

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
October 24 and 25, 2012

The meeting was held on Wednesday and Thursday, October 24 and 25, 2012, in the Auditorium located at Ronald Reagan State Building, 300 South Spring Street, Los Angeles, commencing at 9:10 A.M. with the following members constituting a quorum:

Curtis Good, President
David Tamayo, Vice President
Cliff Utley
Marisa Quiroz
Mike Duran
Naresh Duggal
Ronna Brand

Board staff present:

Susan Saylor, Assistant Executive Officer
Robert Lucas, Consumer Services Manager
Ronni O'Flaherty, Staff Services Analyst

Departmental staff present:

Chris Reardon, Chief Deputy Director
Jodi Clary, Legal Counsel
Peggy Byerly, Staff Environmental Scientist

ROLL CALL

Ms. Saylor read the roll call. Ms. Brand was not present.

FLAG SALUTE

Mr. Good led everyone in the flag salute.

PETITION FOR REINSTATEMENT

Administrative Law Judge Michael Scarlett sat with the Board to hear the Petitions for Reinstatement for Michael Mooshabad, Field Representative License No. 39647, Sok Won Kim, Field Representative License No. 36650, and Tom Petrey, Operator's

License No. 8055. The petitioners were informed that they would be would notified by mail of the Board's decision.

Mr. Good announced that Ms. Saylor has been appointed Interim Registrar and introduced Ms. Quiroz as the new public member of the Board.

APPROVAL OF THE MINUTES OF THE AUGUST 9, 2012 BOARD MEETING

Ms. Saylor stated that the announcement of the three new board member appointments will be added to the minutes of the August 9, 2012 board meeting.

Mr. Utley moved and Mr. Duran seconded to approve the minutes of the August 9, 2012 Board meeting with Ms. Saylor's correction regarding board appointments. Passed unanimously.

DEPARTMENT OF PESTICIDE REGULATION UPDATE

Ms. Byerly reported on the following:

- The Department of Pesticide Regulation (DPR) now has pages on the following social media sites:
 - Facebook – www.facebook.com/CaPesticideRegulation
 - YouTube – www.youtube.com/user/CaliforniaPesticides
 - Twitter – www.twitter.com/CA_Pesticides
 - LinkedIn – www.linkedin.com/company/california-department-of-pesticide-regulation
- Beginning January 1, 2013 the Department of Fish and Game will be called the Department of Fish and Wildlife.
- Enforcement Letter 12-17 regarding inspection procedures was reviewed with the board members.

Ms. Brand arrived at 9:19 A.M.

- New surface water regulations that became effective in July were reviewed with the board members.

- The annual training for County Agricultural Commissioner (CAC) inspectors has been posted online.
- The Office of Environmental Health Hazard Assessment has posted on their website for public comment a study titled “Evidence on the Developmental and Reproductive Toxicity of Deltamethrin”.

Mr. Utley asked Ms. Byerly if there was a reason that Deltamethrin was targeted or if DPR is evaluating products one at a time.

Ms. Byerly responded that there were specific reproductive hazard concerns with Deltamethrin that she is not familiar with and that DPR reevaluates pyrethroids every few years.

Mr. Utley stated that Orange County CAC issued a letter stating that they will no longer allow paper filings of the Monthly Pesticide Use Report (PUR). He added that the software that the CACs are using is not always compatible with the software being used by the pest control operators.

Ms. Byerly stated that the Structural Pest Control Act allows for paper filing and that she will address the issue with Orange County CAC.

Mr. Utley asked that Ms. Byerly look into the possibility of integrating the PUR system with software programs currently being used in the industry.

Mr. Duggal stated that Santa Clara CAC is looking into integrating the software programs to make electronic filing of the PUR easier.

Ms. Clary stated that this issue is being discussed with DPR’s Information Technology Branch and added that she will pass the Board’s concerns on.

Mr. Tamayo asked Ms. Byerly if DPR has received any feedback regarding the new surface water regulations.

Ms. Byerly responded that there has been a lot of outreach regarding these new regulations so most companies were prepared. She added that the rainy season is approaching where compliance will be more challenging, but there have not been any problems so far.

