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**FILED**

Date 8/5/13 By *Susan Saylor*

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:  
12 **GALLEGOS PEST CONTROL, INC.**  
13 **ANGEL GALLEGOS, PRESIDENT/**  
14 **QUALIFYING MANAGER, MARTHA L.**  
15 **GALLEGOS, SECRETARY**  
16 **15503 Rubicon Avenue**  
17 **Bakersfield, California 93314**  
18 **Company Registration No. PR 6391, Br. 1**  
19 **Operator License No. OPR 10788, Br. 1**  
20 **JAVIER PENA**  
21 **15503 Rubicon Avenue**  
22 **Bakersfield, California 93314**  
23 **Field Representative License No. FR 32691,**  
24 **Br. 1**  
25 Respondents.

Case No. 2014-9

**ACCUSATION**

22 Complainant alleges:

23 **PARTIES**

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

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1 **LICENSE HISTORY**

2 **Gallegos Pest Control, Company Registration No. PR 6391**

3 2. On or about October 14, 2011, the Board issued Company Registration No. PR 6391,  
4 in Branch 1, to Gallegos Pest Control Inc. ("Respondent Gallegos"), with Angel Gallegos as the  
5 President and Qualifying Manager and Martha L. Gallegos as Secretary.

6 **Angel Gallegos, Operator's License No. OPR 10788**

7 3. On or about September 18, 2003, the Board issued Operator's License No. OPR  
8 10788, inactive, in Branch 1, to Angel Gallegos ("Respondent Angel"). On or about October 10,  
9 2003, Respondent Angel became the Qualifying Manager and owner in Branch 1 of Respondent  
10 Gallegos. The license will expire on June 30, 2015, unless renewed.

11 **Javier Pena, Field Representative License No. FR32691**

12 4. On or about September 8, 2000, the Board issued Field Representative License No.  
13 FR 32691, in Branch 1, to Javier Pena ("Respondent Pena"). The license will expire on June 30,  
14 2015, unless renewed.

15 **JURISDICTION**

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

20 6. Code section 8624 states:

21 If the board suspends or revokes an operator's license and one or more branch offices are  
22 registered under the name of the operator, the suspension or revocation may be applied to each  
23 branch office. If the operator is the qualifying manager, a partner, responsible officer, or owner  
24 of a registered structural pest control company, the suspension or revocation may be applied to  
25 the company registration. The performance by any partnership, corporation, firm, association, or  
26 registered company of any act or omission constituting a cause for disciplinary action, likewise  
27 constitutes a cause for disciplinary action against any licensee who, at the time the act or omission  
28 occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership,

1 corporation, firm, association, or registered company whether or not he or she had knowledge of,  
2 or participated in, the prohibited act or omission.”

3 7. Code section 8625 states:

4 The lapsing or suspension of a license or company registration by operation of law or by  
5 order or decision of the board or a court of law, or the voluntary surrender of a license or  
6 company registration shall not deprive the board of jurisdiction to proceed with any investigation  
7 of or action or disciplinary proceeding against such licensee or company, or to render a decision  
8 suspending or revoking such license or registration.

9 8. Code section 8622 states:

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

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

28



1 If requested by the county agricultural commissioner, notice of each fumigation to be  
2 performed shall be given to the commissioner in the county in which the job is to be performed.  
3 The notice, which may be mailed or given by telephone, at the option of the commissioner, shall  
4 be given at least 24 hours prior to the time fumigation begins, unless the commissioner  
5 determines that less time is sufficient. No fee shall be assessed for processing the notice which  
6 may be requested by the commissioner.

7 15. Code section 8505.9 states:

8 Prior to the commencement of fumigation, warning signs shall be posted in plainly visible  
9 locations on or in the immediate vicinity of all entrances to the space under fumigation and shall  
10 not be removed until fumigation and ventilation has been completed, and the premises safe for  
11 reoccupancy. Ventilation shall be conducted with due regard for the public safety.

12 16. Code section 8505.10 states:

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

20 17. Code section 8505.13 states:

21 A registered company shall maintain a log of each fumigation job performed by it in this  
22 state. The log shall be in the form required by the regulations of the board and shall be preserved  
23 for a period of at least three years, during which time it shall be available at all times during  
24 business hours for inspection by the board and its authorized representatives.

25 18. Code section 8505.16 states:

26 All fumigators shall be familiar with and able to administer artificial respiration by the best  
27 method or methods recommended currently by the Red Cross in its standard texts on first aid.

28

1 All fumigating crews shall be outfitted with a safety kit containing safety equipment as specified  
2 by the manufacturer's label instructions and by all applicable laws and regulations.

