

MINUTES OF THE
PRE-TREATMENT COMMITTEE MEETING
OF THE
STRUCTURAL PEST CONTROL BOARD
June 14, 2007

The meeting was held on Thursday, June 14, 2007, at the San Diego State Building, 1350 Front Street, San Diego, California, commencing at 10:36 AM with the following members present:

Ron Moss, Chair
Kevin Ethridge
Rick Walsh

Committee members Ray Carrier, Mark Sklan, and Randy Zopf were not present.

Board staff present:

Ryan Vaughn, Administration Analyst

I. **ROLL CALL**

Mr. Moss read the roll call.

Mr. Moss reported that since there is not a quorum, the present committee members could only develop suggestions to forms and regulations to recommend to the committee when a quorum is present.

II. **APPROVAL OF MINUTES**

Minutes from the previous committee meeting were not prepared to be approved by the committee.

III. **DEVELOPMENT OF PROPOSED SOLUTIONS TO ENSURE THE PROPER PRACTICE OF PRE-CONSTRUCTION TERMITE TREATMENTS**

Mr. Moss reported that Kathy Boyle, Department of Pesticide Regulation, is assisting the committee and has some suggestions.

Ms. Boyle suggested that Mr. Moss give some history of the Pre-treatment Committee and what exactly the committee is hoping to accomplish.

Mr. Moss responded that the committee has tried to develop language that defines a "pre-treatment" in California. Mr. Moss read a definition that the committee had developed:

New construction treatment, pre-construction treatment, and pre-treatment are defined as any treatment performed prior to the placement of a permanent concrete slab, the installation of any device prior to or during construction, and installation of materials prior to or during the construction process to protect cellulose components of the structure. Post-construction treatments intended to provide protection to the cellulose components of the structure prior to occupancy are considered to be new construction treatments and are to be performed in accordance of these rules and regulations. New construction, pre-construction, and pre-treatment applications of materials for the protection from termites shall not be made at less than the manufacturer's label specifications. Horizontal barriers shall be established prior to the pouring of the slab. Horizontal barriers shall be defined as overall soil treatment under the concrete slab of living spaces and garages. Vertical barriers shall be established at penetrations or protrusions through the slab including but not limited to plumbing conduits, bath traps and tear outs, interior foundations or stem walls, piers, pillars, pipes or other objects that extend from the soil to the structure. A record of this treatment shall be conspicuously posted on the property.

Mr. Moss stated that the tag would include the person that applied the product, square footage treated, the percentage and amount of product used, as well as contact information. If an inspector did not witness the pre-treatment, all the important information would be included on the tag.

Mr. Moss added that the committee has also tried to develop a method of pre-treatment notification. Prior to application, the County Agricultural Commissioner's office is to be notified.

Ms. Boyle reported that pre-treatments in some other states are the only structural pest control treatments. There are states that are called "FIFRA states" in which all the enforcement is based on the product label. Other states such as Texas, Oklahoma, and Arizona have defined horizontal and vertical barriers as opposed to what is stated on the product label. She suggested that California take a similar approach in defining pre-treatment and horizontal and vertical barriers through regulation.

Robert Leitzel, Defend Exterminators Inc., stated his concern that a pest control company could restate a "pre-treatment" by calling it a "new home termite prevention" and not be included in the definition.

Ms. Boyle responded that he is speaking of possible marketing terms but it is the product labels that will contain the "pre-treatment" terminology.

Kevin Ethridge reported that in his revision of the definition, if it is not a pre-treatment, new construction treatment, during construction treatment, or pre-construction treatment it is considered a post treatment.

Mr. Ethridge asked for clarification on how the Structural Pest Control Board could be granted authority through statute.

Mr. Boyle responded that if it is determined that there is no legislative authority, it would take at least two years to get a bill through legislature and into the Board's statutes.

Mr. Ethridge stated that he had been appointed to the Pre-treatment Committee in 1995 so the two years it would take no longer scares him. He suggested adding pre-treatment to the notification requirement to the County Agricultural Commissioner's office as stated in Business and Professions Code (B&P Code) 8505.5.

