

MINUTES OF THE  
SPECIAL MEETING OF THE  
STRUCTURAL PEST CONTROL BOARD  
APRIL 21, 2006

The meeting was held on Friday, April 21, 2006, at the Historic Mission Inn, 3649 Mission Inn Avenue, Riverside, California, commencing at 9:07 AM with the following members constituting a quorum:

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

Board member Ken Trongo was absent.

Board staff present:

Kelli Okuma, Executive Officer  
Susan Saylor, Assistant Executive Officer  
Carl Smitley, Enforcement Coordinator

Departmental staff present:

Donald Chang, Legal Counsel

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

**III. REINSTATEMENT HEARINGS**

The Board sat with Administrative Law Judge Stephen E. Hjelt and Deputy Attorney General Desiree A. Phillips to hear the Petition for Reinstatement of William N. Bigler, Applicator's License No. 5694. The petitioner was informed he would be notified by mail of the Board's decision.

Mr. Roth announced that Doug Carver, past chairman of the Continuing Education Committee, passed away. Mr. Roth offered the Board's condolences.

**I. ROLL CALL**

Ms. Saylor read the roll call.

## **II. FLAG SALUTE**

Mr. Roth led everyone in the flag salute.

## **IV. APPROVAL OF JANUARY 19 and 20, 2006 BOARD MEETING MINUTES**

Mr. Sesay moved to approve the minutes of the meeting of January 19 and 20, 2006.  
Passed unanimously.

## **V. EXECUTIVE OFFICER'S REPORT**

Ms. Saylor reported on the following:

- Licensing statistics and survey results were reviewed with the Board members.

Mr. Sesay commented that more duplicate licenses were issued last year through April than current year through May. Ms. Okuma responded that the statistical document reflects data from March in fiscal year 2005/2006 compared to March in fiscal year 2004/2005.

Mr. Morris commented that the applicator's license examination passing rate dropped from 50 percent last year to 44 percent current year. He pointed out the increase in investigative fines processed. He asked how to determine how much of those fines were attributed to applicators. He commented that there seemed to be a drop in the applicator-passing rate and the fines had gone up substantially. He was trying to determine if the industry was losing applicators.

Ms. Okuma responded that the database may not allow staffs to determine the breakdown as to what license category received a fine or penalty assessment, but offered to research the capabilities of the database system.

Mr. Morris commented that cancelled applicator licenses show a significant increase (almost 4000) compared to last year (532). Ms. Okuma responded that the disparity was the result of the inability of the program to automatically cancel expired applicator licenses. Staff conducted a manual review of the data contained within the database and manually cancelled all expired applicator licenses. Mr. Morris questioned if the next report would more accurately reflect current status of licensed applicators. Mr. Morris again expressed his concern whether there were an adequate number of licensed applicators available to the industry. He stated that the data breakdown would not be necessary if the next statistical report shows an even balance.

Mr. Arzate questioned the frequency in which the records are updated. Ms. Okuma responded that staff responsible for canceling expired applicator licenses was assigned additional duties and the task of canceling expired licensees received a lower priority.

- Interviews have been scheduled next week to fill the Office Assistant vacancy in the Licensing Unit.
- Recruitment efforts have begun to fill the Staff Services Analyst vacancy in the Administration Unit.
- Steve Thomason, Office Services Supervisor, has been out of the office since mid January on medical leave and is expected to return to work in May or June.
- A mail theft occurred on March 4 at the Howe Avenue mailroom. A notification was placed on the Board's website and Pest Control of Operator's of California was informed. To date, there has been little feedback relative to the theft from affected persons / companies. The investigation into the theft is ongoing.
- The Board's budget is on consent. The Senate's budget hearing was held on March 22, and the Board's budget was approved. The Assembly budget hearing is scheduled for April 25.
- The Office of Administrative Hearings and the Department of Justice have reported fee increases for fiscal year 2006/2007.

Mr. Roth questioned if the \$66,000 augmentation to the Board's budget for a position was for salary or salary plus benefits. Ms. Saylor informed him the augmentation includes salary and benefits.

Ms. Okuma reported on the following:

- Complaint Handling statistics and survey results were reviewed with the Board members. The reporting-form was amended to include Mr. Morris' request to include prior year statistics.
- AB 2247 requires San Diego County to issue a notice of proposed action within 60 days of the notice of violation.

Mr. Morris requested an explanation of the Structural Pest Control Board's outstanding special fund loan to the general fund. Ms. Okuma informed him the status of the special fund loan as it relates to the Board remains outstanding and repayment is not scheduled in fiscal year 06/07.

- AB 2247 (continued) - The bill creates two sets of enforcement rules for the regulators and the regulated industry. The most egregious violators would have the potential to receive no discipline if the county could not conclude its investigation within the time period specified in the bill. The bill could potentially force the county to refer all egregious violations to the Board for administrative action which creates the very problem the bill is attempting to address, as it can take up to a year from the date the case is referred to the Board for the Board to prepare the case for submission to the Attorney General's Office and for that office to file an accusation.

Mr. Sesay moved and Ms. Melton seconded to oppose AB 2247. Passed unanimously.

