

**COMMISSION MEETING  
February 8, 2002  
MINUTES**

**I. Call to order and roll call**

Commissioners present: Commissioners Hale, Hartley, Micuda, Robinson, and Burrows

Commissioners absent: Commissioner Silva and Tennenbaum

Staff present: Deputy Director, Barry Levitch, Richard Mars, David Broadstreet, Dirk Vandenberg, Michael Francis, David Colvin, Jason Aanderud, Maggie Vazquez, Pamela Ulbrich, Carl Martin, and Assistant Attorney General Blair Driggs.

**II. Approval of January 2002 minutes.....TAB 1**

*MOTION: To approve January 2002 minutes, and seconded.*

*VOTE: 5 - 0 Motion carried.*

**III. Call to the public (Each speaker limited to five minutes)**

*None*

**IV. Correspondence with Commissioners**

*None*

**V. Scheduling of future meetings/agenda items**

March 8, 2002 ..... Tucson, AZ  
April 12, 2002 ..... Scottsdale, AZ  
May 10, 2002 ..... Scottsdale, AZ

**VI. Consent Agenda.**

**Items will be read and voted on in one group excluding those pulled for discussion.**

**A. Applications for Business Licenses & Qualifying Party Credentials**

1. Acker, John F. dba **Green Sciences Inc. (Activating Qualifying Party for new business license in the "E & F" categories) ..... TAB 2**

- 2. Aleksiewicz, Matthew dba Green Earth LC dba Green Care (Activating Qualifying Party for new business license “E & F”) . . . . . TAB 3
- 3. Cates, Charles R. dba North Country Pest Management Systems, Inc. (Activating Qualifying Party for existing business license “B & E”) . . . . . TAB 4
- 4 Coronado, Hector dba Sun City Pest Control (Activating Qualifying Party for existing business license “C”) . . . . . TAB 5
- 5. Kuta, Jason M. dba ABATE Pest Management Activating Qualifying Party for new business license “B”) . . . . . TAB 6
- 6. Hargrove, Darrren A. dba America’s Pest Control (Activating Qualifying Party for existing business license “C”) . . . . . TAB 7
- 7. McClure, John dba TACIT Services L.L.C. (Activating Qualifying Party for existing business license “C”) . . . . . TAB 8
- 8. Rupert, William R. III dba Gainey Ranch Golf Club (Activate Qualifying Party for existing business license “E & F”) . . . . . TAB 9
- 9. Swedberg, Tyler M. dba Marana Golf Inc. (Activating Qualifying Party for new business license “E & F”). . . . .TAB 10
- 10. Taylor, John W. dba Africanized Bee & Pest Management Activating Qualifying Party for new business license “B”) . . . . . TAB 11

**B. Applicants for Q.P. Testing.**

- 1. Abel, Matthew A. “B & C” . . . . . TAB 12  
*Pulled*

*Motion:* To approve by Commissioner Robinson  
Seconded by Commissioner Micuda

*Vote:* 5 – 0 Motion carried.

- 2. **Bennett, Richard A.** “E & F” ..... TAB 13
- 3. **Berg, Dennis L.** “E” .....TAB 14
- 4. **Boge, James R.** “E & F” .....TAB 15
- 5. **Fuess, Richard** “E & F” ..... TAB 16
- 6. **Lopez, Raymond** “E & F” ..... TAB 17
- 7. **Nicholson, Sean P.** “E, F, & E-1” .....TAB 18
- 8. **Ramirez, Danny J.** “B” ..... TAB 19
- 9. **Toscano, Eric** “B & C” ..... TAB 20

**C. Applicants to Broaden Qualifying Party**

- 1. **Pugh, Alan** “B & C” ..... TAB 21
- 2. **Wells, Martin** “E” .....TAB 22

**D. Request for Temporary Qualifying Party Certificate and/or Extension.**

- 1. **Able, Matthew A.** dba **Action Termite & Pest Control** ..... TAB 23  
*Pulled*

*Motion:* *To approve by Commissioner Robinson  
Seconded by Commissioner Hale*

*Vote:* *5 – 0 Motion carried.*

- 2. **Hickle, Charles** dba **Bio-Chem Services** ..... TAB 24

**E. Request for Company Name Change.**

- 1. **Mighty National Exterminating Corporation to Mighty National Cecil Dooley Exterminating Services** ..... TAB 25
- 2. **Royal Pest Control to Rio Verde Royal Termite Control** ..... TAB 26
- 3. **Terminix International Co. LP, The to Terminix** ..... TAB 27

