

COMMISSION MEETING
January 28, 2003
MINUTES

I. Call to order and roll call

Commissioners Present: Commissioner Burrows, Fraker, Micuda, and Hale

Commissioners Absent: Commissioner Hartley, Robinson and Peterson

Staff Present: Lisa Gervase, Carl Martin and Maggie Vazquez

II. Call to order and roll call

Chairman Micuda called the meeting to order at 9:03 A.M.

III. Legislative Update regarding HB 2341 and any related legislation (Lisa Gervase)

Lisa Gervase gave an update of what occurred at the Legislature on January 27, 2003 and the Commerce of Military Affairs Committee reviewed HB 2026 which is the bill that repeals the additional termite treatment reporting requirements from HB 2189 from last year and they also reviewed HB 2273 which is the Surplus Lines Insurance provision bill and both of those got a due pass recommendation.

Lisa Gervase stated, she and Barry Aarons spoke yesterday about the APMA meeting results from yesterday and Barry gave Lisa a copy of his notes and she will go through with the Commission of what came out of the APMA meeting and if you have your copy of HB 2341.

On Page 1 the decision was to proceed with the repealing the definition of "apprentice."

Commissioner Hale stated the purpose of this call to ask if this has been modified.

Lisa Gervase responded the purpose of this call was to update the Commissioners of what took place yesterday at the Arizona Pest Management Association Meeting regarding our omnibus HB 2341 and to let you know what happened at the legislative committee meeting yesterday regarding the other two bills and then for the Commissioners to discuss the issues that came out of the APMA meeting yesterday and any other issues you might want to discuss regarding HB 2341 and either decide to take a position on what came out of the APMA meeting or your own thoughts with this specific language.

Commissioner Hale asked if they were expecting a vote on this today.

Lisa Gervase stated if possible and it may not be as cumbersome as you think as you hear what came out of the APMA meeting.

Commissioner Hale stated he may disagree with that and asked if everyone received Bob Hartley's letter. The letter that he had objections to and that he voiced at the last meeting. Commissioner Hale has reviewed this in great detail and is in total agreement with what Commissioner Hartley said, but he has many other issues.

Lisa Gervase stated what came out of the last APMA meeting which she has updated the Commissioners at the January 16, 2003 Conference call was a number of items that we were calling the "B" category which was to proceed with the bill as is, but everybody is still working on the language, so primarily that is what is going to be the focus of today from what came out of the APMA meeting yesterday. On Page 1 the APMA proposed to proceed with the repeal of the definition of "apprentice." They proposed to leave the whole concept of branch office that is something Commissioner Hartley had some real concern about, his concerns should be satisfied and we will continue to pursue that in legislation next year and if we can reach a consensus then proceed otherwise it may end up staying as a regulatory requirement, that is if somebody has a branch office they have to comply.

Commissioner Hale would like to hear from one of the other members, Commissioner Fraker about the Branch Office, he agrees with Commissioner Hartley on that. Lisa Gervase commented it is going to stay as it is now. Commissioner Hale wanted to know why we are taking out the word "apprentice?" Lisa Gervase commented that branch office and apprentice do not have nothing to do with one another. Carl Martin responded the category "apprentice" registered employee means that a person can use pesticides in the State of Arizona. On a long term basis without ever coming before the Commission to become certified. They have to do it under a type of supervision that allows the supervisor to be present on the site where the application is happening, but in the years that we have had the "apprentice" employees' designation available less than 10 employees have been registered that way. Most pest control companies prepare their employees to take the examination to become certified applicators, so the need for a special regulatory category and therefore; regulatory effort, has not been demonstrated over the past year. There is no need for it and so it has just been eliminated and this was fully talked to with the Pest Control Association and others and they agree they never use the "apprentice" category themselves. Commissioner Hartley wanted to know what you call an employee who comes into the company and he is registered as a member on the payroll? Carl Martin responded as an "employee." It is not the states business whom they hire this was just a designation that allows them to use pesticides and the pest control industry feels if you are going to use pesticides you should be certified or moving toward certification.

