

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

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Name of Agency Department of Agriculture

Department Plant Board

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Wade Hodge

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12/23/2019

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

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Title

12/23/1019

Date

RULES OF THE STATE PLANT BOARD

FINAL RULE

The following Rules have been promulgated and adopted by the State Plant Board under authority of the Arkansas Pest Control Law Act 488 of 1975 as amended Ar. Code Annotated, §17-37-101 et seq.

Classification:

The following classifications have been established for licensing and applicator certification purposes.

I. Commercial Applicator

A. Industrial, Institutional, Structural and Health Related Pest Control

1. Termite and Other Structural Pest Control
2. Household Pest and Rodent Control
3. General Fumigation
7. Food Manufacturing, Processing and Storage Pest Control
8. Food Related Fumigation

B. Ornamental and Turf Pest Control

4. Ornamental Tree and Turf Pest Control
5. Weed Control
6. Golf Course Pest Control

II. A. Non-Commercial Applicator Certificate (see restrictions in Section VIII)

9. A. Ornamental Tree & Turf Pest Control
9. B. Ornamental Weed Control
10. Golf Course Pest Control

SECTION I - RULES APPLYING TO ALL OPERATORS

1. Applying for Examinations:

All applicants must make written application to the Plant Board, on forms furnished by the Plant Board, at least 15 days prior to the examinations. Processing of each application must be completed before the written examinations are given. The applicant must submit a minimum of five character references from reputable businesses or banks with their original application.

2. Examination Dates:

The written examinations in classifications 1, 2, and 3 will be given the second Monday of January, March, May, July, September and November. Examinations in classifications 4, 5, 6, 7, 8, 9A, 9B and 10 will be given the second Monday of February, April, June, August, October and December at a time and place designated by the State Plant Board. In the event any of the designated dates occur on a day, when State offices are closed the, Director of the State Plant Board may designate an alternate date for the examinations. The examinations will be graded by an examiner designated by the Plant Board.

3. Applying for License:

After passing the examination, all applicants must make written license application to the Plant Board, on forms furnished by the Plant Board.

4. Fees:

The following fees have been established to carry out the provisions of Ar. Pest Control Law.

License:

| | |
|--------------------------------------|----------|
| Operators First Classification | \$150.00 |
| Each Additional Classification..... | \$100.00 |
| Maximum per operator..... | \$300.00 |

Registration:

| | |
|-------------|----------|
| Agent | \$ 30.00 |
|-------------|----------|

Certificate:

| | |
|---------------------------------|----------|
| Non-Commercial Applicator | \$ 70.00 |
|---------------------------------|----------|

Examination:

| | |
|--------------------------|----------|
| Each classification..... | \$100.00 |
|--------------------------|----------|

Reporting:

| | |
|---|----------|
| Each building on which a structural pest contract is issued | \$ 5.00 |
| Late fee (30 or more days after due date) | \$10.00 |
| First 5 buildings treated by new licensee: | |
| (Termite & other Structural Pest) each | \$ 20.00 |

Inspection:

| | |
|--|----------|
| Each building treated for Structural Pest found not in compliance: | |
| First Notice | \$ 50.00 |
| Second Notice | \$100.00 |
| Third Notice | \$500.00 |

5. Registration and Training:

License holders of classifications 1, 2, 3, 4, 5 or 6 shall register with the Plant Board all individuals (excluding clerical staff) employed by them to perform pest control services, including those employed for solicitation as their agent. Each agent shall be registered only in the classification of pest control for which the license holder is licensed to perform. Agents must be registered and trained by the license holder within 30 days of their employment. Until registration and training requirements have been fulfilled the individual may apply pesticides only in the physical presence of a licensed operator or registered agent.

Training requirements shall be 16 hours of classroom and 40 hours of on the job training. A qualified trainer shall be a licensed operator or agent with at least one year of experience in the pest control industry or other individual approved by the Plant Board.

Topics which must be covered during the training and the suggested time frames for each are as follows:

Classroom

1. Pesticide Labels, MSDS, & label comprehension - 4 hours.
2. Pest identification, biology, control & damage- 3 hours.
- 3 Pesticide safety (Including personal protective equipment), handling, storage, disposal, emergency procedures, & cleanup - 4 hours

4. Pesticide application techniques, & equipment maintenance - 3 hours
5. Pesticide laws and regulations- 2 hours

On the Job:

Forty hours of verifiable job site work, performed under the direct supervision, direction and control of a qualified trainer. During the application of pesticides a licensed operator or registered agent must be physically present on the job site.

The Arkansas State Plant Board shall provide a form which the license holder shall complete and file with the Board as verification of the agents completed training. The information given on the form for classroom training shall include the dates and duration for each topic. On the job; number of job sites worked at, dates and total hours worked for that date of the training, and names of the trainers. Upon receipt of the completed, training record and application for agents registration, the State Plant Board will issue an agents registration card showing both the agent's and license holder's names. To maintain registration, agents shall be kept abreast of pest control technology and receive a minimum of 6 hours of continuing education each year. Continuing education may be achieved by completing a license holders in-house training program or attendance of approved seminars sponsored by the various associations, manufactures or suppliers affiliated with the pest control industry or the cooperative extension service.

An agent not employed by a license holder for 12 months will lose eligibility for registration and must complete the initial training requirements to be reregistered. Records of training must be kept, by the license holder, for as long as the agent is employed. Such records shall be available for review by the State Plant Board during normal business hours. At any time, should the Board determine that training requirements have not been met, the license holder may be assessed a fine of up to \$1,000 per violation, as civil penalty procedure applies.

6. Hearings, Invalidation of Licenses:

Any person who is refused a license, or whose license is being considered for invalidation, may secure a hearing before the Pest Control Committee before the final Board action is taken. This Committee shall consist of the Board member who represents the Head of the Department of Entomology, University of Arkansas, who shall act as the Chairman, and the Board member who represents the Arkansas Pest Management Association. Remaining committee members shall be appointed by the Chairman of the Plant Board. This Committee may hold hearings regarding licenses to take testimony and gather evidence regarding same. Such testimony, evidence and the committee's recommendation shall be made available to the Board for consideration and final action.

7. Keeping Abreast of Technology:

Each licensed operator, qualified operator and non-commercial applicator shall keep himself / herself abreast of changing pest control technology to assure a continuing level of competence and ability to use pesticides safely and properly. The completion of a Cooperative Extension Service Pest Control School every third year shall be considered adequate to satisfy this requirement. An appropriate form, signed by the Director of the school, shall be filed with the Plant Board as proof of attendance. Any licensee failing to meet this provision shall be reexamined or lose their license and certification.

8. Standards for Licensing Pesticide Applicators:

Plant Board standards for the licensing and certification of licensed operators, qualified operators and non-commercial applicators shall be the same as the standards set forth in Section 171.4 thru 171.6 of the Code of Federal Regulations 40 CFR part 171 written pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. Said sections are as follows: Section 171.4, Standards for Certification of Commercial Applicators; Section 171.5 Standards for

Certification of Private Applicators, and Section 171.6 Standards for Supervision of Non-Certified Applicators by Certified Private and Commercial Applicators.

9.Branch Office Operations

On forms provided by the Plant Board, license holders in classifications 1, 2, 3, 4, 5 or 6 shall register the physical address of each branch office from which they will engage in the practice of pest control service.

Any license holder that operates more than one office, under the same name or as a subsidiary with a different name, as long as the final financial, legal and other administrative functions, rest with the parent organization, shall be required to have located at the branch location a licensed operator or qualified operator duly registered and approved by the State Plant Board. This regulation shall be placed in full effect and force on July 1, 2005.

For the purpose of this regulation, a Branch Office is considered to be any location where normal business activity might occur. This location could be expected to exhibit but is not limited to such activities as: 1) having personnel maintaining a typical office environment with any commercial utility service, 2.) Maintaining files at the location, including copies of files when the original copies have been forwarded to the 'home office', 3.) Having company owned vehicles and equipment routinely located at the site, 4) being a location where employee(s) routinely report for work and who are capable of providing information relative to pest control services, scheduling or supervising working crews. A Branch Office would also include any location where business is conducted from a portion of a private residence or other establishment.

10. Clarification:

The following rules are promulgated to clarify the Board's intent relative to certain sections of the Pest Control law.

Ar. Code Annotated,§ 17-37-102. Definitions:

(1) Agent - An agent is an individual employed by a license holder. Agent's registration will be issued upon the written request by a license holder on forms prescribed by the Plant Board only in the name of the person who is an employee of the license holder making the application. Individuals for whom an agent's registration is requested shall not be an employee, owner operator, franchise holder or independent contractor of any pest control service other than that of the license holder. An agent may be terminated by the license holder at any time. All contractual agreements for pest control services executed between agents and customers are the property of the license holder.

(9) License Holder - Certification shall not be required of License Holders who employ Licensed Operators or Qualified Operators and who do not themselves use or supervise the use of restricted use pesticides.

