

# **BACKGROUND PAPER FOR THE Structural Pest Control Board**

**(Joint Oversight Hearing, February 26, 2018, Senate Committee on  
Business, Professions and Economic Development and the Assembly  
Committee on Business and Professions)**

## **IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE STRUCTURAL PEST CONTROL BOARD**

### **BRIEF OVERVIEW OF THE STRUCTURAL PEST CONTROL BOARD**

#### **History and Function of the Structural Pest Control Board**

In 1935, the California Legislature passed the first Structural Pest Control Act (AB 2382, Chapter 823, Statutes of 1935). Added to the California codes, this Chapter was made effective January 1, 1936 and was to be administered by the California Pest Control Association. The new statute set standards for the pest control industry by mandating, among other provisions, that practitioners meet experience and Continuing Education (CE) requirements to meet the goals of comprehensive consumer protection. In 1941, the Structural Pest Control Act was codified in Division 3, Chapter 14 of the Business and Professions Code (BPC) commencing with Section (§) 8500, establishing the current version of the Structural Pest Control Board (SPCB).

On October 23, 2009, the SPCB was transferred from the Department of Consumer Affairs (DCA) to the Department of Pesticide Regulation (DPR). On July 1, 2013, the SPCB returned to DCA under the Governor's 2011-2012 Reorganization Plan (GRP) No. 2 and AB 1317 (Frazier, Chapter 352, Statutes of 2013).

The SPCB's highest priority is the protection of the public through its licensing, regulatory, and disciplinary functions within the pest control industry (BPC § 8520.1).

The current SPCB mission, as stated in its 2015-2018 Strategic Plan, is as follows:

***To protect the general welfare of Californians and the environment by promoting outreach, education and regulation of the structural pest management professions. The SPCB's vision is to strive to be the national regulatory leader of pest management.***

In achieving these priorities, the SPCB follows its core values: 1) consumer protection, 2) efficiencies, 3) integrity, and 4) professionalism.

The SPCB issues three types of licenses for three different practice areas (branches) of pest control. The branch types are:

- *Branch 1 Fumigation* – The practice relating to the control of household and wood-destroying pests or organisms by fumigation with poisonous or lethal gases.
- *Branch 2 General Pest* – The practice relating to the control of household pests, excluding fumigation with poisonous or lethal gases.
- *Branch 3 Termite* – The practice relating to the control of wood-destroying pests or organisms by the use of insecticides, or structural repairs and corrections, excluding fumigation with poisonous or lethal gases.

The license types are:

- *Applicator* - An entry-level license category issued in Branch 2 and 3 only. An Applicator is an individual licensed by the SPCB to apply a pesticide, or any other medium to eliminate, exterminate, control, or prevent infestations or infections. Applicators cannot inject lethal gases used in fumigation.
- *Field Representative* - A full journey-level license issued in all three branches. A Field Representative secures work, makes identifications, makes inspections, submits bids, and contracts for work on behalf of a registered company.
- *Operator* - The highest level of licensure issued in all three branches. Depending on the license category, an Operator must have at least two years, or as many as four years, qualifying experience. Only a licensed Operator may qualify a company for registration by assuming responsibility for the company and its employees as the company Qualifying Manager.

### **Board Membership and Committees**

The SPCB is comprised of seven members, including three professional and four public members. The three professional members are licensed Operators appointed by the Governor. Additionally, two public members are appointed by the Governor, one public member is appointed by the Senate Committee on Rules, and one public member is appointed by the Speaker of the Assembly. SPCB members receive a \$100-a-day per diem. Pursuant to BPC § 101.7, all DCA regulatory boards are required to meet at least three times each calendar year. BPC § 8523 requires SPCB to meet annually during the month of October and provides that special meetings may be called at any time.

Over the last four calendar years, the SPCB has had at least one annual meeting (October) and three special meetings each year. The SPCB has maintained quorum status at all board meetings and committee meetings and has not undergone any major changes since the last Sunset Review in 2014. All SPCB meetings and committee meetings are subject to the Bagley-Keene Open Meetings Act. There are currently no vacancies on the SPCB. The following is a listing of the current SPCB members:

SPCB Member	Appointment Date	Term Expiration Date	Appointing Authority	Professional or Public Member
<p><b>Darren Van Steenwyk, President</b> Mr. Van Steenwyk is from Lodi and is the SPCB's President. He has been technical director at Clark Pest Control since 2006. He held several positions at Univar USA from 2002 to 2006, including manager and sales representative. Van Steenwyk is a member of the U.S. Green Building Council, Northern California Chapter, Entomological Society of America, National Pest Management Association, Pest Control Operators of California and the California Association of Pest Control Advisers. Mr. Van Steenwyk is an industry member appointed by the Governor whose term expires June 1, 2019.</p>	06/21/2016	06/01/2019	Governor	Professional
<p><b>David Tamayo, Vice President</b> Mr. Tamayo was elected to the Board of Directors of the Sacramento Municipal Utility District in 2014. He is a former board president of the Sacramento-Yolo Mosquito and Vector Control District, and is member of DPR's Pest Management Advisory Committee, US EPA's Pesticide Program Dialogue Committee, and National Pest Management Association's GreenPro Advisory Committee. Prior to working for the County, Mr. Tamayo owned a wholesale seafood business and was an electrician and whitewater rafting guide. He holds a BA in Zoology from UC Berkeley and an MS in Entomology and Nematology from the University of Florida, Gainesville.</p>	09/09/2010	06/01/2020	Speaker of the Assembly	Public
<p><b>Ronna Brand</b> Ms. Brand is from Beverly Hills and is the founder and owner of Brand Realty. Ms. Brand has been state director for the California Association of Realtors since 2006. She was president of the Beverly Hills Greater Los Angeles Association of Realtors in 2007 and was founder and owner of Bicoastal Connections from 1980 to 1984.</p>	05/18/2012	06/01/2021	Governor	Public
<p><b>Naresh Duggal</b> Mr. Duggal is from San Jose and has been a manager in the integrated pest management unit for Santa Clara County since 2002. Mr. Duggal was a quality assurance manager for the commercial division of Orkin Exterminating Inc. from 1999 to 2002. He served in multiple positions at Prism Professional Integrated Sanitation Management from 1994 to 1999, including technical support, quality assurance manager and staff entomologist.</p>	05/18/2012	06/01/2017 (currently in grace period)	Governor	Public
<p><b>Mike Duran</b> Mr. Duran is from Indio and has been president of Duran's Termite and Pest Control Inc. since 1977. He has been a member and trustee for the Valley Sanitary District of Indio since 2003. Mr. Duran was a member and trustee of the Mosquito and Vector Control and Sanitary District in Coachella</p>	05/18/2012	06/01/2019	Governor	Professional

Valley from 2004 to 2008. He established the Pest Control Operators Palm Springs chapter and served as president from 2001 to 2004. Mr. Duran served as a reserve police officer in the City of Indio from 1964 to 1967.				
<b>Curtis Good</b> Mr. Good is from Irvine and is president of Newport Exterminating, a company he has owned since 1982. He is a member of the Urban Pest Management Center of California and the Pest Control Operators of California.	06/29/2010	06/01/2021	Governor	Professional
<b>Servando Ornelas</b> Mr. Ornelas is from Los Angeles and is a Deputy Probation Officer and Adjunct Community College Professor specializing in environmental, economic, and contemporary issues. He is a graduate of East Los Angeles College and California State University at Los Angeles. Mr. Ornelas holds a Master's degree in Mexican American studies. He currently sits on the boards of the Latino Educational Fund, and the East Los Angeles Community Youth Center. He is an advocate for safe pest control practices that promote the welfare of the public while enhancing the professionalism and economic growth of the pest control industry.	01/12/2017	06/01/2020	Senate Rules Committee	Public

The SPCB has three standing committees and three select committees. Two committees, the Research Advisory Panel and the Disciplinary Review Committee, are designated in statute. All other committees are formed as needed and committee members are appointed by the SPCB president.

