BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: IDEAL FUMIGATION, INC.; JUAN FRANCISCO TEJEDA;ERNESTO LARA PEREZ; MARTHA PEREZ, Company Registration No. PR 3438 Branch Office Registration No. BR 4934 ERNESTO LARA PEREZ, Operator's License No. OPR 11128, Branch 1 Field Representative's License No. FR 43416, Branch 3 And JUAN FRANCISCO TEJEDA, Operator License No. OPR 10008, Branch 1 Respondents.	Case No. 2014-8 OAH No. 2013081001 ORDER OF DECISION

DECISION

The Proposed Decision of David B. Rosenman, Administrative Law Judge, dated April 25, 2014, in Los Angeles, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c) (2) (c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 7, paragraph number 59, "section 780" is stricken and replaced with "section 6780".

2. On page 7, paragraph number 61, "section 6736" is stricken and replaced with "section 6738".

3. On page 10, paragraph number 88, "section 780" is stricken and replaced with "section 6780".

4. On page 11, paragraph number 91, insert "title 3, section 6780" after Cal. Code of Regs.

5. On page 15, paragraph number 12, "section 8552" is stricken and replaced with "section 8652".

6. On page 15, paragraph number 13, "section 8552" is stricken and replaced with "section 8652".

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Structural Pest Control Board, Department of Consumer Affairs, State of California.

This Decision shall become effective on August 17, 2014.

IT IS SO ORDERED July 18, 2014.

FOR THE STRUCUTRAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: IDEAL FUMIGATION, INC.; JUAN FRANCISCO TEJEDA; ERNESTO LARA PEREZ; MARTHA PEREZ, Company Registration No. PR 3438 Branch Office Registration No. BR 4934 ERNESTO LARA PEREZ, Operator License no. OPR 11128, Branch 1 Field Representative License No. FR 43416, Branch 3 and JUAN FRANCISCO TEJEDA, Operator License no. OPR 10008, Branch 1 Respondents.	Case No. 2014-8 OAH No. 2013081001

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings (OAH), heard this matter on March 26, 2014, in Los Angeles, California. Langston M. Edwards, Deputy Attorney General, represented Complainant Susan Saylor, Registrar, Structural Pest Control Board, Department of Consumer Affairs, State of California (Board). Respondents Ideal Fumigation, Inc., Juan Francisco Tejeda, Ernesto Lara Perez and Martha Perez were present. All Respondents were represented by James L. Frederick, Attorney at Law, Goeltz & Frederick.

Oral and documentary evidence was presented at the hearing. The record remained open until April 1, 2014. On March 26, 2014, Complainant filed and served a Certification of Prosecution Costs, etc., marked for identification as Exhibit 14. As of April 1, 2014, Respondents had not filed any objections or reply. Exhibit 14 is received in evidence. The record was closed and the matter was submitted for decision on April 1, 2014.

FACTUAL FINDINGS

Jurisdiction, Stipulation, Licensing Histories and Facts

1. Complainant filed the Accusation and the First Amended Accusation in her official capacity.

2. Respondents stipulated to the overwhelming majority of the factual allegations in the First Amended Accusation. (Ex. 1, pp. 2 - 13.) These are set forth below, with the paragraph numbering from the First Amended Accusation.[1]

"2. On or about April 10, 1999, the Structural Pest Control Board issued Company Registration Number PR 3438 in Branch 1 to Ideal Fumigation, Inc.; Juan Francisco Tejeda; Ernesto Lara Perez; Martha Perez (Respondents). On or about July 23, 2013, Company Registration Number PR 3438 was issued a $700.00 fine levied by the Orange County Agricultural Commissioner for violation of Cal. Code of Regulations, title 3, subdivision 6780. This fine was paid on or about August 28, 2013. The Company Registration was in full force and effect at all times relevant to the charges brought herein.

"3. On or about April 14, 2003, the Structural Pest Control Board issued Branch Office Registration Number BR 4934 in Branch 1 to Ideal Fumigation, Inc.; Juan Francisco Tejeda; Ernesto Lara Perez; Martha Perez (Respondents).

"4. On or about June 16, 2005, the Structural Pest Control Board issued Operator's License Number OPR 11128, Branch 1, to Ernesto Lara Perez (Respondent Perez). The Operator's License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2016, unless renewed:

"a) On May 19, 2008, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 paid a $400 fine levied by the Los Angeles County Agricultural Commissioner for violation of section 6600(b) of the California Code of Regulations.

"b) On November 20, 2008, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of section 6600(b) of the California Code of Regulations.