- AB 2865 amends the Healthy Schools Act by expanding the definition of a school site to include private child day care facilities. The bill was amended to require that owners of a private child day care facility inform their pest management company that they are a child day care facility.
- AB 1848 extends the sunset provision for the Structural Fumigation Enforcement Program. The bill will be heard in the Senate Business and Professions and Economic Development Committee on April 24.
- AB 2591 requires state agencies to annually report the status of liquidated and delinquent accounts.
- SB 509 requires the operator of a property on which any restricted material pesticide application is to occur provide written notification to all individuals adjacent to the application site.
- Governor Schwarzenegger appointed Rosario Marin as Secretary of the State and Consumer Services Agency.
- The Regulatory Action Status Update was reviewed with the Board members, identifying sections 1914, 1918, 1920, 1950, 1983, 1991, 1993, and 1998 as regulation amendments recently approved by the Office of Administrative Law.

Mr. Morris stated that he assumed the Office of Administrative Law (OAL) had approved all the regulation amendments adopted by the Board. Ms. Okuma clarified that only the referenced sections had been approved by OAL. Mr. Morris asked if OAL had disapproved any regulation amendments adopted by the Board. Ms. Okuma informed him that OAL had not disapproved any regulation amendments submitted to date, but the amendments adopted at the October 2005 meeting were yet to be submitted.

Mr. Roth commented that the budget documents made reference to stamps sold by the Board. He thought the Board had eliminated the use of stamps. Ms. Okuma clarified that the regulation amendment deleted reference to stamps used to file inspection reports and completion notices, however, the Board continues to provide for the sale of pesticide use stamps used to file monthly pesticide use reports with county agricultural commissioner offices. She reported that there is a movement towards electronic filing of the monthly pesticide use reports by some counties, so Board staff will be exploring options relative to the elimination of the need for that stamp.

## **VI. ADOPTION OF 2006 STRATEGIC PLAN**

Ms. Okuma reported that the Strategic Plan as developed at the January 2006 meeting, was submitted for the Board's adoption.

Mr. Morris read the Board's mission and vision statements. He commented that the vision statement "where the structural pest control industry operates without unreasonable restraint" is a negative rather than a positive ending, and that the statement contradicts the mission statement. He questioned what was meant by "unreasonable restraint" and

suggested the statement meant the Board did not want to regulate the structural pest control industry. He stated he felt the statement was a poor choice of ending and words.

Ms. Okuma responded that the statements were not amended at the January 2006 strategic planning session, but were a carry-over from the prior year planning session facilitated by DCA representative Travis McCann, at which Mr. Morris was in attendance. She offered that the Board could amend its mission and vision statements if it so chose.

Mr. Morris commented that he brought the issue up to challenge the Board. He restated his concern that the term used does not support the mission statement.

Mr. Sesay commented that the Board spent hours developing its mission and vision statements during strategic planning to arrive at the language as it appears.

Mr. Morris responded that the words “without unreasonable restraint” do not support the mission statement. He asked what “without unreasonable restraint” meant. He stated that he believed it meant that the Board is not going to follow policy and procedures in terms of regulating the industry.

Mr. Sesay stated he did not believe that is what the statements meant. Mr. Morris responded that he understood what it meant, but that was not his question. He stated he disagreed with the verbiage.

Mr. Morris asked Don Chang if he had a comment, stating he did not think this was the way to do things.

Mr. Arzate stated that he was on time for the 2006 strategic planning session, but was not at the prior strategic planning meeting when the mission and vision statements were developed. He stated that one could argue that regulating the pest control industry with reasonable policies is regulating with unreasonable restraint. It was his experience that mission and vision statements take time to develop properly.

Larry Musgrove, Western Exterminator Co., suggested that the language “with reasonable laws and regulations” accomplishes the same meaning but in the positive as Mr. Morris was seeking.

Mr. Morris thanked Mr. Musgrove for his suggestion but stated that with due respect, the word “reasonable” can be taken very differently by different people. He stated the Board knows its own intent, but he was concerned with how the reader of the statement would interpret the words “unreasonable restraint.”

Mr. Musgrove responded that he had suggested removing the words “unreasonable restraint” and replacing them with “reasonable laws and regulations.”

Mr. Roth suggested the Board invite a facilitator from the Department of Consumer Affairs to a future meeting to address the concerns with the mission and vision statements. He

stated he did not believe the first half of the statement was inconsistent with the second half of the statement, and that a vibrant pest control business needed to be able to make money to stay in business to assist consumers with pest problems. He believed that to do that job, the Board should not be imposing unreasonable regulations, laws, or restraints on the industry. Mr. Roth stated that the Board adopted the mission and vision statements and he did not have a problem with the statements.

Mr. Morris stated for the record that he knew the Board's policies, procedures, and regulations were not unreasonable, and if they were unreasonable, the Board would have the responsibility to change them. He did not like the word "unreasonable" as it is negative and connotes the fact that the Board has too much leeway, or there could be a lot of leeway either from the industry or the public; there is unreasonable restraint.

Mr. Sesay stated that the Board wants to regulate the industry without unreasonable restraint; that is how the Board wants to operate and that is what the statement says.

Dr. Hanif Gulmahamad agreed with Mr. Morris in that the statement as written is an oxymoronic implication. He stated the mission statement says the Board is regulating the pest control industry and the vision statement says the Board is not regulating the pest control industry. He stated it is troublesome because the vision statement looks like the Board is promoting the pest control industry, which it does not.

