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FILED

Date 3/8/10

By *Kelli Okuma*

7
8 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
9 **DEPARTMENT OF PESTICIDE REGULATION**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2009-61

11 **STORMIES PEST CONTROL**
12 **FRANK A. MARSHALL, Owner/QM**
13 36 Centinela Avenue
Inglewood, California 90302

FIRST SUPPLEMENTAL
ACCUSATION

14 Company Registration No. PR 2212,
Branches 1 and 3
15 Operator License No. OPR 7983,
Branches 1 and 3
16 Branch Office No. BR 5066

17 Respondent.

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20 Kelli Okuma, for further causes for discipline, alleges:

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

24 2. The allegations of paragraphs 2 through 16 of the Accusation heretofore filed are
25 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.

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

3 Date and hour aeration commenced.

Conditions of tarp and seal.

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

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

6 Date and hour ready for occupancy.

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

8 Method used to calculate amount of fumigant used.

9 Factors used in calculation of fumigant.

10 Special notes or comments pertinent to fumigation.

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

13 (a) General Requirements.

(1) The employer shall assure that:

14 (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.

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

18 (1) The employer shall ensure that an employee using a tight-fitting facepiece
19 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.

20

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

22 (1) Stored immediately accessible to the work area.

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

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26 (j) Inspection and Repair.

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

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

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

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

13

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

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

20 (2) Fit testing.

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

23 1. The name or identification of the employee tested;

24 2. Type of fit test performed;

25 3. Specific make, model, style, and size of respirator tested;

26 4. Date of test; and

27 5. The pass/fail results for qualitative fit testing or the fit factor and strip chart
28 recording or other recording of the test results for QNFTs.

29 RECORDS INSPECTION

30 5. On or about March 10, 2009, inspector Abduraham Bakri (Bakri) of the Los Angeles
31 County Agricultural Commission/Weights and Measures Department performed a records
32 inspection at Respondent's office located at 1336 Centinela Avenue, Inglewood, California.
33 During the inspection, Bakri found that Respondent failed to record the correct information in the
34 "under seal" section on eleven (11) Standard Structural Fumigation Logs in April 2008, as more
35 particularly set forth below in paragraph 6. Inspector Bakri further found that Respondent had
36 failed to keep and maintain respirator fit test records. Notice of Violation No. V100-010-08/09
37 was issued to Respondent for violating California Code of Regulations, title 16, section 1970,
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1 subdivision (a) (failure to record proper information on fumigation logs) and violating California
2 Code of Regulations, title 3, section 6739, subdivisions (e) and (p) (failure to keep respirator fit
3 test records).

4 **SIXTH CAUSE FOR DISCIPLINE**

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

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

| Street Address | City | Date of Service |
|--|---------------------|-----------------|
| 1030 West 103 rd 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 131 st Steet | Hawthorne | 04/17/2008 |
| 569 East Hillsdale Street | Inglewood | 04/17/2008 |
| 638 West 108 th Street | Los Angeles | 04/16/2008 |
| 1205 South Grandee Avenue | Compton | 04/26/2008 |
| 27011 Diamondhead Lane | Rancho Palos Verdes | 04/16/2008 |

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19 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

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1 1622 WEST GAGE AVENUE

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

14 EIGHTH CAUSE FOR DISCIPLINE

15 ~~(Failure to Comply with Regulations Adopted by the Board)~~

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

20 NINTH CAUSE FOR DISCIPLINE

21 (Failure to Comply with Regulations Adopted by the Board)

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

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1 OTHER MATTERS

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

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

14 13. Pursuant to Code section 8654, if discipline is imposed on Company Registration
15 Certificate Number PR 2212, issued to Stormies Pest Control, then Frank A. Marshall shall be
16 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
17 responsible managing employee for any registered company during the time the discipline is
18 imposed, and any registered company which employs, elects, or associates Frank A. Marshall
19 shall be subject to disciplinary action.

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


23 PRAYER

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

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

- 1 2. Revoking or suspending Operator's License Number OPR 7983, issued to Frank A.
- 2 Marshall;
- 3 3. Revoking or suspending Branch Office Number BR 5066, issued to Stormies Pest
- 4 Control;
- 5 4. Revoking or suspending any other license for which Frank A. Marshall is furnishing
- 6 the qualifying experience or appearance;
- 7 5. Prohibiting Frank A. Marshall from serving as an officer, director, associate, partner,
- 8 qualifying manager or responsible managing employee of any registered company during the
- 9 period that discipline is imposed on Company Registration Certificate Number PR 2212, issued to
- 10 Stormies Pest Control;
- 11 6. Ordering Frank A. Marshall to pay the Structural Pest Control Board the reasonable
- 12 costs of the investigation and enforcement of this case, pursuant to Business and Professions
- 13 Code section 125.3; and,
- 14 7. Taking such other and further action as deemed necessary and proper.

