MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
APRIL 3 AND 4, 2003

The meeting was held on Thursday and Friday, April 3 and 4, 2003, at the Employment Development Department, 722 Capitol Mall, Auditorium, Sacramento, California, commencing at 1:06 PM with the following members constituting a quorum:

Michael Roth, President
Jean Melton, Vice President
Bill Morris
Mustapha Sesay
Gregory Traum
Ken Trongo

Board member Karl Thurmond was not present

Board staff present:

Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Dennis Patzer, Enforcement
Barbara Howe, Licensing

Departmental staff present:

Donald Chang, Legal Counsel

Board Liaison Deputy Attorney General Robert Eisman was also in attendance.

I. ROLL CALL

Ms. Saylor read the roll call.

II. REINSTATEMENT HEARING

The Board sat with Administrative Law Judge M. Amanda Behe and Deputy Attorney General Patrick M. Kenady to hear the Petition for Reinstatement of Loran Dale Martin, Field Representative's License No. FR 20963. The petitioner was informed he would be notified by mail of the Board's decision.

III. CLOSED SESSION

The Board adjourned to closed session to consider administrative actions in accordance with subdivision (c)(3) of Section 11126 of the Government Code.

The meeting recessed at 2:55 PM.

The meeting reconvened at 9:00 AM on Friday, April 4, 2003.

IV. FLAG SALUTE

Mr. Roth asked for a moment of silence for the Armed Forces personnel who lost their lives in Iraq. He then led the flag salute.

Mr. Roth asked Ms. Okuma to say a few words about Gloria Dorsey, a staff member who recently passed away.

Ms. Okuma reported that Gloria Dorsey had worked for the Department of Consumer Affairs since 1967. Gloria had retired a number of years ago, returned as a retired annuitant and then became Ms. Okuma's special assistant. Although she had been diagnosed with cancer about three years ago, she was very determined to not let the disease takes its course, and she came to work almost every day. On those days she did not feel well enough, she would work from her home. Gloria loved her job and loved working for the Board and the Board Members. She was very tenacious and if staff could not get something done, they passed the project to Gloria and she got the job done, no matter how difficult. She was the only person Ms. Okuma knew who could get Jack-In-the-Box to deliver. Gloria came from a very large family and had lots of friends. Ms. Okuma said Board staff was very fortunate to be an extended part of Gloria's family and Gloria would be missed very much by all.

V. PUBLIC HEARING TO ADOPT SECTIONS 1993.1 (REINSPECTION LANGUAGE NOTIFICATION) AND 1996.3 (REQUIREMENTS FOR REPORTING PROPERTY ADDRESSES), AND AMEND SECTIONS 1914 (CONFUSINGLY SIMILAR NAMESTYLES), 1918 (SUPERVISION BY A QUALIFYING MANAGER), 1920 (CONTESTING A CITATION), 1948 (APPLICATOR LICENSE FEE AND LICENSE RENEWAL FEE), 1950 (CONTINUING EDUCATION FOR APPLICATORS), 1970(a) (FUMIGATION LOG), 1983 (BRANCH 2 BAIT STATIONS), 1993 (STAMP REFERENCE), 1996 (DELIVERING AND FILING OF INSPECTION REPORTS), 1998 (DELIVERING AND FILING OF NOTICES OF WORK COMPLETED AND NOT COMPLETED), AND 1991(a)(13) (CORRECTIVE MEASURES) OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS

Mr. Chang announced for the record that the date was April 4, 2003, the time was 9:13 AM and the meeting was being held in Sacramento. He stated a quorum of the Board was present, a notice had been filed with the Office of Administrative Law and a copy sent to all interested parties.

Mr. Chang announced the hearing was being held to consider the proposed changes to Board rules' Sections 1914, 1918, 1920, 1948, 1950, 1970(a), 1983, 1993.1, 1993, 1996, 1998, 1996.3 and 1991(a)(13) as outlined in the public notice. The hearing would be open to take oral testimony and/or documentary evidence by any person interested in these regulations. All oral testimony or documentary evidence would be considered by the Board pursuant to the requirements of the Administrative Procedures Act before formally adopting the proposed amendments to the regulations, or any recommendations for change that might evolve as a result of the hearing.

Mr. Chang announced that after all interested parties had testified, the testimony phase of the hearing would be closed and the Board would then consider the appropriate action to be taken for any regulatory changes. He asked if there were any questions concerning the nature of the proceedings or the procedures to be followed. As there were none, he opened the hearing to the public for oral testimony and/or documentary evidence.

Proposed Amendment of Regulation Section 1914

There were no public comments.

Proposed Amendment of Regulation Section 1918

John Van Hooser, Ultratech Division, commented that:

- As he understood the current regulation, an operator employed as a qualifying manager cannot be employed by another company in any licensed capacity. He questioned whether the operator could work for another licensee if the proposal was passed.

Mr. Eisman, Attorney General's Office, commented that:

- There are other Boards with similar provisions, whereby supervision could be done telephonically, and situations arose where the qualifier was located in another continent and would maintain telephonic communications with company operations. He questioned whether consumers would be served by the fulfillment of the responsibility of supervising work being done at all locations. According to the proposed regulation, as long as the supervisor could be contacted by telephone within a reasonable amount of time, supervisory responsibility would be satisfied. He felt that qualifiers of companies should be held responsible for the work being done and to say that on-site supervision could be satisfied telephonically would satisfy the requirements of consumers.

- He felt there was conflict and vagueness of the regulation where the first paragraph used the words “branch supervisor” and the second paragraph used the words “branch office supervisor.” He stated it was unclear whether or not the first branch supervisor should be the branch office supervisor, as they could be two different things.
- He stated that because of the way the last sentence of the third paragraph was structured: “This designation of supervision does not relieve the qualifying manager or managers of his or her responsibilities to supervise as required in sections 8506.2 and 8610,” it could be interpreted to only apply in those situations where there is ownership of more than one registered company by the same sole owner, corporation or partnership, not necessarily applying to any other situation.

Larry Musgrove, Western Exterminator Company, commented that:
- Most of the operators would not be in Europe or Asia while supervising business in California.
- The proposal fits current operations in California and the concept is not new, having been practiced by the industry previously, but agreed the regulation needed clarification.

Darrell Ennes, Terminix International, commented that:
- He agreed with Mr. Musgrove’s comments.

Proposed Amendment of Regulation Section 1920

There were no public comments.

Proposed Amendment of Regulation Section 1948

There were no public comments.

Proposed Amendment of Regulation Section 1950

There were no public comments.

Proposed Amendment of Regulation Section 1970(a)

There were no public comments.

Proposed Amendment of Regulation Section 1983

There were no public comments.

Proposed Adoption of Regulation Section 1993.1

There were no public comments.

Proposed Amendment of Regulation Section 1993

There were no public comments.

Proposed Amendment of Regulation Section 1996

There were no public comments.

Proposed Amendment of Regulation Section 1998

There were no public comments.

Proposed Adoption of Regulation Section 1996.3

There were no public comments.

Proposed Amendment of Regulation Section 1991(a)13

There were no public comments.

There being no further public comments, Mr. Chang concluded the regulatory hearing and opened up the proposals for Board discussion.

Proposal to Amend Regulation Section 1914

Mr. Traum moved and Ms. Melton seconded to amend section 1914 as follows:

§1914. Name Style--Company Registration.
No company registration certificate shall be issued in a fictitious name which the board determines ~~to be confusingly similar to the name of another registered company, or~~ ~~which~~ is likely to be confused with that of a governmental agency or trade association. No company registration shall be issued in the same name ~~or in a name style which the~~ ~~board determines is confusingly similar to the name~~ of a firm whose company registration has been suspended or revoked unless a period of at least one year has elapsed from the effective date of the suspension or revocation.

It shall be grounds for disciplinary action for a registered company to use the telephone number and/or name style of a firm whose company registration has been suspended or revoked, without the prior written approval of the board.

Passed unanimously.