EXECUTIVE OFFICER’S REPORT

Mr. Lucas reviewed the licensing statistics with the board members.

Mr. Good pointed out that the Field Representative examination passing rate has increased significantly since last year.

Mr. Lucas pointed out that although the WDO numbers are up for the month, they are down for the fiscal year (FY).

Mr. Duggal suggested that there may be a problem with the examination process since there is such a high rate of failing examinees and suggested that staff make available examination questions on the Board's website for examinees to prepare for the examination. He pointed out that the renewal rate is decreasing and asked why the industry is shrinking.

Ms. Quiroz asked if staff collects demographics on the examination applicants.

Ms. Saylor stated that demographics are not collected.

Ms. Brand suggested that everyone who applies for the examination should receive an Act.

Mr. Utley stated that the current printed version of the Act is 3 years old and that there is an updated electronic version of the Act available on the Board's website. He added that the failing rate for examinations is always around 60 percent and stated that the examinations are put in place to ensure that individuals in the industry are knowledgeable in current practices. He commented that the standards should not be lowered to bring less knowledgeable individuals into the industry.

Ms. Saylor stated that the number of licenses in effect has stayed pretty consistent for the last decade, except the number of Applicators licenses in effect which has declined over the past five years. She added that this is because companies would rather hire a Field Representative and train them to be licensed in multiple branches instead of hiring new Applicators. She commented that the passing rates are generally consistent because there is not much incentive to study to pass the examination when the fees are set as low as \$10 for Field Representatives and \$25 for Operators.

Mr. Lucas stated that an occupational analysis is performed at least once every five years to ensure the quality of the criteria put in place regarding the examination content.

Ms. Saylor stated that the last contract for examination development to write questions expired last year and cost about \$500,000 for a four year contract. She added that she does not think that there is a problem with the quality of the questions on the examinations.

Mr. Duggal commented that he does not think there is a problem with the examinations, but is looking for a way to help more individuals pass by making training tools available on the Board's website.

Lee Whitmore, Beneficial Exterminating, stated that the passing rate is not a reflection of the knowledge of individuals with existing licenses, but a qualification standard for individuals trying to get into the industry. He commented that he feels that the Board does a fine job of providing resources to bring people up to the level that is required to obtain a license with the Board. He added that the Board provides a study guide and a list of reference materials to study from before taking the examination.

Nate Tamales, Univar, stated that he agrees with Mr. Whitmore and the bigger challenge is trying to reach out to more quality people to make them want to work in this industry.

Bob Gordon, Gordon Termite Control, stated that there are adults taking these examinations that have not been in an examination environment for a long time and they generally score a lot higher the second or third time taking the examination because they understand more about what they are required to know.

Darrell Ennes, Terminix International, stated that the passing rate is also a reflection of the size of a company that an individual goes to work for because the larger companies have more resources to provide training to prepare their employees for the examination. He added that there are private firms that offer examination preparation courses that individuals can take to prepare themselves for the examination.

Mr. Lucas reviewed the Licensing Unit Survey Results with the Board members.

Mr. Good asked what the normal turn-around time for receiving fingerprint results from the Department of Justice.

Mr. Lucas stated that generally fingerprint results are received within 48 hours.

Ms. O'Flaherty stated that if an individual has a criminal record, fingerprint results take longer to receive.

Mr. Lucas reviewed the follow-up report from the previous meeting regarding the Complaint Unit Survey.

Ms. Saylor reported on the following:

- She met with the State and Consumer Services Agency's Secretary and Undersecretary on September 25, 2012 to discuss the Board's transfer back to

DCA. This was an informal meet and greet to ensure the board members and staff that things are moving forward for the July 1, 2013 transition.

- She has been contacted by a Budget Analyst from DCA to provide budget documents for FY 2012-13 and FY 2013-14.
- The Board hired two new specialists in April and they are both doing very well in getting up to speed with their responsibilities.
- Interviews were conducted to fill a vacancy in the Licensing Unit and a job offer has been made.
- DCA is hosting a week long Enforcement Academy at the end of this month in which six of the Board's eight specialists will be attending.
- The 2011 Continuing Education (CE) Audit is complete. 25% of Operator renewals were audited with only 2% non-complaint. 15% of Field Representative renewals were audited, with 5% non-compliant.
- The 2012 CE audit will begin in December. Staff plans to audit 25% of the Operators who renewed and will be targeting operators who have never been audited. 15-25% of Field Representatives who renew will be audited.

