

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
JANUARY 14, 2005

The meeting was held on Friday, January 14, 2005, at the Hotel Montgomery, 211 South 1st Street, San Jose, California, commencing at 10:30 AM with the following members constituting a quorum:

Jean Melton, President
Michael Roth, Vice President
Bill Morris
Mustapha Sesay

Board members Cris Arzate and Ken Trongo were not present

Board staff present:

Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Barbara Howe, Administration Analyst

Departmental staff present:

Kurt Heppler, Legal Counsel

Board Liaison Deputy Attorney General Christina Thomas was also in attendance.

I. ROLL CALL

Ms. Saylor read the roll call.

II. FLAG SALUTE

Mr. Morris led everyone in the flag salute.

III. APPROVAL OF OCTOBER 8, 2004 BOARD MEETING MINUTES

Mr. Sesay moved and Mr. Roth seconded to approve the minutes of the annual meeting of October 8, 2004. Passed unanimously.

V. PROPOSED AMENDMENT OF CALIFORNIA CODE OF REGULATION SECTION 1970.4 - PET NOTIFICATION ON THE OCCUPANT'S FUMIGATION NOTICE (OFN)

Ms. Okuma stated that recently in Los Angeles and Carmel Valley there were reported deaths to cats being trapped under structures during fumigation. Those pet owners had contacted local legislative representatives, who then contacted Board staff as to what authority the Board had relative to pet deaths. A legislator was currently proposing to introduce legislation requiring that the pest control industry notify nearby homeowners of fumigations. A proposal to amend the Occupant's Fumigation Notice (OFN) to include a notification statement prior to fumigation was before the Board for consideration.

Mr. Morris asked for a brief background from the industry regarding this issue.

John Van Hooser, Ultratech Division, stated some companies already include pet notification language in their OFN's. He mentioned if the pest control companies made direct-contact notifications to each neighbor, it would easily cost consumers an additional \$50 per fumigation. He recommended placing such notification on the OFN.

Harvey Logan, Executive Vice President of Pest Control Operators of California, commented it was ironic that the previously approved pet notification language had been included on the OFN form printed in the Structural Pest Control Act in 2001, although the Office of Administrative Law had not approved the amendment. Since that pet language was on the form in the 2001 Act, a number of companies in California now include the statement on the OFN. He stated PCOC was in favor of language that would address the homeowner, as they were the person most likely to know where pets would hide and to whom the pets belonged. The fumigator would not have any idea regarding pets in the neighborhood of the fumigation.

Michael Reid, Cardiff Pest Control, stated his company had pet language on its OFN that asked the owner of the property being fumigated to notify their neighbors about the fumigation and to contain their pets during the course of that fumigation. Since placing this language on his company's OFN, there had been no issues and no reported pets lost.

Harvey Logan requested the language be worked on today because the Department of Pesticide of Regulation (DPR) was waiting to hear what the Board does with this recommendation before proceeding with an enforcement letter.

Bob Howell, President of Pest Control Operators of California, Mission City Fumigation, commented the fumigator obviously did not wish to kill pets and at the same time wanted homeowners to be aware of the need to inform those around them with domestic pets, to keep them away during fumigation and felt the best way to do this was by placing notification language on the OFN.

Larry Musgrove, Western Exterminator Company, commented that the charge of responsibility should fall on the owner of the pet.

Harvey Logan commented that ultimate responsibility lay with industry. The fumigator must make sure the structure is clear of people and domestic animals. All PCOC was asking was that pet language be placed on the OFN so the fumigator could obtain assistance from another person who may know where pets were in the neighborhood.

Mr. Heppler clarified that the Board was currently confronted with a situation where there was a form purported as an official form of the Board when there was no official action adopting it. He felt it would be advisable for the Board to rectify that situation no matter what so that a properly adopted form would be in use.

Bob Howell commented if nothing was placed on the OFN, the issue would just occur again and again. Placing pet language on the OFN would eliminate problems for both industry and the homeowner. All industry was asking the homeowner to do was participate in a little extra safety margin to prevent the accidental killing of domestic pets.

Michael Reid commented he was looking for shared responsibility. As a fumigator he would do whatever he had to do to ensure a safe fumigation for both animals and humans, but also wanted the homeowner to share in that responsibility.

Mr. Roth moved and Mr. Morris seconded to notice for public hearing the following language to be placed on the Occupant's Fumigation Notice (OFN):
We suggest that you notify nearby neighbors of the date of fumigation and to keep pets away during the fumigation. Close off any open access to the subarea to prevent pets from entering.
Passed unanimously.

VII. REQUEST FROM JIM SHAVER TO APPROVE THE NAMESTYLE "CALIFORNIA TERMINIX"

Ms. Saylor reported that the Board had disapproved the namestyle "California Terminix," but afforded Mr. Shaver the opportunity to appeal staff's decision by placing the matter on today's agenda for the Board's consideration.

