

**MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
April 24 and 25, 2013**

The meeting was held on Wednesday and Thursday, April 24 and 25, 2013, in the Hearing Room located at 2005 Evergreen Street in Sacramento, commencing at 9:03 A.M. with the following members constituting a quorum:

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

Board staff present:

Susan Saylor, Interim Executive Officer
Robert Lucas, Consumer Services Manager
Ronni O'Flaherty, Staff Services Analyst
Melissa Sowers-Roberts, Disciplinary Action Analyst
Valerie Connelly, Staff Services Analyst

Departmental staff present:

Chuck Andrews, Associate Director
Jim Shattuck, Environmental Program Manager

ROLL CALL

Ms. Saylor read roll call.

FLAG SALUTE

Mr. Good led everyone in the flag salute.

APPROVAL OF MINUTES OF THE JANUARY 16 AND 17, 2013 BOARD MEETING

Mr. Duran moved and Ms. Quiroz seconded to approve the minutes of the January 16 and 17, 2013 board meeting minutes. Passed unanimously.

DEPARTMENT OF PESTICIDE REGULATION UPDATE

Jim Shattuck, Program Manager, Enforcement Branch, stated that Business and Professions (B&P) Code Section 8616 requires development of a training program for County Agricultural Commissioner's (CAC) enforcement staff. He added that this training was provided in June of 2012 in Southern California, and training in Northern California is being planned for October. He invited everyone to attend.

Mr. Duran asked Mr. Shattuck if there were dates set for this training.

Mr. Shattuck replied that tentative dates for the training are Oct 1-3, 2013.

Mr. Tamayo commented that it is important that CACs are familiar with how to investigate incidents that occur during fumigations.

DEPARTMENT OF CONSUMER AFFAIRS UPDATE REGARDING TRANSITION OF SPCB TO DCA

Sandra Mayorga, Deputy Director, Office of Administrative Services, stated that she has been put in charge of the Board's transfer back to the Department of Consumer Affairs. She stated that the transition is going very smoothly and DCA is happy to have the board back under their jurisdiction. She added that DCA is already currently providing several services for the Board, so transfer of remaining services should be smooth.

Mr. Utley asked if recreating the Board's strategic plan is urgent because of the distinct differences between the two departments.

Ms. Mayorga responded that the department will not require the Board to immediately update their Strategic Plan, and will put it on their Strategic Planning calendar as the current plan approaches its expiration. She added that she will review the current plan with Ms. Saylor and make any necessary adjustments.

Ms. Saylor stated that DCA has a facilitator to assist the Board with the Strategic Planning process.

EXECUTIVE OFFICER'S REPORT

Ms. Saylor reported on the following:

- SB662 – in regards to increasing the minimum requirements for bond and insurance. Passed Senate Business, Professions and Economic Development committee on 04/22/2013. Next hearing is set for this upcoming Monday.
- SB748 – This bill is currently identified as a SPCB Bill, but is a spot bill which is more than likely going to change.
- AB1177 – Fumigation Enforcement Program extends sunset from January 2014 to January of 2018. This bill was heard and approved on Tuesday and is not yet calendared for next hearing.
- AB186 – Expediting temporary licensure of spouses of persons on active duty in military.
- AB1317 – Governor's reorganization plan to move several agencies throughout state – already on consent calendar

Mr. Utley stated that when the Board transferred to Department of Pesticide Regulation, some sections were missed in the reorganization plan and added that he wants to make sure all of the sections that need to be changed are included in this bill.

Ms. Saylor responded that she reviewed the bill and it appears to have all sections included.

Mr. Utley raised concern concerning licensees being able to obtain building permits after the transfer.

Ms. Saylor responded that she would look in to it.

Mr. Good stated that there is also a primacy bill being proposed and asked Mr. Andrews to speak to that effect.

Mr. Andrews stated that there is not yet proposed language, but DPR is concerned with maintaining primacy authority over pesticide use, sales and transportation. He added that he will be discussing this during agenda item nine relating to the San Francisco City ordinance regarding bed bug complaints and ask the Board if they would like to recommend a position to the department on this issue.

