

# **2015 STRUCTURAL PEST CONTROL BOARD ACT BOOK SUPPLEMENT**

This document contains updates to the Structural Pest Control Act and its associated rules and regulations. These updates have occurred subsequent to the publication of 2015 Structural Pest Control Act Book.

## **BUSINESS AND PROFESSIONS CODE, DIVISION 3, CHAPTER 14**

**8506.1.** (a) A “registered company” is any sole proprietorship, partnership, corporation, or other organization or any combination thereof that is registered with the Structural Pest Control Board to engage in the practice of structural pest control.

(b) A registered company may secure structural pest control work, submit bids, or otherwise contract for pest control work. A registered company may employ licensed field representatives and licensed operators to identify infestations or infections, make inspections, and represent the company in the securing of pest control work. A registered company may hire or employ individuals who are not licensed under this chapter to perform work on contracts covering Branch 1, 2, or 3, or any combination of branches, only after an operator or field representative has fully completed the negotiation or signing of the contract covering a given job.

(c) This section shall not be construed to authorize an unlicensed individual to perform work that requires a license pursuant to this chapter.

**8506.2.** A “qualifying manager” is the licensed operator or operators designated by a registered company to supervise the daily business of the company and to be physically present at the principal office or branch office location for a minimum of nine days every three consecutive calendar months to supervise and assist the company’s employees. These days shall be documented and provided to the board upon request.

**8516.** (a) This section, and Section 8519, apply only to wood destroying pests or organisms.

(b) A registered company or licensee shall not 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 employed by a 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). The address of an inspection report prepared for use by an attorney for litigation purposes shall not be required to be reported to the board and shall not be assessed a filing fee.

A written inspection report conforming to this section and a form approved by the board shall be prepared and delivered to the person requesting the inspection and the property owner, or to the property owner’s designated agent, within 10 business days from the 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 or the property owner. An inspection report may be a complete, limited, supplemental, or reinspection report, as defined by Section 1993 of Title 16 of the California Code of Regulations. The report shall be delivered before work is commenced on

any property. The registered company shall retain for three years all 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 inspection reports or copies thereof shall be submitted to the board upon demand 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 or operator 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, including 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 to clearly identify them, as is typical in standard construction components, including, but not limited to, siding, studs, rafters, floor joists, fascia, subfloor, sheathing, and trim boards.
- (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. An estimate or bid 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. 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." 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 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 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 separate report is available pursuant to this subdivision. If a separate 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 separate 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 (1) or (2) of subdivision (c), and the property owner or the property owner's designated agent 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 separate 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 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 year after the guarantee expires.

(g) For purposes of this section, "control service agreement" means an 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 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 the original inspection report.

(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) The original inspection report, the control service agreement, and completion report shall be maintained for three years after the cancellation of the control service agreement.

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

(4) 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.

(5) Under a control service agreement, 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.
- (6) All notice requirements pursuant to Section 8538 shall apply to all pesticide treatments conducted under control service agreements.

(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.

**8518.** (a) When a registered company completes work under a contract, it shall prepare, on a form prescribed by the board, a notice of work completed and not completed, and shall furnish that notice to the owner of the property or the owner's agent within 10 business days after completing the work. The notice shall include a statement of the cost of the completed work and estimated cost of work not completed.

(b) The address of each property inspected or upon which work was 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 completed work.

(c) A filing fee shall be assessed pursuant to Section 8674 for every property upon which work is completed.

(d) Failure of a registered company to report and file with the board the address of any property upon which work was completed pursuant to subdivision (b) of Section 8516 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).

(e) The registered company shall retain for three years all original notices of work completed, work not completed, and activity forms.

(f) Notices of work completed and not completed 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 notices of work completed or not completed or copies thereof shall be submitted to the board upon request within two business days.

(g) This section shall only apply to work relating to wood destroying pests or organisms.

**8567.** (a) Should a field representative or applicator change his or her employment, or should an operator enter the employ of a registered company, or being already employed by a registered company change his or her employment, or being employed by a registered company leave that employment and enter the pest control business on his or her own behalf, he or she shall notify the registrar on a form prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board. The registrar shall register the change in his or her records.

(b) If a field representative, operator, or applicator fails to notify the registrar within 30 days of the date a change of employment occurs, a registered company may notify the registrar, on a form prescribed by the board, that the field representative, operator, or applicator is no longer associated with the registered company.

**8616.9.** (a) If an employee is found during an inspection or investigation not wearing personal protective equipment required by label or regulation, the commissioner may refer the violation by the employer for statewide disciplinary action by the board or suspend the right of the employer to work in the county for up to three working days. If the commissioner does neither, the commissioner may assess an administrative fine against both the employer and the employee. If the commissioner takes no action against the employer for this violation, the commissioner may assess an administrative fine against the employee if the employer provides evidence of all of the following:

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

(2) The employer provided personal protective equipment required by label or 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.

