

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
DECEMBER 28, 2009

The teleconference meeting was held on Monday, December 28, 2009, at the Structural Pest Control Board, 2005 Evergreen Street, Lake Tahoe Conference Room, Sacramento, California, commencing at 9:02 A.M. with the following members constituting a quorum:

Cris Arzate, President
Jean Melton, Vice President
Terrel Combs-Feirerra
Cliff Utley
Bill Morris

Board member Luis Argurto was not present.

Board staff present:

Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Dennis Patzer, Administration Analyst

Departmental staff present:

Kurt Heppler, Legal Counsel

I. **CALL TO ORDER AND ROLL CALL**

Ms. Saylor read the roll call.

II. **CONSIDERATION OF A REVISION TO THE PROPOSED AMENDMENT TO SECTION 1997 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS TO INCREASE THE FILING FEE FROM \$2.00 PER ACTIVITY TO \$2.50 PER ACTIVITY EFFECTIVE JULY 1, 2010**

Mr. Arzate asked Ms. Okuma to provide background information regarding the amendment of section 1997.

Ms. Okuma stated the WDO activity fee is currently set by regulation at \$1.50 per activity. The statutory cap for the fee is \$3.00. At the April 2009, Board meeting, staff proposed a WDO activity fee increase. The Board voted to increase the WDO fee to \$2.00 per activity. The Board discussed that the budget would still be in the red on June 30, 2011 if the housing market did not rebound and the number of activities being filed with the board did not increase. Once the Board voted and approved a regulatory fee increase, the regulatory package was submitted to the control agency for approval. The Board's jurisdiction transferred from the Department of Consumer Affairs to the Department of Pesticide Regulation, therefore the Department of Consumer Affairs was out of the loop in terms of processing the rulemaking file and the Department of Pesticide Regulation then became the control parent. The Department of Pesticide Regulation asked for a meeting with Susan Saylor and Ms. Okuma to discuss the projections regarding the fee increase proposal and the fact that at the time the Board took action and now six months later, the revenue did not meet the projections for that level. The Department of Pesticide Regulation conveyed to the Board the message from the Department of Finance it will only entertain a fee increase to \$2.50 in order to stabilize the Board's funding condition. What is before the board is to approve an amendment for a fee increase to \$2.50 per activity.

Mr. Utley asked Ms. Saylor if at the April 2009 board meeting, did staff tell the Board that a minimum of \$2.25 possibly \$2.50 was needed. Mr. Utley stated that industry opposed an increase to \$2.50.

Ms. Saylor stated that the proposal at the April 2009 meeting, was for a \$2.00 or \$2.50 increase. Ms. Saylor stated that staff recommendation was \$2.50.

Mr. Morris stated that he recommended a fee increase to \$2.50 and the Board did take testimony from the industry. The industry testified that an increase to \$2.50 was too high. Based on the industry's concern, Mr. Morris made a motion that the fee be increased to \$2.00. Mr. Morris stated that staff did recommend a fee increase in the range of \$2.25 to \$2.50 and stated that things would probably be okay at \$2.00 for a short period of time and at a later time the Board could go back and revisit activity fees based on the economy.

Mr. Utley stated that the Board should increase the fee to \$2.50. although if the Board increased the fee, it should direct staff to provide quarterly updates regarding the fund condition and let the Board know when the fees could be reduced.

Mr. Morris asked Mr. Utley and Ms. Melton what it would mean to them as pest control operators from an economic point of view to see a fee increase from \$1.50 to \$2.50. Mr. Morris stated that he was concerned and did not want to see consumers burdened significantly because of a fee increase. Mr. Morris stated that he believed that the industry was capable of handling the fee increase on a short-term basis.

Mr. Utley stated that he did not know if a fee increase would result in a burden to Southern California consumers but it will be a burden to companies to a certain extent. He felt that the Department of Pesticide Regulation would not settle for anything less than an increase to \$2.50 per activity.

Mr. Morris asked Mr. Utley if he was relegated to the fact that the Board has to vote for an increase to \$2.50.

Mr. Utley stated that he was of the opinion that the Board would have to vote for an increase to \$2.50 but he wanted to monitor the revenue just like licensing is monitored so that at some point in time the fee could be lowered.

Mr. Morris stated that he agreed with Mr. Utley and asked for Ms Melton's opinion.

Ms. Melton stated that she concurred with Mr. Morris and Mr. Utley that the fees should be monitored because it will be a burden on the industry.

Ms. Feirrer asked at what point during monitoring should a fee reduction be considered.

Mr. Utley stated that it was his opinion that staff should be directed to give the Board an update at the next meeting to get an idea what information would be needed to enable the Board to reduce the fee. He asked if three months of reserves was needed before a fee reduction could be considered.

Ms. Saylor stated that the Department of Pesticide did not address months of reserve, only that the board was heading for a deficit.

Ms. Okuma stated that policy regarding reserve status can fluctuate from administration to administration.

Mr. Utley stated that based on not knowing the future status of the Board, he would like to see some kind of control over fees should the economy improve and the number of activities increase.

