

MINUTES OF THE
STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE
MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
January 18, 2013

The meeting was held on Friday, January 18, 2013, at Structural Pest Control Board, 2005 Evergreen Street, Hearing Room, Sacramento, California, commencing at 9:00 A.M. with the following members present:

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

Board staff present:

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

Departmental staff present:

Kathy Boyle, Staff Environmental Scientist

Board member Curtis Good was also in attendance.

ROLL CALL

Mr. Gordon read roll call. Ms. Brand was not present.

**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 stated that the meeting would begin with discussion of electronic notification as provided in B & P Code Section 8538.

Mr. Katz stated that at the last Board meeting, Jodi Clary, Legal Counsel, provided a legal opinion stating that current law does not allow for electronic delivery of a pre-notification service slip as provided in B & P Code Section 8538. He suggested that the committee add to B & P Code Section 8538(b) the option of electronic delivery of the service slip.

Mr. Katz moved and Mr. Kanady seconded to recommend to the Board to add "by electronic means" to B & P Code Section 8538(b) as follows. Passed unanimously.

8538(b) In the case of Branch 1 applications, the notice prescribed by subdivision (a) shall be provided at least 48 hours prior to application unless fumigation follows inspection by less than 48 hours.

In the case of Branch 2 or Branch 3 registered company applications, the notice prescribed by subdivision (a) shall be provided no later than prior to application.

In either case, the notice shall be given to the owner, or owner's agent, and tenant, if there is a tenant, in at least one of the following ways:

- (1) First-class mail.
- (2) Posting in a conspicuous place on the real property.
- (3) Personal delivery.
- (4) By electronic means

If the building is commercial or industrial, a notice shall be posted in a conspicuous place, unless the owner or owner's agent objects, in addition to any other notification required by this section.

The notice shall only be required to be provided at the time of the initial treatment if a contract for periodic service has been executed. If the pesticide to be used is changed, another notice shall be required to be provided in the manner previously set forth herein.

The committee noted that they would like to define "notice" and "notification" when they address definitions.

Mr. Katz stated that the language in CCR Section 1970.4 will need to be changed as well to allow electronic delivery of service slips.

Mr. Whitmore stated that CCR Section 1970.4 is very unclear and suggested that the committee consider rewriting it.

Mr. Ineichen commented that the law should require that electronic delivery only be allowed with the consumer's consent.

Mike Parker, Clark Pest Control, stated that electronic delivery of the service slip is acceptable to the owner of the property in the case of multiple unit structures, but the notice should still be posted in conspicuous locations to notify the tenants.

Mr. Ineichen stated that CCR Section 1970.4(e) clarifies that in multiple unit structures with more than four units that the notice must be posted in conspicuous locations.

Mr. Gordon stated that the current law also states that the notice does not need to be posted if the owner objects and there is no way to prove whether or not the manager objected to the posting of the notice.

Mr. Ineichen suggested having the manager of multi-unit structures sign a statement stating that they will post the notice and notify their tenants of applications that are scheduled.

Sherlan Neblett, Los Angeles County Agricultural Commissioner's Office, stated that putting the responsibility on the manager or property owner makes no one responsible if the tenants are not notified because the property owner cannot be cited, only the pest control company can. She added that there are also no requirements as to how long the notice must be posted, so it can be posted and immediately removed and not be in conflict with the law. She stated that this section is very unclear and needs to be rewritten.

The committee discussed the difficulties in proving that a service slip has been provided, whether it was claimed to have been delivered via electronic communication or simply left on the tenant's door.

Mr. Ineichen stated that it is still necessary to have proof that the tenant requested or allowed electronic delivery of the service slip.

Mr. Ennes stated that the Board's laws need to conform to the electronic age and this committee should not make it impossible or more difficult to do so.

Mr. Katz moved and Mr. Ennes seconded to recommend to the Board the following amendments to CCR Section 1970.4(c).

(c) Whenever a licensee employed by a branch 2 or branch 3 registered company applies a pesticide within, around or to any structure such person shall leave in a ~~conspicuous location~~ a written notice identifying the common, generic or chemical name of each pesticide applied. In case of a multiple family structure, such notice may be given to the designated agent or the owner. Such pesticide identification notice may be a door hanger, invoice, billing statement or other similar written document which contains the registered company's name, address, and telephone number or may be transmitted electronically.

Mr. Whitmore suggested requiring the licensee to "provide" instead of "leave" this notice as the regulation currently reads. The committee agreed.

Ms. Saylor suggested removing the requirement for the notice to be "written" since the committee intends to allow electronic notification.

The committee discussed the need to specify when the notification needs to be provided so that it is provided prior to the licensee leaving the property after the application.

After much discussion, Mr. Katz amended his motion to make the following recommended amendments to CCR Section 1970.4(c). Mr. Ennes seconded the amended motion. Passed unanimously.

(c) Whenever a licensee employed by a branch 2 or branch 3 registered company applies a pesticide within, around or to any structure such person shall ~~leave~~ provide a written notice in a ~~conspicuous location~~ immediately upon completion of an application identifying the common, generic or chemical name of each pesticide applied. In case of a multiple family structure, such notice may be ~~given~~ provided to the designated agent or the owner. Such pesticide identification notice may be a door hanger, invoice, billing statement or other similar written or electronic document which contains the registered company's name, address, and telephone number ~~or may be transmitted electronically.~~ Written notification left at the property shall be left in a conspicuous location.

The committee discussed CCR Section 1950.1 and agreed that there were no changes that they would like to recommend to the Board regarding this section.

Mr. Kanady moved and Mr. Ennes seconded to recommend to the Board to make the following changes to CCR Section 1950.5(j). Passed unanimously.

