

MINUTES OF THE  
ANNUAL MEETING OF THE  
STRUCTURAL PEST CONTROL BOARD  
October 21 and 22, 2009

The meeting was held on Wednesday and Thursday, October 21 and 22, at the Mission Inn, 3649 Mission Inn, Riverside, California, commencing at 1:00 P.M. with the following members constituting a quorum:

Cliff Utley, President  
Cris Arzate, Vice President  
Luis Agurto  
Jean Melton  
Bill Morris

Board member Terrel Ferreira was not present.

Board staff present:  
Kelli Okuma, Executive Officer  
Susan Saylor, Assistant Executive Officer  
Dennis Patzer, Associate Governmental Program Analyst

Departmental staff present:  
Kurt Heppler, Legal Counsel

Board Liaison Deputy Attorney General Rene Judkiewicz was also in attendance.

I. ROLL CALL

Ms. Saylor read the roll call

II. REINSTATEMENT HEARING

The Board sat with Administrative Law Judge James Ahler and Deputy Attorney General Rene Judkiewicz to hear the Petition for Reinstatement of William James Tocki, Field Representative's License No. 23479. After the Administrative Law Judge's opening remarks the petitioner became aware of his right to be represented by counsel at his own expense and requested that the hearing be taken off calendar to enable him to retain counsel. The matter was ordered off calendar.

III. PUBLIC COMMENTS

Chris Reardon, Chief Deputy Director of the Department of Pesticide Regulation, and Chuck Andrews, Associate Director of the Department of Pesticide Regulation, were introduced to the Board by Mr. Utley.

IV. STRATEGIC PLANNING

The Board reviewed its current mission and vision statements and its current strategic plan. The Board amended its mission statement as follows: "The Structural Pest Control Board protects consumers by regulating the structural pest control industry to promote the health, safety, and general welfare of the public."

Further review of the strategic plan will be agendized at a future meeting to ensure consistency with the transfer of jurisdiction to the Department of Pesticide Regulation.

V. 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 meeting recessed at 3:34 P.M.

The meeting reconvened Thursday, October 22, 2009, at 9:05 A.M.

VI. FLAG SALUTE

Mr. Arzate led everyone in the flag salute.

VII. ROLL CALL

Ms. Saylor read the roll call.

VIII. APPROVAL OF MINUTES OF THE JULY 23 AND 24, 2009 MEETING

Mr. Arzate moved and Ms. Melton seconded to approve the minutes of the special meeting of July 23 and 24, 2009. Passed unanimously.

IX. EXECUTIVE OFFICER'S REPORT

Ms. Okuma introduced Chris Reardon, Chief Deputy Director of the Department of Pesticide Regulation, and Chuck Andrews, Associate Director, Department of Pesticide Regulation.

Ms. Okuma reported that Ryan Vauhan left the Board to take a position within the Department of Consumer Affairs and Dennis Patzer, who has worked for the Board for a number of years as a retired annuitant, has reinstated to state service and has taken the position vacated by Mr. Vaughn.

Ms. Okuma reported that Robert Lucas, Chief Enforcement Officer, left the Board to accept a Career Executive Assignment at the Department of Mental Health.

Ms. Okuma reported that one of the issues left on the enforcement desk was the status of the Technical Advisory Committee. The committee asked legal counsel to provide them with information. Legal counsel provided the information to Board staff. Mr. Lucas felt that staff did not ask the exact question the committee was seeking an answer to and he wanted legal to get further clarification. That was the status when Mr. Lucas left. Ms. Okuma reported that within the next thirty-days, the issue would be addressed and a Technical Advisory Committee meeting would be scheduled.

Ms. Okuma reported that the position that Mr. Lucas vacated, a Staff Services Manager I position, has been noticed on the State Personnel Board's VPOS website. The Board is currently receiving and reviewing applications for the position and within the next few weeks will be conducting interviews to fill the position. The Department of Pesticide Regulation has a promotional list in the Staff Services Manager I classification. The board will make contacts from that list in order to get as many qualified applicants for the position as possible.

Ms. Okuma reported that the Board currently has a vacancy for a Structural Pest Control Board Specialist in southern California. There is however, no current civil service examination in place to hire a specialist to fill the vacancy. The Department of Consumer Affairs has been working with staff to establish the examination process to recruit qualified applicants. It is anticipated that because of the current downturn in the industry it is possible there will be more applicants than previously in the past. The board is being creative with the Department in terms of considering options for conducting the civil service examination. In the past, the examination consisted of an oral interview. A written examination followed by qualification appraisals is being considered.

