

MINUTES OF THE  
STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE  
MEETING OF THE  
STRUCTURAL PEST CONTROL BOARD  
September 19, 2012

The meeting was held on Wednesday, September 19, 2012, at the Department of Consumer Affairs, Hearing Room, located at 2005 Evergreen Street, Sacramento, California, commencing at 9:14 A.M. with the following members present:

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

Board staff present:

Susan Saylor, Assistant Executive Officer  
Robert Lucas, Consumer Services Manager  
Ronni O'Flaherty, Staff Services Analyst  
Tom Ineichen, Board Specialist

Departmental staff present:

Kathy Boyle

Board members Curtis Good and Ronna Brand were also in attendance.

**ROLL CALL**

Mr. Gordon read roll call.

**APPROVAL OF THE MINUTES OF THE AUGUST 22, 2012 COMMITTEE MEETING**

Mr. Ennes moved and Mr. Kanady seconded to approve the minutes of the August 22, 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**

Mr. Gordon asked if there are any updates from staff regarding the unfinished business from the August 22, 2012 meeting.

Ms. Saylor stated that staff is looking into these items.

Mr. Gordon introduced correspondence from Jodi Clary, Legal Counsel regarding adding (i) to Section 8617.

Mr. Whitmore moved and Mr. Kanady seconded to recommend to the Board to add Section (i) to Section 8617 as follows. Passed by majority. (AYES: Mr. Whitmore, Mr. Kanady, Mr. Katz, Mr. Gordon; NOES: Mr. Ennes)

**8617.** (a) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may suspend the right of a structural pest control licensee or registered company to work in a county for up to three working days or, for a licensee, registered company, or an unlicensed individual acting as a licensee, may levy an administrative fine up to one thousand dollars (\$1,000) or direct the licensee to attend and pass a board-approved course of instruction at a cost not to exceed the administrative fine, or both, for each violation of this chapter or Chapter 14.5 (commencing with Section 8698), or any regulations adopted pursuant to these chapters, or Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), or Chapter 7 (commencing with Section 15201) of Division 7 of the Food and Agricultural Code, or any regulations adopted pursuant to those chapters, relating to pesticides. However, any violation determined by the board or the commissioner to be a serious violation as defined in Section 1922 of Title 16 of the California Code of Regulations shall be subject to a fine of not more than five thousand dollars (\$5,000) for each violation. Fines collected shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund. Suspension may include all or part of the registered company's business within the county based on the nature of the violation, but shall, whenever possible, be restricted to that portion of a registered company's business in a county that was in violation.

(b) A licensee who passes a course pursuant to this section shall not be awarded continuing education credit for that course.

(c) Before a suspension action is taken, a fine levied, or a licensee is required to attend and pass a board-approved course of instruction, the person charged with the violation shall be provided a written notice of the proposed action, including the nature of the violation, the amount of the proposed fine or suspension, or the requirement to attend and pass a board-approved course of instruction. The notice of proposed action shall inform the person charged with the violation that if he or she desires a hearing before the commissioner issuing the proposed action to contest the finding of a violation, that hearing shall be requested by written notice to the commissioner within 20 days of the date of receipt of the written notice of proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and a right to present evidence on his or her own behalf. If a hearing is not requested within the prescribed time, the commissioner may take the action proposed without a hearing.

(d) If the person upon whom the commissioner imposed a fine or suspension or required attendance at a board-approved course of instruction requested and appeared at a hearing before the commissioner, the person may appeal the commissioner's decision to the Disciplinary Review Committee and shall be subject to the procedures in Section 8662.

(e) If a suspension or fine is ordered, it may not take effect until 20 days after the date of the commissioner's decision if no appeal is filed. If an appeal pursuant to Section 8662 is filed, the commissioner's order shall be stayed until 30 days after the Disciplinary Review Committee has ruled on the appeal.

(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.

