

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
APRIL 8, 2005

The meeting was held on Friday, April 8, 2005, at the Sheraton Pasadena, 303 East Cordova Street, Pasadena, California, commencing at 8:12 AM with the following members constituting a quorum:

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

Board member Cris Arzate was not present

Board staff present:

Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Barbara Howe, Administration Analyst

Departmental staff present:

Kurt Heppler, Legal Counsel

Board Liaison Deputy Attorney General Christina Thomas was also in attendance.

I. ROLL CALL

Ms. Saylor read the roll call.

II. FLAG SALUTE

Mr. Trongo led everyone in the flag salute.

III. APPROVAL OF JANUARY 14, 2005 BOARD MEETING MINUTES

Mr. Morris moved and Mr. Trongo seconded to approve the minutes of the special meeting of January 14, 2005. Passed unanimously.

IV. EXECUTIVE OFFICER'S REPORT

Ms. Saylor reported on the following:

- Licensing statistics and survey results were reviewed with the Board members.
- At a pre-hearing in the Assembly the statewide pro-rata was increased this fiscal year for the research fund based on the Board's contract two years ago with UC Berkeley. Although the Board is in consent with the Senate, all budgets for the Department are currently on hold due to some concerns with other Boards.
- The Department reviewed today's Public Hearing regulation package and expressed their opinion that it would not be approved based on the fee increase and continuing education requirements for Applicators.
- Renewal notifications will be sent out by the end of April 2005 for all licenses expiring June 30, 2005.

Ms. Okuma reported on the following:

- Complaint Handling statistics and survey results were reviewed with the Board members.
- As of April 1, 2005, there were nineteen (19) registered companies and fifty-three (53) licensees on probation.
- The objective for a written survey to determine the scope of industry practices had fallen behind the due date of March 31, 2005. Surveys should be mailed within the next couple weeks.
- The first step in implementing computer-based testing as a means for improving the examination process was completion of an occupational analysis. Branch 1 surveys had been mailed to gather information regarding tasks and knowledge.
- Board staff was still in the process of working with the Department's Telecommunications Unit to contract with a vendor to update the Board's current telephone system. This first step must be completed before a vendor can determine the type of call features required to record conversations between Board staff and the public for quality control purposes.
- Legislative Bills were reviewed with the Board members;
Senate Bill 954 - introduced by Senator Figueroa, would declare the intent of the Legislature to enact legislation to modernize and improve state government operations.
Senate Bill 834 – introduced by Senator Figueroa, spoke to the same issue and declared the intent of the Legislature to reorganize and improve the performance of State Government based on recommendations from the California Performance Review. Ms. Okuma said the Director of the Department of Consumer Affairs had indicated that while the Department did not have any position on these bills per se, it supported the Governor's goals to improve government efficiency.

Assembly Bill 87 – introduced by Assembly Member Bermudez, would exempt a structural pest control operator licensed by the Structural Pest Control Board and a person or business licensed or certified by the Department of Pesticide Regulation from the licensing requirement for the trapping of mammals, and she had issued several letters to various representatives regarding the Board’s support of this bill.

Assembly Bill 226 – introduced by Assembly Member Negrete McLeod, would require that the Joint Committee on Boards, Commissions, and Consumer Protection, during Sunset Review, also consider whether the functions of a board would be accomplished more effectively if that board was replaced by a single executive officer.

Assembly Bill 293 – introduced by Assembly Member Maze, would in part require that the Department of Consumer Affairs record the number of consumer complaints regarding home inspectors, although not requiring their mediation, and would also make it unlawful for a home inspector to make any recommendation regarding the need for structural pest control.

Assembly Bill 405 – introduced by Assembly Member Montanez, would prohibit, in specified circumstances, the use of specified pesticides on a school site.

Assembly Bill 485 – introduced by Assembly Member Arambula, would create within the State and Consumer Services Agency a business license center to develop and administer a computerized master business license system to simplify the process of engaging in business in California.

Assembly Bill 552 – introduced by Assembly Member La Suer, would change the one-year statute of limitations in the processing of administrative penalties. It would require the Notice of Proposed Action be sent within 60 days of the initial Notice of Violation, and if the proposed action were not taken within 90 days after specified dates, the citation would be dismissed with prejudice.

Assembly Bill 861 – introduced by Assembly Member Bass, would exempt certain licenses from provisions authorizing the denial of licensure for the conviction of a crime with respect to conviction for a nonviolent drug possession offense, or a misdemeanor or felony which was not serious or violent, if certain other conditions were met.

Mr. Trongo moved and Mr. Sesay seconded to oppose Assembly Bill 861.
Passed unanimously.

Senate Bill 872 – introduced by Senator Denham, would make a technical non-substantive change.

Assembly Bill 1024 – introduced by Assembly Member Walters, would abolish a number of Boards and transfer their responsibilities to the Department of Consumer Affairs.

Senate Bill 229 – introduced by Senator Figueroa, would extend the sunset dates for the Structural Pest Control Board.

Senate Bill 332 – introduced by Senator Battin, would authorize the Secretary of Food and Agriculture to adopt new quarantine prohibitions for the Red Imported Fire Ant.

Senate Bill 509 – introduced by Senator Florez, would provide that when pesticide applications take place on public property, written notification be received at least 24 hours in advance in both Spanish and English to every person within one mile of the pending application.

Senate Bill 577 – introduced by Senator Figueroa, would also declare the intent of the Legislature to enact legislation to improve the efficiency and accountability of state government.

Senate Bill 879 – introduced by Senator Escutia, would require that initiation and completion of human illness investigations in regards to pest control violations take no longer than 60 days, and that civil penalties be levied for violations that create or pose actual health or environmental hazards.

Mr. Roth moved and Mr. Sesay seconded to delegate authority to the Executive Officer to transmit a letter to Assembly Member La Suer's office asking for clarification regarding the juxtaposition of the words Citation, Notice of Violation and Proposed Action, indicating the Board's opposition to Assembly Bill 552. Passed by majority. (Aye – Melton, Roth, Sesay. No – Morris, Trongo)

- The Regulatory Action Status Update was reviewed with the Board members.