Ms. Okuma reported that Consumer Service Representative, Patti Jensen will be retiring at the end of November. The Board is currently in the process of recruitment for the consumer services representative position.

Ms. Okuma announced at the previous board meeting that Dr. Rust and Dr. Lewis would be present to make presentations on their final research proposals. Dr. Rust was unable to attend this meeting. The project is two-fold where Dr. Rust did the laboratory study and Dr. Lewis the field study, and therefore it did not seem appropriate to bring the field study in first and the laboratory study at a later date. The presentation will be rescheduled for a future date. Dr. Rust and Dr. Lewis' final reports for the evaluation of chemical localized treatment for drywood termite control have been posted on the Board's website.

Ms. Okuma presented and explained the Complaint Handling Survey to the Board and Department of Pesticide Regulation representatives.

#### A. UNIT UPDATES

Ms. Saylor presented the licensing survey results and licensing statistics.

Mr. Morris stated that he wanted to commend Ms. Saylor in terms of the statistics, as there has been a lot of progress in reporting statistics then from previous years.

Mr. Morris asked what the term Certified Applicator/License Applicator meant in the survey results. Ms. Saylor explained that at one time applicators were only certified, not licensed. Ms. Okuma stated that the term should now only state "licensed applicators."

Mr. Morris asked why applications for licensed applicators were down over 1,100 from the previous year. Ms. Saylor stated that it was representative of the downturn in the industry. Mr. Morris stated that he was concerned that the low number of applicants affects the labor pool from which the industry hires.

Mr. Morris asked Ms. Saylor if the lower number of Applicator licenses renewed was a trend. Ms. Saylor indicated that it was a trend.

Mr. Morris asked Ms. Saylor if she saw concerns regarding the number of applicators cancelled. Ms. Saylor responded that she was not concerned because until 2009, there was no legislation to cancel applicator licenses. The numbers now accurately reflect the number of applicator licenses.

Mr. Utey stated the statistics showed that the amount of pesticide stamps sold and WDO filings are down this year compared to the previous year. He stated that he believed the decline was due to the economy.

An unidentified person asked what percentage WDO filings had declined from the previous year. Mr. Arzate responded that filings were down approximately 10%. Ms. Okuma stated that the Board was spending a significant amount of enforcement time doing compliance checks regarding the filing of WDO reports with the Board. Ms. Okuma stated there were a number of open investigations, citations and fines that include orders of abatements to file reports that were not yet filed. Ms. Okuma stated that in many of those cases, the number of reports not filed by a company was in the thousands.

Ms. Saylor stated that at the last Board meeting she had reported that Priscilla Romero, the Board's Office Services Supervisor II was on medical leave. Ms. Romero returned to the Board on August 1, 2009. Upon her return, Ms. Romero moved to the examination desk as the examination coordinator. The Board is currently advertising and receiving applications for the Office Services Supervisor II position and interviews will be scheduled soon.

Ronnie O'Flaherty, the previous examination coordinator, has moved to the administration unit.

**B. BUDGET**

No update was given.

**C. LEGISLATION OF INTEREST TO THE BOARD**

No legislative report was given.

**D. REGULATION UPDATE**

Rules and Regulation section 1951 is now in effect which provides a one-year extension to gain continuing education requirements for license renewal to those serving in the armed service. The Office of Administrative Law approved this regulation on September 16, 2009.

Amendment of Rules and Regulation section 1984 is now in effect which replaced the word "cultural" with the word "behavioral" in regards to the definition of Structural Integrated Pest Management. The Office of Administrative Law approved this amendment on

September 16, 2009.

Amendment of Rules and Regulation section 1999.5 is now in effect which amends the regulation's introductory statement. The Office of Administrative Law approved this amendment on July 17, 2009.

The rulemaking package for amendment of Rules and Regulation section 1997, which would increase the WDO filing fee from \$1.50 to \$2.00, was submitted to the Department of Consumer Affairs on September 3, 2009 for review. Once the package is returned from the department, it will be sent to the Office of Administrative Law for approval.