Mr. Morris stated he saw no reason for the use of the word "most" as used in the mandate "to ensure that the most credible operators are licensed." He questioned if the Board issued two licenses, one issued to the average credible operator and another to the most credible operator.

Ms. Okuma commented that at the last strategic planning meeting, the Board focused only on its goals and objectives. The remainder of the plan was carried over from the prior year plan. She suggested that Mr. Morris's concern regarding the mandates, as well as his concerns with the mission and vision statements, could be addressed at a future meeting at which Travis McCann could be invited to facilitate amendments to the strategic plan.

Mr. Morris requested that the two issues he raised at this meeting be the focus of the strategic plan review.

Mr. Roth suggested that the language could read "licensure to ensure that competent and honest operators are licensed."

Mr. Morris stated that he was assuming the individual is competent if the Board issued a license.

Mr. Roth stated the language could read, "...the operators are appropriately licensed."

Mr. Morris responded that once the Board issued a license, one would assume that the license was issued based on the individual's passage of requirements. He did not think it was necessary to say "more better."

Harvey Logan, Pest Control Operators of California, stated that he hoped the language would read that all operators are licensed, as there is a big problem with unlicensed activity.

Mr. Arzate commented that the Board was talking about protecting the consumer by regulating the industry through licensing, examinations, enforcement, public redress and education with rigorous licensing procedures, period.

Ms. Okuma clarified that for purposes of the minutes, the Board was not adopting the plan at this time. The matter would be carried over to the next meeting.

Mr. Morris moved and Mr. Sesay seconded to postpone adoption of the Strategic Plan. Passed unanimously.

Ms. Okuma informed the Board that the Department's Division of Investigation in Southern California had agreed to work with the Board on investigating some unlicensed activity cases in that area.

Ms. Okuma introduced Board Specialists Steven Smith, Ed Ackerman, Greg Adams, Charles Alsky and Ron Moss. She also introduced the County Agricultural Commissioners and Sealers Association Southern California liaison to the Structural Pest Control Board, Kurt Floren.

## **VII. STRATEGIC PLAN UPDATE**

Ms. Okuma reported that the quarterly updates had not been completely developed with target dates.

Installation of the call-center features of the telephone system was scheduled for completion in May. Mr. Roth asked if the Board members would be permitted to listen to the taped telephone conversations between staffs and callers. Mr. Chang responded that while there would be no prohibition, such a practice would be discouraged in that the day-to-day operations of the Board are left to the registrar, and also to the extent that should the Board members listen to the tapes, they could be called as a witness in the event an adverse action was taken against a Board employee based on recorded conduct.

### **VIII. DISCUSSION OF THE DEPARTMENT OF PESTICIDE REGULATION'S ACTION TO RESTRICT THE USE OF SECOND GENERATION ANTI-COAGULANTS**

Kathy Boyle, Department of Pesticide Regulation (DPR), stated that the Department of Fish and Game requested a re-evaluation of secondary class anti-coagulants used for vertebrate pest control. In various studies, the class of rodenticide had been traced to the cause of death of predators such as mountain lions, i.e. the predator ate a rodent that ate the rodenticide. She stated that unbeknownst to registrants, manufacturers, distributors and industry members, the re-evaluation process began several years ago, and that approximately one year ago, DPR staff put forth a proposed mitigation measure that bait stations be used indoors only, which would have some major implications to the structural pest control industry. She informed the Board that there was currently an open public comment period regarding this measure in which DPR was seeking solutions rather than simply comments of opposition.

Dr. Gulmahamad commented that there are two second-generation anticoagulant materials available to the industry, and about five or six over-the-counter products that contain a formulation of the general-use material affected by the re-evaluation. He questioned the clarity of use by the regulated industry and the public. He stated there needed to be more stakeholder input into this issue to reach a reasonable compromise.

Mr. Morris asked if there was anyone in the audience representing the Department of Fish and Game or an environmental agency that could provide a counter point of interest. He asked figuratively where the rodenticides are placed within a residence or commercial building. He asked what was the general practice of industry use of these rodenticides.

Darrell Ennes, Terminix International, responded that tamper resistance boxes are placed around the exterior subareas; the concept is to not trap a rodent within the structure, but rather to prevent the entry of the rodent. He stated that Terminix has a pharmaceutical client that develops cancer drugs and if even a single rodent dropping or rodent hair were found in the product, the entire product batch for that day would have to be destroyed at a cost of millions of dollars. Mr. Ennes stated that in those cases, most of the baiting would be done along fence lines. Taking away the main product for the industry to use in those types of settings was going to be very difficult for commercial customers and residential customers. He challenged the accuracy or timeliness of the scientific data presently being put forth to support the re-evaluation and mitigation measures. He stated that if second generation rodenticides were taken away, it was going to completely change the effectiveness of the rodenticide procedures now, with an extremely significant negative financial impact on consumers.

Mr. Roth questioned why this issue was on the agenda, and what action was expected from the Board.

Ms. Okuma responded that no action was expected from the Board regarding this matter. She informed the Board that it was important for the Board to be aware of and understand



the issue as the matter could ultimately have an impact on consumers. She stated the matter was placed on the agenda simply to inform the Board of the issues only.

Larry Musgrove, Western Exterminator Co., commented that the regulated structural pest control industry uses only about five percent of rodenticides, yet the agricultural and private party retail purchase represent 95 percent of rodenticide use. He stated the mitigation measure addresses the population that uses the least amount of the product.