V. REQUEST FROM JIM SHAVER TO RESCIND THE NAMESTYLE "CALIFORNIA ANTBUSTERS"

Jim Shaver, owner-operator of Antbusters, stated that he felt the code was clear on the proper procedure for a company to request and have a namestyle registered with the Structural Pest Control Board. Section 1914 mandated a namestyle not be similarly confusing and in this case, the Board had granted the name "California Antbusters," which he said Board staff and his customers deemed similarly confusing. Both companies conducted business in the same geographic area, with 68% of his business within ten miles of "California Antbusters." He believed common sense and logic dictated that the two names were deemed similar and confusing. He felt the Board granted the namestyle in direct contradiction to Section 1914, did not feel there was any way it could be said these names were not similar and confusing, and that the namestyle "California Antbusters" was invalid, in direct contradiction to that statute. He was asking the Board to revoke the namestyle.

Mr. Heppler stated he would not comment on the merits of the claims but would speak to process. The Board was in uncharted territory and the issue was something both parties had a substantial vested interest in as they both had spent advertising dollars, established phone numbers, and acquired business from these endeavors. The question was if the Board entertained how to take the name back, how would they go about it. The issue was not in the nature of a disciplinary proceeding because there was no accusation on either side regarding violations of Civil Codes or rules or regulations, it was a dispute about a

Board action. So if the Board wanted to entertain rescinding the name “The California Ant Busters,” the proper forum would be one similar to a full Administrative Procedures Act Hearing where both sides would have the opportunity to produce evidence as to why they felt their name was or was not confusingly similar, complete with sworn affidavits from consumers. An Administrative Law Judge would then make a decision as to whether the name was confusingly similar or not. The problem with making a decision today was that no one had been properly sworn in, anecdotal evidence had been presented, and a Board meeting was the improper forum for the Board to make such a decision.

Mr. Morris moved and Mr. Sesay seconded that the Board take no action on this matter. Passed unanimously.

VI. DISCUSSION AND POSSIBLE ACTION ON RECOMMENDATIONS FROM THE JOINT COMMITTEE ON BOARDS, COMMISSIONS AND CONSUMER PROTECTION

Ms. Okuma stated the Sunset Hearing process was concluded and the Board was awaiting final recommendations from the Joint Sunset Review Committee. This item was placed on the Agenda in anticipation of those recommendations.

VII. DISCUSSION AND POSSIBLE ACTION OF DEPARTMENT OF CONSUMER AFFAIRS INTERNAL AUDIT

Ms. Okuma stated the Department of Consumer Affairs had conducted an audit of the Board. This item was placed on the agenda in anticipation of receiving the draft audit report. When received, staff would prepare a formal response after which the Department would make their final report, and the Board would subsequently be notified of those results.

VIII. DISCUSSION OF PROPOSED PROCEDURES FOR CONDUCTING FUTURE STRATEGIC PLANNING SESSIONS

Mr. Morris asked that this Agenda item be tabled to a future date.

IX. PUBLIC HEARING TO AMEND SECTIONS:

- A. 1914 TO ELIMINATE THE REQUIREMENT THAT THE STRUCTURAL PEST CONTROL BOARD NOT ISSUE COMPANY REGISTRATIONS IN A NAME STYLE IT DEEMS CONFUSINGLY SIMILAR TO THAT OF ANOTHER REGISTERED COMPANY

- B. 1918 TO RE-STATE THE PROVISIONS FOR SUPERVISION OF COMPANIES WITH MORE THAN ONE LOCATION AND CLARIFY RESPONSIBILITIES OF QUALIFYING MANAGERS AND SUPERVISORS
- C. 1920 TO SPECIFY THAT A SECOND INFORMAL CONFERENCE FOR A MODIFIED CITATION WILL NOT BE ALLOWED
- D. 1948 TO REVISE THE FEE FOR AN APPLICATOR'S LICENSE AND LICENSE RENEWAL
- E. 1950 TO SPECIFY THE NUMBER AND TYPE OF CONTINUING EDUCATION HOURS REQUIRED TO RENEW AN APPLICATOR'S LICENSE
- F. 1983 TO CLARIFY REFERENCES TO RODENTICIDE AND AVICIDE BAIT STATIONS
- G. 1991 TO DELETE SPECIFIC RECOMMENDATIONS RELATIVE TO WOODEN DECKS, STAIRS AND LANDINGS THAT ARE ALREADY COVERED IN SECTION 1991(a)(5)
- H. 1993 AND 1998 TO ELIMINATE REFERENCES TO FILING INSPECTION REPORTS AND NOTICES OF WORK COMPLETED, AND REQUIRE THE FILING OF PROPERTY ADDRESSES INSPECTED AND UPON WHICH WORK HAS BEEN COMPLETED.

Mr. Heppler announced for the record that this hearing was to consider the proposed changes, amendments, adoption and repeal of Board rules sections 1914, 1918, 1920, 1948, 1950, 1983, 1991, 1993 and 1998 as outlined in the Public Notice. At this time the hearing was open to take oral testimony and/or documentary evidence by any person interested in these regulations for the record, which was being made by tape recorder. All oral testimony or documentary evidence would be considered by the Board pursuant to the requirements of the Administrative Procedures Act before the Board formally adopted the proposed amendments to the regulations, or recommended changes that may evolve as a result of the hearing.

If any interested party desired to provide oral testimony, it would be appreciated if he or she stood or came forward, giving their name, address and name of any organization they represented, for a complete record of all those who appear. He stated it was the desire of the Board that the record of the hearing be clear and intelligible and that the hearing itself be orderly, thus providing all parties with fair and ample opportunity to be heard. The purpose of the hearing was to receive comments upon the proposed regulatory changes. It was not a forum for debate or defense of the regulations. It was not necessary to repeat the statements or views of the previous speaker, as it was merely sufficient to state agreement. Written statements summarized and submitted to the Board concurrently would not be read. After all interested parties, if any, had been heard, the issue would stand submitted before the Board.

