

Meeting Minutes – July 27, 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 July 27, 2011. The meeting was held at the Kankakee County Health Department in Kankakee, Illinois, beginning at approximately 9:00 a.m.

Participants and SPCAC Members Present

IDPH Representative(s) Present:

- Dr. Curt Colwell, Division of Environmental Health

Subcommittee Members Present:

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

Subcommittee Members Not Present:

- Susan DiGrino, McDonough County Health Department

Guests:

Dan Adams
Paul Arena
Donald Baumgartner
Debbie Broadfield
Brian Brophy
Bernadette Browne
Michael Glasser
Shane Nemmers
Michael Scobey
Sol Oduyale
Latrice Porter-Thomas
Dan Wondaal

SPCAC Subcommittee on Bed Bugs Meeting Summary

Curt Colwell called the meeting to order and determined a quorum was present.

- Minutes of the previous meeting of June 8, 2011 were approved by vote. Curt Colwell advised that the June 8 Minutes had appeared on a Website prior to this approval, which Judy Roettig acknowledged doing. Colwell advised that meeting Minutes, like the Subcommittee's report draft, are unapproved, not finalized, and therefore should not be distributed because they risk conveying information that may ultimately be deemed incorrect.
- Determining that representatives of the Illinois Pest Control Association (IPCA) were not present, Chris Haggerty volunteered to address the status of the Subcommittee's on-line Questionnaire that the IPCA had agreed to deliver to its members. Haggerty related a problem with the Questionnaire. It contained 3 questions on heat treatments, asking recipients to answer only if their pest management companies did heat treatments, yet the Questionnaire forced recipients to answer these questions in order to progress to other questions. Haggerty stated he thought this problem could be corrected, and would speak to IPCA representatives about it.
- Judy Roettig was asked if she had contacted representative(s) of the rental furniture industry for comment at the present meeting. She reported that she had spoken to someone who declined to provide specific information to the Subcommittee, citing that the information was proprietary. Roettig said she would attempt to obtain a statement for the Subcommittee that was not proprietary.
- Curt Colwell stated that he had also been assigned to secure testimony, in this case from representative(s) from the lodging industry, in the form of industry response to recommendations the Subcommittee was considering with regard to lodging establishments. Having been apprised of those considered recommendations, Debbie Broadfield was present to read the statement of Marc J. Gordon, President and CEO of the Illinois Hotel and Lodging Association (IHLA, see Exhibit A). Broadfield's points included:
 - The hotel industry remains vigilant with respect to bed bug problems in lodging establishments because they must, due to reputational liability, and therefore the Subcommittee's proposal for regulation of the industry's bed bug response is unnecessary and would be unfair and burdensome.
 - The hotel industry has no control over guests bringing bed bugs into rooms, and must respond to this with integrated pest management practices. The fact that bed bug bites may not show on the skin for days afterward, can make it difficult to determine where the bites took place – making any "response law" an opportunity for fraud.

Rachel Rosenberg asked for Mr. Gordon's statement to be more specific with regard to which recommendations the IHLA opposed. She said that what the Subcommittee was recommending with regard to the lodging industry was not heavy-handed. Nancy Tikalsky added that the recommendations centered around health department inspectors having access to hotels in order to respond to guest complaints. Gary Pietrucha further stated that the Subcommittee's recommendations were aimed at the, albeit small, percentage of hotels that are not responding adequately to bed bug problems. Chris Haggerty envisioned that, following the Subcommittee's recommendations, a health department inspector would contact a hotel in response to a complaint, would advise the hotelier about that complaint and ask what the hotel did, is doing or would do in response. That this would be the typical health department response to a complaint, as the Subcommittee sees it, was explained by Haggerty and confirmed by Curt Colwell. Colwell suggested that investigating reports of guests' alleged bed bug encounters would be at the discretion of the local health department, and inspectors would realize that the validity of such complaints could not be known from a phone call. Nancy Tikalsky stressed that health department involvement was a way of responding, in an institutional capacity, to the public's concerns. Colwell added that if enforcement action were taken, it would be the habitual, unresponsive offending hotel that would incur it. Debbie Broadfield agreed to relay to Mr. Gordon the Subcommittee's comments and concerns regarding Gordon's statement, and reply to the Subcommittee.

