

MINUTES OF THE  
ANNUAL MEETING OF THE  
STRUCTURAL PEST CONTROL BOARD  
November 18, 2008

The meeting was held on Tuesday, November 18, 2008, at the Westin Los Angeles Airport, 5400 West Century Blvd., Los Angeles, California, commencing at 9:07 AM with the following members constituting a quorum:

Mustapha Sesay, President  
Cliff Utley, Vice President  
Luis Agurto  
Cris Arzate  
Terrel Combs-Feirerra  
Jean Melton

Board member Bill Morris was not present.

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.

I. **ROLL CALL**

Ms. Saylor read the roll call.

II. **FLAG SALUTE**

Ms. Melton led everyone in the flag salute.

### **III. APPROVAL OF MINUTES OF THE JULY 18, 2008, BOARD MEETING**

Mr. Utley moved and Ms. Melton seconded to approve the minutes of the special meeting of July 18, 2008. Passed unanimously.

### **IV. RESEARCH UPDATES**

Dr. John Klotz, University of California, Riverside (UCR), presented a research update on the study of baiting and perimeter spray programs for urban pest management of argentine ants. The project began in 2005 and was to end in 2008 but due to the suspension of the research contract, the project was extended to May of 2009. Dr. Klotz also presented a research update on his study on developing low risk management strategies for argentine ants. The project began January 1, 2008, and is scheduled to be completed by December 31, 2009.

Dr. Michael Rust, UCR, presented a research update on the study developing baits for yellowjacket control and the study evaluating localized treatments for drywood termites. He stated that the study on yellowjackets began in 2006 and was granted an extension until June 30, 2009, due to the suspension of the research contract. The study on localized treatments of drywood termites began January 1, 2008, and was granted an extension until June 30, 2009, due to the suspension of the research contract.

Dr. Vernard Lewis, University of California, Berkeley (UCB), presented a research update on the assessment of devices and techniques for inspection and evaluation of treatments for inaccessible drywood termites. The project began in December 2006, and was extended to June 30, 2009. Dr. Lewis also presented a research update on field evaluations of localized treatment for controlling drywood termites. The project began in February 2008, and was extended until June 30, 2009.

Final reports of the research projects will be made available on the Board's website once the projects are completed.

Ms. Okuma introduced State and Consumer Services Agency Secretary Rosario Marín.

Ms. Marín thanked the president and vice president for making the arrangements to hold the Board's meeting at the Department of Consumer Affairs' (DCA) Professionals Achieving Consumer Trust Summit. She stated that the summit hopes to serve as an opportunity for consumers to learn more about how they are being protected by DCA. She added that the summit will also allow Board members the opportunity to learn how other boards and bureaus operate.

V. **'TEST HOLES' – DISCUSSION AS TO WHETHER MAKING AN INACCESSIBLE AREA ACCESSIBLE DURING A STRUCTURAL INSPECTION (PRIOR TO ISSUING AN INSPECTION REPORT) IS PERMISSIBLE UNDER CURRENT STATUTE / REGULATION**

Ms. Okuma reported that the issue of test holes was suggested for a future agenda item at the July Board meeting. Ms. Okuma introduced Tom Murray to give more information on test holes.

Tom Murray, Structural Renewal Inc., reported that his family business has been working in the Berkeley and Oakland areas since 1957. He added that he is representing many operators in the bay area. The homes that his company inspects are often stucco-sided and over 100 years old. Mr. Murray stated that he as well as other branch 3 operators have been forced to change their standard set of procedures because a Board specialist issued a citation and fine for drilling test holes at the time of inspection. He added that his company has been drilling test holes with permission or making a recommendation for further inspection at a later date for the past 35 years. The Board specialist has been citing companies for making test openings during the first visit to the property, not recommending a further inspection, performing work without a contract, and not issuing a notice of work completed. He cited California Code of Regulations (CCR) section 1990 that states that reports shall contain information on all accessible areas of the structure including stucco walls. Mr. Murray cited Business and Professions (B&P) Code section 8516 which states that an original inspection report shall indicate or describe any areas that are inaccessible or not inspected with a recommendation for further inspection if practicable. He stated that the operators in the bay area feel that test holes should be permissible at the time of inspection if the homeowner gives permission.

