

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

In the Matter of the Accusation Against:

BRONCO FUME, INC.; SERGIO VALDOVINOS,
RUDY ARIAS

Case No. 2010-73

OAH No. 2010100917

Respondents.

DECISION

The Proposed Decision of Eric Sawyer, Administrative Law Judge, dated June 30, 2011, in Los Angeles, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c) (2) (c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 1, second paragraph, add "Interim" to Registrar/Executive Officer.

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

The Decision shall become effective on August 26, 2011

IT IS SO ORDERED July 27, 2011



For the Structural Pest Control Board

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

In the Matter of the Accusation Against:

BRONCO FUME, INC.
Ruben De La Torre, Pres.
Sergio Valdovinos, QM
Company Registration Certificate No. PR 4510,

SERGIO VALDOVINOS
Operator's License No. OPR 9986,

RUDOLPH J. ARIAS,
a.k.a. Rudy Arias
Field Representative's License No. FR 29288,

Respondents.

Case No. 2010-73

OAH No. 2010100917

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 1, 2011, in Los Angeles. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Alvaro Mejia, Deputy Attorney General, represented William Douglas, Registrar/Executive Officer of the Structural Pest Control Board (Complainant).

Ray De La Torre, was present and represented Respondent Bronco Fume, Inc., in his capacity as that company's manager. Respondents Sergio Valdovinos and Rudolph Arias were also present and represented themselves.

FACTUAL FINDINGS

Parties & Jurisdiction

1. Complainant's predecessor, Kelli Okuma, brought the Accusation in her official capacity as the then Registrar/Executive Officer of the Structural Pest Control Board (Board), which is within the California Department of Pesticide Regulation (Department). Respondents submitted Notices of Defenses, which contained requests for the hearing that ensued.

2. On April 15, 2004, the Board issued Company Registration Certificate Number PR 4510 (registration) in Branch 1 (fumigation) to Respondent Bronco Fume, Inc. (or Bronco Fume), with Merced Gonzalez as owner and Daniel Saucedo as qualifying manager. On July 12, 2006, Ramon (Ray) De La Torre became president of Respondent Bronco Fume. On November 7, 2007, Ruben De La Torre replaced Ray De La Torre as president. On October 9, 2008, Respondent Sergio Valdovinos (Respondent Valdovinos) became the qualifying manager. On August 10, 2009, Respondent Valdovinos disassociated as qualifying manager, but became qualifying manager again on November 25, 2009. Respondent Bronco Fume's registration has been suspended on several occasions between March 2007 and October 2009 for various regulatory violations, and is currently under suspension for failure to maintain a surety bond.

3. On February 17, 1999, the Board issued Operator's License Number OPR 9986 (operator's license) in Branch 1 to Respondent Valdovinos, then an employee of Beneficial Exterminating, Inc. On October 9, 2008, Respondent Valdovinos became the qualifying manager for Respondent Bronco Fume. On August 10, 2009, Respondent Valdovinos disassociated as qualifying manager. On August 11, 2009, he became employed by Experience the Difference Fumigation, Inc. On November 25, 2009, Respondent Valdovinos became the qualifying manager for Bronco Fume again, while still employed by Experience the Difference Fumigation, Inc. Respondent Valdovinos' operator license has been suspended on several occasions between October 2001 and July 2009 for various regulatory violations, but it is currently reinstated and scheduled to expire on June 30, 2013.

4. On April 16, 1998, the Board issued Field Representative's License Number FR 29288 (field representative license) in Branch 1 to Respondent Rudolph J. Arias, also known as Rudy Arias (Respondent Arias), then as an employee of Terminix International Company LP. On July 12, 2006, Respondent Arias became employed by Respondent Bronco Fume. On June 1, 2009, Respondent Arias' field representative license was placed on inactive status, but it is currently reinstated and scheduled to expire on June 30, 2012.

Fumigation Work in Torrance

5. On March 10, 2009, Agricultural Inspector Steve Rawald and Deputy Agricultural Commissioner Greg Creekmur of the Los Angeles County Agricultural Commissioner's Office performed a fumigation aeration inspection at 21511 Budlong Avenue in Torrance. The house was in the aeration phase of a Vikane fumigation. Rawald and Creekmur met with Respondent Bronco Fume's field representative, Amador Hernandez. Rawald inspected a Dodge Ram 1500 truck that was being used for the fumigation and asked Hernandez to show him the emergency respirator that contained a full air tank, the truck's emergency respirator storage markings, and the monthly maintenance records for the respirator. Hernandez showed Rawald the respirator as requested, but could not produce the maintenance records. The vehicle also did not have the required storage markings.

