

**COMMISSION MEETING
June 14, 2002
MINUTES**

I. Call to order and roll call

Commissioners present: Commissioner Fraker, Hale, Hartley, Micuda, Peterson, Robinson

Commissioners absent: Commissioner Burrows

Staff Present: Executive Director, Jerome Davis, Barry Levitch, Pam Ulbrich, Richard Mars, Dirk S. VandenBerg, Sr., Michael Francis, Jason Aanderud, Maggie Vazquez, Carl Martin, Dave Colvin, Alan Pugh, Wyatt Simons, and Assistant Attorney General Blair Driggs

II. Approval of May Minutes TAB 1

*MOTION: To approve May 2002 minutes by Commissioner Micuda
Seconded by Commissioner Peterson.*

VOTE: 6 - 0 Motion carried.

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

None

IV. Correspondence with Commissioners

*Commissioner Robinson - Kevin Ethridge/Contractors
Chairman Hartley - Received several calls regarding the Matrix/University/Arizona
Exterminating
Commissioner Fraker - Contractors*

V. Scheduling of future meetings/agenda items

**June 14, 2002Scottsdale, AZ
July 12, 2002 Scottsdale, AZ
August 9, 2002..... Scottsdale, AZ
September 13, 2002Flagstaff, AZ
October 11, 2002Scottsdale, AZ**

November 8, 2002Tucson, AZ
 December 13, 2002Scottsdale, AZ
 January 10, 2003 Scottsdale, AZ
 February 14, 2003 Scottsdale, AZ
 March 14, 2003Scottsdale, AZ
 April 11, 2003 Scottsdale, AZ
 May 9 , 2003 Tucson, AZ

Chairman Hartley asked how was the schedule for future meetings. Commissioner Peterson will not be able to attend the August 2002 meeting.

VI. Consent Agenda.

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

A. Applications for Business License

- | | | |
|---|-------------------|---|
| <p>1. Collman, Carl O.
<i>Pulled</i></p> | <p>dba</p> | <p>Black Jack Pest Control (Activating Qualifying Party for new business license in “B” General Pest). TAB 2</p> |
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<p><i>MOTION:</i></p>	<p><i>To approve by Commissioner Peterson Seconded by Commissioner Micuda</i></p>
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<p><i>VOTE:</i></p>	<p><i>6 - 0 Motion carried.</i></p>
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Commissioner Fraker is concerned that the owner, Frank Sanchez will be involved in running the business and the QP will not be involved in the Business on a day-to-day basis.

Discussion by various Commission members of doing something different on QP’s. Should be put on the agenda. Mr. Collman does not see anything different for those companies that have branches throughout the state and they are only a telephone call away.

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|---------------------------------------|-------------------|---|
| <p>2. Corthouts, George J.</p> | <p>dba</p> | <p>Union Hills Country Club (Activating Qualifying Party for existing business</p> |
|---------------------------------------|-------------------|---|

license in “E” Weed Control & “F” Turf & Ornamental) TAB 3

3. Dettman, Jeffrey C. dba Kleen Kill Pest Control (Activating
Pulled Qualifying Party for new business license in
“B” General Pest) TAB 4

MOTION: To approve by Commissioner Hale
Secoded by Commissioner Fraker

VOTE: 6 - 0 Motion carried.

Mr. Dettman bought the Company about eight years ago it was called Pests Express.

4. Gallifant, Gavin R. dba National Environmental Solutions, LLC
Pulled (Activating Qualifying Party for new business license in “B” General Pest, “C” Wood Destroying Organisms, “E” Weed Control & “F” Turf & Ornamental)
.....TAB 5

MOTION: To approve by Commissioner Fraker
Secoded by Commissioner Hale

VOTE: 6 - 0 Motion carried.

*(Staff to check on the status of insurance).
Scott Richardson said the insurance was under a separate binder.*

5. Jones, David P. dba City of Tucson - Water Department
Pulled (Activating Qualifying Party for new business license in “E” Weed Control)
.....TAB 6

MOTION:

*To approve by Commissioner Hale
Seconded by Commissioner Fraker*

VOTE:

6 - 0 Motion carried.

Commissioner Hale has questions for staff why the City of Tucson needs a qualifying party. Because the Parks & Rec had a QP five years ago and they dropped the Qualifying Party.

- 6. Lopez, Raymond J. dba Scottsdale Weed Control & Fertilizer (Activating Qualifying Party for new business license in “E” Weed Control)TAB 7
- 7. Mastalsz, Jimmy dba Harvest Landscaping, Inc. (Activating Qualifying Party for new business license in “E” Weed Control)TAB 8
- 8. Nerone, Joseph A. dba First & Last Pest Management Services (Activating Qualifying Party for existing business license in “B” General Pest & “C” Wood Destroying Organisms).TAB 9
- 9. Neumeyer, Michael J. dba Bock’s Bee’sss (Activating Qualifying Party for new business license in “B” General Pest).TAB 10
- 10. Olson, Timothy S. dba MasterCare Pest Management & Environmental Services (Activating Qualifying Party for new business license in “B” General Pest).TAB 11
Pulled

MOTION:

*To approve by Commissioner Micuda
Seconded by Commissioner Peterson*

VOTE:

6 - 0 Motion carried.

Commissioner Hartley said the company's name is MasterCare with no space in between.

11.Preece, Thomas J. dba Ambush Bee & Pest Control Inc. (Activating Qualifying Party for existing business license in "C" Wood Destroying Organisms)..... TAB 12

12.Winter, Burghard G. dba Winter Bros. (Activating Qualifying Party for new business license in "B" General Pest).....TAB 13
Pulled/Tabled

*MOTION: To approve by Commissioner Hale
No Second*

VOTE: Motion fails for lack of a second.

Commissioner Peterson wanted this to go on the record because of Mr. Winter's criminal record. Table until the next commission meeting. Staff needs to provide more information, so Commissioners can re-evaluate.

B. Applicants for QP Testing

1. Bancroft, Jay W. "E" (Weed Control)TAB 14

2. Gielow, Ryan R. "B, C & E" (General Pest, Wood Destroying Organisms & Weed Control) TAB 15

3. Goodland, Eugene P. "E" (Weed Control) TAB 16

4. McCraw, Todd "B" (General Pest) TAB 17

5. Morehead, Scott E. "E" (Weed Control) TAB 18
Pulled

MOTION: To deny by Commissioner Peterson and Mr. Morehead will have to wait 90 days before he can

retest.
Seconded by Commissioner Hale

VOTE: 6 - 0 Motion carried.

Commissioner Peterson pulled because of staff notes on examination behavior. Mr. Morehead took notes off test for herbicides.

- 6. Peters, Tanya M. “B” (General Pest) TAB 19
- 7. Powell, Tim D. “B, C & D” (General Pest, Wood Destroying Organisms & Fumigation TAB 20
- 8. Rachoy, Daniel J. “B & C” (General Pest & Wood Destroying Organisms) TAB 21
- 9. Royalty, John T. “E & F” (Weed Control & Turf & Ornamental) TAB 22
- 10. Truog, David G. “B” (General Pest). TAB 23
- 11. Walsh, Jr., William C. “E & F” (Weed Control & Turf & Ornamental) TAB 24

C. Request for Temporary Qualifying Party Certificate and/or Extension

- 1. Aesch, Paul G. dba Pestube Systems, Inc. TAB 25
- 2. Hicks, Trent Larry dba Action Termite & Pest Control . . TAB 26
- 3. Horrocks, Jr., Billy E. dba Amera Sun City Pest Control . . . TAB 27
- 4. Koch, John M. dba Proven Ecological TAB 28

D. Request for Company Name Change

- 1. Ambush Bee & Pest Control to Access Pest Control TAB 29
- 2. FUMA-GATOR a div. of Pest Techs to PEST! TECHS TAB 30
- 3. Petrini’s Landscaping Inc. to Landworks Southwest TAB 31

Pulled

*MOTION: To deny Name Change by Commissioner Peterson
Seconded by Commissioner Robinson*

VOTE: 6 - 0 Motion Carried.

