified by DOA to use restricted pesticides. There are problems with some of the board's licensing requirements.

15. Letter from Robert L. Shuford, Executive Secretary, Pest Control Board, to the Honorable Andrew Levin, State Representative, January 17, 1985.

Moral character. Chapter 460J prohibits licensing anyone who does not possess a good reputation for honesty, truthfulness, financial integrity, and fair dealing. To verify the applicant's good reputation, applicants must submit sworn certificates from two persons who have known the applicant for six months or more certifying that the applicant bears a good reputation for honesty, truthfulness, and fair dealing. These provisions are equivalent to requirements for good moral character and should be deleted from the statute. DCCA is no longer enforcing these provisions.

Financial statements. The board's rules require a financial statement to be submitted with the application. The board has not, however, set any criteria that can be used in reviewing financial statements to determine whether a firm is qualified. Without such criteria, the financial statements are useless as grounds for rejecting applications.

The primary reason for trying to establish the financial capability of pest control businesses is to give consumers some assurance that they can recover for any damages that licensees may incur. The insurance requirement more effectively fulfills that need and therefore the financial statement requirement should be eliminated.

Insurance requirement. Section 460J-25 requires pest control businesses to obtain general liability insurance in the minimum amount of \$20,000 for any one claim and not less than \$50,000 for all claims. For fumigation work, the insurance requirement is a minimum amount of \$50,000 for all claims. These specific amounts have remained relatively unchanged since the licensing law was enacted in 1972 and can be traced back to the 1957 law authorizing the Board of Health to regulate fumigation. Because the minimum levels of insurance coverage have not been updated in nearly 20 years, the adequacy of the current levels needs to be

reassessed. Any move to increase the minimum insurance requirement, however, is complicated by the current insurance "crisis" facing the pest control industry.

In early 1985, pest control companies in Hawaii and around the United States encountered the problem of cancelled insurance policies or drastic increases in insurance premiums. To allow companies which could not purchase insurance policies to operate, the board passed an emergency rule allowing businesses to substitute either a \$50,000 cash bond or a financial statement indicating that they had a net worth of \$50,000 or more, in lieu of the insurance requirement. When the current insurance situation stabilizes, an increase in the insurance requirement should be considered.

Also, in relation to the insurance requirement, we note that the board does not require licensees to submit verification of current liability insurance policies along with fees during license renewal. Consequently, the board does not know whether a licensee is continuing to buy coverage after the initial application.

Examinations. There are serious problems with the board's examinations. They are outdated and of questionable validity. The board is required under Chapter 460J to administer a written examination to applicants to determine competency in seven areas. The current examination is divided into two parts. Part I is given to all applicants and tests knowledge on laws and regulations pertaining to pest control. Part II of the examination tests knowledge in specific branches of pest control.

There is a different test for each branch of licensure: Branch I, fumigation; Branch II, general pests; and Branch III, termites. Applicants for an operator or responsible managing employee license take the same Part II examination for each branch. Applicants for a field representative license take a different examination in each branch. This means that the board is responsible for developing seven different examinations.

There has been considerable concern in recent years over the liability of state agencies and boards for licensing examinations that are deficient, invalid, or unreliable. Formerly, licensing boards were given the statutory authority to develop tests, and they had a relatively free hand in deciding what and how to test applicants for licensure. Today, licensing examinations must meet nationally established standards for validity, reliability, and fair administration. They must be legally defensible in the courts. As a result, responsibility for licensing examinations are being shifted to testing professionals or national testing organizations such as the Educational Testing Service.

The board's current examination is deficient in a number of respects. It has not been revised since 1976. It has never been tested for validity, i.e., the extent to which the examination actually measures occupational competency, and there is only one version of the examination that is used over and over again.

Apparently these problems are recognized by the examination branch of DCCA. At its August 26, 1985 meeting, the examination branch informed the board that totally new examinations had to be developed. The staff briefly outlined an examination development process the board should follow, beginning with a job analysis of the pest control occupation. The board was told it would have to develop a task analysis questionnaire, send the questionnaire to licensees and experts, and based on the analysis of the responses, develop new examinations.

DCCA's approach to examinations is a step in the right direction. It is clear that board members are not testing experts, and they need help in developing sound licensing examinations. However, assistance provided by the examination branch was inadequate.