Jim Boyer, Clark Pest Control, stated he has been in this industry for five decades, and that this measure would put this industry back fifty years by forcing the use of first generation rodenticides, which take seven to ten days of feeding to eliminate the rodents. He stated this would be the only alternative for outside use, and that the delay in control would give rodents sufficient time to infest homes, food processing and distribution locations, and warehouses. He agreed there needs to be further study to ascertain the source of the user of the product that resulted in the death of the predator species; was it indiscriminate use of over-the-counter products rather than use by the heavily regulated structural pest control industry. Mr. Boyer stated the industry uses tamper resistant bait stations, labeled, locked and anchored to the ground. He asked that the Board take a position of opposition to the mitigation measure.

Harvey Logan, Pest Control Operators of California (PCOC), commented that DPR was well aware of the problem and had asked the industry to develop a solution. A meeting with DPR and PCOC was scheduled for next week to discuss a modification of the label to require that consumer use would be limited to indoors and that the regulated industry could use the product outdoors.

Mr. Morris asked if the manufacturer would take any action to change the chemistry of the rodenticide.

Mr. Logan responded that there was no such change being considered that he was aware, and that the proposed changes were educational and label direction.

Mr. Roth asked if Mr. Logan would provide an update to the meeting of PCOC and DPR at the next Board meeting. He also asked if someone from the Department of Fish and Game or an environmental group could attend to provide opposing viewpoints.

Mr. Logan pointed out that a determination regarding the issue would have already been made prior to the Board's next meeting.

Jerry Farris, Big Valley Termite and Pest Control, stated that if the Board took no position on the matter, it would already be over with by its next meeting.

Ms. Okuma responded that it was important that if opposed, the Board not simply voice its opposition but rather offer a resolution or modification. She stated she did not believe the Board had enough information to develop a recommended modification.

Mr. Arzate questioned the time line for making recommended modifications. Ms. Boyle responded the comment period concludes at the end of April.

Mr. Musgrove asked if the Board could express grave concerns regarding the proposal.

Mr. Boyer commented the only position should be one of opposition.

Mr. Ennes questioned if the Board could take a position that the regulated structural pest control industry continue to use the product.

Dr. Gulmahamad stated the issue was political and that it was not in the best interest of the Board to take a position on this matter. He stated the industry, manufacturers, distributors, and PCOC would address the matter with DPR.

Mr. Morris stated he agreed and felt that it would be prudent to allow PCOC to proceed as reported.

Mr. Farris asked the Board to make a request for an extension of the deadline to allow the Board to get enough information to take an informed position on the matter.

Mr. Ennes believed the Board needed to take a position in the interest of consumer protection.

An unidentified audience member commented that there was currently a rodent task force comprised of the manufacture that has submitted new data to DPR in order to provide a better understanding of the material. He stated the reason for rodent control is to deter rodents from becoming the vector of diseases. He suggested communicating directly with the manufactures to get a better understanding of the issue.

Curtis Good, Newport Exterminating, said the Department of Fish and Game could not provide specific data relative to animal deaths and their relevance to rodenticides. He believed the structural pest control industry uses only five percent of the product with 90 percent of the effectiveness. He believed it is the average consumer who does not use the compound according to label directions. He believed the exposures are occurring from consumer's direct use. Mr. Good stated that it should be the goal of the Board to support the industry that uses the product correctly.

Dr. Gulmahamad stated there is no doomsday prediction relative to this issue, and there are a host of materials available to the industry to use should members of the industry educate themselves regarding the products and their proper use.

Mr. Morris commented that he was very concerned with the industry's position regarding the potential financial impact on the consumer. He stated that from his point of view, this was a highly contentious issue, both politically and socially, and that once the environmental people got involved, the matter would become a political nightmare. He did

not believe he had received enough information concerning the issue to take a position, as he had not heard from the environmentalists or the Department of Fish and Game.

Mr. Roth asked how the Board would be perceived if it did or did not request a delay in process.

Ms. Boyle responded that DPR was more than willing to negotiate issues brought to its attention from PCOC, but whether DPR would offer an extension was unclear. She stated that there was an opportunity to meet and discuss the issues.

Mr. Roth stated that if DPR was meeting with PCOC, it appeared that there was no need for input from the Board.

Ms. Boyle stated that DPR must respond to the legislature and the governor, so the more input received boded well for DPR in that it could demonstrate that it actively sought input other than its own.

Mr. Arzate asked if there was a forum in which all entities met to discuss the issues, and if not, could the Board partner with DPR to facilitate such a discussion.

Ms. Boyle responded that the manufacturer had met with DPR and that DPR would be meeting with PCOC.

Mr. Roth asked if all the parties would be interested in the Board holding a special meeting to discuss this issue.

Mr. Logan responded that PCOC was involved in weekly telephone calls for the last month in which the latest status was that the registrants supported PCOC's recommendation to amend the label to allow structural pest control licensees to continue to use the material as currently used.

Mr. Morris stated that Board members must hear both sides otherwise it would be improper to take a position, and that passing a resolution to oppose or not oppose was chancy. He stated that he was not prepared to take a position, and he had concerns with placing rodenticides within a structure. Mr. Morris stated that he needed more information before making a decision.

Mr. Musgrove stated that the Board was seeking input from environmentalists and representatives from the Department of Fish and Game, yet the industry had tried unsuccessfully to identify those parties.

