

MINUTES OF THE
STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE
MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
March 5, 2014

The meeting was held on Wednesday, March 5, 2014 at the Los Angeles Agricultural Commissioner's Office, located at 12300 Lower Azusa Road, Arcadia, California.

Committee Members Present:

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

Board staff present:

Susan Saylor, Executive Officer
Robert Lucas, Consumer Services Manager
David Skelton, Administrative Analyst

Departmental staff present:

Kyle Muteff, Legal Counsel

Board member Curtis Good was also in attendance.

ROLL CALL/ESTABLISHMENT OF QUORUM

Mr. Gordon read roll call at 10:47 A.M., quorum established.

APPROVAL OF MINUTES FROM THE DECEMBER 10, 2013 AND JANUARY 29, 2014 COMMITTEE MEETINGS

Mr. Kanady moved and Mr. Katz seconded to approve the minutes from the December 10, 2013 Act Review Committee Meeting. Passed unanimously.

Mr. Ennes moved and Mr. Kanady seconded to approve the minutes from the January 29, 2014 Act Review Committee Meeting. Passed unanimously.

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

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

Mr. Whitmore stated that B&P Code Section 8505.6 should be removed because it is outdated and provides guidelines for practices that are no longer used or allowed by the manufacturers' label.

Mr. Muteff stated that the proposed language revision to B&P Code Section 8505.6 suggested by staff was based on their reading of the practices permitted by the manufacturers' label concerning the fumigation of a single room within a structure.

Mr. Katz stated that he does not believe the manufacturer's label allows for fumigating a single room within a structure.

Mr. Gordon stated that concerns were raised in the January 29, 2014 Act Review Committee Meeting that the practice of a fumigating single room within a structure still occurs in the industry.

Mr. Whitmore stated that the practice of fumigating a single room within a structure does not occur and the concerns raised were about connecting structures which are covered in other code sections.

Mr. Whitmore further stated that removing B&P Code Section 8505.6 enhances consumer protection by eliminating guidelines for what is an unsafe practice.

Mr. Muteff stated that re-writing B&P Code Section 8505.6 to address the Committee's concerns would possibly be a better option than removing it completely.

Mr. Lucas stated that justification will be needed to remove B&P Code Section 8505.6 in its entirety.

Mr. Katz stated that justification can be provided in the form of statements from the manufacturers as to the meaning and intent of the language on their labels.

The Committee discussed B&P Code Section 8505.6 as it pertains to differences in the practice of fumigating a single room within residential, commercial, and mixed use structures.

Mr. Lucas asked what the motivation was in the industry for no longer fumigating a single room within a structure.

Mr. Katz stated that the catalyst for no longer fumigating a single room within a structure was the change in chemicals that are used to fumigate.

Mr. Whitmore stated that he will get statements from the manufacturers outlining the proper use of their products.

Peggie Byerly, Senior Environmental Scientist, Department of Pesticide Regulation stated that it would be close to impossible when using sulfuryl fluoride to meet the new Environmental Protection Agency requirements in the practice of fumigating a single room within a structure. Manufacturers may be basing their label instructions on chamber fumigations which are much different from residential structures in terms of ventilation.

Mr. Gordon asked if staff has encountered single room fumigations occurring.

Mr. Whitmore stated that the instances Tom Ineichen spoke about at the January 29, 2014 Committee meeting were concerning connecting structures and not single rooms within a structure being fumigated.

Ms. Brand stated that the proposed removal of B&P Code Section 8505.6 should be accompanied by statements from the manufacturers about the proper use of their products.

Ms. Byerly referred the Committee to the minutes of the January 29, 2014 Committee Meeting wherein Kathy Boyle addressed B&P Code Section 8505.6.

Mr. Katz moved and Mr. Whitmore seconded to recommend to the Board the removal of B&P Code Section 8505.6 in its entirety. Passed unanimously.