**F. Continuing Education Committee Minutes of  
January 2002 Meeting ..... TAB 28**

**G. Treatment Proposals.**

**1. AMA Exterminating Inc. .... TAB 29**

**2. Avant-Garde .....TAB 30**

**3. Foothills Pest Control ..... TAB 31**

**4. Tonto Rim Pest Control, PLLC ..... TAB 32**  
*Pulled*

*Motion: Approved to form by Commissioner Burrows  
Seconded by Commissioner Micuda*

*Vote: 5 – 0 Motion carried.*

*Note to Company that verbiage is not correct with the citing of the Arizona Revised Statute A.R.S. §32-2323 (D) in the Treatment Proposal.*

**H. Settlement Conferences**

**1. Bill’s Home Services – Case # 2001-297.....TAB 33**  
Pretreatment Violations (Quantity, strengths and dosages).

*Proposed resolution:*

*Note: No parties involved have any prior violations. The Business license performed corrective action to the site.*

*That the applicator, Jessie Arvayo, certification # 000710 VII, C, be issued an ADMINISTRATIVE WARNING for violation of A.A.C. R4-29-402 (Quantity, strengths and dosages).*

*That the applicator, Daniel Whitmer, certification # 940409 VII, BC, be issued an ADMINISTRATIVE WARNING for violation of A.A.C. R4-29-402 (Quantity, strengths and dosages).*

*That the Qualifying Party, William Bennett, Q.P. # 1862 BC, be issued an ADMINISTRATIVE WARNING for violation of A.A.C. R4-29-402 (Quantity, strengths and dosages).*

*That the Business License, Bill's Home Services License # C 4320 BC, be issued an ADMINISTRATIVE WARNING for violation of A.A.C. R4-29-402 (Quantity, strengths and dosages).*

*That the Business License, Bill's Home Services License # C 4320 BC be required to pre-report termite activities for a period of 6 months from the date of the order.*

*That the Business License, Bill's Home Services License # C 4320 BC be required to provide training to all employees in the area of pre-treat site calculations, and provide proof of training and attendees to the Commission. Training to be completed within 90 days from the date of the order.*

**2. Bill's Pest and Termite Company – Case # 2001-136. . . . .TAB 34**  
Wood Infestation Violations.

*Proposed Resolution:*

*That the Business License, Bill's Pest and Termite Company, License # C 5468 BC, be issued an ADMINISTRATIVE WARNING for violation of A.A.C. R4-29-414 (conditions conducive).*

**3. Bio-Chem Services – Case # 2001-314 . . . . .TAB 35**  
Termite Action Report Forms (TARFs) Violations.

*Proposed Resolution.*

*That the Business License, Bio-Chem Services, License # C 4147 BC, be issued an ADMINISTRATIVE WARNING for violation of A.A.C. R4-29-417 (A) (TARFs).*

*That the Business License, Bio-Chem Services, License # C 4147 BC, be issued a CIVIL PENALTY in the amount of \$1200.00 for violation of A.A.C. R4-29-417 (A) (TARFs).*

*That the Qualifying Party license for William Jones, License # 456 BC be issued an ADMINISTRATIVE WARNING for violation of A.A.C. R4-29-417 (A) (TARFs).*

*That the Business License, Bio-Chem Services, License # C 4147 BC, be required to submit all TARFs due and related fees in the amount of \$13,776.00*

**Total amount due = \$14,976** *Note: Payment plan is requested as follows: \$963.00 for 16 months. First payment due within 30 days from the date of the order.*

***Pulled***

***NOTE:*** *Commission discussion on issue of payment plan. This case will go back to staff because payment plan is not acceptable.*

**4. Homestead Maintenance Inc. – Case # 2001-252 . . . . .TAB 36**

Unlicensed Activity Violations.

*Proposed Resolution.*

*That the Company, Homestead Maintenance Inc, be issued a Civil Penalty in the amount of \$1000.00 for violation of A.R.S. § 32-2325 (1) (Unlicensed activity).*

**NOTE:** *The owner is requesting payments in the amount of \$500.00 per month for two months. First payment due within 30 days from the date of the order.*

*Pulled*

*Motion: Approved by Commissioner Micuda  
Seconded by Commissioner Robinson*

*Vote: 5 – 0 Motion carried.*

- 5. Magic Pest Control – Case # 2001-186 & 2001-313 . . . . . TAB 37**  
Violations resulting from the failure to leave a receipt with a customer and the delivering of an empty pesticide container to S.P.C.C. offices.

*Proposed Resolution.*

*The following terms and conditions resulted from the settlement conference.*

*Items 1 & 2 pertain to case 2001-186*

- 1. That the Business License, Magic Pest Control, License # C 5158 B, be issued an ADMINISTRATIVE WARNING for violation of A.A.C. R4-29-305 (A) (Written Notification of Treatment Required).*
- 2. That the Business License, Magic Pest Control, License # C 5158 B, be required to obtain an additional three (3) C.E.U.s in the area of Laws and Regulations. To be completed within 60 days from the date of the order.*
- 3. That complaint 2001-313 be dismissed.*

- 6. Sun Devil Termite and Pest Control – Case # 2001-220 . . . . . TAB 38**  
Termite Action Report Forms (TARFs) Violations.

