MINUTES OF THE
STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE
MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
January 11, 2012

The meeting was held on Wednesday, January 11, 2012, at Structural Pest Control Board, 2005 Evergreen Street, Silverwood Lake Room, Sacramento, California, commencing at 9:02 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
Ronni O'Flaherty, Staff Services Analyst
Tom Ineichen, Board Specialist

Departmental staff present:

Kathy Boyle, Enforcement Program Specialist
Mike Zeiss, Staff Environmental Scientist
Rachel Kubiak, Chief Legislative Analyst

Board members Curtis Good and Cliff Utley were also in attendance.

ROLL CALL

Mr. Gordon called roll.

APPROVAL OF MINUTES OF THE NOVEMBER 16, 2011 COMMITTEE MEETING

Mr. Kanady moved and Mr. Katz seconded to approved the minutes of the November 16, 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. Whitmore distributed and introduced correspondence pertaining to the label recommendations for Chloropicrin that do not coincide with the current Act. He stated that there have been circumstances where the use of Chloropicrin is not possible because the fumigation site contains sensitive items or are sterile environments. He suggested adding "there may be unusual circumstances in which the use of chloropicrin is not possible due to its unknown effects on sensitive items, such as artifacts in museums or in police evidence storage. In these circumstances, waiving the use of chloropicrin must be approved by the state regulatory authority and must include alternative safety precautions, such as guarding the fumigated site" to Section 8505.12.

Mr. Gordon suggested excluding "guarding" because having a guard on site is not the only method of monitoring a fumigation site.

Mr. Zeiss stated that the use of the term "such as" in the language is not restrictive to having a guard on site.

Mr. Utley suggested adding the language as "such as, but not limited to" to be inclusive of any future strategies of guarding the fumigation site that may arise.

Mr. Kanady suggested adding the language as "such as, but not limited to guarding or monitoring the fumigated site."

Mr. Whitmore suggested adding the language as "in these circumstances, waiving the use of Chloropicrin must be approved by the state regulatory authority and must include alternative safety precautions which address initial clearance of the site to be fumigated, potential movement of the fumigant to unattended areas, and continued site security" because those are the functions that Chloropicrin provides for a fumigant that is odorless and colorless. He added that this would leave it up to enforcement staff to decide whether or not adequate security measures have been taken.

Ms. Boyle and Mr. Kanady agreed with Mr. Whitmore's proposed language.

> Mr. Kanady moved and Mr. Whitmore seconded to recommend the following changes to Section 8505.12 to the Board. Passed unanimously.

8505.12. A registered company performing fumigation shall use an adequate warning agent with all fumigants which lack such properties.

There may be unusual circumstances in which the use of chloropicrin is not possible due to its unknown effects on sensitive items, such as but not limited to artifacts in museums or in police evidence storage. In these circumstances, waiving the use of chloropicrin must be approved by the state regulatory authority and must include alternative safety precautions which address

initial clearance of the site to be fumigated, potential movement of the fumigant to unattended areas, and continued site security.
When conditions involving abnormal hazards exist, the licensee exercising direct and personal supervision shall take such safety precautions in addition to those prescribed by this chapter as are reasonably necessary to protect the public health and safety.

Ms. Boyle introduced CAC / DPR proposed statutes for discussion explaining that this chart reflects concerns that the CACs or DPR have with the current Act.

The committee decided to work from the chart and address the concerns of the CAC and DPR.

Ms. Boyle stated that she will compile a list of definitions and provide the source of those definitions before addressing Section 8505.

In regard to Section 8505.1(a), Ms. Boyle stated that Methyl Bromide is still a registered product that has not been used in a residential structural situation in about six years but can still be, and is used in commodity fumigations. She suggested leaving Methyl Bromide in this section and added that she is still researching the uses of Magnesium Phosphide and added that the committee already suggested removing Sulfur Dioxide and Propylene Oxide from this section at a previous meeting.

Ms. Boyle stated that Carbon Monoxide was approved as a pesticide for growers with burrowing rodents and although there is currently not a label for structural use, the committee may want to consider adding Carbon Monoxide to Section 8505.1 (c) for future use.

Mr. Kanady suggested adding carbon monoxide as a simple asphyiant to Section 8505.1 (c).

> Mr. Ennes moved and Mr. Whitmore seconded to suggest to the Board to add carbon monoxide as a simple asphyiant to Section 8505.1 (c). Passed unanimously.

