

MINUTES OF THE
STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE
MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
September 7, 2011

The meeting was held on Wednesday, September 7, 2011, at Western Exterminator Company, 305 North Crescent Way, Anaheim, California, commencing at 10:01 A.M. with the following members present:

Bob Gordon, Chairman
Mike Katz
Allen Kanady
Darrell Ennes
Lee Whitmore

Committee member Cris Arzate was not in attendance:

Board staff present:

Bill Douglas, Interim Executive Officer
Susan Saylor, Assistant Executive Officer
Ronni O'Flaherty, Staff Services Analyst

Departmental staff present:

Mitch Gorsen
Peggy Byerly

Board member Curtis Good was also in attendance.

L.A. County Agricultural Commissioner's Office staff present: Sherlan Weblett

Mr. Gordon opened the floor for conversation regarding the direction the committee will take in reviewing the Act.

Mr. Good stated that his vision is to completely review the Act and bring all of the contents up to date with current standards.

Mr. Gordon suggested reviewing the recommended changes from previous reviews of the Act and deciding whether to go through with them or not and then divide the remaining sections among committee members to review and make suggestions for changes at a future committee meeting.

Mr. Gordon pointed out that Business and Professions Code (B & P Code) section 8520 in the current printed version of the Act states that: "This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed." He questioned whether this relates to the sunset dates of the board.

Mr. Douglas stated that the sunset dates for the Board were extended to 2015.

The committee recommended for staff to change B & P Code section 8520 from 2012 to 2015.

Ms. Weblett expressed concern with the enforceability of codes due to the way that they are written and asked the committee to consider this when reviewing and making changes to the Act.

Mr. Gordon opened the floor for discussion regarding the recommended changes to B & P Code section 8617 (f).

Ms. Saylor stated that the companies are required to file their reports within 10 days, and by adding, "or allow any Wood Destroying Organisms (WDO) filings" to B & P Code section 8617 (f), the board would be telling companies they have to file but not allow them to file because of unpaid fines.

Mr. Katz stated the purpose of withholding pesticide use stamps from companies who owe fines is so they can't work until their fine is paid and that not allowing a branch 3 company to file WDO reports does the same.

Mr. Douglas stated that when a citation is issued, the licensee has the right to an informal conference and 30 days would have to be allowed for them to contest the violation before staff disables their account to not allow them to file.

Mr. Katz moved and Mr. Ennes seconded to recommend to the Board to add "or allow any Wood Destroying Organisms (WDO) filings" to section 8617 (f) of the B & P Code. Passed unanimously.

8617. (f) Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board. Where a citation containing a fine is issued to a licensee and it is not contested or the time to appeal the citation has expired and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of that license. A license shall not be renewed without payment of the renewal fee and fine. Where a citation containing a fine is issued to a registered company and it is not contested or the time to appeal the citation has expired and the fine is not paid, the board shall not sell to the registered company any pesticide use stamps or allow any Wood Destroying Organisms (WDO) filings until the assessed fine has been paid. Where a citation containing the requirement that a licensee attend and pass a board-approved course of instruction is not contested or the time to appeal the citation has expired and the licensee has not attended and passed the required board-approved course of instruction, the licensee's license shall not be renewed without proof of attendance and passage of the required board-approved course of instruction.

Mr. Kanady opened the floor for discussion regarding section 8551.5 of the B & P Code.

It was discussed that the term "pesticide" is commonly used and "rodenticide, or allied chemicals or substances" is not necessary, as they are inclusive in the common field definition of "pesticide".

Mr. Kanady suggested allowing 60 days instead of 30 days after employment to apply pesticides under the direct supervision of a field representative or operator for purposes of training. He added that 30 days is not enough time for a new employee to pass the examination and it becomes costly to employ someone who can not be used for work.

Mr. Whitmore moved and Mr. Kanady seconded to recommend to the Board to change section 8551.5 of the B & P Code from 30 to 60 days and to remove "rodenticide, or allied chemical or substances" in two places of this section. Passed unanimously.

8551.5. No unlicensed individual in the employ of a registered company shall apply any pesticide, ~~rodenticide, or allied chemicals or substances~~ for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests, or organisms included in Branch 2 or Branch 3. However, an individual may, for ~~30~~ 60 days from the date of employment, apply pesticides, ~~rodenticides, or allied chemicals or substances~~ for the purposes of training under the direct supervision of a licensed field representative or operator employed by the company. This direct supervision means in the presence of the licensed field representative or operator at all times. The ~~30-~~ 60 day time period may not be extended.

Mr. Gordon opened the floor for discussion on B & P Code 8505.

Mr. Whitmore pointed out that "pesticide, rodenticide, or allied chemicals or substances" is used in B & P Code section 8551.5 but in B & P Code section 8505 refers to "insecticides, pesticides, rodenticides, or allied chemicals or substances or mechanical devices" and commented that terms should be used consistently throughout the Act.

After much discussion, it was decided that before making any decisions regarding the suggested replacement of "pesticide, rodenticide, or allied chemicals or substances" with just "pesticide" that a definition of "allied chemicals" should be provided to determine its original intent.

Mr. Katz moved and Mr. Kanady seconded to seek a definition of "allied chemicals or substances" from DPR's legal counsel before removing it from the text of the Act and repeal the part of the last motion suggesting "rodenticide, or allied chemicals or substances" be removed from section 8551.5 of the B & P Code. Passed unanimously.

8551.5. No unlicensed individual in the employ of a registered company shall apply any pesticide, rodenticide, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests, or organisms included in Branch 2 or Branch 3. However, an individual may, for ~~30~~ 60 days from the date of employment, apply pesticides, rodenticides, or allied chemicals or substances for the purposes of training under the direct supervision of a licensed field representative or operator employed by the company. This direct supervision means in the presence of the licensed field representative or operator at all times. The ~~30-~~ 60 day time period may not be extended.

Mr. Gordon opened the floor to discuss the recommended changes to section 8505.4 of the B & P Code.

Mr. Whitmore commented that he thinks that the intent of this proposed change was to make the code inclusive of all ordinances but the word "federal" would be repetitive because the code ends with language including the "regulations of the United States"

Mr. Gordon asked the committee to hold off on discussion regarding the recommended changes to B & P Code section 8507.1 until the term "allied chemicals or substances" is defined. He then opened the floor for discussion of the recommended changes to B & P Code 8519.

Mr. Whitmore pointed out that the term "infestation or infection" is used throughout the Act and if the committee changes it in one section, it should be made uniform throughout the Act.

Mr. Ennes moved and Mr. Katz seconded to not make changes to sections 8519, 8556, 8644 and 8505.4. Passed unanimously.

Mr. Gordon opened the floor for discussion regarding the recommended changes to B & P Code section 8553.

The committee decided that the recommended change to make it a felony rather than a misdemeanor to violate any provisions of the Act is against the legal standard and the committee or the board does not have the authority to make this change.

Mr. Katz moved and Mr. Ennes seconded to not make the recommended changes to section 8553 of the B & P Code. Passed unanimously.

The committee expressed concern that the fees in B & P Code section 8553 have not been changed to make them consistent with the current fee structure.

Mr. Whitmore moved and Mr. Katz seconded to recommend to the Board to change B & P Code section 8553 from \$1000 to \$5000 and from \$100 to \$50 to make these sections current with Title 16, section 1922 of the California Code of Regulations. Passed unanimously.

8553. Any person who violates any provision of this chapter, or who conspires with another person to violate any provision of this chapter, is guilty of a misdemeanor, and is punishable by a fine of not less than ~~one hundred dollars (\$100)~~ fifty dollars (\$50) nor more than ~~one thousand dollars (\$1,000)~~ five thousand dollars (\$5,000), or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Mr. Gordon opened the floor for discussion regarding the recommended changes to section 8505.1 of the B & P Code.

After much discussion, the committee decided that the definition of fumigation has not changed and it is not necessary to change it, but because sulfur dioxide and propylene oxide are no longer used, they should be removed from the list of lethal fumigants.

Mr. Whitmore moved and Mr. Katz seconded to remove "Sulfur dioxide" and "Propylene oxide" from the list of lethal fumigants in section 8505.1 of the B & P Code. Passed unanimously.

8505.1: (a) Except as provided in subdivisions (b) and (c), for the purpose of this act, "fumigation" shall be defined as the use within an enclosed space for the destruction of plant or animal life, a substance having a vapor pressure greater than 5 millimeters of mercury at 25 degrees centigrade when the substance is labeled for those purposes.

The following is a list of lethal fumigants:

- (1) Methyl bromide.
- ~~(2) Sulfur dioxide.~~
- ~~(3) Propylene oxide.~~
- (4 2) Sulfuryl fluoride.
- (~~5~~ 3) Aluminum phosphide.

The board may adopt, and may as necessary amend, by regulation, a list of fumigants.

(b) For the purpose of this act, "warning agent" shall be any agent used in combination with any fumigant that lacks warning properties.

