MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
APRIL 22 AND 23, 2004

The meeting was held on Thursday and Friday, April 22 and 23, 2004, at The Bristol Hotel, 1055 First Street, San Diego, California, commencing at 2:50 PM with the following members constituting a quorum:

Jean Melton, President
Michael Roth, Vice President (April 23, 2004 only)
Cris Arzate
Bill Morris
Mustapha Sesay

Board member Ken Trongo was not present

Board staff present:

Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Barbara Howe, Licensing

Departmental staff present:

Donald Chang, Legal Counsel
Kurt Heppler, Legal Counsel

I. ROLL CALL

Ms. Saylor read the roll call.

II. REINSTATEMENT HEARINGS

The Board sat with Administrative Law Judge Steven V. Adler and Deputy Attorney General Ronald A. Casino to hear the Petitions for Reinstatement of Mauala Joseph King, Operator's License No. 7836, represented by Attorney Thomas A. Goeltz, and Walter Moorer, Field Representative's License No. 29496. The petitioners were informed they would be notified by mail of the Board's decision.

III. CLOSED SESSION

Ms. Melton moved and Mr. Sesay seconded to approve the Closed Session Minutes of January 23, 2004. Passed unanimously. The Board then adjourned to closed session to consider proposed disciplinary actions in accordance with subdivision (c)(3) of Section 11126 of the Government Code.

The meeting recessed at 5:10 PM.

The meeting reconvened at 9:03 AM on Friday, April 23, 2004.

IV. FLAG SALUTE

Ms. Melton led the flag salute. She thanked members of the audience for attending the meeting and introduced the Board's newest Board Member, Mr. Chris Arzate.

Ms. Okuma introduced the newly appointed Director of the Department of Consumer Affairs, Ms. Charlene Zettel. Ms. Zettel thanked Ms. Okuma and the Board Members, commenting that she was happy to be able to attend the Board's meeting. She said the agency gave thanks to each Board Member for their public service in meeting the needs of consumers and in their work with the industry to provide the best standards of care. She and the agency stood ready to support the Board Members in their needs and were looking forward to working with them in the future. She thanked the audience members for their attendance, for participation in their government, and for working with the Board, and she looked forward to hearing their concerns.

V. PUBLIC HEARING TO AMEND SECTION 1950 TO ESTABLISH THE NUMBER OF CONTINUING EDUCATION HOURS AND COURSES NEEDED TO RENEW A FIELD REPRESENTATIVE AND OPERATOR LICENSE, AMEND SECTION 1950.5 TO SPECIFY THE MAXIMUM HOURS EARNED THROUGH IN-HOUSE TRAINING, PASSING SCORE AND CONDITIONS FOR RE-EXAMINATION, AMEND SECTION 1951 TO SPECIFY THE RATING ON THE PASSING SCORE, AMEND SECTION 1953 TO REVISE THE COURSE EVALUATION METHOD AND ALLOW NORMAL IN-HOUSE TRAINING FOR CREDIT, ADOPT SECTION 1922.3 TO ESTABLISH GUIDELINES AND PROCEDURES FOR COURSES REQUIRED PER A NOTICE OF VIOLATION, AND ADOPT SECTION 1993.1 TO REQUIRE SPECIFIC REINSPECTION LANGUAGE ON INSPECTION REPORTS

Mr. Chang announced for the record that the date was April 23, 2004, the time was 9:08 AM and the meeting was being held in San Diego. 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 1950, 1950.5, 1951, 1953, 1922.3 and 1993.1 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 for the record, which was being made by tape recorder. All oral testimony or documentary evidence would be considered by the Board pursuant to the requirements of the Administrative Procedures Act before the Board formally adopted the proposed amendment to the regulations, or recommended changes that may evolve as a result of the hearing.

Mr. Chang announced that if any interested person desired to provide oral testimony, it would be appreciated if he or she stood or came forward, giving their name, address and name of any organization they represented, for a complete record of all those who appear. He stated it was the desire of the Board that the record of the hearing be clear and intelligible and the hearing itself be orderly, thus providing all parties with fair and ample opportunity to be heard. After all interested parties have been heard, the issue would stand submitted. He then asked if there were any questions concerning the nature of the proceedings or the procedures to be followed.

Mr. Chang asked the audience if there were any questions concerning the nature of the proceedings or the procedures to be followed in today's Public Hearing. As there were none, he opened the hearing to the public for oral testimony and/or documentary evidence.

Proposed Amendment of Regulation Section 1950

Mr. Chang stated that under existing regulations a field representative or an operator were required to complete 16 hours of continuing education (CE) if licensed in one branch, 20 hours of CE if licensed in two branches and 24 hours of CE if licensed in three branches. This proposal would increase the CE requirements to require a field representative and an operator to complete 20 hours of CE if licensed in one branch, 24 hours of CE if licensed in two branches and 28 hours of CE if licensed in three branches. In addition to currently requiring a licensee to complete at least eight hours of CE in laws relevant to the Structural Pest Control Act, the amendment would also require a field representative and operator to complete four hours of CE in ethics. Mr. Chang then asked for comments from the public.

Larry Musgrove, Vice President of Company Affairs, Western Exterminator Company, commented that:

- It was Western Exterminator Company's feeling that proposing the teaching of ethics or honesty to people through classes was a stretch and an unnecessary burden to require four more hours of continuing education for that purpose. He stated that people with poor character or dishonest qualities were not going to change their behavior because of a required ethics class. He reiterated that the very purpose of the Board was to protect consumers, which can also be used as a mechanism to step in and take care of the people who are not honest or ethical in their practices in the industry. Mr. Musgrove further urged the Board members to think hard and long about adding an additional four hours of educational ethics training to the CE requirements already in place. He stated that although four hours did not sound like much, in Western Exterminator Company's

case (at approximately 700 licensees) it would cost roughly $57,000 in lost productivity to have everyone meet that new requirement. He further commented that Western Exterminator Company had just finished going through a Worker's Compensation increase, along with other companies, and that another educational expense such as this proposal could cost the industry a million dollars a year in additional costs, calculated at $60 an hour times the total number of licensees. He urged the Board members to vote against the proposal and put it to rest. He stated he was not talking against ethics or honesty, reiterated he believed strongly in the Board's ability to protect consumers from dishonest licensees, and that the proposed amendment was a reach and an unnecessary burden.

