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Meeting Minutes – April 12, 2011

Illinois Structural Pest Control Advisory Council (SPCAC): Subcommittee on Bed Bugs

General Meeting Information

A meeting of the Illinois Structural Pest Control Advisory Council Subcommittee on Bed Bugs was held on April 12, 2011. The meeting was held at Illinois Wesleyan University, Shirk Center, Bloomington IL, beginning at 1:30 p.m.

Participants and SPCAC Members Present

IDPH Representative(s) Present:

- Dr. Curt Colwell, Entomologist
  Division of Environmental Health

- Derrick Pehlman, Integrated Pest Management Coordinator
  Structural Pest Control Program

Members Present:

- Susan DiGrino, McDonough County Health Department
- Chris Haggerty, American Pest Control
- Gary Pietrucha, Envirosafe Pest Management Inc.
- Tony Hernandez, Illinois Housing Development Authority
- Meron Kahssai, Metropolitan Tenants Organization
- Judith Roettig, Chicagoland Apartment Association
- Rachel Rosenberg, Safer Pest Control Project
- Nancy Tikalsky, Office of the Illinois Attorney General

Guests & Visitors:

- Larry Hanks
- Tim Baietto
- Dale Kesler
- Scott Dahl
- Susan Hagberg
- Rafael Rlaluz
- Tim Hennessey
- Jeremy Bergstrom

SPCAC Subcommittee on Bed Bugs Meeting Summary

Curt Colwell called the meeting of the Subcommittee on Bed Bugs to order and determined, by number of members present (as reported above), a quorum was present.

- The SPCAC Subcommittee on Bed Bugs began discussion following the April 12, 2011, meeting agenda.

- Minutes were provided to the members from the previous meetings held on December 13, 2010 and March 3,2011. A vote was taken to approve Minutes. All Subcommittee members voted in favor of approving the minutes.

- Discussion moved to bed bug legislation: responsibility and enforcement.

    - Dr. Colwell asked Meron Kahssai if she had comments, since she was not able to attend the previous meeting when landlord-tenant responsibility issues were discussed. Meron had a concern regarding the burden of proof that a tenant had prior knowledge of a bed bug infestation. Nancy Tikalsky commented on the likelihood of someone being held accountable for not reporting an issue. She stated it would be very hard to prove prior knowledge, but the presence of the requirement is there for people who are most egregious. Judy Roettig commented that this goes back to public education and putting in a *quid pro quo* addendum encouraging notification with the urgency to report to the landlord. Nancy stated that bed bug infestation could be analogous with a water leak and that notification is required with regard to mechanical problems. Chris questioned if the quantity of bed bugs present could be used to construe prior knowledge. Several members commented that numbers cannot. Other members stated that the fact that legislation states only *live* bed bugs, and not evidence of, hinders the responsibility to report. The legislation should state live bed bugs or the evidence of bed bugs. Judy commented that there must be equal responsibility between the landlord and tenant when it comes to bed bug infestation and that the tenant must report an infestation. She further stated that the National Apartment Association (NAA) guideline defines what infestation is and that the proposed wording is not strong enough to protect landlords from tenants who do not report.

    - Rachel Rosenberg discussed a time line for landlords to inspect and treat of bed bug infested units. It was determined that the City of Chicago requires 14 days to respond to a tenant's complaint. Curt Colwell asked the pest control professionals what a realistic time to respond to a bed bug complaint would be. Several factors were brought up, to include who does the inspection. Judy stated that landlords need to develop an action plan to respond to bed bug complaints so that an adequate inspection and proper treatment can be done. Meron believes that landlords need training on how to conduct a proper bed bug inspection. Tony Hernandez believes that a standard protocol for inspections needs to be established. He further stated that the landlord, by law, can inspect and remediate cockroaches so middle ground must be established when it comes to inspections for bed bugs. Though bed bugs are very damaging, they are not a public health crisis at this time, so is the economic concern of emptying out a building in order to treat it properly, the reason for only a licensed professional to