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

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

(5) The employer has not been disciplined or assessed an administrative fine for a violation of the personal protective equipment requirement for the previous two years.

(b) (1) An administrative fine assessed against an employer pursuant to this section shall not be less than seven hundred dollars (\$700) nor more than five thousand dollars (\$5,000). An administrative fine assessed against an employee pursuant to this section shall not be less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000).

(2) In assessing an administrative fine pursuant to this section, the board or commissioner shall consider the appropriateness of the amount of the fine to the gravity of the violation, the good faith of the licensee, and the history of prior violations.

(c) Nothing in this section is intended to limit the authority of the commissioner to take action against the employee pursuant to Section 8617, including suspension of the employee's license or referral of the violation for statewide disciplinary action by the board pursuant to Section 8620.

**8621.** A complaint of any person against a nonlicensee, licensee, or registered company shall be filed with the board no later than two years after the act or omission alleged as the ground for disciplinary action or, in a matter involving fraud, gross negligence, or misrepresentation, no later than four years after commission of the act or omission. The board shall file any accusation no later than 18 months after the complaint has been filed with the board, except that with respect to a violation of Section 8637, the accusation may be filed no later than two years after

the discovery by the board of the alleged facts constituting the fraud or misrepresentation prohibited by the section.

**8698.6.** This chapter shall remain in effect only until January 1, 2023, and as of that date is repealed.

## **CALIFORNIA CODE OF REGULATIONS, TITLE 16, DIVISION 19**

### **§ 1914. Name Style - Company Registration.**

No company registration certificate shall be issued in a fictitious name which the board determines is likely to be confused with that of a governmental agency or trade association. No company registration shall be issued in the same name of a firm whose company registration has been suspended, surrendered or revoked unless a period of at least one year has elapsed from the effective date of the suspension, surrender or revocation.

It shall be grounds for disciplinary action for a registered company to use the telephone number and/or name style of a firm whose company registration has been suspended, surrendered or revoked, without the prior written approval of the board.

Note: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 8525, 8625 and 8650, Business and Professions Code.

#### **HISTORY**

1. Amendment filed 5-19-78; effective thirtieth day thereafter (Register 78, No. 20).
2. Amendment filed 9-22-83; effective thirtieth day thereafter (Register 83, No. 39).
3. Amendment filed 3-23-87; effective upon filing pursuant to Government Code Section 11346.2 (d) (Register 87, No. 13).
4. Amendment of first paragraph filed 3-21-2006; operative 4-20-2006 (Register 2006, No. 12).
5. Amendment of section and Note filed 10-2-2017; operative 1-1-2018 (Register 2017, No. 40).

### **§ 1936. Form and Date for Filing Application for License.**

(a) An application for an initial operator's or field representative's license shall be:

(1) Filed at the principal office of the board on Form 43L-1 (Rev. 6/16) or Form 43L-14 (Rev. 6/16), which are hereby incorporated by reference, and shall comply with every requirement shown thereon.

(2) Accompanied by the required fee.

(b) All documents filed in support of any application will be retained by the board; provided, however, that the board may at its discretion permit such documents to be withdrawn upon substitution of a true copy.

Note: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 114.5, 115.5, 480, 8560-8566 and 8674, Business and Professions Code; and Sections 11361.5 and 11361.7, Health and Safety Code.

#### **HISTORY**

1. Amendment of subsection (b) filed 1-2-68; effective thirtieth day thereafter (Register 68, No. 1).

2. Amendment of subsections (c) and (d) filed 3-15-79; effective thirtieth day thereafter (Register 79, No. 11).
3. Amendment filed 9-22-83; effective thirtieth day thereafter (Register 83, No. 39).
4. Amendment of subsection (a)(1) and new form 43L-14 filed 6-22-92; operative 7-22-92 (Register 92, No. 26).
5. Amendment of subsection (a)(1) and relocation and amendment of Form 43L-1 from section 1936.1 filed 8-25-2006; operative 9-24-2006 (Register 2006, No. 34).
6. Amendment of subsections (a)(1)-(2), repealer of forms 43L-1 and 43L-14, adoption and incorporation by reference of new forms 43L-1 and 43L-14 and amendment of Note filed 10-12-2016; operative 1-1-2017 (Register 2016, No. 42).

**§ 1936.1. Form and Date for Filing Application for Company Registration Certificate.**

(a) An application for a company registration certificate shall be:

(1) Filed at the principal office of the board on Form 43L-26 (Rev. 3/14), which is hereby incorporated by reference, and shall comply with every requirement shown thereon.

