MINUTES OF THE
ANNUAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
October 28, 2010

The meeting was held on Thursday, October 28, 2010, in the Auditorium located at 1350 Front Street in San Diego, Room B-019, commencing at 9:03 A.M. with the following members constituting a quorum:

Cliff Utley, Vice President
Curtis Good
Luis Agurto
David Tamayo

Board staff present:
Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Bill Douglas, Chief Enforcement Officer
Ronni O'Flaherty, Staff Services Analyst
Ron Moss, Specialist
Steven Smith, Specialist

Departmental staff present:
Cliff Smith, Sr. Environmental Scientist
Jodi Clary, Legal Counsel

Board member Cris Arzate was not in attendance.

ROLL CALL

Ms. Saylor read the roll call.

FLAG SALUTE

Mr. Good led everyone in the flag salute.

APPROVAL OF MINUTES OF THE JULY 22, 2010 BOARD MEETING

Mr. Good moved and Mr. Agurto seconded to approve the minutes of the July 22, 2010 Board meeting. Passed unanimously.

DEPARTMENT OF PESTICIDE REGULATION UPDATE

Cliff Smith, Department of Pesticide Regulation, reported on the following:

- Revisions of the enforcement response regulations which relate to how the agricultural commissioners offices take enforcement action in violation situations are approximately two months from public notice.

- Anyone with interest in the upcoming re-write of regulations regarding personal protective equipment was referred to Department of Pesticide Regulation's website for more information.

- Text has been drafted and can be found on the department's website in regards to surface water quality protection regulations that relate to off-site drift and run-off from various operations. He added that these are areas that have not had a lot of previous regulation.

- The final transition to the California Aeration Plan (CAP) from the current Tarpaulin Removal Aeration Plan (TRAP) will be effective November 1st, 2010 for all structural fumigations. He explained the difference between the two plans is that with CAP, the aeration will be performed with fans while the tarp remains on the structure, whereas with TRAP, aerations are performed with the tarp removed.

- DPR has three enforcement actions underway to allow agricultural commissioners offices to take enforcement action against branch one licensees who are shutting off gas valves without the utility company's assistance, creating a potentially hazardous situation.

EXECUTIVE OFFICER'S REPORT

Ms. Okuma reported on the following:

- The Governor issued an Executive Order that puts in place a hiring freeze for state government. There are currently two vacancies among board staff, a Specialist position and a half-time position in the Enforcement and Complaint Unit.

- Due to furloughs, the office has been closed three days per month, however, current budget negotiations for different bargaining units now have some staff furloughed while others not. She added that the office will remain open Monday through Friday, although not fully staffed.
- Since the last meeting, staff has discontinued the use of Web Center, the web-based telephone system that allowed incoming calls to be monitored to ensure the public was being responded to appropriately. She added that

Web Center was causing many problems with the phone lines and was very expensive.

- AB1736, signed into law, is a bill that requires DPR to solicit nominations for the appointment of Structural Pest Control Board appointees and prohibits manufacturers from serving as board appointees. She added that this bill would extend the provisions of the Structural Fumigation Enforcement Program to January of 2014 and would require the director of DPR to provide oversight to the program.

- SB294, signed into law, is a bill that extends the sunset provisions of the Structural Pest Control Board to 2014.

- At the last meeting, the board took a position of opposition to SB1157, the Healthy Schools Act. This bill was vetoed by the Governor.

- The transition to DPR has been a learning curve for board staff as DPR's processes are different than DCA's. Some processes are working better than others. DPR's human resources, for example, handle staff needs efficiently. Whereas DCA never questioned or directed staff, DPR is more directly involved. For example, DPR recently cancelled travel arrangements made by board staff for a witness for the State that was subpoenaed by the Attorney General's office, and questioning the need for the witness.

- Complaint handling survey results were reviewed with the board members.