Mr. Morris stated that the fact of the matter was that the issue was highly charged financially and maybe politically, therefore, there needed to be dialog to clarify who was taking what position.

Marie Evans, Northstar Exterminators, stated she understood the comments, however, the highest priority of the Board is to protect and benefit the public, not wild animals. She stated there is a lot of data that the industry has questioned and is requesting to see to answer its concerns. She encouraged the Board to seek the data.

Dr. Gulmahamad stated that rodents can be controlled without rodenticides, and that traps are available.

Mr. Roth asked legal counsel if a meeting could be cancelled should the matter be resolved prior to the Board meeting.

Mr. Roth moved that the board hold a meeting in the next 60 days to discuss the subject and asked staff to invite the different stakeholders, manufacturers, distributors, Pest Control Operator's of California, industry, environmental interests with BFG and that this meeting be held subject to the issue being still ripe, and the president or vice president determine enough stakeholders accept the invitation to participate.

Mr. Roth asked for a survey of members who wanted to take a position on the matter today.

Mr. Morris stated he could not take a position on the matter today.

Mr. Roth asked if the Board liked the approach of his motion, subject to people attending. He asked how soon it could be scheduled.

Ms. Okuma informed him that the law requires publicly noticing a meeting ten days prior.

Mr. Arzate clarified that there are seven calendar days from today before DPR takes its action.

Mr. Roth questioned if DPR would at least informally consider what the Board had to say regarding the issue.

Ms. Boyle responded that while DPR may hear the position, it would be under no legal obligation to respond or take the Board's position under consideration.

Mr. Roth stated the Board could not meet the DPR deadline, however, it should hold a meeting inviting participants for discussion.

Mr. Sesay stated it may be a wasted effort in that the Board's comments would be made too late in the process.

Mr. Roth responded this his proposal to go forward was contingent on the issue still being relevant, in that the matter had not been resolved between DPR and PCOC.

Mr. Morris stated that this was the first time the Board had heard the issue and he was concerned with the integrity of the Board. He stated the integrity of the Board in making its decisions is high priority, and the Board making a decision based on only one-sided information was unwise. He stated he did not want to see the Board open to political criticism.

Mr. Farris stated that taking no position was tantamount to blessing the mitigation measures proposed by DPR. He was not clear why the Board was considering having a special meeting after the matter would already be determined. He encouraged the Board to request an extension.

Mr. Arzate supported having a special meeting with all stakeholders to engage in dialogue to address the matter.

Mr. Sesay also supported requesting an extension.

Mr. Roth amended his motion to state that the Board ask DPR to extend its deadline for the submission of comments on the proposed policy because the Board wished to convene a meeting of stakeholders for the purpose of inviting input upon the issue for the Board's consideration and possible adoption of a position on the issue by the Board.

Mr. Sesay requested that the motion be amended to include the words that the Board had concern.

Mr. Roth disagreed as he was trying to keep value judgments out of the motion. He wanted to keep the motion neutral.

Mr. Arzate seconded the motion.

Tim Palmatier commented that the DPR letter was issued November 8, 2005, the meeting was November 18, 2005, at which point the mitigation measures were introduced by DPR. He asked the Board what made it think an extension would even be considered due to the amount of time that had transpired, and why was the Board even visiting this issue at this time.

Mr. Roth responded that he knew the answer as well as the Board did.

Mr. Morris responded that this was the first time the issue had come before the Board.

Mr. Ennes stated that while the registrants knew of this issue for several years; the industry first became aware of it earlier this year. He stated that DPR was asked on March 28, 2006, to grant a 60-day extension; it granted a 30-day extension. He suggested that asking for another extension was going to be problematic.

Mr. Good asked Ms. Okuma how many licensees received violations for secondary poisoning. She responded that she was unaware of any such violations. Mr. Good thanked her for the response.

Mr. Boyer commented that he could see the concern of the Board, a consumer advocacy Board. He also was concerned, and believed that so were approximately 150,000 Northern California customers of structural pest control companies, many of which are grocery chains. He asked that the motion be amended to express that the Board was concerned about the proposed changes, especially with placing rodenticides in the interior of structures.

Mr. Roth responded that he could not accept that as a friendly amendment. He believed it was dangerous to make value judgments in a motion, stating that as persuasive as the arguments sounded today, he believed it was premature to say anything that could be perceived as a judgment. Mr. Roth stated the fact that the Board was asking for an extension suggested concern. He believed the reason Mr. Boyer wanted the Board to say concern is because it served Mr. Boyer's viewpoint.

Mr. Musgrove commented that consumers would be concerned when the industry could not provide services.

Mr. Roth stated he did not accept that as a friendly amendment as he did not want the motion to contain value judgments, stating there was no value to state the Board was concerned.

Mr. Musgrove stated that all customers have concerns about the impact of the proposed mitigation measures. He stated the Board could talk this issue to death but if the Board was not going to do anything, then do nothing; the industry would do the best it could. He stated the Board did not seem to be representing the consumer very well, that there are more than just environmentalists involved, such as families, homeowners, grocery stores, and food processing plants. Mr. Musgrove stated the Board just continued to talk as if there was no problem with the industry losing good control services. He stated that listening to the Board talk on and on about the issue was not useful.

Mr. Boyer commented that the regulators inspecting food-processing plants had come out in opposition to the measure.

