

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
April 27 and 28, 2011

The meeting was held on Wednesday and Thursday, April 27 and 28, 2011, in the Hearing Room located at 2005 Evergreen Street in Sacramento, commencing at 1:05 P.M. with the following members constituting a quorum:

Curtis Good, President
David Tamayo, Vice President
Cliff Utley
Luis Agurto

Board member Cris Arzate was not in attendance.

Board staff present:

Bill Douglas, Interim Registrar / Executive Officer
Susan Saylor, Assistant Executive Officer
Ronni O'Flaherty, Staff Services Analyst
Tom Ineichen, Board Specialist
Melissa Roberts, Staff Services Analyst
Ackerman, Board Specialist
Moss, Board Specialist

Ed
Ron

Departmental staff present:

JoAnne Payan, Assistant Director
Chuck Andrews, Associate Director
Jodi Clary, Legal Counsel
Kathy Boyle, Enforcement Program Specialist

Board Liaison, Deputy Attorney General, Rene Judkiewicz was also in attendance.

FLAG SALUTE

Mr. Good led everyone in the flag salute.

REINSTATEMENT HEARINGS

The Board sat with Administrative Law Judge Linda Cabatic to hear the Reinstatement Hearing of Jose Carrillo, Field Representative License No. 17136. The petitioner was informed that he would be notified by mail of the board's decision.

The Board sat with Administrative Law Judge Linda Cabatic to hear the Petition for Modification / Termination of Probation of Carlos Moncada, Operators License No. 12122 and Field Representative License No. 45017. The petitioner did not appear.

CLOSED SESSION

The Board adjourned to closed session to discuss the annual performance evaluation of the Registrar, recruitment of a new Registrar, legal representation alternatives, and consider proposed disciplinary actions in accordance with subdivision (c)(3) of section 11126 of Government Code.

APPROVAL OF MINUTES OF THE JANUARY 20, 2011 BOARD MEETING

Mr. Utley moved and Mr. Good seconded to approve the minutes of the January 20, 2011 Board meeting. Passed unanimously.

APPROVAL OF MINUTES OF THE APRIL 14, 2011 TELECONFERENCE BOARD MEETING

Mr. Utley moved and Mr. Tamayo seconded to approve the minutes of the April 14, 2011 Teleconference Board meeting. Passed unanimously.

RECRUITMENT FOR A NEW REGISTRAR / EXECUTIVE OFFICER

Joanne Payne, Department of Pesticide Regulation (DPR), introduced a Civil Service Recruitment and Hiring Process package and stated that DPR will be working with the board to determine the most appropriate hiring process for such a position and is seeking a hiring freeze exemption from the Governor's Office to allow the recruitment and hiring of a new Executive Officer.

DISCUSSION REGARDING A STRATEGIC PLANNING MEETING

Mr. Douglas stated that while under DCA's jurisdiction, the department provided professional guidance to the board in developing the Strategic Plan and under DPR's jurisdiction the board may have to contract out for said assistance. He added that the Board needs to set dates for Strategic Planning, preferably in conjunction with an upcoming board meeting.

Mr. Good asked if these meetings are open to the public.

Ms. Saylor responded that the public is welcome to attend but will have minimal opportunity for comment.

Mr. Good asked that department staff be invited to participate in the Strategic Planning and suggested that it be held at the earliest in October in hopes that the board will have a permanent Registrar.

Mr. Utley asked that a discussion regarding Strategic Planning be added to the agenda for the July meeting.

CONTINUATION OF INTERAGENCY AGREEMENT BETWEEN DCA AND DPR FOR SERVICES

Mr. Douglas reported that the Interagency Agreement between DCA and DPR is due to expire on June 30, 2011 and instead of extending the agreement only one year board staff would like to extend it for three years.

Mr. Good asked if there would be a cost savings by extending the agreement three years instead of one.

Mr. Douglas responded that extending the agreement three years instead of one is simply for the convenience of not having to revisit the issue each year.

Mr. Good questioned how close DCA came to their projected costs in the board's budget.

Ms. Saylor stated that exact costs have not been determined, but her guess is that the actual costs would be very close to what the agreement estimated.

Mr. Good stated that he is concerned that there is not an actual break down of costs for services.

Mr. Utley stated that the amount estimated is a maximum cost and the board should only be charged for the services they receive and by entering into a three year agreement the board may actually lock in lower rates than what may be charged in future years.

Mr. Douglas responded that he will look into the breakdown of costs and possible costs savings.

Mr. Utley moved and Mr. Tamayo seconded to direct staff to extend the Interagency Agreement at their discretion. Passed unanimously.