Mr. Douglas reported on the following:

- The board was involved in a two day unlicensed activity sting operation that involved the board, the Contractors State Licensing Board and the Division of Investigation. Due to the interagency agreement with DCA, the board was able to issue citations and have armed law enforcement staff on scene. He added that the Department of Industrial Relations and the Yolo County District Attorney were also present to issue their citations and fines in relation to unlicensed businesses with employee workman's compensation issues. He stated that eventually similar stings will be performed in central and southern California.

- As an educational experience, he went on a field visit with a qualifying manager of a licensed company. He stated this was beneficial because he has now seen the entire process; from an original inspection performed, to a complaint filed, and through the investigation process.

- Information regarding test holes has been submitted to DPR's legal counsel for their opinion.

Martyn Hopper, Pest Control Operators of California, expressed gratitude to Mr. Douglas and board staff for their efforts and concern with enforcement against unlicensed activity.

Mr. Douglas stated that any unlicensed activity reported to the board is reviewed and if there is not enough evidence to move forward, it is filed for future reference.

Ms. Okuma introduced Ron Moss and Steven Smith as two of the board's specialists and added that both have also been involved in numerous unlicensed activity investigations, some resulting in individuals being incarcerated.

Ms. Saylor reported on the following:

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

- Research projects funded by the board were reviewed.

- Wood Destroying Organism statistics, which were compiled as a result of a request from board members during the last meeting, were provided to the board members. She stated that the September 2010 number of activities filed shows 87,000, but the actual number by the end of that month reached approximately 97,000. She added that an updated version of this document will be provided at future meetings.

- Current and past year's pro-rata costs were provided, which reflected a cost of $526,979 in fiscal year (FY) 09/10 and a $918,867 pro-rata for FY 10/11. She stated that the figure of $918,867 was reduced by approximately $100,000 due to line-item expenditure for maintenance of the WDO system that may be spent, but generally is not. She added that FY 10/11 pro-rata includes DPR's direct services, information technology, and the interagency agreement between DCA and DPR.

- The interagency agreement between DCA and DPR has been signed and reflects what services are still being provided by DCA and the cost to the board.

- Staff was directed to proceed with the rulemaking package for sections 1974 and 1996.1, relating to the trade name and active ingredients of pesticides being used. The regulation package was submitted for approval on September 30, 2010.

- The notice of public hearing regarding section 1970.5, which relates to the CAP, was approved by the board. The package must be submitted to DPR for approval by the Air Resources Board prior to filing it with Office of

Administrative Law for public hearing. She requested that board members schedule out two board meetings ahead to allow time for the matter to be noticed for public hearing.

- Staff was notified by the Department of Justice (DOJ) that, due to fiscal crisis and hiring restrictions, they will no longer accept staff telephone calls to their office in regards to live scan results. She added that staff will continue to send out delayed result notices to DOJ staff.

- A new Act book has been published and a copy has been mailed to every principal, branch, Attorneys General and Agricultural Commissioner's office.

- The continuing education audit of applicators, who renewed between July 1, 2009 and June 30, 2010, has begun and initial letters were mailed out on October 7, 2010.

- The 2009 continuing education audit for field representatives and operators is almost complete. Staff is awaiting approximately forty more responses.

- Priscilla Romero has been out since June 1, 2010 and her leave has been extended to January of 2011. She has been removed from the examination desk and replaced by a new staff person, Frank Munoz, who came from the Athletic Commission and is doing a tremendous job on the desk.

- Joseph Halligan has transferred from the Department of Pesticide Regulation to the Board's Administration Unit to assume Ronni O'Flaherty's duties as the purchasing specialist and contact person for board specialists.

- Ronni O'Flaherty has been promoted to the Staff Services Analyst position in the Administration Unit. She will be working on rulemaking and website updates.

- Elizabeth Chervenak has returned from maternity leave and is currently working three days per week.

- There has been very low attendance at the examination development workshops. The last two workshops have been cancelled due to the confirmation of only two people, and only two operators appeared for the September workshop. She explained that it is very expensive to hold these workshops and not cost effective when so few people attend. She has discussed with the examination vendor the possibility of conducting a branch 1 workshop in Southern California in December or January in hopes of getting more participation.