(2) Accompanied by the required company registration fee.

(b) All documents filed in support of any application will be retained by the board; provided, however, that the board may at its discretion permit such documents to be withdrawn upon substitution of a true copy.

Note: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 114.5, 115.5, 480, 8610 and 8674, Business and Professions Code; and Sections 11361.5 and 11361.7, Health and Safety Code.

**HISTORY**

1. New section filed 3-23-87; effective upon filing pursuant to Government Code section 11346.2(d) (Register 87, No. 13).
2. Change without regulatory effect amending subsection (a)(1) filed pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 30).
3. Relocation and amendment of Form 43L-1 to section 1936 and editorial correction of page order of Form 43L-14 filed 8-25-2006; operative 9-24-2006 (Register 2006, No. 34).
4. Amendment of subsection (a)(1), repealer of form 43L-26, adoption and incorporation by reference of new form 43L-26 and amendment of Note filed 10-12-2016; operative 1-1-2017 (Register 2016, No. 42).

**§ 1936.2. Form for Filing Application for Applicator's License.**

(a) An application for an initial applicator's license shall be:

(1) Filed at the principal office of the board on Form 43L-21 (Rev. 4/15), which is hereby incorporated by reference, and shall comply with every requirement shown thereon.

(2) Accompanied by the required fee.

(b) All documents filed in support of any application will be retained by the board.

Note: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 114.5, 115.5, 480, 8564.5 and 8564.6, Business and Professions Code; and Sections 11361.5 and 11361.7, Health and Safety Code.

**HISTORY**

1. New section filed 8-12-96; operative 9-11-96 (Register 96, No. 33).

2. Amendment of subsections (a)(1)-(2), repealer of form 43E-21, adoption and incorporation by reference of new form 43L-21 and amendment of Note filed 10-12-2016; operative 1-1-2017 (Register 2016, No. 42).

**§ 1960. License Renewal Fingerprint Requirement.**

All licensees applying for a license renewal must submit a set of fingerprints for the purpose of conducting a criminal history record check as a condition for license renewal. Applications for license renewal will be deemed incomplete and not eligible for renewal if a set of fingerprints is not included with the application. This section applies to licensees whose license expires on or after June 30, 2016. This section does not apply to licensees who already have submitted a set of fingerprints for the purpose of conducting a criminal history record check.

Note: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 144 and 8520.1, Business and Professions Code; and Section 11105(b)(10), Penal Code.

**HISTORY**

1. New section filed 2-29-2016; operative 2-29-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 10).

**§ 1970.4. Pesticide Disclosure Requirement.**

(a) The primary contractor for fumigation shall have in his or her possession and shall provide to any subcontractor for fumigation a form (See Form 43M-48 (Rev. 5/07) at the end of this section) signed by the occupants or designated agent of a structure. The primary contractor for fumigation and the subcontractor for fumigation shall retain a copy of the occupants fumigation notice for a period of at least three years. In case of multiple-family dwellings, the owner, manager or designated agent of the building may obtain signatures and/or verify the notification of the occupants.

The form shall state the name of the pest to be controlled, the pesticide(s)/fumigant(s) proposed to be used, the active ingredient(s) and the health cautionary statement as required under section 8538 of the code. The form shall also state that a lethal gas (poison) will be used in the building on indicated dates and that it is unsafe to return to the building until a certification notice for reentry is posted by the licensed fumigator. The form shall also indicate that the occupant has received the prime contractor's information regarding the procedures for leaving the structure.

The properly signed form or a copy, written or electronic, thereof shall be in the possession of the licensed fumigator when the fumigant is released. Such form shall be attached to and become a permanent part of the fumigation log upon completion of the fumigation.

(b) Any death or serious injury relating to pesticide application or use, whether to a worker or member of the public, shall be reported to the nearest Structural Pest Control Board office immediately.

(c) Whenever a licensee employed by a branch 2 or branch 3 registered company applies a pesticide within, around or to any structure such person shall leave in a conspicuous location a written notice identifying the common, generic or chemical name of each pesticide applied. In case of a multiple family structure, such notice may be given to the designated agent or the

owner. Such pesticide identification notice may be a door hanger, invoice, billing statement or other similar written document which contains the registered company's name, address, and telephone number.

(d) All pest control operators, field representatives, applicators and employees in all branches shall comply in every respect with the requirements of section 8538 of the code. Failure to comply with section 8538 of the code is a misdemeanor and shall constitute grounds for discipline.

