

MINUTES OF THE  
STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE  
MEETING OF THE  
STRUCTURAL PEST CONTROL BOARD  
August 22, 2012

The meeting was held on Wednesday, August 22, 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

Board staff present:

Robert Lucas, Consumer Services Manager  
Ronni O'Flaherty, Staff Services Analyst  
Ron Moss, Board Specialist

Departmental staff present:

Peggy Byerly

Board member Curtis Good was also in attendance.

**ROLL CALL**

Mr. Gordon read roll call.

**APPROVAL OF THE MINUTES OF THE JUNE 28, 2012 COMMITTEE MEETING**

Mr. Katz moved and Mr. Kanady seconded to approve the minutes of the June 28, 2012 committee meeting. 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**

The committee reviewed Sections 8568 through 8572 and decided not to make any recommendations to change any of these sections.

The committee discussed the renewal requirements for applicators and changing the renewal date for all applicators to June 30.

Mr. Ennes moved and Mr. Kanady seconded to recommend to the Board to delete Section 8590.1 and amend Section 8590 to include applicators. Passed unanimously.

**8590.** Except as otherwise provided herein, all operator's, ~~and field representative's, and applicator's~~ licenses shall expire at 12 midnight on June 30 of every third year ~~and all applicator's licenses shall expire at 12 midnight three years from the date of issue.~~

An individual licensed in more than one category may request that each license expire on the same date. The date requested shall be the date of the earliest expiration.

Every operator, ~~and every field representative, and applicator~~ shall pay a fee for the renewal of his or her license.

The board shall on or before the first day of June of each year mail to each operator, ~~and field representative, and applicator~~ whose license will expire in that year, addressed to him or her at his or her last known address, a notice that his or her renewal fee is due and payable and that, if not paid by June 30, a penalty will be added thereto.

In no case shall the penalty be waived.

Upon the receipt of the fee the board shall cause the renewal certificate to be issued.

~~**8590.1.** All applicator's licenses shall expire at 12 midnight three years from the date of issue. Every applicator shall pay a fee for the renewal of his or her license.~~

~~The board shall, on or before 60 days prior to the expiration of an applicator's license, mail to the applicator whose license will expire, addressed to him or her at his or her last known address, a notice that his or her renewal fee is due and payable and that, if not paid by the due date, a penalty will be added thereto. In no case shall the penalty be waived. Upon the receipt of the fee, the board shall cause the renewal certificate to be issued.~~

The committee discussed Sections 8591 and 8592 and decided not to make any recommendations to change anything in these sections.

In discussion of Section 8593, Mr. Kanady asked if continuing education courses have to be approved by the Board.

Mr. Gordon responded that a continuing education provider has to send an outline of the course in which they would like to give to the Board with sample test questions and the course has to be approved by the Board to count towards the continuing education requirement.

Mr. Good asked why the Board stopped requiring the submittal of the actual continuing education certificates and started having the licensees simply declare under penalty of perjury that their hours have been completed.

Mr. Katz responded that he thinks it was a matter of storage.

Ms. O'Flaherty stated that a lot of licensees still send in their certificates and staff has to send them back to the licensees so that they will have them should they be chosen for the audit.

Mr. Good suggested having the licensees complete a roster of continuing education courses that they complete upon renewal of their license.

Mr. Gordon stated that currently, the continuing education providers have to submit a roster of licensees who attended each of their courses to the Board.

Mr. Good stated that upon renewing a license through DPR the licensee must complete a roster showing which courses they took to complete their continuing education. He added that when all a licensee has to do is sign off that they completed the hours, that a lot are not being honest.

Mr. Whitmore stated that there were a lot less cases of falsified renewals when it was required to send the certificates in with the renewals. He added that if staff is only auditing a certain percent of licensees who renew each year and are catching people

who are lying on their renewals, that you can only imagine how many licensees are getting away with not completing their hours.

Ms. O'Flaherty stated that she thinks Mr. Katz was right in that the Board does not have ample storage to house every certificate for every licensee but at the same time the Board does not have staff time to review the certificates for each licensee renewing.