Mr. Murray reported that the Board specialist believes that drilling test holes is considered work and thus a notice of work completed must be issued. He posed the question, when does an inspection stop and work begin? Mr. Murray suggested that work is when a repair or correction is made to the structure.

Ms. Okuma directed the Board to two letters in their Board package, which offered support to Mr. Murray's argument.

Mr. Utley stated that the only flaw that he saw with Mr. Murray's argument was that the patching of the test holes would be considered work since it is repairing the structure. He stated that he was in favor of drilling test holes at the time of the original inspection but that the company should not patch the holes at that time.

Mr. Murray compared the patching of the test holes to what a doctor would do when taking a biopsy. The doctor would take material out for examination and then stitch up the opening that was created.

Mr. Agurto reported that patching the test holes during the original inspection protects the homeowner from water damage.

Ms. Melton stated that the issue needs to be clarified for consumers. She added that homebuyers want to know what can or cannot be done during the original inspection.

Mr. Heppler suggested that the Board refer the matter to the Rules & Regulations Committee to determine if test holes can be part of the inspection or if they are considered work.

Ms. Melton stated that she personally does not want regulations that state that test holes must be made. She added that the drilling of test holes should be something that the homeowner authorizes.

Steven Smith asked if there is typically an additional charge for drilling test holes.

Mr. Murray responded that there is a charge for test holes. In some cases, if only a few test holes are needed, Mr. Murray stated that he does not charge extra for the test holes.

Mr. Utley asked Mr. Heppler if it would be acceptable to make a motion to direct Board specialists to allow test holes at the original inspection if permission is given.

Mr. Heppler responded that it would be a problem since the current rules and regulations are not clear as to whether test holes can be made during the original inspection.

Mr. Utley moved and Mr. Agurto seconded to have the Rules & Regulations Committee examine the topic of test holes to determine if a regulatory amendment is necessary for clarity.

Michael Katz, Western Exterminator Company, stated that he was confused by the discussion. He said that making test holes during the original inspection has been an industry standard for many years and it is one Board specialist's opinion that they should not be.

Mr. Heppler responded that there may or may not be a need to amend regulations to further clarify but that is why it is necessary for the committee to examine the issue.

Ms. Okuma added that all the Board specialists are on the same page. The issue of test holes has not been addressed in the past.

Ms. Okuma suggested that the issue might be more appropriate for the Technical Advisory Committee to examine.

Mr. Utley amended his motion to refer the matter to the Technical Advisory Committee.

Curtis Good, Newport Exterminating, asked who was on the Technical Advisory Committee.

Ms. Okuma responded that the Board president appoints members of the committee and since new officers are being elected later in the meeting, the new president will appoint committee members.

Darrell Ennes, Terminix International Company, asked Ms. Okuma how many Board specialists there are and how many inspections they do a year.

Ms. Okuma responded that there are 8 Board specialists and they perform approximately 60-100 inspections each year each.

Mr. Ennes asked why there is need to examine the issue over one citation and fine.

Ms. Okuma responded that there needs to be clarification on the issue for future inspections for the Board specialists.

Passed unanimously.

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

Ms. Okuma reported on the following:

- The Executive Order instituted by the Governor on July 31, 2008, terminated the services of Mr. Smitley, Dennis Patzer, as well as one other Board staff member. In mid-October exemptions were granted for Mr. Smitley and Mr. Patzer.
- The Executive Order also suspended all Board contracts, which included the research contracts.
- The Executive Order also froze the hiring of the Board's enforcement position.
- Complaint survey results were reviewed with the Board members.
- The Office of Administrative Law (OAL) disapproved the proposed amendment to CCR section 1999.5 based on necessity. OAL stated that the proposed changes lacked clarity and was ambiguous. The Board has 120 days from the date of disapproval to correct and resubmit the regulation package to OAL. An update will be provided to the Board at the January Board meeting.
- Proposed legislation was reviewed with the Board, which would require that licensees complete criminal background checks if they were licensed before the requirement.

Mr. Katz, citing the relatively long process for the background checks to be completed, asked if the Board would provide flexibility to those who are already licensed while the results are made available to the Board. He stated his concern that the new law would cause many operators and qualifying managers to have to suspend business until the results of the background were available.