E. Treatment Proposals.

1. ORKIN PEST CONTROLTAB 32

End of Consent Agenda

Commissioner Peterson withdrew first Motion to accept Consent Agenda

*MOTION: By Commissioner Peterson to accept Consent Agenda as read with the exception for those items pulled for discussion.
Seconded by Commissioner Hale*

VOTE: 6 - 0 Motion carried.

VII. Complaints

1. Bio-Chem Services - Case # 2001-316.TAB 33

*MOTION: To Dismiss by Commissioner Micuda
Seconded by Commissioner Hale*

VOTE: 6 - 0 Motion carried.

2. Sexton Pest Control - Case # 2001-331TAB 34

*MOTION: To Dismiss by Commissioner Peterson
Seconded by Commissioner Hale*

VOTE: 6 - 0 Motion carried.

VIII. Test Results/Qualifying Party A.R.S. § 32-2314/New Matrix/Enforcement

**Procedure/Vehicle Inspection Procedures TAB 35
(Requested by attorney, Scott Richardson for discussion)**

Dirk S. VandenBerg, Sr., - Staff received a letter from Mr. Richardson for discussion of how to get test results in a prompt and an efficient manner and the New Matrix, Enforcement Procedures, and Vehicle Inspection Procedures of the Structural Pest Control Commission. Ms. Ulbrich will address test results and qualifying party, and Mr. Francis and I will address the rest.

Scott Richardson/Lisa Gervase - I asked on behalf of a number of our clients that this be put on the Agenda today in an effort to seek some clarification, seek some relief and to determine if we are going in the best and appropriate way for the industry and try to have what we see is what is happening out in the field and not to start driving a wedge between the industry, and the staff, and the Commission.

Scott Richardson - I know Lisa has some comments, but let me just take a moment to reiterate something I said at the last meeting when the Matrix was announced. It was the first we heard about the Matrix, no one to my knowledge came to the industry or the association and said we have this new Matrix and it is going to be non-discretionary. If you read your Minutes those Minutes say "this is a non-discretionary Matrix." Which troubled me on the spot and troubled Lisa on the spot because at that point, we felt what is really the point to have a Settlement Conference. If it is a traffic ticket and there is one fine and that is the only fine you can have then why would we ever have a Settlement Conference and that leads you to the escapable conclusion that some good things come out of a Settlement Conference not just lower fines. Those good things include such things as: Pre-reporting which this Commission cannot order, it includes keeping logbooks on Pre-treats which this Commission cannot order, and it includes people having to go to field classes and learn how to do things if there is some suspicion if they are not being done the right way. It involves extra continuing education and there are other problems with this Matrix and there are a number of folks in the audience who would like to speak very briefly this morning about some of their experiences. The other issue that the industry would like to address is the testing issue and this again I believe was raised at the last meeting. The issue is a very simple one, the industry is trying to get its people through the process of testing, hopefully, successfully and get them certified and get them out in the field and in work. My understanding from the last meeting it is apparently a Scantron machine that was on its last leg there is a new one I guess that is being purchased. I'm told in the old days that it was a matter of running a test through a machine and saying to someone that you passed or you didn't and now what we are finding is not only that it takes some time, but we are getting the results by the mail and where there is a time limit on testing within which you must pass portions of the test. It's become a problem because the lag time between taking the test and then getting the results by mail is a difficult situation for companies and for the applicators and they sometime fall outside the deadlines or in some cases they even retest because they don't know if they passed or failed the previous test. I am not sure if this is what we really want them to do, but Lisa why don't you mention what we talked about as an industry with respect to the Matrix .

Lisa Gervase - Scott and probably some industry members here can talk about some of the practical effects, so I thought I would focus on the legal aspects and certainly your counsel can advise you more thoroughly or if he disagrees with my thoughts. My concern is that if you are going to have something that is a guideline, Matrix, policy whatever you want to call it. It doesn't really matter what matters is the effect and by law there is a definition of Rule and it appears that this Matrix would fall within that definition of Rule and as opposed to say as substantive policy statement because it directly effects the industry. There are very limited exceptions where you don't have to promulgate a Rule and the Court of Appeals in Arizona in an AHCCCS case basically said that those exceptions are to be very narrowly construed the favor is to promulgate a Rule if you are going to have something that effects the regulated community. There is a concern that this could back-fire because if somebody wants to pursue their legal remedies well first they would petition the Commission and say you need to promulgate a Rule you can't use this Matrix and if you don't and if the Commission didn't agree then somebody could petition the Governor's Regulatory Review Council which is the agency that oversee's Rules and they would determine whether something constitutes a Rule and should have been promulgated as a Rule if they determine that and the answer is "Yes" then the policy or in this case the Matrix would be considered void by law so, I think there are some far reaching concerns about using something that's not promulgated as a Rule, but has the effects of a Rule. Ultimately, it could back-fire in another way which is if somebody did not get relief through that process they could go to court and seek a declaratory judgment saying basically that this is an improper practice and possibly subject the Commission to attorney's fees. I think the picture of using something to make enforcement actions more consistent to avoid any arbitrary enforcement, is a great idea and I think the Matrix is an attempt at that maybe it is a little bit backwards because determining appropriate disciplinary action is not just a science there is an art to it and the Matrix takes the art part out of it and maybe the better approach to what I think is the goal of determining discipline that is fair and not arbitrary from case-to-case is to have a spread sheet or keep a tracking system of the types of cases, categorize the types of cases, categorize the mitigating and aggravating circumstances and the discipline that is imposed and maybe use it in reverse when you have a current case in front of you. See how you have handled cases in the past to try and come up with a non-arbitrary decision, but every case has to be determined individually using aggravating and mitigating circumstances, so maybe a process in the reverse might be better. I did do some research to see what some other agencies do in terms of substantive policy statements on the front end to give their staff some guidance in what might be a starting point and some agencies have come up with a lengthy process and it is not as quantifiable as this Matrix, but it gets you out of the problem of Matrix being a Rule and taking the art out of disciplinary action determinations which is prioritizing the types of cases and giving a list of what you might consider to be aggravating and mitigating circumstances and the range of discipline as opposed to a specific bottom line discipline for each type of case. Maybe that is something that could be used for the front end some kind of tracking record used at the tail end and that would probably be legally enforceable and ultimately better. It is a little more narrative, but the Matrix I think has some considerable problems in that regard.

Chairman Hartley - What are some examples.

Ryan Weber - Good morning Chairman and Commissioners, I'm Ryan Weber, the pre-treat and final treat manager for SOS Exterminating. The issues I would like to address today is some of the testing situation issues we have run into. I am in the process of the QP testing and there is a seven (7) day policy for retesting which makes sense and I understand that, but I've run into the issue as well as, I've talked to Sexton and a lot of different companies where we are not getting our results back. For me, I took the test on a Friday and I wanted to retest if I needed to on the next Friday. I didn't get the results back and I couldn't retest, I didn't receive the results until the following Monday, so that's frustrating for me because do I need to test, do I even need to study, where can I go, this is at the QP level. The other issue is with my test, it has been three weeks when I received the results in the mail. You can't call and ask because I can't verify who you are which makes sense, you can't come down and get your results this all has to be mailed and all this has been happening in the last year. In the past, for some of you that may not know you got your results right there after you took the test they ran it though the scanner for the technicians. I know they grade the QP test by hand, but the tech should not have to wait three (3) weeks to get their results. They have done this change over the last year and it has been difficult for business and we want to get our guys out in the field. Another issue is on tests, if you can't pass a test, like Mr. Morehead's situation back there we use to be able to sit down with an inspector and then they would go over the questions we missed, so we have a way of learning from our mistakes. If you don't know something and you keep studying and studying you are not going to know what you are studying for unless you know what you are missing. That is one of the issues we are running into. The other issue is just the grading, I spoke earlier on that, if we can get grades back faster at least within the seven (7) days where we are allowed to retest or grade them there with the new machine that was purchased, that would be great that would help out the industry a lot where we can get certified applicators out into the field.

