MINUTES OF THE
STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE
MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
November 16, 2011

The meeting was held on Wednesday, November 16, 2011, at Structural Pest Control Board, 2005 Evergreen Street, Silverlake Room, Sacramento, California, commencing at 9:04 A.M. with the following members present:

Bob Gordon, Chairman
Mike Katz
Allen Kanady
Darrell Ennes
Lee Whitmore

Committee member Cris Arzate was not in attendance.

Board staff present:

Bill Douglas, Interim Executive Officer
Susan Saylor, Assistant Executive Officer
Ronni O'Flaherty, Staff Services Analyst

Departmental staff present:

Mitch Gorsen, Deputy Director
Kathy Boyle
Mike Zeiss

Board member Curtis Good was also in attendance.
Billy Gaither, PCOC

ROLL CALL

Mr. Gordon called roll.

APPROVAL OF MINUTES OF THE SEPTEMBER 7, 2011 COMMITTEE MEETING

Mr. Katz moved and Mr. Ennes seconded to approved the minutes of the September 7, 2011 Act Review Committee meeting. Passed unanimously.

REVIEW OF THE STRUCTURAL PEST CONTROL ACT AND TITLE 16, CALIFORNIA CODE OF REGULATIONS, FOR PURPOSES OF UPDATING AND IDENTIFYING CONTINUED NEED AND/OR USE

Mr. Gordon asked that everyone not on the committee to introduce themselves.

Mr. Katz asked to be replaced on the committee as he had a difficult time meeting his obligations to the committee. He added that he is hesitant to open up the entire Act in legislation because outside entities may take it as an opportunity to add or remove what they want.

Mr. Gordon stated that he agrees and that the Act needs to be updated but the committee needs to be very careful deciding what important changes need to be made and what the potential outcomes may be as it will be easy to lose control of what happens once the recommended corrections move into legislation.

Mr. Douglas recommended breaking the recommendations into three categories depending on their importance and introducing the each section separately to avoid opening up the whole Act at one time. He suggested that the recommendations are categorized as:

- Category 1: recommendations to change the Act in regards to practices no longer being used or regulations that are no longer enforced or that conflict with labels
- Category 2: non-critical changes above terminology and language modifications
- Category 3: non substantive recommended changes and recommended terminology changes

Mr. Kanady stated that rewriting the Act can be very time consuming. He added that the contents are all there, but you have to go from section to section to find and connect them and adding an index would be beneficial.

Mr. Douglas stated that it would be very beneficial to the users of the Act to include a reference index and a section of definitions.

Mr. Katz pointed out that there are changes that need to be made in the Act to bring the codes current with technology as well.

Mr. Whitmore commented that the Act needs to be updated and the fear of opening it up in legislation can not stop the Board from making their laws current. He added that Business & Professions Code Section (Section) 8505.6 is not allowed anymore and is very misleading as it allows for the fumigation of a single apartment rather than fumigating the entire complex and would allow the apartment two floors above to be occupied while the fumigation is being performed.

Mr. Whitmore moved and Mr. Katz seconded to recommend to the Board to remove Section 8505.6 from the Structural Pest Control Act in its entirety. Passed unanimously.

~~**8505.6.** During the process of fumigation the room or apartment being fumigated, together with all rooms and apartments, including rooms or apartments on the same floor and those above, below, and adjacent thereto, shall be vacated by the occupants thereof. During the process of~~

~~such fumigation, all rooms, apartments, and hallways adjacent to the rooms, apartments or spaces undergoing fumigation, shall be kept well ventilated and warning signs as herein prescribed stating such fact of fumigation shall be kept posted at all entries to such rooms or apartments during the time of such fumigation and thereafter until all such premises are safely ventilated free of all fumes. All rooming or apartment houses designed for the use of four families or less shall be entirely vacated and closed against entry thereto and occupancy thereof while fumigation is being performed therein and until the same is safely ventilated free of all fumes.~~

Mr. Gordon stated that this recommendation would be considered a category one recommendation.

Mr. Gorsen recommended to the committee that after striking this section that they should specify what is allowed when fumigating multi-unit structures.

Mr. Douglas pointed out that Section 8505.7 specifies what is allowed under current law regarding fumigations in multi-unit structures.

Mr. Whitmore stated that the Food and Agriculture Code 15204 states that a Notice of Intent to Fumigate (NOI) be filed with the County Agricultural Commissioner (CAC), which is contradictory to Section 8505.5 of the Act, which states that the NOI is only filed at the request of the CAC. He added that this would be a category three recommendation.

Mr. Ennes suggested adding more modern ways of filing to Section 8505.5 beings that the Act currently only allows for the filing of the notice to be via mail or telephone.