"c) On May 14, 2009, Respondent Ernesto Lara Perez' Operator's License No, OPR 11128 paid a $550 fine levied by the Orange County Agricultural Commissioner for violation of section 12973 of the California Food and Agricultural Code.

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[1] Minor grammatical and spelling errors have been corrected.

"d) On November 24, 2009, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 paid a $1000 fine levied by the Los Angeles County Agricultural Commissioner for violation of section 1973(a) of the California Code of Regulations.

"e) On November 10, 2011, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of section 6600(b) of the California Code of Regulations.

"[f]) On October 15, 2012, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 paid a $50.00 fine levied by the Orange County Agricultural Commissioner for violation of section 8505.10 of the Business and Professions Code.

"g) On December 7, 2012, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 became the Vice President of Ideal Fumigation, Inc.

"5. On or about July 30, 2008, the Structural Pest Control Board issued Field Representative's License Number FR 43416, Branch 3, to Ernesto Lara Perez (Respondent Perez). On July 26, 2013, Accusation No. 2014-8 was filed against Respondent Ernesto L. Perez' Field Representative's License No. FR 43416. [Footnote omitted] The Field Representative's License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless renewed.

"6. On or about April 5, 1999, the Structural Pest Control Board issued Operator's License Number OPR 10008, Branch 1, to Juan Francisco Tejeda (Respondent Tejeda). On or about July 23, 2013, Operator's License Number OPR 10008 was issued a $700.00 fine levied by the Orange County Agricultural Commissioner for violation of Cal. Code of Regulations, title 3, subdivision 6780. This fine was paid on or about August 28, 2013. The Operator's License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2016, unless renewed."

"22. On or around July 30, 2012, Respondents fumigated a residential property located at 1103 N. Teakwood Avenue, Rialto, CA (Teakwood Property) as the prime contractor.

"23. Respondents, a Branch 1 company, treated the Teakwood Property for 'dry wood termites' using Vikane, a gas fumigant.

"24. Prior to performing the fumigation for the Teakwood Property, Respondents failed to obtain a termite inspection report.

"25. Respondents subsequently failed to provide a termite inspection report or any pertinent documentation relating to the contract, when requested by the Board.

"26. On or around August 4, 2012, Respondents fumigated a residential property located at 1025 Whistle Stop Drive, Colton, CA (Whistle Stop Property) as the prime contractor.

"27. Respondents, a Branch 1 company, treated the Whistle Stop Property for 'dry wood termites' using Vikane, a gas fumigant.

"28. Prior to performing the fumigation for the Whistle Stop Property, Respondents failed to obtain a termite inspection report.

"29. Respondents subsequently failed to provide a termite inspection report or any pertinent documentation relating to the contract, when requested by the Board.

"30. On or around September 11, 2012, a Board Specialist performed an unannounced inspection of Respondents' office and requested all subcontractor agreements, fumigation logs where Respondents were identified as a prime contractor, occupant fumigation notices, pesticide disclosures, employee and business licenses, certifications and billing with any mechanics' lien notices to consumers, to be produced by September 20, 2012.

"31. On or around September 20, 2012, the Board Specialist interviewed Respondents.

"32. During the interview, Respondents admitted that Ideal Fumigation, Inc. '[[2]] fumigates [termite] jobs without a prime contractor for family, friends, and people that cannot afford to pay for a termite inspection.'

"33. Respondents admitted they did not possess documentation for at least nineteen (19) properties identified on Respondents' daily printout schedule.

"34. Respondents admitted they did not possess documentation for eighty-five (85) completed jobs from identifiable daily job schedules.

"35. Respondents produced fifteen (15) fumigation logs which identified Respondents as the prime contractor but produced no additional documentation for any of the jobs.

"36. Respondents produced four (4) fumigation logs where there was a previous termite inspection report performed by a Branch 3 registered company, however Respondents failed to use those reports prior to commencing fumigation.

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[2] Respondents did not stipulate to the word "regularly" in paragraph 32.

"37. Respondents produced twenty-two (22) fumigation logs with occupant's notices which identified Respondents as the prime contractor, but produced no additional documentation for any of the jobs.

"38. On or around June 21, 2013 Respondents fumigated Tacos El Tejado, a food truck using a CB 580 fogger with pyrethrin, which required a Branch 2 registration.

"39. Respondents are subject to disciplinary action under Code sections 8620 and 8514 in that Respondents attempted to perform, advertised and held themselves out to the public that Respondents were authorized, qualified, or registered to perform pest control work in a branch for which Respondents were not registered. Complainant incorporates by reference paragraphs 22 - 38 above, as if fully set forth herein.

