

MINUTES OF THE
STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE
MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
April 26, 2013

The meeting was held on Friday, April 26, 2013, at Structural Pest Control Board, 2005 Evergreen Street, Lake Tahoe 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
Ronna Brand

Board staff present:

Susan Saylor, Interim Executive Officer
Tom Ineichen, 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.

**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 discussed the recommended changes made to B & P Code Section 8505.17.

Mr. Gordon stated that the minutes from the December 11, 2012 committee meeting reflect that the committee recommended including applicators in CCR Section 1950(f). He added that "or applicator's" was added in two places of this subsection, but it is also necessary to add "or applicator's" in the last sentence of the section as well, amending it to read "and two hours of IPM in order to keep the field representative's or applicator's license active."

APPROVAL OF MINUTES OF THE DECEMBER 11, 2012 AND FEBRUARY 21, 2013 COMMITTEE MEETINGS

Mr. Kanady moved and Mr. Ennes seconded to approve the minutes of the December 11, 2012 committee meeting with the following correction to CCR Section 1950(f). Changes made to the minutes regarding CCR Section 1950(f) are indicated by double underline. 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, in order to keep the field representative's or applicator's license active.

Mr. Gordon stated that the minutes of the February 21, 2013 committee meeting has a signature line for Curtis Good, Board President instead of Bob Gordon, Committee Chairperson.

Mr. Whitmore stated that on page three of the minutes, Mr. Kanady's name is spelled incorrectly.

Mr. Ennes moved to approve the minutes of the February 21, 2013 committee meeting with the noted corrections. There was no second on the motion.

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. Whitmore stated that he and Sherlan Neblett, Los Angeles County Agricultural Commissioner's Office, worked on a proposed revision to CCR Section 1970.4. The committee decided to discuss the proposed changes to CCR Section 1970.4. Please refer to Committee Correspondence Item Number 31.

Mr. Whitmore suggested that the committee add a preamble to CCR Section 1970.4. He stated that the pre and post notification requirements are not clear in either B & P Code Section 8538 or CCR Section 1970.4.

The committee discussed the validity of B & P Code Section 8538 being the authority of CCR Section 1970.4 because B & P Code Section 8538 discussed pre-notification requirements and CCR Section 1970.4 discussed post notification requirements.

Ms. Boyle suggested that the committee not get hung up on the authority but rather discuss how the committee wants CCR Section 1970.4 to read and worry about authority later, and that another B & P Code Section may be necessary to address post-notification requirements.

Mr. Ineichen stated that the Food and Agriculture Code clearly states that the homeowner must be notified after treatment, it is just not clear how it needs to be done. He added that Branch 3 post-notifications need to be addressed in regulation because many companies do not post a service slip except in the subarea.

Mr. Whitmore stated that the preamble that was proposed may not be necessary in this section and may instead be necessary in B & P Code as the authority to CCR Section 1970.4. The committee agreed not to add a preamble to CCR Section 1970.4.

The committee discussed the proposed language to CCR Section 1970.4(a).

Ms. Brand asked if there should be a minimum amount of time that the pre-notification should be provided to the tenant prior to the application.

Mr. Whitmore stated that there is already a 48 hour notification requirement set forth in B & P Code Section 8538.

Mr. Gordon commented that he does not like the use of the term "legal tenant" in the proposed language.

Ms. Neblett suggested using "occupant" instead. The committee agreed.

Mr. Ineichen commented that allowing a manager to sign an occupant's behalf eliminates the point of requiring the occupant to sign the Occupant Fumigation Notice (OFN).

Mr. Whitmore stated that this at least provides clarity that there needs to be an OFN for each unit. He added that sometimes the occupants of a unit only live there part of the year and it is not realistic to stop the treatment of an entire structure because one occupant is not available to sign the OFN.

Mr. Good stated that sometimes one occupant in a multi-dwelling structure will refuse to sign the OFN and allowing the manager to sign will allow the treatment to be performed.

Ms. Boyle suggested using "occupants" instead of "their" to provide clarity. The committee agreed.

The committee discussed whether they want to use "dwelling" or "structures" throughout this Section when they make their recommendation. They decided that "structure" should be used.