Chairman Micuda asked Commissioner Fraker if he was at the meeting and his response was "yes." Getting back to the Branch Office apart from APMA does it make sense in throwing it out in a regulatory scheme? Commissioner Fraker stated branch offices only affect a few companies, but his understanding is that there is nothing in the branch office requirement regarding pesticide storage at those locations, so the branch office really does not serve any direct purpose, other than the argument from people who want to keep branch offices was that it gave their employees a sense of responsibility in the areas throughout the state where those branch offices are located. From a regulatory stand point it does not serve a lot of purpose. Chairman Micuda sees two problems with branch offices. The first one is it takes away some responsibility to the QP. It is making it clear and

the statutory scheme is that QP's have certain responsibilities and what those are and then secondly, the concern he has is that if you don't have a QP who is checking in on things and all you have, is an applicator who some has some type of supervisory responsibility where in our statutory, regulatory scheme do we have a provision that allows us to impose that obligation on an applicator and the applicators don't typically supervise? Commissioner Fraker stated the branch offices only needs a certified applicator at those locations, but the Qualifying Party is still the responsible individual regardless if it is at the home office or a branch office. There is designation of where those records need to be kept and the QP is still responsible for those whether they are held at the branch office or the home office. Commissioner Hale commented that there are many QP's who do not even live in the State. The branch office verbiage in this document later on is that an employee which should be clearly stated that should be under a licensed applicator and every branch office should have a licensed applicator and the QP should see that this is being done and does not see the need to delete branch offices, they need chemical storage, etc.

Lisa Gervase stated the proposal is to leave things the way they are and being that it affects such a few number of companies and it does not make a difference in compromise we can probably go along with that. In the future, if the legislature decides to get rid of the regulatory requirements pertaining to registration and branch offices, it does not mean that companies can't still have branch offices. Chairman Micuda states it only affects a few companies and those companies have some different interests then 95% of those companies in this state. What is the most responsible course of action for the Commission as a regulatory entity and he is not hearing a compelling argument and if that is the case he does not have a problem leaving it there, but if that is the case it deserves some discussion? Lisa Gervase stated if it stays in the statutes it will be on Carl's and her future look at legislation lists with several other items.

Commissioner Fraker stated one of the problems there is no requirement for chemical storage at branch offices and there is nothing to inspect. Is that correct Carl? Carl Martin commented that is correct, nor is there a mandatory requirement for them to store records at the office. The companies are free to store chemical on trucks at the main office, branch offices and peoples homes as long as they let the Commission know where that storage is, further they are allowed to keep records at the same locations. They allow the Commission to have access to them when requested, so again the regulatory scheme for branch offices is weak, you can choose to have them. It probably merits discussion. Commissioner Fraker stated if we are going to have branch offices and that seems it is going to be the case what we should look forward in the future to tailor the requirements for those branch offices, so they are responsible for records and for proper chemical storage, so there is something there for the inspectors to go to find information of activities that are going on like the Prescott Office when there is no qualifying party there, the other thing that was discussed at the meeting yesterday and he knows that Bert mentioned this if we are going to have branch offices then we should have somebody in a qualifying party level at those branch offices. Chairman Micuda agrees with everything that has been said by Commissioner Fraker and if we are going to have branch offices then they need to be held more accountable than they are right now. Chairman Hale stated his agrees with Commissioner Fraker and everything that he said and a company is a company and they are a legal institution and it all should be treated equally and he does not feel there has to be any separate provisions for having a branch office. Chairman Micuda requested that Lisa and Carl add that to the list because it will be something they will be working on in the work

group. Lisa Gervase has it on her legislative notes, so for the future things of looking into and discussion.

Lisa Gervase stated the next issue is the word “fungi” anywhere it is used it should be changed to “mold.” Commissioner Hale requested that Lisa Gervase repeat what she just said. Lisa Gervase stated every place where the word “fungi” is used it would simply be “mold.” It is her understanding that the word “mold” is narrower and the broader definition of “fungi” and she didn’t quite get the rationale for that and she is summarizing that because there has been some debate whether this should be a new category that the compromise was instead of including everything that could be included in the word “fungi” narrow it simply just to mold.

Commissioner Hale objected that you were talking to a pathologist and entomologist now. Informed Carl and gave him some direction not to get involved with mold. This would be a legal nightmare that would have to be explained thoroughly. We do not have chemicals registered in mold, we don’t have people able to identify mold, some people could not tell the difference between a fungi and mold in a wood. Molds are under the Department of Health and the only thing they can tell people is to clean your house and use Lysol. Molds are natural existing things, we will be getting into a lot of trouble if we take the responsibility for mold. There will be lawsuits all over the place. Chairman Micuda stated there are already lawsuits and it is a problem and there is nobody out there regulating it and sooner or later the legislature is going to say someone is going to need to be responsible for it because no one is right now. Commissioner Hale said don’t let it be the Structural Pest Control Commission. Chairman Micuda stated that everything that he hears, likely it is going to land on SPCC if we want it or not. Chairman Micuda’s perspective is it is more beneficial to the public, for someone to step up to the plate and take it on then everyone runs and hide from it and by “stepping up to the plate” we have some control over how we can take it on and he thinks it insulates SPCC from any effort of merging us with anybody else.

Commissioner Hale stated it is a matter of defining it. The word “fungi” has to be explained. Fungi and mold are two different things. Fungi would be a problem that you would have at a golf course and turf, etc., this is a thing that has chemicals that can control it. Fungi can be divided and explained more thoroughly or if they inadvertently put the word “mold” in there it would have to be divided and explained thoroughly, not just one word mold. Chairman Micuda asked if we have a category for “fungi” and the response was, we do not. Carl Martin stated “fungi” is already incorporated in the code in the category “C” wood destroying organisms and so we cannot escape the responsibility because it already exists. Commissioner Hale stated if Carl needed some help, he would have helped him to explain this. Fungi has to be explained because the average operator could be misled.

Chairman Micuda stated that “fungi” is already in our code. This present proposed legislation does not come near to taking care of all the problems we have with our statutory scheme. We are trying to take care of a big issue, mostly house cleaning. Can anybody find something in the bill that it does not address because there is no way one bill is going to take care of all the problems our statutes have? The definition of “fungi” is already in there, so he does not see spending time at this point when it is already being planned to go in front of a committee to try and define “fungi.” The only issue here is do we have a separate category for mold or not, they should not be combined and

APMA suggested that we do.

Lisa Gervase stated it is her understanding that we would not have the word “fungi” we would not have wood destroying organisms that would stay as wood destroying insects and then we would have mold which is her understanding would be a narrower category than fungi then we would define what mold is. Chairman Micuda asked what would be the implications.

Commissioner Hale suggested that Carl go down to the University to the Department of Pathology and get some advice. The same advice he is giving you now is what you will hear. Chairman Micuda wanted to know what the people at APMA are saying what is the point of going with fungi instead of mold? What does that accomplish? Lisa Gervase asked Commissioner Fraker to go into more detail, since he was the person who was at the meeting yesterday. Commissioner Fraker stated “fungi” actually came after the new categories for mold and they felt mold was limiting the area of responsibility to just mold and not other fungi. Commissioner Hale stated they are ignorant people making those decisions. We are a professional organization and so therefore, we have to stand up and fight this now and there is no way he will vote with the word mold in there, it is against his professional training and his knowledge of the business. Commissioner Burrows stated he would have to agree with Commissioner Hale because if we get into this mold thing, we are going to open up a can of worms that we will never be able to close. Commissioner Hale stated mold is under the supervision of the Department of Health. All they can do is advise people not to buy a house if it has mold in it and you if are allergic to it.

Chairman Micuda stated if you go over to DHS you will find people who will state that it is not their responsibility. It is not their responsibility to regulate the inspection and dealing with remediation on mold. They are not taking responsibility or technical registration has been shouldered with a little responsibility, but they are backing away from and are trying not to get involved, and DEQ does not want it, if Commissioner Peterson was on the telephone he would be telling you they do not want it and it is going to land on somebody.

Commissioner Burrows wanted to ask a question to Commissioner Fraker as a PCO if he wanted to take on the mold issue. Commissioner Fraker stated personally, he does not. Commissioner Burrows asked if he has heard anything from the other PCO's as far as this mold issue. Commissioner Burrows can see other problems such as training, identifying, proper training and identification of different kinds of mold that are out there. Commissioner Fraker stated not all molds are wood destroying and he is trying to get some additional information. Initially he did not have an opinion on this from an operator's stand point because he does not plan on being in the mold detection business. Commissioner Hale stated if it is inserted in this bill in the legislature then any homeowner can come back to you and say you did not take care of my home. Commissioner Fraker stated that was part of the compromise, if we made a separate category for that just like we have a separate category for fumigation then those parties or companies who wanted to pursue mold inspections and/or mold reports and do air sampling as part of that function then that would be limited to people who wanted to pursue that in that category as opposed to putting the organisms in the terminology in wood destroying insects as opposed to wood destroying organisms that we are in fact taking that responsibility whether we like it or not.

Chairman Micuda stated it has been his understanding because of the present language a very good argument can be made that mold is included. It is his understanding that the PCO's most of them out their don't want to shoulder that liability and they can't get the insurance to cover it any way. The effort here was to shield those who don't want to get in the mold business from being pulled into it and you give an opportunity to those who do want to do it to qualify get a proper certificate in the proper category and if they want to engage in the business they can and those who don't want to they don't have to and more importantly they won't be dragged into it because of the language we have. In one way, we are limiting the scope of what most PCO's are doing, but at the same time opening up another category, so that those who want to assume the responsibility of getting into the mold business they can't.

Commissioner Hale stated then someone should decide where the molds belong. Either they belong in the SPCC and if someone says that the scientific world not to get involved with it or it should it be with the Department of Health that is where it is now and that is where it should stay. Commissioner Hale asked Commissioner Fraker if he knew of any chemical that is registered for the control of mold. Commissioner Fraker responded "no."

