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

In the Matter of the Accusation Against: **STORMIES PEST CONTROL** **FRANK A. MARSHALL, Owner/QM** 4119 Don Jose Drive Los Angeles, California 90008 Company Registration No. PR 2212, Branches 1 and 3 Operator License No. OPR 7983, Brances 1 and 3 Branch Office No. BR 5066 Respondent.	Case No. 2009-61 OAH No. L-2010090092

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Structural Pest Control Board, Department of Pesticide Regulation, as its Decision in this matter.

This Decision shall become effective on August 26, 2011.

It is so ORDERED July 27, 2011.

FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General
ALVARO MEJIA
Deputy Attorney General
State Bar No. 216956
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-0083
Facsimile: (213) 897-2804
Attorneys for Complainant

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

In the Matter of the Accusation Against: **STORMIES PEST CONTROL** **FRANK A. MARSHALL, Owner/QM** 4119 Don Jose Drive Los Angeles, California 90008 Company Registration No. PR 2212, Branches 1 and 3 Operator License No. OPR 7983, Brances 1 and 3 Branch Office No. BR 5066 Respondent.	Case No. 2009-61 OAH No. L-2010090092 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kelli Okuma ("Complainant") is the Registrar/Executive Officer of the Structural Pest Control Board. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Alvaro Mejia, Deputy Attorney General.

2. Respondent Stormies Pest Control, Frank A. Marshall, owner and Qualifying Manager ("Respondent") is represented in this proceeding by attorney Nelson L. Atkins, whose address is: 3699 Wilshire Blvd, Suite 890, Los Angeles, CA 90010.

LICENSE INFORMATION

Company Registration No. PR 2212

3. On or about March 6, 1992, the Board issued Company Registration No. PR 2212 ("registration"), in Branches 1 and 3, to Stormies Pest Control, with Frank A. Marshall as the owner and Qualifying Manager. On or about August 26, 2008, the registration was suspended pursuant to Business and Professions Code ("Code") section 8697 (failing to maintain a $4,000 surety bond). On or about September 3, 2008, the registration was reinstated.

Operator's License No. OPR 7983

4. On or about December 8, 1987, the Board issued Operator's License No. OPR 7983 in Branches 1 and 3 to Respondent as the President and Qualifying Manager of Stormies Fum For Pest, Inc. On or about March 6, 1992, Respondent became the owner and Qualifying Manager for Stormies Pest Control. On or about December 2, 2005, Respondent became the Branch Office Supervisor for Stormies Pest Control, Branch Office No. BR 5066. The license will expire on June 30, 2011, unless renewed.

Branch Office No. BR 5066

5. On or about December 2, 2005, the Board issued Branch Office Registration No. BR 5066 to Stormies Pest Control with Respondent as the Branch Office Supervisor.

JURISDICTION

6. Accusation No. 2009-61 was filed before the Structural Pest Control Board ("Board"), Department of Consumer Affairs[1], and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 27, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2009-61 is attached as exhibit A and incorporated herein by reference. First Supplemental Accusation No. 2009-61 was filed before the Structural Pest Control Board, Department of Pesticide Regulation on March 8, 2010. First Supplemental Accusation No. 2009-61 and all other statutorily required documents were properly served on Respondent on

[1] Legislation in 2009 transferred the Structural Pest Control Board from the Department of Consumer Affairs to the Department of Pesticide Regulation.

March 11, 2010. A copy of First Supplemental Accusation No. 2009-61 is attached as exhibit B and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2009-61 and First Supplemental Accusation No. 2009-61. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation and First Supplemental Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent admits the truth of each and every charge and allegation in Accusation No. 2009-61 and First Supplemental Accusation No. 2009-61.

11. Respondent agrees that his Company Registration No. PR 2212, Branch Office No. BR 5066, and Operator License No. OPR 7983 are subject to discipline and agrees to be bound by the Structural Pest Control Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Structural Pest Control Board. Respondent understands and agrees that counsel for Complainant and the staff of the Structural Pest Control Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the

stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Company Registration No. PR 2212, in Branches 1 and 3, Branch Office No. BR 5066, and Operator's License No. OPR 7983, in Branches 1 and 3 issued to Frank A. Marshall, owner and Qualifying Manager ("Respondent") are revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Actual Suspension. Respondent's Company Registration No. PR 2212, in Branches 1 and 3, Branch Office No. BR 5066, and Operator's License No. OPR 7983, in Branches 1 and 3 are suspended for 20 consecutive days.

