



■ FUTURE MEETINGS

February 8-9 in Oakland.
April 18-19 in San Diego.
June 13-14 in Sacramento.
September 12-13 in Los Angeles.
December 5-6 in San Francisco.

STRUCTURAL PEST CONTROL BOARD

Registrar: Donna J. Kingwell
(916) 263-2540 or
(800)-PEST-188

The Structural Pest Control Board (SPCB) is a seven-member board functioning within the Department of Consumer Affairs (DCA). SPCB's enabling statute is Business and Professions Code section 8500 *et seq.*; its regulations are codified in Division 19, Title 16 of the California Code of Regulations (CCR).

Licensees are classified as: (1) Branch 1, Fumigation, the control of household and wood-destroying pests by fumigants (tenting); (2) Branch 2, General Pest, the control of general pests without fumigants; (3) Branch 3, Termite, the control of wood-destroying organisms with insecticides, but not with the use of fumigants, and including authority to perform structural repairs and corrections; and (4) Branch 4, Wood Roof Cleaning and Treatment, the application of wood preservatives to roofs by roof restorers. Effective July 1, 1993, all Branch 4 licensees must be licensed contractors. An operator may be licensed in all four branches, but will usually specialize in one branch and subcontract out to other firms.

SPCB licenses structural pest control operators and their field representatives. Field representatives are allowed to work only for licensed operators and are limited to soliciting business for that operator. Each structural pest control firm is required to have at least one licensed operator, regardless of the number of branches the firm operates. A licensed field representative may also hold an operator's license. SPCB also licenses structural pest control applicators, defined as any individual licensed by SPCB to apply a pesticide, rodenticide, allied chemicals, or substances for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests or organisms included in Branches 2, 3, or 4 on behalf of a registered company. Such applicators must meet specified examination, application, and renewal requirements to receive a license.

SPCB is comprised of four public and three industry members. Industry members are required to be licensed pest con-

trol operators and to have practiced in the field at least five years preceding their appointment. Public members may not be licensed operators. All Board members are appointed for four-year terms. The Governor appoints the three industry representatives and two of the public members. The Senate Rules Committee and the Speaker of the Assembly each appoint one of the remaining two public members.

On August 11, the Board held a special meeting at the Department of Consumer Affairs (DCA) to select a new Registrar to replace Mary Lynn Ferreira, who resigned from her position effective July 1. [15:2&3 CRLR 102] After conducting interviews, SPCB chose Donna J. Kingwell to fill the position.

■ MAJOR PROJECTS

Legislature Slashes Board's Budget to Compel Enhanced Performance. During the spring of 1995, SPCB's performance was harshly criticized by a legislative budget subcommittee chaired by Senator Dan Boatwright. [15:2&3 CRLR 99-100] Following debate by the budget conference committee, the legislature passed a budget bill which allocated the Board only six months' worth of its annual funding (which will carry it to January 1, 1996). In Item 1530-001-0775, the legislature specified that the remainder of the Board's 1995-96 funding is contingent upon its fulfillment of four conditions:

(a) The Board must act to restrain licensees from excessively pricing services and requiring unneeded work to be done; it must establish guidelines for the adoption of regulations that establish standards as to how much material is to be removed when replacing wood weakened by fungus or wood-destroying pests or organisms.

(b) SPCB must establish guidelines for the adoption of regulations to allow the consumer the option to independently contract with a company for any pest control work that the licensee otherwise would subcontract out.

(c) SPCB must establish guidelines for the adoption of regulations relative to a system of citations and fines pursuant to sections 125.9 and 148 of the Business and Professions Code, and shall implement those regulations by July 1, 1996.

(d) SPCB must provide written status reports on the actions prescribed in this provision by October 1, 1995, and by December 31, 1995, to the Department of Consumer Affairs, the Department of Finance, the Secretary of the State and Consumer Services Agency, and the Joint Legislative Budget Committee.