Mr. Utey asked how many of the individuals who were found to be non-complaint in the audit were due to problems with their addresses.

Ms. Saylor stated that she is unaware but will look into it.

Mr. Good asked if a 5% non-compliance rate is normal for the Field Representative CE audit.

Ms. Saylor stated that a candidate is considered non-compliant whether they are missing one or all of their hours, and generally there is about a 7% non-compliance rate.

Mr. Tamayo asked Ms. Saylor how the selection process for the audit works.

Ms. Saylor stated that usually, every fourth candidate is selected but this year licensees who have never been audited will be targeted.

Mr. Good asked the CE Providers to spend a few minutes during their course instruction to reiterate the importance of actually having the hours that they are

certifying on their renewal slips. He added that revisions to the renewal slip are being discussed with the Act Review Committee.

Mr. Duran stated that it needs to be emphasized to the licensees that it is their responsibility to know the requirements and to obtain the CE that is needed to renew their licenses.

Josh Adams, Pest Control Operator's of California (PCOC), stated that there are always more people joining PCOC during renewal time because the licensees are seeking direction as to what hours need to be completed.

Mr. Tamayo asked what it would take to change the renewal process.

Ms. Saylor stated that it would have to be an administrative change where staff would have to work with DCA's Office of Information Services (OIS) to change the renewal form. She added that the Board should keep in mind that there is not ample staff during the renewal period to authenticate certificates from approximately 3,500 renewal applications, where every application will contain numerous certificates.

Mr. Whitmore suggested having renewal candidates send in their certificates with their renewal forms, but have staff still only audit and review 25% of the candidates.

Ms. Saylor suggested having this discussion during Strategic Planning.

Mr. Duran stated that some agencies have a database where the CE Providers can input each licensee's hours into the database.

- SB1480, relating to trapping, has been vetoed.
- Budget documents were reviewed with the Board members.
- The Education and Enforcement Fund was overspent in FY 11-12 due to reimbursements to the CACs for enforcement activities on behalf of the Board. Funds were transferred from the Support Fund to balance this account.

Mr. Whitmore asked if the reimbursements paid to CACs for their time in the field are offset by the fines that are issued.

Ms. Saylor responded that the fines issued and collected do replenish the account and the dollar amount of fines issued in FY 11-12 was higher than the previous FY.

**BOND AND INSURANCE REQUIREMENTS – DISCUSSION REGARDING
INCREASING MINIMUM REQUIREMENTS**

Ms. Saylor stated that there has been discussion regarding the bond and insurance requirements being insufficient. She reported that she had staff pull 250 Principal Registration files which is a 10% sampling of the approximate 2,500 principal registrations currently in affect to determine the average amount that companies are having policies issued for. She stated that 93% of companies already have \$1 million insurance policies in place and 98% of companies have policies in excess of \$300,000.

Mr. Utley stated that he did some research relative to the costs of increasing bond and insurance policies. He stated that a \$4,000 bond usually costs about \$250-300 for a three year policy, and by raising the bond requirement to \$12,500, the cost of that bond would increase to \$800-1000. He added that increasing the insurance requirement would not have a large impact on companies, but increasing the bond requirement will affect about 50% of the operators because a bond is issued based upon credit. He suggested that the Board's acceptance of cash bonds in lieu of bond or insurance policies may become a problem.

Ms. Saylor stated that 11 companies have a cash deposit in lieu of an insurance policy.

Mr. Good asked for more information regarding the companies with cash deposits. He asked if it is difficult to track and withdraw funds from the cash deposits.

Ms. Saylor responded that the Act Review Committee has recommended to stop allowing cash deposits in lieu of a bond or insurance because banks prematurely release the funds or when banks buy other banks, the account numbers change and staff is not always able to locate funds that are supposed to only be released to the Board.