Billy Gaither, Olde Town Pest Control, commented that:

- He agreed with Mr. Musgrove. He commented there were several different providers for continuing education and in-house programs. He wondered who would set the standards for what is to be taught and not withstanding anybody in the room, wondered who would be ethical enough to teach these suggested ethics courses.

Darrell Ennes, Terminix International, commented that:

- He concurred with both Mr. Musgrove and Mr. Gaither. He continued that if he thought an ethics class would actually teach someone ethics and make the industry more ethical, he would be all for having attendance at eight or even ten hours. But he did not think that anyone, by simply attending a four-hour course, would necessarily have ethics taught to them and be able to use it in their everyday lives. He stated there was an increase in hours of somewhere around 25% and a cost factor which would involve his company also. He felt that when someone tried to regulate ethics it was kind of like trying to regulate morality. Ethics was a matter or character, one either had it or they didn't. It was something developed at an early age and sometimes further on, but he did not necessarily believe a four-hour class every three years would have the positive impact the Board was searching for.

Proposed Amendment of Regulation Section 1950.5

Mr. Chang stated that existing regulations specify how approved CE courses are to be conducted. The regulations currently allow up to six hours of CE credit be granted for activities such as teaching CE courses and publishing technical articles, and allow attendance at a Board Meeting two hours of CE credit, up to a maximum of six hours. This proposal would delete the granting of CE credit for equivalent activities such as teaching CE or publishing technical articles and would reduce the total number of CE credit granted for attending a Board Meeting from six to four hours. Mr. Chang then asked for comments from the public.

John Van Hooser, Van Hooser Enterprises, commented that:

- He was in favor of the proposal because under the present structure, the pre-operator classes he conducts as correspondence courses were not required to have an

examination, and some of the in-house classes on technical and rules also were not required to have an examination.

Proposed Amendment of Regulation Section 1951

Mr. Chang stated that existing regulations allow a Board licensee to qualify for license renewal by completing an examination and obtaining a score of at least 70% in lieu of taking CE courses. This proposal would clarify that the licensee must obtain a score on the challenge examination of 70% or higher. Mr. Chang then asked for comments from the public.

There were no public comments.

Proposed Amendment of Regulation Section 1953

Mr. Chang stated that existing regulations specify the requirement and procedures the CE provider must follow in order to obtain Board approval. This proposal would clarify the information that is to be contained in a proposed CE course syllabus and specify that the CE course provider must provide postage for its participants' evaluation of their course. Mr. Chang then asked for comments from the public.

John Van Hooser, Van Hooser Enterprises, commented that:

- He was in favor of the proposal and felt it would be beneficial because currently there were only blind evaluations where people take their examination and then send their comments to the Board, without having to go through the provider or the instructor. He felt this would benefit correspondence courses also, as they would now be required to comply with the regulation and could find out the real truth about their classes.

Proposed Adoption of Regulation Section 1922.3

Mr. Chang stated that existing law authorizes the Board or County Agricultural Commissioners to issue licensees a citation, suspension, administrative fine or direct the licensee to pass a Board-approved course when the licensee has violated any law relating to pesticides. This regulatory proposal would specify the procedure to be followed when the Board or County Agricultural Commissioner orders a licensee to complete a Board-approved CE course. Mr. Chang then asked for comments from the public.

John Van Hooser, Van Hooser Enterprises, commented that:

- He was in favor of the proposal. His only question was if the Board would interpret this as a Board-approved CE class, i.e., would it be possible for that licensee to then obtain credit for their license renewal after taking a Board-approved class pursuant to disciplinary action.

Larry Musgrove, Vice President of Company Affairs, Western Exterminator Company, commented that:

- Western Exterminator Company was in favor of the proposal. Western Exterminator Company wants the Agricultural Commissioners Office to feel comfortable with and work on the Board's behalf and therefore urged Board support of this proposal.

Proposed Adoption of Regulation Section 1993.1

Mr. Chang stated that existing law provides that where a Structural Pest Control Company has performed an inspection and prepares a report thereon, a re-inspection of the items listed on the original report will be performed and completed within ten (10) days after a re-inspection is ordered, if the request for re-inspection is made within four (4) months from the original inspection. This regulatory proposal would require specified language regarding re-inspections be contained on all inspection reports. Mr. Chang then asked for comments from the public.

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.

Proposed Amendment of Regulation Section 1950

Mr. Morris commented that ethics was a valuable tool in training and as nebulous as it can be to try to teach ethics to someone he understood Mr. Musgrove's comments. However, it was the posture of a regulatory board to institute some form of ethics and he questioned Mr. Musgrove's comment that ethics regulation would cost Western Exterminator Company $57,000. He felt this was a lot of money but practically speaking, for a large company like Western Exterminator Company, he wondered what percentage it was in terms of debt in relation to the possibilities of what ethics training could give their licensees and company.

Mr. Musgrove responded that Mr. Morris' logic was almost the same as that used to garner Worker's Compensation premiums. He stated Western Exterminator was a large company and could handle the increase, but the company had been handling a little bit more lately on everything, including rising fuel costs. He said California businesses did not have a machine printing more money in the back room and that Western had to earn every dollar, with a lot of debt to take care of, just like every other business in California. His company serviced a lot of people's needs, including employee's insurance, and this was yet another cost burden to add to the rest. Ultimately, he stated, as with any cost burden, the cost of the product being provided to the consumer rose commensurately. He understood some of the Board Members felt strongly about ethics training and suggested to instead incorporate ethics training into the required general point hours a licensee could now pick at random.

Mr. Morris commented that from a personal point of view he was in the same business position; but in terms of his position as a Board Member, his overall concern had to be that of the consumers of California.

Mr. Musgrove asked the Board to look at the amount of licensees and what percentage were the bad eggs. He commented because there happened to be some bad operators right now, which the Board Members were responsible to either eliminate or at least penalize, the industry had to pay. He said the Board Members were here to take care of those bad apples, to punish them, to extract fines from them or to take their license away. He wholeheartedly believed in the Board Member's charge to the consumers of the State of California to not allow bad licensees to perform any type of work in the state, so when a licensee was found to be dishonest or unethical, the Board's responsibility was to remove them, as industry did not want them working in the state either.

Mr. Morris asked to hear suggestions and other possibilities on how to approach ethics without putting a serious financial burden on the industry.

Mr. Sesay asked that Mr. Musgrove not view ethics training as punishment. He commented the vice-president of Boeing had made a deal with a lady who was working with the government that she would be hired after her service with the government ended. Boeing got into trouble for this and the whole company down to the maintenance people who had nothing to do with that promise were all required to take ethics classes.

Mr. Musgrove replied that talking about ethics was warm and fuzzy and everyone wanted to support it, but it was necessary to be logical and business-like. He asked what the criteria would be to teach the ethics, who would teach it, would a minister be hired or would industry's present providers provide such training. He commented that if everyone thought the pest control world would not survive without some type of ethics training, why not compromise and incorporate ethics into the existing total number of hours already required for renewal, as this would eliminate the financial impact and the only change would be of criteria in some of the hours already required for licensure.

Mr. Morris felt Mr. Musgrove's idea would be a reliable compromise and questioned if two general hours were used for ethics, did Mr. Musgrove think that would have an adverse effect in terms of continuing education hours on the industry, yes or no.

Mr. Musgrove replied, "personally, no."

Mr. Roth commented he was somewhat skeptical about Mr. Musgrove's presentation because when this issue was reviewed in the past his argument was "people were either ethical or not ethical and you can't teach them," which Mr. Roth did not personally agree with. Mr. Musgrove had no argument about money previously, so Mr. Roth felt that because he did not win that previous argument he was today bringing up a money argument. Mr. Roth was also in disagreement with the fact that a multi-million dollar industry could not afford for its licensees to have four hours of ethics training. However, he would look to the industry members on the Board to ask, "Have we been requiring too much continuing education?" Because Mr. Musgrove is saying now that education in the mechanics of business should be reduced and replaced with training in ethics. Mr. Roth said he would consider today's argument if he was comfortable with the notion too much education has been required, although in his three years on the Board he had never heard

anyone state there were too many continuing education requirements. Mr. Roth reiterated he felt this argument was only because industry members wanted to avoid taking ethics classes.

Mr. Musgrove responded there was a difference in extending hours from those currently required. He found no fault in the technical hours required. Some of the general point hours, he felt, were just helter-skelter. For instance, one general hour could be satisfied through attendance at a meeting with a guest speaker, on any pest control topic. He was asking to make these hours more meaningful and to replace them with ethics. He was not suggesting there were too many hours; he was saying industry did not need more hours.

Mr. Roth responded that although one of the items in the Strategic Plan dealt with making sure the Board was sensitive to the needs of the industry, he was not certain the Board would be satisfying its job for the public by compromising each and every time there was economic impact. He reiterated he was not convinced the ethics issue equated to a large economic impact and said he thought he heard Mr. Musgrove saying there were too many educational requirements.

Mr. Musgrove replied he did not say there were too many educational requirements nor did he find fault with the number of hours required, but that in the general points, which are not specific, there was room to add the ethics requirements the Board wanted.

Mr. Roth asked why there were general requirements if there could be so easily done away with.

Mr. Musgrove replied they ensured people went to meetings, met with their colleagues and became aware of the direction of state of the art industry. He felt continuing education was a good thing as it forced licensees to go out, attend meetings, and find out where pest control was headed.

Mr. Roth asked if there would be any problem with all of a sudden four hours of general points now being in ethics.

Mr. Musgrove restated he was against the teaching of ethics period and did not think an ethics class could change character. He wondered who would be the wise person who could bring good character to the bad character person.

Mr. Arzate asked how a company such as Western Exterminator Company communicated to its employees regarding the issue of bad apples and what would be done.

Mr. Musgrove responded the special thing about private industry was that if there was a bad apple you could dismiss them or put them on warning and then dismiss them, depending upon the egregiousness of the act they committed. Western was just like any other company and could not afford to have employees, both from a customer and a liability standpoint, who were dishonest. He understood in state government it was really hard to get rid of employees, as they tended to stay forever, good or bad. But in private business a

company could fire people not of good character. He stated he was trying to make the argument that a dishonest, bad employee could not be changed but could be taken out of circulation by the Board members. The Board could take away their license; they could fine them; they could penalize them. Just sending that bad licensee to an ethics class, however, he did not feel would change their fundamental make-up or character or turn them into an honest person.

Mr. Morris commented he respected Mr. Musgrove's opinion very highly and agreed with his argument that ethics cannot be taught. However, he felt the most important thing was a message from the Board and the State of California, whose primary responsibility was protection of the consumer, so he felt that ethics classes would hold a lot of weight.

Mr. Musgrove commented that the Board members were the church, they were morality, they were ethics, and the best point they could make would be to have a pro-active enforcement program. The Board was falling down when things took too long to get resolved and people were continuing to be hoodwinked by dishonest and unethical licensees. He felt the Board needed to be the sharpest Consumer Affairs Board in the state in the sense that when there was a consumer problem the Board was on it, and if there was unethical practice and dishonesty, then the Board Members fined the licensee or took their license away. That would be a message. If the Board wanted to impress the industry, A-1 enforcement and swift justice would make the day, not a required ethics class.

