

MINUTES OF THE
PRETREATMENT COMMITTEE
STRUCTURAL PEST CONTROL BOARD
April 21, 2004

The meeting was held on Wednesday, April 21, 2004, at the San Diego State Building, 1350 Front Street, San Diego, California, commencing at AM with the following members constituting a quorum:

Ron Moss, Chair
Ray Carrier
Kevin Ethridge
Mark Sklan
Rick Walsh
Randy Zopf

Board staff present:

Kelli Okuma, Executive Officer

Ron Moss invited the public members to make comments before the committee proceeded.

Terry Clark, Clark Pest Control, commented that the industry does not approach pretreatment the same as control service agreements. Once the pretreatment is done, there is no return to the property within three years, but rather the process is treated as a secondary control service without following control service agreement regulations. Problems could be alleviated if there is a relationship between the licensee and the homeowner. In order to keep the guarantee in place, the licensee must go back and do a complete inspection in three years.

Mr. Ethridge commented that the 99A form mandates a one-year warranty, so at the end of one year, the company is done. Companies could make a marketing decision to extend the warranty. However, there could be months between the time the pretreatment is performed and the homeowner becomes the legal owner of the property. His company offers a five-year warranty on soil treatments and a one-year warranty on borate treatments in Arizona. He tried in California to market to services for annual control, but found consumers are not interested. He is concerned that adopting regulation to require annual control service would encumber the bid process to the builders and the industry would lose the market.

Randy Zopf moved and Ray Carrier seconded to approved the minutes of the March 18, 2004, committee meeting. Approved unanimously.

Pre-treats qualify control service w/three year warranty and required inspection. The proposal could also generate additional revenue for the state. He reported that he was offered \$750,000 to do a "fax pre-treatment."

Ron Moss asked the committee to revisit the ten-day pre-notification, thinking it was too lengthy.

Rick Walsh stated he contacted Texas with a day and it presented no problem. There was a learning curve with the contractors, but once learned, it was doable. Kevin—thought the notification was to allow for enforcers to appear. Could always to inspection based on tag. Would submit that pco's give notification of a specific time is impossible. Specific geographical location also difficult. Thought that it was not necessary to witness application, but could enforcement via tags and testing.

Rick and Ron, having time would be beneficial as being on site is most valuable enforcement tool.

Kevin—Acknowledged that it could waste time of enforcement staffs. In arizona, enforcement staff sit at a site for eight hours and the company doesnt show until 2 a.m., with knowledge that government does not work at those hours.

Rick—At least 24 hours prior.

Mark—Enforcement ideally would observe and take test samples. Labs test to determine if application was according to label. How long for the process. Rick—If priority, 2 days to a week. Normally a month. Mark—If, 30 days later, and lab says not to label rate, and the slab is poured, then what. Rick—County and state can discipline. Ron—drill for post treatment. Randy—other states, if caught, can impose requirement to post 15-year bond specific to property involved in violation. Mark—As a litigator, when the complaint is that there was a pre-treat and there is now an infestation, looks for \$.

Todd—Arizona notification difficulty is that pcos don't know pco has contract until called, even after concrete poured. Usually less than 24 hours notification to pour slab. Asked Mark how many California lawsuits have been filed due to pre-treat. Asked if his clients anticipate a problem. Mark told him that his clients are construction trade, not pest control trade. Difficult to find insurance coverage.

Randy—contract in place before work begins. Todd—disagreed. Randy—Most pco's would have a contract; would not just show up to do job with agreement. Not a whole lot of re-infestations, thus not a whole lot of law suits.

Kevin—Cochella Valley development incident i.e. Lewis Homes resulting in having to drill subdivision.

Todd—Not asking if builder was suing pco. How many consumers were harmed, who was sued, and monetary value. How many consumer complaints relative to pre-treatments. If no litigation and no complaints, then what is the problem. Consumer's pay for warranty. Not a state issue.

Ron Moss—level the playing.

Terry—How can a pretreat be done without contract.

Ron—8516—must have a contract.

Terry—Shut them down if no contract.

Kevin—30 day window proposed years ago because many times, there is no address to put on the form because the address has not yet been assigned to the development. (1996) Having to do a WDO report made no sense because there is no structure. Referenced DCA legal opinion that a report must be done based on pesticide application.

Ron—Back to 10 day notification.

Ray—Challenge for pre-treat. Not like fumigation because house must be vacated. 10 day too much, not going to steak out a site for ten days.

Ron—It is going to be an education process for contractors.

Kevin—24 hours or up to trying to do the work is okay, but it really varies because concrete contractor is waiting until he passes inspection, get signoff at 3:30 and mud is ordered. Contractor is long gone. Concrete guy is responsible, which is why 5 am call to come treat. Sometimes pco is given luxury of enough notification, but not always.