Ms. Okuma responded that the language as presented appears to require that current licensees complete the fingerprinting process by a certain date but not necessarily that the

results have to be available by that date. She stated that the licensee must be able to certify that he/she has performed the fingerprinting process.

Ms. Saylor reported on the following:

- Licensing statistics, survey results, and the Regulatory Action Status were reviewed with the Board members.
- The contracts that were suspended with the Executive Order included the exam development contract. The contract has been resumed and new branch 1 examinations for field representatives and operators should be in place by the summer of 2009.
- Ronni O'Flaherty has been hired as an Office Technician in the licensing unit and is on the bonds and wood destroying organism (WDO) desk.
- Lisa Esquivel has been hired as an Office Technician in the licensing unit and is on the livescan desk and will be in charge of conducting the continuing education audit.
- In early October, the Board upgraded its new phone system to allow for phone monitoring for quality control purposes.

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

Cliff Smith, Department of Pesticide Regulation, handed out a further explanation of violations that occurred during the 2006-2007 fiscal year. At the July Board meeting, Mr. Smith had presented statistics and a large percentage of violations were classified as "other." The document detailed the types of violations that fell into the "other" category.

Ms. Combs-Feirrer asked what the acronym "PPE" stood for.

Mr. Smith responded that "PPE" stood for personal protection equipment.

## **VIII. ANNUAL REVIEW OF BOARD PROCEDURES**

Ms. Okuma asked if there were any proposed amendments or suggestions for repealing any procedures.

Ms. Okuma suggested striking out the requirement to distribute draft Board minutes to the Director within 30 days after a Board meeting as stated in procedure G-5.

Ms. Melton moved and Ms. Combs-Feirrer seconded to remove the requirement to submit draft minutes to the director from procedure G-5. Passed unanimously.

Ms. Okuma suggested replacing "Deputy Director of Board Relations" with "Deputy Director of Board Support" in procedure G-8.

Ms. Melton moved and Mr. Arzate seconded to replace “Deputy Director of Board Relations” with “Deputy Director of Board Support” in procedure G-8. Passed unanimously.

Ms. Okuma suggested the following changes to procedure E-2:

- Correcting a typo by replacing specialist with specialists.
- Correcting grammar by replacing “will sent” with “will be sent.”
- Removing instances of “Investigator.”
- Inserting the Board’s new Evergreen address.
- Replacing an instance of “is being” with “may be.”
- Amending the procedure to state that cases shall be closed or sent to the Chief Enforcement Officer within forty (40) days after compliance or noncompliance with the report of findings.
- Correcting a typo by replacing “as” with “is.”

Ms. Melton moved and Mr. Utley seconded to amend procedure E-2 with Ms. Okuma’s suggestions. Passed unanimously.

Ms. Thomas suggested amending procedure E-3 to replace “sitting with” with “hearing the matter in front of.”

Mr. Utley moved and Ms. Melton seconded to amend procedure E-3 to state that the Board will consider “hearing the matter in front of” the administrative law judge whenever the Registrar recommends that the accusation is unusual and warrants the Board’s attention. Passed unanimously.

Mr. Arzate asked why the repealed procedures remained in the procedure package.

Ms. Okuma responded that the procedures that have been repealed remain in the package for historical reference.

Ms. Okuma cited two typographical errors in procedure E-7. She suggested correcting the word “investigation” with “investigating” and correcting the word “recluse” with “recuse.” Ms. Okuma stated that a formal motion was not required make the changes.

Mr. Heppler suggested that procedure L-6, which grants an exemption for licensees who serve in the armed forces, be removed from the Board procedures and that the exemption be put into the Board’s regulations.

Ms. Okuma concurred and added that the procedure goes beyond the authority of law and should be adopted into regulation. She recommended that the Board move to repeal procedure L-6 and also move for public hearing to put the armed services exemption into regulation.

Mr. Utley moved and Ms. Melton seconded to repeal procedure L-6 from the Board procedures and to notice for public hearing to adopt the armed services exemption. Passed unanimously.