Mr. Good stated that he would like to encourage the Board to recommend a position on this. He added that he has some concerns regarding this primacy issue and the ability of the department to regulate the industry should this primacy issue go through. He stated that any support the Board can provide to the department to allow the Board to maintain the ability to regulate its licensees.

Mr. Andrews asked Mr. Good to prepare correspondence addressing his concerns.

Mr. Tamayo suggested that it would not be responsible for the Board to take a position on this issue without first putting it on an agenda for a future meeting.

Mr. Utley recommended that the Board wait to discuss this until agenda item nine is being discussed.

Mr. Good stated that the Board does not need to take an official position on this topic, but the agency needs to know that the Board is in support of the department maintaining primacy.

Martyn Hopper, Pest Control Operators of California (PCOC), stated that the industry is very concerned with the possibility of having 472 different jurisdictions. He stated that PCOC has already contacted and scheduled a meeting with Assembly Speaker John Perez.

Darrell Ennes, Terminix International, agreed with Mr. Hopper in that it would be a disaster to have so many municipalities being able to adopt their own laws pertaining to pesticide use and for the pest control operators to know them all.

Michael Katz, Western Exterminator, spoke in favor of maintaining primacy at the state level. He stated that it is very important for there to be consistency in the laws by which pest control companies must operate. He suggested that if the Board has the opportunity to take a position on this topic that it would be in the best interest of both the Board and the pest control companies.

Bill Gaither, BG Inspections and Pest Control, stated that this was an issue in 1999 with the City of Fairfax when Fairfax tried to make an ordinance to require 24 hour written notification to any surrounding property prior to any type of application.

Mr. Duggal suggested having this conversation during the discussion of the San Francisco City Ordinance regarding bed bugs.

Mr. Tamayo commented that even during the discussion of the San Francisco City Ordinance regarding bed bugs, the Board cannot take a position on whether or not the laws regarding primacy should change because the topic was not noticed or put on the agenda.

Mr. Good stated that the Board is not trying to determine whether the law should change, they are discussing preservation and interpretation of the current law.

Mr. Utley commented that the conversation is permitted under the Department of Pesticide Regulation Update and all the department wants is to know that the Board supports current laws regarding primacy.

- WDO Statistics, Licensing Survey Results, and Enforcement Survey Results were reviewed with the Board members.

Mr. Good asked if a board specialist visited the property regarding complaint case number 13-326.

Mr. Lucas responded that a specialist was not sent out to the property.

- Since exams were compromised, new FR tests were put in place in March. The passing rate was very low. Since then, those exams were reviewed and new exams were put out in April. Question analysis is being done and results will be sent out tomorrow.
- Valerie Connelly was hired to fill the vacancy in Administration. She is handling the approval of continuing education providers and courses, the citation and fine program and procurement for contracts.
- Tom Ineichen, Board Specialist, was introduced.
- Mr. Douglas will not be returning. The Chief Enforcement Officer vacancy will hopefully be filled soon.
- Elizabeth Chervenak returned to Administration from maternity leave.
- Kristina Jackson-Duran will be returning from her maternity leave of May 8, 2013.
- Priscilla Romero will be retiring from the Enforcement Unit in May and the Board is in the process of recruiting to fill that position.

Darren Van Steenwyk, Clark Pest Control, stated that the passing rate for the March examination was extremely low. He asked Ms. Saylor if question analysis will be done every month until the passing rate becomes more consistent.

Ms. Saylor responded that question analysis will be done every month.

Kyung Yi, A & K Computers, stated that his company has contacted the department to offer help with the development of new examinations and examination processes. He suggested offering copies of old examinations to people applying for the exam to use as study guides.

Mr. Ennes asked Ms. Saylor if she knew why the examination passing rate was so low in March.

Ms. Saylor responded that the low passing rate is a combination of several factors. She stated that the examinations that were compromised were in place for a couple of years because the Board did not have a contract to develop new exams. She added that the questions that are on the new examination are from a bank of questions that were developed by subject matter experts. She asked that if there are any licensees who are interested in developing questions for the new exams to please pass their contact information onto Board staff.