Chairman Hartley - Lets stop there for a second for a couple of questions to staff. Number one is the new scanner going to allow us to give results immediately.

Pamela Ulbrich - Chairman, Commissioners the new scanner is basically the same as the other one. The old scanner never stopped grading the tests, we grade the tests and they are out within 48 hours a lot of the problems we have is with the applicators they will go back to their employers and they will tell their employers they did not get their results because they did not pass their test. Ninety-five percent (95%) of the time that is the case. If the companies wanted to know if their applicators passed they can get on our web-site, if they passed their tests it shows up automatically once it grades through the auto grader it shows they passed, if they are not on there it means they failed. The problem we are having is the companies are wanting the information, but it is the applicators that are not telling them the actual truth that they failed the tests. They do come in and they want to retest and if there is a problem with the mail whatever, we tell them their results and verify who they are, but the problem of getting them out in three to four weeks, I disagree with

that because we get them out within the 48 hours.

Chairman Hartley - Let me just say this is becoming a nightmare, but I read something where we are not allowed to tell employers whether somebody passed or failed. It is the employees responsibility, we have a responsibility to get people certified and we have a certain number of days to do it otherwise, the QP will be standing up here at the podium saying why he has people that are not certified, he needs to know and he needs to know fast. In conjunction with that is the job or the lack of a job for the person and the potential for error. What I mean if an error is made and somebody doesn't get posted on the web-site and we assume that means they failed and now they are not certified the next day, they are gone and they are history and somebody lost their job or could potentially lose their job because of a gigantic and I'm not pointing the finger at anyone or anybody it sounds like this is a ball of string that does not have an end to it and there has to be a way to sit down and go through it logically, so everybody comes out a winner in this thing because that is what we are all here for, but somebody could end up losing their job because we don't know if they passed the test.

Pamela Ulbrich - Chairman, we do offer the applicators a form if they want to send their employer their test results the majority of them say "No". They don't want their employers to know their results.

Chairman Hartley - Blair help us out a little bit in this, I have an employee and he comes to test and I have a requirement, I am suppose to be able to receive the results. I'm the QP, I'm suppose to be overseeing this whole process with my employee and yet you are telling me I can't be privy to whether he passed or failed the test.

Blair Driggs - Well I think they've already explained to you that you already have the ability to see whether they passed have the employee send you the results.

Chairman Hartley - Assuming that is 100%.

Blair Driggs - But you also as the employer you can usually have them send you the results. There is some privacy issues that may be involved and I think that is what staff has been careful and making sure they don't overstep it. I haven't really gone into it and said point blank you cannot do this, but I think as an appropriate response by staff in light of the overall privacy things, I am not sure it really applies, again I have not gone into it, but I think staff has explained that they have been given many options to protect the qualifying party and the employer of an applicant by either asking them to allow to give you the test results, once you have become a certified applicator that is public record. Where you say it may be a mistake and you don't get the results, but I need to look at it as a third party where an employer can check on another person.

Chairman Hartley - What about this idea, I steal an idea from 88 Crime. Everybody that

takes a test gets a five digit number or a hundred digit number whatever is appropriate and that's there number, if they call in and give that number that is their identification. You failed, you passed, whatever to me that is simplicity in motion and would be a simple thing to implement and that way you know who you are talking to or else they've given their 88 Crime Number to somebody else to collect the money. That's the way they do that to positively identify somebody. It pretty much puts it in the court of the other person if they want their privacy protected, they've got their privacy protected, it is a pretty simple thing to do. You get a stamp and just stamp this thing with a number and give it to a guy and he calls in and he is one million seven hundred what are the results.

Blair Driggs - Again you give that number to the guy.

Chairman Hartley - Yeah, that's what I'm saying you give it to the guy.

Blair Driggs - It is up to the guy to give it to the qualifying party.

Chairman Hartley - No, that's my point, one of the complaints is, he calls in and they go, were sorry we can't tell you they don't know if your Mr. Weber, you could be somebody else calling in for Mr. Weber. If we gave him when he sat down to take the test a unique number and he called in and gave the right number they could give him the results right over the phone and that would end that problem right away. That's not even hard to do.

Ryan Weber - When they pass they get a pay raise they get all kinds of stuff and we even pay for them to take the test, so I don't see them keeping their letter because they failed because we give them the day off and pay for them to go down and take the test. It is not like they are not receiving their letters, I don't know, but there was a couple of weeks there and there were issues with the new computer system, or new policies, but we were running into all the time.

Commissioner Robinson - I think you hit on something right there, I think most employers pay for an applicant to come down and there should be something on that applicant form that whoever wrote that check to pay for that should get the test results and then the employer can go from there and what percentage Pamela would you say of employers pay for that 80%.

Pamela Ulbrich - Yes, I would say that.

Commissioner Robinson - The golden rule comes into effect here, if you are paying for somebody to go down that individual should get it.

Chairman Hartley - Blair is going to disagree with that.

Blair Driggs - You still have the privacy rights. You need to make sure the right people get the information and the person that did it.

Chairman Hartley - From a practical sense the only other thing that I am looking at is protecting the employer because a lot of pressure is put on the QP to make sure they are doing their job right. So you get an employee and the QP says did you pass the test and he goes "A Ok" I passed the test and then you know he says they are just screwed up and they did not send me the results and sooner or later all this is going to come out, but in the interim here is a guy that lied and says he passed the test and keeps on working, you got a guy out in the field that may be in violation. Next thing you know the QP is up here answering for a violation and I mean this just goes round and round in a giant circle and everybody is pointing the finger at everybody else there has to be some simple solutions to this thing. You know we are going to be going into Computer Based Testing and that will solve a lot of it.

Vice-Chairman Micuda - I don't have the concerns about the privacy issues that maybe Blair has, but again I have not looked at it closely either. I don't profess to have any personal knowledge about how the whole process works, but what I'm hearing at least some time ago you took a test, your scanned, you get a result, and you walk out the door with your result. I don't understand why we are not doing that and if it a funding issue, a personnel issue it ought to be made a priority because that will take care of the problem.

Pamela Ulbrich - The reason why we aren't doing that anymore because basically the information we have to input into the computer system, we don't have the staff to do it.

Commissioner Robinson - You've reduced the number of people that can test at any one time over this last years period.

Pamela Ulbrich - We take twenty (20) testers.

Commissioner Robinson - So you've always done twenty (20).

Pamela Ulbrich - Right!

Barry Levitch - Chairman, Commissioner Robinson we did reduce it there for a time because when Pamela took it over there were some Administrative problems, staff issues and we had to get that place organized and operational and back to twenty (20). We have been testing into the twenties since last November and if I could speak to the staffing issue, clearly we can add another staff person, we do have the resources to do that, concerning Commissioner Micuda's point. We felt by serving the public better by using electronic means by utilizing the web-site, we made a conservative effort to make sure all the data is entered in a timely fashion as I indicated before. What is the Commission's discretion of what they want staff to do, if you want that done, we certainly can accommodate, we thought we were enhancing the service by moving to a computer based electronic testing environment. The other thing I might add, is that a lot of applicators wait until 60 or 70 days into that 90 day window and then its hurry up. We certainly make every effort

to give the businesses and the applicators and people that are testing the best possible service under the environment. I think if you check our service levels with other agencies, we are far way better.

Vice-Chairman Micuda - Let me make a couple of comments, I appreciate putting the results on-line and I think that is what we ought to be doing because that is going to press the industry into getting computers and getting accustomed to being on-line which is the way we are going whether people like it or not there is just no way to avoid it. I do appreciate that, the one concern I have is I am not hearing that there is any certainty about when that information is available on-line and so what I'm hearing is that if your name is there, then your good if not, its maybe because they just haven't gotten around to putting your name on there or maybe because you failed and so there is a little uncertainty of your name not being there. I don't know to the extent what you are talking about a couple of days to do that, you know it just seems to me there is a lot of utility in being able to have somebody hand in their test, have it scanned and get something in return and that they can go to their employer and there isn't any doubt that this person has passed and a lot of these issues go away. I really encourage it and I like the on-line thing.