Proposal to Amend Regulation Section 1918

Mr. Trongo commented he believed Mr. Eisman raised some legitimate concerns. He believed communication devices were good under certain conditions, but did not want to create a situation whereby someone could run a business from another country. He felt the regulation needed more clarity.

Mr. Morris stated he supported the comments of Mr. Trongo and did not feel the regulation was consumer friendly. He stated he would like to pursue dialogue in terms of refining the regulation. He said he was especially uncomfortable with hands-on being remote and telephonic measures being permissible.

Mr. Chang clarified what could be done with the regulation. He stated that the Board needed to determine if they wanted to allow unrestricted use, limited use, or elimination of telephonic communication devices altogether as a method of supervision. He stated that before the board referred the matter to committee they needed to give them some direction.

Mr. Morris stated he wished to refer the matter to committee for dialogue and refinement.

Mr. Sesay supported Mr. Morris' suggestion to refer the matter to committee for further study.

Mr. Chang suggested that the board ask Mr. Eisman for ideas he might have in regards to what would be considered reasonable telephonic use restriction.

Mr. Eisman responded that he felt it was most important to establish first what the total responsibilities of the qualifier or the operator would be with respect to supervision; i.e., being responsible for everything that either happens or fails to happen in conjunction with the work that is being performed.

Mr. Roth asked if the responsibilities could be done via communication devices, why would anything more need to be said about responsibilities and would not those responsibilities automatically be the same?

Mr. Eisman stated if the Board prescribed that supervision could be done telephonically, to a certain degree that could be interpreted to be basically a sanction that "that's all I need to do." It was this interpretation he felt the Board wanted to avoid.

Mr. Trongo stated he would like to see some limits but was unsure what they should be because the are situations that occur when a person should be allowed to supervise telephonically if necessary , on the other hand the Board would not want someone running a

company from somewhere outside of the country. He agreed with Mr. Chang that direction was needed before referring to committee and he hoped there would be some type of limitation placed on telephonic communication devices as a method of supervision.

Mr. Sesay stated perhaps some conditions could be placed when the telephone could be used.

Mr. Trongo suggested adding a line to the regulation stating that supervision by telecommunication cannot be assumed to be the only kind of supervision advocated by the Board.

Mr. Sesay suggested allowing telephonic supervision only on a limited basis or only under special conditions.

Mr. Morris asked how loopholes could be avoided to keep telephonic supervision from being abused.

Mr. Trongo stated that what he envisioned was wording such as: telecommunication devices are not to be considered the only method of supervision.

Mr. Eisman stated that he felt the Board needed to pay attention to the regulations wording. He stated that another Board with a similar provision provided that a certain percentage of time has to be given to on-site supervision. He said that the Dental Board has a provision that if a person is operating multiple sites, at least 50% of the time during which work is being performed there must be on-site supervision. He stated that the Board may want to consider similar language.

He recommended the Board not act on the proposal at this time because the wording would require a lot of thought. Mr. Eisman recommended the Board ensure that the regulation is structured in such a way that the door is not left open for the use of telecommunications or telephonic devices as sole alternatives to supervisory responsibility.

Mr. Roth felt the matter needed to be referred to committee with instructions, as there were a lot of good suggestions and a lot of subtleties that needed to be thought about before implementing the amendment to section 1918.

Mr. Trongo moved and Ms. Melton seconded to refer the proposal to the Rules and Regulations Committee, based on the discussion occurring today and the public comments received, and to report back to the Board at the next meeting.

Mr. Morris recommended that legal counsel be part of the committee.

Passed unanimously.

Proposal to Amend Regulation Section 1920

Mr. Roth commented that it seemed to him somewhat unfair that a licensee could go in with a prior cite and fine and negotiate something and then Board would decide to modify it and the licensee has no appeal rights if he or she does not like the modifying decision.

Mr. Eisman stated that once the notification goes out all options are laid out to the cited individual as to what their rights are. The individual maintains his or her right to a hearing if they appeal the original citation within the timelines that are established and that does not go away if they have the informal conference.

Mr. Chang stated that if a citation is issued and the individual requests an informal conference, he or she would submit information to the Registrar, who might see an error and decide to modify the citation. Under current law the Board now issues a new citation and the individual can then again request another informal conference. The proposed amendment says is that before an individual has an informal conference that person can provide the Registrar with information, and if the fine is reduced, it would not be necessary to hold another informal conference to appeal the modified decision. The individual still maintains the right to a hearing on the original citation.

Mr. Trongo moved and Mr. Morris seconded to amend section 1920 as follows:

§1920.

(e) Contest of Citations:

(1) In addition to requesting a hearing provided for in subdivision (b)(4) of section 125.9 of the code, (hereinafter "administrative hearing"), the person cited may, within ten (10) days after service or receipt of the citation, notify the Registrar or Deputy Registrar, as designated, in writing of his or her request for an informal conference with the designated Registrar or Deputy Registrar. The informal conference shall include at least one, but no more than two, industry members of the Board, as designated by the Registrar.

(2) The informal conference shall be held within 60 days from the receipt of the request of the person cited. At the conclusion of the informal conference, the Registrar or Deputy Registrar may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The decision shall state in writing the reasons for the action and shall be served or mailed to the person within ten (10) days from the date of the informal conference. ~~This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.~~

(3) The person cited does not waive his or her request for ~~a~~ an administrative hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the Registrar or Deputy Registrar.

If the citation is dismissed after the informal conference, the request for ~~a~~ an administrative hearing on the matter of the citation shall be deemed to be withdrawn.

~~If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days in accordance with subdivision (b)(4) of section 125.9 f the code.~~

If the informal conference results in the modification of the findings of violation(s), the amount of the fine or the order of abatement, the citation shall be considered modified, but

not withdrawn. The cited person shall be entitled to an administrative hearing to contest the modified citation if he or she made a request in accordance with subdivision (b)(4) of section 125.9 of the code for an administrative hearing, within thirty (30) days after service of the original citation. The cited person shall not be entitled to an informal conference to contest a modified citation. If the cited person did not make a request for an administrative hearing after service of the original citation, the decision in the modified citation shall be considered a final order.

Passed unanimously.

Proposal to Amend Regulation Section 1948

Mr. Trongo moved and Ms. Melton seconded to amend section 1948 as follows:

§1948. Fees.
(a) Pursuant to the provisions of section 8674 of the code, the following fees are established:
(1) Duplicate license. . . $ 2
(2) Change of licensee name. . . $ 2
(3) Operator's examination. . . $ 25
(4) Operator's license. . .$150
(5) Renewal operator's license. . . $150
(6) Company office registration. . . $120
(7) Branch office registration. . . $ 60
(8) Field representative's examination. . . $10
(9) Field representative's license. . . $ 30
(10) Renewal field representative's license. . . $ 30
(11) Change of registered company's name. . . $ 25
(12) Change of principal office address. . . $ 25
(13) Change of branch office address. . . $ 25
(14) Change of qualifying manager. . . $ 25
(15) Change of registered company's officers. . . $ 25
(16) Change of bond or insurance. . . $ 25
(17) Continuing education provider. . . $ 50
(18) Continuing education course approval. . . $ 25
(19) Pesticides use report filing. . . $ 6
(20) Applicator’s license…….$50
(21) Applicator’s license renewal…….$50
(b) Pursuant to section 8564.5 of the code, the fee for examination for licensure as an applicator is $15.00 for each branch in which an examination is taken.
(c) Pursuant to section 8593 of the code, the fee for the continuing education examination for operators is $25.00, for each branch in which an examination is taken.
(d) Pursuant to section 8593 of the code, the fee for the continuing education examination for field representatives is $10.00, for each branch in which an examination is taken.

Passed unanimously.

Proposal to Amend Regulation Section 1950

Ms. Okuma commented that the language in the Board package and filed with the Office of Administrative Law (OAL) contained language that had been previously repealed by the Board and approved by OAL. Therefore the references referring to the wood roof cleaning and treatment category in the Board package were in error, although they could be corrected through the rule-making process. The date in the new subsection (e): "For the renewal period ending December 31, 1998," was in error, there was a typographical error in the last line where the word control was left out of "structural pest related," and the date in subsection (c): "For the renewal period ending June 30, 1995," in the first line also was in error. Both renewal dates should read February 28, 2007.

