

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
July 22, 2010

The meeting was held on Thursday, July 22, 2010, in the Hearing Room located at 2005 Evergreen Street, Sacramento, California, commencing at 9:00 A.M. with the following members constituting a quorum:

Cris Arzate, President
Cliff Utley
Luis Agurto
Curtis Good

Board staff present:
Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Bill Douglas, Chief Enforcement Officer
Ronni O'Flaherty, Office Technician

Departmental staff present:
Chuck Andrews, Associate Director
Jodi Clary, Legal Counsel

ROLL CALL

Ms. Saylor read the roll call.

FLAG SALUTE

Mr. Good led everyone in the flag salute.

APPROVAL OF MINUTES OF THE APRIL 21 AND 22, 2010 BOARD MEETING

Mr. Utley moved and Mr. Good seconded to approve the minutes of the April 21 and 22, 2010 Board meetings. Passed unanimously.

DEPARTMENT OF PESTICIDE REGULATION UPDATE

Chuck Andrews, Department of Pesticide Regulation (DPR), reported that the California Aeration Plan (CAP) has been approved and DPR is working on a

transition plan for companies to prepare for and be able to adhere to the plan in lieu of respiratory protection. He added that the target launch date for the CAP is set for September, but there may be a need for an extension of this date, as a regulation change may be necessary to fully implement the CAP.

Mr. Good stated that the equipment needed for companies to implement the CAP is expensive and not readily available.

Billy Gaither, Pest Control Operators of California (PCOC), reiterated that section 1970.5 of regulation must be updated prior to the implementation of the CAP.

Ms. Okuma stated that at the last Board meeting, the Board voted to proceed with a public hearing to amend section 1970.5.

EXECUTIVE OFFICER'S REPORT

Ms. Okuma reported on the following:

- Jodi Clary is the Board's new Legal Counsel from Department of Pesticide Regulation.
- Board staff mailed notification to all registered companies' principal and branch offices in relation to the U.S. Environmental Protection Agency (EPA) Lead Safe Renovation Program. Board staff received numerous calls from its licensees asking if structural licensees are to comply with this program. There are concerns from industry members as to whether or not the Board will be enforcing these U.S. EPA requirements. Board enforcement of this program was not the intention of this notification.
- The interagency agreement between DPR and Department of Consumer Affairs (DCA) is moving forward. The Board was operating under a Memorandum of Understanding (MOU) between the two departments so that DCA could still provide the Board with necessary services that it provided before. Some services are not near a transition point for DPR to take over, the major one being Information Technology. The Board relies on DCA's databases for cashiering, applicant tracking, license issuance, tracking of enforcement cases, consumer complaints, and accusations. Essential Board programs are dependent on these databases and this interagency agreement.
- DCA will continue to provide accounting and some mail services under this agreement as well. DCA used to pick up the Board's out-going mail twice a day. DPR will only be picking up mail once a day. This may cause a one day delay in mail being received by the industry from the Board. This could result in applicants not being able to apply for re-

examination in a timely manner to be able to take the examination again the following month.

- DPR has indicated to Board staff that we need to give DPR's Mail Room an advance notice when we have a mass mailing which they consider to be over 500 pieces.

Mr. Good asked Ms. Okuma if examinees can call Board staff to have their results faxed or e-mailed to them.

Ms. Okuma responded that Board staff does not have the resources to respond to that many inquiries each month. She added that staff has a back-up plan in place should DPR not be able to mail examination results timely.

Mr. Good asked Ms. Okuma if the remaining Information Technology services that DCA is providing the Board will all transition to DPR simultaneously.

Ms. Okuma replied that it is too early in the process of transferring to know when the Information Technology function will transfer.

- DCA will continue to provide facility and janitorial services.
- Vehicle registrations and personnel records were transferred to DPR.
- The Division of Investigation will continue to provide services to the Board for unlicensed activity.
- DCA will charge a pro-rata for services, which last year was \$687,000. The DCA agreement for this year will cost \$470,000. It is unsure at this time what DPR's pro-rata charge will be for services.
- Each Board member's Southwest Airlines account used for state travel will need to be transferred to a Southwest Airlines account through DPR.
- DPR requires a different travel expense claim form than DCA. Karen Costley will complete the new forms for the Board members.
- DCA worked with Board staff to finalize establishment of a civil service list for the current vacancy for Board specialist. The Board hopes to fill this vacancy in the near future.
- In January the Board approved to release \$250,000 from the research fund for Requests for Proposals (RFPs) in the area of bed bugs. DCA required at least one year to complete the contract process. After discussion between the two departments, it was decided that DPR would process this contract and would therefore delay issuing the RFP until

July 1. Staff drafted the RFP and submitted it to DPR on July 1, and DPR is ready to move forward once the Research Advisory Panel has been appointed and dates for granting a proposal have been identified.

