

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
JULY 20 AND 21, 2006

The meeting was held on Thursday and Friday, July 20 and 21, 2006, at the Department of Consumer Affairs, 1625 North Market Blvd., Room S-102, Sacramento, California, commencing at 1:03 PM with the following members constituting a quorum:

Cris Arzate
Jean Melton
Bill Morris
Mustapha Sesay

Board staff present:

Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Carl Smitley, Enforcement Coordinator
Ryan Vaughn, Administration Analyst

Departmental staff present:

Spencer Walker, Legal Counsel
Don Chang, Legal Counsel

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

I. ADMINISTER OATH TO BOARD MEMBERS

Ms. Okuma administered the oath to reappoint Board members Jean Melton and Bill Morris.

Ms. Okuma announced that Board member Ken Trongo passed away following a short illness with cancer. She commented that Mr. Trongo was proud to have served as a member of the Structural Pest Control Board (Board) and he would be greatly missed by all. A moment of silence was observed in Mr. Trongo's memory.

II. ROLL CALL / FLAG SALUTE

Ms. Saylor read the roll call.

Ms. Okuma led everyone in the flag salute.

III. ELECTION OF OFFICERS

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

Mustapha Sesay nominated Jean Melton for President of the Board. The nomination was seconded by Bill Morris.

Passed unanimously.

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

Bill Morris nominated Mustapha Sesay for Vice President of the Board. The nomination was seconded by Jean Melton.

Passed unanimously.

IV. REINSTATEMENT HEARING

The Board sat with Administrative Law Judge Stephen K. Smith and Deputy Attorney General Kent Harris to hear the Petitions for Reinstatement of Stephen Lawson, Operator's License No. 8722, Daniel Lee Bussey, Operator's License No. 8604, and William A. Hernandez, Field Representative's License No. 34391. The petitioners were informed they would be notified by mail of the Board's decision.

V. CLOSED SESSION

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

The meeting recessed at 3:42 PM.

The meeting reconvened Friday, July 21, 2006, at 9:03 AM.

VI. FLAG SALUTE

Ms. Melton led the flag salute.

Tom Murray spoke on the life of former Board member Ken Trongo. Mr. Trongo was 67 years old when he passed away in June of 2005. Mr. Trongo served as a Board member for nine years. He was a family man with four children with one of his sons currently working for the family business. Mr. Trongo loved cars and had recently started building dunebuggies. He took many trips to the Sea of Cortez in Baja, Mexico and he requested that his ashes be spread there. Ms. Melton requested that everyone stand for a moment of silence.

VII. RESEARCH GRANT UPDATES

Ms. Saylor gave updated information on the Board's four research project contracts. Two research projects are currently being carried out and the other two projects are awaiting contract approval. Once the projects have been approved, the three-year term begins.

Mr. Morris asked why haven't the two projects been approved and who approves them.

Ms. Saylor responded that the legal division of the Department of General Services approves the research projects contracts. The UC Riverside contract is with DGS awaiting approval. The UC Berkeley contract was returned to the Board for clarifications and has been resubmitted for DGS approval.

Mr. Morris wanted confirmation that getting the research project contracts approved had not been delayed by the Board.

VIII. REGISTRAR'S REPORT

Ms. Okuma introduced Ryan Vaughn to the Board. Mr. Vaughn has taken over the Regulation Analyst position formerly held by Barbara Howe.

Ms. Saylor reported on the following:

- Licensing statistics and survey results were reviewed with the Board members.
- Ryan Vaughn has filled the vacant Staff Services Analyst position.
- Interviews are being scheduled to fill the Office Assistant vacancy in the Licensing Unit.
- Recruitment efforts have begun to temporarily fill the Office Services Supervisor (OSS) position formerly held by Steve Thomason. Mr. Thomason has been out on disability since January and may be out for another year.
- The Board's budget has been signed and approved. The Board was granted an additional SSA position in the Administration Unit. The Board is getting ready to start recruiting for that position.
- The Board had requested for approval of out of state travel for two individuals to attend two upcoming meetings relating to pest control. Attendance at the National Pest Management Association meeting was denied entirely and attendance to the

ASPCRO meeting was reduced to one attendee. The number of traveling days was also reduced.