AR. Code Annotated § 17-37-206 License Application:

(f) Persons holding valid licenses issued under the authority of the Pest Control Law whose licenses become subject to renewal, shall be examined and found to meet the Standards for Licensing and Certification of Pesticide Applicators set forth in Sections 171.4 thru 171.6 of the Code of Federal Regulations 40 CFR Part 171 pursuant to FIFRA, as amended.

Ar. Codes Annotated § 17-37-216 & 17-37-217:

Refusal to issue. Grounds for license invalidation or non-renewal of License.

In addition to invalidation and denial, this section shall also be considered as providing for the suspension of a license. Items (1) thru (11) shall be considered as grounds for suspension as well as denial or invalidation of a license. In addition, the use of a pesticide inconsistent with its labeling shall also be considered grounds for denial, suspension or invalidation of a license.

Ar. Code Annotated § 17-37-202 (b) Exemption :

Shall provide for the use of general use pesticides only, during the period of time a pest control company may operate without a licensed operator.

Ar. Code Annotated § 17-37-203 Exemptions:

The exemptions stated in 17-37-203 shall apply only to persons who use general use pesticides.

Ar. Code Annotated § 17-37-103 Penalties:

Items (1) thru (11) of Ar. Code Annotated § 17-37-217 shall be considered violations of the Pest Control Law and its rules and shall be subject to the penalties stated in Ar. Code Annotated § 17-37-103 and the Pest Control enforcement response rules as stated in Section IX . Ar.

Code Annotated § 17-37-106 Prior Rules:

This section does not repeal Act 389 of 1975 Ar Code Annotated § 20-20-202 or act 410 of 1975 Ar. Code Annotated § 2-16-402 or any part of either act.

SECTION II - RULES FOR OPERATORS HOLDING A LICENSE FOR TERMITE AND OTHER STRUCTURAL PESTS (CLASSIFICATION ONE)

1. Contracts.

All license holders in Classification One shall issue a signed contract, along with a complete plot or diagram showing the location of visible damage, active or previous infestation and an outline of the work to be carried out on each job performed for the prevention, control or eradication of termites and other structural pests, including soil pre-treatments and letters of clearance. Said contracts must guarantee the performance of work for a period of not less than one year and clearly state, on the face of the contract, the name of chemical used ,if repairs of damage are included or if the license holder's liability is limited to re-treatment only for the control of termites under the guarantee. License holders must submit a legible copy of all contracts to the Plant Board for review prior to their issuance. When issuing a letter of clearance on a building that is already under a current contract by the license holder writing the letter of clearance, for a real estate transaction, a new contract, including diagram, shall be issued in the name of the new buyer, guaranteeing the performance of work for one year from the date the letter of clearance is issued. The new contract requirement shall not apply in cases where the letter of clearance is issued on buildings already under contract, that are being refinanced, provided the license holder holding the contract issues the letter of clearance. Letters of clearance, written on buildings under contract by the operator, must show the original date of treatment.

The number of contracts providing a re-treatment only guarantee for the control of termites that a license holder may issue per fiscal year (July 1 to June 30) shall not exceed 20% of the number of buildings for which the license holder reported and paid reporting fees during the previous fiscal year (July 1to June 30).

Renewals.

Each time a contract is renewed the operator shall assume responsibility for bringing substandard conditions in the building under contract up to standards, except on prior approved substandard buildings. This shall also apply to all new additions to the building unless the license holder shows in **bold** print, on the renewal notice, that the renewal does not cover new additions to the building. When a license holder elects not to renew a viable contract, the owner must be notified by return receipt requested certified mail, at least 30 days prior to the contract expiration date, of the intent not to renew the contract. Notification by the operator of non-renewal does not apply when the contract is terminated for non-payment of the renewal fee, or canceled by the consumer, provided the consumer was notified a renewal fee was due.

2. Reporting - Responsibility.

Licensed operators shall give complete information required by Code 17-37-221 of the Pest Control Law by filing monthly reports. This information shall be filed with the Board even though it is understood that payment for the service will be made at a later date. In all cases where there is a question as to whether a job is completed, the criterion for a completed job shall be payment in part or in full. Each licensed operator shall be responsible for, or shall guarantee for at least one year, all representations, provisions, declarations, work or services called for by the contract, form 905 and the diagram of the property or by Letters of Clearance.

3. Meeting Minimum Standards.

Each building on which a contract is issued for the prevention, control or eradication of termites shall meet the Minimum Standards outlined in Section III A, III B, III C-D or III E of these rules unless unusual structural or physical conditions render the correction of certain conditions to portions of the building impractical. In such cases, an agreement for responsibility of performance or waiver of meeting certain requirements for Structural Pest Work may be requested, provided the remainder of the structure is treated to meet all remaining Minimum requirements. Agreements for waiving minimum requirements for structural pest work shall be made on forms supplied by the Plant Board. Each signed and dated by the property owner, or prospective buyer and the licensed operator. The contract issued on the building for which a waiver of the minimum requirements is requested shall clearly state that minimum requirements for Structural Pest Work have not been fulfilled and reference the waiver as being a part of the contract.

4. Letters of Clearance / Wood Destroying Insect and Organisms Report

Any statements as to the condition of a building pertaining to termites, other wood destroying insects or decay fungi (Rot), other than a bid or proposal for treatment shall be considered a Letter of Clearance. Letters of Clearance issued in connection with a real estate transaction shall be made on a form officially adopted by the State Plant Board. This form shall be the current Wood Destroying Insect Infestation Inspection Report form prescribed by HUD. Letters of clearance must be accompanied by a signed contract providing a guarantee of at least one year and a graph or diagram showing, if present, the location of active or inactive wood destroying insect infestations and visible damage. If present, conditions existing to the substructure favorable to decay fungi and possible damage due to rot must be disclosed in the additional comments section on the form. Structures upon which letters of clearance are written must meet all conditions stated in the letter as well as all the minimum requirements for structural pest work in Sections IIIA, IIIB, and IIID or III E. For additional responsibility on Letters of Clearance see Section II, Item I, Contracts.

Areas which are inaccessible for inspection must be clearly described in the letter.

When a Letter of clearance is issued on a building for which previous substandard prior approval or waiver of the minimum treating requirements has been given, the operator shall notify the new owner in writing (on the Clearance Letter if possible) that specified prior approved substandard conditions exist in the structure. When this is done the operator shall not be issued a Report of Substandard Termite Treatment on the specified substandard conditions.

5. Reporting and Reinspection Fees - Correcting Substandard Work.

Each license holder shall remit to the Plant Board, by the 15th day of each month, an inspection fee of \$5.00 for each building on which a contract has been issued during the previous calendar month excluding new contracts issued with letters of clearance on buildings under current contracts. The \$5.00 reporting fee shall be paid on each building treated regardless of how many buildings are covered by a single contract. If for any reason the payment of this fee is delayed more than 30 days the fee shall be doubled. The Plant Board, through its authorized representatives, reserves the right to inspect any or all buildings on which a contract has been issued, to determine compliance with the Pest Control Law and Rules made there- under. Should inspections by the Plant Board's representatives of buildings covered by a contract, including a renewal of a contract and/or Letter of Clearance, be found infested with termites or other structural pests for which prevention, control or eradication has been contracted, or if the Plant Board's minimum standards (Sections IIIA, IIIB, IIID and IIIE), other than those excepted in the contract and given prior approval or a waiver by the Plant Board, have not been met or fulfilled, or misrepresentations have been made to the owner, the Plant Board will send the license holder a notice to that effect. The license holder shall, within 15 days, retreat the building when necessary and otherwise bring the building into compliance with the law and these rules and shall submit to the Plant Board along with the report of correction an appropriate reinspection fee. If the necessary corrections cannot be made in 15 days due to circumstances beyond the license holder's control, additional time may be requested from the Plant Board office. When a notice has not been returned by the due date and the license holder has not contacted the Plant Board office concerning the notice, a reinspection of the building will be made and another notice will be issued, if the building has not been brought up to standard at the time of the reinspection. Should subsequent reinspections reveal the building still not in compliance, the same procedure outlined above will be followed. These fees are to pay for the cost of inspections and payment does not preclude invalidation of a license by the Plant Board should this be warranted

6. Inspection of First Five Properties Treated.

Within 90 days of issuance of a first termite and other structural pest license to a person, the new licensee shall submit a report on their first five termite jobs including all required forms and information. The report shall be accompanied by an inspection fee of \$20.00 for each job and the regular \$5.00 reporting fee will be waived on these first five jobs. Plant Board representatives will inspect the jobs to assess the operator's performance and compliance with the law and regulations. If a licensee does not complete and report their first five jobs in 90 days, or if inspection shows that the operator is apparently not qualified, a notification that no more work is to be contracted will be issued and the Plant Board will consider revoking the license. A hearing before the Board's Pest Control Committee may be requested by filing a certified letter with the Board within 20 days of receipt of the notice.

7. Supervision.

A licensed operator shall personally supervise or inspect all work and/or services performed. A verification of this shall be made on the monthly report of work performed, signed by the licensed operator. If the licensed operator fails to comply with this provision, he shall be considered as if no longer in charge of the license-holder's pest control operation, and the license shall be deemed invalid in accordance with the provisions of the Pest Control Law.

