

**COMMISSION MEETING
January 10, 2003
MINUTES**

I. Call to order and roll call

Commissioners Present: Commissioner Burrows, Fraker, Hale, Hartley, Micuda, Peterson and Robinson

Commissioners Absent: None

Staff Present: Pamela Ulbrich, Richard Mars, Dirk S. VandenBerg, Sr., Vince Craig, Maggie Vazquez, Carl Martin, Mike Francis, David Colvin, Robert Tolton, Alan Pugh, and Assistant Attorney General Blair Driggs

II. Call to order and roll call

III. Approval of December 2002 Minutes TAB 1

MOTION: To approve December 2002 minutes by Commissioner Peterson, and seconded by Commissioner Robinson.

VOTE: 6 - 0 Motion carried.

Chairman Micuda abstained was not at last months Commission meeting.

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

None

V. Correspondence with Commissioners

None

VI. Scheduling of future meetings/agenda items

Proposed dates and locations

February 14, 2003 Scottsdale, AZ
March 14, 2003Scottsdale, AZ
April 11, 2003 Scottsdale, AZ
May 9, 2003 Tucson, AZ
June 13, 2003 Scottsdale, AZ
July 11, 2003 Scottsdale, AZ

2nd AMENDED AGENDA

Richard Mars proposed the Amended Agenda with corrections for the March and May 2003 meeting dates and locations for future meetings as follows:

*February 14, 2003 Scottsdale, AZ
March 14, 2003 Tucson, AZ
April 11, 2003 Scottsdale, AZ
May 9, 2003 Scottsdale, AZ
June 13, 2003 Scottsdale, AZ
July 11, 2003 Scottsdale, AZ*

VII. Consent Agenda.

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

A. Applications for New Business License

- 1. Agee, Byron Scott dba Action Termite and Pest Control (Activate Qualifying Party for new business license in “B” General Pest and “C” Wood Destroying Organisms).TAB 2**

- 2. Morehead, Scott E. dba A-1 Weed Control (Activating Qualifying Party for new business license in “E” Weed Control). TAB 3**

- 3. Russell, Patrice C. dba Buzzard Limited. (Activating Qualifying Party for new business license in “B” General Pest and “C” Wood Destroying Organisms) TAB 4**

B. Applications for Existing Business License

- 1. Gathright, Edward A. dba Adieux Termite and Pest Control (Activating Qualifying Party for existing business license in “E” Weed Control) TAB 5**

- 2. Strong, Roy Collier dba Prescott Pest Control (Activating Qualifying Party for existing business license in “B” General Pest) TAB 6**

3. Turcott, Trevor Scott dba Amera SunCity Pest Control (Activating Qualifying Party for existing business license in “C” Wood Destroying Organisms)..... TAB 7

C. Applicants for QP Testing

1. Calderon, Francisco J. “E” (Weed Control) TAB 8

2. Lewis, Darrell D. “E & F” (Weed Control & Turf & Ornamental) TAB 9

3. Lucas, Brian Jeffrey “B” (General Pest) TAB 10

4. McClure, Jennifer L. “B & C” (General Pest & Wood Destroying Organisms) TAB 11

5. McKenzie, Barbara D. “B” (General Pest).. TAB 12
Pulled

*MOTION: To Deny by Commissioner Hale.
 Seconded by Commissioner Robinson.*

VOTE: 5 - 2 Motion carried.

*ROLL CALL VOTE: Commissioners Hale, Peterson, Robinson, Fraker and Hale - Yes
 Chairman Micuda and Commissioner Burrows - No*

Denied because Ms. McKenzie does not have field experience.

6. Pearce, Chandler A. “B” (General Pest) TAB 13

7. Ravenkamp, Stephen A. “E & F” (Weed & Turf & Ornamental) . TAB 14
Pulled

*MOTION: To test only in the “F” category by Commissioner Robinson.
 Seconded by Commissioner Peterson.*

VOTE: 7 - 0 Motion carried.

MOTION: To deny testing in “E” by Commissioner Peterson.
Seconded by Commissioner Robinson.

VOTE: 7 - 0 Motion carried.

Denied in “E” because Mr. Ravenkamp is not certified in the “E” category.

8. Smith, Paul E. “B” (General Pest).....TAB 15
Tabled Because applicant verified his own experience and staff is to contact Mr. Smith for more information.

Commissioner Hartley recused himself.

1st AMENDED AGENDA - Applicant for Qualifying Party Exam

Kilian, Gloria L. “B”“C”“E” (General Pest, Wood Destroying
Pulled Organisms, and Weed Control)

MOTION: To deny because Ms. Kilian does not have practical experience and she verified her own experience. Table until Ms. Kilian has someone else verify her experience by Commissioner Robinson.
Commissioner Robinson withdrew his Motion.

MOTION: To approve “E” Category only. Table “B” & “C” until Ms. Kilian has creditable evidence to support her experience in these two areas by Commissioner Hale.
Seconded by Commissioner Robinson.

VOTE: 6 - 1 Motion carried.

