

INITIAL STATEMENT OF REASONS
STRUCTURAL PEST CONTROL BOARD

Title 16. California Code of Regulations
Amend Section 1920 Pertaining to Citations and Fines
Amend Section 1937.11 Pertaining to Structural Disciplinary Guidelines
Repeal Section 1970.5 Pertaining to Structural Fumigation Aeration

SUMMARY OF PROPOSED ACTION

Structural Pest Control Board (SPCB) proposes to amend Title 16, California Code of Regulations, (16 CCR) sections 1920 and 1937.11, and repeal section 1970.5. In summary, the proposed action would remove as specified criteria in order to maximize its authority to assess fines in excess of \$2,500; revise language to indicate that as a part of a probationary requirement, a licensee may be required to complete a continuing education course approved by the Board; and the definition of "time ventilation is commenced" used to specify when supervision is required after fumigation is performed.

SPECIFIC PURPOSE AND FACTUAL BASIS

- Amend Section 1920 - Citations and Fines.

Section 1920 provides authority to issue citations and fines. Within the regulation is criteria that must be met in order to access fines in excess of \$2,500. In 2006, section 1920 was amended to specify criteria to be used to determine the level of an administrative fine of more than \$2,500. In order for SPCB to maximize the use of existing enforcement tools, the specified criteria should no longer apply. Accordingly, SPCB proposes to remove from regulation the criteria in order to maximize its authority to assess fines in excess of \$2,500.

In order for SPCB to better utilize the enforcement tool of citation and fine authority which may include an administrative fine, the specified criteria to be met in accessing an administrative fine in excess of \$2,500 should no longer apply, giving the board more flexibility in accessing fines.

- Amend Section 1937.11 - Disciplinary Guidelines.

The correspondence course that is identified in the Disciplinary Guidelines is no longer available with the University of California Extension Berkeley. The language is amended to indicate that a licensee may be required to complete a continuing education course as part of a disciplinary action. In order to establish consistency in disciplinary penalties and probationary terms, SPCB established the *Manual of Disciplinary Guidelines and Model Disciplinary Orders* (1991) which is incorporated into regulation by reference. As part of the Optional Terms and Conditions of Probation, the Manual references the completion of a University of California Extension Berkeley correspondence course. The correspondence course is no longer available. SPCB proposed to revise the language in the Manual to indicate that as part of a probationary requirement, a licensee may be required to complete a continuing education course approved by

SPCB. In addition, the publication date for SPCB's *Manual of Disciplinary Guidelines and Model Disciplinary Orders* is being revised to "Rev. 2010".

- Repeal Section 1970.5 - Commencing Aeration.

State laws mandate SPCB to protect consumers by regulating the structural pest control industry to promote the health, safety, and general welfare of the public.

Business and Professions (B&P) Code section 8505.2 requires fumigations be performed only under direct and personal supervision of an individual who is licensed by the SPCB as an operator or field representative in a branch of pest control that includes fumigation. B&P Code section 8505.3 defines direct and personal supervision to mean that supervision is required at the fumigation site during the entire time the fumigants are being released, the time ventilation is commenced, and at the time the property is released for occupancy.

Title 3 CCR section 6780 pertains to general fumigation safe-use requirements. Subsection (b) specifies that when an employee may be exposed above an exposure standard to methyl bromide, sulfuryl fluoride, or any other fumigant for which only air-supplied respirator equipment is approved, the employer must require the use of air-supplied respirator equipment; employ continuous monitoring to warn employees before the Permissible Exposure Limit as specified in 8 CCR section 5155; or operate under the provisions of a Fumigation Safety Program written by an employer and approved by the Director of the Department of Pesticide Regulation (DPR).

Pursuant to section 6780(c), the structural pest control industry had a Fumigation Safety Program approved by DPR known as the Tarpaulin Removal and Aeration Plan (TRAP). In part, TRAP included an aeration procedure in which aeration was completed within about one hour, at the end of which the fumigation workers removed the tarp from the structure. TRAP required direct and personal supervision by a licensed supervisor for the relatively short aeration procedure, ending when all tarps had been removed. As a result, 16 CCR section 1970.5 was adopted in 1990 (and amended in 1996) to define "time ventilation is commenced" as used in B&P Code section 8505.3 expanding the standard definition of "commenced." This definition requires a licensed Branch 1 operator or field representative to be present during the entire time beginning when the seal is broke and ending when all seals/tarps are removed.

Recently, the structural pest control industry submitted the California Aeration Plan (CAP), as a Fumigation Safety program for employers and employees to follow to meet one of the requirements of section 6780(b). Pursuant to section 6780(c), DPR approved this plan as a replacement to TRAP. One of the main differences between the TRAP and CAP plans is the duration and nature of the aeration procedure. Under the current CAP, aeration continues for 12-24 hours or more, during which the tarps remain on the structure. The structure is aerated via pre-installed aeration ducting and fans that are operated remotely. CAP does require a licensed supervisor to be present at the beginning of the aeration, and again when the tarps are removed. However, there is no requirement with the approved CAP plan, and no need, for a supervisory person to be onsite during the entire CAP aeration procedure.

SPCB proposes to repeal section 1970.5 since it is unnecessary to expand the standard definition of "time ventilation is commenced" by requiring direct and personal supervision during the entire time of ventilation. Direct and personal supervision as described in B&P Code section 8505.3 is sufficient to regulate the use of the new CAP aeration plan, and current definition goes beyond the scope required in section 8505.3.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION (GOVERNMENT CODE SECTION 11346.2(b)).

SPCB has not identified any feasible alternatives to the proposed regulatory actions that would lessen any adverse impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

ECONOMIC IMPACT ON BUSINESS

The proposed regulations will not have a significant adverse economic impact upon business. The document relied upon to make this determination is listed in the "Documents Relied Upon" section of this initial statement of reasons and is available from SPCB.

EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed actions do not duplicate or conflict with the Code of Federal Regulations.

DOCUMENTS RELIED UPON

1. Minutes of the Annual Meeting of the Structural Pest Control Board, October 28, 2010.
2. Minutes from the Special Meeting of the Structural Pest Control Board, April 21 and 22, 2010
3. Minutes of the Special Meeting of the Structural Pest Control Board, April 27 and 28, 2011.
4. Pesticide Enforcement Program Standards Compendium Volume 4: Inspection Procedures, Appendix C: California Aeration Plan (CAP) for Structural Fumigations.
5. Economic Analysis for Proposed Amendment to Structural Pest Control Board Regulation. California Environmental Protection Agency, Economic Studies Section, Air Resources Board. Memorandum from Tom Rosen-Molina to Linda Irokawa-Otani, Regulations Coordinator, DPR. February 8, 2012.