Mr. Heppler asked the audience if there were any questions concerning the nature of the proceedings or the procedures to be followed in today's Public Hearing. As there were none, he opened the hearing to the public for oral testimony and/or documentary evidence.

Proposed Amendment of Regulation Section 1914

John Van Hooser, Van Hooser Enterprises, commented that:

- He understood the problem staff had complying with section 1914 and saw earlier the problems that could arise from it, but he felt it should be looked at some more as there should be some way companies applying for a name could be notified they might be sued if their name was similar to someone else's. He was not sure this amendment would solve the problem and was on the fence as to being in favor or opposed to it.

Ken Gordon, Gordon Termite Control, commented that:

- He felt the Board was in a difficult position; however, if the amendment did become law, he asked that the Board consider publishing newly issued company names in a newsletter.

Harvey Logan, Pest Control Operators of California (PCOC), questioned:

- Who would review name styles if the staff and the Board did not.

Mr. Roth stated the Secretary of State approved the organizing of documents for corporations, partnerships and LLC's.

Harvey Logan responded the number of corporate entities within structural pest control was rather small as the majority were sole ownerships. Therefore, there would not be review by any person on the vast majority of businesses.

Larry Musgrove, Vice President of Company Affairs, Western Exterminator Company, commented that:

- He had reservations about the Board giving up this responsibility. It worked well and staff performed a good job. He said when there was a dispute it was usually because the Board overrode staff recommendations, so he felt the Board could be more sensitive when rescinding staff decisions. He felt structural pest control was a large mom-and-pop industry and similar name styles would be cropping up all over the place with the elimination of namestyle oversight.

Darrell Ennes, Terminix International, commented that:

- He concurred with both Mr. Musgrove and Mr. Logan. He stated there were approximately 1800 registered companies in California of which only a small portion were registered with the Secretary of State. He felt the current staff had served the system and the industry well. Similarly confusing names confused not only industry members but also the consumer. If the Board would not determine confusingly similar name styles, there was basically no one who would. He was in opposition of this amendment.

Stephen Roy, Highridge Pest Control, commented that:

- Today demonstrated what happens when the Board approves and disapproves names. He felt the system that worked 50 to 60 years ago was adequate but that with 1800

companies now there was no possible way to avoid repetition. Existing forums were already in place, such as the Secretary of State, the filing of dba's, and intellectual property right searches, so these could settle name matters rather than the Board. He was in favor of the amendment.

Ronald Pelham, Dewey Pest Services, commented that:

- He was very much opposed to the Board dropping their responsibility. The system had worked for 40 or 50 years with not that many problems. He felt what happened today with the Antbusters disagreement was majoring in minors and minoring in majors and this did not happen all the time.

Kevin Etheridge, Contractors Termite Control, commented that:

- He agreed with Mr. Larry Musgrove.

Marie Evans, Northstar Exterminators, commented that:

- She agreed with Mr. Larry Musgrove. She felt it would be chaotic for staff and the Board if there were twenty-five California Termite Controls and there were complaints, as it might be difficult to find out which California Termite Control was being referenced.

Proposed Amendment of Regulation Section 1918

Bill Gillespie, government watcher, commented that:

- As a provider of continuing education he received lots of calls over the years regarding being a qualifying manager. He felt that whatever was put into regulation needed to be written clearly.

Proposed Amendment of Regulation Section 1920

There were no public comments.

Proposed Amendment of Regulation Section 1948

Harvey Logan, Pest Control Operators of California (PCOC), commented that:

- It was his impression the Department of Consumer Affairs suggested that the Board not pursue this amendment.

John Van Hooser, Van Hooser Enterprises, commented that:

- The statute called for a fee although one had never been placed into regulation. He liked the idea that the applicator would have to pay a license fee the same as the field representative. If statistics were examined, the number of applicators and field representatives could be seen drawing closer together and he thought more people would be getting the field representative license instead of an applicator's license, so in the future the applicator's license could be done away with. He asked how could this not be done. The statutes called for a fee. However, all the years the applicator license had been around there had never been a fee charged. He said this was insane.

Proposed Amendment of Regulation Section 1950

Bill Gillespie, government watcher, commented that:

- His comments were in writing and he appreciated Ms. Saylor's help in unearthing his comments from three years ago when this amendment was first heard. He had revised that letter and wished to submit it today. He felt 16 hours of continuing education was a little much in view of the limited required competence for what an applicator was allowed to do, which was apply pesticides. This was the same requirement for an operator or a field representative and 12 of those 16 hours were on pesticide application and use. He felt it was too much for their limited area of expertise because an applicator was not allowed to identify pests yet could go out and apply a pesticide and select it without knowing what they were applying it for. He felt it would be advisable to reduce the requirement to 12 hours, with 8 in Board approved pest identification and control, including pesticide application and use. The law currently required the applicator acquire training in pesticide application and use, but did not prohibit other things, which were identification of that pest and their habits. He felt this focus was too narrow and that long-range, their time period should be limited before obtaining a field representative or an operator's license. He felt this was of critical importance because throughout the state applicators were being allowed to identify pests and select the pesticide and formulation to use on a job, so limiting their status to one year would mitigate that problem.

John Van Hooser, Van Hooser Enterprises, commented that:

- The statute required that all licensees obtain continuing education and this requirement had never been applied to an applicator. On its face he felt the applicator needed to have continuing education but agreed there were problems with working out the time. If there were a different set of circumstances for applicators as opposed to the other licensees, it would be confusing as to how many hours were required and in what category. When there were three activities there was confusion, so continuing education had been simplified to the same for all licensees. If this section was amended, and he felt it should be, it would cost an applicator a minimum of \$150 to obtain their continuing education. The result would be that applicators would retake the test for \$30 and continuing education could be ignored due to the cost factor. He stated again that he was in favor of the regulation as it was proposed.

Larry Musgrove, Western Exterminator Company, commented that:

- He was in favor of the proposal. It was a three-year license, there were four hours a year on pesticide knowledge and training and one hour basically for rules and regulations. He did not feel it was an extreme demand on either the applicator or the company and highly recommended going ahead with the proposal. He wanted to remind the audience that the applicator license, when instituted, was designed for an entry-level employee, the first step to becoming a field representative in the pest control industry and again highly recommended going forward with this amendment.