## **IX. PRE-TREATMENT COMMITTEE UPDATE**

Ms. Okuma reported that the Pre-Treatment Committee met on November 14, 2008, and introduced committee member Kevin Etheridge to provide an update.

Kevin Etheridge, Committee Member, reported that the committee met and made motions to:

- examine how to maintain the inspection report and completion notice for pre-treatments
- create a notice of intent with a revenue value attached based on market research
- make the Structural Pest Control Board the lead agency in pre-treatment enforcement
- create an avenue for county agricultural commissioners to liaison in pre-treatment enforcement
- create a separate fund specific for pre-treatment enforcement
- develop a field inspection matrix for the enforcement of storm water language specified on the product label
- review rules and regulations suggested in previous pre-treatment committee meetings to ascertain applicability with the committees new proposals

Mr. Etheridge added that the next committee meeting is scheduled for January 5, 2009.

Ms. Okuma reported that the committee met for a few years but the proposal was dependent upon the enforcement efforts of the county agricultural commissioners. The committee has redirected enforcement to the Board.

Mr., Utley asked if the notice of intent would still be sent to the county agricultural commissioners offices.

Ms. Okuma responded that the Board would be receiving the notice of intent.

Ms. Okuma added that the committee at this point has not fleshed out many of the details. The committee has developed new proposals to the Board to determine if the Board believes the committee should continue to meet to formulate the details of the pre-treatment notification and enforcement process.

Greg Creekmur, Los Angeles County Agricultural Commissioners Office, asked if the county could be notified. Ms. Okuma responded that the counties could be notified if they so chose.



Mr. Utley moved and Ms. Combs-Feirrer seconded to direct the pre-treatment committee to proceed in its current direction and to report to the Board at the January meeting.

Harvey Logan stated that he would like to commend the committee for its work.

Passed unanimously.

**X. DISCUSSION OF RELEASE OF CRIMINAL OFFENDER RECORD INFORMATION (CORI) TO REGISTERED COMPANIES – JACK LAUNIUS**

Ms. Okuma reported that this agenda item was requested by Jack Launius and introduced Mr. Launius.

Jack Launius, Borite Termite & Pest Treatments Corporation, reported his company had hired an individual, but on the day that he was to report to work, he did not. Weeks later, a letter from the Board came to the company addressed to the individual, requesting information regarding an arrest. Mr. Launius stated the company did not know the individual had been arrested and that he did not work for the company, yet he appears as being associated with the company on the Board's website. Mr. Launius stated he felt that as his employer, he should have the right to know when an employee is arrested.

Ms. Okuma stated that Mr. Launius has included agenda item XI in his argument but that the current discussion on the agenda should only pertain to the release of criminal offender record information (CORI) to registered companies who have hired an offender.

Mr. Heppler stated there are some constitutional privacy issues if the Board were to share CORI with registered companies. He suggested that the Board direct legal counsel to prepare a legal review of current law.

Mr. Utley stated that, as a business owner, he would love to be able to contact the Board and find out conviction information for a prospective employee but it is not legal to do so. He suggested that company owners could have their employees complete their own background checks.

Mr. Utley moved and Ms. Melton seconded to direct the Board's legal counsel to examine existing law and prepare a legal analysis for the January Board meeting.

Mr. Arzate asked if the owner of a company has the right to open mail that was addressed to a licensee at the company's address.

Ms. Thomas responded that since the licensee has listed the company's address as his/her address of record, the case could be made that the company could open the letter.

Passed unanimously.

**XI. DISCUSSION OF LICENSEE EMPLOYMENT INFORMATION POSTED ON STRUCTURAL PEST CONTROL BOARD WEBSITE**

Ms. Okuma reported that procedurally, a licensee will report to the Board a change of address or change of employment. Business and Professions (B&P) Code section 8567 states that should a licensee change his/her employment, he/she shall notify the Board of that change. California Code of Regulations (CCR) section 1911 states that each licensee shall file his/her address of record with the Board.