To illustrate, task analysis questionnaires must be carefully constructed to identify critical job skills that must be tested to ensure safe practice at the entry

level. The results of a job analysis questionnaire must be carefully analyzed to make sure that sufficient emphasis will be placed on important areas of competence and that questions that are constructed reflect these areas of competence. After all this is done, the tests must be pretested to determine their validity and reliability. Ambiguous and incorrect questions must be removed from the test.

The purpose of a job or task analysis is described by one expert as follows:

"Given the purpose for licensing tests (to establish evidence of competence to practice at the entry level), it is critical that the tests be job-related. . . .

"The method increasingly used for establishing the job-relatedness of a licensing examination is a formal job analysis. A job analysis is a systematic method of determining what a practitioner actually does on the job. It provides a way to describe the most important functions and responsibilities of the job and what the entry-level practitioner needs to know and be able to do in order to carry out those responsibilities and functions. . . .

"One common approach to job analysis identifies and describes principal job tasks through the use of a questionnaire survey."¹⁶

In October 1985, the board was given a draft of the task analysis questionnaire for pest control which was prepared by the examination branch staff. The questionnaire is critically deficient. It does not identify any tasks. Instead, the questionnaire lists 22 general categories such as "insect development," "insecticides," and "pesticides." Respondents are asked to rate these categories in terms of how frequently they are performed, the effect of poor performance on public health, and how much proficiency a new licensee should have. What it means to rate the category of "insect development" as frequently performed and of significant risk is anyone's guess. The questionnaire is not usable as a basis for job analysis.

16. Jim C. Fortune and Associates, *Understanding Testing in Occupational Licensing*, San Francisco, Calif., Jossey-Bass Publishers, 1985, pp. 17-18.

If Chapter 460J is continued, DCCA must develop greater testing expertise. The current examination development procedures are unsatisfactory and require improvement. In developing the new licensing examinations DCCA should also begin to work closely with DOA to eliminate unnecessary duplication with DOA's certification examination.

Enforcement program. There are two problem areas in the board's enforcement program: (1) coordination with other agencies, and (2) disciplinary provisions that are not sufficiently specific or strong.

Lack of coordination. There is a serious lack of coordination and communication between DCCA and other regulatory agencies relating to violations of state and federal law committed by pest control operators. This deficiency decreases the board's efficiency and effectiveness in acting against incompetent and unscrupulous operators.

As we described in Chapter 2, there are several other state agencies with regulatory functions affecting pest control operators. These agencies include DOA, DOH, and DLIR.

Proper use of both general and restricted pesticides is regulated by DOA. Disposal of pesticide containers and pesticide residues is regulated by both state and federal law and is enforced in part by DOH. Occupational safety and health laws are enforced by DLIR. Serious violations of these laws should lead the Pest Control Board to review the applicable licenses. However, because of the lack of communication, this is not done.

Unlike the other regulatory agencies, the board does not have inspectors to monitor pest control activities in the field. Instead, the board must rely on DCCA's central complaint office, RICO, to handle complaint investigations initiated by consumers, licensees, or board members. By making arrangements for and taking

advantage of monitoring programs and complaint investigations performed by other agencies, the board can greatly enhance its effectiveness in protecting the public from incompetent or unscrupulous operators.

In addition to increasing communication, there is a need for greater centralization of enforcement information from all agencies regulating pest control operators. Currently, enforcement information is scattered among four different departments and no one agency has a complete picture of how well or how poorly pest control companies are performing. The board should seek help and advice from the State Office of Environmental Quality Control in arranging for cooperative agreements to be made between the board and other state agencies for the purpose of setting up an enforcement information reporting system.

Statutes need to be changed. The statutes relating to statute of limitations, grounds for disciplinary action, and penalties should be reviewed, clarified, and updated.

The law requires all accusations against licensees to be filed within two years after the act or omission alleged as the grounds for revocation or suspension of a license. The two-year statute of limitation should be eliminated. It is unnecessarily brief and is a disadvantage to consumers. According to DCCA legal staff, no other board has a similar two-year limit.

In 1974, changes were made to the law. The section on grounds for disciplinary action was renumbered but through an oversight a corresponding change was not made in Section 460J-18 which refers to that section. This error should be corrected.¹⁷

17. References in Section 460J-18 to "section 460J-15(4)" should be changed to "section 460J-15(3)."

Section 460–15(a)(2) is too general and should be clarified. The provision lists "[d]isregard and violation of any law of the State, or of any political subdivision thereof, relating to building, including any violators of any applicable rule or regulation of the department of health, or of any applicable safety or labor law" as grounds for disciplinary action. Instead, specific laws should be cited such as the Hawaii Pesticides Law. This would give the board clear authority to take action against licensees who have violated key laws regulating the safe practice of pest control.

