

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
JANUARY 18 and 19, 2007

The meeting was held on Thursday and Friday, January 18 and 19, 2007, at the Napa Valley Marriott Hotel, 3425 Solano Ave., Napa, California, commencing at 9:03 AM with the following members constituting a quorum:

Jean Melton, President
Mustapha Sesay, Vice President
Cris Azarte
Terrel Ferreira
Bill Morris
Cliff Utley

Board staff present:

Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Carl Smitley, Enforcement Coordinator (January 19 only)
Ryan Vaughn, Administration Analyst

Departmental staff present:

Kurt Heppler, Legal Counsel
Donald Chang, Legal Counsel

Board Liaison Deputy Attorney General Christina Thomas was also in attendance on January 19 only.

Ms. Okuma administered the oath to appoint Board member Cliff Utley.

I. ROLL CALL

Ms. Saylor read the roll call.

II. PUBLIC COMMENTS

No public comments were made.

III. STRATEGIC PLANNING

The Board reviewed its current mission and vision statements and its current strategic plan (incorporated by reference).

XIX. CLOSED SESSION

The Board adjourned to closed session at 1:49 P.M. to review proposed disciplinary actions in accordance with subdivision (d)(3) of Section 11126 of the Government Code.

The meeting recessed at 2:38 PM.

The meeting reconvened Friday, January 19, 2007 at 9:02 AM.

IV. FLAG SALUTE

Ms. Melton led everyone in the flag salute.

V. APPROVAL OF MINUTES OF THE OCTOBER 20, 2006, BOARD MEETING

Ms. Ferreira moved and Mr. Sesay seconded to approve the minutes. Passed unanimously.

VI. EXECUTIVE OFFICER'S REPORT

Ms. Okuma reported on the following:

- Assembly Bill 126 was introduced which will expand the structural fumigation enforcement program to include Santa Clara County. The bill will also reinsert the sunset provision.
- Dennis Ohlsson, Board specialist assigned to northern California, will be retiring from state service on April 6, 2007. Until the Board can hire from a civil service list, Board specialists Tom Ineichen and Ed Ackerman will be reassigned to areas in northern California. Mr. Ineichen will work out of the Board's office in Sacramento. The remaining specialists in southern California will absorb the territories previously assigned to Mr. Ackerman.
- A meeting with the Board specialists was held in December to review current working procedures.
- Former Board staff member Dennis Patzer began working for the Board as a retired annuitant. He will be assisting Ms. Okuma with special projects.

Ms. Saylor reported on the following:

- Licensing statistics and survey results were reviewed with the Board members.
- The public hearing to amend the Occupants Fumigation Notice will be scheduled for the April Board Meeting.
- Examination statistics for Field Representatives and Operators were provided to the Board members.
- Website hits for the Board's license look-up for the year 2006 were provided to the Board members.
- A list of continuing education courses specific for Applicator license renewal has been developed and will be posted to the Board's website.
- The 2005 continuing education audit is nearly complete and the 2006 audit will begin in the coming weeks.
- Randy Freitas was hired on December 1, 2006, as an Office Services Supervisor, temporarily filling Steve Thomason's position.
- Priscilla Romero was hired as an Office Technician to head the examination desk formerly held by Ryan Vaughn.
- An outside vendor has been contacted to contract for development of new Branch 3 Field Representative and Operator examinations. These tests should be completed by the end of this calendar year. The Branch 1 Field Representative and Operator examinations would be updated next.
- The UC Berkeley (UCB) research project contract was approved and became effective December 1, 2006 through November 30, 2008. Progress reports from two other ongoing research projects were also reviewed.

Dr. Vernard Lewis, UC Berkeley, gave an update on the UCB research project. Dr. Lewis had begun ordering equipment for the project. He requested a one-year extension to the research contract due to the delay in securing an effective date.

Ms. Okuma responded that Board staff could assist Dr. Lewis with a possible contract extension. He was advised to contact Board staff closer to the expiration of the contract to obtain the one-time extension.

Mr. Morris requested that the Board members receive written explanation of the delays related to the execution of the research contract.

VII. DEPARTMENT OF PESTICIDE REGULATION UPDATE

Kathy Boyle, Department of Pesticide Regulation (DPR), updated the Board on issues that could affect the structural pest control industry.

- Zythor (sulfuryl fluoride) is currently available in California. There was a concern as Zythor and Vikane have different reentry and certification levels, however Vikane is currently in the registration process to match the same level as Zythor.

- Sulfuryl fluoride has been posted as a toxic air contaminant because of air quality concerns. Both the United States Environmental Protection Agency (USEPA) and DPR are conducting risk assessments.
- There was an amendment to the Healthy Schools Act, which went into effect January 1, 2007. The amendment added private child day care centers to the facilities that are required to notify parents and faculty of any pesticide application.
- The USEPA released a proposed risk litigation decision which affects nine rodenticides. If approved, three active ingredients that are found in the rodenticides will be deemed as restricted use pesticides. This would eliminate the use of these rodenticides by Board applicators because applicators are not allowed to apply restricted use materials. The decision is under comment period until March 19, 2007.
- DPR is conducting a reevaluation of pyrethroids. DPR will be looking at 22 different active ingredients that are found in 600 products. There is no timetable as it is a large project. The reasons for the reevaluation are water quality concerns, ecological concerns, and human safety exposure issues.
- DPR has a committee through statute called the Pest Management Advisory Council. There is now an Urban Pest Management subcommittee formed to consider pesticide use in non-agricultural production settings. Ms. Boyle suggested having a Board staff member on the subcommittee.
- DPR will conduct the annual county agricultural commissioners structural training, which has not been conducted since 2004. DPR is currently trying to secure locations in southern and northern California for training that will be conducted in April and May.

Harvey Logan, Pest Control Operators of California, Inc., asked if the Board was aware of the issue that might impede applicators' ability to apply rodenticides and what steps has the Board taken.

Ms. Okuma responded that she was not aware of the possible restriction to applicators but that she would speak with DPR to clarify the proposal.

Michael Katz, Western Exterminator Company, asked Ms. Boyle what is preventing Board applicators from being considered certified applicators.

Ms. Boyle responded that the license examination that is given to a Board applicator does not include questions that would qualify them to apply restricted use pesticides. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) addresses the examination components required for certification. The Business & Professions

Code that defines Field Representatives as certified applicators could also be modified to include the Board's registered applicators.

**VIII. PROPOSAL TO CONSTRUCT UNIVERSITY OF CALIFORNIA
STRUCTURAL PEST CONTROL EDUCATIONAL FACILITY UTILIZING
STRUCTURAL PEST CONTROL BOARD'S RESEARCH FUND**

Ms. Okuma reported that the Board's Legal Counsel examined current law to determine whether the existing language would allow for research funds to be used for the building of an educational facility. There is no provision of law that would allow the Board's research funds to be used in this manner.

Mr. Heppler cited Business and Professions Code Section 8674 and its repeated use of the phrase "research only." The research funds being used for the construction of a facility would not be consistent with current law.

