

MINUTES OF THE
BOARD MEETING OF THE
STRUCTURAL PEST CONTROL BOARD

March 27, 2014

The meeting was held on March 27, 2014 in the Hearing Room located at 2005 Evergreen Street, Sacramento commencing at 9:00 A.M. with the following members present constituting a quorum.

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

Board Staff Present:

Susan Saylor, Executive Officer
Robert Lucas, Consumer Services Manager
Ronni O'Flaherty, Administrative Analyst
David Skelton, Administrative Analyst

Departmental Staff Present:

Christine Lally, DCA Executive Office
Kyle Muteff, Legal Counsel

ROLL CALL/ESTABLISHMENT OF QUORUM

A quorum of the board was established.

FLAG SALUTE/PLEDGE OF ALLEGIANCE

Mr. Tamayo led everyone in the flag salute and recitation of the Pledge of Allegiance.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

There were no public comments on items not on the agenda.

APPROVAL OF THE MINUTES FROM THE JANUARY 23 & 24, 2014 BOARD MEETING

Mr. Tamayo asked the Board if there were any changes to the minutes from the January 23 & 24, 2014 Board Meeting.

Mr. Good asked that his comment on Page 5 of the January 23 & 24, 2014 Board Meeting Minutes be changed from “congratulated PCOC” to “congratulated the Board”.

Mr. Utley moved and Mr. Duran seconded to approve the minutes from the January 23 & 24, 2014 Board Meeting as amended. Passed unanimously.

REVIEW OF COMMENTS AND RESPONSES FROM THE INTERESTED PARTIES WORKSHOP ON IPM'S ROLE IN CONTINUING EDUCATION (CE)

Ms. Saylor referred the Board to the minutes (included in Board Materials) from the IPM Interested Parties Workshop and to the 3 written public comments received by staff (also included in Board Materials).

Mr. Tamayo introduced Darren Van Steenwyk, Clark Pest Control, as the Chair of a newly formed CE IPM Committee and asked him to provide a summary of its members and goals.

Mr. Van Steenwyk introduced the members of the CE IPM Committee as follows- Nita Davidson, Department of Pesticide Regulation, Naresh Duggal, Santa Clara County, Brandon Kitagawa, Regional Asthma Management and Prevention, Sylvia Kenmuir, Target Specialty Products, Jim Steed, Neighborly Pest Management, and Dave Tamayo, Sacramento County Water Department, and stated that their first meeting is scheduled for May 13, 2014.

PRESENTATION AND DISUCSSION BY DR. ANDREW SUTHERLAND, UC IPM BAY AREA ADVISOR ON HUMAN HEALTH AND ENVIRONMENTAL CONSIDERATIONS WHILE CONDUCTING STRUCTURAL PEST CONTROL AND SUGGESTED PATH

Dr. Andrew Sutherland gave a presentation explaining the theory and practice of Integrated Pest Management as it relates to the public and to the pest control industry.

Mr. Tamayo asked the Board and IPM Review Committee to consider Dr. Sutherland's presentation and how some of the information it contained could fit into a structural IPM framework.

CONSIDERATION OF AMENDING SECTION 1950 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS- INCREASE IPM CE REQUIREMENT

Mr. Tamayo stated that this agenda item will be an area of particular focus for the CE IPM Committee.

Mr. Duggal stated that the CE IPM Committee should consider the report and recommendations made by the Urban Pest Management Working Group to DPR in 2008.

EXECUTIVE OFFICER'S REPORT

Ms. Saylor reported on the history of the Board's examinations being compromised, the criminal investigation of those responsible for it, the development of one new examination at a cost of \$40,000, and the implementation of computer based testing.

Ms. Saylor reported on the examination passing rates and stated that the Board is currently conducting examination workshops which will result in new tests being debuted starting in June, 2014.