Carl Martin - It happens simultaneously, Mr. Chairman, Commissioners when the test is graded and if the tester has passed it goes to the web-site and becomes a piece of information that becomes available at the very moment you are printing out that slip that said you passed the test. It is posted to the web-site there is no additional step, there is no person typing it in later when its graded if it passed it is posted to the web-site. If it doesn't pass it doesn't post to the web-site by the time you give them the fail slip you could be looking on the web-site you could find out that they didn't pass as a certified applicator. There is no lag time there, no extra body involved so there is no person in between that process.

Vice-Chairman Micuda - I understand that and it make a lot of sense to me, so the question is how much time is it taking from the time a person hands in their test to the test being graded. That sounds like the problem.

Pamela Ulbrich - When the applicators came in like today they are graded and sent out within 24 hours.

Jerome Davis - You are looking at a window of 24 or the latest 36 hours, I think that is good service.

Chairman Hartley - It sounds like we need some education.

Commissioner Robinson - Do you do a list of the people that are going to be testing in a particular day or you can't do that if you don't know who is coming in.

Pamela Ulbrich - We schedule all of our testers in the morning and we have them scheduled

and we have them all sign in and then they come in and get their test and they take their test as they are done with their test we put them in the auto-grader and as we are done, we then mail out the results. Ninety percent (90%) of that time they are mailed out that night and they are in the mail the very next morning.

Chairman Hartley - Are you going on-line or the web-site Mr. Weber. Are you finding your certified applicators on there.

Ryan Weber - Yes, I am. Not all the time. I am not on there every day looking at the web page. I do check it. I am not the only one that has one or two or three week late stuff, so I don't want to argue with staff about anything, they do a great job for us. You know it would help out if they would grade it right there and hand it back and it is already posted, we can verify even while the tech is on his way home, we can check stuff, but it would help to have that paper in hand when they are done grading.

Commissioner Fraker - Mr. Weber, I would like to clarify that you took a QP test on Friday and then you wanted to plan to retake the test the following Friday. Then you said you did not receive the results until Monday was that the following Monday.

Ryan Weber - QP's test on Friday. Seven days. Correct.

Chairman Hartley - We have somebody else lined up.

Ryan Weber - Thank you.

Tony/Tonto Rim Pest Control - Introduces himself to the Commissioners. I can't imagine how much paperwork they have to process, so there is no complaints on that. That has to be an over-whelming job. I am in the process of doing QP testing for termites. I took it three weeks ago today and as of yesterday I have not seen the results in the mail and I haven't checked the web-site. That is one of the things I plan to check on as well, while I am here to see if I can get my results.

Chairman Hartley - Sounds like we have addressed certification and it is my understanding it is graded and posted to the web-site electronically, if it passed. What about the QP test part?

Tony - Pen and Pencil

Chairman Hartley - What is the time lag or time frame?

Pamela Ulbrich - With him I would like to review his file to see what the problem is because the timing they are giving me because they test on Friday and the majority of the time we can't grade their test on Friday. We grade them on Monday and have them out on Tuesday.

Chairman Hartley - Discussion on the delivery of mail and how he mailed two envelopes to Richard Mars at SPCC and how each letter arrived on different days. Chairman Hartley thought it would be ideal for the QP's to be assigned a number and they could call on Monday morning if the tests were graded or even on Tuesday to find out if they passed or failed because that seven (7) day window to retest is so critical and your dealing with the U.S. mail. They would have to have it by Friday might be a little bit thin, so I would say that needs some looking at, I would appreciate it.

Andrew Weber - Where are those posted I am in the web-site regularly. I am just curious where that is located because it is not on the front page.

Chairman Hartley - Is that other Weber related to you.

Mike Means - Chairman, Commissioners I know how to fix that problem, besides that I don't want to beat a dead horse, but I am speaking on behalf of my students, not as the company but we have students who come to our courses and we teach each category once a month and so if they fail a test "say it is general pest control" they can come back the next month and take it over for free. We have numerous students who come to us and it is about time to take general pest over again. They don't know if they passed or failed and I don't know but it sounds like they should know from what is being said here. Perhaps they don't have a web-site, or they don't have a computer, or they just don't know. I don't know about that or its just not being publicized that you can't find out. They come to us not knowing whether they should take the course over again, we were in the practice of calling, my assistant Diane Sweeney got into a lot of trouble for calling and was told to never call back again because she was calling to try and find out if these students passed or failed, so they would need to know if they needed to retake the training over again. That has been a problem with a lot of people, if they know within 24 hours that should be publicized. The real issue that I would like to speak about today and Mr. Morehead is a perfect example of what is going on is that there are students that don't pass the test and they can't find out what they missed. A year ago they used to be able to come here and sit with an inspector, review their test, they would find out I'm strong in this area, but I'm weak in this area and I need to study those areas and retake the test. That is a very efficient way because they don't have to come back and retake and retake and not really knowing what they missed. We used to come down to the Commission and get a copy of their test results and we would also review it with our students, so we would know what we needed to train this student in and what area are they weak in. About a year ago that was eliminated, now we cannot do that, nor can the test taker himself do that either. In the case like Mr. Morehead, where he has taken the test but he doesn't know what he doesn't know and that is the problem, he doesn't know herbicides.

Chairman Hartley - You can beat that to death where they could take the test and keep looking at the ones like I missed, eventually I will pass the test, but nothing gets proven. The terms of my knowledge about the subject only my knowledge about the test.

Mike Means - If somebody is passing certain sections, but is really weak in chemicals or weak in ID I am not even saying you have to show them the questions they missed whatever, but a person ought to know what area do I need to work on. To be able to focus in on their weaknesses, in most cases I just came in and took four tests in November, one was in Public Health and I had to take Public Health four times to pass it. The problem was I would take a different test with different questions, it would start off about 60 or somewhere in there and work my way up and I finally got it to a passing score. In all the others I had no problem, but in that particular one I was facing the same thing Mr. Morehead was facing I didn't know what I was missing and I studied that material that was given for public health and I would do that stuff backwards and forwards and I was still having problems with it. I think that it would be a good thing if the Commission could say you could work on this area or that area, if the guy is blowing the whole thing that is totally a different story.

Carl Martin - I will say that the Commission is already in the process of doing that. The Commission is currently redoing its tests and making test blue prints that will be available. In order to pass this test you will have to have knowledge of this area and that area and that is part of the testing process, but to allow candidates to take a standard exam that isn't changed and to review actual questions on that exam and they happen to come in again and if they make a mistake on the test and a mistake on those questions, it seems to me what the Chairman has suggested, what it does is make your test exams invalid and the other person never learned anything. We will provide a test blue print, we are working on that currently.

Barry Levitch - Mr. Chairman, Commissioners, I don't think we should be in the remedial test business here, I don't know of any other entity that does that and it is great customer service, we used to do that in the past, when I came here they were doing that, but I'm not sure we should be doing that and it is not the best for State resources.

Vice-Chairman Micuda - I agree with Barry, I don't like this idea of giving people the tests afterwards and letting them review it, but if we are not going to do that, then you have to do what Carl suggested and that is you have to make sure you have a valid test to begin with and you have to make sure the materials that test takers are provided relate to the test and in fact cover the material that are on the test and that people have an understanding of exactly what is on the test. When I took the Bar exam I never got to see my test at all, I was told what the score was and that was it, some people get three shots and then some people have to apply with the Arizona Supreme Court to take it again and most professions when you take a test they never see their tests, so I am not in favor of disclosing our tests because that will be invalid. But at the same time we need to ensure that there are materials available before you take the tests, in fact to enable a person to do well on the test, assuming they put in the time and they study.

Mike Means - I agree with you in a sense Commissioner Micuda, but I don't really think that you should go back because you missed this question, so the next time they remember it is 2 B or

whatever. I think if they are weak in an area that should be known and there is another way to look at it. I think that is your goal to have technicians that are out there on the street who really know what they are doing and who are very competent, not technicians that came back who took the test four or ten times and they finally got lucky and slid by. I think that is the goal of all of us is to improve the education so that we have the technicians out there knowing what they are doing.

