

**MINUTES OF THE MEETING OF THE
STRUCTURAL PEST CONTROL BOARD**

The meeting was held October 7 & 8, 2015 at the Department of Consumer Affairs,
Hearing Room, 2005 Evergreen Street, Sacramento, California.

Board Members Present:

Dave Tamayo, President
Curtis Good, Vice President
Naresh Duggal
Mike Duran
Cliff Utley

Board Members Absent:

Ronna Brand
Marisa Quiroz

Board Staff Present:

Susan Saylor, Executive Officer
Robert Lucas, Assistant Executive Officer
David Skelton, Administrative Analyst

Departmental Staff Present:

Kurt Heppler, Legal Counsel
Frederic Chan-You, Legal Counsel

Wednesday, October 7, 2015

ROLL CALL / ESTABLISHMENT OF QUORUM

Mr. Tamayo called the meeting to order at 12:01 P.M. and Ms. Saylor called roll.

Board members Tamayo, Good, Duggal, Duran and Utley were present.

Board members Brand and Quiroz were absent.

A quorum of the Board was established.

FLAG SALUTE / PLEDGE OF ALLEGIANCE

Mr. Tamayo lead everyone in the flag salute and recitation of the pledge of allegiance.

**PETITION FOR MODIFICATION / TERMINATION OF PROBATION –
ANGEL GALLEGOS / OPR 10788, BRANCH 1**

Administrative Law Judge Marcie Larson sat with the Board to hear the Petition for Modification / Termination of Probation for Angel Gallegos, Operator License Number 10788. Mr. Gallegos was informed that he would be notified by mail of the Board's decision.

**PETITION FOR REINSTATEMENT –
RICHARD PATRICK LLOYD / FR 25266, BRANCH 3**

Administrative Law Judge Marcie Larson sat with the Board to hear the Petition for Reinstatement for Richard Patrick Lloyd, Field Representative License Number 25266. Mr. Lloyd was informed that he would be notified by mail of the Board's decision.

**PETITION FOR REINSTATEMENT –
DOUGLAS LEE SMITH / OPR 9832, BRANCH 2**

Douglas Lee Smith, Operator License Number 9832, withdrew his Petition for Reinstatement.

CLOSED SESSION

Pursuant to subdivision (c) (3) of section 11126 of the Government code, the Board met in closed session to consider proposed disciplinary actions, stipulated settlements, and petitions for modification / termination of probation and reinstatement.

Return to Open Session

ADJOURNMENT

The meeting adjourned for the day at 3:27 P.M.

Thursday, October 8, 2015

ROLL CALL / PLEDGE OF ALLEGIANCE

Mr. Tamayo called the meeting to order at 8:00 A.M. and Ms. Saylor called roll.

Board members Tamayo, Good, Duggal, Duran and Utley were present.

Board members Brand and Quiroz were absent.

A quorum of the Board was established.

Mr. Tamayo lead everyone in the flag salute and recitation of the pledge of allegiance.

APPROVAL OF THE MINUTES FROM THE JULY 22 AND 23, 2015 AND SEPTEMBER 4, 2015 BOARD MEETINGS

Mr. Utley moved and Mr. Duran seconded to approve the Minutes of the July 22 & 23, 2015 Board Meeting. Passed unanimously. (AYES: TAMAYO, GOOD, DUGGAL, DURAN, UTLEY. NOES: NONE. ABSTENTIONS: NONE.)

Mr. Utley moved and Mr. Good seconded to approve the Minutes of the September 4, 2015 Board Meeting. Passed unanimously. (AYES: TAMAYO, GOOD, DUGGAL, DURAN, UTLEY. NOES: NONE. ABSTENTIONS: NONE.)

EXECUTIVE OFFICER'S REPORT

Ms. Saylor updated the Board on licensing and enforcement survey results and statistics, examination statistics, wood destroying organism (WDO) statistics, examination development, and the status of legislative and regulatory changes including Senate Bills (SB) 328 and 799 and Assembly Bills (AB) 181 and 551.

Mr. Utley asked if there was a status update on the publication of a new Structural Pest Control Board (SPCB) Act Book.

Ms. Saylor stated that the publication of a new SPCB Act Book has been set for January, 2016 in order to capture the legislative and regulatory changes that will go into effect at that time.