Mr. Gordon asked if the industry notifies police departments as to when a fumigation will be performed.

Mr. Whitmore responded that although it is not mandatory, some police departments ask that the address of the residence to be fumigated is reported.

Mr. Gordon asked Mr. Whitmore if he thinks that notifying police departments of intent to fumigate should be mandatory and added to the Act.

Mr. Whitmore responded that it should not be mandatory to notify the police as well as the fire department, although it is a good business practice.

Mr. Gorsen stated that there have been legislative inquiries in regards to the pest control company's liability for protection of the property being fumigated.

Mr. Katz stated that the companies notify the consumer that they do not provide care and custody of the property once the property is locked down and safe in accordance with the Act. He added that in his opinion that the responsible thing to do is notify the consumer that fumigation burglaries are becoming more common so that they can obtain security for their home if they choose to.

Mr. Whitmore stated that he agrees with Mr. Katz that protection of the property is the consumer's responsibility.

Mr. Douglas stated that the Board's Enforcement staff is not prepared or large enough to enforce security issues.

Mr. Katz suggested making it mandatory for the fumigators to notify the consumer of the possibility of a burglary during fumigation and inform them that if they are concerned with this being an issue that they need to provide security or surveillance of the property during the fumigation.

Ms. Saylor stated that she agrees with Mr. Katz that notifying the consumer of the risks provides better consumer protection, which is the goal of the Board.

Mr. Katz stated that if the pest control companies were required to provide security of the premises being fumigated that they would have to subcontract security services and the cost would be passed down to the consumer.

Mr. Gordon suggested removing "If requested by the county agriculture commissioner" from Section 8505.5.

Mr. Katz suggested that in addition to Mr. Gordon's suggestion for Section 8505.5, adding electronic communications as an option to notify the county agricultural commissioner and to leave the reporting method up to the County Agricultural Commissioner.

Mr. Whitmore moved and Mr. Ennes seconded to recommend the following changes to Section 8505.5 to the Board members. Passed unanimously.

8505.5 Notice of the date and place of fumigation, and chemicals to be used, shall be given by the fumigator to the fire department serving the area in which fumigation is to be performed not less than two hours prior to the time fumigation begins. The fire department shall not charge any fees for any service related to structural pest control activities except for the costs of an emergency response necessitated by illegal or negligent actions.
~~If requested by the county agricultural commissioner, n~~Notice of each fumigation to be performed shall be given to the commissioner in the county in which the job is to be performed. The notice, which may be mailed or ~~given by telephone~~ provided by some form of electronic communication, at the option of the commissioner, shall be given at least 24 hours prior to the time fumigation begins, unless the commissioner determines that less time is sufficient. No fee shall be assessed for processing the notice which may be requested by the commissioner.

Mr. Whitmore suggested reviewing each section of the Act in order to determine current need and identify necessary changes rather than breaking it into sections and assigning them to a specific person.

Ms. Boyle directed the committee to Section 8505 and stated that insecticides, rodenticides, fumigants, and allied chemicals are all part of the definition of pesticides and suggested that the definition of pesticide is added to the Act and insecticides, rodenticides, fumigants, and allied chemicals be removed from the many sections of the Act in which it is used.

Mr. Whitmore stated that at the last meeting this was discussed and that the committee directed staff to get a legal definition of "allied chemicals" and with it now being defined that he does not see any reason why "pesticides" can not replace the current language in the Act. He also suggested expanding the current section of the Act that defines terms used within the Act.

Mr. Gordon suggested adding a section at the beginning of the Act that contains all of the definitions of words not commonly understood that are used in the Act.

The committee decided to review the Act section by section. They made no changes for Sections 8500 through 8504.

In review of Section 8505, Ms. Boyle pointed out that the current Act does not define "structure".

Mr. Gordon recommended dedicating time at a future meeting to define structure.

Mr. Whitmore suggested having an entire meeting dedicated to definitions.

Mr. Katz suggested incorporating the definitions used by the Environmental Protection Agency (EPA) into the Act where possible to add consistency.

Mr. Gordon stated that Section 8505.1 was discussed at the previous meeting and the committee recommended to the Board to remove "propylene oxide" and "sulfur dioxide" from that section.

Mr. Whitmore asked if methyl bromide, magnesium phosphide and aluminum phosphide and were still approved for structural applications.

Ms. Boyle stated that she will look into the uses for these pesticides and the licensing requirements. She added that carbon monoxide was recently approved for vertebrae pest control and asked the committee if that is something they may want to include in the Act.

The committee asked Ms. Boyle to look into the whether or not carbon monoxide is approved for structural use.

