

MINUTES OF THE  
SPECIAL MEETING OF THE  
STRUCTURAL PEST CONTROL BOARD  
APRIL 17 AND 18, 2008

The meeting was held on Thursday and Friday, April 17 and 18, 2008, at The Hilton Ontario Airport, 700 North Haven Avenue, Ontario, California, commencing at 2:05 PM with the following members constituting a quorum:

Mustapha Sesay, President  
Cliff Utley, Vice President  
Luis Agurto  
Cris Arzate  
Terrel Combs-Feirrer (April 18 only)  
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:

Kurt Heppler, Legal Counsel

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

Ms. Okuma administered the oath to appoint Board member Luis Agurto.

**I. ROLL CALL**

Ms. Saylor read the roll call.

**II. REQUEST TO RECOGNIZE BORATE (BORACARE) AS A WHOLE-HOUSE TREATMENT**

Jim Gorman and Janet Kintz-Early, Nisus Corporation, conducted a presentation to the Board and requested that Boracare be recognized as an all-encompassing treatment. The product is currently being used in the pest control industry as a localized spot treatment but Nisus Corporation has developed procedures for treatment of the whole structure.

David Poplin, Joshua's Pest Control, reported that his company has used Boracare for approximately a year and has used the product on 18-20 structures. Mr. Poplin stated that there have not been any problems from using Boracare as a whole-house treatment.

John Van Hooser, Van Hooser Enterprises, stated that he has been in the pest control industry for over 50 years and has seen and used various technologies for pest control. He suggested that there are areas of a structure, which would not be accessible to treat with Boracare. Mr. Van Hooser added that Boracare is a great product but it should be used solely for local treatments.

Kathy Boyle, Department of Pesticide Regulation, stated that fumigants have applicator's manuals and are subject to enforcement. The stewardship plan as suggested by Nisus Corporation is not an enforceable document.

Joe Gatto, Clark Pest Control, stated that he agreed with Mr. Van Hooser in that Boracare is a great product but it should just be used as a local treatment, not as an all-encompassing treatment.

Vernard Lewis, University of California Berkeley, stated that his laboratory as well as another University of California laboratory is currently examining the effectiveness of Boracare as a spot treatment.

Curtis Good, Newport Exterminating Company, concurred that Boracare is a great product but he felt that it should not be compared to a fumigation. He stated that if an inspection uncovered 10 active infestations, there could be 10 others that an inspector could be unaware of. Mr. Good added that he is concerned that the Boracare product would not be able to reach the inaccessible areas of a structure.

Kevin Barnett, Ecolab Incorporated, reported that his company uses Boracare but only as a secondary treatment. He added that he would not be able to walk away from a house with 100 percent confidence that the entire structure was treated.

Mr. Gorman stated that the stewardship program would have very specific protocols in how to treat the entire structure. He added that Nisus is not comparing Boracare to fumigation but rather trying to have Boracare recognized as a whole-house treatment.

Darren Van Steenwyk, Clark Pest Control, stated his concern that a pest control inspector could present Boracare as being as effective as fumigation to the consumer.

Jack Launius, Borite Termite & Pest Treatments Corporation, reported that his company uses Boracare for local treatments but that the product cannot access all areas.

Eric Paulsen, Clark Pest Control, suggested that the Board develop additional language to avoid confusing Boracare with traditional whole-house or all-encompassing treatments.

Mr. Utlely stated that the two terms “whole house” and “all-encompassing” are getting confused for each other. He stated that it is currently legal for Boracare to be called a whole-house treatment and for the company to make a guarantee. The product Boracare cannot be used for an all-encompassing treatment as that term only applies to fumigation and heat treatments.

Mr. Gorman responded that Nisus is concerned that the term “whole house” will be confused with “all-encompassing.”

Ms. Kintz-Early stated that the two terms are often used synonymously in the Board’s rules and regulations.

Mr. Morris stated his concern for how the consumer may interpret the terms “whole house” and “all-encompassing.”

Mr. Heppler suggested that the Board refer the issue to the Legal Counsel to examine the two terms and clarify the differences in them as they appear in regulation. He also suggested possibly having the Board’s rules and regulations committee examine and define the terms “whole house” and “all-encompassing.” Mr. Heppler stated that the Legal Counsel’s involvement did not require a formal motion.

Ms. Melton moved and Mr. Arzate seconded to assign a committee to define the terms “all encompassing” and “whole house” treatments and to defer the decision on the proposed request until additional information is presented to the Board.

Gail Getty, University of California Berkeley, cautioned the Board not to rely on data that will be coming from the two studies as mentioned by Mr. Lewis as the studies are examining the efficacy of Boracare as a localized spot treatment.