Proposed Amendment of Regulation Section 1983

There were no public comments.

Proposed Amendment of Regulation Section 1991

There were no public comments.

Proposed Amendment of Regulation Section 1993

There were no public comments.

Proposed Amendment of Regulation Section 1998

There were no public comments.

There being no further public comments, Mr. Heppler concluded the regulatory hearing and opened up the proposals for Board discussion.

Proposed Amendment of Regulation Section 1914

Mr. Trongo commented it was his understanding that the Real Estate Board, Contractor's Licensing Board, Bureau of Automotive Repair and various other entities did not regulate company names. Those Boards and Bureaus seemed to function just fine, as did their industries. There were millions of businesses in the United States all over the country with probably the same name. His opinion was the Board should not control the names of registered companies, and he questioned why this worked for others but appeared to not work for the pest control industry.

Mr. Roth commented that Mr. Trongo made a good point.

Mr. Smitley stated that in the pest control industry there were vehicles all over the roads with their names and phone numbers painted on them. Doctors did not advertise like this, nor did the auto or dental industry, so this one item of advertising was something other Boards and Bureaus were not required to deal with. He could see a problem if there were five Dewey Pest Control trucks out there for five separate companies with that name.

Mr. Sesay said in the pest control industry the company name meant more than it did in a bar, as most people did not go drink because of the bar's name, they drank because they knew the bartender and wanted a drink. With a pest control company, however, it was more important that people knew that the company was trust-worthy.

Mr. Heppler, as staff counsel for the Bureau of Automotive Repair, stated for the record, that the Bureau had no provision in their code or regulations to regulate, nor did it involve itself in the issuance of company names.

Mr. Trongo commented it seemed to him there was an apparatus in place to give any business owner the legal ability to pursue a cease and desist order, for example, against anyone using the same name in the same location. He was sure in the case of Antbusters, for example, that both had a legal right they could pursue. And, as Mr. Heppler pointed out, the Board was not in a position to dictate who could use or not use a name, as the Board was not a court of law. This existed in the entire country; if one wanted the same name as someone else, each had the right to take the other to court for the right to use that name.

Ms. Thomas commented she felt Mr. John Van Hooser brought up a good point about how one determines when there is a similar name. Was the Board qualified, was this the Board's business, and who was really in a position to state that one name was similar to another.

Ms. Okuma stated the issue had been originally presented to the Board as a recommendation from staff. While the Board members would see that rare instance when an individual appeared before the Board, staff spent a significant amount of time discussing disapproved name styles with licensees on an almost daily basis. It was staff's sense that their time would be better spent issuing licenses and administering examinations. As Ms. Thomas stated, it was subjective as to what one might think was confusingly similar versus what another would consider confusingly similar.

In response to Mr. Morris' question, Ms. Okuma replied the individuals calling to complain were those who had their company name style disapproved, and if a name had been approved, the disgruntled caller would be a competitor.

Mr. Roth moved and Mr. Trongo seconded to adopt the proposed amendment to section 1914 of the California Code of Regulations as follows:

§1914. Name Style--Company Registration.

No company registration certificate shall be issued in a fictitious name which the board determines ~~to be confusingly similar to the name of another registered company, or which is likely to be confused with that of a governmental agency or trade association.~~ No company registration shall be issued in the same name ~~or in a name style which the board determines is confusingly similar to the name~~ of a firm whose company registration has been suspended or revoked unless a period of at least one year has elapsed from the effective date of the suspension or revocation.

It shall be grounds for disciplinary action for a registered company to use the telephone number and/or name style of a firm whose company registration has been suspended or revoked, without the prior written approval of the board.

Passed by majority. (Aye – Melton, Roth, Sesay, Trongo. No – Morris)

Proposed Amendment of Regulation Section 1918

Mr. Trongo moved and Mr. Morris seconded to adopt the proposed amendment to section 1918 of the California Code of Regulations as follows:

§1918. Supervision of Registered Companies and Branch Offices.

"Supervise" as used in Business and Professions Code Sections Sections 8506.2, 8610 and 8611 means the oversight, direction, control, and inspection of the daily business of the company and its employees, and the availability to observe, assist, and instruct company employees, as needed to secure full compliance with all laws and regulations governing structural pest control ~~actual on-site supervision.~~

In cases of ownership of more than one registered company by the same sole owner, corporation or partnership where the qualifying manager or managers cannot supervise ~~provide actual on-site supervision~~ to each registered company because of the location of the companies, the qualifying manager or managers ~~registered company~~ may designate an individual or individuals licensed as an operator or as a field representative in the branch or branches of business being conducted to supervise the company ~~provide actual on-site supervision~~. The designated supervisor or supervisors ~~supervision~~ must be under the direct supervision of the qualifying manager or managers. Any such ~~This~~ designation of supervisors ~~supervision~~ does not relieve the qualifying manager or managers of responsibility ~~his or her responsibilities~~ to supervise as required in sections 8506.2 and 8610.

Passed unanimously.

Proposed Amendment of Regulation Section 1920

Mr. Morris moved and Mr. Trongo seconded to adopt the proposed amendment to section 1920 of the California Code of Regulations as follows:

§1920. Citations and Fines.

(a) Authority to Issue Citations and Fines:

(1) The Registrar or Deputy Registrar of the Board is authorized to issue citations which may contain an order of abatement or an administrative fine ("fine") for violations of the statutes contained in the Structural Pest Control Act (commencing with Business and Professions Code Section 8500) or the regulations adopted by the Board.

(2) Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute(s) or regulation(s) alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

(b) Citation; Assessment of Fine:

Citations may be issued without the assessment of a fine. The amount of any fine to be levied by the Registrar or Deputy Registrar shall be no more than \$5,000.