Commissioner Fraker has mixed feeling on this and the more he has investigated this and he had this conversation yesterday the more concerned he is about whether or not we should be in that area and/or because he has talked to some people in California who are on the regulatory board there and there position after listening to all the experts in this area was to get as far away from mold as they could get and not include it in their area. Commissioner Hale stated there is very little literature on mold. Commissioner Fraker stated the experts don't agree at this point, the big scare thing is the black mold puts off spores that can cause health injuries to people. Commissioner Fraker further stated that is not a wood destroying organism type mold, but yet people do not have a lot of understanding, but a lot of pest control operators feel they can make a lot of money by making mold inspections and because some of the pest control companies are in the home inspection business and then this is an avenue to make a lot of money and limit the sources of where you can get this kind of inspection if you have to be a licensed pest control operator to do this type of inspection. In some degree it is a monetary consideration and he does not have a problem of people making money and 98% of the companies or smaller have no interest in mold, but yet he thinks we are thrown into that category of responsibility because we have organisms in our reports, so everybody agrees that organism needs to go and be replaced with insect.

Commissioner Hale stated it has to go or be better defined, he thinks this is Commissioner Hartley's position on this and fungi is better defined or it does not belong there. It should be public health, aquatic household, wood destroying pests and other pest and he sees this as redundantly written in this report in many ways. The fungi for all classical purposes are not even a function of the PCO in today's world. It is an agricultural problem, landscaping problem which falls in SPCC, it is a turf problem, but it is not a structural house problem or business, it would be a school problem, but not anything you would take some of the chemicals they use to treat peaches, apples and potatoes and spray them inside of a house or school.

Chairman Micuda is not sure he has a concern with what APMA decided to do except that if he understands correctly isn't fungi left out now. Lisa Gervase responded "yes." Chairman Micuda

stated you have one term which is fairly broad which is put in there for the protection of the public and now we are substituting a term that is narrower to accomplish the same thing. Everybody agrees that organism needs to go to insect based on what we have right now.

Commissioner Hale made a comment on the point of being more narrower fungi is a well-known thing, every aerial applicator, every operator in the field, every farmer uses more fungi than anything else that is going in the market. Chairman Micuda is only talking about the scope of regulation, we had a term fungi that is very broad and now we are substituting a term of mold which is more limited. His concern is to support a change that limits the scope of the Commission's responsibility, is it a good idea to throw fungi out it was there to begin with. Commissioner Hale stated it should stay there and all resistance should be noted by the SPCC and to eliminate the word mold as part of our responsibility. Chairman Micuda is not convinced of that and there are a lot of other reasons to take on the mold, basically all the reasons he has heard have more to do with liability. Commissioner Hale stated then we should define it right now. Chairman Micuda stated it is defined. Commissioner Hale stated mold has not been defined.

Commissioner Fraker stated that is part of the problem and doing the research in the last few weeks and have had meeting here with laboratory people who test for mold and then have talked with Larry Muskgrove who is on the board in California and the problem he sees is there are a lot of misconceptions and the experts cannot agree on molds and what their effects is and how to remediate those effects and what materials are available to treat them. His concern from a Commission standpoint is this premature to do this and how we are going to enforce, train people in mold inspections and train people how to deal with these situations the fact is at this point, it is a very undecided arena.

Chairman Micuda stated there are a lot of things going on nationally that you got people on one side and people on the other, his perspective is that it is going to land sooner or later, if not this year then probably within the next two years, so he wants to have some control over it, on the other hand Commissioner Hartley's reaction to bad things have happened before with other thing and we don't want to get into it, well just because it is hard does not mean we should not be involved. The one thing he likes about that notion of us getting involved now or later or in the near future, we have control of what we take on, if we step forward we can define things and decide what the perimeters are rather than having someone else do it for us that is a thing he likes about it because we have control over it, so we can define things very narrowly and go from there and we can take our time doing it, his fear is that at some point the legislature will be ok with the budget and the next term or the following term, he does not think it will be here a year or two and then disappear it will be here a lot longer than that and someone will introduce a piece of legislation that we are finally going to make someone responsible for mold and all the legislatures know this is a hot item and they are not particularly sophisticated on this issue and frankly, he does not think they will be too concerned about listening of how that should be defined, etc., they are just going to know their constituents are calling them up and saying "yeah this is great" and finally somebody is going to be made responsible for this and it is going to be handed to SPCC without us having no control over it.