Passed unanimously.

### **III. REINSTATEMENT HEARING**

The Board sat with Administrative Law Judge Samuel D. Reyes and Deputy Attorney General Christina Thomas to hear the Petition for Reinstatement of Filomeno Bautista, Field Representative’s License No. FR 28228. The petitioner was informed that he would be notified by mail of the Board’s decision.

### **IV. 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.

The meeting recessed at 6:19 PM.

The meeting reconvened Friday, April 18, 2008 at 9:05 AM.

**V. FLAG SALUTE**

Mr. Morris led everyone in the flag salute.

Ms. Okuma introduced Carrie Lopez, Director of the Department of Consumer Affairs (DCA).

Ms. Lopez thanked the Board for inviting her to the meeting. She wished to express tremendous gratitude on behalf of the Governor for the service of the Board. Ms. Lopez stated that she has tried to attend meetings of the boards of DCA and commended the Board and Ms. Okuma for its efforts in the area on consumer education. Ms. Lopez stressed that DCA's primary goal is for consumer protection. She stated that DCA's goal is to help clarify the choices for consumers and build their confidence. California consumers should be able to assume that they are being protected.

Ms. Lopez stated that in November 2008, DCA will be inviting all boards to participate in a week-long event in southern California. Each board will conduct its Board meeting during that week which will allow for the various boards to sit-in and see how other boards operate. There will also be various workshops that the Board members are invited to participate in. Ms. Lopez stated that DCA hopes to have similar events in the future throughout the state of California.

Ms. Lopez thanked the Board for their service and for their upcoming deliberation on the meeting's agenda items. She asked that the industry continue to work with the Board to ensure that consumers will be better informed and protected.

Mr. Arzate wished to congratulate Ms. Lopez on her one-year anniversary as Director of DCA. He stated he had met Ms. Lopez years ago when she was the executive director for the Coro Foundation and found she possessed supreme intelligence, innovative ideas, and excellent leadership skills.

**I. ROLL CALL**

Ms. Saylor read the roll call.

**VI. PUBLIC HEARING REGARDING PROPOSED AMENDMENTS OF TITLE 16, CALIFORNIA CODE OF REGULATIONS SECTIONS 1937, 1950, 1950.5 TO INCLUDE INTEGRATED PEST MANAGEMENT REQUIREMENTS IN THE PRE-LICENSURE AND CONTINUING EDUCATION RENEWAL PROCESSES, AND TO REPEAL SUBSECTION (f)(3)(D) OF SECTION 1953 OF TITLE 16 TO ELIMINATE THE CONTINUING EDUCATION COURSE EVALUATION REQUIREMENT**

Mr. Heppler announced for the record that this hearing was to consider the proposed amendments of sections 1937, 1950, 1950.5, and 1953 of Title 16 of the California Code of Regulations (CCR) relating to the practice of structural pest control. The affected sections were 1937, 1950, 1950.5, and 1953 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.

#### Proposed Amendment of Regulation Section 1937

Mr. Heppler asked the audience if anyone would like to offer oral comments of support or objection to the proposed amendments to CCR section 1937.

There were no public comments.

#### Proposed Amendment of Regulation Section 1950

Mr. Heppler asked the audience if anyone would like to offer oral comments of support or objection to the proposed amendments to CCR section 1950.

Ms. Boyle stated that DPR supports all of the proposed amendments.

#### Proposed Amendment of Regulation Section 1950.5

Mr. Heppler asked the audience if anyone would like to offer oral comments of support or objection to the proposed amendments to CCR section 1950.5.

There were no public comments.

### Proposed Amendment of Regulation Section 1953

Mr. Heppler asked the audience if anyone would like to offer oral comments of support or objection to the proposed amendments to CCR section 1953.

There were no public comments.

There being no further public comments, Mr. Heppler concluded the regulatory hearing and opened up the proposals for Board discussion.

### Proposed Amendment of Regulation Section 1937

Ms. Combs-Ferreira moved and Mr. Utey seconded to adopt the proposed amendment to section 1937 of the California Code of Regulations as follows:

#### **§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.

Passed unanimously.

### Proposed Amendment of Regulation Section 1950

Ms. Combs-Ferreira believed that a more appropriate word for the term "gained" would be acquired, completed, or finished.

Mr. Morris suggested that the instances of “gain” and “gained” be replaced with “complete” and “completed.”

Mr. Heppler stated that such changes to the proposed language would require a notice of modified text, which includes a fifteen-day comment period.