Ms. Saylor stated that at the last Board meeting, it was requested that the continuing education audit statistics be added to the licensing statistics. Continuing education audit statistics have not been added because while licensing statistics are tracked monthly the continuing education audit is tracked yearly and are a result of license renewal activities. Applicator license continuing education audits are done on a quarterly basis. Ms. Saylor stated that she could provide that information at each Board meeting if desired.

Mr. Utey asked Ms. Saylor to provide the applicator license continuing education audit information to the board at its meetings.

Mr. Agurto asked what the percentage of licenses the Board audited. Ms. Saylor responded that in 2008, 15% of Field Representatives and Operators who renewed were audited. Of the 15% that were audited (about 550), 9.5% were non-compliant.

Martyn Hopper, Pest Control Operators of California, asked Ms. Okuma when Dr. Rust and Dr. Lewis would be giving their reports to the Board. Ms. Okuma responded that the board did not have a specific date.

Mr. Morris asked Ms. Okuma what the total monetary amount of the grant package was for the period. Ms. Okuma stated it was approximately \$800,000.

Lee Whitmore, Beneficial Exterminating, asked Ms. Saylor if the Board had previous statistics for the compliance rate for renewal of licenses when renewals were required to be accompanied with continuing education certificates. Ms. Saylor responded that the Board did not renew a license if a certificate was not submitted or the hours were not enough, therefore the Board did not keep statistics for education compliance.

Mr. Whitmore stated that the large amount of non-compliance might be curtailed if licensees were required to submit continuing education documentation.

Ms. Okuma reminded the Board that the reason the Board went back to the audit was that it simply did not have the resources to review continuing education certificates for 2,000 to 3,000 applicants every renewal cycle. It was not only a process of reviewing a certificate but also verifying its authenticity. The process was labor intensive taking up to a year to complete each renewal cycle.

Mr. Utey suggested that as the Board and the Department of Pesticide Regulation progresses forward that there may be other options that can be considered. He said that until it gets to that point, the process will have to remain the same.

Mr. Whitmore suggested that licensees be required to submit their certificates, however, keep the current process the same. He said he felt that requiring certificates may influence licensees to be in compliance at the time of renewal.

#### E. RESEARCH UPDATE

Dr. John Klotz and Dr. Les Greenberg from the University of California Riverside, gave a research update regarding developing low risk strategies for Argentine ants. Dr. Klotz summarized the efficacy studies for pesticide applications using fipronil, and metaflumizone. Dr. Greenberg gave an update on pesticide runoff studies.

After the presentation, questions were taken from the Board and audience.

#### X. REPORT FROM THE DEPARTMENT OF PESTICIDE REGULATION ON THE TRANSFER OF JURISDICTION OF THE BOARD

Chris Reardon, Chief Deputy Director of the Department of Pesticide Regulation (DPR), gave a report to the Board regarding the transfer of the Structural Pest Control Board (SPCB) to DPR effective October 23, 2009. Mr. Reardon stated Board licensees and the public will see little change. Under an agreement with the Department of Consumer Affairs (DCA), DCA will manage SPCB functions through June 30, 2010, including examination, licensing and complaint resolution. This will give DPR time to plan how best to integrate and consolidate responsibilities, information technology and administrative functions as well as to look for ways to eliminate redundancies and increase efficiencies. Mr. Reardon stated that the Board would stay in its current location until a complete assessment is made, at least through June 30, 2010.

Mr. Reardon stated that DPR would be meeting on October 23, 2009, to begin evaluating SPCB activities and looking for efficiencies and cost savings.

#### XI. DEPARTMENT OF PESTICIDE REGULATION UPDATE

Kathleen Boyle, DPR, gave an update to the Board regarding re-evaluation of the three (3) sulfuryl fluoride fumigants registered in California. Ms. Boyle stated that DPR has requested additional information regarding the fumigant from its registrants.

Ms. Boyle spoke about the development of a fumigation safety program entitled the California Aeration Plan (CAP) which is being developed by the structural fumigation industry with DPR serving in an advisory capacity. She stated the development of a new fumigation safety program is necessitated due to lower permissible exposure limits regarding work exposure. She stated the CAP is being reviewed by industry members and the county agricultural commissioners.

Ms. Boyle stated county agricultural commissions will be posting information on the DPR website regarding registration by structural pest control companies throughout California. It is anticipated that the posting will be completed by mid-November 2009.

