MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
April 25 and 26, 2012

The meeting was held on Wednesday and Thursday, April 25 and 26, 2012, in the Hearing Room located at 2005 Evergreen Street in Sacramento, commencing at 1:54 P.M. with the following members constituting a quorum:

Curtis Good, President
David Tamayo, Vice President
Cris Arzate
Cliff Utley

Board staff present:
Bill Douglas, Interim / Executive Officer
Susan Saylor, Assistant Executive Officer
Robert Lucas, Consumer Services Manager
Ronni O'Flaherty, Staff Services Analyst
Elizabeth Chervenak, Special Projects Analyst
Tom Ineichen, Board Specialist
Fred Bartley, Board Specialist

Departmental staff present:
Jodi Clary, Legal Counsel
Mike Zeiss, Staff Environmental Scientist
Kathy Boyle, Enforcement Program Specialist

## ROLL CALL

Ms. Saylor read the roll call.

## FLAG SALUTE

Mr. Good led everyone in the flag salute.

## PETITION FOR REINSTATEMENT

The Board sat with Administrative Law Judge Catherine B. Frink to hear the Petition for Reinstatement of Bryan W. Scobey, Field Representative's License No. 30367. The petitioner was informed that he would be notified by mail of the Board's decision.

The Board sat with Administrative Law Judge Catherine B. Frink to hear the Petition for Reinstatement of Thomas J. Murphy, Operator's License No. 8137. The petitioner was informed that he would be notified by mail of the Board's decision.

## APPROVAL OF MINUTES OF THE JANUARY 12, 2012 BOARD MEETING

Mr. Good stated that on page two of the minutes that he asked Dave Watkins, not Harvey Logan to bring the Freddie Mac situation to the California Association of Realtors' attention, and asked that this correction is made to the draft minutes.

Mr. Arzate asked that on page five of the minutes it is noted that he asked to be notified when the hearing regarding the Board being transferred back to DCA is held.

> Mr. Utley moved and Mr. Good seconded to approve the minutes of the January 12, 2012 Board meeting with the noted changes. Passed unanimously.

## CLOSED SESSION

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

The meeting adjourned for the day at 5:20 P.M.

The meeting reconvened on April 26, 2012 at 8:58 A.M.

## ROLL CALL

Ms. Saylor read the roll call.

## FLAG SALUTE

Mr. Good led everyone in the flag salute.

## EXECUTIVE OFFICER'S REPORT

Ms. Saylor reported on the following:

- Licensing survey results and statistics, WDO numbers, and research project updates were reviewed with the Board Members.
- Luther Woods was hired in February to fill the cashiering vacancy in the Licensing Unit.

- Melissa Roberts, who has been on the Company Registration and Operator's Desk has been promoted to the Disciplinary Action Analyst's desk in Administration.

Mr. Tamayo requested that a column reflecting the year's totals be added to the licensing statistics in addition to the year to date totals.

Mr. Douglas reported on the following:

- A new Specialist's Territory Map that includes the Board's two new specialists was reviewed with the board members. Fred Bartley, the new Northern California Specialist was introduced to the Board and audience.

- Langston Edwards will be the Board's new liaison from the Attorney General's Office, replacing Rene Judkiewicz.

- Robert Lucas has been hired as the Complaints and Consumer Services Manager.

- Testimony given in front of the Little Hoover Commission by the Director of DCA in regards to the transfer of SPCB back under the jurisdiction of DCA was reviewed with the board members.

Mr. Good stated that he would like to recognize that Melissa has numerous positive remarks on the Licensing Unit Survey and thanked her.

## DEPARTMENT OF PESTICIDE REGULATION UPDATE

Mr. Zeiss reported on the following:

- Enforcement Branch Letter ENF 2012-3 was mailed out on April 19 in regards to Structural Regulatory Training being held June 12 through 14 in Pomona. There will be both classroom presentations and field demonstrations. This training is funded by SPCB's Education and Enforcement Fund.

- He met with CACs regarding DPR standardizing a process to register pest control companies with the CAC and was met with no opposition. He will begin to work with SPCB and CACs to do so.

- DPR is working to prepare an Enforcement Letter clarifying that B & P Code Section 8505.17(c) does require the total number of applications of each pesticide to be reported on the Monthly Pesticide Use Report.

- Draft surface water regulations are posted on DPR's website and there were no comments during the final comment period. They are now in

internal review with the Department and if approved by Office of Administrative Law, they should take effect in mid-summer 2012.

