

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
JANUARY 11, 2008

The meeting was held on Friday, January 11, 2008, at the Hotel De Anza, 233 West Santa Clara St., San Jose, California, commencing at 9:05 AM with the following members constituting a quorum:

Mustapha Sesay, President
Cliff Utley, Vice President
Cris Arzate
Terrel Combs-Feirrer
Jean Melton
Bill Morris

Board staff present:

Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Carl Smitley, Enforcement Coordinator
Ryan Vaughn, Administration Analyst

Departmental staff present:

Donald Chang, Legal Counsel
Kurt Heppler, Legal Counsel

Board Liaison Deputy Attorney General Christina Thomas was also in attendance.

I. **ROLL CALL**

Ms. Saylor read the roll call.

II. **FLAG SALUTE**

Mr. Morris led everyone in the flag salute.

III. APPROVAL OF MINUTES OF THE OCTOBER 11 AND 12, 2007, BOARD MEETING

Ms. Melton moved and Mr. Morris seconded to approve the minutes of the annual meeting of October 11 and 12, 2007. Passed unanimously.

IV. PUBLIC HEARING REGARDING PROPOSED ADOPTION OF SECTION 1984 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS TO DEFINE INTEGRATED PEST MANAGEMENT AND PROPOSED AMENDMENT OF SECTION 1999.5 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS REGARDING FALSE AND MISLEADING ADVERTISING

Mr. Heppler announced for the record that this hearing was to consider the proposed adoption of section 1984 and proposed amendment of section 1999.5 of Title 16 of the California Code of Regulations (CCR) relating to the practice of structural pest control. The affected sections were 1984, and 1999.5 as outlined in the public notice. This hearing was being held pursuant to section 8525 of the Business and Professions Code as well as the provisions of the Administrative Procedures Act as set forth in the Government Code. The hearing was open to take oral testimony and/or documentary evidence by any person interested in these regulations for the record, which was being made by tape recorder. All oral testimony and documentary evidence would be considered by the Board pursuant to the requirements of the Administrative Procedures Act before the Board formally adopted the proposed amendments to the regulations, or recommended changes that may evolve as a result of the hearing.

Mr. Heppler stated that if any interested person desired to provide oral testimony, he or she should stand or come forward, giving his or her name and address, and if he or she represented an organization, the name of such organization, and that persons offering oral testimony would not be cross-examined or sworn. These steps would be followed so that the Board would have a full record of all those who offered such testimony. He stated it was the desire of the Board that the record of the hearing be clear and intelligible and that the hearing itself be orderly, thus providing all parties with fair and ample opportunity to be heard. After all interested parties, if any, had been heard, the issue would stand submitted.

Mr. Heppler asked the audience if there were any questions concerning the nature of the proceedings or the procedures to be followed in today's public hearing. As there were none, he stated they would proceed in numerical order to consider the Board's proposed amendments to the regulations.

Jonathan Kaplan, Natural Resources Defense Council, asked if the Board would be considering adopting the guidance document in conjunction with the proposed amendments to section 1999.5.

Mr. Heppler responded that the guidance document had been temporarily shelved pending the adoption of the proposed amendments. The Board did not want the guidance

document available until it was certain that the Office of Administrative Law (OAL) would accept the proposed amendments.

Proposed Adoption of Regulation Section 1984

Mr. Heppler asked the audience if anyone would like to offer oral comments of support or objection to CCR section 1984.

Mark Rentz, Deputy Director of Policy Coordination for the Department of Pesticide Regulation, stated that he had submitted a written letter of support for the proposed adoption of CCR section 1984. Mr. Rentz stated that DPR staff reviewed the proposed language and found no conflicts with DPR's regulations. He commended the Board and staff for taking on the task of defining structural integrated pest management (IPM). Mr. Rentz stated that he supported the adoption as proposed.

Mr. Heppler asked for any additional comments concerning the proposed adoption of CCR section 1984. There being no further comments, Mr. Heppler moved the discussion to the proposed amendment of CCR section 1999.5.

Proposed Amendment of Regulation Section 1999.5

Mr. Heppler asked the audience if anyone would like to offer oral comments of support or objection to the proposed amendments to CCR section 1999.5.

S. Wayne Rosenbaum, Foley & Lardner LLP, speaking on behalf of the Integrated Pest Management Control Council (IPMCC), stated his objections with the proposed amendments. His concerns are not over the intent of the regulation, but rather the way that the regulation was drafted, the probable ways the regulation could be misconstrued, and its impact on those people who are to follow integrated pest management control.

To supplement the record, Mr. Rosenbaum supplied the Board with additional written comments and supporting documentation received from the Board.