(e) Where notification is required under section 8538 of the code, and the premises on which the work is to be performed is a multiple family dwelling consisting of more than 4 units, the owner/owner's agent shall receive notification and other notices shall be posted in heavily frequented, highly visible areas including, but not limited to, all mailboxes, manager's apartment, in all laundry rooms, and community rooms on all external pest control servicing. Complexes with fewer than 5 units will have each affected unit notified. Any pest control servicing done within a tenant's apartment requires that the tenant be notified according to section 8538 of the code.

(f) A registered company which applies any pesticide within, around or to any structure shall provide to any person, within 24 hours after request therefore, the common, generic or chemical name of each pesticide applied.

Note: Authority cited: Section 8525, Business and Professions Code. Reference: Section 8505.7, 8505.13 and 8538, Business and Professions Code.

#### HISTORY

1. New section filed 5-19-78; effective thirtieth day thereafter (Register 78, No. 20).
2. Amendment filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).
3. Amendment of subsection (a) filed 6-3-81; effective thirtieth day thereafter (Register 81, No. 23).
4. Relettering of former subsection (d) to (e) and new subsection (d) filed 6-17-85; effective thirtieth day thereafter (Register 85, No. 25).
5. Relettering of former subsection (e) to (f) and new subsection (e) filed 11-10-86; effective thirtieth day thereafter (Register 86, No. 46).
6. Amendment filed 3-23-87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 13).
7. Amendment of subsections (a), (d) and (e) filed 4-12-90; operative 5-12-90 (Register 90, No. 17).
8. Amendment of subsections (a), (c) and Note filed 3-6-95; operative 4-5-95 (Register 95, No. 10).
9. Amendment of subsections (a), (c) and (d), amendment of Note, and new form 43M-48 filed 4-28-98; operative 5-28-98 (Register 98, No. 18).
10. Change without regulatory effect amending subsections (c) and (f) filed 3-26-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 13).
11. Amendment of subsection (a) and repealer and new form 43M-48 filed 12-30-2005; operative 1-29-2006 (Register 2005, No. 52).
12. Amendment of subsection (a) and repealer and new Form 43M-48 filed 4-29-2008; operative 5-29-2008 (Register 2008, No. 18).

13. Amendment of subsection (a) filed 3-22-2016; operative 7-1-2016 (Register 2016, No. 13).

**§ 1993.2. Termite Bait Station.**

(a) For the purposes of this section, “termite bait station” shall include:

- (1) an “above-ground bait station,” which shall mean any device containing pesticide bait used for the eradication of termites that is attached to the structure, or
- (2) an “in-ground bait station,” which shall mean any device containing pesticide bait used for the eradication of termites that is placed in the ground.

(b) Prior to the installation of a termite bait station, a full or limited inspection of the structure shall be made.

(c) Use of a termite bait station shall be considered a control service agreement as defined by section 8516 of the code.

Note: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 8514 and 8516, Business and Professions Code.

**HISTORY**

1. New section filed 6-26-2003; operative 7-26-2003 (Register 2003, No. 26).
2. Amendment of section and Note filed 10-6-2017; operative 1-1-2018 (Register 2017, No. 40).

**§ 1993.3. In-Ground Termite Bait Stations. [Repealed]**

Note: Authority cited: Section 8525, Business and Professions Code. Reference: Section 8516, Business and Professions Code.

**HISTORY**

1. New section filed 6-26-2003; operative 7-26-2003 (Register 2003, No. 26).
2. Repealer filed 10-6-2017; operative 1-1-2018 (Register 2017, No. 40).

**§ 1993.4. Termite Monitoring Device.**

(a) A “termite monitoring device” is defined as a device that:

- (1) Solely provides an indication of the possible presence or absence of termites.
- (2) Does not provide for positive identification of an infestation.
- (3) Does not eliminate the need for an inspection conducted by a Branch 3 Operator or Field Representative prior to any treatment or work being performed.
- (4) Does not contain any pesticides.
- (5) Does not provide any control measures.

(b) Installation of any termite monitoring device must be performed by a registered Branch 3 company.

(c) Prior to installation of any termite monitoring device(s), the following disclosure language shall be provided in writing to the property owner or the property owner's designated agent: “Termite monitoring devices are intended to solely provide an indication of the possible presence or absence of termites in the areas where such devices are installed. Termite monitoring devices do not replace the requirement for a termite inspection to be performed by a licensed termite inspector prior to the commencement of any treatment or work being performed. If the termite monitoring device indicates the possible presence of termites, you

should consider having an inspection performed. You have the right to choose any registered company licensed to perform these services.”

Note: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 8514 and 8516, Business and Professions Code.