3 19. Code section 8617 states, in pertinent part:

4 (a) The board or county agricultural commissioners, when acting pursuant to Section  
5 8616.4, may suspend the right of a structural pest control licensee or registered company to work  
6 in a county for up to three working days or, for a licensee, registered company, or an unlicensed  
7 individual acting as a licensee, may levy an administrative fine up to one thousand dollars  
8 (\$1,000) or direct the licensee to attend and pass a board-approved course of instruction at a cost  
9 not to exceed the administrative fine, or both, for each violation of this chapter or Chapter 14.5  
10 (commencing with Section 8698), or any regulations adopted pursuant to these chapters, or  
11 Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001),  
12 Chapter 3.5 (commencing with Section 14101), or Chapter 7 (commencing with Section 15201)  
13 of Division 7 of the Food and Agricultural Code, or any regulations adopted pursuant to those  
14 chapters, relating to pesticides. However, any violation determined by the board or the  
15 commissioner to be a serious violation as defined in Section 1922 of Title 16 of the California  
16 Code of Regulations shall be subject to a fine of not more than five thousand dollars (\$5,000) for  
17 each violation. Fines collected shall be paid to the Education and Enforcement Account in the  
18 Structural Pest Control Education and Enforcement Fund. Suspension may include all or part of  
19 the registered company's business within the county based on the nature of the violation, but  
20 shall, whenever possible, be restricted to that portion of a registered company's business in a  
21 county that was in violation.

22 . . . .

23 (g) Once final action pursuant to this section is taken, no other administrative or civil  
24 action may be taken by any state governmental agency for the same violation. However, action  
25 taken pursuant to this section may be used by the board as evidence of prior discipline, and  
26 multiple local actions may be the basis for statewide disciplinary action by the board pursuant to  
27 Section 8620. A certified copy of the order of suspension or fine issued pursuant to this section or  
28 Section 8662 shall constitute conclusive evidence of the occurrence of the violation.

1           20. California Food and Agricultural Code, section 12973 states:

2           The use of any pesticide shall not conflict with labeling registered pursuant to this chapter  
3 which is delivered with the pesticide or with any additional limitations applicable to the  
4 conditions of any permit issued by the director or commissioner.

5           21. California Food and Agricultural Code, section 15204.5 states:

6           (a) It is unlawful for any licensed Branch 1 Structural Pest Controller licensee, including  
7 structural pest control operators, field representatives, applicators, and Structural Pest Control  
8 Board (SPCB) registered companies, as defined in Section 8506.1 of the Business and Professions  
9 Code, to conduct fumigations in any county unless that person or company has also registered for  
10 the current calendar year with the commissioner in that county. The registration fee for the SPCB  
11 registered company including structural pest control operators and field representatives and  
12 applicators shall be set by the county Board of Supervisors, but shall not exceed the cost of  
13 processing the registration or twenty-five dollars (\$25), whichever is less. Payment of the fee  
14 shall be due at registration or on a date set by the commissioner. Structural pest control operators  
15 and field representatives may be added during the year, but the fee shall not exceed the actual cost  
16 of processing the registration or ten dollars (\$10), whichever is less.

17           (b) Each registration shall be in the form prescribed by the director after consulting with the  
18 SPCB and the commissioners and shall include the name and address of the SPCB registered  
19 company or structural pest control operator and all satellite offices conducting business in the  
20 county, the name of the qualifying manager or the structural pest control operator and his or her  
21 license number, and a business telephone number. The registration form for field representatives  
22 and applicators shall include their name, license number, business address, and telephone number,  
23 and may be included with the business registration.

24           (c) Each licensed structural pest controller, including structural pest control operators, field  
25 representatives, applicators, or an SPCB registered company, that intends to conduct fumigation  
26 operations is required to appear in person at the office of the commissioner to complete the  
27 registration required by Section 15204.

28

1 (d) Each SPCB registered company or structural pest control operator that intends to  
2 conduct fumigation operations shall notify the agricultural commissioner at least 24 hours prior to  
3 commencing fumigation, or as approved on a case-by-case basis by the commissioner. This notice  
4 shall include all of the following:

- 5 (1) Name and address of the registered company or structural pest control operator.  
6 (2) Address of the area or areas to be fumigated.  
7 (3) The pesticide to be applied.  
8 (4) The date of the intended application.

9 (e) The commissioner may levy a civil penalty against any person who violates the  
10 provisions of this section in accordance with the procedures provided in Section 12999.5.

### 11 REGULATORY PROVISIONS

12 22. Title 3, California Code of Regulations, section 6600, states:

13 "Each person performing pest control shall:

- 14 (a) Use only pest control equipment which is in good repair and safe to operate.  
15 (b) Perform all pest control in a careful and effective manner.  
16 (c) Use only methods and equipment suitable to insure proper application of  
17 pesticides.  
18 (d) Perform all pest control under climatic conditions suitable to insure proper  
19 application of pesticides.

20 (e) Exercise reasonable precautions to avoid contamination of the environment."

21 23. Title 3, California Code of Regulations, section 6739 subdivision (p), states:

22 Recordkeeping. The employer shall retain written information regarding medical  
23 recommendations, fit testing, and the respirator program.

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

28 (2) Fit testing.



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

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

9 (3) A written copy of the current respirator program shall be retained by the  
10 employer. Previous versions of the written respirator protection program shall be retained  
11 for three years.

12 (4) Written information required to be retained under this subsection shall be made  
13 available upon request to employees falling under the respiratory protection program and to  
14 the commissioner or persons designated by the Director for review and copying.