Ms. Saylor reported on the Sunset Review Committee and the Board's response to the areas of concern raised by that Committee. Ms. Saylor stated that the Sunset Committee raised 18 areas of concern and that her, Mr. Lucas, and Mr. Tamayo attended the March 17, 2014 Sunset Hearing to address 8 of those in person.

Ms. Saylor stated that now with the Board being back at DCA the capability exists to broadcast the Board Meetings over the web. Ms. Saylor stated the plan is to begin webcasting at the October Board Meeting.

Ms. Saylor stated that the Board Meeting materials are now available on the Board's website and that will be the case going forward. Ms. Saylor stated that webcasting the Board Meetings and making the Board Meeting materials available on the website both addressed concerns raised by the Sunset Review Committee.

CONSIDERATION AND POSSIBLE POSITION ON SB 1244 SUNSET BILL

Ms. Saylor stated that the SB 1244 Sunset Bill was introduced in February and that it would be prudent for the Board to take a position on it.

Mr. Good moved and Mr. Utley seconded for the Board to support SB 1244 Sunset Review Bill. Passed unanimously.

CONSIDERATION AND POSSIBLE POSITION ON AB 1685 EXAMINATION FEE INCREASE BILL

Ms. Saylor reported on the contents and status of AB 1685 in advance of the Board possibly taking a position on it.

Mr. Muteff stated that in addition to the fee increase contained in AB 1685 there is a change that authorizes PCOs to notify by electronic means when pest control work is to be performed.

Mr. Tamayo asked if the Board should define in regulations the exact meaning of the term “electronic means.”

Mr. Muteff stated that the Board has the authority to define terms in regulations and that defining the term “electronic means” would be a good idea.

Mr. Duran moved and Mr. Utley seconded to support AB 1685 Examination Fee Increase Bill. Passed unanimously.

CONSIDERATION OF PROPOSED AMENDMENTS TO SECTIONS 1936, 1936.1 AND 1936.2 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS- TO REVISE COMPANY REGISTRATION AND LICENSE APPLICATIONS

Ms. Saylor referred the Board to examples of revised applications in their Board materials and stated that if the Board approved them it could direct staff to begin the rulemaking process to change them.

Mr. Tamayo asked if there is time pressure on the Board to make these changes.

Mr. Muteff stated that there is time pressure to change the wording on applications asking about criminal conviction history. The changes adding questions about military service are not as time sensitive, but were added in anticipation of next year’s requirement.

Mr. Tamayo asked if the Board could authorize staff to begin the rulemaking process and still make any additional changes that might be needed during that process.

Mr. Muteff stated that the Board would be voting today to authorize staff to begin the rulemaking process and that additional changes could be made during that process.

Mr. Utley moved and Mr. Duran seconded to approve the proposed text, prepare a notice for hearing on the regulations, and set that hearing for the next board meeting. Passed unanimously.

CONSIDERATION OF PROPOSED AMENDMENT OF SECTION 1948 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS- OPERATOR, FIELD REPRESENTATIVE, AND APPLICATOR EXAMINATION FEE INCREASE

Ms. Saylor stated that AB 1685 is the Examination Fee Increase Bill that will set a maximum fee cap and if that becomes law the Board will need to do a rulemaking package to identify exactly what the fee increase will be in regulation for each license type.

Ms. Saylor stated that the cost to the Board for each person who attends computer based testing is thirty seven dollars and fifty cents (\$37.50) and her recommendation is to increase license examination fees by forty dollars (\$40) for applicators, field representatives, and operators.

Mr. Tamayo asked if the Board can begin the rulemaking process even though they currently do not have the statutory authority to increase fees.

Mr. Muteff stated that the Board can begin the rulemaking process in anticipation of the statutory authority.

Mr. Duran moved and Mr. Good seconded to approve the proposed text and for staff to prepare a notice for hearing, and set that hearing for the next board meeting. Passed unanimously.