"40. Respondents are subject to disciplinary action under Code sections 8620 and 8513 in conjunction with Cal. Code of Regs. section 1937.16 in that Respondents failed to provide notice prior to entering into a contract with an owner for work in which a company registration is required. Complainant incorporates by reference paragraphs 22 - 37 above, as if fully set forth herein.

"41. Respondents are subject to disciplinary action under Code sections 8620 and 8514 in that Respondents commenced work on a contract relating to the control of household pests, or wood destroying pests or organisms without an inspection being performed in advance. Complainant incorporates by reference paragraphs 22 - 37 above, as if fully set forth herein.

"42. Respondents are also subject to disciplinary action under Code sections 8620, 8514 and 8516(b) in that on or around December 4, 2013, Respondents solicited Phoenix Termite to perform the services of a prime contractor and provide a WDO inspection report for a residential property locate in El Monte, CA. Phoenix Termite was and remains an unregistered company, thus a bona fide WDO inspection report was never obtained in advance of fumigation work performed at the El Monte property.

"43. Respondents are subject to disciplinary action under Code sections 8620 and 8538 in conjunction with Cal. Code of Regs. section 1970,4, subdivision (a), in that Respondents failed to provide the required notice to the owner, owner's agent and tenant of the pest to be controlled, the pesticides proposed to be used, etc., as set forth pursuant to these sections. Complainant incorporates by reference paragraphs 22 - 37 above, as if fully set forth herein.

"44. Respondents are subject to disciplinary action under Code sections 8620, 8550 and 8651 in that Respondents performed or solicited pest control services in branches of pest control other than those for which the Respondents are licensed or the company is registered. Complainant incorporates by reference paragraphs 22- 38 above, as if fully set forth herein.

"45. Respondents are subject to disciplinary action under Code sections 8620 and 8652 in that Respondents failed to maintain records. Complainant incorporates by reference paragraphs 33 - 37 above, as if fully set forth herein."

3. Respondents stipulated to the "Disciplinary Considerations" "to determine the degree of discipline, if any, to be imposed," alleged in the First Amended Accusation. (Ex. 1, pp. 13 - 21.) These are set forth below, with the paragraph numbering from the First Amended Accusation.[3]

"JUAN FRANCISCO TETADA/IDEAL, FUMIGATION, INC."

"47. On March 6, 2001, Company Registration Certificate No. PR 3438 paid a $50.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Bus. & Prof. Code section 8505.5 [inadequate notice of fumigation].

"48. On May 16, 2001, Operator's License No. OPR 10008 paid a fine of $50.00 levied by the Orange County Agricultural Commissioner for violation of Cal. Code of Regs., title 16, section 1974, subdivision (a) [inadequate fumigation warning signs].

"49. On March 13, 2002, Operator's License No. OPR 10008 paid a fine of $200 levied by the Orange County Agricultural Commissioner for violation of Cal. Food and Ag. Code section 12973 [pesticide use in conflict with label].

"50. On March 19, 2002, Company Registration Certificate No. PR 3438 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of Bus. & Prof. Code section 8505.10 [failure to comply with requirements regarding color and content of warning signs].

"51. On April 9, 2002, Operator's License No. OPR 10008 paid a fine of $50.00 levied by the Orange County Agricultural Commissioner for violation of Bus. & Prof. Code section 8505.10 [failure to comply with requirements regarding color and content of warning signs].

"52. On July 17, 2002, Company Registration Certificate No. PR 3438 paid a $400 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6780 [failure to follow general fumigation safe-use requirements].

"53. On September 9, 2002, Operator's License No. OPR 10008 paid a fine of $400 levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of

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[3] The stipulation did not include paragraphs 95 and 103. Minor grammatical and spelling errors have been corrected so that these findings are correct.

Regs., title 3, section 6600, subdivision (b) [failure to perform all pest control in a careful and effective manner].

"54. On October 15, 2002, Operator's License No. OPR 10008 paid a fine of $200 levied by the Orange County Agricultural Commissioner for violation of Cal. Food and Ag. Code section 12973 [pesticide use in conflict with label].

"55. On November 18, 2002, Company Registration Certificate No. PR 3438 paid a $50.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6630 [failure to properly identify equipment].

"56. On January 16, 2003, Company Registration Certificate No. PR. 3438 paid a $300 fine Levied by the Orange County Agricultural Commissioner for violation of Cal. Code of Rogs., title 3, section 6702, subdivision (b) [failure to utilize protective equipment].