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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 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.

5. **Posted Notice of Suspension.** Respondent structural pest control company shall prominently post a suspension notice provided by the Board of the Board's order of suspension at its 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.

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. **Course Completion.** Respondent Frank A. Marshall shall successfully complete, within eighteen (18) months of the effective date of this decision, a Board approved course in fumigation safety.

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9. **Random Inspections.** Respondent shall reimburse the Board for one (1) random inspection per quarter by Board specialists during the period of probation not to exceed $125.00 per inspection.

10. **Inspection Fees.** Respondent shall pay to the registrar, or designee, an inspection fee of $50.00 within thirty (30) days from the effective date of this decision.

11. **Cost Recovery.** Pursuant to Business and Professions Code section 125.3, Respondent Frank A. Marshall shall pay to the Board its enforcement and investigative costs in the amount of $10,000.00, which may be paid in monthly installment payments and which is to be paid in full by three months prior to the end of the probationary period.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Nelson L. Atkins. I understand the stipulation and the effect it will have on my Company Registration No. PR 2212, in Branches 1 and 3, Branch Office No. BR 5066, and Operator's License No. OPR 7983, in Branches 1 and 3. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Structural Pest Control Board.

DATED: 3/25/11

Frank A. Marshall, Owner and Qualifying Manager
Respondent

I have read and fully discussed with Respondent Frank A. Marshall the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 3-25-11

Nelson L. Atkins, Esq.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Structural Pest Control Board of the Department of Pesticide Regulation.

Dated: June 13, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

ALVARO MEJIA
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: LA2009900743
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Exhibit A

Accusation No. 2009-61

EDMUND G. BROWN JR., Attorney General
of the State of California
ALFREDO TERRAZAS
Senior Assistant Attorney General
GREGORY J. SALUTE, State Bar No. 164015
Supervising Deputy Attorney General
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2520
Facsimile: (213) 897-2804

Attorneys for Complainant

FILED

Date 6/1/09 By Kelli Okuma

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

In the Matter of the Accusation Against: **STORMIES PEST CONTROL** **FRANK A. MARSHALL, Owner/QM** 36 Centinela Avenue Inglewood, California 90302 Company Registration No. PR 2212, Br. 1 and 3 Operator License No. OPR 7983, Br. 1 and 3 Branch Office No. BR 5066 Respondent.	Case No. 2009-61 **ACCUSATION**

Kelli Okuma ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of Consumer Affairs.

LICENSE INFORMATION

Company Registration No. PR 2212

2. On or about March 6, 1992, the Board issued Company Registration No. PR 2212 ("registration"), in Branches 1 and 3, to Stormies Pest Control, with Frank A. Marshall ("Respondent") as the owner and Qualifying Manager. On or about August 26, 2008, the registration was suspended pursuant to Business and Professions Code ("Code") section 8697

(failing to maintain a $4,000 surety bond). On or about September 3, 2008, the registration was reinstated.

Operator's License No. OPR 7983

3. On or about December 8, 1987, the Board issued Operator's License No. OPR 7983 in Branches 1 and 3 to Respondent as the President and Qualifying Manager of Stormies Fum For Pest, Inc. On or about March 6, 1992, Respondent became the owner and Qualifying Manager for Stormies Pest Control. On or about December 2, 2005, Respondent became the Branch Office Supervisor for Stormies Pest Control, Branch Office No. BR 5066. The license will expire on June 30, 2011, unless renewed.

Branch Office No. BR 5066

4. On or about December 2, 2005, the Board issued Branch Office Registration No. BR 5066 to Stormies Pest Control with Respondent as the Branch Office Supervisor.

JURISDICTION

5. 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.

6. Code section 8624 states:

> If the board suspends or revokes an operator's license and one or more branch offices are registered under the name of the operator, the suspension or revocation may be applied to each branch office.
>
> 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.

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7. 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.