#### HISTORY

1. New section filed 10-6-2017; operative 1-1-2018 (Register 2017, No. 40).

**A MANUAL OF  
DISCIPLINARY GUIDELINES  
AND  
MODEL DISCIPLINARY  
ORDERS**

**STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**2016**

**STRUCTURAL PEST CONTROL BOARD**

**2005 EVERGREEN STREET, SUITE 1500**

**SACRAMENTO, CA 95815-3831**

**(916) 561-8700**

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## **DISCIPLINARY GUIDELINES**

### **INTRODUCTION**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq), the Structural Pest Control Board and the Administrative Law Judge shall consider the uniform disciplinary guidelines as set forth herein.

The Board recognizes that these terms of discipline and conditions of probation are merely guidelines and that the Board and the Administrative Law Judge must be free to exercise their discretion in such cases. However, deviation from such guidelines is appropriate only when facts of the case warrant such a departure. As such, any departure from these guidelines should be explained and noted fully in the proposed decision or disciplinary order.

The Board desires that matters in extenuation or mitigation, as well as those in aggravation, be fully considered and noted in the proposed decision or disciplinary order. Of primary importance is the effect of the licensee's or registrant's conduct/action on the public as consumers.

### PENALTY GUIDELINES

<b>Violation</b>	<b>Minimum Penalty</b>	<b>Optional Probation Conditions</b>	<b>Maximum Penalty</b>
<b>Section 8635</b> Disregard of Specifications	Suspension, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 16, 17	Revocation and Optional Condition 18
<b>Section 8636</b> Violation of Laws	Suspension, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 16, 17	Revocation and Optional Condition 18
<b>Section 8637</b> Misrepresentation	Revocation and Optional Condition 18	Discretionary	Revocation and Optional Condition 18
<b>Section 8638</b> Violation of Contracts	Suspension, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8639</b> Aiding and Abetting	Revocation, Stayed, 5 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8640</b> Real Estate Rebates	Revocation, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8641</b> Violation of Chapter and Rules	Suspension, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 16, 17, 19	Revocation and Optional Condition 18
<b>Section 8642</b> Fraud	Revocation, Stayed, 5 Years Probation and Optional Condition 18	10, 11/12/13, 14, 15, 16, 17, 19	Revocation and Optional Condition 18

<b>Violation</b>	<b>Minimum Penalty</b>	<b>Optional Probation Condition</b>	<b>Maximum Penalty</b>
<b>Section 8643</b> Negligent Handling or Use of Poisonous Agent	Revocation, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 17, 19	Revocation and Optional Condition 18
<b>Section 8644</b> Misrepresentation After Inspection	Revocation, Stayed, 5 Years Probation	10, 11/12/13, 14, 15, 16, 17, 19	Revocation and Optional Condition 18
<b>Section 8645</b> Impersonation	Revocation, Stayed, 5 Years Probation	10, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8646</b> Disregard of Laws	Suspension, Stayed, 3 Years Probation	10, 11/12/13, 14, 15, 17, 19	Revocation and Optional Condition 18
<b>Section 8646.5</b> Cease & Desist	Suspension, Stayed, 3 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18

<b>Violation</b>	<b>Minimum Penalty</b>	<b>Optional Probation Conditions</b>	<b>Maximum Penalty</b>
<b>Section 8647</b> Violation of Laws as to Insecticides	Suspension, Stayed, 3 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8648</b> False Advertising	Suspension, Stayed, 4 Years Probation	10, 11/12/13, 14, 17	Revocation and Optional Condition 18
<b>Section 8649</b> Conviction, Evidence	Revocation, Stayed, 5 Years Probation	10, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8650</b> Name and Location as Licensed	Suspension, Stayed, 3 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8651</b> Performing or Soliciting Beyond Scope of License	Revocation, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8652</b> Failure to Make and Keep All Reports	Suspension, Stayed, 3 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8653</b> Withholding Payment	Suspension, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8654</b> Prohibition Against Association of Suspended Operator	Suspension, Stayed, 3 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18

<b>Violation</b>	<b>Minimum Penalty</b>	<b>Optional Probation Conditions</b>	<b>Maximum Penalty</b>
<b>Section 8655</b> Charge Substantially Related	Revocation, Stayed, 5 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8657</b> Appointment of Receiver	Revocation, Stayed, 4 Years Probation	10, 11/12/13, 14, 17	Revocation and Optional Condition 18
<b>Section 8666</b> Excessive Work	Revocation, Stayed 4 Years Probation	10, 11/12/13, 14, 16	Revocation and Optional Condition 18
<b>Violation of Probation</b>	Extend Probation 1 to 5 years with New or Amended Conditions	Discretionary	Revoke Probation and Impose Stayed Penalty
<b>All Other Violations</b>	Suspension, Stayed 3 Years Probation	Discretionary	Revocation Optional Condition 18