Mr. Utey moved and Mr. Agurto seconded to modify the proposed language of section 1950 as follows and make the modifications available for a 15-day public comment period and delegate authority to the executive officer to adopt the proposed modified regulation amendments as follows, provided there are no adverse public comments:

**§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~~ complete 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~~ complete 16 continuing education hours during each three year renewal period. Operators licensed in two branches of pest control shall ~~gain~~ complete 20 continuing education hours during each three year renewal period. Operators licensed in three branches of pest control shall ~~gain~~ complete 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~~ completed for each branch license, a minimum of two hours in Integrated Pest Management must be ~~gained~~ completed by Branch 2 and/or 3 licensees renewing on or after June 30, 2010, and a minimum of eight hours must be ~~gained~~ completed 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~~ completed for each branch of pest control licensed, a minimum of two hours in Integrated Pest Management must be ~~gained~~ completed by Branch 2 and/or 3 licensees renewing on or after June 30, 2010, and a minimum of eight hours must be ~~gained~~

completed 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~~, June 30, 2010 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~~ six hours of continuing education covering pesticide application and use, two hours covering Integrated Pest Management, and four hours covering the Structural Pest Control Act and its rules and regulations or structural pest related agencies' rules and regulations.

(f) 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~~ complete 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) 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.

Passed unanimously.

#### Proposed Amendment of Regulation Section 1950.5

Mr. Utlely moved and Mr. Arzate seconded to adopt the proposed amendment to section 1950.5 of the California Code of Regulations as follows:

#### **§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.

### Proposed Amendment of Regulation Section 1953

Mr. Utley moved and Mr. Arzate seconded to adopt the proposed amendment to section 1953 of the California Code of Regulations as follows:

#### **§1953. Approval of Activities.**

(a) Providers of activities of continuing education in pest control shall request approval as a provider and of activities on forms provided by the Board (See Form 43M-18 (Rev. 6/02) at the end of this section) accompanied by the required fees. Requests for approval of activities must be submitted to the Board no later than 60 days prior to presentation of the activity unless exception is granted by the Registrar.

(b) All providers must notify the Board 30 days prior to the presentation of any board approved activity, unless exception is granted by the Registrar.

(c) All providers must submit a course attendance roster (See Form No. 43M-46(New 3/93) at the end of this section) to the Structural Pest Control Board within five working days after every course instructed.

(d) After giving the provider a written notice and an opportunity to respond, the Board may withdraw approval of any activity, when good cause exists. Good cause shall include, but not be limited to, failure actually to meet the standards for approval of activities which are outlined in subsection (f) of this section.

(e) Unless otherwise indicated on the written notification of approval, or unless an approval is withdrawn by the Board at an earlier date, approval of each activity shall remain in effect for 3 years.

(f) In order to be approved, activities must be:

- (1) Directly related to the field of structural pest control;
- (2) Provided by an institution, association, university, or other entity assuming full responsibility over the course program;
- (3) Composed of a formal program of learning which requires:
  - (A) attendance and participation,
  - (B) at least one hour of instruction,
  - (C) a syllabus (detailed outline of the main points of the curriculum),
  - ~~(D) an evaluation method on Form No. 43M-39 (Rev. 10/03), costs of postage which shall be incurred by the provider (which is printed at the end of this section),~~
  - (E) (D) a certificate of completion on Form No. 43M-38 (NEW 5/87) (which is printed at the end of this section); and,
- (4) Conducted by an instructor who has qualified by meeting two of the following experience requirements:
  - (A) Completion of training in the subject of the activity,
  - (B) Six months' experience working in the area covered by the activity within the preceding three years,
  - (C) Experience teaching an activity of similar content within the preceding five years,
  - (D) Completion of any post-secondary studies related to the subject matter of the activity,
  - (E) Author of the activity being reviewed, or a credentialed instructor.
  - (g) No activity which focuses on the policies or procedures of a single firm shall be approved.

Passed unanimously.

## **VII. EXECUTIVE OFFICER'S REPORT**

Ms. Okuma reported on the following:

- Assembly Bill 1869 – This bill would incorporate into law all of the proposed consolidations or eliminations in the Governor's Performance Review. The bill was heard at the Assembly of Appropriations Committee and it did not pass.
- Assembly Bill 2223 – This bill would add San Diego county to the existing structural fumigation enforcement program that currently includes Los Angeles, Orange, and Santa Clara counties. She stated that the Board could consider taking a position on the bill.

Mr. Morris asked if the bill would have any fiscal impact to the Board.

Ms. Okuma responded that there would not.