The committee discussed Section 8505.2 and 8505.7 and decided that there are no changes that they would like to recommend o the Board.

Mr. Whitmore stated that there is a lot of confusion with enforcement within the industry in regards to Section 8505.8.

Ms. Boyle added that there have been many recommendations from the County Agricultural Commissioners to repeal this section.

Mr. Whitmore stated that there was once a section of law that referenced fumigation effectiveness that was repealed and he added that it would be beneficial to the committee to see the exact language and find out why it was repealed. He suggested that the committee tabled their discussion in regards to Section 8505.8 until it has been discussed at the Fumigation Enforcement Meeting and Enforcement Committee Meeting for direction.

The committee discussed Section 8505.9 and discussed possible definitions of "entrances".

Ms. Boyle stated that Department of Pesticide Regulation has an Inspection Procedures Manual posted on their website that depicts what is required and looked for from an Enforcement standpoint and that she would bring this manual for the committee's review.

The committee discussed Section 8505.9 and decided there are no changes that they would like to recommend to the Board.

Ms. Boyle stated that the County Agricultural Commissioners are not concerned with the color of the warning signs as described in Section 8505.10, but more the content. She added that she has suggested text to change "shall" to "may" that she will provide via e-mail for the committee's consideration.

The committee decided that it is in the best interest of the public to leave the requirement of the warning signs being red in the Act because red is a universal sign of danger but asked Ms. Boyle to still bring the recommended language change to the next meeting.

The committee discussed Section 8505.11 and determined that if a structure does not have an attic or sub-area that the fumigator does not need to post a fumigation tag and the possibilities of requiring them to be posted elsewhere if there is not an attic or sub-area. They decided that they did not want to recommend any changes to the Board in relation to this section or Section 8505.12.

Ms. Boyle stated that the County Agricultural Commissioners have recommended to her that the Fumigation Log stays on site with the licensee in charge.

Mr. Whitmore pointed out that Section 8505.12 addresses the maintenance of the log and not the specifics as to how to complete it or whose possession it needs to be in at the time of fumigation and California Code of Regulations Section 1970 addresses when the log needs to be present at the job site.

The committee discussed Section 8505.13 through 8505.16 and decided that there are no changes that they would like to recommend to the Board.

Ms. Boyle suggested clarifying Section 8505.17 in that you do not have to report pesticide usage per address, but total use per county when submitting your Monthly Pesticide Use Report to the CACs.

The committee agreed that the current law is very specific to what is required to be reported on the Pesticide Use Report.

The committee discussed changing section 8505.17 to allow electronic filing of the Pesticide Use Reports since some of the counties are already requiring the reports to be filed in this manner although the current law still requires a stamp to be affixed to the report. They decided to come back to this section after the January board meeting at which time this subject will be discussed.

The committee discussed and decided not to make any recommendations to the Board to change Sections 8506 though 8507.

Mr. Katz moved and Mr. Kanady seconded to make the following recommended changes to Section 8507.1. Passed unanimously.

8507.1. (a) "Structural pest control applicator" is any individual who is licensed by the board to apply ~~a~~ pesticides~~, rodenticide, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests or organisms included~~ in Branch 2 or Branch 3 on behalf of a registered company.

Mr. Douglas stated that this will be a category two recommendation to the Board.

Mr. Ennes moved and Mr. Kanady seconded to change "man and his" to "persons and their" in Section 8508. Passed unanimously.

8508. "Household" means any structure and its contents which are used for ~~man~~ persons and ~~his~~ their convenience.

Mr. Douglas stated that this recommendation would be considered a category three recommendation to the Board.

After much discussion regarding the definition of a branch office the committee decided that the current definition is specific enough.

Mr. Kanady moved and Mr. Katz seconded to recommend to the Board to strike "other than governmental offices" from Section 8509. Passed unanimously.

8509. "Branch office" is any fixed place of business in addition to the location of the principal office for which the company registration is issued, where records are kept, mail received, statements rendered, money is collected, or requests are received for service or bids, or information is given pertaining to the practice of pest control~~, other than governmental offices~~.

Mr. Katz stated that this recommendation would be considered a category three recommendation to the Board.

The committee discussed and decided not to make any recommendation to change Section 8510.

Mr. Ennes moved and Mr. Katz seconded to recommend to the Board to remove "himself" from Section 8511. Passed unanimously.

8511. "Manufacturer" is a person engaged in the processing of materials used in the practice of pest control, but who does not ~~himself~~ engage in such practice.

The committee discussed and decided not to make any recommendations to the Board to change Section 8512.

Mr. Whitmore asked if Section 8514 is the section that was referred to in correspondence received from Brian MacQueen.

