

MINUTES OF THE
STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE
MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
April 4, 2012

The meeting was held on Wednesday, April 4, 2012, at Western Exterminator, 305 North Crescent Way, Anaheim, California, commencing at 9:00 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
Tom Ineichen, Board Specialist

Departmental staff present:

Peggy Byerly

Board member Curtis Good was also in attendance.

ROLL CALL

Mr. Douglas called roll call.

APPROVAL OF MINUTES OF THE JANUARY 11, 2012 COMMITTEE MEETING

The committee reviewed the changes made to the draft minutes of the January 11, 2012 meeting.

Mr. Ennes moved and Mr. Whitmore seconded to approve the minutes of the January 11, 2012 committee meeting with the noted changes. Passed unanimously.

REVIEW OF THE STRUCTURAL PEST CONTROL ACT AND TITLE 16, CALIFORNIA CODE OF REGULATIONS, FOR PURPOSES OF UPDATING AND IDENTIFYING CONTINUED NEED AND/OR USE

Mr. Douglas stated that for the record, the April 5 meeting has been cancelled.

Mr. Gordon expressed concern with section 8516 and the requirement to provide a bid for all aspects of a job and the inability of some inspectors to provide such bids.

Mr. Kanady stated that occasionally, a job requires work to be done that a pest control operator is not qualified to bid on or complete.

The committee discussed the requirement to file an inspection with the Board within 10 days of commencement of an inspection and how that affects inspections that take more than 10 days to complete. They decided that this does not occur on a frequent basis and the statute should remain as written.

The committee discussed making changes to require each address inspected to have its own report written and decided to leave the current statute as it is allowing for connecting structures to be issued a single report.

Mr. Kanady asked if there is a problem with companies that are licensed in both branch 2 and 3 performing a branch 2 inspection but also providing the homeowner with branch 3 findings without issuing a branch 3 report.

Mr. Ineichen stated that this has not been much of an issue and it is allowable for a branch 2 inspector to verbally inform a homeowner that there are branch 3 issues as long as they are not claiming to be a Branch 3 professional or provide branch 3 recommendations.

Mr. Gordon asked if the Board runs into problems with companies that are licensed in both branches 2 and 3 performing inspections and recommending fumigations for termites without issuing a branch 3 report and claiming the fumigation was recommended for other general pests and not termites.

Mr. Douglas stated that he has not run into such cases.

The committee discussed the requirement to have separate recommendations for each finding on the inspection report and how this is not happening all the time with reports that are being written within the industry. The committee came to the conclusion that this is not a problem with the Act, but more of an enforcement issue and this requirement is in the Act to protect the consumers.

Mr. Ineichen expressed concern with Section 8516 (c) (1) using the word "evident" and the confusion this causes in regards to section 1 and 2 findings.

Mr. Kanady commented that it is a disservice to the consumer to report section 1 findings as section 2 findings just because an inspector may not see fungus when, in fact, they know that there is fungus damage. He added that section 1 findings are corrected by the seller of the home and the buyer should not be responsible for the damage because it was reported as section 2.

Mr. Good stated that such findings as Mr. Kanady described should be reported as unknowns and the purchaser and seller of the property should have to decide who is responsible for finding out the extent of the problem and who is responsible for fixing it.

Mr. Ineichen suggested the committee either further define section 1 and section 2 or throw it out because it should not be the responsibility of an inspector to decide who is responsible for what damages during the sale of a property, it is their job to identify and report the problems and from there the buyer and seller should have to decide who is responsible for what.

The committee discussed changing the word "evident" to "visible" or the possibility of adding a "section 3" for inaccessible areas or recommendations for further inspections. The committee decided to leave this paragraph as it is.

The committee discussed control service agreements and extended warranties and considered adding requirements for companies to keep the original reports as long as there is a valid warranty or ongoing service agreement and discussed whether or not another inspection should be performed should a warranty or controlled service agreement extend past three years.

Ms. Byerly recommended that the committee define both "control service agreement" and "extended warranty".

Carl Doucette asked for clarification regarding reporting the number of applications on the Pesticide Use Report.

Mr. Ennes stated that only some counties require reporting the number of applications as well as the total use for the month.

Mr. Gordon brought the committee back to the discussion regarding keeping original reports beyond three years when there is a continuous termite service agreement in place. He asked if the committee wanted to recommend keeping these reports for an additional two years from the date of termination of the service agreement.

Mr. Ennes stated that keeping these reports for an additional two years after termination of a contract would require a lot more storage space for larger companies. He added that since it is required to reinspect a property every three years within a service agreement, the most current report should still be available after the termination of the agreement.

Mr. Ennes moved and Mr. Kanady seconded to recommend the following changes to Section 8516(h)(1)(E) and to add section 8516(j) as follows. Passed unanimously.

8516(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 that could infest and infect the structure.

(B) The wood destroying pests and organisms covered by the control service agreement. 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, and agreement, and completion report shall be maintained for the duration of this agreement.

(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.