D. Applicants to Broaden QP

1. Bancroft, Jay W. “F” (Turf & Ornamental)..... TAB 16

2. Embank, Aaron C. “C” (Wood Destroying Organisms).....TAB 17

3. Strong, Roy Collier “C” (Wood Destroying Organisms).....TAB 18

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

1. Bingham, Jarred A. dba American Dyna-Mite Exterminating
..... TAB 19

- 2. Gads, III, Stephen dba A Busy Bee Removal Co. TAB 20
- 3. Painter, Ricky Bert dba Termite Specialists. TAB 21
- 4. Sinclair, Steven A. dba Zap Pest Control Co. TAB 22

F. Request for Company Name Change

- 1. Environmental Care to Valley Crest Landscape Maintenance . . . TAB 23
- 2. No Bug at Anthem to No Bug of Arizona TAB 24
- 3. Pest Defense Systems to Hometeam Pest Defense, LLC TAB 25
- 4. Uni-Tech Exterminating to Uni-Tech TAB 26

1st AMENDED AGENDA - Request for Company Name Change

Kino Termite and Pest Control to Kino

G. Treatment Proposals

- 1. Orkin TAB 27
Pulled

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

VOTE: 5 - 2 Motion carried.

- H. Continuing Education Committee Minutes. TAB 28**
December 2002
Pulled

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

VOTE: 7 - 0 Motion carried.

I. Request for Final Grade Waivers

- 1. Baron Pest Control. TAB 29
- 2. Bullhead Termite and Pest Control. TAB 30
- 3. Eliminator Pest Control. TAB 31

4. Pestube Systems Inc..... TAB 32

5. Tanto Rim Pest Control.....TAB 33

End of Consent Agenda

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

VOTE: 7 - 0 Motion carried.

VII. Complaints and/or Settlement Conferences

1. AAA Africanized Bee Removal - Case # 2002-105 TAB 34

The Complaint contains allegations of violations resulting from an applicator performing pest control outside the 90-day certification requirement.

Proposed Resolution:

*1. That the **Business License** for AAA, LLC # I 5180 B, be issued an Administrative Warning for violation of ARS 32-2315(A) (Registered Employees), and R4-29-203(A) (Structural commercial applicator certification).*

*2. That the **Qualifying Party, Mr. Thomas E. Martin, QP # 1658 B**, be issued an Administrative Warning for violation of ARS 32-2315(A) (Registered Employees), and R4-29-203(A) (Structural commercial applicator certification).*

NOTE: Mr. Thomas Martin agreed to the terms as proposed. The applicator (Mr. Paul Girard) was certified as of 11-05-02.

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

VOTE: 7 - 0 Motion carried.

2. Adobe Termite Control - Case # 2002-130 TAB 35

The Complaints contain allegations resulting from Jerry Fisher dba Adobe Termite Control performing the work of structural pest control without the benefit of a current business license or qualifying party.

Mr. Fisher has admitted fault but has failed to respond in writing to this complaint.

Staff has investigated the allegations and found evidence of violation.
Staff Recommendation: *Cease & Desist Order be issued against Jerry Fisher and that this case be referred to the Office of Administrative Hearing*

MOTION: *To issue Cease & Desist Orders and to send to Administrative Hearing on Case #'s 2002-130, 2002-134, and 2002-135 by Commissioner Hale.*
Seconded by Commissioner Peterson.

VOTE: *7 - 0 Motion carried.*

3. Adobe Termite Control - Case # 2002-134 TAB 36

The Complaints contain allegations resulting from Jerry Fisher dba Adobe Termite Control performing the work of structural pest control without the benefit of a current business license or qualifying party.

Mr. Fisher has admitted fault but has failed to respond in writing to this complaint.

Staff has investigated the allegations and found evidence of violation.

Staff Recommendation: *Cease & Desist Order be issued against Jerry Fisher and that this case be referred to the Office of Administrative Hearing*

Motion was made to combine all three Adobe Termite Control cases to issue Cease & Desist Orders and to send to Administrative Hearing.

4. Adobe Termite Control - Case # 2002-135 TAB 37

The Complaints contain allegations resulting from Jerry Fisher dba Adobe Termite Control performing the work of structural pest control without the benefit of a current business license or qualifying party.

Mr. Fisher has admitted fault but has failed to respond in writing to this complaint.

Staff has investigated the allegations and found evidence of violation.

Staff Recommendation: *Cease & Desist Order be issued against Jerry Fisher and that this case be referred to the Office of Administrative Hearing*

Motion was made to combine all three Adobe Termite Control cases to issue Cease & Desist Orders and to send to Administrative Hearing.

5. Investamite Termite Control - Case # 2002-146 TAB 38

The Complaint contains allegations of violations resulting from Mr. Coronado performing the work of general pest control without a qualifying party in that classification and for allowing an un-registered applicator to perform termite treatments.