Mr. Ennes thanked Board staff for getting a new exam in place so quickly.

Mr. Utley asked what the average score was for the March examinations.

Ms. Saylor responded that most people scored in the high fifty to sixty percentiles.

SAN FRANCISCO CITY ORDINANCE REGARDING BED BUG COMPLAINTS

Mr. Andrews discussed the SF Bug Ordinance and the legal opinion provided which states that the ordinance in SF unlawfully puts regulatory requirements on the Board's licensees. He stated that the Department recognizes the issues and would like to work with the City of San Francisco regarding this ordinance.

Mr. Duggal commented that he didn't see anywhere in the ordinance where the city prohibits pesticide use for the control of bed bugs.

Mr. Andrews stated that the law states that no city or county agency may prohibit or in any way attempt to regulate the sales, transportation or use of pesticides.

Mr. Duggal stated that he does not see where the ordinance is superseding the department's laws or directing pest control operators in regards to the use of pesticides.

Mr. Andrews stated that part of the ordinance includes reporting requirements.

Mr. Duggal stated that the reporting requirements are relative to infestations not pesticide use.

Mr. Good stated that this is more of a client confidentiality matter.

Mr. Duggal stated that the City of San Francisco is simply addressing this from a public health perspective, not a pesticide regulation perspective. He stated that the department does not have reporting requirements or data that a health officer can look at to determine the size of the problem. He added that the City of San Francisco has not overstepped the boundaries of the state law because the department only has oversight over the sales, transportation and use of pesticides. He added that he does see the relevance of concern regarding the language of the ordinance that requires oversight by the Board.

Mr. Good stated that this ordinance requires a pest control operator to inspect neighboring units if bed bugs are found in one unit and requires treatment the same day the infestation is discovered. He stated that there are many variables that can prevent this ordinance from being followed and it puts the pest control operators at risk of being fined for violations of this ordinance that one cannot comply with. He added that he is concerned with working under such authority.

Mr. Duggal stated that he does not see how the department's primacy is being challenged by this ordinance.

Eric Paulson, Clark Pest Control, commented that at least two areas of this ordinance that challenge the department's primacy. He stated that San Francisco City Ordinance section PCO 3.1 regarding Material Safety Data Sheets include reporting requirements that contrary are to B&P Code Section 8538. He added that section PCO 4.4 requires that a pest control operator post a visible safe to reenter tag and this also challenges the department's primacy.

Mr. Duggal suggested that these issues can be worked out with the City of San Francisco.

Mr. Utley stated that when this was first brought up the Board did not understand why the pest control operators were brought into this ordinance. He suggested the city make it a voluntary program, but they cannot require pest control operators to do something extra and cite them for not complying.

Darren Van Steenwyk stated that the bed bug problem in San Francisco is getting worse and pest control operators want to address this properly. He added that this ordinance requires treatment when bed bugs are found and references the pesticide label and sometimes goes above and beyond specifics as to how and where to apply the pesticide.

Mr. Andrews stated that PCO 4.1 mandates where a pest control operator can treat, which can go against the label, which allows another enforcement body to determine whether or not a pesticide is being used according to label. He added that this determination should be carried out by the CAC.

Mr. Duggal suggested the Board work with San Francisco to remedy their concerns.

Mr. Andrews stated that DPR is concerned with the bed bug problem in San Francisco and is willing to work with San Francisco to make this ordinance work for both agencies.

Mr. Good stated the City of San Francisco should have approached the Board prior to making this ordinance.

Mr. Whitmore commented that he agrees with Mr. Good and San Francisco is not the only county with bed bugs and state primacy needs to be addressed. He recommended that the Board send the City of San Francisco a letter letting them know that their ordinance is void and encourage them to contact the department to make workable solutions regarding this ordinance

Mr. Tamayo stated that this ordinance is definitely in violation of the state primacy and the additional regulations imposed are not valid. He added that the state fully regulates the pest control industry. He suggested that the board take a position on the legal opinion provided.

Mr. Utley moved and Mr. Duran seconded to direct staff send a letter of support to DPR stating that we value our primacy and San Francisco has violated some aspects of DPR and SPCB laws and regulations.