*Proposed Resolution.*

*That the Qualifying Party, James Everly, Q.P. # 2079 BC, be issued an ADMINISTRATIVE WARNING for violation of A.A.C. R4-29-418C (TARFs).*

*That the Business License, Sun Devil Termite and Pest Control, License # I 5579 BC, be issued an ADMINISTRATIVE WARNING for violation of A.A.C. R4-29-418C (TARFs).*

*That the Business License, Sun Devil Termite and Pest Control, License # I 5579 BC, be issued a Civil Penalty In the amount of \$500.00 for violation of A.A.C. R4-29-418C (TARFs).*

*That the Business License, Sun Devil Termite and Pest Control, License # I 5579 BC, pay the required fees and late fees for the TARFs identified. The amount owed is \$ 11,520.00*

*Total Amount due = \$ 12,020.00*

*NOTE: Qualifying Party is requesting payments in the amount of \$400.00 per month for 30 months. First payment due within 30 days from the date of the order.*

***Pulled***

*NOTE: Commission discussion on issue of payment plan. This case will go back to staff because payment plan is not acceptable.*

**7. Emmett Sweat – Case # 99-103 ..... TAB 39**  
**Mis-Use Violations.**

*Proposed Resolution.*

*That the Applicator, Emmett Sweat accept a \$250.00 civil penalty and an Administrative Warning for violation of R4-29-301.*

*Pulled*

*Motion: Approved by Commissioner Micuda  
Seconded by Commissioner Burrows*

*Vote: 5 – 0 Motion carried.*

**End of Consent Agenda.**

*Motion: By Commissioner Burrows to accept Consent Agenda as read with the exception for those items pulled for discussion.  
Seconded by Commissioner Micuda.*

*Vote: 5 – 0 Motion carried.*

**VII. Complaints**

**1. Amera Sun City Pest Control - Case # 2001-283 . . . . . TAB 40**

*Motion:* To send to Administrative Hearing by Commissioner Micuda  
Seconded by Commissioner Burrows

*Vote:* 5 – 0 Motion carried.

**2. Centex Home Team Services – Case # 2001-360 . . . . . TAB 41**

*Motion:* To Dismiss by Commissioner Micuda  
Seconded by Commissioner Burrows

*Vote:* 5 – 0 Motion carried.

**3. Northwest Exterminating Co. Inc. – Case # 2001-285 . . . . . TAB 42**

*Motion:* To send to Administrative Hearing by Commissioner Micuda  
Seconded by Commissioner Hale

*Vote:* 5 – 0 Motion carried.

**4. Precision Pest Control – Case # 2001-356 . . . . . TAB 43**

*Motion:* To Dismiss by Commissioner Burrows  
Seconded by Commissioner Micuda

*Vote:* 5 – 0 Motion carried.

**VIII. Felony Applicants.**

**1. Crocker, EJ . . . . . TAB 44**



*Motion: To Approve by Commissioner Burrows  
Seconded by Commissioner Micuda*

*Vote: 5 – 0 Motion carried.*

**2. Gray, Shawn G. .... TAB 45**

*Motion: To Approve by Commissioner Robinson  
Seconded by Commissioner Hale*

*Vote: 5 – 0 Motion carried.*

**IX. Case Status Report**

*Discussion by Dirk VandenBerg.*

**X. Legislative Update – Carl Martin**

*Discussion by Carl Martin on HB 2188.*

**XI. Amended Agenda  
Rules Update**

*Discussion by Carl Martin and Commissioner Robinson.*

*Carl Martin – The Agenda is amended at the request of Commissioner Robinson to have discussion about the Rules and make certain decisions so that the Rules process can sort of progress onwards without making decisions in three areas. We are running into a problem about being able to promulgate Rules, so we need to have a discussion about that, I need to lead you towards votes on three things and Commissioner Robinson really is the point man for this and I will take my direction from him.*

*Commissioner Robinson – I would like to mention we had a Rules meeting on the 31<sup>st</sup> with Ms. Parker, Richard was there and Carl. I was sort of being brought up to speed on what is involved in Rules changes, etc., some of the things she needs direction from us on as Carl said three different areas. One being when we review a QP. Right now it comes before the Commission twice at the front end as you saw today, we say “Yes” it is okay for this individual to go ahead and test for QP and then after the QP testing we have to approve that individual. Her question I think Carl and Rich’s question was why do we need to see it twice. If we approve them and they pass the test at the end of the approval process why does it need to come back to the Commission for approval and I tend to agree with that situation. It seems like one time and maybe that is at the front end as we discussed on Tuesday a week ago or maybe that is on the back end and so I would throw that open for comment or Carl if you have anything to add to that.*