(J) All control service contracts, agreements, and documents shall be maintained for two years after cancellation of control service.

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

(3) 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.

(4) 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.

(5) All notice requirements pursuant to Section 8538 shall apply to all pesticide treatments conducted under control service agreements.

(6) For purposes of this section, "control service agreement" means any 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.

The committee reviewed Section 8516.5 and Mr. Douglas stated that at the previous meeting, the committee discussed eliminating this section but there was no motion made.

Mr. Kanady moved and Mr. Ennes seconded to recommend to the Board to eliminate Business and Professions Code section 8516.5. Passed unanimously.

~~8516.5 Any registered company that makes an inspection of any property relating to the absence or presence of wood destroying pests or organisms on such property and makes a report of such inspection shall furnish a copy of the report either to the owner of the property or to the agent of the owner, within 10 working days after the date the inspection is commenced, except an inspection report prepared for use by an attorney for litigation is not required to be furnished.~~

Mr. Ineichen suggested that the committee defines "inspection" because there is nothing in law that prevents an inspector from writing a report and bid from another company's inspection report and photos.

The committee discussed Sections 8517 and 8518 and agreed that these sections could be written more clearly.

Mr. Katz moved and Mr. Ennes seconded to recommend to the Board to delete Section 8517 and adopt the second sentence of Section 8517 as the second paragraph of Section 8518. Passed unanimously.

~~8517. Any work contract, billing, agreement, letter of work completed, or other correspondence or document expressing an opinion or making a statement relating to the presence or absence of wood destroying pests or organisms or nondecay fungi, shall refer to the inspection report required by Section 8516. These documents shall indicate specifically whether all of the recommended work as set forth in the inspection report was completed, or, if not, the document shall indicate specifically which recommendations were not completed.~~

8518. 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 working 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.

These documents shall indicate specifically whether all of the recommended work as set forth in the inspection report was completed, or, if not, the document shall indicate specifically which recommendations were not completed.

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 working days after completed work.

Every property upon which work is completed 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 upon which work was completed pursuant to subdivision (b) of Section 8516 or Section 8518 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 registered company shall retain for three years all original notices of work completed, work not completed, and activity forms.

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.

The committee discussed Section 8518 and agreed that there were not any additional changes that they would like to see made.

The committee discussed Section 8519 and the ability to certify a reinspection on a property that an inspector may not have been able to perform a full inspection on. They came to the conclusion that a certification can be very misleading when purchasing a property and the homebuyer does not always read all the documents set in front of them for signature at the point of sale and seeing a clearance certification would make one assume the property is free and clear, when, in fact the entire property has not been inspected.

Mr. Ineichen stated that there should possibly be two additional subsections to Section 8519, one for reinspections and another for uninspected, inaccessible areas, and limited inspections.

Mr. Kanady suggested adding a law to require language such as "this entire structure has not been inspected" to any certification for a limited inspection. He agreed with Mr. Ineichen that two additional sections should be added to address reinspections and limited inspections.

The committee agreed to add subsections (d) and (e) to Section 8519 relating to certifying limited inspections and reinspections.

Mr. Gordon suggested the language reads as follows for section 8519 (d): "When a limited inspection report is prepared pursuant to Section 8516 discloses no infestation or infection, this is to certify that the area inspected on this limited inspection report dated ____ (date) in accordance with the Structural Pest Control Act, rules and regulations adopted pursuant thereto and that no evidence of active infestation or infection was found in the visible area(s) inspected".

Mr. Ineichen suggested the language for Section 8519 (e) reads as follows: "When reinspection report prepared pursuant to Section 8516 discloses that the conditions were corrected by others and no infestations or infections were found in the visible and accessible areas".

Mr. Kanady moved and Mr. Katz seconded to table the vote for Section 8519 for a future meeting. Passed Unanimously.

The committee reviewed Section 8519.5 and discussed the inability to fumigate a property without first identifying a target pest.

Mr. Gordon stated that Section 8519.5(b)(1) allows a Branch 1 licensee to identify pests.

Mr. Ineichen commented that the committee should also address who is responsible for cleaning up pellets after fumigation.

Mr. Whitmore stated that this section only addresses directly contracted failed fumigations and commented that Section 8519.5(b) should be eliminated in its entirety.

After much discussion, Mr. Ennes suggested that the committee table the discussion regarding Section 8519.5 for a future meeting.

Ms. Saylor suggested the committee recommend legal input and the history of why this section was originally put in place.

Mr. Douglas suggested tabling the review of this section and having the committee ask at the April board meeting for a legal opinion.

Mr. Kanady moved and Mr. Whitmore seconded to direct staff to research the history of Section 8519.5 and report back to the committee at a future meeting. Passed unanimously.

The committee reviewed Article 2, Administration. The committee did not have recommendations for change in this article.

The next meeting was scheduled for June 28th, 2012 at Western Exterminators in Anaheim.

The meeting adjourned at 2:50 P.M.

These minutes were approved by unanimous vote at the June 28, 2012 committee meeting.