"57. On April 22, 2003, Company Registration Certificate No. PR 3438 paid a $400 fine levied by the Los Angeles County Agricultural Commissioner for violation of Bus. & Prof. Code section 8505.15 [improper / inadequate use of masks].

"58. On March 23, 2004, Company Registration Certificate No. PR 3438 paid a $400 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6780, subdivision (c) [failure to follow general fumigation safe-use requirements].

"59. On April 27, 2004, Company Registration Certificate No. PR 3438 paid a $400 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 780, subdivision (c)[failure to follow general fumigation safe-use requirements].

"60. On June 30, 2004, Company Registration Certificate No. PR 3438 paid a $50.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Food and Ag. Code section 12973 [pesticide use in conflict with label].

"61. On May 18, 2005, Company Registration Certificate No. PR 3438 paid a $50.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6736, subdivision (h)(3) [improper substitution of personal protective clothing].

"62. On May 31, 2005, Company Registration Certificate No. PR 3438 paid a $150 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 1970, subdivision (a) [failure to maintain a fumigation log].

"63. On May 31, 2005, Company Registration Certificate No, PR 3438 paid a $50.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Bus. & Prof. Code section 8505.10 [failure to comply with requirements regarding color and content of warning signs].

"64. On December 5, 2005, Company Registration Certificate No. PR 3438 paid a $400 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6780, subdivisions (b) - (c) [failure to follow general fumigation safe-use requirements].

"65. On December 13, 2005, Operator's License No. OPR 10008 paid a fine of $950 levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Food and Ag. Code section 12973 [pesticide use in conflict with label], Cal. Code of Regs., title 3, subdivision 6600(b) [failure to perform all pest control in a careful and effective manner] and Cal. Code of Regs., title 3, section 6702, subdivision (c) [failure to utilize protective equipment].

"66. On September 25, 2006, Company Registration Certificate No. PR 3438 paid a $300 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6780, subdivisions (b) - (c) [failure to follow general fumigation safe-use requirements].

"67. On March 29, 2007, Company Registration Certificate No. PR 3438 paid a $50.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6738, subdivision (h)(3) [improper substitution of personal protective clothing].

"68. On March 29, 2007, Company Registration Certificate No. PR 3438 paid a $50.00 fine levied by the Orange County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6726, subdivision (b) [failure to post notice of emergency medical facilities].

"69. On November 14, 2007, Operator's License No. OPR 10008 paid a fine of $355 levied by the Orange County Agricultural Commissioner for violation of Cal. Food and Ag. Code section 12973 [pesticide use in conflict with label].

"70. On May 19, 2008, Company Registration Certificate No. PR 3438 paid a $400.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6780, subdivisions (b) - (c)[failure to follow general fumigation safe-use requirements].

"71. On November 20, 2008, Company Registration Certificate No. PR 3438 paid a $250.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs.,title 3, section 6780, subdivisions (b) - (c) [failure to follow general fumigation safe-use requirements].

"72. On December 2, 2008, Company Registration Certificate No. PR 3438 paid a $250.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6724, subdivision (d) [failure to provide proper handler training].

"73. On February 24, 2009, Company Registration Certificate No. PR 3438 paid a $500.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal Food and Ag. Code section 12973 [pesticide use in conflict with label] and Cal. Code of Regs., title 3, section 1970, subdivision (a) [failure to maintain a fumigation log].

"74. On April 27, 2009, Company Registration Certificate No. PR 3438 paid a $250.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Food and Ag. Code section 12973 [pesticide use in conflict with label].

"75. On April 28, 2009, Company Registration Certificate No. PR 3438 paid a $150.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Bus. & Prof. Code section 8505.5 [inadequate notice of fumigation].

"76. On April 30, 2009, Company Registration Certificate No. PR 3438 paid a $100 fine levied by the San Bernardino County Agricultural Commissioner for violation of Cal. Food and Ag. Code section 15204(a) [failure to register prior to operating a structural pest control business].

"77. On June 11, 2009, Company Registration Certificate No. PR 3438 paid a $50.00 fine levied by the Los Angeles County Agricultural Commissioner for violation of Bus. & Prof. Code section 8505.5 [inadequate notice of fumigation].

"78. On June 22, 2009, Company Registration Certificate No. PR 3438 paid a $50.00 fine levied by the Riverside County Agricultural Commissioner for violation of Bus. & Prof. Code section 8505.17(c) [failure to submit a monthly report to the county].

"79. On September 1, 2009, Company Registration Certificate No. PR 5438 paid a $800 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6780, subdivisions (b) - (c) [failure to follow general fumigation safe-use requirements].

