

MINUTES OF THE
STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE
MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
November 6, 2012

The meeting was held on Tuesday, November 6, 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
Ronna Brand

Board staff present:

Susan Saylor, Interim Executive Officer
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.

**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 a letter sent to pest control operators in Orange County by Orange County Public Works. Ms. Byerly stated that the letter has caused some confusion within the industry and clarified that Orange County Public Works is not trying to change the Pesticide Use Reporting (PUR) laws, but due to funding issues, staff will no longer be able to manually process the reports as they have been done previously. She added that Orange County Public Works is not implying in this letter that it is mandatory to file electronically, but simply offering training for companies who would like to file online but are having trouble doing so.

Mr. Lucas recommended that the committee consider removing the word “however” from the recommended language that was added as Section 8617 (i) at the previous meeting and to change “violation” to “act or omission”.

Mr. Whitmore moved and Mr. Kanady seconded to recommend to the Board to make the following changes to Section 8617 (i). Passed unanimously.

8617. (i) Actions brought by the commissioner or board under this section must be brought within two years of the occurrence of the ~~violation~~ act or omission. ~~However, w~~When an investigation is completed and submitted to the director, the action shall be commenced within one year of that submission.

Mr. Whitmore suggested that the committee reconsider their recommendation from the November 2011 meeting to remove “given by telephone” from Section 8505.5. He stated that some counties will allow notice to be given via telephone under certain circumstances and he does not want to eliminate that as an option.

Mr. Katz commented that use of a telephone is considered an electronic communication.

Mr. Whitmore asked Ms. Neblett if she would consider a notice given by telephone an acceptable form of electronic communication.

Ms. Neblett stated that she would not have a problem with it, but she is only one of many counties.

The committee decided to leave the section as they amended it at the November 2011 meeting.

APPROVAL OF THE MINUTES OF THE SEPTEMBER 19, 2012 COMMITTEE MEETING

Ms. O’Flaherty provided the committee with an updated version of the minutes highlighting the changes made after it was submitted for their review.

Mr. Kanady moved and Mr. Katz seconded to approve the minutes, as corrected. 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 Section 8697.

Mr. Gordon stated that a \$4,000 bond is not sufficient in this industry, but it would be difficult for some smaller companies or new companies to obtain a bond because bonds are issued based upon a person’s credit and assets.

Mr. Good stated that the Board’s primary concern is consumer protection and a \$4,000 bond does not provide very much protection when companies are performing jobs that cost substantially more. He added that the Contractor’s State Licensing Board’s (CSLB) bond requirements are set at \$12,500.

Mr. Whitmore stated that the Board’s requirements for bond and insurance are the lowest in the nation and California has some of the most expensive real estate.

Mr. Good stated that he did some research and came to the conclusion that a 3 year bond would increase in price from about \$250 to about \$700 when raising the bond amount from \$4,000 to \$12,500.

Mr. Gordon expressed concern that raising the bond requirements would preclude new operators from being able to start a company in this industry.

Ms. Brand suggested making the bond requirements lower for new companies and making them gradually increase their bonds once their businesses progress.

Mr. Katz stated that having lower bond requirements for new companies does not make sense because generally, the newer companies are at higher risk.

Mr. Katz moved and Ms. Brand seconded to recommend to the Board to increase the bond requirements set forth in Section 8697 to \$12,000.

Ms. O'Flaherty stated that she is not aware of an official acceptance of the appointment of Ms. Brand to the committee.

Ms. Brand stated for the record, that she accepts her appointment to the committee.

After much discussion, Mr. Katz withdrew his motion.

Mr. Katz moved and Ms. Brand seconded to recommend to the Board to increase the bond requirements set forth in Section 8697 to \$12,500. Passed by majority. (AYES: Mr. Gordon, Mr. Ennes, Mr. Katz, Mr. Whitmore, Ms. Brand; Mr. Kanady abstained from the vote.)

8697. Each company registered under the provisions of this chapter shall maintain a bond executed by an admitted surety insurer in the amount of ~~four thousand dollars (\$4,000)~~ twelve thousand five hundred (\$12,500).

Mr. Gordon stated that the Board requested at the October board meeting that the committee also reviews the insurance requirements and the ability of a company to put up a cash deposit in lieu of a bond or insurance.

The committee reviewed Section 8692.

Mr. Katz stated that he spoke with Pest Sure, a broker that covers over 80 pest control companies nationwide, and the minimum policy that they will issue is for \$1 million per occurrence and \$3 million aggregate and the reason behind this is the risk of chemical exposure to the public.

Mr. Good stated that he contacted the Pest Control Operators of California insurance program and they did an analysis determining that over the past 5 years, 75 percent of the claims received were under \$50,000. He added that the other 25 percent of the claims were mostly due to exposure, ranging from \$75,000 to well over \$300,000.

Mr. Katz stated that he would like the insurance requirement to be raised to \$1 million.

Mr. Gordon stated that he does not feel that the requirement should be set as high as \$1 million and he feels a \$300,000 policy should be sufficient.

Mr. Kanady moved and Mr. Ennes seconded to recommend to the Board to increase the insurance requirement to \$500,000. Passed by majority. (AYES: Mr. Gordon, Mr. Kanady, Mr. Ennes, Mr. Whitmore, Mr. Katz; Ms. Brand was not present for the vote.)

8692. An "insurance policy" as used in this article means a contract of liability insurance issued by an insurance company authorized to transact business in this state or one issued by a nonadmitted carrier whose activities in this state are controlled by the Surplus Line Association, which insures the policyholder against loss from legal liability for damages on property upon which work is being performed or has been completed, including third party losses, as a result of an accident or occurrence due to participation in any control, prevention, or repair activities which require a license under this chapter. The insurance policy shall provide minimum limits of ~~twenty-five thousand dollars (\$25,000)~~ five hundred thousand dollars (\$500,000) for any one loss due to bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person or persons, and ~~twenty-five thousand dollars (\$25,000)~~ five hundred thousand dollars (\$500,000) minimum for any one loss due to injury or destruction of property, including the loss of use thereof.

This section shall not be construed to require errors and omissions insurance for all activities relating to or during inspections, inspection reports, recommendations, estimates, and bids, whether oral or written.

Mr. Good stated that at the previous meeting the committee recommended to delete Section 8693, which addresses the Board's request for the committee to discuss the ability of a company to put up a cash deposit in lieu of a bond or insurance.

The committee reviewed Section 8697.2 and decided not to recommend any changes to this section.

Mr. Moss expressed concern with the committee's recommendation to delete Section 8666 and stated that he would rather change the code to make it non-subjective rather than delete the entire section.

Mr. Whitmore asked Mr. Moss if he uses Section 8666 very often.

Mr. Moss stated that he does not cite companies for violating Section 8666, but has used it to warn an operator when he finds a company has called for and intends to perform work in excess of what is necessary.

Mr. Good stated that overlooking necessary recommendations occurs a lot more frequently than making excessive recommendations.

Mr. Whitmore stated that there are other sections of the Act that deal with fraud to address excessive recommendations.

The committee decided to uphold their recommendation from the previous meeting to delete section 8666.

The committee reviewed Section 8697.3.

Mr. Gordon suggested that since the committee recommended to increase the bond requirements, that the restoration bond requirements described in Section 8697.3 should be increased as well.

Mr. Katz moved and Mr. Kanady seconded to make the following changes to Section 8697.3. Passed unanimously.

8697.3. If, after a hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, a license or company registration is suspended or revoked upon the grounds set forth in Article 7 (commencing with Section 8620) of this chapter, the registrar shall require the applicant, licensee, or registered company, as a condition to the issuance, reissuance, or restoration of the license or company registration, to file a surety bond in the sum to be determined by the registrar based upon the seriousness of the violation, but which sum shall not be less than one thousand dollars (\$1,000) nor more than ~~eight thousand dollars (\$8,000)~~ twenty-five thousand (\$25,000) dollars.

The bond required by this section shall be in addition to the bond required by Section 8697 of this article.

Each applicant, licensee, or registered company required to maintain a bond of the type provided in this section shall post such bond with the registrar for a period of at least two years and during such additional time as there may be unsatisfied claims outstanding against the same.

The committee reviewed Section 8697.4 and decided not to recommend any changes to this section.

Mr. Whitmore suggested that the committee readdresses Section 8690 and 8691. He explained that since the committee recommended to delete Section 8693 and the ability to put up a bond in lieu of an insurance policy, that the language in Sections 8690 and 8691 relating to bonds should also be deleted.

Mr. Katz moved and Mr. Whitmore seconded to recommend to the Board to delete Section 8697.5. Passed unanimously.

~~**8697.5.** Such bonds as are required by this article shall be in addition to any bond which may be maintained pursuant to the provisions of Article 9 (commencing with Section 8690) of this chapter.~~

Mr. Whitmore moved and Mr. Katz seconded to recommend to the Board to make the following changes to 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.

Mr. Ennes moved and Mr. Whitmore seconded to recommend to the Board to make the following changes to Section 8691. Passed unanimously.

8691. No registered company shall engage in any of the practices for which it is required to be registered by this chapter unless it maintains such insurance policy ~~or bond~~ as specified in this article.

The committee reviewed Chapter 14.5.

Mr. Whitmore stated that he will be meeting with the chairperson of the Structural Fumigation Enforcement Committee to address current issues. He stated that the Structural Fumigation Enforcement Committee sunsets on January 1, 2014 and the committee is working to find a sponsor for the bill since it needs to be submitted this

legislative session. He suggested that should this committee have recommendations, they should be forwarded to the Structural Fumigation Enforcement Committee. He added that the Structural Fumigation Enforcement Committee is looking to address the following issues that have come up:

- Determining whether or not Santa Clara County has met the inspection criteria relating to the number of fumigation inspections performed
- Counties not having the ability to collect the \$5 fee for filing a Notice of Intent (NOI)
- Determining whether or not the \$5 fee for filing a NOI with the county should be increased to help with staffing to follow through with the program.

Mr. Good asked that a discussion regarding the Structural Fumigation Enforcement Committee be put on the agenda for the January 2013 board meeting.

Ms. Neblett suggested that the committee consider increasing the \$5 fee for filing of a NOI and expressed concern that there is no law in place to enforce the payment of this fee. She added that if a company does not pay the \$5 fee, the only mechanism in place is to cite the company for a violation of Section 8698.1 and when that fine is paid the funds go to the Education and Enforcement Fund and the county never receives their \$5.

After much discussion, the committee decided not to recommend any changes to Chapter 14.5 since the Structural Fumigation Enforcement Committee will be addressing current issues.

Mr. Good stated that he would like to try to move forward with changing the bond and insurance requirements this legislative session rather than waiting for the committee to complete its review of the Act.

Ms. Saylor stated that she will ask Department of Consumer Affairs (DCA) to look into adding these changes to their current legislation.

Mr. Good stated that these changes will be discussed at the branch meetings of PCOC and be brought in front of the Board of Directors.

Mr. Gordon stated that hopefully the Board of Directors will move to support these changes.

The committee asked Ms. Saylor to provide historical information regarding the bond and insurance requirements.

Mr. Lucas stated that the Board needs to approve the recommended changes before they are taken in front of the Legislature.

Mr. Gordon stated that at the next meeting he would like to begin to categorize the recommended changes to the Business and Professions Code.

Mr. Good reminded the committee that they still need to address definitions.

The committee began review of Title 16 of the California Code of Regulations (CCR).

The committee reviewed Article 1 of the CCR and decided not to make any recommendations for changes to the sections under this article.

The committee reviewed and discussed Section 1911 and decided not to recommend any changes to this section.

In review of Section 1912, Mr. Gordon suggested removing “written” from this section to prepare for the implementation of the board’s new computer system, BrEZe, which will allow for the completion and payment of forms online.

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

§1912. Branch Offices Registration.

A registered company that opens a branch office shall notify the board of that fact within 30 days on a ~~written~~ form provided by the board (see form No. 43L-15 at the end of this section) accompanied by the required registration fee.

The committee reviewed and discussed Sections 1913, 1914, and 1916 and decided not to make any changes to these sections.

In review of Section 1917, Ms. Brand recommended to change the current law to require a licensee to file with the Board, within 10 days, any change of name.

Ms. Brand moved and Mr. Kanady seconded to recommend the following changes to Section 1917 to the Board. Passed unanimously.

§1917. Change of Name.

When a structural pest control licensee or registered company changes his or her or its name, he or she or it shall file with the registrar an application for change of name on a form prescribed by the board, within 10 days (See form No.

43L-8 at the end of this section) accompanied by the required fee and by a declaration certified under penalty of perjury, stating:

(a) The former name,

(b) The type and number of the pest control license or company registration, and

(c) That the change of name was not for the purpose of defrauding creditors or any other person or persons or for circumventing the provisions of the Business and Professions Code of California or any other law of the United States, State of California or any political subdivision thereof.

The committee reviewed Section 1918.

Ms. Byerly expressed concern with the leasing of employees and the ability to cite such employees.

Mr. Gordon stated that the leasing companies have contracts with the pest control companies that relieve them of responsibility should the licensee be cited for a violation of the Act.

Mr. Moss stated that in order for a licensee's license to be active, it must be associated to a Principal Registration license.

Mr. Good suggested that the committee look into what other program's views are regarding employee leasing for guidance.

Mr. Moss expressed concern with licensee's "renting out" their operator's licenses but not being involved in the company's daily operations and the inability to prove whether or not a qualifying manager is living up to the standards set forth in Section 1918.

Mr. Lucas stated that there are court cases where the court established criteria to determine whether or not someone is acting as a qualifier.

The committee reviewed Section 1919 and decided not to recommend any changes to this section.