Mr. Gordon stated that he feels that Mr. MacQueen's concerns address report writing specifications that are addressed in Section 8516.

The committee decided that it did not have any changes to recommend to the Board in regards to Section 8514.

Mr. Whitmore asked the committee to discuss Section 8513 (f). He explained that this section excludes Branch 2 registered companies from complying with these laws, when in fact they subcontract for fumigations as well. He recommended deleting "operating pursuant to a Branch 1 or Branch 3 registration".

> Mr. Whitmore moved and Mr. Kanady seconded to recommend to the Board to remove "operating pursuant to a Branch 1 or Branch 3 registration". Passed unanimously.

8513. (a) The board shall prescribe a form entitled "Notice to Owner" that shall describe, in nontechnical language and in a clear and coherent manner using words with common and everyday meaning, the pertinent provisions of this state's mechanics' lien laws and the rights and responsibilities of an owner of property and a registered pest control company thereunder. Each company registered under this chapter, prior to entering into a contract with an owner for work for which a company registration is required, shall give a copy of this "Notice to Owner" to the owner, his or her agent, or the payer.

(b) No company that is required to be registered under this chapter shall require or request a waiver of lien rights from any subcontractor, employee, or supplier.

(c) Each company registered under this chapter that acts as a subcontractor for another company registered under this chapter shall, within 20 days of commencement of any work for which a company registration is required, give the preliminary 20-day notice (private work) in accordance with the provisions of Section 3097 of the Civil Code, to the owner, his or her agent, or the payer.

(d) Each company registered under this chapter that acts as a prime contractor for work for which a company registration is required shall, prior to accepting payment for the work, furnish to the owner, his or her agent, or the payer a full and unconditional release from any claim of mechanics' lien by any subcontractor entitled to enforce a mechanics' lien pursuant to Section 3114 of the Civil Code.

(e) Each company registered under this chapter that subcontracts to another company registered under this chapter work for which a company registration is required shall furnish to the subcontractor the name of the owner, his or her agent, or the payer.

(f) The provisions of this section shall be applicable only to those registered companies~~,~~ as defined in Section 8506.1~~, operating pursuant to a Branch 1 or Branch 3 registration~~.

(g) A violation of the provisions of this section is a ground for disciplinary action.

The next meeting of the Structural Pest Control Act Review Committee will be held on January 11, 2012 at 9:00 A.M. in Sacramento.

Ms. O'Flaherty asked the committee if it would be beneficial to them to have a draft Act with all of their recommended changes from previous meetings highlighted.

The committee responded that they would like to have a draft Act of their recommendations so that the same sections are not repeatedly discussed.

The committee discussed the legalities of electronic signatures and electronic filing and storage of reports in regard to Section 8516.

Ms. Boyle stated that because electronic signatures are not included in law, that it is citable and needs to be clarified.

The committee asked Mr. Douglas to look into the validity of electronic signatures and electronic retention.

Mr. Gordon suggested the possibility of adding pre-treatment guidelines to Section 8516.

Mr. Katz suggested making a whole section of law specifically pertaining to pre-treatment guidelines.

Mr. Kanady asked if "and a completion notice issued" should be added to Section 8516 (b) (9) to make it consistent with the recommendations of the Test Hole Committee's findings. He explained that when an original inspection report is issued and there are recommendations for and the consumer allows further inspection, that a completion notice should be issued for that work done on the original report and a supplemental report should be issued to disclose the findings of the further inspection.

After much discussion, the committee directed Mr. Douglas to revise the letter sent out to the industry "Clarification of Test Hole Procedures" clarifying that further inspections should be filed as and considered supplemental inspections rather than work completed. They asked that Mr. Douglas draft said letter and present to the Board at the December meeting for Board approval.

The committee discussed the inability of every company to bid or provide estimates for each recommendation for a corrective measure specified on an original inspection report as described in Section 8516 (b) (13).

Mr. Katz asked that the discussion regarding Section 8516 (b) (13) be tabled for the next meeting. The committee agreed to start the January 11, 2012 meeting with Section 8516 (b) (13).

Mr. Whitmore distributed his recommendations for Section 8663 for the committee's review.

Mr. Ennes distributed his recommendations for Sections 8590 and 8563 for the committee's review.

Mr. Zeiss asked if the committee was interested in feedback and recommendations for the next meeting.

The committee asked Mr. Zeiss to provide them with any concerns or recommendations that he may have.

This meeting adjourned at 3:02 P.M.

Robert E Gordon
Committee Chairperson

William Douglas
William Douglas, Interim Executive Officer

1-11-2012
DATE