Curtis Good, speaking as the Pest Control Operators of California (PCOC) legislative chair, thanked the Board for putting this item on the agenda. He cited the passage of Senate Bill 1402 which required the Board to post licensing information on its website. Mr. Good reported that the industry is concerned that inaccurate information is on the Board's website due to the fact that the individual licensees are not notifying the Board of changes. He stated that there are currently five former employees related under his company listing even though they are working for other companies. One of the individuals has not worked for Mr. Good in over 10 years. He added that if an individual is cited for a violation, it is an incorrect reflection of the business that no longer employs him/her. Mr. Good offered that the Department of Motor Vehicles has a form in which you can release liability when selling a vehicle. The Board does not offer a way for a company to release being liable for a former employee. He requested that the Board find a way so that employers can have some control on who is related under their company listing.

Mr. Utley asked if it would be possible to create a different database system from which the website could pull information.

Ms. Okuma responded that the license look-up website pulls information from the Board's licensing database. This database is used by the entire Department of Consumer Affairs.

Ms. Thomas stated that the problem is that individual licensees are not informing the Board of their changes of employment and address. She added that not notifying the Board is grounds for disciplinary action and is included in disciplinary cases.

Mr. Launius offered the scenario in which the licensee leaves the industry but does not notify the Board. If the individual does not go work for another company, he/she will continue to be listed under the original employer's website listing.

Bob Gordon, Gordon Termite Control, stated that his company's listing currently shows 10 licensees that have been cancelled yet are still listed as employees of his company.

Ms. Okuma stated that the database utilized by the Board is over 30 years old. DCA does not entertain changes to the database system very often. She suggested exploring the option of removing all "related records" from the website listing but then no individual licensees will appear on the company listing.

Mr. Good stated that the industry would welcome that change but reiterated that the industry would like a way to remove individuals who are no longer working for their company.

Lee Whitmore, Beneficial Exterminating, suggested finding a way to at least remove the licensees whose licenses have been cancelled or revoked.

Cindy Ziemke, American City Pest & Termite Inc., stated that the purpose of the Board is to protect consumers and having incorrect information on the company's website is not protecting consumers.

Mr. Heppler stated that B&P Code section 8567 and CCR section 1911 put the burden of notifying the Board of changes on the individual licensee. He suggested that the Board direct staff and legal counsel to examine the technological and legal authority issues in changing what information is available on the website.

Mr. Heppler suggested that employers consider having their employees fill out the transfer of employment form at the time of being hired.

Mr. Utley moved and Mr. Arzate seconded to direct Board staff and legal counsel to examine the technological and legal authority issues for the January Board meeting.

Mr. Good thanked the Board for their consideration.

Passed unanimously.

Mr. Heppler stated that the requirement for the posting of information to the website is not in the Board's rules and regulations but it is in the California B&P Code in section 27.

## **XII. REQUEST FOR APPOINTMENT TO THE DISCIPLINARY REVIEW COMMITTEE**

Ms. Okuma reported that the Board maintains a pool of individuals to serve on the Disciplinary Review Committee. Two candidates are before the Board for consideration. A motion would be required to recommend them to DPR for appointment to the committee.

### **A. DAVID POPLIN**

Mr. Utley stated that he would have a problem recommending Mr. Poplin for consideration citing that Mr. Poplin is currently on probation.

Mr. Heppler stated that if there was no motion to recommend Mr. Poplin then the matter would be deemed passed over.

## **B. JACK LAUNIUS**

Mr. Utley asked Mr. Launius why he wished to be recommended for the Disciplinary Review Committee.

Mr. Launius responded that he felt it was a duty.

Mr. Utley moved and Ms. Combs-Ferreira seconded to recommend to DPR that Jack Launius be appointed to the Disciplinary Review Committee. Passed by majority. (Aye – Agurto, Arzate, Combs-Feirrer, Sesay, Utley. No – Melton.)

## **XIII. PROPOSED AMENDMENT OF SECTION 1984 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS – DEFINITION OF STRUCTURAL INTEGRATED PEST MANAGEMENT (IPM)**

Ms. Okuma reported that the Office of Administrative Law approved the definition for Integrated Pest Management (IPM), CCR section 1984 became operative on August 8, 2008. The IPM task force developed the definition and much discussion centered on the word “cultural.” The IPM task force ultimately replaced “cultural” with “behavioral.” Unfortunately, the version of specific language noticed for public hearing to adopt section 1984 contained the word “cultural.”

