

MINUTES OF THE  
SPECIAL MEETING OF THE  
STRUCTURAL PEST CONTROL BOARD  
APRIL 20, 2007

The meeting was held on Friday, April 20, 2007, at The Bay Club Hotel and Marina, 2131 Shelter Island Drive, San Diego, California, commencing at 9:00 AM with the following members constituting a quorum:

Jean Melton, President  
Mustapha Sesay, Vice President  
Cris Azarte  
Terrel Ferreira  
Bill Morris  
Cliff Utley

Board staff present:

Kelli Okuma, Executive Officer  
Susan Saylor, Assistant Executive Officer  
Dennis Patzer, Administration Analyst  
Ryan Vaughn, Administration Analyst

Departmental staff present:

Kurt Heppler, Legal Counsel  
Donald Chang, 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**

Mr. Utley led everyone in the flag salute.

### **III. APPROVAL OF MINUTES OF THE JANUARY 18 AND 19, 2007, BOARD MEETING**

Mr. Sesay moved and Mr. Utlely seconded to approve the minutes. Passed unanimously.

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

Ms. Okuma reported on the following:

- Governor Schwarzenegger appointed Carrie Lopez as the new Director to the Department of Consumer Affairs. Ms. Okuma asked Antonette Sorrick, the Deputy Director of Board Relations for the Department of Consumer Affairs (DCA), if she would like to add anything about Ms. Lopez's appointment.

Ms. Sorrick reported that Ms. Lopez has most recently been with the CORO Institute. Former DCA Director, Charlene Zettel, accepted a Board position on the San Diego Regional Airport Authority. Ms. Sorrick wished to congratulate Ms. Zettel and also welcome Ms. Lopez to DCA.

- Nicole Rice has been appointed as the new Deputy Director of Strategic Planning. Ms. Rice will be assisting DCA and its Boards with developing and updating strategic plans.
- Carl Smitley, the Board's Enforcement Coordinator, has been working on some unlicensed activity cases. Through his efforts, two individuals have been arrested and are scheduled for arraignment in the Alhambra Superior Court.
- Ms. Okuma met with then Director, Ms. Zettel, to discuss whether or not the Board's licensees should be required to submit proof of worker's compensation. Dialog has started between several boards in similar situations as well as the Department of Insurance.
- Ms. Okuma also spoke with Ms. Zettel concerning the correlation between real estate agents and brokers and complaints against Structural Pest Control licensees.
- Assembly Bill 721 will require agencies to respond to a member of the Legislature's request for public records within three days. The bill has been referred to the assembly committee for hearing on April 25.
- Assembly Bill 865 will require state agencies to answer incoming telephone calls with a live customer service agent. The previous hearing for this bill was cancelled on the author's request.
- Assembly Bill 1025 will provide that a person may not be denied licensure, or their license may not be suspended or revoked, based on a criminal conviction that has been dismissed on specified grounds. The bill would also provide that an arrest more than one year old does not constitute grounds for denial of a license pursuant to certain provisions if no disposition is recorded.

The bill would also require that an applicant who has been denied or a licensee who has been revoked would receive a copy of the criminal history. The bill is scheduled for hearing on April 24 with the Assembly Business and Professions Committee. DCA has taken a position of opposition to the bill.

- Assembly Bill 1135 concerns government agency reports. Law currently sets requirements for submission of reports by public agencies to the Legislature, the Governor, controller, or other executive entities. This bill would require a declaration when state agencies or departments submit the reports.
- Assembly Bill 1393 would require that agencies that have a website include on its homepage specified information that is not exempt from disclosure, about how to contact the agency, how to request records, and would authorize any person to bring an action to enforce the duty of state agency to comply. The bill has been re-referred to the Assembly Committee on Governmental Organization.
- Assembly Bill 1530 requires certain pesticide poisoning reporting requirements to state agencies, such as, the Office of Environmental Health Hazard Assessment and the Department of Pesticide Regulation.
- Assembly Bill 1604 has to do with agricultural fumigant alternatives. The hearing was cancelled at the author's request but another hearing was scheduled for April 25 in the Agriculture Committee.
- Assembly Bill 1717 would provide that among actions that are brought within four years of a violation, actions can also be brought to collect civil penalties for violations of provisions of law prohibiting sale of any adulterated or misbranded pesticide. The bill is not specific to the Board and has passed out of the Assembly Environmental Safety and Toxic Materials Committee and has been referred to the Assembly Committee on Appropriations.
- Senate Bill 374 concerns military service and benefits. The bill would require that every Board within the Department waive the initial license and license renewal fee for a member or a spouse of a qualified member of the military. Ms. Okuma stated that she did not foresee this bill having a significant adverse affect on the Board's revenue.
- Senate Bill 618 would require each state agency by January 1, 2010, to maintain all of its records in an electronic format. This bill was referred to the Committee on Governmental Organization. The next hearing was scheduled for April 24.
- Senate Bill 721 requires state agencies to develop succession plans by January 1, 2010. The bill was scheduled for hearing on April 23 with the Senate Appropriations Committee.
- Senate Bill 963 would delete the provision that requires the Department to succeed to the duties, powers, and purposes of an inoperative board. A hearing has been set on April 23 with the Senate Business Professions and Economic Development Committee.
- Senate Bill 1047 would require the Board to meet at least three times each calendar year with at least one meeting in both Southern and Northern California. This bill would not affect the Board as it is already in compliance.