Mr. Rosenbaum stated that he would not address the Board on the legal concerns. He felt that the Board's Legal Counsel should address those concerns. Mr. Rosenbaum stated that the regulation as written was vague and ambiguous. Without the supporting guidance document as referenced in the regulation, an "accessible area" could not be determined. He felt that the regulation would create two classes: the class that fumigates and the class that uses any other treatment technology. Mr. Rosenbaum felt that with adequate guidance, the concerns of the IPMCC and public could be resolved. He stated that including the guidance document only after the proposed amendments are in place would be an underground regulation. Mr. Rosenbaum felt that without the accompanying guidance document, the regulation would remain vague and ambiguous and also be a violation of the first amendment.

Brad Eggleston, California Storm Water Quality Association (CASQA), stated that many of CASQA's members are regulated by regional water boards and require reductions in urban

runoff discharges. The regional water boards have identified IPM as an important component in reducing the contaminants in urban runoff. Mr. Eggleston reported that CASQA strongly supports the proposed changes to the regulations to define IPM and allow IPM practitioners to make substantiated claims about their methods. He stated that the proposed changes are an important step to allow for an IPM certification program such as the Eco-Wise Certified program. Mr. Eggleston, on behalf of CASQA, urged the Board to accept the proposed changes as drafted.

Vernard Lewis, University of California Berkeley, stated his support for the proposed amendments. As a researcher, he stated that the Board has been very supportive of IPM research. Mr. Lewis said that more research should be done. He stated that he will be meeting with the University of California Davis to discuss bringing in help at the county level for IPM.

Mr. Kaplan stated his support for the proposed amendments. As a member of the task force, he reported that the proposed language is the result of a cooperative process. Mr. Kaplan felt that the task force could have been even more inclusive in developing the regulations. He recommended that the guidance document address the concerns of the broader pest control industry, including Mr. Rosenbaum's clients. Mr. Kaplan stated that the broader question of the efficacy of orange oil as a partial or whole-house treatment needs to be addressed. He urged the Board to adopt the regulation as written and stated he was committed to working with the concerned parties to make sure that their concerns are addressed in the guidance document.

Mr. Rentz stated that he had submitted a letter on behalf of DPR in support of the proposed amendments. DPR is appreciative of the Board's undertaking and recognized the challenge that was before the task force. Mr. Rentz stated that he supported the proposed amendments as drafted. He agreed with Mr. Kaplan in that the proposed regulation reflects a compromise by all sides.

David Chatfield, Californians for Pesticide Reform, stated that he supported the comments that Mr. Kaplan made. He appreciated the openness of the Board to allow stakeholders such as his organization to participate in the task force meetings. He agreed that the needs and issues that have been raised should be addressed in the guidance document.

Jim Gorman, Nisus Corporation, stated that he had submitted a written comment with concerns about the word "capable" as written in the proposed amendment. He felt that the term would be open to interpretation if not clearly defined. Mr. Gorman suggested including a definition for the term "capable" which includes that a product must have supporting scientific research should it not be registered with the Environmental Protection Agency (EPA) or DPR.

Mr. Heppler stated for the record that the Board received quite voluminous written comments. There being no further public comments, Mr. Heppler concluded the regulatory hearing and opened up the proposals for Board discussion.

Mr. Utley asked the Board's Legal Counsel if it would need to reexamine the proposed changes to CCR section 1999.5.

Mr. Heppler responded that the written comments received lead him to belief that Legal Counsel would want to reexamine the proposed amendments.

Mr. Utley commented that there were concerns with some words in the proposed regulation. He understood that the words were already defined in the Structural Pest Control Act.

Mr. Heppler responded that the terms are commonly understood. He instructed the Board that there were three options: 1) move to adopt the proposed changes, 2) vote not to proceed with the rulemaking process, or 3) refer to staff to reexamine the language.

Ms. Melton asked if the Board was going to vote on the proposed regulations separately.

Proposed Adoption of Regulation Section 1984

Mr. Utley moved and Ms. Melton seconded to adopt the proposed regulation section 1984 of the California Code of Regulations as follows:

§1984. Structural Integrated Pest Management.

(a) Structural integrated pest management (IPM) means a systematic decision making approach to managing pests, which focuses on long-term prevention or suppression with minimal impact on human health, property, the environment, and non-target organisms. Structural IPM incorporates all reasonable measures to prevent pest problems by properly identifying pests, monitoring population dynamics, and using cultural, physical, biological or chemical pest population control measures to reduce pests to acceptable levels. If a pesticide application or other intervention is determined to be necessary, the selection and application of the intervention shall be performed in a manner that minimizes risk to people, property, the environment, and non-target organisms, while providing effective pest management.

(b) For the purposes of this section, intervention means an action, device, product or practice that is intended for the prevention, control, management, elimination or abatement of a pest.

Passed unanimously.

Proposed Amendment of Regulation Section 1999.5

Mr. Morris stated that he believed that the proposed amendment needed to be directed back to staff with legal oversight with the possibility of a committee being formed.

Mr. Morris moved and Mr. Arzate seconded to refer the proposed amendment back to staff with legal oversight to address the concerns received.