(g) Once final action pursuant to this section is taken, no other administrative or civil action may be taken by any state governmental agency for the same violation. However, action taken pursuant to this section may be used by the board as evidence of prior discipline, and multiple local actions may be the basis for statewide disciplinary action by the board pursuant to Section 8620. A certified copy of the order of suspension or fine issued pursuant to this section or Section 8662 shall constitute conclusive evidence of the occurrence of the violation.

(h) Where the board is the party issuing the notice of proposed action to suspend or impose a fine pursuant to subdivision (a), "commissioner" as used in subdivisions (c), (d), and (e) includes the board's registrar.

(i) Actions brought by the commissioner or board under this section must be brought within two years of the occurrence of the violation. However, when an investigation is completed and submitted to the director, the action shall be commenced within one year of that submission.

The committee discussed changing the word "insecticide" to "pesticide" in Section 8647 and Ms. Boyle introduced the correspondence she submitted for the committee's review regarding the definition of "pesticides" as used in The Food and Agriculture Code.

Mr. Whitmore moved and Mr. Katz seconded to recommend to the Board to make the following changes to Section 8647. Passed unanimously.

**8647.** Failure to comply in the sale or use of ~~insecticides~~ pesticides with the provisions of Chapter 2 (commencing with Section 12751) of Division 7 of the Food and Agricultural Code is a ground for disciplinary action.

Mr. Gordon introduced a letter received by Orange County Agricultural Commissioner's Office asking all pest control operators to report their pesticide usage online. He expressed concern in that the Act still requires that a stamp be affixed to the report.

Ms. Boyle stated that DPR and DCA legal have opposing views on the definition of "affix" and DPR legal's perspective is that it is allowable for companies to file their Pesticide Use Reports (PURs) online as long as they still print a hard copy and affix the stamp to the report so if the CAC or Board inspectors need to check their records there is still record of the stamp. She added that some CACs have agreements with their operators where the operator will give the CAC 12 stamps and that company is covered through the year for the filings of their PURs. Finally, she reminded the committee that the California Agricultural (CalAg) Permits Program allows reporting the stamp number online once the laws have been changed to allow for online filing.

Mr. Ineichen stated that most pest control companies are smaller companies and may not be able and willing to send 12 stamps to each county at one time.

Mr. Gordon asked Mr. Ennes if some counties require each branch office under a principal registration in a single county to file a separate report while other counties want the reports for each company's branch offices in their county to be consolidated.

Mr. Ennes responded that it is different depending on the county.

Mr. Gordon asked if a pesticide use stamp is required for each branch office in the counties that require separate reports for each branch office.

Mr. Ennes responded yes.

Mr. Ineichen commented that there are a lot of problems with the CalAg Permits Program and stated that DPR needs to take the lead to help the CACs get used to using the system.

Ms. Boyle stated that the Board has a huge investment in the launch of the CalAg Permits Program on the structural side. She recommended that Curtis recommend to the Board to appoint someone to take the lead in meeting with DPR staff to get the status on the implementation of the program.

Ms. Saylor stated that with the WDO System, there are still three options of filing and that may be what has to be done with the filing of PURs as well.

Mr. Gordon asked if he should comply with the correspondence from Orange County.

Ms. Boyle stated that since there has not been a state directive, the CACs in some counties are making their operators aware that they are moving forward and allowing for online filing.

Mr. Gordon stated that some counties are marking the stamps used even for negative use reports filed by companies.

Ms. Boyle stated that DPR needs to be made aware of this because it clearly states in the Act that a stamp is only required when there is actual pesticide usage being reported.

Mr. Gordon stated that he also received a directive from DPR stating that the number of applications for non-restrictive use pesticides will not have to be reported by pest control operators on their PURs.

Ms. Boyle stated that this directive is old and another has been drafted and will be coming out soon that speaks to this and will become effective January 1, 2013 requiring such applications to be reported.

Mr. Good stated that there is nothing in statute that prevents all branch offices in one county from filing a single pesticide use report. He asked Mr. Ineichen how the Board handles cases in which a company is found not filing PURs.

Mr. Ineichen responded that the Board would notify the CACs in the counties in which that company is operating.