8505.1. (a) Except as provided in subdivisions (b) and (c), for the purpose of this act, "fumigation" shall be defined as the use within an enclosed space for the destruction of plant or animal life, a substance having a vapor pressure greater than 5 millimeters of mercury at 25 degrees centigrade when the substance is labeled for those purposes.
The following is a list of lethal fumigants:
(1) Methyl bromide.
~~(2) Sulfur dioxide.~~
~~(3) Propylene oxide.~~
(~~4~~ 2) Sulfuryl fluoride.
(~~5~~ 3) Aluminum phosphide.
The board may adopt, and may as necessary amend, by regulation, a list of fumigants.
(b) For the purpose of this act, "warning agent" shall be any agent used in combination with any fumigant that lacks warning properties.
The following is a warning agent:

Chloropicrin.
The board may adopt, and may as necessary amend, by regulation, a list of warning agents.
(c) For the purpose of this act "simple asphyxiants" shall not be deemed to be fumigants.
The following is a list of simple asphyxiants:
(1) Liquid nitrogen.
(2) Carbon dioxide.
(3) Carbon monoxide
The board may adopt, and may as necessary amend, by regulation, a list of simple asphyxiants.

Ms. Boyle introduced suggestions to Section 8505.1(d) to address the issue of less fumigant being used in structural fumigations than the fumigant label allows.

Mr. Whitmore stated that Section 1970.2 was repealed and asked why the Board repealed this section.

Mr. Zeiss asked that when Section 1970.2 is discussed that the committee considers the Integrated Pest Management (IPM) aspects of using less than label dose because this approach may be beneficial from an IPM standpoint.

Mr. Whitmore agreed in that as an IPM approach, a company can extend the exposure period which can substantially reduce the amount of fumigant being used, but is still in compliance with the label.

> Mr. Whitmore moved and Mr. Kanady seconded to table the review of Section 8505.1 (d) for the next meeting where more information could be provided relating to the repeal of Section 1970.2. Passed unanimously.

Ms. Boyle pointed out that Section 8505.2 discusses "a branch of pest control that includes fumigation" and that the Act also defines Branch 1 as the practice relating to the control of household pests by fumigation. She suggested using "branch 1" since it is already defined.

> Mr. Katz moved and Mr. Ennes seconded to replace "in a branch of pest control that includes fumigation" with "licensed in branch 1". Passed unanimously.

8505.2. Fumigation shall be performed only under the direct and personal supervision of an individual who is licensed by the board as an operator or field representative in ~~a~~ ~~b~~Branch ~~of pest control that includes fumigation~~ 1.

The committee discussed the suggestion regarding Section 8505.4 to drop "laws and regulations of the United States" and replace with "federal laws". The committee decided to leave the language of this section as it currently is.

The committee discussed the suggestion regarding Section 8505.5 to replace "chemicals" with "pesticides". The committee decided to leave the language of this section as it currently is.

Mr. Whitmore proposed revisiting Section 8505.7 after he reviews the language regarding the California Aeration Plan.

The committee discussed the suggestion regarding Section 8505.8, and although the procedure outlined is not current practice and can not be enforced, were hesitant to delete it.

Mr. Whitmore stated that the committee works on this section with the CACs and can possibly create a Section 8505.1(d) and readdress this at a later meeting.

Ms. Boyle states that a couple of counties have come to her with concerns regarding Section 8505.10 and the requirement to have all writing on a fumigation sign in red ink.

While Mr. Gordon commented that this is not a difficult code to adhere to, Mr. Whitmore suggested that it probably was the intent of the law to have the signs printed in red, not the date, time, etc being written in red.

> Mr. Whitmore moved and Mr. Ennes seconded to recommend the following changes to Section 8505.10 to the Board. Passed unanimously.

8505.10. Warning signs shall be printed in red on white background and shall contain the following statement in letters not less than two inches in height: "DANGER--FUMIGATION." They shall also depict a skull and crossbones not less than one inch in height and shall state in letters not less than one-half inch in height the name of the fumigant~~,~~. These signs shall also include in legible ink of any color, the date and time fumigant was injected, and the name, address and telephone number of the registered company performing the fumigation. Warning signs placed under a tarpaulin shall not be required to state the time the fumigant was injected.

Ms. Boyle pointed out that Section 8505.14 also addresses "licensed in the branch of pest control that includes fumigation" rather than "Branch 1".

