

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
JANUARY 23, 2004

The meeting was held on Friday, January 23, 2004, at the Elihu Harris Building, 1515 Clay Street, Oakland, California, commencing at 9:10 AM with the following members constituting a quorum:

Jean Melton, President
Michael Roth, Vice President
Bill Morris
Mustapha Sesay
Gregory Traum
Ken Trongo

Board member Karl Thurmond was not present

Board staff present:

Kelli Okuma, Executive Officer
Barbara Howe, Licensing

Departmental staff present:

Donald Chang, Legal Counsel
Kurt Heppler, Legal Counsel

Board Liaison Deputy Attorney General Robert Eisman was also in attendance.

I. ROLL CALL

Ms. Okuma read the roll call.

Ms. Melton reported that Susan Saylor would not be in attendance today due to a death in her family.

II. REINSTATEMENT HEARINGS

The Board sat with Administrative Law Judge Michael C. Cohn and Deputy Attorney General Harold W. Teasdale to hear the Petition for Reinstatement of James G. De Busk, Operator's License No. 4746. The petitioner was informed he would be notified by mail of the board's decision.

III. CLOSED SESSION

The Board adjourned to closed session to consider proposed disciplinary actions in accordance with subdivision (c)(3) of Section 11126 of the Government Code.

IV. FLAG SALUTE

Ms. Melton led the flag salute.

V. APPROVAL OF OCTOBER 16 AND 17, 2003, BOARD MEETING MINUTES

Mr. Trongo moved and Mr. Sesay seconded to approve the minutes of the meeting of October 16 and 17, 2003. Passed unanimously.

VI. EXECUTIVE OFFICER'S REPORT

Ms. Okuma reported on the following:

- Kathleen Hamilton, Director of the Department of Consumer Affairs, stepped down as Director on December 8, 2003. Ron Joseph, Executive Officer of the Medical Board of California, has been appointed as Interim Director.
- Dennis Patzer, having been identified as a surplus employee in the potential layoff process, accepted a position with another Board within DCA prior to the Board learning that his position was not being cut. However, a staff services analyst position at the Board was cut, and Mr. Patzer elected to proceed with his transfer of employment, thus eliminating the lay-off of a staff services analyst.
- In total since July 2002, the Board lost three full-time permanent and two full-time temporary-help positions.
- A half-time position is vacant, as Elizabeth James, also identified as a surplus employee, found employment at another department. Recruitment efforts are underway to fill the position. Because of lack of interest in a half-time position, the Board has partnered with another Board within the Department and is advertising the position as a full-time job-share position.
- Ms. James was the staff person responsible for conducting the continuing education renewal audits, but as she is no longer with the Board, the duties for the 2003 renewal will be assigned to another staff person until the half-time position can be filled.
- The Employment Development Department (EDD) contracts with the Department of Consumer Affairs to print and mail the Board's licenses and license renewal applications. EDD has also been affected by staff reductions, and reports it is going to take longer, approximately three weeks, to print and mail licenses and license renewal applications. In order to ensure a timely mailing of license renewal applications, the Board has requested an earlier mailing date.