## **FACTORS IN AGGRAVATION, MITIGATION AND EXTENUATION FOR CONSIDERATION IN DISCIPLINARY CASES**

In determining whether revocation, suspension, or probation is to be imposed in a given disciplinary case, factors such as the following should be considered:

- I) Factors in Aggravation: Crimes or Acts
  - a. Nature and severity of the act or crime under consideration.
  - b. Actual or potential harm to the public or any consumer.
  - c. Pending and final records of any cause of action from any investigation, hearing, or court of competent jurisdiction in this state or any other venue.
  - d. Conduct was knowing, willful, reckless, or negligent.
  - e. Whether financially motivated.
  - f. Involved fraud, misrepresentation and/or dishonesty.
  - g. Whether a pattern of practice.
  - h. Length of time passed since the act or omission.
  - i. Length and seriousness of the administrative, civil or criminal record.
  - j. Compliance with any administrative, or criminal probation, or of any criminal parole imposed, regardless of venue.
  - k. Compliance with, including but not limited to, restitution, fines, or community service lawfully imposed in this state or any other venue.
  
- II. Factors in Mitigation: Crimes or Acts
  - a. Satisfaction of any lawfully imposed sanctions or other conditions including, but not limited to, restitution, fines or compliance arising from any cause of action.
  - b. Participation and completion of training, counseling or rehabilitation programs.
  - c. No prior disciplinary actions.
  - d. Not a pattern of practice.
  - e. Evidence of substantial measures to prevent the occurrence of future violations.
  - f. Neither willful, reckless, or negligent.
  - g. The public or any consumer was not actually or potentially harmed.
  - h. The length of time passed since the act or omission, or completion of probation, or completion of parole.
  - i. No prior criminal record.
  - j. If applicable, evidence of expungement proceedings or dismissal pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.
  - k. Other relevant evidence of rehabilitation.
  
- III. Factors in Extenuation: Crimes or Acts
  - a. Circumstances deemed beyond one's direction or control.
  - b. Degree of knowledge and/or participation constituting cause for discipline.
  - c. Coercion or oppression.

- d. Incapacitation, physical or mental condition.

The Board does not require the presence of any one or combination of the above factors to justify the degree of discipline to be imposed.

### **STANDARD TERMS AND CONDITIONS OF PROBATION**

The standard terms of probation appearing in every case are:

1. Obey all laws
2. File quarterly reports
3. Tolling of probation if respondent moves out of state, is suspended, does not renew, or inactivates license
- 4a. Notice to employers
- 4b. Notice to employees
5. Violation of probation
6. Interview / Records: Board Or Its Designee
7. License Surrender
8. Completion of Probation
9. Cost Recovery

### **OPTIONAL TERMS AND CONDITIONS OF PROBATION**

10. Actual suspension of license / registration certificate
11. Completion of appropriate continuing education course: Branch 1
12. Completion of appropriate continuing education course: Branch 2
13. Completion of appropriate continuing education course: Branch 3
14. Reimbursement to the Board for random inspections
15. Payment of inspection fee
16. Restitution to consumer
17. Prohibition from serving as officer, director, associate, partner or qualifying manager
18. No ownership of registered company
19. Take and pass licensure examination

### **DEFAULT DECISION**

The disciplinary penalty in a default decision is revocation.

### **CIVIL PENALTY IN LIEU OF SUSPENSION**

The Board has the authority to assess a civil penalty in lieu of actual suspension as follows:

- (a) not more than \$5,000 for an actual suspension of 1 to 19 days
- (b) not more than \$10,000 for an actual suspension of 20 to 45 days

The respondent may express a preference for paying a civil penalty in lieu of actual suspension, but the Board is not bound by any expression of preference. If such preference is expressed, it should be included in the proposed decision.

## **MODEL DISCIPLINARY ORDERS**

### **MODEL LANGUAGE**

#### **A. Revocation – Single Cause**

(Ex. Operator's / Field Representative's / Applicator's) License / Company Registration Certificate No. (Ex. OPR 1234) issued to Respondent (Ex. John Doe) is revoked.

#### **B. Revocation – Multiple Causes**

(Ex. Operator's / Field Representative's / Applicator's) License / Company Registration Certificate No. (Ex. OPR 1234) issued to respondent (Ex. John Doe) is revoked pursuant to Determination of Issues (Ex. I, II, and III) separately and for all of them.

#### **C. Suspension – Single Cause**

(Ex. Operator's / Field Representative's / Applicator's) License / Company Registration Certificate No. (Ex. OPR 1234, Branch(es) X) issued to Respondent (Ex. John Doe) is suspended (Ex. Thirty (30) consecutive days) beginning the effective date of the decision.