> Mr. Katz moved and Mr. Whitmore seconded to make the following changes to Section 8505.14 to the Board. Passed unanimously.

8505.14. "Fumigator" means any individual licensed by the board as a structural pest control operator or as a structural pest control field representative in ~~the~~ ~~b~~Branch 1 ~~of pest control which includes fumigation~~ as set forth in Section 8560.

Mr. Zeiss pointed out that when the committee discussed similar changes to Section 8505.2 that the committee did not refer the reader to Section 8560 for the definition of Branch 1.

Mr. Whitmore moved and Mr. Ennes seconded to add "as set forth in Section 8560" to their earlier recommendation to amend Section 8505.2. Passed unanimously.

8505.2. Fumigation shall be performed only under the direct and personal supervision of an individual who is licensed by the board as an operator or field representative in ~~a b~~Branch ~~of pest control that includes fumigation~~ 1 as set forth in Section 8560.

Due to its complexity and current changes being made to Sections 8505.17 and 8505.17(c), Ms. Boyle suggested tabling the discussion regarding the recommendations for a future meeting.

Mr. Kanady moved and Mr. Ennes seconded to table the discussion regarding Section 8505.17 for a future meeting. Passed unanimously.

Ms. Boyle stated that the definition in Section 8506(a) for "Operator" is the least descriptive of all license types, yet the Operator's duties are far more complex than other licensees.

Mr. Gordon stated that by the time this committee completes its objective, he hopes to have incorporated a section into the Act that covers only definitions.

Mr. Whitmore suggested tabling this discussion for a later meeting when the committee discusses definitions.

Mr. Whitmore moved and Mr. Ennes seconded to table the discussion of recommended changes to Section 8506(a) for a future meeting. Passed unanimously.

Ms. Boyle discussed the confusion of the CAC to distinguish the role of an office supervisor and whether or not they are providing adequate supervision.

The committee discussed technology changes and the ability of a supervisor or Qualifying Manager to supervise the daily activities of their office from afar.

Mr. Zeiss suggested discussing Section 8506.2 when Section 1918 of Title 16 of the California Code of Regulations is discussed by the committee.

Ms. Boyle suggested the committee considered better defining "supervisor".

Mr. Gordon stated that the committee can discuss the definition of supervisor when definitions are discussed.

Mr. Katz pointed out that the requirement for a branch office to have an appointed supervisor is addressed in Section 8611 and this discussion should be held then. The committee agreed.

The committee discussed Section 8509 and the concerns of the CAC regarding not having employee records available when the employee's company does not have a local branch office but there is a common worksite that the employee is reporting to. They decided to table this discussion for when they discuss definitions.

The committee discussed Sections 8516 and 8516.5 regarding electronic records, records retention, and electronic signatures and decided to table the conversation and address all sections relating to electronic records at one time once they receive a formal opinion from legal.

Mr. Zeiss suggested defining "signature" and "deliver" when addressing definitions.

Mr. Utley asked that Mr. Douglas seek a legal opinion regarding a licensee's signature that has been typed on a bid rather than having an original signature.

Mr. Kanady expressed concern regarding Section 8516(b)(13) in that it does not make it mandatory to provide a copy of an inspection report to the owner of the inspected property. He suggested that by adding this requirement to Section 8516, Section 8516.5 can be removed from the Act because it would be redundant.

Mr. Ennes moved and Mr. Katz seconded to amend Sections 8516 as follows. Passed unanimously.

8516. (a) This section, and Section 8519, apply only to wood destroying pests or organisms.
(b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.

Every property inspected pursuant to this subdivision or Section 8518 shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8518 or this section is grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars ($2,500).

A written inspection report ~~conforming to this section and~~ on a form approved by the board shall be prepared and delivered to the owner and the person requesting the inspection or ~~to~~ the person's designated agents within 10 business days ~~of~~ from the commencement of the inspection, except that an inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all original inspection reports, field notes, and activity forms.