DISCUSSION REGARDING THE 30 DAY WAITING PERIOD FOR APPLICANTS TO RETAKE LICENSING EXAMINATIONS – POSSIBLE BOARD ACTION ON REQUIREMENT

Numerous members of the industry expressed their concern with the Board's policy mandating a 30 day waiting period for Applicators who fail the exam citing the burden of employing

unlicensed individuals, the difficulty of the examination and the reduced risk of exams being compromised since Computer Based Testing was implemented.

Heidi Lincer-Hill, Office of Professional Examination Services (OPES), outlined the reasoning behind the 30-day waiting period citing the following: 1) that applicants should receive ample time to study, 2) examination security, and 3) consumer protection.

Mr. Tamayo inquired about research or studies showing the basis of the 30-day waiting period.

Ms. Lincer-Hill stated that no research or studies exist; instead, the waiting period is a result of long standing departmental practice. Ms. Lincer-Hill further stated that OPES is willing to support any action taken by the Board.

Mr. Heppler stated that if the Board were to reduce the 30-day waiting period for Applicants it would be in the form of a policy change and that additionally it would need to be determined if the 30-day waiting period was a contractual obligation.

Mr. Good moved and Mr. Duran seconded to change the waiting period for Applicants to re-test from 30 to 15 days, effective November 2, 2015, and for staff to identify any contractual issues associated with the change. Passed unanimously. (AYES: TAMAYO, GOOD, DUGGAL, DURAN, UTLEY. NOES: NONE. ABSENTIONS: NONE.)

REVIEW AND DISCUSSION REGARDING THE EXAMINATION STUDY GUIDES AND REFERENCE MATERIALS – POSSIBLE BOARD ACTION

Ms. Saylor stated that staff has been working with OPES to reduce the number of reference books used for the exam development process.

Mr. Utley asked if the reference books are the same for all the licensing examinations.

Ms. Lincer-Hill stated that, overall, the reference books have been reduced from 18 to 10 without harming the validity of the exam. However, Applicant exam development is still in its early stages and additional time will be necessary to strengthen the examination bank of questions.

Mr. Duggal stated that the number of reference books used to create the examinations is still excessive.

Lisa Blecker, UC IPM, stated that the reference books currently used in exam creation are too advanced for applicants to effectively study. Ms. Blecker further stated that creating a single reference book that incorporates all the information applicants' needs would be beneficial.

Mr. Duggal asked legal counsel to look into the legality of public agencies other than the Board producing a reference book and / or study guide.

Mr. Chan-You stated that he would look into the legality of public agencies other than the Board producing a reference book and / or study guide.

Mr. Tamayo stated that using too many reference books in exam creation can lead to confusing or contradictory information.

Ms. Lincer-Hill stated that in the absence of an singular, adequate reference book, reducing the number of reference books used in exam creation makes it more difficult to produce an acceptable exam.

Mr. Duggal moved and Mr. Duran seconded to direct staff, if practicable and psychometrically valid, to work with OPES on exploring the possibility of reducing the number of reference books used to create each exam to 2, one for pesticide safety & use and one for the laws and regulations specific to the license being sought. Passed unanimously. (AYES: TAMAYO, GOOD, DUGGAL, DURAN, UTLEY. NOES: NONE. ABSENTIONS: NONE.)

STATUS UPDATE OF REGULATORY LANGUAGE DEVELOPMENT REGARDING CONTINUING EDUCATION (CE) INTEGRATED PEST MANAGEMENT REVIEW COMMITTEE RECOMMENDED CHANGES TO CURRENT CE REGULATIONS

Ms. Saylor updated the Board on the development of regulatory language that would implement the recommendations of the CE IPM Review Committee highlighting the areas where staff is seeking clarification.

Mr. Heppler stated that this topic was placed on the agenda as an update and therefore the Board should refrain from taking any action on it.

Lee Whitmore, Beneficial Exterminating, stated that the Environmental Protection Agency (EPA) is in the process of establishing CE standards of 6 hours for rules & regulations and 6 hours for each technical branch of licensure.

Ms. Blecker stated that the public comment period for the EPA's proposed CE standards is currently open.