In determining whether a citation shall contain an order of abatement or a fine and if a fine is to be imposed, the Registrar or Deputy Registrar shall consider the following factors:

- (1) Gravity of the violation.
- (2) History of previous violations of the same or similar nature.
- (3) The good or bad faith exhibited by the cited person.
- (4) Evidence that the violation was willful.
- (5) The extent to which the cited person cooperated with the Board's investigation.
- (6) The extent to which the cited person has mitigated or attempted to mitigate any damage caused by his or her violation.
- (7) Such other factors as the Registrar or Deputy Registrar considers relevant.

(c) Citations for Unlicensed Practice:

The Registrar or Deputy Registrar of the Board is authorized to issue citations which may contain order of abatement or a fine against persons who are performing or who have performed services for which a structural pest control license is required under the Structural Pest Control Act. The citation issued under this section shall be separate from and in addition to any other civil or criminal remedies.

(d) Compliance with Orders of Abatement:

When a citation is not contested or if the citation is appealed and the person cited does not prevail, failure to comply with the order of abatement or to pay the fine in the citation within the time allowed by a licensee may result in disciplinary action being taken by the Board against the person cited, or where the cited person is unlicensed in appropriate judicial relief being taken against the person cited.

(e) Contest of Citations:

(1) In addition to requesting a hearing provided for in subdivision (b)(4) of section 125.9 of the code, (hereinafter "administrative hearing"), the person cited may, within ten (10) days after service or receipt of the citation, notify the Registrar or Deputy Registrar, as designated, in writing of his or her request for an informal conference with the designated Registrar or Deputy Registrar. The informal conference shall include at least one, but no more than two, industry members of the Board, as designated by the Registrar.

(2) The informal conference shall be held within 60 days from the receipt of the request of the person cited. At the conclusion of the informal conference, the Registrar or Deputy Registrar may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The decision shall state in writing the reasons for the action and shall be served or mailed to the person within ten (10) days from the date of the informal conference. ~~This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.~~

(3) The person cited does not waive his or her request for ~~a~~an administrative hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the Registrar or Deputy Registrar. If the citation is dismissed after the informal conference, the request for ~~a~~an administrative hearing on the matter of the citation shall be deemed to be withdrawn. ~~If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days in accordance with subdivision (b)(4) of section 125.9 of the code. If the informal~~

conference results in the modification of the findings of violation(s), the amount of the fine or the order of abatement, the citation shall be considered modified, but not withdrawn. The cited person shall be entitled to an administrative hearing to contest the modified citation if he or she made a request in accordance with subdivision (b)(4) of section 125.9 of the code for an administrative hearing, within thirty (30) days after service of the original citation. The cited person shall not be entitled to an informal conference to contest a modified citation. If the cited person did not make a request for an administrative hearing after service of the original citation, the decision in the modified citation shall be considered a final order.

Passed unanimously.

Proposed Amendment of Regulation Section 1948

Ms. Okuma explained that the current fee of \$15 an applicator paid was an exam fee, which went directly to the County Agricultural Commissioner's office that administered the test and was the only fee the applicator paid to receive their license.

Mr. Trongo commented this was a case of economics, because if it cost to issue applicator licenses, the Board should recover that cost.

Ms. Okuma replied there indeed was a cost. The Board had one full time position in licensing solely dedicated to the task of issuing licenses and renewals to applicators.

Mr. Trongo responded it then made sense to charge the fee for the license and the fee for the license renewal.

Mr. Trongo moved and Mr. Morris seconded to adopt the proposed amendment to section 1948 of the California Code of Regulations as follows:

§1948. Fees.

(a) Pursuant to the provisions of section 8674 of the code, the following fees are established:

- (1) Duplicate license. . . \$ 2
- (2) Change of licensee name. . . \$ 2
- (3) Operator's examination. . . \$ 25
- (4) Operator's license. . . \$150
- (5) Renewal operator's license. . . \$150
- (6) Company office registration. . . \$120
- (7) Branch office registration. . . \$ 60
- (8) Field representative's examination. . . \$10
- (9) Field representative's license. . . \$ 30
- (10) Renewal field representative's license. . . \$ 30
- (11) Change of registered company's name. . . \$ 25
- (12) Change of principal office address. . . \$ 25

- (13) Change of branch office address. . . \$ 25
- (14) Change of qualifying manager. . . \$ 25
- (15) Change of registered company's officers. . . \$ 25
- (16) Change of bond or insurance. . . \$ 25
- (17) Continuing education provider. . . \$ 50
- (18) Continuing education course approval. . . \$ 25
- (19) Pesticides use report filing. . . \$ 6
- (20) Applicator's license . . . \$30
- (21) Applicator's license renewal . . . \$30

(b) Pursuant to section 8564.5 of the code, the fee for examination for licensure as an applicator is \$15.00 for each branch in which an examination is taken.

(c) Pursuant to section 8593 of the code, the fee for the continuing education examination for operators is \$25.00, for each branch in which an examination is taken.

(d) Pursuant to section 8593 of the code, the fee for the continuing education examination for field representatives is \$10.00, for each branch in which an examination is taken.

Passed unanimously.

Proposed Amendment of Regulation Section 1950

Mr. Trongo stated that the board should consider the experience and wisdom of members of the audience who indicated today that establishing 12 hours of continuing education would be sufficient for an applicator to renew their license, as their scope of practice was less than that of both the field representative and the operator.

Mr. Roth agreed, that after hearing all the debate, it made sense to establish 12 hours of continuing education for an applicator to renew their license.

Mr. Roth moved and Mr. Morris seconded to authorize staff to modify the proposed amendment of section 1950, make the modifications available for a 15-day public comment period, and delegate authority to the registrar to adopt the proposed modified regulation amendment as follows, provided there were no adverse public comments:

§1950. Continuing Education Requirements.

(a) Except as provided in section 1951, every licensee is required, as a condition to renewal of a license, to certify that he or she has completed the continuing education requirements set forth in this article. A licensee who cannot verify completion of continuing education by producing certificates of activity completion, whenever requested to do so by the Board, may be subject to disciplinary action under section 8641 of the code.

(b) Each licensee is required to gain a certain number of continuing education hours during the three year renewal period. The number of hours required depends on the number of branches of pest control in which licenses are held. The subject matter covered

by each activity shall be designated as “technical” or “general” by the Board when the activity is approved. Hour values shall be assigned by the Board to each approved educational activity, in accordance with the provisions of section 1950.5.