15 24. Title 3, California Code of Regulations, section 6724 subdivision (d) states:

16 (d) Training shall be completed before the employee is allowed to handle pesticides,  
17 continually updated to cover any new pesticides that will be handled, and repeated at least  
18 annually thereafter. Initial training may be waived if the employee submits a record showing that  
19 training meeting the requirements of this section and covering the pesticides and use situations  
20 applicable to the new employment situation was received within the last year. A certified  
21 applicator is considered trained for the purposes of this section.

22 25. Title 3, California Code of Regulations, section 6780, states:

23 "(a) When fumigation concentrations cannot be controlled and an employee's exposure  
24 exceeds the Permissible Exposure Limit (PEL) as specified in Title 8, California Code of  
25 Regulations, Section 5155, Airborne Contaminants, or more stringent requirements by product  
26 labeling, the employer shall provide and require the employee to wear approved respiratory  
27 protective equipment.

28

1 (b) Whenever an employee may be exposed above an exposure standard to methyl  
2 bromide, sulfuryl fluoride, or any other fumigant for which only air-supplied respirator equipment  
3 is approved, the employer shall either:

4 (1) require the use of air-supplied respirator equipment,

5 (2) employ continuous monitoring to warn employees before the PEL is reached

6 or

7 (3) operate under the provisions of (c) below.

8 (c) Upon written application by an employer, the director will review and may accept  
9 a Fumigation Safety Program that described methods, work practices, devices, or processes which  
10 the director determines will ensure that employees will not be exposed to concentrations of  
11 fumigants in excess of the PEL.

12 (d) The employer shall have an accident response plan at the worksite. The plan  
13 shall provide instructions to protect employees during situations such as spills, fire, and leaks.  
14 Employees shall be trained in accident management procedures based on the plan.”

15 26. Title 3, California Code of Regulations, section 6782, states:

16 Enclosed spaces include vaults, chambers, greenhouses, vans, boxcars, ships, planes,  
17 vehicles, and tarpaulin-covered structures and commodities. When fumigating tarpaulin-covered  
18 commodities inside buildings, and areas or things inside greenhouses, this section applies to the  
19 entire structure.

20 (a) Whenever a pesticide is used for fumigation inside an enclosed space, at least two  
21 trained employees shall be present at all times when:

22 (1) The fumigant is introduced into the enclosed space;

23 (A) Except, only one trained person is required to be present when solid fumigants  
24 (including aluminum phosphide, magnesium phosphide, and smoke cartridges) are introduced  
25 into the enclosed space from outside the enclosed space;

26 (2) The enclosed space is entered for the purpose of facilitating aeration; and

27 (3) The enclosed space is entered to determine the concentration of the fumigant and  
28 personal protective equipment is required by pesticide product labeling or regulation.

1 (b) The second employee shall have immediate access to the personal protective equipment  
2 required by the pesticide product labeling for handlers in the event entry into the fumigated  
3 enclosed space becomes necessary for rescue.

4 (c) Prior to the commencement of fumigation, warning signs shall be posted in plainly  
5 visible locations on or in the immediate vicinity of all entrances to the space under fumigation  
6 and shall not be removed until fumigation and ventilation have been completed, and the premises  
7 is safe for reentering. Warning signs shall be printed in red on white background and shall  
8 contain, in English and Spanish, the following statement in letters not less than two inches in  
9 height: "DANGER-FUMIGATION." They shall also depict a skull and crossbones not less than  
10 one inch in height and shall state in letters not less than one-half inch in height the name of the  
11 fumigant, the date and time the fumigant was injected, and the name, address and telephone  
12 number of the applicator performing the fumigation.

13 (d) Employees shall not be allowed to enter fumigated enclosed areas, except to determine  
14 the fumigant concentration or facilitate aeration unless the concentration in the area is known to  
15 be at or below the level specified in 6780(a) above.

16 (e) The fumigant shall not be released into an occupied work area.

17 (f) After completion of the fumigation, the treated area or products shall be managed so that  
18 employees entering the area or working with the treated products are not exposed to a  
19 concentration in excess of the level specified in 6780(a) above.

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

21 For the purpose of maintaining proper standards of safety and the establishment of  
22 responsibility in handling the dangerous gases used in fumigation and the pesticides used in other  
23 pest control operations, a registered company shall compile and retain for a period of at least three  
24 years, a log for each fumigation job and for each pesticide control operation in which a pesticide  
25 is used by the registered company or the registered company's employee.

26 (a) The log (See Form 43M-47 (Rev. 5/03) at the end of this section) for each  
27 fumigation job shall contain the following information:

28 Name, address and company registration certificate number of prime contractor.

1 Name, address and company registration certificate number of subcontractor, if any.

2 Address of property.

3 Date of fumigation.

4 Name and address of owner or his or her agent.

5 Date and hour fire department was notified pursuant to Business and Professions

6 Code section 8505.5.

7 Date and hour county agricultural commissioner was notified and method of  
8 notification, where required.

9 Property description including type of structure as to details of roofing, walls, and the  
10 presence of construction elements, conduits, drains, or vacuum systems that could allow the  
11 passage of fumigant from the structure to be fumigated to any adjacent or adjoining structure(s),  
12 thereby connecting them, and method(s) used to prevent passage of the fumigant.

