

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

In the Matter of the Accusation Against:

GALLEGOS PEST CONTROL, INC.;
ANGEL GALLEGOS, PRESIDENT/
QUALIFYING MANAGER, MARTHA L.
GALLEGOS, SECRETARY,
Company Registration No. PR 6391, Br. 1
Operator License No. OPR 10788, Br. 1

JAVIER PENA
Field Representative's License No. FR 32691,
Branch 1

Respondents.

Case No. 2014-9

OAH No. 2013100449

PROPOSED DECISION


The Proposed Decision of Samuel D. Reyes, Administrative Law Judge, dated June 18, 2014, in Santa Barbara, 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 1, paragraph 2, "Interim Registrar/Executive Officer" is stricken and replaced with "Registrar/Executive Officer".
2. On page 2, paragraph 3a, "The license expires on June 30, 2015, unless renewed" is stricken.
3. On page 3, paragraph 5a and 5b, "FR 332691" is stricken and replaced with "FR 32691".
4. On page 4, paragraph 8c, "November 30, 1011" is stricken and replaced with "November 30, 2011".
5. On page 6, paragraph 2, "section 1771" is stricken and replaced with "section 1971".
6. On page 6, paragraph 3, "section 1774" is stricken and replaced with "section 1974".
7. On page 6, paragraph 6, "section 6782" is stricken and replaced with "section 6780".
8. On page 9, paragraph D, insert the prefix "FR" in front of "32691".

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 14, 2014.

IT IS SO ORDERED July 15, 2014.



FOR THE STRUCTURAL PEST CONTROL BOARD
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Field Representative
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PROPOSED DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Santa Barbara, California, on May 20, 2014.

Christina Thomas, Deputy Attorney General, represented Complainant Susan Saylor, Interim Registrar/Executive Officer of the Structural Pest Control Board (Board), Department of Consumer Affairs.

James L. Frederick, Attorney at Law, represented Gallegos Pest Control, Inc. (Respondent Gallegos, Inc.), Angel Gallegos (Respondent A. Gallegos), and Respondent Martha L. Gallegos (Respondent M. Gallegos), collectively referred to as Respondents Gallegos. Respondent Javier Pena (Pena), who is included in collective references to Respondents, represented himself.

Complainant seeks to discipline the licenses held by Respondents on the bases of their alleged violation of laws and regulations governing structural pest control. Respondents stipulated to the truth of all of the factual allegations in the Accusation and presented evidence in mitigation and rehabilitation in support of continued licensure.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant filed the Accusation solely in her official capacity.
2.
 - a. On September 18, 2003, the Board issued Operator's License number OPR 10788, inactive, Branch 1, to Respondent A. Gallegos. On October 10, 2003, Respondent A. Gallegos became the Qualifying Manager and Owner of Gallegos Pest Control.
 - b. On May 26, 2008, following a hearing, Operator's License number 10788, was revoked, which revocation was stayed for three years on terms and conditions.
 - c. The Ventura County Agricultural Commissioner has levied the following fines on Operator License number 10788: \$500 on October 20, 2006, for violation of Business and Professions Code¹ section 8505.15 and California Code of Regulations (CCR), title 3, section 6780, subdivisions (b) and (c); \$600 on August 10, 2007, for violation of section 8505.15; \$700 on December 26, 2007, for violation of CCR, title 3, section 6702, subdivision (b)(5); and \$3,500 on June 10, 2010, for violation of Food and Agriculture Code section 12973. The fines were paid on March 20, 2007, September 25, 2007, February 6, 2008, and July 15, 2010, respectively.
 - d. The Santa Barbara County Agricultural Commissioner has levied the following fines on Operator License number 10788: \$2,670 on May 23, 2012, for violation of CCR, title 3, section 6780, subdivision (b), and CCR, title 16, section 1971, subdivision (a)(2); \$250 on May 24, 2012, for violation of CCR, title 16, section 1974, subdivision (b); and \$950 on May 24, 2012, for violation of CCR, title 3, sections 6724, subdivision (d), and 6782, subdivision (b). The fines were paid on April 16, 2013, October 2, 2012, and November 20, 2012, respectively.
 - e. On May 31, 2012, the Kern County Agricultural Commissioner levied a \$250 fine against Operator License number 10788 for violation of CCR, title 3, section 6739, subdivision (p). The fine was paid on June 14, 2012.
3.
 - a. On October 14, 2011, the Board issued Company Registration number PR 6391, Branch 1, to Respondent Gallegos, Inc., with Respondent A. Gallegos as the President and Qualifying Manager and Respondent M. Gallegos as Secretary. The license expires on June 30, 2015, unless renewed.