The committee discussed the second paragraph of the proposed language to CCR Section 1970.4(a).

Mr. Gordon suggested that "copy" should be plural to make it consistent.

The committee decided that "properly" should be removed from the suggested language.

The committee discussed the proposed changes to CCR Section 1970.4(b).

Ms. Brand asked if the requirement set forth in the first paragraph to report any serious death or injury related to pesticide application or use to the Board is covered elsewhere since the proposed language suggests eliminating such a requirement.

Mr. Whitmore stated that the proposed language also suggests adding CCR Section 1975 which would cover these reporting requirements.

The committee discussed changes they would like to see made to the proposed language to subsection (b). They decided to remove the requirement to leave the service slip in a conspicuous location and replace such language with the requirement to have the "licensee provide a notice" to allow electronic delivery, including by office staff, of the service slip; which would still be considered having been "provided" by the licensee.

Ms. Neblett suggested that the law requires the notice to be "written" to clarify that the notice cannot be given verbally. The committee agreed.

The committee discussed whether apartment complexes are considered commercial buildings. Mr. Gordon suggested possibly defining "commercial" when the committee addresses definitions.

Mr. Gordon stated that he has customers that do not want service slips left at their property.

Mr. Katz stated that in the case of multiple family structures, the property owners do not want a company leaving service slips that provide the tenants with the property owner's residence address on it.

Mr. Gordon suggested adding language to allow the company to not leave a slip if the customer requests that the company not do so.

Ms. Neblett stated that the law was put in place so that the tenants are notified when an application is scheduled.

Eric Paulson, Clark Pest Control, stated that there was a law put in place about twelve years ago that requires the landlord to notify the tenants.

Mr. Gordon stated that there is also a requirement for the company to leave notification on the property and when four or less units, notify each tenant.

Mr. Ineichen stated that the intent of B & P Code Section 8538 is to notify tenants prior to the applications and provide them with a list of pesticides to be used so that they can seek more information regarding the pesticides if they so choose. He suggested making a requirement for the company to provide application information to the landlord in the case of exterior applications, and require the landlords to provide that notification to the tenants; and in the case of interior applications, require that the licensee notify each tenant in which services were provided to the interior of their unit.

After much discussion, the committee decided to require notice to be given to the designated agent or owner, or be posted in a conspicuous place on the real property when servicing the exterior of multi-family structures.

Mr. Katz suggested that the service slip also needs to provide the registered company's name, address and telephone number. The committee agreed.

The committee discussed the proposed changes to the notification requirements regarding applications made to the interior of multi-family structures. They decided that the requirement should be that "notification shall be provided to each affected unit".

Mr. Ineichen stated that CCR Section 1970.4 only addresses post notification requirements.

Mr. Whitmore stated that the new subsection (d) in the proposed changes addresses pre-notification requirements set forth in B & P Code Section 8538.

Mr. Ineichen stated that B & P Code Section 8538 does not address multiple unit structures. He suggested clarifying pre-notification requirements.

Mr. Whitmore commented that the pre-notification requirements should be at the beginning of this section.

Mr. Katz stated that the intent of B & P Code Section 8538 was to notify the tenant prior to an application of pesticides to be used so that they can decide if the benefits outweigh the risks and opt for more information.

Ms. Boyle stated that there is no requirement, except in branch 1, to notify the tenant any sooner than the time of the application, which goes against the intent of informing the tenant prior to treatment.

Mr. Ineichen commented that there needs to be pre-notification requirements for branch 2 and 3 applications being made to multiple unit structures.

The committee decided to remove subsection (e) from CCR Section 1970.4.

The committee discussed the proposed changes to CCR Section 1970.4(c). Mr. Ineichen stated that "therefore" should be changed to "thereof". The committee agreed.

The committee agreed with the proposed changes to CCR Section 1970.4(d).

The committee discussed the proposed addition of CCR Section 1975.

Mr. Whitmore questioned the need to include the death or serious injury reporting requirements required by CAL-OSHA (Title 8, CCR, Section 342) in the Board's regulations.

Mr. Ineichen commented that pest control operators are more likely to read the Structural Pest Control Act than the CAL-OSHA regulations and that it would at least make the licensee aware that there are other reporting requirements as well.

