

MINUTES OF THE
ANNUAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
OCTOBER 8, 2004

The meeting was held on Friday, October 8, 2004, at the Coast Anaheim Hotel, 1855 South Harbor Blvd., Anaheim, California, commencing at 9:12 AM with the following members constituting a quorum:

Jean Melton, President
Michael Roth, Vice President
Cris Arzate
Bill Morris
Mustapha Sesay
Ken Trongo

Board staff present:

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

Departmental staff present:

Don Chang, Legal Counsel
Kurt Heppler, Legal Counsel

Board Liaison Deputy Attorney General Christina Thomas and Supervising Deputy Attorney General Jennifer Cady were also in attendance.

II. REINSTATEMENT HEARING

The Board sat with Administrative Law Judge Roy W. Hewitt and Deputy Attorney General Christina Thomas to hear the Petitions for Reinstatement of Larry Ridge, Field Representative's License No. 19729 and William Jackson, Operator's License No. 6387. The petitioners were informed they would be notified by mail of the Board's decision.

III. CLOSED SESSION

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

The open meeting resumed at 11:40 AM.

I. ROLL CALL

Ms. Saylor read the roll call.

IV. FLAG SALUTE

Mr. Trongo led everyone in the flag salute.

V. APPROVAL OF MINUTES

Mr. Sesay moved and Mr. Trongo seconded to approve the minutes as corrected. Passed unanimously.

XIV. CALIFORNIA PERFORMANCE REVIEW UPDATE

Ms. Okuma reported that the California Performance Review (CPR) report recommends elimination of the Structural Pest Control Board (SPCB) and that its licensing functions be placed under the new Division of Pesticide Regulation. A number of public hearings were held, of which Ms. Okuma and Ms. Melton attended two. Ms. Okuma gave oral testimony during the public hearing portion and spoke to the fact that because the current proposal did not take into consideration the consumer protection services the Board performed, she recommended that the Board be placed under the newly proposed Commerce and Consumer Protection Agency. To date, there has been no indication what the final recommendations of the CPR will be.

Harvey Logan, Pest Control Operators of California (PCOC), commented that Bob Howell had appointed a special task force to review the recommendation put forth by CPR staff. He stated that CPR's description of the Board was alarming, as it completely missed the single largest function of the Board: Branch 3 inspection reports, adjudication, mediation, etc. It was his understanding that the California Department of Pesticide Regulation wanted nothing to do with Branch 3 issues. PCOC wrote a letter, which had been confirmed by their Board of Directors last week, to the Governor and his commission. Marie Evans had also testified on behalf of the Association in support of moving the Board to the Commerce and Consumer Protection Agency. He said the proposal would go through a legislative agenda item before enactment and that PCOC planned to take a strong position of opposition. There was no savings to the State of California whatsoever in transferring the Board, and the consumer would suffer greatly. He declared the CPR overlooked the Board's major functions completely and requested that Board Members become actively involved in opposition to the transfer.

Mr. Morris moved and Mr. Sesay seconded to authorize staff to prepare a one-page synopsis on the California Performance Review for the Board Members, within ten (10) days. Passed by majority (Ayes – Mr. Arzate, Ms. Melton, Mr. Morris, Mr. Sesay, Mr. Trongo. Nay – Mr. Roth).

Mr. Chang suggested once the topics paper had been prepared for the Board Members, that staff then issue a letter on the Board's behalf for the President's signature, which opposed the California Performance Review's recommendations.

Larry Musgrove, Western Exterminator Company, commented he would hope the Board would take a public position on record today to oppose the recommendations being put forth.

Marie Evans, Northstar Exterminators, stated she also wished to encourage the Board to take a position today. She said she had attended three hearings, went through a lot of public testimony at the end and had spoken in favor of keeping the Board. She felt as Mr. Musgrove and Mr. Logan did, that the Board Members needed to vote today to oppose this elimination and that this needed to be done on behalf of the community.

Mr. Roth moved and Mr. Sesay seconded that the Board officially oppose the California Performance Review recommendation to eliminate the Structural Pest Control Board and authorize the Executive Officer to work with the President in constructing a position paper detailing reasons why, within ten (10) working days. Passed unanimously.

Ms. Melton officially thanked Mr. Harvey Logan and the PCOC for their work on this issue.

XV. CONTINUING EDUCATION CENTER FOR PEST MANAGEMENT'S PROPOSAL TO TRACK CONTINUING EDUCATION CREDITS FOR STRUCTURAL PEST CONTROL BOARD LICENSEES

Ms. Okuma stated that Board staff had been approached by the Continuing Education Center for Pest Management (CECPM), who were asking for Board endorsement of their continuing education tracking program. She stated CECPM had originally contracted with the trade association with PCOC to track continuing education for their membership, which for a number of reasons had proven unsuccessful. CECPM indicated to Board staff that it would now like the Board to endorse its program for the licensing population; with that endorsement CECPM could then sell its services to the industry. She asked Mr. Harvey Logan to elaborate on some of the experiences PCOC had with CECPM.