6. Later, Rawald and Creekmur performed a perimeter inspection of the property and found that six of the 10 fumigation warning signs posted on the structure were not in compliance with Business and Professions Code sections 8505.4 and 8505.10¹, in that the lettering of the company information (name, address, and telephone number) was not at least one-half inch in height. Hernandez explained that his boss had just ordered new warning signs.

7. On March 11, 2009, Rawald called Respondent Bronco Fume's office and spoke with Ray De La Torre. Rawald explained the laws and regulations regarding the use, storage, and maintenance records for the emergency Self Contained Breathing Apparatus (SCBA), and informed Ray De La Torre that the company's warning signs were not in compliance.

Fumigation Work in La Mirada

8. On March 18, 2009, Weights and Measures Inspector III Juan Francisco Limon of the Los Angeles County Agricultural Commissioner's Office conducted an inspection at 15230 Vanada Road in La Mirada. Limon found that nine of the 11 fumigation warning signs posted on the structure were not in compliance with portions of the Code, because the lettering of the company's information was too small.

Office Inspection

9. On April 6, 2009, Limon conducted a records inspection at Respondent Bronco Fume's office. Limon checked Bronco Fume's employee list and medical evaluation records and noted that there were no medical evaluation records for two field representatives, Mr. Hernandez and Respondent Arias. Limon asked Ray De La Torre for the medical evaluations of those two employees. Ray De La Torre indicated that neither Hernandez nor Arias had been evaluated.

Fumigation Work in Lakewood

10. On April 7, 2009, Rawald and Agricultural Inspector Chris Salinas (Salinas) went to 5526 Castana Avenue in Lakewood, on an uncover assignment. Rawald and Salinas observed a single family structure with an attached garage under fumigation with Vikane. The fumigation had been performed by Respondent Bronco Fume on April 6, 2009. Between 10:35 and 10:55 a.m., two vehicles arrived at the house, including a Bronco Fume truck. The fumigation crew removed the ladder, fan, and tube, and then placed the ladder at the seam area. The SCBA was removed from the truck and placed near the fan on the ground. The mandatory one hour aeration was started at approximately 11:09 a.m. At approximately 12:05 p.m., Rawald and Salinas observed Respondent Arias close the garage door without putting on an SCBA. At 12:07 p.m., Arias exited the front door, still not wearing his SCBA.

¹ All further statutory references are to the Business and Professions Code (Code).

Respondent Bronco Fume's Aggravating & Mitigating Evidence

11. Respondent Bronco Fume has been subject to the following regulatory fines:

A. On June 14, 2006, it paid a \$50 fine levied by the Orange County Agricultural Commissioner for violating Code section 8698.1.

B. On November 7, 2007, it was issued a \$250 fine by the Los Angeles County Agricultural Commissioner for violating California Code of Regulations (Regulation), title 3, section 6780,² which it has failed to pay.

C. On December 20, 2007, it was issued a \$450 fine by the Los Angeles County Agricultural Commissioner for violating Code section 8505, which it has failed to pay.

D. On January 15, 2008, it was issued a \$50 fine by the Los Angeles County Agricultural Commissioner for violating Regulation 6630, which it has failed to pay.

E. On February 19, 2008, it was issued a \$250 fine by the Los Angeles County Agricultural Commissioner for violating Regulation 6734, which it has failed to pay.

F. On November 9, 2009, it paid a \$300 fine levied by the Los Angeles County Agricultural Commissioner for violating Regulation 6780.

12. Ray De La Torre formerly owned Bronco Fume, but it is now owned by his son Ruben De La Torre for reasons that were not established. The company has not been in operation since 2010 due to the suspension of its license for failure to obtain a surety bond. Ray De La Torre currently works for another exterminator.

13. Ray De La Torre presented health survey and safety training certifications for the employees in question which were obtained after the above-described violations were discovered. Ray De La Torre also testified that the company has obtained updated safety manuals for its employees and ordered new warning signs in compliance with the Code and Regulations. The above described license suspensions were due to Respondent Bronco Fume either not having a valid qualifying manager, a proper surety bond, or general liability insurance. Otherwise, Respondent Bronco has received no prior discipline by the Board for substantive violations relating to consumers or the general public.

Respondent Valdovino's Aggravating & Mitigating Evidence

14. Respondent Valdovinos has been subject to the following regulatory action:

² All further regulatory references are to California Code of Regulations, title 3.