*Carl Martin – I think that was nicely said. The issue is do you simply want to review QP applicants applications prior to testing or do you want to review them before you give them permission to go ahead and qualify a business, it seems that it is redundant to do both.*

*If you reviewed a person's background and they passed the test as Commissioner Robinson has said, you approved them to test and they passed the test they are either going to be inactive because they are not qualifying a qualified business or they are going to become active to qualify a business. In either case you've seen them, you've already reviewed their credentials there is no more information they can give you. There is no more application process they go through, so the basic question is why take the time of the Commission to see them a second time why not just do it one time. You can pick prior to the testing or you can pick at the end of the process, but the recommendation from our Rules writer is that we just have it once and you decide when you like to see those folks.*

*Chairman Hartley – Let me throw in a question, I think one of the things we've looked at when they come back a second time is what they are using that QP to qualify. It is kind of a safety valve because sometimes in the State there are shenanigans that go on where people tests for QP's and they basically sell them. I understand they become Qualifying Parties for operations that are very dubious and I think a lot of time when it comes in for that second approval and I've seen a lot of those pull out of here where they are trying to qualify a business and know there are some shenanigans going on, it is kind of a backup. What is our backup going to be in that situation?*

*Carl Martin – Lets talk about two discreet events that is the granting of the qualifying party credential license and the granting of the business license which is a separate thing. Certainly the Commission has in its purview and it is part of the process that we currently undergo that you would review business license applications and part of that is who is going to qualify this business, so you would still in effect review this information. You just asked during the Business License part of the process; however, on the QP part of it again it is a discreet function you may just decide on the time this person is qualified of being a qualified party. That is kind of a bad way of saying it. There approved to be a qualifying party, they can take the test, we will look at the business relationship when the Business License comes up for approval by this Commission, and so you look at that point.*

*Chairman Hartley – What about when the Business License like when somebody changes their QP. The Business License doesn't come into.*

*Carl Martin – Technically it does in fact. Unless they change it this very minute. That our QP is being fired at 11:59 this morning and our new QP has been hired at 11:59:01. There is a lapse between the time they lose their QP and the time the new QP comes. Under the law; in fact, they are not suppose to operate during that time. The Commission is certainly within it purview to review the Business License plans for operating the business including who the qualifying party is in fact, it is part in partial of your duty, you have to do that, you have to look to see who is going to qualify this business. But it is a Business License decision if they come in with a QP that was unacceptable. The QP would not lose his QP license, the business would lose its license or it's*

*authority to operate in the State of Arizona. Do you see the difference there? Okay, well I'm not being clear.*

*Chairman Hartley – When somebody changes QP, I don't think there Business License comes into anything here. Where it comes in as that a person is looking to activate their QP and I just did this. I activated my QP for my company and their Business License did not do anything, it did not come up for anything.*

*Carl Martin – What we are suggesting, it would be within the purview of the Commission if they changed insurance companies, they changed categories of the QP. Lets say they had a license and their QP had four categories and they changed QP's to a QP who had two categories. Certainly within the purview of the Commission to review now a Business Plan or the Business License of a company that's changed to a new QP with different credentials. We would like to set it up such that you review the QP one time and you review the Business License also, a separate function.*

*Chairman Hartley – So then that would actually fill the part of what we are talking about the qualifying party authorization, but all we are giving to qualify a business.*

*Carl Martin - The way it is styled now and the way it was styled today on the Agenda was that you sort of looked at the QP twice. You gave some QP's at the front-end approval to take the test. Then at the back-end after they have taken the test and they found somebody to hire them you are looking at them again. What we would suggest instead of looking at QP's at that second hearing, that you actually look at the Business License at that point. Is the Business License to be operated properly with a QP? Do they have insurance? The things the Commission has the responsibility to look at anyway.*

*Chairman Hartley – I will have to do some more thinking on this. I may be the only one here that is confused, but I'm confused in terms. I see a huge loophole in this. I've got to think about it because it seems like you are doing away with one thing, but then you are bringing something new that takes its place, so what have we accomplished. We are asking a QP to come in to say what business are you qualifying.*

*Carl Martin – We are back to the second bite of the apple sort of an analogy. That you've taken a chance at looking at all the qualifications and individual person. A human being came in with regard to qualifying party and you said you have all the qualifications that statute required and we approve you to go through the process that the first one. To look at them again then to see if they are qualified again would be to review a decision you already made. They already passed that hurdle; we don't need them to start the race over again. But you could legitimately look at how the business will operate using this qualifying party including do they have insurance. Does this person have the categories necessary for this requisite for this business to operate, etc. etc. that would certainly be legitimate at that point. But you would be reviewing the Business License at that point, not the qualifying party as we are currently doing; you are sort of looking at the QP twice.*

*Commissioner Robinson – The QP has to be associated with a business or his own business to be active. Is that a correct statement?*

*Carl Martin - That is correct.*

*Commissioner Robinson – Otherwise he has to be inactive. He can test.*

*Carl Martin – A qualifying party who is not associated with a business is not an active qualifying party. Under the law active qualifying party means they qualify a business.*

*Commissioner Robinson – Otherwise, he is inactive.*

*Carl Martin – That is correct. The minute a QP quits, they go inactive.*

*Commissioner Micuda – Mr. Chair. I would like to hear from Blair, he's got something to say.*

*Blair Driggs – I think what the confusion is that it appears you are judging the qualifying party twice. Anytime the Commission while I've been here has attempted to examine the QP when they have come forward with an existing Business License or anything on that line and it hasn't happened hardly at all but any time you've had questions about a QP. I believe my advice in the past is that you cannot examine the QP, you have already judged him, so in effect they are saying your practice you have been doing what they want you to try to do. If they come on your Agenda the same way or in a different way. I would advise you whether you follow my advice or not that you have already given that qualifying party approval to be a qualifying party as long as he passes the tests. Then he passes the test all he has to do is activate it and there is no real judgment by you whether he activates it. Now when he comes in front of you if it is a new business you are examining that business and if the business does not have the proper paperwork that as far as Commissioner Hale would like as the better Business Plan. The things that you look at when they have as the proper insurance. You really need to examine the Business License, but it looks like on your Agenda you are examining the Qualifying Party twice.*

*Commissioner Micuda – Mr. Chair. I think what Blair and Carl is saying is exactly right. All they are proposing is that we make a change to the statutes, the rules; however, we go about doing it to reflect what we are really doing in practice. The second review, as I understood it has not been to look at the QP because we've already approved the QP. It's been to look really, as a matter of fact, to look at the business. Regardless of how it appears on the Agenda, so I think what they are proposing is a fine point, but is probably a necessary change. To accurately reflect what we should be doing in fact what we are doing even though the Agenda does not appear to be that way.*

*Chairman Hartley – Also it is the match of the QP and the business.*

*Commissioner Micuda – Yeah, but what Blair is saying is exactly correct when we do that*

*initial review on a QP and they come back, we are not looking at the QP again because we've already approved the QP. We are looking at the business relationship and really looking at the business and how the QP fits in with that and if there is a problem. We are going to do something with respect to the business not the QP because we have already approved the QP. We can't refuse a QP his license after we have already approved him to take the tests, he's taken the test and passed. At that point the whole notion of licensing is you don't have the right to a license it is a privilege but once you become qualified and you've jumped through all the hoops for a license then you are entitled to it and so that's the second review of the QP we've already reviewed him. He's done everything he needs to do, he is entitled to a license at that point. Okay, its not a privilege anymore, at that point because he/she has done everything they need to do, so I think all that is being proposed is that we ensure that the statutes and the rules mirror what we are doing in effect in practice even though some people don't understand that.*

*Carl Martin – The whole goal here again Mr. Chairman, Commissioners and that was well said Commissioner Micuda. Thank you! You are already doing it this way; it just appears on our Agenda that you are looking at the QP again. But we are not really doing that we want to write a rule to let everybody know we are not going to look at the QP twice. We are going to look at them one time if it is your choice prior to testing that's a great choice. After that part you can look at the Business License too. We want to write a rule to that effect in order to do that we need to have a vote of the Commission that agrees that we want to look at the QP one time, wherever in the process, you decide it has been proposed. I think by Commissioner Robinson that the best place is at the front-end before they test. If there is consensus that what I would sort of like to do is to have a vote and then report to our Rules write that you agree and then we will write a rule that reflects your will.*

*Commissioner Micuda – I agree with the notion that one, we just look at the QP once and we should front load it. Does not make a whole lot of sense to let them go through testing and everything else and then when they are all done with everything and then say, no. If there is something wrong with their qualifications and whatever, we ought to catch that before they invest the time and in-fact we invest whatever resources we have them being tested whatever, so I think the review should be prior to testing.*

*Allow Commission review on Qualifying Party applicant qualifications, one time prior to testing.*

*Motion: To Approve by Commissioner Robinson for Ms. Phillips to write the rules in such a way that the Commission looks at QP applicants on the front-end before he has to test that we would not look at the back-end, but we would look at the Business License.  
Seconded by Commissioner Burrows*