Mr. Heppler stated that in the meantime, the Board could direct staff to generate a quarterly report that would inform the Board of the revenues being generated by activity fees. The report could be generated as a formal public procedure and be adgendized on the boards meeting agenda.

Mr. Morris stated that he was concerned about putting undue economic pressure on the industry. He stated that the industry has to be healthy in order to produce a safe, viable product to the consumer. He stated that he agreed with setting up safeguards for the foreseeable future, meeting by meeting, and he would agree with a fee increase to \$2.50.

Mr. Heppler stated that the procedural aspect would be to revise the regulation to \$2.50, keep the operative date the same, issue a fifteen-day notice of proposed change from \$2.00 to \$2.50, and in the absence of any negative public comments, delegate authority to the Executive Officer to prepare the rulemaking file and submit it to the Office of Administrative Law for approval. In the event that the Board does receive adverse comments, the issue would be before the Board at its January 21 and 22, 2010, meeting so that it may be heard.

Mr. Heppler stated that he felt there was no need to address updating the fund condition in the motion. The Board, through its President, could simply direct staff to report at every meeting the fund condition and any possible adjustments thereto.

Mr. Utley asked if on the outside chance the direction the Department of Pesticide Regulation goes with the Board is to change its structure, what would be the protection of the industry regarding the fee.

Mr. Heppler stated that as with many departments where decision making is vested in the Director, the rulemaking procedure spelled out in the Administrative Procedures Act would still be followed, however the forum would be different.

Mr. Utley moved and Mr. Morris seconded to amend previously proposed amendment to the California Code of Regulations Section 1997 to reflect an activity fee increase to \$2.50, notice the amendment for fifteen days to all the interested parties, and in the absence of any adverse comments, the Executive Officer be delegated the authority to prepare the rulemaking file for submission to the control agencies and the Office of Administrative Law for adoption.

Mr. Arzate asked if there were any comments from the Board. After hearing none, he asked for comments from the public.

Mr. Arzate stated that at the 1021 N. Orange Drive, Hollywood, California teleconference location, there were no persons in the audience and therefore no comments.

From the 3958 Valley Avenue, Suite E, Pleasanton, California teleconference location, Mr. Van Hooser stated the fee increase was a tax that will be passed on to the consumer and he hoped real estate business would pick up in the first quarter.

Harvey Logan, Western Exterminator Company, stated that they did not necessarily oppose the fee increase but would like to see the second fifty cents implemented incrementally as the Board needs the funds, as this would be less burdensome to registered companies.

Bill Gaither, Pest Control Operators of California, stated that the association's official position is to oppose any fee increase at this time due to the state of the economy.

Mr. Arzate asked if there were any comments from the 3165 June Street, San Bernardino, California teleconference location. Mr. Utley stated there were none as he was the only person in attendance.

Mr. Heppler stated that there was a motion on the table to amend the fee increase from \$2.00 to \$2.50 as of July 1, 2010, and issue a fifteen-day public notice, if there are adverse comments the matter will be brought before the Board at its January 21, 2010 meeting.

Mr. Utley asked if based on what Mr. Logan had said was it a possibility to spread out the increase activity fee over six months or longer.

Ms. Okuma stated that the message the Board received is that if the activity fee is not increased to \$2.50, there will be no fee increase at all and that would be devastating to the Board.

She further stated that each fee increase would required going through the regulatory process. The process for a fee increase could take six months to a year.

Ms. Feirrer asked if in the absence of the Board, would the Department of Pesticide Regulation still regulate the industry.

Ms. Okuma stated that the presumption is that the industry would still be regulated, but the Department of Pesticide Regulation has not yet made public its direction with regard to this question.

Mr. Morris stated that he felt the Board had a clear mandate in regards to the fee issue. He stated it was his opinion that the fee should be increased.

Mr. Arzate asked if there were any other questions or comments for the teleconference locations.

The vote on the motion was taken by roll call. The vote in support of the motion was unanimous.

Mr. Heppler clarified it was the will of the Board that the Executive Officer prepare fund condition reports for Board consideration at each meeting.

III. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

From the Pleasanton location, Mr. Van Hooser stated that he would like to see not as an action item but an information item discussion regarding increasing the required surety bond amount because the Pest Control Operators of California were considering seeking to increase the bond amounts.

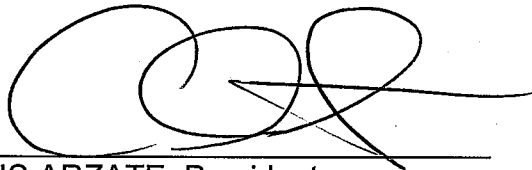
Mr. Arzate asked that the subject be put on the agenda for the next board meeting.

Mr. Utley made a motion to adjourn the meeting.

Ms. Melton seconded the motion to adjourn the meeting.

The vote to adjourn the meeting was unanimous.

The meeting was adjourned at 9:40 A.M.



CRIS ARZATE, President



KELLI OKUMA, Executive Officer

1/21/10
DATE