Mr. Roth asked Mr. Chang if other Boards required ethics training.

Mr. Chang replied most did not. There were a few in the healing arts and counseling areas such as Behavioral Sciences or Psychology where ethics training addressed the issues of client and practitioner relative to boundaries that cannot be crossed, usually in an area where a practitioner could establish some sort of dependency relationship with the patient or client.

Mr. Roth asked for Mr. Chang's thoughts on the issue.

Mr. Chang replied it was his personal opinion there was merit to both sides. Ethics was something you could reasonably expect a licensee to have, but on the other hand it was difficult to teach. However, he was not sure this was the sort of profession where that type of ethical requirement was needed because there was no dependency relationship. If dishonesty was occurring, the employer had the right to say, "I'm going to cut this guy loose" and cut his liability. He appreciated the thought but was not sure how effective it would be.

Mr. Roth asked about compromising with one hour of ethics and then test running it to see how it would work. It would be lower cost and industry would still get the message that ethics is important.

Ms. Melton stated it was her opinion the Board should take two hours of the general CE classes and swap them with ethics. She said she agreed with Mr. Musgrove that one could

not teach another person ethics or how to be honest. However, she did feel it was important to give boundaries and guidelines because those would keep the honest people honest and help prevent the bad apple from influencing the honest person. She felt it was necessary to have ethics training, although she did feel that a dishonest person would always be a dishonest person. She then suggested having the trainers trained by a trainer who already teaches ethics.

Mr. Roth commented he did not understand how twice before the Board had unanimously voted for ethics training and now today there was an epiphany this was not a good idea.

Mr. Musgrove responded the industry cared about ethics and honesty, but that four hours of training in ethics in addition to other training requirements was not the right way to go.

Mr. Roth stated if there was to be a compromise he would rather keep the continuing education hours as is and add one hour of ethics. That compromise would not cut back on the hours that anyone, until today, commented there were too many of.

Mr. Morris asked for comments from Mr. John Van Hooser.

Mr. Van Hooser agreed ethics could not be taught to a dishonest person. His problem with the ethics class was when it is required as a condition of probation, and there are no course offerings. He felt if it was instituted, it should be available to everybody at a reasonable cost. He did not feel 20 hours was excessive over a three-year period as QAL (Qualified Applicator License) licensees had to have 20 hours in two years.

Mr. Morris asked if the 16 hours were stayed, would two hours dedicated to ethics make any sense in terms of sending a message to the industry, and what the Board wanted from the industry, regarding good quality people.

Mr. Van Hooser stated that if something was done like that it could be revisited in two years or four years and judged at that time for impact.

> Ms. Melton moved and Mr. Sesay seconded to table the issue until the next meeting and in the meantime seek out a trainer for the training. Passed unanimously.

<u>Proposed Amendment of Regulation Section 1950.5</u>

Mr. Chang explained to the Board that in reviewing the Statement of Reasons for this proposed amendment to the regulations he felt they were a bit thin. He recommended going back and attaching more documentation to justify the proposal, supplementing the file and then re-noticing to the public.

> Mr. Sesay moved and Mr. Arzate seconded to authorize staff to supplement the rule-making file with respect to justification, make the modification available for a 15-day public comment period, and delegate authority to the registrar to adopt the proposed regulation amendment as follows, provided there are no adverse public comments:

§1950.5. Hour Value System.

The following hour values shall be assigned to the educational activities approved by the Board. All educational activities must be submitted to the Board for approval before presentation for continuing education credit, in accordance with section 1953. Each activity approved for technical or rules and regulations continuing education hours must include a written examination to be administered at the end of the course. Examinations administered at the end of the course must consist of ten questions per one hour of instruction, with 40 questions minimum for any activity of instruction of four hours or more. Licensees must obtain a passing score of 70% or better in order to obtain a certificate of course completion. If the examination is failed, the licensee shall be allowed to be reexamined by taking a different examination within sixty days.

(a) Accredited college courses - 10 hours for each 2 semester-unit course; 16 hours for each 3 semester-unit course.

(b) Adult education courses - 6 hours

(c) Professional seminars or meetings - up to a maximum of 6 hours per seminar or meeting. Additional hours may be approved depending on the complexity of the activity and its relevance to new developments in the field of pest control.

(d) Technical seminars or meetings - up to a maximum of 6 hours per seminar or meeting. Additional hours may be approved depending on the complexity of the activity and its relevance to new developments in the field of pest control. ~~Each approved technical seminar or meeting must include an examination to be administered at the end of the course. Licensees must obtain a passing score of 70% or better in order to obtain a certificate of course completion. If the examination is failed, the licensee shall be allowed to be reexamined by taking a different examination within sixty days.~~

(e) Operators' courses approved by the Board pursuant to section 8565.5 of the code - 1 hour per hour of instruction.

(f) Correspondence courses developed by the Board pursuant to section 8565.5 of the code - full credit per branch.

(g) Correspondence courses approved by the Board - hours will be assigned depending on the complexity of the course and its relevance to new developments in the field of pest control.

~~(h) Equivalent activities, including teaching approved courses and publishing technical articles - 1 to 6 hours per activity, depending on the complexity of the activity and its relevance to new developments in the field of pest control.~~

~~(i)~~(h) Association meetings - 1 hour for every hour of instruction up to a maximum of 4 hours per meeting.

~~(j)~~(i) Structural Pest Control Board meetings – **1 general hour and 1 rule and regulation hour** ~~**2 hours**~~ per meeting, up to a maximum of ~~6~~ 4 hours per renewal period (excluding Board Members.) **This activity is exempt from examination requirements pursuant to this section.**

~~(k)~~(j) Structural Pest Control Board Committee meetings - 1 hour per meeting, up to a maximum of 2 hours per renewal period (excluding Board Members).

~~(l)~~(k) In-house training in technical subjects - 1 hour per hour of instruction.