When presented with the Budget Act including these conditions, Governor Wil-

son approved them with one exception: He deleted the language in condition (a) requiring the Board to restrain excessive pricing of services by its licensees, stating that "[t]he Board has no statutory authority to implement or enforce cost controls. Therefore, the language represents a substantive change of law which can only be included within a single subject bill, not the Budget Act." The Governor approved the remainder of condition (a) and the other conditions.

The four conditions are also incorporated into a budget trailer bill, AB 910 (Speier) (Chapter 381, Statutes of 1995). Among other things, AB 910 provides that if SPCB does not comply with the four conditions set forth in the Budget Act by January 1, 1996, as determined by the Department of Consumer Affairs (DCA), then DCA may succeed to and is vested with all the duties, powers, purpose, responsibilities, and jurisdiction of the Board. If DCA elects not to exercise control over SPCB after January 1, 1996, it must monitor the Board on a monthly basis and the State Controller must, on a monthly basis, transfer one month's worth of funding to SPCB for the first six months of 1996. AB 910 also amends Business and Professions Code section 125.9 to permit SPCB to adopt citation and fine regulations, and substantively amends several provisions of the Structural Pest Control Act to further the legislative intent behind the Budget Act (*see* LEGISLATION).

To implement the requirements of the Budget Act and AB 910, SPCB has proposed citation and fine regulations (*see below*), proposed regulatory changes which will set standards for the removal of wood which has been weakened by fungus or wood-destroying pests (*see below*), and filed status reports in September and December on its progress in fulfilling the four conditions.

Citation and Fine Regulations. On August 18, SPCB acted to implement one of the requirements of the Budget Act and AB 910 (Speier) (*see above*) by proposing to adopt new section 1920, Title 16 of the CCR, to establish a citation and fine program to address minor violations of the Structural Pest Control Act which may not be serious enough to warrant license revocation but which should not be ignored by the Board. Among other things, section 1920 would authorize the Board's Registrar or Deputy Registrar to issue a citation against a structural pest control licensee who violates the Structural Pest Control Act and/or the Board's regulations; specify that a citation must be in writing and served upon the individual personally or by certified mail; specify violations for



which a citation may not be issued and set forth seven criteria which must be used by the Registrar when fixing the amount of any fine; specify that such fines shall not be less than \$100 nor more than \$2,500; provide the procedures applicable to a citation which contains an order of abatement; authorize the Registrar or Deputy Registrar to issue a citation which could include an order of abatement and a fine against persons who are performing services for which a license as a structural pest control operator is required; specify the procedures for the issuance of such a citation; specify the procedure for appealing a citation; provide that a person who receives a citation may request an informal conference with the Registrar regarding the acts charged in the citation; and set forth the procedures applicable to the informal conference.

Following an October 6 public hearing on the proposed regulation, SPCB adopted it; at this writing, staff is preparing the rulemaking file for submission to DCA and the Office of Administrative Law (OAL).

Standards for Removal of Wood Weakened by Fungus or Pests. Also on August 18, the Board published notice of its intent to amend sections 1991(a)(5) and 1991(a)(8), Title 16 of the CCR, to satisfy another requirement of the Budget Act and AB 910 (Speier) (*see above*).

Section 1991(a)(5) currently requires the removal of wood which is structurally weakened by fungus; SPCB's proposed changes to the section would expand its regulations to allow for reinforcement of fungus-infected wood and to also allow surface fungus to be chemically treated or left as is once the moisture condition is eliminated.

Section 1991(a)(8) allows structural pest control companies to locally treat when evidence of wood-destroying pests extends into inaccessible areas. SPCB's proposed changes to section 1991(a)(8) would require registered companies to include in their inspection report a statement that local treatment and/or corrective work will not eradicate other undetected infestations which may be located in other areas of the structure.

Following an October 6 public hearing on these proposed changes, SPCB adopted the proposed amendments to section 1991(a)(5); at this writing, these changes await review and approval by DCA and OAL. However, the Board did not adopt the proposed changes to section 1991(a)(8), and instead referred the matter to committee to consider the matter of an all-encompassing disclosure statement on all inspection reports addressing inaccessible areas and potential infections and infestations.

