

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

In re: )  
)  
) **DECISION OF DISAPPROVAL**  
**STRUCTURAL PEST CONTROL BOARD** ) **OF REGULATORY ACTION**  
)  
) (Gov. Code, sec. 11349.3)  
**REGULATORY ACTION:** )  
)  
) Title 16, California Code of ) **OAL File No. 01-0126-01 S**  
Regulations )  
ADOPT SECTION: 1996.3 )  
AMEND SECTIONS: 1950, 1990, )  
1990.1, 1993, 1996, 1996.2, 1998 )  
)  
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**DECISION SUMMARY**

The regulatory action deals with continuing education and also with specified reporting requirements. On March 13, 2001 the Office of Administrative Law (“OAL”) notified the Structural Pest Control Board (“Board”) that the regulatory action was disapproved because it did not comply with the “clarity” standard contained in Government Code section 11349.1 and for incorrect procedure.

**A. CLARITY**

Government Code section 11349.1, subdivision (a)(3) requires that OAL review all regulations for compliance with the “clarity” standard. Government Code section 11349, subdivision (c) defines “clarity” to mean “...written or displayed so that the meaning of the regulations will be understood by those persons directly affected by them.”

Section 16 of Title 1 of the California Code of Regulations (“CCR”) declares in relevant part as follows:

“In examining a regulation for compliance with the ‘clarity’ requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:

(a) A regulation shall be presumed not to comply with the ‘clarity’ standard if any of the following conditions exist:

- (1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or
  - (2) the language of the regulation conflicts with the agency’s description of the effect of the regulation; or
  - (3) the regulation uses terms which do not have meanings generally familiar to those “directly affected” by the regulation, and those terms are defined neither in the regulation nor in the governing statute; or . . .
  - (4) the regulation uses language incorrectly. This includes, but is not limited to, incorrect spelling, grammar or punctuation; or
  - (5) the regulation presents information in a format that is not readily understandable by persons “directly affected;” or
  - (6) the regulation does not use citation styles which clearly identify published material cited in the regulation.
- (b) Persons shall be presumed to be ‘directly affected’ if they:
- (1) are legally required to comply with the regulation; or
  - (2) are legally required to enforce the regulation; or
  - (3) derive from the enforcement of the regulation a benefit that is not common to the public in general; or
  - (4) incur from the enforcement of the regulation a detriment that is not common to the public in general.”

1. Proposed section 1996.3 sets forth the requirements for reporting property addresses. It declares in relevant part

“(a) The address of each property inspected and/or upon which work was completed shall be reported on a shall be reported on the WDO by the Board and designated Inspection and Completion Activity Form (See Form No. 43M-51 (new 11/98) at the end of this section. Required Use Effective [ OAL to fill in effective date]. This form shall be completed by each registered company and shall comply with all of the requirements pursuant to Business and Professions Code Sections 8516(b), 8516.1(b) or 8515.

The form shall contain the following information for each property inspected and/or upon which work was completed

- (1) Company name.
- (2) Company registration number.
- (3) Branch Office, (when branch office issues inspection report or notice of work completed.
- (4) Address of property inspected or upon which work was completed, Including zip code.
- (5) Specify Inspection or Completion and the date.
- (6) License number of licensees performing the inspection. . . .”  
(Emphasis added.)

The repetition of “shall be reported on” appears to be a typographical error. The first sentence implies that the Board completes the form but the third sentence requires the registered company to complete the form. It is not clear what “WDO” means and if it is part of the title of the “Inspection and Completion Activity Form.” If it is part of the title then the phrase “and designated” is surplus language. A closing parenthesis should be added after “at the end of this section”.

Based upon the rulemaking record it appears that what is required is that “the address of each property inspected and/or upon which work was completed shall be reported on the WDO [spelled out in its entirety] Inspection and Completion Form 43M-51 (new 11/98) which is printed at the end of this section.”

Further complicating this issue is the fact that there is no Form 43M-51 at the end of section 1996.3, nor is it in the current CCR or in the rulemaking record. There is no way for OAL to verify that this form is consistent with the information specified in proposed subsections (a)(1) through (6), if additional regulatory provisions that have not had a public availability period are contained in this form or if the form is internally inconsistent with the regulation and/or other applicable provisions of law. OAL therefore must reserve the right to subject this section to a full Administrative Procedure Act (“APA”) review when it is resubmitted.

Additionally we note that it is not clear if proposed subsection (a)(6)’s requirement to “Specify Inspection or Completion and the date” refers to the date of inspection or completion or to the date the form was completed by the registered company.