Mr. Duggal suggested that the motion be more specific in order for him to support it and suggested that DPR provide information as to what laws this ordinance violates.

Mr. Utley stated that he wants to send a letter of support. He commented that there has been no notice of an epidemic in San Francisco. He added that he wants the Board to support DPR in upholding current laws.

Mr. Duran stated that he would like to applaud San Francisco for trying to do something about this bed bug problem but he cannot support the way they went about it.

Dr. Vernard Lewis, UC Berkeley, stated that the bed bug problem is growing but we do not have treatment methods down to an exact science. He suggested that maybe a roundtable discussion regarding bed bugs be held before the situation gets worse.

Mr. Utley moved to amend his motion to state that the Board directly supports the conclusion of DPR legal counsel in that San Francisco cannot lawfully pass an ordinance that puts regulatory requirements on pest control operators. Mr. Duran seconded this motion. Passed by majority. (AYES: Mr. Good, Mr. Tamayo, Mr. Utley, Ms. Quiroz, Ms. Brand, Mr. Duran; NOES: Mr. Duggal)

Mr. Good stated the board would like to assist the department in any efforts regarding reserving primacy.

Mr. Andrews stated that he respects the Board and its processes and he wants to make sure the department maintains primacy.

Mr. Good suggested that if the Department needs anything further from the Board a teleconference meeting might be in order.

Mr. Tamayo commented that he prefers not to have teleconference regarding this matter and encourages the Board to put it on a regular meeting agenda because if the Board is going to express an opinion on this issue, he would like it to be done with opportunity for public comments.

Mr. Good stated that there is not another Board meeting until October.

Mr. Utley suggested that the Board put this on October's board meeting agenda, and only hold a teleconference if issues arise making it necessary.

Mr. Andrews stated that this is acceptable.

PRESENTATION ON DESIGN AND BUILDING STRUCTURES THAT FEATURE PEST PREVENTION AND IPM

Mr. Good introduced Dr. Chris Geiger.

Dr. Geiger stated that he manages the IPM program for city properties and introduced Tara Cahn who is an architect who worked on this project. Together, they presented a project called Pest Prevention by Design.

DISCUSSION ON THE ROLE OF SPCB IN REGULATING STRUCTURAL IPM APPROACH INCLUDING “REGULATING THROUGH RESOURCE PROVIDER” ON SUBJECTS SUCH AS CENTRALIZED RESOURCE CENTER FOR FOCUSED STRUCTURAL IPM TRAINING, EXAMINATION, AND LICENSING OF THE BUSINESS AND RELATED CONSUMER PROTECTION INTERESTS

Mr. Duggal stated that in regards to wood destroying organisms, the Board is doing their due diligence by requiring structural repairs and suggested that there needs to be more push for an IPM approach regarding general pest management. He stated that he feels that requiring two hours of IPM as a continuing education requirement is not adequate. He stated that he would like the Board to consider looking into how they can move the industry towards providing consumers with IPM advice and using pesticides as a last resort. He suggested such things as having extensive training, a set curriculum, and gear licensing towards IPM. He concluded that the current IPM certification does not guarantee an IPM service to the customer and the Board need to take the lead in requiring training so that the pest control operators can use that training out in the field.

Mr. Duran stated that he would like to know the Board’s stance regarding IPM certification. He added that the Board does not currently have a definition of certification to pursue enforcement action regarding violations.

Mr. Utley stated that when the Board defined IPM that they decided not to endorse any companies that offer IPM certification although they are aware that there are companies that offer what the Board would consider an endorsable program.

Mr. Tamayo stated that he requested that the board set standards regarding IPM certification. He added that there was an IPM Certification Committee where it was determined by the committee that there was not enough of a problem in the industry to have the need to define certification because IPM services are often sought out. He added that the Board supported the findings of the committee. He stated that the Board has not yet pursued the recommendations of the committee. He suggested the Board look into what other things they could do to promote more thorough implementation of IPM in the industry. He suggested reviewing the current IPM CE courses that are available. Not to regulate certification, but figure out how to move this further.