(j) Structural Pest Control Board Committee meetings - 1 hour per meeting, ~~up to a maximum of 2 hours per renewal period~~ (excluding Board Members). This activity is exempt from examination requirements pursuant to this section.

The committee discussed CCR Section 1951 and agreed that there were no changes that they would like to recommend to the Board regarding this section.

Mr. Katz moved and Mr. Kanady seconded to recommend to the Board to remove "written" from CCR Section 1953(e). Passed unanimously.

1953 (e) Unless otherwise indicated on the ~~written~~ notification of approval, or unless an approval is withdrawn by the Board at an earlier date, approval of each activity shall remain in effect for 3 years.

Mr. Katz moved and Mr. Kanady seconded to recommend to the Board to remove "written" from CCR Section 1953(d). Passed unanimously.

1953 (d) After giving the provider a ~~written~~ notice and an opportunity to respond, the Board may withdraw approval of any activity, when good cause exists. Good cause shall include, but not be limited to, failure actually to meet the standards for approval of activities which are outlined in subsection (f) of this section.

Mr. Whitmore moved and Mr. Ennes seconded to reverse the changes made to CCR Section 1950(f) at the December 11, 2012 meeting. Changes made at this meeting are indicated by double underline and double strike through. Passed unanimously.

(~~g~~ f) Operators who hold a field representative's ~~or applicator's~~ license in a branch of pest control in which they do not hold an operator's license must gain four of the continuing education hours required by section 1950(c) in a technical subject directly related to the branch or branches of pest control in which the field representative's ~~or applicator's~~ license is held, and two hours of IPM in order to keep the field representative's license active.

Mr. Katz moved and Mr. Ennes seconded to replace "working" with "business" in B & P Code Section 8516(b). Passed unanimously. Changes recommended at this meeting are indicated by double underline and double strike through.

8516 (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 owner and the person requesting the inspection or to the person's designated agents within 10 business days of from the commencement 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. 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 date of the inspection and the name of the licensed field representative or operator making the inspection.
- (2) The name and address of the person or firm ordering the report.
- (3) The name and address of 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.
- (6) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected, 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 (i.e. siding, studs, rafters, floorjoist, fascia, subfloor, sheathing, trim boards, etc.)

(7) Information regarding the substructure, foundation walls and footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves; rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation or infection, such as earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient ventilation are to be reported. The location of such conditions shall be clearly identified.

(8) One of the following statements, as appropriate, printed in bold type:

(A) The exterior surface of the roof was not inspected. If you want the water tightness of the roof determined, you should contact a roofing contractor who is licensed by the Contractors' State License Board.

(B) The exterior surface of the roof was inspected to determine whether or not wood destroying pests or organisms are present.

(9) Indication or description of any areas that are inaccessible or not inspected with recommendation for further inspection if practicable. If, after the report has been made in compliance with this section, authority is given later to open inaccessible areas, a supplemental report on conditions in these areas shall be made.

(10) Recommendations for corrective measures.

(11) Information regarding the pesticide or pesticides to be used for their control as set forth in subdivision (a) of Section 8538.

(12) The inspection report shall clearly disclose that if requested by the person ordering the original report, a reinspection of the structure will be performed if an estimate or bid for making repairs was given with the original inspection report, or thereafter.

(13) The inspection report shall contain the following statement, printed in boldface type: "NOTICE: Reports on this structure prepared by various registered companies should list the same findings (i.e. termite infestations, termite damage, fungus damage, etc.). However, recommendations to correct these findings may vary from 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.

Mr. Kanady moved and Mr. Katz seconded to recommend to the Board to make the following changes to the preamble of CCR Section 1970. Passed unanimously.

§1970. Standards and Record Requirements.

For the purpose of maintaining proper standards of safety and the establishment of responsibility in handling the ~~dangerous-gases~~ fumigants used in fumigation and the pesticides used in ~~either~~ Branch 2 and Branch 3 pest control operations, a registered company shall compile and retain for a period of at least three years, a fumigation log for each fumigation job and report for each pesticide control operation in which a pesticide is used by the registered company or the registered company's employee. If the fumigation is to be performed by a fumigation subcontractor, the subcontractor shall complete the fumigation log and forward a copy of the log to the primary contractor within ten business days.

Mr. Ennes moved and Mr. Whitmore seconded to recommend to the Board to change "working" to "business" in B & P Code Section 8519.5(a). Passed unanimously.

8519.5. (a) After an inspection report has been prepared by a Branch 3 registered company pursuant to Section 8516, which discloses a wood destroying pest that can be eradicated by fumigation, and the fumigation has been duly performed by a Branch 1 registered company, the Branch 1 registered company, on a company document that identifies the licensee performing the fumigation and the name and address of the registered company, shall issue the following certification: "This is to certify that the property located at ____ (address) was fumigated on ____ (date) for the extermination of ____ (target pest)." This certification shall be issued to the person ordering the fumigation and to the registered company that prepared the inspection report within five working business days after completing the fumigation.

(1) Where a consumer has authorized a Branch 3 registered company to subcontract the fumigation to a Branch 1 registered company, a copy of the certification shall accompany any reinspection report, notice of work completed pursuant to Section 8518, or any certification issued by the Branch 3 company.

(2) Where the consumer has elected to contract directly with a Branch 1 registered company to perform a fumigation, the distribution of any documents pertinent to the fumigation shall be the responsibility of the Branch 1 registered company.

ADJOURNMENT

The meeting adjourned at 2:01 P.M.



Bob Gordon, Committee Chairman



Susan Saylor, Interim Registrar

5/29/13
DATE