Jim Shaver stated he was a Branch 2 Operator who owned a company called "Antbusters" and that he wanted to discuss and argue in favor of the namestyle "California Terminix." He then agreed that the name "California Terminix" was confusingly similar, was not in the best interests of the consumer, and that he was in support of staff's decision. Next he requested that the Board revoke the name "The California Ant Busters," as it was as confusingly similar to the name of his company "Antbusters" as "California Terminix" was confusingly similar to "Terminix."

Mr. Heppler interjected that Mr. Shaver's request could not be addressed at today's meeting because it had not been agendaized as such. He commented to Mr. Shaver that he was welcome to ask the Board to agendaize this request at the next Board meeting under the Agenda Item XIII: Public Comments for Items Not on the Agenda.

Mr. Shaver officially withdrew his request for approval of the namestyle "California Terminix."

IV. EXECUTIVE OFFICER'S REPORT

Ms. Okuma reported on the following:

- Staff had successfully completed the process for Internet filing of Wood Destroying Organism (WDO) activities online. A private entity called the Center for Digital Government recognizes government agencies that have implemented technology to the benefit of government, and the Structural Pest Control Board was recognized this year by receiving an award for the Best Application Serving Department/Agency Business Needs.
- On January 5, 2005, Ms. Melton and she attended the Sunset Hearing before the Joint Committee on Boards, Commissions and Consumer Protection. The Committee had several issues for which they asked clarification. Next, the Committee would prepare its report, to which the Department would respond, and the Committee would then make recommendation on whether or not to continue the Board.
- The California Performance Review Report had recommended that many of the functions of the Board cease and that the Board be placed within the Division of Pesticide Regulation. Ultimately, however, the proposal Governor Schwarzenegger submitted to the Little Hoover Commission was to eliminate the Structural Pest Control Board and transfer its functions to the Department of Consumer Affairs (DCA). If that proposal comes to fruition, licensing, examinations, regulations and enforcement of the profession would be governed directly by DCA. This proposal was currently at the Little Hoover Commission, which had thirty days to review it as an advisory group. The Commission could make recommendations but did not have authority to approve or disapprove the Governor's proposal. From the Little Hoover Commission, the proposal goes to the Legislature, which has sixty days to act upon it. The Legislature does not have to approve the proposal, only disapprove it. If not disapproved, the proposal becomes effective. DCA is anticipating a July 1, 2005, effective date if the Governor's proposal takes effect.
- The Research Grant Request for Proposals was submitted to DCA; Contracts Unit has the document and anticipated distribution sometime after January 18.

Ms. Saylor reported on the following:

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

- Since July 1, 2004, 4400 results had been received from the Department of Justice (DOJ) and the FBI, with 1340 total licenses being issued. Currently there were 200 applicants awaiting results from either DOJ or the FBI, who could have been waiting from as far back as July if court documents were still needing to be processed or if an applicant had applied for a license just yesterday. Those 200 applicants represented approximately 5% of everyone who applied since July 1, 2004.
- Staff recognized that in some cases there were problems getting results from DOJ and the FBI. Staff was now automatically sending inquiries every thirty days on those applicants who were still awaiting DOJ and FBI results.
- The 2003 Continuing Education Audit was almost complete. There were a few licensees trying to get sign-in rosters from some providers. A few cases had been sent to the Attorney General's Office for revocation for those individuals who did not comply with the request to submit proof of their continuing education. A few citations and fines were issued for minor violations. The 2004 audit process had begun; letters were mailed in mid-December to a portion of those who renewed in 2004. Approximately 11% of those audited for 2003 were in non-compliance.
- A few staff changes had occurred within the Board. Barbara Howe, who performed an excellent job in the Licensing Unit on the Bonds and Insurance Desk, received a promotion to the Administration Unit and was now the analyst responsible for the rulemaking process, newsletters and printing a new Act. Naomi Sanchez, currently working in the WDO Unit and very instrumental in getting the Internet filing project off the ground, was promoted to a position in the Licensing Unit and will assume the duties Barbara was performing on the Bonds and Insurance Desk.
- Currently 570 companies were electronically submitting WDO activities to the Board; a total of 400,000 activities had been logged on the Internet since the system went online last May. Because of the lessened duties on staff, one position was moved out of the WDO Unit and consideration was being given to transferring that WDO position to licensing.
- The Governor's Budget was available online.

Mr. Morris wished to acknowledge the Board's new employee, Elizabeth James, with the WDO Unit. He stated she was extremely professional, courteous and a delight when answering the telephone. She was a positive and professionally pleasant young lady who was an attribute to the administrative staff.

Mr. Morris requested that the number of licensees on probation be placed on the Statistics Report.

XIII. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

Steve Mayne, S. G. Mayne Termite Company, Inc., asked what would happen to monies submitted to the Board for WDO filing after a company ceased to do business.

Ms. Okuma replied that according to law, unused money must be refunded to the company.

Jim Shaver, Antbusters, stated that The California Ant Busters was a ridiculously similar and confusing name to Antbusters. He said the similarity of the name caused confusion and anger among his customers. Both Antbusters and The California Ant Busters worked in Orange County, so they were right next door to each other; their advertising was even similar and so there was just no way that a person could not agree that The California Ant Busters was confusingly similar to Antbusters. He felt the granting of The California Ant Busters name was setting a precedent and anyone could now tack the word California onto the front of any name. He asked for a quick and easy solution to his problem that would also protect his customers, as he felt this was a consumer protection problem. He did not understand how the name had ever been granted and requested that reversal of the name "The California Ant Busters" be agendized for the next Board meeting.