Mr. Tamayo stated that the Board's original direction regarding the implementation of the CE IPM Review Committee's recommendations was broad enough to give staff the ability to continue working and bring back a recommendation to a future meeting for approval.

Mr. Tamayo provided the public an opportunity to comment on items that are not on the agenda.

REVIEW, DISCUSSION AND POSSIBLE POSITION ON AB 1545

Ms. Saylor provided the Board with a recap of the interested parties meeting held on September 29, 2015 to discuss AB 1545, which proposes to move the Board from the authority of the Department of Consumer Affairs to the authority of a newly formed Housing Agency.

Ms. Saylor cited the discrepancy between the Board's primary mission of consumer protection and the proposed Housing Agency's primary mission to create more affordable housing.

Additionally, Ms. Saylor provided the Board with a handout from the interested parties meeting which contained an organizational chart showing the Board being placed under the authority of Contractor's State License Board.

Board Member Cliff Utley departed the meeting at 11:00 A.M. The Board still maintained a quorum as 4 members were present.

Mr. Good stated his opposition to AB 1545 citing the recent moves the Board has undergone and the incompatibility of the Board's consumer protection mandate with the proposed Housing Agency.

Mr. Duran stated his opposition to AB 1545 citing the recent moves the Board has undergone and the lack of a compelling reason for the Board to move.

Mr. Duggal stated his opposition to AB 1545 stating that the Board has more diverse interests than the creation of affordable housing and that consumer protection is the Board's primary focus.

Martyn Hopper, Pest Control Operators of California (PCOC), stated that thus far there has been no indication that the Governor would sign AB 1545 and that it was a good idea for the Board to get out in front of it and take a position as soon as possible.

Mr. Good moved and Mr. Duran seconded for the Board to oppose its inclusion in AB 1545 and for the Executive Officer to write a letter to the author explaining the reasons why. The reasons identified by the Board to be included in the letter are the Board's consumer protection mandate being improperly aligned with the proposed mission of the Housing Agency, the Board's purview being larger than just housing, the inappropriateness of the Board being placed under the authority of the Contractor's State License Board, the absence of a benefit to the Board moving, and the cost associated with the Board moving. Passed unanimously. (AYES: TAMAYO, GOOD, DUGGAL, DURAN. NOES: NONE. ABSENTIONS: NONE.)

ANNOUNCEMENT STRUCTURAL PEST CONTROL BOARD SPECIALIST EXAMINATION

Ms. Saylor announced that the Board is opening up the Specialist examination in order to begin gathering a list of eligible candidates in the event of any current Board Specialists retiring.

PRESENTATION, DISCUSSION AND CONSIDERATION OF ACT REVIEW COMMITTEE RECOMMENDED LEGISLATIVE AND REGULATORY CHANGES TO BUSINESS AND PROFESSIONS CODE SECTION 8506.1 AND CALIFORNIA CODE OF REGULATIONS SECTIONS 1970.4, 1990, 1993.2, AND 1993.4 AND REPEAL OF CALIFORNIA CODE OF REGULATIONS SECTION 1993.3

Mr. Gordon presented the recommendations of the Act Review Committee to the Board.

The Board discussed the distinction between termite monitoring devices & bait stations and wood destroying pest monitoring devices & bait stations.

The Board and members of the public discussed the proposed changes to CCR Section 1990 and whether or not they obligated licensees to disclose non-wood related construction such as exterior concrete landings, steps, decking and related non-wood construction.

The Board asked the Act Review Committee to further revise CCR Section 1990 in a manner that would address the concerns about licensees' obligations and the extent to which they must disclose exterior structures, not limited to wood, as reportable conditions.

Mr. Duran moved and Mr. Good seconded to authorize the Executive Officer to seek an author to implement the recommended changes to B&P Code Section 8506.1. Passed unanimously. (AYES: TAMAYO, GOOD, DUGGAL, DURAN. NOES: NONE. ABSENTIONS: NONE.)

8506.1. A "registered company" is any sole proprietorship, partnership, corporation, or other organization or any combination thereof that is registered with the Structural Pest Control Board to engage in the practice of structural pest control.

A registered company may secure structural pest control work, submit bids, or otherwise contract for pest control work. A registered company may employ licensed field representatives and licensed operators to identify infestations or infections, make inspections, and represent the company in the securing of pest control work.

