

**MINUTES OF THE
TECHNICAL ADVISORY COMMITTEE
JULY 7, 2009**

The meeting was held at the Department of Boating and Waterways, Conference Room, 2000 Evergreen Street, Sacramento, California, scheduled at 10:00 A.M. with the following members constituting a quorum:

Curtis Good, Chair
Dennis Robertson
Jean Melton
David Roe

Board Staff Present:

Robert Lucas, Chief Enforcement Officer
Dennis Patzer, Associate Governmental Program Analyst

I. ROLL CALL

At 10:10 A.M., Mr. Good called the roll. Except for Tom Murraray, all committee members are present.

II. APPROVAL OF MINUTES

Mr. Good moved and Ms. Melton seconded to approve the minutes of the May 19, 2009 committee minutes. Passed unanimously.

III. DISCUSSION AND DEVELOPMENT OF POTENTIAL AMENDMENTS TO SECTION 1993.3 OF THE CALIFORNIA CODE OF REGULATIONS (CCR) TO AUTHORIZE AN EXEMPTION TO THE CONTROL SERVICE REQUIREMENT WHEN AN IN-GROUND TERMITE MONITORING AND/OR BAITING SYSTEM IS INSTALLED FREE OF CHARGE.

Mr. Good opens comment on test holes. He outlines his concern about the committee's May 19, 2009 motion for test holes and the potential problems the motion may create in connection with building permit requirements. Kelli Okuma, Executive Officer of the Structural Pest Control Board (SPCB), comments that the committee may raise the test hole issue under Section IV of the Agenda. "PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA." Mr. Good acknowledged.

Mr. Good redirects attention to Agenda item III and suggest that "baiting systems' or like terminology be removed from the regulations. The committee believes that this is worth considering.

Mr. Good request that Gary Rowell, Orkin Inc., discuss what is meant by a "detection" service program and how it differs from a Control Service Agreement program (CSA).

Mr. Rowell states that detection and CSA's are distinctly different as well as the roles and the responsibilities of a Branch 3 licensee when providing such services. While he indicates that he did not believe a regulation change was required, he explains that, in the best interests of the industry, a legal review by SPCB staff may be necessary.

Mr. Rowell explains that consumers should be allowed to monitor the system indicating that detection is developing into a mainstream activity. He also explains that it provides additional revenue streams citing that many companies outside California charge an extra three (3), four (4), five (5) or even ten (10) dollars a month for such services. However, as Mr. Rowell explains, California consumers will not be charged for this service.

Mr. Rowell provided a copy of the service agreement for review by the committee. He states in summary the following:

This is not a CSA and it is stated several times in the document. We also ask that the customer acknowledge by signing that they understand what this agreement is. We have yet to receive a complaint about any kind of confusion with this type of agreement. The customers can relate to it and it is a value added service.

Mr. Rowell states that it's easy to tell in most cases if something is happening in the service. Unlike a CSA the customer is making the call and not the company.

Darrell Ennes of Terminix comments that the other {company's Service Managers company names not disclosed} in the states of Illinois, Georgia, Ohio and Florida use detection devices. Mr. Ennes states that the programs are successful and the customers approve of them. He further comments that Terminix's customers can reasonably examine whether an infestation has occurred because either a buzzer is set off, a light, or a flag. Under such circumstances, Terminix returns to the customer to identify the condition and if work is required. If work is required, Terminix issues a discount and guarantees its work. Terminix believes that this type of program is not a CSA.

Mr. Ennes continues in summary:

Whether a Branch 2 or Branch 3 or a homeowner, we still look at what remedial treatment is necessary. I think this is just a service to the consumer.

Other audience members comment that they believe there is a conflict with the use of such devices or programs. They maintain that since they are offered for free and that an inspection is conducted within a three-year period, this is a value added service. The audience maintains that only a Branch 3 should make the identification as opposed to a Branch 2.

Committee member Dennis Robertson states the following in summary:

We don't have a problem with detection. It is a function of a Branch 3 since it is for termites. An inspection should be done within three years because people may get a false sense if there is no problem. We do monitoring as a warranty program and it is fee based. I know that it is an added expense. The consumer is getting more for their money and they understand that. We can justify the costs.

Mr. Rowell believes that an inspection is required before the items can actual be installed. He continued that a three-year inspection should pose no issue.

Mr. Good conceptualizes that if a Branch 3 performs an inspection and assuming noting is found, the customer can be given the option to elect for a CSA or detection program.

Mr. Rowell continues about the number of devices installed maintaining that Orkin, Indc. Usually installs between six to eight devices while Terminix {as explained by Mr. Ennes} installs approximately eight devices.

Mr. Ennes comments that he does not agree with the three-year inspection requirement because it can be cost prohibitive. However, he agrees that an initial inspection should take place prior to the installation of the devices.

Mr. Good asked the significance of a full or limited inspection.

Mr. Rowell comments that the inspection is consumer driven.

Mr. Robertson states that the Structural Pest Control Act allows either a full inspection or a limited inspection.

Mr. Rowell states that three-year inspections add expense, but he believes this is a small compromise. He adds that some times the devices can fail and to replace them can add costs as well.

Mr. Good states that customer perceptions about a CSA verses a detection agreement can be confusing. Additionally, companies may have an incorrect perception because current laws and regulations require a baiting or monitoring system and not a detection system.

Mr. Rowell comments that a CSA requires that the customer pay for specific services at the beginning while a detection program is free of charge.

The audience comments that consumer cannot be expected to understand the differences between the two programs especially since a CSA warrants against damage while a detection program is dedicated only to infestation.

Bill Gaither questions how the program is to be administered if a customer cancels service or if the property is sold.