Mr. Harvey Logan, Pest Control Operators of California (PCOC), responded that CECPM would want the data in a very specific manner, and in no other way; he said they might turn to the Board for charges to modify the records sent. He then said PCOC had spent \$27,000 over a period of two years attempting to modify records and get CECPM to accept

data from the Structural Pest Control Board, but it was not coming to fruition. SPCB's data continued to be unacceptable and so PCOC decided to pay \$7,500 to cancel the contract and were delighted to have done it because of the constant requirements, constant changes and, he stated, the requirements would be the same upon the Board as they were upon the PCOC.

Mr. Heppler commented the Board should not endorse any particular organization, as there was no provision in government to recommend any single provider or any provider services and therefore it would be improper for the Board to endorse the proposal.

VI. EXECUTIVE OFFICER'S REPORT

Ms. Saylor reported on the following:

- Licensing statistics and survey results were reviewed with the Board members.
- Regulatory Action Status was reviewed with the Board members. The following four sections were approved within the last several months by the Office of Administrative Law (OAL): 1953(a), 1970, 1983(j) and 1996.3.
- The Applicator's Exam had been compromised again early last month when an exam booklet was taken out of one of the Agricultural Commissioner's Offices. Staff rewrote and delivered the exam to the County Commissioner Offices within a week.
- 10% of the renewals were audited for the 2003 Continuing Education audit. Of the 257 audited renewals, 58 individuals were found out of compliance, a representation of approximately 20%.
- On July 1, 2004, the hiring freeze was lifted. Viki Whitaker was hired in the Licensing Unit as a half-time Office Technician. With the addition of this staff person, the 2004 CE Audit would return to 25%, or 750 to 800 of the 3,000 licensees who renewed June 2004.
- The WDO database system placed on-line in May has been very successful with 400 companies submitting over 220,000 activities on-line. One of the three employees in the WDO Unit voluntarily went to work elsewhere, so that position was reclassified to a Staff Services Analyst and placed in Administration. Interviews were conducted, Elizabeth James was selected, and will be returning to the Board on October 25, 2004, to oversee the WDO Unit. Her primary functions will be oversight of the on-line WDO database and the Applicant Tracking System (ATS). As ATS will provide the Board with a database to track applicants from their first submission, it is the Board's first step towards computer-based testing throughout the state.
- Since the requirement effective July 1, 2004, that the Board complete background checks on all new licensees and those upgrading a license, the Board has received a combined total of 3,000 results from DOJ and the FBI. As those could represent a combination of 1,500 from each, they signified at least 1,500 candidates. Out of those 1,500 the Board had licensed 950. There were currently 133 individuals who completed the entire process, took the examination, applied for the license and were waiting for either DOJ or FBI results, a representation of approximately 5%. There

were approximately 500 applicants who had both DOJ and FBI results in but had yet to either apply for the license or pass the test.

- Effective yesterday a consumer information link on the home page web site became operational. It links one to several different areas, such as how to file a complaint with the Board, information regarding termite inspections, etc. The link was added for consumers because anyone can now log onto the WDO database and search property for the last two years for a termite inspection. With the exception of a very small stack of "flats" in the office, which would be scanned and verified within two weeks, the search on-line for activities was at 100% of Board submissions.

Ms. Okuma reported on the following:

- Mr. Carl Smitley, the Retired Annuitant hired to coordinate the enforcement program, was now up to speed after refreshing himself with the industry and getting caught up on some enforcement cases. He was conferring with the Deputy Attorney Generals and would be taking the lead on the conclusion the Pre-Treatment Committee was currently looking at, as well as the Technical Advisory Committee's issue referenced at the last Board Meeting. There would be recommendations forthcoming from both committees.
- The Governor had appointed Nancy Hall Deputy Director of Board Relations for the Department of Consumer Affairs. She replaced Lynn Morris. The Director of Consumer Affairs, Charlene Zettel, had been confirmed by the Legislature, although she had been in that position for some time.
- The research contract was currently being worked on and would be submitted to the Department for processing. It was expected that at the April Board Meeting Board members would be reviewing proposal requests. University of California, Riverside (UCR), indicated interest in overseeing the research grant program.
- In August the Board's Consumer Services Representatives (CSR) attended the Better Business Bureau and Department of Consumer Affairs' Consumer Exposition held in San Diego.
- Complaint survey results were reviewed with the Board members.

VII. ANNUAL REVIEW OF BOARD PROCEDURES

John Van Hooser, Ultratech Division, commented that No. G-3 stated Board members are ad hoc members of all Board committees. He felt the Board Members should have a vote if they are ad hoc members of a committee.

