

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2520
6 Facsimile: (213) 897-2804
Attorneys for Complainant

FILED

Date 3/28/12 By William H. Douglas

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

In the Matter of the Accusation Against:

Case No. 2012-45

Manuel Edwardo Lerma
8939 S. Sepulveda Blvd., #110-224,
Westchester, CA 90045

ACCUSATION

-and-

10016 Pioneer Blvd., Ste. #102,
Santa Fe Springs, Ca. 90670

Operator's License No. OPR 11228, Branch 2
and 3

Respondent

Complainant alleges:

PARTIES

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.

2. On or about December 15, 2005, the Board issued Operator's License Number OPR 11228 in Branch 3 (termite) to Manuel Edwardo Lerma ("Respondent"). Respondent's operator's license will expire on June 30, 2014, unless renewed.

///

///

1 **STATUTORY AND REGULATORY PROVISIONS**

2 3. Business and Professions Code ("Code") section 8620 provides, in pertinent part, that
3 the Board may suspend or revoke a license when it finds that the holder, while a licensee or
4 applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu
5 of a suspension may assess a civil penalty.

6 4. Code section 8654 states:

7 Any individual who has been denied a license for any of the reasons
8 specified in Section 8568, or who has had his or her license revoked, or whose license
9 is under suspension, or who has failed to renew his or her license while it was under
10 suspension, or who has been a member, officer, director, associate, qualifying
11 manager, or responsible managing employee of any partnership, corporation, firm, or
12 association whose application for a company registration has been denied for any of
13 the reasons specified in Section 8568, or whose company registration has been
14 revoked as a result of disciplinary action, or whose company registration is under
15 suspension, and while acting as such member, officer, director, associate, qualifying
16 manager, or responsible managing employee had knowledge of or participated in any
17 of the prohibited acts for which the license or registration was denied, suspended or
18 revoked, shall be prohibited from serving as an officer, director, associate, partner,
19 qualifying manager, or responsible managing employee of a registered company, and
20 the employment, election or association of such person by a registered company is a
21 ground for disciplinary action.

22 5. Code section 8641 states:

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

28 6. Code section 8593 states:

The board shall require as a condition to the renewal of each operator's
and field representative's license that the holder submit proof satisfactory to the board
that he or she has informed himself or herself of developments in the field of pest
control either by completion of courses of continuing education in pest control
approved by the board or equivalent activity approved by the board.

In lieu of submitting that proof, the licenseholder, if he or she so desires,
may take and successfully complete an examination given by the board, designed to
test his or her knowledge of developments in the field of pest control since the
issuance of his or her license.

The board shall develop a correspondence course or courses with any
educational institution or institutions as it deems appropriate. This course may be
used to fulfill the requirements of this section. The institution may charge a
reasonable fee for each course.

1 The board may charge a fee for the taking of an examination in each
2 branch of pest control pursuant to this section in an amount sufficient to cover the
3 cost of administering each examination, provided, however, that in no event shall the
4 fee exceed fifty dollars (\$ 50) for each examination.

5 7. California Code of Regulations, title 16, section ("Regulation") 1950 states, in
6 pertinent part:

7 (a) Except as provided in section 1951, every licensee is required, as a
8 condition to renewal of a license, to certify that he or she has completed the
9 continuing education requirements set forth in this article. A licensee who cannot
10 verify completion of continuing education by producing certificates of activity
11 completion, whenever requested to do so by the Board, may be subject to disciplinary
12 action under section 8641 of the code.

13 (b) Each licensee is required to gain a certain number of continuing
14 education hours during the three year renewal period. The number of hours required
15 depends on the number of branches of pest control in which licenses are held. The
16 subject matter covered by each activity shall be designated as "technical" or "general"
17 by the Board when the activity is approved. Hour values shall be assigned by the
18 Board to each approved educational activity, in accordance with the provisions of
19 section 1950.5.

20

21 (d) Field representatives licensed in one branch of pest control shall have
22 completed 16 continuing education hours, field representatives licensed in two
23 branches of pest control shall have completed 20 continuing education hours, field
24 representatives licensed in three branches of pest control shall have completed 24
25 continuing education hours during each three year renewal period. In each case, a
26 minimum of four continuing education hours in a technical subject directly related to
27 each branch of pest control held by the licensee must be gained for each branch of
28 pest control licensed and a minimum of eight hours must be gained from Board
approved courses on the Structural Pest Control Act, the Rules and Regulations, or
structural pest control related agencies' rules and regulations . . .

29 COST RECOVERY

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

34 FIRST CAUSE FOR DISCIPLINE

35 (Failure to Verify Completion of Continuing Education)

36 10. On or about May 12, 2011, Respondent submitted a license renewal
37 application to the Board wherein Respondent certified under penalty of perjury that he
38 successfully completed twenty (20) hours of continuing education during his last renewal period.

1 11. On or about October 20, 2011, a representative of the Board sent
2 Respondent a letter indicating that he had been selected for the 2011 continuing education (CE)
3 audit. The October 20, 2011 letter to Respondent asked Respondent to submit copies of the
4 certificates of course completion which verified his CE hours for the renewal period of July 1,
5 2008, through, June 30, 2011, to the Board.

6 12. On or about December 9, 2011, a representative of the Board sent
7 Respondent a letter indicating the while the Board had received certificates from Respondent in
8 response to the Board's letter dated October 20, 2011, that Respondent was short eight (8) hours
9 Rules and Regulations, four (4) hours Technical Branch 2, four (4) hours Technical Branch 3, two
10 (2) hours IPM and two (2) hours General.¹ Respondent was asked to submit copies of any
11 additional certificates of course completion that verify his continuing education hours for the
12 renewal period of July 1, 2008 through June 30, 2011, to the Board.

13 13. On or about December 21, 2011, Respondent sent to the Board a letter to
14 the Board indicating that he was not able to produce any more certificates verifying his
15 continuing education hours for the renewal period in question.

16 14. Respondent is subject to disciplinary action pursuant to Code sections
17 8641 and 8593 in that he failed to comply with Regulation 1950 by failing to verify that he
18 completed all of the required courses of continuing education in pest control approved by the
19 Board. Specifically, Respondent failed to produce copies documenting completion of twenty (20)
20 hours of continuing education for the renewal period of July 1, 2008 through June 30, 2011, as
21 requested by the Board's representative.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Misrepresentation of Material Fact)**

24 15. Respondent is subject to disciplinary action pursuant to Code sections
25 8641 and 8637 in that he made a misrepresentation of a material fact to the Board or its designee
26 in that on or about May 12, 2011, Respondent sent back to the Board a completed license renewal

27 ¹ The December 9, 2011 letter indicated that Respondent was short these hours because
28 the certificates he sent in were taken outside of the renewal period.

1 application signed under penalty of perjury that he had completed all twenty (20) hours of
2 continuing education required for renewal of his license when in fact he had not completed the
3 twenty (20) hours required for renewal of his license. Paragraphs 10-14 are hereby incorporated
4 by reference as though alleged herein.

5 **DISCIPLINARY CONSIDERATIONS**

6 16. On or about October 22, 2007, Respondent paid a \$1500 fine levied by
7 the Board for violation of sections 8612, 8613, and 8648 of the Business and Professions Code.

8 **OTHER MATTERS**

9 17. Code section 8620 provides, in pertinent part, that a respondent may
10 request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of
11 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request
12 must be made at the time of the hearing and must be noted in the proposed decision. The
13 proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

14 18. Pursuant to Code section 8654, if discipline is imposed on Operator's
15 License Number OPR 11228, issued to Manuel Edwardo Lerma, Manuel Edwardo Lerma shall be
16 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
17 responsible managing employee for any registered company during the time the discipline is
18 imposed, and any registered company which employs, elects, or associates Manuel Edwardo
19 Lerma shall be subject to disciplinary action.

20 **PRAYER**

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

23 1. Revoking or suspending Operator's License Number OPR 11228, issued
24 to Manuel Edwardo Lerma;

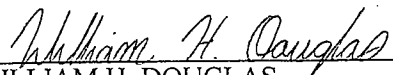
25 2. Prohibiting Manuel Edwardo Lerma from serving as an officer, director,
26 associate, partner, qualifying manager or responsible managing employee of any registered
27 company during the period that discipline is imposed on Operator's License Number
28 OPR 11228, issued to Manuel Edwardo Lerma;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Ordering Manuel Edwardo Lerma 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;

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

DATED: 3/28/12


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

LA2012506436