Mr. Good commented that he feels that it would keep the licensees more honest if the Board required the licensees to write down the courses they take each renewal period and submit the course names to the Board while still conducting the audit.

Mr. Kanady asked what percentage of renewal candidates are audited each year.

Ms. O'Flaherty responded fifteen percent.

Mr. Kanady asked what percent of the licensees who are audited are found to be noncompliant.

Mr. Good responded that the numbers are staggering and this is definitely something that needs to be fixed.

Ms. Byerly suggested requiring licensees to submit their continuing education certificates through electronic media.

Ms. O'Flaherty stated that it may be possible to incorporate the submittals of continuing education courses through the new database being launched by DCA.

Mr. Good suggested redesigning the renewal form to include a section of ten or so lines and require the licensees to write in the names of the courses they took.

Mr. Gordon suggested looking into a computer program that the continuing education providers can submit their rosters to the Board and the computer systems put the proper hours under the licensee's file.

Ms. O'Flaherty stated that this may be possible with the launch of the new database.

Mr. Gordon commented that getting the certificates from the providers is a more trustworthy source than getting them from the licensees.

Ms. O'Flaherty responded that the fifteen percent of renewal candidates being audited are required to provide their certificates, which are then compared to the rosters submitted by the providers.

Mr. Lucas said that the Contractor's State Licensing Board created an imaging workflow automation system that tracks their licensee's continuing education hours and commented that hopefully the Board can work towards a similar system.

Mr. Gordon asked if the Applicator and Field Representative Continuing Education Challenge Examinations are the same.

Ms. O'Flaherty responded that there is an Applicator's Continuing Education Challenge Examination and a separate continuing education challenge examination for each branch for both operators and field representatives, seven in all.

Mr. Gordon asked if this exam had to be taken within a year of the renewal date.

Ms. O'Flaherty responded that it did.

Mr. Ennes moved and Mr. Kanady seconded to direct staff to research the possibility of adjusting the renewal form to include a section to indicate continuing education classes completed. Passed unanimously.

The committee reviewed Section 8593.1.

Mr. Gordon asked if there is a possibility of the Applicator Continuing Education Challenge Examination ever being made available on a computer and suggested removing "written" from this section.

Mr. Katz moved and Mr. Ennes seconded to recommend to the Board to remove "written" from Section 8593.1. Passed unanimously.

**8593.1.** The board shall require as a condition to the renewal of each applicator's license that the holder thereof submit proof satisfactory to the board that he or she has completed courses of continuing education in pesticide application and use approved by the board or equivalent activity approved by the board. In lieu of submitting that proof, the license holder, if he or she so desires, may successfully apply for and pass an appropriate ~~written~~ applicator's examination for renewal of a license given by the board.

The committee reviewed and discussed Section 8610.

Mr. Moss asked the committee for their thoughts on operators renting out their licenses.

Mr. Ennes stated that is fine as long as the operators maintain institutionalized control as outlined in this Section.

Mr. Moss asked if the committee is okay with the qualifying managers only being available by telephone.

Mr. Gordon stated that there are times where a Qualifying Manager is away on vacation for an extended period of time but are always available via telephone and commented that as long as they are available, it is acceptable.

Mr. Whitmore commented that the problem is that everyone knows that there are operators renting their licenses but not maintaining any oversight over the company.

Mr. Lucas stated that there is a formal legal opinion on this topic and he will forward it electronically to the committee members after the meeting.

Mr. Gordon stated that being able to rent an operator's license for the purpose of gaining training and experience can be beneficial to a company who would like to branch out but does not have sufficient experience to obtain the license themselves.

Mr. Moss stated that the problem is obvious when a specialist goes into a company asking for the Qualifying Manager and the staff does not know who that person is. He added that a case like this is obviously just a financial agreement.

Ms. Neblett asked if the Board always cites the qualifying manager when taking action against licensees.

Mr. Moss replied yes.

Ms. Neblett commented that citing the qualifying manager seems to make a bigger difference and suggested maybe the counties should do so more often.