¹ Unless otherwise stated, all further statutory references are to the Business and Professions Code.

b. On May 23, 2012, the Santa Barbara County Agricultural Commissioner levied a \$2,670 fine against Company Registration Certificate number 6391 for violation of CCR, title 3, section 6780, subdivision (b), and CCR, title 16, section 1971, subdivision (a)(2). The fine was paid on April 16, 2013.

c. On May 24, 2012, the Santa Barbara County Agricultural Commissioner levied a \$250 fine against Company Registration Certificate number 6391 for violation of CCR, title 16, section 1974, subdivision (b). The fine was paid on October 2, 2012.

d. On May 24, 2012, the Santa Barbara County Agricultural Commissioner levied a \$950 fine against Company Registration Certificate number 6391 for violation of CCR, title 3, sections 6724, subdivision (d), and 6782, subdivision (b). The fine was paid on November 20, 2012.

e. On May 31, 2012, the Kern County Agricultural Commissioner levied a \$250 fine against Company Registration Certificate number 6391 for violation of CCR, title 3, section 6739, subdivision (p). The fine was paid on June 14, 2012.

4. A prior company registration owned by Respondent was also disciplined prior to its cancellation. On May 26, 2008, following a hearing, Company Registration Certificate number 4415, issued to Gallegos Pest Control with Angel Gallegos as Qualifying Manager and Owner, was revoked, which revocation was stayed for three years on terms and conditions. The Ventura County Agricultural Commissioner levied fines of \$600, \$700, and \$3,500, on August 10, 2007, December 26, 2007, and June 10, 2010, respectively, for violation of regulations governing structural pest control. Company Registration Certificate number 4415 was cancelled on October 14, 2011.

5. a. On September 8, 2000, the Board issued Field Representative License number FR 332691, Branch 1, to Respondent Pena. The license expires on June 30, 2015, unless renewed.

b. On January 31, 2008, the Santa Barbara County Agricultural Commissioner levied a \$250 fine against Field Representative License number FR 332691 for violation of section 8505.2. The fine was paid on April 21, 2008.

6. On October 19, 2011, Respondent Pena was in charge of a crew of Respondent Gallegos, Inc.'s employees performing a fumigation job at 7622 Evergreen Drive, Goleta, California. Tarps were set up and Vikane, a brand name for the fumigation gas sulfuryl fluoride, was applied. On October 21, 2011, at about 12:30 p.m., Respondent Pena and three other employees of Respondent Gallegos, Inc., began removing the tarps without wearing respiratory protection or continuous monitoring devices.

7. On November 28, 2011, Respondent Pena and his crew used Vikane to fumigate a residence at 3778 Center Avenue, Santa Barbara. Warning signs were not posted on one of the tarp seams. Respondent Pena explained that he had covered both "true" seams and referred to the seam at issue as a "false" one, or one not involving a true space between to tarps.

8. a. On November 28, 2011, Respondent Pena and his crew fumigated two buildings located at 3360 Braemar Avenue, Goleta, California, using Vikane.

b. On November 30, 2011, while removing the tarps from the project, Respondent Gallegos, Inc.'s employees were not equipped with two functional positive pressure self-contained apparatus or combination air-supplied/SCB A respirators.

c. On November 30, 2011, Mario Jaquez, one of the workers removing the tarps had not been trained to handle Vikane. This was Jaquez's first day on the crew, and Respondent Pena was training him.