Finally, the statutory provisions on penalties should be reviewed and updated. The maximum penalty of a \$500 fine has been unchanged since 1948, and the penalty of six months imprisonment has been unchanged since 1972.

Recommendations

We recommend that:

1. *Chapter 460J, Hawaii Revised Statutes, be reenacted until the end of 1987, at which time it should be allowed to sunset.*

2. *The Hawaii Pesticides Law be amended to incorporate the licensing program currently established under Chapter 460J and to transfer the responsibilities from the Pest Control Board to the Department of Agriculture.*

3. *Whether regulation is continued in its present form or is reorganized, the law be amended to:*

- . clarify the definition of pest control, infections, responsible managing employee, and field representative;*
- . abolish the moral character requirement;*
- . abolish the two-year statute of limitations for disciplinary action;*
- . clarify the grounds for disciplinary action; and*
- . update its penalty provisions.*

4. *If Chapter 460J is reenacted and regulation is continued in substantially the same form:*

- . The Department of Commerce and Consumer Affairs develop greater expertise in licensing examinations and work with the Department of Agriculture in developing valid examinations for pest control operators.*
- . The board amend its rules to eliminate the requirement for financial statements for license applications and to establish a requirement for liability insurance verification for license renewals.*
- . The board improve communication with other regulatory agencies and initiate the development of an enforcement information reporting system.*

APPENDIX

RESPONSES OF AFFECTED AGENCIES

COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on December 11, 1985 to the Pest Control Board, the Department of Agriculture (DOA) and the Department of Commerce and Consumer Affairs. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. Similar letters were sent to the Department of Agriculture and the Department of Commerce and Consumer Affairs.

The Pest Control Board does not concur with our recommendations to transfer responsibilities from the Pest Control Board to the DOA. It says that the DOA should monitor the technical use of pesticides while the board continues to regulate the professionalism and business side of pest control activities. The board says that it is aware of a communications gap with the DOA and will be working on eliminating this problem.

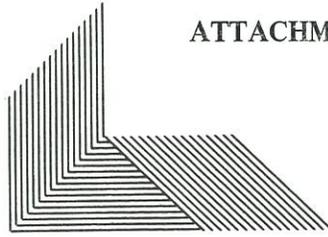
The Department of Agriculture also does not recommend assuming responsibilities for the Pest Control Board. The department points to the complexity of its current responsibilities and says that these require all its current personnel and resources. DOA recognizes the need for better coordination but says that this can be accomplished through its liaison on the Pest Control Board. DOA also says that it lacks expertise to handle business related complaints. However, as noted in our report, if responsibilities were transferred to DOA, complaints about unfair and deceptive business practices could be forwarded to the Office of Consumer Protection for investigation.

In spite of the lack of concurrence by the Pest Control Board and DOA with our recommendation to reassign responsibilities, we still conclude that placing all important responsibilities for pesticide operations under a single agency would alleviate current problems in communication and coordination and make for a more effective regulatory program.

The Department of Commerce and Consumer Affairs comments that it does not agree with the deficiencies noted in the report about assistance provided by the examination branch. It says that the task analysis questionnaire criticized in the report was only a first draft. However, the questionnaire in question had been approved by the board for distribution. The department agrees that it must work more closely with DOA on the certification examinations and will continue to work on improvements in that area.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813



CLINTON T. TANIMURA
AUDITOR

December 11, 1985

COPY

Mr. Roy M. Shimotsukasa, Chairperson
Pest Control Board
Department of Commerce and Consumer Affairs
State of Hawaii
Honolulu, Hawaii 96813

Dear Mr. Shimotsukasa:

Enclosed are eight preliminary copies, numbered 4 through 11, of our *Sunset Evaluation Report, Pest Control Operators, Chapter 460J, Hawaii Revised Statutes*. These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Russel Nagata, Director, Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of pest control operators. If you have any comments on our recommendations, we would appreciate receiving them by January 10, 1986. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

Sincerely,

Clinton T. Tanimura
Legislative Auditor

Enclosures

ATTACHMENT 2



GEORGE R. ARIYOSHI
GOVERNOR

RUSSEL S. NAGATA
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

PEST CONTROL BOARD

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
HONOLULU, HAWAII 96801

January 9, 1986

RECEIVED

JAN 9 2 48 PM '86

OFF. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Auditor
465 South King Street, Suite 500
Honolulu, Hawaii 96813

Dear Mr. Tanimura,

Thank you for the opportunity to comment on your Sunset Evaluation Report of the Pest Control Operators, Chapter 4605 Hawaii Revised Statutes (HRS).