Dr. Lewis reported that UC Berkeley has received seed money from UC Davis to conduct a meeting to explore the possibility of a research facility. He has been in contact with PCOC, USDA, and Washington State to discuss the concept.

Gail Getty, UC Berkeley, mentioned that they do have the necessary land and building. Ms. Getty will keep the Board posted and wished to thank the Board for considering the proposal.

**IX. RECOMMENDATION TO RELEASE RESEARCH GRANT REQUEST FOR
PROPOSALS DEPENDING ON THE ACTION OF AGENDA ITEM VIII**

Ms. Saylor reported that the Board's research funds are accumulating. Since the process of obtaining approval of a research project is lengthy, she recommended that the Board begin the process now and make a decision how to proceed. The two options are to either appoint the Research Advisory Panel to develop recommendations for a research topic or to authorize Board staff to release a Request for Proposal (RFP) with a general scope of structural pest control research.

Mr. Azarte moved and Mr. Morris seconded to authorize Board staff to release a generic topic RFP. Passed unanimously.

**X. APPOINTMENT OF RESEARCH ADVISORY PANEL DEPENDING ON THE
ACTION ON AGENDA ITEMS VIII AND IX**

No action taken.

XI. PROPOSED LEGISLATIVE AMENDMENT TO ESTABLISH A DELINQUENT RENEWAL PERIOD FOR LICENSED APPLICATORS

Ms. Saylor cited Business and Professions Code Section 8590.1 in which it states that an Applicator license will expire three years from the date of issue. Statute 8675 gives the Board the authority to charge a delinquent renewal fee however there currently is no statute that establishes a delinquent time period for applicators. Without a delinquent period, an expired applicator could return to the Board years after the license expired and the Board would have to renew the license. IT was recommended that the Board motion for a legislative amendment to establish a delinquent renewal period for Applicators, identical to the ninety days that is currently in place for Field Representatives and Operators.

Mr. Utley moved and Ms. Ferreira seconded to seek a legislative amendment to establish a delinquent renewal period for Applicators. Passed unanimously.

XII. PROPOSED LEGISLATIVE AMENDMENT TO ESTABLISH A FEE FOR A CONTINUING EDUCATION EXAMINATION FOR APPLICATORS

Ms. Saylor cited Section 8593.1, which provides that effective January 1, 2009, Applicators must submit proof satisfactory to the Board that the required continuing education (CE) courses have been completed or the licensee can take a continuing education examination in lieu of completing the courses. Currently, there is no statute that authorizes the Board to establish a fee for the applicator CE exam. It was recommended that the Board seek a legislative amendment to establish a CE exam fee.

Mr. Sesay moved and Mr. Azarte seconded to seek a legislative amendment to establish a fee for the Applicator CE exam. Passed unanimously.

XIII. PROPOSED LEGISLATIVE AMENDMENT TO GRANT THE REGISTRAR THE AUTHORITY TO ISSUE PROBATIONARY LICENSES

Ms. Okuma recommended that the Board seek a legislative amendment to grant the Registrar the authority to issue probationary licenses. When an applicant with a criminal history applies for a license, a decision is made to either approve or deny the license. There are cases where the issuance of a conditional license is appropriate. However, without that authority, staff must deny the application for licensure, the denied applicant can request a statement of issues, the deputy attorney general could propose settlement terms for a conditional license, and the Board vote to grant or deny the license. Having the authority to issue probationary licenses from the start would result in more applicants being licensed, less time being devoted to achieve the probationary terms, and a cost savings to the Board.

Mr. Heppler wished to clarify that if an applicant chose to reject the probationary license, he/she could still have a hearing in front of an administrative law judge.

Mr. Azarte asked Ms. Okuma for an example of an applicant who would be eligible for a probationary license.

Ms. Okuma provided an example of an applicant with burglary and drug use convictions in their not too recent but not too distant past.

John Van Hooser, Van Hooser Enterprises, asked who would revoke the license if the licensee violated their probation.

Ms. Okuma responded that a petition to revoke probation would go to a hearing with an administrative law judge.

Mr. Morris stated he was concerned with authorizing the legislative amendment, citing that the cases that the Board is presented with rarely involve criminal history. He also stated he was not sure that he wanted the responsibility to fall on Board staff. Mr. Morris requested to be provided data on the fiscal costs of the proposal before he would give approval or disapproval of the proposal.

Mr. Sesay stated that he was in favor of the legislative amendment stating that some of the borderline applicants who currently are rejected would be able to have a license within a shorter term.

Mr. Azarte asked if there were any other Boards that have the ability to issue probationary licenses.

Ms. Okuma and Mr. Heppler responded that the Physician Assistant, Respiratory Care Board, and Contractor's Board all have the ability to issue probationary licenses.

Mr. Sesay moved and Mr. Utley seconded to seek a legislative amendment to grant the registrar the authority to issue probationary licenses. Passed by majority (Aye – Azarte, Ferreira, Melton, Sesay, Utley. No – Morris).

XIV. WATER QUALITY COMMITTEE RECOMMENDATIONS

Ms. Okuma reported on the issue of pesticides getting into storm drains which ultimately lead into creeks and streams. The pesticides have been shown to adhere to the soil and kill organisms that fish feed on. Agencies are subject to fines if the issue of water quality is not addressed. The Water Quality Committee is seeking ways to discourage perimeter spraying in urban settings. Ms. Okuma questioned if there is a need for a special certification for those who practice Integrated Pest Management (IPM). There was a group that developed a protocol for issuing

certification but there were impediments in how registered companies would advertise themselves to the public. The committee examined what put the impediments in place, which was in part the false and misleading advertising regulations. The Board's enactment of those regulations was driven by the California Public Interest Research Group (CAPIRG) in that lawsuits were filed against pest control companies who were making claims that they were using chemicals which were safe for the environment. The problem was that while IPM used less toxic chemicals, at some level, pesticides might still be used. To avoid fines from the Water Board individual certification for a pest control company or individual licensee might be necessary. The Water Quality Committee sought to make recommendations to the Board on ways to ensure water quality.

Eric Paulsen, Water Quality Committee member, said that there were three main agenda items. The items were to look at the Board's advertising regulations, examine if it was appropriate to have a third party issue a certification to companies and licensees, and if it was determined that a third party should not be involved, what recommendations could be made to the Board. The Committee felt that the Board should address the certification rather than a third party. There could possibly be continuing education requirements specific to water quality and IPM. The committee felt that they could not make recommendations to change the current false and misleading advertising regulations.

Pat Clark, Clark Pest Control, commented that he believed that the Board should set out to formally define what IPM is. He also recommended dedicating a portion of the rules and regulations requirement for continuing education to be devoted to the Federal Quality Act.

Ms. Boyle added that when the Healthy Schools Act was being drawn up in 2000, a search on the internet showed 37 different definitions of IPM. She commented that it would be to the Board's advantage if IPM were defined in the Board's rules and regulations.