9. a. On April 12, 2012, Respondent Pena and his crew fumigated three separate structures in an apartment complex located at 83 North La Cumbre Road, Santa Barbara, California.

b. Respondent Pena and his crew had installed two aeration fans in the main apartment building structure, but had only removed the seal on one of them. In addition, they failed to set up aeration ducting that extended from the aeration fans to at least ten feet above ground. In failing to remove the seals from both fans and in failing to extend aeration ducting from the fans to at least ten feet above ground, Respondent Pena and his crew failed to comply with the requirements of the Vikane labeling instructions and the applicable California Aeration Plan (CAP). Respondent Pena explained that the aeration was about 9.5 feet above ground, which he felt was appropriate given the location of the roofline.

c. Respondents removed the tarp seals in the carport and cottage structures after 10 hours of fumigation, not the 12 hours required for full aeration. In the apartment building structure, the tarps were removed after 11 hours of aeration.

d. Respondents' employees began removing the tarps without wearing respiratory protection or continuous monitoring devices.

e. Respondent Pena left the project for approximately four hours on April 12, 2012, leaving the carport and cottage tarps partially open and unattended. In failing to lock, barricade and secure the project, Respondent Pena violated 8505.7. Respondent Pena testified that he had tested the structures with a fumiscope and did not detect sulfuryl fluoride and therefore he did not believe he needed to secure the structures against re-entry.

f. A warning sign for an open portion of the carport tarp was on the ground and not posted on the tarp opening. Similarly, signs for the five openings in the detached cottage structure were on the ground and not posted on the tarp.

10. a. During an inspection that took place in Respondent Gallegos, Inc.'s headquarters office between April 10 and May 8, 2012, Respondents were not able to provide written information regarding fit testing for four of its employees, including Respondent Pena, when requested by Kern County Department of Agriculture and Measurement Standards inspectors.

b. Respondent A. Gallegos testified that he did have the testing documentation, but that he could not locate it when asked by inspectors. He now keeps the documents in a safe place and are readily available if requested.

11. Respondent A. Gallegos was not personally involved in any of the field violations. He had trained Respondent Pena to follow pest control laws and regulations and trusted him to follow the law on projects. Respondent A. Gallegos testified that he has purchased all required equipment and that the required respiratory and monitoring equipment was available to Respondent Pena.

12. Respondent A. Gallegos is the only one running the crews now, and there have been no problems since the citations involved in this matter. He has four employees and they are all trained. He has all the required equipment in his truck.

13. Respondent Pena has been in the pest control industry for about 20 years. He testified that he tries to do his best in all his jobs, and took responsibility for bad decisions on the jobs at issue. He agreed that he opened the tarps too soon in the La Cumbre apartment complex job. He did not dispute the evidence regarding the failure to use respiratory equipment or monitoring equipment. He expressed regret for his actions.

14. Respondent Pena has been working for another company for approximately one year. Four or five of his jobs have been inspected and no citations have been issued.

15. The Board has incurred costs in the investigation and enforcement of this matter, in the form of charges from the Attorney General's office in the sum of \$5,492.50. These costs are found to be reasonable.

LEGAL CONCLUSIONS

1. In failing to wear respiratory protection, and in failing to have other members of his crew wear protective respiratory equipment, as set forth in factual finding numbers 6, 9.a. and 9.d., Respondent Pena violated CCR, title 3, section 6780, subdivision (a).

2. In failing to use continuous monitoring devices, as set forth in factual finding numbers 6, 9.a. and 9.d., Respondent Pena violated CCR, title 16, section 1771, subdivision (a)(1).

3. In failing to properly post warning signs, as set forth in factual finding numbers 7, 9.a. and 9.f., Respondent Pena violated CCR, title 16, section 1774.

4. In failing to have immediate access to the personal protective equipment required by the manufacturer of Vikane, and in failing to have other members of his crew wear protective respiratory equipment, as set forth in factual finding numbers 6, 8.a., and 8.b., Respondent Pena violated CCR, title 3, section 6782, subdivision (b).

5. In employing a crew member without proper training, as set forth in factual finding numbers 8.a. and 8.c., Respondent Pena violated CCR, title 3, section 6724, subdivision (d).

6. In failing to comply with the manufacturer's instructions for handling Vikane, as set forth in factual finding numbers 9.a., 9.b., 9.c., and 9.f., Respondent Pena violated Agricultural Code section 12973 and CCR, title 3, section 6782, subdivision (b)(3)(c).

7. In leaving the La Cumbre project unattended with partially open tarps, as set forth in factual finding numbers 9.a. and 9.e., Respondent Pena violated section 8505.7.

8. In failing to provide written information regarding fit testing for four of its employees, as set forth in factual finding number 10, Respondents Gallegos Inc., and A. Gallegos violated CCR, title 3, section 6739, subdivision (p).