A registered company may hire or employ individuals who are not licensed under this chapter to perform work on contracts or service agreements as defined in this chapter covering Branches 1, 2, and 3 ~~wood-destroying organisms~~ only after an operator or field representative has fully completed the negotiation or signing of the contract covering a given job.

~~A registered company may hire and use individuals who are not licensed under this chapter on service contracts already established.~~ Nothing in this section shall be

interpreted to mean that an unlicensed individual may perform work specifically requiring licensure as defined in this chapter.

Mr. Good moved and Mr. Duran seconded for staff to begin the rulemaking process to implement the recommended changes to CCR Sections 1970.4, 1993.2, 1993.4, and 1993.3. Passed unanimously. (AYES: TAMAYO, GOOD, DUGGAL, DURAN. NOES: NONE. ABSENTIONS: NONE.)

§ 1970.4. Pesticide Disclosure Requirement.

(a) The primary contractor for fumigation shall have in his or her possession and shall provide to any subcontractor for fumigation a form (See Form 43M-48 (Rev. 5/07) at the end of this section) signed by the occupants or designated agent of a structure. The primary contractor for fumigation and the subcontractor for fumigation shall retain a copy of the occupants fumigation notice for a period of at least three years. In case of multiple-family dwellings, the owner, manager or designated agent of the building may obtain signatures and/or verify the notification of the occupants.

The form shall state the name of the pest to be controlled, the pesticide(s)/fumigant(s) proposed to be used, the active ingredient(s) and the health cautionary statement as required under section 8538 of the code. The form shall also state that a lethal gas (poison) will be used in the building on indicated dates and that it is unsafe to return to the building until a certification notice for reentry is posted by the licensed fumigator. The form shall also indicate that the occupant has received the prime contractor's information regarding the procedures for leaving the structure.

The properly signed form or a copy, written or electronic, thereof shall be in the possession of the licensed fumigator when the fumigant is released. Such form shall be attached to and become a permanent part of the fumigation log upon completion of the fumigation.

(b) Any death or serious injury relating to pesticide application or use, whether to a worker or member of the public, shall be reported to the nearest Structural Pest Control Board office immediately.

(c) Whenever a licensee employed by a branch 2 or branch 3 registered company applies a pesticide within, around or to any structure such person shall leave in a conspicuous location, or provide via electronic mail, if an electronic mailing address has been provided, a written, or electronic notice identifying the common, generic or chemical name of each pesticide applied and the registered company's name, address, and telephone number. In case of a multiple family structure, such notice may be given to the designated agent or the owner. Such pesticide identification notice may be a door hanger, invoice, billing statement or other similar written, or electronic document ~~which contains the registered company's name, address, and telephone number.~~ Notices provided electronically must be transmitted no later than the conclusion of service.

(d) All pest control operators, field representatives, applicators and employees in all branches shall comply in every respect with the requirements of section 8538 of the code. Failure to comply with section 8538 of the code is a misdemeanor and shall constitute grounds for discipline.

(e) Where notification is required under section 8538 of the code, and the premises on which the work is to be performed is a multiple family dwelling consisting of more than 4 units, the owner/owner's agent shall receive notification and other notices shall be posted in heavily frequented, highly visible areas including, but not limited to, all mailboxes, manager's apartment, in all laundry rooms, and community rooms on all external pest control servicing. Complexes with fewer than 5 units will have each affected unit notified. Any pest control servicing done within a tenant's apartment requires that the tenant be notified according to section 8538 of the code.

(f) A registered company which applies any pesticide within, around or to any structure shall provide to any person, within 24 hours after request therefore, the common, generic or chemical name of each pesticide applied.

§ 1993.2. Termite Bait Station.

(a) For the purposes of this section ~~and section 1993.3~~, "termite bait station" shall include:

(1) an "above-ground bait station," which shall mean any device containing pesticide bait used for the eradication of wood destroying pests that is attached to the structure, or

(2) an "in-ground bait station," which shall mean any device containing pesticide bait used for the eradication of termites that is placed in the ground. ~~material to attract and or monitor wood destroying pests, or containing a pesticide bait to eradicate wood destroying pests, that is placed in the ground.~~

(3) ~~an "in-ground termite monitoring system" is a device placed in the ground to determine the presence or absence of subterranean termites through scheduled periodic inspections.~~

(b) Prior to installation of any termite baiting system, a full or limited inspection of the structure shall be made.

