

MINUTES OF THE
TEST HOLE COMMITTEE MEETING
OF THE
STRUCTURAL PEST CONTROL BOARD
May 26, 2011

DRAFT

The meeting was held on Thursday, May 26, 2011, at Western Exterminator Company, 305 North Crescent Way, Anaheim, California, commencing at 10:00 A.M. with the following members present:

Mike Katz, Chairman
Allen Kanady
Bob Gordon
Darrell Ennes

Board member Curtis Good and board staff member William Douglas were also in attendance.

Bill Gaither was also in attendance representing PCOC.

Mr. Katz stated that the use of test holes has been relegated to Northern California for many years during the initial inspection process when there are no outward indications of an infestation. He stated that a few years back, a board specialist issued a citation to an inspector who had made test holes without issuing a report. He added that the Department of Pesticide Regulation's legal staff recently reviewed the current regulations and determined that test holes cannot be performed without first issuing a report. He stated that the purpose of this committee is to determine what, if any, actions should be taken to either amend the current regulations to allow for test holes prior to issuing a report or leave the current regulations as they are.

Mr. Ennes commented that he feels that allowing test holes at the time of inspection better serves the consumer and that test holes should be a part of the initial inspection process. He suggested that there should be guidelines regarding a reasonable size of the test holes.

Mr. Gordon stated that this issue arose when two inspectors did their own inspections on the same property in which one made test holes and the other didn't. He added that the inspector that did not make test holes was reprimanded for not making test holes to find the infestation and the inspector who did make test holes was issued a citation for making the test holes with out issuing a report. He explained that only with experience will an inspector learn to identify when or where a test hole is needed and to better protect a new inspector out doing an inspection, section 8516 should be amended to allow test holes at the time of the original inspection at the discretion of the inspector.

Mr. Kanady stated that he makes test holes on a regular basis but since the legal opinion was publicized that he now issues an original inspection report prior to making test holes. He added that he feels that it benefits the consumer to issue a report before making test holes because the consumer then has time to discuss their options with the other homeowners or the realtor. He stated that realtors understand that a report now needs to be issued prior to making test holes and will schedule the inspections accordingly. He commented that at first he was against having to issue a report before doing test holes, but since he has been doing it, has realized that it is not as big of a problem as he expected and that he does not feel that the regulations need to be changed. He stated that homes with certain types of roofs should always have test holes done even when there are no outward signs of damage. He added that by using a hammer or mining pick approximately twelve to fifteen test holes about two inches in diameter each are made from the exterior of the structure to access the inaccessible high risk areas. He stated that now his company charges to make test holes whereas before the legal opinion was made public, they did not charge to do so as they were considered part of the original inspection but whether or not a company charges to make test holes is at the discretion of the company.

Mr. Good stated that making test holes is not making any improvements to the structure and still part of the inspection process and the current regulation punishes the good inspectors who know when test holes are necessary. He commented that knowledge and experience cannot be regulated and added that there are many other situations where an inspector is not making test holes but still opening inaccessible areas for further inspection which is still part of the inspection process in determining the integrity of the structure.

Mr. Kanady stated that about 85 percent of the time there is damage when opening inaccessible areas with no outward signs of damage and that his employees train for at least six months before being allowed to do inspections on their own.

Mr. Katz reviewed letters received regarding this meeting and stated that one letter objected to the meeting being held in Southern California since test holes are mainly a Northern California issue. He stated that John Ellinger, former board specialist, is of the opinion that test holes should be allowed under current regulation. He added that a realtor submitted a letter commenting that having to issue a report prior to making test holes makes the inspection process more time consuming and costly and suggested that the opinion of the realtor is not in the best interest of the consumer and may be driven by self interest.

Mr. Gordon questioned Mr. Kanady as to what the evidence for further inspection would be to make test holes when there are no outward signs of a problem.

Mr. Kanady responded that the roof system would be considered the evidence.

Mr. Katz questioned since this is only an issue in a few areas of Northern California, how it would affect the industry in the rest of the state should the committee decide to change

regulations to allow test holes without outward evidence of an infestation and commented that people will criticize the industry saying that issuing a report prior to making test holes now allows companies to charge for services that used to be free of charge but he thinks time should be compensated when advice is being provided by an expert.

Mr. Good stated that the previous specialist would have issued a citation for not making test holes and the current specialist is issuing citations for making the test holes.

Mr. Katz stated that with the interpretation by DPR's legal counsel, the board has no choice but to deem the practice of making test holes at the time of the inspection illegal.

Mr. Good stated that the legal opinion states that the existing law addresses visible infestations and the possibility of infestations.

Mr. Gaither stated that he does not want to do anything that is going to increase the liabilities of the companies doing the inspections.

Mr. Kanady stated that making test holes is a very intrusive process and should not be forced on a consumer. He added that the membrane will be compromised by making test holes but patching the test holes corrects the issue.

Mr. Katz stated that the options that the committee has is to either make the test holes allowable during the original inspection or amend the current regulation to allow test holes without outward signs of infestation. He expressed concern that a citation may be issued for making test holes based on experience of working with a certain roofing style as a specialist may not see that as a visible sign.

Mr. Kanady responded that he isn't very concerned with that happening.

Mr. Gordon stated that the legal opinion provided puts licensees in a bad position in court as they can be told that there was a possibility of infestation so they should have made a recommendation for further inspection. He added that whether a person is innocent or not, they are still responsible for legal fees associated with defending themselves. He reminded the committee that it is the responsibility of the committee to either make a regulation to address the issue or to do nothing by following the current regulation.

Mr. Katz stated that he does not feel that the Act supports the legal opinion provided because it requires evidence to make the recommendation.

Mr. Ennes commented that he would be more comfortable with the legal opinion if the word possibility was removed.

Mr. Kanady commented that he is not concerned with the legal opinion addressing the possibility of infestation because it refers to existing law and if a problem were to arise, the existing law would have to be looked at after going over the legal opinion.

The committee reviewed the related sections of the Act and determined that the legal opinion is supported by the Act.

Mr. Kanady stated that he does not think anything needs to be done and the regulations regarding test holes should be left as they are.

Mr. Ennes stated that he agrees that the regulations need not be changed and licensees should take the extra steps to write a recommendation prior to opening inaccessible areas.

Mr. Gaither stated that he attended the Diablo Valley District meeting earlier in the week and it was the general consensus between those participants that the current law should not be changed.

Mr. Gordon moved and Mr. Kanady seconded to recommend to SPCB to leave the Act as it relates to test holes as permitted under section 8516 (b) (6,7,9) and directed staff to provide clarification of the process to the industry. Passed unanimously.

Mr. Katz asked that board staff issue a “specific notice” providing a clear procedure as to how to access inaccessible areas.

Mr. Douglas stated that issuing a specific notice would create an underground regulation beings that the procedures regarding accessing inaccessible areas is already spelled out in the Act.

Mr. Katz requested that a presentation of the committee’s recommendations be put on the agenda for the July board meeting.