Mr. Morris stated he was concerned with the industry's well being but he was also concerned with the consumer's well being, not just safety but the financial ramifications. He stated that as a Board member, when he did not hear the opposite side of the issue, he was in no position to make a decision based on everyone's well being. Mr. Morris stated that this was the first time the Board had heard the issue and the Board needs more information. He stated he was not going to walk off a cliff on this issue.

Mr. Musgrove responded that the Board should then do nothing, as he saw no concern from the public Board members about rodent control. He stated that if the Board did not

want to take any strong action on the issue, then he could accept that, despite the fact that the best control method is being restricted.

Ms. Melton commented that the Board meeting agenda was noticed to the public. She stated that persons concerned with environmental issues had attended Board meeting in the past, yet they were not here today. She believed the proposed measure would cause harm. She pointed out to Mr. Morris that he, as a storeowner, would be forced to place a bait station in his store resulting in dead rodents within full sight of his customers.

Mr. Morris informed her that her comments were a personal matter.

Mr. Roth sought a consensus of the Board to determine if a lunch break was in order before the Board made a decision on the matter. The members suggested continuing.

Mr. Roth stated that if his motion did not pass, he would take a vote on whether the Board wanted to take an opposing position.

Mr. Chang suggested the Board needed to consider the motion on the floor before considering a subsequent motion.

Mr. Roth asked that the motion be read. Ms. Okuma read the motion. Mr. Sesay stated that the action must be taken as soon as possible and if DPR did not agree, the Board must vote before the April 28 deadline. Ms. Okuma stated that was not possible, as a telephonic meeting of the Board must be noticed ten days in advance.

Mr. Morris requested the motion be reread. Ms. Okuma read the motion.

Mr. Sesay recommended that depending on the outcome of the Board's request, that the Board oppose the mitigation. Mr. Chang informed the Board it must take action on the motion on the floor before it considered a second motion.

Mr. Roth responded the motion had been made and seconded and as part of the discussion of the motion, and should it pass, the Board would then listen to Mr. Sesay, and if he liked what he had to say, then he would just make a motion to withdraw the motion that would have just passed, which would be silly, therefore, he wanted to listed to Mr. Sesay's motion. Mr. Sesay said if the request was rejected by DPR, and the Board could not make a decision within ten days, then the Board should take a position now.

Mr. Roth stated the Board would vote on the motion on the floor.

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

Mr. Sesay moved that the Board take a position of opposition to DPR's mitigation measures should DPR deny the Board's request for an extension.

Mr. Roth stated that the Board had been placed in an impossible position, that for whatever reason, this matter was never brought to the Board's attention until today. He stated to take an opposed position now may be helpful to the public, but he had concerns that the issue was not as egregious as it sounded. He believed there were points of interest that the Board had not yet heard.

Mr. Logan reminded the Board that the matter was placed on the agenda as an informational item only.

Mr. Roth responded that it was a contentious issue whether or not the Board should take any action relative to this matter. He believed the position the Board adopted was a compromise.

Mr. Roth asked if there was a motion to oppose. Mr. Sesay responded that his motion stood. Mr. Roth stated that the motion on the floor was if an extension was not granted that the staff was directed to communicate the opposition of the Structural Pest Control Board to the mitigation proposals of DPR as written on this date.

Mr. Roth stated that the second motion applied only if a sufficient extension was not granted.

Mr. Morris stated that the Board would hold a special meeting, regardless.

Mr. Roth responded that was not accurate.

Mr. Morris stated that the Board still wanted to hear the opposing views.

Mr. Roth stated that if Mr. Sesay's motion passed, it did not take away the motion to request a postponement and having a meeting. If a sufficient extension was not granted, the Board could still have a special meeting.

Mr. Good informed the Board that the public comment period on the mitigation measures was open to everyone, including the referenced stakeholders. He suggested the Board make a public records request to ascertain stakeholders' positions.

Mr. Arzate questioned when those records could be obtained.

Mr. Roth stated DPR would not be required to provide those comments until the rulemaking was completed.

Ms. Okuma stated there is no rulemaking file being compiled, as this was not a regulatory action.

Mr. Chang informed the Board that public records would have to be disclosed. He further asked if there was a second to the motion. There was no second to the motion. The motion failed.



Mr. Roth asked that the minutes reflect the clarification that if a sufficient extension was not granted that a stakeholder meeting be held.

Lee Whitmore, Beneficial Exterminating, stated that the meeting was open to the public and if any interested stakeholder wanted to attend, the opportunity was there.

Mr. Arzate responded that the Board had no knowledge how aggressively the meeting was conveyed to the stakeholders.

Mr. Logan reminded the Board that DPR had extensive discussions with all stakeholders. DPR had already done what the Board was proposing to do.

Dr. Gulmahamad stated that he hated to see the Board being pushed into taking a position by the industry.

Mr. Boyer stated that while there are traps and other alternatives to rodenticides, the consumers would be significantly impacted by the financial need to daily check traps.

Mr. Roth stated he was going to vote to the need to hold a stakeholders meeting. He made a motion that in the event a sufficient extension was not granted by DPR, that a meeting be held. Mr. Morris seconded. The motion passed (Aye – Arzate, Morris, Roth, Sesay. No – Melton).