"80. On July 9, 2010, Company Registration Certificate No. PR 3438 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of

Regs., title 3, section 6616, subdivision (a) [failure to obtain consent to discharge pesticide].

"81. On November 9, 2010, Company Registration Certificate No. PR 3438 paid a $350 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Food and Ag. Code section 15204.5(d)(3) [failure to provide the commissioner with proper notice of the pesticide to be applied] and section Bus. & Prof. Code section 8505.10 [failure to comply with requirements regarding color and content of warning signs].

"82. On April 25, 2011, Company Registration Certificate No. PR 3438 paid a $500 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Food and Ag. Code section 12973 [pesticide use in conflict with label].

"83. On August 19, 2011, Company Registration Certificate No. PR 3438 paid a $500 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6780, subdivisions (b) - (c) [failure to follow general fumigation safe-use requirements].

"84. On September 13, 2011, Company Registration Certificate No. PR 3438 paid a $700 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Food and Ag. Code section 15204.5(d) [failure to provide the commissioner with proper notice of the fumigation].

"85. On November 10, 2011, Company Registration Certificate No. PR 3438 paid a $700 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6780, subdivisions (b) - (c)[failure to follow general fumigation safe-use requirements].

"86. On March 22, 2012, Company Registration Certificate No. PR 3438 paid a $100 fine levied by the Orange County Agricultural Commissioner for violation of Bus. & Prof. Code section 8505.10 [failure to comply with requirements regarding color and content of warning signs].

"87. On March 22, 2012, Company Registration Certificate No. PR 3438 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of Bus. & Prof, Code section 8505.17(c) [failure to submit a monthly report to the county] and 8698.1[failure to pay structural fumigation treatment fees].

"88. On March 22, 2012, Company Registration Certificate No. PR 3438 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 780, subdivisions (b) - (c)[failure to follow general fumigation safe-use requirements].

"89. On March 22, 2012, Company Registration Certificate No. PR 3438 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6600, subdivisions (a) [failure to use safe/good repair equipment].

"90. On September 7, 2012, Company Registration Certificate No. PR 3438 paid a $250 fine levied by the Orange County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6780 [failure to follow general fumigation safe-use requirements].

"91. On August 28, 2013, Company Registration Certificate No. PR 3438 paid a $700 fine levied by the Orange County Agricultural Commissioner for violation of Cal. Code of Regs., title [failure to follow general fumigation safe-use requirements].

"92. On October 16, 2013, Company Registration Certificate No. PR 3438 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6780, subdivisions (b) - (c) [failure to follow general fumigation safe-use requirements].

"93. On August 28, 2013, Operator's License No. OPR 10008 paid a fine of $700 levied by the Orange County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6780 [failure to follow general fumigation safe-use requirements].

"94. On October 16, 2013, Operator's License No. OPR 10008 paid a fine of $250 levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs,, title 3, section 6780, subdivisions (b)- (c) [failure to follow general fumigation safe-use requirements]."

"ERNESTO LARA PEREZ"

"96. On May 19, 2008, Respondent Ernesto Lara Perez's Operator's License No. OPR 11128 paid a $400 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6600, subdivision (b) [failure to perform all pest control in a careful and effective manner].

"97. On November 20, 2008, Respondent Ernesto Lara Perez's Operator's License No. OPR 11128 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6600, subdivision (b) [failure to perform all pest control in a careful and effective manner].

"98. On May 14, 2009, Respondent Ernesto Lara Perez's Operator's License No. OPR 11128 paid a $550 fine levied by the Orange County Agricultural Commissioner for violation of Cal. Food and Ag. Code section 12973 [pesticide use in conflict with label].

"99. On November 24, 2009, Respondent Ernesto Lara Perez's Operator's License No. OPR 11128 paid a $1000 fine levied by the Los Angeles County Agricultural Commissioner for violation of section Cal. Code of Regs., title 16, section 1973, subdivision (a) [failure to perform proper testing after aeration using testing equipment for clearing the structure as required by the manufacturer's label instructions and all applicable laws and regulations].

"100. On November 10, 2011, Respondent Ernesto Lara Perez's Operator's License No. OPR 11128 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6600, subdivision (b) [failure to perform all pest control in a careful and effective manner].

"101. On October 15, 2012, Respondent Ernesto Lara Perez's Operator's License No. OPR 11128 paid a $50.00 fine levied by the Orange County Agricultural Commissioner for violation of Bus, & Prof. Code section 8505.10 [failure to comply with requirements regarding color and content of warning signs].