A. On April 16, 1987, the Board issued Field Representative's License Number FR 15022 in Branch 1 to Respondent Valdovinos. On April 19, 1990, pursuant to the Decision rendered in Accusation No. 88-22, Respondent Valdovinos' license was revoked. The revocation was stayed and Respondent was placed on probation for three years. Valdovinos' license was also suspended for 10 days.

B. On June 12, 1993, pursuant to the Decision rendered in Accusation No. 91-96, Respondent Valdovinos' license was again revoked for reasons not established. On May 3, 1996, Respondent's license was reinstated, but was immediately revoked, the revocation was stayed, and his license was placed on probation for three years. On February 15, 1999, the field representative's license was canceled due to the issuance of his operator's license in branch 1, as described above.³

C. On August 7, 2001, Respondent Valdovinos paid a \$400 fine levied by the San Bernardino County Agricultural Commissioner for violating Regulation 6780 and Code section 8505.8.

D. On May 30, 2002, Respondent Valdovinos paid a \$300 fine levied by the Board for violating Code sections 8505.3 and 8505.5.

E. On March 17, 2005, Respondent Valdovinos paid a \$2,500 fine levied by the Board for violating Code section 8691.

F. On August 8, 2008, Respondent Valdovinos paid a \$250 fine levied by San Diego County Agricultural Commissioner for violating Food and Agricultural Code section 15204.

15. Respondent Valdovinos explained that at the time in question, he was the qualifying manager for two different companies, including Bronco Fume. He believes the violations are related to his not being at Bronco Fume enough to properly supervise the activity there. He is now working for another exterminator as an employee, not a qualifying manager. He presented evidence indicating that he is current in his continuing education requirements and that recent fumigation projects he has completed have been inspected by government authorities without any violations noted.

Respondent Arias' Aggravating & Mitigating Evidence

16. Respondent Arias has been subject to the following regulatory fines:

A. On July 29, 2003, Respondent Arias paid a \$250 fine levied by the Los Angeles County Agricultural Commissioner for violating Code section 8505.7.

³ Code section 8566.5 provides, in part, that an individual shall be permitted to hold only one license in the same branch at the same time.

B. On March 28, 2005, Respondent Arias paid a \$155 fine levied by the Orange County Agricultural Commissioner for violating Code section 8505.7.

17. Respondent Arias appeared remorseful when he testified, admitting candidly that not wearing his breathing apparatus when entering a recently fumigated structure was a mistake and that he was wrong to do it. He has been working in this field for the past 17 years and has no record of prior discipline. He now works for another exterminator. He has updated his safety training and health survey certifications.

Costs

18. The Board incurred reasonable costs in the amount of \$8,590 in the investigation and prosecution of this case.

LEGAL CONCLUSIONS

1. Respondent Bronco Fume is subject to disciplinary action pursuant to Code section 8641, in that on March 10, 2009, Respondent failed to comply with Code sections 8505.4 and 8505.10 when it failed to ensure that the lettering on six of the 10 fumigation warning signs that were posted on the structure were proper. (Factual Findings 5-7.)

2. Respondent Bronco Fume is subject to disciplinary action pursuant to Code section 8641, in that on March 10, 2009, Respondent failed to comply with Code section 8505.4 and Regulations 6739, subdivision (i)(2) [company truck was clearly marked as containing emergency respirators], and 6739, subdivision (j)(1)(b)(2) [failed to prepare or keep monthly maintenance records for the emergency respirator]. (Factual Findings 5-7.)

3. Respondent Bronco Fume is subject to disciplinary action pursuant to Code section 8641, in that on March 18, 2009, Respondent failed to comply with Code sections 8505.4 and 8505.10 by failing to ensure that the lettering of the company information was at least one-half inch in height on nine of the 11 fumigation warning signs that were posted on the structure. (Factual Finding 8.)

4. Respondent Bronco Fume is subject to disciplinary action pursuant to Code section 8641, in that on April 6, 2009, Respondent failed to comply with Code section 8505.4 and Regulation 6739, subdivision (d), when it failed to ensure that medical evaluations were conducted for two of its field representatives to determine the employees' ability to use SCBAs or respirators. (Factual Finding 9.)

5. Respondent Arias is subject to disciplinary action pursuant to Code section 8641, in that on April 7, 2009, he failed to comply with Code section 8505.4 and Regulation 6702, subdivision (c), by failing to use his SCBA during the one hour aeration period. (Factual Finding 10.)

6. Pursuant to Code section 8624, the cause for discipline established against Respondent Bronco Fume likewise constitutes cause for discipline against Respondent Valdovinos, regardless of whether Valdovinos had knowledge of or participated in the acts or omissions which constitute cause for discipline against Bronco Fume.