Mr. Roth commented that the Board has met frequently with Administrative Law Judges and that almost without fail the Board was informed that it is a great Board, that the members deliberate well, they listen to one another, they respect each other even when they do not agree, and that this Board, unlike some Boards within the Department of Consumer Affairs, really is cohesive and is a deliberative body. He made these comments based on the contentious issues just considered and that despite the contentiousness of the situation, he believed that with all the Board members he has been honored to serve with, that relationship continues and that the reason they got through the issues as easily as they did, it probably would have been more difficult if the relationships had been different, because the relationships are good. He believed all the Board members felt that way.

**IX. DISCUSSION OF THE SAN FRANCISCO CITY AND COUNTY DEPARTMENT OF PUBLIC HEALTH'S ACTION TO CHARGE STRUCTURAL FUMIGATION PERMIT AND INSPECTIONS FEES**

Ms. Okuma reported that this item is informational only. She stated that the Pest Control Operators of California, Inc. informed the Board and the Department of Pesticide Regulation (DPR) that San Francisco City and County's Department of Public Health announced that it would charge a commodity and fumigation application fee and a monitoring and inspection fee to structural pest control companies. This issue came about

as a result of the dissolution of the San Francisco County Agricultural Commissioners Office, and the redirection of duties and responsibilities to the county's Department of Public Health. DPR addressed the issue with the city and county, citing laws that precluded the assessment of such fees and suggested it withdraw its ordinance.

## **X. RESEARCH GRANT UPDATES**

Ms. Okuma reported that the University of California Berkeley research contract had not yet been finalized, nor the contract with the University of California, Riverside (developing baits for the control of yellow jackets in California).

The Board members were provided with quarterly updates on the research projects conducted by the University of California, Riverside (a comparison of baiting and perimeter spray programs for urban pest management of argentine ants), and the University of Irvine.

Mr. Roth commented that he was surprised that the contracts were not yet in place based on the urgency expressed during the process of granting funds.

Ms. Okuma responded that following the decisions made by the Board relative to granting funds, the contracts go through the Department of Consumer Affairs' (DCA) Contract Unit that handles numerous contracts for all of DCA. Contracts are then forwarded to the contracts staff in the university system. The contracts can go back and forth for amendments.

Mr. Morris questioned if the Board members could do anything to initiate some speed in the process. Ms. Okuma informed him that Board staffs are working with the entities involved and the Board could do nothing to expedite the process.

## **XI. LAWS AND REGULATION COMMITTEE UPDATE**

Mr. Musgrove, Chair, reported that the preliminary review of the reorganization of the statutes as written by Deputy Attorney General Eisman was approximately two-thirds completed. The unexpected death of a key staff member had delayed the review somewhat. It was anticipated that the package would be ready in approximately three months for submission to the Laws and Regulations Committee, and subsequent submission for the Board's review. He anticipated the committee would be able to submit its recommendations to the Board sometime in 2007.

Mr. Morris asked who comprised the committee. He was informed that Ms. Okuma and Harvey Logan served on the committee that he chaired.

Dr. Gulmahamad asked that the committee solicit public input. Ms. Okuma responded that according to the Board's strategic plan, the document would be reviewed and formatted prior to submission to the committee for public notice and public input.

Mr. Roth responded that the Board would not be expected to adopt a proposal without prior public input. He questioned who was developing the first draft, such as making decisions about which words to delete or add or move. He was informed that then Deputy Attorney General Robert Eisman developed a draft document, and that Mr. Musgrove and Ms. Okuma were reviewing his draft in preparation for submission to the committee.

Mr. Roth admonished Mr. Musgrove and Ms. Okuma for acting as a committee without benefit of working as the committee he appointed, stating if they did not want to be committee members then they should inform him of such.

Ms. Okuma informed him that Mr. Musgrove was assisting her as the only staff available to evaluate what had been done to date and what remained to be done by the committee with the draft developed by Mr. Eisman, in preparation for presenting a working document to the committee.

Mr. Roth suggested that legal counsel be consulted. He was informed that progress relative to this matter had been reported to the Board at each Board meeting for the past year and legal counsel never took exception.

Mr. Roth questioned if there was a Laws and Regulations Committee. He was informed that he had appointed the committee. He clarified that there was some overlap, and questioned whether the committee had met. He was informed that the committee had not yet met. He was directed to the strategic plan and updates that gave detail relative to the status of the project.

Mr. Roth asked if the composition of the committee needed to be expanded. Ms. Okuma stated the composition as appointed was acceptable.

Mr. Roth thanked Mr. Musgrove for his report.

Mr. Morris asked that this topic be updated at the next meeting.

## **XII. WATER QUALITY COMMITTEE UPDATE**

Mr. Roth reported that he had appointed the Water Quality Committee. Staff was compiling a packet of background information for the committee members, which he believed were a well-rounded representation of all interests.

## **XIII. DEPARTMENT OF CONSUMER AFFAIRS' INTERNAL AUDIT – CONSTRUCTION TRAINING COURSE REQUIREMENT (ACTION)**

Ms. Okuma reported that the Department of Consumer Affairs' Internal Audit Office determined after reviewing closed investigative cases, that there were a significant number

of workmanship issues relative to structural pest control licensees. DCA was recommending that the Board adopt requirements that its licensees have additional training in the area of construction.