The committee discussed the renewal process in regards to certifying continuing education hours. Ms. Saylor stated that rosters are still being sent to the Board from the continuing education providers and checked against the certificates received during the audit. She added that 25 percent of renewal candidates are audited each year and only about 5 percent of operators and 7 percent of field representatives are found non-compliant.

Mr. Good recommended having a section added to the renewal form for the licensee to write in all of the continuing education courses taken during the renewal period.

Mr. Gordon stated that he feels that having the licensee sign under penalty of perjury that they have completed the necessary hours is sufficient.

The committee decided not to make any changes to the renewal form.

The committee discussed Section 8648 and asked Mr. Ineichen if this is the statute that backs the false and misleading advertising regulation, California Code of Regulations Section 1999.5.

Mr. Ineichen stated that this section is used quite often for false and misleading advertising.

The committee decided not to recommend to the Board to make any changes to Section 8648, 8649 or 8650.

The committee discussed Section 8651 and decided to remove “chemical, or allied substance” from this section to make consistent with other recommendations made previously by this committee.

Mr. Kanady moved and Mr. Ennes seconded to recommend to the Board to remove “chemical, or allied substance” from Section 8651.

Ms. Boyle stated that “structural pests” has not been defined.

Mr. Kanady moved and Mr. Ennes seconded to amend his motion to add “or household” to include household pests since “structural pests” has not been defined. Passed unanimously.

**8651.** The performing or soliciting of structural pest control work, the inspecting for structural or household pests, or the applying of any pesticide, ~~chemical, or allied substance~~ for the purpose of eliminating, exterminating, controlling, or preventing structural or household pests in branches of pest control other than those for which the operator, field representative, or applicator is licensed or the company is registered is a ground for disciplinary action.

The committee reviewed Section 8652 and decided not to recommend any changes to this section to the Board.

After much discussion regarding the enforcement of Section 8653, the committee decided not to recommend any changes to this section.

The committee reviewed and discussed Sections 8654 and 8655 and decided not to recommend any changes to these sections.

In review of Section 8656 the committee came to the conclusion that adding “of the Business and Professions Code” is necessary to specify where “Section 125.9” derives from.

Mr. Gordon recommended that the committee define “substantially related”.

Mr. Lucas stated that the California Code of Regulations already defines “substantially related.”

In discussion of Section 8656 Mr. Gordon asked if the committee wanted to not allow a company to file WDO reports until their citations have been paid.

Ms. O'Flaherty stated that the committee already changed Section 8516 (f) to not allow for filing of WDOs when a fine has not been paid within 30 days.

Ms. Saylor stated that she does not know if the Board has the authority to do so because there is a section of law that requires the WDO reports to be filed within 10 days.

Mr. Kanady moved and Mr. Ennes seconded to recommend the following changes to Section 8656 to the Board. Passed unanimously.

**8656.** In addition to the remedies provided for in Section 125.9 of the Business and Professions Code, when the licensee who is a registered company has failed to pay the fine assessed pursuant to a citation within 30 days of the date of assessment, unless the citation is being appealed, the board shall not sell to the registered company any pesticide use stamps until the assessed fine has been paid.

The committee directed staff to request a legal opinion regarding the recommended changes to Section 8617(f).

In discussion of Section 8657 Mr. Ineichen explained that this section is the authority for the board to require a bond as part of having a valid principal registration.

The committee decided not to recommend any changes to this section.

Mr. Ineichen stated that Section 8658 gives the Board the authority to take a large case in front of the Superior Court.

Mr. Lucas stated that he wants to make sure that the Code of Civil Procedure referenced in this section is still valid.

Ms. Boyle stated that the reference is still valid.

The committee decided there were no recommendations to be made to this section.

The committee discussed Section 8660.



Mr. Katz stated that the Department of Food and Agriculture is no longer the appropriate reference for this section and asked Ms. Saylor if this section should still reflect DPR once the Board goes back under the jurisdiction of DCA.