Ron—In Texas, further a contractor may have civil or criminal liability if structural pest control laws violated.

Kevin—Would not want contractor lobby to defeat progress. Should focus on pco notification requirement. One pco can't always have exceptions to notification, which would then trigger concern to enforcement.

Mark—Understands notification to appropriate office, but is sending the notice the thing that starts the clock, is sending or receipt when the clock begins?

Kevin—Visibility in the field for enforcement. Concerned that 24 hours is not enough time to get enforcement in the field. If exceptions, enforcement can go check logs, etc.

Todd—ten days, many variables. Phase two begins while still working on phase one. Ten days from date of contract okay, 24 hour notification is difficult. Pcos get notification between 3 and 5 to pour at 5 am next morning. Treat pads when vapor barrier is placed. Many variables. Not getting 24 hour notice.

Ron—If no pco violates law, then the contractor will have to wait for the 24 hour period.

Todd—Contractor will claim requirement is not in his code, so why does he have to comply with structural pest code.

Kevin—Clarification on 24. Point of notification?

Ron—Texas—4 hours to 24 hours. Some counties will have a problem because it can take longer to get across county.

Kevin—Envisions call comes in at 4 to do job that evening. Secretary fills out work order for application and immediately goes to a notice and duplicate what was just done and faxes to comply with notification. Enforcement is not going to see pretreats if not running a swing shift because pcos are not going apply product when employees are on job site because of exposure liability.

Ron—Enforcement staffs do work variable hours.

Kevin—Most people will want to comply, so try not to penalize the ones in compliance. Allow for rush and emergency jobs, and watch for repeat rush jobs and the potential violators.

Rick—Does look for patterns.

Kevin—LA accepted late fum notice.

Ray—Not wanting to penalize good companies.

Kevin—That is for soil, but what about borate of first 24 inches of wood in lieu of soil treatments.

Randy—Timbor not approved for pretreat.

Kevin—Boracare is approved.

Ron—DCA legal memo regarding borate treatments.

Kevin—state does not define what can be used for pre-treats. 1991 13 b must follow product label. The future is here. There are formulas how to determine

how much product must be used, enforcement tool. Also have a test kit to spray on wood. If borate present, will turn red.

Terry--no longer under the control of HUD, will not be producing the forms.

Kevin--Adopt into regulation a minimum warranty period?

Rick--notification should deal with soil only?

Kevin--No. If lumber violations, then enforcement will see more violations there than in soil violations.

Ron--Amend form to address wood treatment in-construction?

Kevin--Amend form for 24 hour?

Rick--Likes Texas 4 to 24 hours.

Kevin--Can the committee consider 2?

Randy--2 would address contractor problems.

Ron--24 to 2 hour notification of county prior to any treatment.

2 hours to 24 hours prior to the application for any treatment--Randy Zopf moved and Rick Walsh seconded.

Todd--wanted clarification that this was wood as well as soil. Told both.

Passed unanimously.

Use of wording Pre-treat method would address any future developments in pretreat market.

Todd--Wanted clarification of who would be notified--told county in which property being treated. Didn't understand at what level of government would investigate. Told both.

Mark--Email notification? Told depends upon county. If by phone, any method to record call? Discussion on how much could be left up to county discretion--mirror already existing language for fumigation notification: notification shall be given via phone or fax, or method acceptable to the county.

Committee worked of form amendments.

Committee worked on posting tag.

Randy Zopf moved and Rick Walsh seconded to adopt the changes to the tag. Passed unanimously.

Definition of pre-construction liquid soil treatments: Randy suggested to adopt ASPCRO definition.

Committee members will bring borate labels to next meeting for review as it relates to pretreatment use.

Any soil treatment performed on a site where a cement slab was poured and the soil thereunder has not been treated shall not be labeled as a pretreatment and shall be considered a post-construction treatment.

Inspections and completions should not be required within 10 days; 30 days could be sufficient. Antiquated forms should be changed to accommodate. Could address 99 A and 99B except in commercial applications. Don't want preprinted FHA VA forms. Want something on letterhead. Basically, that is what you are asking for. You can just make it a California pretreatment form with a \$3 filing fee.

Arizona has a form that could be considered. 99B may have been modeled after that form. Arizona is using HUD inspection form, but to generate money, an additional form is required. In Arizona, if not selling pco can just give a written estimate and nothing is filed with state. If work done, than TARF (termite activity report form) must be filed.

Next meeting Wednesday, May 19th.

Randy Zopf moved and Rick Walsh seconded to adjourn the meeting at 3:21.