**Standing Committees**

- *Research Advisory Panel* – The Panel is statutorily mandated by BPC § 8674(t). The Panel consists of one member of the SPCB, two representatives from the structural pest control industry, one representative from the DPR, and one representative from the University of California (California Code of Regulation (CCR) § 1919). The Panel is assigned by the SPCB on an as-needed basis to approve and to fund structural pest control research proposals.
- *Disciplinary Review Committee* – This committee is statutorily mandated by BPC § 8660. The committee consists of three members, including one member of the DPR, one member of the SPCB, and one licensed pest control Operator actively involved in the business of pest control who is selected by agreement of the other members. This committee was established for the purpose of reviewing appeals of orders issued by agricultural commissioner’s acting under authority of BPC § 8617. The committee, as a county adjudicatory body, does not have the authority to suspend or revoke a license issued by the SPCB, as that authority rest solely with the SPCB.
- *Technical Advisory Committee* – This committee considers any matter referred by the SPCB that requires SPCB action but is of such a technical nature that it requires substantial research, input, and considerations by persons qualified in that specific topic to make recommendations to the SPCB.

## Select Committees

- *Act Review Committee* – This committee meets as directed by the SPCB to deliberate and create additions, revisions, or deletions to the Structural Pest Control Act and the CCR. The committee is also tasked with recommending legislation as necessary to clarify the statute’s purpose. From 2011 through 2016, this committee met over 30 times in order to update the Structural Pest Control Act.
- *Pre-Treat Committee* – This committee was formed to address an industry trend of preconstruction termite treatments being performed at less than label rate of product.
- *Continuing Education Integrated Pest Management Committee* – This committee was established to examine the SPCB’s continuing education program and recommend changes that would place an increase emphasis on integrated pest management education and professional practice.

The SPCB does not belong to any national associations, but does collaborate and receive input in connection with rules, regulations, legislation, and pesticide use issues from a number of state and national associations, including the Association of Structural Pest Control Regulatory Officials (ASPCRO), the Pest Control Operators of California, the National Pest Management Association, and the California Agricultural Commissioners and Sealers Association (CACASA).

## Fiscal, Fund, and Fee Analysis

The SPCB is a special fund agency whose activities are funded through regulatory fees and license fees and is independent of the State General Fund. According to SPCB, each fiscal year (FY) the SPCB determines its fund balance by adding the difference between its actual current FY’s expenditures and revenues to its beginning fund balance. This fund balance (or reserve) is then apportioned into the next FY cycle. BPC § 128.5 limits SPCB to a fund balance reserve of 24 months or less.

At the end of FY 2016/2017, the SPCB reports that it had a reserve balance of 5.0 months. However, the SPCB projects to have a fund reserve of 3.7 months at the end of FY 2017/2018 and 2.4 months at the end of FY 2018/2019. At this time, the SPCB has not requested any fee increases. SPCB’s fund is discussed further in Issue #5.

The following is the past, current, and projected fund condition for the SPCB.

<b>Fund Condition</b>						
(Dollars in Thousands)	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18*	FY 2018/19*
Beginning Balance	\$1,409	\$1,831	\$2,275	\$2,176	\$2,154	\$1,526
Revenues and Transfers	\$3,981	\$4,367	\$4,615	\$4,566	\$4,657	\$4,750
<b>Total Revenue</b>	\$3,981	\$4,367	\$4,615	\$4,566	\$4,657	\$4,750
Budget Authority	\$4,474	\$4,508	\$5,071	\$4,788	\$4,869	\$4,966
Expenditures**	\$3,636	\$3,994	\$4,841	\$4,361	\$4,869	\$4,966
Loans to General Fund	N/A	N/A	N/A	N/A	N/A	N/A

Accrued Interest, Loans to General Fund	N/A	N/A	N/A	N/A	N/A	N/A
Loans Repaid from General Fund	N/A	N/A	N/A	N/A	N/A	N/A
<b>Fund Balance</b>	\$1,734	\$2,201	\$2,041	\$2,154	\$1,617	\$1,082
<b>Months in Reserve</b>	5.2	5.4	5.3	5.0	3.7	2.4

\*Projected

\*\*Board expenditures only. Does not include disbursements to other state agencies.

The following is a breakdown of SPCB expenditures by program component.

Expenditures by Program Component								
(list dollars in thousands)								
	FY 2013/14		FY 2014/15		FY 2015/16		FY 2016/17	
	Personnel Services	OE&E						
Enforcement	\$728	\$751	\$825	\$708	\$908	\$1,021	\$946	\$622
Licensing & Examination	\$495	\$332	\$561	\$383	\$617	\$562	\$644	\$386
Administration *	\$583	\$193	\$652	\$194	\$710	\$289	\$739	\$126
DCA Pro Rata	N/A	\$555	N/A	\$671	N/A	\$734	N/A	\$898
Diversion (if applicable)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>TOTALS</b>	<b>\$1,806</b>	<b>\$1,830</b>	<b>\$2,038</b>	<b>\$1,956</b>	<b>\$2,235</b>	<b>\$2,606</b>	<b>\$2,329</b>	<b>\$2,032</b>

\*Administration includes costs for executive staff, board, administrative support, and fiscal services.

The SPCB is one of 40 entities within DCA. Through its divisions, DCA provides centralized administrative services to all boards, committees, commissions, and bureaus which are funded through a pro rata calculation that appears to be based on the number of authorized staff positions for an entity rather than actual number of employees. The SPCB paid DCA \$550,000 in pro rata for FY 2013/2014 which has steadily increased to \$898,000 for FY 2016/2017 or approximately 20.6% of the SPCB expenditures.

The SPCB administers three funds: (1) the Structural Pest Control Fund (Support Fund) (Fund Number 0775), (2) the Structural Pest Control Education and Enforcement Fund (Fund Number 0399), and (3) the Structural Pest Control Research Fund (Fund Number 0168). The SPCB's Support Fund and Education and Enforcement fund are appropriated by the Legislature. The SPCB's Research Fund is continuously appropriated pursuant to BPC § 8674(t)(1).

The Support Fund is the primary fund for the SPCB, accounting for approximately 75% of the SPCB's annual budget. Unlike most professional licensing boards that rely heavily on licensing fees for funding, the majority of the Support Fund comes from Wood-Destroying Pests and Organisms (WDO) filing fees. The WDO filing fee is a \$2.50 fee each time a pest control company inspects a property or completes work on a property. The SPCB has averaged approximately 1,374,949 WDO filings every year over the last four FYs (FY 2013-2017).