*Vote: 5 – 0 Motion carried.*

*Carl Martin – We have three issues, so I will try to go quickly through the next two. The law requires an application for licensure, no matter if it is certification or registration. Even if it is*

*at the registration level. Certification certainly Qualifying Party or Business License requires that a person or Corporation responsible leader in the Corporation whoever is identified they fill out an application. The questions present itself however; the application comes with a fee. Does the fee come attached to a single application or was it the Commissions intent that they pay one fee and if they had to modify things or make changes they could keep putting in applications and not pay an additional fee. Further, with regard to testing does it accrue that they could take as many tests as you want on one application or does each testing experience represent a discreet experience and an application has to come in for each testing experience and a fee to accompany that application for each testing experience? This is an important issue because as we talk about delivering testing in changing ways we deliver testing or even if we don't change the way we are delivering testing the financial burden for paying for testing tends to shift from people who are taking the test to those who pay TARF's that is consumers who pay to get termite treatments in our scheme getting money into the agency, our funding.*

*The Commission needs to decide, does an application mean for one thing, does the fee mean for one thing including one test or does it mean for then the need to make a decision, so we can write a rule so that it reflects what is means to put in an application, so everybody knows. Commissioner Robinson may have more to add on that.*

*Commission Robinson – There were two or three things that came up, number one I think the biggest heartache of the group that was there the other night was the fact that some people use this testing as a study period. They will come in take the test, fail it, come back a second time, which they are entitled to under the same fee and application, they fail it again, and a third time they can do the same thing.*

*Whereas, an individual who has prepared himself, has studied, comes in and passes the first time is sort of financing this other persons study of the testing procedures and Carl brought up the fact, that I agree with it, that this should be spread, so that it should be that the person should carry the weight of the cost of the application and fee. One question that I have and we really did not discuss the other night if an individual comes in and if he is testing for three or four parts, he passes two parts he can come back in a period of time I think it is within six months whatever and try again up to three times in six months, so we have to distinguish between taking parts or versus the whole thing.*

*Carl Martin – That is partial part of the question, exactly right Commissioner Robinson, Mr. Chairman, and Commissioners. On qualifying party examinations when an application is put in you approve what an applicant is allowed to test for before they can even go take the examination.*

*The question arises the Commission requires an additional fee for sections that are failed. Sections that have not been tested are covered by the first application, but when a person fails the question is do they need to put in a new application and pay the new fee. We are currently taking a fee without a new application is that the will of the Commission or would you like a new application for each testing experience. Also what if information changes during the six-month period on the application for example: a felony conviction. There is no time under our current system you make your declaration on the date you put in your application. If things change there is*

*no opportunity for them to declare correctly after that the Commission is left in the dark. So our concern is that you might want to look as an application allows a person to do a certain thing and they pay a fee to do that thing that is all that application does. If they want to do something else, they have to put in a new application with new fee to do a second thing, new application, new fee if they want to do it again and so on and so forth, but it can be written however, you want, but you can see our confusion, we need to make sure we have direction from you as how you want us to go forward on this.*

*Commissioner Micuda – Mr. Chairman, I see this relating a lot to the whole issue of the Computer Based Testing. I chaired the committee that approved one of the vendors for the Computer Based Testing and given that we got at least a year and a half invested in going down that road, at least since I've been here. Jerry been up there clubbing us over the head for a year and a half saying that Computer Based Testing was his priority for this particular Commission and we all agreed with that. The proposals were hinged on the notion that people were going to pay a fee every time they were going to take a test and the contract was awarded based on that, so it does not make any sense to have a Rule change, that butts heads with the proposal, so it seems to me every time someone takes a test they should be paying something and if it means submitting an application or supplementing the application or something, I have less of a problem with that, but in terms of taking a test that was an intricate part of the proposals that were made for the Computer Based Testing, so I think that is the direction we need to go to make it consistent.*

*Commissioner Robinson - Kip I have a question on that CBT are we looking at an option of "yes" we will allow CBT or other testing or once we go down that road it is totally CBT testing.*

*Commission Micuda – Well, I think we are going to have to vote, which should be on the next Agenda. I expect to see it on the next Agenda that we take a vote that we are going to go along with the direction we have been going for the past year and a half. It is the way other agencies are going and there are factors and mandate from the Governor's Office that to the extent State Agencies can delegate that particular function and it makes sense that is the way State Government should be going and I think that is the way we ought to go. My understanding is that everybody here has agreed with that, but that is what we have been doing since I've been here, so I don't see any reason to change course when frankly when we are at the end of the contract has been awarded basically, so it seems to me it is just a matter of putting the stamp of approval to move forward.*