> Mr. Trongo moved and Ms. Melton seconded to authorize staff to modify the proposed amendment of section 1950, make the modifications available for a 15-day public comment period, and delegate authority to the registrar to adopt the proposed modified regulation amendment as follows, provided there are no adverse public comments:

§1950. Continuing Education Requirements.

(a) Except as provided in section 1951, every licensee is required, as a condition to renewal of a license, to certify that he or she has completed the continuing education requirements set forth in this article. A licensee who cannot verify completion of continuing education by producing certificates of activity completion, whenever requested to do so by the Board, may be subject to disciplinary action under section 8641 of the code.

(b) Each licensee is required to gain a certain number of continuing education hours during the three year renewal period. The number of hours required depends on the number of branches of pest control in which licenses are held. The subject matter covered by each activity shall be designated as "technical" or "general" by the Board when the activity is approved. Hour values shall be assigned by the Board to each approved educational activity, in accordance with the provisions of section 1950.5.

(c) For the renewal period ending ~~June 30, 1995~~ February 28, 2007, and each subsequent renewal period, operators licensed in one branch of pest control ~~or wood roof cleaning and treatment~~ shall gain 16 continuing education hours during each three year renewal period. Operators licensed in two branches of pest control ~~or one branch of pest control and wood roof cleaning and treatment~~ shall gain 20 continuing education hours during each three year renewal period. Operators licensed in three branches of pest control ~~or two branches of pest control and wood roof cleaning and treatment~~ shall gain 24 continuing education hours during each three year renewal period. ~~Operators licensed in three branches of pest control and wood roof cleaning and treatment shall gain 28 continuing education hours during each three year renewal period.~~ In each case, a minimum of four continuing education hours in a technical subject directly related to each branch of pest control ~~or wood roof cleaning and treatment~~ held by the licensee must be gained for each branch license and a minimum of eight hours must be gained from Board approved courses on the Structural Pest Control Act, the Rules and Regulations, or structural pest control related agencies' rules and regulations.

(d) For the renewal period ending ~~June 30, 1995~~ February 28, 2007, and each subsequent renewal period, field representatives licensed in one branch of pest control ~~or wood roof cleaning and treatment~~ shall have completed 16 continuing education hours, field representatives licensed in two branches of pest control ~~or one branch of pest control and wood roof cleaning and treatment~~ shall have completed 20 continuing education hours and field representatives licensed in three branches of pest control ~~or two branches of pest control and wood roof cleaning and treatment~~ shall have completed 24 continuing education hours during each three year renewal period ~~and field representatives licensed in three branches of pest control and wood roof cleaning and treatment shall gain 28 continuing education hours during each three year renewal period~~. In each case, a minimum of four continuing education hours in a technical subject directly related to each branch of pest control ~~or wood roof cleaning and treatment~~ held by the licensee must be gained for each branch of pest control ~~or wood roof cleaning and treatment~~ licensed and a minimum of eight hours must be gained from Board approved courses on the Structural Pest Control Act, the Rules and Regulations, or structural pest control related agencies' rules and regulations.

(e) For the renewal period ending ~~December 31, 1998~~ February 28, 2007, and each subsequent renewal period, a licensed applicator shall have completed 16 hours of Board approved continuing education. Such continuing education shall consist of 12 hours of continuing education covering pesticide application and use, and four hours covering the Structural Pest Control Act and its rules and regulations or structural pest control related agencies' rules and regulations.

~~(e)~~ (f) Operators who hold a field representative's license in a branch of pest control ~~or wood roof cleaning and treatment~~ in which they do not hold an operator's license must gain four of the continuing education hours required by section 1950(c) in a technical subject directly related to the branch or branches of pest control ~~or wood roof cleaning and treatment~~ in which the field representative's license is held, in order to keep the field representative's license active.

~~(f)~~ (g) No course, including complete operator's courses developed pursuant to section 8565.5, may be taken more than once during a renewal period for continuing education hours.

Passed unanimously.

Proposal to Amend Regulation Section 1970(a)

Ms. Okuma commented that there were a couple of errors wherein the language of section 1970(a) did not include some previously approved language dealing with conduits, but the larger problem was that when the document was filed with the Office of Administrative Law (OAL) the actual fumigation log, which was being amended, was not included with the package. Therefore staff was recommending that the proposal be withdrawn and then re-noticed for public hearing so it could be noticed properly.

Mr. Morris moved and Mr. Trongo seconded to withdraw the proposal to amend regulation section 1970(a) and re-notice it for public hearing.

Passed unanimously.

Proposal to Amend Regulation Section 1983

Mr. Trongo moved and Mr. Traum seconded to amend section 1983 as follows:

§1983. Handling, Use, and Storage of Pesticides.

(a) Each container in which any pesticide is stored, carried or transported shall be adequately labeled in accordance with the provisions of Articles 1 and 5, Chapter 2, Division 7 of the Food and Agriculture Code (relating to economic poisons) and regulations adopted by the Department of Pesticide Regulation thereunder.

(b) Service kits which contain any pesticide or preparation thereof shall be handled with extreme caution and in no case shall such a kit be left where children or other unauthorized persons might remove the contents.

(c) When any pesticide or preparation thereof is carried on a truck or other vehicle, a suitable storage space shall be provided thereon. Under no circumstances shall such storage be left either unlocked or unattended when containing any pesticide or preparation thereof.

(d) Where there is danger of food or drug contamination, all food or drug commodities and all utensils or equipment used in the preparation of food or drugs shall be adequately covered to insure against contamination by pesticidal materials, unless the contamination will be dissipated or otherwise removed prior to the time the food or drugs are consumed or the utensils or equipment used.

(e) No rodenticide or avicide shall be used in such manner as to be readily accessible to children or pets.

(f) All rodenticides and avicides shall be removed from readily accessible places upon termination of the particular service.

(g) Under no circumstances shall oil base insecticidal materials be used in or near open flames or active heaters.

(h) Tracking powders shall be used only at floor level or in such places as warrant their safe use.

(i) When a covered or uncovered bait station is used for any ~~pesticide~~ rodenticide or avicide the bait station shall be adequately marked with the signal word or symbols required on the original ~~pesticide~~ rodenticide or avicide label, the generic name of the pesticide, and the name, address and telephone number of the structural pest control company~~. A building which is vacated, posted, locked and in the care, custody and control of the registered company shall be considered the bait station.~~

Passed unanimously.

Proposal to Adopt Regulation Section 1993.1

Ms. Okuma mentioned there was a minor typographical error with a missing parenthesis around the number 10 in the third sentence of the second paragraph.

Mr. Traum moved and Mr. Morris seconded to adopt section 1993.1 as follows:

§1993.1 Reinspection Language

The following statement must appear on any wood destroying pests and organisms inspection report when an estimate or bid for making repairs was given with the original inspection report, or thereafter:

"This company will reinspect repairs done by others within four months of the original inspection. A charge, if any, can be no greater than the original inspection fee for each reinspection. The reinspection must be done within ten (10) working days of request. The reinspection is a visual inspection and if inspection of concealed areas is desired, inspection of work in progress will be necessary. Any guarantees must be received from parties performing repairs."

NOTE: Authority cited: Section 8525.5 Business and Professions Code.
Reference: Section 8516, Business and Professions Code.

Passed unanimously.

Proposal to Amend Regulation Sections 1993, 1996, 1998 and to Adopt Section 1996.3

Ms. Okuma reported that section 1996 referenced an old form revision date and would require a 15-day notice to fix.

Ms. Melton moved and Mr. Trongo seconded to authorize staff to correct the revision date of the proposed amendment of section 1996, make the modification available for a 15-day public comment period, and delegate authority to the registrar to adopt the proposed modified regulation amendment as follows, provided there are no adverse public comments:

§1996. Requirements for Reporting All Inspections Under Section 8516(b).