Mr. Gordon stated that the Act Review Committee discussed bond and insurance requirements at the last committee meeting and will be discussing them again at the next. He stated that the committee is awaiting direction from the Board.

Michael Katz, Western Exterminator Company, stated that he does not like the idea of grandfathering in companies with cash deposits by allowing them to maintain a lesser bond or insurance.

Mr. Good stated that he would like to see the insurance requirement raised to \$300,000 and the bond requirement raised to \$12,500.

Mr. Whitmore stated that the requirements do not need to be increased because of collection issues, but because California has the lowest financial responsibility requirements and some of the highest valued real estate in the nation. He added that

as a subcontractor, he has to go after a consumer for payment when the prime contractor doesn't pay.

Mr. Utley moved to ask the Act Review Committee to make a recommendation and provide more information to the Board regarding increasing the bond and insurance requirements.

Mr. Good moved and Ms. Brand seconded to recommend that the insurance requirement needs to be raised to around \$300,000 and the bond requirement to around \$12,500 to make consistent with the Contractor's State Licensing Board, and that cash deposits should no longer be acceptable.

Mr. Duggal suggested having a professional analyst perform a risk analysis regarding increasing the bond and insurance requirements.

Mr. Good stated that he will contact insurance companies to see if they can provide a risk analysis. He asked Mr. Adams to report to the PCOC Board of Directors regarding the direction the Board wants to go and to put this topic on the agenda for the January meeting.

Mr. Adams stated that in the past, this has been brought in front of the Board of Directors and was voted down and he will look into the reason why.

Mr. Tamayo asked that Mr. Good removed the financial figures from his motion.

Mr. Gordon stated that the Act Review Committee will come up with a recommendation to present to the Board.

Mr. Utley stated that the Board's primary goal is consumer protection, and sometimes protecting the consumer will require a larger burden to be carried by the pest control companies.

Mr. Good withdrew his motion.

Mr. Duran commented that he feels that the current bond and insurance requirements are sufficient to protect the consumer.

Mr. Good stated that he would like to see this be carried through legislation separate from the rest of the Act Review Committee's recommendations.

Ms. Saylor stated that she would need these recommendations by late January to move forward with them this legislative session.

PEST CONTROL LEASING OF EMPLOYEES

Ms. Clary reviewed a memorandum dated September 17, 2012 regarding the leasing of employees in the industry. She stated that she did not look into 1099 employees.

Mr. Whitmore stated that the contract reviewed was only one of many leasing company's contracts and asked if the Board has any obligation to verify that the proper contractual elements are in place.

Mr. Good stated that this will be discussed later during the agenda item regarding The California Labor Enforcement Task Force.

Ms. Byerly stated that the CACs are not sure who to cite as the employer when dealing with leased employees.

Mr. Good stated that the violations would go against the pest control company, not the leasing firm.

FREDDIE MAC HOMES / HOMESTEPS UPDATE

Ms. Saylor stated that in May of last year it was brought to the attention of the Board that Freddie Mac had issued a letter preventing pest control operators from being able to perform termite repairs on Freddie Mac properties.

Mr. Katz reported that in late August, he received correspondence from Congressman Miller and Congressman Dole that he did not feel addressed the questions posed to Freddie Mac Homes. He stated that after the November election, he will approach the Congressmen and ask that they seek more relevant responses regarding the Board's concerns.

Mr. Good asked Ms. Saylor to add this to the agenda for January's board meeting.

Ms. Saylor stated that this will be a standing topic on the Board's agenda until it is resolved.

PESTICIDE USE BY HOMEOWNERS OR EMPLOYEES

This topic is being held over to the January 2013 board meeting.

ANNUAL REVIEW OF BOARD PROCEDURES

Ms. Saylor stated that it is in statute that the board's procedures be reviewed each year at the annual board meetings in October each year. She added that she did not have any recommended changes to the board's procedures.

Mr. Good stated that because of the recent appointment to the Registrar's position, there will not be an evaluation of the Registrar this year.

CASH PAYMENTS TO BRANCH 3 – INSPECTORS FOR FUMIGATION WORK

This topic is being held over to the January 2013 board meeting.

