



# Department of Pesticide Regulation



Mary-Ann  
Warmerdam  
Director

## MEMORANDUM

Arnold Schwarzenegger  
Governor

TO: Kelli Okuma, Registrar

FROM: Jodi L. Clary, Senior Staff Counsel

DATE:

SUBJECT: Making Inaccessible Areas (Test Holes) Visible During Branch 3 Structural Inspections

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**Background:** Since November 2008, the Board has been considering whether to allow test holes to be made in inaccessible areas as part of the initial inspection process. The Technical Advisory Committee opined that making a minimum size test holes large enough to determine the presence or non-presence of infestation could be allowed as part of the diagnosis process and would not be considered “work”. However, the inspector would be required to contact the building department to determine whether a building permit would be required. As of this date, no response from the Contractor’s State License Board has been received about the Board’s inquiry asking to exempt test holes from the building permit process.

**Existing Law:** Inspections and inspections reports regarding wood destroying organisms are tightly and clearly regulated in statute and regulation. The scheme contemplates an inspection of accessible areas, to include recommendation for a further inspection if practicable into inaccessible areas.

The requirements of an inspection and the inspection report are set forth in Business and Professions Code section 8516, and in implementing regulations 16 CCR sections 1990, 1991 and 1993. Section 8516(b)(6) requires a diagram or sketch of the structure be included in the report that would indicate infested or infected areas *evident*, and would indicate where conditions exist that would ordinarily subject those parts to attack by wood destroying pests. The report is to include information regarding certain areas of the structure, and the language “exposed timbers”, “exposed sheathing”, etc. demonstrates that accessible areas are being inspected. See subsection (7), which further states the report should include information about conditions “usually deemed likely to lead to infestation...” Subsection (9) sets forth the requirements for reporting on inaccessible areas, and recommendations for further inspection. Section (e) requires the inspection report form prescribed by the board to separately identify the infestation that is evident from conditions deemed likely to lead to infestation.

The regulations follow the statutory scheme and require separate descriptions of infestations, infections or evidence thereof, from conditions usually deemed likely to lead to infestation. 16 CCR section 1990 requires the report to include information regarding accessible areas (e), and a discussion of inaccessible areas (d). Separating these two finding is required by (f). Recommendations for corrective measures also address how to correct inaccessible areas. See 1991(a)(8). Section 1992 describes secondary recommendations. Section 1993 discusses the complete inspection report as visible and accessible portions of a structure (b), and the



supplemental report performed on inaccessible areas that have been made accessible as recommended (d).

**Analysis:** A comprehensive regulatory scheme exists requiring different measures be taken for visible and evident infestations than for inaccessible areas. The statutes and regulations are clear and address accessible and inaccessible areas separately, and set up a two-stage inspection process. To allow test holes to open up and inspect inaccessible areas would require a re-writing of the regulatory scheme. Complicating this interpretation is the requirement by some building departments that test holes would require a building permit. Although logically, test holes appear like a reasonable part of inspection, existing law cannot be read or interpreted to include allowing test holes in the initial inspection. In addition, it is a dangerous precedent to set to allow the practice by refusing to enforce the law. The Board is required to enforce the existing laws, and does not satisfy its mission to protect consumers by following the industry's desires to allow a particular practice that benefits industry more than consumers. Moreover, if the Board chooses not to enforce this set of laws as written, a precedent is set that could lead to pressures to not enforce other laws.

**Conclusion:** Existing law sets forth a comprehensive scheme devised to protect the consumer that cannot be interpreted as allowing test holes in initial inspections. Existing law addresses both visible infestations and the possibility of infestations in inaccessible areas. This careful and thoughtful scheme protects consumers and avoids the invasive practice of making test holes. The Board is obligated to enforce the laws as written. However, if the Board finds that test holes are in the best interest of the consumer, the Board could recommend making the necessary regulatory changes.