(a) A written inspection report conforming to section 8516(b) of the code (See Form No. 43M-41 (Rev. ~~8/97~~ 10/01) at the end of this section) shall be prepared and ~~filed with the board~~ delivered to the person requesting the inspection, or to the person's designated agent regardless of whether the registered company has offered to perform the inspection without charge. The granting of permission to make an inspection shall be deemed a request to make an inspection.

~~(b) Reference to price may be deleted from the copy of the report filed with the board provided this is the only difference between the copy filed with the board and the copy that is delivered to the person who requested the inspection or to his or her designated agent.~~

~~(c)~~ (b) The failure or refusal of the person ordering the inspection or of his or her designated agent to pay for such inspection or report shall not excuse a registered company which has commenced an inspection from preparing and delivering a report ~~and filing a copy thereof with the board.~~ to the person requesting the inspection or the person's designated agent.

Passed unanimously.

Ms. Okuma reported that section 1996.3 was missing the prescribed form when it was submitted to the Office of Administrative Law. Therefore staff was recommending the proposal be withdrawn and re-noticed for public hearing so it could be noticed properly.

> Mr. Traum moved and Ms. Melton seconded to withdraw the proposal to amend regulation section 1996.3 and re-notice it for public hearing.

Ms. Okuma reported that section 1993 was deleting the reference to board stamps, consistent with Senate Bill 1307 which changed the process to filing properties instead of stamps with the Board.

Ms. Okuma reported that section 1998 was deleting a reference to documents being filed with the Board, consistent with SB 1307, and made reference to the Notice of Work Completed being prepared and provided to the homeowner or designated agent as opposed to being filed with the Board.

> Mr. Traum moved and Ms. Melton seconded to amend sections 1993 and 1998 as follows:

§1993. Inspection Reports.

All of the following reports must be in compliance with the requirements of Section 8516 of the code. All reports must be on the form prescribed by the board ~~and filed with the board with stamps affixed.~~

(a) An original inspection report is the report of the first inspection conducted on a structure at the request of a specified party or for a specified purpose. Subsequent inspections conducted on a structure at the request of a different party, for a different purpose than a previous inspection, or a different transaction relating to the same structure shall be deemed to be new inspections for which an original inspection report shall be required. An original inspection report may be either a complete or limited inspection.

(b) A complete report is the report of an inspection of all visible and accessible portions of a structure.

(c) A limited report is the report on only part of a structure. Such a report shall have a diagram of the area inspected and shall specifically indicate which portions of the structure were inspected with recommendation for further inspection of the entire structure and the name of the person or agency requesting a limited report.

(d) A supplemental report is the report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report. Such report shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

(e) A reinspection report is the report on the inspections of item(s) completed as recommended on an original report or subsequent report(s). The areas reinspected can be limited to the items requested by the person ordering the original inspection report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

§1998. Reporting Requirements Under Section 8516(h)(4).
If an inspection report is required ~~to be filed~~ pursuant to code section 8516(h)(4), a notice of work completed and not completed shall ~~be filed with the Board~~ also be prepared and provided to the homeowner or his/her designated agent for any work recommended and performed pursuant to such report.

Passed unanimously.

Proposed Amendment of Regulation Section 1991(a)13

Ms. Okuma commented there was an error in the title where the subsection said 8516(b)9, as it had previously been amended to subsection (b)10, and there was some language previously acted upon already pending approval at the Office of Administrative Law, the local treatment statement required to be on the notice. Ms. Okuma stated this should be clarified with the 15-day notice to keep the rule-making file clean when it does go to OAL.

Mr. Sesay moved and Mr. Traum seconded to authorize staff to make the necessary modifications of the proposed amendment of section 1991(a)13, make the modification available for a 15-day public comment period, and delegate authority to the registrar to adopt the proposed modified regulation amendment as follows, provided there are no adverse public comments:

§1991. Report Requirements Under Section 8516(b)~~9~~10.
(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph ~~9~~ 10 of subdivision (b) of Section 8516 of the code and shall also conform with the provisions of Title 24 of the California Code of Regulations and any other applicable local building code, and shall accomplish the following:
(1) Comply with the provisions of section 2516(c)(1) of Title 24 of the California Code of Regulations.
(2) Remove from the subarea all excessive cellulose debris in earth contact. This excludes shavings or other cellulose too small to be raked or stored goods not in earth contact. Stumps and wood imbedded in footings in earth contact shall be treated if removal is impractical.
(3) When evidence of moisture, infestations or infections exists as a result of faulty grade levels, earth fill planters or loose stucco, a recommendation shall be made to correct the condition. Any method of controlling infestations arising from these conditions is considered adequate if the infestation is controlled.
(4) Comply with the provisions of section 2516(c)(6.1) of Title 24 of the California Code of Regulations (Effective July 1992).
(5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as

is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

(6) Comply with the provisions of section 2516(c)(6) of Title 24 of the California Code of Regulations.

(7) Comply with the provisions of section 2516(c)(4) of Title 24 of the California Code of Regulations.

(8) Exterminate all reported wood-destroying pests. Such extermination shall not be considered repair under section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendation shall be made to either:

(A) enclose the structure for an all encompassing treatment utilizing materials listed in Section 8505.1 of the code, or

(B) use another all encompassing method of treatment which exterminates the infestation of the structure, or

(C) locally treat by any or all of the following:

1. exposing the infested area(s) for local treatment,
2. removing the infested wood,
3. using another method of treatment which exterminates the infestation.

<u>(If any recommendation is made for local treatment, the report must contain the following statement: "Local treatment is not intended to be an entire structure treatment method. If infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated.")</u>

When a complete inspection is performed, a recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests.

When a limited inspection is performed, the inspection report shall state that the inspection is limited to the area(s) described and diagrammed. A recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests in the limited areas. The limited inspection report shall include a recommendation for further inspection of the entire structure and that all accessible evidence of wood-destroying pests be removed or covered.

(9) For the extermination of subterranean termite infestations, treat an infested area under the structure when subterranean termite tubes are found connected to the ground or when active infestations are found in the ground. Subterranean termite tubes shall be removed where accessible.

(10) Comply with the provisions of section 2516(c)(2) of Title 24 of the California Code of Regulations.

(11) Correct any excessive moisture condition that is commonly controllable. When there is reasonable evidence to believe a fungus infection exists in a concealed wall or area, recommendations shall be made to open the wall or area.

(12) Repair a stall shower if it is found to leak when water tested for a minimum of fifteen (15) minutes after the shower drain has been plugged and the base filled to within one (1) inch of the top of the shower dam. Stall showers with no dam or less than two (2) inches to the top of the dam are to be water tested by running water on the unplugged shower base for a minimum of five (5) minutes. Showers over finished ceilings must be inspected but need not be water tested. If water stains are evident on the ceiling, recommendations shall be made for further inspection and testing.

~~(13) Restore any members of wooden decks, wooden stairs or wooden landings in exterior exposure to a condition where they are able to carry out their intended function. Recommendations for corrective measures will depend upon the extent of adverse exposure and existing degree of deterioration and may include any of the following:~~
~~(A) Refasten any wood members which are considered structurally functional but have become loose because of wood deterioration.~~
~~(B) Remove and/or replace structurally weakened portions of any wood member.~~
~~(C) Remove and replace all wood members if full function and safety cannot be restored by partial replacement and repair as in (B) above, remove and replace entire wood member.~~
(b) Preconstruction application of termiticide for protection from subterranean termites shall not be made at less than the manufacturer's label specifications.
(c) If in the opinion of the inspector a building permit is required, it must be noted on the wood destroying pests and organisms inspection report (Form No. 43M-41 as specified in section 1996 of the California Code of Regulations).

Passed unanimously.

VII. REGISTRAR'S REPORT

Mr. Roth announced a change in the order of business. Agenda Item VI would be heard when Kathleen Hamilton, the Director of the Department of Consumer Affairs arrived to speak with the Board.

Ms. Okuma introduced staff members of the Structural Pest Control Board who were in the audience: Melissa Sowers-Roberts, Sally Lathum and Patricia Jensen.