Other New SPCB Rulemaking Proposals. On June 9, SPCB published notice of its intent to amend sections 1911, 1918, 1940, 1941, 1942, 1948, 1951, 1970.4, 1970.5, 1973, and 1993, and adopt new section 1936.2, Title 16 of the CCR. SB 2070 (Calderon) (Chapter 844, Statutes of 1994) amended provisions of the Board's statutes concerning the certification of pesticide applicators; the bill changed the title of an applicator's "certificate" to an applicator's "license," and also specified revised license examination, application, and renewal requirements for licensed applicators. [14:4 CRLR 102] Accordingly, SPCB proposes to amend the above regulations to change their references from "certificate" to "license" and to clarify when the regulations refer to those functions performed by a licensed field representative or operator rather than a licensed applicator. New section 1936.2 would specify and include in regulation the application form upon which an applicant would apply for an applicator's license. On July 28, the Board held a public hearing on these proposed changes; following the hearing, SPCB adopted the changes, which await review and approval by DCA and OAL.

Also on June 9, SPCB published notice of its proposed changes to sections 1950, 1970.4, and 1970.6, Title 16 of the CCR. The proposed amendments to section 1950 would delete a reference to the continuing education renewal requirement for licensees whose license expired on June 30, 1994, as this reference is now obsolete. Section 1970.4 currently requires that the primary structural pest control contractor have in his/her possession and provide to any subcontractor for fumigation a fumigation notice (the "Occupants Fumigation Notice and Pesticide Disclosure" form—*see below*) which has been signed by the occupant of a structure to be fumigated; SPCB's proposed changes to this section would specify that both the primary contractor and subcontractor must retain a copy of the Occupants Fumigation Notice for a period of at least three years. Finally, fumigant manufacturers' labels allow for the independent fumigation of connecting structures, provided that the connecting structure is separated by sealing methods which prevent the fumigant from entering the adjacent or adjoining structures; the Board's proposed changes to section 1970.6 would clarify that this is an acceptable practice. Following a July 28 public hearing, the Board adopted these proposed regulatory changes; at this writing, staff is preparing the rulemaking file for submission to DCA and OAL.

On October 20, SPCB published notice of its intent to further revise section 1970.4;

specifically, these changes would amend the Occupant Fumigation Notice and Pesticide Disclosure form to include a description of symptoms of overexposure. The Board held a public hearing on these proposed changes on December 8; following the hearing, the Board adopted the changes, which await review and approval by DCA and OAL.

Rulemaking Update. The following is a status update on other SPCB rulemaking proposals discussed in detail in previous issues of the *Reporter*:

- On June 28, SPCB released a modified version of its proposed changes to section 1970, Title 16 of the CCR. Section 1970 currently requires a fumigator to maintain a fumigation log, and specifies the information that must be included in the log; SPCB's revised amendments would incorporate the Standard Structural Fumigation Log used by licensees into the regulation itself, specify additional information required to be reported in the log, and change the fumigation log retention period from two to three years, in compliance with record retention amendments enacted by SB 2070 (Calderon) (*see above*). [15:2&3 CRLR 100; 14:4 CRLR 102] At this writing, the proposed changes await review and approval by OAL.

- In March 1995, SPCB published notice of its intent to amend section 1970.4, Title 16 of the CCR, which currently requires—among other things—that a primary fumigation contractor use a fumigation form signed by the occupant of a structure. The industry uses a standard fumigation form which complies with section 1970.4, but which is not included in the regulation itself; the purpose of this proposed amendment is to adopt into regulation the "Occupants Fumigation Notice and Pesticide Disclosure" form (*see above*). At this writing, these changes still await review and approval by OAL. [15:2&3 CRLR 100]