15 DATED: 3/8/10


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

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20 DOJ Matter ID: LA2009900743
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6 Attorneys for Complainant

FILED

Date 6/1/09 By Kelli Okuma

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8 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2009-61

12 **STORMIES PEST CONTROL**
13 **FRANK A. MARSHALL, Owner/QM**
36 Centinela Avenue
Inglewood, California 90302

A C C U S A T I O N

14 Company Registration No. PR 2212, Br. 1 and 3
15 Operator License No. OPR 7983, Br. 1 and 3
16 Branch Office No. BR 5066

17 Respondent.

18 Kelli Okuma ("Complainant") alleges:

19 **PARTIES**

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

23 **LICENSE INFORMATION**

24 **Company Registration No. PR 2212**

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

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

3 **Operator's License No. OPR 7983**

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

10 **Branch Office No. BR 5066**

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

14 **JURISDICTION**

15 5. Code section 8620 provides, in pertinent part, that the Board may suspend
16 or revoke a license when it finds that the holder, while a licensee or applicant, has committed any
17 acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a
18 civil penalty.

19 6. Code section 8624 states:

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

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

26 The performance by any partnership, corporation, firm, association, or
27 registered company of any act or omission constituting a cause for disciplinary
28 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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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.

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

2 Prior to commencement of fumigation, warning signs which comply with
3 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".

4 (a) Prior to sealing a structure which is to be fumigated, fumigation
5 warning signs shall be posted on the structure at or near all entrances and on each
6 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.

7 (b) Fumigation warning signs shall also be placed on the outside surface of
8 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.

9 Additional fumigation warnings signs shall be posted at all joint seams of
10 the tarp at the first floor level.

11 **COST RECOVERY**

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

16 **638 WEST 108TH STREET, LOS ANGELES, CALIFORNIA**

17 17. On or about April 16, 2008, inspector Abduraham Bakri ("Bakri") of the
18 Los Angeles County Agricultural Commissioner/Weights and Measures Department inspected a
19 property that had been fumigated by Respondent, located at 638 West 108th Street, Los Angeles,
20 California. During the inspection, Bakri found only one warning sign placed on the structure
21 (backside of the West corner), and no signs on the other corners, seams, or sides of the structure.
22 Bakri issued Notice of Violation No. V100-022-07-08 to Respondent for violating Code section
23 8505.10 (failure to include the date and time the fumigant was injected into the structure on the
24 warning sign), and California Code of Regulations, title 16, section 1974 (failure to post
25 fumigation warning signs on the structure at or near all entrances and on each side of the

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

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Failure to Post Warning Signs Containing Proper Information)**

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

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Failure to Post Warning Signs at Entrances)**

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

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27 1. California Code of Regulations, title 16, section 1970(a) violation was discovered by the
28 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.

1 **THIRD CAUSE FOR DISCIPLINE**

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

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

10 **UNDERCOVER AERATION INSPECTION**

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

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with the Use of Insecticides)**

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

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1 **RECORDS INSPECTION**

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

11 **FIFTH CAUSE FOR DISCIPLINE**

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

14 24. Respondent's company registration and operator license are subject to
15 discipline under Code section 8646, in that between November 13, 2007, and
16 December 21, 2007, he failed to comply with California Code of Regulations, title 16, section
17 1970(a), by failing to record the weight of each fumigant cylinder prior to the introduction of gas
18 into the structure on the Standard Structural Fumigation Logs at the following properties:

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

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|----|--------------------|---|---------|
| 1 | January 12, 2004 | Fine levied by Orange County Agricultural Commissioner for violating Business and Professions Code section 8505.17 | \$50 |
| 2 | | | |
| 3 | September 16, 2004 | Fine levied by Orange County Agricultural Commissioner for violating Business and Professions Code section 8505.17 | \$100 |
| 4 | | | |
| 5 | February 8, 2005 | Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 8505.10 | \$50 |
| 6 | | | |
| 7 | February 14, 2006 | Fine levied by the Structural Pest Control Board for violating Business and Professions Code sections 8516 and 8518 | \$7,500 |
| 8 | | | |
| 9 | March 13, 2007 | Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 8505.10 | \$50 |
| 10 | | | |
| 11 | April 14, 2008 | Fine levied by Los Angeles County Agricultural Commissioner for violating Business and Professions Code section 8505.15 | \$500 |
| 12 | | | |

13 **Operator's License No. OPR 7983 - Fines**

| 14 | Date | Description | Fine Amount |
|----|-------------------|---|-------------|
| 15 | 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 |
| 16 | | | |
| 17 | February 14, 2006 | Fine levied by the Structural Pest Control Board for violating Business and Professions Code sections 8516 and 8518 | \$7,500 |
| 18 | | | |
| 19 | October 18, 2007 | Fine levied by San Diego County Agricultural Commissioner for violating Business and Professions Code section 8505.3 | \$700 |
| 20 | | | |
| 21 | February 25, 2008 | Fine levied by Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 16, section 1973 | \$700 |
| 22 | | | |

23 **Accusation No. 910**

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

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

3 Accusation No. 84-02 and 85-25

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

11 Accusation No. 89-33

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

18 OTHER MATTERS

19 28. Notice is hereby given that section 8620 of the Code provides, in pertinent
20 part, that a respondent may request that a civil penalty of not more than \$5,000 be assessed in
21 lieu of an actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of
22 20 to 45 days. Such request must be made at the time of the hearing and must be noted in the
23 proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed
24 in lieu of a suspension.

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

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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