The Board does not concur with your recommendation to transfer the responsibilities from the Pest Control Board to the Department of Agriculture (DOA). It is the opinion of the Board that a definite requirement exists for continuing the Board's activities.

We agree that the DOA should monitor the technical use and misuse of pesticides. The Board should continue to regulate and control the professionalism and business side of pest control activities through the enforcement of laws, rules, testing, licensing and acting on complaints.

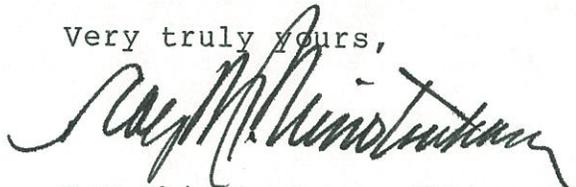
If the Board was moved to the DOA and the professional and business activities remained in DCCA, a much greater communication gap would exist between the technical and the professional activities involved in pest control. The Board and DOA are aware of a communication problem and are both working to ensure that this gap in communications is completely eliminated.

Mr. Clinton Tanimura
January 9, 1986
Page 2

By law, the director of the DOA or his representative is to serve on the Board on an ex officio voting basis. At the present time, the deputy director of the DOA is the ex officio member. It is the Board's understanding that by separate letter, the DOA is responding personally to you and in much the same vein as is set forth above.

The Board has submitted legislation which is part of the administrations packet, to correct the items mentioned in paragraph 3 on page 3-25 of the report.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Roy Shimotsukasa', written in dark ink.

Roy Shimotsukasa, Chairman
Pest Control Board

ATTACHMENT 3

GEORGE R. ARIYOSHI
GOVERNOR



JACK K. SUWA
CHAIRPERSON, BOARD OF AGRICULTURE

SUZANNE D. PETERSON
DEPUTY TO THE CHAIRPERSON

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 So. King Street
Honolulu, Hawaii 96814-2512

Mailing Address:
P. O. Box 22159
Honolulu, Hawaii 96822-0159

January 10, 1986

RECEIVED

JAN 10 3 32 PM '86

OFF. OF THE AUDITOR
STATE OF HAWAII

MEMORANDUM

To: Mr. Clinton T. Tanimura
Legislative Auditor

Subject: Preliminary Sunset Evaluation Report, Pest Control
Operators, Chapter 460J, Hawaii Revised Statutes

Thank you for the opportunity to comment on the subject report. Undoubtedly, this is a timely, insightful review of a program which is currently undergoing some changes as evidenced by the recent amendment of its rules (Hawaii Administrative Rules Chapter 16-94, Pest Control Operators).

Since the proposed recommendations in this Evaluation Report impact on the pesticide enforcement and applicator certification program of the Department of Agriculture (DOA), we wish to offer the following comments.

As pointed out in the report, pest control operators are subject to licensing under Chapter 460J, Hawaii Revised Statutes (HRS) and to certification under Chapter 149A, HRS. While we agree that there are advantages in incorporating the licensing program of Chapter 460J into Chapter 149A, and to transfer the responsibilities from the Pest Control Board to DOA, we also feel that there is merit in continuing the current system of separating the business-related program from the pesticide enforcement and applicator certification program.

Presently DOA has fifteen staff members, including a program manager, a technical registration specialist and a case preparation officer, to administer an ever-complicated pesticide enforcement program. The major responsibilities of the program are to 1) regulate the sale and use of pesticides in Hawaii; 2) register pesticide uses for special local needs; 3) issue experimental use permits; and

4) certify pesticide applicators. To briefly illustrate the complexity of the program, there are currently 4,193 products, including paints and hospital-use disinfectants which contain pesticides, licensed by the DOA to be sold in the State. Of these, 323 products are listed as restricted-use pesticides. Pursuant to the Hawaii Pesticides Law, persons must be certified by the DOA prior to the purchase and application of restricted-use pesticides. Under this program, 2,800 private applicators, i.e. farmers, and 1,200 commercial applicators, including pest control operators, have thus far been certified.