Mr. Agurto asked Ms. Saylor for an update on the status of the branch 2 and 3 workshops.

Ms. Saylor replied there is currently a bank of 500 questions for both branch 3 examinations. She stated that branch 2 workshops have not yet been held, however, letters requesting participation were recently sent out resulting in a tremendous response. She added that there has not been a new branch 2 examination written in over a decade.

Harvey Logan, Western Exterminator Company, questioned the possibility of computer based testing in the future.

Ms. Okuma stated that she has discussed computer based testing briefly with DPR, but in order to do so there would have to be legislative changes made, as there would be an additional cost to the industry.

Mr. Logan asked if Pest Control Operators of California (PCOC) could sponsor this legislation for next year.

Ms. Okuma replied that originally when discussing computer based testing, the board was piggybacking off of DCA's contract. Since the board is no longer under DCA, staff is gathering statistics and getting figures to begin the process independent of any existing contract. She stated that PCOC support will be necessary.

Martyn Hopper, PCOC, expressed concern that a computer based examination system potentially could cost millions of dollars. He stated that he does not want to see that expense passed on to the industry.

ANNUAL REVIEW OF BOARD PROCEDURES

Ms. Okuma introduced the board procedures that the board members previously adopted. She explained that once a year the procedures are reviewed by the Board for any updates or amendments. She added that the guidelines for public record access may need to be reviewed to guarantee consistency with DPR's guidelines.

Mr. Utley asked if Legal would have to be involved in any changes regarding public record access.

Ms. Okuma stated that generally, public record guidelines are procedures set forth by each department, therefore Legal should only have to be involved to advise the Board of departmental policies and procedures.

Mr. Utley asked if the section regarding public record access would be the only procedure that would have to be reviewed due to the transition to DPR.

Ms. Okuma replied that depending on the final result of the transition, the entire procedures may need to be reconsidered.

CONSIDERATION OF THE TECHNICAL ADVISORY COMMITTEE RECOMMENDATION TO ALLOW FOR THE INSTALLATION OF PESTICIDAL INSULATION WITHIN THE SCOPE OF A STRUCTURAL PEST CONTROL REGISTRATION AND LICENSE

Mr. Douglas reported that as a result of the action taken by the board at the July 22, 2010 meeting, he provided CSLB with correspondence stating the installation of insulation with pesticidal properties would be considered unlicensed activity for their licensees.

Mr. Tamayo asked if both a pest control license and a contractor's license are needed to install pesticidal insulation and if licensed contractors would be notified.

Mr. Douglas responded that dual licensure was required, but no notification was going to be made.

Ms. Okuma stated that a licensed contractor does not need a structural pest control license to install insulation with pesticidal properties, but a pest control license is required to actually sell or recommend the product as a pest control method.

Mr. Utley and Mr. Douglas confirmed that a contractor's license is required if a registered structural pest control company were to install insulation that was not specific to a finding and recommendation.

Eric Paulson, Clark Pest Control, stated that he was under the impression that as a pest control licensee, one is allowed to remove and replace the existing insulation whether or not it contains pesticidal properties as long as it is related to a finding; a contractor's license would not be required.

Mr. Utley stated that as long as the installation is being done in accordance with a service agreement, and the work is within the scope of the license held, it is appropriate.

Mr. Van Hooser added if the necessity of insulation placement is documented on a WDO Inspection Report for Branch 3 and some other work order for Branch 2, it is within the scope of a structural license and does not require a contractor's license.

PROPOSED AMENDMENT OF SECTION 1937.11 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS – DISCIPLINARY GUIDELINES AS INCORPORATED BY REFERENCE

Mr. Douglas provided the members with recommended amendments to the Disciplinary Guidelines that address the outdated reference to the obsolete U.C. Berkeley correspondence course.

> Mr. Agurto moved and Mr. Good seconded to notice this matter for public hearing. Passed unanimously.

RESEARCH ADVISORY PANEL RECOMMENDATIONS TO APPROVE RESEARCH PROPOSAL(S)

Darrell Ennes reported on the Research Advisory Panel's recommendations regarding two research proposals submitted for bed bugs. He stated that after much review and discussion, the panel recommended that both proposals are accepted.