The committee discussed whether to include other injuries not related to actual pesticide applications or use should be reported to the Board as well.

Mr. Whitmore stated that this Section is intended to address deaths or serious injuries caused by pesticides.

Mr. Gordon agreed that companies should not have to report injuries unrelated to pesticides to the Board.

After much discussion regarding the reporting requirements of serious injuries or deaths caused by pesticide application or use, the committee decided that the law should read "pesticide exposure" to exclude injuries that occur on the job, but not related to actual exposure of pesticides.

The following language is the language agreed upon by the committee at this meeting.
There was no motion made.

§1970.4. Pesticide Notice and Disclosure Requirements.

(a) For Branch 1 applications:

~~The primary prime contractor for fumigation shall have in his or her possession and shall provide to any subcontractor for fumigation an Occupants Fumigation Notice & Pesticide Disclosure form (See Form 43M-48 (Rev. 5/07) at the end of this section) signed by the occupants or designated agent of a structure. The primary prime contractor for fumigation and the subcontractor for fumigation shall retain a copy of the occupants fumigation notice form for a period of at least three years. In the case of multiple -family dwellings structures, every unit shall have a notice signed by the occupant. In the event the occupant is unavailable, the owner, manager or designated agent of the building structure may obtain signatures and/or verify the notification of sign on the occupants-occupant's behalf.~~

~~The form shall state the name of the pest to be controlled, the pesticide(s)/fumigant(s) proposed to be used, the active ingredient(s) and the health cautionary statement as required under section 8538 of the code. The form shall also state that a lethal gas (poison) will be used in the building on indicated dates and that it is unsafe to return to the building until a certification notice for reentry is posted by the licensed fumigator. The form shall also indicate that the occupant has received the prime contractor's information regarding the procedures for leaving the structure.~~

The properly signed form(s) or a copy(s) thereof shall be in the possession of the licensed fumigator when the fumigant is released. Such form(s) shall be attached to and become a permanent part of the fumigation log upon completion of the fumigation.

~~(b) Any death or serious injury relating to pesticide application or use, whether to a worker or member of the public, shall be reported to the nearest Structural Pest Control Board office immediately.~~

~~(c)~~ (b) For Branch 2 or Branch 3 applications:

~~Whenever a licensee employed by a branch 2 or branch 3 registered company applies a pesticide within, around or to any structure such person licensee shall leave in a conspicuous location provide a written notice identifying the common, generic or chemical name of each pesticide applied, and the registered company's name, address, and telephone number. Written notice is to be given as either a paper copy or by electronic means. In case of a multiple family structure, such notice ~~may~~ shall be given to the designated agent, or the owner, or posted in a conspicuous place on the real property. 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.

~~(d) All pest control operators, field representatives, applicators and employees in all branches shall comply in every respect with the requirements of section 8538 of the code. Failure to comply with section 8538 of the code is a misdemeanor and shall constitute grounds for discipline. In the case of interior applications, at multi family structures, notification shall be provided to each affected unit.~~

~~(e) Where notification is required under section 8538 of the code, and the premises on which the work is to be performed is a multiple family dwelling consisting of more than 4 units, the owner/owner's agent shall receive notification and other notices shall be posted in heavily frequented, highly visible areas including, but not limited to, all mailboxes, manager's apartment, in all laundry rooms, and community rooms on all external pest control servicing. Complexes with fewer than 5 units will have each affected unit notified. Any pest control servicing done within a tenant's apartment requires that the tenant be notified according to section 8538 of the code.~~

~~(f) (c) A registered company which applies any pesticide within, around or to any structure shall provide to any person, within 24 hours after request thereof, the common, generic or chemical name of each pesticide applied.~~

(d) All pest control operators, field representatives, applicators and employees in all branches shall comply in every respect with the requirements of section 8538 of the Business and Professions Code. Failure to comply with section 8538 of the Business and Professions Code is a misdemeanor and shall constitute grounds for discipline.

ADJOURNMENT

The meeting was adjourned.



Bob Gordon, Committee Chairperson



Susan Saylor, Interim Registrar

5/29/13

Date