- At its February 25 meeting, the Board held a public hearing its proposal to amend sections 1911, 1919, 1950(d), 1970.3, 1973, 1990, and 1993, repeal section 1994, and adopt new section 1974, Title 16 of the CCR. [15:2&3 CRLR 100; 15:1 CRLR 93-94] After the hearing, SPCB adopted proposed amendments to the following sections: 1911 (requiring licensees to file address changes with the Board within ten days); 1919 (deleting a requirement that the Board representative on the Research Advisory Panel be a public member); 1950.5(d) (requiring continuing education providers to administer a second examination to licensees who fail the first exam); 1973 (requiring licensees to perform proper testing after aeration to ensure



areas are safe for re-entry); and 1993 (defining the contents of reports that must be filed by licensees). The Board also voted to repeal section 1994, which is now incorporated into the proposed amendment to section 1993.

Also on February 25, SPCB modified the proposed language of new section 1974. As originally proposed, the amendment would specify the proper placement of warning signs on a structure, include the warning sign format in the regulation, and require signs to be at least 11"x17". Specifically, SPCB changed the minimum size for the warning sign to 11"x15", as that is the size of signs fumigators receive from chemical suppliers.

The Board also modified its proposed amendments to section 1990. Originally, the amendment specified the language which should appear in a separated report. The regulation stated that Section I of the report would "contain items where there is evidence of active infestation, infection or conditions that have resulted in or from infestation or infection." SPCB revised this language to refer to Section I as containing "items where there is *visible* evidence of active infestation,...."

On June 28, SPCB released a modified version of its proposed changes to section 1970.3, Title 16 of the CCR. The section currently provides that a clamshell lock or keyway locking device shall be used as the secondary lock when a door mechanism will accept it, and a pin may be used only when no other type of secondary locking device is capable of securing the structure. As revised, the section would provide that a secondary lock means a device or barricade that will secure and prevent a door from being opened by anyone other than the licensee in charge of the fumigation; examples of approved devices are clamshell locks, padlocks, keyway locks, pins, or any other device, including deadbolts.

At this writing, all of these proposed changes still await approval by OAL.

■ LEGISLATION

AB 910 (Speier), as amended July 29, provides that if specified contingencies (see MAJOR PROJECTS) do not occur by January 1, 1996, DCA shall succeed to and be vested with the powers and responsibilities of the Board, and would appropriate the Board's budget to DCA. AB 910 also amends section 125.9 of the Business and Professions Code to permit SPCB to adopt citation and fine regulations.

Business and Professions Code section 8514 authorizes a structural pest control company to subcontract work. AB 910 amends section 8514 to require companies to obtain the consumer's written consent

to any subcontracting, and permits the consumer to select another company.

This bill also adds section 8514.5 to the Business and Professions Code, which provides that it is unlawful for a registered company, when billing for subcontracted work, to charge, bill, or otherwise solicit payment from the consumer for structural pest control work not actually rendered by the registered or under its direct supervision without providing specified information in writing.

Under Business and Professions Code section 8516, a registered pest control company or licensee may not commence work or sign, issue, or deliver any documents expressing an opinion or statement until an inspection has been made by a licensed Branch 3 field representative or operator. Following an inspection, a report is required to be delivered to the person requesting the inspection, or to the person's designated agent, before work is commenced, setting forth specified information. AB 910 amends section 8516 to require, as part of the mandated report, a statement printed in bold type stating the following: "The Structural Pest Control Board encourages competitive business practices among registered companies. 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. Therefore, you may wish to seek a second opinion since there may be alternative methods of correcting the findings listed on this report that may be less costly."

Finally, AB 910 adds section 8519.5 to the Business and Professions Code, to require a certificate with specified contents to be issued by a company which performs a fumigation. This urgency measure was signed by the Governor on August 4 (Chapter 381, Statutes of 1995).

AB 568 (Brown). Under existing law, certain persons or entities are exempt from SPCB's licensing requirement, including public utilities, persons engaged in agricultural pest control work, governmental agencies, and educational institutions engaged in research or study of pest control. As amended July 15, this bill additionally exempts from the licensing requirement persons engaged in the live capture and removal of vertebrate pests (such as bats, raccoons, skunks, and squirrels), bees, or wasps from structures without the use of pesticides, if the person maintains specified insurance coverage. The bill provides that the licensing exemption does not exempt a person from compliance with the

California Endangered Species Act, and makes related changes.