The following is a warning agent:

Chloropicrin.

The board may adopt, and may as necessary amend, by regulation, a list of warning agents.

(c) For the purpose of this act "simple asphyxiants" shall not be deemed to be fumigants.

The following is a list of simple asphyxiants:

- (1) Liquid nitrogen.
- (2) Carbon dioxide.

The board may adopt, and may as necessary amend, by regulation, a list of simple asphyxiants.

Mr. Gordon opened the table for discussion regarding the recommended changes to section 8516 of the B & P Code.

Mr. Gordon stated that B & P Code section 8516 is the most predominant section in the Act and suggested that the committee table this section for a future meeting when an entire meeting could be dedicated to its review.

Mr. Ennes moved and Mr. Kanady seconded to table the review of changes to B & P Code section 8516 until a future meeting. Passed unanimously.

Mr. Gordon directed the committee to review the proposed restructure of Article 1.

Mr. Whitmore commented that the proposed restructure of Article 1 is more user friendly than the way it is currently written and that the committee should look at the structure separate from the content of the proposed changes.

Mr. Douglas stated that there may be a lot of resistance trying to get this through legislation as every B & P Code relating to the Act would be looked at to compare definitions and those codes would have to be changed as well to be consistent with the definitions outlined in the proposed restructure of Article 1.

The committee suggested that the list of definitions as provided in the proposed restructure be put on the web site for public access.

Mr. Whitmore moved and Mr. Ennes seconded to keep the structure of the Act as it currently is but consider changes to the content upon arrival at those sections. Passed unanimously.

The committee reviewed the "Proper Pre-construction Subterranean Termite Treatments" guide.

Mr. Katz moved and Mr. Whitmore seconded to direct staff to review the contents of this guide for value. Passed unanimously.

The committee discussed bond and insurance requirements and the board's authority to assist a branch 1 company in collecting monies owed to them from a branch 3 company.

Mr. Good stated that consumers are having liens put against their homes due to branch 3 companies not paying branch 1 companies; and this can be avoided if the Board would enforce B & P Code section 8653.

Mr. Douglas stated that although the Board does not have the right to obtain a pest control company's financial records, if a violation is written for non-payment of monies due to a branch 1 company, the branch 3 company can contest the violation and request an informal conference at which point it is the burden of that company to provide evidence that they can not pay the branch 1 company.

Mr. Good stated that if a branch 1 company provides evidence from the consumer that the consumer indeed paid the branch 3 company that is all that should be needed for the Board to write a violation and fine the branch 3 company under B & P Code section 8653. He added that even though this would not force the branch 3 company to pay the branch 1, it would deter them from making this a habit and puts a traceable record relating to that company.

The committee members chose to divide the 10 articles and Chapter 14.5 of the Act among themselves to review and make suggestions for changes at the next committee meeting. The division of these articles is as follows:

Article 1: Mr. Katz and Mr. Kanady with input from Mr. Whitmore
Articles 2, 2.5, and 3: Mr. Gordon
Articles 4, 5, and 6: Mr. Ennes
Articles 7 and 8: all committee members
Articles 9 and 10: Mr. Arzate with input from Mr. Good
Chapter 14.5: Mr. Whitmore

Ms. Byerly stated that the Southern California CACs have concerns with section 8663 of the B & P Code that extend beyond the suggested changes to that section. She asked the committee how questions directed at the committee should be routed. She stated that a "major violation" as described in section 8663 does not translate to a specific class according to section 1922 of the California Code of Regulations.

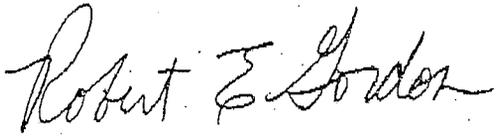
Ms. Weblert stated that it is difficult to get a copy of the violation out within 15 days of the violation.

Mr. Whitmore volunteered to review and make recommendations regarding section 8663 of the B & P Code at the next committee meeting.

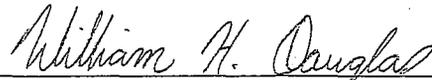
Mr. Kanady moved and Mr. Ennes seconded to allow Mr. Whitmore to review B & P Code 8663 and make recommendations to the committee at the next meeting.

The next meeting of this committee was scheduled for 9:00 A.M. on Wednesday, November 16, 2011 in Sacramento.

The meeting was adjourned at 2:56 P.M.



Bob Gordon, Committee Chairman



William H. Douglas, Interim Registrar

11/18/11
DATE