- The Department of Consumer Affairs notified the Board that the general fund loan of \$2 million in fiscal year 2002/2003 would be repaid to the Board with interest during fiscal year 2006/2007.

Ms. Okuma reported on the following:

- Ms. Okuma introduced Antonette Sorrick who is the deputy director of Board Relations for the Department of Consumer Affairs (DCA).
- The Board has appointed the Laws & Regulations committee to review the rewrite of the Laws & Regulations that was drafted by Robert Eisman, formerly the deputy attorney general. The meeting is scheduled for August 16, 2006 in Sacramento. The committee is comprised of Larry Musgrove, Harvey Logan, and Ms. Okuma. Ms. Okuma reported that it would most likely take more than one meeting to complete.
- The Board is working towards setting a date for the Water Quality Committee meeting. The meeting will likely be set up for sometime in September.
- The Board will likely be moving its office early next year. DCA has found a location however nothing is official. DCA has asked for the Board to attend weekly meetings concerning the move.
- Okuma has been in contact with the Governor's office to fill the vacant Board member positions.
- Complaints have been received from prospective Applicator licensees complaining about not receiving their licenses in a reasonable amount of time after passing the test. It was discovered that some County Agricultural Commissioners offices were not sending the results to the Board in a timely manner. The offices were contacted and the Board requested that the exam results be mailed to the Board by the next business day.
- Ms. Okuma attended a meeting with the San Diego County Agricultural Commissioners from July 10th to July 12th. San Diego County hired an independent contractor who took San Diego County staff and put them through the Kaizen process. The process allows staff to physically map out the procedures from the point of the investigation to the point that the notice of proposed action is issued. The process allowed staff to see the redundancy in the process as well as identify all those involved. Ms. Okuma found the Kaizen process very beneficial and mentioned that it could be used with staff to identify possible problems.

IX. PRE-TREATMENT COMMITTEE UPDATE

Ron Moss and Kevin Etheridge reported that the current proposal is very much a work in progress. The Agricultural Commissioners had concerns with how the notifications of pre-treatment would be received, the timeliness of receiving the pre-notifications, and the naming of the "notice of intent." There was a committee meeting in May and another in

June. Kathy Boyle, the Department of Pesticide Regulation's (DPR) liaison, has prepared a draft of the "notice of intent." The draft should be finalized at the next committee meeting to be held in August.

Ms. Melton presented Mr. Moss with a letter from BASF, which contained concerns about the pre-treatment proposal. In the letter, Jim Trunslow, Senior Sales Specialist from BASF, presented two concerns. The first concern was that the proposal specifies that exterior vertical barriers (final grade) would not be required unless the termiticide label required it. The other area of concern involves the termiticide Bio-care. The label for Bora-care specifies treatment after the slab has been poured to plumbing protrusions, cold joints, framing, and foundations. Mr. Trunslow reported that he was not aware of any data that proves this method of treatment to be effective at preventing a subterranean termite infestation to structures. Mr. Trunslow included that the states of Texas and Arizona have come to that conclusion and thus do not allow Bora-care for pre-treatment.

Mr. Morris asked Mr. Etheridge to give the Board an overview on the report and to summarize what the intentions are.

Mr. Etheridge reiterated that the proposal was still a draft. One regulation that the committee is trying to update is regulation 1991.12(b), which states that if a pre-treatment is done, the instructions on the label of the pesticide must be followed. The committee feels that because the labels vary among the manufacturers, it is difficult to have enforcement powers over the pre-treatment. The committee was organized to define what pre-treatment is as well as put some parameters around the areas of pre-treatment. There are several ways to achieve a pre-treatment. Some is driven by federal paper work. The National Pest Management Association and the Department of Housing and Urban Development together developed regulations 99a and 99b, which required warranties in pre-treatment in escrow transactions. Regulation 99a allows for the use of soil treatment, wood treatment, the use of a bait system, and there is a box for "other." What the committee is trying to do is bring everything in without reinventing the rules. The committee is also going to define liquid treatment and lumber treatment.

Mr. Etheridge then directed the Board's attention to the subject of posting treatment tags. Mr. Etheridge distributed a sample of the treatment tag, which will allow county agricultural inspectors to do tag monitoring. The tagging record will allow an inspector to monitor the use of pesticides without physically being at the site at the time of treatment. The committee debated about what warranties and guarantees imply. The committee recommended that a company couldn't issue a warranty or guarantee without performing a proper treatment. Mr. Etheridge stated that he doesn't believe that all inspection and completion reports are being filed with the State. As a member of the industry, Mr. Etheridge knows it is his responsibility to file the reports. Mr. Etheridge is not sure that all companies are aware of the requirement.

Mr. Morris stated that the Board previously discussed the problem of companies using incorrect chemicals or watered down chemicals. He asked if this was being addressed in this proposal.

Mr. Etheridge responded that it is being addressed.

Ms. Thomas asked what the current standard was and what does this proposal bring to the table.

Mr. Etheridge respectfully submitted that there isn't a standard right now. He felt that the widely accepted standard is that the industry defaults to the label. Mr. Etheridge stated that since there is no regulatory visibility in the field he couldn't determine if the labels are followed correctly.

Ms. Okuma reported that the statutes and regulations only have brief reference to pre-treatments. The industry has historically tried to fit pre-treatments into the existing laws and regulations. The committee will develop a clarification for the industry as to what the requirements are for pre-treatments.

Ms. Thomas stressed the importance of having the clarification in the laws and regulations, as it will represent the gold standard when cases go to trial.

Mr. Sesay commented that if the proposal makes references to warranties and guarantees there should be a brief description of a warranty and guarantee.

Mr. Moss responded that the committee is working on both definitions.

Mr. Chang commented that the Legal Office would work with the committee concerning the definition of warranties and guarantees.

Harvey Logan asked if the committee was going to address notification.

Mr. Moss responded that the committee is addressing pre-notification. From a regulator's standpoint, it is necessary. Without the pre-notification, inspectors would only be guessing when a property was going to be treated.

Ms. Okuma said that in terms of pre-notification, the committee had reservations about the number of hours required for a pre-notification.

Mr. Moss confirmed that the committee did not want the short number of hours. There is an agricultural provision that allows a commissioner to have late notifications. Mr. Moss reports that some county agricultural commissioners are using this provision, which does not provide inspectors with enough time to actually be on site during treatment.

Ms. Okuma asked what was the present time frame that the pre-treatment committee is looking at to recommend for pre-notifications.

Mr. Moss replied that in the latest draft, the county agricultural commissioner shall be notified at least 24 hours and not less than 2 hours prior to commencement of any pre-

construction application treatment. The committee proposes that by 4 PM of the day before the treatment a registered structural pest control company must notify the commissioner's office by telephone or fax. The agricultural commissioner may allow less than 2 hours of notification if he/she determines that because of the constraints of the construction schedule, prior notice is not possible. The notice of pre-construction application treatment shall include the following: company name, company address, company structural pest control registration number, name and address of builder or contractor, pesticide trade name, EPA number, method of treatment, address/site location and cross street/lot number, map or directions to the location, and the time and date of the proposed treatment.

Ms. Okuma mentioned that the last pre-treatment committee meeting concluded with some concerns that have been put in writing and presented today. Ms. Okuma asked if these concerns would be addressed at the next meeting.

Mr. Etheridge reported that most termiticide labels read to achieve new construction, pre-treatment provide a horizontal N/4 vertical barrier. BASF just came out with a label on Termidor, exclusively for pre-treatment where it is mandated by the label. Mr. Etheridge reported that in his experience of over 30 years in southern California, he has never received a warranty call during the 5-year warranty period on the exterior foundation. As a committee member, Mr. Etheridge commented that a company can go about doing an exterior final grade and then the landscaping and construction will destruct it all anyway, there will probably not be any treatment left. He posed the question, why put product where it may or not be needed. Instead of mandating the rules and regulations, why not leave it up to the individual companies and how they want to protect their liability as far as the warranty period. Mr. Etheridge responded to the second concern about Bora-care, more specifically disodium octaborate tetrahydrate, saying that it is labeled for pre-treatment across the nation. He believes that there are five or six states in the U.S. that do not recognize Bora-care as a pre-treatment. Mr. Etheridge commented the committee is trying to write a good regulation that can be enforced.

Mr. Morris asked Ms. Okuma if the regulation is headed for approval under the SPCB Rules and Regulations and also what the timetable was for that.

Ms. Okuma responded that the Pre-Treatment committee is close to finalizing its recommendations. The committee will present the Board with the general concepts and once the Board approves them, the concepts will be presented to the county agricultural commissioners. Ms. Okuma speculated that it would take a few months from the time the committee finalizes the recommendation to the Board members and for the county agricultural commissioners to review the recommendation. Staff will then work with Legal Council for the proper language. At which point it will be determined if this recommendation will require a statute or regulation change.

Mr. Azarte asked if there has been contact with the county agricultural commissioners regarding the proposed recommendations.

Ms. Okuma responded that the Board has already presented some conceptual language to the agricultural commissioners, which then contacted the pre-treatment committee with some concerns. Ms. Okuma mentioned that there are some counties that are following the process very closely.

Mr. Chang added that Kathy Boyle has been involved and that she has been able to point out possible problems.

Ms. Okuma concurred stating that Ms. Boyle has been a very valuable asset to the process.

Steve Merrill, representing B.E.E. Pest Services, requested clarification on what is being proposed as far as the amount of time for the notice of intent.

Ms. Okuma responded that the proposal calls for 24-hour notification for the notice of intent. There is a provision where a company could request an exception to the 24 hours notification through the county.

Mr. Merrill asked if this would be on a county-by-county basis.

Mr. Moss confirmed that it would be on a county-by-county basis, as each specific county would receive the notice of intent.

Mr. Azarte asked if two hours notice is a feasible amount of time for a response from the county agricultural commissioner's office.

Mr. Etheridge responded that two hours notice is probably not enough time to dispatch an agricultural inspector. He mentioned that the tag monitoring system would allow an inspector to determine if the proper amount of pesticides was used. By monitoring the pesticide tags, an inspector will be able to note any discrepancies and contact the specific pre-treatment applicator should there be a problem. Mr. Etheridge commented that if there is a repetitive practice of two-hour notices, there might be a problem with the pre-treatment operator.

Mr. Merrill asked if there are any regulations that require builders to have pre-treatments performed.

Mr. Etheridge responded that there are no laws or regulations at this time. Mr. Etheridge commented that pre-treatments are sometimes necessary for loans or insurance purposes. Commercial projects have also been seen to require pre-treatments.

Mr. Etheridge thanked the Board and Ms. Okuma.

X. STRATEGIC PLAN UPDATE

Ms. Okuma mentioned that at the last Board meeting there was considerable discussion on the Board's mission and vision statements for the new strategic plan. The Board decided to have a facilitator from the Department to review the Board's mission and vision statements. Staff is awaiting a response from the Department. If a facilitator is not available, staff will look into alternatives. This issue will be on the October meeting's agenda.

Mr. Morris asked Ms. Okuma if the Board has scheduled a meeting for the Board's five-year strategic plan.

Ms. Okuma responded that there is not a meeting scheduled.

Mr. Sesay commented that he was under the impression that the Board had decided not to have a meeting to discuss the five-year strategic plan.

Mr. Morris recalled that the Board decided that a meeting would be held every other year but it was a moot point as there isn't a meeting currently scheduled.

Ms. Okuma apologized for not having the updated quarterly reports for the current strategic plan. Part of the problem is that the administrative positions that normally provide the deliverables for the reports are currently vacant. Ms. Okuma mentioned that one of the objectives of the strategic plan had been accomplished. The objective of enhancing the Board's telephone system for quality control is complete. The Board has a call center in place which initially greets a caller with a message identifying the Board as well as informs the caller that their call may be monitored and recorded for quality control purposes. The caller is able to enter a tree, which presents a number of options so that the call is directed to the appropriate staff member. The call monitoring is done by Ms. Okuma, Ms. Saylor, and potentially Mr. Thomason or a new office supervisor. Because of Mr. Thomason's absence, Ms. Saylor's duties have increased causing Ms. Okuma to do the majority of the call monitoring. Ms. Okuma is pleased to report that for the most part, Board staff has been courteous and has been providing accurate information. The call monitoring allows Board supervisors to remind staff how to conduct themselves as well as reeducate them if they are providing incorrect information to consumers.