Harvey Logan, Pest Control Operators of California (PCOC), reported that Assembly Bill 126 has cleared the House of Appropriations Committee and is on its way to the Assembly floor. This bill would increase the number of counties involved in the fumigation enforcement program to include Santa Clara County. The bill would institute a five-dollar fee for each fumigation conducted in a county and the fee would go to the agricultural commissioners offices to support the structural fumigation enforcement program. The bill.

Ms. Okuma apologized for not including AB 126 in her report. Currently in Los Angeles and Orange Counties, there is the enhanced enforcement program, which requires the five-dollar fee. Ms. Okuma encouraged Board support.

Mr. Morris requested that either Ms. Okuma or the Board's Legal Counsel provide a summary of each bill and include whether the impact would be on the consumer or the industry.

Ms. Okuma responded that Assembly Bill 126 would have a direct impact on consumers.

Ms. Thomas commented on AB 1025, that in her opinion, homeowners would be very leery to know the Board did not have control over the individuals who are entering their homes.

Mr. Azarte stated his concern that it appears that opposing the bill would ultimately penalize people for offenses that have not been proven in court.

Mr. Heppler clarified that the term "dismissed" as used in AB 1025 does not mean that a case was dismissed and there was no further action taken. Dismissed in this context means that the act has been adjudicated and then has been expunged after the applicant has served his/her time.

Mr. Morris referenced the Board's mission statement in that its highest priority is to protect the public.

Mr. Sesay moved and Mr. Utley seconded to oppose Assembly Bill 1025. Passed by majority (Aye – Morris, Ferreira, Melton, Sesay, Utley. No – Azarte).

Mr. Utley moved and Ms. Ferreira seconded to support Assembly Bill 126. Passed unanimously.

- Complaint survey results were reviewed with the Board members.

Mr. Sesay wished to congratulate Board staff on the results indicating that staff was courteous.

Ms. Saylor reported on the following:

- Licensing statistics, survey results, and examination results were reviewed with the Board members.
- The Board is on the consent calendar for the April 11 Senate hearing and the May 1 Assembly hearing concerning the Board's budget.
- The license lookup feature on the Board's website now has the capability to disclose information if a licensee has surrendered a license.

Mr. Van Hooser wanted clarification on whether or not an individual who has surrendered a license will be allowed to retake the examination for a new license.

Ms. Okuma responded that surrendering a license is part of the stipulated process and part of the agreement is that the individual will comply with all terms of reinstatement the same as a revocation.

- The 2005 continuing education audit has been completed. The 2006 audit has begun and the audit notices were mailed to licensees in March.
- State agencies received a directive to update each state agencies website to comply with the Americans with Disabilities Act. All websites must be in compliance by November 2007. Mr. Vaughn has begun updating the Board's web pages and will be assuming the role of the Board's webmaster.
- There is one Office Assistant vacancy in the office. Recruitment for the position has begun.
- Dennis Ohlsson, Board Specialist, has retired. DCA has been contacted to administer the Structural Pest Control Board Specialist examination to fill the vacancy left by Mr. Ohlsson.
- The contract for the examination development for Branch 3 Field Representatives and Operators is in process. The Board is hoping to have the contract in place by the end of May and new examinations by the end of this calendar year. Workshops will be conducted with licensees participating in writing the examination questions.
- The request for research proposals has been submitted to DCA.
- The Board will have an updated version of the Structural Pest Control Board Act published by the end of this fiscal year. The publication will be mailed out to principal and branch offices.
- The Board also has a newsletter waiting for Department approval. It should be available by the end of June and will be sent to all the Board's companies and licensees.
- The Board received notification from the Office of Administrative Hearing that the fee for judges will be increased from \$181 to \$187 per hour effective July 1, 2007.