"102. On October 16, 2013, Respondent Ernesto Lara Perez's Operator's License No. OPR 11128 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of Cal. Code of Regs., title 3, section 6600, subdivision (b) [failure to perform all pest control in a careful and effective manner]."

4. Complainant contends that Martha Perez is a responsible party and subject to the Board's jurisdiction. This contention was not supported by the evidence. Ideal Fumigation, Inc., is a corporation, owned half by Ernesto Perez (Martha's husband) and half by Juan Tejeda. Mrs. Perez worked part time for the corporation before the Accusation herein was filed, and has since become the office manager on a regular basis. She keeps records, makes schedules, and signs checks, among other office duties. The corporation, Ernesto and Martha are listed as the insureds on a certificate of liability insurance. (Ex. 9.) She testified her name was listed because she was a contact person for the insurance company. She is not an officer or stockholder. She is not listed on the license histories of any of the Board licensees. (Ex. 2.)

5. Respondent Tejeda has 22 years of experience in the industry. Respondent E. Perez has 21 years of experience in the industry. They do not contest the allegations and accept responsibility for the violations described in the First Amended Accusation. They ascribe their history of violations to a combination of factors, including growing the business too fast and losing control over some employees and some requirements for properly conducting their business.

6. Respondents closed one of their two offices and have reduced the number of employees from 15 to 10. They have made changes to prevent future violations, including

using checklists to make sure required steps are taken and proper documents are filed. There is greater supervision of employees and jobsites by Respondents E. Perez and Tejeda. There are more meetings with employees to discuss procedures and any problems that arise, and to train employees. Equipment is inspected and repaired promptly. Respondent Tejeda meets with Mrs. Perez every week to review the paperwork to assure compliance with requirements.

7. Respondent Tejeda stated that they performed fumigations without a termite report to help family and friends. He and Respondent E. Lopez were not aware they could fumigate a house without a prime contractor having first done a termite inspection and prepared a report. They learned of the necessity of the report from Donald Graves, a Board investigator.

8. Several prior fines were due to improper signs. Respondents were not aware until recently that their employee had been improperly preparing the signs. The signs are now prepared correctly. Respondents received inconsistent information about the fumigation of the taco truck, and now are aware they cannot do such work under their present licenses.

9. Respondents desire to maintain their licenses and their business, for themselves and their employees. They request a probationary order and are willing to comply with terms of probation. They are not aware of any complaints against them from customers. A recent inspection by the Los Angeles County Commissioner's Office found no violations.

10. Complainant established that Respondents did not fax two fumigation logs from jobs (January 27, and February 24, 2014) to the primary contractor until March 19, 2014, long after the 10-day limit established in California Code of Regulations, title 16, section 1970. Respondent Tejeda admitted they were not aware of the 10-day deadline until informed of it by Mr. Graves. They have since added this requirement to the office checklist.

Costs of Investigation and Prosecution

11. Complainant submitted evidence of the costs of investigation and enforcement of this matter in the total amount of $10,665, summarized as follows:

a. Deputy Attorney General, 61.5 hours at $170 per hour, subtotal $10,455; and

b. Paralegal, 1.75 hours at $120 per hour, subtotal $210.

LEGAL CONCLUSIONS AND DISCUSSION

1. Pursuant to Business and Professions Code section 8620, the Board can suspend or revoke a license for any act or omission constituting cause for disciplinary action. Also applicable to licensees are certain regulations found in the California Code of Regulations, title 16 (CCR), set forth in more detail below.

2. Under Business and Professions Code section 8514, a licensee cannot commence work until an inspection has been made.

3. Cause exists pursuant to Business and Professions Code sections 8620 and 8514, to suspend or revoke the Company and Branch Office Registrations of Ideal Fumigation, the Operator's Licenses of Respondents E. Perez and J. Tejeda, and the Field Representative's License of Respondent E. Perez, for commencing work without an inspection, as set forth in Factual Findings 1, 2 and 3.

4. Under Business and Professions Code section 8513, a licensee must provide an owner with a Notice to Owner including required information relating to the mechanic's lien law, using the language found in California Code of Regulations, title 16, section 1937.16.

5. Cause exists pursuant to Business and Professions Code sections 8620 and 8514, to suspend or revoke the Company and Branch Office Registrations of Ideal Fumigation, the Operator's Licenses of Respondents E. Perez and J. Tejeda, and the Field Representative's License of Respondent E. Perez, for failing to provide the required Notice to Owner, as set forth in Factual Findings 1, 2 and 3.

6. Under Business and Professions Code section 8516, a licensee cannot commence work until an inspection has been made by a licensed Branch 3 field representative or operator.