7. Pursuant to Code section 8624, if Respondent Valdovinos' operator license is suspended or revoked, the Board may suspend or revoke Respondent Bronco Fume's company registration certificate as well.

8. Pursuant to Code section 8654, if discipline is imposed on Respondent Valdovinos' operator license, he shall also 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 him shall be subject to disciplinary action.

9. Pursuant to Code section 8654, if discipline is imposed on Respondent Arias' field representative license, he 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 him shall be subject to disciplinary action.

10. Respondents each requested during the hearing that a civil penalty be assessed in lieu of an actual suspension, pursuant to Code section 8620. The Board, when reviewing this Decision, may therefore consider that alternative, but it is not bound by the preference expressed by Respondents.

11. A. Reference is made to the Board's Manual of Disciplinary Guidelines (Nov. 2010). The applicable factors to be considered in making a disposition indicate that minimum discipline, combined with some optional terms in the intermediate range of discipline, should be imposed in this case against Respondents Bronco Fume and Valdovinos, and that less than minimum discipline against Respondent Arias is warranted. (Factual Findings 1-17.)

B. With regard to Respondent Arias, the following factors indicate less than minimum discipline is warranted. He has no prior disciplinary record with the Board. He has received two fines from county inspectors, and has paid them both. Only one violation was established against him in this matter. Although the violation posed a potential health risk to himself, no evidence of any harm to the public, real or potential, was presented. His violation is deemed to be minor. He received no financial benefit from his violation. No pattern and practice of actionable conduct was established. Respondent Arias was remorseful during the hearing, and has taken steps to remedy his wrong. Those mitigating facts show Respondent is less likely to engage in future misconduct.

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C. With regard to Respondents Bronco Fume and Valdovinos, the following factors indicate the need for discipline somewhere between minimum and intermediate. While their violations were quite modest, bordering on technical, it is their pattern of misconduct over the years that warrants inclusion of intermediation optional terms. For example, both Respondents have been fined by county inspectors and suspended by the Board. Bronco Fume has failed to pay many of its fines to the county. Respondent Valdovinos has twice before been subject to Board discipline. Each of them is responsible for a variety of discipline established in this case, stemming from three different fumigation jobs and an office inspection. Both Respondents provided little job site supervision and failed to ensure that safety measures were taken to protect their employees. Thus, these factors outweigh the mitigating steps they have taken to remedy these problems.

12. 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 of its licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement. In this case, it was established that the Board's reasonable costs were \$8,590. Only 20 percent of these costs should be attributed to Respondent Arias, since his misconduct was related to just one of the five incidents in question. Thus, his share of the costs should be \$1,590. The remainder of the costs should be equally borne by Respondents Bronco Fume and Valdovinos, who are equally culpable for the lack of supervision and failed management of the business. (Factual Finding 18.)

ORDERS

1. Company Registration Certificate Number PR 4510, issued to Respondent Bronco Fume, Inc., is revoked. However, the revocation is stayed, and Respondent Bronco Fume, Inc. is placed on probation for three years upon the terms and conditions below.

2. Operator's License Number OPR 9986, issued to Respondent Sergio Valdovinos, is revoked. However, the revocation is stayed, and Respondent Valdovinos is placed on probation for three years upon the terms and conditions below.

3. Field Representative's License Number FR 29288, issued to Respondent Rudolph J. Arias, also known as Rudy Arias, is revoked. However, the revocation is stayed and Respondent Arias is placed on probation for one year upon the terms and conditions below.

A. Obey All Laws

Respondents shall obey all laws and rules relating to structural pest control.

B. Quarterly Reports

Respondents shall file quarterly reports with the Board during the period of probation.

C. Tolling of Probation

Should any 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.

D. Notice to Employers

Respondents Valdovinos and Arias shall notify all present and prospective employers of the decision in this case, bearing Case No. 2010-73, and the terms, conditions and restrictions imposed on respondents by said decision.

Within 30 days of the effective date of this decision, and within 15 days of undertaking new employment, Respondents Arias and Valdovinos shall cause their employer(s) to report to the Board in writing acknowledging the employer has read the decision in Case No. 2010-73.

E. Notice to Employees

Respondent Bronco Fume shall, upon or before the effective date of this decision, post or circulate a notice to all employees involved in structural pest control operations which accurately recites the terms and conditions of probation. Respondent Bronco Fume 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.

F. Suspension and Posted Notice of Suspension

Respondents Bronco Fume and Valdovinos shall be suspended for 10 days.

Respondent Bronco Fume 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.