ASPCRO / NPMA SURVEY OF STATE REGULATIONS

Ms. Saylor reviewed the ASPCRO / NPMA Survey with the board members. She added that she provided a summary of key findings of this survey comparing them against California's standards.

CALIFORNIA LABOR ENFORCEMENT TASK FORCE

Ms. Clary reviewed a memorandum dated September 17, 2012 where she addressed the ability of SPCB specialists to investigate licensees for compliance with wage and workers compensation laws. The conclusion of her advice is that board specialists can investigate such matters and take licensing action, but cannot pursue violations under labor, safety, or compensation insurance laws. She added that the board specialist can provide such information to the Labor Enforcement Task Force.

Mr. Good expressed concern with pest control companies using 1099 employees.

Mr. Whitmore commented that should a 1099 employee get injured on a job site they can sue the property owner if the company they are working for does not carry

workman's compensation insurance and that this does not provide protection to the consumer.

Mr. Tamayo stated that there needs to be very specific guidelines for what the Board wants their specialists investigating.

Mr. Good suggested that the specialists seek training from the California Labor Enforcement Task Force to teach them what to look for.

Ms. Saylor stated that she would like to look into the Enforcement Academy Training schedule to see if this issue will be addressed during the specialist's training at the end of the month and to see if other departments are facing similar issues.

ELECTRONIC DELIVERY OF BRANCH 2 – SERVICE SLIPS

Ms. Clary reviewed a memorandum dated September 12, 2012 addressing the delivery of Branch 2 service slips being delivered electronically. The conclusion of her advice is that a Branch 2 service slip can be provided electronically but only in addition to the three delivery methods outlined in statute.

Mr. Katz stated that the original question was in regards to service slips being left on a monthly service account, not the initial notification as described in Section 8538.

Ms. Clary stated that she cannot legally consider electronic delivery of a service slip a "personal delivery". She recommended that the Act Review Committee define "personal delivery" if they want electronic communications to be included therein.

Ms. Quiroz suggested that electronic delivery can be considered more efficient because e-mail can be set up to confirm that it was delivered whereas if a notice is left on a front door it can blow away and there is no proof that it was left at the property.

Mr. Good asked to defer this discussion to the Act Review Committee to address.

STRATEGIC PLAN – DISCUSSION AND UPDATE

The Board agreed that the discussion regarding updating the Strategic Plan should be held after the transfer of the Board back under the jurisdiction of DCA.

ELECTION OF OFFICERS

Mr. Tamayo moved and Ms. Brand seconded to elect Mr. Good as president of the Board.

Mr. Duran amended the motion to elect Mr. Good as president and Mr. Tamayo as vice president of the Board. Passed unanimously.

BOARD MEETING CALENDAR

Mr. Good stated that the January board meeting was scheduled for January 16 and 17, 2013 in Sacramento. He stated that the April board meeting is generally scheduled in conjunction with PCOC's Legislative Days which will be April 23 and 24, 2013. The Board scheduled the next meeting for April 24 and 25, 2013 in Sacramento.

Mr. Adams extended an invitation to the board members to attend the PCOC Legislative Days.

FUTURE AGENDA ITEMS

Mr. Duggal asked when the Strategic Plan will be readdressed because he would like to have a discussion regarding Goal 2.4 of the 2017 Strategic Plan.

Ms. Saylor stated that this goal discusses the evolution from paper to computer based examinations and she added that she will discuss examination services with DCA upon the transfer back under their jurisdiction.

Mr. Utley asked when the Board will hold their next Strategic Planning session.

Ms. Saylor responded that Strategic Planning is done during a board meeting and added that she will work with DCA to get on their Strategic Planning calendar for October 2013.

Mr. Whitmore inquired about the permanent appointment of a registrar.

Mr. Good responded that the Board would like to wait until they are transferred back under the jurisdiction of DCA to appoint a permanent registrar.

PUBLIC COMMENTS NOT ON THE AGENDA

There were no public comments.

ADJOURNMENT

The meeting adjourned at 12:40 P.M.



President



Susan Saylor, Interim Executive Officer

1/17/13

DATE