Ms. Boyle responded that this solution would not be possible as the products used in pre-treatments are not restricted use materials. The notice of intent that is submitted to the County Agricultural Commissioners offices as mentioned in B&P Code 8505.5 is required because the products used for a fumigation are restricted use materials. Under existing law, the commissioners cannot ask for notification unless the product is a restricted use material.

Mr. Ethridge asked how could the committee add the notice of intent for pre-treatment into regulation.

Ms. Boyle responded that the Board's legal counsel would have to examine current law to determine if there is statutory authority and if there is not, a legislative bill would have to be drawn up.

Mr. Leitzel stated that it appears necessary to seek a legislative bill to grant the authority through statutes.

Claude English, Anna Montague & Claude English Partnership, agreed that the committee should seek a legislative bill.

Ms. Boyle responded that the process is laborious and complicated.

Mr. English stated that existing regulations require that the product label be followed.

Mr. Moss responded that many of the product labels are vague.

Mr. Ethridge stated he felt like the committee would rather attempt to go though the Board's regulations instead of statutes to define and enforce pre-treatments.

Mr. Moss called for Ms. Boyle to present what she had prepared.

Ms. Boyle provided a packet of information on the details of notification, the tag, and definition of pre-treatment. She reported that County Agricultural Commissioners are the first to tell you that they do not know pre-treatments. Ms. Boyle reported that the commissioner's offices are awaiting codified definitions of the pre-treatment terms. She recommended that the committee wait until a quorum is present to proceed with further discussion.

Mr. Leitzel stated that it appears that the best suggestion is to seek a legislative bill to provide the authority.

Ms. Boyle concurred that there would most likely have to be a bill to accomplish all the committee is trying to do but at the moment, nothing has been prepared to submit.

Mr. Leitzel suggested developing a pre-treatment log similar to that of the fumigation log.

Ms. Boyle suggested taking a look at the existing record keeping requirements.

Mr. Ethridge reported that he has served on many committees including one recently in Arizona where the state's rules and regulations were revamped. He asked whether the committee could use B&P Code 8635 as a basis to move forward with a new regulation.

Ms. Boyle responded that question would have to be directed towards the Board's legal counsel.

Mr. Leitzel cited California Code of Regulations Section 1991 (12)(b) stating that it gives the Board the authority to enforce a completion tag.

Ms. Boyle responded that regulations cannot grant authority but that it is the statutes that have to power to do so.

Mr. Moss brought up another issue of other possible methods of pre-treatments.

Ms. Boyle reported that the issue concerns the non-liquid termiticide products such as Borates and could include orange oil treatments. She reported that Borates is labeled as a pre-treatment.

Mr. Ethridge stated that the question is whether or not Borates can be considered a standalone pre-treatment. The problem he sees with Borates is that there are areas of a home that could be void of protection such as the control joint. He mentioned that other states including Oklahoma and Arizona have examined Borates as a pre-treatment and that the committee should gather scientific data to determine the effectiveness of the product.

Ms. Boyle added that representatives from Nisus spoke before the Board at the April Board meeting to petition that their Borates product, Bora-care, be recognized as a whole-house treatment.

Mr. Leitzel stated that the focus of the committee should be formulating enforcement that will ensure that the pest control company is following the product label and approving effective types of pre-treatment.

Mr. Leitzel suggested that the committee examine the forms that the Minnesota Pollution Control Agency (MPCA) has for soil treatments.

Ms. Boyle also suggested examining the forms posted on the Association of Structural Pest Control Regulatory Officials (ASPCRO) website. ASPCRO does not have enforcement power but the information that it provides might serve as possible guidelines for the committee.

Mr. Moss responded that the committee had reviewed the ASPCRO guidelines at previous committee meetings.

Ms. Boyle reported that if there is a delay in the approval of the state budget, Mr. Walsh and she might not be able to travel until September to attend the next meeting. If there is no delay in the signing of the budget, August might be a possibility.

Mr. Ethridge apologized for not having a quorum present. He was under the impression that the committee members had received notification of the meeting.

IV. ADJOURNMENT

Mr. Moss adjourned the meeting at 11:58 AM.

RON MOSS, Chair

KELLI OKUMA, Registrar

DATE