Mr. Morris asked how many times per year would the Board like to have a newsletter sent out.

Ms. Saylor responded that the Board would like to publish a newsletter quarterly.

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

Kathy Boyle reported that structural regulatory training is scheduled in Sunnyvale and Pomona in April. There will be an entomology portion with Gail Getty and Robin Taylor representing UC Berkeley as well as industry members volunteering their time. The training will encompass a review of branches 1, 2, and 3 as well as allied subjects regarding enforcement, digital photography, etc. There are roughly 100 participants at each location and about 65% of the participants have not participated in past structural training. The training was due in part to the \$60,000 that came from the Board's education and enforcement fund.

A rulemaking package regarding respiratory protection is going through DPR right now. An industrial hygienist will be attending Pest Control Operators of California (PCOC) meetings to talk about the respiratory regulation package. The goal of the regulation is to bring the regulations up to speed with the California Occupational Safety and Health Authority (Cal/OSHA). Ms. Boyle reported that this will be a significant change and will likely affect the Board. DPR is hopeful that the Office of Administrative Law (OAL) will approve the rulemaking package with a delayed implementation possibly not until 2008.

## **VI. DISCUSSION AND POSSIBLE ACTION ON WATER QUALITY COMMITTEE RECOMMENDATIONS**

Jerry Farris, reporting for the Water Quality Committee, presented some recommendations resulting from the April 4, 2007, meeting. The first recommendation was to require that Integrated Pest Management (IPM) be included as part of the continuing education requirements for the renewal of branch 2 and 3 licenses. The committee also recommends to the Board to consult with DPR to determine a definition of IPM for the purpose of encouraging the industry and the public to adopt IPM practices. Another recommendation was to modify current pre-licensing training and examinations for branch 2 and 3 field representatives and operators to include IPM and water quality concerns. The committee's final recommendation was to revise California Code of Regulations section 1999.5 to prohibit general claims of environmental benefit but to allow specific, truthful, substantiated, non-misleading claims.

John Van Hooser, Van Hooser Enterprises Inc., suggested that instead of requiring licensees to complete continuing education courses specifically pertaining to IPM, the Board should make the courses worth additional hours as an incentive for renewing licensees.

Mr. Arzate stated his concern that requiring licensees to take specific IPM courses may result in missing out on other important education courses.

Mr. Farris responded that currently, licensees are responsible for eight hours of rules and regulations, four hours of technical per branch, and four additional hours. The IPM course requirement could assume some of the rules and regulations hours or the additional “general” hours.

Mr. Heppler advised the Board to move to assign a committee or task force to define IPM.

Dr. Vernard Lewis reported that there are several definitions of IPM. In his opinion the best definition has been provided by the United Nations. Dr. Lewis has been a part of two attempts to define IPM specifically to structural pest control but both attempts have been unsuccessful.

Mr. Heppler suggested that the Board assign the Rules and Regulations Committee to define IPM as it pertains to structural pest control.

Mr. Azarte moved and Mr. Sesay seconded to designate the Rules and Regulations Committee to define IPM.

Anna Folkins, Xtermite Inc., suggested that companies that are currently practicing IPM should also be involved in the meeting.

Jonathan Kaplan, National Resources Defense Council, thought that creating a definition of IPM was a great first step. He wanted to make sure that the committee had equal and balanced representation from public health groups, not just pest control industry members.

Mr. Heppler stated that all committee meetings are noticed ten days prior to meeting and are always open to the public for comments.

Mr. Kaplan responded that while the opportunity for public comments exists, there needs to be voting members representing groups other than the pest control industry.

Ms. Boyle commented that a letter had been sent to the Board from DPR Director Mary-Ann Warmerdam stating support for all of the motions that the Water Quality Committee presented.

Mr. Heppler suggested an alternative of creating a task force assigned to define IPM.

Mr. Chang added that the task force could consist of some of the Rules and Regulations committee members as well as any interested individuals representing other agencies and groups.