13 Cubic feet fumigated.

14 Target pest(s).

15 Kind of fumigant(s) used.

16 United States Environmental Protection Agency registration number(s) of  
17 fumigant(s).

18 Name of warning agent and amount used.

19 Type of sealing method used.

20 Weather conditions as to temperature and wind.

21 Date and hour fumigant introduced.

22 Cylinder number of each fumigant used.

23 Weight of each fumigant cylinder before introduction of gas.

24 Pounds of fumigant used from each cylinder.

25 Total pounds of fumigant used.

26 List of any extraordinary safety precautions taken.

27 Name, signature and license number of operator or field representative  
28 releasing fumigant.

1 First name and surname of crew when fumigant was released, when aeration  
2 commenced and when the property was released for occupancy.

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

6 Date and hour aeration commenced.

7 Conditions of tarp and seal.

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

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

11 Date and hour ready for occupancy.

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

14 Method used to calculate amount of fumigant used.

15 Factors used in calculation of fumigant.

16 Special notes or comments pertinent to fumigation.

17 (b) The report for each pest control operation, other than fumigation, in which a  
18 pesticide is used shall contain the following information:

19 Date of treatment.

20 Name of owner or his or her agent.

21 Address of property.

22 Description of area treated.

23 Target pest(s).

24 Pesticide and amount used.

25 Identity of person or persons who applied the pesticide.

26 (c) The term "fraudulent act" as used in Section 8642 includes but is not limited to the  
27 falsification of any records pertaining to fumigation jobs or other pest control operations in which  
28 a pesticide other than a fumigant is used.

1 28. California Code of Regulations, title 16, section 1971 states:

2 (a) All fumigation crews shall be provided with and shall have in their possession on the  
3 job:

4 (1) A fumigation safety kit, in proper condition for use, containing at least the following:  
5 (A) Statements of instructions published by the manufacturer of the fumigants being used.  
6 (B) Two or more effective gas masks or other safety equipment approved by the National  
7 Institute of Occupational Safety and Health, for protection against the type of fumigant being  
8 used.

9 (C) A chart of instructions for artificial resuscitation.

10 (2) Proper testing equipment as required by the manufacturer's label instructions and all  
11 applicable laws and regulations.

12 (b) The crew shall be instructed in the use and care of kit and safety equipment and in first  
13 aid methods.

14 29. California Code of Regulations, title 16, section 1973 states:

15 Following a fumigation, the licensee must personally:

16 (a) Perform proper testing after aeration using testing equipment for clearing the structure  
17 as required by the manufacturer's label instructions and all applicable laws and regulations.

18 (b) Release the property for occupancy by posting a Notice of Re -Entry (See Form 43M-42  
19 (Rev. 5/07) at the end of this section). The form must be no smaller than 8 1/2" x 11" and be  
20 printed in black lettering on a white background.

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

22 Prior to commencement of fumigation, warning signs which comply with the provisions of  
23 sections 8505.9 and 8505.10 (see Form 43M-15 (New 8/93)) shall be posted. Such warning signs  
24 shall be at least 11" x 15".

25 (a) Prior to sealing a structure which is to be fumigated, fumigation warning signs shall be  
26 posted on the structure at or near all entrances and on each side of the structure and kept at those  
27 locations until the structure is declared to be safe for re-occupancy by the licensee exercising  
28 direct and personal supervision over the fumigation.

1 (b) Fumigation warning signs shall also be placed on the outside surface of the tarps used to  
2 seal the structure and shall be clearly visible on all accessible sides of the space under fumigation  
3 and from any direction from which the site may be approached.

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

#### 6 **COST RECOVERY**

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

#### 11 **7622 Evergreen Drive, Goleta, CA**

12 32. On or about October 21, 2011, inspector Mary Ann Rajala ("Rajala"), from the  
13 Agricultural Commissioner's Office, County of Santa Barbara, conducted a use monitoring  
14 inspection at 7622 Evergreen Drive, Goleta, California ("Evergreen project"). Respondent  
15 Gallegos fumigated the property on or about October 19, 2011 with Vikane. Rajala visited the site  
16 twice on October 21, 2011, once at 11:28 a.m., and again at 12:30 p.m. During the initial visit,  
17 Rajala noted that tarps were intact surrounding the structure and aeration had not been initiated.  
18 During her second visit, she noted that Respondent's employees had begun removing tarps from  
19 the structure. None of the employees were wearing respiratory protection or continuous  
20 monitoring devices while performing these activities. Violations were noted, as more particularly  
21 set forth below, and Violation Notice No. 107-808135, was issued to Respondent Gallegos.