G. Completion of Probation

Upon successful completion of probation, respondents' licenses/certificates will be fully restored.

H. Violation of Probation

Should any respondent violate probation in any respect, the Board, after giving respondent(s) 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(s) 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.

I. Correspondence Course - Branch 1

Respondents Valdovinos and Arias shall complete with a final grade of C Minus (C-) or better within 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.

J. Random Inspections

Respondents shall reimburse the Board for one (1) random inspection per quarter by Board specialists during the period of probation not to exceed \$125 per inspection.

K. Restitution

Respondent Bronco Fume shall submit proof to the Registrar that restitution in the amount of \$1,000 has been made to the Los Angeles County Agricultural Commissioner within 120 days of the effective date of this Decision.

L. Prohibited from Serving as Officer, Director, Associate, Partner or Qualifying Manager

Respondents Valdovinos and Arias are 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 their respective licenses/certificates.

4. Respondent Arias is ordered to pay the Structural Pest Control Board costs in the amount of \$1,590. Respondents Bronco Fume, Inc., and Sergio Valdovinos shall each pay costs to the Structural Pest Control Board in the amount of \$3,500.

DATED: June 30, 2011


ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

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FILED

Date 4/12/10 By Kelli Okuma

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF PESTICIDE REGULATION**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 **BRONCO FUME, INC.**
13 **RUBEN DE LA TORRE, PRES.**
14 **SERGIO VALDOVINOS, QM**
15 **4572 La Madera Avenue**
16 **El Monte, California 91732**
17 **Company Registration Certificate No. PR 4510,**
18 **SERGIO VALDOVINOS.**
19 **4973 Firestone Boulevard**
20 **South Gate, California 90280**
21 **Operator's License No. OPR 9986,**
22 **and**
23 **RUDOLPH J. ARIAS,**
24 **a.k.a. RUDY ARIAS**
25 **1721 Pine Avenue, Suite 3**
26 **Long Beach, California 90813**
27 **Field Representative's License No. FR 29288**
28 Respondents.

Case No. 2010-73

ACCUSATION

Complainant alleges:

PARTIES/LICENSE INFORMATION

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

1 **Company Registration Certificate No. PR 4510**

2 2. On or about April 15, 2004, the Board issued Company Registration Certificate
3 Number PR 4510 (hereinafter "registration") in Branch 1 (fumigation) to Bronco Fume, Inc.
4 ("Respondent Bronco Fume" or "Bronco Fume") with Merced Gonzalez as owner and Daniel
5 Saucedo as qualifying manager. On July 12, 2006, Ramon De La Torre became president of
6 Bronco Fume. On November 7, 2007, Ruben De La Torre replaced Ramon De La Torre as
7 president. October 9, 2008, Sergio Valdovinos ("Valdovinos") became the qualifying manager.
8 On August 10, 2009, Valdovinos disassociated as qualifying manager, but became qualifying
9 manager again on November 25, 2009. Brono Fume's registration was suspended on the dates
10 indicated below and is currently reinstated.

11	<u>Suspension Date</u>	<u>Violation</u>	<u>Status</u>
12	03/12/2007	Failure to replace the qualifying manager	Registration reinstated 05/01/2007
13			
14	07/17/2007	Failure to maintain \$4,000 surety bond as required by Business and Professions Code ("Code") section 8697	Registration reinstated 07/19/2007
15			
16	10/29/2007	Failure to maintain general liability insurance as required by Code section 8690	Registration reinstated. 11/30/2007 after general liability insurance posted
17			
18	04/03/2008	Failure to maintain general liability insurance as required by Code section 8690	Registration reinstated 04/16/2008 after general liability insurance posted
19			
20	09/16/2008	Failure to replace the qualifying manager	Registration reinstated 10/09/2008
21			
22	09/17/2008	Failure to maintain general liability insurance as required by Code section 8690	Registration reinstated 10/09/2008 after general liability insurance posted
23			
24	07/20/2009	Failure to maintain general liability insurance as required by Code section 8690	Registration reinstated 07/21/2009 after general liability insurance posted
25			
26	08/25/2009	Failure to replace the qualifying manager	Registration reinstated 11/25/2009
27			
28	///		

<u>Suspension Date</u>	<u>Violation</u>	<u>Status</u>
10/07/2009	Failure to maintain general liability insurance as required by Code section 8690	Registration reinstated 11/25/2009 after general liability insurance posted

Operator's License No. OPR 9986

3. On or about February 17, 1999, the Board issued Operator's License Number OPR 9986 in Branch 1 to Valdovinos, employee of Beneficial Exterminating, Inc. On October 9, 2008, Valdovinos became the qualifying manager for Respondent Bronco Fume. On August 10, 2009, Valdovinos disassociated as qualifying manager. On August 11, 2009, Valdovinos became employed by Experience the Difference Fumigation, Inc. On November 25, 2009, Valdovinos became the qualifying manager for Bronco Fume while still employed by Experience the Difference Fumigation, Inc. Valdovinos' operator's license was suspended on the dates indicated below and will expire on June 30, 2010, unless renewed. Valdovinos' operator's license is currently reinstated.