The Education and Enforcement Fund is established by BPC § 8505.17 and is supported by the pesticide use report filing fee (BPC § 8674) and all proceeds from civil penalties collected by the board pursuant to BPC § 8620. The cost of the pesticide use report filing fee of \$4.00 is set in regulation while the statutory maximum is \$5.00 (BPC § 8674(r)). The Education and Enforcement Fund is used by the

SPCB for the purposes of training, reimbursement to the Director of Pesticide Regulations for work performed as the agent of the SPCB, and for expenses incurred by the Disciplinary Review Committee. Average revenue from report filing fees and pesticides fines each year over the past four FYs (FY 2013-2017) has been \$423,509.

The Research Fund supports the research efforts of the Research Advisory Panel. An additional cost of \$2.00 per every pesticide use stamp purchased supports the Research Fund (BPC § 8674). Average number of pesticide use stamps bought each year over the past four FYs (FY 2013-2017) has been 71,164.

Applicator, Field Representative, and Operator license renewal fees are due triennially based from the day of issuance (BPC § 8674 and CCR § 1948). In order to support the implementation of Computer Based Testing (CBT), the SPCB authorized fee increases for each of its license types. Effective January 1, 2015, the Applicator exam fee increased from \$15 to \$55, the Field Representative exam fee increased from \$10 to \$50, and the Operator exam fee increased from \$25 to \$65.

The SPCB has not authored nor submitted any Budget Change Proposals (BCPs) in the past four years. In the *2014 Sunset Report*, the SPCB indicated that it would pursue a BCP for FY 2014/15 or FY 2015/16 Budget Act to expand its program to include consumer arbitration and to seek position authority to establish at least two additional investigative positions. When the SPCB updated its *2015-2018 Strategic Plan*, consumer arbitration and position authority was deferred for future consideration.

### **Staffing Levels**

According to the SPCB's organizational chart for FY 2017/2018, the SPCB has 29.5 authorized positions and no vacancies as of July 1, 2017. The SPCB reports that its workforce remains stable and there have been no major retention or recruitment issues.

### **Licensing and Examination**

As of June 30, 2017, the SPCB had 6,898 active Applicator licensees, 11,511 active Field Representative licensees, and 3,769 active Operator licensees. Each company and branch office must register with the SPCB (BPC § 8610). As of June 30, 2017, there were 3,047 Principal Registrations and 435 Branch Office Registrations.

Beginning January 1, 2017, the SPCB inquires on each of its license applications as to the military and veteran status of both the applicant and if applicable, the applicant's spouse, bringing the board into compliance with BPC § 114.5. For each of the SPCB license types that have a training or an experience component, the SPCB accepts training or experience that was acquired during an applicant's time in the armed forces. However, the SPCB reported that there have been no applicants who have offered military education or experience towards the required experience necessary for licensure. The SPCB also reports that it receives at most one person per renewal period that has a cancelled or soon to be cancelled license and is unable to renew due to being away on active military duties.

If the applicant is already licensed in a different state, the SPCB sends a request to the applicant's current or previous employer requesting a license history on that state regulatory authority's letterhead. The SPCB licensing also requests a detailed statement from his/her employer stating the exact duties the individual performed and any certificates of training, schooling in pest control, and a penalty of perjury

statement from the applicant. The SPCB licensing unit reviews that state's website to check whether 1) the rules and regulations and 2) education and experience requirements meet or exceed SPCB's requirements for licensure in California. If the application is approved, the applicant is scheduled to take the appropriate license examination.

The SPCB does not maintain reciprocal agreements with other states and therefore does not administer a national exam. The SPCB does not offer exams in language other than English because the applicant and licensee must be able to read and understand pesticide labels and comply with California labeling laws. For each license type, applicants must successfully pass written examination with a score of 70% or better.

Below are the requirements for each license and branch type.

<b>Applicator License Requirements</b>			
	Education	Experience	Examination
Branch 2/3	None	None	The examination will ascertain that an applicant has sufficient knowledge in pesticide equipment, pesticide mixing and formulation, pesticide application procedures, integrated pest management and pesticide label directions.

<b>Field Representative License Requirements</b>			
	Education	Experience	Examination
Branch 1	None	Six months' training and experience in the practice of fumigating with poisonous or lethal gases under the immediate supervision of an individual licensed to practice fumigating. Of this six months' experience, a minimum of 100 hours of training and experience must be in the area of preparation, fumigation, ventilation, and certification.	The examination will ascertain that an applicant is qualified in the use and understanding of the safety laws of the state, provisions of the Structural Pest Control Act, poisonous and other dangerous chemicals used in pest control, the theory and practice of pest control, and other state laws, safety or health measures, or practices as are reasonable within the scope of structural pest control.
Branch 2	None	A minimum of 40 hours of training and experience in the practice of pesticide application, Branch 2 pest identification and biology, pesticide application equipment, and pesticide hazards and safety practice, of which 20 hours are actual field work. The minimum hour requirement must include training and experience in Integrated Pest Management and the impact of structural pest control services on water quality.	The examination will ascertain that an applicant is qualified in the use and understanding of the safety laws of the state, provisions of the Structural Pest Control Act, poisonous and other dangerous chemicals used in pest control, the theory and practice of pest control, and other state laws, safety or health measures, or practices as are reasonable within the scope of structural pest control.

Branch 3	None	A minimum of 100 hours of training and experience in the practice of pesticide application, Branch 3 pest identification and biology, pesticide application equipment, pesticide hazards and safety practices, structural repairs, and structural inspection procedures and report writing, of which 80 hours are actual field work. The minimum hour requirement must include training and experience in Integrated Pest Management and the impact of structural pest control services on water quality.	The examination will ascertain that an applicant is qualified in the use and understanding of the safety laws of the state, provisions of the Structural Pest Control Act, poisonous and other dangerous chemicals used in pest control, the theory and practice of pest control, and other state laws, safety or health measures, or practices as are reasonable within the scope of structural pest control.
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<b>Operator License Requirements</b>			
	Education	Experience	Examination
Branch 1	Successful completion of board-approved course in the areas of pesticides, pest identification and biology, contract law, rules and regulations, business practices, and fumigation safety.	Two years' actual experience in the practice relating to the control of household and wood-destroying pests or organisms by fumigation with poisonous or lethal gases. One-year of experience must have been as a licensed field representative in Branch 1 (B&P Section 8562).	Operators must complete a Pre-Op Course before taking the licensure exam. Must successfully pass written examination with a score of 70% or better. The examination will ascertain that the applicant is qualified in the use and understanding of the English language, including reading, writing, the building and safety laws of the state and any of its political subdivisions, the labor laws of the state, the provisions of the Structural Pest Control Act, poisonous and other dangerous chemicals used in pest control, the theory and practice relating to the control of household and wood destroying pests or organisms by fumigation with poisonous or lethal gases, and other state laws, safety or health measures, or practices that are reasonably within the scope of structural pest control, including an applicant's knowledge of the requirements regarding health effects and restrictions.
Branch 2	Successful completion of board-approved course in the areas of pesticides, pest identification and biology, contract law, rules and regulations, and business practices.	Two years' actual experience in the practice relating to the control of household pests, excluding fumigation with poisonous or lethal gases. One-year of the required two years' experience must have been as a field representative in Branch 2.	
Branch 3	Successful completion of board-approved course in the areas of pesticides, pest identification and biology, contract law, rules and regulations, business practices, and construction repair and preservation techniques.	Four years' actual experience in the practice relating to the control of wood destroying pests or organisms by the use of insecticides, or structural repairs and corrections, excluding fumigation with poisonous or lethal gases. Two years of the required four years' experience must have been as a field representative in Branch 3.	

