BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **SHERIDAN PEST CONTROL** **CHRISTOPHER M. SHERIDAN, OWNER** **PAUL C. RIGHTLER, QUALIFYING MANAGER** **68 Coombs Street** **Napa, California 94558** **Company Registration Certificate No. PR 5852** **CHRISTOPHER M. SHERIDAN** **68 Coombs Street** **Napa, California 94558** **Mailing Address:** **P.O. Box 6192** **Napa, California 94581** **Field Representative's License No. FR 45526** **Applicator License No. RA 47811** **PAUL C. RIGHTLER** **68 Coombs Street** **Napa, California 94559** **Mailing Address:** **9550 Avenue B** **Niland, California 92257** **Operator's License No. OPR 9068** **and** **CLEVELAND MOORE, JR.** **2120 University Park Drive** **Sacramento, California 95825** **Operator's License No. OPR 9548** Respondents.	Case No. 2011-71 **DEFAULT DECISION AND ORDER: RESPONDENTS SHERIDAN PEST CONTROL, CHRISTOPHER M. SHERIDAN, AND CLEVELAND MOORE, JR.** [Gov. Code §§ 11504, 11505(b)]

FINDINGS OF FACT

1. On or about June 6, 2011, Complainant William H. Douglas, in his official capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed Accusation No. 2011-71 against Respondents Sheridan Pest Control, Christopher M. Sheridan, Cleveland Moore, Jr. and Paul C. Rightler before the Structural Pest Control Board. (Accusation attached as Exhibit A.)

2. On or about May 27, 2009, the Structural Pest Control Board (Board) issued Company Registration Certificate No. PR 5852 in Branch 2 to Respondent Sheridan Pest Control, with Respondent Christopher M. Sheridan as owner and Cleveland Moore, Jr. as the qualifying manager. On January 28, 2010, the company registration was upgraded to include Branches 2 and 3 (termite) with Respondent Cleveland Moore Jr. as the Branch 3 qualifying manager. On June 3, 2010, the company registration was suspended for failing to maintain general liability insurance as required by Business & Professions Code section 8690. On June 23, 2010, Respondent Cleveland Moore, Jr. disassociated as the qualifying manager. On June 29, 2010, the company registration was reinstated after posting general liability insurance. On July 9, 2010, the company registration was suspended for failing to replace the qualifying manager. On or about March 3, 2011, Respondent Paul C. Rightler became the Branch 2 qualifying manager, the company registration was reinstated and the company registration was downgraded to include Branch 2 only.

3. On or about August 6, 2007, the Board issued Applicator License No. RA 47811 in Branches 2 and 3 to Respondent Christopher M. Sheridan, an employee of Respondent Sheridan Pest Control. On May 17, 2010, the license was downgraded to a Branch 3 due to issuance of a Field Representative License to Respondent Christopher M. Sheridan. On August 6, 2010, Applicator License No. RA 47811 expired and was canceled.

4. On or about May 17, 2010, the Board issued Field Representative License No. FR 45526 in Branch 2 to Respondent Christopher M. Sheridan, an employee of Respondent Sheridan Pest Control. The license will expire on June 30, 2012, unless renewed.

5. On or about June 19, 1996, the Board issued Operator's License No. OPR 9548 in Branch 2 to Respondent Cleveland Moore, Jr. On September 29, 1998, the license was upgraded to Branches 2 and 3. On May 27, 2009, Respondent became the Branch 2 qualifying manager for Respondent Sheridan Pest Control. On January 28, 2010, Respondent became the Branch 3 qualifying manager. On June 3, 2010, Respondent's license was suspended for failing to maintain general liability insurance as required by Business & Professions Code section 8690. On June 23, 2010, Respondent disassociated as the Branches 2 and 3 qualifying manager for

Respondent Sheridan Pest Control, his license was reinstated and placed on inactive status. Respondent Cleveland Moore Jr.'s operator's license will expire on June 30, 2013, unless renewed.

3. On or about July 5, 2011, and again on July 19, 2011, Respondents were served by Certified Mail and United States First Class Mail with copies of the Accusation No. 2011-71, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at their respective addresses of record and mailing addresses. Respondent Sheridan Pest Control's address of record was and now is, pursuant to Business and Professions Code section 136, at 68 Coombs Street, Napa, California 94558. Respondent Christopher M. Sheridan's address of record was and now is 68 Coombs Street, Napa, California 94558, and his mailing address is P.O. Box 6192, Napa, CA 94581. Respondent Cleveland Moore, Jr.'s address of record was and now is 2120 University Park Drive, Sacramento, California 95825.

4. On August 9, 2011, Respondent Christopher M. Sheridan was served again by Certified Mail and United States First Class Mail with copies of the Accusation No. 2011-71, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7).

5. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

6. On or about July 11, 2011, the Board received a Return Receipt for Certified Mail of the aforementioned documents addressed to Respondent Christopher M. Sheridan, owner of Respondent Sheridan Pest Control, at P.O. Box 6192, Napa, California 94581. The Certified Mail and First Class mailings of the aforesaid documents to Respondent Christopher M. Sheridan, at 68 Coombs Street, Napa, California were returned by the United States Postal Service on or about July 20, 2011, as "undeliverable." The Certified Mail and First Class mailings to Christopher M. Sheridan of August 9, 2011, were not returned and in fact, a Return Receipt for the Certified Mail was received on August 16, 2011, signed by Respondent Christopher M.

Sheridan.The Certified Mail and First Class Mail of the aforesaid documents addressed to Respondent Cleveland Moore, Jr. at 2120 University Park Drive, Sacramento, California 95825 have not been returned by the U.S. Postal Service.

7. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

8. Respondents Sheridan Pest Control, Christopher M. Sheridan and Cleveland Moore, Jr., failed to file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No. 2011-71. Respondent Paul C. Rightler timely submitted Notice of Defense.

9. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

10. Pursuant to its authority under Government Code section 11520, the Board finds that Respondents Sheridan Pest Control, Christopher M. Sheridan and Cleveland Moore, Jr., and each of them, are in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2011-71, finds that the charges and allegations in Accusation No. 2011-71, are separately and severally, found to be true and correct by clear and convincing evidence as against Respondents Sheridan Pest Control, Christopher M. Sheridan and Cleveland Moore, Jr.

11. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is $7,361.64 as of August 26, 2011.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Sheridan Pest Control has subjected its Company Registration Certificate No. PR 5852 to discipline, Respondent Christopher M. Sheridan has subjected his Field Representative License No. FR 45526 and canceled Applicator License No. RA 47811 to discipline, and Cleveland Moore, Jr. has subjected his Operator's License No. OPR 9548 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Structural Pest Control Board is authorized to revoke the Company Registration issued to Respondent Sheridan Pest Control, the Field Representative License and canceled Operator License issued to Respondent Christopher M. Sheridan, and the Operator's License issued to Respondent Cleveland Moore, Jr. based upon the violations alleged in the Accusation, all of which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case, as follows:

a. Business & Professions Code section 8550 for unlicensed activities;

b. Business & Professions Code section 8639 for aiding and betting unlicensed activities by others;

c. Business & Professions Code section 8641 for submitting bids and contracting for pest control work without inspections by a licensed field representative or operator;

d. Business & Professions Code section 8652 for failure to maintain or make available for inspection records of all pest control operations and activities;

e. Section 1970, title 16, California Code of Regulations for failure to compile/retain a log for pesticide control operations in which pesticides were used;

f. Business & Professions Code sections 8516 and 8518 for failure to file addresses of all properties inspected or where work was performed;

g. Business & Professions Code section 8610 for failure to supervise registered company's daily business; and

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h. As to Respondents Sheridan Pest Control and Christopher M. Sheridan only, Section 1983, title 16, California Code of Regulations for failure to properly store, maintain and label all pesticides.

ORDER

IT IS SO ORDERED that Company Registration Certificate No. PR 5852 issued to Respondent Sheridan Pest Control, Field Representative License No. FR 45526 and canceled Applicator License No. RA 47811 issued to Respondent Christopher M. Sheridan, and Operator License No. OPR 9548 issued to Respondent Cleveland Moore, Jr., and each of them, are revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondents may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondents. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on November 18, 2011.

It is so ORDERED October 19, 2011

FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

Attachment: Exhibit A: Accusation

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FILED
Date 6/16/11 By William H. Douglas

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **SHERIDAN PEST CONTROL** **CHRISTOPHER M. SHERIDAN, OWNER** **PAUL C. RIGHTLER, QUALIFYING MANAGER** **68 Coombs Street** **Napa, California 94558** **Company Registration Certificate No. PR 5852,** **CHRISTOPHER M. SHERIDAN** **68 Coombs Street** **Napa, California 94558** **Mailing Address:** **P.O. Box 6192** **Napa, California 94581** **Field Representative's License No. FR 45526,** **PAUL C. RIGHTLER** **68 Coombs Street** **Napa, California 94559** **Mailing Address:** **9550 Avenue B** **Niland, California 92257** **Operator's License No. OPR 9068,** **and** **CLEVELAND MOORE, JR.** **2120 University Park Drive** **Sacramento, California 95825** **Operator's License No. OPR 9548** Respondents.	Case No. 2011-71 **ACCUSATION**

Complainant alleges:

PARTIES/LICENSE INFORMATION

1. William H. Douglas ("Complainant") brings this Accusation solely in his official capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of Pesticide Regulation.

Sheridan Pest Control

2. On or about May 27, 2009, the Board issued Company Registration Certificate Number PR 5852 ("company registration") in Branch 2 (general pest) to Sheridan Pest Control ("Respondent Sheridan Pest Control"), with Christopher M. Sheridan ("Respondent Sheridan" or "Sheridan") as the owner and Cleveland Moore, Jr. ("Respondent Moore" or "Moore") as the qualifying manager. On January 28, 2010, the company registration was upgraded to include Branches 2 and 3 (termite) with Moore as the Branch 3 qualifying manager. On June 3, 2010, the company registration was suspended for failing to maintain general liability insurance as required by Business and Professions Code ("Code") section 8690. On June 23, 2010, Moore disassociated as the qualifying manager. On June 29, 2010, the company registration was reinstated after posting the general liability insurance. On July 9, 2010, the company registration was suspended for failing to replace the qualifying manager. On March 3, 2011, Paul C. Rightler ("Respondent Rightler" or "Rightler") became the Branch 2 qualifying manager and the company registration was downgraded to include Branch 2 only (the company registration was also reinstated).

Christopher M. Sheridan

3. On or about May 17, 2010, the Board issued Field Representative's License Number FR 45526 in Branch 2 to Respondent Sheridan, employee of Sheridan Pest Control. Respondent's field representative's license will expire on June 30, 2012, unless renewed.

4. On August 6, 2007, the Board issued Applicator License No. RA 47811 in Branch 2 and 3, to Respondent Sheridan, employee of Sheridan Pest Control. On May 17, 2010, Applicator license No. RA 47811 was downgraded to a Branch 3 due to issuance of a Field Representative

License to Respondent Sheridan. On august 6, 2010, Applicator License No. RA 47811 expired and was canceled.

Paul C. Rightler

5. On or about December 29, 1992, the Board issued Operator's License Number OPR 9068 ("license") in Branch 2 to Respondent Rightler, employee of Flea X (Respondent left the employ of Flea X on June 1, 1993). On December 4, 1997, Respondent's license was upgraded to include Branches 2 and 3. On July 24, 1999, Respondent became the owner and qualifying manager of PC Pest. On March 23, 2000, Respondent's license was suspended for failing to maintain general liability insurance as required by Code section 8690. On April 3, 2000, Respondent's license was reinstated after posting the general liability insurance. On June 2, 2000, Respondent disassociated as the qualifying manager of PC Pest. On March 3, 2011, Respondent became the Branch 2 qualifying manager of Sheridan Pest Control. Respondent's license will expire on June 30, 2013, unless renewed.

Cleveland Moore, Jr.

6. On or about June 19, 1996, the Board issued Operator's License Number OPR 9548 ("license") in Branch 2 to Respondent Moore. On September 29, 1998, Respondent's license was upgraded to include Branches 2 and 3. On May 27, 2009, Respondent became the Branch 2 qualifying manager for Sheridan Pest Control. On January 28, 2010, Respondent became the Branch 3 qualifying manager. On June 3, 2010, Respondent's license was suspended for failing to maintain general liability insurance as required by Code section 8690. On June 23, 2010, Respondent disassociated as the Branch 2 and 3 qualifying manager for Sheridan Pest Control, and his license was reinstated and placed on inactive status. Respondent's operator's license will expire on June 30, 2013, unless renewed.

JURISDICTION

7. Code section 8620 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

8. Code section 8624 states, in pertinent part:

. . . .

If the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company, the suspension or revocation may be applied to the company registration.

The performance by any partnership, corporation, firm, association, or registered company of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who, at the time the act or omission occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm, association, or registered company whether or not he or she had knowledge of, or participated in, the prohibited act or omission.

9. Code section 8625 states:

The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration.

10. Code section 8654 states, in pertinent part:

Any individual . . . who has had his or her license revoked, or whose license is under suspension . . . or who has been a member, officer, director, associate, qualifying manager, or responsible managing employee of any partnership, corporation, firm, or association . . . whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or revoked, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of a registered company, and the employment, election or association of such person by a registered company is a ground for disciplinary action.

STATUTORY AND REGULATORY PROVISIONS

(Statutory Provisions)

11. Code section 8506.2 states that "[a] 'qualifying manager' is the licensed operator or operators designated by a registered company to supervise the daily business of the company and to be available to supervise and assist the company's employees."

12. Code section 8507 states, in pertinent part:

(a) "Structural pest control field representative" is any individual who is

licensed by the board to secure structural pest control work, identify infestations or infections, make inspections, apply pesticides, submit bids for or otherwise contract, on behalf of a registered company . . .

13. Code section 8507.1 states, in pertinent part:

(a) "Structural pest control applicator" is any individual who is licensed by the board to apply a pesticide, rodenticide, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests or organisms included in Branch 2 or Branch 3 on behalf of a registered company . . .

14. Code section 8515 states:

Nothing in this chapter shall prohibit a company registered hereunder from authorizing an officer, partner, or employee to submit bids, after an inspection by an individual licensed as an operator or field representative under this act, or to sign contracts after negotiation by an individual licensed as an operator or field representative under this act, on behalf of the registered company.

15. Code section 8516 states, in pertinent part:

. . . .

(b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.

. . . .

A written inspection report conforming to this section and a form approved by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent within 10 business days of the inspection, except that an inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all original inspection reports, field notes, and activity forms.

16. Code section 8518 states, in pertinent part:

When a registered company completes work under a contract, it shall prepare, on a form prescribed by the board, a notice of work completed and not completed, and shall furnish that notice to the owner of the property or the owner's agent within 10 working days after completing the work. The notice shall include a statement of the cost of the completed work and estimated cost of work not completed.

. . . .

Notices of work completed and not completed shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized representative during business hours. Original notices of work completed or not completed or copies thereof shall be submitted to the board upon request within two business days.

17. Code section 8550 states, in pertinent part:

(a) It is unlawful for any individual to engage or offer to engage in the business or practice of structural pest control, as defined in Section 8505, unless he or she is licensed under this chapter.

(b) Notwithstanding subdivision (a), an unlicensed individual may solicit pest control work on behalf of a structural pest control company only if the company is registered pursuant to this chapter, and the unlicensed individual does not perform or offer to perform any act for which an operator, field representative, or applicator license is required pursuant to this chapter. As used in this subdivision, to "solicit pest control work" means to introduce consumers to a registered company and the services it provides, to distribute advertising literature, and to set appointments on behalf of a licensed operator or field representative.

(c) It is unlawful for an unlicensed individual, soliciting pest control work on behalf of a registered structural pest control company pursuant to subdivision (b), to perform or offer to perform any act for which an operator, field representative, or applicator license is required, including, but not limited to, performing or offering pest control evaluations or inspections, pest identification, making any claims of pest control safety or pest control efficacy, or to offer price quotes other than what is provided and printed on the company advertising or literature, or both.

. . . .

(e) It is unlawful for any firm, sole proprietorship, partnership, corporation, association, or other organization or combination thereof to engage or offer to engage in the practice of structural pest control, unless registered in accordance with Article 6 (commencing with Section 8610).

18. Code section 8610 states, in pertinent part:

. . . .

(c) Each registered company shall designate an individual or individuals who hold an operator's license to act as its qualifying manager or managers. The qualifying manager or managers must be licensed in each branch of pest control in which the company engages in business. The designated qualifying manager or managers shall supervise the daily business of the company and shall be available to supervise and assist all employees of the company, in accordance with regulations which the board may establish . . .

19. Code section 8639 states:

Aiding or abetting an unlicensed individual or unregistered company to evade the provisions of this chapter or knowingly combining or conspiring with an unlicensed individual or unregistered company, or allowing one's license or company registration to be used by an unlicensed individual or unregistered company, or acting

as agent or partner or associate, or otherwise, of an unlicensed individual or unregistered company to evade the provisions of this chapter is a ground for disciplinary action.

20. Code section 8641 states:

> Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action.

21. Code section 8646 states:

> Disregard and violation of pesticide use and application, structural pest control device, fumigation, or extermination laws of the state or of any of its political subdivisions, or regulations adopted pursuant to those laws, is a ground for disciplinary action.

22. Code section 8652 states:

> Failure of a registered company to make and keep all inspection reports, field notes, contracts, documents, notices of work completed, and records, other than financial records, for a period of not less than three years after completion of any work or operation for the control of structural pests or organisms, is a ground for disciplinary action. These records shall be made available to the executive officer of the board or his or her duly authorized representative during business hours.

(Regulatory Provisions)

23. California Code of Regulations, title 16, section ("Regulation") 1918 states, in pertinent part:

> "Supervise" as used in Business and Professions Code Sections 8506.2, 8610 and 8611 means the oversight, direction, control, and inspection of the daily business of the company and its employees, and the availability to observe, assist, and instruct company employees, as needed to secure full compliance with all laws and regulations governing structural pest control . . .

24. Regulation 1970 states, in pertinent part:

> For the purpose of maintaining proper standards of safety and the establishment of responsibility in handling the dangerous gases used in fumigation and the pesticides used in other pest control operations, a registered company shall compile and retain for a period of at least three years, a log for each fumigation job and for each pesticide control operation in which a pesticide is used by the registered company or the registered company's employee . . .
>
> . . . .
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> (b) The report for each pest control operation, other than fumigation, in which a pesticide is used shall contain the following information:

Date of treatment.