*Mike Means – President of Metro Institute. I received last week a contract from the State of Procurement Office to begin Computer Based Testing on April 1<sup>st</sup>. Is that a done deal or is that something that needs to be voted on.*

*Carl Martin – Mr. Chairman it would be my counsel at this time that the Commission might consider that we might need to have this on the next Agenda and we really cannot discuss this item or make decisions about it in this public meeting without it being Agendized, so just speaking for staff, I would say that Mr. Means has a good question and I would like to meet with him after the meeting and maybe discuss it, but I don't think the Commission can make a formal decision or take*

*any action because it has not been Agendized for public review.*

*Commissioner Hartley – I have not seen the particulars, I don't know if anybody else has seen the particulars on it.*

*Commissioner Micuda – I think Carl is correct, frankly I'm a little confused about it myself because given that a contract already has been awarded.*

*Richard Mars – Commissioner Micuda and Mr. Chairman, the terms of the award state that nothing is to take place until a purchase order is issued by the Commission. The purchase order will not be issued until the Commissioners have a whole full vote on it. There is nothing that says it will be issued or will not be issued. It's a condition on April 1<sup>st</sup>. They could not set it up any other way. They said they do not issue conditional contracts anymore, so they based it on issuance of a purchase order.*

*Blair Driggs – I advise the Commissioners we really can't get into this right now.*

*Commissioner Micuda – It needs to be on the next months agenda.*

*Commissioner Burrows – Carl let me ask you a question. If a person comes in now applies for testing, they fail, they can retest unlimited times for that first fee is that correct.*

*Carl Martin – It is limited by the law in this way. It says a person cannot retest sooner than five days after there last test.*

*Commissioner Burrows – Is that the only restriction five days, so that in that six months period.*

*Carl Martin – They can take numerous times.*

*Commissioner Burrows – Through some miracle of hypnosis or something they finally pass.*

*Carl Martin - There is distinction between qualifying party testing and certified applicators testing that is correct. Certified applicators can retest and eventually they could pass through however the process they came to that knowledge.*

*Commission Micuda – I think that ought to be changed as well. I don't know of anybody or any other agency that has contacts in which you can test over and over and over until you pass within a six-month period. It doesn't make any sense to me and there has been discussion at least, since I've been here of somewhat raising the bar and expecting people to do their homework and whatever it takes to get the training to make sure they are qualified.*

*Commission Hartley – Jack state your name for the record for me.*



*Jack McClure – My name is Jack McClure, Chem Tech Supply. Commission Micuda if I might inject a small thought of information here. We have a serious problem with the testing practices overall and that many of the answers and the questions are either out of date or just plain wrong and I never in my life have had as many phone calls as I have in the last six months of people failing the tests and asking questions that they thought they understood. In fact, it appears there is a serious disruption within the testing procedure and that the entire tests need to be reviewed on all counts for all exams for accreditation and for qualifying party licenses and many of the people there quite frankly come in to test just to see what the tests is like. They are trying to figure out what is going on and it is no different then trying to figure square footage on a building in which the upper floor is in the sky and there is no dirt. We've seen inspectors make those mistakes in the field. We've seen people of all kinds make mistakes, but what we have is a State exam that needs to be fully and completely reviewed. I apologize if I am rather blunt on that issue.*

*Commissioner Hartley – Thank you for your input. I do not want to open this for general discussion. We are on an Agenda topic called “Rules Update” is that all you had Mr. Martin on this.*

*Carl Martin – We need to get a sense from the Commissioners again by vote as to how they want the Rule written. Remember we are talking about drafting a rule here. This will be a draft rule there will be comments afterwards. We will meet with the industry etc., etc., so I'm not saying this is how we will finally look at it but at this point we need to give our Rules writer some concrete directions about what an application means. What a fee means. What a test means. Is it one application, one fee, one test is that the rule you would like us to write and then we can work it through the process or is there some other sort of set up you would like us to work. We can't require her to give us an out put when we don't give her the direction she needs to make them, so that is what we are hoping to do.*

*Chairman Hartley – Here is my problem and I don't speak for the rest of the Commissioners, but I don't have anything in writing in front of me that shows me what my alternatives are, I have your verbalization which I am not prepared to vote on. I would like to see what the alternatives are and how that calculates into dollars and cents and time. I don't have anything in front of me, but a piece of paper that says Rules Update and I'm really not prepared to vote on it. I don't know what the pleasure of the rest of the Commissioners are.*

*Commissioner Micuda – Mr. Chair, I can understand that it would be nice to have something in writing and at least lays out some of the options in terms of proposals of the people who are on the Rules Committee have a better sense than most anybody else on what the options are and what makes the most sense and I think its fair to say lets see a proposal in writing, but I don't want to talk about something that is not Agendized. But to the extent there is problems with the tests and that is what I just heard. It probably ought to be on the next Agenda that we talk about the tests and if it means we establish an AD HOC Committee to review the tests then we ought to do that. This is not the first time I heard it, but it was put pretty blunt and I appreciate that if people are not telling us what is going on or what you think we don't know and it is as*