Jon Kaplan, Natural Resources Defense Council (NRDC), said that NRDC had sent via certified mail a petition for the Board to revisit its marketing regulations. The NRDC feels that the current regulations limit the public from getting information about IPM. Mr. Kaplan added that the marketing regulations are unconstitutional in that they prevent free speech.

Mr. Heppler commented that since the issue of the Board's marketing regulations was not on the agenda, discussion would have to wait until the April Board meeting.

Ms. Melton suggested that the Water Quality Committee proceed with their meetings and a subcommittee should be formed to study regulation 1999.5, which concerns the false and misleading advertising.

Mr. Paulsen responded that section 1999.5 was the main agenda item that the committee examined and that a subcommittee was not necessary as the committee now has some specific recommendations from the NRDC.

Mr. Heppler and Dr. Lewis volunteered their time to assist with the committee.

XV. PROPOSED LEGISLATIVE AMENDMENT TO RESTRICT THE NUMBER OF REGISTERED COMPANIES A QUALIFYING MANAGER MAY QUALIFY

Ms. Okuma reported that at the October 2006 Board meeting, the Board instructed Legal Counsel to examine the Board's current law to determine if there is existing language that would limit the number of companies a licensed operator can qualify. Legal Counsel determined that there is no statute that specifies a limit of companies one can qualify and that a legislative amendment would be required if the Board desired such a limitation.

Ms. Okuma suggested using the Contractor's Board's restrictions as a guide. Their law limits a qualifier to three companies.

Darrel Ennes, Terminix, wanted to make sure that the proposed legislative amendment would exclude DBA's (doing business as) from the limitation.

Ms. Okuma confirmed that DBA's would not be limited.

Mr. Utley commented that he was in favor of limiting the number of companies per qualifier but was not sure that three companies was ideal. He also questioned whether or not the limitation would be retrospective and if so, how long would the licensees have to comply.

Mr. Heppler responded that statutes are generally prospective. The Board could include language in the amendment to look back and require that operators qualifying more than three companies comply.

Michael Katz, Western Exterminator Company, suggested the legislative amendment should look back and require that all operators comply with the statute.

Mr. Musgrove suggested that the amendment limit the number of companies to two.

Mr. Heppler stated that the amendment could require that existing qualifying managers comply with the limit within 18 to 24 months.

David Roe, Leading Edge Pest Management, asked if the amendment would prevent operators from acting as a qualifying manager while residing in another state.

Ms. Okuma responded that the legislative amendment would not address that specific issue.

Mr. Morris moved and Mr. Utley seconded to seek a legislative amendment to limit the number of companies a qualifying manager may qualify to two companies, excluding DBA's, and requiring that all qualifying managers comply within 24 months of enactment. Passed unanimously.

XVI. LAWS AND REGULATIONS COMMITTEE RECOMENDATIONS FOR STRUCTURAL PEST CONTROL ACT REVISIONS

Mr. Musgrove, Chairman, Laws and Regulations Committee, presented recommendations to revise sections of the Business and Professions Code.

Mr. Utley moved and Ms. Ferreira seconded to pursue a legislative bill to update the following sections.

8510. For purposes of this chapter, "wood preservative" means any coating formulated to protect wood surfaces from deterioration caused by insects, fungus, rot, and decay and which contains a wood preservative chemical that is registered with the California Department of ~~Food and Agriculture~~ Pesticide Regulation and the United States Environmental Protection Agency.

8525. The board, subject to the approval of the director, may, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt, amend, repeal, and enforce reasonably necessary rules and regulations relating to the practice of pest control and its various branches as established by Section 8560 and the administration of this chapter.

The board shall also consult with the ~~Director of Food and Agriculture~~ Department of Pesticide Regulation when developing or adopting regulations that may affect the Department of ~~Food and Agriculture~~ Pesticide Regulation or the county agricultural commissioner's responsibilities pursuant to Division 7 (commencing with Section 12501) of the Food and Agricultural Code.

8507. (a) "Structural pest control field representative" is any individual who is licensed by the board to secure structural pest control work, identify infestations or infections, make inspections, apply pesticides, **and** submit bids for or otherwise contract, **in on** behalf of a registered company.

A pest control field representative shall not contract for pest control work or perform pest control work in his or her own behalf.

(b) As used in this chapter, "field representative" refers to "structural pest control field representative."

8509. "Branch office" is any fixed place of business in addition to the location of ~~business~~ the principal office for which the company registration is issued, where records are kept, mail received, statements rendered, money is collected, or requests are received for service or bids, or information is given pertaining to the practice of pest control, other than governmental offices.

8565.5. (a) An applicant for a Branch 1 operator's license shall demonstrate to the board that he or she has passed satisfactorily board-approved courses in the following areas:

- (1) Pesticides.
- (2) Pest identification and biology.
- (3) Contract law.
- (4) Rules and regulations.
- (5) Business practices.
- (6) Fumigation safety.

(b) An applicant for a Branch 2 operator's license shall demonstrate to the board that he or she has passed satisfactorily board-approved courses in the following areas:

- (1) Pesticides.
- (2) Pest identification and biology.
- (3) Contract law.
- (4) Rules and regulations.
- (5) Business practices.

(c) An applicant for a Branch 3 operator's license shall demonstrate to the board that he or she has passed satisfactorily board-approved courses in the following areas:

- (1) Pesticides.
- (2) Pest identification and biology.
- (3) Contract law.
- (4) Rules and regulations.
- (5) Business practices.
- (6) Construction repair and preservation techniques.

~~The board shall develop a correspondence course or courses with any educational institution or institutions as it deems appropriate.~~

~~These courses may be used to fulfill the requirements of this section. The institution may charge a reasonable fee for each course.~~

8617. (a) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may suspend the right of a structural pest control licensee or registered company to work in a county for up to three working days or, for a licensee, registered company, or an unlicensed individual acting as a licensee, may levy an administrative fine up to one thousand dollars (\$1,000) or direct the licensee to attend and pass a board-approved course of instruction at a cost not to exceed the administrative fine, or both, for each violation of this chapter, or Chapter 14.5, or any regulations adopted pursuant to these chapters, or Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), Chapter 3.5

(commencing with Section 14101), or Chapter 7 (commencing with Section 15201) of Division 7 of the Food and Agricultural Code, or any regulations adopted pursuant to those chapters, relating to pesticides. However, any violation determined by the board or the commissioner to be a serious violation as defined in Section 1922 of Title 16 of the California Code of Regulations shall be subject to a fine of not more than five thousand dollars (\$5,000) for each violation. Fines collected shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund. Suspension may include all or part of the registered company's business within the county based on the nature of the violation, but shall, whenever possible, be restricted to that portion of a registered company's business in a county that was in violation.

(b) A licensee who passes a course pursuant to this section shall not be awarded continuing education credit for that course.