- Discussion moved to further consideration of the Subcommittee's recommendations regarding lodging establishments. Tony Hernandez said the Subcommittee's report should recognize the hotel industry's commitment to bed bug control and its financial incentive to do so.
- Before continuing to consider other Subcommittee recommendations, Judy Roettig asked to read a prepared statement, and that the statement be listed in the meeting's Minutes (see Exhibit B). She proceeded to read the statement, an opinion of the Chicagoland Apartment Association which she serves.
 - Tony Hernandez mentioned that, at the Subcommittee's last meeting, Roettig had agreed to provide an alternative to the Draft presently being considered, but instead had provided the Subcommittee with another statement. Hernandez offered to reword the present Draft. He went on to cite from the present Draft, a section that specified penalties for tenants who did not provide access or preparation with regard to bed bug treatments contracted by landlords. He stated that, despite Roettig's statement to the contrary, the Subcommittee had discussed at length the issue of penalties for such uncooperative tenants, had adopted them, and that the language did appear in the current Draft. Hernandez said that the comments in Roettig's statement do not adequately reflect the work of the Subcommittee. Roettig said that the Draft did not reflect that the Subcommittee had a difficult discussion and was split on the issue, and

furthermore that the Draft did not mention the points she had made throughout the discussion. Hernandez offered to work with Roettig in rewording this section of the Draft. Roettig said she would have to talk to her Board about that.

- Judy Roettig stated that rental properties should be held to different standards, based on their type. Tony Hernandez asked why this should be so. Roettig explained that federally subsidized housing have access to funds that market-driven properties do not. Rachel Rosenberg commented that, while Roettig has said the Subcommittee's proposals are in disagreement with those of other task forces, that New York City, for example, makes no such distinction between types of rental properties in terms of how they should handle bed bug infestation. Roettig said that New York City's recommendations speak specifically about education.
- Tony Hernandez said he did not perceive the Subcommittee's recommendations as especially burdensome to landlords, recalling that when the City of Chicago responded to a tragic incident by changing its code for porches, landlords were suddenly forced to make very costly upgrades to their porches. Yet landlords survived this financial burden and found ways to get the work done, including passing the cost on by increasing rental fees. Judy Roettig said that she didn't disagree, but that landlords must have recourse against noncompliant tenants, recourse that goes beyond calling the health department. She contended that the Draft did not express the need for tenant compliance in properly preparing their units. Hernandez stated that there were several paragraphs in at least 4 places in the Draft where it discusses the need for proper preparation, coordination and cooperation between landlords and tenants. Roettig said there was only one such sentence in the Draft. Similarly, Nancy Tikalsky read from the Draft, another section expressing the shared responsibilities of landlord, tenant and pest management.
- Curt Colwell suggested that Judy Roettig construct definitive list of points, stating specifically what she wanted to see in the report, and that she could then work with Tony Hernandez in preparing an addendum to the Draft, within the next two weeks.
- Discussion moved to considering other portions of the Draft:
 - Rachel Rosenberg suggested that, in addition to mentioning the volume of bed bug-related calls to the Illinois Department of Public Health (IDPH), that similar measures be obtained from other agencies including the Metropolitan Tenants Organization (MTO). Meron Kahssai agreed to provide such figures for the MTO's Tenants Rights Hotline. Judy Roettig advised that the National Apartment Association had similar information

as well. Curt Colwell asked the members to forward the information to him for incorporation into the next revision of the Draft.

- Chris Haggerty advised that, when bed bugs are reported to a landlord, landlords should not be required to employ a licensed pest management professional to do an inspection. He believed this would unduly burden pest control companies, and drive up pest control pricing. He suggested that a building's maintenance staff could become familiar with bed bugs and would be capable of doing inspections. He further suggested that pest control companies should be contracted within 10 days of the landlord being notified of bed bugs in a unit (as stated in the Draft) but that language requiring treatment within 10 days should be stricken. The members agreed.
- Meron Kahssai related that bed bugs are rampant in senior housing and that seniors often do not have the means to prepare their units as prescribed by landlords or pest management, and that the Draft should allow for this. Rachel Rosenberg agreed that this is a problem with regard to the tenant compliance issue. Nancy Tikalsky suggested the Draft specify that for those tenants deemed mentally or physically incapable should be provided with assistance, and this was agreed upon.
- Rachel Rosenberg commented that the Draft should add "detached" to its discussion of exempting single-family rental properties, because this would not exclude rented condominiums which are attached and can therefore spread bed bugs to neighboring units just as in apartment buildings. It was suggested that condominium associations dictate in their bylaws that owners are responsible for contracting a specific pest control company when bed bugs occur in their units.
- Judy Roettig was asked to provide information, requested of her at the Subcommittee's previous meeting, on what criteria landlords were using to determine when a bed bug-infested unit, once vacated, can be rented again. She related that the National Apartment Association's guidelines say that if a new tenant does not report bed bugs within 7 days after moving in, that tenant is presumed to have accepted the unit as "bed bug-free." Rachel Rosenberg disagreed with this presumption, citing that bed bug eggs take longer than 7 days to hatch. Curt Colwell and Chris Haggerty advised that, depending on the number of bed bugs, bed bugs might not be noticed for more than 7 days because they might not come out to feed within those 7 days. Nancy Tikalsky said it would be better if landlords were required to inform prospective tenants that a unit had been treated for bed bugs within the last 60 days – an idea put forth at the Subcommittee's last meeting. Curt Colwell suggested that the 7-day rule mentioned by Roettig would not be necessary if the 60-day notification of a unit's history was required. Roettig said this would put an administrative burden on landlords. Members decided to recommend the 60-day notification requirement.

- Discussion moved to the section of the Draft pertaining to the Illinois Safe and Hygienic Bed Act:
 - Chris Haggerty posed the question that, under the Act's current verbiage and the Subcommittee's recommendations for amending it, a thrift store could be fined \$10,000 for selling a single bed bug-infested item. He said this could shut down the thrift industry, but added that rented furniture seems to be a common way in which residences become infested. Judy Roettig suggested that public education might be the answer, and that there might be some bed bug information posted in thrift stores. It was decided that this should be recommended for sellers and renters of used furniture.
- The final section of the Draft, that of funding, came up for discussion:
 - Chris Haggerty felt the Draft should outline the criteria for distribution of subsidized materials (as recommended in the Draft) such as mattress covers.
 - Judy Roettig maintained that stakeholders should be involved in the creation of the pamphlet the Subcommittee has recommended be distributed by landlords to tenants. Rachel Rosenberg advised that creation of the pamphlet would come after the Subcommittee's work was done. Curt Colwell said that, therefore, the Subcommittee would not be around to review the pamphlet, but that the contents of the pamphlet are outlined in the Draft. Roettig said that stakeholders who are putting much time and effort into managing the bed bug problem, should be allowed to review the pamphlet. She said that if we (landlords) are going to be required to distribute the pamphlet without some ability to review and comment on what goes into it is ridiculous. She said the Subcommittee should create the pamphlet. Tony Hernandez said the pamphlet is intended to be produced by the qualified state agency and, before it is produced, the Subcommittee's recommendations will have to survive the legislative process. Gary Pietrucha said that the pamphlet, if prepared by the IDPH, would presumably go through the same review and approval process as other documents produced by the IDPH. Nancy Tikalsky suggested the Subcommittee's Draft could reference existing information like that intended for the pamphlet, to provide a framework for the Legislature's consideration. Rosenberg and Pietrucha said she would forward such material to Curt Colwell for inclusion in the Draft. Roettig read a list of items recommended by New York City to be in information provided by landlords to tenants, and said these should be used to determine what information would be in the pamphlet. Colwell referenced the Subcommittee's Draft, stating that it already lists 7 items that should be in

the pamphlet, and that if someone found additional items to include, he should be advised. Roettig agreed to do so.

- With the Subcommittee’s discussion of the Draft completed, the audience was invited to make statements.
 - Michael Scobey, Assistant Director of the Illinois Association of Realtors, identified himself and read a prepared statement (see Exhibit C below).
 - Paul Arena, of the Illinois Rental Property Owners Association, stated that a landlord should not be forced to contract with pest management companies if the landlord is capable of doing bed bug control in-house. He said it would be acceptable to require in-house staff to be trained to do so. Curt Colwell advised that such staff might be required to pass the IDPH’s General Standards Examination, focusing on pesticide safety. Chris Haggerty added that the Subcommittee’s current recommendations allow in-house bed bug control, if persons become “minimally certified” as non-commercial applicators. Colwell advised that non-commercial technicians do not “contract” with anyone per se, so the Draft’s language should be reworded to reflect that. Following this, the meeting was adjourned.

EXHIBIT A: Statement of Marc Gordon

Thank you for your hard work on this issue and the opportunity to make comments before your subcommittee meeting tomorrow. The lodging market demands that hotels remain extremely vigilant on all aspects of guest safety, comfort and satisfaction. Our hotel members, unlike many other industries, are “put to the test” daily by the guests they serve. Their reputational liability forces hotels to stay on top of the issue of bed bug infestations, or else they may find themselves out of business. The market and the value of their reputation dictate that they handle this issue both proactively and reactively. This industry is already highly incented to ensure that all aspects of this issue are taken care of properly.

In response to your proposed recommendations, the hotel industry has serious concerns about potential legislation that we feel is unnecessary for our industry. The issue for the lodging industry centers around notification and control, which hotels have neither of in the case of bed bugs. Hotels aren’t notified unless there is an exposure, which is too long to wait, and cannot control guests who victimize hotels by bringing in bed bugs in their clothing and luggage. Hotels must deal with the insect after the fact, promptly and aggressively through a number of integrated pest management practices designed to inspect for, detect, respond and eliminate any bed bug incidents.

Legislation would be unfair and burdensome to hoteliers, adding another step in a laborious and expensive process to protect guests and facilities from bed bug infestations. Hotels already cover the cost of their own integrated pest management programs, inspection processes and extermination vendors, service protocols, including in-depth multi-lingual staff training and education. The industry hasn’t been waiting for legislation to get in front of this issue—as they are market-driven, the economic risk is far too great—they represent a multi-million dollar investment which for the health of the investment and industry, they must respond immediately to this issue.

There are also concerns with “response laws” which may create an opportunity for fraud. As you know, only 20% of those bitten display a response, and in some the bites may not show for days, making the exposure more difficult to pinpoint exactly when and where it definitely occurred. The highly transient nature of a hotel guest and secretive nature of the bed bug make a response law difficult. They have just as likely a chance to pick up a bed bug on their airplane, taxi, train or rental car, yet know of none of these industries currently have inspection protocols specifically related to bed bugs like the hotel community does.

IHLA has been proactively offering training sessions and bed bug resources to our hotel members since July 2008, and we continue to offer webinars and tools to assist them in this issue. American Hotel and Lodging Association also provides national resources and training, and remain at the forefront of education and awareness on this issue. For the future growth of our industry, this has become a leading priority.

In summary, IHLA feels strongly that proposed recommendations with regard to lodging facilities are unnecessary and overly burdensome on an industry that is forced to regulate itself on this issue in order to survive. For example, subjecting hotels to regulatory enforcement based on “reasonable suspicion” from multiple jurisdictions is unfair. Imposing civil penalties for not following legislation may be more appropriate and effective for dwellings occupied by permanent residents, but not for hotels. For hoteliers, the financial incentive is to act-and act quickly-which is already being done.

EXHIBIT B: Statement of Judy Roettig

It is the opinion of Chicagoland Apartment Association member owners and operators of rental housing that the SOBB draft report does not adequately meet the requirements of PA 096-1330. Nor does it provide adequate guidelines to state legislators on the management and control of bed bugs as a shared stakeholder responsibility. Further that the writing and tone of the draft does little to dispel stereotypical mindsets and misconceptions about the reemergence of bed bugs locally, nationally and worldwide.

1 – The SOBB draft report fails to state the importance of public awareness/education with consensus on key messages to the public as its highest priority

- Bed Bugs are a pest like no other. There is no simple solution or typical treatment. To even begin to manage and control the reemergence of bed bugs, the general public must be aware and educated. The draft report only cites the need to focus education on the low or no income housing population. Other State Task Forces, Advisory Boards, and industry experts all recognize the importance of a much more proactive approach (NYC, Ohio, NMPA, and the National Apartment Association among many others.
- Key messages have not been discussed nor agreed upon. – see NYC Appendix B as an example of core education messages
- While availability and use of an educational pamphlet* is agreed upon, no process for review by the subcommittee stakeholders has been brought to consensus. If landlords are required to distribute it, then landlords should be included in discussions on what to include. Example NYC pamphlet
 - Many Illinois landlords use the NAA pamphlet; Georgia HAP asked for permission to use it and permission was granted
- Our assumption is that the pamphlet will be free to landlords and other stakeholders and should be stated as such in the final report

- Other items not agreed on or discussed in the draft report are, what should be included on IDPH's website, resources cited, how that will be decided and maintained.
- What IDPH does include is a request for funds to train their department based on volume of inquiries
- Note – report states 15 Bed Bug calls per month, # of occupied rental units in Illinois approximately 1.1 million (U S Census 2000)

2 – the SOBB draft report fails to identify the importance of early detection and reporting to owner/landlord by tenants in controlling and managing infestations as well as cost

- Early detection and notification must be stated in the SOBB report as a high priority in order to better control the financial impact on landlords and discomfort to residents in adjoining units.
- The importance of early detection and notification is not mentioned once in the SOBB draft report. All other credible resources reviewed by CAA clearly state the importance of early detection (NYC, Ohio, NMPA, EPA, universities including Virginia Tech, Ohio State among others)

3 – The SOBB draft report does not adequately address stakeholder shared responsibility and accountability (government, landlords, tenants and pest management providers)

- Once again as a member of the subcommittee representing landlords I take great exception to page 2, 3 and 4's tone, logic and substantiation of landlords bearing the cost and liability of bed bug infestations with little or no recourse to hold other stakeholders especially tenants legally accountable. For example;

Current Chicago Code 13-196-610 details respective responsibilities for both occupants and landlords

13-196-620 responsibilities of occupants

a. Clean, sanitary and safe condition is required

c. If a single family dwelling – occupant is responsible for extermination

c. If a family unit in a dwelling containing more than one unit and only one unit is infested occupant is responsible for exterminating

f.Nor place in storage or in premise any "furniture, equipment or material which harbors insects, rodents or other pests (bed bugs are a pest)

13-196-630 owner, operator responsibilities

f. owner must exterminate"if infestation exists in two or more of the family units in the dwelling or shared public parts in any dwelling containing two or more units

Note – who pays (tenant or owner operator) is not addressed

4 – The SOBB draft report does not separately detail tenant's specific responsibilities and accountability if a tenant fails to comply with notification, PMP unit preparation requirements and need to comply with preventative measures in pamphlet or lease rules and regulations.

- Pest management providers and landlords stated in prior meetings that lack of tenant cooperation in unit preparation is often a problem adding to time and cost to controlling infestations; nowhere is that stated in the report

In Summary

CAA believes that the SOBB draft report does not meet the objective as stated in PA 096-1330 failing to reflect in tone and substance the importance and necessity of stakeholder shared responsibility and need for public awareness education. While owners and operators are best positioned to coordinate infestation control, it is the tenant who is in the best position to identify and report an infestation. The draft report puts the financial and liability burden on owner operators with little, if any legal recourse on noncompliant tenants or liability on pest management providers.

The majority of rental housing in Illinois is in buildings containing 50 units or less owned and operated by independent, entrepreneurial operators with limited financial resources and access to credible resources. Over 80% of non subsidized affordable housing in Cook County falls into this category of ownership (Preservation Compact data). As currently written, this is just another ill crafted report mandating government regulation on rental housing owner/operators adding to their expense and liability burden that impacts affordable housing availability. It's irresponsible and must be done better

The Chicagoland Apartment Association reserves the right to file a dissenting report to the General Assembly unless the final SOBB report addresses all of the above concerns and those in prior written testimony to the committee.

EXHIBIT C: Statement of Michael Scobey

Good Morning. My name is Michael Scobey and I am the Assistant Director of Government Affairs for the Illinois Association of REALTORS. The Association is a not for profit trade association comprised of 43,000 members in the State. Several thousand of our members engage in leasing and property management of residential rental units. We appreciate the opportunity to make a statement to the Subcommittee at this time.

Our comments today are based on what we have seen and read in minutes of previous meetings. Our main concern is the forthcoming recommendation that state law be introduced and enacted which would place the entire burden, the entire cost of bedbug treatment in all units on the property owner. Without having seen actual language for legislation, this recommendation would seem to impose a strict liability for all costs associated with bedbug treatment and control on the landlord. We encourage you to reconsider this kind of recommendation.

Base on Subcommittee discussion I heard at the June meeting, the Subcommittee's rationale appears to be that since property owners are mostly responsible for the elimination of pest infestation of all other kinds, then they should also be solely responsible for bedbug problems. But an important distinction can be made here. For the most part, bedbugs reside and travel in items of personal property. Other pests stay in elements of real property: flooring, woodwork, cabinetry, etc. Now this distinction probably does not give us very clear direction on what should be recommended but it should steer us away from a strict liability standard in regard to the cost of treatment and control of bedbugs.

With a strict liability standard—language in a state law that clearly states that the owner is entirely responsible for the cost—the owner would be precluded from working things out with a tenant, maybe recouping some of the costs, sharing some of the costs if it's apparent that the tenant introduced the problem.

We agree that assigning exclusive blame is probably impossible. But a recommendation that the owner is *always* responsible for the costs feels like an assignment of blame. And we would urge the Subcommittee to not go in that direction.

We're glad to see in the preliminary recommendations that there is a greater emphasis on shared responsibility in terms of notice between tenant and landlord, access to units and education. At this time, my organization is not prepared to comment on some of the specific recommendations that are forthcoming in these areas.

Thank you for allowing us the opportunity to provide testimony today.