

PEST CONTROL BOARD
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF THE MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by § 92-7(b), Hawaii Revised Statutes (“HRS”)

Date: February 2, 2022

Time: 2:00 p.m.

Place: Virtual Videoconference Meeting – Zoom Webinar
(use link below)
<https://dcca-hawaii-gov.zoom.us/j/91067019415>

Present: Jonathan Montalbo, Industry Member, Chair
David Lau, Industry Member, Vice Chair
William Lee, Industry Member
Julian Yates, Ph.D., Public Member
Scott Ai, Public Member
John Speed, Industry Member
Jia-Wei Tay, Ph.D., Department of Plant & Environmental Protection Sciences, Ex-Officio
Gracelda Simmons, Department of Health, Ex-Officio
Greg Takeshima, Department of Agriculture, Ex-Officio
Lei Ana Green, Executive Officer
Christopher Leong, Esq., Deputy Attorney General (“DAG”)
Susan Reyes, Secretary
Rochelle Araki, Executive Officer (Technical Support)

Member(s)
Excused: None.

Guest(s): James
Patrick Nunnari
Steve Russo
Tim Lyons – Hawaii Pest Control Association
Cameron Higgins
KT

Agenda: The agenda for this hearing was filed with the Office of the Lieutenant Governor as required by § 92-7(b), Hawaii Revised Statutes (“HRS”).

Call to Order: A brief video was played that explained meeting procedures and information on how members of the public can participate during the meeting.

There being quorum, Chair Montalbo called the meeting to order at 2:09 p.m. He provided information on how members of the public can participate during the meeting.

Chair Montalbo asked if there were any amendments to the agenda.

Mr. Takeshima moved to amend the agenda to add HB3214, Relating To Pest Control to item 7.b., 2022 Legislative Session, which was seconded by Mr. Lee, and unanimously carried to add to the agenda.

Approval of
Minutes:

It was moved by Mr. Lee, seconded by Dr. Yates, and unanimously carried to approve the minutes of the November 22, 2021 meeting, with the following correction as follows:

- Page 4, under Old Business (a) (i), the first line should read as follows:

“DAG Leong said **that** he had signed the document..”

Executive
Officer's Report:

- a. Examination Report

**PROMETRIC
HAWAII PEST CONTROL EXAMINATIONS
EXAMINATIONS ADMINISTERED October 2021**

EXAM	ADMINISTERED				
	NO. EXAMS	NO. FAIL	NO. PASS	% FAIL	%PASS
PART 1	3	1	2	34%	66%
FIELD REP BR 1	1	1	0	100%	0%
FIELD REP BR 2	5	2	3	40%	60%
FIELD REP BR 3	5	4	1	80%	20%
OPERATOR BR 1	1	0	1	0%	100%
OPERATOR BR 2	2	1	1	50%	50%
OPERATOR BR 3	0	0	0	0%	0%
TOTAL NO. EXAMS ADMINISTERED				17	
TOTAL NO. EXAMS PASSED				8	
TOTAL NO. EXAMS FAILED				9	
TOTAL PERCENT PASSED				47%	
TOTAL PERCENT FAILED				53%	

**PROMETRIC
 HAWAII PEST CONTROL EXAMINATIONS
 EXAMINATIONS ADMINISTERED December 2021**

<u>EXAM</u>	<u>ADMINISTERED</u>				
	<u>NO. EXAMS</u>	<u>NO. FAIL</u>	<u>NO. PASS</u>	<u>% FAIL</u>	<u>%PASS</u>
PART 1	3	1	2	33%	67%
FIELD REP BR 1	0	0	0	0%	0%
FIELD REP BR 2	3	2	1	34%	66%
FIELD REP BR 3	3	2	1	66%	34%
OPERATOR BR 1	0	0	0	0%	0%
OPERATOR BR 2	0	0	0	0%	0%
OPERATOR BR 3	0	0	0	0%	0%
TOTAL NO. EXAMS ADMINISTERED				9	
TOTAL NO. EXAMS PASSED				6	
TOTAL NO. EXAMS FAILED				4	
TOTAL PERCENT PASSED				44%	
TOTAL PERCENT FAILED				56%	

Applications: Chair Montalbo asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which there were none.

a. Pest Control Operator (“PCO”)

	Applicant	Branch(es)	Board Determination
(i)	Termite Express, LLC James Smith (PCO-1558 / BR-1; Reactivate)	1	Approved

b. Pest Control Field Representative (“PCFR”)

	Applicant	Branch(es)	Board Determination
(i)	Kylene Albao Additional Class The Terminix International Company, LP (PCO-618 / BR-1, 2, 3)	3	Approved
(ii)	Sharina Fausi Kilauea Pest Control, Inc. (PCO-954 / BR-2, 3)	3	Approved

(iii)	James Fitzgerald Kilauea Pest Control, Inc. (PCO-954 / BR-2, 3)	2	Approved
(iv)	Micah Gibson Kilauea Pest Control, Inc. (PCO-954 / BR-2, 3)	3	Approved
(v)	Keoki Gionson Kilauea Pest Control, Inc. (PCO-954 / BR-2, 3)	3	Approved pending additional documentation
(vi)	Christopher James The Terminix International Company, LP (PCO-618 / BR-1, 2, 3)	2, 3	Approved

c. Reactivation(s)

	Applicant	License	Branch(es)	Board Determination
(i)	James Smith (PCO-1558 / BR-1) Termite Express, LLC (New)	PCO	1	Approved

It was motioned by Vice Chair Lau, seconded by Mr. Ai, and unanimously carried to approve applications and reactivation applications as reflected above, with Mr. Speed recusing himself from the applications of Sharina Faausi, James Fitzgerald, Micah Gibson, and Keoki Gionson.

Old Business:

Chair Montalbo asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which there were none.

a. Rule Revisions

i. Process Update

Chair Montalbo stated that it has been sent to the Governor for approval.

b. Updating licensure exam questions

i. Fumigation questions and calculator

Chair Montalbo stated that the Board is still waiting to hear back from Prometric regarding the exam revisions.

Scope:

Chair Montalbo asked if there are any members of the public who would like to provide oral testimony on this agenda item.

Tim Lyons, of the Hawaii Pest Control Association, was present and informed the Board that a member of the Association was investigated by the Regulated Industries and Complaints Office ("RICO") and was issued a warning. He stated that these questions are from members of the Association in response to an advisory that was put out amongst its members.

a. An e-mail received from Tim Lyons, of the Hawaii Pest Control Association, requests the Pest Control Board address the following questions:

- 1) "Can the Board please elaborate on what "secure pest control work" means? This comes from the Hawaii Administrative Rules 16-94-3 which is the definition of a Pest control Field representative. The rule talks about a PCFR is one that secures pest control work. What does "secure" mean?"

Ms. Green stated that the meaning of "secure" in this context would be the same as that in Hawaii Revised Statutes ("HRS") section 460J-23, which states, "A pest control operator may secure pest control work, identify infestations or infections, make inspections, and submit bids or otherwise contract for pest control work. A pest control operator may hire or employ individuals who are not licensed under this chapter to perform work on contracts."

After discussion, it was the consensus of the Board that, in this context, "secure" means to offer to undertake or practice or holds oneself out as being able to undertake or practice pest control work as defined by HRS section 460J-1.

- 2) "Does an individual who only does applications (no sales, no insect identification, no signing contracts) have to have a Pest control Field Representative license?"

Ms. Green referred the Board to HRS section 460J-1, where pest control is defined. In order to perform what is defined as pest control work, an individual must be licensed.

As stated in HRS section 460J-23, “a pest control operator may hire or employ individuals who are not licensed under this chapter to perform work on contracts”.

After discussion, it was the consensus of the Board that an individual hired or employed by a pest control operator, who performs applications that were contracted by the pest control operator, does not need to be a licensed PCFR or PCO.

- 3) “(See 2 above). Does someone who does only routine maintenance agreement applications have to be licensed?”

Ms. Green stated that, as with the previous question and answer, if an individual is performing pest control work as defined by the HRS section 460J-1, then a license is required. However, pursuant to HRS section 460J-23, “a pest control operator may hire or employ individuals who are not licensed under this chapter to perform work on contracts”.

It was the consensus of the Board that an individual hired or employed by a pest control operator, who performs routine maintenance agreement applications that were contracted by the pest control operator, does not need to be a licensed PCFR or PCO.

- 4) “Regarding 460-19 on termite control contracts, is a PC-9 required prior to preconstruction treatments even if there is no structure? Is a pretreat considered a termite control action that falls under 460J-19?”

Ms. Green stated that in its June 23, 2003 meeting, the Board determined that a BR-1 or BR-3 are required to perform a Termite Inspection Report (“TIR”, also known as a PC-9 form), and she noted that the TIR asks for evidence of drywood and/or subterranean termites. In addition, HRS section 460J-19(b) states in relevant part that “no licensee shall commence work on a contract for the control of termites until an inspection has been made and a written inspection report and a written estimate have been approved by the person requesting the work; provided that

no written inspection report shall be required in the event that a live infestation exists.”

After discussion, it was the consensus of the Board that a TIR/PC-9 form is required in order to commence work on a contract for the control of termites, which includes pretreatment prior to construction.