~~8505.6. During the process of fumigation the room or apartment being fumigated, together with all rooms and apartments, including rooms or apartments on the same floor and those above, below, and adjacent thereto, shall be vacated by the occupants thereof. During the process of such fumigation, all rooms, apartments, and hallways adjacent to the rooms, apartments or spaces undergoing fumigation, shall be kept well ventilated and warning signs as herein prescribed stating such fact of fumigation shall be kept posted at all entries to such rooms or apartments during the time of such fumigation and thereafter until all such premises are safely ventilated free of all fumes. All rooming or apartment houses designed for the use of four families or less shall be entirely vacated and closed against entry thereto and occupancy thereof while fumigation is being performed therein and until the same is safely ventilated free of all fumes.~~

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8514.

Mr. Whitmore asked if the proposed change to B& P Code Section 8514 interferes with B&P Code Section 8519.5 and the ability of a Branch 1 company to perform fumigation based on the inspection reports made by another company.

Mr. Kanady suggested revising the proposed recommendation to read- "No Branch 2 or 3 registered company" instead of "No registered company"

Mr. Kanady moved and Mr. Ennes seconded to recommend the proposed changes to the Structural Pest Control Board. Passed Unanimously.

8514. No Branch 2 or 3 registered company shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the control of household pests, or wood destroying pests or organisms until the registered company has completed an inspection, has been made.

Notwithstanding any provision of this chapter, after an inspection has been made, a registered company which holds a branch registration for the control of household pests, or wood destroying pests or organisms, but its branch registration restricts the method of eradication or control permitted, may recommend and enter into a contract for the eradication or control of pests within the scope of its branch registration, provided that it subcontracts in writing the actual performance of the work to a registered company which holds a branch registration authorizing the particular method to be used.

A registered company may in writing subcontract any pest control work for which it is registered in any branch or branches to a registered company holding a valid branch registration to do such work.

Nothing in this chapter shall be construed to prohibit a registered company or the consumer from subcontracting with a licensed contractor to do any work authorized under Section 8556.

A registered company shall not subcontract structural fumigation work, as permitted in this section, without the written consent of the consumer. The consumer must be informed in advance, in writing, of any proposed work which the registered company intends to subcontract and of the consumer's right to select another person or entity of the consumer's choosing to perform the work. The consumer may authorize the subcontracting of the work as proposed or may contract directly with another registered company licensed to perform the work. Nothing in this paragraph shall be construed to eliminate any otherwise applicable licensure requirements, nor permit a licensed contractor to perform any work beyond that authorized by Section 8556.

Nothing herein contained shall permit or authorize a registered company to perform, attempt to perform, advertise or hold out to the public or to any person that it is authorized, qualified, or registered to perform, pest control work in a branch, or by a method, for which it is not registered, except that a Branch 2 or Branch 3 registered company may advertise fumigation or any all encompassing treatment described in paragraph (8) of subdivision (a) of Section 1991 of Title 16 of the California Code of Regulations if the company complies with the requirements of this section.

Subcontracting of work, as permitted herein, shall not relieve the prime contractor or the subcontractor from responsibility for, or from disciplinary action because of, an act or omission on its part, which would otherwise be a ground for disciplinary action. However, the registered company making the initial proposal including proposed work that the registered company intends to subcontract shall not be subject to disciplinary action or otherwise responsible for an act or omission in the performance of the work that the consumer directly contracts with another registered company, person or entity to perform, as permitted by this section.

All home solicitation contracts must comply with Division 3, Title 5, Chapter 2, of the Civil Code.

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

Mr. Ennes suggested adding language to B&P Code Section 8551.5 that permitted employees to begin their training period in a more flexible manner than is currently allowed.

Mr. Kanady asked why there is any limit on the amount of time an unlicensed individual can be trained under direct supervision.

The Committee considered proposing a recommendation to allow indefinite training of an unlicensed individual by a license field representative or operator.

Mr. Katz objected to allowing indefinite training of an unlicensed individual by a licensed field representative or operator citing the potential for abuse and also the ability of the unlicensed individual to get an Applicator license if needed.

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

Ms. Saylor stated that Mr. Muteff and staff felt input was needed from the Agricultural Commissioners before the Committee could make a recommendation to the Board to change B&P Code Section 8505.12.