Name of owner or his or her agent.

Address of property.

Description of area treated.

Target pest(s).

Pesticide and amount used.

Identity of person or persons who applied the pesticide . . .

25. Regulation 1983 states, in pertinent part:

(a) Each container in which any pesticide is stored, carried or transported shall be adequately labeled in accordance with the provisions of Articles 1 and 5, Chapter 2, Division 7 of the Food and Agriculture Code (relating to economic poisons) and regulations adopted by the Department of Pesticide Regulation thereunder.

. . . .

(c) When any pesticide or preparation thereof is carried on a truck or other vehicle, a suitable storage space shall be provided thereon. Under no circumstances shall such storage be left either unlocked or unattended when containing any pesticide or preparation thereof . . .

26. Regulation 1996.3 states, in pertinent part:

(a) The address of each property inspected and/or upon which work was completed shall be reported on a form prescribed by the Board and designated as the WDO Inspection and Completion Activity Report Form (see Form No. 43M-52 Rev. 5/09) at the end of this section. This form shall be prepared by each registered company and shall comply with all of the requirements pursuant to Section 8516(b), and 8518.

. . . .

(c) Failure of a registered company to report and file with the Board the address of any property inspected or upon which work was completed pursuant to Section 8516(b) or 8518 are grounds for disciplinary action and subject to a fine of not more then two thousand five hundred dollars ($ 2,500).

COST RECOVERY

27. Code section 125.3 states, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

BACKGROUND

28. On June 3, 2010, the Board sent a letter and an Order of Suspension to Sheridan Pest Control and Moore, notifying them that the company's registration certificate and Moore's operator's license were suspended due to their failure to file with the Board written evidence of a general liability insurance policy in effect for the company (Sheridan Pest Control's certificate of insurance had expired on May 26, 2010). The Board ordered Sheridan Pest Control and Moore to cease operation immediately and informed them that any business conducted after June 3, 2010, was unlicensed activity and that disciplinary action may be taken.

29. On June 23, 2010, the Board received a Notice of Transfer of Employment form from Moore, indicating that as of June 21, 2010, he was no longer qualifying manager for Sheridan Pest Control.

30. On June 29, 2010, Sheridan Pest Control's company registration was reinstated after posting the general liability insurance.

31. On July 9, 2010, the Board's specialist, Thomas E. Ineichen ("Ineichen"), sent a letter to Sheridan Pest Control, notifying them that Moore had disassociated as their qualifying manager effective June 23, 2010, that the company must cease all work immediately, and that any further business would be considered unlicensed activity and may result in disciplinary action. That same day, Sheridan Pest Control's company registration was suspended for failing to replace the qualifying manager.

32. On July 13, 2010, Ineichen went to Sheridan Pest Control and met with Christopher Sheridan. Sheridan admitted that the company was actively working. Sheridan gave Ineichen a few Branch 3 files, which he represented were the only Branch 3 records in the office. Sheridan told Ineichen that Moore performed all of the Branch 3 work and that Moore kept the Branch 3 records in a computer at his home. Sheridan stated that he had been paying Moore for the use of his operator's license, that Moore did not supervise the company's business operations, Moore had been coming to the office only once a month "to check on things" and to get his payment, and that Moore was not providing any training. Sheridan could not provide Ineichen with complete records of all of the Branch 2 operations that the company had performed in the previous 3 years.

Sheridan admitted that the company's licensed applicators regularly perform one-time, initial, or retreatment services, sell accounts, sign agreements, and perform services for new pest problems on re-treatments without an inspection of the property or negotiation of the contract first by a licensed field representative or operator. Ineichen obtained a copy of a "Services Report" from Sheridan listing the dates pest control services were performed by the company[1]. The report showed that the company had performed services for several different customers on July 9, 2010, and July 12, 2010, while the company registration was suspended. Ineichen also obtained copies of an invoice issued by the company for a pest control service performed on July 12, 2010, by licensed applicator Allan Gilpin ("Gilpin"); Wood Destroying Pests and Organisms ("WDO") Inspection Reports dated January 14, 2010, March 17, 2010, April 22, 2010, and April 27, 2010, prepared by Moore, and related documents (field notes, contracts, and invoices), pertaining to four different properties located in Napa that were inspected by Moore; and invoices for pest control treatments performed at two of the properties (no other records were provided by Sheridan regarding the work completed relating to those treatments).

33. That same day (July 13, 2010), Ineichen issued a compliance inspection report to Sheridan Pest Control, outlining several violations of the Code which he found during his meeting with Sheridan. Ineichen noted, among other things, that there were no records of training or supervision of the licensed applicators and that the company was operating without a qualifying manager or licensed operator. Ineichen directed Sheridan Pest Control to cease all structural pest control activities until a licensed operator/qualifying manager was associated with the company and the company was properly licensed.