Mr. Heppler suggested that the Board move to notice for public hearing an amendment of section 1984 to reflect the IPM task force’s final recommendation.

Mr. Arzate moved and Mr. Utley seconded to notice for public hearing an amendment of section 1984, replacing “cultural” with “behavioral:”

§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~~ behavioral, 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.

**XIV. PROPOSED AMENDMENT OF SECTION 1950 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS – CLARIFICATION OF EFFECTIVE DATE OF IPM CONTINUING EDUCATION REQUIREMENT FOR LICENSED APPLICATORS**

Ms. Okuma reported that at the April 2008, public hearing, the Board approved amendments to CCR section 1950 to require that branch 2 and/or 3 licensees complete hours in IPM as part of their continuing education requirements. The language as approved would put off the requirements of applicators completing any continuing education hours, which is not what the Board intended.

Mr. Heppler stated that if the Board agreed with the proposed amendment, the Board could issue a 15 day modified text to all interested parties and if no adverse comments were received, the Board could then proceed with the rulemaking file.

Mr. Utley moved and Mr. Arzate 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, 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~~ December 31, 2008 and each subsequent renewal period up to the renewal period ending June 29, 2010, a licensed applicator shall have completed 12 hours of Board approved continuing education. Such continuing education shall consist of ~~eight~~ six ~~eight~~ 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) For the renewal period ending 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 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.

~~(g)~~ (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 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)~~ (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.

Passed unanimously.

## **XV. ELECTION OF OFFICERS**

Mr. Sesay wished to thank the Board, its staff, and the industry for the opportunity of being the Board's President.

Ms. Okuma asked for nominations for the office of President.

Mr. Sesay nominated Clifford Utley for president of the Structural Pest Control Board.

Passed unanimously.

Ms. Okuma asked for nominations for the office of Vice President.

Mr. Utley nominated Cris Arzate for vice president of the Structural Pest Control Board.

Passed unanimously.

#### **XVI. BOARD MEETING CALENDAR**

The next Board meeting will be held January 23, 2009, in Napa. The following meeting will be held April 16 and 17, 2009, in San Diego.

#### **XVII. FUTURE AGENDA ITEMS**

Martyn Hopper, PCOC, stated that in October 2007, PCOC sent a letter to the Board concerning false and misleading advertising and the product orange oil. PCOC asked the Board to take action against the advertisements that are in violation of the Board's false and misleading advertising regulations. Mr. Hopper stated that the advertising has continued and that the industry needs some assurance that the Board is taking action against the false claims. He requested an update or report of what the Board is doing in regards to the orange oil advertising.

Mr. Heppler responded that ongoing or pending investigations cannot be discussed in open session.

Ms. Okuma stated that she could provide enforcement statistics including cease and desist orders, notices of violations, and citations and fines specific to false and misleading advertising but that it could be difficult to narrow that statistics down to orange oil cases.

Mr. Heppler responded that the matter will be considered for the next agenda.

#### **XVIII. SUMMARY OF ALL ACTIONS TAKEN BY THE STRUCTURAL PEST CONTROL BOARD AT THIS MEETING**

- The minutes of the July 18, 2008, meeting were approved.
- The issue of test holes was referred to the Technical Advisory Committee.
- Board procedures were amended and the Board noticed for public hearing an exemption from certain renewal requirements for persons serving in the armed forces.
- The Pre-Treatment Committee was directed to proceed and report to the Board at the January meeting.

- This issue of making CORI results public was directed to staff and the Board's legal counsel.
- The issue of the website listing former employees was directed to staff and the Board's legal counsel.
- The Board recommended Jack Launius for appointment to the Disciplinary Review Committee.
- The Board noticed for public hearing to amend CCR section 1984.
- The Board moved to release a 15 day modified text for CCR section 1950.
- Mr. Utley was elected as the Board's President.
- Mr. Arzate was elected as the Board's Vice President
- The next meeting was set for January 23, 2009, in Napa and the following meeting was set for April 16 and 17, 2009, in San Diego.