Reports shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized representative during business hours. Original

inspection reports or copies thereof shall be submitted to the board upon request within two business days. The following shall be set forth in the report:
(1) The date of the inspection and the name of the licensed field representative or operator making the inspection.
(2) The name and address of the person or firm ordering the report.
(3) The name and address of any person who is a party in interest.
(4) The address or location of the property.
(5) A general description of the building or premises inspected.
(6) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected, indicating thereon the approximate location of any infested or infected areas evident, and the parts of the structure where conditions that would ordinarily subject those parts to attack by wood destroying pests or organisms exist.
(7) Information regarding the substructure, foundation walls and footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation or infection, such as earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient ventilation are to be reported.
(8) One of the following statements, as appropriate, printed in bold type:
(A) The exterior surface of the roof was not inspected. If you want the water tightness of the roof determined, you should contact a roofing contractor who is licensed by the Contractors' State License Board.
(B) The exterior surface of the roof was inspected to determine whether or not wood destroying pests or organisms are present.
(9) Indication or description of any areas that are inaccessible or not inspected with recommendation for further inspection if practicable. If, after the report has been made in compliance with this section, authority is given later to open inaccessible areas, a supplemental report on conditions in these areas shall be made.
(10) Recommendations for corrective measures.
(11) Information regarding the pesticide or pesticides to be used for their control as set forth in subdivision (a) of Section 8538.
(12) The inspection report shall clearly disclose that if requested by the person ordering the original report, a reinspection of the structure will be performed if an estimate or bid for making repairs was given with the original inspection report, or thereafter.
(13) The inspection report shall contain the following statement, printed in boldface type:

"NOTICE: Reports on this structure prepared by various registered companies should list the same findings (i.e. termite infestations, termite damage, fungus damage, etc.). However, recommendations to correct these findings may vary from company to company. You have a right to seek a second opinion from another company."

An estimate or bid for repairs shall be given separately allocating the costs to perform each and every recommendation for corrective measures as specified in subdivision (c) with the original inspection report if the person who ordered the original inspection report so requests, and if the registered company is regularly in the business of performing corrective measures.

If no estimate or bid was given with the original inspection report, or thereafter, then the registered company shall not be required to perform a reinspection.

A reinspection shall be an inspection of those items previously listed on an original report to determine if the recommendations have been completed. Each reinspection shall be reported on

an original inspection report form and shall be labeled "Reinspection" in capital letters by rubber stamp or typewritten. Each reinspection shall also identify the original report by date.

After four months from an original inspection, all inspections shall be original inspections and not reinspections.

Any reinspection shall be performed for not more than the price of the registered company's original inspection price and shall be completed within 10 working days after a reinspection has been ordered.

Ms. Boyle discussed the concerns of the CACs regarding Section 8519.5 to possibly add a section for Branch 2 inspections.

Mr. Utley stated that this has been discussed previously and it was determined that this section only relates to Branch 3.

Ms. O'Flaherty stated that the committee previously discussed updating Section 8520 (d) from the sunset date of 2012 to 2015.

Mr. Kanady moved and Mr. Katz seconded to make the following changes to Section 8520(d).

8520. (a) There is in the Department of Pesticide Regulation a Structural Pest Control Board, which consists of seven members.
(b) Subject to the jurisdiction conferred upon the director by Division 6 (commencing with Section 11401) of the Food and Agricultural Code, the board is vested with the power to and shall administer the provisions of this chapter.
(c) It is the intent of the Legislature that consumer protection is the primary mission of the board.
(d) This section shall become inoperative on July 1, 2011, and, as of January 1, ~~2012~~ 2015, is repealed, unless a later enacted statute, which becomes effective on or before January 1, ~~2012~~ 2015, deletes or extends the dates on which it becomes inoperative and is repealed.

Ms. Boyle pointed out that this section has already been changed, but those changes were not recorded in the current version of the Act because the 2010 Act was printed before the sunset dates changed.

The committee came to the conclusion that no action was necessary pertaining to Section 8520 (d). No vote was taken.
Ms. Boyle addressed the CAC's concerns regarding an original signature by the actual occupant on the notice described in Section 8538.

The committee discussed the difference in the Occupant's Fumigation Notice (OFN) and the notice required by Section 8538.

Mr. Gordon stated that the notice requirements in Section 8538 are usually covered in the branch 3 inspection report, but in the case of a fumigation being done for a branch 2 pest, those requirements can incorporated with the OFN.

Ms. Boyle stated that the CACs are very frequently finding fumigations being done where there is no signature on the Section 8538 notice or the signature is not that of the occupant. She added that sometimes the Branch 3 company does not get the Section 8538 notice to the Branch 1 company in a timely manner to comply with these laws, which puts the Branch 1 company in a bad position.

Mr. Ineichen stated that the intent of this law was to dovetail Section 8538 to put the responsibility on the prime contractor to get the signature on the notice before the fumigation begins. He explained that Section 8538 discloses to the consumer that a dangerous pesticide is going to be used, and Section 1970.4 requires proof that the Section 8538 notice has been provided to the occupant by containing their signature.

Mr. Whitmore suggested taking instances in which a false signature was provided on a case by case basis, beings that it is not a frequent occurrence.

Ms Boyle suggested tabling this discussion until the committee has received a legal opinion regarding electronic signatures. The committee agreed.

The committee discussed Section 8551 and determined that it is unnecessary to restate in this section that it is unlawful for any unlicensed person to perform fumigation when Section 8550 already addresses unlicensed individuals.

> Mr. Katz moved and Mr. Whitmore seconded to recommend to the Board to eliminate Section 8551. Passed unanimously.

~~**8551.** It is unlawful for any unlicensed person to perform fumigation with dangerous or lethal fumigating chemicals in any public structure, including rooming houses, or households when used as public structures, hotels, apartment houses, or any part thereof.~~

Ms. Boyle suggested seeking legal input regarding the intent of Section 8551.

Ms. Boyle explained to the committee that there is confusion within the CACs regarding Section 8557. She stated that the CACs are concerned with no longer being able to discipline licensees with fines, suspensions, or required classes. She added that DPR has been explaining to the CACs that this is not the intent of this law, the law was more to prohibit counties from denying permits to structural licensees to perform the duties in which they are licensed for.

Mr. Douglas stated that Section 8557 was put in place when the Board was transitioned to the jurisdiction of DPR and the powers it provides the Board were powers the Board already held by being a part of DCA.

Ms. Boyle asked Mr. Douglas to provide the CACs with a clarification as to the intent of Section 8557.

Mr. Good commented that when the Board goes back to DCA that he would like Section 8557 to remain in the Act because before it was in place there was need for clarity.

The committee discussed the CAC's recommendation to change Section 8616.9.

Ms. Boyle asked that the recommendation for Section 8616.9(c) be tabled until she gets clarification form the CACs regarding their concerns. She stated that companies are, for the most part, held responsible for the actions of their employees. She asked that the committee better clarify when the employee should be cited versus when the company should be cited.

> Mr. Kanady moved and Mr. Katz seconded to recommend to the Board to amend Section 8616.9 as follows. Passed unanimously.

8616.9. If an employee is found during an inspection or investigation not wearing personal protective equipment required by regulation, the commissioner shall have the option to ~~use discretion in citing~~ cite ~~an employer~~ the employee rather than the employer only if evidence of all of the following is provided:

(a) The employer has a written training program, has provided training to the employee, and has maintained a record of training as required by regulation.

(b) The employer provided personal protective equipment required by regulation, the equipment was available at the site when the employee was handling the pesticide or pesticides, and the equipment was properly maintained and in good working order.

(c) The employer is in compliance with regulations relating to the workplace and supervision of employees.

(d) The employer has implemented and adheres to a written company policy of disciplinary action for employees who violate company policy or state or local laws or regulations.

(e) The employer has no history of repeated violations of this section.

The committee discussed the concerns of the CACs in regards to Section 8617 and decided not to make the changes that were recommended.

In regards to the recommendations for Section 8618 the committee tabled the discussion until a determination is made by legal regarding electronic retention and signatures.

Ms. Boyle addressed the CACs recommendation to change Section 8660 to reflect the Director of DPR rather than Food and Agriculture.

Mr. Douglas stated that he already initiated a legislative proposal to make this change.

> Mr. Whitmore moved and Mr. Kanady seconded to make the following changes to Section 8663(b). Passed unanimously.

8663. (a) This section only applies to work conducted under a Branch 1 license.

(b) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may levy a fine of up to ~~one~~ five thousand dollars (~~$1,000~~ 5,000) against a registered company acting as a prime contractor for any major violation committed by ~~any licensee~~ a subcontractor with whom the prime contractor has subcontracted if, before that violation occurred, the prime contractor had been notified by certified mail, return receipt requested, of more than two major violations committed by ~~the~~ that subcontractor within 12 consecutive months.

Fines collected pursuant to this section shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund.

The next meeting was scheduled for April 4 and 5, 2012 at Western Exterminator in Anaheim, California.

ADJOURNMENT

The meeting adjourned at 2:26 P.M.

Bob Gordon, Committee Chairman

William Douglas, Interim Executive Officer

4-4-2012
DATE