MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
May 10, 2012

The meeting was held on Thursday, May 10, 2012, in the Magnolia Room located at 3737 Main Street in Riverside, commencing at 10:24 A.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
Robert Lucas, Consumer Services Manager
Ronni O'Flaherty, Staff Services Analyst
Ron Moss, Board Specialist

Departmental staff present:
Chuck Andrews, Associate Director

Board Liaison, Deputy Attorney General, Langston Edwards was also in attendance.

ROLL CALL

Ms. O'Flaherty read roll call.

FLAG SALUTE

Mr. Good led the flag salute.

REINSTATEMENT HEARINGS

The Board sat with Administrative Law Judge Alan S. Meth to hear the Petition for Reinstatement for Aaron Cunningham, Field Representative License No. 36625 and Applicator's License No. 22471. The petitioner was informed that he would be notified by mail of the Board's decision.

The Board sat with Administrative Law Judge Alan S. Meth to hear the Petition for Reinstatement for Marcos Lopes, Applicator's License No. 47257. The petitioner was informed that he would be notified by mail of the Board's decision.

William James Tocki, Field Representative License No. 23479 did not appear to petition for reinstatement.

FUMIGATION CAP

Mr. Good stated that he asked that this topic be put on the agenda because it has come to his attention that the CAP process may be compromising the containment of the fumigant. He stated that the durability of some of the mylar ventilation ducting being used may be compromised during installation. He stated that in a brand new form, the mylar ducting may meet the CAP qualifications but not the label requirements which require material to be 4 millimeters in thickness. He added that a tear in this ducting may cause a leak during the fumigation and compromise the efficacy of the fumigation. He stated that he has witnessed instances where the ducting has blown off of the structure being fumigated which can lead to pesticide exposure to bystanders. He stated that another concern he has with this and homemade ducting is that when it is installed the ducting is being bent and does not allow for sufficient air flow to properly ventilate.

John Sansone, Pest Control Operators of California, stated that PCOC has seen increasing violations because the equipment being used, both manufactured and homemade, is either implemented improperly or does not meet the specifications. He stated that during the exposure period the ventilation ducting is considered part of the seal even if it is installed on the outside of the tenting. He added if this ducting is being used, it should be installed under the tarp, covered with a gas retentive tarp material, or be tested to ensure that it meets specifications. He stated that the County Agricultural Commissioners (CACs) should be able to enforce the durability of these ducts by determining if the fumigant is being leaked through cracks or tears in the ducting.

Mr. Good asked Mr. Sansone what the most common violation issued in relation to CAP has been.

Mr. Sansone responded that ducting issues such as remote removal of duct cap, use of self contained breathing apparatus' (SCBA), and inlet sizes are the most common violations.

Mr. Good asked Mr. Sansone if PCOC has seen any violations issued for using the mylar ducting.

Mr. Sansone responded that they had not seen any citations issued, but it was recently asked of the Fumigation Enforcement Committee if this type of ducting meets the specifications.

Mr. Whitmore stated that during the aeration process the fumigant is being forced out of the ducting with fans and if the ducting has tears in it some of the fumigant is being forced back into the structure being aerated. He stated that he was on the committee that developed CAP and the committee allowed for removal of the duct cover using SCBA only as a back up plan if something goes wrong and the duct cover cannot be removed remotely. He added that there is an 18 inch diameter requirement for the ducting and he has also seen where when the cover is removed the cover makes a 45 degree opening that redirects the airflow and does not allow for the fumigant to vacate the structure as required with a true 18 inch wide opening.

David Wadleigh, Mega Fume, stated that he prefers to install the ducting under the tarps to prevent people from tearing down the tubing. He stated that he is manufacturing collars to use as adapters so that the ducting can be installed under the tarp to allow for ventilation without the ducting being exposed.

Mr. Good stated that the annual County Agricultural Commissioner (CAC) Training is being held in June and asked if all of the counties would have representation at this training.