- On December 2, 2003, she attended the Pest Control Operators of California Fumigation Enforcement Committee Meeting where the Los Angeles County Agricultural Commissioners Office presented its Focused Activity Project on fumigation violations. The county conducted 17 undercover operations of fumigations in progress and found that all 17 had violations, some minor and others significant. Staff met with the county and reviewed the cases to determine if any of the cases should be referred to the Board for disciplinary action.
- The Board is proceeding with the Annual Structural Symposium for the county agricultural commissioners. This year's program will focus less on entry-level biologists and more on in-depth issues relative to how the education and enforcement program operates, enforcement action options, and understanding the civil penalty process.
- Susan Saylor and Karen Sanders are developing the continuing education list for acceptable adult education courses to be placed on the website.
- The research grant Request for Proposals is being revised. The Department cannot process the document as the University of California has yet to return the research dollars.
- The Association of Bay Area Governments received a pest alliance grant and will be pursuing a Green Business Certification for structural pest control companies.
- Amendments to the license renewal application to display clear information on the continuing education renewal requirements and consequences of failure to comply, as requested by the Board, have been made by Board staff. The Department may not be able to make the requested amendments in time for this year's renewal cycle.
- Fingerprint requirements reported to be effective January 1, 2004, at the last meeting actually take effect July 1, 2004. Staff is working on a notification to companies, which will be mailed soon.
- The Board again requested that the Department allow it to implement the Applicant Tracking System, as it would allow expeditious handling of the fingerprint process. The Department indicated that its data base system is too fragile to allow the Board to access this existing functionality. The Department attempted to replace the Applicant Tracking System with a system called PLEMS, but it has now been determined that PLEMS will not be implemented, so the Board is limited to the current system of storing licensing and enforcement data.
- The Building Standards Commission held a meeting with Board staff regarding updating of the Building Code, and any impact the update would have on Board regulations that incorporate parts of the Code by reference.
- She attended the CACASA Winter Conference, giving an update on the upcoming fingerprint clearance process, and how that will affect the County Agricultural Commissioners.
- The Governor issued an Executive Order placing a freeze on all contracts and purchases. The Department has since received an exemption from the freeze because we are not a general fund agency.
- The Governor's Executive Order also placed a freeze on the regulatory process. Regulations voted on at the last meeting to be noticed for public hearing were not noticed. However, staff has since learned the Board may be able to proceed with

the public hearings, as the Board would be in compliance at this time with addressing the Governor's areas of concern.

- The Board packages have no licensing survey responses because there were not resources to send out the survey cards.
- There was no reduction in the Governor's Budget for the 2004-05 Budget for the Board.
- Research has begun on the Continuing Education Committee's recommendation to develop regulatory language that would comply with the Federal Insecticide, Fungicide and Rodenticide Act requirements. A report should be available at the next board meeting.
- Licensing statistics and complaint survey results were reviewed with the Board members.

Mr. Sesay questioned the fluctuation in the examination passing score from this time last year. Ms. Okuma responded that she could think of no internal reason to account for the fluctuation other than that it is not completely uncommon to periodically see such fluctuations.

Mr. Roth asked how many of the 17 violations the Los Angeles County Agricultural Commissioner's Office found were identified as significant, and if that amount was expected or not.

Ms. Okuma replied there were only two or three cases significant enough for disciplinary action, and that the members of the Fumigation Enforcement Committee were somewhat surprised at the number of violations, taking the report very seriously.

Mr. Roth felt this should be publicized as something the county agricultural commissioner offices are doing so licensees would know the consequences of violation, feeling that publication would have a deterrent effect on violation-type behavior.

Harvey Logan, Pest Control Operators of California (PCOC), commented that the Fumigation Enforcement Committee and the Association's Executive Committee as a whole were shocked at the results and they already sent out a newsletter to every person, in every branch, across the state. They also contacted Los Angeles and Orange County Agricultural Commissioner's offices and encouraged them to continue the undercover operations. He said the issue had additionally been brought to the attention of the Southern California Fumigator's Group where they were strongly encouraged to either comply with the law or get out of the business.

Mr. Roth asked if word would get to non-members of PCOC.

Mr. Logan responded in the affirmative and mentioned that at the fumigator's meeting last week, because of word-of-mouth, there were 147 attendees instead of the usual 40 to 50.

Ms. Okuma commented that the Board was currently receiving numerous calls from licensees regarding the undercover operations.

VII. BOARD POSITION ON ASSEMBLY BILL 1312 (BERMUDEZ) – EXEMPTION FOR STRUCTURAL PEST CONTROL BOARD LICENSEES FROM FISH AND GAME LICENSING REQUIREMENTS PURSUANT TO SB 1645

Ms. Melton asked Harvey Logan, Pest Control Operators of California, to speak on Assembly Bill (AB) 1312.

Mr. Logan stated that Assembly Member Bermudez had amended AB 1312, a two-year bill that was carried over from the previous year, to provide for an exemption for Structural Pest Control Board licensees from Fish and Game licensing requirements. Unfortunately, in doing so, the process that allowed involvement by other parties was circumvented, as AB 1312 was introduced in the originating house about four days before it had to be heard and pass out of the house. The Fund for Animals objected to the amendment. Assembly Member Bermudez was immediately contacted and asked to submit another bill to allow for full hearings. The new bill is currently at Legislative Counsel and will contain language identical to AB 1312. Mr. Logan requested the Board lend its support to the proposed legislation, and to also adopt a motion pertaining to the implementation of SB 1645, that for purposes of the Fish and Game Commission's regulations implementing this bill, licensees of the Structural Pest Control Board operating under Business and Professions Code Section 8505 be exempt from the licensing requirements.