8. Code section 8622 states:

When a complaint is accepted for investigation of a registered company, the board, through an authorized representative, may inspect any or all properties on which a report has been issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section 8518 by the registered company to determine compliance with the provisions of this chapter and the rules and regulations issued thereunder. If the board determines the property or properties are not in compliance, a notice shall be sent to the registered company so stating. The registered company shall have 30 days from the receipt of the notice to bring such property into compliance, and it shall submit a new original report or completion notice or both and an inspection fee of not more than one hundred twenty-five dollars ($125) for each property inspected. If a subsequent reinspection is necessary, pursuant to the board's review of the new original report or notice or both, a commensurate reinspection fee shall also be charged. If the board's authorized representative makes no determination or determines the property is in compliance, no inspection fee shall be charged.

The notice sent to the registered company shall inform the registered company that if it desires a hearing to contest the finding of noncompliance, the hearing shall be requested by written notice to the board within 20 days of receipt of the notice of noncompliance from the board. Where a hearing is not requested pursuant to this section, payment of any assessment shall not constitute an admission of any noncompliance charged.

STATUTORY PROVISIONS

9. 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."

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10. Code section 8647 states:

"Failure to comply in the sale or use of insecticides with the provisions of Chapter 2 (commencing with Code section 12751) of Division 7 of the Food and Agricultural Code is a ground for disciplinary action."

11. Code section 8505.10 states:

> Warning signs shall be printed in red on white background and shall contain the following statement in letters not less than two inches in height: "DANGER — FUMIGATION." They shall also depict a skull and crossbones not less than one inch in height and shall state in letters not less than one-half inch in height the name of the fumigant, the date and time fumigant was injected, and the name, address and telephone number of the registered company performing the fumigation. Warning signs placed under a tarpaulin shall not be required to state the time the fumigant was injected.

REGULATORY PROVISIONS

12. California Code of Regulations, title 3, section 6600(b) states: "Perform all pest control in a careful and effective manner."

13. California Code of Regulations, title 3, section 6780 states:

> (b) Whenever an employee may be exposed above an exposure standard to methyl bromide, sulfuryl fluoride, or any other fumigant for which only air-supplied respirator equipment is approved, the employer shall either:
>
> (1) Require the use of air-supplied respirator equipment,
>
> (c) Upon written application by an employer, the director will review, and may accept, a Fumigation Safety Program that describes methods, work practices, devices, or processes which the director determines will ensure that employees will not be exposed to concentrations of fumigants in excess of the PEL.

14. California Code of Regulations, title 16, section 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.
>
> (a) The log (See Form 43M-47 (Rev. 5/03) at the end of this section) for each fumigation job shall contain the following information:
>
> Weight of each fumigant cylinder before introduction of gas.

15. California Code of Regulations, title 16, section 1974 states:

> Prior to commencement of fumigation, warning signs which comply with the provisions of sections 8505.9 and 8505.10 (see Form 43M-15 (New 8/93)) shall be posted. Such warning signs shall be at least 11" x 15".
>
> (a) Prior to sealing a structure which is to be fumigated, fumigation warning signs shall be posted on the structure at or near all entrances and on each side of the structure and kept at those locations until the structure is declared to be safe for re-occupancy by the licensee exercising direct and personal supervision over the fumigation.
>
> (b) Fumigation warning signs shall also be placed on the outside surface of the tarps used to seal the structure and shall be clearly visible on all accessible sides of the space under fumigation and from any direction from which the site may be approached.
>
> Additional fumigation warnings signs shall be posted at all joint seams of the tarp at the first floor level.

COST RECOVERY

16. 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.

638 WEST 108TH STREET, LOS ANGELES, CALIFORNIA

17. On or about April 16, 2008, inspector Abduraham Bakri ("Bakri") of the Los Angeles County Agricultural Commissioner/Weights and Measures Department inspected a property that had been fumigated by Respondent, located at 638 West 108th Street, Los Angeles, California. During the inspection, Bakri found only one warning sign placed on the structure (backside of the West corner), and no signs on the other corners, seams, or sides of the structure. Bakri issued Notice of Violation No. V100-022-07-08 to Respondent for violating Code section 8505.10 (failure to include the date and time the fumigant was injected into the structure on the warning sign), and California Code of Regulations, title 16, section 1974 (failure to post fumigation warning signs on the structure at or near all entrances and on each side of the

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structure). It was also discovered that Respondent violated California Code of Regulations, title 16, section 1970(a) (failure to record the weight of each fumigant cylinder before the introduction of gas)[1].

FIRST CAUSE FOR DISCIPLINE

(Failure to Post Warning Signs Containing Proper Information)

18. Respondent's company registration and operator license are subject to discipline under Code section 8646, in that on or about April 16, 2008, concerning the property located at 638 West 108th Street, Los Angeles, California, Respondent failed to comply with Code section 8505.10, in that he failed to include the required information on the warning signs, as more particularly set forth above in paragraph 17.

SECOND CAUSE FOR DISCIPLINE

(Failure to Post Warning Signs at Entrances)

19. Respondent's company registration and operator license are subject to discipline under Code section 8646, in that on or about April 16, 2008, concerning the property located at 638 West 108th Street, Los Angeles, California, Respondent failed to comply with California Code of Regulations, title 16, section 1974(a) and (b), in that he failed to post warning signs on the structure at or near all the entrances on each side of the structure, as more particularly set forth above in paragraph 17.

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1. California Code of Regulations, title 16, section 1970(a) violation was discovered by the Board on August 28, 2008, upon review of Notice of Violation No. V100-022-07-08. Therefore, it was not included on Notice of Violation No. V100-022-07-08 that had been issued to the Respondent on April 16, 2008.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Adopted by the Board - Standards and Record Requirements)

20. Respondent's company registration and operator license are subject to discipline under Code section 8646, in that on or about April 16, 2008, concerning the property located at 638 West 108th Street, Los Angeles, California, he failed to comply with California Code of Regulations, title 16, section 1970(a), by failing to record the weight of the fumigant cylinder prior to the introduction of gas into the structure on the Standard Structural Fumigation Log, as more particularly set forth above in paragraph 17.

UNDERCOVER AERATION INSPECTION

21. On or about April 17, 2008, Juan Limon and Steve Rawald of the Los Angeles County Agricultural Commissioner/Weights and Measures Department conducted an undercover aeration inspection at 27011 Diamondhead Lane, Rancho Palos Verdes, California. During the inspection, it was determined that Respondent violated California Code of Regulations, title 3, sections 6780(b)(1) (failing to use a Self Contained Breathing Apparatus while inside the fumigated structure, and while opening the seam of the fumigated structure); 6780(c) (failing to perform the Tarpaulin Removal Aeration Procedure); and 6600(b) (failing to open the garage of the structure to perform the aeration procedure). Respondent was issued Notice of Violation No. V080-015-07-08.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Use of Insecticides)

22. Respondent's company registration and operator license are subject to discipline under Code section 8647, in that on or about April 17, 2008, concerning the property located at 27011 Diamondhead Lane, Rancho Palos Verdes, California, Respondent failed to comply with California Code of Regulations, title 3, sections 6780(b), 6780(c), and 6600(b), by failing to use safety equipment and failing to follow aeration procedures, as more particularly set forth above in paragraph 21.

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RECORDS INSPECTION

23. On or about April 30, 2008, Bakri performed a records inspection at Respondent's office located at 1336 Centinela Avenue, Inglewood, California. During the inspection, Bakri found that Respondent failed to record the beginning and ending weights of fumigant cylinders prior to and after the release of fumigant on seven (7) Standard Structural Fumigation Logs in November 2007, and on eight (8) Standard Structural Fumigation Logs in December 2007, as more particularly set forth below in paragraph 24. Notice of Violation No. V100-024-07-08 was issued to Respondent for violating California Code of Regulations, title 16, section 1970(a) (failure to record the weight of each fumigant cylinder before the introduction of gas).

FIFTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Adopted by the Board - Standards and Record Requirements)

24. Respondent's company registration and operator license are subject to discipline under Code section 8646, in that between November 13, 2007, and December 21, 2007, he failed to comply with California Code of Regulations, title 16, section 1970(a), by failing to record the weight of each fumigant cylinder prior to the introduction of gas into the structure on the Standard Structural Fumigation Logs at the following properties:

Street Address	City	Date of Service
213 West 110th Street	Los Angeles	11/13/07
9127 Hass Avenue	Los Angeles	11/15/07
1769 West 36th Place	Los Angeles	11/15/07
1313 West 99th Street	Los Angeles	11/16/07
2708 Indiana Street	Southgate	11/17/07
554 West 104th Street	Los Angeles	11/28/07
14003 Zamora Street	Los Angeles	11/28/07
408 West 64th Place	Inglewood	12/3/07
1710 Garth Avenue	Los Angeles	12/10/07
3330 West 135th Street	Hawthorne	12/11/07
16231 Harwill Avenue	Carson	12/11/07
143 East 47th Street	Los Angeles	12/17/07
17700 south Avalon, Sp.251	Carson	12/17/07
5415 2nd Avenue	Los Angeles	12/20/07
4256 South Western Avenue	Los Angeles	12/21/07

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PRIOR DISCIPLINE

Company Registration Certificate No. PR 2212 - Fines

Date	Description	Fine Amount
July 30, 1992	Fine levied by Los Angeles County Agricultural Commissioner for violating Food and Agriculture Code section 12973	$100
July 28, 1993	Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 15204	$100
October 26, 1993	Fine levied by Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 16, section 1970.3 and Business and Professions Code section 8505.10	$350
March 3, 1997	Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 8698.1	$50
April 16, 1997	Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 8505.10	$150
January 27, 1998	Fine levied by Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 3, section 6780(c)	$200
August 12, 1998	Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 8698.1	$100
August 14, 1998	Fine levied by Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 3, section 6674	$50
January 15, 1999	Fine levied by Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 16, section 1974(b)	$50
October 17, 2000	Fine levied by Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 3, sections 6602 and 6780, and Business and Professions Code section 8505.15	$400
September 6, 2001	Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 8505.15	$200
November 5, 2002	Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 8698.1	$50
February 4, 2003	Fine levied by Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 3, sections 6726 and 6734	$201

January 12, 2004	Fine levied by Orange County Agricultural Commissioner for violating Business and Professions Code section 8505.17	$50
September 16,2004	Fine levied by Orange County Agricultural Commissioner for violating Business and Professions Code section 8505.17	$100
February 8, 2005	Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 8505.10	$50
February 14, 2006	Fine levied by the Structural Pest Control Board for violating Business and Professions Code sections 8516 and 8518	$7,500
March 13, 2007	Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 8505.10	$50
April 14, 2008	Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 8505.15	$500

Operator's License No. OPR 7983 - Fines

Date	Description	Fine Amount
October 26, 1993	Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 8505.10, and California Code of Regulations, title 16, section 1970.3	$350
February 14, 2006	Fine levied by the Structural Pest Control Board for violating Business and Professions Code sections 8516 and 8518	$7,500
October 18, 2007	Fine levied by San Diego County Agricultural Commissioner for violating Business and Professions Code section 8505.3	$700
February 25, 2008	Fine levied by Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 16, section 1973	$700

Accusation No. 910

25. On or about September 13, 1980, in a disciplinary action entitled "*In the Matter of the Accusation Against Stormies Fum For Pest, BGM Exterminators, and Frank Anderson Marshall*", Case No. 910, a copy of which is attached hereto as **Exhibit A**, the Board issued a decision ordering that Respondent's Operator License Numbers 4460 and 5161, and Field Representative's License Number 4447, be suspended for 180 days. However, the

execution of the suspensions were stayed for three (3) years, and Respondent was placed on three (3) years probation under terms and conditions.

Accusation No. 84-02 and 85-25

26. On or about November 4, 1986, in a disciplinary action entitled "*In the Matter of the Accusation Against Stormies Fum For Pest, Stormies Fume for Pest, Inc. dba BGM Exterminators, and Frank Anderson Marshall*", Case No(s). 84-02 and 85-25, a copy of which is attached hereto as **Exhibit B**, the Board issued a decision ordering that Respondent's Operator License Numbers OA 6340 and OA 6617, and Field Representative's License Number RC 4447, be revoked. However, the revocations were stayed, and Respondent was placed on three (3) years probation under terms and conditions.

Accusation No. 89-33

27. On or about March 5, 1993, in a disciplinary action entitled "*In the Matter of the Accusation Against Stormies Fum For Pest, Inc. and Frank Anderson Marshall*", Case No. 89-33, a copy of which is attached hereto as **Exhibit C**, the Board issued a decision ordering that Respondent's Company Registration Certificate PR 946 and Respondent's Operator's License Number OPR 7983, be revoked. However, the revocations were stayed, and Respondent was placed on three (3) years probation under terms and conditions.