7. Cause exists pursuant to Business and Professions Code sections 8620, 8514 and 8516, to suspend or revoke the Company and Branch Office Registrations of Ideal Fumigation, the Operator's Licenses of Respondents E. Perez and J. Tejeda, and the Field Representative's License of Respondent E. Perez, for commencing work without an inspection and for soliciting an unregistered company to perform the services of a prime contractor, as set forth in Factual Findings 1, 2 and 3.

8. Under Business and Professions Code section 8538, a licensee must provide a notice to an owner including required information relating to the pest to be controlled and the pesticide to be used, including the information found in California Code of Regulations, title 16, section 1970.4.

9. Cause exists pursuant to Business and Professions Code sections 8620 and 8538, to suspend or revoke the Company and Branch Office Registrations of Ideal Fumigation, the Operator's Licenses of Respondents E. Perez and J. Tejeda, and the Field Representative's License of Respondent E. Perez, for commencing work without an inspection, as set forth in Factual Findings 1, 2 and 3.

10. Under Business and Professions Code sections 8550 and 8651, a licensee cannot perform work outside the limits of its licenses or registrations.

11. Cause exists pursuant to Business and Professions Code sections 8620, 8550 and 8651, to suspend or revoke the Company and Branch Office Registrations of Ideal Fumigation, the Operator's Licenses of Respondents E. Perez and J. Tejeda, and the Field Representative's License of Respondent E. Perez, for performing work outside the limits of its or their licenses or registrations, as set forth in Factual Findings 1, 2 and 3.

12. Under Business and Professions Code section 8552, a licensee is required to keep records and make them available to a Board representative.

13. Cause exists pursuant to Business and Professions Code sections 8620 and 8552, to suspend or revoke the Company and Branch Office Registrations of Ideal Fumigation, the Operator's Licenses of Respondents E. Perez and J. Tejeda, and the Field Representative's License of Respondent E. Perez, for failing to keep required records and make them available to a Board representative, as set forth in Factual Findings 1, 2 and 3.

14. Business and Professions Code section 125.3 provides, in pertinent part, that the 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.

15. The reasonable costs of investigation and enforcement that may be awarded to the Board pursuant to Business and Professions Code Code section 125.3 are determined to be $10,665, as set forth in Factual Finding 11 and Legal Conclusions 1, 3, 5, 7, 9, 11 and 13.

16. The First Amended Accusation also requests licensing limitations under Business and Professions Code section 8654, which provides that discipline against an individual's license may result in prohibitions against that individual serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of a registered company. This limitation will be imposed as follows: no limits on Martha Perez, and Respondents E. Perez and Tejeda will be limited to serving in such capacities only for Ideal Fumigation, Inc.

17. The Board has promulgated disciplinary guidelines, referred to in California Code of Regulations, title 16, section 1937.11, which set forth suggested ranges of license discipline for specified violations of the Code and regulations, as well as factors to be considered in determining whether to impose a minimum, maximum or intermediate level of license discipline. Some violations found herein are not included in the Guidelines. For other violations found herein, the recommended maximum penalty is revocation of the license, and the recommended minimum penalty is revocation stayed with three years of probation, including the Board's standard terms of probation and the possibility of several of the Board's optional terms of probation.

18. Under the disciplinary guidelines, the factors to be considered in determining whether to impose a minimum, maximum or intermediate level of license discipline, as applicable to this case, include: the actual or potential harm to the public and to any consumer; prior disciplinary record; number and variety of current violations; mitigating evidence; whether the conduct was knowing, willful, reckless or inadvertent; the financial benefit to Respondents; and whether the unlawful act was part of a pattern or practice.

19. In consideration of the evidence herein, the following factors and evidence are noted. There was no actual harm to the public or any consumer, but the potential for such harm existed. Although there was no history of prior discipline by the Board, there is a long history of violations with fines paid to County Commissioners. Although Respondents claimed they upgraded their policies and performance after the Accusation was served (July 26, 2013), there are five violations noted after that date, as well as the failure to send the fumigation logs within 10 days earlier this year. Some of these prior violations are more serious (failure to follow safety procedures), others are less so (posting of improper signs or failing to give required notices). The current violations also span from moderate to severe in severity. Mitigation was established in the form of better procedures and a reduced workforce, with better oversight. While it cannot be concluded that the behavior was knowing and willful, it was at least reckless or inadvertent. One would expect better, and sooner, compliance considering the number of prior violations and fines in Respondents' past. There was no evidence of financial benefit to Respondents other than payment for the work performed. Based purely on the number and types of violations, it appears there was a prior pattern of indifference to the statutes and regulations governing Respondents' actions under their licenses and registrations.

