

MINUTES OF THE
STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE
MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
January 29, 2014

The meeting was held on Wednesday, January 29, 2014, at Structural Pest Control Board, 2005 Evergreen Street, Sacramento, California.

Committee Members Present:

Bob Gordon, Chairman
Allen Kanady
Lee Whitmore
Darrell Ennes

Board staff present:

Susan Saylor, Executive Officer
Robert Lucas, Consumer Services Manager
Tom Ineichen, SPCB Specialist
David Skelton, Administrative Analyst

Departmental staff present:

Kyle Muteff, Legal Counsel
Ryan Arnold, DCA Legislative Analyst

Board member Curtis Good was also in attendance.

ROLL CALL

Mr. Gordon read roll call at 10:04 A.M and Mr. Gordon, Mr. Kanady and Mr. Whitmore were present.

APPROVAL OF MINUTES FROM THE DECEMBER 10, 2013 COMMITTEE MEETING

The approval of the minutes from the December 10, 2013 meeting was deferred to the next meeting.

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

Mr. Muteff stated that with the help of staff he had gone through the Class 1 recommendations from the December 10, 2013 Committee Meeting and made some suggested revisions.

Mr. Gordon opened up discussion on the proposed change to remove "limited liability company" from B&P Code Section 8504. There was no discussion from the Committee and the Committee voted to include the proposed revision as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8505.1.

Mr. Muteff stated that he removed the proposed addition of Carbon Monoxide to the list of simple asphyxiants because that change could be made through regulations rather than legislation.

Kathleen Boyle, Department of Pesticide Regulation, Staff Environmental Scientist, stated that there has been a shift in interpretation on how Carbon Monoxide is to be used and this new interpretation negates the need for it to be added to the list of simple asphyxiants.

The Committee voted to recommend to the Board removal of Sulfur Dioxide and Propylene Oxide as lethal fumigants from B&P Code Section 8505.1.

10:12 AM Committee Member Darrell Ennes arrived. Quorum established.

Mr. Gordon asked if the Committee were to make recommendations to the Board at the March 5, 2014 Committee Meeting if that would leave enough time for those changes to be included in a 2014 Omnibus Bill.

Ms. Saylor stated that we have a placeholder in a 2014 Omnibus Bill and there is enough time to include recommendations made to the Board at the March 5, 2014 Committee Meeting.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8505.5. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8505.6.

Mr. Muteff stated that he suggests removing B&P Code Section 8505.6 from the Committee's proposed recommendations due to consumer protection concerns. He suggested the Committee look at changing the language rather than removing it.

Mr. Whitmore stated that the practice of fumigating single units within a structure is no longer allowed and this Code Section is an example of the Structural Pest Control Act being outdated.

Mr. Gordon asked about the potential impact on commodities fumigation by a structural operator due to the removal of B&P Code Section 8505.6.

Ms. Boyle stated that that type of fumigation would not be in the purview of a Structural Pest Control License. She further stated that the Committee might want to look at removing Methyl Bromide and Aluminum Phosphide from the list of simple asphyxiants in B&P Code Section 8505.1 because neither can be used for structural pest control.

Mr. Ineichen stated that there are still situations in the practice of structural pest control that allow for spaces within a structure to be fumigated and the language contained in B&P Code Section 8505.6 is still needed for that reason.

Mr. Lucas stated that the labels for Master Fume and/or Vikane do have instructions for proper use when fumigating spaces within a structure.

Ms. Boyle stated that the Department of Pesticide Regulation would be opposed to B&P Code Section 8505.6 being left in. The human health concerns if it is left in override the consumer protection concerns raised by its removal.

Mr. Muteff stated that if B&P Code Section 8505.6 is removed there needs to be justification for the removal of consumer protections. Perhaps other code sections could be added to or rewritten to provide the same protections in a more modern context.

Ms. Boyle stated that the consumer protections provided in B&P Code Section 8505.6 are already covered in other code sections.

Mr. Whitmore stated that B&P Code Section 8505.6 actually decreases consumer protection by providing guidelines for a practice which is dramatically unsafe.

Mr. Gordon asked staff to revise B&P Code Section 8505.6 and present their proposed revisions at the March 5, 2013 Act Review Committee Meeting.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8505.10. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8505.12.

After much discussion Mr. Gordon asked staff to revise B&P Code Section 8505.12 and present their proposed revisions at the March 5, 2014 Act Review Committee Meeting.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8505.14.

Mr. Muteff stated that he suggests removing this section as a recommendation to the Board because the change is non-substantive and not needed.

Mr. Gordon directed the Committee to defer discussion of 8505.14 and instead review the proposed changes Mr. Muteff identified in the Class 1 recommendations and come back to the sections Mr. Muteff did not include.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8518 to change "working days" to "business days."

The Committee agreed to remove the recommendation to change B&P Code Section 8518 that added the words "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" and to vote on changing the term "working" to "business" and voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8538.

Mr. Muteff stated that the proposed addition of "by electronic means" may be enhanced by adding the words "if requested" at the end of the sentence.

The Committee discussed the benefits of adding the ability to notify by electronic means citing less environmental impact, convenience, and similarity to the means of notification that are currently approved.

Mr. Ineichen stated that adding the ability to notify by electronic means could be used by bad actors to circumvent their responsibility to notify.

Mr. Good requested that when the Committee creates a list of definitions that electronic means be further defined.

The Committee voted to include the proposed revision "by electronic means" as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8551.5

Mr. Muteff stated that he understood the need to extend new employee training time from 30 to 60 days but he was concerned about using the term pesticides without defining the term first.

The Committee discussed whether or not a definition of the term pesticides should be created before moving forward with the proposed changes with this code section.

Mr. Whitmore stated 60 days is still insufficient time to ensure licensure of an employee being trained and he would advocate extending the allowable training period to be 90 days.

Mr. Ineichen stated that the 30 or 60 day allowable training period is a consumer protection to prevent individuals who are unable to obtain a license from practicing pest control.

The Committee discussed the practicalities of the allowable training time period including how to define when employment begins.

Mr. Muteff stated that "employment" can be defined in regulations and urged the Committee to think about the consumer protections involved in the decision to extend the allowable training time period.

Mr. Ennes moved and Mr. Kanady seconded to amend the Committee's recommendation from September 7, 2011 Act Review Committee Meeting to extend the allowable training time period from 60, to 90 days. Recommendations from the September 7, 2011 Meeting are denoted by double strike through. Passed unanimously.

8551.5. Except as provided by this chapter, No unlicensed individual in the employ of a registered company shall apply any pesticides, rodenticide, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests, or organisms included in Branch 2 or Branch 3. However, an individual may, for ~~30~~ 90 days from the date of employment, apply pesticides, rodenticides, or allied chemicals or substances for the purposes of training under the direct supervision of a licensed field representative or operator employed by the company. This direct supervision means in the presence of the licensed field representative or operator at all times. The ~~30-60~~ 90 day time period may not be extended.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8555. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8560. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8562. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8564. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8564.5.

Mr. Muteff advised either having PCOC include in their sponsorship of legislation an increase in the fee expressed in section 8564.5 or removing the reference to the fee in section 8564.5

Ms. Saylor indicated that PCOC had already been contacted to revise the proposed legislation to delete the reference to a fee.

The Committee voted to recommend striking the word "written" in subdivisions (b) and (c) and the words "provided, however, that the fee shall not exceed fifteen dollars (\$15)" in subdivision (d).

Mr. Whitmore moved and Mr. Ennes seconded to recommend to the Structural Pest Control Board the proposed change to B&P Code Section 8564.5. Passed unanimously.

8564.5. (a) Any individual 18 years of age or older may apply for a license as applicator.

(b) The board shall ascertain by ~~written~~ examination that an applicant for a license as applicator in Branch 2 or Branch 3 has sufficient knowledge in pesticide equipment, pesticide mixing and formulation, pesticide application procedures and pesticide label directions.

(c) Passage of the ~~written~~ examination authorizes an individual to apply any chemical substance in Branch 2 or Branch 3.

(d) The board may charge a fee for any examination required by this section in an amount sufficient to cover the cost of administering the examination, ~~provided, however, that the fee shall not exceed fifteen dollars (\$15).~~

(e) Nothing in this chapter shall prohibit an applicator, authorized to apply any chemical substance in Branch 2 or Branch 3 before January 1, 1995, from acting as an applicator pursuant to that authorization. Upon expiration of the authorization, an applicator's license shall be required.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8564.6. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8565.

Mr. Muteff stated that the proposed replacement of “poisonous and dangerous chemicals” with the term “pesticides” should not be recommended until a definition of the term pesticides has been created.

The Committee agreed to remove the recommendation to remove “poisonous and dangerous chemicals” and replace it with it with “pesticides” and to keep the recommendation to strike out “written” and “and spelling” and voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8565.6. There was no discussion from the Committee and they voted to include the recommended removal of section 8565.6 to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8566.

The Committee agreed to remove the recommendation to remove “poisonous and dangerous chemicals” and replace it with it with “pesticides” and keep the recommendation to remove the word “written” and voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8567. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8590. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8590.1. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8593.1. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8612. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8613. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8617.

Mr. Muteff asked why the Committee is seeking to place a statute of limitation on the Agricultural Commissioners if one does not already exist.

Ms. Boyle stated that the Agricultural Commissioners do currently have a statute of limitations due to a default to either a CAC or Food & Agricultural code statute which is shorter than what the Committee is proposing.

The Committee voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed changes to B&P Code Section 8656. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed changes to B&P Code Section 8660. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed addition of B&P Code Section 8672.1. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Gordon opened up discussion on the proposed addition of B&P Code Section 8673. There was no discussion from the Committee and they voted to include the proposed revisions as a recommendation to the Board.

Mr. Ennes moved and Mr. Kanady seconded to recommend to the Structural Pest Control Board the revisions to B&P Code Sections 8504, 8505.1, 8505.5, 8505.10, 8518, 8538, 8555, 8560, 8562, 8564, 8564.6, 8565, 8565.6, 8566, 8567, 8590, 8590.1, 8593.1, 8612, 8613, 8617, 8656, 8660, 8672.1, and 8673. Passed unanimously.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8505.2.

Mr. Whitmore moved and Mr. Kanady seconded to recommend to the Structural Pest Control Board the proposed change to B&P Code Section 8505.2. Passed unanimously.

8505.2. Fumigation shall be performed only under the direct and personal supervision of an individual who is licensed by the board as an operator or field representative in a ~~branch~~ of pest control that includes fumigation as set forth in Section 8560.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8505.14.

Mr. Whitmore moved and Mr. Ennes seconded to recommend to the Structural Pest Control Board the proposed change to B&P Code Section 8505.14. Passed unanimously.

8505.14. "Fumigator" means any individual licensed by the board as a structural pest control operator or as a structural pest control field representative in the bBranch 1 of pest control which includes fumigation as set forth in Section 8560.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8514. This section was delegated to staff to recommend language back to the Committee at the March 5, 2014 Act Review Committee Meeting.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8516.5. The Committee agreed not to make any recommendation to this section until changes to B&P Code Section 8516 have been made.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8517. The Committee agreed not to make any recommendation to this section.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8518.

Mr. Muteff stated that because the Committee decided to not recommend removal of B&P Code Section 8517, the addition of the second paragraph stating "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." is not needed.

The Committee agreed to leave its previous recommendation, without the addition of the second paragraph.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8519. The Committee agreed to work on new language during the March 5, 2014 Act Review Committee Meeting.

Mr. Gordon opened up discussion on the proposed changes to B&P Code Section 8551. The Committee agreed to make no recommendation.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8643. The Committee agreed to make no recommendation until the term "pesticide" is defined.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8647. The Committee agreed to make no recommendation until the term "pesticide" is defined.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8651. The Committee agreed to make no recommendation until the term "pesticide" is defined.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8622.

Mr. Ennes moved and Mr. Whitmore seconded to recommend to the Board to revise the following sentence within section 8622 to read: "The registered company shall have 30 days from the receipt of the notice to bring such property into compliance, unless an extension is authorized 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." Passed unanimously.

The final recommendation for B&P Code Section 8622 is as follows. Change made at this meeting is indicated by double strikethrough.

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 authorized 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.

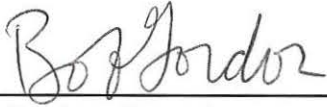
Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8652. The Committee agreed to not recommend any revisions until changes can be made to B&P Code Section 8516.

Mr. Gordon opened up discussion on the proposed changes to CCR Section 1970.4 and 1970.5. The Committee decided to discuss the proposed changes to CCR Section 1970.4 and 1970.5 at the March 5, 2014 Act Review Committee Meeting.

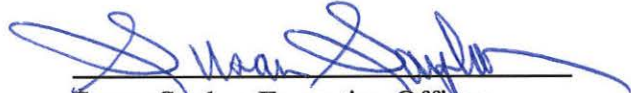
Mr. Kanady moved and Mr. Ennes seconded to adjourn the meeting. Passed unanimously.

ADJOURNMENT

The meeting adjourned at 2:58 P.M.



Bob Gordon, Committee Chairperson



Susan Saylor, Executive Officer

3-5-2014

DATE