conduct the inspection and treatment? Tony further stated that it is important to recommend legislation that clearly defines the responsibility and timeliness of the tenant and landlord to properly control bed bugs. Several members wanted clarification on what is "knowledge" of bed bugs and what are the time limits. Rachel thought 5 days was a reasonable time to allow for inspection. Judy was concerned that the timelines may not be able to be followed by the landlords for certain reasons. The item was discussed among the members. Tony responded that if we are requiring tenants to report a possible bed bug problem after being given only a pamphlet on the subject, it should be reasonable for landlords to have a timeline for responding to the report. Gary suggested that 5 business days is adequate and Judy responded that 10 days is better. Judy is concerned that the timeline may be too restrictive and she would not vote in favor of a 5 business day timeline and is fully prepared to file a dissenting opinion. She further states that if a landlord is going to bear the cost burden, there has to be a *quid pro quo*. The group further discussed the timeline between "contracting" and "contacting" a pest control company for treatment, as well as the necessary time lag before a unit that had bed bugs can be rented again. Rachel wanted a clear definition on when a unit could be rented after an infestation, and whether or not a licensed technician would be required to do the treatment. Tony stated that the issue is more of a consumer protection one; protecting the landlord as well as the tenant, from bad practices and chemicals. The group further discussed the restriction of products such as "bug bombs" and decided that it was not the responsibility of the group to outline procedural practices on the control of bed bugs. Labels must be followed when applying pesticides, and Rachel mentioned that the labels of total-release aerosols may soon be changed in this regard. The group further discussed what is a contract, and concluded that it can be verbal or written.

- Dr. Colwell proposed a vote on 5 days for landlords to do an inspection and 10 days to contract for treatment. All voted in favor of a five day inspection time frame with a 48 hour notice given to the tenant for entry and a 10 day requirement to contract for treatment. Landlords also shall tell tenants to prepare for treatment according to the guidelines given to them by the pest control company no less than five business days prior to said treatment.

- Susan DiGrino proposed that the group discuss stand-alone rental units, rental property that is one unit, such as a rented house. Should such properties be treated differently from multifamily units? After further discussion, Judy suggested that they defer the vote until more information is gathered on standalone property. She proposed that the group wait to hear from representatives from the rental property organization, and agreed to contact organizations to give them an opportunity comment on

the matter. Chris agreed with Judy that the group should be given an opportunity to comment. The matter was deferred to the next meeting.

- Dr Colwell asked if there were any more comments on the first bullet point in the written proposal provided to members. Rachel brought up an issue about when a unit can be rented after it has been cleared, and what is the definition of clear and who determines if it is clear. Several members looked at 60 day bed bug free declaration. Judy was concerned that that would put many landlords out of business if they could not rent a unit for 60 days. The group also discussed that per the New York City bed bug law, landlords should be required to tell potential renters that a unit had a bed bug infestation during the last 12 months, though it has been cleared of bed bugs since. Judy was concerned that a year is excessive, adding that landlords are not required to report cockroach infestations even though they (the roaches) are known do carry disease. Why ahould a landlord be required to notify possible renters of past bed bug infestation. Tony stated that without such notification a unit that had been infested could put the renter at risk of getting bed bugs and thus require tenant expenses. And unlike cockroaches, bed bugs are difficult to control. Both Meron and Nancy stated that landlords in the City of Chicago are required to notify all possible tenants of all structural violations within the previous 12-month period. Judy was concerned if the group wanted rental property in Illinois at all, and wouldn't enough information about bed bugs be given to prospective tenants in the proposed pamphlet provided at lease signing. Judy was concerned that the group is proposing another notification requirement all of which become litigious and burdensome on the landlord. Nancy responded that such requirements ensure that landlords will be honest. Rachel expressed a concern that such notification could pose a problem to the landlords as to their ability to rent the unit. This could cause tenants to walk away from units that have had bed bugs but are now clear, just because they can find one that has never been reported as having bed bugs. Rachel wanted more clarification on what "clear of bed bugs" means, not necessarily how long a unit needed to sit before it could be cleared. Curt stated that pest control companies cannot certify a unit "bed bug free" because it's difficult to know if any unit is really bed bug free. But they can say that for a specified amount of time there has been no evidence of bed bugs there. Susan Hagberg spoke from the audience about how dogs could be helpful, but bed bugs can travel into a unit via a painter or other service technician operation. Tim Hennessey asked from the audience if the Subcommittee's notification requirement would apply to the hotel/motel industry. The group said it would not, that hotels were not to be considered akin to rental property, and they would be discussed later in the meeting.

- Rachel had a comment about a tenant being responsible for the cost of treatment if they do not notify the landlord of a bed bug infestation. Tony stated that the forfeiture of the security deposit is acceptable, but by no means should the tenant be responsible for hiring a contractor and treatment. The hiring of a contractor and treatment should be the responsibility of the landlord. The group agreed that the owner needs be responsible for the hiring and treatment of the unit(s). Jeremy Bergstrom stated from the audience that any provision that punishes a tenant for failing to report will have the opposite effect the Subcommittee desires. In his experience working with tenants, the threat of punishment makes tenants unwilling to comply, thus they would fail to report bed bug infestations in the face of such penalties or if they thought landlords would retaliate. He references the Violence Against Women Act (VAWA) and domestic violence reporting. He suggested that the Subcommittee remove language that provides for tenant penalties and instead write provisions that encourage them to report. He also states that laws disfavor "liquidated damage" clauses, and he encourages the Subcommittee not to waste time discussing it. He further states that the discussion has been "corporate oriented" and wants the Subcommittee to understand that the majority of landlords are small mom-and-pop businesses and the cost of treatment could be in the thousands which could equal a year's worth of rent. He asks the Subcommittee to focus on reasonable requirements for landlords that have the means to comply, and encourages all parties to get the necessary education and to cooperate but not punish. This applies to both sides. As Jeremy was not able to attend the beginning of the meeting, Dr. Colwell briefly summarized what was discussed earlier regarding the burden of proof and brought for discussion Jeremy's idea of not having a penalty for tenants that failed to report bed bug infestations to landlords. Judy said no, and further stated that there has to be a balance of responsibility. Most landlords and tenants will act responsibly but the Subcommittee is providing for the few most egregious situations, and landlords need to have a means to recoup some of the expense. Jeremy stated that most tenants do not have the money and will hide problems until the lease is up. He stated that he understands an eviction for not reporting, but a monetary penalty would have the reverse affect on reporting. Tony stated that the goal is to get the unit treated and that there is a certain population that will come forward to avoid paying rent, but by and large the last thing people want is to be "on the hook" for a bed bug treatment. Tony believes that the financial burden of the owner cannot be balanced by the financial means of the tenants. The owner's responsibility and the tenant's responsibilities cannot be equally shared because landlords and tenants are not equal. The notion that any financial burden placed on the landlord needs to have a *quid pro quo* with regard to the tenant is not a productive approach to the problem because we cannot achieve the desired equality. It is the building owner's responsibility to fix

problems in a rented building, and if a tenant brings about a problem, there is other recourse an owner can take. Tony believes that Jeremy has a point; that the tenant may remain quiet about bed bugs rather than risk possible recourse for reporting. Tony believes that it must be communicated to the tenant that he/she cannot be evicted or otherwise punished for communicating a bed bug problem. Judy mentioned that there has to be responsibility on everybody's part and that it has to be defined and where there are consequences for the landlord there must also be consequences for the tenant. Chris mentioned that the landlord is also responsible for the protection of the other tenants, so how can a landlord protect the other tenants when there is nothing to compel the tenant in question to comply? Tony added that it will be very difficult to prove that someone had bed bugs in their unit who did not report them. Jeremy commented that if you try to determine responsibility, people will fight and it will have a detrimental effect on the efficacy of the Subcommittee's recommendations for bed bug control. Nancy asked Jeremy then what is going to make a tenant report? Jeremy stated that if they can report and get the situation corrected without repercussions then they will report. There may be some who do not care, but nothing is going to make those tenants care. Rachel stated that during a proper bed bug inspection the inspector would do a cloverleaf inspection and the offending tenant would be revealed. Several other Subcommittee members stated that in a proper inspection it would be revealed in time, and education on how to do a proper inspection is necessary. Other board members commented on the success of VAWA with the fact that no one could be evicted from a unit if they were a victim of domestic violence and reported it, as well as the success of the campaign against H1N1. Would the success of these two programs have been if there was a penalty against not reporting to your doctor? Judy commented that this is an enormously complex issue with no real solution for the landlords. Gary said that the world is getting smaller as far as goods and travel, and we are not going to stop the influx of bed bugs into the United States but we can have an impact on bed bugs getting from point A to point B through a variety of things we are trying to do here. The landlords have things they can do to help curve bed bugs coming into their units. From the audience, Rafael Laluz commented that some landlords are offering classes, and training their staff, but some of the smaller landlords may not be able to do this, though training is essential. He also asked the group a question posed to him by a tenant: Why should she be concerned about bed bugs, if a pest control company sprays in her unit every month. He thinks there may be a common feeling among residents that it is not their job to look for bugs, that that is what the exterminator is for. Tony suggested that it may be beneficial that a line be put in the recommendations, that IDPH provide education to tenants, property owners and other groups.