Ms. Okuma reported on the following items:

- She and Mr. Patzer were finishing work on identifying public interest groups for Strategic Planning. The information would be available at the next Board meeting.
- The newsletter was progressing. Articles were written and Delores Coleman would be submitting them to the Department for publication by next week.
- Mr. Patzer has been working on the written survey to determine the effectiveness of existing regulations, but unfortunately was now working on some other projects that had taken precedence, so the timeline of October 2003 to Board Members might be tight.
- The proposal for the on-line Wood Destroying Organism Filing through the internet was ready to go out to vendors, there were some communication issues regarding whether the proposal would actually allow electronic filing, so it was now back on Ms. Okuma's desk for review.
- She and Mr. Patzer are currently working on the Strategic Plan's enforcement information that had an April 30, 2003 timeframe. The report will be provided to Board members. Each Board member will be individually contacted regarding what type of information they wish to see, which will then be incorporated into the report.

- She and Ms. Saylor are currently working on the report due April 30, 2003 regarding Computer-Based Testing. A clear obstacle to the project is money, so the report might not be very positive at this time.
- Regarding the Quality Control Issue for the telephone system, which would allow the monitoring of telephone calls for quality control purposes, the Department's Telecommunications Unit had researched what it would take to enhance the Board's telephone system. The downside is that it is a considerable amount of money and because of current budget restrictions staff was not sure how far they could proceed with the project.

Mr. Roth asked for a ballpark figure.

Ms. Okuma responded the Board was last quoted $30,000.00.

Mr. Morris asked for a written report on adverse fiscal impacts on the directions given for the Strategic Plan.

Mr. Roth asked if it was possible for the Board to accept contributions in order to fund the telephone system.

Mr. Chang replied there was a procedure whereby private parties can make donations to the State and designate them to a particular agency, which goes through the Department of General Services under a specific protocol.

- Ms. Okuma then gave an update on regulatory sections 1991(a)8, 1993.2 and 1993.3, termite bait stations and notifications regarding local treatment, which were at the Office of Administrative Law (AOL), and stated there should be a determination in a few days.

Mr. Roth asked Ms. Okuma if it would be okay to continue later as Ms. Kathleen Hamilton, Director of the Department of Consumer Affairs had just arrived in the audience.

VI. FUNCTIONS, RESPONSIBILITIES AND OBLIGATIONS OF BOARD MEMBERS – ERIC BERUMEN, DEPARTMENT OF CONSUMER AFFAIRS

Ms. Hamilton said that she wanted to take the opportunity to meet the Board members and share some things the Department was working on, some of the progress its making, its focus and changes taking place. She said that the Board had one of the best Executive Officers in the Department. She said that when she first arrived at the Department, the Structural Pest Control Board was up for sunset review and was thus one of the very first boards she observed and became familiar with. She stated that she has watched the Board grow and be responsive to emerging issues during her five years with the department. She said the Board did not have a status quo operation and she was very, very pleased with Ms. Okuma's leadership.

Ms. Hamilton touched on the Department's mission statement and Strategic Plan, which are reviewed and updated yearly. She then spoke about providing information to the public in instances where cases have not yet been adjudicated involving a licensee and balancing the publics right to know with the rights of the licensee or registered company. She said the Department wanted to make sure the Board took a look at situations where it might be appropriate to provide information to the public, upon request. She reported that a Department standard grew out of a long-standing problem with a swimming pool contractor. The Contractor's State Licensing Board knew for several years of a contractor who would enter into contracts, begin to install swimming pools in backyards, then abandon the jobs or only partially complete them. Because of the enormity of the case, it took the Contractor's Board several years to file a disciplinary action against the contractor. In the meantime, consumers were still entering into business transactions with the pool contractor. She said that it is the timeframe between the filing of disciplinary action and final disposition that the Department hopes all the Boards will take into consideration when looking for ways to provide information to protect consumers.

Ms. Hamilton reported that the Department has also been focusing on working with Board members. She said the Department was grateful for each member's willingness to serve on a Board and engage in a civic duty. She thanked each Board Member personally on behalf of Governor Gray Davis and on behalf of the Department as well. She said the Department provides Board training, which had become mandatory as of 2003. She said that if any of the Board members had not received training they would be hearing from the Department. She said that a bill by Assembly member Correa signed by the governor and put into law last year clearly defined that all Board members serving on Boards and Bureaus and Commissions are mandated to protect the public.

She said that in most government Boards and Commissions, members were actually prohibited from making decisions on matters where they have professional interest. The Boards in the Department of Consumer Affairs were very unique and constructed in a way intuitively inimical to that premise of having to recuse oneself if there are professional or fiduciary interests. She said each Board member was valuable and the Department and the people of California benefit from their expertise and professionalism. She said that when making a decision each Board member walks a very fine line because their job was fundamentally to protect the public, not the industry.

She stated that staff vacancies and budget considerations would soon be addressed by the Department and the loans made by the Boards' Reserve Funds to the State's General Fund would be paid back pursuant to an agreement with the Department of Finance. She recapped the Department's commitment to work with the Board members and their Executive Officer and asked that they feel free to contact her whenever they felt the need.

Mr. Roth thanked Ms. Hamilton for attending the meeting and inspiring and keeping the Board focused.

VII. REGISTRAR'S REPORT Resumed

Ms. Okuma continued her report with the following item:

- There were two legislative bills in the Board package: Senate Bill 434 and Assembly Bill 1006. As she understood it, AB 1006 as currently written would prohibit all public schools from using the most highly toxic pesticides on school property and basically eliminate any type of pest control work in public schools.

Mr. Traum requested, as an industry member of the Board, to go on record as opposing legislation AB 1006.

Mr. Trongo stated that as the bill was written it basically would not allow any chemical to be used in a school. He mentioned that for example that uncontrolled cockroaches could cause all kinds of problems, including respiratory problems. He said he did not feel the bill was well thought out and offered no alternatives. He said that for the state to pass a law that would effectively eliminate the safety of the schools would not help the public but hurt them instead. He went on record as being against AB 1006.

Mr. Morris said he wanted to clarify that the bill did allow the use of pesticides. He said his being in the food business made him sensitive to the use of toxic substances in and around food. He said his interpretation of the bill was that pesticides could be used.

Mr. Trongo replied that Section 2 17615(b)(5), by stating: “All pesticides applied by fogging, bombing, tenting, broadcasting, or baseboard spraying,” just basically eliminated every chemical the pest control industry used.

Mr. Sesay asked how would industry members respond to pesticides being linked to numerous flu and chronic illnesses.

Mr. Trongo responded that there was a bill passed a year or so ago that addressed pesticides and pest control use in schools and industry felt it was an adequate bill.

Ms. Melton said that all pesticides are toxic but if applied properly by professionals, should not be hazardous to school teachers or children. She said that in the past she always found that the school janitor would apply whatever could be found and that might explain why there is such a high cancer rate in schools. She felt that industry members should be able to apply the pesticides in a safe manner, instead of janitors or schoolteachers.

Mr. Roth asked for input from industry members in the audience on how they felt the bill could be better stated.

Harvey Logan, Pest Control Operators of California (PCOC), commented that the bill had been changed as of April 1, 2003. He said PCOC had been working with the author, Assemblywoman Chu, and with the proponents of the bill, Californians for Pesticide Reform; He said that a lengthy letter had been written and at an initial meeting it had been agreed to immediately remove all of section 2 17615(b)(5). Notwithstanding, the current bill bypassed the Environmental Protection Agency’s Investigation and Evaluation of Pesticide, the Department of Pesticide Regulation, and established a black list of products that can and cannot be used. Language had been adopted two years ago, in the Healthy Schools Act of 2000, which dramatically reduced the amount and types of pesticides used in schools in the

State of California and PCOC thought it was a landmark piece of legislation in the right direction. He said that AB 1006 went in the wrong direction. He said as members appointed to the Structural Pest Control Board and obviously concerned with the health and welfare of children in schools one should take look at a blanket across the board reduction in pesticides without scientific evaluation. He hoped the Board would take a position of opposition unless amended.