XII. CONSIDERATION OF RECOMMENDATION TO AMEND CALIFORNIA CODE OF REGULATIONS SECTION 1970.5 TO ALLOW FOR PROVISION OF THE FUMIGATION SAFETY PROGRAM

Ms. Okuma reported that based on information received regarding the California Aeration Plan (CAP), Rules and Regulation section 1970.5 would have to be amended. This amendment is necessary due to no requirement for a licensee to be present during the active aeration phase of the fumigation.

XIII. CONSIDERATION OF RECOMMENDATION TO ADOPT CALIFORNIA CODE OF REGULATIONS SECTION 1975 TO CLARIFY BUSINESS AND PROFESSION CODE SECTION 8505.11 TO SPECIFY THAT THE TRADE NAME AND ACTIVE INGREDIENT NAME OF THE FUMIGANT BE INCLUDED ON THE FUMIGATION COMPLETION TAG

The board considered a recommendation for adoption of a new regulation regarding the requirement for specific trade name, active ingredient, and Environmental Protection Agency registration number on the fumigation completion tag posted by Branch 1 licensees after fumigation.

After discussion regarding the recommendation, Ms. Okuma stated that she was concerned whether a necessity for this regulation could be established.

Mr. Heppler verified that the Office of Administrative Law would look for the standard of necessity for a regulation.

Curtis Good stated that 99% of the information on the fumigation completion tag was used by the industry, not by emergency responders and regulators.

Mr. Patzer stated that the purpose of the placement of the fumigation tag should be determined. He asked if the placement of a tag was for the benefit of the industry or to give consumers information regarding the fumigant used.

Mr. Heppler stated that the question presented to the Board was if the proposed regulation demonstrates a necessity for the information and would it satisfy the Office of Administrative Law's standard.

Ms. Melton moved and Mr. Agurto seconded to table the agenda item. Passed unanimously.

XIV. PUBLIC HEARING TO AMEND CALIFORNIA CODE OF REGULATIONS SECTION 1971(a) (1) (B) TO REMOVE REFERENCES TO GAS MASKS (CONTINUATION OF ITEM FROM PREVIOUS MEETING)

Ms. Okuma stated that at the last Board meeting, there was a public hearing and California Code of Regulation Section 1971 was proposed for amendment. The proposal was to strike language that the fumigation crew shall be provided with or shall have in their possession, two or more effective gas masks or other safety equipment approved by the National Institute of Occupational Safety and Health for protection against the type of fumigant being used. DPR

submitted to the Board written concerns in opposition to this amendment. The Board voted to delay discussion until the next Board meeting in order to hear DPR's concerns and make a determination whether or not to go forward with the proposal.

Mr. Utley stated, as he understood it from DPR, the Board would not be able to look at the matter until March or April.

Ms. Okuma stated that she thought DPR was prepared to address their concerns before the Board.

Mr. Heppler announced, for the record, that the date was October 22, 2009, and this was a continued hearing for the purpose of considering amending section 1971 of Title 16 of the California Code of Regulation (CCR) as outlined in the previous notice and on the agenda. This hearing was being held under the authority of section 8525 of the Business and Professions Code as well as the provisions of the Administrative Procedures Act as set forth in the Government Code. The hearing was open to take oral testimony and/or documentary evidence by any person interested in this regulation for the record, which was being made by tape recorder. All oral testimony and documentary evidence would be considered by the Board pursuant to the requirements of the Administrative Procedures Act before the Board formally adopted the proposed amendments to the regulations, or recommended changes that may evolve as a result of the hearing.

Mr. Heppler stated that if any interested person desired to provide oral testimony, he or she should stand or come forward, giving his or her name and address, and if he or she represented an organization, the name of such organization, so that the Board would have a full record of all those who offered such testimony. He stated that it was the desire of the Board that the record of the hearing be clear and intelligible and that the hearing itself be orderly, thus providing all parties with fair and ample opportunity to be heard. After all interested parties, if any, had been heard, the issue would stand submitted.

Mr. Heppler 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 stated they would proceed by numerical order to consider the Board's proposed amendments to the regulations.

#### Proposed Amendment of Regulation Section 1971(a)(1)(B)

Mr. Heppler stated that this was a proposed amendment to strike sub clause (B) out of sub-division (a)(1) of section 1971, the requirement of two effective gas masks.