#### 22 **FIRST CAUSE FOR DISCIPLINE**

#### 23 **(Violation of Law - Proper Equipment)**

24 33. Respondent Gallegos' company registration and Respondent Angel's operator  
25 license, are subject to disciplinary action under Code section 8646, in that on or about October 21,  
26 2011, on the Evergreen project, Respondents violated California Code of Regulations, title 3,  
27  
28

1 section 6780(a), by failing to wear the approved respiratory protective equipment and/or  
2 continuous monitoring devices and failing to follow the CAP procedures<sup>1</sup>.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Violation of Law – Failure to Follow Manufacturer’s Label Instructions)**

5 34. Respondent Gallegos’ company registration and Respondent Angel’s operator license  
6 are subject to disciplinary action under Code section 8646, in that on or about October 21, 2011,  
7 on the Evergreen project, Respondents failed to comply with California Code of Regulations, title  
8 16, section 1971, subdivision (a) (2), by failing to provide the fumigation crew with a functioning  
9 device (such as an Interscan) at the job site able to test the air concentration of the sulfuryl  
10 fluoride which poses a reasonable possibility of creating a health hazard.

11 **3778 Center Avenue, Santa Barbara, CA**

12 35. On or about November 28, 2011, inspector Matt Victoria (“Victoria”), from the  
13 Agricultural Commissioner’s Office, County of Santa Barbara, conducted a use monitoring  
14 inspection at 3778 Center Avenue, Santa Barbara, California (“Center project”). Respondent  
15 Gallegos fumigated the property the same day with Vikane. Victoria noted that one of the seams  
16 was not posted with warning signs. Violations were noted, as more particularly set forth below,  
17 and Violation Notice No. 107-808191, was issued to Respondent Gallegos.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Violation of Law - Warning Signs)**

20 36. Respondent Gallegos’ company registration and Respondent Angel’s operator  
21 license, are subject to disciplinary action under Code section 8646, in that on or about November  
22 28, 2011, on the Center project, Respondents violated California Code of Regulations, title 16,  
23 section 1974, by failing to post warning signs at all joint seams of the tarp at the first floor level  
24 of the structure.

25 ///

26 ///

27 <sup>1</sup> The current Fumigation Safety Program required by law is entitled the California  
28 Aeration Plan (“CAP”).



1 3360 Braemar Avenue, Goleta, CA

2 37. On or about November 30, 2011, inspector Matt Victoria ("Victoria"), and inspector  
3 Mary Ann Rajala ("Rajala") from the Agricultural Commissioner's Office, County of Santa  
4 Barbara, conducted a use monitoring inspection at 3360 Braemar Avenue, Goleta, California  
5 ("Braemar project"). Respondent Gallegos fumigated two buildings on the property on or about  
6 November 28, 2011, with Vikane. Victoria and Rajala noted that Respondent Gallegos' employee  
7 Mario Jaquez ("Jaquez") was removing tarps from one of the buildings. Victoria and Rajala  
8 asked Jaquez if he was trained to handle Vikane and he replied he had not been trained and that  
9 this was his first day employed with Respondent Gallegos. Respondent Pena confirmed that  
10 Jacquez had not been trained. Respondent Gallegos' employees were not equipped with two  
11 functional positive pressure self-contained breathing apparatus or combination air-supplied/SCB  
12 A respirators. Violations were noted, as more particularly set forth below, and Violation Notice  
13 No. 107-808192, was issued to Respondent Gallegos.

14 FOURTH CAUSE FOR DISCIPLINE

15 (Violation of Law – Handler Training)

16 38. Respondent Gallegos' company registration and Respondent Angel's operator license  
17 are subject to disciplinary action under Code section 8646, in that on or about November 30,  
18 2011, on the Braemar project, Respondents violated California Code of Regulations, title 3,  
19 section 6724 (d), by failing to have employee Jaquez complete pesticide handling training before  
20 employee Jaquez was allowed to handle pesticides.

21 FIFTH CAUSE FOR DISCIPLINE

22 (Violation of Law - Proper Equipment)

23 39. Respondent Gallegos' company registration and Respondent Angel's operator  
24 license, are subject to disciplinary action under Code section 8646, in that on or about November  
25 30, 2011, on the Braemar project, Respondents violated California Code of Regulations, title 3,  
26 section 6782(b), by failing to have its employees equipped with two functional positive pressure  
27 self-contained breathing apparatus or combination air-supplied/SCB A respirators.

28 ///

1 **Pest Control Headquarters Inspection**

2 40. In and between April 10, 2012 and May 8, 2012, a pest control headquarters  
3 inspection was conducted on Respondent Gallegos by the Kern County Department of  
4 Agriculture and Measurement Standards. During the inspection it was discovered that  
5 Respondent Gallegos did not have written information available regarding fit testing for four of  
6 its employees.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Violation of Law – Recordkeeping of Respiratory Protection)**

9 41. Respondent Gallegos' company registration and Respondent Angel's operator  
10 license, are subject to disciplinary action under Code section 8646, in that in and between April  
11 10, 2012 and May 8, 2012, Respondents violated California Code of Regulations, title 3, section  
12 6739, subdivision (p) by failing to retain written information regarding respiratory fit testing for  
13 employees Javier Pena, Luis Vasquez, Feliciano Mercado, and Miguel Orozco.