The meeting adjourned for the day at 5:07 P.M.

The meeting reconvened at 9:04 A.M. on April 28, 2011

FLAG SALUTE

Mr. Good led everyone in the flag salute.

ROLL CALL

Ms. Saylor read the roll call.

DEPARTMENT OF PESTICIDE REGULATION UPDATE

Kathy Boyle, DPR, reported on the following:

- The annual Structural Training given by DPR and SPCB will be held May 24-26 in Pomona for Southern California County Agricultural Commissioners (CACs) and June 7-9 in the Dublin area for Northern California CACs.
- A recent Executive Order regarding state travel has been released, but since the Annual Structural Training is mandated in the Structural Pest Control Act (Act), travel for Structural Training should not be affected.
- Two policy release orders relating to structural licensees will soon be issued by DPR to the CACs. The first regarding the use of Pro-Fume in non-residential facilities having to be performed by a DPR licensee. The second regarding Business and Professions Code 8663 (d) as a directive to CACs regarding a prime contractor being notified of actions relating to Branch 1 companies in which they contract with.

EXECUTIVE OFFICER'S REPORT

Mr. Douglas reported on the following:

- AB417 is a bill that prohibits a city or county from prohibiting a licensee of the board from engaging in the profession in which they are licensed in. Historically, some cities and counties have been hesitant to issue a building permit to board licensees.

Mr. Good moved and Mr. Utley seconded to issue a letter of support regarding AB417. Passed unanimously.

- SB190 is a bill that would become operative on July 1, 2012 requiring a person to forfeit their liens if they willfully include labor or material in a lien claim that was not furnished to the property in the claim.

- SB394 is the Healthy Schools Act of 2011 that will discontinue the use of pesticides on school campuses that are known to the state to be harmful to people.

Mr. Utley asked Mr. Andrews if DPR opposes this bill.

Mr. Andrews responded that DPR has not taken an official position on this bill.

Mr. Hopper stated that PCOC is working closing with the sponsors of this bill and the hearing is set for May 4th.

Mr. Utley commented that this bill is not necessary if The Healthy Schools Act of 2000 is made mandatory instead of voluntary.

Mr. Good stated that approval of this bill could cause potential legal issues or litigation for the industry and asked Jim Steed, PCOC, if PCOC has met with the sponsors to address concerns with this bill.

Mr. Good moved and Mr. Utley seconded for the board to oppose SB394.

Mr. Steed responded that he met with the sponsor and still has a couple of concerns with this bill. He stated that the Healthy Schools Act of 2000 is working well with school districts that are implementing it, and this bill has two objectives; one to increase implementation of IPM and the other to engineer some of those changes by being specific with the restrictions permitted with districts and pest control operators as they use pesticide on the school sites. He added that in order to comply with the Proposition 65 section of this bill that the district employee or pest control operator would constantly have to refer to the Proposition 65 list to compare against pesticides being used. He stated that PCOC is also concerned with the language in section 2, paragraphs A and B and their potential legal liability. He stated that PCOC requested from the sponsors to move the language in section 2, paragraphs A and B to the preamble and address the proposition 65 concerns. He encouraged the board to oppose this bill in its current state.

Mr. Tamayo asked if the board can suggest amendments to the bill and support it rather than opposing it in its current state.

Ms. Clary stated that the board can conditionally support a bill upon desired changes, but in this case PCOC is already working with the authors and sponsors and addressing the board's concerns with them.

Mr. Tamayo asked Mr. Good to amend his motion.

Mr. Good moved and Mr. Utley seconded to oppose section 2, paragraphs A and B of this bill. Mr. Tamayo and Mr. Agurto opposed the motion.

Mr. Tamayo moved and Mr. Agurto seconded to support SB394 under the conditions that sections A and B are removed, IPM schools become

mandatory, section 4(a) is amended to allow specified chemicals but limit their use by using IPM practices, and only allow a licensee to perform applications on school grounds. Mr. Good and Mr. Utley opposed the motion.

- AB569 is a bill to consolidate all licensing agencies in state government to one master licensing center agency. Similar bills have been introduced in previous legislative sessions and opposed.
- SB195 is a single word change to the current law.
- AB942 is a bill that would require the funds derived from payment of citations and fines issued by CACs to be deposited into the State General Fund instead of the board's funds.

Mr. Good asked Mr. Andrews if DPR has taken a position on AB942.

Mr. Andrews stated that DPR has not taken an official position on this bill but has concerns regarding the loss of potential revenues.

Ms. Boyle stated that the upcoming annual Structural Training is funded through the Education and Enforcement Fund.

Mr. Tamayo asked how much money the board would lose if this bill passes.