Proposed Resolution:

1. *That the **Business License** for Investamite, LLC # P 8138 C, be issued an **Administrative Warning** and a **Civil Penalty** in the amount of \$100.00 for violation of ARS 32-2325(2) (Unlawful Acts).*
2. *That the **Qualifying Party, Mr. Hector Coronado, QP # 8123 C, be issued an Administrative Warning** and a **Civil Penalty** in the amount of \$100.00 for violation ARS 32-2325(2) (Unlawful Acts).*
3. *That the **Business License** for Investamite, LLC # P 8138 C, be issued an **Administrative Warning** for violation of ARS 32-2315(A) (Registered Employees).*
4. *That the **Qualifying Party, Mr. Hector Coronado, QP # 8123 C, be issued an Administrative Warning** for violation of ARS 32-2315(A) (Registered Employees).*

NOTE: *Mr. Hector Coronado agreed to the terms as proposed. The Civil Penalties (which total \$200.00) are to be paid within 30 days from the date of the Order.*

Mr. Coronado has stated that Mr. Ramirez is no longer working for Investamite.

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

VOTE: *7 - 0 Motion carried.*

6. Phoenix Exterminating - Case # 2002-131 TAB 39

The Complaint alleges Phoenix Exterminating failed to note evidence of wood destroying organisms when completing a wood infestation report.

Investigative staff noted the termite evidence was discovered eight months after the original Inspection, under approximately two feet of what appears to be blown-in insulation in the attic. The evidence was originally exposed when an air-conditioning repairman cut a hole in the ceiling to install an air-conditioning unit.

Based on the fact that the apartments were occupied during the sale of treatment in 6-01, investigation staff is unable to determine whether or not proper conditions existed that would have facilitated for a complete treatment of the property. On 12-26-02, Mr. Craig made arrangements with Mr. Oakland and Mr. Edwards. It was agreed by the two parties that Mr. Oakland will provide Mr. Craig with a list of all patios that were not treated and Mr. Craig will telephone Mr. Edwards to obtain a date and time for an SPCC Inspector to monitor the treatments.

Staff Recommendation: Dismissal without prejudice

MOTION: To approve Dismissal Without Prejudice by Commissioner Peterson. Seconded by Commissioner Hartley.

VOTE: 7 - 0 Motion carried.

VIII. Felony Applicants

1. Hastings, Scott Austin TAB 42

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

VOTE: 7 - 0 Motion carried.

2. Wiley, Larry Allen TAB 43

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

VOTE: 7 - 0 Motion carried.

MOTION: At 10:12 A.M. a Motion was made to go into Executive Session to discuss Special Review of Applicant for Certification Testing by Commissioner Burrows. Seconded by Commissioner Hartley.

VOTE: 7 - 0 Motion carried.

Back in session at 10:27 A.M.

IX. Special Review of Applicant for Certification Testing

1. Kowalczyk, Todd TAB 44

MOTION: To approve for certification examination by Commissioner Burrows. Seconded by Commissioner Hartley.

VOTE: 7 - 0 Motion carried.

Brief discussion by Commissioner Peterson to staff. Commissioner Peterson has questions of how does SPCC safe guard tests. Does SPCC inventory tests monthly? Are there numbers on tests? Pamela Ulbrich stated Licensing is inventorying their tests and verifying the numbers. We give out the test's one at a time and when they are done we verify that the test is returned. Commissioner Peterson encouraged staff that we number our tests and keep track of them because that is something they do. Commissioner Burrows suggest have something on tests to verify that it is the property of the SPCC. Commissioner Peterson wanted to know if we collect their ID's, he does know that we check the ID's. Pamela Ulbrich stated we do verify their ID and give it right back to them. Commissioner Peterson stated if we keep their ID it will keep them from walking out with tests and Chairman Micuda agreed. Carl Martin stated under the direction of the Executive Director, Ms. Gervase we are re-making the examinations they should be a different format. Chairman Micuda stated Richard will be talking about CBT, but with the CBT will that take care of this issue?

X. Case Status Report TAB 45

Discussion by Vince Craig on Case Status.

XI. SPCC Enforcement Scheme TAB 46

Commissioner Fraker had the same questions, but at the last meeting we asked to agendaize the issue about the signage of two inch letters and that is why it is on here. Dirk S. VandenBerg, Sr. stated it is in response to their question about signage on the vehicle lettering height and the name that is registered. The amount of adjustments were done through the EDP/Martix guideline along with the new inspection form to reduce the severity of anything regarding the signage until regulation can be changed. We made it a De minimis violation and it is not addressed for example: when we do a vehicle inspection we are merely addressing the height of the lettering and the name that is registered. There is four months to adjust the lettering where it needs to be or file for a name change. In most cases, the name of the company is in bigger and bolder letters and the rest of the lettering is logo. Commissioner Robinson questioned if the companies that are changing their names are they changing their letterhead and forms. Mr. VandenBerg, Sr., responded that they do not have to change their letterhead, according to statute and rule they are allowed to have logo. If they have "exterminating" it is considered logo. Scott Richardson stated the lettering rule has been going on now for six months and many industry members have come forwarded to speak to you about it and many have changed their names. This has caused companies to change their names by eliminating "pest control" or "exterminating" which does not allow companies to identify themselves as a pest control vehicle. Commissioner Hartley stated that the other issue was besides the letters was the name that is registered with the Commission is the name that is on the truck. Truly Nolan changed their name to "Truly Nolan" and it had nothing to do with the size and Truly likes the lettering gigantic. There is nothing in law that he is aware of that says your license as a pest controller, or exterminator, or fumigator, just that your name is as exactly that is registered with the Commission. Scott Richardson stated that we are causing people to change their names because they cannot afford to change their trucks or are not willing to paint their trucks. Chairman Micuda agrees with Scott that we have gone into a direction that does not give any information of whom these people are and it is not a good idea. Dirk and his staff do important work and they are