Ms. Saylor stated that the Disciplinary Review Committee consists of one member from DPR whether or not the Board is under the jurisdiction of DPR or DCA.

Mr. Katz moved and Mr. Ennes seconded to recommend to the Board members to make the following changes to Section 8660. Passed unanimously.

**8660.** A disciplinary review committee consisting of three members shall be established for the purposes of reviewing appeals of orders issued pursuant to Section 8617. The committee shall be made up of one member representing the Director of ~~Food and Agriculture~~ Department of Pesticide Regulation and one member representing the board. The third member shall be a licensed pest control operator actively involved in the business of pest control and shall be selected by agreement of the other members.

The committee reviewed and discussed Section 8662 and decided not to recommend any changes to this section.

Mr. Whitmore introduced the language he drafted with input from the Fumigation Enforcement Committee, DPR and the CACs as a revision to Section 8663 to the committee.

Mr. Katz moved and Mr. Kanady seconded to recommend to the Board to make Mr. Whitmore's suggested changes to Section 8663 as follows. Passed unanimously.

**8663.** (a) This section only applies to work conducted under a Branch 1 license.

(b) A copy of a notice of violation issued for any violation committed by a subcontractor shall be sent to the prime contractor responsible for the work by the issuing authority within 30 day from the date the violation was committed or discovered. In circumstances where the violation is classified as "serious" or "moderate" as defined in Section 1922 of Title 16, notification shall be performed by certified mail, return receipt requested.

(c) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may levy a fine of up to ~~one thousand dollars (\$1,000)~~ five thousand dollars (\$5,000) against the registered company acting as a prime contractor for any major “serious” or “moderate” violations committed by the ~~that~~ subcontractor within 12 consecutive months. Fines collected pursuant to this section shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund.

~~(c) For purposes of this section, “major violation” means a violation of any of the following provisions of this code or of the California Code of Regulations that poses a serious hazard to humans: (1) A violation of subdivision (a) or (b) of Section 1970.4 of Title 16 of, or Section 6454 of Title 3 of, the California Code of Regulations, or a violation of Section 8505.5. (2) Any violation of the structural pest control law that results in a serious injury to any person. (3) A violation of Section 8505.2 or 8505.3, relating to direct and personal supervision. (4) A violation of Section 8505.7, relating to vacating and securing structures. (5) A violation of subdivision (a) of Section 6780 of Title 3 of the California Code of Regulations. (6) A violation of Section 6454 of Title 3 of the California Code of Regulations. (7) A violation of Section 8505.12, relating to warning agents. (8) A violation of Section 8505.9 or 8505.10, relating to warning signs.~~

~~(d) A copy of a notice of violation issued for any violation committed by a subcontractor shall be sent by certified mail to the prime contractor by the issuing authority within 15 days from the date the violation was committed.~~

(ed) Notwithstanding subdivision ~~(b c)~~, a prime contractor may be fined for a subcontractor's first violation for failing to have a signed factsheet Occupant Fumigation Notice (OFN) on the premises being treated, or for failure if the subcontractor fails to provide advance notice of a treatment fumigation per Section 8538 (b), to the occupants of the premises being treated.

The committee reviewed and discussed Sections 8664 and 8665 and decided not to make any recommendations to change these sections.

In discussion of Section 8666 Mr. Katz stated that California is one of the few states that allows for spot treatments for subterranean termites and he once received a letter from the Board stating that his recommendation for a whole house treatment of a property with subterranean termites was excessive.

Mr. Ineichen stated that fumigants are labeled to kill termites not to prevent an infestation. He added that if the committee decides to eliminate this section, they should make sure there is a law to prevent excessive recommendations.

After much discussion, the committee made the following motion:

Mr. Katz moved and Mr. Ennes seconded to recommend to the Board to delete Section 8666 in its entirety. Passed unanimously.