To ensure proper sale and use of pesticides in Hawaii, DOA's pesticide enforcement program is responsible for on-site inspection of establishments for pesticide formulating, repackaging and retailing as well as inspection of pesticide usage by pest control operators and farmers. This monitoring program requires virtually all the personnel and resources available to us.

We are cognizant of the importance of regulating pest control practices to protect public health and the environment as well as the need for better coordination between the Department of Commerce and Consumer Affairs (DCCA) and DOA. We believe, however, that these can be adequately addressed and improved upon through liaison provided by DOA's representative on the Pest Control Board. While DOA is knowledgeable about pesticides and their uses and sales, DOA seriously lacks the knowledge of business- and labor-related laws and rules. Therefore, if the licensing program under Chapter 460J and the responsibilities of the Pest Control Board are transferred to DOA, the added responsibilities cannot be carried out effectively by DOA with current available resources. For example, Table 3.1 on Page 3-13 of the report shows that there were 49 complaints relating to pest control filed with DCCA from January 1982 through September 1985. Of these, 46 complaints, or 93.9%, were business practice related and the remaining 6.1% were complaints which may be related to DOA's responsibilities, such as negligence and misuse of chemicals. The business practice related complaints, however few in number, require detailed investigation to determine the validity of each complaint as well as accurate interpretation of pertinent business or labor laws. This is an area in which DOA does not have necessary expertise or resources.

On the other hand, maintaining the current system of separating the business-related licensing program administered by DCCA from the pesticide enforcement and certification program under DOA would ensure designation of the programs to agencies having proper expertise. In the event complaints are filed, they can be investigated from the business practice viewpoint by DCCA and from the technical viewpoint on pesticide usage by DOA without any

Memo to Mr. Clinton T. Tanimura
January 10, 1986
Page 3

conflict or redundancy. An example of this is the statement in Table 3-1 that action taken for misuse of chemicals was based on inspection findings of DOA. This interagency coordination can and will be continued through DOA's representation on the Pest Control Board.

For reasons and concerns cited above, the DOA does not recommend the proposed incorporation of the licensing program currently established under Chapter 460J into Chapter 149A and the transfer of the responsibilities from the Pest Control Board to the Department of Agriculture.

If you have any questions on this matter, please let me know.



JACK K. SUWA
Chairman, Board of Agriculture

ATTACHMENT 4



GEORGE R. ARIYOSHI
GOVERNOR

RUSSEL S. NAGATA
Director
COMMISSIONER OF SECURITIES

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

ROBERT A. ALM
DEPUTY DIRECTOR

January 10, 1986

RECEIVED

JAN 10 2 53 PM '86

OFC. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Auditor
465 S. King Street, Suite 500
Honolulu, HI 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your "Sunset Evaluation Report Pest Control Operators."

The Department of Commerce and Consumer Affairs appreciates the thoughtful assessment done by your staff of the regulation of pest control operators.

We would like to comment on the recommendation directed to the department as follows:

"The DCCA develop greater expertise in licensing examinations and work with the Department of Agriculture in developing valid examinations for pest control operators."

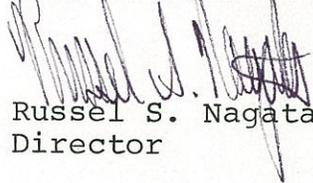
While we agree that the licensure examination for pest control operators needs to be improved (and of which we appreciate your acknowledgement of our efforts in moving in that direction), we do not concur with the deficiencies you note about the assistance provided by the examination branch staff. It should be clarified that the task analysis questionnaire was not independently prepared by the examination branch as one might infer from your comments. The contents for the questionnaire had been based on input from the board on the areas they believed an applicant should be tested on. The examination branch at this very early stage simply took the information provided, formatted the questionnaire and presented it to the board for further review. The deficiencies which are mentioned about the questionnaire

Mr. Clinton T. Tanimura
January 10, 1986
Page 2

more than anything else reflect the fact that the questionnaire was only in its first draft. We are confident that the concerns raised in your report will be addressed and that when the final form of the questionnaire is developed, it will properly identify tasks or skills that are considered necessary for an entry-level practitioner to know. We will continue to work with the board to improve the examination by providing the assistance necessary, examination branch resources permitting.

We agree that we must work closely with the Department of Agriculture (DOA) on the certification examinations. We understand that the board is making efforts to develop a better relationship with DOA which will allow both of our agencies to cooperate on projects such as examination development. We will continue in our efforts to improve the licensure examination in cooperation with all parties concerned and appreciate your comments in this area.

Very truly yours,



Russel S. Nagata
Director