~~(m)~~(l) Board approved Rules and Regulations courses - 1 hour for every hour of instruction. ~~Each approved activity must include an examination to be administered at the~~

~~end of the course. Licensees must obtain a passing score of 70% or better in order to obtain a certificate of course completion. If the examination is failed, the licensee shall be allowed to be reexamined by taking a different examination within sixty days.~~

NOTE:
The Bold underlined language represents proposed language voted on at the January 22, 2004 Board meeting. The other underlined language represents proposed language voted on by the Board at the October 17, 2003 Board meeting.

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 8560 and 8593, Business and Professions Code

Passed unanimously.

Proposed Amendment of Regulation Section 1951

Mr. Chang explained to the Board that in reviewing the Statement of Reasons for this proposed amendment to the regulations he felt they were a bit thin. He recommended going back and attaching more documentation to justify the proposal, supplementing the file and then re-noticing to the public.

Mr. Arzate moved and Mr. Morris seconded to authorize staff to supplement the rule-making file with respect to justification, make the modification available for a 15-day public comment period, and delegate authority to the registrar to adopt the proposed regulation amendment as follows, provided there are no adverse public comments:

§1951. Examination in Lieu of Continuing Education.
In lieu of continuing education, a licensee ~~licensed operator or field representative~~ may qualify for renewal by taking and passing an examination designed by the Board to cover developments in the field of pest control. Licensees ~~Licensed operators or field representatives~~ who choose this method of qualifying for renewal may take this examination only once, and must take the examination no earlier than one year prior to their license expiration date. A score of 70% or higher shall be considered a passing grade on this examination.

NOTE: Authority cited: Sections 8525, Business and Professions Code. Reference: Sections 8560 (c) and 8593, Business and Professions Code.

Passed unanimously.

Proposed Amendment of Regulation Section 1953

Mr. Chang explained to the Board that in reviewing the Statement of Reasons for this proposed amendment to the regulations he felt they were a bit thin. He recommended going back and attaching more documentation to justify the proposal, supplementing the file and then re-noticing the public.

Mr. Morris moved and Mr. Arzate seconded to authorize staff to supplement the rule-making file with respect to justification, make the modification available for a 15-day public comment period, and delegate authority to the registrar to adopt the proposed regulation amendment as follows, provided there are no adverse public comments:

§1953. Approval of Activities.

(a) Providers of activities of continuing education in pest control shall request approval as a provider and of activities on forms provided by the Board (See Form 43M-18 (Rev. 3/87) at the end of this section) accompanied by the required fees. Requests for approval of activities must be submitted to the Board no later than 60 days prior to presentation of the activity unless exception is granted by the Registrar.

(b) All providers must notify the Board 30 days prior to the presentation of any board approved activity, unless exception is granted by the Registrar.

(c) All providers must submit a course attendance roster (See Form No. 43M-46(New 3/93) at the end of this section) to the Structural Pest Control Board within five working days after every course instructed.

(d) After giving the provider a written notice and an opportunity to respond, the Board may withdraw approval of any activity, when good cause exists. Good cause shall include, but not be limited to, failure actually to meet the standards for approval of activities which are outlined in subsection (f) of this section.

(e) Unless otherwise indicated on the written notification of approval, or unless an approval is withdrawn by the Board at an earlier date, approval of each activity shall remain in effect for 3 years.

(f) In order to be approved, activities must be:

(1) Directly related to the field of structural pest control;

(2) Provided by an institution, association, university, or other entity assuming full responsibility over the course program;

(3) Composed of a formal program of learning which requires:

(A) attendance and participation~~, and which provides~~

(B) at least one hour of instruction~~,~~

(C) a syllabus (detailed outline of the main points of the curriculum)~~,~~

(D) an evaluation method on Form No. 43M-39 (~~NEW 5/87~~ Rev. 10/03), costs of postage which shall be incurred by the provider (which is printed at the end of this section),

(E) a certificate of completion on Form No. 43M-38 (NEW 5/87) (which is printed at the end of this section); and,

(4) Conducted by an instructor who has qualified by meeting two of the following experience requirements:

(A) Completion of training in the subject of the activity,

(B) Six months' experience working in the area covered by the activity within the preceding three years,

(C) Experience teaching a activity of similar content within the preceding five years,

(D) Completion of any post-secondary studies related to the subject matter of the activity,

(E) Author of the activity being reviewed, or a credentialed instructor.

(g) No activity which focuses on the policies~~,~~ or procedures ~~or products~~ of a single firm~~, or which consists of meetings which are a normal part of in-house staff or employee training~~ shall be approved.

STUDENT QUESTIONAIRE

The Structural Pest Control Board would like your feedback on the continuing education activity you have just taken. Please fill out this card and submit this evaluation form directly to the Structural Pest Control Board. Do not submit this form to the course provider.

Course No.

	Disagree – Strongly Agree				
	1	2	3	4	5
1. I learned something new during this course.					
2. Examination questions reflected the course materials.					
3. The provider covered the topic(s) adequately.					
4. The course meets your expectations.					

5. How could this course be improved?

Name (optional)

You may contact the Structural Pest Control Board by email, by going to our website: www.pestboard.ca.gov.

43M-39 (~~New 5/87~~ Rev. 10/03)

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Section 8593, Business and Professions Code

Passed unanimously.

Proposed Adoption of Regulation Section 1922.3

Mr. Chang explained to the Board that in reviewing the Statement of Reasons for this proposed adoption to the regulations he felt they were a bit thin. He recommended going back and attaching more documentation to justify the proposal, supplementing the file and then re-noticing to the public.

Mr. Sesay moved and Mr. Roth seconded to authorize staff to supplement the rule-making file with respect to justification, make the modification available for a 15-day public comment period, and delegate authority to the registrar to adopt the proposed regulation as follows, provided there are no adverse public comments:

1922.3 Course requirement by County Agricultural Commissioners.

(a) When, pursuant to Business and Professions Code section 8617, a lawful order is made by a county agricultural commissioner to direct a licensee to take and pass a board approved course of instruction, the licensee prior to taking the course shall submit the name of the course and documentation regarding its content to the same agricultural commissioner for review and approval.