8. Notice that all Jobs are to be inspected.

Any time that an unreasonably high (15% or more) number of jobs of a licensed operator / holder upon inspection are found not in compliance with the law and these regulations, the Pest Control Committee, after reviewing the record of the licensee in question, may instruct Plant Board inspectors to inspect all jobs reported during the previous year. In such a case the license holder / operator will be notified by registered or certified letter (return receipt requested) that their work has not been satisfactory. The Plant Board will withhold any further inspections for 60 days following the receipt of this notice. After the 60-day delay, all jobs reported the previous year, not including those previously checked and in compliance, will be inspected. The time period covered will be the year previous to the date that the above notice is received by the licensed operator.

SECTION III A - MINIMUM REQUIREMENTS FOR STRUCTURAL PEST WORK ON EXISTING STRUCTURES.

1. Access opening.

An opening, at least 14 inches high and 16 inches wide, shall be provided to permit inspection under all parts of the building.

2. Chemicals.

The term chemical, when used hereafter, shall apply to pesticides used for the control or prevention of termites, powder-post beetles, wood destroying fungi and other wood destroying organisms. The pesticides are described in Section III C-materials.

3. Debris and Form Boards.

(a) All wood including stumps, roots and other cellulose debris which can be caught by a rake, on the surface of the ground, must be removed from underneath the building. Large stumps, that are impractical to remove, may be trenched, drilled or rodded and treated provided they are not in contact with or within 5 inches of the buildings substructure timbers.

(b) All unnecessary form boards and grade stakes, must be removed from underneath and around the outside of the building. Grade stakes embedded in the foundation footing which are impractical to remove should be cut off flush with the concrete and treated as per label directions with chemical.

4. Clearance Under Buildings.

All soil, which is within 12 inches of bottom edge of floor joists or within 5 inches of subsills, must be removed.

Note: Adequate clearance scuttle holes, 14 inches high and 16 inches wide, must be provided under drop sills, plumbing and air ducts for passage of a large man to make complete inspection under all parts of the building.

5. Shelter Tubes.

Brush all termite shelter tubes from piers, walls, sills, joists, sub-floors, pipes, and other parts of the understructure.

6. Piers and Stiff-legs.

(a) Stiff-legs or other wood supports must have concrete or metal-capped bases extending at least 4 inches above the ground.

(b) Piers under sills or subsills, if less than 8 inches high, must be concrete or metal-capped.

7. Wood on Concrete Floors.

Where wood parts such as posts, door frames, partitions, or stair-carriages:

(a) have been attacked by termites working up thru concrete, or

(b) are set down into concrete,

said wood parts must be cut off and set on metal or concrete bases raised at least 1 inch above the floor level.

Exception: Stiff-legs, posts, or other wood supports supporting a raised sundeck, patio, wood porch, carport roof or similar attached appurtenance, located outside the exterior perimeter of a buildings foundation, need not be cut off and placed on concrete or metal bases as required in Sections 6(a) and/or 7; however, chemical must be applied as per label directions around such supports.

8. Wood Steps.

Chemical treatment as per label directions around all wood steps shall be made.

9. Pipes

Pipes should be trenched and treated with approved chemicals according to label directions.

10. Dampness.

Dampness favors the development of termites and wood rots. If water can run under the building through access opening, ventilators, or other openings in or under sidewalls or skirting, this condition must be remedied. Seepage through or under walls should be prevented. If it is impracticable to prevent seepage, owner must be notified in the contract.

If condensation of soil moisture upon wood of the substructure is a problem, it can be prevented by constructing a vapor barrier. An adequate barrier can be made by covering the soil under the building with roofing paper or a polyethylene sheet.

11. Ventilation.

Inadequate ventilation also favors the development of termites and wood rots. Provide ventilation at the rate of at least one 8 x 16 inch opening (or equivalent) for each 25 linear feet of foundation wall. Provide ventilation for all dead air pockets.

12. Replacements / Exclusion of Existing Damage

A. Wood substantially weakened by termites, powder-post beetles or decay fungi (rot) should be replaced. Replacements may be made by the operator or the property owner, or both. Replacement of damage caused by termites or powder-post beetles for which the operator is not responsible must be specifically excluded in writing by:

(1) Describing the excluded replacements in the contract and stating therein that they are not to be made by the operator;

(2) Showing their location on the diagram of the structure and;

(3) Noting that the replacement of uninfested hidden damage (that which cannot be seen by thorough visible inspection without defacing the property) at or above the subfloor, which is not

covered by (1) and (2) and which was caused by an infestation occurring prior to the operator's first treatment of the property or the issuance of a letter of clearance, shall not be the responsibility of the operator.

B. The license holder shall be required to replace substantially weakened wood which has been damaged by termites, on buildings covered by a contract providing a guarantee for retreatment and replacement of termite damage, when inspectors find active termites associated with the damaged wood and / or visible damage not excluded as required in paragraph A.

C. Replacement of wood weakened by decay fungi (rot) shall not be the license holders responsibility, unless they have entered into an agreement to control this pest provided that the owner is provided written notification in **bold** print that a condition exists to the substructure which is favorable to decay fungi and possible damage due to rot, on the termite or powder-post beetle control contract, graph, and letter of clearance, if issued.

13. Outside Grade. See Figure 1.

A. Wood Construction.

Top of foundation wall and all exterior wood, such as siding and framing, must be at least 3 inches above outside grade. To lower grade, soil next to wall should be removed to necessary depth and a retaining wall built or a concrete gutter installed, after chemical is applied in accordance with label directions.

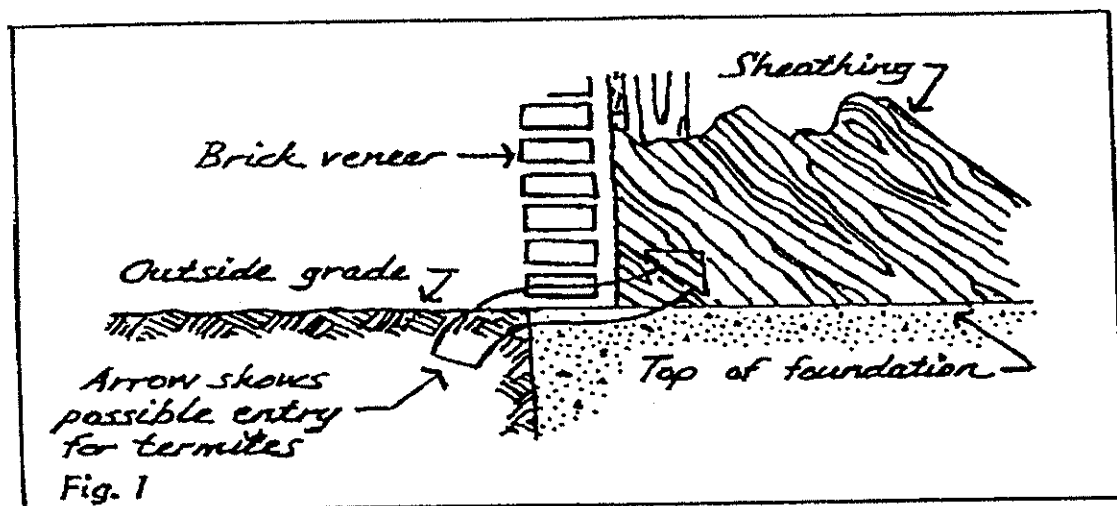
B. Masonry Veneer Construction.

In lieu of a retaining wall or concrete gutter as specified in (A) above, soil against masonry veneer walls may be treated according to label directions with a application of chemical.

FIGURE 1 EXPLAINS 13.

In this drawing, the top of the foundation is level with the outside grade. This is a hazardous condition for two reasons:

- (1) Wood at or near ground level is often damp, a condition favorable to termites;
- (2) Termites can easily enter from the outside, unseen, by going thru cracks in the first mortar joint and then into the sheathing. Unless the outside grade is at least 3 inches below the wood parts of the house (including the siding on a frame house), it must be treated as described in Section 13.



14. Skirting and Lattice Work.

Skirting and Lattice Work should rest on solid concrete or cemented brick extending at least 3 inches above the outside grade, unless suspended, in which case there should be at least 3 inches clearance above grade. Contact must be broken between the building and any lattice which may rest on or in the soil.

Exception: Skirting and lattice work outside the perimeter of a buildings foundation, attached to a wood porch or deck, need not be serviced to provide 3 inches of clearance above the outside grade.

Chemical treatment as per label directions to control termites must be made around these items however.

15. Steps, Porches, Ground Slabs* and Similar Structures.

A. Structures which are even with, or above the sill line, must be either:

1. Drilled at intervals specified by label directions, or rodged, and the soil thoroughly flooded with chemical at the juncture of the structure and foundation or wall. If the structure is long-rodged, the route must be shown on the diagram of the building; or

2. Tunneled and treated, the tunnel must extend the length of the fill and be at least 12 inches deep (or down to grade) and 12 inches wide. Dirt of the tunnel must be saturated with chemical at all points of contact with wall and slab. Supports for the slab should be erected in the tunnel if needed.