Mr. Utley moved and Mr. Morris seconded to support Assembly Bill 2223.

Mr. Good wished to thank the Board on behalf of PCOC for their position of support. The he stated that the enforcement program is very vital in the enforcement of fumigations.

Passed unanimously.

- Assembly Bill 2423 – This bill would give the Board the authority to issue probationary licenses. The Board had voted to seek such a bill in order to issue probationary licenses in instances where it did not seem appropriate for an all-out denial of a license.

Mr. Heppler wished to clarify that the Board currently issues probationary licenses but that is only after formally denying the license and going to a hearing for stipulation. The bill would allow the Board to issue the probationary license without issuing a denial.

Mr. Arzate moved and Ms. Melton seconded to support Assembly Bill 2423.

Dr. Hanif Gulmahamad, Los Angeles Unified School District, stated that the Board already has a process to issue probationary licenses and that the bill would not be good for consumers. He stated that he was troubled that the Board wants to issue licenses to troubled individuals.

Ms. Combs-Ferriera asked if the instances would be on a case by case basis and if the Board would still have the power to deny a license and have a hearing.

Mr. Heppler responded that the Board would retain the authority to outright deny the license and the individual would be able to request a formal hearing.

Ms. Okuma stated that Board staff currently makes the determination to deny a license. In closed session, the Board sees the results of denial hearings or stipulated decisions. In situations where an individual's past is not so egregious to warrant an all-out denial, Board staff negotiates a stipulated settlement. Ms. Okuma stated that this bill would allow an individual to be granted a probationary license without having to go through the long process of negotiating a settlement through a formal hearing with the Attorney General's Office. The costs to the Board would also be reduced.

Dr. Hanif Gulmahamad stated that a lot of pest control work is done in homes, schools, hospitals, and convalescent homes. He believed that there needs to be a process to ensure consumer protection.

Mr. Sesay stated that he believed that this authority would not be used frequently. The issuance of a probationary license will occur when an individual does not have egregious crimes and does not warrant an outright denial. He did not see how this new authority would have any decrease in consumer protection.

Mr. Morris stated he was concerned about compromising the integrity of licensees to the consumer.

Ms. Okuma reminded the Board that they had directed staff to seek this legislative amendment.

Mr. Utey wished to clarify that when individuals are contracted to perform work in school districts, they are required to have background checks done prior to performing work.

Ms. Okuma clarified that the bill would not result in the Board issuing licenses to individuals that are not already being issued licenses.

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

- Senate Bill 1206 – This bill would allow branch 2 and/or 3 companies to advertise for fumigation. At a previous meeting the Board voted to conceptually agree to support the bill once it was drafted.

Ms. Melton moved and Mr. Morris seconded to support Senate Bill 1206.

Mr. Good, on behalf of PCOC, wished to thank the Board for their support of the bill. The bill is set for hearing on April 28, 2008. He stated that PCOC would appreciate a letter of support from the Board.

Passed unanimously.

- Senate Bill 1402 – This bill does not impact the Board.
- Senate Bill 1498 – This bill would make some nonsubstantive changes to several sections of the Business and Professions Code.
- The Board moved to its new location to Evergreen Street in Sacramento. Mr. Utley and Ms. Melton have visited the new office. The Board is hopeful that the July Board meeting will be held at the hearing room of the new location. There were some unforeseen problems with the move including the disruption of incoming phone calls and faxes. It is estimated that in the two week disruption, approximately 700 phone calls were missed.
- The Board's specialists attended the Annual Urban Pest Management Conference in Riverside in March.
- A permanent enforcement position has been authorized and becomes effective July 1, 2008. The Board had lost the position about 6 years ago and Carl Smitley had joined the Board as a retired annuitant to assist with the Board's enforcement.

Ms. Saylor reported on the following:

- Licensing statistics, survey results, and the Regulatory Action Status were reviewed with the Board members
- The Board's budget was on the consent calendar and is moving forward.
- Three new staff members were hired in February. Vanessa Martinez has joined the enforcement unit as a Consumer Assistant Technician. Jamie Jones has joined the licensing unit as a half-time Office Assistant. Shelly Kidwell joined the licensing unit as the Examinations Coordinator. Ms. Kidwell has accepted another position and will be leaving the Board at the end of April. The recruitment process has started to fill the position.
- A new Board newsletter is currently at DCA for review and should be made available shortly.

- The branch 3 examinations have been rewritten and are currently being administered. Recruitment to rewrite the branch 1 examinations will begin for exam development workshops in June.

Ms. Okuma introduced Mr. Agurto to those who were not in attendance on Thursday, April 17, 2008. He was appointed by Governor Schwarzenegger and is the owner of the pest control company Pestec.

#### **VIII. APPROVAL OF MINUTES OF THE JANUARY 11, 2008, BOARD MEETING**

Ms. Melton moved and Mr. Utley seconded to approve the minutes of the special meeting of January 11, 2008. Passed unanimously.

#### **IX. DEPARTMENT OF PESTICIDE REGULATION UPDATE**

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

- DPR's structural regulatory training has been scheduled for May 12, 13, and 14 in Dublin and June 2, 3, and 4 in San Diego.
- A third sulfuryl fluoride product, Master Fume, has been registered.
- The sulfuryl fluoride product Zythor underwent a label change, which removed the breathing zone language.
- DPR recently issued a policy letter which is available on DPR's website which speaks to a number of the issues that the respiratory regulations have brought up which went into effect January 2008.

#### **X. ADOPTION OF PROPOSED AMENDMENT OF SECTION 1999.5 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS REGARDING FALSE AND MISLEADING ADVERTISING**

Mr. Heppler stated that the agenda item was a continuation from the January 2008 Board meeting. Mr. Heppler stated that the Board had directed him to prepare a legal analysis of the comments presented to the Board. He stated that the official comment period has closed and that arguments over the content of the proposed amendments would not be considered. Mr. Heppler stated that the Board has three options: The Board could decide not to proceed, the Board could vote to proceed and direct staff to prepare the final rulemaking file to the Office of Administrative Law (OAL), or the Board could vote to amend the language with a 15 day notice of modified text.

Mr. Utley moved and Mr. Agurto seconded to adopt the proposed amendment to section 1999.5 of the California Code of Regulations as originally proposed and as follows:

## **§1999.5. False and Misleading Advertising**

It is the purpose of this regulation to protect the public from false, misleading, deceptive, or unfair representations or claims concerning structural pest control while enabling the public to receive truthful and legitimate information about those structural pest control products and services and the potential of these products and services to reduce impact to health or the environment.

(a) It is unlawful for any licensee, or any employee thereof, directly or indirectly to make, disseminate, represent, claim, state, or advertise, or cause to be made, disseminated, represented, claimed, stated or advertised by any manner or means whatever, any statement or representation concerning structural pest control, as defined in Business and Professions Code section 8505, which is unfair, deceptive, untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be unfair, deceptive, untrue or misleading.

(b) As used in this section, the terms "make," "disseminate," "represent," "claim," "state," or "advertise" and any of their variants include, but are not limited to any print communications (for example, telephone directories, newspapers, magazines or other publications or books, notices, circulars, pamphlets, letters, handbills, posters, bills, signs, placards, cards, labels, tags, vehicle or equipment signage, window displays, or store signs), electronic communication (for example, radio, television, audio or video tape, telephone, or the Internet), demonstration, direct person-to-person contact, or other means or methods now or hereafter employed to bring structural pest control services, methods, products, pesticides, or devices to the attention of the public: for the purpose of requesting any work or services or for the direct or indirect purpose of performing or offering to perform services for which a license is required by section 8500 and following of the Code.

(c) As used in this section "the exercise of reasonable care" includes a duty to investigate the basis of any statement or representation to assure that the statement or representation is not unfair, deceptive, untrue or misleading. The making of a statement or representation without knowledge of its truthfulness breaches the duty to investigate.

(d) Violation of this section occurs at the time an unfair, deceptive, untrue or misleading statement or representation is made. Once a violation occurs, subsequent disclosures, caveats, disclaimers, or waivers cannot eliminate it.

(e) The remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws and regulations of this State.

(f) Examples of direct or indirect statements or representations which are unfair, deceptive, untrue or misleading include, but are not limited to, the following:

(1) any advertising in violation of Business and Professions Code sections 17200, and 17500;

(2) any statement or representation that misrepresents or fails to disclose an important or necessary fact about a pest control service, method, product, pesticide or device;

(3) any unfair, deceptive, untrue or misleading statement or representation about the effects of a pest control service, method, product or device;

(4) any expressed or implied statement or representation that one or a combination of pest control services, methods, products, pesticides, or devices is an alternative or substitute for, is comparable to, or is better than any other pest control service, method, product, pesticide, device, or combination thereof, if what is being compared provides different treatment coverage of a structure, including but not limited to differences in the

extent that accessible and inaccessible areas can ~~reasonable~~ reasonably be treated, unless said differences in treatment coverage are clearly and conspicuously stated. This subsection shall only apply to Branch 3 activities;