(b) The submittal for approval shall be made within twenty (20) days of the order. The county agricultural commissioner shall make a decision and respond to the licensee within twenty (20) days.

(c) The course of instruction shall have content that directly addresses applicable pesticide use laws, regulations and the practice of structural pest control relating to the violations committed. After completion of the approved course, the licensee shall take and pass an examination provided by the course provider that directly relates to the course content. A passing score for the examination shall reflect that the licensee correctly answered at least seventy percent (70%) of the examination questions.

(d) After passing the examination, the licensee shall obtain a certificate of course completion from the course provider. As proof of compliance, the licensee shall submit the certificate to the county agricultural commission who issued the Notice of Proposed Action within twenty (20) days of course completion.

(e) The licensee must comply with the order within ninety (90) days. The commissioner shall have the discretion to extend this date up to one hundred eighty (180) days after issuance of the Notice of Proposed Action.

NOTE: Authority cited: Section 8525, Business and Professions Code
Reference: Sections 138, 680, Business and Professions Code.

Passed unanimously.

Proposed Adoption of Regulation Section 1993.1

Mr. Chang explained to the Board that in reviewing the Statement of Reasons for this proposed adoption to the regulations he felt they were a bit thin. He recommended going back and attaching more documentation to justify the proposal, supplementing the file and then re-noticing to the public.

Mr. Roth requested a change in tense for the verb "was" (past tense) in the first paragraph to "is" (present tense).

Mr. Roth moved and Mr. Morris seconded to authorize staff to correct the verb "was" to "is" in the first paragraph, supplement the rule-making file with respect to justification, make the modification available for a 15-day public comment period, and delegate authority to the registrar to adopt the proposed regulation as follows, provided there are no adverse public comments:

§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~~ is 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 Business and Professions Code.
Reference: Section 8516, Business and Professions Code.

Passed unanimously.

VI. APPROVAL OF JANUARY 23, 2004, BOARD MEETING MINUTES

Mr. Sesay moved to approve the minutes of the meeting of January 23, 2004. Passed unanimously.

Ms. Melton extended wishes for a happy birthday to both Mr. Sesay and Ms. Saylor.

VII. EXECUTIVE OFFICER'S REPORT

Ms. Okuma reported on the following:

- In attendance were a number of representatives from Los Angeles and San Diego counties Agricultural Commissioners offices.
- Assembly Bill 320 (Correa), which prohibits any licensee regulated by the Department of Consumer Affairs from prohibiting any party involved in a legal dispute from filing a complaint or cooperating in a Department investigation, was amended on April 16, 2004, and re-referred to the Judiciary Committee.
- Assembly Bill 1926 (Bermudez), would exempt Structural Pest Control Board licensees from having to also obtain the Department of Fish and Game's trapping license. She and Ms. Melton attended the legislative hearing at which Ms. Melton spoke on the Board's behalf in support of the bill. The bill has since been amended to include licensees of the Department of Pesticide Regulation (DPR) and passed out of committee.
- Assembly Bill 2142 (Houston) would exempt Structural Pest Control Board licensees who are also home inspectors from the current prohibition for home inspectors against making repairs on a structure they have inspected. The hearing was postponed.
- Senate Bill 1735 (Figueroa and Aanestad), in part provides that any Board position abolished prior to January 1, 2004, because of a six-month vacancy law requirement would be re-established. The bill was heard on April 19.
- Orange County is proposing a tax assessment to do structural pest control for all residences in the county.
- Licensing and Complaint unit statistics were reviewed with the Board Members.

Mr. Roth commented there were quite a number of regulations the Board had previously approved for submittal to the Administrative Law Office (OAL) that now had to be re-noticed

because of the one-year moratorium issued by the Governor. He stated he was frustrated because there were a lot of good proposals adopted, such as repealing the Board's responsibility to approve name styles, and it was one of the regulations having to be re-noticed. He asked Ms. Okuma if all these affected regulations must start the regulatory process again from the beginning step. Ms. Okuma stated he was correct in that all the regulations that missed the one-year date for approval must be re-noticed for public hearing. Mr. Roth commented that it was unfortunate that there was no way to expedite the process for those regulations, and it was a shame to have such duplicative effort.

VIII. REQUEST THAT BOARD ADDRESS DEPARTMENT OF JUSTICE DELAYS IN PROCESSING FINGERPRINT CLEARANCES – JIM CLARK

Ms. Okuma reported that Jim Clark, Clark Pest Control, had an employee with a criminal history and the Department of Justice (DOJ) took 18 months to submit the fingerprint clearance to the Structural Pest Control Board, which the Board needed in order to make a determination on whether to issue or deny the request for license. Mr. Clark was asking for the Board's intervention with DOJ to see that these processes were somehow expedited and employees were not left waiting 18 months to learn if they were even going to have a license.

Mr. Morris asked if the amount of time DOJ was taking was normal. He wondered if a letter could be written explaining industry's problems relative to these delays and asked if there was anything the Board Members could do to help the situation. Mr. Morris suggested that a letter to DOJ would put the Board on record as showing sensitivity to industry needs in terms of acquiring background checks in a timely manner.

> Mr. Morris moved and Mr. Sesay seconded to have staff write a letter to DOJ addressing the length of time relative to fingerprint submissions on behalf of the Board. Passed unanimously.

IX. STRATEGIC PLAN UPDATE

Ms. Okuma reported the 2004 Strategic Plan was in each Board member packet. She, Ms. Saylor and Licensing Unit Supervisor, Steve Thomason met with Travis McCann to develop deliverables, ownership and target dates. The plan was not updated to reflect the outcome of that meeting. She reviewed the following deliverables for each objective with the Board Members.