here to do an important job and the Commission needs to give them direction of what the Commission priorities are. Chairman Micuda would like to talk about establishing what are the Commission's priorities? Every law enforcement agency or prosecutor's office has lots of laws and if they are managed well there is some priority given to some things that are important and you look at what your resources are. There are lots of law that are in the books that are not enforced and it may not be a priority. Chairman Micuda spoke to Lisa about this and would like for staff to do a table or spreadsheet of some kind with the provisions of what we are citing people for in the last six months. A spreadsheet that shows where we are putting our dollars and what we are citing people for. This information will help the Commission of wherever we decide to do in this particular area or that area or these other things that are not priority. The height of the lettering is not a priority. We need to know where we are spending our time and our dollars. Commissioner Burrows stated there is a public safety issue involved by not identifying vehicles especially if they were in an accident. Commissioner Peterson commented it would be a good direction to go, so that the Commission can be fair and it also shows where we are putting our enforcement money. Chairman Micuda commented to Dirk that personally he feels a little bit in the dark and this is not a knock on you or your staff. Chairman Micuda commends your staff for what they are doing. We have discussed this in part there is a void here that needs to be filled by the seven Commissioners to give direction with the resources we have which may become less perhaps. We need to give direction, so he is looking for a way for the Commission to get the information they need to make a responsible decision. Chairman Micuda at this time does not know what are priorities for staff and what things are not priority. This is something the Commission needs to be setting and they need to become participants of that process. Chairman Micuda would like to see on the next agenda information which will enable them to learn more of what is actually is going on in Enforcement where we are spending our dollars and have a discussion of what our priorities are. Chairman Micuda suggested that we ease off citing people until we establish how we are going to move forward. Chairman Micuda understands that we have a law in the book and we have a responsibility to enforce it, but on the other hand you have discretion here and this Commission has discretion and if our priorities are such that we don't have the man hours to go after the size of letters then you don't. That should be part of the discussion all of us have. Dirk S. VandenBerg, Sr., stated the intent of revising the inspection form and bringing down the name as registered which is a three part and bring it down to a De minimis violation of how the name was registered which was a lot of problems several months ago. Staff does need direction in this area. Staff has provided to you in a basic nature and would like to provide this to you every month hereafter. If you would like this broken down into man hours, etc., we can do this. Chairman Micuda commented he does not know if we have the capacity to prepare a spreadsheet of what he requested a while ago. Lisa Gervase stated she will look into this once she gets into the office. Dirk S. VandenBerg, Sr., stated there are case status and data bases that are being created. Mike Francis who will have a format on man hours, time spent and the violations. Chairman Micuda would like the information so they can make a decision. Chairman Micuda stated we should not be unwittingly be hammering a company that have adopted names that inform people what they do and now they are taking a name that is ambiguous such as "Kino" down in Tucson. The burden is on the Commission's shoulders and that is what he is proposing and they need information so they can do that. Dirk S. VandenBerg, Sr., commented that the best they could do at the time is to minimize the violation because we did not have direction to address it or not, it had to be part of the inspection. The minimal height is two inches. The majority of the time the lettering was less than two inches. We also gave a 90-day period to have industry address. Commissioner Hale supports Scott Richardson in his presentation. It is only good business

sense not to shorten a company name.

XII. Legislative Update (Carl Martin)

Carl Martin stated last year the legislator passed HB 2189 requiring that companies doing termiticide treatments to report all of those treatments to the Commission for the purpose of creating a data base for public use. After discussion and venting that fully after it was passed that it is not a very workable regulation, so in connection with the Arizona Pest Management Association legislation has been put forward been sponsored to repeal those provisions in 2189 that required reporting and required SPCC to database that information. That bill has been pre-filed and pre-introduced at the house and we suspect there should be no problem getting that bill passed this year. The Commission is on record as seen as unworkable those provisions that required us to data base and distribute that information, so we have been supported by APMA to have that repealed. The second piece of legislation is progressing through the process that requires now some deliberation on your part and identification listing which are commonly held or to be properly moved on or those things that need to be additionally studied and that would be last year's 2188 as a basis with additions and additional modifications this year. Mr. Chairman you were the chairman who worked on this committee along with Commissioner Fraker and so I think I'm here to assist our Executive Director, Lisa Gervase, Mr. Aarons, Mr. Richardson, Mr. Birkmyer, Mr. Andy Weber, Mr. VandenBerg also participated in our meetings and that legislation is before you. It is a decision that has to come from you. Chairman Micuda stated this is an opportunity for the Commissioners to ask questions, express concerns they have about the proposed language. Ultimately, we can if we wish, we can endorse it or just watch it go through the process, it probably does not make any sense. It has to go through so many committees and two houses, review, and legislative counsel, and expects the bill will look a lot different than it does in its proposed form. Lisa Gervase asked Chairman Micuda if we could dispose of the last two items on the agenda, so that staff that does not need to stay can go about their other duties. Tabled for now.