In response to the audit, the Board asked for complaint case information specific to the recommendation. Staff reviewed every complaint file housed at the Board, dating back to December 5, 2001, and identified each complaint case that resulted in a Board Specialist confirmation of workmanship violations. The Board was also informed that pest control companies issued 1,657,083 notices of work completed during this same time period.

Dr. Gulmahamad questioned if construction repair continued to be a legally required element of the licensing examinations. He was informed it was still required and was part of the licensing examinations. He asked what the percentage of violations was in comparison to the notices of work completed. He was informed that the workmanship violations were less than one percent of the total number of jobs completed in the same time period.

Ms. Okuma asked the Board to consider if the data supported the necessity to impose an additional training requirement for the regulated industry.

Mr. Roth asked Ms. Okuma if she thought the Board should act on this matter today. She responded that she thought the Board could make a determination based on the data provided.

Dr. Gulmahamad suggested that rather than unnecessary regulatory amendments, the Board consider expanding the construction repair elements of the licensing examinations in response to the Department of Consumer Affairs' (DCA) concerns. Ms. Okuma responded that DCA had completed the occupational analyses for the Branch 3 license categories and that once examination development began the examinations would reflect construction repairs based on the analyses performed by DCA.

Mr. Morris and Mr. Roth questioned how much structural improvement a licensee of the Board can make. They were informed that the repair must be incidental to the findings and recommendations only.

Mr. Morris asked if a Board licensee can do a contractor's job, specifically, he wanted to know if a licensee is properly trained in construction repair and can a Board licensee do repair on a weight bearing wall. Ms. Okuma responded that the license would permit repair in that situation if there is an identified wood destroying pest or organism with a repair recommendation. She stated that some companies do not consider repair their area of expertise, therefore, may subcontract the work to a licensed contractor. Mr. Morris stated that personally he knew someone who had structural pest control work done which required that a licensed contractor give direction to the structural pest control licensee. Ms. Okuma responded that the report provided to the Board members reflects every complaint that the Board investigated where there was a workmanship issue. She stated the report reflects

that not all companies perform poor repairs, but those that do are being disciplined and revoked.

Mr. Sesay moved and Ms. Melton seconded to authorize the registrar to communicate to DCA the Board's opposition to any additional construction training requirements. Passed unanimously.

#### **XIV. BOARD MEETING CALENDAR**

The next Board meeting will be held July 20 and 21, 2006, in Sacramento. The following meeting will be held October 19 and 20, 2006, in the Burbank area.

#### **XV. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA**

Gail Getty, University of California Berkeley (UCB), questioned who makes decisions regarding the disbursement of research funds as referenced in environmental scan of the Board's strategic plan. She was informed the environmental scan was a broad identification of external stakeholders, and the UC researchers would fall in that category. She then questioned who she would address regarding future funding issues once the Board had approved a funding project. Ms. Okuma responded that she was aware that UCB had requested full funding in advance of the research, however, the Request For Proposal (RFP) specifically identified how research monies would be disbursed. Ms. Getty stated that she had missed reading that in the RFP, but for future funding, to get the monies in arrears each month when the university has a huge output of cash for equipment and scientists, the university must borrow money and repay the money once they receive the funds from the Board's Research Fund. She did not want to waste the Board's time if this was not within the Board's authority to address. Ms. Okuma responded that the matter was a contractual matter, not within the Board's authority. Ms. Getty was informed that the matter could be discussed through Department of Consumer Affairs and Board staffs.

Lee Whitmore, Beneficial Exterminating, questioned if an amendment to the Occupants Fumigation Notice was to include language regarding notification to owners of pets that fumigation was going to take place. He was informed that while the Board did consider a regulatory amendment to adopt such an amendment, it did not approve the amendment, and the form printed in the 2001 Structural Pest Control Act was in error. Mr. Roth requested the Board's website be updated to reference the publication error.

Mike Watkins, Cardinal, stated he understood that the matter would be noticed for Board reconsideration at a Board meeting. Ms. Okuma stated the matter could be placed on a future agenda.

Marie Evans, Northstar Exterminating, stated she had hoped the Board would have taken action on the matter of San Francisco City and County issue as it did some years back when local fire districts began charging fees to the structural pest control industry relative to

fumigations. Ms. Okuma responded that while similar, the matter was different in that the prohibition from the fire districts charging a fee was addressed in the Board's codes, while the matter of San Francisco City and County was within the authority of DPR. The Board considered opening the matter back up for discussion. There was not motion to do so.

Dr. Gulmahamad offered to assist the Board in rewriting licensing examinations. Mr. Roth asked if members of the public could submit potential questions for inclusion in the licensing examinations. Ms. Okuma responded that such a practice would not be consistent with security issues relative to examination development, but stated that Dr. Gulmahamad could be placed on a contact list when the Board began that process.

Greg Adams, Structural Pest Control Board Specialist, asked how many complaint cases were reviewed to determine there were 150 cases of workmanship violations. He was informed all specialist cases in the office at the time, some dating back to 2001.

Mr. Roth stated he wanted to thank all people who took the time to attend the meeting, as their input was valuable.

Kathy Boyle, Department of Pesticide Regulation, suggested that if San Francisco City and County does not agree with DPR's letter to retract its ordinance, then the Board might want to lend its support to the matter.

**XVII. 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.

Mr. Roth adjourned the meeting at 3:50 PM.

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President

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KELLI OKUMA, Executive Officer

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DATE