The SPCB began computer based testing (CBT) in March 2014. CBT is available for all board examinations and is administered at 17 examinations sites in California and 22 locations nation-wide.

In the past few years, the SPCB has been working with the DCA's Office of Professional Examinations Services (OPES) to conduct Occupation Analysis (OA) for each of its licenses and update exams and study materials. On January 1, 2018, new exam was released for Field Representative Branch 2 and 3. The OPES has recently complete an OA for Operator Branch 2, is currently working on an OA for

Operator Branch 3, and is scheduled to start an OA for Operator Branch 1 and Field Representative Branch 1. Working with OPES, the SPCB has successfully reduced the reference materials for licensure exams from 19 in 2011 to 8 in 2016. The SPCB continues to work with OPES as scheduled and will update study guide materials once all OA have been completed and when all examination question content have been validated.

In FY 2013/2014, pass rates, especially for Field Representative licenses, were low. The pass rate for first-time Field Representative license exam takers averaged around 21% for Branch 1 and 26% for Branch 3. With the introduction of new exams and CBT, the pass rates have continued to increase. In FY 2016/2017, the pass rate for first-time takers for the Applicator license averaged at 51%, for Field Representative license between 37% -55%, and Operator license between 50%-80%.

Certificates of course completion must accompany the application for an Operator's examination. Applications for licensure as a Field Representative and Operator must also be accompanied by a Certificate of Experience, completed and signed under penalty of perjury by the Qualifying Manager (licensed Operator) of the company under which the applicant gained the required training and experience. Any discrepancies noted by staff during the application review process as it relates to possible authenticity of the signature or experience qualifications are researched further by contacting Qualifying Managers to confirm accuracy of the information. License files are reviewed to confirm periods of employment. If experience is obtained from out-of-state employment, verification of licensure from that state regulatory agency is obtained.

Applicants must respond to the question on the application, "Have you ever been convicted of a felony or a misdemeanor other than a minor traffic infraction?" If yes, they are to attach a signed, detailed statement regarding all felonies and misdemeanor convictions in addition to the live scan process which every applicant must undergo. If the applicant responds "no" and the SPCB later receives a background check hit, the SPCB sends a written correspondence to the applicant requesting an explanation. For prior disciplinary actions, the SPCB reviews CAS records for pending complaints, citations, and accusations. If records reveal any pending actions or unsatisfied obligations, the applicant is asked to correct the issues. If the SPCB believes that an applicant has falsified any information in the application regarding criminal history or past/present disciplinary actions, the application will be referred for denial or a statement of issues. Pursuant to the Administrative Procedures Act, the applicant may appeal the Board's proposed action.

Effective July 1, 2004, all license applicants must be fingerprinted for a criminal history background check through the Board's Criminal Offender Record Information program. Because this law could not be enforced retrospectively, only applicants filing applications for licensure on or after July 1, 2004 and current licensees upgrading their licenses (i.e. upgrading a field representative license to an operator license) were subject to the requirements of this legislation. Effective February 29, 2016, the Board updated its policy by promulgating regulations (CCR § 1960) to require all licensees, whose licenses were issued on or before July 1, 2004, to submit to fingerprinting as soon as administratively feasible but no later than the date of licensure renewal beginning June 30, 2016 through June 30, 2018 therefore capturing any licensee not previously fingerprinted.

The SPCB processes approximately 99% of all applications and examination requests. All non-deficient applications are processed within 60 days. Applicants whose applications have been approved and who have successfully passed the examination have up to one year to complete their applications. Beyond

one year, the application is void. According to the SPCB, processing delays are rare and if they do occur, they are usually due to a factor beyond the SPCB's control (i.e. fingerprints).

**Continuing Education**

Licensees are required to complete CE specific to the branch they are licensed in every three years. Applicators are required to complete a total of 12 hours of CE, including six hours of pesticide application and use, four hours of SPCB rules and regulations, and two hours of integrated pest management. Field Representatives and Operators are required to complete a total of 16 hours of CE, including four hours specific to each branch they are licensed in, eight hours of SPCB rules and regulations, two hours of integrated pest management, and two hours in any other category. No changes have been made to CE requirements in the past four years, but the SPCB is considering amending CE categories.

As a condition to renew a license, a licensee must certify on their license renewal form that he or she has completed the CE requirements. The SPCB has been working to auditing those who have not been audited before and have recently focused more on conducting audits of Operators to ensure they are held responsible for completing their CE.

The consequences for failing a CE audit depend on the severity of the failure and penalties range from corrective action (citation and fine) to disciplinary action (suspension or license revocation). During the last four FYs, the SPCB has issued 50 citations to Applicator licensees and 172 citations to Field Representative and Operator licensees for CE audit violations.

Number of CE Audits			
Fiscal Year	Applicator	Field Representative	Operator
2014/15	52	397	756
2015/16	121	No Audits	778
2016/17	75	402	328
2017/18	Pending	Pending	Pending

The SPCB does not have authority to approve and license a school but does approve course content submitted by upstart and existing course providers for purposes of offering continuing education (CE) to licensees. The SPCB currently has 94 CE approved providers listed on its website at <http://www.pestboard.ca.gov/ce/index.shtml>. SPCB investigators and in-house staff periodically audit CE course providers to ensure compliance with Board requirements. If a provider fails to comply with the standards adopted by the SPCB pursuant to CCR §§ 1950 and 1953, the SPCB has authority to withdraw or cancel the course offerings. The SPCB may also refer repeat violations to the oversight of other jurisdictions to discontinue or terminate any accreditations or licensure maintained by the provider. CE course oversight and audits are discussed further in Issue #6.

## **Enforcement**

The SPCB has established performance targets for its enforcement program of 10 days to complete complaint intake, 180 days from the time the complaint is received until the investigation is complete, and 540 days from the time the complaint is received and disciplinary decision is ordered. As of FY 2015/2016, the SPCB is meeting its target for intake cycle time and investigation cycle time, but is on average 16 days over its goal for disciplinary cycle time.

The SPCB's case prioritization policy is consistent with DCA's guidelines, appropriate for the license population it is charged to oversee. The SPCB applies cases by level of priority: 1) Urgent, 2) High, and 3) Routine. Urgent priority cases include fumigation deaths, arrests for convictions, or unlicensed activity (elder abuse or significant financial damages). High priority cases include probation violations, unlicensed activity (moderate financial damages), or fraud. Routine cases include advertising violations or improper inspections with minor or no financial damages.

The SPCB reports that intakes of complaints have remained steady over the past three years, averaging approximately 582 per year.

Over the last three years, the SPCB:

- Investigated and closed approximately 1,807 investigations
- Referred 201 cases to OAG for action
- Filed 167 accusations
- Revoke or accepted the surrender of 165 licenses
- Placed 63 licensees on probation

The Office of Administrative Law approved the SPCB's cite and fine authority in 1998 (CCR § 1920). In lieu of the SPCB filing formal disciplinary action for small or moderate violation, a citation without a fine or a citation with a fine is used alternatively. Violations must also not have involved misrepresentation, criminal acts, elder abuse, substantial financial damages, or other commonly recognized egregious violations to be considered for the cite and fine process. This process allows the SPCB to impose reasonable sanctions against licensees without the need to pursue formal discipline to suspend or revoke a license. This program also saves the state of California on the substantial costs associated with formal actions which are usually at least three times the costs of citation actions.