Ms. Saylor replied that about \$80,000 was put into the Support Fund last year, but she is unaware of the monies deposited into the Education and Enforcement Fund and she was under the impression that the monies in the Education and Enforcement Fund would not be affected by this bill due to mandate of yearly CAC training.

Mr. Good moved and Mr. Utley seconded to oppose AB942. Passed unanimously.

- AB1176 is a bill that would require the Director of DPR to make available to the public a report on the health effects of a pesticide and a determination regarding control measures within 180 days after their receipt of the evaluation of the pesticide.

Mr. Good asked Mr. Andrews if DPR has taken a position on this bill.

Mr. Andrews responded that DPR has not taken an official position on this bill. He stated that DPR has a current process in place that prioritizes risk assessments and evaluates whether or not a pesticide should go through the toxic air contaminant process and there are limitations as to how many evaluations can be performed due to time restraints.

Mr. Good moved and Mr. Utley seconded to oppose AB1176. Passed by majority. Mr. Tamayo abstained.

- Executive order B-06-11 was issued prohibiting state travel unless deemed mission critical.
- Unlicensed activity has continued to be the focus of the Enforcement Unit.
- Probation monitoring has become an issue as some licensees who were given a second chance are continuing to fail to comply with their probation terms and it will be one of the staff's renewed focuses to move forward and take appropriate action as necessary.

Martyn Hopper, PCOC, stated that the industry would like to commend Mr. Douglas for his enforcement regarding unlicensed activity.

Ms. Saylor reported on the following:

- Licensing statistics were reviewed with the board members.

Mr. Good asked if there was any follow up with the consumer regarding case number 11-245.

Mr. Douglas stated that case number 11-245 was closed at the consumer's request.

- WDO statistics were reviewed with the board members. WDO filings are still down and board staff is increasing its enforcement efforts regarding the filing of WDO activities by doing office records checks on companies who have not filed or whose filing have decreased since the fee increase in July.
- Section 1920 and 1937.11 rulemaking packages were submitted to DPR in December and received back last week to be filed with the Office of Administrative Law for public hearing in either July or October.
- The research projects that were recently approved began on March 1st and are set to end on February 9, 2012. Due to delays in the effective date, researchers may ask for an extension until the end of February to complete the research.
- New field representative and operator branch 3 exams went into affect this month and branch 2 exams are being developed and hopefully there will be new field representative and operator branch 2 exams in place by June.
- There is a Field Representative branch 3 workshop scheduled in Folsom on May 11 and 12.
- The 2010 Continuing Education audit is almost complete and the final results will be reported at the next meeting.

- The board specialists received new laptops in 2009. The computers being used in the office were purchased in 2005 and are no longer under warranty. The board is not in a financial state to replace the computers of all staff, therefore non-functioning equipment is being replaced on an as needed basis.
- The BREEZE Project will cost the board \$20,000 per year and is scheduled to be in place by 2013 or 2014.
- The budget reflects a \$500,000 reversion for the 2010-2011 Fiscal Year.

DISCUSSION OF ELECTRONIC FILING OF PESTICIDE USE REPORTS

Mr. Douglas reported that board staff is still working with DPR and this item will be reported on at the next meeting.

Mr. Good announced to those in attendance that Mr. Douglas was appointed as the Interim Executive Officer / Registrar on April 14, 2011.

DISCUSSION REGARDING BUSINESS AND PROFESSIONS CODE SECTION 8520.2 (e)

Mr. Douglas stated that since Mr. Arzate requested this item on the agenda and he is not present, this item will be discussed at the next meeting.

CONSIDERATION OF PROPOSAL TO REPEAL CALIFORNIA CODE OF REGULATIONS SECTION 1970.5

Mr. Andrews stated that there have been structural pest control aeration procedural changes and CCR section 1970.5 is no longer necessary or relevant to the new aeration plan.

Mr. Good moved and Mr. Utley seconded to repeal CCR Section 1970.5.
Passed Unanimously.

SURFACE WATER REGULATIONS

Mr. Andrews updated the board regarding draft regulations relating to pyrethroids and the protection of surface water. He stated that the departments approach is to put restrictions on and minimize the use of pyrethroids in both structural and landscape applications. He added that currently the initial statement of reasons is being finalized for submittal to Agency for approval and this regulation should be noticed in August.

Mr. Tamayo thanked Mr. Andrews and DPR for addressing surface water issues and PCOC and industry members for their support in doing so.

Mr. Hopper, PCOC, thanked Mr. Van Steenwyk for his hard work in chairing PCOC's water quality committee.