(c) Operators licensed in one branch of pest control shall gain 16 continuing education hours during each three year renewal period. Operators licensed in two branches of pest control shall gain 20 continuing education hours during each three year renewal period. Operators licensed in three branches of pest control shall gain 24 continuing education hours during each three year renewal period. In each case, a minimum of four continuing education hours in a technical subject directly related to each branch of pest control held by the licensee must be gained for each branch license and a minimum of eight hours must be gained from Board approved courses on the Structural Pest Control Act, the Rules and Regulations, or structural pest control related agencies' rules and regulations.

(d) Field representatives licensed in one branch of pest control shall have completed 16 continuing education hours, field representatives licensed in two branches of pest control shall have completed 20 continuing education hours, field representatives licensed in three branches of pest control shall have completed 24 continuing education hours during each three year renewal period. In each case, a minimum of four continuing education hours in a technical subject directly related to each branch of pest control held by the licensee must be gained for each branch of pest control licensed and a minimum of eight hours must be gained from Board approved courses on the Structural Pest Control Act, the Rules and Regulations, or structural pest control related agencies' rules and regulations.

(e) For the renewal period ending December 31, 2008, and each subsequent renewal period, a licensed applicator shall have completed 16 12 hours of Board approved continuing education. Such continuing education shall consist of 12 eight hours of continuing education covering pesticide application and use, and four hours covering the Structural Pest Control Act and its rules and regulations or structural pest related agencies' rules and regulations.

~~(e)-(f)~~ Operators who hold a field representative's license in a branch of pest control in which they do not hold an operator's license must gain four of the continuing education hours required by section 1950(c) in a technical subject directly related to the branch or branches of pest control in which the field representative's license is held, in order to keep the field representative's license active.

~~(f)~~ (g) No course, including complete operator's courses developed pursuant to section 8565.5, may be taken more than once during a renewal period for continuing education hours.

Passed unanimously.

Proposed Amendment of Regulation Section 1983

Mr. Sesay moved and Mr. Trongo seconded to adopt the proposed amendment to section 1983 of the California Code of Regulations as follows:

§1983. Handling, Use, and Storage of Pesticides.

(a) Each container in which any pesticide is stored, carried or transported shall be adequately labeled in accordance with the provisions of Articles 1 and 5, Chapter 2, Division 7 of the Food and Agriculture Code (relating to economic poisons) and regulations adopted by the Department of Pesticide Regulation thereunder.

(b) Service kits which contain any pesticide or preparation thereof shall be handled with extreme caution and in no case shall such a kit be left where children or other unauthorized persons might remove the contents.

(c) When any pesticide or preparation thereof is carried on a truck or other vehicle, a suitable storage space shall be provided thereon. Under no circumstances shall such storage be left either unlocked or unattended when containing any pesticide or preparation thereof.

(d) Where there is danger of food or drug contamination, all food or drug commodities and all utensils or equipment used in the preparation of food or drugs shall be adequately covered to insure against contamination by pesticidal materials, unless the contamination will be dissipated or otherwise removed prior to the time the food or drugs are consumed or the utensils or equipment used.

(e) No rodenticide or avicide shall be used in such manner as to be readily accessible to children or pets.

(f) All rodenticides and avicides shall be removed from readily accessible places upon termination of the particular service.

(g) Under no circumstances shall oil base insecticidal materials be used in or near open flames or active heaters.

(h) Tracking powders shall be used only at floor level or in such places as warrant their safe use.

(i) When a covered or uncovered bait station is used for any ~~pesticide-rodenticide or avicide~~ the bait station shall be adequately marked with the signal word or symbols required on the original ~~pesticide-rodenticide or avicide~~ label, the generic name of the pesticide, and the name, address and telephone number of the structural pest control company. ~~A building which is vacated, posted, locked and in the care, custody and control of the registered company shall be considered the bait station.~~

(j) When a termite baiting system contract is terminated, any toxicant used to modify, control, change or eliminate the behavior and existence of termites, excluding liquid termiticides, shall be removed from the property.

Passed unanimously.

Proposed Amendment of Regulation Section 1991

Mr. Morris moved and Mr. Sesay seconded to adopt the proposed amendment to section 1991 of the California Code of Regulations as follows:

§1991. Report Requirements Under Section 8516(b)10.

(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 10 of subdivision (b) of Section 8516 of the code and shall also conform with the provisions of Title 24 of the California Code of Regulations and any other applicable local building code, and shall accomplish the following:

(1) Comply with the provisions of section 2516(c)(1) of Title 24 of the California Code of Regulations.

(2) Remove from the subarea all excessive cellulose debris in earth contact. This excludes shavings or other cellulose too small to be raked or stored goods not in earth contact. Stumps and wood imbedded in footings in earth contact shall be treated if removal is impractical.

(3) When evidence of moisture, infestations or infections exists as a result of faulty grade levels, earth fill planters or loose stucco, a recommendation shall be made to correct the condition. Any method of controlling infestations arising from these conditions is considered adequate if the infestation is controlled.

(4) Comply with the provisions of section 2516(c)(6.1) of Title 24 of the California Code of Regulations (Effective July 1992).

(5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

(6) Comply with the provisions of section 2516(c)(6) of Title 24 of the California Code of Regulations.

(7) Comply with the provisions of section 2516(c)(4) of Title 24 of the California Code of Regulations.

(8) Exterminate all reported wood-destroying pests. Such extermination shall not be considered repair under section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendation shall be made to either:

(A) enclose the structure for an all encompassing treatment utilizing materials listed in Section 8505.1 of the code, or

(B) use another all encompassing method of treatment which exterminates the infestation of the structure, or

(C) locally treat by any or all of the following:

1. exposing the infested area(s) for local treatment,

2. removing the infested wood,

3. using another method of treatment which exterminates the infestation. (If any

recommendation is made for local treatment, the report must contain the following statement: "Local treatment is not intended to be an entire structure treatment method. If infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated.")

When a complete inspection is performed, a recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests.

When a limited inspection is performed, the inspection report shall state that the inspection is limited to the area(s) described and diagrammed. A recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests in the limited areas. The limited inspection report shall include a recommendation for further inspection of the entire structure and that all accessible evidence of wood-destroying pests be removed or covered.

(9) For the extermination of subterranean termite infestations, treat an infested area under the structure when subterranean termite tubes are found connected to the ground or when active infestations are found in the ground. Subterranean termite tubes shall be removed where accessible.

(10) Comply with the provisions of section 2516(c)(2) of Title 24 of the California Code of Regulations.

(11) Correct any excessive moisture condition that is commonly controllable. When there is reasonable evidence to believe a fungus infection exists in a concealed wall or area, recommendations shall be made to open the wall or area.

(12) Repair a stall shower if it is found to leak when water tested for a minimum of fifteen (15) minutes after the shower drain has been plugged and the base filled to within one (1) inch of the top of the shower dam. Stall showers with no dam or less than two (2) inches to the top of the dam are to be water tested by running water on the unplugged shower base for a minimum of five (5) minutes. Showers over finished ceilings must be inspected but need not be water tested. If water stains are evident on the ceiling, recommendations shall be made for further inspection and testing.

~~(13) Restore any members of wooden decks, wooden stairs or wooden landings in exterior exposure to a condition where they are able to carry out their intended function. Recommendations for corrective measures will depend upon the extent of adverse exposure and existing degree of deterioration and may include any of the following:~~

~~(A) Refasten any wood members which are considered structurally functional but have become loose because of wood deterioration.~~

~~(B) Remove and/or replace structurally weakened portions of any wood member.~~

~~(C) Remove and replace all wood members if full function and safety cannot be restored by partial replacement and repair as in (B) above, remove and replace entire wood member.~~

(b) Preconstruction application of termiticide for protection from subterranean termites shall not be made at less than the manufacturer's label specifications.

(c) If in the opinion of the inspector a building permit is required, it must be noted on the wood destroying pests and organisms inspection report (Form No. 43M-41 as specified in section 1996 of the California Code of Regulations).

Passed unanimously.

Proposed Amendment of Regulation Section 1993

Mr. Sesay moved and Mr. Trongo seconded to adopt the proposed amendment to section 1993 of the California Code of Regulations as follows:

§1993. Inspection Reports.

All of the following reports must be in compliance with the requirements of Section 8516 of the code. All reports must be on the form prescribed by the board ~~and filed with the board with stamps affixed.~~

(a) An original inspection report is the report of the first inspection conducted on a structure at the request of a specified party or for a specified purpose. Subsequent inspections conducted on a structure at the request of a different party, for a different purpose than a previous inspection, or a different transaction relating to the same structure shall be deemed to be new inspections for which an original inspection report shall be required. An original inspection report may be either a complete or limited inspection.

(b) A complete report is the report of an inspection of all visible and accessible portions of a structure.

(c) A limited report is the report on only part of a structure. Such a report shall have a diagram of the area inspected and shall specifically indicate which portions of the structure were inspected with recommendation for further inspection of the entire structure and the name of the person or agency requesting a limited report.

(d) A supplemental report is the report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report. Such report shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

(e) A reinspection report is the report on the inspections of item(s) completed as recommended on an original report or subsequent report(s). The areas reinspected can be limited to the items requested by the person ordering the original inspection report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

Passed unanimously.

Proposed Amendment of Regulation Section 1998

Mr. Trongo moved and Mr. Sesay seconded to adopt the proposed amendment to section 1998 of the California Code of Regulations as follows:

§1998. Reporting Requirements Under Section 8516(h)(4).

If an inspection report is required ~~to be filed~~ pursuant to code section 8516(h)(4), a notice of work completed and not completed shall ~~be filed with the Board~~ also be prepared and provided to the homeowner or his/her designated agent for any work recommended and performed pursuant to such report.

Passed unanimously.

X. REVIEW OF CONTINUING EDUCATION AUDIT PROCESS

At the Board meeting in October 2004, Mr. Roth had suggested the Board return to the full 100% audit rather than the current audit of 25% because approximately 10% of licensees were in non-compliance and he felt this number was rather high.

Ms. Saylor explained that prior to 2002, individuals were required to send in every certificate with their license renewal, which were then audited by looking for the right hours in the correct areas; however, contacting providers to ensure that the certificates were authentic was not done. With the current audit process, however, providers were being contacted and sign-in sheets requested for every audited person and if their name was not on the sign-in sheet, credit was not assigned for the certificate. She felt licensees were complying more than before, as were the providers.

Mr. Trongo felt that in the process of auditing through four renewal periods, almost everyone would be audited if there were a different 25% of licensees audited each time.

Mr. Roth stated he was comfortable with the current system.

XI. UPDATE ON RESEARCH GRANT PROPOSAL

Ms. Okuma reviewed the Request for Proposal with the Board members, stating that the final date for proposal submission was May 20, 2005. A complete listing of the researchers the Board was aware of had been sent to the Department of Consumer Affairs, which was then posted on the Department's, the Board's, and the Department of General Services' websites. She personally mailed hard copies of the Request for Proposal to all of the researchers the Board was aware of that were interested in the project.

XII. APPOINTMENT OF RESEARCH ADVISORY PANEL

Ms. Okuma reported there was an issue of conflict of interest regarding the appointment of Dr. Frank Beale to the Research Advisory Panel as their University appointment, but at this time she did not yet have a replacement for him. Between now and the next panel meeting she felt it advisable to schedule a teleconference meeting for that appointment.

XIII. PROPOSED COMPLAINT DISCLOSURE REGULATIONS

Ms. Okuma reported that some time back the Department made recommendations for a Complaint Disclosure Policy for all the Boards and Bureaus. The Board went through the

process of adopting these into regulation, but the Department revisited and then revised the policy with the change in Administration, so they were again submitted for consideration of adoption into regulation. Because the Department had also asked for identification of anything the Board felt should be regulation and the Board had identified our complaint disclosure, the Office of Administrative Law (OAL) had some questions. Since staff was still in the process of responding to OAL, this issue was tabled for later.