The committee decided there were no changes to Section 8610 that they would like to recommend to the Board.

Mr. Gordon thanked Mr. Katz for once again providing a facility for the committee to have their meeting.

The committee discussed Section 8611.

Mr. Gordon asked if the branch supervisor can be fined.

Mr. Moss responded that the Board does not have a provision to allow that, but commented that it would be a good idea to hold them responsible for their branch's actions.

Ms. Byerly commented that the Southern California deputies are frustrated that the branch supervisors do not have to be licensed in each branch for which the company is registered.

Mr. Moss responded that Section 1918 requires a branch supervisor for each branch that the company is registered in, but it does not have to be the same person for each branch. He added that if the committee wants to be able to hold the branch supervisor accountable, they would have to determine what their responsibilities are compared to those of the qualifying manager.

Mr. Gordon stated that Section 1918 says that a branch supervisor may be appointed, not that one has to be.

Mr. Moss stated that the Board has always interpreted these laws as having to have a branch supervisor who is licensed in each branch for which the company is registered to perform.

Mr. Katz moved and Mr. Ennes seconded to recommend to the Board to add the following language to Section 8611. Passed unanimously.

**8611.** Each branch office shall have a branch supervisor designated by the registered company to supervise and assist the company's employees who are located at that branch. The branch supervisor shall be an individual who is licensed by the board as an operator or a field representative in the branch or branches of business being conducted and his or her license shall be prominently displayed in the branch office.

If a branch supervisor ceases for any reason to be connected with a registered company, the company shall notify the registrar in writing within 10 days from that cessation. If this notice is given, the company's branch office registration shall remain in force for a reasonable length of time to be determined by rules of the board, during which period the company shall submit to the registrar in writing the name of another qualified branch supervisor.

The committee discussed possible changes to Section 1918 but decided to come back to it when the committee reviews the California Code of Regulations.

The committee reviewed Section 8612.

Mr. Kanady moved and Mr. Katz seconded to recommend to the Board to remove "in writing" from Section 8612. Passed unanimously.

**8612.** The licenses of qualifying managers and company registrations shall be prominently displayed in the registered company's office, and no registration issued hereunder shall authorize the company to do business except from the location for which the registration was issued. Each registered company having a branch office or more than one branch office shall be required to display its branch office registration prominently in each branch office it maintains.

When a registered company opens a branch office it shall notify the registrar ~~in writing~~ on a form prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board. The notification shall include the name of the individual designated as the branch supervisor and shall be submitted with the fee for a branch office prescribed by this chapter.

In discussion of Section 8613, Mr. Ennes recommended changing “in writing” to “on a form prescribed by the board” to allow for electronic forms in the future.

Mr. Ennes moved and Mr. Whitmore seconded to recommend to the Board to make the following changes to Section 8613. Passed unanimously.

**8613.** A registered company which changes the location of its principal office or any branch office or which changes its qualifying manager, branch supervisor, officers, or its bond or insurance shall notify the registrar ~~in writing~~ on a form prescribed by the board of such change within 30 days thereafter. A fee for filing such changes shall be charged in accordance with Section 8674.

In review of Section 8516, Mr. Good asked what happens if a new county inspector does not attend the annual Structural Regulatory Training.

Ms. Byerly stated that the inspection staff goes out and writes the reports but someone who has attended training will actually write the enforcement action.

The committee did not recommend for any changes be made to Sections 8616, 8616.4, 8616.5, 8616.6 or 8616.7.

While discussing Section 8616.9, Ms. Byerly pointed out that although the committee made recommendations for changes to this section at a previous meeting, this section still only addresses regulations, not other laws or label requirements.



Mr. Kanady moved to add label requirements to this section to ensure the personal protective equipment that is required by the label is being used. There was no second on this motion.

Ms. Neblett reminded the committee that by not adding label to this section that the licensee cannot be cited for violations regarding personal protection equipment required by label, but the employer still can be cited.

Mr. Kanady moved and Mr. Whitmore seconded to recommend the following changes to the Board. Passed unanimously. (Single strikethrough or underlined recommendations were made on January 11, 2012 and double strikethrough or underlined recommendations were made at this meeting.)