14 **83 N. La Cumbre Road, Santa Barbara, CA**

15 42. On or about April 12, 2012, inspector Katie Caterino ("Caterino"), from the  
16 Agricultural Commissioner's Office, County of Santa Barbara, received an anonymous call  
17 regarding a fumigated structure located on La Cumbre Road, north of State Street. The caller  
18 stated that the tarps were open and that the structure was unattended. At approximately 8:45 a.m.,  
19 inspector Caterino arrived with inspector Rajala at 83 N. La Cumbre Road, Santa Barbara,  
20 California ("Cumbre project"). No crew was on site so the inspectors conducted a tarp/aeration  
21 check. Three separate structures were under fumigation. The largest structure (apartment  
22 building) had one aeration duct and two inlet devices installed. The aeration duct was open, but  
23 was nearly constricted at the base and was measured at approximately 9 1/2 feet. Only the top  
24 inlet device was open, the bottom inlet device was clipped shut.

25 43. The tarps of a second fumigated structure (carport) were butterflied open, no aeration  
26 duct or inlet devices were installed and most of the warning signs were still posted. The warning  
27 sign at the location where the carport tarps were butterflied open was on the ground.

28



1 followed. Two violations of the CAP occurred. First, Respondent Pena removed the tarp seals  
2 prior to the end of the aeration. CAP requires that the tarps and/or seals be removed from the  
3 structure anytime after the required hours of aeration are completed. CAP requires a 12 hour  
4 aeration when the initial concentration of the fumigant introduced is 16 ounces or less per  
5 thousand cubic feet. Respondent Pena started the aeration at 7:30 p.m. and broke the tarp seals of  
6 the carport and the cottages at approximately 5:30 a.m., after 10 hours of aeration. Respondent  
7 Pena therefore removed the seals on the carport and the cottages prior to the 12 hour aeration  
8 being complete.

9 47. Secondly, Respondent Pena did not complete a 12 hour aeration on the apartment  
10 building. On the apartment building, the top inlet device was open for the entire 12 hour aeration;  
11 however, the second inlet device was only open from 7:30 p.m. -5:30 a.m., (10 hours), and then  
12 reopened at approximately 9:30 a.m. The second inlet device was therefore open for  
13 approximately 11 hours before the tarp was dropped. Thus, a complete 12 hour aeration was not  
14 done on the apartment building prior to dropping the tarps. As CAP was not followed, California  
15 Code of Regulations, title 3, section 6780 subdivision (b) requires that the employer either use  
16 air-supplied respirators or employ continuous monitoring to warn employees before the PEL is  
17 reached. Respondent Gallegos did not require that air-supplied respirators or continuous  
18 monitoring as employees did not wear SCBA's while dropping the tarps and no continuous  
19 monitoring was conducted.

#### 20 **NINTH CAUSE FOR DISCIPLINE**

#### 21 **(Violation of Law - Warning Signs)**

22 48. Respondent Gallegos' company registration, Respondent Angel's operator license,  
23 and Respondent Pena's field representative license are subject to disciplinary action under Code  
24 section 8646, in that on or about April 12, 2012, on the Cumbre project, Respondents violated  
25 Food and Agricultural Code section 12973, California Code of Regulations, title 16, section 1974,  
26 and California Code of Regulations, title 3, section 6782 subdivision c, by failing to post the  
27 required warning signs on the structure. When Respondent Pena left the fumigation site on April  
28 12, 2012, the carport and cottages had not been certified and the tarps and most of the warning

1 signs remained on the structures; therefore, these structures were still considered under  
2 fumigation. Respondent Pena left the carport and cottage tarps open and unattended for  
3 approximately 4 hours. Aeration had not been completed at this point and warning signs to the  
4 entrances of the tarp openings were not posted but lying on the ground. Respondent Pena failed to  
5 take appropriate precautions to prevent re-occupancy of the fumigated area until the aeration and  
6 clearing processes were complete and the fumigation warning signs were not clearly posted on all  
7 accessible sides of the space under fumigation.

8 **TENTH CAUSE FOR DISCIPLINE**

9 **(Failure to Lock and/or Barricade Structure)**

10 49. Respondent Gallegos' company registration, Respondent Angel's operator license,  
11 and Respondent Pena's field representative license are subject to disciplinary action under Code  
12 section 8647, in that on or about April 12, 2012, on the Cumbre project, Respondents failed to  
13 comply with Code section 8505.7 by failing to lock, barricade or otherwise secure the property  
14 against entry until declared safe for re-occupancy. Respondent Pena stated to Rajala that he tested  
15 the structures with a fumiscope and did not detect sulfuryl fluoride and therefore did not believe  
16 he needed to secure the structures against re-entry. Respondent Pena also stated that he did not  
17 certify the structures prior to leaving the site.