- One of the elements of the Strategic Plan was to have a system in place to monitor incoming telephone calls to ensure that the industry and the public were given proper information. Having this system has caused numerous problems for staff involving the phone systems. The computers in the office are too old to function with this system and the Board is not in a position to buy new computers. She added that she will be meeting with DCA's telecommunications unit to come up with a plan to eliminate this feature.

Mr. Arzate asked Ms. Okuma what the alternative will be if this feature is eliminated.

Ms. Okuma responded that she needs to meet with the telecommunications unit to discuss the options, but most likely staff will be back to having a standard telephone system without the capability to monitor calls. She reported that having monitored calls for several months, staff was generally very courteous to a caller. Very few occasions occurred where staff mis-communicated to callers.

Mr. Good asked Ms. Okuma if the reason for the high cost of the phone service is due to money being spent on repairs.

Ms. Okuma replied that the existing phone system is very expensive, and the cost reflected is the normal operating cost for the service.

Mr. Arzate asked if a fee will be assessed for a possible early termination of the phone system.

Ms. Okuma responded that they are too early in the planning process to have that information.

- At the last meeting the Board discussed the issue of test holes, and directed staff to prepare a legal opinion in terms of the committee's recommendations. With the transition from DCA to DPR, staff does not have a legal opinion prepared at this time, but it will be available for the next Board meeting.
- Complaint survey statistics were reviewed with the Board members.

Mr. Utley asked Ms. Okuma if the notes reflected in the survey results were consumer complaints or industry complaints.

Ms. Okuma stated that the first box on the survey results reflects consumer responses and the second box reflects industry responses.

Mr. Utley stated that there are a very high percentage of satisfied respondents.

Ms. Okuma stated that she reviews each survey card, and if the comments indicate dissatisfaction, she will pull and review the file. She added that is not uncommon for her to ask for a case to be reopened or clarifications made if she feels that staff has not been responsive.

Mr. Good asked in regards to case 10-196 why it took twelve weeks for the specialist to be assigned the case, by which time the consumer already repaired the shoddy work.

Ms. Okuma responded that the Board makes mediation efforts prior to assigning a case to a specialist. In this case, there was a period of time that the company was being unresponsive. She added that she agrees that staff should have been more aggressive in getting a response from the company. When the company responded, they went directly to the consumer and tried to remedy the problem. When the company made contact with the Board, Board staff contacted the consumer, who said that the company was at their property working, but they still were not satisfied. Upon receipt of this information, the case was assigned to a specialist the next day, and the specialist contacted the consumer within eight business days. She expressed that she does not think that eight days is excessive considering the specialists' workloads. Once the consumer has altered the conditions of the property, enforcement staff can not determine violations made by the licensee.

Mr. Good asked Ms. Okuma if what she was saying is that if a company does not respond to an inquiry in a timely manner that the consumer will be penalized.

Ms. Okuma stated that in this particular case, the company was being responsive to the consumer, but was not calling the Board to let staff know that they were attempting to remedy the problem.

Mr. Good asked that if the delay of this case being referred to a specialist posed any safety issues to the consumer.

Ms. Okuma responded that in her review of this case, she does not feel that staff failed the consumer in terms of moving forward in regards to any safety issues.

Ms. Okuma reviewed pending legislation:

- AB 1736 – Fumigation Enforcement Program: Extends the sunset date of the Structural Fumigation Enforcement program in Los Angeles, Orange,

Santa Clara, and San Diego counties and deletes the provisions for each commissioner to contract with DPR to perform inspections under this program. Instead, this bill provides that the director of DPR will have oversight over the program and will require the commissioners in each county to perform those increased services. This bill may also be the vehicle for DPR to make whatever amendments are deemed necessary in relation to appointees of the Board.