- 5) “Is a PC-9 required prior to installing Sentricon?”

Ms. Green stated that as Sentricon is for the treatment of termites, the TIR is required.

It was the consensus of the Board that a TIR/PC-9 form is required in order to commence work on a contract for the control of termites, which includes Sentricon.

- 6) “Is a PC-9 required prior to doing a spot treatment without seeing live termites?”

Ms. Green stated that if a treatment is for termites, the TIR/PC-9 form is required.

It was the consensus of the Board that a TIR/PC-9 form is required in order to commence work on a contract for the control of termites, which includes spot treatment for termites.

- 7) “Where does it say that a written contract is required for general pest control?”

Ms. Green stated that she understands it is an industry best practice to have a written contract for general pest control work and noted various sections of HRS chapter 460J and Hawaii Administrative Rules (“HAR”) chapter 16-94 that refer to contracts, subcontracting, and pest control operators as contractors. However, neither HRS chapter 460J nor HAR chapter 16-94 state that a written contract is required for general pest control.

After discussion, it was the consensus of the Board that neither HRS chapter 460J nor HAR chapter 16-94 state that a written contract is required for general pest control.

- 8) “460J-19b calls for a “written inspection report” (PC-9) and a “written estimate” that are subject to approval. Note: We know of no place on the PC-9 where the person ordering

the work must approve the PC-9. So perhaps this is not worded correctly.”

Ms. Green stated that there doesn't appear to be a question here but, in reviewing everything, there does not appear to be a field on the form for someone sign it for approval. If the person who requested the work signs a contract based on that report and the accompanying written estimate, then perhaps that could indicate their approval.

Mr. Lyons stated that he just wanted to point out that there appears to be a flaw in the wording that the Board may want to address.

9) “Is a “written estimate” the same as a contract?”

Ms. Green stated that an estimate is a statement of the cost of the work or scope of the work to be done, and a contract is a binding agreement between the two or more parties.

It was the consensus of the Board that a “written estimate” is not a contract.

2022 Legislative
Session:

Chair Montalbo asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which there were none.

a. S.B. 233, Relating to Bees

Required any person that receives state or county funding who wants to remove a beehive or swarm from the person's property to contract with a beekeeper or pest control operator for removal.

Ms. Green stated that S.B. 233 was a carry-over from last session and was not heard. The Board discussed it in its January 25, 2021 meeting and had comments. The Board was concerned that beekeepers are not subject to licensure or regulation and there is no assurance of training or other requirements to protect the safety and welfare of the public. Pursuant to HRS section 460J-23, a pest control operator may hire or employ individuals who are not licensed under HRS chapter 460J to perform work on contracts.

If the committee hearing the bill is inclined to amend HRS chapter 142 to include a scope of practice regulated by HRS chapter 460J, the Board can offer amendments to the proposed language to be consistent with the definition of pest control operators and the requirements for pest control as stated in HRS chapter 460J.

It was motioned by Chair Montalbo, seconded by Vice Chair Lau, and unanimously carried to reaffirm the Board's position offering comments on S.B. 233, Relating to Bees.

b. S.B. 3214, Relating to Pest Control

Ms. Green stated that this bill amends the title and the scope of the pesticide subsidy program and the pesticide use revolving fund to include all pest control methods approved by the Hawaii Department of Agriculture. It appropriates moneys into and out of the pest control revolving fund for administering the pest control subsidy program.

This bill proposes to amend HRS chapter 149A, not HRS chapter 460J. However, with the use of "pest control" in the proposed amendments, it was noted that a definition of "pest control" was not included in the proposed amendments in HRS chapter 149A. Ms. Green asked the Board if they had any comments on the proposed changes to this chapter with respect to "pest control".

Mr. Takeshima stated that HRS chapter 149A does not have a specific definition of "pest control". The department of agriculture has concerns with the bill and they are drafting testimony.

The Board asked Mr. Lyons if he had concerns with the bill and he stated he did not.

After discussion, it was moved by Chair Montalbo, seconded by Vice Chair Lau, and unanimously carried to track this bill.

Announcements:

a. Next Meeting:

Monday, March 21, 2022
2:00 p.m.
Location: To Be Determined

Adjournment:

There being no further business to discuss, the meeting adjourned at 3:33 p.m.

Taken and recorded by:

Taken and recorded by:

/s/ Lei Ana Green
Lei Ana Green
Executive Officer

/s/ Susan A. Reyes
Susan A. Reyes
Secretary

LG:sar

02/07/22

- Minutes approved as is.
 Minutes approved with changes, see minutes of _____.