Commissioner Burrows stated that since the mold issue came up a year or two ago, this is a public

health issue and he does not see it as an SPCC issue. Chairman Micuda stated the problem he has with that is it is all going on now because it is not regulated at all. Imposing some regulations is not going to foster more lawsuits, the lawsuits are going on now and they are going to continue to go on regardless of what efforts are taken to regulate it. Chairman Micuda stated he could make a persuasive argument that if you are concerned about consumers it makes a whole lot more sense for someone to get into the business of trying to regulating this stuff rather than leaving it for a free for all which is exactly going on. Commissioner Fraker his concern is this that after talking to some of the people in California and some of the mold laboratory people is that there is a reason why the Department of Agriculture does not want this and why public health does not want it and there is a reason why DEQ does not want to get involved. There is a reason why these agencies are staying away from this because it could be an explosive nightmare and that is why they do not want to step up and take responsibility and that to him makes him question do we want to be the people to take this issue on.

Chairman Micuda stated we have control over defining the scope of exactly what we are doing and how exactly we are going to do it, but of all those agencies you just listed if this issue gets to the legislature and it will sooner or later, who do you think will have the less amount of clout in going to the legislature and convincing them we don't want it and we shouldn't get it. All those other agencies are going to have a whole lot more clout than we are, plus they can make a very persuasive argument that it should fall on SPCC. Commissioner Hale stated it is a matter of education. Chairman Micuda does not have any faith that the education will go where it ought to. Commissioner Hale stated California has done as Commissioner Franker described they do have the experts, we don't have that many experts in Arizona, but there are dusty professors in the Department of Pathology, so again why open up the door for this, let the lawsuits go on, and try to lobby with the legislature, because people are going to be passing these bills, to try to educate the public, that can't be done. Commissioner Hale further stated to take out the word fungi and put in the word mold makes the SPCC look academically extremely backwards. Lisa Gervase asked the Commissioners if they wanted to take a vote on this particular issue or do you want her to continue with the other issues and decide at the end. Commissioner Fraker stated there are some issues relative to this in the latter pages that address this and maybe we should look at the whole package before we make a decision.

Lisa Gervase continued on page one, APMA's position is that "fungi" should be changed to mold that is on line 33. Then on page two at the top the definition of "De Minimis" the violation in this proposal is to leave that language in so it will not be repealed. Lisa Gervase stated she will not stop at every page where "fungi" would be proposed to change to "mold." Commissioner Fraker stated he wanted to say something to bring everyone into perspective from yesterday's meeting. The meeting was from 9:00 A.M. until 12:30 P.M. yesterday and we were two hours getting off page two. That is how much discussion there was on the mold and fungi issue.

Chairman Micuda would like to move things, but would like to know what is with the De Minimis. Commissioner Franker stated the APMA Board's concern is that they like the term of De Minimis violation because it was somewhere to go besides a regular violation. Instead of a violation that would go to complaint, again, it would have been good for Carl Martin to be at this meeting for clarification of why some of these things were suggested because people really do not understand

the reasoning behind them. The concern is because if you get four De Minimis violations then it is up to the discretion of somebody in the Enforcement section to say well you have four in this area, so now you are going to get a complaint. It is a Count I, II, III approach.

Lisa Gervase stated the way the current law reads the Commission can issue an Advisory Notice for a De Minimis violation there was never any definition of what constituted a De Minimis violation, but what she thought was interesting is the proposal from APMA is to leave the definition of De Minimis, but they did not propose to leave in the Commission's authority to issue Advisory Notices for De Minimis violation, so by leaving this definition of De Minimis violation it does not do anything.

Carl Martin stated the Code calls for the Commission to establish what De Minimis violations are through Rule, we have never done that so how do we issue an Advisory Notice on something that is not existing. Chairman Micuda stated that Andy Weber called him yesterday and that the APMA is fine with the approach we are taking of inquiry versus formal complaint is that accurate. Commissioner Fraker stated "yes." Chairman Micuda stated that made the De Minimis violations more of a novelty. That is one thing and the majority of us can agree that it does not make any sense and we can't do anything with it anyway. Commissioner Fraker stated it would be nice to have, but did not think about it at the time and he was only there only to defend the Commission's side at this meeting, but you know it is not defined, so what is it. Chairman Micuda stated it is not defined and we don't have a Rule to tell us what to do with it, in fact, we are going to be adopting a scheme making it obsolete.

Commissioner Fraker stated if we make the case or we write a couple of sentences Carl regarding why supporting the De Minimis violations, particularly the part that is not defined it leaves it too open that they will turn around on that and that was not a deal breaker. Commissioner Fraker was surprised that any pest control operator would vote to keep something that is a violation. Chairman Micuda commented that is something Lisa Gervase and Carl Martin can make them understand what the point is.

