



REGULATORY AGENCY ACTION

develop work production standards the Board and the courts may use to determine whether a reporter is incompetent or delinquent. Ron Clifton now heads the Education Committee. Recently, firm owners were added to this committee to enable them to contribute their thoughts on appropriate curricula. This Committee will review the work already done regarding school curriculum and make additional recommendations to the Board.

FUTURE MEETINGS:

To be announced.

STRUCTURAL PEST CONTROL BOARD

Registrar: Mary Lynn Ferreira
(916) 924-2291

The Structural Pest Control Board (SPCB) is a seven-member board functioning within the Department of Consumer Affairs. The SPCB is comprised of four public and three industry representatives. SPCB's enabling statute is Business and Professions Code section 8500 *et seq.*; its regulations are codified in Chapter 19, Title 16 of the California Code of Regulations (CCR).

SPCB licenses structural pest control operators and their field representatives. Field representatives are allowed to work only for licensed operators and are limited to soliciting business for that operator. Each structural pest control firm is required to have at least one licensed operator, regardless of the number of branches the firm operates. A licensed field representative may also hold an operator's license.

Licenses are classified as: (1) Branch 1, Fumigation, the control of household and wood-destroying pests by fumigants (tenting); (2) Branch 2, General Pest, the control of general pests without fumigants; (3) Branch 3, Termite, the control of wood-destroying organisms with insecticides, but not with the use of fumigants, and including authority to perform structural repairs and corrections; and (4) Branch 4, Roof Restoration, the application of wood preservatives to roofs by roof restorers. Branch 4 was enacted by AB 1682 (Sher) (Chapter 1401, Statutes of 1989); licensing and regulation of individuals practicing in Branch 4 will commence after July 1, 1990. An operator may be licensed in all four branches, but will usually specialize in one branch and subcontract out to other firms.

SPCB also issues applicator certificates. These otherwise unlicensed indi-

viduals, employed by licensees, are required to take a written exam on pesticide equipment, formulation, application and label directions if they apply pesticides. Such certificates are not transferable from one company to another.

SPCB is comprised of four public and three industry members. Industry members are required to be licensed pest control operators and to have practiced in the field at least five years preceding their appointment. Public members may not be licensed operators. All Board members are appointed for four-year terms. The Governor appoints the three industry representatives and two of the public members. The Senate Rules Committee and the Speaker of the Assembly each appoint one of the remaining two public members.

MAJOR PROJECTS:

Corrective Measures Regulation. Section 8516(b)(9) of the Business and Professions Code requires that recommendations for corrective measures for a structure be set forth in a registered company's inspection report. SPCB's report requirements under section 8516(b)(9) are set forth in section 1991 of its regulations in Chapter 19, Title 16 of the CCR. Specifically, section 1991(a)(8) requires that the corrective measures must include extermination of all reported infestations of wood-destroying pests. If evidence indicates that an infestation of drywood termites or wood-boring beetles extends into an inaccessible area or wall, then the licensee must recommend whether to fumigate or to expose the infestation for local chemical treatment. "Exposing the infestation for local treatment" requires the SPCB licensee to remove all wall and floor materials to expose all of the infected timbers of the infestation.

During the summer of 1989, the Board proposed amendments to section 1991(a)(8) in order to resolve confusion among licensees as to when local treatment may be used instead of fumigation to eradicate wood-destroying pests. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 80 for background information.) Under SPCB's proposed amendment, localized treatment is an acceptable method only when the known infestation can be physically reached for hand-drill treatment with liquid, dust, or paste application of chemicals. The amendment would require fumigation of a structure when hand application of chemicals is impractical.

The Board is also considering other amendments to this section which would allow the use of new technologies in treating wood-infesting insects. These

new technologies include such methods as the heat process and the use of liquid nitrogen. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 72 and Vol. 9, No. 2 (Spring 1989) p. 76 for background information.)

Just prior to the Board's August 1989 hearing on its proposed amendment to section 1991(a)(8), Interested California Exterminators (ICE) submitted extensive comments. (See CRLR Vol. 9, No. 4 (Fall 1988) p. 80 for background information.) ICE stated that it supported the Board's proposed amendment, and noted that it would merely codify as a regulation the substance of SPCB's Specific Notice III-2-83, which—according to ICE—"has been the Board's well considered policy for over six years." However, ICE suggested some modifications to the Board's language. Specifically, under ICE's proposal, if there is evidence which indicates an infestation of drywood termites or wood-boring beetles in an inaccessible area, then a licensee shall make a *primary* recommendation either to fumigate, or to expose the infestation for local treatment. Under ICE's proposal, fumigation of the structures is the required primary recommendation when drywood termite infestation exists in areas inaccessible and impractical to expose for local treatment. If a primary recommendation is made to expose the infestation for local treatment, the inspection report must disclose that this localized treatment will not provide eradication of other drywood termite-infested areas, if any, and may not destroy the colony.