> Mr. Good moved and Mr. Tamayo seconded to adopt the Research Advisory Panel's recommendation to accept both proposals. Passed unanimously.

Lee Whitmore, Crown Pest Control, asked how much the two proposals will cost.

Ms. Okuma responded that the two proposals will cost $303,066. She added that while this amount exceeds the funds currently available, there will be sufficient monies available upon completion of the project.

Darren Van Steenwyk asked about the time frame of the contract is.

Ms. Saylor stated that Dr. Tsutsui's proposal had a start date of January 3, 2011 extending through January 2, 2012, and Dr. Lewis' from January 1, 2011 to December 31, 2011.

CONSIDERATION OF REQUEST AND RECOMMENDATIONS TO AMEND CALIFORNIA CODE OF REGULATIONS SECTION 1991 TO REQUIRE PLACEMENT OF SUBSECTION (a)(8)(C)(3) DISCLOSURE WITH THE CORRESPONDING RECOMMENDATION(S) ON THE INSPECTION REPORT

Mr. Douglas stated that if the board takes a position to make a change regarding the placement of this disclosure, regulatory changes will be necessary.

Mr. Van Hooser stated that the current regulation is fine; however, clarification regarding subterranean termites is necessary. The original intent of the disclosure statement was to sell fumigations. He places the statements following every recommendation as is now being proposed and has never had a customer request fumigation rather than perform a local treatment. The proposal would greatly lengthen the report. The statement was originally intended to address drywoods. He recommended the language be clarified that it is not necessary for findings of subterranean termites. He further suggested doing nothing or use the 8538 notification for the vehicle for this message.

Mr. Ennes stated that he agrees with Mr. Van Hooser in that adding this disclosure with every spot treatment recommendation will only make the reports lengthy and is not necessary.

Steve Delk, Delk Pest Control, stated that he believes it would be foolish to change the regulation right now and recommended taking no action.

Mr. Good stated that he thinks placing the language with the recommendation provides clarity to the consumer and that he is in favor of the change.

Mr. Good provided Mr. Tamayo with background information on this agenda item and explained that the item up for discussion is simply the placement of a disclosure that is already required to be on the report, regulations just do not specify where.

Michael Katz, Western Exterminator, asked that if this recommendation passes, will it also be applicable to recommendations for subterranean termites.

Ms. Okuma stated that this was discussed at the previous meeting. The board directed staff to go back to the original rulemaking file, provide the board with the historical information, and determine what the original intent was. She added that after review of the original rulemaking package, her determination is that exclusion of subterranean termites and the placement of the disclosure was discussed, however, the package was approved without those clarifications being made. She added that if these issues are not addressed now, the same questions will arise during the public hearing process and will have to be addressed at that time.

Mr. Tamayo asked if the board should take a step back and address the issue of drywood versus subterranean termites prior to moving forward with the placement issue.

Mr. Utley responded that fumigation is not used for subterranean termites, but there is an all encompassing treatment as opposed to a specific treatment.

Mr. Paulson stated that while the regulation does not specify whether this disclosure is for drywood or subterranean termites, when it was originally written, it was meant only for drywood termites. He suggested taking no action. If the Board moves forward, the issues need to be further clarified.

Mr. Utley asked Board Specialist Steven Smith if when looking at a report, he feels it makes a difference if the disclosure is located outside of the recommendations section.

Mr. Smith replied that it makes little to no difference as to where the disclosure is on the report. He added that some reports have numerous disclosures and that he feels that the more disclosures on the report, the more likely they are to be overlooked by the consumer.

Mr. Agurto asked Mr. Good that if any changes are made with this regulation, would it affect the way the pest control industry practices or benefit the consumer.

Mr. Good replied that there would be no changes in field practices. He feels that these changes would simply make the recommendations more clear to the consumer.