Mr. Traum moved and Mr. Roth seconded to approve seeking an exemption from Fish and Game licensure requirements by authorizing staff to provide comments consistent with the motion, which would include: the adverse impact on California business economy, Structural Pest Control Board licensee exemption due to current licensure with the Board, another license would be unnecessarily burdensome, and that it is unnecessary to be licensed by two separate agencies when there is already sufficient oversight. Passed unanimously.

Mr. Roth moved and Mr. Morris seconded that the Board support legislation that is consistent with the language of AB 1312 pertaining to the exemption of Structural Pest Control Board licensees from the Department of Fish and Game licensure. Passes unanimously.

IX. APPROVAL OF 2004 STRATEGIC PLAN AND PLAN UPDATE

Ms. Okuma presented the 2004 Strategic Plan for adoption by the Board. The meeting to develop deliverables was postponed due to staff availability, and will be addressed at a later date in the very near future.

Mr. Traum moved and Mr. Roth seconded to adopt the 2004 Strategic Plan. Passed unanimously.

Ms. Okuma reported that because of staffing issues, there were no significant updates to report on the prior strategic plan. She provided, in response to Mr. Morris' prior request,

specific names of public interest groups contacted in response to seeking public attendance and participation at board meetings. She further reported that Ms. Saylor is spending approximately 50 to 80 percent of her time implementing Internet data filing of WDO activities, and she provided the members with a printout of some of the screens relative to the new program.

VIII. STATUS OF LEGAL REVIEW OF LAWS AND REGULATIONS

Deputy Attorney General Robert Eisman reported on his progress with the review and rewrite of the statutes and regulations to ensure their effectiveness. He stated that on October 21, 2003, an initial planning meeting had been held at DCA to address how to approach accomplishing this task, and it was decided to divide the work between the Attorney General's Office and DCA's legal counsel. There have been two follow-up sessions at DCA and others would continue on a monthly basis. At this time, Articles 1, 2, 2.5 and 3 of the Business and Professions Code, Division 3, Chapter 14 were being addressed. The target date is December 31, 2005, for a complete package revision of both the statutes and regulations, and according to the current working plan a presentation would be ready for the Board by September 2004.

X. PROPOSED AMENDMENT OF SECTION 1953(G) TO MAKE CLEAR THAT CONTINUING EDUCATION CANNOT BE EXTENDED TO COURSES THAT FOCUS ON SALES AND MARKETING ACTIVITIES OF ANY TYPE

Ms. Okuma reported that at the last meeting, the Board directed that staff prepare specific language to amend section 1953(g) to make it clear that continuing education credit cannot be extended to courses that focus on sales and marketing activities of any type. The specific language was submitted for the Board's consideration.

Mr. Traum moved and Mr. Sesay seconded to notice the following language for public hearing:

§1953. Approval of Activities.

(a) Providers of activities of continuing education in pest control shall request approval as a provider and of activities on forms provided by the Board (See Form 43M-18 (Rev. 3/87) at the end of this section) accompanied by the required fees. Requests for approval of activities must be submitted to the Board no later than 60 days prior to presentation of the activity unless exception is granted by the Registrar.

(b) All providers must notify the Board 30 days prior to the presentation of any board approved activity, unless exception is granted by the Registrar.

(c) All providers must submit a course attendance roster (See Form No. 43M-46(New 3/93) at the end of this section) to the Structural Pest Control Board within five working days after every course instructed.

(d) After giving the provider a written notice and an opportunity to respond, the Board may withdraw approval of any activity, when good cause exists. Good cause shall include, but

not be limited to, failure actually to meet the standards for approval of activities which are outlined in subsection (f) of this section.

(e) Unless otherwise indicated on the written notification of approval, or unless an approval is withdrawn by the Board at an earlier date, approval of each activity shall remain in effect for 3 years.