(c) Before a suspension action is taken, a fine levied, or a licensee is required to attend and pass a board-approved course of instruction, the person charged with the violation shall be provided a written notice of the proposed action, including the nature of the violation, the amount of the proposed fine or suspension, or the requirement to attend and pass a board-approved course of instruction. The notice of proposed action shall inform the person charged with the violation that if he or she desires a hearing before the commissioner issuing the proposed action to contest the finding of a violation, that hearing shall be requested by written notice to the commissioner within 20 days of the date of receipt of the written notice of proposed action.

A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address.

If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and a right to present evidence on his or her own behalf. If a hearing is not requested within the prescribed time, the commissioner may take the action proposed without a hearing.

(d) If the person upon whom the commissioner imposed a fine or suspension or required attendance at a board-approved course of instruction requested and appeared at a hearing before the commissioner, the person may appeal the commissioner's decision to the Disciplinary Review Committee and shall be subject to the procedures in Section 8662.

(e) If a suspension or fine is ordered, it may not take effect until 20 days after the date of the commissioner's decision if no appeal is filed. If an appeal pursuant to Section 8662 is filed, the commissioner's order shall be stayed until 30 days after the Disciplinary Review Committee has ruled on the appeal.

(f) Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board.

Where a citation containing a fine is issued to a licensee and it is not contested or the time to appeal the citation has expired and the fine is not paid, the full amount of

the assessed fine shall be added to the fee for renewal of that license. A license shall not be renewed without payment of the renewal fee and fine.

Where a citation containing a fine is issued to a registered company and it is not contested or the time to appeal the citation has expired and the fine is not paid, the board shall not sell to the registered company any ~~inspection stamps, notice of completion stamps, or pesticide use stamps~~ or allow any Wood Destroying Organisms (WDO) filings until the assessed fine has been paid.

Where a citation containing the requirement that a licensee attend and pass a board-approved course of instruction is not contested or the time to appeal the citation has expired and the licensee has not attended and passed the required board-approved course of instruction, the licensee's license shall not be renewed without proof of attendance and passage of the required board-approved course of instruction.

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

(h) Where the board is the party issuing the notice of proposed action to suspend or impose a fine pursuant to subdivision (a) of this section, "commissioner" as used in subdivisions (c), (d), and (e) includes the board's registrar.

8591. If delinquency in the payment of the fee for renewal of any ~~operator's or field representative's~~ license extends beyond three months, the license ~~may~~ shall not be reinstated and the licensee ~~may~~ shall be required to obtain a new license in accordance with the provisions of Article 4 (commencing with Section 8560).

8592. Any ~~operator, field representative, or applicator~~ licensee whose license is under suspension may make application for renewal of his or her license as provided in this article, but the board may not renew his or her license until the suspension has been lifted.

8611. Each branch office shall have a branch supervisor designated by the registered company to supervise and assist the company's employees who are located at that branch. The branch supervisor shall be an individual who is licensed by the board as an operator or a field representative and his or her license shall be prominently displayed.

If a branch supervisor ceases for any reason to be connected with a registered company, the company shall notify the registrar in writing within 10 days from that cessation. If this notice is given, the company's branch office registration shall remain in force for a reasonable length of time to be determined by rules of the

board, during which period the company shall submit to the registrar in writing the name of another qualified branch supervisor.

8612. The licenses of ~~operators~~ qualifying managers and company registrations shall be prominently displayed in the registered company's office, and no registration issued hereunder shall authorize the company to do business except from the location for which the registration was issued. Each registered company having a branch office or more than one branch office shall be required to display its branch office registration prominently in each branch office it maintains.

When registered company opens a branch office it shall notify the registrar in writing on a form prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board. The notification shall include the name of the individual designated as the branch supervisor and shall be submitted with the fee for a branch office prescribed by this chapter.

8506.1. A "registered company" is any sole proprietorship, partnership, corporation, or other organization or any combination thereof which is registered with the Structural Pest Control Board to engage in the practice of structural pest control.

A registered company may secure structural pest control work, submit bids, or otherwise contract for pest control work. A registered company may ~~hire~~ employ licensed field representatives and licensed operators to identify infestations or infections, make inspections, and represent the company in the securing of pest control work. A registered company may hire or employ individuals who are not licensed under this chapter to perform work on contracts covering wood-destroying organisms only after an operator or field representative has fully completed the negotiation or signing of the contract covering a given job.

A registered company may hire and use individuals who are not licensed under this chapter on service contracts already established.

8512. "Employer" refers to a registered company which ~~hires~~ employs operators, field representatives, applicators, and other individuals, the latter not being required to be licensed under this chapter, and who work on pest control jobs under the supervision of an operator or field representative.

8551.5. No unlicensed individual in the employ of a registered company shall apply any pesticide, ~~rodenticide, or allied chemicals or substances~~ for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests, or organisms included in Branch 2 or Branch 3. However, an individual may, for 30 days from the date of hire employment, apply pesticides, ~~rodenticides, or allied chemicals~~ for the purposes of training under the direct supervision of a licensed field representative or operator employed by the company. This direct supervision means in the presence of the licensed field representative or operator at all times. The 30-day time period may not be extended.

8505.2. Fumigation shall be performed only under the direct and personal supervision of an individual who is licensed by the board as an operator or field representative in a branch of pest control which includes fumigation ~~or who is the qualifying manager of a registered company which is so registered.~~

8505.3. "Direct and personal supervision" as used in Section 8505.2 means that the Branch 1 licensee exercising such supervision shall be present at the site of the fumigation during the entire time the fumigants are being released, the time ventilation is commenced, and at the time property is released for occupancy.

8505.4. Fumigation shall be performed in compliance with all applicable federal state, county, ~~city,~~ and city and county laws and ordinances and all applicable laws and regulations of the United States.

~~**8505.15.** Two effective masks of a type approved by the National Institute of Occupational Safety and Health for protection against the fumigant being used shall be made readily available by the registered company to a fumigating crew whenever a fumigant is introduced into or removed from a structure.~~

8569. In addition to the partner or other individual designated as the qualifying manager for a registered company which is organized as a partnership, if any of the company's partners desire to actively engage in pest control on behalf of the partnership each shall be required to qualify for and to be licensed as an operator or field representative.

Nothing in this chapter shall prohibit any partner who is duly qualified and licensed in one or more of the branches of pest control designated in Section 8560, from representing the partnership in any other branch of pest control for which the partnership is registered, except that he or she may actively engage in pest control as an operator or field representative only in the branch for which he or she is qualified and licensed.

Upon being licensed as an operator or field representative, the other partner may engage in pest control only on behalf of the partnership of which he or she is a member, as long as he or she remains a partner thereof, but he or she may become associated with another partnership, or with a firm or corporation, in a capacity other than as a qualifying manager.

The committee has recommended that this statute be amended to allow for only ONE qualifier for one company. It is not clear from the minutes of this committee if the committee meant that a company registered in multiple branches could have only a single qualifier, or if the intend of the committee was to limit the number of companies a qualifier could qualify to one company. If the latter is the case, this subject is agendized by staff to allow no more than three companies a single person could qualify.

Passed unanimously.

The Board decided to hold off on sections 8507.1, 8551.5, 8651, 8516, 8556, 8644, 8553, and 8505.1.