Objective 1.1: Improve channels of communication with the Executive Branch and key industry associations.

Deliverable 1.1.1 Staff would attend the National Pest Management Association annual meeting, which had not been done for a number of years. A request

had been submitted to attend. She did not think it would be approved, although in the future staff could probably attend such meetings again.

Deliverable 1.1.2	Obtain input on pre-treatment issues from the Association of Structural Pest Control Regulatory Officials (ASPCRO) committee. An update would be received today.
Deliverable 1.1.3	Identify key staff people within the Executive Branch to contact.
Deliverable 1.1.4	Send information on Structural Pest Control Board (SPCB) issues and actions to key Executive Branch staff.
Objective 1.2:	Increase public attendance at board meetings.
Deliverable 1.2.1	Identify ways to notify a broader population of the date and location of Board meetings.
Deliverable 1.2.2	Publish Board meeting dates and locations to a broader audience.
Objective 1.3:	Increase the number of members of the public serving on committees.
Deliverable 1.3.1	Contact the Department of Consumer Affairs (DCA) to identify staff who may want to serve on SPCB committees.
Deliverable 1.3.2	Contact retiree organizations to solicit potential public members for SPCB committees.
Deliverable 1.3.3	Identify ways to solicit government students to participate on SPCB committees.
Objective 1.4:	Increase the Legislature's awareness of the SPCB and its programs and benefits to the public in order to establish a working relationship between the Board and the Legislature.
Deliverable 1.4.1	Develop a public relations package to highlight the SPCB's contribution to the health and safety of California consumers.
Deliverable 1.4.2	Send the public relations package to selected members of the Legislature.
Objective 1.5:	Develop and implement a program to educate the public about the application of new/emerging structural pest control products and services and their use.
Deliverable 1.5.1	Update the SPCB website to include information regarding in-ground bait stations.

Objective 2.1: Complete the process for filing Wood Destroying Organism (WDO) activities online.

Ms. Okuma reported this was a carry over from the 2003 Strategic Plan and that Ms. Saylor had spent a significant portion of the past few months working with vendors and licensees to get the process implemented online.

Ms. Saylor stated the project was currently being used internally online. By the end of April all companies will have received User ID's and Passwords, and WDO filing would become available on May 3, 2004.

Ms. Okuma commented Ms. Saylor had done a phenomenal job getting the system online and encouraged everyone to take a look at it once it was available to the public. She felt it would make it easier for the industry to file and easier for staff to process. Through the entire process she felt the project was in competent hands, she never had to get involved and felt that Ms. Saylor should be commended for a wonderful job.

Objective 2.2: Conduct a written survey to determine what licensees are doing with regard to industry practice.

Ms. Okuma reported this was a carry over from the 2003 Strategic Plan and that no additional progress had been made, although staff was continuing to try to get the survey out.

Objective 2.3: Implement the recommendations of the Ad Hoc Committee on Education regarding: 1) uniform standards for approving and not approving educators and allocations of credit; and 2) ways to restructure the means and methods of providing CE to licensees.

Deliverable 2.3.1 Work on this objective was progressing as seen today in the Public Hearing. Some of the recommendations were part of that hearing process.

Objective 2.4: Review and rewrite the statutes and regulations to ensure their effectiveness.

Ms. Okuma reported this was a carry over from the 2003 Strategic Plan and that Mr. Robert Eisman had made considerable progress, submitting a partial draft to both her and Mr. Chang. She had reviewed his contributions and was very pleased with his rewriting and reorganization. Mr. Eisman was currently waiting for feedback in order to proceed further, but as there were some problems on his end in terms of availability the project might slow down a bit.

Mr. Roth commented the goal was to finish the sections identified by the end of 2004, for adoption by the end of 2005. He questioned at this point if that goal was still feasible.

Ms. Okuma responded that staff would do their best to stay within that timetable.

Objective 2.5: Bring license fees into alignment with licensing costs to assure that fees are equitable.

Deliverable 2.5.1 Identify resources to map and cost out the licensing process from receipt of the exam application to issuance of the license.

Objective 3.1: Achieve needed disposition of complaints in order to protect consumers and meet statutory requirements.

Deliverable 3.1.1 Obtain a new classification to replace the vacancy left by Mr. Dennis Patzer. Staff met with DCA personnel and it will take minimally two years to obtain a classification and approval to fill the position. In the interim the Department recommended the Board consider hiring a retired annuitant to take on some of the responsibilities. There was an individual in Southern California who was previously a Specialist, currently retired from the state, who has expressed an interest in returning as a retired annuitant. Paperwork was being completed to obtain a freeze exemption and staff should know in about 30 days if this solution was doable.

Objective 4.1: Implement computer-based testing (CBT) as a means for improving the exam process.

Deliverable 4.1.1 Complete the occupational analysis for the licensing exam.

Deliverable 4.1.2 Complete development of a new licensing exam.

Deliverable 4.1.3 Solicit and complete review of bids for exam development.

Deliverable 4.1.4 Get contract with vendor to provide the licensing exam via computer.

Deliverable 4.1.5 Complete administration of the initial computer-based licensing exam.

Objective 5.1: Begin recording conversations between Board staff and the public for quality control purposes.

Deliverable 5.1.1 Staff had met with different vendors and the paperwork was in place to purchase the software and hardware enhancements for the existing telephone system, but because of an increase in enforcement expenditures staff was hesitant to proceed. If before the end of the Fiscal Year staff felt comfortable with Board resources they would proceed, if not this would be completed in the next Fiscal Year.