<u>Suspension Date</u>	<u>Violation</u>	<u>Status</u>
10/04/2001	Failure to maintain general liability insurance as required by Code section 8690	Operator's license reinstated 10/15/2001 after general liability insurance posted
06/10/2004	Failure to maintain general liability insurance as required by Code section 8690	Operator's license reinstated 10/21/2004
05/24/2007	Failure to maintain general liability insurance as required by Code section 8690	Operator's license reinstated 06/04/2007 after general liability insurance posted
05/29/2008	Failure to maintain general liability insurance as required by Code section 8690	Operator's license reinstated 06/17/2008 after general liability insurance posted
03/13/2009	Failure to maintain general liability insurance as required by Code section 8690	Operator's license reinstated 04/01/2009

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<u>Suspension Date</u>	<u>Violation</u>	<u>Status</u>
07/20/2009	Failure to maintain general liability insurance as required by Code section 8690	Operator's license reinstated 07/21/2009 after general liability insurance posted

Field Representative's License No. FR 29288

4. On or about April 16, 1998, the Board issued Field Representative's License Number FR 29288 in Branch 1 to Rudolph J. Arias, also known as Rudy Arias ("Respondent Arias" or "Arias"), employee of Terminix International Company LP. On July 12, 2006, Arias became employed by Bronco Fume. On June 1, 2009, Arias' field representative's license was placed on inactive status. Arias' field representative's license will expire on June 30, 2012, unless renewed.

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, in pertinent part:

....

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

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

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.

1 8. Code section 8654 states:

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

17 **STATUTORY AND REGULATORY PROVISIONS**

18 9. Code section 8505.4 states that "[f]umigation shall be performed in compliance with
19 all applicable state, county, and city laws and ordinances and all applicable laws and regulations
20 of the United States."

21 10. Codes section 8505.10 states:

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

11. Code section 8641 states:

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

12. California Code of Regulations, title 3, section ("Regulation") 6702, subdivision (c),
states:

Employees shall utilize the personal protective equipment and other
safety equipment required by pesticide product labeling or specified in this
subchapter that has been provided by the employer at the work site in a condition that
will provide the safety or protection intended by the equipment.

1 13. Regulation 6739 states, in pertinent part:

2
3 (d) Medical Evaluation. The employer shall ensure a medical evaluation
4 is conducted to determine the employee's ability to use a respirator before the
5 employee is fit tested or required to use the respirator in the workplace. The employer
6 may discontinue an employee's medical evaluations when the employee is no longer
7 required to use a respirator.

8
9 (i) Storage of Emergency Respirators. Emergency respirators shall be:

10
11 (2) Stored in compartments or in covers that are clearly marked as
12 containing emergency respirators.

13
14 (j) Inspection and Repair.

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

17
18 (B) Emergency-use respirators are also inspected at least monthly
19 according to the routine-use inspection criteria, and in accordance with the
20 manufacturer's recommendations. For escape-only respirators, also conduct
21 inspection before being brought into the workplace for use. For both emergency use
22 and escape-only respirators, inspections shall include the following:

23
24 2. Certify by documenting the date the inspection was performed, the
25 name (or signature) of the person who made the inspection, the findings, required
26 remedial action, and a serial number or other means of identifying the inspected
27 respirator; and that this information is included on a tag or label that is attached to the
28 storage compartment for the respirator or is kept with the respirator. This information
shall be maintained until replaced following a subsequent certification . . .

COST RECOVERY

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

28 ///

21511 BUDLONG AVENUE, TORRANCE, CA

1
2 15. On March 10, 2009, Agricultural Inspector Steve Rawald ("Rawald") and Deputy
3 Agricultural Commissioner Greg Creekmur ("Creekmur") of the Los Angeles County
4 Agricultural Commissioner's Office performed a fumigation aeration inspection at 21511
5 Budlong Avenue in Torrance, California. The house was in the aeration phase of a Vikane
6 fumigation. Rawald and Creekmur met with Respondent Bronco Fume's field representative,
7 Amador Hernandez ("Hernandez"). Rawald inspected a Dodge Ram 1500 truck that was being
8 used for the fumigation and asked Hernandez to show him the emergency respirator that
9 contained a full 100% of air, the truck's emergency respirator storage markings, and the monthly
10 maintenance records for the respirator. Hernandez showed Rawald the respirator as requested,
11 but could not produce the maintenance records. The vehicle also did not have the required
12 storage markings.

