MINUTES OF THE STRUCTURAL PEST CONTROL BOARD
ACT REVIEW COMMITTEE MEETING
September 3, 2014

The meeting was held September 3, 2014 at the Structural Pest Control Board, Lake Tahoe Conference Room, 2005 Evergreen Street, Sacramento, California

Committee Members Present:

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

Board Staff Present:

Susan Saylor, Executive Officer
David Skelton, Administrative Analyst
Tom Ineichen, SPCB Specialist

Departmental Staff Present:

Kyle Muteff, Legal Counsel

Board member Curtis Good was also present.

ROLL CALL / ESTABLISHMENT OF QUORUM

Mr. Gordon read roll call at 10:03 A.M. Quorum established.

APPROVAL OF MINUTES OF THE JULY 11, 2014 COMMITTEE MEETING

Mr. Ennes moved and Mr. Kanady seconded to approve the minutes of the July 11, 2014 committee meeting. Passed unanimously.

REVIEW OF THE STRUCTURAL PEST CONTROL ACT AND TITLE 16, CALIFORNIA CODE OF REGULATIONS, FOR THE PURPOSE OF UPDATING AND IDENTIFYING CONTINUED NEED AND / OR USE AND TO MAKE RECOMMENDATIONS TO THE BOARD

The Committee extensively discussed B&P Code section 8516 and made the following edits.

8516. (a) This section, and Sections 8518 and 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 associated with the registered company except as provided in Section 8519.5. 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 property owner ~~person requesting the inspection~~ or ~~to~~ the ~~person's~~ property owner's designated agent(s) within 10 business days ~~of~~ from the ~~commencement~~ start 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. An inspection report may be a complete, limited, supplemental or reinspection report. 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. All ~~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 start date of the inspection and the name of the licensed field representative(s) or operator(s) making the inspection.

(2) The name and address of the person or firm ordering the report.

(3) The name and address of the property owner and 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~~,~~.

(A) Indicate on the foundation diagram or sketch ~~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. Reporting of the infested or infected wood members, or parts of the structure identified shall be listed in the inspection report so as to clearly identify them as is typical in standard construction components including but not limited to ~~(i.e.~~ siding, studs, rafters, floorjoist, fascia, subfloor, sheathing, trim boards~~,. etc.)~~

(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 or prevention 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 similar 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 each corrective measure~~s~~.

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~~ business days after a reinspection has been ordered.

(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 similar 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."

(c) At the time a report is ordered, the registered company or licensee shall inform the person or entity ordering the report, that a separated report is available pursuant to this subdivision. If a separated report is requested at the time the inspection report is ordered, the registered company or licensee shall separately identify on the report each recommendation for corrective measures as follows:

(1) The infestation or infection that is evident.

(2) The conditions that are present that are deemed likely to lead to infestation or infection.

If a registered company or licensee fails to inform as required by this subdivision and a dispute arises, or if any other dispute arises as to whether this subdivision has been complied with, a separated report shall be provided within 24 hours of the request but, in no event, later than the next business day, and at no additional cost.

(d) When a corrective condition is identified, either as ~~paragraph~~ Section (1) or Section (2) of subdivision (c), and the ~~responsible party, as negotiated between the buyer and the seller,~~ property owner or the property owner's designated agent(s) chooses not to correct those conditions, the registered company or licensee shall not be liable for damages resulting from a failure to correct those conditions or subject to any disciplinary action by the board. Nothing in this subdivision, however, shall relieve a registered company or a licensee of any liability resulting from negligence, fraud, dishonest dealing, other violations pursuant to this chapter, or contractual obligations between the registered company or licensee and the responsible parties.

(e) The inspection report form prescribed by the board shall separately identify the infestation or infection that is evident and the conditions that are present that are deemed likely to lead to infestation or infection. If a separated form is requested, the form shall explain the infestation or infection that is evident and the conditions that are present that are deemed likely to lead to infestation or infection and the difference between those conditions.

In no event, however, shall conditions deemed likely to lead to infestation or infection be characterized as actual "defects" or as actual "active" infestations or infections or in need of correction as a precondition to issuing a certification pursuant to Section 8519.

(f) The report and any contract entered into shall also state specifically when any guarantee for the work is made, and if so, the specific terms of the guarantee and the period of time for which the guarantee shall be in effect. If a guarantee extends beyond three (3) years the registered

company shall maintain all original inspection reports, field notes, activity forms, and notices of completion for the duration of the guarantee period and for one (1) year after the guarantee expires.

(g) ~~Control service is defined as the regular reinspection of a property after a report has been made in compliance with this section and any corrections as have been agreed upon have been completed.~~ For purposes of this section, "control service agreement" means any agreement, including extended warranties, to have a licensee conduct over a period of time regular inspections and other activities related to the control or eradication of wood destroying pests and organisms. Under a control service agreement a registered company shall refer to the original report and contract in a manner as to identify them clearly, and the report shall be assumed to be a true report of conditions as originally issued, except it may be modified after a control service inspection. A registered company is not required to issue a report as outlined in paragraphs (1) to (11), inclusive, of subdivision (b) after each control service inspection. If after control service inspection, no modification of the original report is made in writing, then it will be assumed that conditions are as originally reported. A control service contract shall state specifically the particular wood destroying pests or organisms and the portions of the buildings or structures covered by the contract.

(h) A registered company or licensee may enter into and maintain a control service agreement provided the following requirements are met:

(1) The control service agreement shall be in writing, signed by both parties, and shall specifically include the following:

~~(A) The wood destroying pests and organisms that could infest and infect the structure.~~

~~(B)~~ (A.) The wood destroying pests and organisms covered by the control service agreement.

(B.) Any wood destroying pest or organism that is not covered must be specifically listed.

(C) The type and manner of treatment to be used to correct the infestations or infections.

(D) The structures or buildings, or portions thereof, covered by the agreement, including a statement specifying whether the coverage for purposes of periodic inspections is limited or full. Any exclusions from those described in the original report must be specifically listed.

(E) ~~A reference to t~~The original inspection report, ~~and~~ agreement, and completion report shall be maintained for three (3) years after the cancellation of the control service agreement.

(F) The frequency of the inspections to be provided, the fee to be charged for each renewal, and the duration of the agreement.

(G) Whether the fee includes structural repairs.

(H) If the services provided are guaranteed, and, if so, the terms of the guarantee.

(I) A statement that all corrections of infestations or infections covered by the control service agreement shall be completed within six months of discovery, unless otherwise agreed to in writing by both parties.

(2) Inspections made pursuant to a control service agreement shall be conducted by a Branch 3 licensee. Section 8506.1 does not modify this provision.

(3) A full inspection of the property covered by the control service agreement shall be conducted and a report filed pursuant to subdivision (b) at least once every three years from the date that the agreement was entered into, unless the consumer cancels the contract within three years from the date the agreement was entered into.

(4) Under a control service agreement a ~~A~~ written report shall be required for the correction of any infestation or infection unless all of the following conditions are met:

(A) The infestation or infection has been previously reported.

(B) The infestation or infection is covered by the control service agreement.

(C) There is no additional charge for correcting the infestation or infection.

(D) Correction of the infestation or infection takes place within 45 days of its discovery.

(E) Correction of the infestation or infection does not include fumigation.

(5) All notice requirements pursuant to Section 8538 shall apply to all pesticide treatments conducted under control service agreements.

~~(6) For purposes of this section, "control service agreement" means any agreement, including extended warranties, to have a licensee conduct over a period of time regular inspections and other activities related to the control or eradication of wood destroying pests and organisms.~~

~~(i) All work recommended by a registered company, where an estimate or bid for making repairs was given with the original inspection report, or thereafter, shall be recorded on this report or a separate work agreement and shall specify a price for each recommendation. This information shall be provided to the person requesting the inspection, and shall be retained by the registered company with the inspection report copy for three years.~~

The Committee discussed reviewing these edits and possibly making a motion at the next meeting to recommend the changes to the Board.

PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

There were no public comments for items not on the agenda.

FUTURE MEETING DATES

The following three meetings were previously scheduled for October 8, 2014 in Sacramento, November 5, 2014 in Orange County, and December 3, 2014 in Sacramento.

ADJOURNMENT

The meeting adjourned at 3:01 P.M.

Bob Gordon

Bob Gordon, Chairman

10-8-2014

Date