34. On July 19, 2010, Ineichen interviewed Moore regarding his prior association with the company. Moore told Ineichen that he believed it was Sheridan's responsibility to maintain the company's records and insurance, that he did not have possession of any of the company's

[1] The report listed the customer's name, address, and telephone number, the date and cost of the service, and whether the work was done under a service contract or was a one-time service. There was no description of the actual Branch 2 service that was provided at the customer's property or the identity of the person or persons who performed the service.

documents, and that he did not have any documents or information showing his supervision or training of the company's employees. Moore stated that one of the company's employees worked as a "route tech" and another performed the termite treatments.

35. On July 20, 2010, Ineichen performed a search of the Board's records and found that Sheridan Pest Control had not filed any addresses with the Board for Branch 3 inspections or completed work (WDO activities).

36. On July 27, 2010, Ineichen returned to Sheridan Pest Control and met with the office manager, "Cheryl". Cheryl told Ineichen that the company was still operating and that they had not obtained a new qualifying manager as of that time. Later, Ineichen met with Sheridan and told him that he needed to cease all pest control activity and that any further pest control work was unlicensed activity and could subject him and the company to disciplinary action.

37. On September 28, 2010, Ineichen met with Walt Blevins ("Blevins"), Maintenance and Construction Supervisor for the Napa County School District (the school district was identified as a customer on the Services Report). Blevins told Ineichen that Sheridan Pest Control had been performing pest control work for the school district, including rodent control, cockroach control, flea control, and wasp control. Blevins stated that he had heard from another source that the company was not properly licensed. When Blevins confronted the company about their licensure status, they told him the information was not true. Blevins provided Ineichen with copies of several invoices that had been issued by Sheridan Pest Control for pest control work performed for the school district from July 2010 through September 2010. Gilpin was listed as the service technician on all of the invoices. Later, Ineichen met with Janice Owens ("Owens"), the owner of Moors Landing, a restaurant located in Napa (also identified as a customer on the Services Report). Owens told Ineichen that Sheridan Pest Control had been doing their pest control service for some time and provided Ineichen with copies of various invoices, including an invoice dated June 7, 2010, and an invoice dated August 2, 2010. Gilpin was listed as the service technician on both invoices. Ineichen returned to Sheridan Pest Control and saw two trucks in the parking lot that appeared to belong to the company, one of which had a Sheridan Pest Control

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logo. Ineichen inspected and photographed both trucks, and found various pesticides located in the beds of both vehicles that were not properly stored, maintained, or labeled, as set forth below.

38. On October 5, 2010, Ineichen met with Gilpin regarding his employment at Sheridan Pest Control. Gilpin stated that he works "mostly" on his own with no supervision, that he has full access to the company's chemicals and equipment, that he has performed many jobs where there was no inspection or initial treatment by anyone other than himself, and that he determines how to perform the work. Gilpin also stated that Moore had not been "around much", and that the only contact he had with Moore was when Moore provided him with some video tapes for training. Gilpin admitted that he had performed the duties of a field representative many times on new jobs and re-treatments, including inspections, contracting, and identifications.

39. On February 8, 2011, Ineichen received a call from John Cooledge ("Cooledge"), Deputy Agricultural Commissioner for Napa County. Cooledge told Ineichen that on February 4, 2011, his office had received a Monthly Summary Pesticide Use Report from Sheridan Pest Control, indicating that the company had applied pesticides in Napa County for structural use during the month of January 2011. Cooledge stated that the use report was prepared by Paul Rightler.

40. On February 10, 2011, Ineichen met with Cooledge and agricultural biologist Chad Godoy ("Godoy"). Godoy stated that he attempted to contact Sheridan after receiving the use report, but had not received a response from Sheridan or the company. Cooledge and Godoy provided Ineichen with a copy of the use report for January 2011.

41. On March 3, 2011, Rightler became the Branch 2 qualifying manager for Sheridan Pest Control.

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FIRST CAUSE FOR DISCIPLINE

(Unlicensed Activity)

42. Respondents Sheridan Pest Control, Cleveland Moore, Jr., Christopher M. Sheridan, and Paul C. Rightler are subject to disciplinary action pursuant to Code section 8641 in that Respondents failed to comply with Code section 8550 by engaging in the business or practice of structural pest control when Sheridan Pest Control's company registration certificate was suspended and invalid, as follows:

a. On or about June 7, 2010, Respondents Sheridan Pest Control, Moore, and Sheridan performed a pest control service (rodent control, cockroach control, and spider control) for customer Moors Landing while Sheridan Pest Control's company registration was suspended.

b. On and between July 9, 2010 and September 20, 2010, Respondents Sheridan Pest Control and Sheridan performed pest control services, including rodent control, cockroach control, flea control, wasp control, and spider control, for several customers, including, but not limited to, the Napa County School District and Moors Landing, while Sheridan Pest Control's company registration was suspended for failing to replace the qualifying manager. Further, Respondents continued to engage in the practice of structural pest control despite the fact that they had been warned repeatedly by the Board's authorized representative, Ineichen, to cease all pest control activities until a licensed operator/qualifying manager was associated with the company, and that any further business would be considered unlicensed activity and may result in disciplinary action.

c. In or about January 2011, Respondents Sheridan Pest Control, Sheridan, and Rightler applied pesticides in Napa County for structural use while the company registration was suspended.