**8616.9.** If an employee is found during an inspection or investigation not wearing personal protective equipment required by label or regulation, the commissioner shall have the option to ~~use discretion in citing~~ cite an employer the employee rather than the employer only if evidence of all of the following is provided:

(a) The employer has a written training program, has provided training to the employee, and has maintained a record of training as required by regulation.

(b) The employer provided personal protective equipment required by regulation, the equipment was available at the site when the employee was handling the pesticide or pesticides, and the equipment was properly maintained and in good working order.

(c) The employer is in compliance with regulations relating to the workplace and supervision of employees.

(d) The employer has implemented and adheres to a written company policy of disciplinary action for employees who violate company policy or state or local laws or regulations.

(e) The employer has no history of repeated violations of this section.

The committee reviewed Section 8617. Mr. Ennes asked if all branch offices would be suspended if a company which has more than one branch office in a particular county and is determined to have committed a serious violation.

Mr. Katz stated that the intent of this law was to be able to suspend all branch offices in the county should they be found to commit a serious violation.

Ms. Neblett stated that although this may have been the intent of the law, she is not aware of this ever happening and added that she still has concerns with Section 8557.

Ms. O'Flaherty stated that Ms. Saylor has forwarded the committee's concerns regarding Section 8557 to legal counsel.

Ms. Byerly asked if the committee considered prohibiting the filing of Wood Destroying Organisms (WDO) activities until their fines are paid.

Ms. O'Flaherty stated that the committee made the recommendation to do so on September 7, 2011 and added that she will provide Ms. Byerly, Mr. Moss, Mr. Ineichen, Ms. Boyle and Ms. Neblett with committee binders at the next meeting.

The committee discussed Sections 8617.5, 8618, 8619, and 8620 and decided they did not want to make any recommended changes to the Board regarding these sections.

The committee reviewed Section 8621.

Ms. Neblett stated that the statute of limitations for CACs reverts back to Government Code 340 only allows one year from the date of the violation, not the date of discovery, to file an accusation and this makes it difficult to take action on some major violators. She suggested that the committee consider making the statute of limitations two years instead.

Ms. Byerly stated that Government Code 340 sets the one year from the date of the violation standard for any agency or board whose own laws or regulations do not provide a different timeframe. She stated that she would provide the language from Government Code 340 to the committee members before the next meeting.

Mr. Lucas stated that he would research the legislative intent of Sections 8617 and 8621.

Mr. Whitmore commented that the law should allow for at least one year from discovery, not the actual violating act and added that he feels this would be the section to add such language.

The committee decided to table the discussion of this section for a future meeting.

In review of Section 8622, Mr. Gordon asked why the Board, but not companies are allowed to charge more than \$125 for a reinspection fee when the reinspection should never take longer than the original inspection.

Mr. Ennes stated that bringing a property into compliance within thirty days from receipt of the notice is not always possible as some consumers are difficult to agree upon a schedule.

Mr. Moss stated that the availability of the consumer is taken into consideration.

The committee decided that there were no changes that they would like to see made to Section 8622.

In the review of Section 8623, Ms. O'Flaherty questioned Section 8623(d)(1) stating that it is her understanding that the criminal history reports are not allowed to be released to the licensees.

The committee asked Ms. O'Flaherty to look into the section and report back.

Mr. Kanady asked that the committee revisit Section 8622 and added that both Mr. Gordon and Mr. Whitmore made good points and he would like to see the changes that the committee discussed.

Mr. Kanady moved and Mr. Whitmore seconded to recommend to the Board to add "not to exceed \$125" to Section 8622. Passed unanimously.

Mr. Kanady moved and Mr. Ennes seconded to recommend to the Board to add "unless an extension is authorized by the board" to Section 8622. Passed unanimously.