Jerome Davis - Mr. Chairman, in reference to what Carl said and in reference to what Mr. Means said all the information currently for certification and also three quarters for the Qualifying Party training material are currently available here in this office. That's where we are at right now. If there is any resource they need they can go into the Turf & Ornamental whatever it may be and go and find the answers.

Carl Martin - Pam provided by admission information necessary about herbicides that would be tested on. Take this list you are going to need to know these herbicides, we are providing that data.

Mike Denny - Commissioners, Chairman, it appears that we've ascertained that there is a way if you passed the certification test and my conclusion is if they didn't pass they are not on the list. The problem with that is the test is sectionalized and it is the QP's and the Business License responsibility to see that those tech's are certified. They only have to take the section of the test again that they failed, so just knowing that a test is not on the list doesn't tell you where you have to address the inadequacies with that tech of his knowledge in order to pass that test. The thing that is necessary in order to bring that tech back to the testing center is to know what he has failed. We need to know if he failed the laws or chemicals or identification of what he has failed, so we can educate him in that area. I also want to speak on vehicle inspection procedure, I will come back for that one.

Chairman Hartley - We will come back to that one. Pam, he brings up a really good point if it is sectionalized, they need to know where they failed and if they have to come back.

Pamela Ulbrich - They will have the results to know if they have to take the general pest or the core. They will have to have both of them to be certified, so if they didn't pass the core they wouldn't be certified.

Vice-Chairman Micuda - Maybe it is my own misunderstanding about the process but to the extent that someone comes in and takes a test and they pass some and they miss one part and they only have to come back to take one part. They do not have to take everything over again, we need to communicate that information. When you are taking your exams to be a CPA that is sectionalized. If you miss part of it you come back and take that part only that makes a lot of sense to me, you need to tell people that you missed this section and you come back and take that section only.

Discussion with Pamela Ulbrich and Chairman Hartley that the results letter breaks down the categories they passed. How quickly do they get those results? Which are mailed out within 24 to 48 hours they are in the mail and a tester has to wait seven (7) days before they can retake the test.

Chairman Hartley - It sounds like again with the QP tests, we have a potential problem if a guy fails one section, he needs to come back and take that and he might not get the results with enough time to study up in that area and come back within the seven days (7) to retest it sounds like maybe something needs to be done in that area. It sounds like there could be some beefing up in a couple of areas that might make this thing work until we can get on to the computer based testing.

Doug Pennicker - Mr. Pennicker introduced himself to the Chairman and Commissioners, he is the Vice-President of Contractors Termite Pest Control. First I would like to say that, I know staff is starting to take this very offensively and I really hope that you don't these are only concerns that the industry has in order to try and come to a cohesion to make things better and trust me there is no way that we are picking on staff here. You guys do your job and that is good. What I would like to talk about are basically two concerns. One is on the Matrix and that is I am a little concerned as why an offense is different from a company who has one or two employees to a company that has over ten employees. To me if you poison a dog you poison a dog. I don't understand why the Matrix is different. I know you probably do not want to comment on anything, but I just wanted to get that out.

Chairman Hartley - I would be glad to comment on anything. I think that is the average type of thinking that comes in here, if you are treating houses and you are treating around 200,000 dogs and you manage to damage one and you have another company that all they ever treated were ten dogs and they killed one or damaged one there could be a serious problem even in the absolute sense nobody wants to hurt a dog, or a child, or anyone else. In the sense of what your looking at and what is going on here you say your treating around ten dogs and you managed to make one sick out of ten. That is a pretty bad batting average on a dog. If you are treating 100,000 houses and you only managed to make one dog sick in five years that is a better batting average.

Doug Pennicker - Then the Matrix should be reversed. Because right now the way you have it is that the small company gets a \$300.00 fine and a larger company gets a \$2000.00 fine.

Chairman Hartley - I will have to take a look at it.

Doug Pennicker - To me an offense is an offense and everybody whether you are a small operation or a large operation you have that technician acting as a representative of your company and he may make that mistake whether he is in a large company or a small company that is some of my concerns. You will have to excuse me I am a little nervous. Secondly, is about inspections as you know, we wrote you that letter. As of right now, we are up to 36 inspections, since the first of year and the most of them on one vehicle. My concern is the way things are being inspected. The

way things have been inspected for the last nine years now that I know of and now things are changing. Mainly, I will give you an example on one inspection we had, the name was not two inches in height. Our name is four and a half inches in height, but if you look underneath it the Termite and Pest Control that is in the blue box underneath it was an inch and three quarters. Now this has been this way, since we have started our business. If it is going to be changed we don't really care what the interpretation is as long as the industry knows it is going to be changed that a thing has to be a certain way. We were under the impression that Contractors is our name and so that had to be over two inches which it is. I just wanted to bring that up to see if we can't get some sort of consistency in inspections. I'm sure a few of you know our company, we are very much in complying, we feel the Commission is our friend and we would like to see some sort of consistency.

Discussion with Chairman Hartley and Commissioner Fraker about addressing the letter at a later time because the discussion was about the Matrix and testing. Chairman Hartley said he was going to talk to staff, since this concerns inspections. Commissioner Fraker stated we started off with Scott on the Matrix and Testing and will these concerns be brought up later in the meeting.

Doug Pennicker - There is one particular inspection by the way that took two and a half hours of my mans time. There were two inspectors and a supervisor there and the only thing he got wrote up on was the inch and three quarters on the Termite Pest Control.

Chairman Hartley - The question I have for staff boils down to bring up a legitimate question is well two things. The difference between inspections and investigations. Inspections being a maintenance a routine function. Investigations being something that gets initiated because of potential problems, we want to know, so there is a difference between investigations and an inspection. I'm sure Mr. Driggs can fill us in on it. I am going to address inspections, but I don't want to put you on the spot. I'm sure we have a lot of companies in the State and companies want to feel as regards to inspections not investigations that somehow the inspection process is being spread as evenly as possible. Granted you have large companies and they have a lot of trucks on the road and they are going to get more inspections, but sometimes you will find companies in this State that has never had an inspection. They do not even know there is a Commission. They have been doing pest control for years and nobody has ever inspected them. How do we ensure what our goal is as a Commission as broadly as possible to put these inspections out, so that we are not always inspecting, it is easy to inspect the obvious whatever, they need inspections and nobody is complaining about that. They also want to know that these inspections are being spread out and that companies are in fact kind of like the IRS.

Jerome Davis - Dirk and I have been working on this program. This program is a two year window and we have different zones throughout Maricopa County.

Dirk S. VandenBerg, Sr. - We have ten zones and there is Tucson, Yuma and up in the mountains. We also have an inspector out of Phoenix who covers the river and we have Northern

Arizona that is covered by Inspector Orzell. In regards to address Mr. Pennicker's concern on inspections those were covert pre-treatments observations. As I explained in a previous conversation earlier with Mr. Pennicker as of May 1st we are only doing speciality covert operations, now. We are doing them overtly 95% of the time and we are calling every company that is doing pre-treatment work and scheduling a time to go out with them to meet them at the site, so instead of searching out pre-treatment sites and then sitting on them and then having somebody show up which is the same company's technician, applicator whoever it might be, we are now doing it in the same format as the neutral inspections scheme as in the offices, as Jerry referred earlier. We understand that certain companies have been hit more than others according to the way inspections were set up prior and now that has been compensated for we are trying to work with the industry and not hit the same companies over and over again. But obviously, when you have larger companies you are going to have more vehicles in a specific zone. The chance of running into a different vehicle with the same company is going to be greater.

Chairman Hartley - I think another factor was that historically pre-treats have been a particular problem in Arizona. There was a time when eight out of the ten had to do with pre-treats and therefore, there was going to be a higher inspection demand on pre-treats and a lot of the companies that were doing pre-treats would be affected more than the companies that were not doing any pre-treats or refused. The type of business in the State will effect pre-treats, but I feel that we have done a fairly decent job on pre-treats we brought down the complaints quite a bit.

Jerome Davis - We are currently recognized throughout the country as the lead State in pre-treats.

Commissioner Fraker - Mr. Chairman, I would like to make a comment because I am a pre-treater. I would like to make the point in reference to Doug's issue are these Vehicle Inspections or are these Use Inspections in the process of doing the job. If it is a Vehicle Inspection they should be done periodically, but a Vehicle Inspections should not be something that is tagged on every time you see that vehicle and/or there should be a differentiation between the Use Inspection on a pre-treat and a Vehicle Inspection.

Jerome Davis - I would like to make a comment. One of the things actually when I was performing and periodically I do this in the field. One of the things I found out when you do inspections on vehicles it is very helpful to the company. Chairman Hartley asked me a long time ago this probably goes back 18 years and as of result if you have a problem with my vehicle I would appreciate if you would take the number of the vehicle, so it can be corrected. That relationship worked very nicely because the vehicle was corrected when we did follow-up, so the inspection on vehicles primarily is a very useful tool for the company, the main reason for I think and most of you know that is the compliance end as long a you comply you have less problems all the way around. I think Mr. Hartley will agree with that.

Commissioner Fraker - I agree with that as well, it lets them know if the technician is following the guidelines and using the materials and keeping the materials replenished that is required on the inspection. My concern with Doug's situation is, in fact, the same operator of the same vehicle has had the majority of 36 inspections since January, I would say that is excessive. Now if they are monitoring a technician that they think his services may be in question and they are ensuring that his application technique is good, that's a different issue. But to have a vehicle inspection twenty plus times in a six month period on a single vehicle I would say that is excessive. I remember one time with this Commission, Jack Root's policy was because people complained about excessive inspections to keep a copy of that inspection in the dash box and if you got stopped within six months of a vehicle inspection you would show that I just had an inspection two months ago to that inspector and you walked. The point being there should be a differentiation in Use Inspections and Vehicle Inspections.

Dirk S. VandenBerg, Sr. - I also agree, in that conversation with Mr. Pennicker I did state the same thing to keep the receipts in the glove compartment, I've also talked to staff about this as a records request from Mr. Pennicker. We are currently looking into all the files on all Use Inspections and Vehicle Inspections to find out if indeed if his company has been signaled out unfairly or overly so, we are going to work to correct that problem. I would like to remind the Commissioners that if we do find violations on any inspection, De Minimis or otherwise a follow-up inspection is due and warranted which we will continue to do unless it is warranted by you.

Doug Pennicker - I just want to make this perfectly clear that I don't believe we were signaled out as a company I think we were inspected by convenience.

Dave Colvin - If I may comment now because I was probably more involved than anyone in scheduling pre-treats. The inherent problem with monitoring pre-treats is there is seven companies that do the majority of the work of pre-treats in the valley. Specifically addressing Contractors concern the reason that they probably ended up with 36 inspections and perhaps the majority is on one or two vehicles is because of the area that we monitor the West side which provides us with the majority of pre-treatment sites where construction is occurring. That may also be due to the fact, to the routes that they set up on the West side. You can look into the record and see there is a direct pattern on the number of inspections for specific companies that do the majority of pre-treatments in specific areas and the West side is a real active area for construction and you are going to find if they send the service technician to that area. You will find that there will be more inspections on that particular individual.

Chairman Hartley - I want to get something out of this discussion that are action items that we can be working on because there have been some really good things that have been addressed here, but I don't want to leave with just having chewed the fat just so to speak regarding these problems. The first thing, had to do with the testing there are some things that we can do when we leave this room and go do to speed up the process and make it better. I am not criticizing anybody

and everybody is doing their job, but it's not all coming together "we have some lumps in the mashed potatoes."

Commissioner Peterson - Mr. Chairman regarding that issue I guess you know that everyone had good intentions. I would like to know the facts, we can all come here and say we are not getting good service. Being in the government sector a lot of people like to complain about things that are not necessarily verified. I would like to ask are we doing time tracking on these applications, are they date stamped? Is the letter dated when these things go out?

Pamela Ulbrich - Yes, everything is dated and when we receive the application it is stamped.

Commissioner Peterson - Is there any mechanism of tracking? That way we know the facts. Is it due to the postal service then we have the opportunity to call up the postal service and say why is it taking three weeks for these things to go out of here.

Chairman Hartley - You brought up a good point Commissioner Peterson, but I think we can solve the problem without going there. I think to even talk to the Post Office is not a real productive thing because they are going to tell you this and they are going to do what they want to do.

Commissioner Peterson - The issue is then you want them to grade the exam immediately.

Chairman Hartley - They are grading the exam, but the problem is there grading the exam, but instead of having a piece of paper here is the results it is going into a computer. Now what is the solution to that. One of the potential solutions might be an instruction sheet that they hand out instead of the actual grade. Here is what you need to do. You need to go back to your office tell your boss to get on the Internet and look up the test to see if I passed or not. Then if I didn't we are gonna call and if I have a number I am going to identify myself and find out what section I didn't pass and I am going to study for it and I will be ready to take it in seven (7) days. That's the time problem we are presented with here, forget the mail because they are not going to help us. The mail is going to be the mail. There are potential solutions to this that are easy that can be put into effect without adding staff, I think we can satisfy everybody needs by tweaking the system here. Everybody wants to do the right thing, but we have some timing problems here. The mail problem is a thing that we can eliminate. We can have an instruction sheet because it sounds educational and it is something else that is needed. If it is on the Internet, but people don't know that or don't know where to go on the Internet that is an education point that needs to be given out. So rather than give them the grades and rather than to hire somebody to give them a hand or show them how to do it electronically. I don't know where everyone else has been everything is going to Internet, computer, sign-on people that don't get with the program will be left behind and this is just not with the Commission this is life in general. People need to get with the program and learn how to do these things and I think education is one of the best ways to do that. We can solve those problems with

very minimal effort on part of the industry and the Commission staff and they can come together and this can be a win situation.

Commissioner Hale - Mr. Chairman, we are relying very heavily on the computer but of the 6000 companies we have in Arizona for applicators. Many of these are very small companies how many companies do not have computers. What percent of the industry.

Chairman Hartley - I can't imagine any of them doing business that don't have one.

Comments from the audience. There are a few of them out there.

Chairman Hartley - I said they could call in if we use a simple numbering process, look on the Internet, or you can call in and say I am number eight billion seven hundred and fifty thousand, and they say you study section number seven, go study and come back next week. There are simple solutions.

Vice-Chairman Micuda - Let me just jump in here for a minute. I really don't want to take words out of your mouth, but what I think Jack is looking for is just more information of what we are doing and if not, that is what I would like to know. There are a number of issues of what kind of information do people have when they take the test. How quickly are they getting the results, what is the information they are getting about the results, and frankly, I would like to see some kind of impact statement or analysis by staff that says. "Here's what our process is, so that everybody knows what it is and then proposals about how to address the primary concerns which is getting results to people as quickly as possible and the one that I am particularly interested in is what kind of information are you getting to people of the results." I agree with Chairman Hartley, the timing issue I think there are a number of ways that can be addressed, you know that will make everybody fairly happy. I think the bigger question is the information that people get after they take the test and what the results are. We could really be doing ourselves a benefit and the industry by giving them some insight about what they need to look at, so that they are not coming in blind three, four or five times. I know for me, I would like to see something in writing an analysis that says here is what we are doing, here is the issues that we see that the industry has presented to us, and here is a couple of proposals to deal with it and put it on the Agenda. Everybody shows up, everybody knows what is on paper and we talk about it and reach a resolution at that time. Right now there has been a lot of discussion about a lot of stuff, I don't know what the facts are, and I know Jack feels that way and I would like to see something on paper.

Chairman Hartley - What I would like to see on paper are proposed solutions. What are some tweaking and solutions to this.

Jerome Davis -Mr. Chairman, Commissioners by July we will have an action plan designed for the Commissioners review and any other comments.

