

TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS

DIVISION 19. STRUCTURAL PEST CONTROL BOARD

FINDING OF EMERGENCY

SUBJECT MATTER OF PROPOSED REGULATIONS

Wood Destroying Organism (WDO) Emergency Fee Increase

SECTIONS AFFECTED

California Code of Regulations (CCR), Title 16, Section 1997

SPECIFIC FACTS SHOWING THE NEED FOR EMERGENCY ACTION

The Structural Pest Control Board (SPCB) has determined that it is necessary to increase the WDO fee on an emergency basis in order to avoid the immediate risk of insolvency and the serious risk to public safety that would result if the SPCB becomes insolvent. The SPCB's expenses rose considerably and unexpectedly starting in the 2017-2018 fiscal year. The SPCB tried to address the revenue shortfall with a regulatory increase to the WDO fee, because this fee provides immediate revenue to the SPCB and is the least impactful to applicants and licensees. Thus, the SPCB actively pursued a regular rulemaking to increase the WDO fee to \$3.00, which at the time was the statutory maximum, and the fee increase just took effect July 1, 2019. But even with the recent WDO fee increase, the SPCB's projected budget still shows that the SPCB is on the verge of insolvency. And the budget projections do not account for the sharp rise in legal fees that the Attorney General's Office recently and unexpectedly announced that are expected to go into effect September 1, 2019. The SPCB needs additional revenue immediately to ensure that it can maintain its operations and protect the public. Fortunately, the Legislature recently increased the statutory maximum WDO fee to \$5.00, providing the SPCB an avenue to address the revenue shortfall via regulation.

The regular rulemaking process, however, is not sufficient to address the SPCB's immediate needs. The regular process can take up to 12 months to complete, and while this would address the SPCB's long-term budget needs, it does not address the SPCB's immediate needs. The proposed emergency action would increase the WDO fee to \$4.00 and immediately provide SPCB with much-needed revenue to maintain operations.

The SPCB's highest priority is public protection. (BPC section 8520.1.) Boards and bureaus within the Department of Consumer Affairs (DCA) typically maintain a reserve fund balance of approximately six months to be able to respond to unanticipated revenue fluctuations and costs, such as decreases in licensing populations (and the associated revenue drop), litigation expenses, and increases in enforcement costs. (See Business and Professions Code (BPC)

sections 3145 [Optometry Board maintains up to a six-month reserve]; 3775, subd. (d) [Respiratory Care Board maintains six-month reserve]; 7138.1 [Contractors State License Board maintains six-month reserve].) The SPCB began its 2019-2020 fiscal year with a dangerously-low reserve balance of \$426,000 (see attached 2019 Governor’s Budget fund condition statement). This equates to less than one month in reserve. Under the current budget projections, without a fee increase, the SPCB is projected to have a negative reserve balance by the 2020-2021 fiscal year.

The SPBC’s expenditures dramatically and unexpectedly increased starting in the 2017-2018 fiscal year. As reflected in the attached 2019 Governor’s Budget fund condition statement, the SPCB’s expenditures in the 2015-2016 and 2016-2017 fiscal years were only slightly greater than its revenues. It maintained a relatively-stable reserve balance of 5.3 months in the 2015-2016 fiscal year and 4.9 months in the 2016-2017 fiscal year. But in the 2017-2018 fiscal year, the SPCB’s expenditures began to significantly outpace its revenues and the SPCB ended the last fiscal year with less than one month in reserve.

As indicated, the SPCB voted in April 2018 to raise the WDO fee from \$2.50 to the statutory maximum (at the time) of \$3.00 per property address reported to try to address the rise in costs and rapidly-depleting fund reserve. The rulemaking action was approved by the Office of Administrative Law (OAL) on May 7, 2019, with an effective date of July 1, 2019. While the recent increase stopped the fund reserve’s quickening decline, and is now projected to bring revenue closer to the level of expenditures, it is ultimately insufficient and the SPCB remains projected to nearly exhaust its budget reserves in this fiscal year.

The SPCB requires a sufficient fund balance to ensure that it can fulfill monthly financial obligations such as salaries, rent, and Attorney General/Office of Administrative Hearings charges, and pay for unexpected costs. The SPCB also regularly experiences uneven cash flow patterns. It is frequently required to spend significantly more in one month than its revenue on hand in that same month. Accordingly, if the SPCB does not raise the WDO fee immediately, it risks being unable to pay for expenditures that exceed its current fund balance.

The chart below illustrates the type of revenue fluctuations the SPCB has experienced in the last fiscal year.

SPCB Monthly Revenue FY 2018-2019

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
\$296,466	\$541,319	\$357,740	\$454,217	\$337,596	\$350,042	\$400,959	\$302,532	\$358,746	\$384,971

As the chart shows, the SPCB experienced month-to-month revenue decreases last fiscal year as large as \$183,579. If such revenue drops were to occur in consecutive months in the 2019-2020 fiscal year, the SPCB’s entire budget reserve would be nearly exhausted and it risks not being able to pay its bills.

Additionally, the SPCB’s expenditures are subject to significant month-to-month fluctuation. The charts below show the SPCB’s Attorney General (AG) and Office of Administrative Hearing (OAH) monthly costs for the 2018-2019 fiscal year.