18 **DISCIPLINARY CONSIDERATIONS-MATTERS IN AGGRAVATION**

19 50. To determine the degree of penalty to be imposed, if any, Complainant makes  
20 the following allegations:

21 a. On or about October 10, 2003, Company Registration Certificate No. PR  
22 4415 was issued in Branch 1 to Gallegos Pest Control with Angel Gallegos as Qualifying  
23 Manager and Owner. On or about August 3, 2007, First Amended Accusation No. 2007-54 was  
24 filed against Company Registration Certificate No. PR4415. On or about May 26, 2008, the  
25 decision rendered in First Amended Accusation No. 2007-54 revoked Company Registration  
26 Certificate No. PR4415, with the revocation stayed, and the Certificate placed on 3 years  
27 probation, with conditions including a 15 day suspension and repayment of investigative and  
28 prosecution costs in the amount of \$7106.50.

1                   b.    On or about August 10, 2007, Company Registration Certificate No. PR  
2 4415 was issued a \$600 fine levied by the Ventura County Agricultural Commissioner for  
3 violation of section 8505.15 of the Business and Professions Code. The fine was paid on or about  
4 September 25, 2007.

5                   c.    On or about December 26, 2007, Company Registration Certificate No.  
6 PR 4415 was issued a \$700 fine levied by the Ventura County Agricultural Commissioner for  
7 violation of section 6702(b)(5) of the California Code of Regulations. The fine was paid on or  
8 about February 6, 2008.

9                   d.    On or about June 10, 2010, Company Registration Certificate No. PR  
10 4415 was issued a \$3500 fine levied by the Ventura County Agricultural Commissioner for  
11 violation of section 12973 of the Food and Agricultural Code. The fine was paid on or about July  
12 15, 2010.

13                   e.    Company Registration Certificate No. PR 4415 was cancelled on October  
14 14, 2011.

15           51.    To determine the degree of penalty to be imposed, if any, Complainant makes the  
16 following additional allegations:

17           a.    On or about October 14, 2011, Company Registration Certificate No. PR 6391 was  
18 issued in Branch 1 to Gallegos Pest Control Inc. with Angel Gallegos as President and Qualifying  
19 Manager and Martha L. Gallegos as Secretary.

20           b.    On or about May 23, 2012, Company Registration Certificate No. PR 6391 was  
21 issued a \$2670 fine levied by the Santa Barbara County Agricultural Commissioner for violation  
22 of section 6780(b) and 1971(a)(2) of the California Code of Regulations. The fine was paid on or  
23 about April 16, 2013.

24           c.    On or about May 24, 2012, Company Registration Certificate No. PR 6391 was  
25 issued a \$250 fine levied by the Santa Barbara County Agricultural Commissioner for violation of  
26 section 1974(b) of the California Code of Regulations. The fine was paid on or about October 2,  
27 2012.

28

1           d.    On or about May 24, 2012, Company Registration Certificate No. PR 6391 was  
2 issued a \$950 fine levied by the Santa Barbara County Agricultural Commissioner for violation of  
3 section 6724 (d) and 6782 (b) of the California Code of Regulations. The fine was paid on or  
4 about November 20, 2012.

5           e.    On or about May 31, 2012, Company Registration Certificate No. PR 6391 was  
6 issued a \$250 fine levied by the Kern County Agricultural Commissioner for violation of section  
7 6739 (p) of the California Code of Regulations. The fine was paid on or about June 14, 2012.

8           52.   To determine the degree of penalty to be imposed, if any, Complainant makes the  
9 following additional allegations:

10          a.    On or about September 18, 2003, Operator's License No. OPR 10788 was issued in  
11 Branch 1 to Angel Gallegos.

12          b.    On or about August 3, 2007, First Amended Accusation No. 2007-54 was filed  
13 against Operator's License No. OPR 10788. On or about May 26, 2008, the decision rendered in  
14 First Amended Accusation No. 2007-54 revoked Operator's License No. OPR 10788, with the  
15 revocation stayed, and the license placed on 3 years probation, with conditions including a 15 day  
16 suspension and repayment of investigative and prosecution costs in the amount of \$7106.50.

17          c.    On or about October 20, 2006, Operator's License No. OPR 10788 was issued a  
18 \$500 fine levied by the Santa Barbara County Agricultural Commissioner for violation of sections  
19 6780 (b) and (c) of the California Code of Regulations and section 8505.15 of the Business and  
20 Professions Code. The fine was paid on or about March 20, 2007.

21          d.    On or about August 10, 2007, Operator's License No. OPR 10788 was issued a \$600  
22 fine levied by the Ventura County Agricultural Commissioner for violation of section 8505.15 of  
23 the Business and Professions Code. The fine was paid on or about September 25, 2007.

24          e.    On or about December 26, 2007, Operator's License No. OPR 10788 was issued a  
25 \$700 fine levied by the Ventura County Agricultural Commissioner for violation of section  
26 6702(b)(5) of the California Code of Regulations. The fine was paid on or about February 6,  
27 2008.

28

1 f. On or about June 10, 2010, Operator's License No. OPR 10788 was issued a \$3500  
2 fine levied by the Ventura County Agricultural Commissioner for violation of section 12973 of  
3 the Food and Agricultural Code. The fine was paid on or about July 15, 2010.