Mr. Kaplan commented that the matter has been before the Board for over two years. He stated that the existing regulation is unconstitutional and will be cause for legal action. Mr. Kaplan stated that if the Board decided to not move forward, it would be another six months before the documents could be submitted to OAL for approval.

Ms. Combs-Ferreira asked what additional information the guidance document would provide.

Mr. Heppler responded that the guidance document would provide examples of acceptable and unacceptable advertising claims.

Mr. Rosenbaum stated that his clients have the same concerns as Mr. Kaplan. He added that he would commit his time to expedite the process. Mr. Rosenbaum reported that the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) had an outstanding example of guidelines that could be used to develop the guidance document to accompany the regulation.

Mr. Utley asked Mr. Rosenbaum if it would be acceptable if the Board decided to move forward with the proposed amendments but allow Mr. Rosenbaum to help develop the guidance document.

Mr. Rosenbaum responded that his clients cannot support the changes if they did not know what the guidelines are and what the regulation means.

Mr. Utley commented that a draft of the guidance document had been prepared but just has not been presented yet.

Mr. Rosenbaum responded that the process could be expedited because of that fact.

Michael Katz, Western Exterminator Company and chairman of the task force, stated that the task force worked very hard to get to this point. All the meetings were publicly noticed for public participation.

Anna Folkins, X Termite, reported that she as well as four other IPM practicing companies volunteered for the task force but were politely declined. She felt that IPM practitioners were not represented.

Lee Whitmore, Beneficial Exterminating Inc., explained that the rationale behind not including the guidance document was that the regulation would take much longer to go into effect. Following the advice of the Board's Legal Counsel, there would be a risk for OAL to reject the proposed amendments and then have the guidance document available.

Curtis Good, Newport Exterminating, reported that he was a member of the task force and that no one was precluded from attending or participating in the meetings.

Robert Baker, Clark Pest Control, spoke about the word "substantiated" and how it relates to IPM practitioners. He stated that IPM practitioners have to have substantial evidence

that the methods are efficacious. The burden is upon the person making the claim, not the company or the Board. As a member of the task force, Mr. Baker felt that they did not discriminate against any type or method of pest control.

Mr. Rosenbaum stated that the two pieces have to come together.

Mr. Heppler reported that there is a possibility of having a teleconference meeting for the Board to consider the issues brought forth during the public hearing. This meeting could be held prior to the next scheduled meeting in April.

Mr. Good wished to point out CCR section 1990(b)(2) in which it clarified "inaccessible" areas.

Mr. Sesay asked Mr. Morris if he wanted to modify his original motion.

Mr. Morris responded that he did not wish to modify his motion due to the gravity of the issue. He stated that the proposed amendments needed to be legally analyzed and that there would be a lot of room for error should the Board adopt the language as currently written. Mr. Morris felt that an additional three months is not a problem to cleanup or modify the current proposal.

Mr. Heppler stated that there still is the issue of the guidance document. He added that the Board could direct staff to work on the guidance document for the Board to review.

Mr. Morris responded that as long as it did not prolong the timeline, he would like to direct staff to work on the guidance document.

Mr. Chang summarized what he believed to be the motion on the table.

Mr. Morris made an amended motion.

Mr. Morris moved and Mr. Arzate seconded to direct staff to summarize and review all written and spoken comments, to direct staff to work on the guidance document, and to direct the Board's Legal Counsel to summarize the legal issues raised with the timeline being no later than the next scheduled meeting.

Passed by majority. (Aye – Arzate, Combs-Feirrer, Morris, Sesay. No – Melton, Utley.)

Mr. Kaplan wished to clarify that it could possibly be another six months before another public hearing could be held to discuss amending CCR section 1999.5.

Mr. Heppler responded that it could be possible for the Board to hold a teleconference meeting before the April meeting in order to expedite the process.

V. EXECUTIVE OFFICER'S REPORT

Ms. Okuma reported on the following:

- Carl Smitley conducted specialist meetings on December 4 and 5 with the Board's specialists.
- The Board's move-date has been postponed to the end of March. Ms. Okuma and Ms. Saylor were invited for a walkthrough of the new building.
- Complaint survey results were reviewed with the Board members.
- Staff is working with a vendor to compile statistics on the pest control industry's inspections which will show not only the total number of inspections but also break the numbers down further to include data on original, limited, supplemental inspections, and re-inspections, as well as information on notices of work completed and not completed.

Ms. Saylor reported on the following:

- Licensing statistics, survey results, and the Regulatory Action Status were reviewed with the Board members.

Mr. Morris asked if there should be any concern with the passing rate increase for field representatives and operators when compared to last year's statistics.

Ms. Okuma responded that some of the examinations had been recently revised so that the increase is not alarming.

Mr. Morris asked about the difference in the figures for applicator renewals when comparing the current figures to the previous year.

Ms. Saylor responded that in prior years, staff did not have the ability to automatically track the number of renewals but that staff has the ability now.