Commissioner Hale stated we are not done with page two, article four, line four, does not like the definition "device" means any mechanical, pesticide or electrical, why did we use the word "pesticide." Carl Martin responded because chemical is an imprecise term, so we replaced the term chemical with the term pesticide. Commissioner Hale said which is more imprecise. Carl Martin responded it is a direct definition from EPA.

Commissioner Hale stated he does not agree with EPA or #15 the description of pesticide either, it is clumsy and it has scientific inaccuracies in it. Look at line 40 it is too broad. It has insects, fungi, bacteria, and microbes. Where does microbes come from, can anyone define a microbe for Commissioner Hale. Carl Martin stated there are plenty of people who can, but microbes come from our responsibility to regulate antimicrobial uses that are restricted. Commissioner Hale stated there is no word of antimicrobial and it is not in the pest control industry. Commissioner Hale stated it is not in the books, it is not in Trauman's Scientific Guide this whole thing needs to be rewritten, so it is understandable and accurate.

Chairman Micuda stated that EPA is not always right, but if EPA has been using it to the extent that we have to be mindful of our relationship with EPA and we will not go toe-to-toe over their definition. Commissioner Hale stated someone has to come “up to bat” and we have to be remindful that the people at EPA are not scientifically trained. It is very obvious when you read the writing of this. Commissioner Fraker stated we should make a note to review the proper definition of pesticide. Commissioner Hale stated he will write two definitions for Carl and you compare the two. Lisa Gervase stated that is something we can take and put into our notes for review by the Commission and consideration for a future legislative bill. Carl Martin stated the only mitigating efforts on these is the definitions have been standing since 1988. Commissioner Hale stated, take that word pesticide out and leave chemical in. Because a device is a electrical apparatus, a hammer, it does not mean a chemical or a pesticide. Anything chemical or electrical apparatus used in conjunction in place of the supplement of dispersing pesticides. Carl Martin stated this language was brought to our attention by Commissioner Peterson. Commissioner Hale wanted to know in what way. Carl Martin responded as the responsible agent for registering pesticides and antimicrobial chemicals in the State, he felt that the term chemical was imprecise that we needed to use the term of pesticide in device and the definition of pesticides should be microbes. Commissioner Hale stated that Commissioner Peterson is not scientifically trained. Commissioner Hale asked Carl Martin if he could name him one antimicrobial device. These do not exist in the industry. Carl Martin stated there are plenty of restricted anti-microbial’s which he can e-mail to Commissioner Hale that we are required to inspect for under our EPA Cooperative Agreement, so it would be no difficulty to produce a list of chemicals that are registered as restricted use anti-microbial’s. The question is whether or not we are talking past each other on this issue and that will probably take further discussion. Commissioner Hale informed Carl Martin he would like to see the list and he is not only critiquing what has been written here for improving it, he is critiquing the very document itself.

Lisa Gervase asked if there is any definition of device then is there any discussion among the Commissioners as to whether we want to take out the word chemical as well as not add the word pesticide and leave it. Chairman Micuda stated it ought to be left as it is, frankly, Commissioner Peterson knows a whole lot more about this and he is willing to defer to him. Commissioner Hale is not willing. Commissioner Fraker refers to Commissioner Hale on devices such as fumigation devices and equipment like automatic permethrin injection systems that would be devices that include pesticide. There are automatic release systems for fumigation and automatic machinery that dispenses chemical every 15 to 30 minutes that do have pesticide in them and that device would fall under that category. Commissioner Hale stated he has no objection to that concept, but a chemical or a pesticide is not a device. It means any mechanical or electrical or high pressure apparatus used in conjunction in the place to supplement or dispense pesticide or chemicals. Commissioner Burrows stated he would have to agree with Commissioner Hale a device is something that is used to apply or to put down or to disseminate, it is not the chemical itself or the pesticide. Commissioner Fraker stated he agrees with Commissioner Hale that is a valid point to check on, he cannot think how chemical or pesticide would relate to the term device.

Commissioner Fraker stated we need to keep this in mind that this is at the legislature and the more we try to change the document as it has been submitted it is going to lose some credibility. If we can live with things temporarily until we can change them at another time, it is going to be better for us

then going down with a whole different document to try to sell. Chairman Micuda stated if we had started this process a year ago like we should have all the different views could have been explored over the course of a year rather than the course of five months and we wouldn't be having these problems.