Chairman Micuda reconvened back to Legislative Update and asked if anyone would like to come forward and talk about the proposed legislation. Mike Denny/US Pest Control commented he has reviewed an older draft of what is going to the legislature. 32-2314(C) An applicant for a Qualifying Party shall (and you discussed it a couple of times this morning) under the proposed legislation you are asking for 3000 hours of verifiable practical field experience excluding sales and office experience in the prevention of re-mediation of pests and pesticides and this morning in at least one application for testing in Qualifying Party you added to that and excluded field supervision. Because you would not accept the fact the two ladies in questions had gone out and watched applicators do applications, since they were not in positions of authority, he saw that as supervision which was excluded this morning. Mr. Denny discussed if Commissioners Hartley, Robinson, and Fraker sent in their renewals fees after the 31st of this month they would not be able to renew their license because those payments were made late then probably they would not qualify as Qualifying Party under proposed legislation. Mr. Denny would assume that neither of them have 3000 hours of verifiable at the end of the hose experience in the last five years. Mr. Denny feels there has to be more than this to be a qualifying party. The other problem he has is with 32-2321(C)(1) Disciplinary action, grounds, procedure, and judicial review under (C)(1) the Commission is allowed to proceed against the business license based on certain things. Under # 1 "The business licensee has committed a prior violation of the same type including any violation

by any employee of the business licensee.” He would like to see that changed to reflect that the business licensee was found to have some type of culpability in a previous violation by an employee. It goes back to R4-29-104 “Joint Responsibility” of rule and if as a business licensee if I could provide the Commission that I have properly trained and instructed our employees then there is no culpability for the business licensee or the qualifying party. With this provision if a subsequent employee was not properly trained than the Commission can take action against me on a prior violation, so he would like to see this expanded excluding an employee where the business licensee had no culpability on the violation.

Scott Richardson stated he would like to talk about the whole process. The legislation before you is a beginning point or even a step before a beginning point. In this piece of legislation, he thinks industry agrees with, industry may not agree with, industry may even be split on. The point was we couldn't let the deadline go by without getting something into the legislature. Mr. Richardson mentioned a few of the items that are helpful in the bill. In 2188 last year we attempted to change the definition of wood destroying organism to wood destroying insect. We attempted to do that so that fungi or mold were not a target in an inspection in a wood infestation report. Discussion about agencies and administrative law and the difference between a complaint and an inquiry. An inquiry which gives the staff or the Commission an opportunity to go out and look if someone has termites. If they had a post-treatment eight years ago, it should not be a complaint it should be an inquiry and staff should use good judgment before it comes before the Commission, or before it ends up on someone's record, or before it becomes public record. Mr. Richardson commented he knows that there is going to be disagreement about the increased hours for Continuing Education in the various categories. Where the committee was concerned, lets raise the bar, he heard some of that mentioned earlier today. The hours should be in law and regulations, since we are about to change the law and safety. Also, have qualifying party courses and have the QP take a certain number of hours for those courses. The qualifying party is more than an applicator, if the qualifying party is charged with making sure the technicians of a company are equipped, trained and supervised then they should take CEU's on an annual basis. There is a lot in this bill that we may agree with and we may not agree with, but it was getting this bill into the legislature within the time frame.

Barry Aarons, Executive Director for Arizona Pest Management Association. Thanked Chairman Micuda, Commissioner Fraker, Carl Martin and Dirk VandenBerg with the great work they have done with the industry in a partnership on the special committee in developing the changes that were important to this legislation. Mr. Aarons stated they have identified a new member in the legislature who is interested in our industry, Michelle Regan from Scottsdale, she represents the building of SPCC. Ms. Regan has agreed to introduce HB 2026 and she also has the folder open, she has not introduced this bill until the Commission has been able to review this bill. Mr. Aarons would like to do with the permission of the SPCC with a couple of changes for example section five of the bill page 11, lines 40 through 42, also repeals 2189. The industry is sensitive to Mr. Denny's comments. What we would like to do on Tuesday is have Ms. Regan introduce this bill with the changes. It will go through three committees, two procedural committees, and two sets of floor actions in both houses in the legislature.

Lisa Gervase has some practical comments under A.R.S. §32-2304 that is the “Powers and duties” under section “A” the Commission shall do and a list and under section “B” the Commission may do. The first part being the shall and the second part being the may. Then later in a paragraph in