20. Respondents established generally that they know how to fumigate properties but were lax in proper paperwork and ignored certain continuing practices that violated the safe practices necessary to properly run and manage a fumigation company. They are sincere in their remorse, recent improved efforts at compliance, and desire to improve and operate correctly.

21. Under such circumstances, it would be appropriate to revoke Respondents' licenses and registrations, but stay the revocation and place the licenses and registrations on probation for five years on terms and conditions, including that Respondents E. Perez and Tejeda take and pass the licensure examinations to reacquaint them with the requirements for licensed practice. Other appropriate probationary terms will be included. Such an order will adequately protect the health, safety and welfare of the people of California.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The following registrations and licenses are covered by this Order: (1) Ideal Fumigation, Inc., Juan Francisco Tejeda, qualifying manager, Company Registration No. PR 3438, Branch Office Registration No. BR 4934; (2) Ernesto Lara Perez, Operator License no. OPR 11128, Branch 1, Field Representative License No. FR 43416, Branch 3; and (3) Juan Francisco Tejeda, Operator License no. OPR 10008, Branch 1. Each such registration and license is revoked pursuant to Legal Conclusions 3, 5, 7, 9, 11 and 13, separately and for all of them. However, the revocations are stayed and each such registration and license is placed on probation for five (5) years upon the following terms and conditions:

1. Obey All Laws: Respondent's shall obey all laws and rules relating to the practice of structural pest control.

2. Quarterly Reports: Respondents shall file quarterly reports with the Board during the period of probation.

3. Tolling of Probation: Should Respondents leave California to reside outside this state, Respondents must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

4. Notice to Employers: Respondents shall notify all present and prospective employers of the decision in this case and the terms, conditions and restriction imposed on Respondents by said decision. Within 30 days of the effective date of this decision, and within 15 days of Respondents undertaking any new employment, Respondents shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in this case.

5. Notice to Employees: Respondents shall, upon or before the effective date of this decision, post or circulate a notice to all employees involved in structural pest control operations which accurately recites the terms and conditions of probation. Respondents shall be

responsible for said notice being immediately available to said employees. "Employees" as used in this provision includes all full-time, part-time, temporary and relief employees and independent contractors employed or hired at any time during probation.

6. Posted Notice of Suspension: Respondents shall prominently post a suspension notice provided by the Board of the Board's order of suspension at his principal office and each of its branch offices in a place conspicuous and readable to the public. Said notice shall remain so posted during the entire period of actual suspension.

7. Completion of Probation: Upon successful completion of probation, Respondents' registrations and licenses will be fully restored.

8. Violation of Probation: Should Respondents violate probation in any respect, the Board, after giving Respondents notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against Respondents during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. Actual Suspension: Each Respondent shall serve an actual suspension of fifteen (15) days.

10. Correspondence Course – Branch 1: Respondents Ernesto Lara Perez and Juan Francisco Tejeda shall complete with a final grade of C Minus (C-) or better within eighteen months (18) months of the effective date of this decision the correspondence course, Pest Control, Branch 1, Fumigation, offered by the University of California Extension, Berkeley.

11. Random Inspections: Respondent shall reimburse the Board for three random inspections per year by Board specialists during the period of probation not to exceed $125 per inspection.

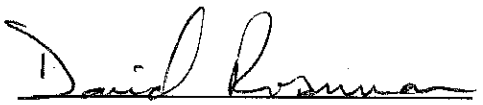
12. Prohibited from Serving as Officer, Director, Associate, Partner or Qualifying Manager: Respondents are prohibited from serving as an officer, director, associate, partner, qualifying manager or branch office manager of any registered company other than Ideal Fumigation, Inc. during the period that discipline is imposed on the licenses, and may not serve in those capacities for any registered company during the time that the licenses are actually suspended.

13. No Interest In Any Registered Company: Respondents shall not have any legal or beneficial interest in any company currently or hereinafter registered by the Board except for Ideal Fumigation, Inc. during the period of probation.

14. Take And Pass Licensure Examinations: Within eighteen months, Respondents Ernesto Lara Perez and Juan Francisco Tejeda shall take and pass the Operator's examination currently required of new applicants for Operator's license. The examination shall be taken on regularly scheduled dates. Respondents shall pay the established examination fee.

15. Reimbursement of Costs: In reimbursement for its costs of investigation and enforcement of this matter, Respondents shall pay to the Board the sum of $10,665, at such time and in such manner as the Board in its discretion may direct.

DATED: April 25, 2014.



DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings