

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
JULY 15, 2005

The meeting was held on Friday, July 15, 2005, at the Department of Consumer Affairs, 1424 Howe Ave, Ste. F, Sacramento, California, commencing at 9:03 AM with the following members constituting a quorum:

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

Board staff present:

Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Carl Smitley, Enforcement Coordinator
Barbara Howe, Administration Analyst

Departmental staff present:

Kurt Heppler, Legal Counsel

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

II. FLAG SALUTE

Mr. Trongo led everyone in the flag salute.

I. ROLL CALL

Ms. Saylor read the roll call.

III. PUBLIC HEARING TO AMEND SECTIONS:

- A. 1920 TO ESTABLISH CRITERIA UNDER WHICH A MAXIMUM FINE MAY BE IMPOSED
- B. 1970.4 TO INCLUDE A STATEMENT ON THE OCCUPANTS FUMIGATION NOTICE RELATIVE TO PREVENTING PET ENTRY

- C. 1991(a)(9) TO ALLOW TERMITE TUBES TO REMAIN IN PLACE WHEN ABOVE-GROUND BAIT STATIONS ARE USED
- D. 1996 TO DELETE REFERENCE TO FILING INSPECTION REPORTS WITH THE BOARD AND CLARIFY THAT REPORTS ARE TO BE PROVIDED TO THE PERSON REQUESTING INSPECTION

Mr. Heppler announced for the record that this hearing was to consider the proposed amendment of four sections of Title 16 of the California Code of Regulations relating to the practice of structural pest control. The affected sections were 1920, 1970.4, 1991, and 1996 as outlined in the public notice. This hearing was being held pursuant to section 8525 of the Business and Professions Code as well as the provisions of the Administrative Procedures Act as set forth in the Government Code. 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 and 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.

Mr. Heppler stated that if any interested person desired to provide oral testimony, he or she should stand or come forward, giving his or her name and address, and if he or she represented an organization, the name of such organization, and persons offering oral testimony would not be cross-examined or sworn. These steps should be followed so that the Board would have a full record of all those who offered such testimony. 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. After all interested parties, if any, had been heard, the issue would stand submitted.

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 stated they would proceed in numerical order to consider the Board's proposed amendments to the regulations.

Proposed Amendment of Regulation Section 1920

There were no public comments.

Mr. Heppler requested there be a slight amendment, as the current proposal needed amending to limit discretion of the Board when assessing a civil penalty between \$2,501 and \$5,000. He submitted the model language proposed by the Department of Consumer Affairs and stated the current language read that a fine of exactly \$5,000 would require one or more of the proposed four conditions. He suggested it be amended to read that if the Deputy Registrar or Registrar wished to assess a fine in excess of \$2,500, meaning \$2,501 up to \$5,000, the following four conditions would have to be met. He asked for public comments on section 1920 as it was proposed for the 15-Day Modification Notice.

There were no public comments.

Proposed Amendment of Regulation Section 1970.4

Bill Gillespie, government watcher, questioned:

- If the Department of Pesticide Regulation (DPR) had been declared by the Joint Legislature to bear primary responsibility for pesticide regulation and the Board bore primary responsibility for licensing in structural pest control, why was it that the Board kept coming up with structural board regulations and not DPR.

John Van Hooser, Van Hooser Enterprises, commented that:

- Most people in the industry already had the language on their Occupant's Fumigation Notice and Pesticide Disclosure Form. He said industry had no objection to the amendment to the form, as it was just a minor thing.

Kathleen Thuner, San Diego Agricultural Commissioner and Liaison to the Board for the California Agricultural Commissioners and Sealers Association (CACASA), commented that:

- The language appeared to be sufficiently instructive and she hoped it would help alleviate the issue.

Proposed Amendment of Regulation Section 1991(a)(9)

There were no public comments.

Proposed Amendment of Regulation Section 1996

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 1920

Mr. Roth moved and Mr. Morris seconded to authorize staff to modify the proposed amendment of section 1920, to 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:

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. The maximum amount of \$5,000 to be charged only if. For the issuance of a citation that includes an administrative fine in excess of \$2,500, the Registrar or Deputy Registrar shall determine that at least one or more of the following circumstances apply:

(1) the citation involves a violation that has an immediate relationship to the health and safety of another person;

(2) the cited person has a history of two or more prior citations of the same or similar violations;

(3) the citation involves multiple violations of the Act or these regulations that demonstrate a willful disregard of the law; and or,

(4) the citation involves a violation or violations perpetrated against a senior citizen or disabled person with disability.

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:

(1A) Gravity of the violation.

(2B) History of previous violations of the same or similar nature.

(3C) The good or bad faith exhibited by the cited person.

(4D) Evidence that the violation was willful.

(5E) The extent to which the cited person cooperated with the Board's investigation.

(6F) The extent to which the cited person has mitigated or attempted to mitigate any damage caused by his or her violation.

(7G) 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.~~

* **Shaded area represents another rulemaking change pending OAL approval.**

Passed unanimously.

Proposed Amendment of Regulation Section 1970.4

Mr. Trongo asked Mr. Bill Gillespie if he felt this regulation was something that should have been done by the Department of Pesticide Regulation (DPR) and not the Board.

Bill Gillespie replied that based on what he read of the Joint Legislative Decision several years ago, it would appear so, as it was not just a decision, it was in the law. If DPR was not supposed to have done this regulation, he wondered if it had been coordinated with them because it was a pesticide-related regulation.

Mr. Morris asked Mr. Gillespie if he felt DPR was overlapping with the Board's responsibilities, or if the Board was overlapping with DPR's responsibilities as dictated by law.

Bill Gillespie replied that as a general matter DPR, being the state lead agency as specified in federal law, was supposed to regulate all this stuff. There were certain legislative decisions that modified that and certainly the state had the opportunity to do it, but as a general matter he felt the Board took prerogatives that should be under the guidance, if not the supervision, of DPR. He believed the Board did more overstepping than DPR did.

Mr. Trongo felt Mr. Gillespie was getting into an area beyond the expertise of the Board and felt his comments should be directed to legal instead.

Ms. Okuma stated that in the rulemaking process, any public comments became part of that file and it was incumbent upon staff to respond to those comments. It was up to the control agencies, primarily the Office of Administrative Law (OAL), as to whether or not the Board, via its staff, had adequately responded to Mr. Gillespie's concerns. If OAL attorneys determined the Board had adequately responded and had authority, they would approve the file. If those attorneys deemed the Board did not have that authority and had not responded accordingly, then they would disapprove the file.

Mr. Trongo moved and Mr. Sesay seconded to adopt the proposed amendment to section 1970.4 of the California Code of Regulations as follows:

§1970.4. Pesticide Disclosure Requirement.

(a) The primary contractor for fumigation shall have in his or her possession and shall provide to any subcontractor for fumigation a form (See Form 43M-48 (~~New 5/96~~ Rev. 5/05) at the end of this section) signed by the occupants or designated agent of a structure. The primary contractor for fumigation and the subcontractor for fumigation shall retain a copy of the occupants fumigation notice for a period of at least three years. In case of multiple-family dwellings, the owner, manager or designated agent of the building may obtain signatures and/or verify the notification of the occupants.

The form shall state the name of the pest to be controlled, the pesticide(s)/fumigant(s) proposed to be used, the active ingredient(s) and the health cautionary statement as required under section 8538 of the code. The form shall also state that a lethal gas (poison) will be used in the building on indicated dates and that it is unsafe to return to the building until a certification notice for reentry is posted by the licensed fumigator. The form shall also indicate that the occupant has received the prime contractor's information regarding the procedures for leaving the structure.

The properly signed form or a copy thereof shall be in the possession of the licensed fumigator when the fumigant is released. Such form shall be attached to and become a permanent part of the fumigation log upon completion of the fumigation.

(b) Any death or serious injury relating to pesticide application or use, whether to a worker or member of the public, shall be reported to the nearest Structural Pest Control Board office immediately.

(c) Whenever a licensee employed by a branch 2 or branch 3 registered company applies a pesticide within, around or to any structure such person shall leave in a conspicuous location a written notice identifying the common, generic or chemical name of each pesticide applied. In case of a multiple family structure, such notice may be given to the designated agent or the owner. Such pesticide identification notice may be a door

hanger, invoice, billing statement or other similar written document which contains the registered company's name, address, and telephone number.

(d) All pest control operators, field representatives, applicators and employees in all branches shall comply in every respect with the requirements of section 8538 of the code. Failure to comply with section 8538 of the code is a misdemeanor and shall constitute grounds for discipline.

(e) Where notification is required under section 8538 of the code, and the premises on which the work is to be performed is a multiple family dwelling consisting of more than 4 units, the owner/owner's agent shall receive notification and other notices shall be posted in heavily frequented, highly visible areas including, but not limited to, all mailboxes, manager's apartment, in all laundry rooms, and community rooms on all external pest control servicing. Complexes with fewer than 5 units will have each affected unit notified. Any pest control servicing done within a tenant's apartment requires that the tenant be notified according to section 8538 of the code.

(f) A registered company which applies any pesticide within, around or to any structure shall provide to any person, within 24 hours after request therefore, the common, generic or chemical name of each pesticide applied.

Passed unanimously.

(The Occupant's Fumigation Notice and Pesticide Disclosure Form is referenced separately, at the end of these minutes.)

Proposed Amendment of Regulation Section 1991

Mr. Morris moved and Mr. Trongo 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— except where a licensee is using an above ground termite bait station that requires the use of the termite tubes to be effective. Where a licensee is using an above ground termite bait station that requires the use of termite tubes to be effective, subterranean termite tubes can remain in place for the duration of the licensee's use of the

termite bait stations. At the conclusion of the treatment, the subterranean termite tubes shall be removed.

(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).

* **Shaded area represents another rulemaking change pending OAL approval.**

Passed unanimously.

Proposed Amendment of Regulation Section 1996

Mr. Trongo moved and Mr. Sesay seconded to adopt the proposed amendment to section 1996 of the California Code of Regulations as follows:

§1996. Requirements for Reporting All Inspections Under Section 8516(b).

(a) A written inspection report conforming to section 8516(b) of the code (See Form No. 43M-41 (Rev. 10/01, required use effective July 1, 2003) at the end of this section) shall be prepared and ~~filed with the board~~ delivered to the person requesting the inspection, or to the person's designated agent regardless of whether the registered company has offered to perform the inspection without charge. The granting of permission to make an inspection shall be deemed a request to make an inspection.

~~(b) Reference to price may be deleted from the copy of the report filed with the board provided this is the only difference between the copy filed with the board and the copy that is delivered to the person who requested the inspection or to his or her designated agent.~~

~~(c) (b) The failure or refusal of the person ordering the inspection or of his or her designated agent to pay for such inspection or report shall not excuse a registered company which has commenced an inspection from preparing and delivering a report and filing a copy thereof with the board. to the person requesting the inspection or the person's designated agent.~~

Passed unanimously.

IV. APPROVAL OF APRIL 8, 2005 BOARD MEETING MINUTES

Mr. Sesay moved and Mr. Arzate seconded to approve the minutes of the special meeting of April 8, 2005, as amended. Passed unanimously.

V. EXECUTIVE OFFICER'S REPORT

Ms. Okuma reported on the following:

- The Structural Pest Control Board leases its office. Although the lease is currently being renegotiated, there was a possibility the Board may have to relocate in the near future.
- Legislative Bills were reviewed with the Board members.
Assembly Bill 87 - introduced by Assembly Member Bermudez to exempt structural pest control licensees and licensees of the Department of Pesticide Regulation (DPR) from the requirement of a Department of Fish and Game (F&G) trapping license was amended. On or before July 1, 2006, the Board and DPR had to adopt regulations addressing animal trapping that required annual reporting from licensees to identify, but not be limited to, animal species, the location of the trapped animal, its disposition, and the trapping method. Examinations would require management of vertebrate pests and the laws and regulations governing mammal trapping. Exemption was now operative upon adoption of those regulations and structural pest control licensees needed a Fish and Game License until the Board adopted them. The bill required the Board to work with DPR and F&G to formulate the regulations and was in the Appropriations Committee.
Senate Bill 229 – introduced by Senator Figueroa to extend the Board's sunset date had been referred to the Appropriations Committee. The Governor, through the Department of Consumer Affairs (DCA), indicated opposition to the bill unless amended. The bill addressed many subjects in addition to the extension of the Structural Pest Control Board and the Administration had recommended that some of the Boards in the bill either be consolidated or sunseted to become a Bureau within DCA. Opposition to the bill from DCA did not, however, include the Structural Pest Control Board.

- Assembly Bill 552 – introduced by Assembly Member La Suer, would require the notice of proposed actions against a cited person for pesticide misuse to be sent within 60 days of the initial violation and if action were not taken within 90 days the citation would be dismissed. The hearings had been cancelled at the request of the author. California Agricultural Commissioners & Sealers Association met with the author, who was agreeable to working with them and the Board to see if their concerns could not be addressed through another process.
- The Quarterly Report for the Strategic Plan was reviewed with the Board members.
 - 2.2 - The survey card to determine what licensees were doing with regard to industry practices had been mailed to all registered companies. A report would be provided at the next Board meeting.
 - 4.1 – In order to implement computer-based testing the Board was transitioning into the Applicant Tracking System (ATS) within DCA, with the first meeting scheduled later in July.
 - 4.1.1 – Examination Resources could no longer work with the Board on completing the occupational analyses for licensing. A Request for Proposals had been developed to contract the project out to a private vendor.
 - 5.1. – The contract to upgrade the phone system to monitor telephone calls for quality control purposes had been issued and awarded to a vendor who would begin the installation of upgrade enhancements.
 - The Complaint Handling Surveys were reviewed with the Board members. There were a couple comments from consumers, in that, had they know before they filed their complaint they were not to alter the conditions of the property by making the necessary corrections, they would not have done so. Although that information was routinely shared with consumers when they called and was on the Board’s brochures, it was not on the website. The website had since been updated to include this information.

Mr. Roth voiced his concern regarding Assembly Bill 87 that the Board’s licensees would have to be licensed with F&G until the Board adopted the appropriate regulations. He felt it was foolish for the Board’s licensees to be licensed twice. Since the rulemaking process was fraught with risk and the Board could have trouble getting their regulations through, he feared F&G would get its regulations out first, which would require board licensees to have dual licensure for months or years even.

Harvey Logan, Pest Control Operators of California, commented F&G did not have its regulations out yet, only the statute. He said industry was also concerned about the Board getting rules through in a timely manner, and, the way amendments to the bill had recently progressed, structural pest control licensees would not be allowed to trap rats, mice, voles or gophers until either licensed by F&G or the regulations were adopted by the Board.

Mr. Roth asked if there was anything that could be done to help.

Harvey Logan stated it would be critical for the Board to be at the hearing in mid-August to help industry get this straightened out.

Mr. Heppler asked if there were any further comments from the audience concerning the bills that had been talked about today.

Harvey Logan responded that supposedly SB 229 was not going to be amended, as it was a political ploy. It would go to the governor and be vetoed which would then strike down the Board's extension of sunset; however, everybody he spoke with assured him there would be another bill introduced or the Board's sunset extension would be placed into another vehicle after the veto, in plenty of time to resurrect the Board.

Mr. Roth asked what would prevent the governor from vetoing the fix-it legislation he described.

Harvey Logan stated the governor was in support of the Structural Pest Control Board, although there were two or three other Boards within SB 229 he did not want extended. The fix-it legislation would not include those Boards the governor was opposed to.

Mr. Roth moved and Mr. Arzate seconded that the Board direct the Executive Officer to attend the hearings for Assembly Bill 87 and express the Board's concerns regarding:

- 1) contingent licensing based upon promulgation of regulation;
- 2) the correction of any misinterpretation that the bill in its current form impinged upon a licensee's practice to trap mice, rats, voles and gophers; and
- 3) automatic suspension in the case of an un-filed or incomplete report.

Passed unanimously.

- Nancy Hall, Deputy Director of Board Relations for the Department of Consumer Affairs, was introduced to the Board members.

Ms. Saylor reported on the following:

- Licensing statistics and survey results were reviewed with the Board members.
- The Regulatory Action Status Report was reviewed with the Board members.
- Updates to the Board's website – the Structural Pest Control Act had been posted as one complete document with all statutes and regulations, and the California Code of Regulations document had been updated, including each Article. Board Actions on the website were now current through February 2005 and the Branch 2 Candidate's Handbooks for the Operator and Field Representative examinations had been updated. The Department had established a One-Stop Search for Documents search engine where anyone could obtain information regarding the professions within DCA, which would soon be placed on the website.
- The budget had been approved and would be posted on the Governor's website.
- Out-of-State Travel had been approved for this fiscal year for one attendee at the Association of Structural Pest Control Regulatory Officials (ASPRO) Annual Meeting in Indiana in August.
- Fingerprint background checks were almost always done via Live Scan, where they were digitally scanned into the system. The Department of Justice had recently stated they would no longer accept hard cards, so everyone would be required to

- use Live Scan. A notification had been mailed to all companies regarding that change, which contained a provision for those unable to visit a Live Scan location.
- A new employee, Ryan Vaughn, had been hired in the WDO Unit; one of the Board's specialists was retiring, and the recruitment process for his replacement had begun.

VI. PROPOSED AMENDMENT OF CALIFORNIA CODE OF REGULATIONS SECTION 1922 TO INCREASE THE MINOR, MODERATE, AND SERIOUS FINE RANGE IN ACCORDANCE WITH BUSINESS AND PROFESSIONS CODE SECTION 8617

Ms. Okuma stated that Section 8617 of the Business and Professions Code currently gave the county agricultural commissioners authority to levy an administrative fine against structural licensees up to \$1,000, but legislation had been introduced to amend that authority up to \$5,000. Section 1922 of the California Code of Regulations was originally adopted to mirror fine authority as it related to pesticide use violations and citations on the agricultural side, and the proposed amendment to section 1922 was intended to mirror as closely as possible the new fine structure.

Mr. Roth moved and Mr. Sesay seconded to notice for public hearing an amendment to regulation section 1922 as follows:

§1922. Civil Penalty Actions by Commissioners.

(a) When taking civil penalty action pursuant to section 8617 of the Business and Professions Code, county agricultural commissioners shall use the provisions of this section to determine the violation class and the fine amount.

(1) For purposes of this section, violation classes shall be designated as "serious," "moderate," and "minor."

(A) "Serious": Violations that are repeat violations of those in subparagraph (B) or violations which created an actual health or environmental hazard. The fine range for serious violations is ~~\$401-\$1,000~~ \$700-\$5,000.

(B) "Moderate": Violations that are repeat violations of those in subparagraph (C) or violations which pose a reasonable possibility of creating a health or environmental effect. The fine range for moderate violations is ~~\$151-\$400~~ \$250-\$1,000.

(C) "Minor": Violations that did not create an actual health or environmental effect or did not pose a reasonable possibility of creating a health or environmental effect. The fine range for minor violations is ~~\$50-\$150~~ \$400.

Passed unanimously.

VII. DEPARTMENT OF CONSUMER AFFAIRS INTERNAL AUDIT – DISCUSSION AND POSSIBLE ACTION ON:
A. STRATEGIC PLAN
B. CONSTRUCTION TRAINING COURSES
C. INSURANCE AND BONDING AMOUNTS

Ms. Okuma reported on the findings of the Department of Consumer Affairs (DCA) Internal Audit Office.

- 1) The Board’s strategic planning efforts generally met state guidelines but could be improved by incorporating additional elements found in a strong strategic approach.
- 2) The Board’s licensing operations could benefit from improvement in several areas.
- 3) Continued improvements are needed to strengthen the Board’s complaint and inspection processes.

Mr. Trongo moved and Mr. Morris seconded to recognize and deliberate on the findings of DCA’s Internal Audit Office at the next strategic planning session.

Passed unanimously.

Mr. Roth moved and Mr. Sesay seconded to recognize and deliberate on the findings of the audit, to direct staff to thoroughly research the current insurance and bonding amounts, per branch, and to return to the Board with information relative to whether those amounts were sufficient given California’s current economic conditions, along with a projected cost to industry if the amounts were raised.

Passed unanimously.

Mr. Roth moved and Mr. Sesay seconded to recognize and deliberate on the findings of the audit, and to direct staff to complete a detailed analysis of the complaints filed in order to determine if there were quality of workmanship issues, so as to adequately evaluate the Board’s required construction training courses, and to determine whether two to six hours of training was adequate for licensees performing significant construction repairs to households.

Passed unanimously.

VIII. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S REQUIREMENT THAT CALIFORNIA USE NATIONAL PEST MANAGEMENT ASSOCIATION'S INSPECTION REPORT FORM NPMA-33

Ms. Okuma reported on the Department of Housing and Urban Development's (HUD) requirement that California use the National Pest Management Association's Inspection Report Form NPMA-33 in addition to the Board's mandated Inspection Report Form. The problem, aside from completing both forms, was that the national form only addressed insects, not organisms. HUD requested a letter stating that licensees were prohibited from completing the NPMA form. She spoke with a representative of HUD who indicated that procedurally when a FHA-HUD loan application was received, a deficiency list was placed on the application and used to check off missing items. Washington had been apprised that a California application marked as a deficiency as it related to the Wood Destroying Pests and Organisms Inspection Report would still be processed, regardless of the NPMA-33 deficiency, and had indicated to her there were no problems at the moment.

IX. RECOMMENDATION THAT THE BOARD CONSIDER A LEGISLATIVE AMENDMENT TO REPEAL REINSPECTION REQUIREMENT PER SECTION 8516

Ms. Okuma reported that at the July 2004 Board meeting Mr. Chuck Brasiel had requested the Board consider a legislative amendment to repeal the reinspection requirement in Business and Professions Code section 8516. Board members asked staff to return with the pros and cons of that request. Staff since concluded that the language requiring the reinspection was originally enacted to ensure that a consumer could make repairs themselves and obtain a clearance report in order to complete a real estate transaction. The pro was that consumers could continue to make needed repairs with the reasonable assurance they would be able to obtain a clearance at a fair price during a real estate transaction. The con was that companies could issue a clear report without knowledge the repair was performed correctly or incorrectly, or that a wood destroying condition had been concealed, and a seller could conceal damage not disclosed to the buyer. No consumer benefit could be identified in repealing the language. Staff's conclusion was if conditions were properly identified and recommendations properly made when a company made its reinspection, clearly stating there was no visible evidence of infestation or infection, and the report addressed the fact that repairs were completed by others and the company could not certify those repairs were done to completely eliminate or correct a condition, then there would be disclosure to a consumer considering the purchase of that home. Based on their analysis, it was staff's recommendation the Board not seek a legislative amendment to repeal the reinspection requirement language in Business and Professions Code section 8516.

Chuck Brasiel, Termite Consulting, addressed the Board members. He stated the inspection report dealt solely with an inspection for the presence or absence of wood destroying pests and organisms and brought their attention to section 8516(b): "A

reinspection shall be an inspection of those items previously listed on an original report to determine if the recommendations have been completed,” commenting that if the consumer fixed the damage he recommended repaired, his recommendation was never completed. He wondered where he would stand in a liability issue if he passed the house because there was no evidence of infection or infestation, as his focus was never on the work during the original inspection or the reinspection. He felt 8516(b) focused on recommendations for completion rather than determining if the findings still existed. He then asked the Board members to consider the recent legislation of section 1993.1: “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 must be done within ten (10) working days of request. The reinspection is a visual inspection and if inspection of concealed areas is desired, inspection of work in progress will be necessary. Any guarantees must be received from parties performing repairs.” He commented that “reinspect repairs done by others” was a false statement, as they never inspected repairs, they inspected for the presence or absence of infection or infestations. He objected to the statement: “Any guarantees must be received from parties performing repairs,” because of an already implied warranty.

Chuck Brasiel then gave his most recent experience with the reinspection language. He made an inspection on a property and passed it. The new buyer did the walk through, accepted it, closed escrow, showed up two weeks later and found two inches of standing water in one room on top of the carpet. The repaired window had leaked and water dumped into the building. He had reinspected the repairs and shared some liability. He since received notice a lawsuit was pending and the insurance company had asked the plaintiff to find where a regulation was violated before payment would be made, which, he said, is where the “reinspect repairs done by others” regulation could come in. He felt anyone who did consulting work would bring that regulation into play and said it was possible his liability would exceed his \$1,000,000 insurance policy because their only argument was he inspected repairs and he felt he was not qualified to inspect repairs. He stated the statute should be addressing infection and infestation and not the reviewing of work, saying the way everything was written, to the attorneys, the consumer, and the real estate industry, pest control companies were indeed inspecting work. He again stated the focus was on recommendations and he was not certifying recommendations, he was certifying the absence of infection and infestation, which was how the law should read. If the Board would not repeal the law, he asked for a change to focus on infection and infestation, and a change in the regulation saying pest control companies inspected repairs.

John Van Hooser, Ultratech Division, commented he was in favor of the repeal, although it could prove difficult trying to take it out of statute. He felt the statute was unnecessary, as one could always find a company to inspect work done by others. He asked Ms. Saylor if she could compare reinspections in relation to original inspections from the Board’s database as he felt that number would turn out to be very small.

Mr. Trongo felt this required more review as the pros and cons were not adequately addressed and the statute had been a problem since it was placed into effect.

Mr. Roth expressed concern over the utility of the underlying statute and whether it was causing rather than solving problems, agreeing with Mr. Trongo it needed further review.

Harvey Logan, Pest Control Operators of California (PCOC), commented that PCOC had no position on the issue because it had yet to be addressed at a Board of Directors Meeting. He agreed with John Van Hooser that trying to take it out of statute could create problems. He said industry might end up with something a lot worse than what was in law now.

Larry Musgrove, Western Exterminator Company, said the situation was livable with his company, and when someone else did the repairs they wrote on the report they would not be responsible for the quality of the workmanship.

Mr. Trongo moved and Mr. Roth seconded to table the issue until PCOC takes a position.

Passed unanimously.

X. APPROVAL OF RESEARCH GRANT PROPOSALS

Ms. Okuma stated the Research Advisory Panel (RAP) had reviewed the submissions for the Research Grant Proposals and based on the evaluation and the funding available for the project, were recommending that the Board grant:

- the University of California, Irvine, the amount of \$312,037 for a study in The Role of Genetics and Cuticular Hydrocarbons in Argentine Ant Aggression;
- the University of California, Riverside, the amount of \$260,684 for a study in Developing Baits for the Control of Yellow Jackets;
- the University of California, Berkeley, the amount of \$258,084 for An Assessment of Devices and Techniques for Improving Inspection and Evaluation of Treatments for Inaccessible Drywood Termite Infestations; and
- the University of California, Riverside, for a Comparison of Baiting and Perimeter Spray Program for Urban Pest Management of Argentine Ants for a Demonstration in Costs, funding for two years of their three year study, with the recommendation that the contract include an amendment with the option to grant the third year of research after the first two years had been completed.

Mr. Roth commented he was concerned the Board members had not been presented with a written recommendation, as they were being asked to make a decision to award money based on absolutely no written information.

Ms. Okuma replied that the Board had an appointed RAP to depend upon for expertise in conducting the evaluations, which was spelled out in law, and the panel had made those recommendations based on the merits of the research as the RAP had no idea of the dollar cost since the Department and staff had allocated that. Historically the Board had never reviewed the entire proposals.

Mr. Sesay moved to approve the recommendations of the Research Advisory Panel and transfer the appropriate funds to the recommended applicants.

The motion died for lack of a second.

Larry Musgrove, Western Exterminator Company, commented it had been ten years since a Research Proposal had been approved. He asked the Board to go forward with the projects put forth and get this research going.

Harvey Logan, Pest Control Operators of California, stated legislation created the RAP and the Board appointed the members of the panel. He felt the Board must recognize that and rely upon the recommendations of that very diverse group.

Mr. Arzate commented that for the granting of \$1,000,000 the Board had received a one-page memo, which did not describe any of the proposed projects. He stated he would like a summarized documentation that would explain to the Board members what they were voting on.

John Van Hooser, Ultratech Division, commented the Board appointed the RAP because they did not have the expertise or competence needed to review and evaluate the proposals. He was incensed the Board members did not pass the RAP's recommendations, because that was what the whole process was about.

Mr. Morris commented the Board had gone through this same process a year ago and the Board members were aware of what happened to industry in terms of this process. He felt the Board should remember that, listen to the comments from the audience, and go forward with the issue.

Ms. Okuma commented that as the Board members indicated they would like to see a brief summary of each of the proposals, if they adjourned now for lunch and proceeded with the reinstatement hearing at 2:00PM, a one-page summary of each of the proposals would be provided for review following the reinstatement hearing.

Mr. Roth moved and Mr. Trongo seconded to rescind the previous action of the Board (to approve the recommendations of the Research Advisory Panel and transfer the appropriate funds to the recommended applicants) which died for lack of a second.

Passed unanimously.

The meeting recessed at 12:38 PM.

The meeting reconvened at 2:05 PM.

XIII. REINSTATEMENT HEARING

The Board sat with Administrative Law Judge Leonard Scott and Deputy Attorney General Patrick M. Kenady to hear the Petition for Reinstatement of James Gregory De Busk, Operator's License No. 4746. The petitioner was informed he would be notified by mail of the Board's decision.

X. APPROVAL OF RESEARCH GRANT PROPOSALS (Continued)

Ms. Okuma presented the Board members with a one-page summary of each of the submitted Research Grant Proposals, both approved and not approved.

Ms. Melton asked for comments from the audience.

Mr. Trongo moved and Mr. Sesay seconded to adopt the Research Grant Proposals as recommended by the Research Advisory Panel.

Passed unanimously

Ms. Okuma commented the next step was to notify DCA regarding which contracts to award. There was a requirement that there be a Notice of Intent to Award with a last day to protest the awarding of a contract. The proposed award date was August 1, 2005, and the projected agreement date for the terms of the contracts to begin was September 1, 2005.

Mr. Morris commented that from the point of timing and the subject matter given to the Board for proper analyzing and vote procedure, this had been a dysfunctional process and felt it needed to be addressed for the future.

Harvey Logan, Pest Control Operators of California, requested to have an actual meeting for future considerations and that an executive summary be written based on all of their participation as their recommendations were made to the Board. He felt doing this in absentia was crazy and believed the dollar amounts of the proposals would have been very helpful when trying to prioritize the contracts. He recognized that Ms. Okuma argued vociferously for the panel to have knowledge of the dollar amounts requested and that DCA had opposed this. He was hopeful this would not be the case next time.

Mr. Trongo commented that having one paragraph and three lines of information when asking the Board members to allocate nearly a \$1,000,000 went against common sense. He was opposed to voting on something on blind faith. He wanted the public to understand the Board members had a position of responsibility and would be derelict in that duty if that responsibility had been shirked. He agreed with Mr. Morris that this had been poorly done and felt it was one of the worst things he had seen come through.

Mr. Morris stated he wished to applaud the Board members in their decision to look at the whole and not the minutiae of the issue; he respected them for looking at the big picture and agreed with what the Board members had done.

XI. RECOMMENDATION TO OMIT DISCLOSURES ON INSPECTION REPORT IF NOT APPLICABLE

John Van Hooser, Ultratech Division, stated there were sections in the Act that required various disclosures. He gave an example of an inspection of a downstairs condominium unit when there is another unit above, questioning why he had to place the standard disclaimer about a roof covering when there was no way a roof would be involved in the inspection. He then referred to a limited inspection he made limited to the walls around a bathtub. He clarified that if he had completed the limited inspection and said the walls around the bathtub were bad, made a recommendation for repair and placed a price on it, he would indeed need to place the reinspection clause and the second opinion clause on the report, but when he had none of those, the clauses would not apply and therefore, should not have to be included on the report.

Ms. Okuma commented she had reviewed the statutes and the law stated they needed to be on the report.

Mr. Trongo stated he agreed with John Van Hooser, as a limited report was just that.

Mr. Roth asked where the committee was on reviewing the Act.

Ms. Okuma replied the review was partially completed. She and Larry Musgrove, Chair of the Laws and Regulations Committee, would be completing the review.

Mr. Roth moved and Mr. Trongo seconded to instruct the Executive Officer, when the Department of Consumer Affairs next called for legislative proposals, to include in the Board's legislative package a proposal of non-applicability, such that inspection reports did not need to include disclaimers inapplicable to the inspection.

Passed unanimously

XII. PROPOSAL TO ADOPT INTO THE CALIFORNIA CODE OF REGULATION A COMPLAINT DISCLOSURE REGULATION

Ms. Okuma reported DCA had provided its revised proposed complaint disclosure regulation, which was now before the Board to consider for public hearing.

Mr. Roth moved and Mr. Trongo seconded to notice for public hearing the adoption of section 1923 as follows:

§1923. Public Information System – Disclosure.

(a) The Board shall establish and maintain a public information system to provide members of the public with information regarding complaints and disciplinary or enforcement actions against registered companies and licensees, and unlicensed persons subject to the Board’s jurisdiction. Such a system shall also provide the public with information regarding the licensed status of the Board’s licensees and registered companies.

Information subject to the public information system shall be disclosed to members of the public, upon request, by telephone, in person, or in writing (including fax or e-mail). Such information, when feasible and to the extent required or permitted by law, shall be made available by the Board in writing or by telephone. Requests for information shall be responded to within ten (10) days.

(b) Information to be Disclosed Regarding License Status.

The Board shall disclose the following information regarding past and current licensees:

(1) The name of the licensee and registered company, as it appears in the Board’s records;

(2) The license and registration number;

(3) The address of record;

(4) The license and registration issue date;

(5) The license expiration date; and

(6) The license and registration status and history.

(c) Information to be Disclosed Regarding Disciplinary or Enforcement Action.

Unless otherwise required by law, the Board shall disclose the following information regarding disciplinary or enforcement action taken against licensees and unlicensed persons, if applicable:

(1) Total number of disciplinary and enforcement actions taken by the Board;

(2) Brief summary of disciplinary and enforcement actions taken by the Board; citations that have been satisfactorily resolved shall be disclosed as such;

(3) Current status of pending Accusations, Statements of Issues, and Citations filed by the Board; disclosure of pending actions shall contain a disclaimer stating that the pending administrative action(s) against the person and company is/are alleged and no final legal determination has yet been made; further disclaimers or cautionary statements regarding such pending actions may also be made; and

(4) Information which is statutorily mandated to be disclosed.

(d) Information to be Disclosed Regarding Complaints.

(1) The Board shall disclose complaint information when the executive officer has determined that:

(A) the complaint information has a direct and immediate relationship to the health and safety of another person; and

(B) one or more of the following have occurred:

(i) A complaint involves a dangerous act or condition caused by the subject of the complaint that has or could result in a death, bodily injury or severe consequences and disclosure may protect the consumer and/or prevent additional harm to the public;

(ii) A series of complaints against a party alleging a pattern of unlawful activity have been received by the Board and it has been determined that disclosure may protect the consumer and/or prevent additional harm to the public;

(iii) A complaint has been referred to the Attorney General for filing of an Accusation or Statement of Issues; or

(iv) A complaint has been referred to another law enforcement entity for prosecution. Complaint information that is determined to meet the conditions for disclosure listed in subsection (d)(1) shall be incorporated into the public information system no later than ten (10) days after the conditions for disclosure have been met.

(2) Information about a complaint shall not be disclosed if it is determined by the registrar/executive officer that any of the following apply:

(A) Disclosure is prohibited by statute or regulation;

(B) Disclosure might compromise an investigation or prosecution; or

(C) Disclosure might endanger or injure the complainant or third party.

(3) When conditions for disclosure have been met, the Board shall disclose the following information regarding complaints received against licensees and unlicensed persons, if applicable:

(A) Total number of complaints meeting conditions of disclosure;

(B) Date(s) of receipt and nature of the complaint(s);

(C) Disposition of the complaint(s), by indicating whether the matter has been:

(i) referred to formal disciplinary action;

(ii) disposed of through any other action, formal or informal; or

(iii) other disposition.

(D) Information which is statutorily mandated to be disclosed;

(E) Current status of criminal prosecution resulting from a complaint received by the Board;

(F) A description of the type of public information not included in the system (i.e. civil judgments, criminal convictions, unsubstantiated complaints); and

(G) Disclaimers indicating that the system does not constitute endorsement or non-endorsement of a person, and that the system may not contain all available information.

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Section 8620, Business and Professions Code.

Passed unanimously

XIII. PROPOSED AMENDMENT TO ESTABLISH AN APPLICATOR LICENSE AND RENEWAL FEE AND DECREASE THE OPERATOR LICENSE AND RENEWAL FEE

Ms. Okuma reported that multiple times in the past the Board had attempted to establish an Applicator License and Renewal Fee, but each time the Department of Consumer Affairs (DCA) and the State and Consumer Services Agency (Agency) disapproved the proposal. Staff was now attempting to establish a \$10 Applicator License and Renewal Fee by reducing the Operator License and Renewal Fee from \$150 to \$120, with the end result being minimal net gain revenue to the Board.

Mr. Trongo asked why bother if it did not bring in any more money to the Board.

Ms. Okuma replied there were lots of problems related to Applicators not having to pay a license or renewal fee, as those fees were part of the licensing process. Frequently the Applicator would wind up without a license because of failure to renew and the renewal was a mechanism within which the Applicator would either submit proof of or certify to their continuing education.

Mr. Trongo moved and Mr. Sesay seconded to notice for public hearing the proposed amendment of section 1948 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~~ \$120
- (5) Renewal operator's license. . . ~~\$150~~ \$120
- (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 . . . \$ 10
- (21) Applicator's license renewal . . . \$ 10

(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

XIV. APPROVAL OF BUDGET CHANGE PROPOSAL TO INCREASE THE SPENDING AUTHORITY AND CONTRACT AMOUNT FOR THE DEPARTMENT OF PESTICIDE REGULATION

Ms. Okuma reported that the Business and Professions Code 8505.17 provided for a special fund (Structural Pest Control Education and Enforcement Fund) derived from the pesticide use report-filing fee and proceeds from civil penalties assessed by the county agricultural commissioners against structural licensees. The account was used to develop and conduct a training program for all county agricultural commissioners and other personnel involved in structural pest control investigations and enforcement, for reimbursement to the Director of the Department of Pesticide Regulation (DPR) for work performed as an agent of the Board for inspections and routine investigations of pesticide use by the Board's licensees, and for reasonable expenses incurred by the Disciplinary Review Committee. The Board's spending authority was now less than their contract with DPR, training program services had been reduced due to budget limitations, and the contract expires June 30, 2006. Staff was requesting to increase that spending authority by \$60,000 per fiscal year, which would not increase revenue fees charged to the industry.

Kathleen Boyle, on behalf of DPR, encouraged the Board members to authorize increasing the Board's spending authority. She stated DPR had been reluctant to withhold training the past fiscal year and was reluctant to do it again this fiscal year, but as they had hit a cap far sooner than anticipated, an increase in spending authority would be welcome.

Mr. Sesay moved and Mr. Roth seconded to authorize staff to request a Budget Change Proposal to increase spending authority for the Education and Enforcement Fund to adequately cover the costs of training and pesticide use enforcement.

Passed by majority (Ayes – Arzate, Melton, Morris, Roth, Sesay. Abstain – Trongo).

XV. ELECTION OF OFFICERS

Ms. Okuma said the Business and Professions Code section 8523 stated the Structural Pest Control Board should elect a president who would serve for one year, and Board Procedure No. G-4 stated that elections for the offices of president and vice president should be conducted at the meeting preceding the annual October Board meeting, with the officers assuming duties at the Board meeting following the October meeting, and that at least one of the offices of president and vice president be held by a public member.

Ms. Okuma asked for nominations for the office of president.

Mr. Morris nominated Michael Roth for President of the Structural Pest Control Board.
(Ayes – Arzate, Morris, Roth)

Ms. Melton nominated Ken Trongo for President of the Structural Pest Control Board.
(Ayes – Melton, Trongo)

Mr. Sesay nominated Jean Melton for President of the Structural Pest Control Board.
(Aye – Sesay)

Mr. Roth accepted the nomination. Mr. Trongo accepted the nomination. Ms. Melton
accepted the nomination.

The motion failed for lack of a majority.

Ms. Okuma asked for those in favor of Michael Roth for President of the Structural Pest
Control Board. (Ayes – Arzate, Morris, Roth)

Ms. Okuma asked for those in favor of Ken Trongo for President of the Structural Pest
Control Board. (Ayes – Melton, Trongo)

Ms. Okuma asked for those in favor of Jean Melton for President of the Structural Pest
Control Board. (Aye – Sesay)

The motion failed for lack of a majority.

Ms. Okuma again asked for those in favor of Michael Roth for President of the Structural
Pest Control Board. (Ayes – Arzate, Morris, Roth, Sesay)

Ms. Okuma asked for those in favor of Ken Trongo for President of the Structural Pest
Control Board. (Ayes – Melton, Trongo)

Passed by majority.

Mr. Roth nominated Jean Melton for the office of vice president.

Passed unanimously.

XVI. BOARD MEETING CALENDAR

The next Board meeting will be held October 6 and 7, 2005, in San Diego. The meeting
following will be held January 19 and 20, 2006, in the Monterey area.

XVII. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

John Van Hooser, Ultratech Division, commented he had attended every Structural Pest Control Board meeting since 1970, had sat through innumerable elections of officers and was really delighted at the proceedings today.

XIX. 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 5:10 PM.

JEAN MELTON, President

KELLI OKUMA, Executive Officer

DATE