Regarding the use of liquid nitrogen (the "freezing method"), ICE proposed that, where a drywood termite infestation extends into an inaccessible area, a licensee would be permitted to make a *secondary* recommendation to inject liquid nitrogen into the space within walls, without exposing the infestation for treatment, providing it also makes an approved primary recommendation and complies with section 1992. Section 1992 of the CCR allows a licensee to suggest secondary recommendations on an inspection report; however, the report must include a full explanation of secondary methods of pest eradication which are needed and must include a statement that such methods are "below standard" measures. ICE also proposed that section 1991(a)(8) be modified to allow the freezing method as a *primary* recommendation only where all of the infected timbers are exposed for local treatment. Such treatment involves wrapping infected timbers with an insulating blanket and injecting liquid nitrogen behind the blanket.



On January 16, 1990, Tallon Termite and Pest Control, Inc. (Tallon) also proposed an amendment to section 1991(a)(8). Tallon utilizes the "Blizzard System" to eradicate drywood termites. The Blizzard System involves the use of liquid nitrogen, a nontoxic, inert substance, to freeze and kill termites. The Blizzard System requires no tenting or evacuation of structures in order to eradicate pests. The Blizzard System is registered by the U.S. Environmental Protection Agency (EPA) and the California Department of Food and Agriculture (CDFA), and is also regulated by SPCB pursuant to the provisions of the Structural Pest Control Act.

Referring to ICE as "the fumigators," Tallon charged that ICE is a "biased group of individuals and companies who seek to enact legislation favoring fumigation and disadvantageous to its competitors." Tallon claimed that the freezing method is "an environmentally preferable alternative of eradicating pests because there is no need to tent, evacuate, use toxic, carcinogenic chemical compounds or toxic gasses [sic], or fumigate an entire location." In a footnote, Tallon noted that "methyl bromide, a fumigant, has been considered carcinogenic by the Netherlands National Institute of Public Health."

After characterizing ICE's proposal to "prohibit the primary recommendation of liquid nitrogen by SPCB licensees" as "a blatant anticompetitive attempt to regulate the Blizzard System out of business," Tallon argued that section 1991(a)(8) only applies to situations where termites extend into an inaccessible wall or area. Tallon asserted that the Blizzard System makes termites accessible due to the use of fiber optic scopes; therefore, neither the proposed change to 1991(a)(8) nor the regulation as currently drafted is applicable to the Blizzard System. The scopes are used to view evidence of termites or termite pellets; when the termites are detected, they are eradicated by freezing.

Tallon opined that there is no need to change the existing regulation. Tallon also objected to ICE's characterization of liquid nitrogen as a "localized treatment," because (according to Tallon) the entire colony is eliminated; and contested ICE's proposal to make liquid nitrogen a secondary recommendation subject to section 1992 and its "below standard" admonition. However, in the event the Board should decide to amend section 1991(a)(8), Tallon recommended that the term "inaccessible" be defined to mean when termites or termite pellets cannot reasonably be detected by a licensed inspector. Tallon also proposed

to eliminate all language which distinguishes between the use of localized treatment and fumigation. Tallon maintains that it is inappropriate to mandate that only fumigation may be a primary recommendation under section 1991(a)(8), when other technologies—such as liquid nitrogen—are available for termite eradication.

On February 9, SPCB held a special meeting to address the proposed changes to section 1991(a)(8). Comments by industry members indicated a desire to specifically include wood-boring beetles within the meaning of the subsection. An attorney for Tallon Industry expressed concern that the proposed regulatory changes do not contain a definition of "inaccessible", and urged the Board not to inadvertently favor one method of control (fumigation) over others (liquid nitrogen). No final decision as to the proposed amendments was made at this meeting. Instead, the Board moved to establish a committee of Board members to review section 1991(a)(8) and draft additional proposals if necessary. SPCB President Irene Fabrikant suggested that anyone wishing to submit input on this matter do so in writing by March 1.