(f) In order to be approved, activities must be:

(1) Directly related to the field of structural pest control;

(2) Provided by an institution, association, university, or other entity assuming full responsibility over the course program;

(3) Composed of a formal program of learning which requires attendance and participation, and which provides at least one hour of instruction, a syllabus, an evaluation method on Form No. 43M-39 (NEW 5/87) (which is printed at the end of this section), a certificate of completion on Form No. 43M-38 (NEW 5/87) (which is printed at the end of this section); and,

(4) Conducted by an instructor who has qualified by meeting two of the following experience requirements:

(A) Completion of training in the subject of the activity,

(B) Six months' experience working in the area covered by the activity within the preceding three years,

(C) Experience teaching an activity of similar content within the preceding five years,

(D) Completion of any post-secondary studies related to the subject matter of the activity,

(E) Author of the activity being reviewed, or a credentialed instructor.

(g) No activity which focuses on marketing the policies, ~~procedures or~~ products of a single firm, ~~or which consists of meetings which are a normal part of in-house staff or employee training~~ shall be approved.

Passed unanimously.

XI. LAWS AND REGULATIONS COMMITTEE RECOMMENDATION TO AMEND CODE SECTION 8516 REGARDING INSPECTION LANGUAGE REQUIREMENT ON INSPECTION REPORTS

Ms. Okuma reported that although the Laws and Regulations Committee made its report at the last Board meeting, proposed amendments to Business and Professions Code section 8516 was omitted from that agenda. The committee has been directed to review a proposed regulation that would require that specific language regarding reinspections be included on the inspection report. The committee met and instead recommended to incorporate the language into statute, and that the proposed amendment be incorporated into the overall review being conducted as part of the Board's strategic plan.

John Van Hooser, Ultratech Division, commented that the idea of putting the language into statute rather than regulation was delaying the recommendation, and requested the Board proceed with the regulatory process.

Mr. Chang recommended the Board table the issue to allow counsel to review the matter.

X. PROCEDURES FOR CONDUCTING CONTINUING EDUCATION COURSE AUDITS / QUALITY CONTROL

Mr. Roth questioned how the Board would know if continuing education courses were being conducted properly and if the syllabus was being followed.

Ms. Okuma responded that the Board's specialists do audits of continuing education courses. Specialists either attend the activity unannounced, or register as a participant.

John Van Hooser, Ultratech Division, questioned how electronic and correspondence courses are audited. Ms. Melton recommended this issue be placed on the agenda for the next Board meeting.

Mr. Roth stated that he has no great comfort that Board staff is doing a good job auditing continuing education providers, and he questioned if the education in the field was effective.

Bill Gillespie, government watcher, stated that the free enterprise system with feedback from participants was important. He referenced the evaluation form that course participants received, which is required by the Board, was a tool to determine whether course content was effective.

XII. PROPOSED AMENDMENT OF SECTION 1950.5 TO PROVIDE THAT ATTENDANCE AT STRUCTURAL PEST CONTROL BOARD MEETINGS FOR CONTINUING EDUCATION WILL RECEIVE ONE RULE AND REGULATION HOUR AND ONE GENERAL HOUR AND BE EXEMPT FROM EXAMINATION REQUIREMENTS

Larry Musgrove, Western Exterminator Company, requested that the Board amend section 1950.5 to allow one rules and regulations continuing education hour and one general continuing education hour for Structural Pest Control Board meetings, and to exempt the activity from examination requirements.

Mr. Roth moved and Mr. Sesay seconded to notice for public hearing an amendment to section 1950.5 to allow one general hour and one rules and regulations hour for Structural Pest Control Board meeting, and to exempt the activity from examination requirements pursuant to that section. Passed unanimously.

XVI. APPROVAL OF EDWARD ACKERMAN TO THE DISCIPLINARY REVIEW COMMITTEE

Ms. Okuma reported that the Board has a Disciplinary Review Committee (DRC) and, as need arose, any committee member in the pool might be asked to hear a licensee's appeal of a County Agricultural Commissioner's (CAC) civil penalty. When a CAC issues a Notice

of Proposed Action, the licensee has the right to appeal the notice, and that appeal can go to the level of the DRC. The DRC is comprised on one representative from the Department of Pesticide Regulation, one from the Board, and one from the industry. Currently there is only one approved individual in the pool, and while there might not be a need to hear an appeal for as long as a year or two, the pool is still necessary. Mr. Edward Ackerman had applied for consideration as a committee member of the DRC. His letter of request for consideration, license histories, background and resume were in the Board packages. She stated she had known Mr. Ackerman for a number of years, he was very active in attending past Board meetings, and was in attendance today to respond to any questions the Board Members may have.