Mr. Rowell states that most agreements are transferable; the customers also have the ability to cancel the agreements. He states the following in summary:

The customers are provided both the CSA and the detection agreement and they are given an opportunity to decide which approach best suits their needs.

Ms. Melton comments in summary:

I have concerns. We have orange oil, baiting stations and people tend to think they're covered and yet their property is being damaged. I had a ninety-two year old lady – a company is only as good as its worst employee – and the salesman said that if the attic and sub area are not dusted, it will cost her \$25,000 to fumigate. We have Branch 2 licensees making calls [identifications] and they are not licensed to do that.

Mr. Ennes agrees that there is still confusion in the industry where people do not know the difference between a household pest compared to a wood-destroying pest. However, he comments that as long as the agreement is spelled out clearly in the beginning, this should reduce confusion.

Ms. Melton comments that four to eight bait stations do not ensure that a home is protected inside.

Mr. Rowell comments that the agreement is intended to cover as many scenarios as possible, but that it is not all encompassing. It has proven to work by providing all the required disclosures in the beginning leaving no doubt for customers what services they will be receiving.

Dennis Patzer states that he has four concerns: (1) the program must keep pace with technology [i.e. the use of motion detection practices may change], (2) 1993.3 CCR must be amended to reflect detection as not being a CSA, (3) who is authorized to make an identification [the use of non-licensees or Branch 2 licensees diminishes the purpose of the Branch 3], and (4) laws and regulations should not be written in order to further marketing and advertising agendas.

An audience member comments that in the last meeting Mr. Patzer proposed specific language to better define 1993.3 CCR although the definition was not officially voted.

Mr. Patzer responds that he maintained the information in his notes and would locate it.

Mr. Rowell states that the primary concern in a detection program is the qualifications of the person making the identification of termites.

Mr. Good states that the program is yet another tool availing consumers an opportunity to take part – it brings awareness and it involves them.

Mr. Patzer comments that not all companies may be providing such services in the same manner; consistency will be a major problem especially since there are over 2,000 companies whose approaches may differ from Orkin or Terminix.

Mr. Rowell stressed that detection service is free since no one is making identifications at the beginning. He reiterates that the customer will be monitoring for detection. If the device is later triggered, the Branch 3, who is contacted by the customer, makes the identification.

Mr. Gaither responds to Mr. Patzer's earlier comment by stating in summary, "It sounds like you're saying that other companies out there are crooks?"

Mr. Patzer responds that is not his intent. He further comments that in-ground devices, or any other devices used for detection, according to the laws and regulations, are CSA's. Companies must comply with the law.

Ms. Okuma responds that the regulations, as written, do not exempt a company from a CSA even if it is customer driven.

Mr. Good states he believes that 12-15 stations actually should be installed around homes and even as many as 24 to 30 stations. The placement of just two stations can be a problem.

Mr. Rowell suggests that detection and monitoring should be defined perhaps. He recounts that it is still his belief that the regulation already covers detection services.

Mr. Patzer questions how a company can control false customer calls (i.e. company responds on week 1 and week 5) especially if it is repeated within the three-year period.

Mr. Rowell states that detection is a protection program and companies should be able to minimize repeated calls.

An audience member states that his customers (in the Bay area and central coast) want spot treatments only as opposed to full treatments.

Mr. Good requests to poll the committee on whether a regulatory change is required.

Ms. Melton states that the SPCB legal staff should review this issue first before further considerations are made.

Mr. Good requests a vote on whether a legal review of 1993.3 CCR is necessary.

Ms. Okuma mentions that she had an earlier discussion with legal counsel that this issue should be clarified and that business practices must be defined.

Ms. Melton questions if Terminix has any written agreements.

Mr. Ennes responds that Terminix uses oral agreements only.

The audience expresses concern about allowing the three-year mandatory inspection believing that it should be an option or upon request.

Robert Lucas states that permissive language may be used.

Mr. Gaither states that he prefers that inspections be an option.

Mr. Lucas recites that there must be a distinction made between detection and monitoring and whether inspections should be an option.

Mr. Patzer states that he located his notes. He states that his notes refer to adding subsection "c" to 1993.3 CCR. He reads, "This section does not apply to the placement of detection devices after an initial inspection by a registered company has been made when activity in the device is determined and actual identification must be made by a branch 3 licensee."

Mr. Good requests that the committee move to allow a review of 1993.3 CCR with legal counsel and to await an opinion before moving forward. The committee motioned unanimously.

IV. PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA

Ms. Okuma states that the committee seeks to revise the issue of test holes.

Mr. Good states that the committee's May 19, 2009 motion requires further evaluation, based on Mr. Lucas' insight, that building code standards were not fully considered.

Mr. Lucas states that provisions under Title 24 of the Building Standards Code must be evaluated as to their relevance in connection with test holes. A review of the International Building Codes, the California Building Codes, the International Residential Codes, city and/or county codes adopted are necessary. Additionally, organizations responsible for drafting standards should be contacted and this includes, but may not be limited to the International Code Council, California Association of Building Officials and the International Conference of Building Officials. Mr. Lucas states that SPCB staff has been collecting information and will be submitting that information prior to the next TAC meeting.

The audience suggests that SPCB laws be amended to recognize the building department's requirements.

Mr. Good, upon input from Mr. Lucas and Ms. Okuma, requests that the issue of test holes and building code requirements be discussed, as an agenda item, at the upcoming

July 23-24, 2009 Board Meeting and that the May 19, 2009 motion be set aside pending further developments.

The committee moved in favor of this issue being reevaluated.

A member of the audience comments on marketing and overall business practices under 1993.3 CCR, Agenda Item III, and the confusion and benefits associated with detection programs.

V. ADJOURNMENT

Mr. Good adjourned the meeting at approximately 11:15 A>M>



Curtis Good, Chairman

2-9-10
Date