Mr. Van Hooser stated that he feels the drywood versus subterranean termite issue should be resolved before looking at the placement of the disclosure. He added that this disclosure should not apply to subterranean termites because, from an Integrated Pest Management standpoint, a local treatment uses fewer pesticides.

Mr. Smith stated that he has yet to find a company that believes this disclosure applies to subterranean termites.

Mr. Tamayo stated that prior to approving the placement of the disclosure; the issue of drywood versus subterranean termites needs to be addressed.

Mr. Utley asked Ms. Okuma if the consideration at hand can be amended to reflect drywood termites and beetles instead of wood destroying organisms.

Ms. Okuma stated that at the previous meeting, there was a suggestion made in those regards, but no motion was made by the board.

Mr. Ennes stated that exempting subterranean termites would be the appropriate action.

Mr. Utley stated that he would like board staff to determine whether to exclude subterranean termites or to make the disclosure relevant to only drywood termites and beetles.

Ms. Okuma stated that Legal Counsel would be able to assist in drafting language and determine which route is better.

Mr. Agurto asked Mr. Van Hooser how the change of language in this disclosure would affect the local treatment of subterranean termites.

Mr. Van Hooser replied that he does not believe that it would cause any change and he feels this consideration is being pushed by fumigators.

> Mr. Good moved and Mr. Tamayo seconded to direct staff to revise language to either make this disclosure relevant to only drywood termites and beetles or to exclude subterranean termites. Passed unanimously.

Ms. Okuma clarified that staff is directed to draft language that clarifies this subsection that states the disclosure is only required when making recommendations for wood destroying pests that are not subterranean termites.

Mr. Utley stated that consideration of making the disclosure relate only to drywood termites and beetles was also part of the directive.

Ms. Okuma reminded board members that the item on the agenda is placement of the disclosure.

Mr. Utley stated that if the wording is changed as directed, that placement may not even have to be addressed.

Mr. Good stated that he feels the language should be addressed prior to considering placement.

Mr. Paulson stated that when changing the language of this disclosure, it would be better to write out what it applies to rather than excludes.

Mr. Good stated that by only excluding subterranean termites, there can still be other pests leading into inaccessible areas and that inspectors must look at each individual situation.

Mr. Good stated that the point of excluding subterranean termites is so that members of the industry can still do local treatments for subterranean termites.

ELECTION OF OFFICERS

Ms. Okuma asked for nominations for officers.

Mr. Agurto moved and Mr. Tamayo seconded to elect Curtis Good as the president of the Structural Pest Control Board. Passed unanimously.

Mr. Utley moved and Mr. Agurto seconded to elect David Tamayo as the vice president of the Structural Pest Control Board. Passed unanimously.

FUTURE AGENDA ITEMS

Mr. Agurto questioned the ownership rights of knowledge gained resulting from research projects funded by the board.

Ms. Okuma stated that the ownership rights for said research projects are not negotiable, and that once the board approved the research project proposal, no contractual changes can be made. She added that the outcome of this research will not be owned by the state and any person or entity can use the information.

Mr. Agurto asked that once the contract is over, if the researcher would be able to sell the rights to a private enterprise for a financial gain.

Ms. Okuma stated that she has never heard of this happening but it may be possible.

Mr. Agurto asked that this matter be put on the agenda for discussion relating to future research projects.

Mr. Tamayo asked that the Department of Pesticide Regulation be invited to give the Board an update on the status of its surface water regulations for the purpose of exploring any role the Board may need to undertake as it relates to possible exemptions in the proposed regulations for those licensees who participate in a third-party integrated pest management certification program.

Mr. Utley asked that Pest Control Operators of California also be invited to give the Board an update on the associations integrated pest management certification program.

BOARD MEETING CALENDAR

The next board meeting will be scheduled for January 20, 2011, in Sacramento.

The following meeting will be scheduled for April 28, 2011, in Sacramento.

PUBLIC COMMENTS NOT ON THE AGENDA

There were no public comments.

ADJOURNMENT

This meeting was adjourned at 11:03 A.M.

President

Kelli Okuma, Executive Officer

1-20-11
DATE