Kathleen Boyle, Department of Pesticide Regulation (DPR), stated that DPR was in opposition to the proposed amendment of section 1971 for three reasons. The section, as written, provides specifics as to when these gas masks or other safety equipment need to be on the site, need to be in possession of the crew, and need to be two or more gas masks. She stated that "gas masks" is the term even though it is generally understood by the industry and regulators that they are air-supplied respirators. The reason DPR is opposed to the amendment is that DPR, despite having a very broad respiratory protection regulation, the amendment does not address the specifics that 1971 (a)(1) does and therefore DPR, the county agricultural staff as the local enforcer, would be hindered in the ability to provide for the safety of fumigators by not having a specific code section to require gas masks to be onsite during a fumigation. Ms. Boyle stated she recognized there might be a future possibility for DPR to amend its own code



to address this, however because this language is currently in play, it is easier to ask for the Board's consideration to keep the language, especially in view of the merger, and let DPR handle the differences in its own code section at some other point in time.

There were no other public comments.

Ms. Okuma reminded the Board that the reason this regulation amendment was before them is because as part of statutory cleanup, the particular statute that spoke to this was repealed. The regulatory amendment proposed based on the statute being repealed. Without the statutory authority, the regulation should not exist. Staff has since conferred with legal counsel and it is now believed that legal authority for the regulation exists.

Mr. Morris asked Ms. Okuma if 1971(a)(1)(B) should remain the same.

Ms. Okuma stated that was what DPR was asking for and she did not disagree with them.

Mr. Heppler stated that if the Board wished to proceed with the amendment it should adopt the amendment as proposed, and the Board would proceed with a rulemaking file. If the Board elected not to proceed with this rulemaking package, it would direct the Executive Officer to notify the Office of Administrative Law not to proceed.

Mr. Agurto moved and Mr. Arzate seconded that the Board not proceed with the amendment of section 1971 and direct the Office of Administrative law not to proceed. Passed unanimously.

#### XV. ELECTION OF OFFICERS

Mr. Morris nominated Mr. Arzate for Board President and Ms. Melton seconded the nomination. No other nominations were submitted. The vote for Mr. Arzate as President passed unanimously.

Mr. Arzate nominated Ms. Melton for Board Vice President and Mr. Morris seconded the nomination. No other nominations were submitted. The vote for Ms. Melton as Board Vice President passed unanimously.

#### XVI. FUTURE AGENDA ITEMS

No future agenda items were submitted.

#### XVII. BOARD MEETING CALENDAR

Mr. Agurto moved and Mr. Arzate seconded that the next Structural Pest Control Board meeting be held in Sacramento, California on January 20 and 21, 2010. The motion passed (Aye-Arzate, Agurto, Morris, Utley. No-Melton).

XVIII. SUMMARY OF ALL ACTIONS TAKEN BY THE STRUCTURAL PEST CONTROL BOARD AT THIS MEETING

- The minutes of the July 23 and 24, 2009 meeting were approved.
- The Registrar's report and unit updates were given.
- A report regarding the transition of the SPCB to DPR was given.
- The DPR update was given.
- Development of a California Aeration Plan and possible amendment of Title 16, CCR section 1970.5 was discussed.
- Proposed adoption of a regulation (1975) regarding fumigation tags was tabled.
- Proposed amendment of Title 16, section 1971 will not proceed.
- Mr. Arzate was elected as Board President and Ms. Melton was elected as Board Vice President.
- A special meeting of the SPCB was scheduled for January 20 and 21, 2010.

XIX. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Harvey Logan, Western Exterminator, asked the Board the status of pre-treatment. Ms. Okuma stated that the Board prepared legislative information to the Department of Consumer Affairs and that DPR has been informed.


Mr. Morris stated that wherever the Board ends up in the future, he hoped it would end up on its feet. Mr. Morris wanted everyone to know that the commitment towards consumerism and the consumer's safety and well-being has always been the highest priority in his estimation and he hoped that commitment would follow the Board in the future.

Mr. Arzate stated that he wanted to recognize Mr. Utley's leadership during the past year.

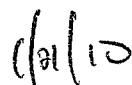
XX. ADJOURNMENT

Ms. Melton moved and Mr. Arzate seconded that the meeting be adjourned. Passed unanimously.

Mr. Utley adjourned the meeting at 12:08 P.M.

  
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PRESIDENT

  
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KELLI OKUMA, Executive Officer

  
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DATE