Mr. Sesay asked Mr. Logan what was wrong with the bill now that section 2 17615(b)(5) had been deleted.

Harvey Logan said there were certain pyrethoids with very low toxicity that should be allowed. Category 1 Vikane, used to treat a building infested with drywood termites, should be allowed. He said "What if a school has a major infestation it should be fumigated?" Such treatments are never done in the presence of people and there are all kinds of safety techniques used before anyone was allowed back into the building when using Vikane. As the bill currently stood, there were many prohibitions that tied the hands of the pest control operators.

Mr. Sesay asked if PCOC had spoken with Assemblywoman Chu and the Californians for Pesticide Reform since the bill had been changed.

Harvey Logan responded PCOC had written a lengthy letter and was waiting for a response.

Mr. Morris stated he believed all Board members had first and foremost in their minds the safety of school children. He said he wanted to go back to Section 2 17615(a) because it meant to him that toxic substances could be used but not highly toxic ones, which could be a loop area.

Mr. Roth asked if there were other toxics that would still be allowable under the statutes to be applied in a school using any of the methods listed in Section 2 17615(b)(5).

Harvey Logan responded that in the event of a drywood infestation at a school, he knew of no alternative to Vikane, a highly toxic item.

Mr. Roth commented his problem was he was reluctant to oppose a bill that had so much to offer in terms of protecting children at schools. He felt he should support the bill today even though he understood there were some reasons why the bill had shortcomings. He wished to support the legislation as consumer protection, unless he was convinced to the contrary and felt it would be dangerous to commit to the contrary on such short notice.

Mr. Roth asked how many members of the public wanted to comment and said he would take two comments.

John Van Hooser, Ultratech Division, pointed out the problem with pesticides in schools was not with licensed people but with non-licensed ones, such as janitors and teachers, applying pesticides. Solving the problem would be having pesticides applied by licensed people, when the building was vacant, which would be far safer than anything sprayed in the air.

Larry Musgrove, Western Exterminators, agreed with John Van Hooser. He felt if there was a real problem with drywood termites getting into the studs, as could happen in Southern California, the studs could give way and a school could collapse. He felt that Vikane was the only product available that could protect structural integrity. He said what was not in the bill, products like bleach and germicidal materials, used in schools every day, which are highly toxic.

Mr. Roth asked if it was illegal under present law for a janitor to apply these chemicals.

Mr. Trongo responded saying “no,” and stated that because janitors and other school employees could and did apply pesticides, it was entirely possible they were being incorrectly administered. He wanted it on record he was not against protecting children. He was against a bill that was poorly written, that was not in the best interest of children, and was not adequate enough to protect them.

Mr. Chang stated the bill was well-intended, as it was designed to protect children and the employees of schools, but at the same time it appeared to be over-reaching, over-broad and did not really address the problem properly. He said the Board members were basically being asked to oppose the bill and he did not think there was enough information, but at the same time did not feel the Board would be comfortable supporting the bill. He suggested taking a watch position, following and monitoring the bill. By the next meeting the Board members would be able to see what direction the bill was going. If it looked like it was still not doing its intended purpose then would be the appropriate time to take a position. He cautioned this was something not specifically within the Board’s jurisdiction as it pertained to licensees to some extent but not directly and he did not feel it was something the Board needed to take a position on today.

Mr. Sesay stated the Board could still take a position to oppose the bill as it was written right now, stating it was misguided and needed help.

Mr. Chang stated the difficulty with taking an opposed position was it could be taken the wrong way, making the Board appear to be opposed to protecting school children. He said the Board could oppose the bill unless amended, specifying why it should be amended. But again, he recommended the watch and wait position.

Mr. Roth agreed that if the Board took a position of opposition it could be a significant step because people may listen. It could affect what would happen in terms of negotiations between the sponsor, legislation and the industry. He was inclined to not support the bill because of flaws in its drafting and felt it would be too quick to take action. He was in favor of Mr. Chang’s recommendation to put off making a decision today.

Mr. Morris moved and Mr. Trongo seconded that the Board adopt a position to monitor and watch Assembly Bill 1006.

Mr. Trongo moved and Mr. Traum seconded to add the words, with concern, to the motion.

Passed by majority (Aye – Melton, Roth, Sesay, Traum, Trongo. Opposed – Morris).

Mr. Roth requested that AB 1006 be placed on the agenda for the next Board Meeting. He thanked the members of the audience for their help today.

Mr. Patzer reported on the following:

- Next week and the week after he would be participating in County Agricultural Commissioner Training that is mandated by law for new staff before doing structural pesticide use enforcement. An area of emphasis would be training to agricultural staff in regards to unlicensed activity investigation and referral.
- He had a meeting last week with the San Joaquin County District Attorney's office in regards to its interest in pursuing unlicensed activity in that county.
- About eight other counties were also interested in pursuing unlicensed activity actions, as long as the Board provided adequate information and did not take action against a company prior to sending the county its information.
- The Rules and Regulations 1999.5 training for false and misleading advertisement for licensees had been completed.
- Investigative staff were now beginning office audits and audits of advertisement with licensees, pursuing enforcement actions related to those matters.

Ms. Saylor reported on the following:

- Licensing statistics, survey results and comments were reviewed with the Board members.

Mr. Roth remarked on the comment which said: "Melissa Roberts was a tremendous help" as she was in the audience and invited her to keep up the good job.

- In regards to the budget, Ms. Hamilton had covered most of the issues. There was a Director's Meeting in February regarding budget cut backs and all offices have been asked to cut back their travel expenses by 35% for current year. A cut back of at least that amount is expected next budget year and Mr. Patzer has counseled the district PCOC meetings he travels to throughout the year regarding this. Additional cuts will be likely.
- 750 licensees were currently being audited for 2002 Continuing Education, with approximately 150 licensees being completed so far. Staff hoped to be done in a few months. Non-compliance was at approximately 5%. Revocation of license and Cite and Fine were being discussed for those found not in compliance.

Mr. Roth asked that an article be placed in the newsletter regarding what might happen to licensees found in non-compliance during an audit of their continuing education submissions.

Ms. Okuma replied that an article had already been prepared addressing the deficiencies some licensees have experienced.

- On February 14, 2003 Forest Products Lab placed on line a request for proposals from researchers, who would have until April 30, 2003 to submit their proposals for research grants. The Research Advisory Panel will then meet to review all proposals on May 9, 2003. At the July board meeting recommendations from the panel will be given to the Board.

VIII. APPROVAL OF JANUARY 10, 2003 BOARD MEETING MINUTES

Mr. Trongo moved to approve the minutes of the meeting of January 10, 2003. Passed unanimously.

IX. REQUEST FROM GARY NIEBRUGGE TO USE THE TELEPHONE NUMBER OF A REVOKED COMPANY REGISTRATION

Ms. Okuma stated she received a request from Diamond Termite and Pest Control asking to be allowed to divert the telephone calls coming into Deal Termite Company's telephone number, as they performed the fumigations for Deal Termite Company, whose company registration was revoked on March 3, 2003. The requestor, Gary Niebrugge, stated he wanted to ensure he has no liability for fumigation issues and would not advertise the number. He would use it to respond to any possible problems as they related to his previous fumigations.

Mr. Traum moved and Mr. Roth seconded to allow Diamond Termite and Pest Control to rotor Deal Termite Company's old phone number into their current phone system.

Mr. Trongo then commented that one of the purposes of Regulation 1914, which prohibits a company from using a revoked company's telephone number unless the Board gives approval, was to prevent those who lost their license, etc., from having a phone number someone could call to do business. He said that Gary Niebrugge was a former employee of Deal Termite Company. He said that Niebrugge's company tags had been posted at fumigation sites and notification could be made from those tags.

Mr. Sesay questioned if there was an ongoing business relationship between Diamond Termite and Pest Control and Deal Termite Company.

Mr. Roth asked for a vote on the previous motion to allow Diamond Termite and Pest Control to rotor Deal Termite Company's old telephone number into its current phone system. Motion did not pass (Aye – Traum. Opposed - Melton, Morris, Roth, Sesay, Trongo).

X. ENFORCEMENT OF PRE-TREATMENT APPLICATIONS TO SOIL PRIOR TO CONSTRUCTION

Ms. Okuma reported the Board was being asked to look at the issue of pre-treatments. A question had been raised as to whether the requirement that companies use the proper amount of pesticide was being enforced. Ms. Okuma asked for the Board's permission to turn the explanation of pretreatments and presentation of a case for increased enforcement and statute changes to better regulate the industry over to Randy Zopf and Kevin Etheridge.

Randy Zopf, Roseville Termite and Pest Control, thanked Ms. Okuma and the Board members for allowing him to make his presentation. He said that at the beginning of the year he had reintroduced his company to pretreatment market and was pricing according to the label and specifications laid out by the Structural Pest Control Board. After about 50-60 proposals and not getting one contract, it came to light there were basically two companies in Northern California getting 90% of the business by pricing at 6.5 and 7.5 cents per square foot. He said his company's cost for the chemical alone was 8.5 cents per square foot, which did not include labor and overhead. He then related that other states required pre-notification for pretreatments and stated he would like to see greater enforcement, with an expansion of section 1991(b): "Preconstruction application of termiticide for protection from subterranean termites shall not be made at less than the manufacturer's label specifications," to include specifications from the architect. He asked for a web site or a hot line, and then turned the presentation over to Kevin Etheridge.

Kevin Etheridge, Contractors Termite Control, Inc., stated this was a multifaceted industry and the issues went far and deep. Pretreatment could be performed on new homes seeking FHA and VA financing by baiting, boric acid applications to the lumber framing or soil treatment. He had seen instances where severe under treatment was taking place and did not feel pricing was the Board's job or interest, but because the consumer had the potential of harm the Board should look into it. He felt there was confusion about the state because some companies felt they didn't have to file activity reports because a structure wasn't involved. He suggested coming up with some other kind of reporting tool in addition to educating the licensees of the State Contractor's Licensing Board. He asked to not model anything after Arizona, Texas or Louisiana because California has set the pace and the standard in the past and could so again.

Mr. Roth suggested the creation of a committee to look into the problem.

Mr. Morris stated he felt that general market conditions dictated the price of everything and although Mr. Zopf stated two companies did 90% of the pretreatments in Northern California he felt that was their right. He then asked who would get the complaints if those companies were not doing their job?

Randy Zopf stated no one would, the only complaint to come would be if there were a re-infestation within the five-year warranty period, at which time the company would be called back to retreat the area.

Kevin Etheridge said that Randy's point was if a company wanted to go out and lose money on a job that was their right, but when a company continues to sustain a loss and stays in business at the same time there was something amiss.

Mr. Trongo commented the problem was there is no policy in California to stop companies from going out and pre-treating with water instead of chemicals. He felt it was a problem and thought the Board should take a look at those companies who go out and treat for less than what the chemical alone costs.

Mr. Patzer stated the problem came under pesticide use enforcement and the problem with pretreatment applications was they were usually done in the mornings or evenings when

regulatory agencies had no staff in service, and there were no pre-notification requirements. Substantial consumer complaints in regards to pre-treatment violations were not received because companies issued warranties and for the very few there might be a problem with, the company went out and took care of it. Also, without notification requirements it would be hard to know when and where to go out and observe.

Mr. Roth stated he didn't feel the presenters were asking the Board to get involved with price control, but were stating if there were pre-notification requirements it would give specialists the opportunity to go out to the site and make sure undiluted chemicals, water or anything else improper was not being done. Although not every spot could be watched, industry would be on notice that at any time they could be monitored, and without giving notification they would be at a site unlawfully. He felt the subject matter was very pro-consumer.

Jerry Parsons, Roseville Termite, stated he got the impression from Mr. Patzer that as long as the five-year warranty was given, companies had a green light to do the service as they wished.

Mr. Roth replied that the position of the Board was to have the job done correctly in the first place, because even with a warranty the company could go out of business.

Terry Clark, Clark Pest Control, stated he wanted to thank Randy for bringing the issue up. He said he had received a call from a contractor offering him $750,000 just providing paperwork and not doing the actual pesticide application. The contractor said he would never want to see him on the job site and this would be their only contact. Clark suggested soil sampling as a great way to monitor the site.

Kevin Etheridge stated he wanted to go on record as being adamantly against pre-notification. He said it gives the operators who are trying to comply just one more hoop to jump through, one more overhead cost to go through, and the people who are not complying now by not filing inspections and completions would skate because if they don't file the paperwork there is no way to know they've done the work.

Mr. Roth asked if there were other solutions to the problem.

Kevin Etheridge replied yes.

Mr. Traum moved and Mr. Trongo seconded to establish a committee to look into the issue of pretreatment. Passed unanimously.

Mr. Trongo asked that Randy Zopf and Kevin Etheridge be on the committee.

Mr. Morris asked when there were specific issues if any member of the Contractors State Licensing Board could be invited to help answer questions.

XI. CONTINUING EDUCATION COMMITTEE REPPORT

Mr. Patzer gave a brief report and then stated that on April 15, 2003 there would be another meeting after which Doug Carver, Chairman, would formulate a complete presentation with the committee's recommendations to the Board and then gave the Board members a brief rundown of discussions of the committee.

Mr. Roth commented he felt the new questions were better than the old ones on the revised Evaluation Card Form No. 43M-38, but there was one missing question from the old card he liked: "Would you recommend this course to others?" He asked if there was room on the updated card to add that question. He stated he was concerned that if 1953(g) was deleted in its entirety, companies could use educational sessions for marketing purposes, and he wanted the committee to address that issue.

Mr. Trongo said his problem with deleting 1953(g) was the part that read: "normal part of in-house staff or employee training" because he felt this was what they were after when it was first drafted in the regulation. He felt if something was part of in-house training it should not be approved as continuing education.

Ms. Okuma asked that the questions on the Evaluation Card Form No. 43M-38 be made into statements.

John Van Hooser, Ultratech Division, mentioned that the motion made at the January 29, 2003 meeting to: "require that all non-group activities require a written examination be administered at the end of the course" had failed.

XII. TECHNICAL TERMITE BAIT STATION COMMITTEE REPORT

Tom Murray reported on the Technical Termite Bait Station Committee meetings and stated he wished to submit the following language to the Board members for approval to notice for a public hearing:

> When a termite baiting system contract is terminated, any toxicant, excluding liquid termiticides, used to modify, change or eliminate the behavior and existence of termites, shall be removed from the property.

He commented that this meant when the contract was over, the bait would be removed, but not the devices the bait was in as some companies sold them to the consumer or removed them on their own.

Mr. Chang asked for the reason to take out the toxicant.

Tom Murray replied it had been brought up that if a bait station was abandoned, someone could be harmed if it was broken into.

Mr. Traum asked to insert the word 'control' in the language after the word modify.

Mr. Patzer asked if the termite baiting system labels, such as Recruit, FMC or any others registered in California, had been looked at to ascertain if they required removal after

service or not, as ultimately the label would be the law in regards to termiticide or baiting applications.

Tom Murray replied the committee did not discuss the labels at the meeting.

Mr. Roth asked if there were any other cases where an operator would be required to take something from a home once they were finished.

Ms. Okuma replied there were other types of pest control devices used.

Mr. Roth asked for Don Chang's input into the need for adopting this language into regulation.

Mr. Chang replied he did not really have an opinion. He said it could be possible that a child might pop the station open and stick their finger in it, and that this scenario would be more likely than with some of the other pest control applications.

Mr. Sesay moved and Mr. Traum seconded to authorize staff to modify the proposal by inserting the word "control" after the word "modify" and make the modification available for rule-making as follows:

> When a termite baiting system contract is terminated, any toxicant, excluding liquid termiticides, used to modify, control, change or eliminate the behavior and existence of termites, shall be removed from the property.
>
> Passed unanimously.