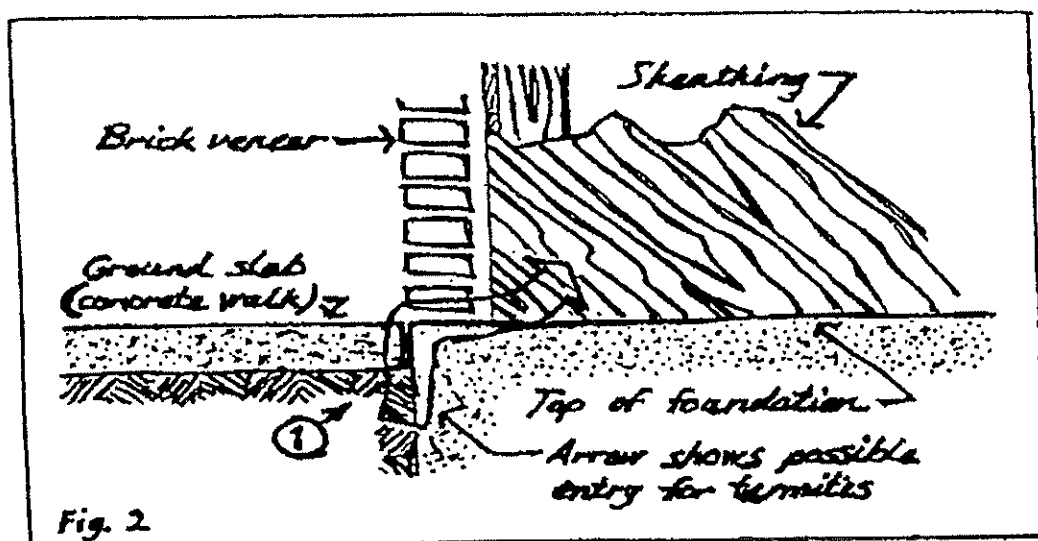
B. Structures below the sill line:

1. For veneer construction, treatments are not required unless an infestation is associated with the structure, In such case the structure must be drilled or tunneled as in (A) above.

2. For frame construction, in which the structure is within 3 inches of the wood it must be drilled or tunneled as in (A) above. If the structure is more than 3 inches below the wood no treatment is required unless an infestation is associated with the structure. In such case, it must be drilled or tunneled as in (A) above.

FIGURE 2 EXPLAINS SECTION 15 A & B (IN PART).

When the top of the concrete walk (ground slab) is level with top of the foundation wall, termites may come up unseen thru the joint between foundation and slab, thru cracks in the first mortar joint, and into the sheathing. To correct this condition, a tunnel may be made at → and chemical applied, or the slab may be drilled as specified by label directions at → and the soil treated with chemical.



NOTE 1: Tunneling is preferred over drilling and treating in moist situations where wood is in contact with the soil.

NOTE 2: Solid (not dirt filled) porches and steps may be drilled on 9 inch centers and treated or they may be made accessible for thorough inspection by opening the foundation sufficient for visual examination across the back of the structure. When possible, removal of the sill or plate to expose the back of the structure is suggested.

NOTE 3: If siding or other exterior wood touches the top of a dirt filled or ground slab structure. Slab structure must be drilled and treated, or tunneled, or the situation remedied by cutting strip from the bottom of the siding to create a space where termites must expose themselves getting to wood.

* "Ground Slab" refers to such structures as concrete or masonry walks, gutters, patios, etc., laid directly upon the ground rather than upon a dirt fill.

Tunneling and Treating Notes. (See Figures 2 and 3)

NOTE 1. The size of the tunnel under ground slabs is not specified.

NOTE 2. When the sill or other wood extends below the bottom of the concrete slab, the tunnel must be more than 12 inches deep next to the foundation wall, in order to provide at least 12 inches of clearance from the bottom of the wood to the bottom of the tunnel.

NOTE 3. When the bottom of the tunnel is above ground level under the structure, the trench for applying the chemical in the tunnel should, be dug down to the level of the trench on the opposite side of the wall, unless the wall is of solid, un-cracked, concrete. If this is impracticable, the wall should be drilled and injected at the level of the bottom of the tunnel, rather than at the ground level.

NOTE 4. If it appears that a fireplace hearth would fall in if tunneled, the chimney base may be drilled and treated as stated in Paragraph 19,

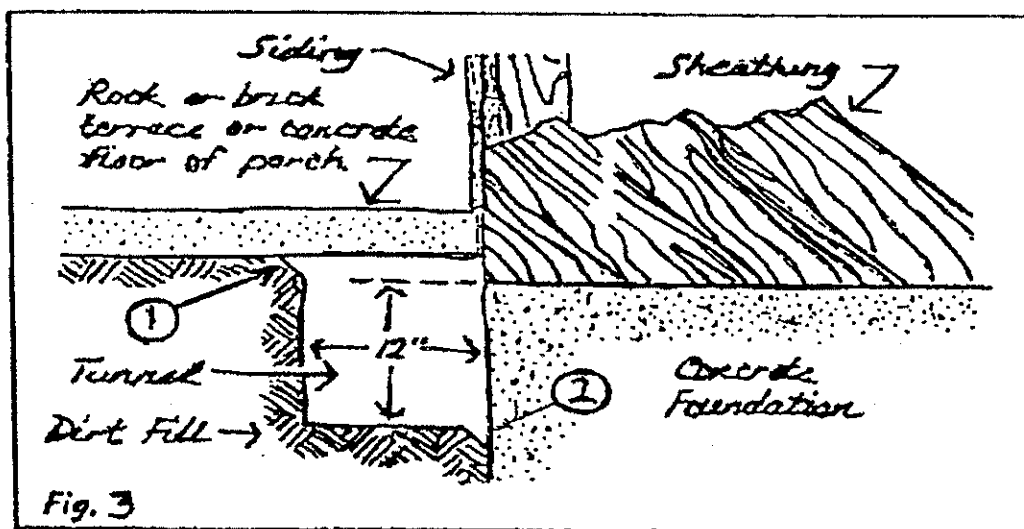


FIGURE 3 EXPLAINS 15 (IN PART).

When tunneling a dirt filled porch (or other dirt-filled structure), the bottom of the tunnel must be at least 12 inches below the sill or other wood parts of the building. Apply chemical at → and ♥.

16. Stucco.

- (a) Wood supports for stucco must be at least 6 inches above outside ground level, or 4 inches above the level of ground under an adjacent slab.
- (b) Where stucco extends to or below grade, chemical should be applied as per label directions in trenches dug below and under the edge of the stucco, so as to assure saturation of ground beneath. This is in addition to ground treatment under building (see 17).
- (c) Where ground slabs prevent the trenching required under (b), the ground may be treated by injecting chemical into the void between stucco and inner walls.

17. Ground Treatment Under the Building.

Chemical must be applied according to label direction entirely around inside of foundation wall, and around all pipes, chimneys, and piers.

18. Ground Treatment Outside Buildings.

For infested buildings, apply chemical according to label directions entirely around outside of foundation wall. Treatment on uninfested buildings shall be at the license holders option.

Example. If the outer ground level is 12 inches above the inner ground level, the outside trench should be 12 inches deep. The dirt used to refill the trench should be saturated with chemical. to prevent termites entering from the outside, through the mortar joints. The only remaining way by which termites could come up the wall would be by coming from below, through the footing. Drilling and injection of the first mortar joint above the trench as required by 19 (B) should be done to prevent this.

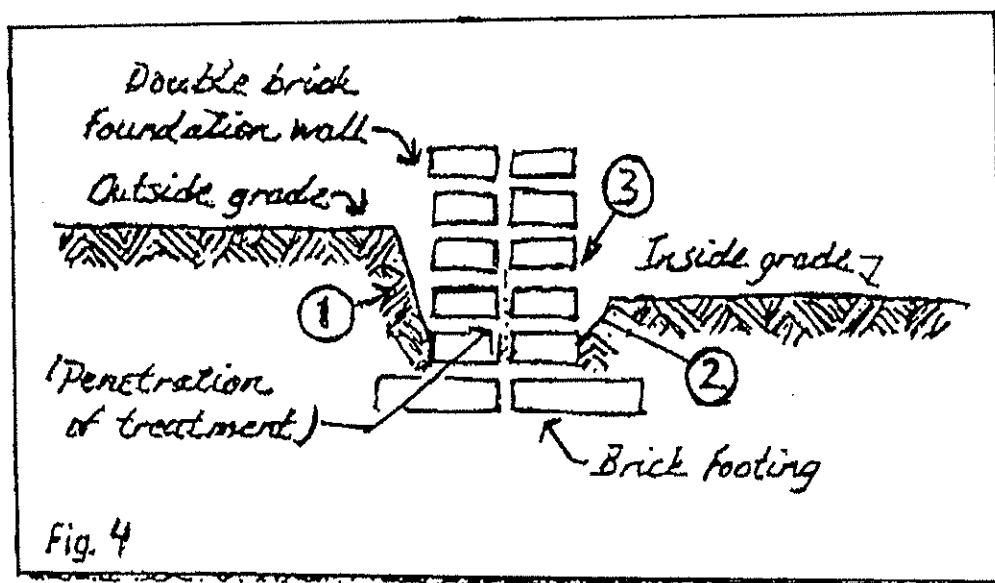


FIGURE 4 EXPLAINS SECTIONS 18 AND 19(b) IN PART

Outside and inside trenches → and ♥ should be dug to the same level. When applying chemical around foundation walls. The first horizontal mortar joint above the trench at □ should be ■ and treated at 9-inch intervals. The full width of the brick, should be drilled to assure that chemical will reach and penetrate down into the vertical mortar joint, as shown.