Lisa Gervase stated she will have it on the next agenda and she will ask you again for every Commissioner to take the current language of our statutes or even this bill and mark it up or have a meeting with her and tell her your thoughts on this legislation, so that she has it and she can plug it into our future legislative discussions rather than people feeling like things have been moving along and they didn't have an opportunity to comment. Ms. Gervase would appreciate everybody's input such as what Commissioner Hale is raising right now. Write a memo or mark up a copy of the statute, so that she has it, so next time we look at legislation all of those can be considered, so that we are not leaving anything out because we really can't come in now and start changing things the process is too far underway, we are really here to focus on what came out of the APMA meeting yesterday and what can we live with and what can't we live with and do we have suggestions for language changes to present back to them.

Chairman Micuda stated on the Agenda for the next meeting there will be an entry for the workgroup to get together and he is hoping that we can get one other person maybe the President of APMA to participate and to try and find somebody else from the public who represents the public interest. Chairman Micuda does not plan on waiting until August or September to start looking at legislation.

Lisa Gervase stated on page four the next proposed change by APMA is on line 21 and 22 their proposal is to delete everything after the word toxicologist, so that it would read that the seventh member on the Commission would be one member who at least has a baccalaureate degree and is an entomologist, plant pathologists, toxicologist who is appointed by the Governor. Ms. Gervase does not know why they made that recommendation, but her concern is whether that it limits the pool of potential Commissioner's too much.

Commissioner Hale stated there is only one of us here and he made a mark on this section the terminology beyond the word toxicology is totally unnecessary, a medical doctor cannot qualify as an entomologist or pathologist or toxicologist in pest control, and a health care provider are you talking about a registered nurse, an individual holding a degree in public health this makes no sense.

Lisa Gervase stated when the Legislature first enacted this many years ago it was not only meant to be a toxicologist or entomologist or pathologist somebody only related to the pest control industry, but in fact, broader than that and in fact..... Commissioner Hale stated he is an entomologist, plant pathologist, and toxicologist, he agrees with the first part of it, how the rest of it is defined he thinks it should be redefined if they want to make it broader. Lisa Gervase has a concern on paragraph B the three public members and the member that are appointed pursuant to paragraph A 3 are not supposed to have been affiliated with the pest control. Commissioner Hale stated that is his next concern on that same page if that is the case then he has been a Commissioner illegally for three years. Chairman Micuda stated people have made that remark about

Commissioner Hale. Lisa Gervase stated she has some concerns because we end up then having four industry and three public members as opposed to three-three and then someone who can help the Commissioner understand either medical or toxic logical issues. Chairman Micuda stated that having four people on the Commission from the industry will not fly. You do not see that on any Board or Commission. Commissioner Hale made comment that an appointee may serve no more than two consecutive terms. There should be a better definition of what constitutes a reduced term. Commissioner Burrows agrees with Commissioner Hale because he is in the same situation.

Lisa Gervase stated the next APMA discussion was on page five. Chairman Micuda asked based on the APMA language are we opening the door for four industry members? Lisa Gervase asked "yes." Chairman Micuda has a problem with that and Commissioner Fraker missed that. Commissioner Fraker would like to know how that opens the door for four industry members. There is one entomologist/pathologist and we have three public members, how do we get the fourth industry on this list. Lisa Gervase stated because the person who holds the position of the entomologist, pathologist or toxicologist frequently is affiliated with the pest control industry despite the specific prohibition against that and so the public can view that fourth person as an industry member as opposed to an independent person that is really the purpose of this person is to help educate us in these issues not to look at things from the industry member point of view. Chairman Micuda stated the Legislature has some concern of just using the term that APMA adopted it will be so limited to find someone to fill that slot that they felt the pressure to open it and to get somebody that has some kind of background with science and various chemicals and health, it opens up a pool of people. Commissioner Hale has always considered himself an industry member and he has been consulting in the industry for the last 20 years. There should be a defined position of at least one industry member who has a credential in the science field. Chairman Micuda stated it makes a lot of sense, but his concern is that we are getting rid of language that makes it clear that the person should not be an industry member. Commissioner Fraker stated over the years as he observed the Commission and heard the interaction and communications between the different Commissioners, he has never felt the toxicology position and never interpreted as an industry member. Chairman Micuda stated it is the intent of the Legislation, but the change's APMA is adopting are getting rid of that, it will be very easy for him or anybody else to walk down there into a Committee here is the implication of this language and a Committee is going to change that, they are not going to allow a statutory change that make the majority of the Commission industry members, nor shall they allow it. Commissioner Hale stated if they keep it as it is they should and not make it from two years to five years, but there should be no limitation whatsoever. A person who is a scientifically trained person whether he is in a college, university or a private consultant, he is doing this all the time as an industry member they are running their pest control companies.

Lisa Gervase stated maybe she should go through all the mold issues because it sounds like their needs to be a vote separately on some of these issues or do you want her to keep going through page by page by pointing out what came out at the APMA meeting. Commissioner Fraker stated they drop off pretty dramatically in the next few pages.