- Priscilla Romero, formerly the examination coordinator with the Board, has accepted the position of the Licensing Supervisor.
- Interviews have been conducted for the vacant consumer assistant technician position in the enforcement unit. The position should be filled shortly.
- The office assistant position in the licensing unit is vacant. The vacancy has been announced and applications are being accepted.
- Progress reports for three of the four current research projects were included in the Board packages.
- Two of the three new Board approved research projects have been approved. The projects by Dr. John Klotz of the University of California Riverside and Dr. Michael Rust of the University of California Riverside have a start date of January 1, 2008. The third project from Dr. Vernard Lewis of the University of California Berkeley is awaiting approval from the Department with a probable start date in February 2008.
- The Board's next newsletter is with DCA for review.

Mr. Morris wished to commend Board staff for keeping up with the newsletter. He asked how the governor's proposal of 10% cutbacks would affect the Board.

Ms. Okuma responded that it was not clear how the proposal would affect the Board, which is special funded, but she would let the Board know when the DCA's Budget Office contacts the Board.

VI. DEPARTMENT OF PESTICIDE REGULATION UPDATE

Kathy Boyle, Department of Pesticide Regulation (DPR), reported on the following:

- DPR's structural training for 2008 has been targeted for April or May in both northern and southern California.
- DPR's respiratory regulations effective January 1, 2008, affects all Board licensees. The reason for the regulations is that DPR was not in compliance with the California Division of Occupational Safety and Health (Cal/OSHA) requirements. Information concerning the new regulations will be available on DPR's website and questions should be directed to each county agricultural commissioner's office or to DPR.
- Assembly Bill 1717, effective January 1, 2008, requires that each structural pest control company register with each county in which work is performed. DPR mailed information to the Board's principle and branch offices, operators, and field representatives. Each county will have the ability to require a fee for registration. The bill also requires fumigators to give the county agricultural commissioner's office 24-hour notice prior to fumigating.
- A third sulfurlyl fluoride product is going through the registration process.
- DPR's website has a report on the pyrethroid re-evaluation.

VII. PROPOSED INTEGRATED PEST MANAGEMENT TRAINING AND EDUCATION REQUIREMENTS

Ms. Okuma reported that the proposal had been developed out of the Water Quality Committee's recommendations. The proposed amendments to California Code of Regulation (CCR) sections 1937, 1950 and 1950.5 will require that branch 2 and/or 3 licenses gain training and education in IPM as part of their pre and post licensing requirements. She reported that the proposed language may require some cleanup prior to the notice for public hearing being sent out.

Ms. Melton moved and Mr. Morris seconded to notice for public hearing for the April Board meeting the following Water Quality Committee's recommendations to amend CCR sections 1937, 1950, and 1950.5 to require IPM training and education as part of the pre and post licensing requirements for branch 2 and/or 3 licenses.

§1937. Qualification of Applicant.

(a) "Experience" and "in the employ of," as used in section 8562(b) of the code and "training and experience" as used in section 8564 of the code means actual field work.

(b) A qualifying manager of a registered company or licensed operator designated by a company shall provide written certification of an employee's or former employee's experience and time accurately and promptly upon written request by the employee. The qualifying manager or designated licensed operator must be licensed in the branch or branches for which he/she is certifying experience and time.

(c) Specific minimum requirements of training and experience are accorded to the branch or branches for which the applicant is applying, as follows:

Branch 1 A minimum of one hundred hours of training and experience in preparation, fumigation, ventilation, and certification required.

Branch 2 A minimum of forty hours of training and experience, twenty hours of which are actual field work, required. The minimum hour requirement must include training and experience in Integrated Pest Management, and the impact of structural pest control services on water quality.

Branch 3 A minimum of one hundred hours of training and experience, eighty hours of which are actual field work, required. The minimum hour requirement must include training and experience in Integrated Pest Management, and the impact of structural pest control services on water quality.

§1950. Continuing Education Requirements.

(a) Except as provided in section 1951, every licensee is required, as a condition to renewal of a license, to certify that he or she has completed the continuing education requirements set forth in this article. A licensee who cannot verify completion of continuing education by producing certificates of activity completion, whenever requested to do so by the Board, may be subject to disciplinary action under section 8641 of the code.

(b) Each licensee is required to gain a certain number of continuing education hours during the three year renewal period. The number of hours required depends on the number of branches of pest control in which licenses are held. The subject matter covered by each activity shall be designated as "technical" or "general" by the Board when the activity is approved. Hour values shall be assigned by the Board to each approved educational activity, in accordance with the provisions of section 1950.5.

(c) Operators licensed in one branch of pest control shall gain 16 continuing education hours during each three year renewal period. Operators licensed in two branches of pest control shall gain 20 continuing education hours during each three year renewal period. Operators licensed in three branches of pest control shall gain 24 continuing education hours during each three year renewal period. In each case, a minimum of four continuing education hours in a technical subject directly related to each branch of pest control held by the licensee must be gained for each branch license and a minimum of eight hours must be gained from Board approved courses on the Structural Pest Control Act, the Rules and Regulations, or structural pest control related agencies' rules and regulations.