Mr. Azarte asked about the procedure for selecting task force members.

Mr. Chang responded that the decision would be at the discretion of the chair or in this case, the president of the Board.

Ms. Melton instructed interested parties to submit their name to the Board.

Mr. Heppler stated the Board could perform a friendly amendment to the original motion to substitute task force for the Rules and Regulations Committee.

Ms. Melton asked for a vote on the motion as amended. Passed unanimously.

Mr. Utlely suggested tabling the remaining motions presented by the Water Quality Committee until the task force has defined IPM.

Mr. Chang commented that the Board could defer all the remaining motions and also direct legal counsel and Board staff to perform preliminary research on the motions for the next Board meeting.

Mr. Azarte moved and Mr. Sesay seconded to defer the remaining motions until a definition of IPM has been agreed on but also to direct staff to begin preliminary work on the remaining motions. Passed unanimously.

Mr. Sesay moved and Ms. Ferreira seconded to defer the motion concerning California Code of Regulations Section 1999.5 until after agenda item VII. Passed unanimously.

**VII. CONSIDERATION OF PETITION TO AMEND CALIFORNIA CODE OF REGULATIONS SECTION 1999.5 – FALSE AND MISLEADING ADVERTISING**

Mr. Heppler stated that a public member had petitioned the Board to revise CCR Section 1999.5. This regulation serves as the basis of cites and fines and the Board's disciplinary actions. The proponents feel that the current language stifles environmentally friendly services. Mr. Heppler reported that the regulation was adopted in 2000 and that the Board can accept the petition in part.

Mr. Kaplan stated that he is one of the petitioners and is representing National Resources Defense Council (NRDC). The NRDC has 1.2 million members across the U.S. with a quarter of them in California. He feels that these California members would like to find an environmentally friendly alternative to pesticides. Mr. Kaplan believes that CCR section 1999.5 prevents the public from hearing non-misleading claims about environmentally superior services. There needs to be a determination of which kinds of claims are not misleading. Mr. Kaplan highlighted the difference in the Board's regulation and that of DPR. DPR allows for the advertising of environmental benefits. Mr. Kaplan added that NRDC has examined the regulation and determined that it is unconstitutional.



Jason Barbose stated he was representing Environment California, established in 2003 as the new home of the California Public Interest Research Groups (CALPIRG). CALPIRG had worked on this regulation in the late 1990s. CALPIRG did a report at the time looking at false and misleading claims that pest control companies were making and sued a couple of them for their egregious claims. Mr. Barbose believed that the Board should be promoting services that promote environmental friendly alternatives. He stated that when the Board proposed section 1999.5 in the late 1990s, CALPIRG suggested that the regulation was too restricting.

Ms. Boyle cited the document that DPR Director Mary-Ann Warmerdam had submitted. It stated that once there is a definition of IPM, CCR section 1999.5 can be revisited.

Mr. Lewis stated that there is very limited laboratory data on environmentally friendly alternatives. This could make it difficult to pinpoint what is considered false and misleading advertising.

Mr. Kaplan said that the most difficult question to answer is what kind of claims are non-misleading.

Darren Van Steenwick, Clark Pest Control, stated that if the Board or the task force cannot determine what is and what is not a non-misleading claim, CCR section 1999.5 cannot be opened for discussion.

Mr. Barbose wished to have clarity on the Board's desire to allow for non-misleading claims.

Mr. Sesay responded that the Board is willing to open up discussion of CCR section 1999.5 through the task force.

Mr. Azarte stated that the Board will have to wait until hearing back from the task force to decide how to proceed.

Mr. Logan hoped that efficacy data would be the principle-determining factor when examining the environmentally friendly treatments.

Mr. Katz agreed with Mr. Logan and stated that he hoped that scientific data would be required in determining what is truthful, non-deceptive advertising. He reported that at the August meeting of the Association of Structural Pest Control Regulatory Officials (ASPCRO), a resolution was passed to address the Federal Environmental Protection Agency requiring that the non-pesticide products be registered as pesticides to give ASPCRO the statutory authority to regulate the false claims that are made.

Mr. Whitmore concurred and recommended that the supporting data be retrieved from a non-biased party.