Existing law provides that SPCB or certain agricultural commissioners, when properly designated, may suspend the right of a structural pest control licensee or registered company to work for three days or may levy a fine of up to \$500 for each violation of specified provisions and regulations. This bill increases the possible fine to \$1,000, and also makes that fine applicable to an unlicensed individual acting as a licensee. This bill was signed by the Governor on October 9 (Chapter 718, Statutes of 1995).

SB 378 (Calderon). Existing law prohibits a fire department from charging a fee exceeding \$25 for receipt of a notice of fumigation. [15:2&3 CRLR 101] As amended July 17, this bill instead prohibits a fire department from charging fees for any service related to structural pest control activities except for the costs of an emergency response necessitated by illegal or negligent actions.

Existing law provides for a two-year pilot project, repealed effective January 1, 1996, requiring the Director of the Department of Pesticide Regulation to contract with the Los Angeles County Agricultural Commissioner to perform increased structural fumigation inspection and enforcement activities. This bill extends that pilot project an additional year, to be repealed effective January 1, 1997. This bill was signed by the Governor on October 9 (Chapter 691, Statutes of 1995).

AB 1182 (Kuykendall). Under the Board's enabling act, when a registered company completes a project, it must file a notice of work completed with SPCB within five working days. As introduced February 23, this bill provides that a registered company must file a notice of work completed and not completed within ten working days of completion. [15:1 CRLR 93] The bill also provides that the registered company must furnish a copy of the notice to the owner or the owner's agent within ten working days of completion. This bill was signed by the Governor on August 2 (Chapter 273, Statutes of 1995).

SB 929 (Petris), as introduced February 23, would enact the Pesticide Poisoning Prevention Act of 1995. The bill would prohibit the registration of any new use for an extremely hazardous pesticide, as defined, after its effective date. The bill would also require the Secretary for Environmental Protection to develop and implement a plan to eliminate the use of extremely hazardous pesticides that were registered prior to the bill's effective date. [S. H&HS]

Future Legislation. At its December meeting, and in accord with the legislative



intent underlying the 1995-96 Budget Act and AB 910 (Speier) (*see above*), SPCB approved a proposal to sponsor legislation stating that it is unlawful for any SPCB licensee to recommend or to perform any pest control corrective work under any contract or agreement which the licensee knows or has reason to know is in excess of that required to eliminate the condition for which the licensee was employed.

LITIGATION

At SPCB's October 6 meeting, Harvey Logan, Executive Vice-President of Pest Control Operators of California, Inc. (PCOC), announced that his organization voted to legally challenge the requirements of AB 910 (Speier) (Chapter 381, Statutes of 1995), and would name SPCB and DCA as defendants (*see LEGISLATION*). At SPCB's December 7-8 meeting, Registrar Donna Kingwell reported that PCOC had in fact filed a lawsuit against DCA and SPCB; however, the parties had engaged in negotiations to settle their dispute over AB 910. Those proposed amendments will be presented to Senator Boatwright for his review and comment.

Pursuant to a SPCB request, Senator David Kelley requested an Attorney General's (AG) Opinion to clarify whether new terms and conditions of control service contracts imposed by amendments to Business and Professions Code section 8516 are retroactive to January 1, 1994, and whether the amendments apply to extended warranties. [15:2&3 CRLR 101; 15:1 CRLR 95] On November 2, the AG's Office issued *Opinion No. 95-108*, which concluded that all extended warranties executed by a structural pest control operator must include the performance of periodic inspections, and that the statutory requirements for executing a control service agreement by a structural pest control operator do not apply to agreements executed prior to the statute's effective date of January 1, 1994.

By way of background information, the AG explained that the legislature has enacted a comprehensive statutory scheme regulating the practice of structural pest control; operators and field representatives must be qualified in the use and understanding of poisons and other chemicals used in pest control and the theory and practice of pest control. After inspection and completion of a report describing and diagramming infestation and conditions likely to lead to infestation, as well as recommendations for corrective measures, a company may enter into a contract with the consumer to eradicate or control pests. The focus of the AG's inquiry concerned

the terms and conditions of section 8516, which applies to wood-destroying pests or organisms and prescribes the requirements registered companies must meet in order to perform work on contracts to correct any infestation. As a result of 1993 legislation, a control service agreement may be entered into if the specified requirements listed in section 8516 regarding inspection and reporting are met.

In considering the first question presented—whether all extended warranties executed by a licensed pest control operator must include periodic inspections as part of the agreement, the AG noted that although the statutory language is ambiguous, section 8516 clearly contemplates that some extended warranties will include regular inspections. After reviewing the legislative history of the section and its subsequent amendments, the AG concluded that extended warranties must include follow-up inspections in order for consumers to be properly protected.

However, the AG also concluded that the requirements of section 8516 with respect to the execution of control service agreements do not apply to agreements executed prior to January 1, 1994, the effective date of the applicable statutory amendment; according to the opinion, legislation may not be retroactively applied when it constitutes an impairment of an existing contract. Further, the AG stated that there is no indication in the language of section 8516 itself or in the legislative history of the 1993 amendment suggesting that the legislature intended the new requirements to apply retroactively.

RECENT MEETINGS

At its October 6 meeting, the Board unanimously agreed to give California-based researchers first priority in funding considerations, rather than limiting requests for research grants to California-based organizations. Further, the Board agreed to expand the scope of research proposals to include research in the area of *Poria Incrassata*.

Also at its October 6 meeting, SPCB elected Theodora Poloynis-Engen to serve as President, and R.C. "Chuck" Brasiel to serve as Vice-President.

Also at its October meeting, the Board voted to amend its procedures to, among other things, specify that while reviewing consumer complaints, staff must determine whether a building permit was required and, if so, whether it was actually obtained.

At its December 7-8 meeting, the Board authorized the Registrar to hire a consultant to assist with the preparation of the Board's sunset review report for submis-

sion to the legislature. Under the terms of SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994), SPCB will cease to exist on July 1, 1998 unless the Joint Legislative Sunset Review Committee reviews the necessity and performance of the Board and the legislature enacts legislation to extend the sunset deadline. [14:4 CRLR 20, 102]

Also, the Board discussed a request to administer its licensing examination out-of-state; following discussion, the Board directed a committee to commence a review of this and other examination issues after January 1. However, the Board also authorized staff to administer the Branch 2 field representative's license examination in Utah on a one-time basis in February and March 1996.

The Board also heard a report from its Deck Committee, which it formed at its July meeting; the Committee was charged with reviewing issues regarding the inspection of decks and submit any findings and recommendations to the Board. Among other things, the Committee reported that there is a need for a clear statement of the limits of knowledge and tools, the special environmental vulnerability of decks, and the imprecision in estimating serviceability. Following the Committee's presentation, a motion to exclude all decks from inspection failed; instead, the Board agreed to include decks in all inspections unless the person ordering the inspection requests that they be excluded, and directed the Committee to determine whether this constitutes a limited report.

FUTURE MEETINGS

February 23 in San Diego.
May 24 in Pasadena.

VETERINARY MEDICAL BOARD

Executive Officer: Gary K. Hill
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Pursuant to Business and Professions Code section 4800 *et seq.*, the Veterinary Medical Board (VMB) licenses all doctors of veterinary medicine (DVMs), veterinary hospitals, animal health facilities, and registered veterinary technicians (RVTs). The Board evaluates applicants for veterinary licenses through three written examinations: the National Board Examination, the Clinical Competency Test, and the California State Board Examination.

The Board determines through its regulatory power the degree of discretion that veterinarians, RVTs, and unregistered as-