OTHER MATTERS

28. Notice is hereby given that 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.

29. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 2212, issued to Stormies Pest Control, likewise constitute cause for discipline against Operator's License Number OPR 7983, issued to Frank A. Marshall, who served as the Qualifying Manager of Stormies Pest Control, regardless of whether

Frank A. Marshall had knowledge of or participated in the acts or omissions which constitute cause for discipline against Stormies Pest Control.

30. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 2212, issued to Stormies Pest Control, then Frank A. Marshall 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 Frank A. Marshall shall be subject to disciplinary action.

31. Code section 8622 provides, in pertinent part, that respondent shall submit an inspection fee of not more than $125. If a reinspection is necessary, a commensurate reinspection fee shall be charged.

32. Government Code section 11519(d) provides, in pertinent part, that the Board may require restitution of damages suffered as a condition of probation in the event probation is ordered.

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 2212, issued to Stormies Pest Control;

2. Revoking or suspending Operator's License Number OPR 7983, issued to Frank A. Marshall;

3. Revoking or suspending Branch Office Number BR 5066, issued to Stormies Pest Control;

4. Revoking or suspending any other license for which Frank A. Marshall is furnishing the qualifying experience or appearance;

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5. Prohibiting Frank A. Marshall 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 Company Registration Certificate Number PR 2212, issued to Stormies Pest Control;

6. Ordering Frank A. Marshall 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; and,

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

DATED: 6/1/09

Kelli Okuma

KELLI OKUMA
Registrar
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

LA2009900743
Accusation (kdg) 4/14/09

Exhibit B

First Supplemental Accusation No. 2009-61

EDMUND G. BROWN JR.
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General
ALVARO MEJIA
Deputy Attorney General
State Bar No. 216956
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-0083
Facsimile: (213) 897-2804
Attorneys for Complainant

FILED

Date 3/8/10 By Kelli Okuma

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

In the Matter of the Accusation Against: **STORMIES PEST CONTROL** **FRANK A. MARSHALL, Owner/QM** 36 Centinela Avenue Inglewood, California 90302 Company Registration No. PR 2212, Branches 1 and 3 Operator License No. OPR 7983, Brances 1 and 3 Branch Office No. BR 5066 Respondent.	Case No. 2009-61 **FIRST SUPPLEMENTAL ACCUSATION**

Kelli Okuma, for further causes for discipline, alleges:

1. Kelli Okuma (Complainant) makes and files this first supplemental accusation in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation.

2. The allegations of paragraphs 2 through 16 of the Accusation heretofore filed are realleged and incorporated herein by reference as if fully set forth.

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REGULATORY PROVISIONS

3. California Code of Regulations, title 16, section 1970 states:

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. If the fumigation is to be performed by a fumigation subcontractor, the subcontractor shall complete the fumigation log and forward a copy of the log to the primary contractor within ten business days.

(a) The log (See Form 43M-47 (Rev. 5/07) at the end of this section) for each fumigation job shall contain the following information:
Name, address and company registration certificate number of prime contractor.
Name, address and company registration certificate number of subcontractor, if any.

Address of property.
Date of fumigation.
Name and address of owner or his or her agent.
Date and hour fire department was notified pursuant to Business and Professions Code section 8505.5.
Date and hour county agricultural commissioner was notified and method of notification, where required.
Property description including type of structure as to details of roofing, walls, and the presence of construction elements, conduits, drains, air ducts, or vacuum systems that could allow the passage of fumigant from the structure to be fumigated to any adjacent or adjoining structure(s), thereby connecting them, and method(s) used to prevent passage of the fumigant.
Cubic feet fumigated.
Target pest(s).
Kind of fumigant(s) used.
United States Environmental Protection Agency registration number(s) of fumigant(s).
Name of warning agent and amount used.
Type of sealing method used.
Weather conditions as to temperature and wind.
Date and hour fumigant introduced.
Cylinder number of each fumigant used.
Weight of each fumigant cylinder before introduction of gas.
Pounds of fumigant used from each cylinder.
Total pounds of fumigant used.
List of any extraordinary safety precautions taken.
Name, signature and license number of operator or field representative releasing fumigant.
First name and surname of crew when fumigant was released, when aeration commenced and when the property was released for occupancy.