Tom Murray continued with his report on the March 13, 2003 Technical Termite Baits Committee Meeting by submitting the following language for approval to the Board:

> "Structural pest control applicator" is any individual who is licensed by the board to identify infestations or infections for the purpose of treatment, to apply a pesticide, rodenticide, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pest or organisms included in Branch 2 or Branch 3 on behalf of a registered company.

He reported the way to accomplish the intention of the recommendation was to change 8507.1(a). The proposed language was for the purpose of allowing a Branch 3 applicator to change the monitoring material to the baiting termiticide matrix material inside an in-ground device. It did not allow the applicator to identify termites for the purposes of writing a report; and was strictly for the purposes of treatment as there was an existing report of findings and recommendations the applicator was already following. The committee believed this did not harm the consumer because it allowed for only one disturbance of the termites in the device. Passing this language would provide for immediate treatment; with less cost to the consumer by eliminating additional trips to the home, and even if the in-ground devices have their monitoring material changed out to bait material the consumer is still not harmed because the material is in a closed container device, unlike bait liquid material that could be

misapplied. Tom requested that if the recommendation was unacceptable to the Board members, to let the committee members know what was wrong with it.

Mr. Trongo asked Ms. Okuma if an applicator is licensed to identify wood-destroying pests and organisms.

Ms. Okuma replied no.

Mr. Trongo replied he had mixed emotions about the language and did not feel it appropriate to state an applicator is licensed to identify infestations and infections. He did not believe the act stated it that way and said if he were a field representative he would be upset. He had no problem with what the committee was trying to do but had a problem with the wording. He suggested that taking out the definition of an applicator might help.

Mr. Chang restated the concern was that now a field representative has to go out and check the bait station for hits and the proposed language would extend its scope to allow an applicator to do that limited identification as to whether or not there is a hit at just that bait station. He suggested slightly extending the scope of the applicator to allow identification limited to just bait stations.

Mr. Morris asked if the purpose of the language was to try to help the consumer with expenses.

Tom Murray replied he would certainly charge less money.

Mr. Morris asked if giving the applicator identifying responsibility as opposed to the inspector, who is more experienced, would be compromising the quality of the work.

Tom Murray reported he didn't believe so and said the committee merely wanted to expand the scope of an applicator duty to be able to switch monitoring material to baiting material.

Mr. Roth stated it was his sense to send this language back to the committee.

Steve Fleming, Dow AgroSciences, stated the language was strictly for the sake of treatment and it was not the committee's intention to diminish the value of the field representative license by having an applicator be able to identify a termite, a cockroach or an ant. All this language was intended to do was to allow the applicator, when he opens the bait stations and sees evidence of termites and active infestation, to apply bait.

Ed Ackerman, Able Exterminators, Inc., stated that if the Board was going to consider allowing the applicator to identify insects they should also consider making identification part of the applicators exam to make sure they know what it is they are looking at.

Mr. Traum said a field representative job was to inspect and determine what infestations or infections were there for the purpose of control or treatment and he felt that was what was being suggested the applicator could do the same, which was way beyond the scope of their responsibility.

Mr. Traum moved and Ms. Melton seconded to send the language back to the committee.

Passed unanimously.

XIII. PROPOSED COMPLAINT DISCLOSURE REGULATION

Ms. Okuma stated that at the last Board meeting the Board members had moved to amend the Board's existing complaint policy to conform to the Department of Consumer Affairs' complaint disclosure policy. The draft language of the complaint disclosure regulation was in the Board member's packets for approval to notice for public hearing.

Mr. Traum stated he had a problem with section 1923(C) because he felt "a probable violation" was subjective to the person who is reading the information.

Mr. Chang responded that probable violation meant: everything has been reviewed by the staff and fully investigated, the findings had been given to the Registrar, who reviewed it and thought there was enough evidence to send to the Attorney General's Office for prosecution.

Ms. Okuma said it was important to realize that the case will be referred, not may be referred for legal action, so at the point it is disclosed, the Board knows the case is being sent to the Attorney General's office.

Mr. Sesay moved and Mr. Traum seconded to direct staff to notice the complaint disclosure policy language for public hearing. Passed by majority (Aye – Melton, Morris, Roth, Sesay, Traum. Abstain – Trongo).

XIV. EXTENSTION FOR ENFORCEMENT OF USE OF THE REVISED INSPECTION REPORT FORM AND NOTICE OF WORK COMPLETED

Mr. Roth explained that the Board was being asked to extend the required use date of the revised Wood Destroying Pests and Organisms Inspection Report and Notice of Work Completed and Not Completed forms.

Mr. Patzer reported that he had surveyed the Board's certified vendors that present WDO activity reports to the Board. Six of the seven vendors were up and running already or would be this month. Some were in the alpha testing phase and said they would be up and on-line on or before July 1, 2003. He spoke with two non-certified vendors with programs that rely on the Board's WDO Activity Report program who stated they were already up to speed and had issued programs to their licensees. He called the seven top filers with the Board and asked if they were having difficulties with the implementation phase and their representatives stated they would be up and on line July 1, 2003. Based on these findings, his recommendation to the Board would be to not grant an extension for the deadline date on use of the new forms.

Harvey Logan, Pest Control Operators of California (PCOC), pursuant to Mr. Roth's request at the meeting in San Diego, commented he had presented a form to the Board, which would help people in the industry in filling out the new forms. There were two examples and instructions on how to go about formatting the report.

Mr. Roth commended PCOC for having completed the project so quickly. He thought it was a good idea and was glad it had been done.

Mr. Traum moved and Mr. Morris seconded to not delay enforcement on use of the revised Wood Destroying Pests and Organisms Inspection Report and Notice of Work Completed and Not Completed forms beginning July 1, 2003. Passed unanimously.

XV. PROPOSED AMENDMENT TO SECTION 1996.1 TO ADDRESS POSTING ALTERNATIVE METHODS OF TREATMENT

Mr. Roth stated that California Code of Regulations section 1996.1 requires the posting of a completion tag in the structure whenever a registered company completes any work with respect to wood-destroying pests and organisms, and it must state the name of any chemical used. Mr. Traum requested the Board consider an amendment to this section to have the tag include all other methods of treatment.

Mr. Traum continued he wanted additional information on the completion tags because there were many different alternative methods on the market; thermagation, electro gun, microwave system. Currently section 1996.1(b) specifies the "name of any chemical used," so if any alternative method is used, technically, the company is not required to post a completion tag so a new company would be unaware of treatment. He recommended sending his request to the Rules and Regulations Committee.

Ms. Okuma stated she would like to clarify that the way the regulation was currently written, a completion tag would still have to be posted although it did not have to disclose what type of treatment was used. She said amending the section could be done as simply as adding in the words "and method of treatment" after the words "name of any chemical used."

Mr. Chang asked for more clarification on changing the regulation. He realized the need for disclosing what chemicals were used but was unclear why alternative methods should be disclosed.

Mr. Traum responded that at this time a company could complete a whole house treatment using thermagation and not post what was performed, when the intent of the completion tag is to notify the next company coming in for the next inspection what was done.

Ed Ackerman, Able Exterminators, Inc., stated that once the company removes or masks over all the evidence it won't make any difference if the tag says it was treated once before or even two years before.

Mr. Trongo moved and Mr. Traum seconded to direct staff to notice for public hearing the amendment of section 1996.1(b) as follows:

§1996.1. Inspection and Completion Tags.
(b) If the registered company completes any work with respect to wood-destroying pests or organisms, it shall post a completion tag next to the inspection tag. The completion tag shall be not less than 3" by 5" and shall contain the firm's name, date of completion and name of any chemical used or method(s) of treatment.

Passed unanimously.

XVI. BOARD MEETING CALENDAR

The Board Meeting in July was changed to July 17 and 18, 2003 in Sacramento. The following meeting will be held October 23 and 24, 2003 in Riverside.

XVII. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

As there were no public comments, Mr. Roth adjourned the meeting at 1:15M.

_____ _____
MICHAEL ROTH, President KELLI OKUMA, Registrar

_____
DATE