2. Proposed subsection (b) of section 1996.3 states that

“Failure of a registered company to report and file with the Board the address of any property inspected or upon which work was completed pursuant to Section 85168(b), or 8518 are grounds for disciplinary action and subject to a fine of not more than two thousand five hundred dollars (\$2,500).”

It may not be clear to the directly affected public where sections 8516(b) or 8518 are located. The addition of “Business and Professions Code,” the pluralization of “Section” and the deletion of the comma after “8516(b)” would improve the clarity of this regulation.

3. The title for section 1998 “Requirements for Control Service Agreements” is not accurate. Section 1998 contains only requirements related to inspection reports and makes no mention of control service agreements and is therefore internally inconsistent (see Issue B 2).

## **B. INCORRECT PROCEDURE**

OAL must review rulemaking records submitted to it in order to determine whether all of the procedural requirements of the APA have been satisfied. (Gov. Code, sec. 11349.1, subd. (a).)

1. The rulemaking record contains the Minutes of the Board’s January 20, 2000 hearing. Page 14 of the Minutes verifies that the Board did not adopt the amendments to section 1996.2. that are indicated below by ~~strikeout~~.

“A written standard notice of work completed and not completed conforming to section 8518 of the code shall be prepared on the form prescribed by the board. (See Form No. 43M-44 (Rev. 8/97) found at the end of this section. This form shall be prepared ~~and filed with the board for any property upon which work was completed. The registered company shall retain for three years all original notices of work completed and not completed.~~”

However, the text submitted to OAL includes the specific language which was not adopted by the Board. Clarification is needed from the Board. If their intent is not to adopt the stricken out language then they should also delete the second sentence “This form shall be prepared” because it is a sentence fragment that merely repeats language that is already in the first sentence. If the Board wants to retain the language in issue, which parallels Business and Professions Code section 8518, then the rulemaking record needs to have either a transcript, tape or minutes showing its adoption by the Board. (Gov. Code sec. 11347.3, subd. (a)(8).)

2. Subsection (b) of section 8 of Title 1 of the CCR requires the use of “. . . underline or italics to accurately indicate additions to, and ~~strikeout~~ to accurately indicate deletions from, the California Code of Regulations.”

The current CCR has the following title for section 1998 “Reporting Requirements under Section 8516(b)(4).” This title correctly identifies the subject matter of the regulation. The text submitted to OAL did not use underline or ~~strikeout~~ but has the inaccurate title “Requirements for Control Service Agreements.” If the intent is to change the title it must comply with the procedural underline-~~strikeout~~ requirement and also meet the clarity standard by accurately identifying the subject matter of the regulation (see Issue A3). If the Board’s decision is to retain the current title contained in the CCR then no underline or ~~strikeout~~ is required.

3. Government Code section 11347.3 subdivision (b)(12) mandates that the rulemaking file include

“An index or table of contents that identifies each item contained in the rulemaking file. The index or table of contents shall include an affidavit or a declaration under penalty of perjury in the form specified by Section 2015.5 of the Code of Civil Procedure by the agency official who has compiled the rulemaking file, specifying the date upon which the record was closed, and that the file or the copy, if submitted, is complete.”

The final closing declaration in the rulemaking record does not state that the file is complete.

4. The rulemaking record is incomplete because it does not contain Form 43-M51(11/98) that is required in proposed section 1996.3 to be used by registered companies. There is no way for OAL to verify what is contained in the form, if the title of the form is correct and if the form meets all APA requirements (see Issue A1).

5. Government Code section 11346.3, subdivision (c) states that

“No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.”

Business and Professions Code section 8516(b), 8516.1(b) and 8518 require that specified persons report the address of each property inspected or upon which work was completed or if applicable, was not completed on a form prescribed by the Board.”

Proposed section 1996.3 specifies requirements that go beyond the reporting of a property address but are necessary to verify the information e.g., company name and registration number, branch office if applicable date, and the license number of the inspector. Because Form 43M-51 (11/98) is not in the rulemaking file OAL can not at this time determine if the required report goes beyond the statutory requirements of a report thereby triggering Government Code section 11346.3, subdivision (c)’s requirement of a specified finding.

## **CONCLUSION**

For the reasons set forth above, OAL has disapproved the adoption of section 1996.3 and the amendment of sections 1950, 1990, 1990.1, 1993, 1996, 1996.2 and 1998 of Title 16 of the California Code of Regulations. If you have any questions, please contact me at (916) 323-6809.

March 19, 2001

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