STRUCTURAL PEST CONTROL BOARD BROCHURES REVIEW AND DISCUSSION REGARDING COST OF PUBLISHING IN LANGUAGES OTHER THAN IN ENGLISH

Ms. Saylor stated that at the previous Board Meeting a Board member had inquired about the ability to publish public informational brochures in languages other than English. Ms. Saylor stated that after looking into that possibility she believes it will be too expensive. Ms. Saylor

further stated that she would be working with DCA on translating the brochures to the most widely used languages other than English and making them available on the website.

The Board discussed the publication of brochures in languages other than English and ultimately decided to table the discussion and add a future agenda item during which the topic of brochures could be discussed more broadly.

PRESENTATION OF ACT REVIEW COMMITTEE RECOMMENDED LEGISLATIVE CHANGES TO BUSINESS AND PROFESSIONS CODE SECTIONS 8504, 8505.1, 8505.2, 8505.5, 8505.10, 8505.12, 8505.14, 8507.1, 8514, 8518, 8538, 8551.5, 8555, 8560, 8562, 8564, 8564.5, 8564.6, 8565, 8565.6, 8566, 8567, 8590, 8590.1, 8593.1, 8612, 8613, 8617, 8622, 8643, 8647, 8651, 8656, 8660, 8673, DELETION OF 8505.6 AND ADDITION OF 8504.1 AND 8672.1

Mr. Gordon gave a presentation explaining the process and rationale of the recommendations made to the Board by the Structural Pest Control Board Act Review Committee.

CONSIDERATION OF ACT REVIEW COMMITTEE'S RECOMMENDATION TO CHANGE BUSINESS AND PROFESSIONS CODE SECTIONS 8504, 8505.1, 8505.2, 8505.5, 8505.10, 8505.12, 8505.14, 8507.1, 8514, 8518, 8538, 8551.5, 8555, 8560, 8562, 8564, 8564.5, 8564.6, 8565, 8565.6, 8566, 8567, 8590, 8590.1, 8593.1, 8612, 8613, 8617, 8622, 8643, 8647, 8651, 8656, 8660, 8673, DELETION OF 8505.6 AND ADDITION OF 8504.1 AND 8672.1

Mr. Tamayo asked if the proposed change to B&P Code Section 8505.12 needed to more clearly define who the State Regulatory Authority is.

Mr. Muteff stated that statutes are typically worded broadly and the Board may make regulatory changes to further define the State Regulatory Authority in regulation.

Mr. Good asked Mr. Gordon if he could explain the Committee's approach to the process of recommending these changes.

Mr. Gordon stated that the Committee started at the beginning of the Structural Pest Control Act and went through every code section with the intention of bringing it up to date.

Mr. Gordon stated that the changes being presented to the Board at this meeting are the first in a series of planned recommendations and were chosen because the Committee felt these were non-controversial.

Mr. Duggal asked Mr. Gordon if the Committee considered OSHA regulations when making the proposed change to B&P Code Section 8505.10.

Mr. Gordon stated that the Committee did consider OSHA regulations when making the proposed change to B&P Code Section 8505.10.

Mr. Duggal asked Mr. Gordon if the Committee considered adding reciprocity for Operators in B&P Code Section 8562.

Mr. Gordon stated that the Committee did not consider adding reciprocity for Operators in B&P Code Section 8562 but that it is a very good suggestion.

Mr. Tamayo asked about the rationale for adding a statute of limitations to B&P Code Section 8617.

Mr. Muteff stated that he consulted with Kathy Boyle, Department of Pesticide Regulation, Staff Environmental Scientist, at one of the Act Review Committee Meetings and was told this was needed for commissioner action to increase consumer protection.

Eric Paulsen, Clark Pest Control, asked if the Committee considered striking “bees” from B&P Code Section 8555 due to the court decision in the Merrifield case.

Mr. Muteff stated that bees were not excluded in the Merrifield court decision.

Mr. Paulsen asked what the Committee’s rationale was for removing B&P Code 8565.6.

Mr. Gordon stated that a Branch 2 license grants a licensee the ability to control bees regardless if they are Africanized or not so there was no need to draw a distinction between them.