The SPCB issued an average of 163 citations and fines over the last three years. The five most common violations for which citations are issued include:

- CE Violation (BPC § 8593) – Assessed 172 times
- Contract Violation (BPC § 8638) – Assessed 127 times
- Inspection Report Violation (BPC § 8516) – Assessed 116 times
- Completion Report Violation (BPC § 8518) – Assessed 62 times
- Disregard of Specifications (BPC § 8635) – Assessed 25 times

In the past four FY, the SPCB has participated in seven Disciplinary Review Committee matters. The Disciplinary Review Committee hears appeals regarding notices of proposed actions issued by local government pursuant to BPC § 8617. Apart from DRC, the SPCB held 15 informal conferences in the

last three FY. The SPCB also received two requests for administrative appeals in the last four FYs but both appeals were withdrawn by the licensees and the citations have been complied with.

The SPCB began using the Franchise Tax Board (FTB) intercepts to collect outstanding fines in March 2015. It has submitted for collection 24 cases, including 11 cite and fine cases, 11 County Civil Penalty Assessments cases, one accusation decision cases, and one probation case. The total sum of cost recovery requested is \$20,488.40 and the FTB has collected \$1,002.75.

The SPCB seeks cost recovery for each accusation case filed with the Attorney's General Office. However, the administrative law judge, based on court testimony and/or findings of fact, may or may not order cost recovery in the proposed decision. If the cost recovery order is contrary to the amount sought by the SPCB, the SPCB has no discretion to set aside the judge's decision unless it elects to non-adopt the proposed decision in its entirety. The SPCB historically has not attempted to set aside and issue its own decision if the issue is only cost recovery; decisions that are set aside involve other matters of law.

Over the last four fiscal years, the SPCB's average cost recovery order, whether issued by an administrative law judge or by SPCB stipulation, is approximately \$3,362 per case. This figure represents a total of 87 disciplinary cases, excluding the costs of statement of issues cases which are not recoverable.

(For more detailed information regarding the responsibilities, operation and functions of SPCB, please refer to the 2017 Sunset Review Report. This report is available on its website [http://www.pestboard.ca.gov/forms/sunset\\_2018.pdf](http://www.pestboard.ca.gov/forms/sunset_2018.pdf))

## PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The SPCB was last reviewed by the Legislature through Sunset Review in 2013-2014. During the previous Sunset Review, 19 issues were raised. In December 2017, the SPCB submitted its sunset report to the Senate Committee on Business, Professions, and Economic Development and Assembly Committee on Business and Professions (Committees). In this report, the SPCB described actions it has taken since its prior review to address the recommendations made. The following are some of the more important programmatic and operational changes, enhancements, and other important policy decisions or regulatory changes made. For those which were not addressed and which may still be of concern to the Committees, they are addressed and more fully discussed under “Current Sunset Review Issues.”

- **The SPCB updated its Strategic Plan.** After the SPCB learned it was being transferred from the DPR back to the DCA in 2012, the SPCB decided to hold the final approval of its *2011 Strategic Plan* because of the differing missions of the two departments. In 2014, the SPCB began meeting with the DCA’s Strategic Organization, Leadership, and Individual Development Program (SOLID) to update its Strategic Plan and in July 2015 adopted its current *2015-2018 Strategic Plan*.
- **The SPCB is currently fully staffed.** In its *2014 Sunset Review Report*, the SPCB expressed that it was having trouble recruiting and retaining job candidates for certain positions, namely professional class positions. At the time of the last Sunset Review, the SPCB had a staff of 28 with three vacant positions. As per DCA policy, the SPCB sought to reclassify certain positions as they became vacant from specialist class positions into generalist class positions in order to improve recruitment efforts. The SPCB reclassified four positions in its enforcement section beginning in FY 2015/2016. Since then, the SPCB has been able to fill its vacancies in a timely manner and is fully staffed as of July 1, 2017.
- **The SPCB is now posting board meeting materials on its website.** During the prior sunset review, the Committees noted that while the SPCB posted board meeting agendas and minutes on its website, it was not posting the materials or hand-outs which are used in preparation for the meetings and are referenced in meetings. Starting with the March 2014 board meeting, the SPCB has posted meeting materials for almost every meeting.
- **The SPCB has implemented CBT for its licensing examinations.** The SPCB began its CBT Pilot in March 2014. The SPCB contracts with a DCA approved vendor which serves a majority of other boards and bureaus under DCA. CBT is available for all board examinations, except CE challenge examinations. The SPCB sought legislation in FY 2013/14, AB 1685 (Williams, Chapter 304, Statutes of 2014 to increase fees to cover its reasonable administrative costs, which was not to exceed \$60 for an applicator exam, \$75 for a field representative exam, and \$100 for an operator exam.
- **The SPCB has deposited renewal fees previously in a special revenue account in the DPR to the SPCB’s Support Fund.** In its *2014 Sunset Review Report*, the SPCB noted that 85% of the Field Representative renewal fees for FY 2011/2012 and FY 2012/2013 were allocated to special revenue account, RAC 1258000-000: Renewal Fees, under the DPR. The SPCB was transferred from the DPR to DCA July 1, 2013 and the revenue in the special revenue account was deposited in the SPCB’s Support Fund in FY 2012/2013.

- **The SPCB adopted regulations to require all licensees who have not previously been fingerprinted to be fingerprinted as a condition of license renewal.** On February 29, 2016 the SPCB adopted CCR §1960, requiring all licensees applying for renewal to submit a set of fingerprints for the purpose of conducting a criminal history record check. All licensees were notified that they would need to submit fingerprints as a condition of license renewal after CCR §1960 became effective on January 1, 2016. The SPCB also sends three notices to each affected licensee during their specific renewal period. All licenses should be fingerprinted by June 30, 2018.
- **The SPCB has been working to update all of its examinations in response to the 2013 compromise of its examinations.** In February 2013, the SPCB learned that its examinations were compromised. DCA's Division of Investigation determined that the two individuals illegally obtained exam materials for 12 different state-administered exams and faced 24 felony charges. In response, the SPCB cancelled all six of its examinations for a one-month period, costing the SPCB approximately \$38,000. The SPCB has been working closely with DCA's OPES to update all the examinations and has since updated to CBT which offers the highest security available for testing.
- **The SPCB has sought legislation that extends the SPCB statute of limitations.** Since the *2014 Sunset Review Report*, the SPCB has been unable to move forward with 11 cases due to the statute of limitations. In response to this issue, the SPCB sought legislation to allow the SPCB an additional six months to take disciplinary action for a total of 18 months. AB 1590 was chaptered and filed with the Secretary of State on September 25, 2017.

# CURRENT SUNSET REVIEW ISSUES FOR THE STRUCTURAL PEST CONTROL BOARD

The following are unresolved issues pertaining to the SPCB, or those which were not previously addressed by the Committees, and other areas of concern for these Committees to consider, along with background information concerning the particular issue. There are also recommendations the Committees' staff have made regarding particular issues or problem areas which need to be addressed. The SPCB and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

## SPCB ADMINISTRATION ISSUES

### **ISSUE #1: (STRATEGIC PLAN) What is the status of the SPCB's plans to update its 2015-2018 Strategic Plan?**

**Background:** The SPCB's most recent Strategic Plan was approved in July 2015. In preparation, the SPCB met with the DCA's Strategic Organization, Leadership and Individual Development Program (SOLID) to approve the development of an updated plan in January 2014 and the SPCB began strategic planning sessions with SOLID in October 2014.