8507.1. (a) "Structural pest control applicator" is any individual who is licensed by the board to apply a pesticide, ~~rodenticide, or allied chemicals or substances~~ for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests or organisms included in Branch 2 or Branch 3 on behalf of a registered company.

A structural pest control applicator shall not contract for pest control work or perform pest control work in his or her own behalf.

(b) As used in this chapter, "applicator" refers to "structural pest control applicator."

8551.5. No unlicensed individual in the employ of a registered company shall apply any pesticide, ~~rodenticide, or allied chemicals or substances~~ for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests, or organisms included in Branch 2 or Branch 3. However, an individual may, for 30 days from the date of hire employment, apply pesticides, ~~rodenticides, or allied chemicals~~ for the purposes of training under the direct supervision of a licensed field representative or operator employed by the company. This direct supervision means in the presence of the licensed field representative or operator at all times. The 30-day time period may not be extended.

8651. The performing or soliciting of structural pest control work, the inspecting for structural or household pests, or the applying of any pesticide, ~~chemical, or allied substance~~ for the purpose of eliminating, exterminating, controlling, or preventing structural pests in branches of pest control other than those for which the operator, field representative, or applicator is licensed or the company is registered is a ground for disciplinary action.

8519. Certification as used in this section means a written statement by the registered company attesting to the statement contained therein relating to the absence or presence of wood-destroying pests or organisms and, listing such recommendations, if any, which appear on an inspection report prepared pursuant to Section 8516, and which relate to (1) infestation or infection of wood-destroying pests or organisms found, or (2) repair of structurally weakened members caused by such infestation or infection, and which recommendations have not been completed at the time of certification.

Any registered company which makes an inspection report pursuant to Section 8516, shall, if requested by the person ordering the inspection report, prepare and deliver to that person or his or her designated agent, a certification, to provide:

(a) When the inspection report prepared pursuant to Section 8516 has disclosed no ~~infestation or infection~~ wood destroying pests or organisms: "This is to certify that the above property was inspected on ____ (date) in accordance with the Structural

Pest Control Act and rules and regulations adopted pursuant thereto, and that no evidence of active ~~infestation or infection~~ wood destroying pests or organisms was found in the visible and accessible areas."

(b) When the inspection report prepared pursuant to Section 8516 discloses ~~infestation or infection~~ wood destroying pests or organisms and the notice of work completed prepared pursuant to Section 8518 indicates that all recommendations to remove that ~~infestation or infection~~ wood destroying pests or organisms and to repair damage caused by that ~~infestation or infection~~ wood destroying pests or organisms have been completed: "This is to certify that the property described herein is now free of evidence of active ~~infestation or infection~~ wood destroying pests or organisms in the visible and accessible areas."

(c) When the inspection report prepared pursuant to Section 8516 discloses ~~infestation or infection~~ wood destroying pests or organisms and ~~or~~ the notice of work completed prepared pursuant to Section 8518 indicates that the registered company has not completed all recommendations to remove that ~~infestation or infection~~ wood destroying pests or organisms or to repair damage caused by it: "This is to certify that the property described herein is now free of evidence of active ~~infestation or infection~~ wood destroying pests or organisms in the visible and accessible areas except as follows: ____ (describing ~~infestations, infections~~ wood destroying pests or organisms, damage or evidence thereof, excepted)."

This certificate shall be accompanied by a copy of the inspection report prepared pursuant to Section 8516, and by a copy of the notice of work completed prepared pursuant to Section 8518, if any notice has been prepared at the time of the certification, or the certification may be endorsed on and made a part of that inspection report or notice of work completed.

8556. (a) Licensed contractors acting in their capacity as such, may remove and replace any structure or portions of a structure damaged by wood destroying pests or organisms if that work is incidental to other work being performed on the structure involved or if that work has been identified by a structural pest control inspection report. Licensed contractors acting in their capacity as such may apply wood preservatives directly to end cuts and drill holes of pressure treated wood, and to foundation wood as required by building codes, as well as to fencing and decking, by brush, dip, or spray method and need not obtain a license under this chapter for performance of that work, provided a disclosure in the following form is submitted to the customer in writing: "The application of a wood preservative is intended to prevent the establishment and flourishing of organisms which can deteriorate wood. If you suspect ~~pest infestation or infection~~ wood destroying pests or organisms, contact a registered structural pest control company prior to the application of a wood preservative."

These exemptions do not authorize the performance of any other acts defined in Section 8505.

(b) A licensed contractor may contract for the performance of any soil treatment pest control work to eliminate, exterminate, control, or prevent infestations or infections of pests or organisms in the ground beneath or adjacent to any existing building or structure or in or upon any site upon which any building or structure is to

be constructed, but the actual performance of any such work must be done by a registered structural pest control company.

8644. Fraud or misrepresentation, after inspection, by any licensee or registered company engaged in pest control work of any ~~infestation or infection~~ of wood-destroying pests or organisms found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by wood-destroying pests or organisms, whether or not a report was made pursuant to Sections 8516 and 8517 of this code, is a ground for disciplinary action.

8553. Any person who violates any provision of this chapter, or who conspires with another person to violate any provision of this chapter, is guilty of a ~~misdemeanor~~ felony, and is punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

8505.1. (a) Except as provided in subdivisions (b) and (c), for the purpose of this act, "fumigation" shall be defined as the use within an enclosed space for the destruction of plant or animal life, ~~a substance having a vapor pressure greater than 5 millimeters of mercury at 25 degrees centigrade when the substance is labeled for those purposes.~~

The following is a list of lethal fumigants:

- (1) Methyl bromide.
- ~~(2) Sulfur dioxide.~~
- ~~(3) Propylene oxide.~~
- (4) Sulfuryl fluoride.
- ~~(5) Aluminum phosphide.~~

The board may adopt, and may as necessary amend, by regulation, a list of fumigants.

(b) For the purpose of this act, "warning agent" shall be any agent used in combination with any fumigant that lacks warning properties.

The following is a warning agent:

Chloropicrin.

The board may adopt, and may as necessary amend, by regulation, a list of warning agents.

(c) For the purpose of this act "simple asphyxiants" shall not be deemed to be fumigants.

The following is a list of simple asphyxiants:

- (1) Liquid nitrogen.
- (2) Carbon dioxide.

The board may adopt, and may as necessary amend, by regulation, a list of simple asphyxiants.

Sections 8516, 8516.1, 8516.2, 8516.3, 8516.4, 8516.5 were referred back to the Laws and Regulations Committee.

8516. (a) This section shall apply only to wood destroying pests or organisms.
(b) No registered company or individual shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. All registered companies shall prepare a written inspection report in a consistent manner or style approved by the board. The report shall be prepared and delivered to the person requesting the inspection or to the person's designated agent within 10 business days of the inspection. The report shall be delivered before work is commenced on any property.

The following shall be set forth in the report:

The date of the inspection and the name of the licensed field representative or operator making the inspection.

The name and address of the person or firm ordering the report.