Mr. Utey asked Mr. Gordon about written comment received in regards to their recommendations.

Mr. Gordon stated that most of the written comment received was from the County Agricultural Commissioners (CACs) in regards to B&P Code Section 8505.12 and the approval process for allowing fumigations without the warning agent, chloropicrin.

Mr. Gordon stated that the Committee chose language in their recommendation for B&P Code Section 8505.12 that allowed the CACs to create their own guidelines for the approval of fumigation without chloropicrin.

Mr. Gordon stated that there was written comment received from a CAC in response to the Committee's recommendation to strike, "given by telephone" from B&P Code Section 8505.5.

Mr. Gordon stated that the Committee felt it was important that a notice of intent to fumigate be filed in writing rather than over the phone.

Mr. Utley asked if the Committee felt it had addressed the concerns expressed in the written comment that was received.

Mr. Gordon stated he felt the Committee had addressed the concerns expressed in the written comment that was received.

Mr. Duggal asked Ms. Saylor if staff was prepared to handle the anticipated increase in workload resulting from the recommended changes to B&P Code Section 8590.

Ms. Saylor stated that the majority of renewal applications are processed at DCA Central Cashiering and that staff could absorb the increase in workload resulting from the recommended changes to B&P Code Section 8590.

Lee Whitmore, Beneficial Exterminating, stated that the Fumigation Enforcement Committee suggested removing the language "such as but not limited to artifacts in museums or in police evidence storage" from the recommending changes to B&P Code Section 8505.12.

Mr. Gordon stated that the Committee included the all-encompassing term "such as, but not limited to" and that removing "such as but not limited to artifacts in museums or in police evidence storage" from the recommended change would be unnecessary.

The Board discussed removing "such as but not limited to artifacts in museums or in police evidence storage" and declined to do so.

Mr. Duran moved and Mr. Good seconded to adopt the recommended changes as they have been presented. Passed unanimously.

Mr. Utley moved and Mr. Good seconded to delegate authority to the Executive Officer to find a legislative author or to include the recommended changes in a bill. Passed unanimously.

BOARD MEETING CALENDER

The following three meetings were previously scheduled for July 9 and 10, 2014 in San Diego, October 15, 16, and 17, 2014 in Sacramento with the intent that one day would be for strategic planning and January 14 and 15, 2015 in San Diego.

The following meeting was scheduled for March 25 and 26, 2015 in Sacramento.

FUTURE AGENDA ITEMS

Mr. Utley requested a future agenda item to discuss a Honda commercial which has been airing in which a person runs into a house that is being fumigated to retrieve something. Mr. Utley wishes to discuss possible Board action to stop the airing of that commercial.

Mr. Utley requested a future agenda item to discuss the online sale of pesticides and what the Board can do to monitor or limit it.

Mr. Duran asked about the formation of a Pre-Treatment Committee.

Mr. Lewis suggested a future agenda item for an update on the research fund.

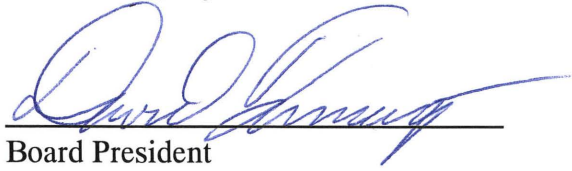
CLOSED SESSION

The Board entered closed session to deliberate on decisions in accordance with subdivision (c)(3) of section 11126 of the Government Code.

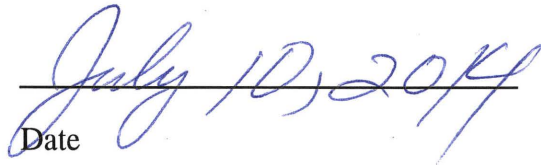
The open meeting resumed at 1:20 P.M.

ADJOURNMENT

The meeting adjourned at 1:20 P.M.


Board President


Susan Saylor, Registrar


Date