Bill Gillespie, Government Watcher and provider of continuing education, wished to also give kudos to Elizabeth James, saying she was an effective, nice lady, who did a good job.

X. DISCUSSION OF PROPOSED PROCEDURES FOR CONDUCTING FUTURE STRATEGIC PLANNING SESSIONS – BILL MORRIS

Mr. Morris thanked President Jean Melton and Executive Officer Kelli Okuma for placing him on the Agenda as he did have some comments on a few sections of the Strategic Plan. However, in light of the Governor's bold new era and upcoming CPR report, he requested this Agenda Item be tabled.

Mr. Morris moved and Mr. Sesay seconded to table discussion of proposed procedures for conducting future strategic planning sessions to a possible future Board meeting. Passed unanimously.

VI. REVIEW OF CONTINUING EDUCATION AUDIT PROCESS – MICHAEL ROTH

Mr. Roth requested this matter be tabled.

Mr. Roth moved and Mr. Sesay seconded to table the review of the continuing education audit process to the next Board meeting. Passed unanimously.

VIII. APPROVAL OF 2005 STRATEGIC PLAN

Ms. Okuma reviewed the amendments to the 2004 Strategic Plan as they would now appear on the 2005 Strategic Plan.

Goal 1:

- Objective 1.1
 - Deliverable 1.1.1 - Amend target date to October 2005.
 - Deliverable 1.1.2 - Remove as completed.
 - Deliverable 1.1.3 - Remove from plan.
 - Deliverable 1.1.4 - Remove from plan.
- Objective 1.2
 - Deliverable 1.2.1 and 1.2.2 - Consolidate as 1.2.1
- Objective 1.3 - Remove from plan.
- Objective 1.4
 - Deliverable 1.4.1 - Amend target date to January 2005.
 - Deliverable 1.4.2 - Amend target date to February 2005.
- Objective 1.5
 - Deliverable 1.5.1 - Retain as is.

Goal 2:

- Objective 2.1 - Remove as completed.
- Objective 2.2
 - Deliverables 2.2.1 through 2.2.5 - Retain as is.
- Objective 2.3
 - Deliverables 2.3.1 through 2.3.2 - Retain as is.
- Objective 2.4
 - Deliverables 2.4.1 through 2.4.11 - Retain as is.
- Objective 2.5 - Remove as completed.

Goal 3:

- Objective 3.1 - Retain as is.

Goal 4:

- Objective 4.1
 - Deliverables 4.1.1 through 4.1.5 - Retain with amended dates.

Goal 5:

- Objective 5.1
 - Deliverables 5.1.1 through 5.1.5 - Retain as is.

- Objective 5.2
Deliverables 5.2.1 through 5.2.4 - Retain with amended target date.
- Objective 5.3
Deliverables 5.3.1 through 5.3.2 - Retain with amended target date.

Mr. Sesay moved and Mr. Morris seconded to approve the 2005 Strategic Plan.
Passed unanimously.

IX. PROPOSED AMENDMENT OF BOARD PROCEDURE NO. G-8 – DUTIES OF PRESIDENT AND VICE PRESIDENT

Ms. Okuma reported that at the last Board meeting there was discussion that Robert's Rules of Order might not always be used when conducting the meeting and it was recommended to change Policy No. 4 so the Board would be in compliance with its own procedures.

Mr. Heppler stated this change would be subordinate to the statutory provisions of the Bagley-Keene Open Meeting Act, as State law supersedes internal procedures in the event of any conflict.

Mr. Roth moved and Mr. Morris seconded to amend Policy No. 4 in Procedure No. G-8 - Duties of the President and Vice President to: The president will be guided by, but not bound by ~~use~~ Robert's Rules of Order when conducting the meetings, except to the extent where it conflicts with state law (Bagley-Keene Open Meeting Act). Passed unanimously.

Mr. Morris asked that the misspelling of the word "Directory" in Policy No. 13 in Procedure No. G-8 - Duties of the President and Vice President be corrected to: Director.

XI. PROPOSED AMENDMENT OF BOARD PROCEDURE NO. G-3 – BOARD COMMITTEES

Ms. Okuma reported that at the last Board meeting Board Members asked that Procedure G-3 be amended to include language that the President will designate the chairperson for all ad hoc committees.

Mr. Morris moved and Mr. Roth seconded to amend Procedure No. G-3 – Board Committees to: Members and the chairperson will be appointed by the President.
Passed unanimously.

XII. BOARD MEETING CALENDAR

The next Board meeting will be held April 7 and 8, 2005, in Pasadena. The following meeting will be held July 14 and 15, 2005, in either Napa or Sacramento. The meeting following will be held October 6 and 7, 2005, in Southern California.

XIV. 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.

Ms. Melton adjourned the meeting at 1:20 PM.

JEAN MELTON, President

KELLI OKUMA, Executive Officer

DATE