XIV. PRE-TREATMENT COMMITTEE REPORT AND RECOMMENDATIONS

Ron Moss, Chair, reported that in April 2003, the Board voted to establish a committee to look into the issue of pre-treatment. The committee was formed in 2004 and consisted of two industry members who were heavily involved in pre-treats, two regulatory officials, an industry member not involved in pre-treats and one public member. He reported they had developed guidelines for pre-treatment issues and prepared three documents, which were distributed and reviewed with Board members and the audience. A detailed presentation by Kevin Etheridge and Ron Moss of the committee's suggested language for the definition of pre-treatment and the pre-treatment tag then ensued. Suggestions offered by Board members and audience participants, such as unintended focus on residential property, raised foundations, treating against the vertical, Borate treatments, spelling corrections, additional words for clarification, all intended to tighten up and help clarify the committee's proposed language, will be reviewed and discussed by the Pre-treatment Committee at their next meeting.

Mr. Sesay moved and Mr. Morris seconded to direct staff to communicate with the Department of Pesticide Regulation as the first step in identifying what legislative and regulatory actions would be necessary to adopt the committee's proposal. Passed unanimously.

XV. BOARD MEETING CALENDAR

The next Board meeting will be held July 14 and 15, 2005, in Sacramento. The meeting following will be held October 6 and 7, 2005, in San Diego.

XVI. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

John Van Hooser, Ultratech Division, commented he liked the regulations on the website as it made it easy to obtain the material and although the statute section was great there were corrections that needed to be made to the regulations. Although the corrections were posted under Regulation Update they were not incorporated into the California Code of Regulations on the Board's site. He felt that industry should be informed that the rules and regulations were available on our website and that anyone could download the Act if they wished. He then asked that the newsletter also be placed on the website.

Ms. Okuma commented the Department was not encouraging incurring the costs of the newsletter, and some other Boards were publishing the newsletter by just posting it on their website so there was no hard copy. She felt this was the direction staff was currently moving in.

Lyle Evans, Northstar Exterminators, asked if Board staff had done very much about unlicensed activity, similar to what the Contractor's Board did.

Ms. Okuma stated that if similar meant conducting sting operations and getting media coverage, the answer was no, as the Board did not have the same resources as the Contractors Board for those types of operations. If similar meant open cases of unlicensed activity, the answer was yes, and some citations and fines had been issued.

Ms. Thomas commented that the Board could also discipline any aiding and abetting through the licensing renewal and they actually had an easier time with that because of jurisdiction of the license.

Ms. Okuma commented Mr. Smitley was currently working with the Division of Investigation on some of the Board's operations and although they were not yet up to the level of the Contractors Board, they were certainly working on it and moving forward in that regard.

Lyle Evans stated he asked because a lot of times he heard from other operators about things they had seen and heard in the field which had been turned in to the Board and it seemed to them nothing ever happened. He wished to let them know if the Board was working on those issues.

Ms. Okuma replied it was indeed problematic because well over 90% of the information received regarding unlicensed activity was submitted to the Board anonymously, so there was no one they could contact. Additionally, she stated that if there were an open investigation for unlicensed activity, the Board would not call the person who filed the complaint to update them on the status, as information on open investigations could not be shared until the investigation was completed and the case closed.

Mr. Trongo commented that one of their cases for review that afternoon dealt with unlicensed activity.

Jack Launius, Borite Termite & Pest Treatments Corporation, felt there needed to be more clarity regarding the steps to go through with the fingerprinting and application process for an applicator. He had just gone through almost 60 days of not being able to get someone on board because of his inability to find clearly written information.

Ms. Okuma commented information had been mailed to all registered companies that described the process and asked that he contact Ms. Susan Saylor for that package.

Kathleen Thuner, Agricultural Commissioner, County of Los Angeles, asked what the status or plans were of the Board to proceed with regulations to implement the portion that was new law 2 to 3 years ago that would allow a commissioner to direct a person to a class rather than to fine them.

Ms. Okuma replied the Board had gone through the process of adopting the regulation, the rulemaking file had been prepared in accordance with the APA and was currently at the Department of Consumer Affairs for its review and approval, after which it would be sent to the Office of Administrative Law (OAL). She continued that there had been no indication or concern over that particular regulation from the Department, so as long as the rulemaking file was responsive to all the criteria, she expected OAL to approve it.

Kathleen Thuner further commented that the audit concluded the Board had archaic IT (information technology), if any at all. During the discussion regarding the \$30 fee for an applicator's license and the cost to the Board of one full time staff person to process those licenses for applicators, she felt this presented an opportunity to respond to that audit finding by indicating it was the Board's intention to identify the funds towards IT. She suggested this because one of the things she had hoped for, when working on the process for the examinations, was that anyone could query the status of a licensee easier than that which was currently available, and she saw updated IT as a compatible activity in the furtherance of consumer awareness as well as increasing information availability for companies when hiring.

Kathleen Boyle, Department of Pesticide Regulation, asked if there was any intent in the July agenda to put forth proposed regulations concerning civil penalty guidelines for section 1922 to correspond to their authority to fine up to \$5,000 for violations.

Ms. Okuma responded she would research the issue and if that were the direction of the Board it would be on the July agenda.

XVII. REINSTATEMENT HEARINGS

The Board sat with Administrative Law Judge Roy W. Hewitt and Deputy Attorney General Christina Thomas to hear the Petition for Reinstatement of William Carroll Jackson, Operator's License No. 6387. The Board then sat with Administrative Law Judge Roy W. Hewitt and Deputy Attorney General Gillian E. Friedman to hear the Petition for Reinstatement of Raymond De La Torre, Operator's License No. 9544. The petitioners were informed they would be notified by mail of the Board's decision.

Ms. Melton adjourned the meeting at 2:06PM for adjournment to closed session.

XVIII. 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.

Ms. Melton adjourned the meeting at 2:52 PM.

JEAN MELTON, President

KELLI OKUMA, Executive Officer

DATE