Mr. Arzate asked Mr. Douglas to e-mail the Board members the information for CAC Training.

Mr. Sansone stated that PCOC will be having a meeting in June before CAC Training to discuss what needs to be done to move forward so that everyone is on the same page.

Mr. Good stated that there is no action required on the part of the Board and hopefully it will be addressed within the meetings of PCOC and at CAC Training.

Steve Delk, PCOC asked if an article should be written in the PCOC News Brief.

Mr. Sansone suggested waiting to hear from DPR and the CACs to find out where they feel the problem is regarding enforcement of CAP and work from there.

Mr. Utley stated that this is an enforceable issue and suggested putting together "dos and don'ts" to address the different issues arising with CAP and the substandard manufacturing of aeration ducting.

Mr. Sansone stated that there should be some grounds for enforcement under Food and Agriculture Code Section 6600(a) which states that each person performing pest control shall use only pest control equipment which is in good

repair and safe to operate. He added that often times CACs do not go after these types of violations because if they go to hearing there is a different standard of proof and they are afraid to lose.

Ed Hernandez, Drexel Chemical, stated that CAP requires a 254 square inch minimum for inlets but there are not maximum standards set, so some companies are making huge inlets which hamper the negative air flow needed to aerate the structure. He added that the industry is working on determining where CAP needs to be and asked the Board to simply keep an eye on it as positive progress is being made.

Mr. Whitmore asked that the Board take some kind of position on this issue.

Mr. Tamayo stated that the regulations are enforceable but are being read and interpreted inconsistently. He added that he would like the Board to make a recommendation to ask CACs, DPR and SPCB to work together on improving CAP.

Sharon Eblet, Los Angeles CAC, stated that there are two things regarding CAP that are not enforceable; the maximum inlet size and the remote removal of the duct cover. She added that fine tuning to the wording of CAP needs to be made to make these two items enforceable.

Mr. Good stated that he does not feel that the Board needs to take any action and asked Mr. Sansone to keep the Board informed regarding the progress of this issue.

Mr. Tamayo asked if the Board should make a recommendation for DPR to review CAP.

Mr. Good responded that DPR is aware of the issue and with the CAC Training coming up that he feels the issues will be addressed.

Peggy Byerly, DPR Liaison for Los Angeles and Orange Counties, stated that like any law or regulation, if it is not specific it cannot be enforced and stated that she is concerned that these issues will keep coming up.

Mr. Tamayo asked when a reasonable time would be to revisit this topic.

Mr. Utley asked that this be revisited at the October Board meeting.

Mr. Good asked Mr. Sansone and Ms. Byerly to prepare an update for the October meeting.

PUBLIC HEARING: REGULATIONS – AMEND SECTIONS 1920 AND 1937.11 AND REPEAL SECTION 1970.5 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS

Transcript of Proceedings:

William Douglas: As part of the Structural Board meeting today, the Board is holding a regulatory hearing under the Administrative Procedures Act. All California regulations must be developed by following a formal procedure under the APA, and must be submitted to the California Office of Administrative Law for review and final approval. This hearing is authorized by Government Code section 11346.8. Please bear with me as there are a number of formal items I must go through on the record to satisfy the requirements. I am Bill Douglas. I am the Interim Executive Officer / Registrar as well as the Chief Enforcement Officer for the Structural Pest Control Board, and today I have been asked by the Board to direct the hearing.

For the record, it is Thursday, May 10, 2012. We are in the Magnolia Room in the California Tower Building at 3737 Main Street in Riverside, CA. This hearing is being recorded by Ronni O'Flaherty, Staff Services Analyst with the Structural Pest Control Board. The recording of the hearing will be made part of the rulemaking record.