Indication of whether or not safety equipment was available at the fumigation site at the time the fumigant was introduced, when ventilation commenced and when the property was released for occupancy.

Date and hour aeration commenced.

Conditions of tarp and seal.

Name, signature and license number of operator or field representative commencing ventilation.

Type of device(s) used to test for re-entry.

Date and hour ready for occupancy.

Name, signature and license number of operator or field representative releasing property for occupancy.

Method used to calculate amount of fumigant used.

Factors used in calculation of fumigant.

Special notes or comments pertinent to fumigation.

. . . .

4. California Code of Regulations, title 3, section 6739 states, in pertinent part:

(a) General Requirements.

(1) The employer shall assure that:

(A) Employees use approved respiratory equipment in compliance with this regulation when handling pesticides where respirators are required by label, restricted material permit condition, or regulation.

. . . .

(e) Fit Testing. The employer shall assure that employees using a tight-fitting facepiece respirator pass an appropriate qualitative fit test (QLFT) or quantitative fit test (QNFT).

(1) The employer shall ensure that an employee using a tight-fitting facepiece respirator is fit tested before initial use of the respirator, whenever a different respirator facepiece (size, style, model or make) is used, and at least annually thereafter.

. . . .

(i) Storage of Emergency Respirators. Emergency respirators shall be:

(1) Stored immediately accessible to the work area.

(2) Stored in compartments or in covers that are clearly marked as containing emergency respirators.

. . . .

(j) Inspection and Repair.

(1) The employer shall ensure that all respirators are inspected before each use and during cleaning, and that:

. . . .

(B) Emergency-use respirators are also inspected at least monthly according to the routine-use inspection criteria, and in accordance with the manufacturer's recommendations. For escape-only respirators, also conduct inspection before being brought into the workplace for use. For both emergency use and escape-only respirators, inspections shall include the following:

1. A check for proper function before and after each use;

2. Certify by documenting the date the inspection was performed, the name (or signature) of the person who made the inspection, the findings, required remedial action, and a serial number or other means of identifying the inspected respirator; and that this information is included on a tag or label that is attached to the storage compartment for the respirator or is kept with the respirator. This information shall be maintained until replaced following a subsequent certification;

. . . .

(p) Recordkeeping. The employer shall retain written information regarding medical recommendations, fit testing, and the respirator program.

(1) Records required by this section shall be maintained while the employee is required to use respiratory protection and for three years after the end of employment conditions requiring respiratory protection and shall be available for inspection by the employee, the Director, or commissioner.

(2) Fit testing.

(A) The employer shall establish a record of the qualitative and quantitative fit tests administered to an employee including:

1. The name or identification of the employee tested;
2. Type of fit test performed;
3. Specific make, model, style, and size of respirator tested;
4. Date of test; and
5. The pass/fail results for qualitative fit testing or the fit factor and strip chart recording or other recording of the test results for QNFTs.

RECORDS INSPECTION

5. On or about March 10, 2009, inspector Abduraham Bakri (Bakri) of the Los Angeles County Agricultural Commission/Weights and Measures Department performed a records inspection at Respondent's office located at 1336 Centinela Avenue, Inglewood, California. During the inspection, Bakri found that Respondent failed to record the correct information in the "under seal" section on eleven (11) Standard Structural Fumigation Logs in April 2008, as more particularly set forth below in paragraph 6. Inspector Bakri further found that Respondent had failed to keep and maintain respirator fit test records. Notice of Violation No. V100-010-08/09 was issued to Respondent for violating California Code of Regulations, title 16, section 1970,

subdivision (a) (failure to record proper information on fumigation logs) and violating California Code of Regulations, title 3, section 6739, subdivisions (e) and (p) (failure to keep respirator fit test records).

SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Adopted by the Board - Standards and Record Requirements)

6. Respondent's company registration and operator license are subject to discipline under Code section 8646, in that in or about April 2008, he failed to comply with California Code of Regulations, title 16, section 1970(a), by failing to record the proper information in the "under seal" section on the Standard Structural Fumigation Logs at the following properties:

Street Address	City	Date of Service
1030 West 103rd Street	Los Angeles	04/08/2008
4186 Sutro Avenue	Los Angeles	04/26/2008
3857 Fairway Blvd.	Los Angeles	04/21/2008
2015 North Kalsman Avenue	Compton	04/28/2008
570 East Hillsdale Street	Inglewood	04/24/2008
1000 South Isabella Avenue	Monterey Park	04/18/2008
4568(A)&(B) West 131St Steet	Hawthorne	04/17/2008
569 East Hillsdale Street	Inglewood	04/17/2008
638 West 108th Street	Los Angeles	04/16/2008
1205 South Grandee Avenue	Compton	04/26/2008
27011 Diamondhead Lane	Rancho Palos Verdes	04/16/2008

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Adopted by the Board - Standards and Record Requirements)

7. Respondent's company registration and operator license are subject to discipline under Code section 8646, in that in or about April 2008, he failed to comply with California Code of Regulations, title 3, section 6739, subdivisions (e) and (p), by failing to keep and maintain respirator fit test records, as more fully set forth in paragraph 5, above.

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1622 WEST GAGE AVENUE

8. On or about April 2, 2009, inspector Bakri of the Los Angeles County Agricultural Commission/Weights and Measures Department performed a fumigation site inspection at 1622 West Gage Avenue in the city of Los Angeles. Respondent's fumigation crew was removing tarpaulins from the structure after fumigation. Inspector Bakri performed a truck inspection of Respondent's fumigation rig. During the inspection, Bakri found that Respondent failed to ensure that the required self contained breathing apparatus (SCBA) were stored in compartments or in covers that are clearly marked as containing emergency respirators. Inspector Bakri further found that Respondent had failed to keep and maintain inspections logs for the emergency SCBA. Notice of Violation No. V100-011-08/09 was issued to Respondent for violating California Code of Regulations, title 3, section 6739, subdivision (i)(2) (failure to properly mark emergency SCBA compartments) and section 6739, subdivision (j)(1)(B)(2) (failure to keep and provide inspection logs for emergency SCBA).

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Adopted by the Board)

9. Respondent's company registration and operator license are subject to discipline under Code section 8646, in that in or about April 2009, he failed to comply with California Code of Regulations, title 3, section 6739, subdivision (e)(2), by failing to properly mark emergency SCBA compartments, as more fully set forth in paragraph 8, above.

NINTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Adopted by the Board)

10. Respondent's company registration and operator license are subject to discipline under Code section 8646, in that in or about April 2009, he failed to comply with California Code of Regulations, title 3, section 6739, subdivision (j)(1)(B)(2), by failing to keep and provide inspection logs for emergency SCBA, as more fully set forth in paragraph 8, above.

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OTHER MATTERS

11. Notice is hereby given that 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.

12. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 2212, issued to Stormies Pest Control, likewise constitute cause for discipline against Operator's License Number OPR 7983, issued to Frank A. Marshall, who served as the Qualifying Manager of Stormies Pest Control, regardless of whether Frank A. Marshall had knowledge of or participated in the acts or omissions which constitute cause for discipline against Stormies Pest Control.

13. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 2212, issued to Stormies Pest Control, then Frank A. Marshall 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 Frank A. Marshall shall be subject to disciplinary action.

14. Code section 8622 provides, in pertinent part, that respondent shall submit an inspection fee of not more than $125. If a reinspection is necessary, a commensurate reinspection fee shall be charged.

PRAYER

WHEREFORE, Complainant requests that this first supplemental accusation be heard at the same time and place as the accusation, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking or suspending Company Registration Certificate Number PR 2212, issued to Stormies Pest Control;

2. Revoking or suspending Operator's License Number OPR 7983, issued to Frank A. Marshall;

3. Revoking or suspending Branch Office Number BR 5066, issued to Stormies Pest Control;

4. Revoking or suspending any other license for which Frank A. Marshall is furnishing the qualifying experience or appearance;

5. Prohibiting Frank A. Marshall 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 Company Registration Certificate Number PR 2212, issued to Stormies Pest Control;

6. Ordering Frank A. Marshall 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; and,

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

DATED: 3/8/10

Kelli Okuma

KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

DOJ Matter ID: LA2009900743
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