**8622.** When a complaint is accepted for investigation of a registered company, the board, through an authorized representative, may inspect any or all properties on which a report has been issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section 8518 by the registered company to determine compliance with the provisions of this chapter and the rules and regulations issued thereunder. If the board determines the property or properties are not in compliance, a notice shall be sent to the registered company so stating. The registered company shall have 30 days from the receipt of the notice to bring such property into compliance, unless an extension is granted by the board, and it shall submit a new original report or completion notice or both and an inspection fee of not more than one hundred twenty-five dollars (\$125) for each property inspected. If a subsequent reinspection is necessary, pursuant to the board's review of the new original report or notice or both, a commensurate reinspection fee shall also be charged, not to exceed one hundred twenty-five dollars (\$125). If the board's authorized representative

makes no determination or determines the property is in compliance, no inspection fee shall be charged.

The notice sent to the registered company shall inform the registered company that if it desires a hearing to contest the finding of noncompliance, the hearing shall be requested by written notice to the board within 20 days of receipt of the notice of noncompliance from the board. Where a hearing is not requested pursuant to this section, payment of any assessment shall not constitute an admission of any noncompliance charged.

The committee reviewed Sections 8624, 8625, and 8632 and decided not to recommend any changes to these sections.

In review of Section 8636, Mr. Gordon stated that this is the section that allows for an inspector go check workman's compensation reports.

The committee discussed and decided not to make any recommendations to change Sections 8635, 8636, 8637, 8638 and 8639.

In review of Section 8640 Mr. Whitmore questioned why this section only pertains to real estate transactions.

Mr. Lucas stated that the Board has an informal opinion about rebates and would not enforce such violations.

Mr. Katz asked if giving a discount is legal or if it is considered a rebate.

Mr. Lucas responded that giving a discount is part of the competitive bidding process.

In review of Section 8641, Mr. Gordon stated that this section is not specific enough that it wouldn't even require an inspector to physically be on the property to write an inspection report.

Ms. O'Flaherty stated that the committee already has "inspection" on their list of words that need to be defined in the Act.

The committee decided not to recommend any changes to Sections 8641 or 8642.

The committee reviewed Section 8643.

Mr. Whitmore moved and Mr. Ennes seconded to replace "poisonous exterminating agent" with "pesticide" in Section 8643. Passed unanimously.

**8643.** The negligent handling or use of any ~~poisonous-exterminating agent~~ pesticide is a ground for disciplinary action.

In review of Section 8644, Mr. Whitmore pointed out that the past few sections that have been reviewed are all addressed elsewhere in the Act as well and questioned why these sections remain.

Mr. Lucas stated that quite often when new laws are written that are similar to other laws, lawmakers will still leave the old similar law in place just in case the new law is not inclusive of all possible enforceable actions.

The committee decided not to make any changes to this section or Sections 8645, 8646, or 8646.5.

Mr. Whitmore questioned the need for several of the sections discussed since they are repetitive in other sections.

Mr. Lucas stated that these are the only citable sections for the Board.

In review of Section 8647, Mr. Gordon asked if the sale of pesticides is regulated by the Board.

Mr. Katz stated that the Department of Pesticide Regulation would regulate the sale of pesticides.

Mr. Lucas stated that Chapter 2 of Division 7 of the Food and Agriculture Code only provides definitions.

Mr. Ennes moved and Mr. Whitmore seconded to recommend to the Board to delete Section 8647.

Mr. Katz stated that he feels that it would be irresponsible for the committee to simply delete something that they do not understand without asking for clarification or the reason it was originally put in place.

Mr. Good suggested discussing this section at the next meeting that is being held in Sacramento where more staff is present to answer questions.

Mr. Katz asked that staff look into the meaning of this section and report back to the committee.

Mr. Kanady moved to table the discussion of Section 8647 for the next meeting.

### **FUTURE MEETING DATES**

Mr. Gordon stated that the next scheduled meeting will be held on September 19, 2012 in Sacramento.

The committee scheduled the following meetings for Tuesday, November 6, 2012 at Western Exterminator in Anaheim and Tuesday, December 11, 2012 in Sacramento.

### **ADJOURNMENT**

The meeting adjourned at 3:00 P.M.

These minutes were approved by unanimous vote at the September 19, 2012 committee meeting.