SECOND CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Activity)

43. Respondents Sheridan Pest Control, Cleveland Moore, Jr., and Christopher M. Sheridan are subject to disciplinary action pursuant to Code section 8639 in that Respondents aided or abetted an unlicensed individual or unregistered company to evade the provisions of the

chapter, knowingly combined or conspired with an unlicensed individual or unregistered company, allowed their licenses or the company registration to be used by an unlicensed individual or unregistered company, or acted as agent or partner or associate, or otherwise, of an unlicensed individual or unregistered company to evade the provisions of the chapter, as follows:

a. In and between May 2009 and October 2010, Respondents Sheridan Pest Control, Moore, and Sheridan authorized or permitted their employee/applicator, Allan Gilpin, to engage or offer to engage in the business or practice of structural pest control as a field representative, including securing structural pest control work for the company, making inspections, identifying infestations and/or infections, and/or submitting bids for or otherwise contracting on behalf of the company, as set forth above, when Gilpin was not licensed as a field representative.

b. On or about June 7, 2010, Respondents Sheridan Pest Control, Moore, and Sheridan authorized or permitted Gilpin to perform a pest control service for customer Moors Landing while Sheridan Pest Control's company registration certificate was suspended and invalid, as set forth in subparagraph 41 (a) above.

c. On and between July 9, 2010 and September 20, 2010, Respondents Sheridan Pest Control and Sheridan authorized or permitted Gilpin to perform pest control services for several customers, including, but not limited to, the Napa County School District and Moors Landing, while Sheridan Pest Control's company registration was suspended and invalid, as set forth in subparagraph 41 (b) above.

THIRD CAUSE FOR DISCIPLINE

(Submission of Bids and Contracting for Pest Control Work Without Inspections by a Licensed Field Representative or Operator)

44. Respondents Sheridan Pest Control, Cleveland Moore, Jr., and Christopher M. Sheridan are subject to disciplinary action pursuant to Code section 8641 in that in and between May 2009 and October 2010, Respondents failed to comply with Code sections 8514 and 8515 by authorizing or permitting their employee/applicator, Allan Gilpin, to submit bids and sign contracts for structural pest control work on behalf of Sheridan Pest Control without an inspection of the property or negotiation of the contract first by a licensed field representative or operator.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain or Make Available for Inspection Records of All Pest Control Operations and Activities)

45. Respondents Sheridan Pest Control, Cleveland Moore, Jr., and Christopher M. Sheridan are subject to disciplinary action pursuant to Code section 8652 in that Respondents failed to make and/or keep all inspection reports, field notes, activity forms, contracts, notices of work completed, records of training or supervision, and/or other documents and records of all of their Branch 2 and/or Branch 3 work or pest control operations for the control of structural pests or organisms, and/or failed to make those records available for inspection by the Board's authorized representative, Ineichen.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Compile/Retain a Log for Pesticide Control Operations in which Pesticides Were Used)

46. Respondents Sheridan Pest Control, Cleveland Moore, Jr., and Christopher M. Sheridan are subject to disciplinary action pursuant to Code section 8641 in that Respondents failed to comply with Regulation 1970, as follows: Respondents failed to compile and/or retain a log for each pesticide control operation in which a pesticide was used by the company or its employees, including, but not limited to, Gilpin.

SIXTH CAUSE FOR DISCIPLINE

(Failure to File Addresses of all Properties Inspected or Where Work was Performed)

47. Respondents Sheridan Pest Control, Cleveland Moore, Jr., and Christopher M. Sheridan are subject to disciplinary action pursuant to Code section 8641 in that Respondents failed to comply with Code sections 8516 and 8518, as follows: Respondents failed to report and file with the Board the addresses of all properties inspected or upon which work was completed (WDO inspections and activities), including, but not limited to, the four properties located in Napa, California, identified in paragraph 31 above.