#### **XIX. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA**

John Sansone, Cardinal Professional Products, stated that the problem with false and misleading advertising still persists. He stated that back in the 1980's and 1990's, a group he was a part of petitioned the Board to listen to consumers in regards to the "blizzard" or freeze method and the false and misleading claims with that method. Ultimately, the Board made changes to CCR section 1991 to address the industry's concern with the freeze method. Mr. Sansone recommended that the Board learn from the past and he encouraged the Board to address the current false and misleading advertising that is occurring.

Scott Fries, Hydrex Pest Control, stated that the Board had sued his company for a million dollars. His company had used words "safe" and "environmentally friendly" in describing its treatment methods. The judge hearing the case reduced the amount to one hundred thousand dollars but stated that any product that kills pests should not be advertised as safe. Mr. Fries added that his company then changed its advertisements. He stated that the companies that are currently abiding by the law are at a disadvantage to those companies making false and misleading claims. He estimated that in the Los Angeles phone book, half the advertisements are in violation of the Board's rules and regulations. He suggested that Board specialists review phone books throughout the state.

Ms. Okuma stated that the Board issues citations and fines on phone book advertisements on a weekly basis. She added that if anyone in the industry comes across an advertisement that appears to be in violation, to send her a copy of the advertisement with a copy of the cover which shows the publication and publication date.

Mr. Good read from printouts from the website for the orange oil product XT-2000. He stated that under the header "hidden cost of fumigation" there is a warning sign as well as a fumigation danger sign. Under the "questions & answers" section the question asks if XT-2000 is a primary treatment. The answer states that a primary treatment is when the whole house is under warranty. Mr. Good stated that the website states that there are only three primary treatments for termites: fumigation, heat, and XT-2000. Mr. Good read from



the Board's 1996 fact sheet on termites which stated that are two whole-house methods for the eradication of termites: fumigation and heat. The fact sheet also defines local or spot treatments and states that they are not considered whole-house treatments. Mr. Good also stated that the XT-2000 website claims that with the borascope, all infestations can be identified. He added that consumers rely on honesty and integrity and it is the purpose of the Board to protect the consumers.

Ms. Okuma stated that XT 2000 is not a registered company and the Board cannot discipline them.

Mr. Whitmore stated that the information found on the XT-2000 website is often found on the websites for the companies who use orange oil and thus could be disciplined.

Dr. Michael Linford, Thermapure Heat, stated that he recently received a call from a distressed couple that had been led to believe that orange oil was as effective as fumigation or heat treatments.

Mr. Smitley suggested that Dr. Linford have the couple file a complaint with the Board. He stated that the Board has not received many complaints concerning orange oil.

Mr. Katz stated that the orange oil method has been getting the same complaints as the freeze method several years ago. He added that he respects the difficulty that the Board faces but that the false and misleading claims by the orange oil industry has been going on for a long time. Mr. Katz asked the Board to understand the industry's frustration. He stated that not disciplining the orange oil false claims is putting consumers at risk and is giving a black eye to the pest control industry and to the Board. He urged the Board to address the issue.

Stevan Moore, Moore's Quality Termite Company, stated that he has worked for a company that did fumigations and one that used the orange oil method. He said that when the company offered the orange oil method to consumers, it was sold correctly as a secondary, substandard treatment. Mr. Moore added that many consumers did not want to fumigate their home, even after being told that the orange oil could not treat the entire structure.

Mr. Whitmore stated that he does not believe the industry has a problem with the product as long as it is being advertised correctly. He added that the deceptive advertising is the problem.

Ms. Melton asked Mr. Whitmore if he has performed fumigations on homes that have been treated with orange oil by another company.

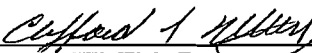
Mr. Whitmore stated that he is sure that he has but what he has found is that the orange oil companies will tell the consumers that any remaining infestations are new infestations and not a failure of the product.

**XX. CLOSED SESSION**

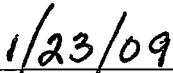
The Board adjourned to closed session to consider proposed disciplinary actions in accordance with subdivision (c)(3) of Section 11126 of the Government Code.

**XXI. ADJOURNMENT**

Mr. Sesay adjourned the meeting at 5:00 PM.

  
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CLIFF UTLEY, President

  
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KELLI OKUMA, Executive Officer

  
\_\_\_\_\_  
DATE