*simple as that, so that's all I need to hear and I expect to see it on the next Agenda.*

*Commissioner Robinson – I thought there was an e-mail sent out to the Commissioners that had this outlined.*

*Carl Martin – It asked specific questions that we asked the Commissioners to be thinking about with regard to this and if we can do a consensus on the answers to those questions it would lead us to this particular decision.*

*Commissioner Micuda – I briefly saw that Carl and frankly, I just didn't have time to look at it very well, but in concept I think every time someone takes a test there probably ought to be a fee associated with that. The only thing that I have a little concern about is whether there is an application that's associated with that in charging a fee that we don't want to burden people with one fee after another and the same thing with the applications, so one thing I was considering and maybe doing an initial application and if you have to retest there is a supplement to that. There are some other agencies who do something like that it is just a one page sheet that asks a number of simple questions to give us an update like have you been arrested; whatever in the last two months, whatever it is. But it would be nice and I am probably a littler more familiar with it then some of my colleagues on the Commission and it is certainly fair to say lets have a few proposals that people can look at, digest, discuss next time and move us forward. The reality is that the whole Rule thing has been a lot longer than it should have been. We are trying to expedite it even though it does take time. From my experience we probably should be farther down line than we are.*

*Carl Martin – Can I raise the third issue then Mr. Chairman. We will take that second one and do some better staff work and get you prepared for the next meeting. The third one is there a problem in the way that categories are currently described in Rule and to be brief with it. It is that there is a phrase in or about in Category B – Pest Control which lends itself to the possible understanding that a person who has a category “B” license could actually do category “F” Pest Control and maybe Mr. Robinson could sort of talk about how we talked about that in the meeting.*

*Commissioner Robinson – That was one issue and there were several issues that the language in that particular one would allow as Carl mentioned that a person licensed in “B” to go ahead and perform on a golf course for instance to on or a structure, so that was one issue. Two or three other issues that came up. We have a category “A” license right now that category “A” is strictly for anybody that is licensed in B C and I believe D E and F. Why do we need the “A” license if we got those other categories that we are licensing people. In my industry we got a category “I” right now that says golf courses which means that you can treat weeds and you can treat turf & ornamental; however, most of us in the golf course industry have a license in E and F and the Aquatics E-I as it is right now. Why do we need a golf course category if that's the case? Those were two or three issues that came up within the discussion.*

*Carl Martin – Wood Preservatives there are only six licensees in the State of Arizona that hold the Wood Preservatives Qualifying Party license currently and none of them is active. Wood*

*Preservatives could easily be if it was the pleasure of the Commission be incorporated into the Wood Destroying Organisms category. I guess what we are saying is that we need to get a decision from the Commission that the Rule writers go ahead and write a Rule that makes the categories distinct from one another. There is no overlap anymore in “B” means a “B” and a “D” means a “D”. They are not going to overlap each other. You have to have a category to practice in a certain type of pest control category, which defines the scope of practice. We just need the Commission to agree to that, we will work out the details and we will get back in the course of the process. But at this point, there is overlap and we think that is problematic and we know it is problematic and we can't write Rules if there aren't standards that are set for practice in certain categories, specific categories.*

*Commissioner Micuda – Mr. Chair when I was an ALJ at OAH I ran into this problem a couple of time of having particular conduct under several different licenses. I like this proposal it compresses the number of categories and we may end up in a situation where we are creating some other categories to try and segregate and distinguish one category from another. Give the Committee a chance to come up with something that we can look at. We certainly do not have to put our stamp of approval on it, but at least give them a shot to try and resolve some of the issues.*

*Chairman Hartley – I do not see where that requires any kind of Motion.*

*Carl Martin – We just want to have on the record that the Commissioners agreed to that and we felt the best way to do that with Commissioner Robinson's advice at the meeting was that we just have a vote. It would be just to write the Rules. It would be like the first instance to draw a Rule that sets standards of practice for specific categories that don't overlap some language to that effect.*

*Motion: To Approve by Commissioner Robinson I would make a Motion that we direct Kathleen Phillips to streamline (I guess the way we would put it) categories so that each category is specific. There is no overlap and if we need to add more categories to be very specific then that can happen also.  
Seconded by Commissioner Micuda.*

*Vote: 5 – 0 Motion carried.*

**Adjournment**      *Motion: To adjourn, by Commissioner Burrows  
Seconded by Commissioner Micuda*

*Vote: 5 – 0 Motion carried.*