9. Cause exists to discipline Respondent Pena's license pursuant to section 8646 in that he failed to comply with statutes and regulations governing structural pest control, as set forth in factual finding numbers 6, 7, 8 and 9, and legal conclusion numbers 1 through 7.

10. Cause exists to discipline Respondent Gallegos, Inc.'s company registration pursuant to section 8646 for violation of statutes and regulations governing structural pest control in that it is responsible for the actions of its employee, Respondent Pena, as set forth in factual finding numbers 6, 7, 8 and 9, and legal conclusion numbers 1 through 7.

11. Cause exists to discipline Respondent Gallegos, Inc.'s company registration pursuant to section 8646 for violation of statutes and regulations governing structural pest control, as set forth in factual finding number 10 and legal conclusion number 8.

12. Cause exists to discipline Respondent A. Gallegos's operator license pursuant to sections 8506.2, 8610, subdivision (c), and 8646 for violation of statutes and regulations governing structural pest control in that as qualifying manager of Respondent Gallegos, Inc., he is responsible for supervising his employees and for the actions of his employee, Respondent Pena, as set forth in factual finding numbers 6, 7, 8 and 9, and legal conclusion numbers 1 through 7.

13. Cause exists to discipline Respondent A. Gallegos's operator license pursuant to section 8646 for violation of statutes and regulations governing structural pest control, as set forth in factual finding number 10 and legal conclusion number 8.

14. Cause exists to discipline Respondent A. Gallegos's operator license pursuant to section 8624 because cause exists to discipline the license of Respondent Gallegos, Inc., a corporation for which he is the qualifying manager, as set forth in factual finding numbers 6, 7, 8, 9 and 10 and legal conclusion numbers 1 through 8, 10 and 11.

15. Cause exists pursuant to section 8654 to prohibit Respondent A. Gallegos from acting as an officer, director, associate, partner or qualifying individual of a Board licensee because cause for discipline exists against Respondent Gallegos, Inc., as set forth in factual finding numbers 6, 7, 8, 9 and 10, and legal conclusion numbers 1 through 8, 10 and 11.

16. Cause exists pursuant to section 8654 to prohibit Respondent Pena from acting as an officer, director, associate, partner or qualifying individual of a Board licensee because cause for discipline exists against Respondent Gallegos, Inc., as set forth in factual finding numbers 6, 7, 8, 9 and 10, and legal conclusion numbers 1 through 8, 10 and 11.

17. Cause exists pursuant to section 125.3 to order Respondents to pay the Board's costs of investigation and prosecution, in the sum of \$5,492.50, by reason of factual finding numbers 6 through 10 and 15, and legal conclusion numbers 1 through 14. Respondents A. Gallegos and Pena are both are jointly and severally liable for this sum. However, Respondent Gallegos, as the President and Qualifying Manager of Respondent Pena's employer shall be primarily responsible for 75 percent of the total reimbursement. Payments may be made on a schedule approved by the Board.

18. All evidence presented in mitigation and aggravation and in Respondent's defense has been considered. Respondent A. Gallegos was not personally involved in the violations, except for one, and there have not been any further violations. However, he has suffered prior discipline and, despite this discipline, failed to adequately supervise those in his employ to prevent further violations. Respondent Pena accepted responsibility for his actions and has been working without subsequent citations. The order that follows is necessary and appropriate for the protection of the public.

ORDER

A. Company Registration number PR 6391, Branch 1, issued to Gallegos Pest Control, Inc., Angel Gallegos, President/Qualifying Manager, and Martha Gallegos, Secretary, is revoked.

B. Operator License number OPR 10788, Branch 1, issued to Angel Gallegos is revoked; provided, the revocation is stayed for a period of five years on the following terms and conditions:

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

2. **Quarterly Reports.** Respondent shall file quarterly reports with the Board during the period of probation.

3. **Tolling of Probation.** Should respondent leave California to reside outside this state, Respondent 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.** Respondent shall notify all present and prospective employers of the decision in case No. 2013100449 and the terms, conditions and restriction imposed on Respondent by said decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case No 2013100449.

5. **Notice to Employees.** Respondent 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 recite the terms and conditions of probation. Respondent 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. **Completion of Probation.** Upon successful completion of probation, Respondent's license/certificate will be fully restored.