On February 10, the Board continued its discussion on the Blizzard System. Although the Blizzard System is registered by both EPA and CDFA, some members of the Board have expressed concern about the use of liquid nitrogen as a method of eradicating drywood termites and other wood-destroying pests. Nitrogen is odorless and colorless, but may cause suffocation by diluting the concentration of oxygen in air below levels necessary to support life. Concerns focus on whether liquid nitrogen is a safe alternative to chemical fumigants, and whether this substance should be classified as a fumigant under Article 1, section 8505.1 of the Business and Professions Code. In the latter part of 1989, the Board forwarded a list of its concerns to Tallon; Tallon responded in December 1989. At the February 10 meeting, Registrar Mary Lynn Ferreira reported that she would compile a packet of all information received on the Blizzard System, and distribute it to Board members and all interested public members in time for an informational hearing on the issue scheduled for May 3 in Orange County. Deputy Registrar Maureen Sharp then reported that a graduate student in the Environmental Department at UC Davis was willing to assess data regarding the Blizzard System for the Board, including the informational packet mentioned above.

At the May 3 hearing, a number of people expressed their thoughts about the Blizzard System. Three consumers, occupants of the same apartment unit, voiced their dissatisfaction with Tallon. The consumers stated that Tallon had used the Blizzard System two years ago to eradicate pests in their apartments, but the apartments are still infested. The Board also received a telegram from a consumer who favored the Blizzard System and spoke very highly of it. Another consumer favored its use as a safe alternative to chemical fumigants.

At the hearing, a number of industry members expressed their reservations about the use of liquid nitrogen. In addition, letters addressed to the Board from various industry members received prior to the hearing articulated doubts as to the safety and effectiveness of liquid nitrogen. One industry member wrote that it is not unusual for Tallon to rely on fumigation if it is unsuccessful in eradicating pests with liquid nitrogen. Another argued that liquid nitrogen is a substance which meets the definition of a fumigant under Business and Professions Code section 8505.1, and should therefore be added to the list of fumigants and regulated as such. Another member claimed that the Blizzard System is only a method of "spot" fumigation and is therefore inadequate to remove pests from an entire structure. Representatives from Tallon responded to all these concerns and defended the use of liquid nitrogen as a safe and effective alternative to fumigation. Tallon reiterated its belief that liquid nitrogen should not be classified as a fumigant because the term "fumigant" is intended to apply only to toxic chemical compounds, and liquid nitrogen is a nontoxic inert substance.

At the May 3 meeting, Mary P. Ferguson, the consultant retained by the Board in April to review the data and comments regarding liquid nitrogen, presented her conclusions and recommended several options for SPCB consideration. One option is to add liquid nitrogen to the current list of lethal fumigants, since—in her opinion—it clearly meets the definition of a fumigant. Ferguson further stated that should the Board decide to adopt this option, new safety regulations for the use of liquid nitrogen should also be adopted. The fumigation safety requirements described in sections 8505.6, 8505.7, and 8505.8 of the Business and Professions Code could create a hazardous environment for workers using liquid nitrogen, as these standards are not exactly applicable to liquid nitrogen. For example, the present regulations



require the tenting of structures for fumigation. When liquid nitrogen is used, however, the areas should not be tented and ventilation should be required.

The second option Ferguson discussed was a revision of the current regulations by reclassifying the existing list of fumigants as either toxic fumigants or simple asphyxiants. Each classification would have separate regulations for safety precautions, licensing, and supervision. A third possible option is that the Board take no action at this time, and let CDFA determine and address any problems presented by the use of liquid nitrogen. (On March 1, CDFA had announced its intention to reevaluate the Blizzard System.) The Board took all the comments from both the public and the consultant under submission, and was scheduled to hold a special meeting on July 11 to further discuss this issue.

Fee Increases. On February 10, the Board held a public hearing on a proposal to amend sections 1948 and 1997 of its rules, relative to fees. In 1988, SPCB's reserve fund equalled its operating budget for the next three fiscal years. By law, the Board may not have reserves in an amount which equals or exceeds the operating budget for the next two fiscal years. Thus, the Board adopted a regulation change which reduced renewal fees to zero for three years and reduced all other fees set by regulation to zero for one year. This regulation became effective in September 1988.

The Department of Consumer Affairs (DCA) recently prepared a fund condition analysis which indicated that SPCB will have a 21-month reserve at the end of the 1989-90 fiscal year. The Board is required by law to begin charging revenue fees to ensure a twelve-month reserve fund at the end of the 1990-91 fiscal year.

Thus, the Board proposed to increase licensing fees effective July 1, 1990 for numerous items, including duplicate licenses, change of branch office address, change of bond or insurance, inspection report filing, and application examination. The Board adopted the fee increases.

However, subsequent to the approval of these changes, staff discovered that the implementation date of July 1, 1990 for some of the fee increases had been inadvertently omitted from the final proposal. The Board mailed a notice of modification to correct the omissions. At this writing, these regulatory changes still await review and approval by the Office of Administrative Law (OAL).