APPOINTMENT OF SURFACE WATER REGULATION COMMITTEE

Mr. Tamayo stated that this committee was to address the concept of IPM certification and asked that this agenda item be discussed at the July meeting.

REVIEW OF THE STRUCTURAL PEST CONTROL BOARD'S PROCEDURE G-6: GUIDELINES FOR ACCESS TO PUBLIC RECORDS

Ms. Clary reviewed the suggested changes to the board's procedure G-6 with the board.

Mr. Utley asked if the thirty-five cent per page charge applies to records being e-mailed.

Ms. Clary responded that there would not be a charge for records provided via e-mail.

Mr. Utley moved and Mr. Good seconded to instruct staff to make the suggested changes to the board's policy and procedures. Passed unanimously.

Lee Whitmore, Beneficial Exterminating, asked if the thirty-five cent per page charge would apply to the board packages being mailed to interested parties.

Ms. Clary responded that the fee increase would only apply to public records requests and not to board packages.

APPOINTMENT OF STRUCTURAL PEST CONTROL ACT REVIEW COMMITTEE

Mr. Van Hooser stated that he has served on a similar committee in the past where the recommendations were forwarded to legal counsel and not acted on. He suggested that should another committee be formed to review the Act, the previous committee's notes and recommendations should be reviewed.

Ms. Saylor stated that there have been a few committees appointed to reviewing the Act in the past and the entire Act was rewritten but never went through legislation.

Mr. Van Hooser suggested that should another committee be developed to review the Act that PCOC should be involved, as their assistance would be needed to carry out any changes in legislation.

Mr. Good moved and Mr. Utley seconded to appoint a committee to review the entire Structural Pest Control Act. Passed unanimously.

DISCUSSION OF LICENSING REQUIREMENTS FOR BED BUG SNIFFING DOGS

Mr. Douglas stated that a person with not less than a Field Representative license must be present to identify a bed bug infestation when a bed bug sniffing dog indicates a present infestation.

Steve Delk, Delk Pest Control asked if a dog needs to be certified to be taken into the field to detect bed bugs.

Mr. Douglas responded that there is no certification or license needed for the dog itself, but it must be accompanied by a Field Representative or Operator when detecting bed bugs so that the licensee can actually identify the infestation.

Mr. Whitmore stated that the National Pest Management Association (NPMA) is looking to create standards for certification of companies for bed bug sniffing dogs and added that he would provide the board with those standards as soon as they become available.

Mr. Van Hooser stated that termite sniffing dogs have been around for years and have not needed certification.

DISCUSSION REGARDING CLOSED ACCUSATIONS BEING POSTED ON THE BOARD'S WEBSITE

Mr. Van Hooser stated that this is not a problem that affects a lot of people but a statute of limitations regarding how long a closed accusation stays on the board's website should be established.

Mr. Good stated that he agrees with Mr. Van Hooser and maybe that is something the committee can look into when reviewing the Act.

Ms. Saylor reported that at this time, there is no way for the Board's database to recognize when an accusation is posted after its retention expires and automatically remove them from the website. She added that this may be an option with the BREEZE project.

Mr. Utley suggested that staff discuss this with the coordinators of the BREEZE project.

Ms. Saylor stated that the records retention schedule for closed accusations is 25 years and if a licensee brings it to staff's attention that an accusation on the website is older than 25 years, staff may be able to remove that record from the website.

Mr. Utley questioned the ability to change the retention schedule to lessen the amount of time a record is kept.

Ms. Saylor stated that the retention schedule is based on Department of General Service's guidelines and can not be changed.

Mr. Agurto stated that the consumer has the right to know which companies are reputable and which are not and seeing an accusation on the website for a reputable company who has had one small issue during a long history of licensure may sway consumers to not use that company.

Jim Weed stated that there is no date posted on the website to reflect when the actual accusation took place.

Mr. Tamayo asked if the retention schedule has to match the length of time an accusation stays posted on the website.

Ms. Clary responded that she believes it does have to match.

Mr. Agurto moved and Mr. Good seconded to direct staff to perform additional research and report at the July meeting.

FUTURE AGENDA ITEMS

Mr. Van Hooser commented that a licensed applicator can apply in both branches two and three and a Field Representative can only apply in the branch in which they are licensed, but one of the descriptions of a Field Representative is chemical application. He added that he can put together some information and provide it for the July board meeting.

Mr. Good stated that he will be appointing members of the committee to review the Act at the July board meeting.

Mr. Agurto stated that although he may extend his service to the board for one more year as a grace period, he has chosen not to serve after June 1, 2011 and the board will need to seek a replacement.

Mr. Good thanked Mr. Agurto for his time served on the board.