Mr. Chang stated this would cause a notice problem if Board members were members of all committees, because if every Board member suddenly appeared at a committee meeting it would have to have been noticed as a Board meeting. To avoid this problem, it had been decided that Board members could attend committee meetings, but could not vote.

After some discussion regarding amending G-3 to include language that the President would designate the chairperson for all ad hoc committees and amending G-8 to include

language that the President and vice president would be guided, not bound, by Robert's Rules of Order, it was decided to agendaize both G-3 and G-8 for the next Board meeting.

VIII. ADOPTION OF AMENDED COMPLAINT DISCLOSURE PROCEDURE

The adoption of the amended complaint disclosure procedure is addressed in the next item: IX - Proposed Complaint Disclosure Regulations.

IX. PROPOSED COMPLAINT DISCLOSURE REGULATIONS

Ms. Okuma stated the previous administration had recommended Complaint Disclosure Guidelines, which the Board had adopted as procedure and sent through the process of adoption as a regulation; but the Department did not approve those Guidelines, as there was a change in administration and subsequent concerns about the policy. So the current administration's recommendations were in the Board packages, but she learned yesterday there was another version coming from the Department so she recommended holding both Agenda Items VIII and IX over until receipt of the revised recommendations.

X. WILDLIFE TRAPPING LICENSE EXEMPTION - UPDATE

Ms. Okuma reported that she attended one of the Department of Fish and Game's public hearings to exempt structural licensees from the trapping license requirement and as anticipated there was opposition from various animal rights groups. She also met with staff from Fish and Game, who indicated it was possible the Commission would not go forward with the proposed regulations to exempt structural licensees from Fish and Game's license requirement.

XI. PROPOSED AMENDMENT OF CITATION AND FINE REGULATION SECTION 1920 TO SPECIFY MAXIMUM FINE CRITERIA

Ms. Okuma stated the Board currently has Cite and Fine Regulations with a fine maximum of \$2,500. A law was passed that extended that maximum to \$5,000. Although the Board already had its own criteria, they were quick in amending the regulations to incorporate that maximum fine of \$5,000. However, the Department had some concerns and was recommending that the maximum fine could be charged only if one or more of the following circumstances applied: (1) the citation involves a violation that has an immediate relationship to the health and safety of another person; (2) the cited person has a history of two or more prior citations of the same or similar violations; (3) the citation involves multiple violations that demonstrate a willful disregard of the law; and (4) the citation involves a violation or violations perpetrated against a senior citizen or disabled person. She asked the Board, if they agreed with these four criteria, to authorize staff to notice for public hearing an amendment to section 1920 to incorporate the Department's recommendations.

Mr. Trongo moved and Mr. Sesay seconded to direct staff to draft a proposed amendment to section 1920 incorporating the Department's recommendations and to then notice the language for public hearing. Passed unanimously.

XII. LEGISLATIVE JOINT COMMITTEE ONBOARDS, COMMISSIONS, AND CONSUMER PROTECTION – SUNSET REVIEW UPDATE

Ms. Okuma stated the Sunset Review report sent to the Legislative Joint Committee had been reviewed and the Board had been requested to answer 25 additional questions by Monday, October 11, 2004. Hearings would occur sometime in December.

XIII. STRATEGIC PLAN UPDATE

Ms. Okuma reviewed the quarterly report for the Strategic Plan.

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

Ms. Okuma reported that the marketing plan set to be in place by September 30, 2004, had not been met due to recent report requirements and current staffing issues. Very soon she and Ms. Saylor would be able to continue work on this deliverable.

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

Ms. Okuma reported she had spoken briefly with the Chair of the Laws and Regulations Committee, Larry Musgrove, and would share with him Deputy Attorney General Robert Eisman's rewrite of the laws and regulations document. They would then come up with recommendations on how to proceed.

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

Ms. Okuma reported she was working with the Department's Telecommunications Unit and Office of Information Services to get the necessary contracts through for purchases of hardware and software. She stated there had been a change of personnel and the new manager had indicated he would not impede their progress; however, the staff person they used who understood the system was now on an extended leave of absence so she was not sure what effect that would have on the progress.

XVI. BOARD MEETING CALENDAR

The Strategic Planning meeting will be held for half a day on November 12, 2004 at the Howe Avenue Complex in Sacramento. The next Board meeting will be held January 13 and 14, 2005, in San Jose. The following meeting will be held April 7 and 8, 2005 in Pasadena.

XVII. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

John Van Hooser, Ultratech Division, commented that he had corrections for the Board's Policy and Procedures, which he would hold on to for the October meeting, next year. He continued that the Contractor's License Board (CSLB) had a system where they designated people licensed by the CSLB to go out and mediate complaints. He asked that the Board look into designating industry people to mediate complaints.

Bill Gillespie, Government Watcher, asked how the CPR and Sunset Hearings related to each other.

Ms. Melton adjourned the meeting at 1:50 PM.



JEAN MELTON, President



KELLI OKUMA, Executive Officer

1-14-05
DATE