The Structural Pest Control Board has called this hearing to receive public comments on a proposed rulemaking action. The Structural Pest Control Board proposes to amend sections 1920 and 1937.11 and repeal section 1970.5 of Title 16, California Code of Regulations. The proposed action would remove specified criteria in order to maximize the Board's authority to assess fines in excess of $2,500; revises language to indicate that as part of a probationary requirement, a licensee may be required to complete a continuing education course approved by the Board; and deletes the definition of "time ventilation is commenced" used to specify when supervision is required after fumigation is performed.

Under the rulemaking provisions of the California Administrative Procedures Act, this hearing is intended to allow members of the public an opportunity to come forward, and tell the Board your opinions about the proposed changes in regulation. Please realize that this hearing, and this part of the Board meeting is not a town meeting or an opportunity to ask the Board questions, it is only the time to collect comments. The Board also accepted written comments, and the written comment period closed yesterday, Wednesday May 9, 2012 at 5:00 pm. Oral comments will be accepted until the close of this hearing and then the comment period will end. Oral and written comments bear the same weight. The Board will consider all oral testimony, written comments, and other documentary evidence before the Board formally adopts the proposed amendments to the regulations, or recommends changes to those regulations based on information reviewed.

For the record, the material that serves as background for this hearing is made up of a rulemaking file. The rulemaking file consists of the notice of the proposed action (notice of hearing), the proposed text, the initial statement of reasons, the economic and fiscal impact statement, a grouping of documents referred to as "the documents relied upon", the written comments received with regards to this action, the oral comments given today and submitted by recording of this hearing, and the Board's action on the proposed rulemaking. Much of this information is posted on the Board web site.

The most important thing is that each person have the opportunity to give his or her testimony today. If you wish to give testimony, I will ask you to stand, give us your name, and if you represent an organization, please provide the name of the organization. While this is considered a formal hearing, you will not be placed under oath, you will not be subject to examination or cross-examination.

Does anyone have any questions about the proceedings today?

(No response)

William Douglas: Members of the Board?

Curtis Good: No

William Douglas: Let's proceed to the hearing.

The proposal to amend section 1920 of Title 16 of the CA Code or Regulations proposes to delete the requirement that in order to issue a citation that includes an administrative fine in excess of $2,500 the Registrar was required to determine that at least one of four specified circumstances had to apply. Would anyone like to testify regarding this proposed amendment?

(No response)

Ms. O'Flaherty, were there any written comments submitted on this matter?

Ronni O'Flaherty: There were no written comments received.

William Douglas: At this point the Board may make a motion to adopt the amendment to Section 1920.

Cliff Utley: I make the motion that we adopt.

Cris Arzate: Second.

Curtis Good: Any discussion?

(No response)

Curtis Good: Any public comments on that?

(No response)

Curtis Good: Ok, I see none. All those in favor of the motion, please by stating aye.
Cris Arzate, Curtis Good, Cliff Utley, Dave Tamayo: Aye.

Curtis Good: Those who oppose?

(No response)

Curtis Good: Motion passes.

William Douglas: The proposal to amend section 1937.11 of Title 16 of the CCR proposes to revise the language of the Manual of Disciplinary Guidelines and Model Disciplinary Orders striking all language requiring the licensee take a correspondence course, and amending the language to require the licensee take a continuing education course. Would anyone like to testify regarding this proposed amendment?

(No response)

William Douglas: Ms. O'Flaherty, were there any written comments submitted?

Ms. O'Flaherty: There were no written comments received.

William Douglas: Again, the Board may choose to make a motion to adopt this amendment.

Curtis Good: I'd like to make that motion.

Dave Tamayo: Second.

Curtis Good: Any further discussion?

(No response)

Curtis Good: Any final comments?

(No response)

Curtis Good: All those in favor of the motion, please state aye.

Cris Arzate, Curtis Good, Cliff Utley, Dave Tamayo: Aye.

Curtis Good: Those who oppose?

(No response)

Curtis Good: Okay, motion carries.

William Douglas: And the final proposal to amend regulations is the proposal to repeal section 1970.5 in its entirety. This section defined the term "The time ventilation is commenced". Would anyone like to testify regarding this proposed amendment?