4 g. On or about May 23, 2012, Operator's License No. OPR 10788 was issued a \$2670  
5 fine levied by the Santa Barbara County Agricultural Commissioner for violation of sections 6780  
6 (b) and 1971(a)(2) of the California Code of Regulations. The fine was paid on or about April 16,  
7 2013.

8 h. On or about May 24, 2012, Operator's License No. OPR 10788 was issued a \$250  
9 fine levied by the Santa Barbara County Agricultural Commissioner for violation of section 1974  
10 (b) of the California Code of Regulations. The fine was paid on or about October 2, 2012.

11 i. On or about May 24, 2012, Operator's License No. OPR 10788 was issued a \$950  
12 fine levied by the Santa Barbara County Agricultural Commissioner for violation of sections 6724  
13 (d) and 6782 (b) of the California Code of Regulations. The fine was paid on or about November  
14 20, 2012.

15 j. On or about May 31, 2012, Operator's License No. OPR 10788 was issued a \$250  
16 fine levied by the Kern County Agricultural Commissioner for violation of sections 6739 (p) of  
17 the California Code of Regulations. The fine was paid on or about June 14, 2012.

18 53. To determine the degree of penalty to be imposed, if any, Complainant makes the  
19 following additional allegations:

20 a. On or about January 31, 2008, Field Representative License No. FR32691 issued to  
21 Respondent Pena was issued a \$250 fine levied by the Santa Barbara County Agricultural  
22 Commissioner for violation of section 8505.2 of the Business and Professions Code. The fine was  
23 paid on or about April 21, 2008.

24 OTHER MATTERS

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



1 decision. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a  
2 suspension.

3 55. Pursuant to Code section 8624, the causes for discipline established as to Company  
4 Registration Certificate Number PR 6391, issued to Gallegos Pest Control, likewise constitute  
5 cause for discipline against Operator's License Number OPR 10788, issued to Angel Gallegos,  
6 who serves as the Qualifying Manager for Branch 1 of Gallegos Pest Control, regardless of  
7 whether Angel Gallegos had knowledge of or participated in the acts or omissions which  
8 constitute cause for discipline against Gallegos Pest Control.

9 56. Angel Gallegos, who serves as the Qualifying Manager for Branch 1 of Gallegos Pest  
10 Control, had knowledge of or participated in the acts or omissions which constitute cause for  
11 discipline against Gallegos Pest Control.

12 57. Pursuant to Code section 8654, if discipline is imposed on Company Registration  
13 Certificate Number PR 6391, issued to Gallegos Pest Control, then Angel Gallegos, who serves as  
14 the Qualifying Manager for Branch 1 of Gallegos Pest Control, shall be prohibited from serving  
15 as an officer, director, associate, partner, qualifying manager, or responsible managing employee  
16 for any registered company during the time the discipline is imposed, and any registered company  
17 which employs, elects, or associates him, shall be subject to disciplinary action.

18 58. Javier Pena was a field representative employed by Gallegos Pest Control, and had  
19 knowledge of and participated in the acts or omissions which constitute cause for discipline  
20 against Gallegos Pest Control.

21 59. Pursuant to Code section 8654, if discipline is imposed on Company Registration  
22 Certificate Number PR 6391, issued to Gallegos Pest Control, then Javier Pena (who was a field  
23 representative employed by Gallegos Pest Control), shall be prohibited from serving as an officer,  
24 director, associate, partner, qualifying manager, or responsible managing employee of a registered  
25 company, and the employment, election or association of him by a registered company is a  
26 ground for disciplinary action.

27 ///

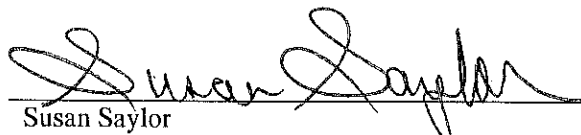
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1 **PRAYER**

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

- 4 1. Revoking or suspending Company Registration Certificate Number  
5 PR6391, issued to Gallegos Pest Control;
- 6 2. Revoking or suspending Operator's License Number OPR10788, issued  
7 to Angel Gallegos;
- 8 3. Revoking or suspending Field Representative License Number FR32691,  
9 issued to Javier Pena;
- 10 4. Prohibiting Angel Gallegos from serving as an officer, director, associate,  
11 partner, qualifying manager or responsible managing employee of any registered company during  
12 the period that discipline is imposed on Company Registration Certificate Number PR6391,  
13 issued to Gallegos Pest Control;
- 14 5. Prohibiting Javier Pena from serving as an officer, director, associate,  
15 partner, qualifying manager or responsible managing employee of any registered company during  
16 the period that discipline is imposed on Company Registration Certificate Number PR6391,  
17 issued to Gallegos Pest Control;
- 18 6. Ordering Gallegos Pest Control, Angel Gallegos, and Javier Pena to pay  
19 the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this  
20 case, pursuant to Business and Professions Code section 125.3; and,
- 21 7. Taking such other and further action as deemed necessary and proper.

22  
23  
24 DATED: 8/5/13

  
Susan Saylor  
Interim Registrar/Executive Officer  
Structural Pest Control Board  
Department of Consumer Affairs  
State of California  
Complainant

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