As the SPCB's current Strategic Plan will be complete at the end of the 2018 calendar year, the SPCB should make establishing a new Strategic Plan a priority.

**Staff Recommendation:** *The SPCB should report on the status of goals established in the 2015-2018 Strategic Plan. Did the SPCB meet its strategic goals? The SPCB should also report on the status of updating its 2015-2018 Strategic Plan.*

### **ISSUE #2: (RESEARCH PROJECTS) What is the status of the Research Advisory Panel and research projects?**

**Background:** Requests for research by the SPCB are conducted by the Research Advisory Panel and are then presented to the SPCB for consideration and implementation. SPCB approved topics are then vetted through a request for proposals (RFP) process and are advertised statewide. Following award of the contract(s), information regarding the progress of research is published on the SPCB's website.

The SPCB's research is paid for through the Research Fund, which is supported through a \$2 fee on each pesticide use stamp purchased from the SPCB. Each year during the past three years, approximately 70,000 pesticide use stamps were purchased and approximately \$140,000 was added into the Research Fund. Typically, the SPCB waits to build up its Research Fund before initiating a research project.

According to the SPCB website, the SPCB has not conducted any major studies since 2011. The SPCB convened in January 2017 and approved the Research Advisory Committee's recommendations to submit a RFP to DCA's Contracts Unit. The topic of research involves studies surrounding the ingestion of rodenticides by non-target pests and best practices in the performance of integrated pest management.

As of February 2018, the RFP is still pending approval from DCA before it can be release to University of California researchers.

In the past, the SPCB has conducted research on issues important to consumers and licensees. Since the SPCB continues to collect fees in order to fund research, the SPCB should ensure that it is properly serving its consumers and licensees by producing relevant research in a timely manner. DCA should ensure that it is providing its boards, including the SPCB, with the appropriate support to do so.

**Staff Recommendation:** *The SPCB should update the Committees on the status of the RFP. The SPCB should also update the Committees on the total amount of funds in the Research Fund. The SPCB should further establish plans to ensure more frequent studies of relevant issues in the structural pest control industry are conducted.*

**ISSUE #3: (ONLINE MEETING MATERIALS) What steps does SPCB take to increase public accessibility to board and committee meetings?**

**Background:** Webcasting is a commonly used and helpful tool for licensees, consumers, and other stakeholders to monitor boards in real-time and better participate when unable to physically attend meetings. While SPCB meetings are split between northern and southern California, there are only a few meetings per year and travel to and from meetings can be difficult. As a result, webcasting provides greater access. It also improves transparency and provides a level of detail that cannot be captured in the board-approved minutes.

During the last sunset review, the Committee raised the issue of SPCB's webcasting of board meetings, which was, and continues to be an issue for many of the entities within DCA. The SPCB reports that it started webcasting board meetings beginning with the October 2014 meeting, but notes that webcasting abilities are subject to DCA resources. Since then, the SPCB held 14 board meetings: eight in Sacramento, four in Southern California, and two telephonic meetings, only five of which were webcast. The SPCB has stated that due to the cost of renting webcasting technology at the locations where board meetings outside of Sacramento take place, the SPCB's policy is only to webcast its Sacramento meetings.

Furthermore, while the SPCB does post the agenda, materials, and often times minutes for committee meetings, the SPCB currently does not webcast committee meetings. As committees are often where important decisions are made for the SPCB, it may be beneficial to consumers and board stakeholders to be able to easily access those proceedings.

**Staff Recommendation:** *The SPCB should advise the Committees on discussions with DCA to provide greater public access to its proceedings through webcasting. The SPCB should discuss efforts to webcast meetings held in locations other than Sacramento, as well as other efforts to increase public access to meetings.*

**ISSUE #4: (BREEZE) The SPCB continues to use DCA's CAS and other standalone programs in lieu of BreZE. What is the status of BReZE implementation by the SPCB?**

**Background:** DCA has been working since 2009 on replacing multiple antiquated standalone IT systems with one fully integrated system. In September 2011, DCA awarded Accenture LLC with a

contract to develop and implement a commercial off-the-shelf customized IT system, which it calls BreEZe. BreEZe is intended to provide applicant tracking, licensing, renewals, enforcement, monitoring, cashiering, and data management capabilities. In addition, BreEZe is web-enabled and designed to allow licensees to complete and submit applications, renewals, and the necessary fees through the internet. The public also will be able to file complaints, access complaint status, and check licensee information if/when the program is fully operational.

The project plan called for BreEZe to be implemented in three releases. The first release was scheduled for July 2012. The SPCB was originally scheduled for inclusion in Release 3 of the project. Under Special Project Report 3.1, which outlined the changing scope and cost of the BreEZe project, Release 3 was removed from the project entirely in 2015.

DCA currently has no formal plan to expand BreEZe to the 19 boards originally included in Release 3. Instead, DCA first intends to conduct a cost-benefit analysis for Release 3 boards (after Release 2 is completed in 2016) and then make a decision about whether programs previously slated for Release 3 of the project will come onto BreEZe and, if so, how that will be implemented. It is not clear whether the system has been evaluated to meet the needs of Release 3 entities like the SPCB, many of which are facing significant operational challenges due to their lack of dynamic IT capacity. The SPCB has contributed \$267,831 to the DCA in pro rata costs to support the BreEZe project from FY 2009/2010 to FY 2016/2017.

The SPCB continues to use outdated programs until a determination of future information technology efforts is made. According to SPCB, it is able to manage all day-to-day functions with its current system without setback or delay.

It would be helpful for the Committees to learn about SPCB's plans to upgrade IT systems. It would also be helpful to understand, particularly given the SPCB's fiscal issues as discussed later, what future costs are anticipated.

**Staff Recommendation:** *The SPCB should advise the Committees on the status of SPCB's IT systems and upgrades, including any temporary workaround systems currently in place and the cost for these systems. The SPCB should update the Committees on if they expect to receive any refund from DCA for the pro rata the SPCB has paid for BreEZe.*

### **SPCB BUDGET ISSUES**

#### **ISSUE #5: (SPCB FUND AND RESERVES) What is the status of the SPCB's long-term fund condition?**

**Background:** At the end of FY 2015/2016, the SPCB reported that it had a reserve balance of 5.0 months but projects to have a fund reserve of 3.7 months at the end of FY 2017/2018 and 2.4 months at the end of FY 2018/2019. Both the SPCB's fund balance and months in reserve are projected to have decreased to less than half of what they were two FY's ago. At this time, the SPCB has not requested any fee increases. Typically, boards and bureaus under DCA maintain a reserve level of at least six months to cover unanticipated costs, such as litigation.