John Sansone: John Sansone, Cardinal, Chairman of the PCOC Fumigation Enforcement Committee. We've dealt with this code section for the past few years and there's been debate whether we needed it, we didn't need it, or if it needed to by modified because CAP was put in. The reason it was put into the record was to define the term "when ventilation is commenced" and that goes back to when the licensee had to be present. At the end of the day, it just said that the licensee had to be present when ventilation was commenced. So we would have fumigators that would come by and remove the clip from the scene or a sandbag from a job and say ventilation is commenced legally and then an unlicensed crew would come back later and remove the tarp, sometimes even several hours later. So you have essentially an activity that should have been performed by a licensee, so that was put into the code to protect that from happening, so the licensee had to be there from the time the seal was broken until the tarps were removed. When CAP was put in, the time when ventilation was commenced is when the aeration fans were started and the tarps don't get removed until the next day. But in CAP, we made a modification that says the licensee has to be present when the tarps are removed, so we kind of took care of that situation. Under CAP, the licensee is there when ventilation is commenced when the fan is started but he also has to be there the next day when the tarps are removed. Now, CAP is a very specific aeration plan. It is possible to do a fumigation and remove the tarps without using CAP by wearing SCBAs. So I would hate to see if a job was done where again, the fumigator would come by, remove a clip, and if we repeal this, later on unlicensed crews can come back and you can have people wanting to use SCBAs because they can have unlicensed crews removing tarps. Under CAP they have to have licensed crews. So I would speak against repealing this section of the code since there are still jobs being done with people wearing SCBAs and they do not use CAP. Thank you.

Lee Whitmore: Lee Whitmore, Beneficial Exterminating. I would speak in opposition of repealing this section for the same reasons that Mr. Sansone just mentioned. The rest of the Act and the regulations, none of that incorporates the

standalone CAP program that was put into place under 6780. It is a standalone document, just as TRAP was previously, that is not incorporated into either the law or regulation. I think this was simply a minor oversight of trying to change the existing regulation to accommodate the new processes that were established under CAP and just failed to recognize that the program in itself, in its entirety is a standalone program and a separate document. So I would speak in opposition to that as well. You can still open jobs using SCBAs in which case you need to define when a licensee needs to be present, you can even have continuous monitoring. There might even be something developed later on that would allow us to open these properties in which case would need the definition provided by this section. So I speak in opposition of repealing it. Thank you.

Curtis Good: Any other public comments?

(No response)

William Douglas: So at this point, the Board may make a motion to repeal, you may make a motion to withdraw the interest in repealing, or you may make a motion to table this pending review by Board or DPR staff. You have several options.

Curtis Good: By the testimony here, and I am kind of embarrassed and forget the origin of how this came before us. I think that with CAP we kind of got ahead of ourselves so I forget the circumstances of how we got here. I'd like to make a motion that we do not repeal California Code of Regulations section 1970.5.

Cliff Utley: I'll second it.

Curtis Good: Any further comment?

(No response)

Curtis Good: Those all in favor of the motion, please state aye.

Cris Arzate, Curtis Good, Cliff Utley, Dave Tamayo: Aye.

Curtis Good: Those who oppose?

(No response)

Curtis Good: Motion carries, it has been withdrawn and will not be repealed. Thank you very much for your testimony.

William Douglas: On that note, the comment period is closed and this matter now stands submitted to the Board. The formal hearing is adjourned. Just for

clarification, Ms. O'Flaherty, did we receive any written comments on the repeal of 1970.5?

Ronni O'Flaherty: There were no written comments received.

William Douglas: On that note, the comment period is closed and this matter stands submitted to the Board. This formal hearing is adjourned.

PUBLIC COMMENTS NOT ON THE AGENDA

There were no public comments.

CLOSED SESSION

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

ADJOURNMENT

This meeting was adjourned at 2:05 p.m.

President

Susan Saylor,
Assistant Executive Officer

8/9/12
DATE