~~8666. It shall be unlawful for any licensee under this chapter to recommend or to perform any pest control corrective work under any contract or agreement that the licensee knows or has reason to know is in excess of that required to eliminate the condition for which the licensee was employed.~~

~~—A violation of this section is a public offense and is punishable upon the first conviction by imprisonment in the county jail for not more than six months, or by a fine not to exceed ten thousand dollars (\$10,000), or by both that imprisonment and fine.~~

Ms. Boyle suggested adding Section 8672.1 to this section to define an “original applicator’s license” and “renewal applicator’s license” to prepare for changing the applicator’s renewal date to June 30.

Mr. Kanady moved and Mr. Ennes seconded to recommend to the Board the following changes to Section 8672.1. Passed unanimously.

8672.1 As used in this chapter, "original applicator's license" means an applicator's license issued to an individual who did not have a license on the preceding June 30th.

For the purpose of this chapter, a “renewal applicator's license” means an applicator's license issued to an individual who had an applicator's license on June 30th of the preceding renewal period.

The committee discussed Section 8673 and to prepare for changing the applicator’s renewal date to June 30 they decided to include applicators in this section.

Mr. Ennes moved and Mr. Katz seconded to recommend to the Board to make the following changes to Section 8673. Passed unanimously.

**8673.** License fees shall not be prorated unless an individual licensed as an operator, ~~and a field representative,~~ or applicator requests an earlier expiration date of one of the licenses in accordance with Section 8590. All license and registration fees shall be paid in advance of the issuance of the license or registration, and all examination fees shall be paid in advance of the examination.

In review of Section 8674, Mr. Katz asked if the current fees that are in statute have been reviewed and determined sufficient. He asked that staff analyzes these figures and reports back to the committee.

Ms. Boyle suggested that the committee consider requiring principal and branch office registrations to renew periodically.

Mr. Gordon asked to table the discussion of this section until more information on the fees can be provided by board staff.

The committee tabled the review of Section 8675 until the financial information relating to fees that was requested in review of Section 8674 can be provided.

The committee reviewed Section 8676 and chose not to make any changes to this section because it will be updated during the transfer back to DCA.

The committee reviewed Section 8690 and decided that to make it consistent with other changes made by the committee, to remove "written" from this section to allow for electronic communications.

Mr. Kanady moved and Mr. Ennes seconded to recommend to the Board to delete "written" from Section 8690. Passed unanimously.

**8690.** The board shall not issue any company registration under this chapter unless the applicant shall have filed with the board on a form prescribed by the board ~~written~~ evidence of an insurance policy approved by the board or a bond as specified in this article, being in effect at the time of the issuance of the company registration. This ~~written~~ evidence shall include a provision that the board shall be given a 10-day notice by the insurance company or bonding company should the policy or bond be canceled or changed during the policy or bond period in a manner as to affect the ~~written~~ evidence.

In review of Sections 8691 and 8692, Mr. Katz suggested that the insurance requirements should be raised from \$25,000.

Mr. Whitmore agreed and stated that California has some of the most expensive real estate and the lowest insurance requirements.

Ms. Saylor stated that this topic is on the agenda for the October board meeting and staff is looking into the requirements of other states.

Mr. Gordon asked Ms. Saylor if any companies have cash deposits in lieu of an insurance policy.

Ms. Saylor responded that if there are, there are very few. She added that the Board would like to reconsider accepting cash deposits because of internal control issues with financial institutions releasing them prematurely.

Mr. Gordon stated that the committee will table the review of this section until after the October board meeting.

The committee reviewed Section 8693.

Mr. Katz moved and Mr. Whitmore seconded to delete Section 8693 in its entirety. Passed unanimously.

~~8693. In lieu of the insurance policy specified in this article an applicant for a company registration may file with the board a bond executed by an admitted surety insurer in the penalty of twenty five thousand dollars (\$25,000) with the State of California as obligee.~~

The committee reviewed Section 8695 and decided not to recommend any changes to this section.

**ADJOURNMENT**

The meeting adjourned at 3:00 P.M.



\_\_\_\_\_  
Bob Gordon, Committee Chairperson



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Susan Saylor, Interim Executive Officer

11-6-2012

DATE