#### **D. Suspension – Multiple Causes**

(Ex. Operator's / Field Representative's/ Applicator's) License / Company Registration Certificate No. (Ex. OPR 1234, Branch(es) X) issued to respondent (Ex. John Doe) is suspended for (Ex. thirty (30) consecutive days) pursuant to Determination of Issues (Ex. I, II, and III) separately and for all of them. All suspensions shall run concurrently beginning the effective date of the decision.

#### **E. Suspension – Multiple Causes**

(Ex. Operator's / Field Representative's/ Applicator's) License / Company Registration Certificate No. (Ex. OPR 1234) issued to respondent (Ex. John Doe) is suspended (Ex. Thirty (30) consecutive days) pursuant to Determination of Issues (Ex. I, II, and III) and (Ex. Sixty (60) consecutive days) pursuant to Determination of Issues (Ex. IV and V). These suspensions shall run consecutively, for a total period of (Ex. Ninety (90) consecutive days) beginning the effective date of the decision.

**F. Standard Stay Order**

However, (revocation / suspension) is stayed and respondent is placed on probation for (Ex. \_\_\_\_\_ years) upon the following terms and conditions:

**G. Probation**

However, (revocation / suspension) is stayed and respondent is placed on probation for \_\_\_\_\_ years upon the following terms and conditions:

**STANDARD TERMS AND CONDITIONS OF PROBATION****[1] Obey All Laws**

Respondent shall obey all federal, state and local laws including all laws and rules relating to the practice of structural pest control.

Respondent shall submit a completed California Department of Justice and federal Livescan fingerprint form, unless previously submitted as part of the licensure application process. Fingerprint forms shall be submitted within thirty (30) calendar days of the effective date of the Decision and Order.

**[2] Quarterly Reports**

Respondent shall file quarterly reports with the Board during the period of probation, no later than ten (10) days after the end of the quarter.

**[3] Tolling of Probation**

In the event respondent should leave California to reside or practice outside the state, prior to departing, respondent must provide written notification to the Board of the dates of departure and anticipated return to the state. Respondent's probation is tolled if and when he or she ceases practicing in California. Periods of practice outside of California will not apply to the reduction of the probationary period. For purposes of this condition, non-practice due to Board ordered suspension, or in compliance with any other Board ordered condition of probation, shall not be considered a period of non-practice.

**[4a.] Notice to Employers (Individual Licensees)**

Respondent shall notify all present and prospective employers of the decision in case No. (Ex. 91-01) and the terms, conditions and restriction imposed on respondent by said decision. Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his/her employer, owner and qualifying manager to report to the Board in writing acknowledging he/she has read the decision in case No. (Ex. 90-01).

**[4b.] Notice to Employees (Registered Companies)**

Respondent shall, upon or before the effective date of this decision, post and circulate a notice to all employees involved in structural pest control operations which accurately recite the terms and conditions of probation. Respondent shall be responsible for said notice being immediately available to said employees. "Employees" as used in this provision includes all full-time, part-time, temporary and relief employees and independent contractors employed or hired at any time during probation. The notice shall be posted in a conspicuous place where employees can see it and shall remain posted the entire term of probation.

**[5] Violation of Probation**

Should respondent violate probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter has been acted upon by the Board.

**[6] Interview / Records: Board Or Its Designees**

Respondent shall be available in person upon reasonable request for interviews and the review of records either at respondent's place of business, residence, or other agreed upon location throughout the term of probation.

**[7] License Surrender**

Following the effective date of this decision, if respondent ceases practicing in the pest control industry due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license/registration to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon the Board's acceptance of the surrender, respondent shall within fifteen (15) days deliver to the Board's offices his/her wall and pocket license and company registration wall certificate. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license/registration shall be deemed a disciplinary action. However, if respondent re-applies for a license or registration, the application shall be treated as a petition for reinstatement of a revoked license/registration.

**[8] Completion of Probation**

Upon successful completion of probation, respondent's license / certificate will be fully restored.

**[9] Cost Recovery**

Respondent shall reimburse the Board investigation and enforcement costs in the amount of \$\_\_\_\_\_. Respondent shall pay these costs within 90 days of the effective date of the decision or through a payment plan approved by the Board. Failure to make a timely payment,

and/or failure to complete payment of cost recovery, shall constitute a violation of probation.

Periods of non-practice by Respondent shall not relieve respondent of his or her obligation to reimburse the Board for its investigative and enforcement costs. Probation shall not be terminated until all costs are paid-in-full.

## **OPTIONAL TERMS AND CONDITIONS OF PROBATION**

### **[10] Actual Suspension**

Respondent is suspended from practicing for (Ex. ten (10) consecutive days) beginning the effective date of the decision. This period of suspension shall not apply to the reduction of the probationary time period.