Ms. Folkins stated that when CCR section 1999.5 went into effect in 2000, her company felt that they had been issued a gag order. She contacted the Office of Administrative Law to find out why her company could not advertise certain claims and she was informed that the regulation's purpose was to level the playing field. Ms. Folkins' company has been able to work within the parameters but she feels the regulation prevents consumers from being educated on the less toxic chemicals.

Mr. Utlely moved and Mr. Azarte seconded to form a task force to review CCR section 1999.5 with the purpose of permitting truthful, non-deceptive, and enforceable claims. Passed unanimously.

Mr. Chang stated that the Board needed to take a position on the petition to revise CCR section 1999.5.

Mr. Morris moved and Mr. Sesay seconded to deny the petition to revise CCR section 1999.5 until the task force has met to discuss the regulation. Passed unanimously.

#### **VIII. ADOPTION OF STRATEGIC PLAN**

Mr. Utlely moved and Mr. Azarte seconded to approve the strategic plan. Passed unanimously.

#### **IX. NEEDED CHANGES TO ENSURE STRUCTURAL PEST CONTROL APPLICATOR'S LICENSE MEETS FIFRA REQUIREMENTS FOR CERTIFICATION**

Ms. Okuma reported that at the last Board meeting it was brought to the Board's attention that the U.S. Environmental Protection Agency (EPA) released a proposed risk litigation decision that would deem various rodenticides as restricted use pesticides. If the decision goes through, the Board's licensed applicators would no longer be able to apply the rodenticides. Mr. Logan had requested that the Board conduct research and report on how the Board will address the issue.

Mr. Patzer reported that EPA's proposal would require a person to be a certified applicator to apply rodenticides and other restricted use pesticides. A licensed applicator under the Board does not meet the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) definition of a certified applicator. Mr. Patzer spoke with Jerry Campbell of DPR and it appears that EPA will not change their position. The comment period for EPA's proposed risk litigation decision has been extended to May.

Ms. Boyle reported that it is a certification and supervision issue. For federally restricted use products there are two forms of supervision: direct supervision and physical presence. If the rodenticides will require direct supervision, the Board's

applicators may be able to apply the pesticides. The person overseeing treatment whether it be operator or field representative would be bound by those requirements of the application of the rodenticides. If the rodenticides require physical presence, the Board's applicators will not be able to apply the pesticides. Ms. Boyle felt that a physical presence requirement is not likely. She suggested that the Board take a preemptive stance and appeal to DPR to find out what is required to certify applicators. Ms. Boyle stated that possible paths to certification could include altering the examination questions, requiring additional continuing education, or through a regulation change.

Jeff Lloyd, Nisus Corporation, stated that he was under the impression that EPA's intent was to make it so that granulated rodenticides would not be available at retailers.

Ms. Boyle responded that removing granulated rodenticides from retailers was just one of the recommendations from EPA.

Ms. Okuma stated that Board staff would have to continue to develop ways to address the issue.

#### **X. RESEARCH GRANT UPDATE**

Ms. Saylor stated that Board staff was instructed to provide a summary of the UC Berkeley contract and the delays that took place. That information as well as progress reports on the four current research projects were included in the Board packages.

Mr. Morris cited the summary of the UC Berkeley that the delays were caused by a number of personnel changes at UC Berkeley, DCA, as well as another state agency. Mr. Morris also cited a letter from Mr. Lewis in which it states that UC Berkeley was primarily responsible for the delays.

Mr. Lewis stated that the research project has begun; however he might encounter potential layoffs if his research team is not in the black by June 30. The delays caused Mr. Lewis to use money that had been meant for other projects. Mr. Lewis said he would provide a progress report or possibly be asking for additional money at the July Board meeting.

#### **XI. APPROVAL OF AMENDMENT OF TERMS TO THE UNIVERSITY OF CALIFORNIA RIVERSIDE RESEARCH AGREEMENT**

Ms. Saylor stated that the University of California Riverside (UCR) has requested a one-year extension and an additional \$62,081 for their current research project. The original contract was approved for two years and had an option to request a one-year extension in the contract.

Mr. Logan asked for clarification on how much money was in the research project fund.

Ms. Saylor responded that if the Board chose to approve the additional \$62,081 to UCR, the Board's research fund would have approximately \$300,000 currently available with \$500,000 projected to be available in 2009.

Mr. Sesay moved and Mr. Utley seconded to approve a one-year extension and an additional \$62,081 for the UCR research contract. Passed unanimously.

Mr. Morris suggested that representatives from each university attend at least one Board meeting each year to update the Board on the current research projects.