- A vote was taken on whether or not the group was in favor of enacting a penalty for tenants that fail to report a bed bug problem. The voting went as follows: Tony-No, Meron-No, Rachel-No, Judy-Yes, Chris-Yes, Gary-Yes, Susan-No, Nancy-Yes. The group discussed a compromise to the issue. What is a proper monetary fine, and is eviction more severe that a monetary fine. Meron is not in favor of a monetary fine, and still questions the burden of proof issue. Is the group possibly instituting a penalty on a tenant who really did not know, or is the group looking to penalize the tenant that continuously refuses to cooperate? Meron also believes that a penalty is not an incentive for tenants to notify. Gary asked then what would be an incentive? Nancy suggested that maybe it would be good to have the local health department make the determination in such cases, after investigating them. That would give the landlord an option for a neutral party to make the determination and decide if a fine was warranted. Curt applied his tie breaking vote in favor of a penalty for tenants who fail to notify, suggesting that the idea of involving the health departments seemed a good compromise. Thus a second vote (on allowing health departments to determine presumably small monetary penalties for tenants that violated the notification requirement) was taken with the following results: Tony-No, Meron-Yes, Rachel-Yes, Judy-Yes, Chris-Yes, Gary-Yes, Susan-No, Nancy-Yes. Motion Passes.

- Chris brought up an issue on the proposal that if a tenant was opposed to a treatment method, that the tenant could then hire their own company to do treatment at their own expense rather than the building owner's expense. The group agreed that this needs to be a cooperative effort and that the property owner needs to be the person contracting pest control, with the understanding that some tenants may have a sensitivity to pesticides or health concerns and require consideration. The Subcommittee agreed that the statement needs to be removed from the proposal.

- Curt moved to the next item on the agenda involving the Illinois Safe and Hygienic Bedding Act. The Subcommittee regarded a tax on new mattresses, and suggested that a tax be placed on the disposal of old mattresses for mattress companies and waste removal companies. The Subcommittee suggested they make suggestions on how to fund the program and provide those suggestions to the mattress industry to determine the best course of action in this regard. The Subcommittee was also concerned about the delivery of new mattresses in trucks that also pick up old, possibly infested, mattresses. The Subcommittee agreed that strengthening the Act would help, especially if used furniture dealers could be included.

- Curt moved to the next item about subsidies for low/no income residents. Rachel suggested that the word "traps" be replaced with "monitors." Rachel also had a question on the method of dispersal of the no-cost

mattress covers. It was suggested that organizations apply to and be approved by the IDPH before they were granted product for distribution. The Subcommittee also agreed that the encasements meet certain standards to prevent subpar encasements from being distributed.

- The Subcommittee also plans to survey the pest control industry on the extent of the bed bug problem in Illinois. Chris believed that the Illinois Pest Control Association had not drafted the survey as asked in the prior meeting. He proposed that members send questions to him for inclusion into a questionnaire to be submitted to the IPCA for distribution at a later date. Members agreed.

- Curt moved to the last item: the oversight of bed bug infestations in hotels. Subcommittee members suggested adding the word "enforcement" between "regulatory" and"authority" in the proposed recommendation and changing "recommendations" to "requirements." Tim Hennessey, representing the lodging industry from the audience, was asked to comment on the issue. Mr. Hennessy asked if the hotel-specific proposal points could be sent to him for review and possible comment at a later date. The Subcommittee agreed.

- The Subcommittee also brought up issues of other vulnerable populations such individuals residing in shelters. Rachel acknowledged that they are vulnerable, but that shelters generally know they are vulnerable and have taken steps to adequately manage bed bug problems. Derrick Pehlman suggested that the Subcommittee consult Texas A&M University which just received a grant from the US EPA to do work in shelters across Texas. The Subcommittee agreed. The Subcommittee also brought up the rent-to-own industry and their policies on inspecting furniture. Judy agreed to get more information from that industry and report back to the Subcommittee.

- Curt suggested that the next meeting be held in mid-June in the Chicago area. The meeting was adjourned at 4:32 pm.

BOARD MEETING ADJOURNED