Mr. Whitmore asked if the Committee could propose the recommendation to the Board at this meeting and subsequently gather input from the Agricultural Commissioners before the next Board Meeting.

Ms. Byerly stated that she would be attending the Deputy Agricultural Commissioners' meeting on March 6, 2014 and would present the proposed change to B&P Code Section 8505.12 to them and report their input back to staff before the March 26 and 27, 2014 Board Meeting.

Mr. Whitmore moved and Mr. Ennes seconded to recommend the proposed changes to B&P Code Section 8505.12 to the Board. Passed unanimously.

8505.12. A registered company performing fumigation shall use an adequate warning agent with all fumigants which lack such properties. There may be circumstances in which the use of chloropicrin is not possible due to its unknown effects on sensitive items, such as but not limited to artifacts in museums or in police evidence storage. In these circumstances, waiving the use of chloropicrin must be approved by the state regulatory authority and documented in advance and must include alternative safety precautions which address initial clearance of the site to be fumigated, potential movement of the fumigant to unattended areas, and continued site security. When conditions involving abnormal hazards exist, the licensee exercising direct and personal supervision shall take such safety precautions in addition to those prescribed by this chapter as are reasonably necessary to protect the public health and safety.

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

The Committee agreed to re-visit the proposed changes to B&P Code Section 8519 after it has discussed any proposed recommendations to B&P Code Section 8516.

Mr. Gordon opened up discussion on a proposed recommendation to create a definition for the term "pesticide."

Ms. Byerly referred the Committee to the pesticide definition in Food & Agricultural Code Section 12753.

Mr. Ennes moved and Mr. Whitmore seconded to recommend to the Board the creation of a definition for the term "pesticide" and for that definition to be contained in Chapter 14, Article 1, Section 8504.1 of the Business and Professions Code. Passed unanimously.

8504.1 "Pesticide" includes any of the following:

(a) Any spray adjuvant.

(b) Any substance, or mixture of substances which is intended to be used for preventing, destroying, repelling, or mitigating any pest.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8643.

Ms. Brand moved and Mr. Ennes seconded to recommend to the Board the proposed change to B&P Code Section 8643. Passed Unanimously.

8643. The negligent handling or use of any ~~poisonous exterminating agent~~ pesticide is a ground for disciplinary action.

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

Ms. Brand moved and Mr. Ennes seconded to recommend to the Board the proposed changes to B&P Code Section 8551.5. 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~~ 90 day time period may not be extended.

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

Mr. Katz moved and Mr. Kanady seconded to recommend to the Board the proposed change to B&P Code Section 8565. Passed unanimously.

8565. The board shall ascertain by ~~written~~ examination that an applicant for a license as operator is qualified in the use and understanding of all of the following:

- (a) The English language, including reading, and writing, and spelling.
- (b) The building and safety laws of the state and any of its political subdivisions, if the branch or branches of pest control for which he or she is applying, require that knowledge.
- (c) The labor laws of the state.
- (d) The provisions of this chapter.
- (e) ~~Poisonous and other dangerous chemicals~~ Pesticides used in pest control, if the branch license or licenses for which he or she is applying, require that knowledge.
- (f) The theory and practice of the branch or branches of pest control in which the applicant desires to be licensed.
- (g) Other state laws, safety or health measures, or practices that are reasonably within the scope of structural pest control in the various branches, including an applicant's knowledge of the requirements regarding health effects and restrictions on applications, as set forth in Section 8538.

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

Mr. Katz moved and Mr. Ennes seconded to recommend to the Board the proposed change to B&P Code Section 8566. Passed unanimously.

8566. The board shall ascertain by ~~written~~ examination that an applicant for a license as field representative is qualified in the use and understanding of the following:

- (a) The safety laws of the state, if the branch or branches of pest control for which he or she is applying, require that knowledge.
- (b) The provisions of this chapter.
- (c) ~~Poisonous and other dangerous chemicals~~ Pesticides used in pest control, if the branch or branches of pest control for which he or she is applying, require that knowledge.
- (d) The theory and practice of pest control in the branch or branches thereof for which the applicant desires to be licensed.
- (e) Other state laws, safety or health measures, or practices as are reasonably within the scope of structural pest control in the various branches.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8647.