7. **Violation of Probation.** Should Respondent violate probation in any respect, the Board, after giving Respondent 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 Respondent 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.

8. **Actual Suspension.** Operator's License number OPR 10788, issued to Respondent Angel Gallegos is suspended for 30 days. Respondent may pay a civil penalty pursuant to section 8620.

9. **Correspondence Course - Branch 1.** Respondent Angel Gallegos shall complete with a final grade of C Minus (C-) or better within eighteen (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.

10. **Random Inspections.** Respondent shall reimburse the Board for random inspections by Board specialists during the period of probation not to exceed \$125 per inspection.

11. **Prohibited from Serving as Officer, Director, Associate, Partner or Qualifying Manager.** Respondent is prohibited from serving as an officer, director, associate, partner, qualifying manager or branch office manager of any registered company during the period that discipline is imposed on Operator's License No. OPR 10788.

12. **No Interest in Any Registered Company.** Respondent shall not have any legal or beneficial interest in any company currently or hereinafter registered by the Board.

13. **Cost Reimbursement.** Respondent Angel Gallegos is ordered to reimburse the Board the sum of \$5,492.50 in reimbursement of the Board's costs of investigation and enforcement. Respondents Angel Gallegos and Javier Pena are jointly and severally liable for this sum. However, Respondent Gallegos, as the President and Qualifying Manager of Respondent Pena's employer shall be primarily responsible for 75 percent of the total reimbursement. Payments may be made on a schedule approved by the Board.

C. Respondent Angel Gallegos is prohibited from acting as an officer, director, associate, partner or qualifying individual of any Board licensee.

D. Field Representative License number 32691, Branch 1, issued to Javier Pena is revoked; provided, the revocation is stayed for a period of five years on the following terms and conditions:

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

2. **Quarterly Reports.** Respondent shall file quarterly reports with the Board during the period of probation.

3. **Tolling of Probation.** Should respondent leave California to reside outside this state, Respondent 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.** Respondent shall notify all present and prospective employers of the decision in case No. 2013100449 and the terms, conditions and restriction imposed on Respondent by said decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case No 2013100449.

5. **Notice to Employees.** Respondent 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 recite the terms and conditions of probation. Respondent 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. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

7. **Violation of Probation.** Should Respondent violate probation in any respect, the Board, after giving Respondent 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 Respondent 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.

8. **Actual Suspension.** Field Representative License number FR 32691, issued to Respondent Javier Pena is suspended for 15 days. Respondent may pay a civil penalty pursuant to section 8620.

9. **Correspondence Course - Branch 1.** Respondent Javier Pena shall complete with a final grade of C Minus (C-) or better within eighteen (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.

10. **Random Inspections.** Respondent shall reimburse the Board for random inspections by Board specialists during the period of probation not to exceed \$125 per inspection.

11. **Prohibited from Serving as Officer, Director, Associate, Partner or Qualifying Manager.** Respondent is prohibited from serving as an officer, director, associate, partner, qualifying manager or branch office manager of any registered company during the period that discipline is imposed on Field Representative License number FR 32691.


12. **No Interest in Any Registered Company.** Respondent shall not have any legal or beneficial interest in any company currently or hereinafter registered by the Board.

13. **Cost Reimbursement.** Respondent Javier Pena is ordered to reimburse the Board the sum of \$5,492.50 in reimbursement of the Board's costs of investigation and enforcement. Respondents Angel Gallegos and Javier Pena are jointly and severally liable for this sum. However, Respondent Gallegos, as the President and Qualifying Manager of Respondent Pena's employer shall be primarily responsible for 75 percent of the total reimbursement. Payments may be made on a schedule approved by the Board.

E. Respondent Javier Pena is prohibited from acting as an officer, director, associate, partner or qualifying individual of any Board licensee.

F. Respondents Angel Gallegos and Javier Pena are ordered to reimburse the Board the sum of \$5,492.50 in reimbursement of the Board's costs of investigation and enforcement. Respondents Angel Gallegos and Javier Pena are jointly and severally liable for this sum. However, Respondent Gallegos, as the President and Qualifying Manager of Respondent Pena's employer shall be primarily responsible for 75 percent of the total reimbursement. Payments may be made on a schedule approved by the Board.

DATED: 6/18/04


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings