

**COMMISSION MEETING
November 8, 2002
MINUTES**

I. Call to order and roll call

Commissioners present: Commissioner Burrows, Fraker, Hale, Hartley, Peterson and Robinson

Commissioners Absent: Commissioner Micuda

Staff Present: Executive Director, Jerome Davis, Pamela Ulbrich, Richard Mars, Dirk S. VandenBerg, Sr., Vince Craig, Maggie Vazquez, Carl Martin, and Assistant Attorney General Blair Driggs

II. Approval of October 2002 Minutes TAB 1

*MOTION: To approve October 2002 Minutes by Commissioner Burrows.
Seconded by Commissioner Hale.*

VOTE: 6 - 0 Motion carried.

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

Susan Tomlinson/North Country Pest Management - Discussion concerning a business license name change was not on the agenda and positions held by SPCC employees listed on Web-Site is misleading.

Bruce Tennenbaum/Industry Member thanked the Executive Director, Jerry Davis for his 23 years of service with SPCC.

IV. Correspondence with Commissioners

None

V. Scheduling of future meetings/agenda items

Proposed dates and locations

December 13, 2002Scottsdale, AZ

January 10, 2003 Scottsdale, AZ

February 14, 2003 Scottsdale, AZ
 March 14, 2003 Scottsdale, AZ
 April 11, 2003 Scottsdale, AZ
 May 9 , 2003 Tucson, AZ

Discussion by Chairman Hartley that May is too far out to hold a Commission Meeting in Tucson. Commissioner Burrows stated they change the March 14, 2003 meeting to Tucson and hold the May 9, 2003 meeting in Scottsdale.

VI. Consent Agenda.

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

A. Applications for New Business License

- 1. **Bermpohl, William C. dba Unicorn Pest Control (Activating Qualifying Party for new business license in “B” General Pest) TAB 2**
- 2. **Blankenship, Daniel L. dba Osmore, Inc. (Activating Qualifying Party for new business license in “H” Wood Preservation) TAB 3**
- 3. **Crandell, Sterling T. dba The. H.E. King Pest Control Company (Activating Qualifying Party for new business license in “B” General Pest) TAB 4**
- 4. **Ellis, Patrick Lee dba PK’s Pest & Termite Control (Activating Qualifying Party for new business license in “B” General Pest & “C” Wood Destroying Organisms) TAB 5**
Pulled

*MOTION: To approve by Commissioner Robinson.
 Seconded by Commissioner Burrows.*

VOTE: 6 - 0 Motion carried.

Read into the record PK’s should be PK’z

- 5. **Herity, John Michael dba All Out Pest Control (Activating Qualifying Party for new business license in “B”**

General Pest) TAB 6

- 6. Ziemba, Mark dba Freedom Pest Control (Activating Qualifying Party for new business license in “B” General Pest)..... TAB 7

B. Applications for Existing Business License

- 1. Denny, Claudia A. dba Proven Ecological (Activating Qualifying Party for existing business license in “B” General Pest) TAB 8
Pulled

MOTION: To approve by Commissioner Hale.
Seconded by Commissioner Fraker.

VOTE: 6 - 0 Motion carried.

- 2. Hurtt, Brian Jay dba Hometown Pest Control and Termite (Activating Qualifying Party for existing business license in “B” General Pest & “C” Wood Destroying Organisms) ... TAB 9

- 3. Sherrill, William K. dba Bug Off Exterminating (Activating Qualifying Party for existing business license in “C” Wood Destroying Organisms & “F” Turf & Ornamental) TAB 10

C. Applicants for QP Testing

- 1. Bingham, Joseph T. “B & C” (General Pest & Wood Destroying Organisms) TAB 11
Pulled

MOTION: To approve by Commissioner Robinson.
Seconded by Commissioner Hale.

VOTE: 6 - 0 Motion carried.

- 2. Cadwell, James Peter “B & C” (General Pest & Wood Destroying Organisms) TAB 12
Pulled

MOTION: To approve by Commissioner Peterson.
Seconded by Commissioner Hale.

VOTE: 6 - 0 Motion carried.

3. Hoffpauir, Michael “B” (General Pest) TAB 13

4. Gabriel, Christopher “E & F” (Weed Control & Turf & Ornamental)
Pulled TAB 14

MOTION: To approve by Commissioner Robinson.
Seconded by Commissioner Peterson.

VOTE: 6 - 0 Motion carried.

5. Martin, Todd Michael “B” (General Pest).. TAB 15

6. Peaty, Paul Earl “B & C” (General Pest & Wood Destroying
Pulled Organisms) TAB 16

MOTION: To approve by Commissioner Robinson.
Seconded by Commissioner Burrows.

VOTE: 6 - 0 Motion carried.

7. Shank, Samuel Gene “E & F” (Weed & Turf & Ornamental) . TAB 17

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

1. Bingham, Joseph Trent dba American Dyna-Mite Exterminating
Pulled TAB 18

MOTION: To deny by Commissioner Robinson because Mr.
Bingham has not tested within the appropriate time
frames and it has been four months since Mr.
Bingham last tested.
Seconded by Commissioner Hale.

VOTE: 6 - 0 Motion carried.

2. Black, Judith dba The Steritech Group, Inc. TAB 19
Pulled

MOTION: To approve by Commissioner Robinson.
Seconded by Commissioner Peterson.

VOTE: 6 - 0 Motion carried.

- 3. **Eadie, Lee Burtram dba TruGreen ChemLawn TAB 20**
Pulled

MOTION: To approve by Commissioner Hale.
Seconded by Commissioner Burrows.

VOTE: 6 - 0 Motion carried.

- 4. **Painter, Ricky Bert dba Termite Specialist, Inc. TAB 21**

E. Request for Company Name Change

- 1. **Centex Pest Management to Pest Defense Systems TAB 22**
- 2. **Godfather Pest Control to Godfather TAB 23**
Pulled

MOTION: To approve by Commissioner Hale.
Seconded by Commissioner Peterson.

VOTE: 6 - 0 Motion carried.

- 3. **Pratte Termite Center LLC to Mesa Verde Termite Center LLC**
. TAB 24
- 4. **Tom Harder Pest Control to El Dorado Pest Control TAB 25**
- 5. **Vernon’s Termite & Pest Control to Vernon’s TAB 26**

F. Treatment Proposals

- 1. **Madrid’s Termite & Pest Control TAB 27**
Pulled

MOTION: To deny by Commissioner Peterson.

Seconded by Commissioner Hale.

VOTE:

6 - 0 Motion carried.

Denied because form is too generic which does not comply with the statute and there is not enough information on the form.

G. Settlement Conferences (Cases Already Heard By Commission)

1. Bio-Chem Services - Case # 2001-314 TAB 28
Pulled

The Commission approved the attached consent agreement on September 13, 2002.

Mr. Bill Jones, Qualifying Party of Bio-Chem Services, contacted the SPCC regarding a fax that he allegedly sent requesting a change of time frame for payments from 30 days to six (6) months. Staff has researched and cannot confirm a receipt of the fax.

Amount of fees due is \$ 13,880.00

Payments schedule as follows: Six (6) payments of \$2313.00. The first payment due within 30 days from the date of the order and each payment thereafter due within 30 days.

Staff recommendation: Approval

MOTION: *To accept by Commissioner Peterson that Bio-Chem Services pay all TARF fees and late fees in the amount of \$13,880.00 the first payment of \$6,940.00 shall be paid within 30 days of the Commission Order and payments in the amount of \$1,735.00 for four months shall be paid thereafter. If Bio-Chem does not agree this matter will go to hearing. Seconded by Commissioner Robinson.*

VOTE:

6 - 0 Motion carried.

End of Consent Agenda

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

VOTE: 6 - 0 Motion carried.

VII. Decision and Recommended Order by Administrative Law Judge

1. Steven Lee Kennicott - Case # 2001-163 TAB 29

MOTION: To approve Finding of Fact Conclusion of Law by Commissioner Peterson. Seconded by Commissioner Hale.

VOTE: 6 -0 Motion carried.

MOTION: To accept Recommended Order by Commissioner Peterson. Seconded by Commissioner Hale.

VOTE: 6 - 0 Motion carried.

2. Randy Ray Severin - Case # 2001-241 TAB 30

MOTION: To approve Finding of Fact Conclusion of Law by Commissioner Burrows. Seconded by Commissioner Hale.

VOTE: 6 - 0 Motion carried.

MOTION: To accept Recommended Order by Commissioner Peterson. Seconded by Commissioner Burrows.

VOTE: 6 - 0 Motion carried.

3. Joshua Carter Stephens - Case # 2001-058 TAB 31

MOTION: To approve Finding of Fact Conclusion of Law by Commissioner Robinson. Seconded by Commissioner Hale.

VOTE: 6 - 0 Motion carried.

MOTION: To accept Recommended Order by Commissioner Burrows.
Seconded by Commissioner Hale.

VOTE: 6 - 0 Motion carried.

4. Benedict M. Tellez - Case 2001-283 TAB 32

MOTION: To approve Finding of Fact Conclusion of Law by
Commissioner Peterson.
Seconded by Commissioner Burrows.

VOTE: 6 - 0 Motion carried.

MOTION: To accept Recommended Order as Blair Driggs discussed
requiring the CEU's be in Wood Infestation Reports (WIR')
and Laws and Rules by Commissioner Peterson.
Seconded by Commissioner Burrows.

VOTE: 6 - 0 Motion carried.

VIII. Complaints and/or Settlement Conferences (1st Time Before Commission)

1. Burn's Pest Elimination - Case # 2002-033 TAB 33
Pulled/Tabled

The Complaint contains allegations resulting from alleged excessive treatments, an inaccurate wood infestation report, and using "banned pesticides". SPCC Staff investigated these allegations. The treatments were performed according to label directions, the wood infestation report was based on findings 6 years ago and the pesticide used (Dursban) is not banned.

Staff has investigated the allegations and found no evidence of a violation.

Staff Recommendation: Dismissal.

This matter was tabled until SPCC staff can review the report in Mr. Dario

Pepe's possession. This matter will be placed on the December 13, 2002 Agenda.

2. Burn's Pest Elimination - Case # 2002-040 TAB 34

Violations resulting for failure to apply a pesticide in a manner consistent with the product labeling. (Drift-off site contamination in two areas).

Proposed Resolution:

1. *That the Business License # C 5654 BC, Burns Pest Elimination be issued an Administrative Warning for violation of A.A.C. R4-29-301 (A) for misuse of any pesticide*

2. *That the Qualifying Party for Burns Pest Elimination, Mr. David G. Burns, QP # 1509 BCE be issued an Administrative Warning and be issued a civil penalty of \$500.00 for violation of A.A.C. R4-29-301(A) for misuse of any pesticide.*

3. *That the Applicator, Mr. Donald Ramsey, CERT# 980005 VII BCE, be issued an Administrative Warning and issued a civil penalty of \$500.00 for violation of A.A.C. R4-29-301 (A) for misuse of any pesticide.*

NOTE: All fees (totaling \$1000.00) are to be paid within thirty (30) days from the date of the Commission Order. Mistery David Burns and Donald Ramsey agreed to the settlement.

MOTION: *To accept with corrections to the Business License No. C 4181 BCE and the Qualifying Party No. 1059 BCE by Commissioner Peterson.
Seconded by Commissioner Burrows.*

VOTE: *6 - 0 Motion carried.*

3. Expedient Tree & Lawn Care - Case # 2002-018 TAB 35

The Complaint contains allegations resulting from performing the business of structural pest control without the benefit of a license. The owner, Mr. Chris Sartain, has failed to respond to the complaint.

Staff has investigated the allegations and found violation.

Staff Recommendation: Office of Administrative Hearing

MOTION: To move this matter to hearing by Commissioner Burrows.
Seconded by Commissioner Hale.

VOTE: 6 - 0 Motion carried.

4. Litchfield Pest Control - Case # 2002-025 TAB 36
Violations resulting for failure to treat all linear footage.

Proposed Resolution:

1. That the Business License # I 2483 BC, **Litchfield Pest Control** be issued an Administrative Warning for violation of A.A.C. R4-29-402 (Chemicals)

2. That the Qualifying Party for **Litchfield Pest Control**, Mr. Kenneth Rael, QP# 1284 BC be issued an Administrative Warning and \$100.00 civil penalty for violation of A.A.C. R4-29-402 (Chemicals)

3. That the Certified Applicator, Mr. Kenneth Rael, CERT# 880394 BC VII, be issued an Administrative Warning and \$100.00 civil penalty for violation of A.A.C. R4-29-402 (Chemicals)

4. That the Business License # I 2483 BC, **Litchfield Pest Control** be issued an Administrative Warning for violation of A.A.C. R4-29-407(C)

5. That the Qualifying Party for **Litchfield Pest Control**, Mr. Kenneth Rael, QP# 1284 BC be issued an Administrative Warning and \$100.00 civil penalty for violation of A.A.C. R4-29-407(C)

6. That the Certified Applicator, Mr. Kenneth Rael, CERT# 880394 BC VII, be issued an Administrative Warning and \$100.00 civil penalty for violation of A.A.C. R4-29-407(C)

NOTE: All fees (\$400.00) are to be paid within thirty (30) days from the date of the Commission Order.

Mr. Kenneth Rael agreed to the settlement.

MOTION: To approve by Commissioner Peterson.
Seconded by Commissioner Hale.

VOTE: 6 - 0 Motion carried.

5. Pest Masters - Case # 2002-088 TAB 37

The complaint contains allegations resulting from the preparation of a wood infestation report (WIR) and failing to note an infestation. The evidence consisted of termite tube stains in a garage cabinet. The applicator noted on the WIR that the cabinets were inaccessible during the inspection due to furniture and other items stored in them.

Staff has investigated the allegations and did not find evidence of a violation.

Staff Recommendation: Dismissal

MOTION: To approve by Commissioner Peterson.
Seconded by Commissioner Fraker.

VOTE: 6 - 0 Motion carried.

6. Son-Ray Pest Control - Case # 2002-089 TAB 38

Violations resulting for failure to note stucco below grade and an uninspected structure.

Proposed Resolution:

1. That the Business License # C 5378 BC, **Son-Ray Pest Control** be issued an Administrative Warning for violation of A.A.C. R4-29-413(A)(6)(12) (Wood Infestation Reports; information required)
2. That the Qualifying Party for **Son-Ray Pest Control**, Mr. Raymond Rodriguez, QP# 1825 BC be issued an Administrative Warning for violation of A.A.C. R4-29-413(A)(6)(12) (Wood Infestation Reports; information required)
3. That the Certified Applicator, Mr. Raymond Rodriguez, CERT# 840424 BC VII, be issued an Administrative Warning for violation of A.A.C. R4-29-413(A)(6)(12) (Wood Infestation Reports; information required)
4. That the Business License # C 5378 BC, **Son-Ray Pest Control** be issued an Administrative Warning for violation of A.A.C. R4-29-414(A)(B)(1) (Wood Infestation Reports; conditions conducive)
5. That the Qualifying Party for **Son-Ray Pest Control**, Mr. Raymond Rodriguez, QP# 1825 BC be issued an Administrative Warning for violation

of A.A.C. R4-29-414 (A)(B)(1) (Wood Infestation Reports; conditions conducive)

6. That the Certified Applicator, Mr. Raymond Rodriguez, CERT# 840424 BC VII, be issued an Administrative Warning for violation of A.A.C. R4-29-414 (A)(B)(1) (Wood Infestation Reports; conditions conducive)

7. That the Certified Applicator, Mr. Michael Fitzpatrick, CERT# 960764 BC VII, be issued an Administrative Warning for violation of A.A.C. R4-29-414 (A)(B)(1) (Wood Infestation Reports; conditions conducive).

NOTE: Mr. Raymond Rodriguez agreed to the settlement. Mr. Michael Fitzpatrick telephoned Investigations Supervisor Craig on 10-22-02, at 3:30 and stated that he also agreed to the settlement.

MOTION: To approve by Commissioner Peterson.
Seconded by Commissioner Burrows.

VOTE: 6 - 0 Motion carried.

Approval was based on the contingency that SPCC staff review the phone records that will be provided by the Qualifying Party, Mr. Rodriguez of Son-Ray Pest Control. The records are to reflect of who was called at SPCC and why for technical support.

7. Valleywide Termite & Pest Control - Case # 2000-208 TAB 39
Violations resulting for failure to treat all linear footage.

Proposed Resolution:

1. That the Business License # C 5427 BC, **Valleywide Termite & Pest Control** be issued an Administrative Warning for violation of A.A.C. R4-29-407(C) (Preconstruction treatments; establishment of barriers).

2. That the Qualifying Party for **Valleywide Termite & Pest Control**, Mr. Kenneth Edwards, QP # 1656 BC be issued an Administrative Warning for violation of A.A.C. R4-29-407(C) (Preconstruction treatments; establishment of barriers).

NOTE: Kenneth Edwards agreed to the settlement.

MOTION: To approve by Commissioner Burrows.
Seconded by Commissioner Peterson.

VOTE: 6 - 0 Motion carried.

8. Valleywide Termite & Pest Control - Case # 2000-264 TAB 40
Violations resulting for failure to treat all linear footage.

Proposed Resolution:

1. That the Business License # C 5427 BC, **Valleywide Termite & Pest Control** be issued an Administrative Warning for violation of A.A.C. R4-29-408(A) (Pretreatment tagging and records)
2. That the Qualifying Party for **Valleywide Termite & Pest Control**, Mr. Kenneth Edwards, QP # 1656 BC be issued an Administrative Warning for violation of A.A.C. R4-29-408(A) (Pretreatment tagging and records)
3. That the Business License # C 5427 BC, **Valleywide Termite & Pest Control** be issued an Administrative Warning for violation of A.A.C. R4-29-407(A)(B) (Preconstruction treatments; establishment of barriers)
4. That the Qualifying Party for **Valleywide Termite & Pest Control**, Mr. Kenneth Edwards, QP # 1656 BC be issued an Administrative Warning and a civil penalty of \$300.00 for violation of A.A.C. R4-29-407(A)(B) (Preconstruction treatments; establishment of barriers)
5. That the Business License # C 5427 BC, be issued an Administrative Warning for violation of A.A.C. R4-29-402 (Chemicals)
6. That the Qualifying Party for **Valleywide Termite & Pest Control**, Mr. Kenneth Edwards, QP # 1656 BC be issued an Administrative Warning and a civil penalty of \$300.00 for violation of A.A.C. R4-29-402 (Chemicals)

NOTE: All fees (\$600.00) are to be paid within thirty (30) days from the date of the Commission Order. Mr. Kenneth Edwards agreed to the settlement.

MOTION: To approve by Commissioner Peterson.
Seconded by Commissioner Hale.

VOTE: 6 - 0 Motion carried.

Break at 11:10 A.M.

Meeting reconvened at 11:20 A.M.

IX. Felony Applicants

1. Bainter, Tracey TAB 41

No show. Commissioner Burrows would like for Ms. Bainter to submit new information to SPCC.

2. Blackburn, Rodney L. TAB 42

Tabled - Per Commissioner Burrows. Need more information from probation officer, since Mr. Blackburn has been convicted of a felony four times and Commissioner Burrows would like to review the court documentation. This matter should be placed on the December 13, 2002 Agenda.

It was read into the record by Chairman Hartley a letter from Ron Davis for Grim Reaper Pest Control Company on behalf of Mr. Blackburn. "I apologize for not being there to speak on behalf of Rodney Blackburn. A very close uncle died this week and I have been unavoidably detained in Phoenix. I stand behind Rodney and would like to be allowed to have him work for my company. Please let me know if I can be of any other service. Again I apologize for any inconvenience but there was no other way for me to make arrangements for my family too."

3. Geibel, Michael TAB 43

*MOTION: To approve by Commissioner Burrows.
Seconded by Commissioner Peterson.*

VOTE: 6 - 0 Motion carried.

4. Pulizzi, Frank TAB 44

*MOTION: To approve by Commissioner Burrows.
Seconded by Commissioner Hale.*

VOTE: 6 - 0 Motion carried.

5. Shambaugh, Robert Allen TAB 45

*MOTION: To approve by Commissioner Burrows.
Seconded by Commissioner Peterson.*

VOTE: 6 - 0 Motion carried.

X. Case Status TAB 46

Discussion by Dirk S. Vandenberg, Sr., and Vince Craig. Chairman Hartley asked what does it mean twelve cases to review and why does some inspectors have five or six cases where others only have one case. Mr. Craig responded for one reason or another cases go back for approval if they do not meet with his satisfaction and some of the inspectors are better cases writers than others.

AMENDED AGENDA

Applicant for QP Testing Extension

1. Melendez, James R.

“B” (General Pest)

*MOTION: To Deny by Commissioner Peterson because Rule does not allow Commission to grant a waiver to extend.
Seconded by Commissioner Burrows.*

VOTE: 6 - 0 Motion carried.

XI. Rules - Approval/Disapproval TAB 47

Discussion by Executive Director, Jerry Davis, Carl Martin, Commissioner Peterson, Lisa Gervase, Chairman Hartley, Commissioner Fraker and Barry Aarons. Jerry Davis stated four Rules have been prepared by the contract attorney for SPCC. These rules are ready for review, comment, modification, since the time frame is drawing near and it is time to move forward on them. Carl Martin and myself have been involved in this. Mr. Martin commented the four rule language is in place for the Commission’s review and approval. It has not been fully vented with the public or the industry and we are looking for some direction with regard to all these rules, secondly we are looking for an opportunity then to go out to the industry and to the public and then meet the requirements of the regulatory acts of the state and then we still have some months before these Rules can be enacted. This is the first step to get something in place. Commissioner Peterson had a questions on R4-29-408 “Tagging” where it will be placed. Mr. Martin commented that the wording for tagging will be visible and accessible after the slab is poured. Lisa Gervase asked what Rules were

they looking at and Mr. Martin read them into the record they are as follows: “R4-29-101-section of Definitions, R4-29-104-Joint Responsibility for Business Licensees, Qualifying Parties for the acts of employees, R4-29-209-Branch Offices and R4-29-408-Tag Records request for pretreats.” Mr. Martin stated the special committee appointed by the Commission has looked at 104 extensively and has some things to say about it and some of those things do not match up with 104 that is in this package. Mr. Martin commented the status of these Rules is this committee appointed/hired a rules writer and assigned some folks to work with her on language which is a technical process. If approval is given to these Rules we make announcements that we have opened up Rule making and these rules are available for comment, they would be opened up in the Secretary of States Register, then schedule a hearing, and then the Rules are fully vented then all the communities and interest groups, and if there is no substantial changes to the Rules then we would move on to the Governor’s Regulatory Review Council. If there are substantial changes then we would have to re-file. Lisa Gervase asked if notice of the docket has been opened and Mr. Martin responded, “yes” the docket is open. Mr. Martin commented the first step is to open the docket and it remains open for a year and if no action is taken then it automatically closes. Then there is a secondary notice which we have not made. Chairman Hartley asked then what do you need from the Commission is a vote of approval. Mr. Martin commented if you are satisfied with the philosophy and the language match up what is the Commission’s general feeling on these four Rules, so we can go forth now and ask effective parties what their views are now. Mr. Martin further commented we are changing definition number two to applicant, we are proposing a change for business, we are proposing a change for Commission, we are proposing a change for number 25 for tag and there are several renumbering, but those are the ones that change the language. There are four definitions that will be changed. Commissioner Fraker would like to know how 104 “Joint Responsibility” would impact the committee. Mr. Martin commented it will have all the impact in the world because if a recommendation came out of the special committee that varied from this language and this philosophy and if the Commission will accept that then this would change and we would have the rules writer committee draft language that is philosophical position as opposed to this one. Barry Aarons, Executive Director for the Pest Management Association stated the committee has been working for a number of weeks on Rule 104 as Commissioner Fraker has identified. We have not seen any of the language to his knowledge of these Rules unless the language that we have been working with happens to be incorporated with these, since he did not have a copy of these four Rules. Mr. Aarons would like for the Commission to hold Rule item 104 on the Agenda before action is taken on this matter. Mr. Martin commented this language information has been presented to the special committee and it has been a part of their deliberations on this particular topic. Commissioner Peterson commented on the word “may” on the strict liability should be “shall”. Chairman Hartley stated that the Commission would pull out 104 and vote on the three Rules.

*MOTION: To approve by Commissioner Peterson this package as submitted except for 104 which will be removed for the group that meets on Friday for their recommendation.
Seconded by Commissioner Hale.*

VOTE: 6 - 0 Motion carried.

XII. Special Committee TAB 48

- Report**
- Instructions**
- Final Grade Waiver**
- Joint Responsibility**
- Legislation**

Discussion on Final Grade Waiver by Carl Martin, Chairman Hartley, Commissioner Fraker, Commissioner Peterson, Dirk S. VandenBerg, Sr., Blair Driggs, and Barry Aarons. Commissioner Fraker commented the committee has met twice since the last Commission meeting on the 18th and the 22nd. The Committee was assigned two topics one being R4-29-104 “Joint Responsibility” and A.R.S. § 32-2304 (A)(15) “Final Grade”. Commissioner Fraker discussed the final Waiver form that was developed from these meetings of the Committee and he cited the statute to A.R.S. § 32-2304 (A)(15). Commissioner Fraker stated they were reporting back to the Commission their thoughts and where they should go with this at this point. Chairman Hartley commented he has a problem with the word “Waivers” this is a word telling somebody not to do something. Chairman Hartley feels they have an obligation when they tell one of their regulated companies they don’t have to do something and that we follow some kind of good practice in doing that, so we are not acting against the best interest of the consumer. Chairman Hartley stated someone can make a case for collusion between the industry and the Commission in terms of waiving the requirements because the pre-treat is an important aspect of that final grade. Blair Driggs commented the statute tells you how to do it and if you are required to put down a reason and if you approve the reason then you are on the record for that reason that you approved. The requirement is 180 days and they would have to give a date when it will be done. Chairman Hartley stated he would like for this to be taken seriously and does not like the exception and then it becomes Rule. Mr. Driggs commented that it has been there without being monitored and the statute tells you have the authority to monitor it and require these things. It will be the same thing as a temporary Qualifying Party they can get an extension if they have good cause and if they don’t have good cause you don’t give it to them. You may get a request for a waiver they are suppose to give you a date when they expect it to be done and another waiver could be requested and the Commission will have to make another decision on the new information. You are going to have to function as the Commission and examine the reasons given to the waiver. Commissioner Peterson commented there is no

change of what we are actually doing. Does not feel it is a burden we are suppose to be doing this now. This is something we are suppose to be cognizant of now and not go out and do a seek and destroy mission. Mr. Driggs stated we should publicize the form out to the industry and the statute being properly followed by the industry. Commissioner Robinson asked a question if a Business License does not report within the 180 days. Mr. Driggs commented it is a violation of statute and rule. There may be some mitigation of uncertainty, but this helps the case being made. Dirk S. VandenBerg, Sr., commented to the Commissioners that they recently had a case before then of a 180 day violation and they received an Administrative Warning. Chairman Hartley asked Mr. Driggs if they had to specifically vote on this. Mr. Driggs responded "yes" the statute states if you are going to grant a waiver. Chairman Hartley asked if in the committee meeting and on this subject about creating a communication of a dialogue with the contractors, so we could tell them how important this 180 days at least the final grade. Commissioner Fraker commented the committee wanted to put the Commission into compliance with the statute. Chairman Hartley commented he would like to see this tied into the computer system so the consumer would have the information. Mr. VandenBerg, Sr., said SPCC has the ability to put this on the web-site so it is accessible. A new data base would need to be developed and we would have to discuss this with our IT Department. Mr. VandenBerg, Sr., stated this form is very basic and it can be adjusted for the future. We would like to get a consensus from the Commission to see if it is appropriate and adequate for the time being and see basically how it works over a period of time and develop a basic program. Commissioner Peterson would like to go on record that this is good and I think we should go forward and start looking at a database and get something set up so it can be done. Chairman Hartley asked if this was the final work product. Carl Martin responded that we would like for you to accept that and we were hoping this could be approved for a specific amount of time perhaps until the end of September 2003. This will give us time to address the legislative remedies that Commissioner Fraker alluded to or to put together a regulatory strategy that would allow for the writing of rules that would incorporate what is required of businesses, so it is fair to them and they know what they have to submit. We need for you to approve the form but you need to make a motion for sun-setting it or revisiting the question at the September meeting that will allow us time to work it out to get some legislative remedy or some other way to make it less necessary. Barry Aarons stated they specifically discussed that concept and perhaps adopting a time period would enable them to have a look at some of the legislative remedies that might be there and if that is there then in the interim we can come back and revisit this at the first of September given a normal legislative session.

MOTION: *To accept by Commissioner Peterson this form including the month and year the date including an e-mail address and look forward utilizing this form until the end of September 2003 at which point and time we will come back with a change in the law.
Seconded by Commissioner Hale.*

VOTE: *6 - 0 Motion carried.*

Discussion on Joint Responsibility by Commissioner Fraker, Carl Martin, Chairman Hartley, Dirk S. VandenBerg, Sr., Blair Driggs, Andy Weber, Scott Richardson, and Commissioner Hale. Discussion by Commissioner Fraker on the second topic of Joint Responsibility R4-29-104. At the last Commission meeting we discussed the various interpretations of the Joint Responsibility of this Rule and the impact. The Director of Enforcement asked for assistance for future cases to be able to deal with firmly and to deal with all the parties fairly. The committee had an in-depth discussion on Joint Responsibility, we had input from the industry, staff participation of the options that were presented and discussed at our last Commission meeting. Carl Martin stated they have not drafted an official report on this issue as Commissioner Fraker has explained. The consensus of the group is that company's should be able to express they have meet all the reasonable obligations in order to avoid sanctions against the Business License and the Qualifying Party, this allows for that idea and it puts the responsibility on them. We do not have a formal report, but if the Commission is comfortable with that there is no reason why you couldn't give us that direction and we could draft that into the Rule writing committee to have a Rule that said that instead of prolonging this on. Chairman Hartley stated to make it a formal Rule that they can take a look at it. Dirk S. VandernBerg, Sr., stated while they were discussing during the interim if this is going to have to go through the Rule process, hopefully, it can be adopted or fast tracked to get something done because it is extremely important at this point. Is there something that everybody agrees that we are going to adopt this and put this through the Rule process can we utilize the philosophy or utilize the draft now as a guidance to Enforcement for the Matrix. Blair Driggs commented as he has advised this Commission whether other attorneys agree with me or not the third option is exactly what I would advise this Commission to do the way the Rule is currently written. If the Commission wants to go for the strict liability issue which is the only other option out there than that might be different in what direction this Commission may go. That third option is how I advise this Commission of how to operate under the current Rule. Carl Martin stated that we have committed in our Five Year Review Report that at least we will make the Rule clear, concise, and understandable. At a minimum we would want to clarify the language and make it understandable, so that everybody knows what they have to do. Commission Fraker stated that we move into this direction and have a vote of confidence from the Commission that this is the option that we want to pursue and then give Carl and the rules writer the green light to put it into some type of final verbiage, so that we then can vote on that if that is the pleasure of the Commission. Commissioner Peterson stated it is his pleasure because we have beat this around. Mr. VanderBerg, Sr., stated that this does not eliminate, alleviate, or stop the investigation concept. Evidence my be presented to us or the staff, but it does not stop us from doing further investigation. Andy Weber stated this encourages the industry to do the supervision, to even do documentation and do safety programs. Scott Richardson stated it helps us with applicators. The applicators right now are off being trained there is no sign in sheet, no records of that training and now companies are going to have to be responsible and now companies will have sign in sheets and the information will be out there. Chairman Hartley asked the committee to come back to us at

the next meeting with a rule that is flushed out with an affirmative defense.

XIII. Computer Based Testing “CBT”

Discussion by Richard Mars on the status of Computer Based Testing. It was his pleasure to inform the Commission on the Notice of Request for Proposal on outsourcing on Computer Based Testing was issued November 7, 2002, there will be a Pre-Proposal Conference on November 15, 2002 and the Proposal Due Date is November 25, 2002. The law has been changed to charge higher fees.

XIV. Exam Validation

Discussion by Carl Martin who stated he and Commissioner Hale in a couple of weeks will be attending a conference in Tucson and will be learning more about Exam Validation. They will be learning more about it and will be pushing forward on it and they have succeeded by putting it on the Agenda at EPA and the Executive Director in our conversations with our Project Officer on the telephone the other day again re-emphasized that the need that EPA needs to step up to come up with some money to do this project, he again said that was going to happen. There will be some federal funding for this project and we will begin with probably Agriculture and Structural like namely fumigation and we will start working through these exams.

XV. Executive Director’s Report

FMC Software for reporting TARF’s

Discussion by Jerry Davis on FMC software that we have been talking about in conjunction with the TARF’s “computer” the FMC is ready for the data to receive for the test program it is going to be on-line in about a week. We have talked to FMC and they are ready for the data to be transferred.

GAO Audit

Discussion by Jerry Davis we had an excellent interview this week, we received outstanding rating. The auditor that did it will be available to anyone who would like to talk to him about the audit.

EPA Exit Interview

Discussion by Jerry Davis stated Carl spoke to the EPA Project Officer, Allen Demorest about additional monies and there is additional money out there and it can be incorporated into the Enforcement issue and it can be done at the end of the fiscal year. The most exciting conversation we had was as you know he was here for the performance audit for EPA. Mr. Demorest stated he was extremely happy with the SPCC and all his comments will be available in a letter for review for the Commission next month at the December meeting.

Policy Procedure Manual

Discussion by Jerry Davis stated that we have a Policy and Procedure Manual. It will actually be ready for review at the December Commission meeting.

Commissioner Fraker had a question on Final Grade Waivers on how does SPCC plan to follow-up. Jerry Davis stated if you recall HB 2188, Hugo already has a program “computer” of flagging any type of information coming in on the subject that you are trying to link together. If we can’t get it, we can report on it.

Adjournment - 12:50 P.M.

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

VOTE: 6 - 0 Motion carried.