Mr. Duggal suggested using data that PCOC and DPR already has to develop a fact based scientific approach and develop standards and regulated practices to address current issues. He

suggested that PCOC take the lead in developing these programs and work with the Board to implement them.

Mr. Van Steenwyk stated that he was part of the IPM Certification Committee and that the committee determined that the Board couldn't move forward with certification of programs because they would have to regulate companies that are not under their jurisdiction and the Board does not have authority to do so. He added that all the Board can do is regulate the licensees of the Board and as long as California Code of Regulations (CCR) Section 1999.5 is being enforced consumers should not be misled or sold services that are expected to be IPM but are not. He also suggested reviewing the quality of the current IPM continuing education courses that are approved by the Board.

Mr. Duggal stated that the Board needs to take the lead to define legal definitions and set minimum standards to prevent the consumer from being misled.

Mr. Van Steenwyk stated that the Board has addressed this issue and suggested that Mr. Duggal look at the minutes from the meeting where CCR Section 1999.5 was discussed.

Mr. Tamayo asked Ms. Saylor what the process of evaluation of continuing education course material is.

Ms. Saylor stated that staff reviews the course content and if the course outline includes IPM practices, it is approved as IPM.

Mr. Tamayo suggested setting a criteria by which the approval of IPM courses is based upon.

Mr. Whitmore stated he acquired 246 hours of continuing education during last renewal period and it seems as if all of the new courses are including more IPM than they did previously. He added that he thinks that the board does a great job approving continuing education courses and if the Board feels that IPM classes are inadequate, the Board needs to work with staff.

Mr. Utley stated that companies who become certified get better IPM training because the certification programs by which they are becoming certified are providing additional training. He added that the courses that are approved by the Board are good courses. He stated that if a company is seeking to provide IPM certified services there are companies that offer it.

Mr. Gillespie recommended that separate courses be developed based on IPM geared towards particular pests because all pests have different biology and will require different IPM approach.

Mr. Tamayo stated that he would like to see what guidelines are used to approve a continuing education course.

Ms. Quiroz commented that there are not demographics taken to take into consideration regarding examination and continuing education issues.

Mr. Good asked Ms. Saylor to present at October's Board meeting the criteria used to approve continuing education courses as well as samples of courses that have been approved.

CONSIDERATION OF RECOMMENDATION TO CHANGE PAPER AND PENCIL EXAMINATIONS TO COMPUTER BASED EXAMINATION

Ms. Saylor stated that there is a recommendation to change the examination process to computer based examinations. She stated that every examinee will be given a different test where the questions are scrambled. She stated that the Board has a large bank of questions but will need help from the industry to develop more. She added that in statute, there are maximum fees set that the Board can charge for an examination, which will not cover the actual costs of computer based examinations which has been estimated at forty dollars for each exam.

Mr. Utley moved and Mr. Duran seconded to raise the maximum fee for all license exams to \$90.00.

Mr. Good stated that there are 17 examination facilities throughout the state that are open Monday through Saturday from 8:00 A.M. to 5:30 P.M. and the examinations are not stored on site. He suggested that the Board make a recommendation as to how often an individual can take the exam.

Mr. Ennes stated that the Board must consider the time it will take in between exams for staff to process examination fees.

Mr. Katz suggested that applicants be allowed to take the examination as often as every day.

Ms. Saylor suggested that the Board address each item separately and make separate motions for each.

Mr. Tamayo recommended that the Board seek legislation to allow Board to adjust fees in regulations rather than in B&P Code.

Ms. Quiroz asked who typically pays for an individual to take the exam.

Mr. Ennes stated that either the individual or the company pays for the exams.

Mr. Hopper stated that PCOC voted to support the board in increasing the examination fee to one hundred twenty five dollars and recommends that there is not an open ended fee set in Code.

Mr. Tamayo suggested that Mr. Utley increase his motion to not exceed \$125 for an examination.

Mr. Utley amended his motion to increase the maximum fee for each examination to \$125. Mr. Duran seconded the motion. Passed unanimously.

Mr. Utley asked PCOC to write a letter endorsing the Board's motion.