this same section talks about the duties and powers in those two main sections that the Commission shall not delegate to staff and of course there are certain things in there that you shall absolutely not delegate to staff. But there are a couple of subsections listed in that list of duties that shall not be delegated it could of been an error in numbering as the proposed language has been changing. Ms. Gervase would like to point those out (A)(8) issuing subpoenas that particular duty is currently listed under paragraph G is not delegable to staff. That needs to be delegated to staff it always has been. Ms. Gervase does not know why that paragraph was delegated certainly the Commission cannot convene every time a subpoena needs to be issued that is something the director needs to do. Ms. Gervase asked the Commission what direction they would like for her to take on this bill under non-delegable duty. The next one is under (A)(11) Conduct or contract to conduct licensing qualifying party licensing examination. That is currently listed in paragraph G as not being delegated to staff. That paragraph 11 needs to come out of the non-delegated line. Further down paragraph (A)(15) employing executive director and other permanent and temporary personnel as deemed necessary that number 15 is an error that is non-delegable, you are certainly not going to delegate the hiring and firing or the executive director or anyone else. The Commission always does that, but with respect of the other staff that is the Executive Directors duty. That number 15 needs to come out as non-delegable. The last one under the shall category is number 16 Investigations. This is actually listed as non-delegable which she does not understand. The staff does the investigations and not the Commission. That definitely needs to come out as non-delegable. Chairman Micuda stated those all make perfect sense to him. Ms. Gervase stated (A)(28) same section the Commission shall approve Proposed Consent Orders. Ms. Gervase had a question for Mr. Driggs, this questions states the Commission shall approve Proposed Consent Orders her interpretation is that if a Proposed Consent Order comes to you, you have to approve it. It should probably be under the may and not the shall. This is new proposed language and it is not in our existing statutes. Carl Martin pointed out it is in our statutes, but it moved.

Chairman Micuda stated there are two ways that you could interrupt that you could move it to “B” to address the issue. You could move it to “may” or approve consent order which means if anything is a consent order it is not proposed.

Ms. Gervase stated there is time in the legislative process, but things do move fairly quickly and would like to know what the direction of the Commission is after their discussion some clear direction from the Commission either by a vote or at least a consensus or if not an actual vote as to either things you want me to oppose on behalf of the Commission or things you want me not to take any position on. Other than that you want me to be supportive of this. Commissioner Robinson asked Ms. Gervase if she had the opportunity to look at what Mr. Aarons or his group would be turning in. Ms. Gervase stated this is what they have in front of them.

Barry Aarons stated they will be taking this up on Tuesday, it is their intention to have an intro-set of the bill with the changes delivered to Ms. Regan on Tuesday. Mr. Aarons inclination is to call legislative counsel to make the changes that Ms. Gervase has given. As for page 8 line 39 clarification on approval if Lisa could get him cleaner language by Monday morning, he feels those are technically housekeeping amendments and are not substantive changes. Commissioner Peterson stated he has always read it differently and has not read it.

Chairman Micuda stated this is a starting point. Everyone has opportunities during the process to make changes or add comments. Commissioner Peterson had another question on the hours it is impractical. How are you going to log this? Commissioner Burrows stated if you work 40 hours a week it is 2040 hours a year. It is going to be construed you worked 2000 hours a week. Chairman Micuda commented that someone that applies who goes out and does it one day a week and then someone who comes in and states he has two years experiences versus someone who does it 40 hours a week. Ms. Gervase stated it come up in a committee meeting discussing what is more definitive of what we have now to verify practical experience. Discussion came up if you work 2040 hours a year a full time job. Carl Martin stated some records have to be kept where people have to provide a pay stub or some type of record. Commissioner Burrows commented that this would be difficult to track the hours. Chairman Micuda commented that he recalls the reason why is so that operators have better records. It says verifiable hours this is wiggle room and discretion for the Commission to determine verifiable hours. Ms. Gervase commented that other agencies accept verification of when their statutes require number of hours is by affidavit by the representative of their employer or employers.

Commissioner Robinson asked if there would be a discussion on defining practical experience and qualifications. Mike Denny spoke that he would be speaking to the association that they endorse other qualifications other than working at the end of the hose for the qualifying party or it just be stricken entirely. Carl Martin stated the language is going in a different direction, this language opens the door for all sorts of experience for your consideration and does not tie it to a certain application that is currently under the code. The items that were excluded are currently excluded in Rule. It states specifically the Commission may not consider sale experience.

Lisa Gervase commented that what Mr. Denny is concerned about is the addition of the word "field" after practical experience that narrows it. This Commission had more discretion by determining what is practical experience than if you had practical field experience. Commissioner Micuda stated that this discretion is causing one Commissioner anxiety.

Chairman Micuda stated he is not comfortable with it as it is right now. Scott Richardson stated verifiable means cable of being verified it does not mean that it is not verified. Commissioner Fraker stated to clarify they did not exclude supervision. People who have had previous field experience can you really qualify at this point because Mr. Weber informed them that the way it was written before he would not qualify. When they struck supervision as a route supervisor or being in a supervisory position where you are responsible for the records, applications, and the technicians. Mike Denny asked what about an office manager. Commissioner Fraker stated he didn't think so. When he thinks of an office, he generally thinks of an administrative clerk, someone asked what about a manager of hiring and firing of technicians. Chairman Micuda stated those are to supervisory experience then you are ok. The language is office clerical experience what that meant to everyone on the committee as a secretary or dispatcher, etc.

Mike Denny commented what about six years later and there are seven new Commissioners. Commissioner Peterson agreed with Mr. Denny that if the word field is not here it would allow more discretion. Lisa Gervase stated if you look at the sentence above you are "the actual use or supervisory us" that is not clear enough in "A" or "B" then the Commissioners still want a substantive change in "A" and "B" you can consider adding field supervisory or training. Bert

Putterman stated the two paragraphs you give the discretion to the Commission to approve somebody's experience based on your judgment. In the next paragraph you exclude sales and office experience there is no reason to exclude those people if based on what is submitted.

Mr. Putterman stated his staff is very well acquainted with the business and what goes on with it. Barry Aarons commented that he is going to go back to the Association on Tuesday and ask them two questions if it is two years 3000 hours or one year and 2000 hours or go back to the original language and leave it as it is in paragraph "A" and "B." Carl Martin stated Rule 204 which is law prohibits this Commission from considering sales experience. "It shall not." The basis of this law came out of this. If there is a need that sales experience should count then we should include it just be clear to everybody what it is. Scott Richardson stated what he is sensing here is that we need some concrete examples to make some decisions. Certainly the case he argued this morning raised some good concrete examples. Bert Putterman would like to make one concrete example of the conflict of Rules and Statute. We require both in Statute and Rules that when someone is making a proposal for a termite treatment it must be certified by the State of Arizona and part of that certification they are required to provide a written proposal. That proposal is detailed and the people that prepare those proposals are sales people and that is all they do. What we are saying is that a sales person is not adequately prepared to qualify when that is what they do under your guidelines for a living. Andy Weber stated that committee members were not happy with everything. Mr. Weber has worked in this business since 1970 helped Steve start the business in 1982, we redirected it to Pre-treat. Mr. Weber has a lot of hours spraying, but in the last 10 years has not physically sprayed, but he is a troubleshooter and he goes out and bids pre-treats. Mr. Weber's title is Commercial Representative. Dirk S. Vandenberg, Sr., stated he had worked in the industry and works for the Commission. If you are doing sales it might involve termite inspection, graphing for a job in a proposal form which you need to be trained and understand what you are doing. Working in the office there are points in training if you are a manager you still have training programs, new equipment, chemicals, and labels. Practical experience should be considered if we limit ourselves and narrow this down we may be eliminating possibilities for new and knowledgeable people coming into the industry. Barry Aarons stated when in doubt go back to the original language get that introduced and work on the amended process and eventually we will stumble on the right language. Because what he is hearing today is that the language of 3000 verifiable hours of practical experience in specific categories or categories for which this person is applying right now is the preferable industry language for introduction purposes "choosing my words carefully" Chairman Micuda stated leaving out the Exclusions. Mr. Aarons stated for paragraph "B" 2000 verifiable hours of practical experience in specific category or categories for which the person is following the same language. Unless Mr. Aaron's Board tells him otherwise that would be the request for the language intro-set and we will continue the dialogue. Blair Driggs stated the verifiable is the issue you need to work on. Mr. Driggs stated you can run into problems when you put hours in an industry that does not have school or something other than the industry members verifying the hours. The year is enough for you to deal with verifying. When you do hours and someone comes in you are going to have to verify the hours. What if they took lunch or if they are sick. If you put a specific number you are limiting yourself and opening yourself up for someone to come in and pick a specific number. Hours seems to work with those agencies in Mr. Driggs's experience that they have to go to school and they have training from an independent source. Chairman Micuda does not share the same concern because verifiable Scott gave the definition and we have discretion to accept whatever they think that verifies the hours.

Lisa Gervase asked if what she heard is to take out field in paragraphs in “A” or “B” and take out the exclusions and leave the rest as is and then either the language will change through the process as everybody has had a chance to discuss it or it won’t and then down the road we will work on Rule 204. Bert Putterman stated he disagrees with the whole thing because he feels it is an inaccurate way to go about doing this since he has sat as a Commissioner and he has reviewed what people have sent in as experience and what they couldn’t squeeze out of people in terms of verifiable experience. Mr. Putterman stated that the qualifying party role is different for each employer and they do not fill the same positions. What we are looking for are people who can train and adequately supervise at the same level. Right now we have a system in place, we have a certified applicator in each category in each branch office or individual company or small company, so that is covering that level. So if you want to make that person the qualifying party and say they need some level of experience you can do that, but I don’t know why you want to do that. On the other hand, the qualifying party is somebody who has the intellectual where with all and the financial where with all to be the responsible party for the activities for any number of people who work for them and for their client base.

Lisa Gervase stated maybe the solution is to use the definitions we have instead of using the practical experience say those submitting hours in the business of structural pest control. Because we have definition of business license and a definition of structural pest control, which includes a number of things, and our definition for a qualifying party is an individual whose license is to supervise and trains all employees of a business of structural pest control. If someone has been doing the business of structural pest control in whatever capacity for whatever number of hours the Commission feels appropriate they can then supervise and train other employees then lets use the definite definition of what we have. Commissioner Robinson commented that we have one person office they are the QP, applicator, office person, etc. so what we are saying here is that someone can pass the test, we have one instance here today where this person could probably pass the test maybe or maybe not. Agreed with Mr. Putterman that there are a lot of levels to consider. Mr. Denny stated there are two different issues here and they are the business licensee and the qualifying party. The obligations of the qualifying party are making recommendations, treatments, etc. The business licensee responsibility is different then the qualifying party. Scott Richardson wanted to make some comments of where we have been and where we want to go. Where we have been, has been a somewhat difficult definition of “quantification” two years is a narrow interpretation of quality field. What we are hearing there is some value to some level of quantification whether it be hours, years or weeks. The important point that has been made here from a philosophical standpoint there is valuable experience that doesn’t necessarily occur in the field for the purposes of someone becoming a qualifying party. Mr. Richardson asked the Commissioners to review the material on behalf of Barbara McKenzie.

Chairman Micuda stated that they have a couple of options at this point we can vote to endorse the bill moving forward and the AMPA and staff working on the bill or we can have staff monitor things and not take a position one way or the other. Commissioner Hartley stated to Chairman Micuda that he gave him a written statement of what his objections are, but at this point until a lot of those issues are dealt with he cannot support the bill as a Commissioner. There are a lot of things on this bill we have not touched on and have not even talked about, so he cannot endorse as a Commissioner. Commissioner Hale stated he will agree with that and a lot of things said in the audience today. Commissioner Hale believes the restrictions excluding sales experience or

whatever experience that is being done in an office should apply and so there is a lot of refinement that needs to be done on the verbiage. Chairman Micuda stated the bill is going to move forward the question is the Commission going to endorse it or sit back and watch it move forward. Commissioner Hartley stated he has real concerns they did away with the concept of branch offices, maybe somebody can make an argument, but nobody has made an argument to this Commissioner or let alone to this industry member who represents a large company that doing away with branch offices is not beneficial to the Commission or beneficial to the industry. Until such argument can be made to his satisfaction and it is something that he will not endorse. Chairman Hartley further stated he will go forward as an industry member to fight this and endorse it as a Commissioner. Bert Putterman stated he agrees with Commissioner Hartley about branch offices, but there is a major issue concerning wood destroying organisms, subdividing Wood Infestation Reports and secondary to that is adding additional categories which reflects on their ability to get insurance there needs to be more conversation and discretion concerning these matters. There is inconsistencies in the Continuing Education requirements and who will provide these Continuing Education requirements and who has to get them. Commissioner Micuda stated the Commission will not be taking a position. Barry Aarons stated the industry did not introduce this bill last year. The industry was moving forward as working with the Commission and a couple of Commissioners which clearly does not constitute a quorum and Mr. Aarons has never categorized the Commission taking a position. There are some thing that our association and other industry members that he has talked to who may or may not be members of their association who would like to pursue in terms of legislation the repeal of 2189 is one of them. Most of what was brought forward was generated at least from the Commission or Commission staff to continue on this. Mr. Aarons thinks some of these pieces of this legislation and the industry would like to see it go for some clarification purposed and so on. Mr. Aarons would like to see some of Mr. Putterman's questions and to see Mr. Hartley's commentary on the bill. The Association will discuss this on Tuesday to see if they go forward with this. The Association has another vehicle which is 2026 that is introduced now and we can make some smaller changes and leave the omnibus thing for a discussion or debate as time goes on for the 2004 session. Mr. Aarons does not want anybody to get the impression that this bill as it stands is an industry or even an association advocated approved, we have to have a piece of legislation. Mr. Aarons felt he had to clarify that it is not their bill.

12:04 P.M. Blair Driggs left the meeting.

12:18 P.M. Commissioner Peterson left the meeting.

XIII. Computer Based Testing "CBT" (Richard Mars)

Discussion by Richard Mars. Richard Mars stated we are still in evaluation process because of the holidays and hopefully, at the next Commission Meeting will disclose more information.

XIV. Exam Update

Carl Martin stated the staff together with Commissioner Fraker have undertaken in preparation for computer-based testing, but also the Commission has expressed an interest in updating exams with reasonable and current content. We have made some progress by looking at the Core Examination and the Wood Destroying Organisms Examination. Some work has been done on other

examinations in the QP area. Very little has been done for the certified applicators examination, we have an advantage there because for each test form for certification there was a database of questions produced. The QP tests are not reserved, we have made some progress if I may suggest that a special committee of this Commission be appointed to oversee or undertake this responsibility so that staff does not make valued judgments what this ought to be outside of input from the Commissioners directly. The input that Mr. Fraker has been invaluable and while we have staff in various areas certainly this is not a bad idea. Chairman Micuda asked Commissioner Fraker how he feels about that. Commissioner Fraker responded that we need some input from other industry members and the committee is an excellent idea and we need to expand. Chairman Micuda asked if anyone is interested in working with Mr. Fraker. Commissioner Robinson asked if staff puts together a list of questions and then the Commissioners could review it instead of having another committee. If they had 150 questions and they needed 50 then the Commissioner could review them or a Commissioner could take those questions to the industry to see if they reflect what someone needs to know to operate in the industry. Lisa Gervase stated there are other categories where we will need expertise outside the agency and the Commission, so maybe the committee idea is not palpable, we can go to someone in the industry where we don't have the expertise in that area enter into a confidentiality agreement that Mr. Martin is already drafting one that I will be editing, so that we don't have a problem with confidentiality exam questions and have that person draft 20 questions and then bring all the questions back to the Commission for a final vote on the examine.

Adjournment - 12:23 P.M.

*MOTION: To adjourn by Commissioner Hartley.
Seconded by Commissioner Hale.*

VOTE: 6 - 0 Motion carried.

Commissioner Peterson left the meeting before it was adjourned.