19. Chemical Treatment of Masonry.

Chemicals shall be applied in accordance with label directions as follows to foundation walls, piers, and chimneys.

(a) To all cracks in concrete.

(b) Drill mortar joints on 9-inch centers and inject all cracks and voids, in the horizontal layer of masonry (stone, brick, concrete blocks, tiles) which is adjacent to the treated ground at the bottom of the trench (Figure 4).

(c) Inject voids between walls, as in brick veneer and stucco construction.

(d) Treat between the top of masonry and the sills or other timbers resting thereon. When this is insufficient, the top of the wall or piers should be capped with concrete or metal.

NOTE 1: When the foundation wall is of hollow masonry blocks and the blocks are not capped with metal or solid concrete, each void should be drilled and injected with chemical as per label directions. This should be done even though there is no visible sign of infestation.

NOTE 2: When footing is of solid concrete, with no cracks, and trenches on both sides of wall extend down to it, drilling and injection of mortar joints in wall is ordinarily not necessary.

NOTE 3: Items 17, 18, and 19 do not permit spot treatment of dwellings. The license holder is held responsible for the entire structure on one and two-family dwelling units. Commercial, industrial and institutional buildings may, however, be spot treated at the license holder's option. The license holders responsibility in such cases shall be limited to retreatment and repair of the

area spot treated, provided the area is shown on the graph, described in the contract and understood by the property owner before the contract is signed.

20. Powder-Post Beetles.

If powder-post beetles are present in the understructure and are not to be treated, the owner must be so informed in writing before the contract is signed. Treatment, if made, should be applied to all wood showing signs of infestation. This can be done by spraying, brushing, or mopping as per label directions onto wood surfaces any pesticide approved for use in powder-post beetle control as described in Section IIIC-Materials. Two or more applications must usually be made at intervals to achieve control. Special formulations are required for treating flooring or furniture to avoid damage to the finish.

21. Slab Construction.

Slab construction shall meet all of the foregoing minimum requirements except, as outlined in paragraphs 1, 3(a), 4, 9, 10, 11 and 17. Treatments should be made when swarms occur or damage is found, or as a preventive measure. Treatment under the slab is accomplished by drilling holes in the slab or foundation through which chemical can be applied in accordance with label directions to establish a barrier in the soil. Long-rodging can sometimes be accomplished without drilling. Brick and stone veneer on slab construction is treated by drilling through the veneer and injecting the void between the veneer and the slab with chemical. Brick and stone veneer shall be drilled at intervals as specified by label directions.

NOTE: On structures which are part slab and part crawl space, appropriate minimum requirements shall be met on each part.

22. Foam Treatment for Concrete Slab and Masonry Veneer.

Treatment is accomplished by drilling no farther apart than on 6 foot centers. The volume of foam applied shall be the amount required to equal the rate and volume specified by the label directions when the chemical is applied as a liquid.

23. Foam Treatment for Crawl Space.

Treatment is accomplished by applying the chemical in a trench along foundation walls, piers, pipes, etc. The volume of foam applied shall be the amount required to equal the rate and volume specified by the label directions, when the chemical is applied as a liquid.

NOTE: All contracts and graphs must specify when foam treatment is used.

SECTION IIIB - MINIMUM REQUIREMENTS FOR STRUCTURAL PEST WORK ON NEW CONSTRUCTION (PRE-TREAT).

Pretreat: New buildings which are treated for the control of termites before, during and/or at the conclusion of construction. Pretreatments shall be made as directed by one or a combination of the following treatment methods

1. Chemical soil barrier treatments:

Crawl space construction: approved chemical at concentration rate and volume must be applied according to label directions to establish a vertical barrier in the soil adjacent to both sides of the foundation, around piers, pipes and other construction elements that would permit termites to infest the building from the ground. Horizontal chemical barriers must be established by applying chemical at the concentration rate and volume specified by the label directions to all soil surfaces to be covered by steps, porches, garage floors, carport slabs, patios or other structures adjoining the building. In addition to the establishment of both vertical and horizontal chemical barriers in

the soil the building must meet items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13A of the minimum requirements given for existing structures in Section IIIA. If ventilation is not provided as described in item 11 in Section IIIA, the license holder shall, in writing on the contract, notify the owner within 12 months of their acquiring ownership of the property, that proper ventilation needed to comply with the minimum requirements for termite and other structural pest work was not provided at the time of construction.

Slab Construction: approved chemical at concentration rate and volume must be applied according to label directions to establish a horizontal chemical barrier in the soil under all parts of the building, adjoining steps, carports, garage floors, patios, porches, or other structures adjoining the building. Chemical must be applied at concentration rate and volume according to the label directions in the soil adjacent to the foundation wall around the outside of the building to establish a vertical barrier in the soil. In addition to the establishment of horizontal and vertical chemical barriers in the soil, the building must meet items 3b, 5, 7, 8, 12, and 13a of the minimum requirements given for existing structures in Section III A.

Foam Treatments: When foam is used as the carrier for chemical material, the volume of foam that is applied shall be the amount required to equal the concentration rate and volume specified by the label directions when applied as a liquid.

NOTE: Contracts and graphs must specify when foam treatment is used.

NOTE: Buildings which are part slab and part crawl space, appropriate minimum requirements shall be met on each part.

2. Above ground wood treatment methods

Approved chemical must be applied to the wood according to the label directions, concentration rates and volumes. In addition crawl space buildings must meet items 1, 3, 4, 5, 6, 10, 12 and 13a. of the minimum requirements for existing structures in Section III A. If ventilation is not provided as described in item 11 in Section IIIA, the license holder shall, in writing on the contract, notify the owner within 12 months of their acquiring ownership of the property that proper ventilation needed to comply with the minimum requirements for termite and other structural pest work was not provided at the time of construction. Slab buildings must meet items 3b, 12 and 13a of the minimum requirements for existing structures in Section III A.

3. Bait treatment methods: When baits are used for pretreatment of a new building, all requirements in Section III E must be met.

Note: Contracts and graphs for all pretreats must state the name of the material used. All materials used must comply with the requirements for materials given in Section III C.

SECTION III C - MATERIALS

Any pesticide or combination of pesticides approved by the United States Environmental Protection Agency, registered with the Arkansas State Plant Board and labeled for the prevention or control of termites, powder-post beetles, wood-rotting fungi or other wood destroying organisms may be used to treat structural pests provided that the pesticides are used according to the label directions.

SECTION III D - MINIMUM REQUIREMENTS FOR STRUCTURAL PEST WORK ON

WOOD DECKS AND WOOD PATIOS ON EXISTING AND NEW CONSTRUCTION.

1. Chemical Treatment to wood decks and wood patios (an open platform adjoining a building, not covered by a
2. New contracts, Contract Transfers, Clearance Letters and Soil Treatment Certificate Responsibility.

Wood decks and/or wood patios are INCLUDED as part of the contract, contract transfer or clearance letter issued on an attached structure UNLESS the contract, contract transfer or clearance letter shows in BOLD PRINT that existing termite damage, or damage that occurs in the future, is NOT to be replaced on wood decks and/or wood patios.

3. Replacements.

A. Operators shall not be required to replace damaged wood caused by termites on wood decks or wood patios treated, even if infested with live subterranean termites, provided, that Section III D, subsection 2 above has been complied with.

B. Operators shall not be required to replace damaged wood caused by weather related rot or other lots on wood decks or wood patios.

C. Operators shall be required to replace damage caused by termites in the treated structure adjacent to the wood deck or wood patio even though the infestation causing such damage originates in the wood deck or patio after the initial treatment to the property.

CLARIFICATION

A. Operators electing to issue contracts for future termite damage replacement on wood decks and wood patios, shall be held equally responsible as for any other part of a building.

B. Operators failing to comply with Section III D, subsection 2 above shall be required to make replacements as needed on wood decks and wood patios.

C. Wood decks and wood patios NOT connected to a treated building are excluded from treatment or repair requirements, unless they are specifically covered by a contract for treatment and damage replacement.

SECTION III E - MINIMUM REQUIREMENTS FOR TERMITE WORK WHEN USING BAITS AS THE METHOD OF CONTROL.

1. Contracts.

In addition to requirements specified in SECTION II item 1, contracts must specifically state the initial number of bait stations that are to be installed and the frequency upon which an inspection of the bait placements or monitoring stations are to be performed. The diagram must show the location

2. Treatment.

The materials, baits, monitoring stations, and matrix's shall be applied and maintained according to

label directions and schedule specified in the contract.