(5) any representation that a service, method, product, pesticide, or device, or combination thereof, ~~that is not designed~~ intended to treat all ~~potentially~~ infested wood in a structure, ~~both accessible and inaccessible~~ will be used to treat an entire structure for target pests if the service, method, product, pesticide, or device or combination thereof is not capable of treating all potentially infested wood in a structure including inaccessible areas. This subsection shall only apply to Branch 3 activities;

(6) any statement or representation that a pest control service, product, pesticide, or device or combination thereof offers a general environmental protection or benefit unless the statement or representation can be substantiated within the meaning of 16 CFR, 260.5 and is limited to the specific nature of the environmental or health benefit being asserted. ~~;~~ ~~or that the pest control products, pesticides, or devices the licensee uses, the applications of such products, pesticides, or devices, or any of them, are “among the least toxic chemicals known,” “relatively non-toxic,” “pollution approved,” “environmentally aware,” “environmentally sensitive,” “environmentally preferable,” “environmentally benign,” or “contains all natural ingredients”;~~

(7) any unfair, deceptive, untrue or misleading statement concerning the composition of a pest control service, method, product, pesticide or device;

(8) any unfair, deceptive, untrue or misleading statement concerning the effectiveness of a pest control service, method, product, pesticide or device;

(9) any unfair, deceptive, untrue or misleading statement about the value of a pest control product for purposes other than as a pesticide or pest control device;

(10) any unfair, deceptive, untrue or misleading comparison of pest control services, methods, products, pesticides or devices;

(11) any statement or representation that a pesticide or device is certified, sponsored, recommended, endorsed, or approved by any agency of the Federal Government or the State of California, including but not limited to, “tested by the Department of the Interior,” “EPA approved,” “EPA registered,” “approved by the Structural Pest Control Board,” or “recommended by the Structural Pest Control Board,” except that a statement or representation of this type is permissible if specifically authorized by the Federal or State agency to which it refers.

(12) a statement which is literally true but is used in such a way as to give an unfair, deceptive, untrue or misleading impression to the consumer;

(13) ~~claims as to the safety of that~~ a pesticide application, a pesticide or pesticide ingredients are safe, including statements such as “safe,” “nonpoisonous,” “non-injurious,” “harmless” or “nontoxic to humans and ~~pest pets~~” with or without such a qualifying phrase as “when used as directed”;

(14) ~~claims that the pesticides and other substances the licensee applies, the application of such pesticides, or any other use of them are comparatively safe or free from risk or harm;~~

~~(14)~~ (14) claims regarding services and products for which the licensee does not have substantiation in the form of tests, analysis, research, studies, or other evidence that was conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results; and

(16) (15) any statement or representation concerning structural pest control that is conditioned or subject to any requirement, condition, limitation, disclaimer or waiver, that is not immediately followed by a clear and conspicuous statement of said requirement, condition, limitation, disclaimer or waiver.

S. Wayne Rosenbaum, Foley & Lardner LLP, speaking on behalf of the Integrated Pest Management Control Council (IPMCC), strongly recommended that the Board vote not to proceed. He stated that the regulation, as written, is badly flawed, vague, and ambiguous. Mr. Rosenbaum stated that he has yet to find in the Board's regulations, a true definition of "all encompassing" treatment and "inaccessible area." He suggested that the Board set the issue aside. He stated that IPMCC is offering \$50,000 to set up a blue ribbon panel to evaluate the issues and develop a regulation that will include new technologies.

Elizabeth Cason, Foley & Lardner LLP, speaking on behalf of the Integrated Pest Management Control Council (IPMCC), stated that based on the guidance document that has been drafted, it would be permissible to make such advertising claims as "you don't have to tent or move out of your home" and that their product is "exempt by the US EPA."

Jonathan Kaplan, Natural Resources Defense Council, urged the Board to adopt the regulation as written. He stated that there are some concerns about the guidance document but the guidance document is not before the Board.

Mr. Van Steenwyk urged the Board to adopt the regulation as proposed. He agreed that the guidance document would have to be revisited on a regular basis. He stated that the proposed language allows for claims as long as they have scientific evidence to support the claims.

Mike Katz, Western Exterminator Company, stated that he served on the 1999.5 task force. The proposed regulation will allow for any claims as long as they can be substantiated. He urged the Board to adopt the proposed amendments.

Lee Whitmore, Beneficial Exterminating, encouraged the Board to adopt the amendment as presented. He stated the regulation will allow for more communication to the consumer than what is currently in place.

Mr. Gorman encouraged the Board to adopt the proposal. He added that currently the regulation does not allow for any advertisement of more environmentally friendly products. The proposed regulation is a step in the right direction.