13 16. Later, Rawald and Creekmur performed a perimeter inspection of the property and
14 found that 6 of the 10 fumigation warning signs posted on the structure were not in compliance
15 with the Code. Hernandez explained that his boss had just ordered new warning signs.

16 17. On March 11, 2009, Rawald called Bronco Fume's office and spoke with Ramon De
17 La Torre. Rawald explained the laws and regulations regarding the use, storage, and maintenance
18 records for the emergency Self Contained Breathing Apparatus (SCBA), and informed Ramon
19 De La Torre that the company's warning signs were not in compliance.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Improper Fumigation Warning Signs)**

22 18. Respondent Bronco Fume is subject to disciplinary action pursuant to Code section
23 8641 in that on or about March 10, 2009, Respondent failed to comply with Code sections 8505.4
24 and 8505.10 as follows: Respondent failed to ensure that the lettering of the company
25 information (name, address, and telephone number) was at least one-half inch in height on 6 of
26 the 10 fumigation warning signs that were posted on the structure.

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pertaining to Medical Evaluations)**

3 23. Respondent Bronco Fume is subject to disciplinary action pursuant to Code section
4 8641 in that on or about April 6, 2009, Respondent failed to comply with Code section 8505.4
5 and Regulation 6739, subdivision (d), as follows: Respondent failed to ensure that medical
6 evaluations were conducted of its field representatives, Hernandez and Respondent Arias, to
7 determine the employees' ability to use SCBA's or respirators.

8 **5526 CASTANA AVENUE, LAKEWOOD, CA**

9 24. On April 7, 2009, Rawald and Agricultural Inspector Chris Salinas ("Salinas") went
10 to 5526 Castana Avenue in Lakewood, California, on an uncover assignment. Rawald and
11 Salinas observed a single family structure with an attached garage under fumigation with Vikane.
12 The fumigation had been performed by Respondent Bronco Fume on April 6, 2009. Between
13 10:35 and 10:55 a.m., two vehicles arrived at the house, including a Bronco Fume truck. The
14 fumigation crew removed the ladder, fan, and tube and placed the ladder at the seam area. The
15 SCBA was removed from the truck and placed near the fan on the ground. The mandatory 1 hour
16 aeration was started at approximately 11:09 a.m. At approximately 12:05 p.m., Rawald and
17 Salinas observed Respondent Arias close the garage door without putting on an SCBA. At 12:07
18 p.m., Arias exited the front door, still not wearing his SCBA.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Failure to Utilize Personal Protective Equipment or Other Safety Equipment)**

21 25. Respondent Arias is subject to disciplinary action pursuant to Code section 8641 in
22 that on or about April 7, 2009, Respondent failed to comply with Code section 8505.4 and
23 Regulation 6702, subdivision (c), as follows: Respondent failed to use his SCBA during the one
24 hour aeration period, as set forth in paragraph 24 above.

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MATTERS IN AGGRAVATION

26. To determine the degree of discipline to be assessed against Respondents, if any, Complainant alleges as follows:

Respondent Bronco Fume, Inc.

- a. On June 14, 2006, Bronco Fume paid a \$50 fine levied by the Orange County Agricultural Commissioner for violating Code section 8698.1.
- b. On November 7, 2007, Bronco Fume was issued a \$250 fine levied by the Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 3, section 6780. Bronco Fume failed to pay the fine.
- c. On December 20, 2007, Bronco Fume was issued a \$450 fine levied by the Los Angeles County Agricultural Commissioner for violating Code section 8505. Bronco Fume failed to pay the fine.
- d. On January 15, 2008, Bronco Fume was issued a \$50 fine levied by the Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 3, section 6630. Bronco Fume failed to pay the fine.
- e. On February 19, 2008, Bronco Fume was issued a \$250 fine levied by the Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 3, section 6734. Bronco Fume failed to pay the fine.
- f. On November 9, 2009, Bronco Fume paid a \$300 fine levied by the Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 3, section 6780.