3. Replacements / Exclusion of Existing Damage

A. Wood substantially weakened by termites, powder-post beetles or decay fungi (rot) should be replaced. Replacements may be made by the operator or the property owner, or both. Replacements of damage caused by termites or powder-post beetles for which the operator is not responsible must be specifically excluded in writing by:

- (1) Describing the excluded replacements in the contract and stating therein that they are not to be made by the operator.
- (2) Showing their location on the diagram of the structure and;
- (3) Noting that the replacement of uninfested hidden damage (that which cannot be seen by thorough visible inspection without defacing the property) at or above the subfloor, which is not covered by (1) and (2) which was caused by an infestation occurring prior to the operator's first treatment of the property or the issuance of a letter of clearance, shall not be the responsibility of the operator.

B. The license holder shall be required to replace substantially weakened wood, which has been damaged by termites, on buildings covered by a contract providing a guarantee for retreatment and replacement of termite damage, when inspectors find active termites associated with the damaged wood and / or visible damage not excluded as required in paragraph A.

C. Replacement of wood weakened by decay fungi (rot) shall not be the license holders responsibility, unless they have entered-into an agreement to control this pest provided that the owner is provided written notification in **bold** print that a condition exists to the substructure which is favorable to decay fungi and possible damage due to rot, on the termite or powder-post beetle control contract, graph, and letter of clearance, if issued.

SECTION IV - HOUSEHOLD PEST AND RODENT CONTROL (CLASSIFICATION 2).

Household Pest and Rodent Control shall consist of the control of any mammal, bird, arthropod, reptile or other organism that may infest or invade a home or other buildings or the immediate area around or under these homes or buildings or other areas, other than wood-damaging or destroying insects, fungi or organisms. Holders of a license in this classification shall not be required to qualify in classification 7, Food Manufacturing, Processing and Storage Pest Control, to perform food related pest and rodent control. Any person wishing to perform food related pest and rodent control for more than one person, company or corporation, however, must be licensed in this classification rather than classification 7.

The Plant Board will investigate complaints against license holders, and monitor each operator's work from time to time, and may invalidate a license for fraud, misrepresentation, failure to carry out contracts, use of improper methods or materials, or other reasons specified in the law.

SECTION V- ORNAMENTAL TREE AND TURF PEST CONTROL (CLASSIFICATION 4); WEED CONTROL (CLASSIFICATION 5); GOLF COURSE PEST CONTROL (CLASSIFICATION 6);

1. The Plant Board will investigate complaints against license holders and may cancel license for fraud, misrepresentation, failure to carry out promises, use of improper methods or materials, or other reasons specified in the law.

SECTION VI - GENERAL FUMIGATION (CLASSIFICATION 3)

Holders of a license in this category shall not be restricted in forming fumigations nor shall they be required to qualify in Classification 8, Food Related Fumigation, to perform food related fumigation. Any person wishing to perform food related fumigation for more than one person, company or corporation, however, must be licensed in this category rather than classification 8.

SECTION VII - FOOD RELATED PEST CONTROL (CLASSIFICATIONS 7 AND 8)

Classification 7- Food Manufacturing, Processing and Storage Pest Control

A Commercial Applicator Certificate shall be issued in this classification to employees of large scale, primarily wholesale food manufacturing, processing and storing companies or corporations. Employees shall be restricted to pest control work at the company address or addresses stated on the Commercial Applicator Certificate. Any person performing pest control work for more than one company shall qualify and be licensed, bonded, and insured under classification two, Household Pest and Rodent Control, rather than in this classification. The companies or corporations and the employee shall be jointly and severally responsible for the proper use of pesticides by the employee.

The Commercial Applicator Certificate shall be subject to denial, suspension or invalidation for any or all grounds stated in AR Code Annotated §17-37-101 as amended or these regulations.

Classification 8 -Food Related Fumigation

A Commercial Applicator Certificate shall be issued in this classification to employees of large scale, primarily wholesale food manufacturing, processing and storing companies or corporations. Said employees shall be restricted to fumigation at the company address or addresses stated on the Commercial Applicators Certificate. Any person performing food related fumigation for more than one company shall qualify and be licensed under Classification 3, General Fumigation, rather than in this classification. The company or corporation and the employee shall be jointly and severally responsible for the proper use of fumigants. The Commercial Applicator certificate shall be subject to denial, suspension or invalidation for any or all grounds stated in AR Code Annotated §17-37-101 as amended or these regulations.

SECTION VIII - NON-COMMERCIAL ORNAMENTAL TREE AND TURF PEST CONTROL (CLASSIFICATION 9A); ORNAMENTAL WEED CONTROL (CLASSIFICATION 9B); GOLF COURSE PEST CONTROL (CLASSIFICATION 10);

Classification 9 A - Ornamental Tree and Turf Pest Control

Classification 9 B - Ornamental Weed Control

A Non-Commercial Applicator Certificate (not a license) shall be issued in either or both classifications to employees of Federal, State, County, or Local Government. Said employees shall be restricted to pest control work on property owned or under control of Federal, State, County or Local Governments. Federal, State, County or Local Governments and their employees

shall be jointly and severally responsible for the proper use of pesticides. A Non-Commercial Applicator shall not perform pest control services for more than one governmental agency or any other entity without having fully qualified and become licensed as a Commercial Applicator, Classifications 4 - Ornamental Tree and Turf Pest Control or Classification 5 - Ornamental Weed Control. The Non-Commercial Applicator Certificate shall be subject to denial, suspension, or invalidation for any or all grounds stated in AR code Annotated §17-37-101 et seq. as amended or these regulations.

Classification 10 - Golf Course Pest Control

A Non-Commercial Applicator Certificate (not a license) shall be issued in this classification to employees of the owner or owners of specific golf courses. Said employees shall be restricted to pest control work on courses owned or under control of said golf owner or owners. The golf course owner or owners and the employee shall be jointly and severally responsible for the proper use of pesticides. A Non-Commercial Applicator shall not perform pest control service for more than one golf course without having fully qualified and become licensed as a Commercial Applicator in Classification 10 - Golf Course Pest Control. The Non-Commercial Applicator Certificate shall be subject to denial, suspension or invalidation for any or all grounds stated in AR code Annotated § 17-37-101 et seq. as amended or these regulations.

SECTION IX

ARKANSAS STATE PLANT BOARD PEST CONTROL ENFORCEMENT RESPONSE REGULATIONS

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X. STATEMENT OF PURPOSE

Pesticides are valuable to Arkansas' agricultural production and the protection of man and his possessions from insects, rodents, weeds, plant diseases, and other pests. It is essential to the public health and welfare that pesticides be used properly to prevent adverse effects on man and the environment.

The purpose of the regulation is to provide a fair and consistent mechanism by which compliance with the Arkansas Pest Control Law, as amended, and the rules written pursuant thereto can be achieved.

XI. DEFINITIONS

As used in this policy:

- A. **Base Civil Penalty:** The midpoint of a civil penalty range. [Example: The civil penalty range for failure to report structural pest control work (1st level of enforcement) is \$200.00 to \$400.00. The base penalty is \$300.00]
- B. **Case Development Review Panel:** An internal committee of staff including: 1. The Plant Industry Division Director or his/her designee, 2. The Agency Assistant Director or his/her designee, and

3. The Agency Director or his/ her designee. The Case Development Review Panel will carefully review all case documentation to insure completeness and to insure that the recommended enforcement action is appropriate.

- C. **Level of Enforcement:** The category by which a violative incident is considered a first, second, third, or fourth offense.

For a violation to be considered as a second or subsequent offense, it must be a repeat of a violation for which a previous enforcement action has been taken by the Plant Board. The previous violation/violations must have occurred within the past 3 years.

- D. **Minor Violation:** A violative incident which does not involve human health, safety, or endanger the environment; or other incidents of non-compliance which do not create a competitive disadvantage for licensees in full compliance.

- E. **Major Violation:** A violative incident which affects human health, safety, or the environment; or other incidents of non-compliance which create a competitive disadvantage over licensees in full compliance; or a history of repetitive violative incidents.

*In no case shall the failure to meet minimum requirements for structural pest work (Sections III A, III B, III C, and III D) adopted under the authority of Ar. Code 17-37-105, except those which require a termiticide application, be considered a violation and subject to a civil penalty.

- F. **Respondent:** A person charged with a violation of the Arkansas Pest Control Law as amended, and the rules written pursuant thereto.

XII. LEGAL AUTHORITY

- A. "Arkansas Pest Control Law" A.C.A. 17- ~~30~~37-101 et. seq. and Regulations.
- B. "The Arkansas Plant Act" A.C.A. 2-16-203 et. seq. and Regulations.