SPCB Monthly AG Costs FY 2018-2019

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
\$34,823	\$0.00	\$86,745	\$48,095	\$32,140	\$32,525	\$32,515	\$30,146	\$29,276	\$44,277

SPCB Monthly OAH Costs FY 2018-2019

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
\$12,060	\$8,530	\$510	\$4,090	\$7,540	\$3,780	\$23,990	\$11,670	\$19,440	\$3,520

As shown in the above charts, the SPCB experiences month-to-month cost fluctuations as large as \$86,745 in AG costs, and \$20,110 in OAH costs. Moreover, the AG unexpectedly announced on July 12, 2019, that its costs will dramatically increase beginning September 1, 2019. The AG raised its hourly rates for Deputy Attorney General services from \$170 per hour to \$220 per hour, and raised the fees for paralegal services from \$120 per hour to \$205 per hour. An AG cost increase of \$86,745 in one month at the former rate of \$170 per hour would now equate to a cost increase of \$112,258 at the AG’s new \$220 rate.

Again, if the SPCB were to experience the same substantial cost increases that it previously experienced in consecutive months, or in combination with a low revenue month, or if other unexpected costs arise, the SPCB’s current budget reserve would be depleted, SPCB could not pay its bills, and the SPCB would need to immediately cease enforcement activity and paying for other critical expenses.

On average, there were approximately 114,645 activity forms filed each month during the last four fiscal years. (See attachment WDO Activities Filed). Increasing the WDO Inspection Reporting Fee by just one dollar—from \$3.00 per property address reported to \$4.00 per property address reported—is projected to produce an annual revenue increase of approximately \$1,375,747, which amounts to approximately \$114,645 per month. This action will provide an immediate influx of cash and increase SPCB’s long-term revenue projections so that all expenditures will be covered and the SPCB can rebuild its reserve fund balance.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

BPC section 8674, subdivision (n) authorizes the SPCB to charge an activity form fee per property address of not more than \$5.

CCR, Title 16, section 1997 currently establishes a WDO Inspection Reporting Fee of \$3.00 per property address reported.

This emergency regulatory proposal would amend CCR, Title 16, section 1997 to increase the WDO Inspection Reporting Fee from \$3.00 per property address reported, to \$4.00 per property address reported.

Currently, the SPCB's expenditures exceed its revenue. Because of this, the SPCB is currently at risk of becoming insolvent. Moreover, the SPCB's reserve fund is projected to be nearly depleted in the current fiscal year. By proceeding with this emergency rulemaking proposal, the SPCB projects an annual revenue increase of approximately \$1,375,747, which amounts to approximately \$114,645 per month. This revenue increase will allow the SPCB to immediately increase its monthly revenue to cover its current anticipated and unanticipated expenditures, and begin building its reserve fund balance back into the recommended range of approximately six months.

PURPOSE, ANTICIPATED BENEFIT, AND RATIONALE

Purpose: Pursuant to BPC sections 8520, subdivision (c) and 8520.1 consumer protection and protection of the public are, respectively, the primary mission and highest priority of the SPCB. The SPCB achieves these goals through the licensing and enforcement of the structural pest control industry. The purpose of this emergency regulatory filing is to increase the WDO fee to immediately address a budgetary shortfall that threatens to render the SPCB unable to pay its bills and, consequently, fulfill its statutory obligations.

Benefit: The SPCB anticipates that the proposed regulation will benefit the public by fully addressing the budgetary concerns outlined in this proposal and ensuring the SPCB is able to meet its obligation to protect consumers and the public.

Rationale: Immediate action to increase the WDO fee is necessary to address the SPCB's budget concerns. Budget projections indicate the SPCB will have almost totally exhausted its budget reserve in the 2019-2020 fiscal year. Moreover, the SPCB will be insolvent if it experiences any unanticipated or higher than expected expenses, or substantial revenue decreases. It would be unable to pay its bills and perform its core functions. For these reasons it is necessary for the SPCB to take immediate action to increase the WDO fee.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing the proposed regulation the SPCB conducted a search for any similar regulations relating to this topic. The SPCB determined that the proposed regulatory action is not inconsistent or incompatible with existing regulations.

UNDERLYING DATA

1. Structural Pest Control Fund, Analysis of Fund Condition, 1-10-2019
2. Structural Pest Control Fund, Analysis of Fund Condition (With \$1.00 WDO Fee Increase), 3-15-2019

3. Statement Of WDO Activities Filed

AUTHORITY AND REFERENCE

Pursuant to BPC section 8525 and to implement, interpret, and make specific BPC section 8674, the SPCB is proposing to amend CCR, Title 16, section 1997.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs / Savings in Federal Funding to the State: The SPCB anticipates increased revenue of \$1,375,747 annually as a result of the proposed regulation.

Nondiscretionary Costs / Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact: The proposed regulation is expected to have an economic impact on structural pest control businesses that are licensed to perform WDO inspections. The SPCB currently registers 3,125 pest control businesses throughout California. Of those, 1,540 are licensed to perform WDO inspections. Over the last four full fiscal years, the 1,540 businesses cumulatively averaged 1,375,747 WDO inspections annually. This regulatory proposal seeks to raise the fee paid by these companies every time they report the performance of a WDO inspection by \$1.00 per inspection. Therefore, the average cost impact for businesses that perform WDO inspections is expected to be approximately \$893 annually.

Impact on Jobs / New Businesses: The SPCB has determined that the proposed regulation will not have any impact on the creation of jobs or businesses or the elimination of existing jobs or businesses within the state of California.

Cost Impact on Representative Private Person or Business: The SPCB currently registers 3,125 pest control businesses throughout California. Of those, 1,540 are licensed to perform WDO inspections. Over the last four full fiscal years, the 1,540 businesses collectively averaged 1,375,747 WDO inspections annually. This regulatory proposal seeks to raise the fee paid by these companies every time they report the performance of a WDO inspection by \$1.00 per inspection. Therefore, the average cost impact for businesses that perform WDO inspections is expected to be approximately \$893 annually.

Effect on Housing Costs: None