(d) Field representatives licensed in one branch of pest control shall have completed 16 continuing education hours, field representatives licensed in two branches of pest control

shall have completed 20 continuing education hours, field representatives licensed in three branches of pest control shall have completed 24 continuing education hours during each three year renewal period. In each case, a minimum of four continuing education hours in a technical subject directly related to each branch of pest control held by the licensee must be gained for each branch of pest control licensed and a minimum of eight hours must be gained from Board approved courses on the Structural Pest Control Act, the Rules and Regulations, or structural pest control related agencies' rules and regulations.

(e) For the renewal period ending December 31, 2008, and each subsequent renewal period, a licensed applicator shall have completed 12 hours of Board approved continuing education. Such continuing education shall consist of eight hours of continuing education covering pesticide application and use, and four hours covering the Structural Pest Control Act and its rules and regulations or structural pest related agencies' rules and regulations.

(f) An applicator, field representative, and operator licensed in branches 2 or 3, must earn a minimum of two continuing education hours in Integrated Pest Management.

~~(f)~~ (g) Operators who hold a field representative's license in a branch of pest control in which they do not hold an operator's license must gain four of the continuing education hours required by section 1950(c) in a technical subject directly related to the branch or branches of pest control in which the field representative's license is held, in order to keep the field representative's license active.

~~(g)~~ (h) No course, including complete operator's courses developed pursuant to section 8565.5, may be taken more than once during a renewal period for continuing education hours.

§1950.5. Hour Value System.

The following hour values shall be assigned to the educational activities approved by the Board. All educational activities must be submitted to the Board for approval before presentation for continuing education credit, in accordance with section 1953. Each activity approved for technical or rules and regulations continuing education hours must include a written examination to be administered at the end of the course. Examinations administered at the end of the course must consist of ten questions per one hour of instruction, with 40 questions minimum for any activity of instruction of four hours or more. Licensees must obtain a passing score of 70% or better in order to obtain a certificate of course completion. If the examination is failed, the licensee shall be allowed to be reexamined by taking a different examination within sixty days.

(a) Accredited college courses - 10 hours for each 2 semester-unit course; 16 hours for each 3 semester-unit course.

(b) Adult education courses - 6 hours

(c) Professional seminars or meetings - up to a maximum of 6 hours per seminar or meeting. Additional hours may be approved depending on the complexity of the activity and its relevance to new developments in the field of pest control.

(d) Technical seminars or meetings - up to a maximum of 6 hours per seminar or meeting. Additional hours may be approved depending on the complexity of the activity and its relevance to new developments in the field of pest control.

(e) Operators' courses approved by the Board pursuant to section 8565.5 of the code - 1 hour per hour of instruction.

- (f) Correspondence courses developed by the Board pursuant to section 8565.5 of the code - full credit per branch.
- (g) Correspondence courses approved by the Board - hours will be assigned depending on the complexity of the course and its relevance to new developments in the field of pest control.
- (h) Association meetings - 1 hour for every hour of instruction up to a maximum of 4 hours per meeting.
- (i) Structural Pest Control Board meetings - 1 general hour and 1 rule and regulation hour per meeting, up to a maximum of 4 hours per renewal period (excluding Board Members.) This activity is exempt from examination requirements pursuant to this section.
- (j) Structural Pest Control Board Committee meetings - 1 hour per meeting, up to a maximum of 2 hours per renewal period (excluding Board Members).
- (k) In-house training in technical subjects - 1 hour per hour of instruction.
- (l) Board approved Rules and Regulations courses - 1 hour for every hour of instruction.
- (m) Integrated Pest Management courses – 1 hour for every hour of instruction.

Passed unanimously.

VIII. BOARD CONSIDERATION OF:

A. PEST CONTROL OPERATORS OF CALIFORNIA’S PROPOSED LEGISLATIVE AMENDMENT OF BUSINESS AND PROFESSIONS CODE SECTION 8514 TO ALLOW BRANCH 2 AND 3 REGISTERED COMPANIES TO ADVERTISE FOR TREATMENTS OUTSIDE THE BRANCH IN WHICH THE COMPANY IS REGISTERED

Martyn Hopper, Pest Control Operators of California (PCOC), reported that there was extensive discussion on this issue at the October Board meeting. PCOC has drafted language and secured an author for the legislative bill. It is their intent to get co-authors. PCOC is asking for an indication of the Board’s support in principle. Mr. Hopper assured the Board that there would be no substantive changes to the language as presented which would allow branch 2 and 3 companies to advertise for fumigation.

Mr. Good stated that he submitted additional information for clarity on behalf of PCOC to the Board members.

Mr. Morris asked the industry audience members if there was any adverse affect to the consumer if a branch 3 company advertised for fumigation.

Darrell Ennes, Terminix International Company, responded that there would be no adverse affect as the branch 3 company would have to inform the consumer in writing that the fumigation was going to be subcontracted and performed by a branch 1 company.