Vice-Chairman Micuda - I would like to encourage Scott and Lisa to find out who is going to put that together. Communicate your concerns in writing. I would like to see the inclusive, if it is Carl or whoever try to get together to get the issues on the table put it in some kind of document, so that it is workable. So that everybody can look at it and say alright lets go through this from A to Z. When are we going to get to the Matrix.

Chairman Hartley - I wanted to hear from Blair when we get to this Matrix and see what his opinion is.

Vice-Chairman Micuda - Let me just make a comment and I thought my comments were pretty much in line with what Lisa said about the Matrix. My view of the Matrix is that it is nothing more than a guideline that helps set some initial parameters as a starting point to guide staff to reach a settlement. If we are starting here, but there are aggravating/mitigating factors there are all kinds of information that will be thrown into the mix that will press a particular proposal up or down and you accomplish that by engaging into a Settlement Conference. She is exactly right if the art or the discretion is taken out of this, it is going to be construed as something that needs to be a Rule that is what we need to avoid, so I though I made that pretty clear. I do have some concerns in looking at the entire thing about some of the guidance that it gives. Like the comment that was made earlier and I guess just thinking off the top of my head I would not be opposed to proposing an Ad Hoc Committee with a couple of Commissioner, maybe Scott and Lisa, and a few industry people, and a few from staff to sit down and maybe go through the Matrix and address all of these issues, I think that would be productive.

Dirk S. VandenBerg, Sr. - Mr. Chairman, Commissioner Micuda that would be very acceptable to us, we thought that may of been asked of us at the last meeting, again first and foremost this is only a guideline. We certainly want to have something to work with to present to you if we have a case or a complaint that allows us the opportunity as Mr. Richardson so eloquently put that "wiggle room". As I explained before, we have a lot of constraints on us as far as the Enforcement Division to go out and cite the violation. The possible violation and then present that possible violation to you to the Commission with substantiating evidence or unless there isn't any and once that is turned back to us unless we have some specific guideline to go by which the last one that we had was way to mild we were getting dinged left and right by EPA and also by the Commissioners. We could make one decision one way and do exactly the same for another company and get hit either way.

Vice-Chairman Micuda - I appreciate that. The problem here is that you got competing interests in a lot of different ways, so the art here is to try and strike a balance there and the other part of the problem that last thing you mentioned is when a determination is rendered it's not enough not to say that we are going to do this in this case. We need to articulate why and that's where people will find the justification for why we treated this case which looks a little similar to this case over here but there is justifications of why we are treating it differently. Maybe if we are

going to do something with a committee, I expect that something like that would be addressed where maybe we need to say a little more about why it is we are deciding one case one way and one case another way. Courts and attorneys are dealing with these issues all the time it is not enough to just answer the question "Yes or No". You have to articulate why and most people are not accustomed to dealing with that question because it is hard. You have to be very specific when you are constantly challenging yourself to ask yourself, have you justified where you want to go. Sometimes that is very hard, so maybe we need to do better on that end.

Dirk S. Vandenberg, Sr. - Mr. Chairman, Commissioner Micuda we will come to the opportunity to sit down with anybody of a committee of your choice to resolve the issue to the best interest of not only the industry, the Commission, but as well as satisfying the Cooperative Agreement with EPA. Any definition you can give us, any guidance you can give me is much appreciated in any shape, matter, or form.

Scott Richardson - Mr. Chairman, I would be happy to sit on a committee and I'm sure Lisa would be happy to sever. My concern is in the short term, the Minutes of the last meeting reflect and proven here today that this Matrix is not discretionary and I am hearing that it is a guideline. I think your staff needs to hear from this Commission that indeed, it is a guideline and that when someone like me who has had several Settlement Conferences in the past who comes in here and tries to negotiate something the staff understand, if there are good reasons to practice the art as Lisa so eloquently put it to settle as opposed to the mere function of following a Matrix. Because otherwise, we are bringing in a settlement that the staff doesn't agree with and I am proposing.

Vice-Chairman Micuda - Scott, I will have to look at those Minutes because I know for a fact that I was saying basically the same thing as Lisa was saying today. That was my number one concern is that this not to be something that boxes staff in when you go to a Settlement Conference and say well it's this, take it or leave it because one that is not a Settlement Conference, and two it is not a guideline which has been the characterization since the Matrix has come about it was just intended to be a guideline.

Scott Richardson - I'm not confused, I just simply won't go along with it. I don't want staff to be confused I would like them to get some clear direction from this Commission at least on Tab 54 on Page 19 of the Minutes it says that "we have eliminated the discretionary that the Agency in determining the penalty for a violation."

Vice-Chairman Micuda - I remember this statement being made, but I remember we had a discussion about where I said that was a problem.

Scott Richardson - So did I, and so did Lisa. I think Dirk has been put in very difficult position, I feel sorry for him because I think it became very clear at the last meeting that this should be a guideline and not a non-discretionary thing.

Dirk S. VandenBerg, Sr. - The rest of that statement also ended with that this is a guideline its not up to us and neither does my staff have the power to make a decision that if a settlement becomes some type of agreement that is the agreement. It is up to the Commission.

Scott Richardson - Let me just make it very simple. If I come in here and the Matrix states the penalty is \$2000.00 and I say in lieu of \$2000.00 I would like my client to pay \$500.00 and do X, Y, and Z which otherwise they do not have the authority to order. I'm fearful right now that staff will say they can't do that because we have to go by the Matrix. As long as that is made clear to the staff in the interim, I'm happy.

Dirk S. VandenBerg, Sr. - Exactly that is not the situation whatever you propose would certainly be included.

Scott Richardson - I would also like this to be endorsed by staff as opposed as it being a minority report coming from the public.

Dirk S. VandenBerg, Sr. - Again, if the Commission allows me or my staff to do that I would be more than happy to do it.

Chairman Hartley - Blair I haven't heard anything from you and you have been very quiet on this Matrix thing.

Dirk S. VandenBerg, Sr. - One more thing to finalize that my concern is if you allow me and my staff to do this to decide and we recommend that this is good. I feel that we are going to be put into a position again for staff to be chastised if we recommend one case one way and another case another way as Commissioner Micuda put it, we can put all the reasoning into it if we want to and still be criticized by another Commission member.

Vice-Chairman Micuda - That is part of the benefit of having a Matrix and Lisa suggested something where you look at what you've done before and compare it from there. There are other places that do that and something like that can be incorporated, it is my impression that the Matrix at least in part was derived in looking at what we have done in the past. I think this needs a closer look and I guess Scott and my sense and hopefully staff understands this guideline is not boxing anybody into a corner, so that there is no wiggle room. It is merely, I know I used this characterization last time it is a starting point. Instead of going from zero to infinity on this particular instance, we are starting at a \$1000.00 to \$3000.00 whatever it is. Hopefully, if the Matrix does not do a very good job now, we will come up with something that says here are things to look at that will press it down or here are things that will press it up. Everybody knows what those things are, you sit down, you talk about it and maybe you argue about it and come up with a recommendation for the Commission.

Commissioner Peterson - I would like to say something, since I'm the one to be regulatory minded as the person sitting up here. My intent was not to do that either actually I was trying to look back at my comments and I thought we need to adopt Rules. I felt this was a good guidance and my intent was not anything at all to not allow people to use this regulatory discretion. This company is going to do this or this company is going to do that and we have to stick strictly to that and I just wanted to go on the record saying that. Am I going to criticize, I'm not trying to criticize I guess what I'm trying to do is to make sure that we are doing our jobs appropriately that everything is investigated thoroughly and that we are not letting anybody off and I agree that we need to have some sort of history if there is a history on a firm. We need to take that into consideration if we have had this type of violations in the past we need to look back and see how we treated them and if there are extenuating circumstances those ought to be clearly laid out in the Settlement Conference and I realize from the EPA you are going to be under some clause and you have to do certain things. Under the minimum enforcement actions that have to be taken and perhaps that is how this can be set up you start here and you can look at all these other things you can look at.

