



# REGULATORY AGENCY ACTION

ize in one branch and subcontract out to other firms.

SPCB also issues applicator certificates. These otherwise unlicensed individuals, 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.

On April 11, Assembly Speaker Willie Brown appointed Republican Wayne Grisham of Norwalk to the SPCB. Mr. Grisham was previously the mayor of La Mirada and is a former member of the California Assembly and the U.S. House of Representatives.

## MAJOR PROJECTS:

*Fee Reduction Regulations Rejected.* Following a February 25 public hearing, the Board voted to repeal sections 1948 and 1997, Chapter 19, Title 16 of the California Code of Regulations (CCR). The two sections set forth all of the Board's various filing, licensure, and application fees. Due to a surplus, fees are currently unnecessary. Because it finds "the process of raising and lowering fees by regulation [to be] a lengthy and cumbersome process," the Board decided to discontinue setting its fees by regulation and instead set future fees, when necessary, by majority resolution of the Board, subject to the approval of the Director of the Department of Consumer Affairs. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 65 for background information.)

On June 7, the Office of Administrative Law (OAL) rejected the Board's repeal of the fee regulations, on grounds that the regulatory action failed to meet the necessity and consistency standards of Government Code section 11349.1. OAL rejected the Board's proposal to set fees by resolution, finding that "the setting of a fee or amending the fee amount by a state agency constitutes the issuance of a regulation subject to the procedural rulemaking requirements of the [Administrative Procedure Act] and subject to review by OAL."

*Other Board Rulemaking.* OAL has also ruled on other SPCB rulemaking action taken on February 25. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 64-65 for background information.) In June, OAL approved the Board's amendment of section 1937, Chapter 19, Title 16 of the CCR, to require that any qualifying manager or designated licensed operator certifying the training, experience, and employment of an applicant for licensure be licensed in the branch(es) for which he/she is certifying experience. OAL also

approved the adoption of new section 1918, which defines the term "supervision" for purposes of required supervision by qualifying managers and branch supervisors over a structural pest control company's employees.

However, OAL rejected the Board's adoption of new section 1954, which would set forth criteria for SPCB approval and revocation of approval of courses required to be completed by applicants for a Branch 1, 2, or 3 operator's license. According to OAL, the language of the new section failed to comply with the necessity, clarity, and consistency standards of Government Code section 11349.1.

## LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 76:

*AB 908 (Killea)*, which would require passage of a written examination every three years as a condition of license renewal for structural pest control operators, passed the Assembly on June 1 and is pending in the Senate Business and Professions Committee.

*AB 2342 (Kelley)* was substantially amended on May 8. This bill would prohibit a registered structural pest control company from commencing any work on a contract, or signing, issuing, or delivering documents expressing an opinion or statement relating to the control of pests or organisms until an inspection has been made. Violation of this provision would be a misdemeanor. AB 2342 would also provide that unlicensed employees of a structural pest control company may quote prices in response to a request for a price quotation. This bill is pending in the Assembly Ways and Means Committee at this writing.

*AB 1682 (Sher)* was amended on June 8. It would authorize licensed contractors to apply wood preservatives after making a specified disclosure to the customer; and would create a new branch of pest control practice—Branch 4 (Roof Restoration). AB 1682 has passed the Assembly and is pending in the Senate Business and Professions Committee at this writing.

*AB 1443 (Hauser)*, regarding disclosure requirements by an individual who inspects property before a structural pest control operator begins work, when the inspection is required as a condition of making a loan, failed passage in the Assembly Committee on Governmental Efficiency and Consumer Protection on May 10.

*AB 459 (Frizzelle)*, which would enable Board licensees who have allowed their licenses to expire to renew those licenses at any time, regardless of length of delinquency and without reexamination requirement, is a two-year bill pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

## RECENT MEETINGS:

At its May 19 meeting, SPCB continued its discussion of a proposal to list liquid nitrogen as a fumigant. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 76 for background information.) In order to gain further information on this issue, the Board discussed the possibility of holding two informational hearings—one for the public and one to obtain expert testimony—prior to formally noticing its rulemaking proposal. However, the Board decided to instead direct staff to gather further information and work with Tallon Pest Control, the proponents of the proposal, in researching the various issues related to the use of liquid nitrogen as a fumigant.

Also at the May 19 meeting, the Board's Inspection Report Review Committee reported on its progress in revamping SPCB's Structural Pest Control Inspection Report form, in compliance with AB 4274 (Bane) (Chapter 1184, Statutes of 1988). (See CRLR Vol. 9, No. 1 (Winter 1989) p. 65 for background information.)

## FUTURE MEETINGS:

To be announced.

## 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 commercial tax preparers and tax interviewers in California.

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 861 (Jones).** Existing law provides that registrations of tax preparers and tax interviewers are to be renewed on an annual basis. This bill would provide for a staggered birthdate renewal program on a two-year basis for those persons and would make related changes. This bill passed the Assembly on June 7 and is pending in the Senate Business and Professions Committee.

## FUTURE MEETINGS:

To be announced.

## BOARD OF EXAMINERS IN VETERINARY MEDICINE

*Executive Officer: Gary K. Hill (916) 920-7662*

The Board of Examiners in Veterinary Medicine (BEVM) licenses all veterinarians, veterinary hospitals, animal health facilities, and animal health technicians (AHTs). All applicants for veterinary licenses are evaluated through a written and practical examination. The Board determines through its regulatory power the degree of discretion that veterinarians, animal health technicians, and unregistered assistants have in administering animal health care. All veterinary medical, surgical, and dental facilities must be registered with the Board and must conform to minimum standards. These facilities may be inspected at any time, and their registration is subject to revocation or suspension if, following a proper hearing, a facility is deemed to have fallen short of these standards.

The Board is comprised of six members, including two public members. The Animal Health Technician Examining Committee consists of three licensed veterinarians, one of whom must be involved

in AHT education, three public members and one AHT.

## MAJOR PROJECTS:

*Department of Consumer Affairs Rejects Teeth Cleaning Regulations.* On March 22, the Director of the Department of Consumer Affairs (DCA) rejected BEVM's proposed section 2037, Chapter 20, Title 16 of the California Code of Regulations (CCR). This proposed section would have clarified the term "dental operation" to include the use or application of any instruments or devices to any portion of an animal's teeth or gums for specified purposes, including preventive dental procedures such as the removal of tartar or plaque from an animal's teeth. This section would have allowed dental operations to be performed only by a licensed veterinarian or veterinarian-supervised AHT. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 66; Vol. 8, No. 4 (Fall 1988) pp. 75-76; Vol. 8, No. 3 (Summer 1988) pp. 81-82; and Vol. 8, No. 2 (Spring 1988) p. 79 for detailed background information.)

BEVM's stated purpose for adopting section 2037 was to assure the public that only formally trained and licensed individuals would be performing this service. However, DCA Director Michael Kelley was persuaded that the purpose of the regulation is solely for the public's benefit. In his March 22 letter, Kelley stated that "the adoption of this regulation will operate to preclude the public from being able to obtain a legitimate service at an affordable cost...it seems quite clear that the motivation is, at least in part, a matter of economics."

The Director's rejection of section 2037 does not end the teeth cleaning controversy. The Board is free to initiate a new rulemaking proceeding; alternatively, it may choose to sponsor clarifying legislation. Although it is still considering various options, the Board has long considered animal teeth cleaning to be within the parameters of Business and Professions Code section 4826, which defines the practice of veterinary medicine. In fact, BEVM claims that this statute authorizes it to prohibit unlicensed teeth cleaning activity without adopting any implementing regulations. To this end, the Board has issued several cease and desist letters to non-vets performing this service.

BEVM's letters have been challenged by Stephen Arian of Larkspur, who has requested a regulatory determination by the Office of Administrative Law (OAL). Arian's request alleges that the Board's letters are an attempt to enforce an im-

proper "underground regulation" prohibiting nonlicensed individuals from engaging in teeth cleaning, and that such attempt exceeds the Board's authority and violates the Administrative Procedure Act. OAL is currently reviewing the request and was scheduled to issue a determination by July 12.

Additionally, the Attorney General's Office is also preparing a formal opinion on the issue at the request of Senator Cecil Green. Opinion 89-504 will address the question whether "the application of a dental instrument, hand scaler, ultrasonic device, or motorized polisher, for the removal of calculus, soft deposits, plaque, tartar, stains, or the matter above or below the gumline in the mouths of dogs or cats, or other smoothing, filing or polishing of the tooth surfaces of dogs or cats, constitute the practice of veterinary medicine, surgery, or dentistry."

*OAL Rejects Permit Reform Act Regulations.* Following an October 1988 regulatory hearing, the Board adopted at its January 1989 meeting new sections 2017 and 2018, Chapter 20, Title 16 of the CCR, to set licensure and examination application processing deadlines in compliance with the Permit Reform Act of 1981. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 67 for background information.) On March 20, OAL rejected the proposed regulations on grounds that they failed to satisfy the clarity standard of Government Code section 11349.1, and that they were internally inconsistent.

On April 5, BEVM released its modified versions of the two sections, and accepted public comments until May 3. The Board adopted the provisions as modified at its May 5 meeting. At this writing, OAL is reviewing the modified regulations.

*Other Regulatory Action.* At its March meeting, the Board held a public hearing on several other proposed changes. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 77 for background information.) Following the hearing, BEVM adopted the changes subject to minor modifications, which it released for an additional public comment period ending on May 3. The Board adopted the changes as modified at its May 5 meeting.

The Board amended section 2014, Chapter 20, Title 16 of the CCR, to provide that its written examination consists of two parts, and that an applicant for licensure must pass both parts in order to pass the written exam. Applicants must also achieve a passing grade on the practical examination in order to qualify for licensure.