Ms. Saylor stated that she is concerned with someone being able to memorize questions if they are able to take the exam on a daily basis.

Mr. Good stated that CCR Section 1936 requires an applicant to apply fifteen days prior to the next scheduled examination date and with computer based testing there will not be scheduled examination dates.

Mr. Tamayo recommended that the Board not allow applicants to take the exam no less than every 30 days.

Mr. Hopper suggested leaving the law as it is requiring the applicant to apply 15 days prior to taking the exam.

Mr. Ennes suggested that an individual should be allowed to take the examination on a weekly basis.

Ms. Brand suggested that when an applicant fails the exam that they are told what areas they are lacking in so that they can better prepare for their reexamination.

Mr. Duran moved and Ms. Brand seconded to allow applicants to test twice monthly.

Mr. Utley recommended that the Board have staff refer to legal to determine what is necessary to allow testing twice a month.

Motion passed unanimously.

CALIFORNIA AERATION PLAN UPDATE

Mr. Whitmore stated that there have been revisions to the California Aeration Plan (CAP) which will be implemented on May 20, 2013. He stated that these revisions are relevant to location of vents, and removed language that was already covered by the specimen labels. He added that the revisions also included a recommendation to use the lowest amount of chloropicrin possible to prevent exposure complaints as well as requiring that ventilation caps be designed to be removed remotely.

Mr. Shattuck stated that CAP training for CACs will continue to be provided by region. He added that an Enforcement letter will go out to CACs as well as training will be provided at CAC training in October.

DISCUSSION REGARDING TENANT NOTIFICATION METHODS REQUIRED UNDER B & P CODE SECTION 8538

Ms. Saylor stated that included in the board package is an issue memo from Ms. Clary stating that one of the CACs has indicated that if every tenant was not notified regarding a pest control treatment and are not provided a disclosure notification, the pest control operator will be cited. She added that there is no requirement to notify each tenant unless the complex has less than 5 units and this particular CAC office has already been notified in regards to this misinterpretation.

ELECTRONIC DELIVERY OF PESTICIDE DISCLOSURE NOTICE AND BRANCH - 2 SERVICE SLIPS

Ms. Saylor stated that she was going to refer this item to the Act Review Committee for discussion at tomorrow's meeting but there was a recommendation to make a modification to B & P Code Section 8538(b)(1) to allow for electronic delivery of the pesticide disclosure notice.

Mr. Katz stated that the Act Review Committee will discuss this tomorrow and provide the Board with a recommendation.

Mr. Utley moved and Ms. Brand seconded to add "or electronic" to B&P Code Section 8538(b)(1).

Bob Gordon, Gordon Termite Control, stated that the committee has had many discussions regarding moving towards the electronic age and the committee has already made recommendations to allow electronic delivery of these service slips and is discussing changes to CCR Section 1970.4 as well to coincide with electronic delivery.

Mr. Utley moved to amend his motion to also include revisions to CCR Section 1970.4 to allow electronic delivery.

Ms. Saylor stated that public hearing would need to be conducted after legislative changes to B&P Code 8538 to amend CCR Section 1970.4.

Motion passed unanimously.

BOARD MEETING CALENDAR

Mr. Good stated that due to the transfer back to DCA, July’s meeting has been cancelled due to travel restrictions.

The next meeting was scheduled for October 16 and 17, 2013 in San Diego.

FUTURE AGENDA ITEMS

Mr. Tamayo requested that the Board takes a position on the DPR primacy issue.

Mr. Good requested that the Board have dialogue regarding changing the license renewal applications to include the reporting of what continuing education courses were taken in that renewal period.

Ms. Saylor stated she will check with DCA to see what is feasible.

Mr. Duggal requested a discussion be held regarding the standardization of IPM continuing education courses and asked that staff bring samples of approved courses and the criteria used to approve them.

Mr. Good asked Mr. Hopper to also present his course approval guidelines.

PUBLIC COMMENTS NOT ON THE AGENDA

There were no public comments.

ADJOURNMENT

The meeting adjourned at 1:35 P.M.

Curtis Good, Board President

Susan Saylor, Registrar

Date