- SB 294 – Regulatory Boards: Extends sunset provisions for a number of Boards within DCA, and includes the Structural Pest Control Board. This extension meets a four year schedule for legislative sunset oversight hearings. The legislature stopped holding these hearings for a few years while extending the sunset dates of these Boards, but will resume conducting these hearings. The sunset provisions in this bill provide for the elimination of the Board, not for the actual deregulation of the profession.
- SB 1157 – Healthy Schools Act of 2010: Prohibits public schools from using any of the most highly toxic pesticides on school properties and would set a fee on manufacturers and brokers of specified pesticides. There has been discussion of this bill being gutted and amended, but those amendments are unknown at this time.
- SB 1330 – Maintenance of Codes: Includes minor modifications of the Structural Pest Control Board Act referencing monies collected by the Board that will now be collected by the Department of Pesticide Regulation.

Mr. Good stated that he has not seen a newer version of SB 1157, and that he would like it on record that the Board opposes this legislation with its' current language. He thinks the problem lies within the choices the schools are making, not the pesticides.

Mr. Good moved and Mr. Utley seconded to oppose SB 1157. Passed unanimously.

Martyn Hopper, PCOC, stated that there is no evidence that any significant amendments will be made. The sponsors of this bill are not allowing additional amendments, and he recommends that the Board weighs in on the bill and sends a copy of that letter to the governor as well.

Mr. Douglas reported on the following:

- As part of his field training, he will be accompanying licensees in the field during their inspections.

- He is meeting with the Division of Investigation once a month to discuss unlicensed activity and projects that are ongoing.

Ms. Saylor reported on the following:

- Licensing statistics were reviewed with the Board members.
- Rulemaking packets on sections 1974 and 1996.1 regarding fumigants being used and active ingredients being listed on fumigation warning signs and inspection completion tags were submitted to and approved by DPR in June, and are ready to be filed with the Office of Administrative Law (OAL).
- OAL approved the rulemaking file for the Wood Destroying Organisms (WDO) fee increase on May 20. Staff immediately sent notification to all branch 3 companies' principal and branch offices, and electronically to all persons who submitted their e-mail addresses to the WDO database. Staff have received some WDO reports in the office with incorrect fees, but those companies were contacted to send the correct fee. There were two companies who stated that they were unaware of the fee increase.
- The revenue report from May which was distributed in Board packages has been updated with the June 30 report. WDO revenues collected this fiscal year were \$1.9 million. Approximately 52,000 more activities were filed this fiscal year compared to last fiscal year.

Mr. Utlely expressed that he likes this report presented each quarter in hopes that eventually the number of inspections being done increases enough to reduce the fee. He asked if a number of inspections filed could be produced that would have to be met in order to consider reducing the fee. He added that the reason the fee was recently increased was because of a decrease in activities being performed and a reduction in revenues received.

Ms. Okuma stated that based on the Board's projections with DCA, the Board thought that a fifty cent fee increase would suffice. During the transition to DPR, their perspective was different. Should the Board later move forward in trying to decrease the fee, it would be contingent on the director of DPR for approval.

Mr. Arzate added that he agrees with Mr. Utlely that there was a need for a short term financial fix when increasing the fee. Considering that 52,000 more activities were filed this year compared to last, more revenue was generated, which this trend should eventually allow the fee to be decreased. He asked Ms. Saylor to provide at the next Board meeting a detail of how many activities were filed each month compared to each month of the past fiscal year.

Ms. Saylor stated that this is subjective because some companies send in large account deposits to file online, and use that money for three or four months; and some companies send in few activities at a time, attaching only the fee for those activities. The revenue deposited each month does not accurately reflect the number of activities performed that month.

Mr. Utlely asked that Board staff work with DPR to see what their stance is on possibly decreasing the fee in the future.

- Year-end expenditure reports were reviewed with the Board members, reflecting a \$430,000 projected surplus for this fiscal year. This figure should be relatively accurate, but at this time the year-end numbers are not available.
- At the last meeting, it was reported that branch 3 examination development workshops are complete. A large bank of questions were developed, therefore the branch 3 examinations can be continuously updated. Workshops are ongoing for branches 1 and 2 examination development. A Field Representative branch 1 workshop is scheduled on August 4 and 5 in Southern California and an Operator branch 2 workshop is scheduled in Folsom on September 14 and 15. Staff scheduled a workshop for June that eight operators committed to and only three appeared. It was very unproductive and not cost effective to hold a workshop when only three people attend.