John Van Hooser, Van Hooser Enterprises Inc., stated that he agreed with Mr. Ennes.

Mr. Morris asked if there were any industry members present that had any concerns with the proposed language.

Ms. Melton questioned whether the Board should take a position as the legislative bill has not been written yet.

Ms. Okuma responded that the Board should not put itself in a position to support a bill that has not been written. It would be appropriate to support the proposal in concept.

Mr. Morris moved and Ms. Combs-Feirrer seconded for the Board to approve in concept and principle the proposed language. Passed unanimously.

B. PEST CONTROL OPERATORS OF CALIFORNIA'S REQUEST THAT SHOULD THE BOARD SUPPORT PROPOSED LEGISLATIVE AMENDMENT IN ITEM VIII A, THAT BOARD CEASE ENFORCEMENT OF ADVERTISING FOR METHODS NOT AUTHORIZED BY THE BRANCH IN WHICH THE COMPANY IS REGISTERED AND RESCIND PRIOR ENFORCEMENT ACTIONS

Mr. Hopper stated that given the Board's support of the proposed language, PCOC requests that the Board cease the enforcement of branch 2 and 3 companies advertising for fumigation.

Mr. Heppler stated that since Business and Professions Code section 8514 is still law, the Board remains obligated to enforce the law as written.

Mr. Katz suggested that the enforcement is the Board's interpretation of section 8514 and not specifically law.

Mr. Heppler respectfully clarified that section 8514 states that a company could not advertise for services that it is not registered to provide.

Mr. Katz asked how long the statute has been in place.

Ms. Okuma responded that it has been in place for decades.

Mr. Katz stated that the statute has been in place for decades yet the Board has only recently started enforcement.

Ms. Okuma responded that the Board has not always had the citation and fine authority to enforce the statute. The law has been on the books for decades. In the past, the Board could either give a warning or take administrative licensing action. The Board now has citation and fine authority. She stated that the pest control industry is bringing the violations to the Board's attention, not the consumers.

Mr. Good concurred that advertising for fumigation is currently a violation. He suggested that the Board relax its enforcement.

Joe Gatto, Clark Pest Control, stated that he believed the statute's intent was to prevent unlicensed activity. He believed that if there is not unlicensed activity, the citations should not be given.

Robert Heinkel, Roadrunner Exterminating Inc., agreed with Mr. Gatto and added that the Structural Pest Control Act (Act) also allows companies to subcontract as long as it is put into writing. He believed that the companies should be able to advertise for fumigation since they are allowed to subcontract for fumigation.

William Houtchens, Team Too Termite and Pest Control Inc., asked Ms. Okuma for the steps leading up to the citation after a complaint has been made by a pest control company. He stated that when it is a consumer complaint, his company is informed of the complaint and receives documentation. He stated that the companies that are receiving the citations and fines for advertising for fumigation are not receiving the same due process.

Ms. Okuma responded that the complaints coming in from the industry are not traditional complaints as with consumer complaints. The pest control companies making the complaints do so by faxing or mailing to the Board the actual advertisements from the yellow pages or newspapers.

Mr. Houtchens stated that the companies being issued the citations should be informed of who is making the complaint.

Mr. Heppler responded that he did not think it was appropriate for the Board to disclose its enforcement techniques. He stated that the Board is in fact allowing for due process. The due process consists of the notice, in the form of the citation letter, and the opportunity to be heard, with an informal conference or a formal administrative hearing being available.

Ms. Okuma stated that there is a provision in the law that allows her, as Registrar, to take action.

Mr. Utley asked if it would be possible for a warning letter to go out prior to the issuance of a citation.

Ms. Okuma responded that she will take into consideration the Board's decision on the proposed legislative bill when evaluating the appropriate course of action on future related enforcement cases.

Mr. Hopper urged the Board and staff to keep in mind that the Board has moved to support in principle and concept the proposed change.

Mr. Morris felt that it would be compromising the integrity of the Board if it was asked to look the other way. He added that it would be appropriate for the Board to take action after the legislative bill has been developed and approved.

Ken Moore, Ken Moore Termite Control, asked if the Board could issue a warning letter prior to the citation and fine.

Ms. Okuma responded that she investigates and evaluates each case and decides what is appropriate whether it be a citation, fine, order of abatement, or a warning letter.

Mr. Morris stated that he is confident that Ms. Okuma will perform her functions in a legal, responsible, and professional manner under the guidelines of the law and the Board.

IX. FUTURE DIRECTION OF PRE-TREATMENT COMMITTEE

Ms. Boyle provided some background of the committee. Approximately three or four years ago, complaints came to the Board regarding the misuse of pre-treatment pesticides. As a result of those complaints, the Board formed the Pre-treatment Committee. The purpose of the committee was to develop proposed language by which the county agricultural commissioner's offices could take enforcement action. One of the concerns was that the county agricultural commissioner's offices would not have an indication of when a treatment was going to take place. The products used in pre-treatments are products that do not require notification. The task for the committee was to develop language that would require some type of notice to the agricultural commissioner's offices. The committee also set out to develop a tag which would disclose to an inspector all important information about the pre-treatment should the inspector not be present.