The name and address of any person the report is sent to.

The address or location of the property.

A general description of the building or premises inspected.

A foundation diagram of the structure or structures or portions of the structure or structures inspected, indicating thereon the approximate location of any infested or infected areas evident, and the parts of the structure where conditions that would ordinarily subject those parts to attack by wood destroying pests or organisms.

A written description of findings of wood destroying pests and organisms or evidence thereof, and its approximate locations. Wood destroying pests and organisms shall include, but are not limited to; decay fungi, beetles, drywood termites, subterranean termites, dampwood termites, carpenter bees, or carpenter ants.

A written description of findings for conditions usually deemed likely to lead to wood destroying pests and organisms and their approximate locations. Conditions shall include, but are not limited to, earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient ventilation.

A written description of findings, which indicate or describe any locations that are inaccessible or not inspected with recommendations for further inspection, if practical. If authority is given later to open inaccessible areas, a supplemental report on conditions in these areas shall be made.

Primary recommendations for corrective measures of all findings.

In addition to the primary recommendation, a secondary recommendation may also be made and shall have a full explanation to the consumer of why they are secondary.

8516.1

1. An estimate or bid for structural repairs shall be given if the person who ordered the inspection report so requests, and if the registered company is regularly in the business of performing repairs. When an estimate or bid for making repairs is given

it shall be recorded on the report or a separate work agreement and shall include a specific price for each recommendation.

2. The report and any contract entered into shall also state specifically when any guarantee for the work is made, and if so, the specific terms of the guarantee and the period of time for which the guarantee shall be in effect.

3. A reinspection shall be an inspection of those items previously reported to determine if the recommendations have been completed. Each reinspection shall be prepared on an inspection report form and shall be labeled as a reinspection. Each reinspection shall also identify the previous report(s) by date. If no estimate or bid was given with the report originally, then the registered company shall not be required to perform a reinspection.

4. At the time a report is ordered, the registered company or individuals shall inform the person or entity ordering the report, that a separated report is available. If a separated report is requested at the time the inspection report is ordered, the registered company or licensee shall separately identify on the report each finding and corrective recommendation as follows:

The infestation or infection, or damage that is evident shall be listed as a Section 1 finding with appropriate corrective recommendation(s).

The conditions that are present that are deemed likely to lead to infestation or infection shall be listed as a Section 2 finding with appropriate corrective recommendation.

When a corrective condition is identified, either as a Section 1 or Section 2 finding and corrective recommendation are made, and the responsible parties as negotiated between the buyer and the seller, chooses not to correct those conditions, the registered company or licensee shall not be liable for damages resulting from a failure to correct those conditions or subject to any disciplinary action by the board. Nothing in this subdivision, however, shall relieve a registered company or a licensee of any liability resulting from negligence, fraud, dishonest dealing, other violations pursuant to this chapter, or contractual obligations between the registered company or licensee and the responsible parties.

The inspection report form prescribed by the board shall separately identify the infestation or infection that is evident and the conditions that are present that are deemed likely to lead to infestation or infection.

If a separated report is requested, the report shall explain the infestation or infection that is evident and the conditions that are present that are deemed likely to lead to infestation or infection and the difference between those conditions.

In no event, however, shall conditions deemed likely to lead to infestation or infection be characterized as actual "defects" or as actual "active" infestations or infections or in need of correction as a precondition to issuing a certification pursuant to Section 8519.

If a registered company or licensee fails to inform as required by this subdivision and a dispute arises, or if any other dispute arises as to whether this subdivision has been complied with, a separated report shall be provided within 24 hours of the request but, in no event, later than the next business day, and at no additional cost.

8516.2

Inspection reports shall also include the following statements. The registered company shall include in the report the disclosures that pertain to property inspected.

1. "The exterior surface of the roof was not inspected. If you want the water tightness of the roof determined, you should contact a roofing contractor who is licensed by the Contractors' State License Board." Or, "The exterior surface of the roof was inspected to determine whether or not wood destroying pests or organisms are present."

"A reinspection of the structure will be performed if an estimate or bid for making repairs was given on the inspection report, or thereafter. The request must be made within four (4) months. After four months a new inspection shall be performed. Any reinspection shall be performed for not more than the price of the registered company's previous inspection and shall be completed within 10 working days after a reinspection has been ordered."

"Reports on this structure prepared by various registered companies should list the same findings (i.e. termite infestations, termite damage, fungus damage, etc.).

However, recommendations to correct these findings may vary from company to company. You have a right to seek a second opinion from another company."

"NOTICE: The charge for service that this company subcontracts to another registered company may include the company's charges for arranging and administering such services that are in addition to the direct costs associated with paying the subcontractor. You may accept this company's bid or you may contract directly with another registered company licensed to perform the work. If you choose to contract directly with another registered company, this firm will not in any way be responsible for any act or omission in the performance of work that you directly contract with another to perform."

"NOTICE TO OWNER: Under the California Mechanics Lien Law any structural pest control company which contracts to do work for you, any contractor, subcontractor, laborer, supplier or other person who helps to improve your property, but is not paid for his or her work or supplies, has a right to enforce a claim against your property. This means that after a court hearing, a court officer could sell your property and the proceeds of the sale used to satisfy the indebtedness. This can happen even if you have paid your structural pest control company in full if the subcontractor, laborers or suppliers remain unpaid. To preserve their right to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are required to provide you with a document entitled "Preliminary Notice." Prime contractors and laborers for wages do not have to provide this notice. A Preliminary Notice is not a lien against your property. Its purpose is to notify you of persons who may have a right to file a lien against your property if they are not paid."

"State law requires that you be given the following information: CAUTION— PESTICIDES ARE TOXIC CHEMICALS. Structural Pest Control Companies are registered and regulated by the Structural Pest Control Board and apply pesticides which are registered and approved for use by the California Department of Pesticide regulation and the United States Environmental Protection Agency. Registration is

granted when the state finds that based on existing scientific evidence there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized. If within 24 hours following application you experience symptoms similar to common seasonal illness comparable to the flu, contact your physician or poison control center (insert telephone number) and your pest control company immediately. For further information, contact any of the following: Your Pest Control Company (insert telephone number); for Health Questions—the County Health Department (insert telephone number); for Application Information—the County Agricultural Commissioner (insert telephone number) and for Regulatory Information--the Structural Pest Control Board, (insert telephone number and address of the board)”

“This is a separated report which is defined as Section 1/Section 2 conditions evident on the date of the inspection. Section 1 contains items where there is visible evidence of active infestation, infection or conditions that have resulted in or from infestation or infection, Section 2 items are conditions deemed likely to lead to infestation or infection but where no visible evidence of such was found. Further inspection items are defined as recommendations to inspect area(s) which during the original inspection did not allow the inspector access to complete the inspection and cannot be defined as Section 1 or Section 2.”