Mr. Paulsen strongly encouraged that the Board adopt the regulation. He stated that it is very telling that the pest control industry and Mr. Kaplan are on the same page. Both the industry and environmental groups have sought changes to the regulation for some time.

Ms. Getty stated that the public often contacts her department for answers and based on the calls, she recommends that the Board adopt the proposed amendments.

John Sessa, Orkin Pest Control, stated that Orkin is in favor of the proposed changes to the regulation.

Passed unanimously

## **XI. FUTURE DIRECTION OF THE PRE-TREATMENT COMMITTEE**

Ms. Boyle provided a brief history of the pre-treatment committee. This committee was formed after reports of the misuse of the products used in pre-treatments. The committee met several times and presented some proposed changes to allow for better enforcement and monitoring of pre-treatments. One of the proposed changes was to require prior notification to the County Agricultural Commissioner's offices. Ms. Boyle stated that in California, the majority of each county's enforcement is devoted to the enforcement of fumigation. Neither the Board nor the County Agricultural Commissioner's offices have the funds or staff time to carryout pre-treatment inspections and enforcement.

Ms. Okuma stated that the issue before the Board was whether or not there was any reason for the committee to continue.

Kevin Etheridge, Contractor's Termite and Pest Control, stated that he is on the pre-treatment committee and has been since 1994. He understands that there are not many, if any, consumer complaints concerning pre-treatments but that does not mean that fraudulent activity is not occurring. He urged the Board to continue the pre-treatment committee. As a member of the committee, he has suggested that a revenue source be created. Mr. Etheridge has been told that it would require a legislative amendment and would take considerable time but he stated since he has been working on the issue for fourteen years, he has nothing but time.

Mr. Van Hooser stated that the Board should not give up on the pre-treatment committee. He added that he had no solutions for the problems but that the committee should keep trying.

Dr. Gulmahamad stated that pre-treatments do not have health or safety issues. He added that the issue is whether or not the consumer is getting what they are paying for.

Mr. Barnett stated that his company performs pre-treatments and it is often a challenge to coordinate with the contractor. He agreed that continuing the pre-treatment committee was important.

Mr. Heppler asked if other states have a more robust pre-treatment enforcement program.

Mr. Etheridge responded that in Nevada and Arizona, pre-treatments are highly regulated. He added that there are not a lot of fumigations done in the two states.

Ms. Okuma added that California is unique in that there are essentially three regulatory entities that could be considered responsible for pretreatment enforcement.

Mr. Whitmore stated that the issue appears to have to do with the lack of funding. He suggested using the fumigation enforcement program as a model.

Mr. Morris suggested that the Board could recommend that a member from the building and environmental industry be added to the committee.

Mr. Morris moved and Ms. Melton seconded to reinvigorate the Pre-treatment Committee and to include a representative from the building industry, environmental industry, DPR, and county agricultural commissioner's offices. Passed unanimously.

**XII. REQUEST FOR INTERPRETATION OF THE 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 he had made the request to have the Board's Legal Counsel examine the Board's regulations to allow branch 2 field representatives to treat in branch 3 and branch 3 field representatives to treat in branch 2. He stated that the Board's regulations stated that an applicator can treat in both branches 2 and 3. Mr. Van Hooser added that a field representative is a superior license to the applicator license, therefore should be allowed to treat in both branches.

Ms. Okuma stated that an applicator is automatically licensed in branches 2 and 3. If an applicator then applies for and is issued a branch 2 field representative license, for example, his/her applicator license would be downgraded to include just branch 3. Ms. Okuma added that should the individual let his/her branch 2 field representative license lapse, the Board does not have a mechanism in place to go back and upgrade the applicator license to include branch 2 again.

Mr. Gatto agreed with Mr. Van Hooser in that the Board should look at the request. He stated that a field representative has already passed the applicator test and held the license and therefore should be allowed to treat in both branches 2 and 3.

Mr. Heppler suggested reexamining the issue at the next meeting with further clarifications of the Board's license categories and what they are authorized to do. He stated that a formal motion was not necessary.

Mr. Morris requested that the issue be included on the agenda for the July meeting.

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

Ms. Boyle stated that currently, the pest control industry is required to submit a monthly summary of pesticide use report to each county that pesticides are applied. The Board's

Business and Professions (B&P) Code states that a pesticide stamp must be affixed to the report. Ms. Boyle reported that there was a possibility that the term “affix” could be broadly interpreted to allow for the reports to be submitted electronically but she has been told that the term cannot be interpreted that way. To allow for the electronic submission, a legislative amendment would be necessary to change the B&P Code section. Ms. Boyle added that the legislative calendar year has ended so a proposed bill could not be drafted until next year. She suggested that the Board begin exploring options for the possibility of electronic submissions.