XIII. ENFORCEMENT ACTIONS

Under the preceding Arkansas Codes, the Plant Board has several options for enforcement action. These are:

- A. **Warning Letter:** For minor, 1st level of enforcement violations, the Board or Board Staff will issue a warning letter. The letter will cite the specific violation. The letter will also identify any corrective action that may be needed and notify the respondent that further violations will result in more severe enforcement action.
- B. **Informal Agreement:** When a violation has been alleged, the respondent has the option of an informal hearing or a board/committee hearing. The purpose of the informal hearing is to resolve a complaint or incident. A hearing officer will meet jointly with the respondent and Plant Board Staff. The group will seek consensus on an appropriate enforcement action for recommendation to the Board. Enforcement action based on the Penalty Matrix (Appendix A) will include Civil Penalty and/or license suspension, revocation, non-renewal, or

registration cancellation. The Full Board acts on all recommendations resulting from the informal hearing.

- C. **Board/Committee Hearing:** If the respondent chooses to bypass the informal agreement process, or if an agreement can not be reached during the informal hearing, a hearing will be held by the Pest Control Committee of the Board. Enforcement action will include Civil Penalty and/or license suspension, revocation, non-renewal, or registration cancellation. Following the Committee hearing, a written Finding of Fact, Conclusion of Law, and recommendation will be submitted to the Board. The Full Board will act on all recommendations of the Committee.
- D. **Suspension / revocation / non-renewal of a license or registration:**
The suspension, revocation, or non-renewal of a license by the Board may be in addition to or in conjunction with a civil penalty fine.
- E. **Injunction:** The Board may apply for an injunction to any court of competent jurisdiction for violations of the Pest Control Law. The court, upon hearing and for cause, has the option of temporary or permanent injunction restraining any person from violating any provisions of The Arkansas Pest Control Law and regulations.
- F. **Referral to Prosecuting Attorney:** The Plant Board has the option of referring violations of the Pest Control Law to the prosecuting attorney.
- G. **Referral to EPA:** The Plant Board will negotiate cases of referral with EPA to determine the appropriate action.
- H. **Referral to Pesticide Division :**
The pest control section will refer, the operation of faulty or unsafe equipment, and for distribution of adulterated and/or misbranded pesticides cases to the pesticide division of the AR. State Plant Board.

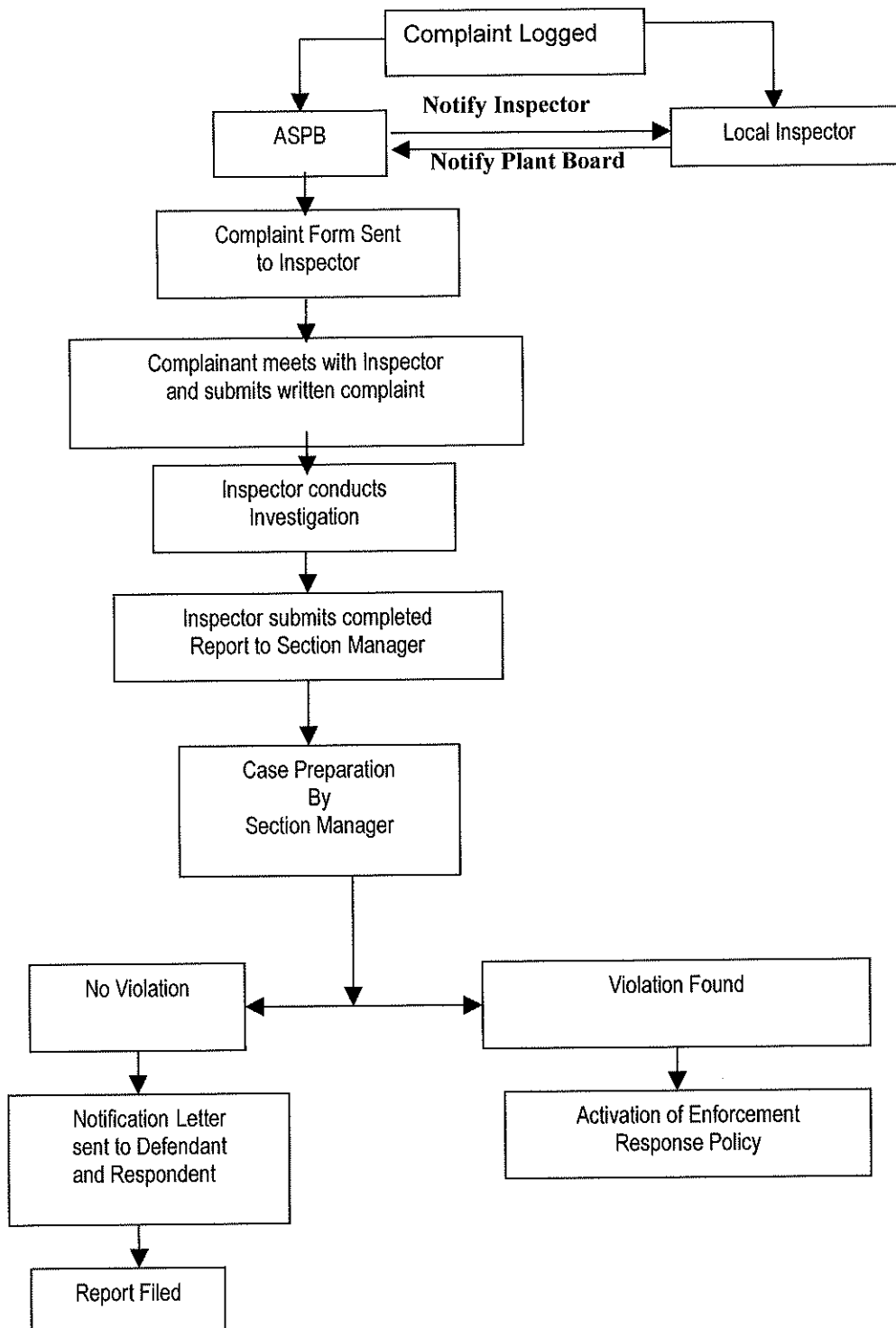
XIV. INCIDENT INVESTIGATION

An incident investigation will be initiated when:

- A. Routine compliance monitoring indicates a violation has occurred.
- B. A formal complaint that an alleged violative incident has occurred. (Filing of written form by a complainant). In cases of apparent immediate endangerment to health or the environment, the written notification may be waived and the investigation of the alleged incident will begin immediately).
- C. Possible human exposure to pesticides is assigned priority status.

The processing sequence for an incident investigation is outlined in Figure I.

FIGURE I
Processing Sequence



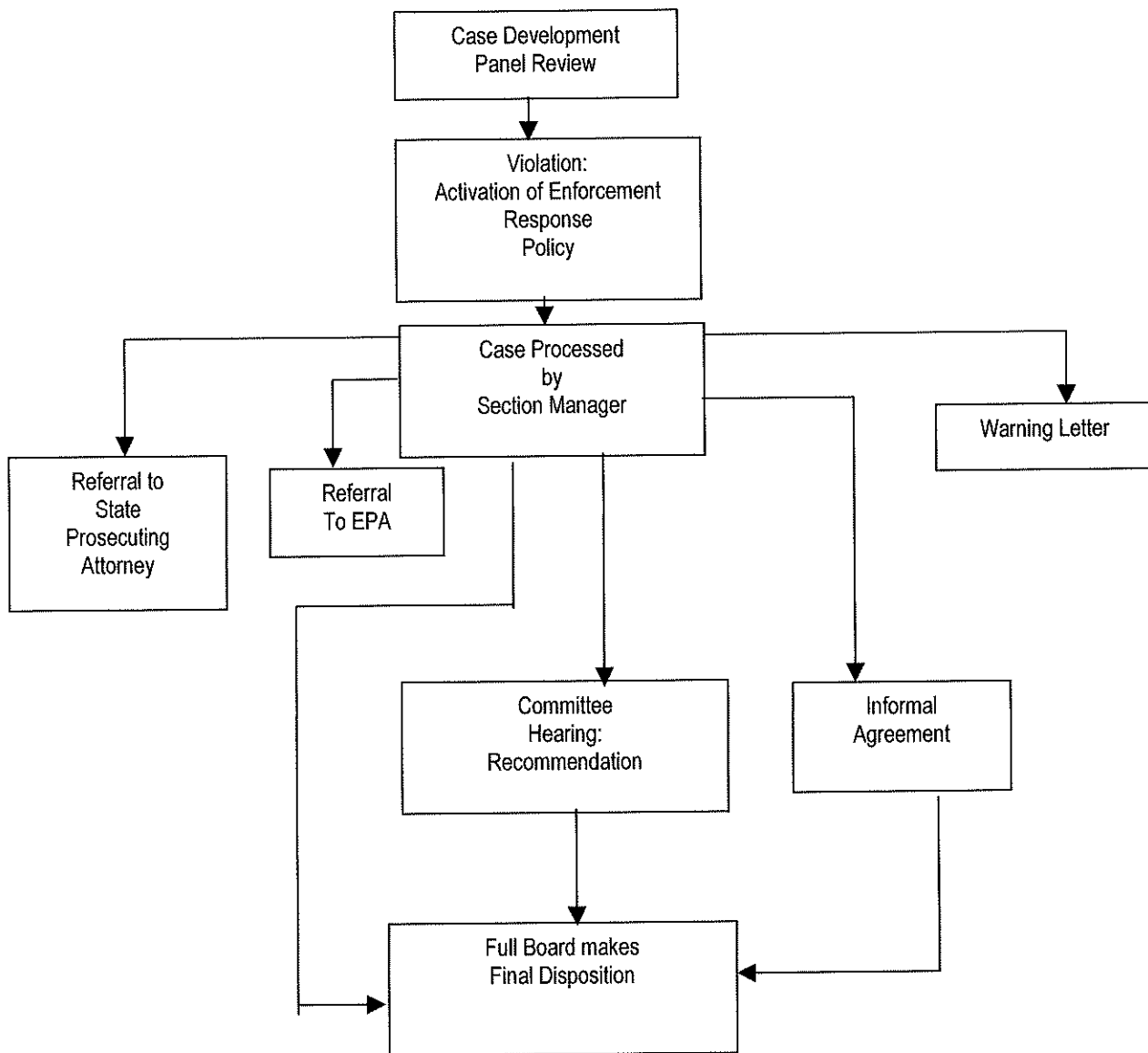
XV. ACTIVATION OF ENFORCEMENT RESPONSE POLICY

An apparent violation of law and/or regulation must be documented to initiate an enforcement action.