Ms. Okuma responded that Board staff could include such a requirement into the contract for future research projects.

Ms. Okuma added that DCA has determined that limiting research proposals to just the University of California campuses will significantly expedite the approval process.

**XII. PROPOSED AMENDMENT TO CALIFORNIA CODE OF REGULATIONS SECTIONS 1970 (FUMIGATION LOG), 1970.4 (OCCUPANTS FUMIGATION NOTICE), AND 1973 (NOTICE OF RE-ENTRY)**

Ms. Okuma stated that the purpose of the amendments would primarily be to strike out the trade name "Vikane" and replace it with the active ingredient sulfuryl fluoride on three of the Board's forms.

Jim Brown, D & M Termite Company, spoke about the letter he submitted to the Board in which he requested that the address of a fumigation be submitted to the Board for record retention similar to that of the Wood Destroying Organism filings.

Mr. Van Hooser commented that in his opinion, the Fumigation Log, which currently is retained by the Branch 1 company, should be forwarded to the Branch 3 company that subcontracted the fumigation. He reported that the Occupants Fumigation Notice is already being forwarded, so including the Fumigation Log would not burden the Branch 1 companies.

Mr. Brown stated his concern of a possible scenario when fumigation records are unavailable. A structure is fumigated, the fumigation tag is removed for one reason or another, the homeowner contacts the primary contractor (Branch 3 company) for the fumigation information, the primary contractor requests the Fumigation Log from the Branch 1 company only to find out that the company has gone out of business and no records of the fumigation are available.

Lee Whitmore, Beneficial Exterminating, reported that his company is often subcontracted to fumigate. He felt that forwarding the Fumigation Log to the various Branch 3 companies would be an administrative burden to some Branch 1 companies.

Mr. Morris replied that since a fumigation is such a volatile practice, it would benefit the consumer to have documentation available at both locations.

Curtis Good, Newport Exterminating, stated that he believed that possible problems could occur if Branch 3 companies start interpreting the Fumigation Log.

Ms. Okuma added that the Board's enforcement staff has wanted this amendment for several years for enforcement reasons.

Mr. Heppler suggested that the Board make a motion for a public hearing.

Ms. Okuma suggested tabling Mr. Brown's suggestion of requiring that the address of a fumigation be submitted to the Board to allow Board staff to discuss with Legal.

Mr. Morris moved and Mr. Sesay seconded to notice for public hearing to amend California Code of Regulations Section 1970 to require that Branch 1 companies forward a copy of the Fumigation Log to the Branch 3 companies. Passed unanimously.

Mr. Utley moved and Mr. Sesay seconded to table the discussion of requiring that the address of a fumigation be submitted to the Board. Passed unanimously.

Ms. Okuma stated that the next proposed amendment would be to alter the Standard Fumigation Log to allow for new fumigant calculation methods. The current form includes the calculation methods specific to the product Vikane but does not include "Fumicalc" which is the calculation method for the new suflyryl fluoride product Zythor.

Ms. Boyle stated that there is also a third suflyryl fluoride product awaiting approval. She suggested also including a write-in area for future calculation methods.

Ms. Ferriera moved and Mr. Utley seconded to notice for public hearing to amend the Standard Fumigation Log to include "Fumicalc" as well as "Other" with a blank line to fill in future calculation methods. Passed unanimously.

Ms. Okuma stated that the next proposed amendment would affect the Occupants Fumigation Notice (OFN) that is in CCR section 1970.4. The proposed amendment would remove the Vikane trade name and replace it with the active ingredient suflyryl fluoride.

Ms. Boyle suggested including a blank line next to the active ingredient suflyryl fluoride to allow for the disclosure of the trade name.

Mr. Whitmore questioned whether or not the conduit language, which had been discussed at a past Board meeting, would be included on the OFN.

Ms. Okuma confirmed that the Board had already approved the conduit language for public hearing but held off to allow for the current discussion.

Ms. Boyle stated that the Board's regulations required that the product name be disclosed on the OFN.

Mr. Patzer confirmed that CCR section 1970.4 required that the pesticide used and product name be listed.

Ms. Ferreira moved and Mr. Utley seconded to notice for public hearing to amend the Occupants Fumigation Notice to remove Vikane and replace it with suflyryl fluoride with a line next to it to disclose the product trade name. Passed unanimously.

Ms. Okuma stated that the final proposed amendment would affect the Notice of Re-entry form mentioned in CCR section 1973. The current form lists the trade name Vikane and has the trademark of Dow Elanco, the Vikane manufacturer.

Ms. Melton suggested removing the references to Vikane and replacing them with the active ingredient suflyryl fluoride and a line to write in the product name.

Mr. Utley moved and Mr. Sesay seconded to notice for public hearing to amend the Notice of Re-entry to remove the trade name Vikane and its manufacturer Dow Elanco and replace it with the active ingredient suflyryl fluoride and a line to write in the product name. Passed unanimously.

### **XIII. REQUEST TO RECOGNIZE BORATES AS A WHOLE-HOUSE TREATMENT**

Ms. Okuma reported that this topic came up from a radio advertisement and whether or not it was in compliance with the false and misleading advertising regulations. The advertisement in question was from the company Nisus and the Bora-Care treatment. Nisus had requested to speak to the Board in an effort to call their Bora-Care a whole-house treatment.

Jim Gorman, vice president of Nisus, provided some history of the Bora-Care product. It was invented in 1990 and has been used for termites for the last ten years. The product is sprayed onto wood and kills existing termite colonies and prevents future infestations. The product is labeled as a primary pre-treatment. The pre-treatment consists of two-foot band treatment, which consists of spraying the

Bora-Care on the wood that is two feet above the ground. The plumbing, penetrations, sill plate, and concrete are treated and it has been shown to prevent termites from tubing over the treated area. Nisus has now moved into the dry-wood termite treatments and would like to be recognized as a whole-house treatment. The method for the whole-house treatment consists of finding existing infestations and drilling and injecting the Bora-Care. Drilling and high-pressure misting into the wall voids treats the rest of the structure. The product has been labeled as a whole house treatment and the label states that Bora-Care can be used in lieu of fumigation. Mr. Gorman stated that he believes the Board has a different definition of a whole-house treatment. The purpose of Nisus speaking to the Board is to talk about the legality of what Nisus can or cannot advertise.

Jeff Lloyd, Nisus research development team, reported that the information that was provided to the Board concerns the questions about efficacy data. The first part of the treatment is a full structure inspection. All the active colonies are treated by drilling and injecting the Bora-Care product. The remaining wood is treated through various procedures.

Mr. Van Hooser brought up CCR section 1991 (a)(8) and stated that if all encompassing treatments are considered whole-house treatments, then Nisus should not have a problem.

Mr. Patzer reported that the Board has determined that the term all encompassing is only applicable to treatments done in an enclosed space such as a fumigation. Section 1991 (a)(8)(B) provides for other treatments done in an enclosed space but that has only been done though heat. Mr. Patzer stated that Nisus could offer whole-house warranties but could not currently call the Bora-Care treatment an all encompassing or whole-house treatment.

Mr. Lloyd responded that the Bora-Care treatment is different than the other all-encompassing treatments. The treatment takes a considerable amount of time and the extermination of the termites takes longer than a fumigation.

Mr. Patzer cited the label for Bora-Care in that it may not penetrate certain substrates, which is not true with fumigations.

Mr. Heppler suggested directing Board staff to examine the term “all encompassing” and the regulations that refer to the term.

Mr. Brown commented that he would consider the Bora-Care treatment as being all encompassing if it was done as a pretreatment but not if the treatment is done after construction.

Mr. Heppler suggested that the Board direct the Legal Counsel to CCR section 1991 to determine whether or not Bora-Care can fall into the all-encompassing treatments.

Ms. Melton agreed that the Legal Counsel should examine the regulation.

**XIV. BOARD MEETING CALENDAR**

The next Board meeting will be held on July 19 and 20, 2007, in Sacramento. The following meeting will be held October 11 and 12, 2007, in Irvine.

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

Mr. Logan asked where the Board was in regards to the investigation on orange oil treatments.

Ms. Okuma responded that the Board has met with the Attorney General's office and has gathered additional data. Board staff will meet again with the Attorney General's office to further discuss the topic of orange oil.

**XVI. CLOSED SESSION**

The Board adjourned to closed session at 1:45 PM to consider proposed disciplinary actions in accordance with subdivision (d)(3) of Section 11126 of the Government Code.

The meeting adjourned at 2:10 PM.

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JEAN MELTON, President

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KELLI OKUMA, Executive Officer

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DATE