Secondary Recommendations. On May 4, SPCB held a public hearing to

discuss a proposal to amend section 1992 of its rules. Section 1992 currently allows a structural pest control company to suggest secondary recommendations when inspecting a structure, provided the company informs the homeowner/agent that the recommendations are a below-standard measure of treatment or repairs. However, when a consumer purchases a structure which has been inspected and treated with secondary (substandard) measures, and problems or questions arise regarding the treatment used, the completion documents do not specifically state that a secondary treatment was conducted. The proposed amendment would require the name of the person or agent who requested or authorized the completion of secondary treatment to be included on any billing or completion document, to ensure that all interested persons are aware of the individual or company who requested a secondary treatment in lieu of a primary treatment. Following the hearing, the Board adopted the proposed amendment with one minor modification, which was published for a fifteen-day comment period on May 25. At this writing, the rulemaking record is being prepared for submission to OAL.

Notification to Occupants. Also on May 4, the Board held a public hearing to discuss a proposed amendment to regulatory section 1970.4(a). Section 8538 of the Business and Professions Code states that when pest control work is to be performed on a multiple-family dwelling, the tenants must receive notification of such work. When a multiple-family dwelling of more than four units is being fumigated, the primary contractor and any subcontractor must have in his/her possession a notification verification form signed by the owner, manager, or designated agent. It is the responsibility of the owner, manager, or agent to notify the occupants.

However, the Board was concerned that the tenants of multiple-family dwellings are not being notified of the treatment. Thus, the amendment to section 1970.4(a) would state that a registered company shall not commence any work on a fumigation until the primary contractor and any subcontractor have received a certification from the owner, manager, or agent of a structure that all occupants had been fully notified of the treatment, including information on specified aspects of the treatment. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 96 for background information.)

After listening to comments made during the public hearing, the Board decided not to adopt the proposal. Industry members expressed concerns

regarding the difficulty of contacting all occupants prior to a treatment, and claimed that the proposed requirement would delay the fumigation procedure. The Board opined that the current procedure seems to be satisfactory and has not produced numerous complaints. The Board therefore decided not to adopt this specific amendment to section 1970.4(a). Section 1970.4(a) will therefore continue to require that the owner, manager, or agent of a multiple-family dwelling verify to the primary fumigation contractor that all occupants have been notified.

In a related matter, on March 15 the Board submitted to OAL other amendments to section 1970.4(a). These amendments focus on the contents of the form to be signed by the designated agent or owner. The form must state the name of the pest(s) to be controlled, the pesticide(s)/fumigant(s) to be used, the active ingredient, and the health cautionary statement required by section 8538 of the Business and Professions Code. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 80 and Vol. 9, No. 2 (spring 1989) pp. 75-76 for background information.) OAL approved these amendments on April 13.

Establishment of Research Grant Advisory Panel. Section 8674 of the Business and Professions Code lists the schedule of fees to be charged for examinations, registration, and licensing. Section 8674(s) mandates that certain fees be deposited into the Structural Pest Control Research Fund; the monies from this fund are to be appropriated only for structural pest control research.

Section 8674(s) also authorizes the Board to establish, by regulation, a five-member research advisory panel to solicit and review research proposals. At its May 4 meeting, the Board voted to create an advisory research panel consisting of one SPCB representative, two representatives from the structural pest control industry, one representative from CDFA, and one representative from the University of California. The advisory committee will recommend grant proposals to the Board; the Board will then distribute funds to qualified applicants, pursuant to the panel's recommendation, upon a two-thirds vote. This proposal, which involves the adoption of proposed regulatory section 1919, was scheduled for a public hearing in July.

Inspection Form. At its October 1989 meeting, SPCB adopted a new inspection report format and amendment to section 1996(a) of its regulations. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 96 for background information.) At its May 4 meeting, the Board voted to



delay the effective date of the new inspection report form. The rulemaking file had not yet been submitted to OAL; however, once submitted and approved, SPCB will amend the rulemaking file to take effect one year after OAL approval. The Board will have to resubmit the file to OAL for approval of the extended date. The extension will allow industry members sufficient time to update their equipment to accommodate the revised form and to deplete their supply of the old forms.

Other Board Rulemaking. On April 12, OAL approved the Board's adoption of section 1970.5, to define the term "the time aeration is commenced" in order to reduce confusion among licensees as to the meaning of this term. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 80 for background information.)