Mr. Trongo moved and Mr. Sesay seconded to appoint Mr. Edward Ackerman to the Disciplinary Review Committee. Motion passed (Aye – Melton, Roth, Sesay, Traum, Trongo. Abstain – Morris).

XI. LAWS AND REGULATIONS COMMITTEE RECOMMENDATION TO AMEND CODE SECTION 8516 REGARDING REINSPECTION LANGUAGE REQUIREMENT ON INSPECTION REPORTS (revisited)

Mr. Heppler recommended the language be amended into existing regulation, and to notice the proposed language for public hearing. The record should be reviewed to determine why the Office of Administrative Law rejected the previous file, making sure the basis for rejection was not statutory, and if necessary, the Board could modify the language at the public hearing.

Mr. Trongo moved and Mr. Sesay seconded to notice for public hearing the proposed language as follows:

“This company will reinspect repairs done by others within four months of the original inspection. A charge, if any, can be no greater than the original inspection fee for each reinspection. The reinspection is a visual inspection and if inspection of concealed areas is desired, inspection of the work in progress will be necessary. Any guarantees must be received from parties performing repairs.”

Passed unanimously.

XIV. PROPOSED ELIMINATION OF WDO ACTIVITY REPORT FORM (FLATS) 43-M-52 AS MEANS OF SUBMITTING WDO ACTIVITY DATA TO THE BOARD

Ms. Melton asked that this agenda item be placed on the April Board meeting agenda.

XVII. BOARD MEETING CALENDAR

The next Board meeting will be held April 22 and 23, in San Diego. The following meeting will be held July 22 and 23, 2004, in Sacramento.

XVII. PROPOSED REGULATION FOR COURSE REQUIREMENTS PURSUANT TO SECTION 8617

Ms. Okuma reported that section 8617 of the Business and Professions Code contains a provision that whenever a County Agricultural Commissioner issues a civil penalty against a structural licensee, the county may levy a civil penalty or direct the licensee to attend and pass a Board-approved course at a cost not to exceed that civil penalty. Proposed language was developed to implement the statutory provision.

Mr. Sesay moved and Mr. Roth seconded to notice for public hearing the following proposed regulation:

1922.3 Course Requirement By County Agricultural Commissioners

(a) When, pursuant to Business and Professions Code section 8617, a lawful order is made by a county agricultural commissioner to direct a licensee to take and pass a board approved course of instruction, the licensee prior to taking the course shall submit the name of the course and documentation regarding its content to the same agricultural commissioner for review and approval.

(b) The submittal for approval shall be made within twenty (20) days of the order. The county agricultural commissioner shall make a decision and respond to the licensee within twenty (20) days.

(c) The course of instruction shall have content that directly addresses applicable pesticide use laws, regulations and the practice of structural pest control relating to the violations committed. After completion of the approved course, the licensee shall take and pass an examination provided by the course provider that directly relates to the course content. A passing score for the examination shall reflect that the licensee correctly answered at least seventy percent (70%) of the examination questions.

(d) After passing the examination, the licensee shall obtain a certificate of course completion from the course provider. As proof of compliance, the licensee shall submit the certificate to the county agricultural commissioner who issued the Notice of Proposed Action within twenty (20) days of course completion.

(e) The licensee must comply with the order within ninety (90) days. The commissioner shall have the discretion to extend this date up to one hundred eighty (180) days after issuance of the Notice of Proposed Action.

Note: Authority cited: Section 8525, Business and Professions Code.
Reference: Section 8617, Business and Professions Code.

Passed unanimously.

XVIII. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

There were no comments from the audience.

Ms. Melton adjourned the meeting at 1:30 PM.

JEAN MELTON, President

KELLI OKUMA, Executive Officer

DATE