Mr. Azarte commented that at the previous Board meeting there was an extensive discussion concerning 2nd generation anti-coagulates and he requested a brief synopsis.

Ms. Okuma responded that the Board had given staff a directive to seek out relevant parties to the issue of second-generation anti-coagulates and to conduct a meeting so that the Board can better understand the issue. The Board's motion was to do this if the issue was still relevant and if the Board's president and vice president deemed it to be still relevant. DPR and PCOC met and discussed a solution to the problem. The structural pest control industry will continue to be able to use second-generation anti-coagulates and

that the label will address the use of others, primarily the over the counter sales. DPR is still taking that issue under advisement. Ms. Okuma mentioned that until recently, the Board did not have a president or vice president appointed to determine whether or not the issue was still relevant. DPR is anticipating a response in about a month or so and will be in contact with PCOC.

XI. DISCUSSION REGARDING PESTICIDE DISCLOSURE REQUIREMENTS

John Van Hooser stated that the pesticide disclosure concerns two documents, the occupant's fumigation notice and the fumigation log. The fumigation disclosure notice goes to the inspector prior to a fumigation to inform the inspector of what is being done. The regulation states the notice will be maintained by both Branch 1 and Branch 3 companies. The fumigation notice has no further use as it only indicates a fumigation was going to be performed. The fumigation log has all the pertinent information including date, time, amount of fumigants uses, the provisions, the number of employees, and the licensee that certified and cleared the property. This log is currently kept only by the Branch 1 companies. Mr. Van Hooser believes that both Branch 1 and 3 companies should be keeping the fumigation logs. When this topic has been brought up at past meetings, fumigators in the audience have said that it will burden the Branch 1 companies to have to send the fumigation logs to the Branch 3 companies. Mr. Van Hooser stated that Branch 3 companies should have the logs for enforcement issues. He reported that fumigation logs have reportedly been edited by Branch 1 companies once requested by the Branch 3 companies. Mr. Van Hooser commented that the regulations state that the Branch 1 and 3 companies must keep the fumigation notice but there is no mention of the Branch 3 companies retaining the fumigation logs. Mr. Van Hooser presented the possibility that the Board could use their interpretation of the regulations to require that the fumigations logs also go to Branch 3 companies. If the Board does not include that in its interpretation, Mr. Van Hooser proposed a possible regulation to include that Branch 3 companies receive the fumigation logs.

Mr. Smitley commented that if the Branch 1 companies did rise up and say that they would not send the fumigation logs to the Branch 3 companies, the Branch 3 companies would come together and demand the logs.

Mr. Chang asked Mr. Van Hooser if he would like the Board to look at the current regulations to see if the Board has the authority to include the Branch 3 companies in those receiving the logs.

Mr. Van Hooser responded that it would be the simple solution. If the Board did not determine that the current laws and regulations included the Branch 3 companies, a regulation update would be needed.

Mr. Chang concluded that staff along with legal council would review current laws and regulations.

XII. BOARD MEETING CALENDAR

The next Board meeting will be held on October 19th and 20th in Studio City. The following meeting will be held January 18th and 19th in Napa.

XIII. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

Ms. Okuma wished to thank the Board members for their incredible patience and dedication.

Mr. Morris thanked Ms. Okuma and Board staff.

Mr. Sesay wished to applaud Board staff for their licensing survey results.

Mr. Chang introduced Spencer Walker, a new attorney with the DCA legal council. Mr. Walker has been an attorney for ten years and has formerly worked for the Attorney General's Office as well as performing private practice. Mr. Chang will be working with Mr. Walker as he transitions his position as the Board's legal representative.

Mr. Walker commented that he looks forward to working with the Board and assisting the public in any way that he can, as long as it is permitted by the Board.

Ms. Melton requested that the Board staff in the audience stand up and introduce themselves. Patti Jensen of the enforcement unit and Karen Costley and Elizabeth James of administration stood and introduced themselves.

Ms. Okuma also wished to thank Regina Sarracino from DPR for attending the meeting.

Ms. Melton adjourned the meeting at 10:40 AM.

JEAN MELTON, President

KELLI OKUMA, Executive Officer

DATE