Deliverable 5.1.2	Complete installation of the upgraded telephone system.
Deliverable 5.1.3	Complete training of SPCB staff on use of the new telephone system.
Deliverable 5.1.4	Complete user testing of the new telephone system.
Deliverable 5.1.5	Begin recording incoming calls from SPCB customers and providing performance improvement feedback to staff.
Objective 5.2:	Implement a quality control system to assure competent, efficient, accurate, impartial and courteous service to all Board constituents.
Deliverable 5.2.1	Monitor work to identify quality control problems and needs.
Deliverable 5.2.2	Develop a mechanism to address identified problems and needs.
Deliverable 5.2.3	Implement business process enhancements and begin monitoring process performance.
Deliverable 5.2.4	Complete evaluation of process enhancements and report findings to the Board.
Objective 5.3:	Complete a review of the Board's internal operations to identify opportunities for improvement and/or cost reduction.
Deliverable 5.3.1	Complete flowcharts of the Board's key business processes and identify cycle times, accuracy rates, and costs per unit of output.
Deliverable 5.3.2	Complete a review of the Board's key business processes, develop recommendations for reducing cycle times, increasing accuracy rates and/or reducing costs, and report findings to the Board.

X. PROPOSED AMENDMENTOF SECTION 8617 – INCREASE CIVIL PENALTIES ISSUED BY COUNTY AGRICULTURAL COMMISSIONERS

Ms. Okuma explained that the Department of Pesticide Regulation (DPR) has a civil penalty process for County Agricultural Commissioners for agricultural violations, which the Board mirrors in terms of how penalties or fines are assessed by commissioners for structural violations. DPR amended its civil penalty structure, so this item was on the agenda for the Board's consideration to a legislative amend to again mirror the agricultural process. However, since placing this item on the agenda, she learned that the County Agricultural Commissioners and Sealers Association was pursuing this matter through a legislative amendment, so no Board action was necessary at this time.

XI. PRE-TREATMENT COMMITTEE UPDATE

Ron Moss, Chair, reported on the status to date of the committee established to look at termite pre-construction treatments because of concerns of lower than product rate applications and/or the issuance of paperwork. He stated the committee consists of six members, two regulatory, three industry and one private sector member. The committee met twice and felt there was a demonstrated need for regulation. The committee was currently in the process of developing language, enforcement methods and methods of notification to the County Agricultural Commissioner Offices, including the idea of tagging after a pre-treatment, by utilizing the language used by Arizona, and Texas, and recommendations made by the Association of Structural Pest Control Regulatory Officials (ASPRO).

XII. PROPOSED ELIMINATION OF WDO ACTIVITY FORM (FLATS) NO. 43-M-52 AS MEANS OF SUBMITTING WDO ACTIVITY DATA TO THE BOARD

Ms. Saylor asked that the Board Members take no action at this time and to hold the item over again as she wanted to view the progress of the WDO report filing program available online May 3, 2004. She wished to see how many companies took advantage of online filing as opposed to sending the diskette or the WDO Activity Form (Flats) No 43M-52 to the Board. She hoped the majority of companies would elect to go online and file activities electronically. She asked to bring this back at the October Board Meeting as by that time she would have a good idea how many companies were still using the WDO Activity Report Form.

Mr. Morris asked Ms. Saylor to send an update regarding the progress to the Board Members before the October Board Meeting. Ms. Saylor replied she could provide reports with exact percentages, how many companies were using the system, how many were not, etc.

Mr. Roth asked Ms. Okuma to add the question, "Do you have Internet access?" to the survey planned for the industry, or anything else she felt might be helpful.

Mr. Roth asked if it would be feasible to provide a ballpark figure of how much it cost the Board to pay staff to process the flats.

XIII. AUDIT OF CORRESPONDENCE AND COMPUTER-BASED CONTINUING EDUCATION COURSES

Ms. Melton requested this item be postponed to a future date.

XIV. APPOINTMENT OF RESEARCH ADVISORY PANEL

Ms. Okuma reported that in anticipation of approval of the research grant Request for Proposals, a list of the current approved Research Advisory Panel (RAP) members was in the packets and this matter was on the agenda in the event the Board Members wanted to make changes to the appointments. By law, there are two industry members, one Department of Pesticide Regulation (DPR) member, one Board member and one University of California (UC) member. She stated that at the last meeting RAP meeting, Dr. Frank Beale, had had to recuse himself due to his association through the UC and its submission of research grant requests. She anticipated he might have to do that again, and his inability to vote had seriously impacted the panel.

Mr. Morris, RAP member, concurred that the situation with Dr. Beale presented difficulties for the panel, as well as the low-level of participation from the DPR member.

Ms. Okuma suggested communicating with the Director of DPR to acquire an assurance of active participation, and because a UC System member was technically valuable to the panel, she suggested the Board might want to appoint an alternative representative at the July meeting.

> Mr. Roth moved and Mr. Arzate seconded to have staff search for someone else within the University of California system to sit on the Research Advisory Panel in lieu of Dr. Beale. Passed unanimously.

Mr. Morris requested for the record that it be clear the removal of Dr. Frank Beale from the Research Advisory Panel was strictly due to his conflicts of interest.

XV. PROPOSED AMENDMENT OF CALIFORNIA CODE OF REGULATIONS SECTION 1990 TO ALLOW FOR ELECTRONIC SIGNATURES

Ms. Okuma reported there was a proposed amendment to allow electronic signatures on inspection reports.

Mr. Chang commented that at this point he did not feel the regulations needed changing in order to allow electronic signatures on an inspection report, as certain protocols must already be followed. Those who provided the electronic signature would have to take the benefits of the signature along with the burden, because they held the burden of proof and it would be strictly up to each company to determine if they wanted to assume that liability.

XVI. BOARD MEETING CALENDAR

The next Board meeting will be held July 22 and 23, 2004, in Sacramento. The following meeting will be held October 7 and 8, 2004, in Anaheim.

XVII. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

There were no comments from the audience.

Mr. Morris voiced thanks to all the technical people who attended today's Board Meeting.

Ms. Melton adjourned the meeting at 12:00 PM.

Jean Melton
JEAN MELTON, President

Kelli Okuma
KELLI OKUMA, Executive Officer

7-23-04
DATE