- It has been proposed by the Governor to move SPCB back under the umbrella of DCA. He stated that DPR appreciates the Governor's efforts to increase the efficiency of government and will carry out whatever structure is finally approved. He added that DPR values their collaboration and looks forward to continuing to work together with SPCB.

Mr. Good stated that it has come to his attention that some of the ducting being used during fumigations being done under the California Aeration Plan (CAP) does not meet the qualifications of California Code of Regulations Section 1970.1 and may not be containing the fumigant. He asked that this be discussed at CAC Training.

Mr. Zeiss stated that this was discussed at the Structural Fumigation Enforcement Training and that DPR is trying to get samples of these substandard aeration ducts for the training.

Mr. Good stated that he can help Mr. Zeiss obtain these ducts if need be. He added that the temporary merge of SPCB and DPR strengthened the relationship between the departments and thanked DPR for their support.

Mr. Edwards reported that an Attorney General's (AG) Office Representative appears at reinstatement hearings in accordance with Government Code Section 11522, which states that any licensee who has had their license revoked may petition the Board for reinstatement or reduction of the penalty one year after the effective date of the previous decision to revoke the license. He stated that the AG's Office assists the Board as the finder of facts in a reinstatement hearing. He stated that they do not advocate on behalf of the petitioner, rather focus on the rehabilitation efforts since the revocation of the license and as part of the proceedings, both parties may ask that documents be marked for identification and admitted into evidence for consideration. He stated that the AG's Office Representative does not generally make a recommendation regarding the decision; the decision is made by the Board members and written by the Administrative Law Judge and may become effective thirty days after the hearing, even without the Board members acting on it.

## RESEARCH UPDATE

Dr. Vernard Lewis, U.C. Berkeley, made a presentation on work done thus far on the research project "Laboratory and Field Investigations of Monitors for the Bed Bug, Climex Lectularius".

Dr. Neil Tsutsui, U.C. Berkeley, made a presentation on work done thus far on the research project "Bedbug Detection Using Airborne Pheromone Cues".

## STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE UPDATE

Mr. Douglas reported that the committee is scheduled to meet again on June 28th in Anaheim. He stated that this has been a very time consuming process, as the Act is being review line by line. He encouraged public participation in these meetings.

Mr. Utley asked if there will be a review period before sending the recommendations to the legislature.

Mr. Douglas stated that the best time for someone to be heard is during the committee meetings, as it would be very time consuming to readdress each issue at a later point. He added that the meetings are being rotated between Northern and Southern California to allow for participation by any interested parties.

Mr. Good suggested reaching out to other stakeholders to give them a chance to become involved in the discussions at this early stage.

Mr. Douglas stated that the recommendations being made by the committee are recommendations for the Board to decide whether they want to move forward with.

Mr. Arzate asked at what point the public would be able to view or comment on the committee's recommendations.

Mr. Douglas stated that there is opportunity for public comment at the end of the discussion of each section during the committee meetings.

Mr. Arzate asked if the recommendations being made by the committee are being made public as the committee makes them.

Mr. Douglas stated that the committee's recommendations are being noted in the committee minutes.

Mr. Tamayo asked if the recommendations being made by the committee can be put on the website so that interested parties can track the recommendations.

Mr. Douglas stated that this would be very easy to do, as a document is already being maintained noting all of the committee's recommendations.

Ms. Boyle stated that as part of the process for making changes to the Business and Professions Code and the California Code of Regulations, a public comment period is required.

Mr. Good thanked Harvey Logan and Michael Katz of Western Exterminator for allowing the committee to meet at their facilities when in Southern California.

## IPM CERTIFICATION PROGRAM COMMITTEE UPDATE

Mr. Douglas stated that the Board members have a copy of the committee's recommendation as well as a letter from Caroline Cox, Center for Environmental Health.

Mr. Arzate asked what position Ms. Cox is in with the Center for Environmental Health.

Mr. Van Steenwyk stated that he believes that she is a Staff Scientist. He presented the following committee findings and recommendations to the Board:

- Legitimate IPM certification programs have the potential of helping customers obtain IPM services without having beyond a lay person's knowledge of IPM.

- Current IPM certifications known to the committee and available in California (EcoWise, GreenPro, and GreenShield) appear to have the characteristics of a legitimate program that can benefit consumers.

- To date, no complaints of improper IPM certification claims have been received by the Board.

- The Board currently has a definition of IPM in regulation that can serve as the basis for enforcement for false or misleading claims regarding the offer or provision of IPM services.

- The Board does not currently have a definition of "certification", so its ability to pursue enforcement against false or misleading claims of certification is likely to be limited.