Respondent Sergio Valdovinos

g. On April 16, 1987, the Board issued Field Representative's License Number FR 15022 (hereinafter "license") in Branch 1 to Valdovinos. On April 19, 1990, pursuant to the Decision rendered in Accusation No. 88-22, Valdovinos' license was revoked. The revocation was stayed and Valdovinos was placed on probation for three years. Valdovinos' license was also suspended for ten (10) days. On June 12, 1993, pursuant to the Decision rendered in Accusation No. 91-96, Valdovinos' license was revoked. On May 3, 1996, Valdovinos' license was

1 reinstated. The license was immediately revoked, the revocation was stayed, and Valdovinos was
2 placed on probation for 3 years. On February 15, 1999, the license was canceled due to the
3 issuance of Valdovinos' operator's license in branch 1 (Code section 8566.5 provides, in part, that
4 an individual shall be permitted to hold only one license in the same branch at the same time).

5 h. On August 7, 2001, Valdovinos paid a \$400 fine levied by the San Bernardino
6 County Agricultural Commissioner for violating California Code of Regulations, title 3, section
7 6780 and Code section 8505.8.

8 i. On May 30, 2002, Valdovinos paid a \$300 fine levied by the Board for violating
9 Code sections 8505.3 and 8505.5.

10 j. On March 17, 2005, Valdovinos paid a \$2,500 fine levied by the Board for violating
11 Code section 8691.

12 k. On August 8, 2008, Valdovinos paid a \$250 fine levied by San Diego County
13 Agricultural Commissioner for violating Food and Agricultural Code section 15204.

14 **Respondent Rudolph J. Arias aka Rudy Arias**

15 l. On July 29, 2003, Arias paid a \$250 fine levied by the Los Angeles County
16 Agricultural Commissioner for violating Code section 8505.7.

17 m. On March 28, 2005, Arias paid a \$155 fine levied by the Orange County Agricultural
18 Commissioner for violating Code section 8505.7.

19 **OTHER MATTERS**

20 27. Pursuant to Code section 8624, the causes for discipline established as to Respondent
21 Bronco Fume, Inc. likewise constitute causes for discipline against Sergio Valdovinos regardless
22 of whether Sergio Valdovinos had knowledge of or participated in the acts or omissions which
23 constitute cause for discipline against Respondent Bronco Fume, Inc.

24 28. Pursuant to Code section 8624, if Operator's License Number OPR 9986, issued to
25 Sergio Valdovinos, is suspended or revoked, the Board may suspend or revoke Company
26 Registration Certificate Number PR 4510.

27 29. Pursuant to Code section 8654, if discipline is imposed on Operator's License
28 Number OPR 9986, issued to Sergio Valdovinos, Sergio Valdovinos shall be prohibited from

1 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
2 employee for any registered company during the time the discipline is imposed, and any
3 registered company which employs, elects, or associates Sergio Valdovinos shall be subject to
4 disciplinary action.

5 30. Pursuant to Code section 8654, if discipline is imposed on Field Representative's
6 License Number FR 29288, issued to Rudolph J. Arias, also known as Rudy Arias, Rudolph J.
7 Arias, also known as Rudy Arias, shall be prohibited from serving as an officer, director,
8 associate, partner, qualifying manager, or responsible managing employee for any registered
9 company during the time the discipline is imposed, and any registered company which employs,
10 elects, or associates Rudolph J. Arias, also known as Rudy Arias, shall be subject to disciplinary
11 action.

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

17 P R A Y E R

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

- 20 1. Revoking or suspending Company Registration Certificate Number PR 4510, issued
21 to Bronco Fume, Inc.;
- 22 2. Revoking or suspending Operator's License Number OPR 9986, issued to Sergio
23 Valdovinos;
- 24 3. Prohibiting Sergio Valdovinos from serving as an officer, director, associate, partner,
25 qualifying manager or responsible managing employee of any registered company during the
26 period that discipline is imposed on Operator's License Number OPR 9986, issued to Sergio
27 Valdovinos;

28 ///

1 4. Revoking or suspending Field Representative's License Number FR 29288, issued to
2 Rudolph J. Arias, also known as Rudy Arias;

3 5. Prohibiting Rudolph J. Arias, also known as Rudy Arias, from serving as an officer,
4 director, associate, partner, qualifying manager or responsible managing employee of any
5 registered company during the period that discipline is imposed on Field Representative's License
6 Number FR 29288, issued to Rudolph J. Arias, also known as Rudy Arias;

7 6. Ordering Bronco Fume, Inc., Sergio Valdovinos, and Rudolph J. Arias, also known as
8 Rudy Arias, to pay the Structural Pest Control Board the reasonable costs of the investigation and
9 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

11
12 DATED: 4/12/10

Kelli Okuma

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

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