Blair Driggs - I don't have anything to add all the comments have been put out in the position of the Minutes you see. The tighter it is going to be, they are right, it is going to be required to be a Rule. The looser it is everybody will be able to work with it. It is a starting point so all the information has been put out it is putting it into effect.

Vice-Chairman Micuda - Discussion of forming a committee for the Matrix. Suggestions of who should be on the committee as follows: two Commission Members, Scott and Lisa if they will accept, one or two other people that are interested but as long as they are not attorneys.

Chairman Hartley - First of all, are Scott and Lisa agreeable to work on a committee.

Lisa Gervase - Said she would be happy to work on the committee and would be happy to prepare a couple of drafts to start off discussions. Ms. Gervase has information of guidelines that she received from various agencies .

Chairman Hartley - Requested two members from the industry and they are Andy Weber and Doug Pennicker of Contractors. Chairman Hartley requested two Commissioners and they are Commissioner Micuda and Commissioner Peterson. Requests were made for staff on the committee and they are Dirk S. VandenBerg, Sr. and Mike Francis.

Vice-Chairman Micuda - Would like the participation of Carl at this meeting, if he has time.

Chairman Hartley - Would like someone from staff to write up the Agenda and goals of the committee. Commissioner Micuda would like to leave in five minutes.

Mike Denny - Discussed the Consent Agreement regarding De Minimis violations and mostly it resulted from vehicle inspections. There are duplicate safety equipment in their trucks for the technicians. On April 25, we had an inspection with the exception of that the tech was not certified. That was an error of the Commission, they had somehow marked him not certified and he was. On the 15th of May we had another vehicle inspection with the exception of the Commission changed the form. Now on that form it requires soap and a towel which was not required previously before, medical instruction to be included in the first aid kit. If they are going to increase the enforcement without notifying the industry that they are going to change the existing laws. Shortly three days later we had another inspection and received another violation because the Poison Control sticker was not posted on the first aid kit. Feels if they are going to be enforced they should be notified in advance of the way they are going to change the enforcement of rules and regulations. The inspector on the third inspection said that if he has inspected a truck and if it has been more than 10 days, he should inspect it again and again.

Chairman Hartley - Stated for the records that Commissioner Micuda had to leave at 11:30 AM and requested a ten minute break.

Commission meeting reconvened at 11:50AM.

IX. Study Committee/House Bill 2189 TAB 36

Discussion by Jerome Davis on House Bill 2189 and the reporting requirements. He asked Chairman Hartley in an e-mail in June for a Study Committee to come up with some ideas on the subject. Mr. Davis recommended that Chairman Hartley would appoint a committee before the next Commission meeting on House Bill 2189 and there are requirements that have to be done. Mr. Davis did not read all of the bill because it consisted of two pages, but included 32-2304(a) 14 to report within 30 days and it may include "a" through "g" and all Commissioners should have a copy of this report and also the 32-2304 (A) 17 Maintain a computer system "a" through "g". The crux of it is basically 32-2304(A) 28 Adopt Rules Regarding the Submission of Electronic Data to a Database that is Maintained by the Commission is and it shall be specific "a" through "f" and the last 32-2317 (A) The commission shall establish the collection of fees is "1 through 11" and down below it that Qualifying Party Exams, and Qualifying Party Broaden, and Certification to Exams to Broaden all of that will be eliminated and we will lose revenue, since it will be out-sourced into the Computer Based Testing. The last Section is number four (4) the Structural Pest Control Commission; electronic testing there is a reporting date and that is December 1, 2002 to the president of the senate and the speaker of the house. Mr. Davis recommended a study committee for House Bill 2189 would be rules action, setting of time-lines, industry participation, staff action needed, assignments, and comments.

Chairman Hartley - Has questions for Blair on House Bill 2189 on its intent. Feels the bill

is contradictory and may cause problems down the road and the need for Blair to look at it and give advice at the next meeting and will call you on it if we need the advice before then. Study Committee will be formed on how to implement.

Blair Driggs - Has had a discussion with staff on some things.

Chairman Hartley - Discussion on definitions and does not know how literal the State wants to do their laws. Based on the other bill passing the other bill got vetoed and there are some minor things in this bill, since the other bill does not exist. Concerns about certain things that were taken out of Rule as QP Examinations whether that can be picked up in Rule. They do not talk about a Qualifying Party Examination anymore they talk about qualification for \$150.00. So is there still an examination when this thing comes into effect and is that thing established by Rule, and if so, what is the Rule that is hanging.

Blair Driggs - One of the things that I was looking at, but we still can enforce, but obviously it changed the term is the Certified Applicators License instead of Certificate. I felt that is something that we can look at and apply all the rest of it. As it was stated in 2188 that was a house cleaning bill, as well, every thing else would be changed to match this particular one this was actually going to match 2188. I felt that one with the intent the way it looked as an applicator, but obviously it needs to be cleaned up. The more important one that you were looking among other things where they change fees for the Qualifying Party Examination. There are fees they can collect for the initial qualifying party qualification fee and you look at the qualifying party and under the same token you look at the certified applicator application they took out examination. When you look at other sections it talks about what you need to do in order to make an application through the process includes the examination and it didn't have any effect on that fee. Obviously, it did allow you to increase the amount which you were looking at, you may need to change it later on you do not lose any revenue in regards to that it would include an examination, as well. The problem you have is where they talk about a specific qualifying party examination retake where your only authority to collect fees was that line and that was struck and you still have the ability to do retakes it appears there may be an inability to collect a fee for that. The more problematic one that we have and I need to look at it closer is that they struck the broaden fee for qualifying party and certified applicator as well as the retake the ability to charge for a retake. This appears to be the only authority that you had for the fee while you still had the ability under other sections of the statute for the Qualifying Party to do a retake. Those two areas may be an issue until the Commission goes forward under 2188 into new legislation.

Chairman Hartley - The need for another committee, we need a study committee on House Bill 2189 to report back on the implementation of 2189. This becomes law in August.

Jerome Davis - August 9th.

Chairman Hartley - So we need some sharp people on this committee and who wants to volunteer. Kip left so he will be number one on the list, he has all the right qualifications. Chairman Hartley asked Commissioner Peterson if he wanted to be on this committee.

Commissioner Peterson - Declined and said Rusty is not here either.

Chairman Hartley - Asked Commissioner Fraker, Richard and Carl.

Scott Richardson - Nominated Barry Aarons to the committee.

Chairman Hartley - Would like to see Barry Aarons on the committee. There are six committee members.

Jerome Davis - Asked Chairman Hartley to set up a small committee for Computer Based Testing.

Chairman Hartley - Discussed Computer Based Testing will be coming out of this 2189. We need the committee to elect a chairman. Do we appoint a chairman here or let them select themselves. Commissioner Micuda would make an excellent chair, since he is going to be the chair next year. This is a bill that the industry did not want, nor did the Commission, so what we have is a law that nobody wanted.

Mike Francis - For the purpose of the minutes of who are the committee members and the chair. Committee members from the Commission are Vice-Chairman Micuda and Commissioner Fraker, from SPCC Richard Mars and Carl Martin, and from the Industry we are looking at Mike Means and Barry Aarons and Kip Micuda as the Chair.

Chairman Hartley - Confirmed the Committee and he will try to e-mail Kip that he needs an Agenda for their first meeting .

X. Legislative Update/House Bill 2188 TAB 37

Discussion by Carl Martin. We did not get it on a technicality, we've should have been able to see that coming and I take responsibility for not seeing that, I want to thank the members of the association and the industry this bill passed both houses and when it got to the Governor's desk a small intellectual group was able to scuttle the bill. This bill will come back next year, but there will be some changes.

Chairman Hartley - Reviewed the bill and there would have been some things he would have changed and so now we have a choice and we can revisit it .

XI. Case Status

Discussion by Dirk S. VandenBerg, Sr. If there are any questions Mike and I will be happy to answer them for you.

XII. Executive Director's Report

Discussion by Executive Director report was actually 2189.

Adjournment

*MOTION: To adjourn, by Commissioner Peterson
Seconded by Commissioner Hale*

VOTE: 5 - 0 Motion carried.