In review of Section 1920, Ms. O'Flaherty stated that there are pending changes to this section that were approved at public hearing and need to be filed with the Office of Administrative Law and Secretary of State.

Ms. Saylor stated that the circumstances set forth in subsection (b) (1) were deleted.

Mr. Katz suggested replacing “Deputy Registrar” in this section with “Executive Secretary” to make consistent with the rest of the Act.

Mr. Katz moved and Mr. Ennes seconded to replace “Deputy Registrar” with “Executive Secretary” throughout Section 1920. Passed unanimously.

Mr. Kanady moved and Mr. Katz seconded to recommend to the Board to add “Business and Professions” to specify the code being referenced in this section. Passed unanimously.

Mr. Whitmore moved and Mr. Katz seconded to recommend to add “or designee” to subsection (e) (1) to allow for a designee appointed by the Registrar to attend an informal conference.

§1920. Citations and Fines

(a) Authority to Issue Citations and Fines:

(1) The Registrar or ~~Deputy Registrar~~ Executive Secretary of the Board is authorized to issue citations which may contain an order of abatement or an administrative fine ("fine") for violations of the statutes contained in the Structural Pest Control Act (commencing with Business and Professions Code Section 8500) or the regulations adopted by the Board.

(2) Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statutes(s) or regulation(s) alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

(b) Citation; Assessment of Fine:

(1) Citations may be issued without the assessment of a fine. The amount of any fine to be levied by the Registrar or ~~Deputy Registrar~~ Executive Secretary shall be no more than \$5,000.

For the issuance of a citation that includes an administrative fine in excess of \$2,500, the Registrar or Deputy Registrar shall determine that at least one of the following circumstances apply:

(A) the citation involves a violation that has an immediate relationship to the health and safety of another person;

(B) the cited person has a history of two or more prior citations of the same or similar violations;

(C) the citation involves multiple violations of the Act or these regulations that demonstrate a willful disregard of the law; or,

(D) the citation involves a violation or violations perpetrated against a senior citizen or person with disability.

(2) In determining whether a citation shall contain an order of abatement or a fine and if a fine is to be imposed, the Registrar or ~~Deputy Registrar~~ Executive Secretary shall consider the following factors:

(A) Gravity of the violation.

(B) History of previous violations of the same or similar nature.

(C) The good or bad faith exhibited by the cited person.

(D) Evidence that the violation was willful.

(E) The extent to which the cited person cooperated with the Board's investigation.

(F) The extent to which the cited person has mitigated or attempted to mitigate any damage caused by his or her violation.

(G) Such other factors as the Registrar or ~~Deputy Registrar~~ Executive Secretary considers relevant.

(c) Citations for Unlicensed Practice:

The Registrar or ~~Deputy Registrar~~ Executive Secretary of the Board is authorized to issue citations which may contain order of abatement or a fine against

persons who are performing or who have performed services for which a structural pest control license is required under the Structural Pest Control Act. The citation issued under this section shall be separate from and in addition to any other civil or criminal remedies.

(d) Compliance with Orders of Abatement:

When a citation is not contested or if the citation is appealed and the person cited does not prevail, failure to comply with the order of abatement or to pay the fine in the citation within the time allowed by a licensee may result in disciplinary action being taken by the Board against the person cited, or where the cited person is unlicensed in appropriate judicial relief being taken against the person cited.

(e) Contest of Citations:

(1) In addition to requesting a hearing provided for in subdivision (b)(4) of section 125.9 of the Business and Professions eCode (hereinafter

“administrative hearing”), the person cited may, within ten (10) days after service or receipt of the citation, notify the Registrar or ~~Deputy Registrar~~ Executive Secretary, as designated, in writing of his or her request for an informal conference with the designated Registrar, ~~or Deputy Registrar~~ Executive Secretary, or designee. The informal conference shall include at least one, but no more than two, industry members of the Board, as designated by the Registrar.

(2) The informal conference shall be held within 60 days from the receipt of the request of the person cited. At the conclusion of the informal conference, the Registrar or ~~Deputy Registrar~~ Executive Secretary may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The decision shall state in writing the reasons for the action and shall be served or mailed to the person within ten (10) days from the date of the informal conference.

(3) The person cited does not waive his or her request for an administrative hearing to contest a citation

The committee reviewed and discussed Section 1922 and decided not to recommend any changes to this section.

Mr. Good expressed concern regarding individuals who have had licenses revoked by the Board still being able to get a license through DPR.

ADJOURNMENT

The meeting adjourned at 2:02 P.M.

Bob Gordon, Committee Chairperson

Susan Saylor, Interim Executive Officer

DATE