

MINUTES OF THE  
STRUCTURAL PEST CONTROL BOARD ACT REVIEW COMMITTEE MEETING  
April 2, 2014

The meeting was held on Wednesday, April 2, 2014 at the Structural Pest Control Board, Lake Tahoe Conference Room, 2005 Evergreen Street, Sacramento, California

Committee Members Present:

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

Board staff present:

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

Departmental staff present:

Kyle Muteff, Legal Counsel  
Ryan Arnold, DCA Legislative Analyst

Board member Curtis Good was also in attendance.

**ROLL CALL/ESTABLISHMENT OF QUORUM**

Mr. Gordon read roll call at 9:15 A.M., quorum established.

**APPROVAL OF MINUTES OF THE MARCH 5, 2014 COMMITTEE MEETING**

Mr. Katz moved and Mr. Kanady seconded to approve the minutes from the March 5, 2014 Committee Meeting. Passed unanimously.

**REVIEW OF THE STRUCTURAL PEST CONTROL ACT AND TITLE 16,  
CALIFORNIA CODE OF REGULATIONS, FOR THE PURPOSE OF UPDATE AND  
IDENTIFYING CONTINUED NEED AND/OR USE AND TO MAKE  
RECOMMENDATIONS TO THE BOARD**

Mr. Lucas introduced Kevin Lau, Structural Pest Control Board, Enforcement Unit, and stated that Mr. Lau would be observing the meeting.

Ms. Saylor stated that G.V. Ayers, Senate Consultant, Business, Professions & Economic Development Committee, asked her to send the Committee recommendations which were approved by the Board at the March 27, 2014 Board Meeting for possible inclusion in the Board's Sunset Bill.

Mr. Ennes inquired as to the possibility of the Board's Sunset Date being removed thereby indefinitely extending the Board's regulatory authority.

Mr. Arnold stated that the trend has been to add more Sunset Dates and that the possibility of having one removed completely was extremely unlikely.

Mr. Gordon opened up discussion on B&P Code Section 8516.

The Committee agreed to identify recommendations for change to B&P Code Section 8516 but to delay making an official recommendation until such time as all issues, including regulatory, could be identified.

Mr. Gordon stated that the Committee had previously considered changing the word "original" in B&P Code Section 8516, subdivision (b), paragraph 4 to properly align with form 43-M41.

After much discussion the Committee agreed to go through B&P Code Section 8516 and at that time identify regulatory issues associated with any statutory changes they might recommend.

Mr. Muteff suggested the Committee consider recommending the term "owner" in subdivision (b), paragraph 4, of B&P Code Section 8516 be changed to "property owner" in order to make it less vague.

After much discussion the Committee agreed to change the term "owner" in subdivision (b), paragraph 4, of B&P Code Section 8516, to "the property owner or the property owner's designated agent."

The Committee began a discussion about striking the word "written" from subdivision (b), paragraph 4, of B&P Code Section 8516.

Mr. Gordon stated that removing the word “written” is a necessary step in order to bring the Act up to date with what is happening in the industry.

Mr. Ineichen stated that removing the word “written” could create situations where unscrupulous operators fail in their reporting requirements and use B&P Code Section 8516 as justification for doing so.

Mr. Good stated that because the requirement exists to prepare the inspection report on a form approved by the Board removing the word “written” would still preclude operators from attempting to satisfy their reporting requirement verbally.

Mr. Lucas stated that more research should be done to ascertain the ramifications of removing the word “written.”

Mr. Muteff stated that if the Committee wishes it can direct staff to research the issues related to removing the “written” and recommend language back to the Committee after doing so.

After much discussion the Committee asked staff to recommend language that would help facilitate the removal of the word “written” from subdivision (b), paragraph 4, of B&P Code Section 8516.

Mr. Gordon opened up discussion on striking the word “original” from subdivision (b), paragraph 4, of B&P Code Section 8516.

The Committee agreed to strike the word “original” from subdivision (b), paragraph 4, of B&P Code Section 8516.

Mr. Gordon opened up discussion on striking the word “original” from subdivision (b), paragraph 5, of B&P Code Section 8516.

The Committee agreed to strike the word “original” from subdivision (b), paragraph 5, of B&P Code Section 8516 and add the word “All” in its place.

Mr. Gordon opened up discussion on subdivision (b), subsection (1) of B&P Code Section 8516.

Mr. Gordon suggested changing the phrase “The date of the inspection” to, “The commencement date of the inspection”.

Mr. Ineichen stated that the word “commencement” can be interpreted to convey a different meaning than the Committee intends.

The Committee agreed to strike the word “commencement” from subsection (b), paragraph 4, of B&P Code Section 8516 and replace it with the word “start”.

The Committee agreed to add the word “start” to subsection (b), subsection (1), of B&P Code Section 8516 as follows “The start date of the inspection...”.

The Committee agreed to add a plural “s”, in parentheses, to the words “field representative” and “operator” in subdivision (b), subsection (1), of B&P Code Section 8516 as follows “field representative(s) or operator(s)”.

The Committee discussed and agreed to add “the property owner and” to the subdivision (b), subsection (3) of B&P Code Section 8516 as follows “The name and address of the property owner and any person who is a party in interest.”

Mr. Gordon opened up discussion on subdivision (b), subsection (5) of B&P Code Section 8516.

Mr. Katz stated that a regulation should be created that further defines the term “general description” in subdivision (b), subsection (5) of B&P Code Section 8516.

Mr. Gordon opened up discussion on subdivision (b), subsection (6) of B&P Code Section 8516.

The Committee agreed to the following changes to subdivision (b), subsection (6) of B&P Code Section 8516.

**(6) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected,.**

**(A) Indicate on the foundational diagram or sketch indicating thereon the approximate location of any infested or infected areas evident, and the parts of the structure where conditions that would ordinarily subject those parts to attack by wood destroying pests or organisms exist. Reporting of the infested or infected wood members, or parts of the structure identified shall be listed in the inspection report so as to clearly identify them as is typical in standard construction components including but not limited to (i.e. siding, studs, rafters, floorjoist, fascia, subfloor, sheathing, trim boards, etc.)**

The following is B&P Code Section 8516 with the changes discussed by the Committee at this meeting.

**8516. (a) This section, and Sections 8518 and 8519, apply only to wood destroying pests or organisms.**

**(b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator associated with the registered company except as provided in Section 8519.5. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.**

Every property inspected pursuant to this subdivision or Section 8518 shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8518 or this section is grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars (\$2,500).

A written inspection report ~~conforming to this section and~~ on a form approved by the board shall be prepared and delivered to the property owner person requesting the inspection or ~~to the person's~~ property owner's designated agents within 10 business days ~~of from the commencement~~ start of the inspection, except that an inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all ~~original~~ inspection reports, field notes, and activity forms.

Reports shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized representative during business hours. All Original inspection reports or copies thereof shall be submitted to the board upon request within two business days. The following shall be set forth in the report:

- (1) The start date of the inspection and the name of the licensed field representative(s) or operator(s) making the inspection.
- (2) The name and address of the person or firm ordering the report.
- (3) The name and address of the property owner and any person who is a party in interest.
- (4) The address or location of the property.
- (5) A general description of the building or premises inspected.



company to company. You have a right to seek a second opinion from another company."

An estimate or bid for repairs shall be given separately allocating the costs to perform each and every recommendation for corrective measures as specified in subdivision (c) with the original inspection report if the person who ordered the original inspection report so requests, and if the registered company is regularly in the business of performing corrective measures.

If no estimate or bid was given with the original inspection report, or thereafter, then the registered company shall not be required to perform a reinspection.

A reinspection shall be an inspection of those items previously listed on an original report to determine if the recommendations have been completed. Each reinspection shall be reported on an original inspection report form and shall be labeled "Reinspection" in capital letters by rubber stamp or typewritten. Each reinspection shall also identify the original report by date.

After four months from an original inspection, all inspections shall be original inspections and not reinspections.

Any reinspection shall be performed for not more than the price of the registered company's original inspection price and shall be completed within 10 working business days after a reinspection has been ordered.

(c) At the time a report is ordered, the registered company or licensee shall inform the person or entity ordering the report, that a separated report is available pursuant to this subdivision. If a separated report is requested at the time the inspection report is ordered, the registered company or licensee shall separately identify on the report each recommendation for corrective measures as follows:

- (1) The infestation or infection that is evident.
- (2) The conditions that are present that are deemed likely to lead to infestation or infection.

If a registered company or licensee fails to inform as required by this subdivision and a dispute arises, or if any other dispute arises as to whether this subdivision has been complied with, a separated report shall be provided within 24 hours of the request but, in no event, later than the next business day, and at no additional cost.

(d) When a corrective condition is identified, either as paragraph (1) or (2) of subdivision (c), and the responsible party, as negotiated between the buyer and the seller, chooses not to correct those conditions, the registered company or licensee shall not be liable for damages resulting from a failure to correct those conditions or subject to any disciplinary action by the board. Nothing in this subdivision, however, shall relieve a registered company or a licensee of any liability resulting from negligence, fraud, dishonest dealing, other violations pursuant to this









**8616.6. The authority to withhold funds shall be limited only to the withholding of an amount otherwise due the agent for reimbursable activities performed in the county or counties for which a notice has been filed pursuant to Section 8616.6.**

**(c) Registered structural pest control companies shall prepare and submit to the county agricultural commissioner a monthly report of all pesticides used in that county. The report shall be on a form approved by the Director of Pesticide Regulation and shall contain the name and registration number of each pesticide and, the amount used, ~~and the number of applications made~~. The report shall be submitted to the commissioner by the 10th day of the month following the month of application, and a copy maintained by the licensee for a period of three years from the report submission date. Each pesticide use report or combination of use reports representing a registered structural pest control company's total county pesticide use for the month shall ~~have affixed thereto~~ require a pesticide use stamp or stamp number issued by the board in the denomination fixed by the board in accordance with Section 8674 as the pesticide use report filing fee. The board shall provide for the sale of these stamps and stamp numbers and for the refund of moneys paid for stamps and stamp numbers which are returned to it unused. When a registered structural pest control company performs no pest control during a month in a county in which it has given notice pursuant to Section 15204 of the Food and Agricultural Code, the registered company shall submit a use report stating this fact to the commissioner. No pesticide use stamp or stamp number is required on negative use reports.**

**(d) All other proceeds from civil penalties collected by the board shall be deposited in the Civil Penalties Account which is hereby created in the fund. These funds shall be available to the board upon appropriation by the Legislature for the purposes of enforcing this chapter.**

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8674.

Ms. Saylor stated that the fees derived from the sale of pesticide use stamps fund County Agricultural Commissioner.

Ms. Boyle asked if current pesticide use filing fees are enough to fund future research the Board may desire.

Ms. Saylor stated that the Board currently charges \$6 for each stamp but the statutory limit is \$7.

Mr. Arnold stated that there could be a problem with proposing to raise a statutory limit when the Board is not currently charging the limit already in place.



~~research. If the Research Advisory Panel designates that the fees be deposited in an account other than the Structural Pest Control Research Fund, any moneys in the fund shall be transferred to the designated account.~~

(2) Prior to the deposit of any funds, the depository shall enter into an agreement with the Department of Consumer Affairs that includes, but is not limited to, all of the following requirements:

(A) The depository shall serve as custodian for the safekeeping of the funds.

(B) Funds deposited in the designated account shall be encumbered solely for the exclusive purpose of implementing and continuing the program for which they were collected.

(C) Funds deposited in the designated account shall be subject to an audit at least once every two years by an auditor selected by the Director of Consumer Affairs. A copy of the audit shall be provided to the director within 30 days of completion of the audit.

(D) The Department of Consumer Affairs shall be reimbursed for all expenses it incurs that are reasonably related to implementing and continuing the program for which the funds were collected in accordance with the agreement.

(E) A reserve in an amount sufficient to pay for costs arising from unanticipated occurrences associated with administration of the program shall be maintained in the designated account.

(3) A charge for administrative expenses of the board in an amount not to exceed 5 percent of the amount collected and deposited in the Structural Pest Control Research Fund may be assessed against the fund. The charge shall be limited to expenses directly related to the administration of the fund.

(4) The board shall, by regulation, establish a five-member research advisory panel, including, but not limited to, representatives from each of the following: (A) the Structural Pest Control Board, (B) the structural pest control industry, (C) the Department of Pesticide Regulation, and (D) the University of California. The panel, or other entity designated by the board, shall solicit on behalf of the board all requests for proposals and present to the panel all proposals that meet the criteria established by the panel. The panel shall review the proposals and recommend to the board which proposals to accept. The recommendations shall be accepted upon a two-thirds vote of the board. The board shall direct the panel, or other entity designated by the board, to prepare and issue the research contracts and authorize the transfer of funds from the Structural Pest Control Research Fund to the applicants whose proposals were accepted by the board.

(5) A charge for requests for proposals, contracts, and monitoring of contracted research shall not exceed 5 percent of the research funds available each year and shall be paid from the Structural Pest Control Research Fund.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8516.5.

Mr. Muteff stated for the Committee that the proposed removal of B&P Code Section 8516.5 leaves a gap in consumer protection without the proposed additions to B&P Code Section 8516 discussed earlier in the meeting by the Committee.

Mr. Katz moved and Mr. Ennes seconded to recommend the deletion of B&P Code Section 8516.5 to the Board.

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

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8517.

Mr. Muteff stated that B&P Code Section 8517 is referred to in a number of other code sections throughout the act and its deletion would leave blank spots in the Act.

Mr. Whitmore moved and Mr. Kanady seconded to not recommend any changes to B&P Code Section 8517 to the Board. Passed unanimously.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8519.

Mr. Muteff stated that any proposed recommendations for change to B&P Code Section 8519 should be made in conjunction with changes to B&P Code Section 8516.

Mr. Lucas stated that limited inspections are defined in regulations but need to be defined in B&P Code Section 8516.

The Committee agreed to table the discussion on B&P Code Section 8519 until the May 7, 2014 Committee meeting.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8519.5.

The Committee agreed to table the discussion on B&P Code Section 8519.5 until the May 7, 2014 Committee meeting where Mr. Whitmore will provide suggested language.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8551.

Mr. Muteff stated that statutes are written to convey clear meaning to all persons and that if the Committee recommends the removal of B&P Code Section 8551 it should offer a clear explanation as to why.

Mr. Katz stated that no person could possibly think that an unlicensed person could perform fumigations and that in light of the language contained in B&P Code Section 8505.2, B&P Code Section 8551 is unnecessary.

Mr. Kanady moved and Mr. Whitmore seconded to recommend the deletion of B&P Code Section 8551 to the Board. Passed unanimously.

~~8551. It is unlawful for any unlicensed person to perform fumigation with dangerous or lethal fumigating chemicals in any public structure, including rooming houses, or households when used as public structures, hotels, apartment houses, or any part thereof.~~

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8553.

Mr. Whitmore moved and Mr. Ennes seconded to recommend the proposed change of B&P Code Section 8553 to the Board. Passed unanimously.

**8553. Any person who violates any provision of this chapter, or who conspires with another person to violate any provision of this chapter, is guilty of a misdemeanor, and is punishable by a fine of not less than ~~one hundred dollars (\$100)~~ fifty dollars (\$50) nor more than ~~one thousand dollars (\$1,000)~~ five thousand dollars (\$5,000), or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.**

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8611.

Mr. Whitmore moved and Mr. Katz seconded to recommend the proposed changes to B&P Code Section 8611 to the Board. 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.**

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8616.9.

Mr. Whitmore stated that some counties have interpreted this code section to mean that only licensees and not companies can be cited.

Mr. Whitmore stated that a broader discussion on licensee discipline needs to occur.

Mr. Muteff suggested that the proposed changes be re-written to clearly give authority to cite both employers and employees.

The Committee agreed to table the discussion on B&P Code Section 8616.9 until the May 7, 2014 Committee meeting.

### **FUTURE MEETING DATES**

The next meeting which was previously scheduled for May 7, 2014 in Los Angeles was changed to May 7, 2014 in Sacramento.

The following meeting was previously scheduled for July 11, 2014 in San Diego to coincide with the Board Meeting.

### **ADJOURNMENT**

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

The meeting adjourned at 2:59 P.M.

  
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Bob Gordon, Committee Chairperson

  
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Susan Saylor, Executive Officer

5-7-2014

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DATE