Mr. Katz moved and Mr. Kanady seconded to recommend to the Board the proposed change to B&P Code Section 8647. Passed Unanimously.

8647. Failure to comply in the sale or use of ~~insecticides~~ pesticides with the provisions of Chapter 2 (commencing with Section 12751) of Division 7 of the Food and Agricultural Code is a ground for disciplinary action.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8651.

Mr. Kanady moved and Mr. Whitmore seconded to recommend to the Board the proposed change to B&P Code Section 8651. Passed unanimously.

8651. The performing or soliciting of structural pest control work, the inspecting for structural or household pests, or the applying of any pesticide, ~~chemical, or allied substance~~ for the purpose of eliminating, exterminating, controlling, or preventing structural or household pests in branches of pest control other than those for which the operator, field representative, or applicator is licensed or the company is registered is a ground for disciplinary action.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8505.

Ms. Brand moved and Mr. Kanady seconded to recommend to the Board the proposed change to B&P Code Section 8505. Passed Unanimously.

8505. "Structural pest control" and "pest control" as used in this chapter are synonymous. Except as provided in Section 8555 and elsewhere in this chapter, it is, with respect to household pests and wood destroying pests or organisms, or such other pests which may invade households or other structures, including railroad cars, ships, docks, trucks, airplanes, or the contents thereof, the engaging in, offering to engage in, advertising for, soliciting, or the performance of, any of the following: identification of infestations or infections; the making of an inspection or inspections for the purpose of identifying or attempting to identify infestations or infections of household or other structures by such pests or organisms; the making of inspection reports, recommendations, estimates, and bids, whether oral or written, with respect to such infestations or infections; and the making of contracts, or the submitting of bids for, or the performance of any work including the making of structural repairs or replacements, or the use of ~~insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances~~, or mechanical devices for the purpose of eliminating, exterminating, controlling or preventing infestations or infections of such pests, or organisms.

"Household pests" are defined for the purpose of this chapter as those pests other than wood destroying pests or organisms, which invade households and other structures, including, but not limited to, rodents, vermin and insects.

Mr. Gordon opened up discussion on the proposed change to B&P Code Section 8507.1.

Mr. Muteff stated that the language in B&P Code Section 8507.1 includes the term "organisms" and the Committee's recommended definition of the term "pesticide" does not include that term.

The Committee discussed adding the words "or organism" to their recommended definition of the term "pesticide."

Mr. Ennes moved and Mr. Kanady seconded to amend the Committee's earlier recommendation to the Board for the creation of a definition for the term "pesticide" and for that definition to be contained in Chapter 14, Article 1, Section 8504.1 of the Business and Professions Code, to include the words "or organism." Passed unanimously.

8504.1 "Pesticide" includes any of the following:

(a) Any spray adjuvant.

(b) Any substance, or mixture of substances which is intended to be used for preventing, destroying, repelling, or mitigating any pest or organism.

Mr. Gordon re-opened discussion on the proposed change to B&P Code Section 8507.1.

Mr. Ennes moved and Mr. Kanady seconded to recommend to the Board the proposed change to B&P Code 8507.1. Passed unanimously.

8507.1. (a) "Structural pest control applicator" is any individual who is licensed by the board to apply a 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 on behalf of a registered company.

A structural pest control applicator shall not contract for pest control work or perform pest control work in his or her own behalf.

(b) As used in this chapter, "applicator" refers to "structural pest control applicator."

FUTURE MEETING DATES

The next meeting was previously scheduled for April 2, 2014 in Sacramento.

The following meeting was scheduled for May 7, 2014 in Los Angeles.

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

ADJOURNMENT

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

The meeting adjourned at 1:56 P.M.



Bob Gordon, Committee Chairperson



Susan Saylor, Executive Officer

3-2-2011
DATE