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SEVENTH CAUSE FOR DISCIPLINE

(Failure to Supervise Registered Company's Daily Business)

48. Respondents Sheridan Pest Control, Cleveland Moore, Jr., and Christopher M. Sheridan are subject to disciplinary action pursuant to Code section 8641 in that Respondents failed to comply with Code section 8610, as follows:

a. In and between May 2009 and June 2010, Respondent Moore failed to supervise the daily business of Sheridan Pest Control, and failed to be available to supervise and assist the employees of the company, including, but not limited to, employee/applicator, Allan Gilpin.

b. In and between May 2009 and October 2010, Respondents Sheridan Pest Control and Sheridan failed to ensure that their employees/applicators, including, but not limited to, Allan Gilpin, were supervised or assisted in the performance of their structural pest control work on behalf of the company.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Properly Store, Maintain, and Label all Pesticides)

49. Respondents Sheridan Pest Control and Christopher M. Sheridan are subject to disciplinary action pursuant to Code section 8646 in that on or about September 28, 2010, Respondents disregarded and violated Regulation 1983, as follows:

a. Respondents failed to label the service equipment chemical tanks located in both of their vehicles or identify the pesticides that were stored in the tanks, in violation of Regulation 1983, subdivision (a).

b. Respondents left various pesticides, including containers carrying the pesticides Tenguard SFR One-Shot, Catalyst, and Phantom, unlocked and/or unattended in the beds of both of their vehicles, in violation of Regulation 1983, subdivision (c). Further, the marking tubes to the gallon gauges on the chemical tanks of both vehicles were broken and leaking, enabling the pesticides to be easily removed from each tank.

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OTHER MATTERS

50. Pursuant to Code section 8624, the causes for discipline established as to Respondent Sheridan Pest Control likewise constitute causes for discipline against Christopher M. Sheridan, the owner of the registered company, regardless of whether Christopher M. Sheridan had knowledge of or participated in the acts or omissions which constitute cause for discipline against Respondent Sheridan Pest Control.

51. Pursuant to Code section 8624, the causes for discipline established as to Respondent Sheridan Pest Control likewise constitute causes for discipline against Paul C. Rightler, who has served as the qualifying manager for Respondent since March 3, 2011, regardless of whether Paul C. Rightler had knowledge of or participated in the acts or omissions which constitute cause for discipline against Respondent Sheridan Pest Control.

52. Pursuant to Code section 8624, the causes for discipline established as to Respondent Sheridan Pest Control likewise constitute causes for discipline against Cleveland Moore, Jr., who served as the qualifying manager for Respondent from May 27, 2009, to June 23, 2010, regardless of whether Cleveland Moore, Jr. had knowledge of or participated in the acts or omissions which constitute cause for discipline against Respondent Sheridan Pest Control.

53. Pursuant to Code section 8624, if Operator's License Number OPR 9068, issued to Paul C. Rightler, is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 5852, issued to Sheridan Pest Control.

54. Pursuant to Code section 8654, if discipline is imposed on Field Representative's License Number FR 45526, issued to Christopher M. Sheridan, Christopher M. Sheridan shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates Christopher M. Sheridan shall be subject to disciplinary action.

55. Pursuant to Code section 8654, if discipline is imposed on Operator's License Number OPR 9068, issued to Paul C. Rightler, Paul C. Rightler shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee

for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates Paul C. Rightler shall be subject to disciplinary action.

56. Pursuant to Code section 8654, if discipline is imposed on Operator's License Number 9548, issued to Cleveland Moore, Jr., Cleveland Moore, Jr. shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates Cleveland Moore, Jr. shall be subject to disciplinary action.

57. Section 8620 of the Code provides, in pertinent part, that a respondent may request that a civil penalty of not more than $5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not more than $10,000 for an actual suspension of 20 to 45 days. Such request must be made at the time of the hearing and must be noted in the proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking or suspending Company Registration Certificate Number PR 5852, issued to Sheridan Pest Control;

2. Revoking or suspending Field Representative's License Number FR 45526, issued to Christopher M. Sheridan;

3. Prohibiting Christopher M. Sheridan from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Field Representative's License Number FR 45526, issued to Christopher M. Sheridan;

4. Revoking or suspending Operator's License Number OPR 9068, issued to Paul C. Rightler;

5. Prohibiting Paul C. Rightler from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the

period that discipline is imposed on Operator's License Number OPR 9068, issued to Paul C. Rightler;

6. Revoking or suspending Operator's License Number OPR 9548, issued to Cleveland Moore, Jr.

7. Prohibiting Cleveland Moore, Jr. from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on suspending Operator's License Number OPR 9548, issued to Cleveland Moore, Jr.

8. Ordering Sheridan Pest Control, Christopher M. Sheridan, Paul C. Rightler, and Cleveland Moore, Jr. to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

9. Taking such other and further action as deemed necessary and proper.

DATED: 6/16/11

William H. Douglas

WILLIAM H. DOUGLAS
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

SA2011101421