Ms. Boyle stated that the language was developed and presented to the Pesticide Regulatory Affairs Committee and was not approved, but sent back for changes. One of the changes requested was on the issue of notification. The proposed language called for no less than two hours notification. The requested change was to be at least twenty-four hours notice. The Pre-treatment Committee is at an impasse with no new proposals being developed. The committee was assigned to develop language to present to DPR and the county agricultural commissioner's offices. The committee did so but the language was not approved.

Ms. Boyle reported that the major issues are staff and funding. With the current number of inspectors, it would be possible that an inspector would be asked to inspect a pre-treatment as opposed to a fumigation.

Ms. Okuma stated that the committee has reached a point where it can not continue without the necessary support.

Mr. Sesay asked if there is reason to believe the impasse will stand.

Mr. Okuma responded that she did not see the proper support for the committee to move forward.

Mr. Morris asked for a summary of Ms. Boyle's comments as well the Pre-treatment Committee's conclusions to be presented to the Board at the next meeting.

Ms. Boyle stated that she would also include the rebuttal that came from the Pesticide Regulatory Affairs Committee.

X. REQUEST FOR INTERPRETATION OF BUSINESS AND PROFESSIONS CODE TO ALLOW A BRANCH 2 FIELD REPRESENTATIVE TO TREAT IN BRANCH 3, AND TO ALLOW A BRANCH 3 FIELD REPRESENTATIVE TO TREAT IN BRANCH 2

Mr. Van Hooser stated that B&P Code Section 8507 defines a field representative as a pesticide applicator. The Act defines an applicator as someone who can apply pesticides in either branch 2 or 3. It also defines a licensee as an applicator. He requested that the Board's Legal Counsel examine section 8507 for the next Board meeting.

Ms. Melton moved and Ms. Combs-Feirrer seconded to direct the Board's Legal Counsel to review B&P Code Section 8507 and to reports its findings at next Board meeting. Passed unanimously.

XI. PEST CONTROL OPERATORS OF CALIFORNIA'S REQUEST FOR IMMEDIATE ACTION REGARDING ORANGE OIL ADVERTISEMENTS AND THE DEVELOPMENT OF A PROTOCOL TO ADDRESS FUTURE OCCURRENCES

Ms. Okuma reported that the agenda item should have been on methods and treatments in lieu of whole-house treatments and not specific to orange oil.

Mr. Hooper asked Ms. Okuma for an update on the actions that the Board and its staff have taken on the issue.

Ms. Okuma stated that there have been a number of fines issued to companies who are making comparisons of local treatments to whole-house treatments. There are ongoing investigations which Ms. Okuma was not at liberty to report.

Mr. Whitmore stated that PCOC is asking the Board to enforce the regulation as it is today which requires a differentiation to be made when comparing a localized, spot treatment to that of a whole-structure treatment. The current regulation was developed after new technologies were introduced that lacked efficacy which led the public to be misled. Now, there are new technologies available which have a place in the industry but PCOC feels that the general public is being misled to believe that the methods and treatments are whole-structure treatments.

Mr. Rosenbaum stated that this issue will hopefully be resolved in the work that will be done on CCR Section 1999.5. He reported that technologies have moved on and that there are new technologies that do have efficacy studies. Mr. Rosenbaum stated that a product can not be registered without having efficacy studies. He recommended that the Board table the issue until it addresses section 1999.5.

Ms. Boyle responded that there are products under EPA that are exempt products. The citrus oil product is one of the products in which registration is not required nor are efficacy studies required.

Mr. Whitmore read a statement made by former Deputy Attorney General Robert Eisman which was included in a letter to the Board members:

“Whole-structure fumigation and heat treatment are used to treat all detected and undetected infestations of drywood termites in the structure. There is a categorical difference between the coverage afforded by whole-structure fumigation or heat treatment and any other method that does not provide the same coverage (i.e., local or spot treatments with pesticides and/or devices). Without a clear and conspicuous explanation of the difference in treatment coverage, consumers may be misled by advertisements which claim that methods such as use of microwave or extreme cold are alternatives to fumigation.”

Mr. Lewis reported that his lab, as well as other University of California labs, is engaged in studies to measure the efficacy of such products.

Bryan Houtchens, Team Too Termite and Pest Control Inc., asked how could a company report unknown infestations. He added that the claims made in the advertisements are based on facts.

Mr. Good reported that PCOC would like a level playing field to allow the consumer to make the decision on what treatment is best.

Mr. Baker stated that while certain advertisements are making claims which are factually true, he believes that they can still be misleading.

Mr. Utey reported that what the consumer thinks is more important than what industry members may think. He felt that in some cases, the consumer is given a false representation.