<b>Fund Condition</b>						
(Dollars in Thousands)	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18*	FY 2018/19*
Beginning Balance	\$1,409	\$1,831	\$2,275	\$2,176	\$2,154	\$1,526
Revenues and Transfers	\$3,981	\$4,367	\$4,615	\$4,566	\$4,657	\$4,750
<b>Total Revenue</b>	\$3,981	\$4,367	\$4,615	\$4,566	\$4,657	\$4,750
Budget Authority	\$4,474	\$4,508	\$5,071	\$4,788	\$4,869	\$4,966
Expenditures**	\$3,636	\$3,994	\$4,841	\$4,361	\$4,869	\$4,966
Loans to General Fund	N/A	N/A	N/A	N/A	N/A	N/A
Accrued Interest, Loans to General Fund	N/A	N/A	N/A	N/A	N/A	N/A
Loans Repaid from General Fund	N/A	N/A	N/A	N/A	N/A	N/A
<b>Fund Balance</b>	\$1,734	\$2,201	\$2,041	\$2,154	\$1,617	\$1,082
<b>Months in Reserve</b>	5.2	5.4	5.3	5.0	3.7	2.4

\*Projected

\*\*SPCB expenditures only. Does not include disbursements to other state agencies

**Staff Recommendation:** *The SPCB should update the Committees on its current fiscal situation and projected budget reserves. The SPCB should also identify appropriate solutions, including raising fees, controlling spending, or other steps that might be taken in order to ensure a stable reserve level.*

### **SPCB LICENSING ISSUES**

**ISSUE #6: (CONTINUING EDUCATION AUDITS)** Are there more effective means by which the SPCB can verify that CE was completed other than conducting random audits for a small number of licensees at the time of renewal?

**Background:** Every three years, active Applicator licensees are required to complete 12 hours of CE while Field Representative and Operators are required to complete 16 hours of CE. In recent years, the SPCB has focused the attention of its CE audits on Operators and this shift in resources has led to a decrease in audits of its other two license types, including no audits of Field Representative licensees in FY 2015/2016.

Verifying that licensees actually complete required CE is something that many boards struggle to achieve. Most boards rely on licensees to self-report at the time of renewal that the individual completed CE courses and provide information about those courses, including the CE provider, course description, and other data points. To confirm that an individual actually completed what they reported, boards like the SPCB conduct random audits of licensees. Given the workload associated with board staff verifying all of the information provided by licensees, the numbers of CE audits most boards conduct are extremely low, as compared to the number of licensees renewing licenses.

<b>Number of CE Audits</b>			
Fiscal Year	Applicator	Field Representative	Operator

2014/15	52	397	756
2015/16	121	No Audits	778
2016/17	75	402	328
2017/18	Pending	Pending	Pending

The new Executive Officer of the Board of Registered Nursing recently proposed an innovative solution to receipt of information from third-party sources, specifically uploading materials directly into a cloud that DCA manages. The SPCB may consider whether there are more efficient ways to ensure CE completion and to obtain primary source documentation from outside organizations, such as proof of completion provided directly to the SPCB through the DCA cloud.

**Staff Recommendation:** *The SPCB should explore innovative methods to confirm CE completion and update the Committees on steps it is taking to streamline processes. Should the SPCB use other technologies the DCA might have to improve submission compliance and processing times for primary source documents?*

**ISSUE #7: (CONTINUING EDUCATION PROVIDER AUDITS) Does the SPCB exercise enough oversight over CE providers?**

**Background:** The SPCB does not have express authority to approve and license CE providers, but does approve course content submitted by upstart and existing course providers. SPCB investigators and in-house staff periodically audit CE course providers, up to 12 times per year, to ensure compliance with SPCB requirements. If a provider fails to comply with the standards adopted by the SPCB, the SPCB has the authority to withdraw or cancel the course offering and/or refer repeat violators to the oversight of the BPPE.

The CE provider audit process may either be: 1) education or informational or 2) investigative. Educational or informational is a process by which SPCB’s administrative or investigative staff responds to frequently asked questions or provides general guidance to the CE provider to ensure compliance with statutory or regulatory requirements.

The investigative process is initiated either proactively whereby CE providers are investigated randomly or, as issues are raised to the Board by formal or informal complaints, reactively to consider the imposition of course decertification or criminal prosecution. Board investigators use recognized investigative techniques and sources of information (i.e. law enforcement or the judicial system) to assist in gathering all facts associated with a given investigation to assess whether violations of law should be pursued.

The SPCB currently has a list of 94 approved CE course providers posted on its website. In its 2018 *Sunset Review Report*, the SPCB did not include data on audits of CE providers and any actions that have been taken against a CE provider found to be not adhering to SCBP rules and regulations.

**Staff Recommendation:** *The SPCB should report to the Committees on the number of CE provider audits it has conducted and any disciplinary action brought against a CE provider. The SPCB should also consider ways to improve oversight over CE providers.*

## **SPCB ENFORCEMENT ISSUES**

**ISSUE #8: (ENFORCEMENT POWERS)** SPCB reports that it is taking steps to increase authority for swift action against licensees. What is the status of those efforts? What are the current barriers to SPCB's enforcement efforts?

**Background:** In its *2018 Sunset Review Report*, the SPCB stated that in order to combat the most significant challenges facing its enforcement division, the SPCB plans to seek to add or amend statute and regulations to give itself greater authority to levy sanctions against licensees and companies for failure to comply with the SPCB's laws and regulations in the following categories: license maintenance (i.e. Secretary of State filings, bonds, and insurance), timely filing of WDO inspection reports, production of records/retention, mandatory supervision, terms and conditions of probation, and eligibility for licensure reinstatement.

Specifically, the SPCB has stated that it is seeking legislation to gain statutory authority to: 1) automatically suspend any license or, with cause, revoke any license or registration based on noncompliance of citation; 2) automatically suspend any license or registration based on an owner's or licensee's failure to satisfy court judgments, arbitration awards, tax liens, and other lawfully imposed sanctions related to pest control profession; 3) require any person listed on the principle registration or branch office registration to take CE or SPCB-approved courses as a conditions of SPCB-issued citation; and 4) deny the renewal of a license based on an owner's or licensee's failure to comply with any provision of the Structural Pest Control Act. The SPCB also stated these enforcement goals in its *2015-2018 Strategic Plan*.

**Staff Recommendation:** *The SPCB should further elaborate on what are the more significant challenges the SPCB is facing. The SPCB should also update the Committees on why it plans to seek the statutory authority mentioned above and what the status of this legislation is.*

**ISSUE #9: (COMPLAINTS)** SPCB's complaint intakes have increased since the prior review. What does SPCB attribute these increases to?

**Background:** In its *2014 Sunset Review Report*, the SPCB noted that "since the housing crisis in 2008, complaints dropped to an all-time low of 377 in FY 2008/2009 but have steadily increased from that point forward to a high of 518 in FY 2012/2013". According to the SPCB's *2018 Sunset Review Report*, complaints have continued to increase to a high of 594 in FY 2014/2015. At the time of the last sunset report, the SPCB believed that this increase in intake of complaints was due to California's economy, specifically "As-Is sales" and the underground pest control economy.

The SPCB believed that the rising trend of "As-Is" sales were nullifying the need for WDO inspections. "As-Is" sales are when the buyer, seller, or lender waives pest control contractual contingencies so that there are fewer requirements in the sale or purchase of a home. These waivers preclude the SPCB from maintaining substantive jurisdiction, even in cases where there may have been a WDO inspection performed. However, the SPCB notes that the use of "As-Is" sales appear to be on the decline due to a resurgence in the real estate market in California.