On March 19, SPCB released modifications to the proposed language of new section 1990(c), which specifies when a wood patio, deck, or similar structure should be inspected. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 80-81 for background information.) The new language, which is now awaiting review by OAL, reads as follows: "If a wood deck, wood patio or other similar structure touches or connects with the structure being inspected, it must also be inspected and reported or stated as not inspected in a 'limited report.' If a deck, patio or other structure does not touch, attach to or connect with the structure, it may be excluded from the scope of the inspection. The attachment, touching, or connection acts as a triggering device for requiring inspections. Separation from the main structure by stucco, metal flashing or other common barriers does not remove it from being considered part of the structure with regard to inspection."

LEGISLATION:

AB 4050 (Sher), as amended June 12, would require the registration of a pest control device, as defined, with the CDFA Director before the device may be used or offered for sale in California. The bill would authorize the Director to establish standards and tests and a fee for registration of a device, and authorize the Director to refuse to register or to revoke a registration under specified circumstances. The bill would also make it unlawful to manufacture, deliver, distribute, sell, possess, or use any device which is not registered. This bill is pending in the Senate business and Professions Committee.

RECENT MEETINGS:

At SPCB's February 9-10 meeting, staff reported that they are making

progress with Branch 4 developments. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 96 for background information.) Staff are currently in the process of identifying roof restoration companies and individuals affected by this new law. On March 1, SPCB published notices in various newspapers in order to specify the Board's role in the Branch 4 license; notice of the new branch was also placed in the Contractor's Registry. The contract for examination development will be in place by June 1. Staff are also revising the Board's current forms in order to include Branch 4. UC Berkeley intends to develop a correspondence course on Branch 4 fumigation.

At SPCB's May 4 meeting, the Health and Safety Committee presented the results of a survey conducted by CDFA. The present practice in the pesticide industry is to place chloropicrin, a nontoxic substance much like tear gas, inside a structure which is being fumigated in order to deter persons from entering the structure. CDFA has proposed that the chloropicrin be injected between the tarp covering the structure and the structure itself, such that individuals would be completely deterred from breaking into the structure. The Health and Safety Committee intends to propose regulations on this issue for the Board's review.

FUTURE MEETINGS:

October 24 in San Diego.

TAX PREPARER PROGRAM

Administrator: Don Procida
(916) 324-4977

Enacted in 1973, abolished in 1982, and reenacted by SB 1453 (Presley) effective January 31, 1983, the Tax Preparer Program registers approximately 19,000 commercial tax preparers and 6,000 tax interviewers in California, pursuant to Business and Professions Code section 9891 *et seq.* The Program's regulations are codified in Chapter 32, Title 16 of the California Code of Regulations (CCR).

Registrants must be at least eighteen years old, have a high school diploma or pass an equivalency exam, have completed sixty hours of instruction in basic personal income tax law, theory and practice within the previous eighteen months, or have at least two years' experience equivalent to that instruction. Twenty hours of continuing education are required each year.

Prior to registration, tax preparers must deposit a bond or cash in the

amount of \$2,000 with the Department of Consumer Affairs.

Members of the State Bar of California, accountants regulated by the state or federal government, and those authorized to practice before the Internal Revenue Service are exempt from registration.

An Administrator, appointed by the Governor and confirmed by the Senate, enforces the provisions of the Tax Preparer Act. He/she is assisted by a nine-member State Preparer Advisory Committee which consists of three registrants, three persons exempt from registration, and three public members. All members are appointed to four-year terms.

LEGISLATION:

AB 3242 (Lancaster), as amended May 15, is the Department of Consumer Affairs' omnibus bill. The bill would prohibit the use of experience gained in violation of the Tax Preparer Act towards a tax preparer's or tax interviewer's registration requirements; change the existing two-year registration renewal system to an annual renewal requirement of registration for tax preparers and tax interviewers; and provide that a tax preparer who does not renew his/her registration within three years of its expiration must obtain a new registration. This bill is pending in the Senate Business and Professions Committee.

RECENT MEETINGS:

The Advisory Board has not met since December 13, 1988.

FUTURE MEETINGS:

To be announced.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

Executive Officer: Gary K. Hill
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Pursuant to Business and Professions Code section 4800 *et seq.*, the Board of Examiners in Veterinary Medicine (BEVM) licenses all veterinarians, veterinary hospitals, animal health facilities, and animal health technicians (AHTs). Effective May 1990, the Board will evaluate applicants for veterinary licenses through three written examinations: the National Board Examination, the Clinical Competency Test, and the California Practical Examination.

The Board determines through its regulatory power the degree of discretion that veterinarians, AHTs, and