(c) Use of termite baiting systems shall be considered a control service agreement as defined by section 8516 of the code.

§ 1993.4 Termite Monitoring Devices

(a) "Termite monitoring devices" are defined as devices that contain no pesticides and do not provide any control measures. They solely provide an indication of the possible presence or absence of termites. Termite monitoring devices do not provide for positive identification, nor does a positive indication on such device eliminate the need for an inspection conducted by a Branch 3 Operator or Field Representative prior to any treatment or work being performed.

(b) Installation of termite monitoring device(s) must be performed by a registered Branch 3 company.

(c) Prior to installation of any termite monitoring device(s), the following disclosure language shall be provided to the property owner or the property owner's designated agent by either written or electronic means:

"Termite monitoring devices are intended to solely provide an indication of the possible presence or absence of termites in the areas where such devices are installed. Termite monitoring devices do not replace the requirement for a termite inspection to be performed by a licensed termite inspector prior to the commencement of any treatment

or work being performed. If the termite monitoring device indicates the possible presence of termites, you should consider having an inspection performed by (company name). You have the right to choose any registered company licensed to perform these services."

§ 1993.3. In-Ground Termite Bait Stations.

~~Use of in-ground termite monitoring and/or baiting systems shall be considered a control service agreement as defined by section 8516 of the code.~~

ANNUAL REVIEW AND POSSIBLE AMENDMENT OF BOARD POLICIES AND PROCEDURES

There were no recommendations for change to the Board's policies and procedures.

BOARD CALENDAR

The following 4 meetings were scheduled for January 13 & 14, 2016 in San Diego, April 6 & 7, 2016 in Sacramento, July 13 & 14, 2016 in Ontario, and October 12 & 13, 2016 in Sacramento.

FUTURE AGENDA ITEMS

Mr. Whitmore stated that a new ordinance in Berkeley, California requires Board licensees to perform work that is outside the scope of their licensure and that the topic should be placed on a future agenda for the Board to possibly take a position on it.

Mr. Heppler stated that legal counsel can research the ordinance and report back to the Board at a future meeting.

Mr. Duggal requested that the topic of reduction of reference materials be revisited at a future meeting and that legal counsel report back on the role public agencies other than the Board can play in the creation of exam study guides.

Mr. Chan-You suggested that the Board offer the public an opportunity to speak about possible legislative changes that would enable the Board to assist in the production of study guides.

ANNUAL ELECTION OF BOARD MEMBER PRESIDENT AND VICE PRESIDENT

Mr. Duran nominated Mr. Tamayo to be president of the Board. No other nominations for Board President were offered. Mr. Tamayo was unanimously elected as Board President. (AYES: TAMAYO, GOOD, DUGGAL, DURAN. NOES: NONE. ABSENTIONS: NONE.)

Mr. Duggal nominated Mr. Good to be Vice President of the Board. No other nominations for Board Vice President were offered. Mr. Good was unanimously elected

as Board Vice President. (AYES: TAMAYO, GOOD, DUGGAL, DURAN. NOES: NONE. ABSENTIONS: NONE.)

PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

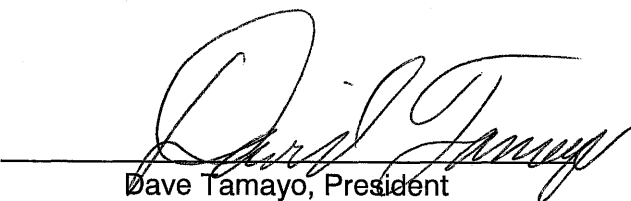
Mr. Katz requested that future meetings begin at 8:30 or 9:00 A.M. to accommodate those who are flying in to attend.

Mr. Tamayo stated that the Board would try to accommodate those who are flying in to attend but that sometimes early starts can't be avoided.

Billy Gaither, Van Hooser Enterprises, Inc., asked if the Board could update its website to include the dates of the upcoming examination development workshops.

ADJOURNMENT

The meeting was adjourned at 12:55 P.M.



Dave Tamayo, President



Date