Mr. Good stated that these examination development workshops should be held in the industry's off season so that more industry members would be able to participate and not cause hardships on the companies.

Mr. Arzate asked the average cost of holding a workshop.

Ms. Saylor responded that one workshop costs approximately \$7,000 for two days.

Mr. Utlely asked when DPR will be taking over the examination development process.

Ms. Saylor stated that the examination development and maintenance is done through a private vendor.

- The 2009 continuing education audit is almost complete. There is 93% compliance with Operators and 71% compliance with Field Representatives. Many Field Representatives have been mailed final notices and staff is awaiting their responses.

- Staff has contracted with the Office of State Publishing to produce the 2010 Structural Pest Control Act, which will be sent out to all principal and branch offices upon completion. Additional copies will be available for purchase from the Board at a cost of \$5.00 per copy. An electronic version is also available for free downloading on the Board's website.
- Priscilla Romero, the Board's Examinations Coordinator, has been on leave since June 1 and her leave has been extended to September 1.
- Vanessa Martinez, the Board's Bonds and WDO Technician, is no longer with the Board. Recruitment to fill this position will begin soon.
- Elizabeth Chervenak, from the Board's Administration Unit, is on maternity leave until October.
- Dennis Patzer's position as the Board's Regulation Analyst is currently vacant and staff is in the process of recruitment for that vacancy.

Ms. Okuma reported that all projects previously funded as research projects have a final report.

Mr. Arzate asked if there were any other comments. There were no public comments.

CONSIDERATION OF REQUEST AND RECOMMENDATIONS TO AMEND CALIFORNIA CODE OF REGULATIONS SECTION 1991 TO REQUIRE PLACEMENT OF SUBSECTION (a) (8) (c) (3) DISCLOSURE WITH THE CORRESPONDING RECOMMENDATION(S) ON THE INSPECTION REPORT

Ms. Okuma provided background information on the request and recommendations.

Mr. Good asked Ms. Okuma how many complaints are filed with the Board regarding consumers being unaware of only a local treatment being performed.

Ms. Okuma responded in that there are a fair number of complaints received with these circumstances, but usually it is a second party consumer who just purchased a home. When home buyers are presented with a report that the bottom line says that the home is clear, they agree to purchase the house, later to find out there is a problem because only a local treatment was performed. It is not uncommon for Board staff to have to educate the consumer as to where in the body of the report to find this disclaimer.

Mr. Good asked Ms. Okuma if the majority of the complaints regarding local treatments were from people who recently purchased the property.

Ms. Okuma stated that generally if the consumer is a homeowner who did not recently purchase the home, they are usually fully aware that they are purchasing a local treatment and not a whole house treatment. The consumers not being aware of the local treatment usually are new homeowners.

Mr. Arzate opened the floor to comment. After much discussion, the Board recommended staff review the original rulemaking files and draft recommended language that would exclude subterranean termites from the proposed amendment to require placement of the 1991(a)(8)(c)(3) disclosure with every local treatment recommendation.

**CONSIDERATION OF THE TECHNICAL ADVISORY COMMITTEE'S
RECOMMENDATION TO ALLOW FOR THE INSULATION OF PESTICIDAL
INSULATION WITHIN THE SCOPE OF STRUCTURAL PEST CONTROL
REGISTRATION AND LICENSE**

Ms. Okuma provided background information on this recommendation. No action was taken at the last meeting because the Board had directed staff to contact the Contractors State Licensing Board (CSLB), and CSLB was yet to respond.

Mr. Douglas stated that he has been in contact with CSLB and that CSLB does not have special requirements for their C-2 licensees to perform tasks such as installing insulation with pesticidal properties.

Eric Paulson, Clark Pest Control, asked the Board if there will be a transitional license for a Structural Pest Control licensee to obtain a CSLB license.

Mr. Utley stated that a contractor without a pest control license should not be allowed to install insulation with pesticidal properties.

Charles Mayer, Concord Termite Control, stated that if pesticidal insulation is being installed as a pesticide, the law requires that the occupants be notified before insulation begins. A contractor who is installing this pesticidal insulation is not giving this proper notification. Pest control licensees are also required under title 24 to install insulation, even if there was not insulation before.

Mr. Good inquired as to whether or not the Board would investigate or take action on a complaint that a contractor is installing pesticidal insulation.

Ms. Okuma replied that the Board would investigate if a complaint is received that a licensed contractor was recommending the use of pesticidal insulation for pest control. Such a complaint would be investigated as unlicensed activity.

Mr. Good moved and Mr. Agurto seconded to direct staff to communicate to the CSLB that it is illegal to install pesticidal insulation with out a pest control license. Passed unanimously.

APPOINTMENT OF THE RESEARCH ADVISORY PANEL

Ms. Okuma stated that a panel needs to be appointed to review proposals for research projects. There must be one representative from the Board, two industry member representatives, one representative from DPR, and one representative from the University of California. The last panel which was appointed in 2007 included: Mary Lou Flint, University of California, Davis, Michael Lawton, Western Exterminator, and Nita Davidson, DPR. They have all agreed to continue serving on the panel should the Board wish.

Mr. Utley stated that it would be in the best interest of the Board to have Mr. Arzate continue to serve as the Board representative because he is not an industry member.

Mr. Hopper nominated Darrell Ennes, Terminix International, as the second industry member.

Mr. Ennes stated that he has been in the industry for over forty years, obtained his first license in 1968, and currently holds an Operators license in branches 1, 2, and 3. He added that he would be happy to serve on the research advisory panel at the Board's request.

Mr. Utley moved and Mr. Good seconded to appoint Mr. Ennes to the Research Advisory Panel and accept the aforementioned interested parties to serve on the Research Advisory Panel.

ELECTION OF OFFICER – VICE PRESIDENT

Ms. Okuma stated that at the October meeting, new officers will be elected.

Mr. Utley moved and Mr. Agurto seconded to nominate himself as Vice President of the Board. Passed unanimously.

FUTURE AGENDA ITEMS

Charles Mayer stated that when the transition from DCA to DPR occurred, the authority of the Board to mediate with municipalities issuing building permits on a

pest control licensee's behalf was not transferred. He requested that this authority be transferred to the jurisdiction of DPR.

Ms. Okuma stated that there are provisions in the CSLB that exempt pest control licensees from needing a contractor's license. There are numerous statutes and regulations within the Structural Pest Control Act that speak to structural pest control licensee's authorities to make structural repairs. When a pest control licensee has a problem obtaining a permit because the building department believes the licensee needs a contractor's license, the Board will contact the building department to mediate. The Business and Professions Code states that no building department can prohibit licensees of the Department of Consumer Affairs from engaging in their business, occupation, or profession. The Structural Pest Control Board is no longer under DCA jurisdiction. She added that it would take a legislative amendment to get pest control licensees back under that provision.

Mr. Utley inquired as to the procedure for the Board to make a legislative amendment.

Ms. Okuma replied that the Board would have to direct staff to seek a legislative amendment to correct this omission; however, this matter was not noticed on the agenda, therefore the Board can take no action at this time.

Mr. Good asked if the Board was still waiting on a legal opinion in regards to test holes.

Ms. Okuma stated that preparation of this legal opinion transferred from DCA to DPR for completion. Board staff needs to update DPR's Legal staff on the issue.

Tom Murray, Structural Renewal, stated that there are still pest control licensees performing test holes at the time of the original inspections. He asked that the Board send a letter to all branch 3 companies as to what is and is not allowable within the scope of test holes.

Mr. Mayer stated that bay area consumers expect test holes to be done as part of a complete inspection.

Mr. Arzate reminded the audience that this is the time to suggest any future agenda items.

BOARD MEETING CALENDAR

The next Board meeting will be scheduled for October 28, 2010, in San Diego.

PUBLIC COMMENTS NOT ON THE AGENDA

Vernard Lewis, University of California, Berkeley, expressed his deep appreciation to the Board, PCOC, and the industry for their support.

ADJOURNMENT

This meeting was adjourned at 10:57 A.M.

Clyford L. Murray
President

Kelli Okuma
Kelli Okuma, Executive Officer

10/28/10
DATE