The SPCB also believed that the underground pest control economy, including both licensed and unlicensed practitioners, appeared to be growing. The SPCB believed this rise to be largely due to rising unemployment, a decline in savings and retirement, and the reduction of various income assistance programs. However, in its *2018 Sunset Review Report*, the SPCB reported that the presence of underground activity has not been significant in the structural pest control industry and contributes this to the result of rising employment and housing over the preceding three or four years.

In *2014 Sunset Review Report*, the SPCB stated that in 2013 it began partnering with the Department of Industrial Relations, Division of Labor Standards Enforcement, and sibling agencies to counteract the negative effects of the underground economy. The SPCB also stated a number of plans to expand the scope of its enforcement operations. These ideas included researching private mediation, conciliation, and arbitration programs (or “alternative dispute resolutions programs”) as an additional means to dispute resolution and to continue to maintain substantive jurisdiction on complaints, even for “As-Is” sales or when the purchase agreement contains waiver clauses. The SPCB also stated that in order to address underground economy efforts, the SPCB would seek position authority for at least two additional field investigators for its current staff of eight field investigators in FY 2014/2015 or FY 2015/2016.

While the number of complaints has slightly decreased since from FY 2013/2014 to FY 2016/2017, complaints are still up approximately 11% from FY 2012/2013 and approximately 15% from 2008. The SPCB also included “increase proactive enforcement to effectively reduce the frequency of unlawful pest control services” as a goal in its *2015-2018 Strategic Plan*. However, the SPCB decided to postpone increasing the number of field enforcement staff and the creation of an arbitration program for a later date.

The SPCB allocates its resources to focus first on reactive complaints, or complaints filed by consumers, before pursuing proactive complaints, or complaints generated by audits, inspections, and investigations of unlicensed/underground activities. If the SPCB’s current staff is unable to handle reactive complaints and also take on active complaints, should the SPCB be continuing to look into ways to expand its enforcement abilities?

***Staff Recommendation:*** *The SPCB should update the Committees as why it believes there has been an increase in complaints since the prior sunset review. The SPCB should also update the Committees on its collaborate efforts with Department of Industrial Relations, Division of Labor Standards Enforcement, and sibling agencies to counteract the negative effects of the underground economy. Should the SPCB consider increasing its field enforcement staff or creating an arbitration program? What are the SPCB’s plans to expand its enforcement staff’s abilities to pursue proactive complaints?*

**ISSUE #10: (EXEMPTION FROM LICENSURE) Should BPC § 8555(g) be amended by the SPCB to bring statute into compliance with the Merrifield v. Lockyer ruling.**

**Background:** During the prior sunset review, the Committees noted that the Act exempts from licensure and regulation by the SPCB those people and businesses engaged in the live capture and removal or exclusion or exclusion of vertebrate pests, bees, or wasps from a structure without the use of pesticides (BPC 8555 § (g)). However, the law further excludes mice, rats, and pigeons from the definition of “vertebrate pests.” This provision was added by AB 568 (Brown, Chapter 718, Statutes of 1995).

In 2008, BPC 8555(g) was held unconstitutional by the 9<sup>th</sup> circuit (Merrifield v. Lockyer, 547 F.3d 978, 900 (9<sup>th</sup> Cir. 2008)). Alan Merrifield was an unlicensed operator of a pest control business and trade association. His business engaged in non-pesticide animal damage prevention and bird control. In 1997, he was sent a warning letter from the SPCB stating that his business activities required a license, because he advertised and conducted rodent proofing. Merrifield never applied for a license and claimed none was necessary for his business activity because he did not use pesticides.

In order to continue without a license, he filed a lawsuit against the SPCB and other state officials alleging a violation of Equal Protection, Due Process and privileges or Immunities Clauses of the Fourteenth Amendment. The 9<sup>th</sup> Circuit held that the application of the licensing exemption under BPC§ 8555(g) for individuals performing the live capture of vertebrae pests, bees, or wasps without the use of pesticides violated the equate protection clause of the 14<sup>th</sup> Amendment under the U.S. Constitution. The Court found that the inclusion of certain animals within the definition of vertebrae pests (bats, raccoons, skunks, and squirrels) but not others (mice, rats, or pigeons), lacked a rational basis.

During the previous Sunset Review, the SPCB noted that the distinction of vertebrate pests was used by the SPCB as a basis to differentiate those pests that invade structures and those that generally do not; the latter being more appropriate under the authority of Fish and Wildlife licensure requirement. The SPCB also stated that in light of the Merrifield decision, it should no longer provide this distinction in statute.

Following the previous Sunset Review, the SPCB's Act Review Committee proposed to remove the exemption for mice, rats, and pigeons from the definition of "vertebrate pests" therefore bringing the live capture of such animals under the licensing authority of the SPCB. The Act Review Committee brought its recommendation to SPCB members during the SPCB's April 2014 meeting and the SPCB decided to stop enforcing BPC§ 8555(g) and seek legislation to amend BPC § 8555(g). However, the legislation never was actualized because the member office the SPCB was working with found that there was a lack of evidence of consumer harm. Considering the SPCB does not enforce BPC § 8555(g) and the statute has been found to be unconstitutional, should the SPCB consider seeking amendments?

**Staff Recommendation:** *The SPCB should advise the Committee on plans comply with the Merrifield decision.*

## **OTHER ISSUES**

**ISSUE #11: (TECHNICAL CHANGES MAY IMPROVE THE EFFECTIVENESS OF THE LAW AND SPCB OPERATIONS)** Should the Structural Pest Control Law be amended to make technical, non-substantive, and conforming changes as proposed by the SPCB?

**Background:** There are instances in the law where technical clarifications may improve SPCB operations and application of the statutes governing the SPCB's work.

Separate from its 2018 Sunset Review Report, the SPCB has submitted a legislative proposal to amend the existing laws governing the practice of structural pest control. The SPCB's proposal intends to make technical or non-substantive changes to certain provisions of the law, delete existing provisions from the law that are no longer applicable, and delete or amend other provisions to support legislative intent.

SPCB should provide information to the Committees about the necessary technical changes to improve its operations. The Committees may wish to ensure that proposed changes brought forth by SPCB include input from stakeholders and interested parties to ensure there is agreement and that unintended impacts of the proposed changes are avoided.

**Staff Recommendation:** *The Committees may wish to amend the various practice acts to include technical clarifications. SPCB should provide the Committees with necessary statutory updates to enhance its public protection efforts.*

## **CONTINUED REGULATION OF THE STRUCTURAL PEST CONTROL PROFESSION BY THE CURRENT STRUCTURAL PEST CONTROL BOARD**

**ISSUE #12: (CONTINUED REGULATION BY THE SPCB) Should the licensing and regulation of structural pest control be continued and should the profession continue to be regulated by the current SPCB membership?**

**Background:** The health, safety, and welfare of consumers are protected by the presence of a strong licensing and regulatory SPCB with oversight over the structural pest control industry.

This SPCB has experienced significant transitions over the last five years, including moving back to DCA from DPR in 2013. However, it appears that the SPCB has successfully traversed the transition and is making progress as a regulatory agency.

The Board should be continued with a four-year extension of its sunset date so that the Legislature may once again review whether the issues and recommendations in this Background Paper have been addressed.

**Staff Recommendation:** *Recommend that the licensing and regulation of structural pest control continue to be regulated by the current SPCB members of the Structural Pest Control Board in order to protect the interests of the public and be reviewed once again in four years.*