Mr. Gorman stated that he felt the Board's current regulation is adequate for there to be a determination of whether or not an advertisement is being truthful. He added that if a company is going to advertise for a method or treatment, they must make the distinction of the differences of the product and its alternatives.

Mr. Moore felt that consumers are being misled to believe that they are getting the same quality of service.

Mr. Heppler stated that the request on the agenda was for immediate action. He recommended that further deliberation take place.

Mr. Sesay moved and Ms. Melton seconded postpone discussion and to take no action. Passed unanimously.

Mr. Heppler clarified that the Board moved to postpone discussion to a future Board meeting and to take no action at this time.

Ms. Combs-Feirrer asked if the issue would be addressed in the possible changes to CCR section 1999.5.

Mr. Heppler responded that the issue could potentially be addressed.

Mr. Morris read a paragraph from the article on orange oil which appeared in the Board's July 2007 newsletter.

XII. PROPOSED AMENDMENT OF BOARD PROCEDURE NO. E-2 TO UPDATE THE REPORT OF FINDINGS COVER LETTER FORMAT

Mr. Heppler stated that there were no legal concerns with the proposed amendment.

Ms. Melton moved and Mr. Morris seconded to approve the proposed amendment of Board procedure No. E-2. Passed unanimously.

XIII. PROPOSAL TO REPEAL CALIFORNIA CODE OF REGULATIONS SECTION 1953 (f)(3)(D) – CONTINUING EDUCATION COURSE EVALUATION METHOD

Ms. Okuma reported that staff has collected statistics on the percentage of course evaluations the Board receives. Only about 2% of students are sending the Board the evaluations. She stated that Mr. Van Hooser had requested that CCR section 1953(f)(3)(D) be repealed. Ms. Okuma stated that the Board specialists attend courses each year and that they have not encountered any problems or concerns.

Mr. Morris stated that he was concerned with continuing education issues. He added that the Board couldn't mandate that the students submit the course evaluations.

Mr. Utley moved and Ms. Melton seconded to notice for public hearing for the April Board meeting the proposal to repeal CCR section 1953(f)(3)(D).

Mr. Van Hooser stated that he would like the record to show that Ms. Okuma had agreed with his proposal.

Passed unanimously.

XIV. RECOMMENDATION TO ALLOW FOR ELECTRONIC SUBMISSION OF PESTICIDE USE REPORTS TO COUNTY AGRICULTURAL COMMISSIONERS

Ms. Boyle stated that current law in the B&P Code 8505.17 requires that companies submit a monthly pesticide use report to each county. The Board sells its pesticide use stamps which are currently attached to a hard copy report and submitted to the county. The agricultural side of the county commissioner's offices can accept electronic submissions of these reports. Section 8505.17 currently states that the stamp must be "affixed to" the report. Ms. Boyle reported that it would require a legislative amendment to modify the statute.

Mr. Heppler suggested that since there is no bill or author, it may be appropriate to direct Legal Counsel to prepare language for the Board.

Ms. Okuma added that it may also be appropriate to direct staff to work with DPR to develop a protocol for companies to submit their reports electronically.

Mr. Arzate moved and Ms. Combs-Feirrer seconded to direct the Board's Legal Counsel and staff to research and analyze the issue and report back to the Board for consideration at the next Board meeting.

Mr. Good stated that the electronic submitting would be a huge step forward for the industry.

Passed unanimously.

XV. BOARD MEETING CALENDAR

The next Board meeting will be held April 17 and 18, 2008, in Ontario. The following meeting will be held July 17 and 18, 2008, in Sacramento.

Ms. Okuma reported that there will be a DCA Board Conference in November 2008. It will be a full week in which all of the Boards will have their Board meetings at the same location. There will be Board member orientation as well as other events. Board members are invited to participate in the events as well as see how other Boards operate. The October meeting may be moved to November and it will likely be in the Los Angeles area.

XVI. FUTURE AGENDA ITEMS

Mr. Heppler summarized the future agenda items that resulted out of the current meeting which include the legislative proposals, the public hearings for CCR sections 1937, 1950, 1950.5, and 1953, the request for field representatives to treat in either branch 2 or 3, and the pre-treatment issue.

XVII. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

Jack Launius, Borite Termite & Pest Treatments Corporation, requested that for future meetings, the meeting room be equipped with microphones so that everyone in the audience could hear.

XVIII. REINSTATEMENT HEARING

The Board sat with Administrative Law Judge Michael C. Cohn and Deputy Attorney General Christina Thomas to hear the Petition for Reinstatement of Thomas Murphy, Operator's License No. OPR 8137. The petitioner was informed that he would be notified by mail of the Board's decision.

XIX. CLOSED SESSION

The Board adjourned to closed session to consider proposed disciplinary actions in accordance with subdivision (c)(3) of Section 11126 of the Government Code.

Mr. Sesay adjourned the meeting at 2:25 PM.

MUSTAPHA SESAY, President

KELLI OKUMA, Executive Officer

4/18/2008
DATE