- Claims of IPM certification made by licensees have the potential to be misleading to consumers if the certification is not backed by programmatic requirements for the licensee; that a consumer would reasonably expect to be associated with the words "IPM" and "certified".

- IPM certification in structural pest control is new and not yet widely recognized by consumers. It is in the interest of consumers to have information regarding the potential benefits of IPM and IPM certification, what to look for in an IPM certification program, and how to obtain bona fide certified IPM services.

- Staff should work with stakeholders to develop and promote a fact sheet that provides guidance to consumers regarding the potential benefits of IPM and IPM certification, what to look for in an IPM certification, and how to obtain bona fide certified IPM services.

- Staff should monitor IPM certification claims, and report to the Board annually on the extent to which complaints are received regarding misuse of IPM certification claims.

- Given the lack of complaints regarding IPM certification claims, the resources required to amend regulations, and the desirability of encouraging beneficial innovation in the early stages of this field's development, do not establish a regulatory definition of "IPM certification" or "certification" at this time.

- In recognition that IPM certification programs may grow substantially, revisit this issue in approximately 3 years, or earlier if circumstances warrant.

Mr. Van Steenwyk summarized Ms. Cox's letter in that she disagrees with the committee's recommendations and feels that defining "certification" is warranted at this point.

Mr. Arzate stated that the committee's recommendation to develop a fact sheet contradicts the recommendation to not define certification.
Mr. Van Steenwyk explained that the committee wants to promote the use of IPM certified services and educate the public on IPM as well as a third party certification without defining certification or setting specific criteria as to what that program should look like.

Mr. Tamayo moved and Mr. Utley seconded to accept the recommendations of the committee.

Mr. Tamayo moved to amend his previous motion to now adopt the committee's findings and recommendations and Mr. Utley seconded. Passed unanimously.

## UPDATE ON FREDDIE MAC HOMES / HOMESTEPS

Mr. Douglas stated that to date, he has not received a response from Freddie Mac.

Ms. Clary stated that the Structural Pest Control Board has no jurisdiction to take action against Freddie Mac's Home Steps Program as a federal agency, but any unlicensed persons performing these activities for Freddie Mac can be prosecuted.

Mr. Logan stated that he and Mr. Ennes met with Congressmen Miller of the Diamond Bar area and Congressman Dull of Illinois to discuss this issue and both agreed to become involved. A letter has been drafted by the National Pest Management Association and Mr. Katz for Congressman Miller and that letter should be sent to Freddie Mac within a couple of days. Both of these Congressmen serve on a subcommittee that provides funding for Freddie Mac. A copy of this letter will be forwarded to Mr. Douglas as soon as it is received.

## BOARD MEETING CALENDAR

Mr. Douglas stated that there is a meeting scheduled for May 10, 2012 in the Magnolia Room at the California Tower Building in Riverside and the Board Members should chose a meeting date for August.

The meeting was scheduled for August 8 and 9, 2012 in Sacramento.

## FUTURE AGENDA ITEMS

Mr. Douglas stated that the May meeting is an emergency meeting and there will be a public hearing and reinstatement hearings at this meeting, as well as a discussion regarding CAP.

Mr. Logan asked if anything has been done regarding board appointments.

Mr. Douglas stated that he has not heard anything.

Mr. Arzate reported that he is making himself available to serve his grace period.

Mr. Douglas reported that Mr. Utley's appointment expires June 1 and Mr. Tamayo's appointment expires May 31 but he is eligible for reappointment.

Mr. Tamayo indicated that he has been contacted by the Speaker's Office and he notified them that he is available for reappointment.

Mr. Utley stated that he contacted the Governor's Office to notify them that he is eligible for reappointment but has not received a return call.

Mr. Good recognized PCOC for their efforts to relay the state of the Board to the Legislature.

Mr. Zeiss asked what in particular will be discussed regarding CAP at the May meeting.

Mr. Good responded that he wants to make the Board aware that some companies are using tents / tarps that may not sufficiently contain fumigants.

Mr. Arzate stated that he let the Senate Rules Committee know that if he is not being selected to serve on the Board that someone needs to be appointed on their part to avoid a significant impact on the Board's budget. He asked that staff puts together a projected cost analysis to show costs should the Board no longer be able to establish quorum.

## PUBLIC COMMENTS NOT ON THE AGENDA

Dr. Lewis introduced Dr. Andrew Sutherland as the newest researcher for the University of California.

**ADJOURNMENT**

This meeting was adjourned at 11:18 a.m.

President

8/9/12
DATE

Susan Saylor,
Assistant Executive Officer