8516.3

The address of each property inspected or upon which work is completed shall be reported on a Wood Destroying Organisms Inspection and Completion Activity Form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work. The registered company shall retain for three years all field notes and inspection reports which are personally signed by the inspector with an original signature or electric signature. Wood Destroying Organisms Inspection and Completion Activity ~~Forms~~ Reports are also required to be retained for the three-year period. Reports shall be made available for inspection and reproduction to the registrar of the board or his or her duly authorized representative during business hours. Inspection reports or certified copies thereof shall be submitted to the board upon request within two business days.

An inspection tag shall be posted whenever an inspection for wood destroying pests or organisms is made.

Every property inspected pursuant to this subdivision or Section 8518 shall be assessed a filing fee pursuant to Section 8674. Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8518 or this section is grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars (\$2,500).

Any person may request and, upon payment of a required fee, obtain directly from the board certified copies of all inspection reports and completion notices prepared and reported on a Wood Destroying Organisms Activity form submitted by any

registered company during the preceding two years. This Notice shall be prominently disclosed on every inspection report and work completion notice. The copy fee required by this chapter shall accompany each request for copies made by the board. In return for such fee the board shall prepare and transmit to the requester copies of all inspection reports and completion notices filed with the board on the subject property within the preceding two years, except that if a search of the board's records discloses that no inspection report and completion notice has been filed on the property within the preceding two years, the board shall retain the fee as a search fee.

An inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board.

8516.4

Control service is defined as the regular reinspection of a property after a report has been made in compliance with this section and any corrections as have been agreed upon have been completed.

Under a control service agreement a registered company shall refer to the original report and contract in a manner as to identify them clearly, and the report shall be assumed to be a true report of conditions as originally issued, except it may be modified after a control service inspection.

A registered company is not required to issue a report after each control service inspection. If after control service inspection, no modification of the original report is made in writing, then it will be assumed that conditions are as originally reported.

A control service contract shall state specifically the particular wood destroying pests or organisms and the portions of the buildings or structures covered by the contract.

8516.5

A registered company or licensee may enter into and maintain a control service agreement provided following requirements are met:

The control service agreement shall be in writing, signed by both parties, and shall specifically include the following:

The wood destroying pests and organisms that could infest and infect the structure.

The wood destroying pests and organisms covered by the control service agreement. Any wood destroying pest or organism that is not covered must be specifically listed.

The type and manner of treatment to be used to correct the infestations or infections. Type of all-encompassing treatment if included.

If all-encompassing treatments are not included as part of the agreement the following statement must be included as part of the agreement. "Fumigation and all-encompassing treatments are not included as part of this agreement. If fumigation or an all-encompassing treatment is deemed necessary during a subsequent inspection additional costs will be incurred by consumer."

The structures or buildings, or portions thereof, covered by the agreement, including a statement specifying whether the coverage for purposes of periodic inspections is

limited or full. Any exclusions from those described in the initial report must be specifically listed.

A reference to the initial inspection report and agreement.

The frequency of the inspections to be provided, the fee to be charged for each renewal, and the duration of the agreement.

Whether the fee includes structural repairs.

If the services provided are guaranteed, and, if so, the terms of the guarantee.

A statement that all corrections of infestations or infections covered by the control service agreement shall be completed within six months of discovery, unless otherwise agreed to in writing by both parties.

Inspections made pursuant to a control service agreement shall be conducted by a Branch 3 field representative or operator licensee. Section 8506.1 does not modify this provision.

A full or limited inspection of the property covered by the control service agreement shall be conducted and a report made filed at least once every three years from the date that the agreement was entered into, unless the consumer cancels the contract within three years from the date the agreement was entered into.

A written report shall be required for the correction of any infestation or infection unless all of the following conditions are met:

The infestation or infection has been previously reported.

The infestation or infection is covered by the control service agreement.

There is no additional charge for correcting the infestation or infection.

Correction of the infestation or infection takes place within 45 days of its discovery.

Correction of the infestation or infection does not include fumigation.

All notice requirements pursuant to Section 8538 shall apply to all pesticide treatments conducted under control service agreements.

~~8516. (a) This section, and Section 8519, apply only to wood destroying pests or organisms.~~

~~—(b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.~~

~~—Every property inspected pursuant to this subdivision or Section 8518 shall be assessed a filing fee pursuant to Section 8674.~~

~~—Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8518 or this section is grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars (\$2,500).~~

~~—A written inspection report conforming to this section and a form approved by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent within~~

~~10 business days of the inspection, except that an inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all original inspection reports, field notes, and activity forms.~~

~~— Reports shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized representative during business hours. Original inspection reports or copies thereof shall be submitted to the board upon request within two business days. The following shall be set forth in the report:~~

~~— (1) The date of the inspection and the name of the licensed field representative or operator making the inspection.~~

~~— (2) The name and address of the person or firm ordering the report.~~

~~— (3) The name and address of any person who is a party in interest.~~

~~— (4) The address or location of the property.~~

~~— (5) A general description of the building or premises inspected.~~

~~— (6) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected, indicating thereon the approximate location of any infested or infected areas evident, and the parts of the structure where conditions that would ordinarily subject those parts to attack by wood destroying pests or organisms exist.~~

~~— (7) Information regarding the substructure, foundation walls and footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack by wood destroying pests or organisms.~~

~~Conditions usually deemed likely to lead to infestation or infection, such as earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient ventilation are to be reported.~~

~~— (8) One of the following statements, as appropriate, printed in bold type:~~

~~— (A) The exterior surface of the roof was not inspected. If you want the water tightness of the roof determined, you should contact a roofing contractor who is licensed by the Contractors' State License Board.~~

~~— (B) The exterior surface of the roof was inspected to determine whether or not wood destroying pests or organisms are present.~~

~~— (9) Indication or description of any areas that are inaccessible or not inspected with recommendation for further inspection if practicable. If, after the report has been made in compliance with this section, authority is given later to open inaccessible areas, a supplemental report on conditions in these areas shall be made.~~

~~— (10) Recommendations for corrective measures.~~

~~— (11) Information regarding the pesticide or pesticides to be used for their control as set forth in subdivision (a) of Section 8538.~~

~~— (12) The inspection report shall clearly disclose that if requested by the person ordering the original report, a reinspection of the structure will be performed if an estimate or bid for making repairs was given with the original inspection report, or thereafter.~~

~~—(13) The inspection report shall contain the following statement, printed in boldface type:~~

~~—"NOTICE: Reports on this structure prepared by various registered companies should list the same findings (i.e. termite infestations, termite damage, fungus damage, etc.). However, recommendations to correct these findings may vary from company to company. You have a right to seek a second opinion from another company."~~

~~—An estimate or bid for repairs shall be given separately allocating the costs to perform each and every recommendation for corrective measures as specified in subdivision (c) with the original inspection report if the person who ordered the original inspection report so requests, and if the registered company is regularly in the business of performing corrective measures.~~

~~—If no estimate or bid was given with the original inspection report, or thereafter, then the registered company shall not be required to perform a reinspection.~~