Documentation must conform to the requirements of the Plant Industry Division.

The sequence of events within the enforcement response policy is as follows.

FIGURE II



XVI. INTERNAL REVIEW

The Case Development Panel will carefully review all documentation and records to determine:

- A. That apparent violation / violations have occurred.
- B. Whether the apparent violation or violations are **Minor** and/or **Major** violations.
- C. The correct level of enforcement based on the penalty matrix and the documented History of the respondent.

Concurrence with the Division's finding by the Panel must be unanimous before further action can be taken on the case.

XVII. HEARINGS

The informal hearing officer and/or the appropriate Committee and/or the Full Board will carefully review the documentation and hear cases of alleged violations.

Should it be determined a violation(s) has occurred, the severity and level of enforcement of each violation will be determined by the three (3) factors in Section VII; as they are applied to the Penalty Matrix (Appendix A).

If a violation is determined in this sequence; the following factors will be considered:

- A. Cooperation of the respondent.
- B. Other extenuating/mitigating circumstances.

The Hearing Officer/Committee/Board may use these factors to accelerate or mitigate enforcement action. When a civil penalty is the preferred action, the base ~~fine~~ penalty may be increased or decreased based on these factors. The civil penalty will not be more or less than the range for the specific violation listed in Appendix A.

The Full Board will take action to determine the final disposition of the case.

XVIII. RIGHT OF APPEAL

Any person aggrieved by any action of the Plant Board may obtain a review thereof, by filing in circuit court within 30 days of notice of the action, a written petition praying that the action of the Plant Board be set aside.

APPENDIX

A

A PENALTY MATRIX

| VIOLATION | Violation Level | 1 st Level of Enforcement | | 2 nd Level of Enforcement | | 3 rd Level of Enforcement | | 4 th Level of Enforcement | |
|--|-----------------|--------------------------------------|-------------------------|--------------------------------------|-------------------------|--------------------------------------|-------------------------|--------------------------------------|-------------------------|
| | | Enforcement Action | Civil Penalty (Fine-\$) | Enforcement Action | Civil Penalty (Fine-\$) | Enforcement Action | Civil Penalty (Fine-\$) | Enforcement Action | Civil Penalty (Fine-\$) |
| 1. Failure to secure an applicator license | Minor | A | | | | | | | |
| | Major | B, C, E, F | 200-1000 | B, C, E, F | 400-1000 | B, C, E, F | 600-1000 | B, C, E, F | 800-1000 |
| 2. Pesticide recommendations or applications which are inconsistent with any/or all of the following: (A) Labeling (B) Federal or State registrations (C) Federal or State restrictions of the use of a pesticide | Minor | A | | B, C | 200-400 | | | | |
| | Major | B, C, G | 200-400 | B, C, G | 400-600 | B, C, D, G | 600-800 | B, C, D, E, G | 800-1000 |
| 3. Intentional misrepresentation(s) in any application for a license. | Minor | | | | | | | | |
| | Major | B, C | 200-400 | B, C | 400-600 | B, C | 600-800 | B, C, E | 800-1000 |
| 4. Misrepresentations for the purpose of deceiving for defrauding. | Minor | | | | | | | | |
| | Major | B, C, D | 200-400 | B, C, D | 400-600 | B, C, D | 600-800 | B, C, D | 800-1000 |
| 5. Making a false statement with knowledge of its falsity for the purpose of inducing others for act there on to their damage. | Minor | | | | | | | | |
| | Major | B, C, D | 200-400 | B, C, D | 400-600 | B, C, D | 600-800 | B, C, D, E | 800-1000 |

ENFORCEMENT ACTION OPTIONS

A - Warning letter
 B - Informal Agreement
 C - Board/Committee Hearing
 D - Suspension/Revocation of License

E - Injunction
 F - Referral to Prosecuting Attorney
 G - Referral to EPA
 H - Referral to Pesticide Division

PENALTY MATRIX

| <u>VIOLATION</u> | Violation Level | 1st Level of Enforcement | | 2nd Level of Enforcement | | 3rd Level of Enforcement | |
|---|------------------------|--|--------------------------------|--|--------------------------------|--|--------------------------------|
| | | Enforcement Action | Civil Penalty (Fine-\$) | Enforcement Action | Civil Penalty (Fine-\$) | Enforcement Action | Civil Penalty (Fine-\$) |
| 6. Performing work, with or without compensation, in a classification for which the licensee does not hold a license. | Minor | | | | | | |
| | Major | B,C,D,E,F | 200-1000 | B,C,D,E,F | 400-1000 | B,C,D,E,F | 600- |
| 7. Falsification of records or failure to maintain or make available all records required by this Act | Minor | A | | B,C | 200-400 | | |
| | Major | | | | | B,C | 600- |
| 8. Failure of licensee to supply the Board or its authorized representative, upon request with true and accurate information concerning methods and materials used on work performed. | Minor | A | | B,C | 200-400 | | |
| | Major | | | | | B,C | 600- |
| 9 Failure of licensee to register agents or solicitors, or failure to pay registration inspection or reporting fees due or failure to make reports within the time specified | Minor | A | | B,C | 200-400 | | |
| | Major | B,C | 200-400 | B,C | 400-600 | B,C,D | 600- |

ENFORCEMENT ACTION OPTIONS

A - Warning letter
 B - Informal Agreement
 C - Board/Committee Hearing
 D - Suspension/Revocation of License

E - Injunction
 F - Referral to Prosecution
 G - Referral to EPA
 H - Referral to Pesticide

PENALTY MATRIX

APPENDIX A (cont)

| VIOLATION | Violation Level | 1 st Level of Enforcement | | 2 nd Level of Enforcement | | 3 rd Level of Enforcement | | 4 th Level of Enforcement | |
|---|-----------------|--------------------------------------|-------------------------|--------------------------------------|-------------------------|--------------------------------------|-------------------------|--------------------------------------|-------------------------|
| | | Enforcement Action | Civil Penalty (Fine-\$) | Enforcement Action | Civil Penalty (Fine-\$) | Enforcement Action | Civil Penalty (Fine-\$) | Enforcement Action | Civil Penalty (Fine-\$) |
| 10. Failure to report structural pest control work. | Minor | A | | B, C | 100-400 | | | | |
| | Major | B, C, D | 200-400 | B, C, D | 400-600 | B, C, D | 600-800 | B, C, D, E | 800-1000 |
| 11 Failure to correct substandard work. | Minor | | | | | | | | |
| | Major | B, C, D | 200-400 | B, C, D | 400-600 | B, C, D | 600-800 | B, C, D, E | 800-1000 |
| 12. Failure of licensee to obtain satisfactory control of the pests or diseases which the licensee engages to control or eradicate as evidenced by repeated inspections by the Board. | Minor | A | | B, C | 200-400 | | | | |
| | Major | | | | | B, C, D | 600-800 | B, C, D, E | 800-1000 |
| 13. Conviction of any court of a violation of this chapter or of FIFRA. | Minor | | | | | | | | |
| | Major | B, C, D | 200-400 | B, C, D | 400-600 | B, C, D, G | 600-800 | B, C, D, E, G | 800-1000 |
| 14. Operation of faulty or unsafe equipment. | Minor | H | | | | | | | |
| | Major | H | 200-600 | H | 400-800 | H | 600-1000 | H | 800-1000 |
| 15. Distribution of adulterated and/or misbranded pesticides. | Minor | H | | | | | | | |
| | Major | H | 200-600 | H | 400-800 | H | 600-1000 | H | 800-1000 |

ENFORCEMENT ACTION OPTIONS

A - Warning letter
 B - Informal Agreement
 C - Board/Committee Hearing
 D - Suspension/Revocation of License

E - Injunction
 F - Referral to Prosecuting Attorney
 G - Referral to EPA
 H - Referral to Pesticide Division