Note: The following paragraph applies only to companies:

Respondent structural pest control company shall prominently post a suspension notice provided by the Board of the Board's order of suspension at its principle office and each of its branch offices in a place conspicuous and readable to the public. The notice shall remain posted during the entire period of actual suspension.

### **[11] Continuing Education Course – Branch 1**

Respondent shall complete a continuing education course for pest control in Branch 1 (fumigation) within six (6) months of the effective date of this decision in addition to the existing license renewal requirements .

### **[12] Continuing Education Course – Branch 2**

Respondent shall complete a continuing education course for pest control in Branch 2 (general pest) within six (6) months of the effective date of this decision in addition to the existing license renewal requirements.

### **[13] Continuing Education Course – Branch 3**

Respondent shall complete a continuing education course for pest control in Branch 3 (wood destroying pests and organisms) within six (6) months of the effective date of this decision in addition to the existing license renewal requirements.

### **[14] Random Inspections**

Respondent shall reimburse the Board for (Ex. one (1)) random inspection(s) per (Ex. quarter) by Board specialists during the period of probation not to exceed \$125 per inspection.

**[15] Inspection Fees**

Respondent shall pay to the registrar, or designee, an inspection fee of (Ex. \$50) within thirty (30) days from the effective date of this decision.

**[16] Restitution to Consumer**

Respondent shall submit proof to the registrar that restitution in the amount of (Ex. \$8,000) has been made to (Ex. John Smith) within (Ex. thirty (30) days) of the effective date of the decision.

**[17] Prohibited from Serving as Officer, Director, Associate, Partner, or Qualifying Manager**

Respondent is prohibited from serving as an officer, director, associate, partner, qualifying manager, branch office manager, or responsible managing employee of any registered company during the period of probation.

**[18] No Interest In Any Registered Company**

Respondent shall not have any legal or beneficial interest in any company currently or hereinafter registered by the Board.

**[19] Take And Pass Licensure Examinations**

Within (Ex. six (6) months) of the effective date of this decision, respondent shall take and pass the (Ex. Operator's/Field Representative's/Applicator's) examination currently required of new applicants for (Ex. Operator's/Field Representative's) license. The examination shall be taken on regularly scheduled dates. Respondent shall pay the established examination fee. If respondent fails to pass said examination within (Ex. Six (6) months) of the effective date of this decision it shall constitute a violation of probation.

**CROSS REFERENCE  
BUSINESS AND PROFESSIONS CODE (B&P)  
SECTIONS TO BUSINESS AND PROFESSIONS CODE SECTION  
ESTABLISHING GROUNDS FOR DISCIPLINARY ACTION**

<b>VIOLATION OF B&amp;P CODE SECTION</b>	<b>GROUNDS FOR DISCIPLINE UNDER B&amp;P CODE SECTION</b>
8505	8651
8505.1	8646
8505.2	8646
8505.3	8646
8505.4	8646
8505.5	8646
8505.6	8646
8505.7	8646
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8505.13	8646
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8505.16	8646
8505.17	8646
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8551.5	8641, 8646
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8639	8641, 8646, 8648, 8651
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8642	8641, 8642
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8644	8641
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8647	8646
8648	8641
8649	8641, 8649
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8657	8641, 8646
8666	8641
8690	8641
8691	8641
8695	8641
8697	8641
8697.4	8641
8698.1	8641

**CROSS REFERENCE  
CALIFORNIA CODE OF REGULATIONS (CCR) SECTIONS  
TO BUSINESS AND PROFESSIONS CODE SECTION  
ESTABLISHING GROUNDS FOR DISCIPLINARY ACTION**

<b>VIOLATION OF CCR SECTION</b>	<b>GROUNDS FOR DISCIPLINE UNDER B&amp;P CODE</b>
1911	8641
1912	8650
1913	8641, 8650
1914	8650
1916	8641
1917	8650
1918	8641
1937	8641
1937.12	8641
1937.13	8641
1937.14	8635, 8636
1937.16	8641
1937.17	8641
1970(a)(b)	8652
1970.3	8646
1970.4(a)(b)(c)(d)(e)(f)	8646
1970.5	8646
1970.6	8646
1971(a)(1)(A)(B)(C)	8646
1971(a)(1)(b)	8646, 8647
1971(a)(2)	8646, 8647
1973	8646
1974	8646
1983	8643, 8647
1990	8641
1991	8641
1992	8641
1993	8641
1993.1	8641
1994	8641
1996	8641
1996.1	8641
1996.2	8641
1996.3	8641
1998	8641
1998(f)	8652
1999.5	8641