~~—A reinspection shall be an inspection of those items previously listed on an original report to determine if the recommendations have been completed. Each reinspection shall be reported on an original inspection report form and shall be labeled "Reinspection" in capital letters by rubber stamp or typewritten. Each reinspection shall also identify the original report by date.~~

~~—After four months from an original inspection, all inspections shall be original inspections and not reinspections.~~

~~—Any reinspection shall be performed for not more than the price of the registered company's original inspection price and shall be completed within 10 working days after a reinspection has been ordered.~~

~~—(c) At the time a report is ordered, the registered company or licensee shall inform the person or entity ordering the report, that a separated report is available pursuant to this subdivision. If a separated report is requested at the time the inspection report is ordered, the registered company or licensee shall separately identify on the report each recommendation for corrective measures as follows:~~

~~—(1) The infestation or infection that is evident.~~

~~—(2) The conditions that are present that are deemed likely to lead to infestation or infection.~~

~~—If a registered company or licensee fails to inform as required by this subdivision and a dispute arises, or if any other dispute arises as to whether this subdivision has been complied with, a separated report shall be provided within 24 hours of the request but, in no event, later than the next business day, and at no additional cost.~~

~~—(d) When a corrective condition is identified, either as paragraph (1) or (2) of subdivision (c), and the responsible party, as negotiated between the buyer and the seller, chooses not to correct those conditions, the registered company or licensee shall not be liable for damages resulting from a failure to correct those conditions or subject to any disciplinary action by the board. Nothing in this subdivision, however, shall relieve a registered company or a licensee of any liability resulting from negligence, fraud, dishonest dealing, other violations pursuant to this chapter, or contractual obligations between the registered company or licensee and the responsible parties.~~

~~—(e) The inspection report form prescribed by the board shall separately identify the infestation or infection that is evident and the conditions that are present that are deemed likely to lead to infestation or infection. If a separated form is requested, the form shall explain the infestation or infection that is evident and the conditions that are present that are deemed likely to lead to infestation or infection and the difference between those conditions.~~

~~—In no event, however, shall conditions deemed likely to lead to infestation or infection be characterized as actual "defects" or as actual "active" infestations or infections or in need of correction as a precondition to issuing a certification pursuant to Section~~

~~8519.~~

~~—(f) The report and any contract entered into shall also state specifically when any guarantee for the work is made, and if so, the specific terms of the guarantee and the period of time for which the guarantee shall be in effect.~~

~~—(g) Control service is defined as the regular reinspection of a property after a report has been made in compliance with this section and any corrections as have been agreed upon have been completed.~~

~~Under a control service agreement a registered company shall refer to the original report and contract in a manner as to identify them clearly, and the report shall be assumed to be a true report of conditions as originally issued, except it may be modified after a control service inspection. A registered company is not required to issue a report as outlined in paragraphs (1) to (11), inclusive, of subdivision (b) after each control service inspection. If after control service inspection, no modification of the original report is made in writing, then it will be assumed that conditions are as originally reported. A control service contract shall state specifically the particular wood destroying pests or organisms and the portions of the buildings or structures covered by the contract.~~

~~—(h) A registered company or licensee may enter into and maintain a control service agreement provided the following requirements are met:~~

~~—(1) The control service agreement shall be in writing, signed by both parties, and shall specifically include the following:~~

~~—(A) The wood destroying pests and organisms that could infest and infect the structure.~~

~~—(B) The wood destroying pests and organisms covered by the control service agreement. Any wood destroying pest or organism that is not covered must be specifically listed.~~

~~—(C) The type and manner of treatment to be used to correct the infestations or infections.~~

~~—(D) The structures or buildings, or portions thereof, covered by the agreement, including a statement specifying whether the coverage for purposes of periodic inspections is limited or full. Any exclusions from those described in the original report must be specifically listed.~~

~~—(E) A reference to the original inspection report and agreement.~~

~~—(F) The frequency of the inspections to be provided, the fee to be charged for each renewal, and the duration of the agreement.~~

~~—(G) Whether the fee includes structural repairs.~~

- ~~—(H) If the services provided are guaranteed, and, if so, the terms of the guarantee.~~
- ~~—(I) A statement that all corrections of infestations or infections covered by the control service agreement shall be completed within six months of discovery, unless otherwise agreed to in writing by both parties.~~
- ~~—(2) Inspections made pursuant to a control service agreement shall be conducted by a Branch 3 licensee. Section 8506.1 does not modify this provision.~~
- ~~—(3) A full inspection of the property covered by the control service agreement shall be conducted and a report filed pursuant to subdivision (b) at least once every three years from the date that the agreement was entered into, unless the consumer cancels the contract within three years from the date the agreement was entered into.~~
- ~~—(4) A written report shall be required for the correction of any infestation or infection unless all of the following conditions are met:~~
 - ~~—(A) The infestation or infection has been previously reported.~~
 - ~~—(B) The infestation or infection is covered by the control service agreement.~~
 - ~~—(C) There is no additional charge for correcting the infestation or infection.~~
 - ~~—(D) Correction of the infestation or infection takes place within 45 days of its discovery.~~
 - ~~—(E) Correction of the infestation or infection does not include fumigation.~~
- ~~—(5) All notice requirements pursuant to Section 8538 shall apply to all pesticide treatments conducted under control service agreements.~~
- ~~—(6) For purposes of this section, "control service agreement" means any agreement, including extended warranties, to have a licensee conduct over a period of time regular inspections and other activities related to the control or eradication of wood destroying pests and organisms.~~
 - ~~—(i) All work recommended by a registered company, where an estimate or bid for making repairs was given with the original inspection report, or thereafter, shall be recorded on this report or a separate work agreement and shall specify a price for each recommendation. This information shall be provided to the person requesting the inspection, and shall be retained by the registered company with the inspection report copy for three years.~~

XVII. BOARD MEETING CALENDAR

The next Board meeting will be held on April 19 and 20, 2007 in San Diego. The following meeting will be held July 19 and 20, 2007 in Sacramento.

XVIII. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

Ms. Melton wished to express her appreciation for Mr. Musgrove who is retiring. She also commented that the Board will miss Mr. Logan when he retires.

Jim Brown, D & M Termite Company, commented that the fumigation log that Branch 1 companies currently keep should also be stored at the Branch 3

companies who contracted the fumigation. His concern is that when Branch 1 companies go out of business, the fumigation records are no longer available to the Branch 3 companies. Mr. Brown also suggested requiring that the fumigation log be sent to the Board so there would be additional record storage.

Mr. Chang recommended that the Board defer the public hearing concerning the occupant's fumigation notice to the July Board meeting to allow for suggestions to change the fumigation log at the April Board meeting.

The Board decided that the public hearing would be moved to July to allow for the discussion concerning the fumigation log at the April Board meeting.

XIX. CLOSED SESSION

The Board adjourned to closed session at 12:29 PM to consider proposed disciplinary actions in accordance with subdivision (d)(3) of Section 11126 of the Government Code.

The meeting adjourned at 1:10 PM.

JEAN MELTON, President

KELLI OKUMA, Executive Officer

DATE