Ms. Combs-Ferreira asked if it would be appropriate to form a committee to develop a plan.

Ms. Boyle responded that the County Agricultural Commissioners currently have a committee in place and that it would be beneficial to have a Board representative added to the committee.

Ms. Okuma stated that it might be appropriate for the Board to direct staff to work in the direction of implementing a mechanism of allowing the electronic submission. She added that it is important to know what the possible costs might be and how the Board will be affected.

Greg Creekmur, Los Angeles County Agricultural Commissioner’s Office, reported that between 9,000 and 12,000 reports are submitted each year and they are processed page by page. The electronic submission would significantly reduce the time and manpower needed to process the reports. Mr. Creekmur stated that the Los Angeles County Commissioner would like the Board to allow for the submission of the reports electronically.

Simone Hardy, San Diego County Agricultural Commissioner’s Office, reported that the San Diego County Commissioner also has requested that the Board support the electronic submissions. Ms. Hardy stated that her office has organized a pilot project with twenty companies who have been filing their reports electronically.

Mr. Agurto asked Ms. Hardy for more information on the pilot project.

Ms. Hardy responded that the pilot project is a web-based project in which the companies submit a year’s worth of pesticide use stamps to her office and then send their monthly usage reports electronically.

Mr. Good, speaking for PCOC, stated that PCOC is in support of allowing pest control companies to submit their monthly pesticide use reports electronically.

Ms. Boyle suggested that the Board conceptually approve the idea of electronic submissions so that she could report to the Pesticide Registration and Evaluation Committee at their spring meeting.

Ms. Okuma expressed concern that the Board would be accepting in concept the idea without knowing what the costs may be to the Board.

Mr. Van Steenwyk stated that he believed that Ms. Boyle is asking the Board to only accept the idea in theory.

Mr. Arzate moved and Mr. Utlely seconded to support in theory and to direct Board staff to explore the possibility of allowing electronic submissions of the monthly pesticide use reports.

Mr. Morris stated that the Board should be careful in supporting the idea in theory without knowing what the fiscal impact may be to the Board.

Mr. Arzate amended his motion and Mr. Utlely seconded to state that if it is determined that the mechanism to allow electronic submissions is not fiscally beneficial to not only the County Agricultural Commissioner's Offices but also to the Board, then the Board is not committed.

Mr. Morris stated that he agreed with the amended motion.

Passed unanimously.

#### **XIV. BOARD MEETING CALENDAR**

The next Board meeting will be held July 17 and 18, 2008, in Sacramento. The following meeting will be held during the week of November 17, 2008, in the Los Angeles area as mentioned by Ms. Lopez.

Ms. Okuma stated that because the October meeting is now being held in November, the Board may have to conduct mail votes on some administrative decisions as the law states they have no more than 100 days to act on them.

Mr. Arzate stated that this meeting might be his last as a member of the Board. If in fact it is, he wished to thank the Board and its staff.

#### **XV. FUTURE AGENDA ITEMS**

Mr. Heppler stated that the future agenda items that resulted from the current meeting was the detailed information of the Board's licenses and the duties that they can perform and the tabled discussion concerning the electronic submission of pesticide enforcement stamps.

Mr. Van Steenwyk asked for an update of the status of the IPM certification issue that had been recommended to the Board.

**XVI. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA**

Mr. Good stated that he was contacted by the Board to help in the rewriting of the branch 3 examinations. He wished to commend the contractors that the Board used as they were very professional. Mr. Good stated that he understood that continuing education providers were excluded from participating.

Ms. Okuma responded that there was concern that if the providers were allowed to participate, they might be privy to the content of the new examination.

Mr. Good suggested that the Board reconsider that policy as talented people in the industry were excluded from the process.

Bill Gillespie, AB Courses, stated that he would oppose any provider being allowed to develop the examination. He felt it would be a conflict of interest.

Mr. Launius stated that he volunteered his time and even offered to drop his status as a continuing education provider in order to participate but did not receive a response from the Board.

Dr. Gulmahamad distributed to the Board members a printout of Business and Professions Code Sections 8520 and 8520.1 and stated that the purpose of the Board is consumer protection.

Mr. Paulsen suggested that the Board make the full Board package available on the website.

Mr. Sesay adjourned the meeting at 12:16 PM.

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MUSTAPHA SESAY, President

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KELLI OKUMA, Executive Officer

7/18/08  
DATE