Lisa Gervase stated the next item is on page five, line 32 that the Commission should notify the business licensee, applicator, and qualifying party in writing of any complaint against the business licensee, qualifying party or an employee. If the applicator is subject to the complaint, they should

be notified in writing as well as the QP and the business licensee. Anywhere in this document that the word "fungi" exists it would be mold any place that just says wood destroying insect inspection and reports which is our current WIR the language and mold inspection reports would be added, so you may have a different position to make on that, but just keep in mind that throughout here that is an issue.

On page eight, lines 34 to 36 the proposal is that we add that language that the Commission shall issue identification cards to QP's and applicators and the APMA does not want this and they want to delete that proposed language, but if you talk to our inspectors and the supervisor of inspections and director of Enforcement at the Commission office that the feeling is that these identification cards are very useful in doing inspections out in the field whether or not the person is licensed and what categories they are licensed and they usually have a photograph on them. Commissioner Hale stated, he goes for that and it should be in there. Lisa Gervase asked Commissioner Fraker if he could elaborate on why the APMA felt they did not want to have their applicators and QP's carrying identification cards issued by the Commission and there would be a corresponding potential violation if they were supposed to carry it and they didn't have it on them.

Commissioner Fraker would like to differ to Carl Martin on this matter. Commissioner Fraker stated in some of their discussions Carl, he thought that it was suggested from the staff point, is that incorrect? Carl Martin stated there are two reasonable arguments being made Chairman Micuda and Commissioner Fraker. The first argument is that if you are in the field it is nice to know that the person you are dealing with has some credential issued by the Commission. The problematic part of that is the credentials are quickly out of date, the picture is no longer current after it has been taken, we have at least one QP out there who got his license when he weighed 115 lbs. and when he were 18 years old, he weighed in excessive of 350 and he is 45 years old now and the license looks nothing like the person, further he added categories, so the card does not reflect everything he has done, so the bottom line is the cards become somewhat burdensome to try and keep the cards updated. If you are going to use it as a real ID device you have to make a real effort to keep them updated and correct which the Commission is probably not financially in a position to sort of do. Because you would have to bring everybody in on a rotating basis so often and reissue the cards which would cost money, etc., etc., so if it is not going to be correct anyway. The other argument goes is then have them show their drivers license then you have a positive identification you don't have to issue a new one that already has one issued by the State. Chairman Micuda stated everyone is getting a drivers license now that is good for 25 years or whatever, so we will have the same problem as the drivers license, as far as updating the ID cards why couldn't we just have it updated at anytime there is a change of their business.

Lisa Gervase stated that is where we might want to head because that information is very useful to the inspectors that on the back of this card it says what categories they are licensed in and when that category of licensure expires. Carl Martin states we issue on the same exact card stock with a seal of the State of Arizona on it an identification card it does beg the question to the standards or scriptures that are required for us to issue the card are they at least similar to those for other State ID cards and the reason why he asks that is if we issue a picture ID with the State of Arizona seal on it does that defacto become a State issued identification for purposes of buying an airline ticket or boarding an airliner or doing anything else. Does there need to be differentiation between the

type of card we issue and the State official ID card, he does not know the answer to that but at a time where there are heightened security issues, homeland security issue that has to at least be acknowledged and looked at?

Chairman Micuda has a concern that how acceptable are these cards and what is going to be the security effect of these cards and what are the penalties for people losing cards. The security issue can cut two ways, on the one hand, you can say there is security here because people have identification and they look official and on the other hand if giving that card some kind of government status or approval and how easy is it going to be for people to get their hands on these things and use them for other purposes then what they were intended on the security issue we can go back and forth whether they are good or bad, it makes him wonder if they are more trouble than what they are worth.

Carl Martin stated that is another reason why they were brought up it does point out another avenue for discussion about is it really that important, if it is then they should be maintained and he thinks some of our staff would argue that they've been a usable device in the past and that they have helped us do our job, but whether or not that continues into the future that mix continues to have to be re-balanced. Commissioner Fraker stated if we are going to continue to have them, they are going to have to be accurate. Chairman Micuda stated if they are going to have them they need to be accurate, they need to be current in terms of the information and there needs to more attention taken to the security of these things, making people more accountable for where they are and what they are doing with them.

Commissioner Fraker asked how often are they used. Carl Martin stated that is another point and that is the feedback we get when we talk to people about coming in and getting a new photo to update their photo, etc., they never use the ID and they don't have time to drive to Scottsdale to do that, they have never used it and we have heard people say this over and over again so it is a question that has to be mixed in as well. Commissioner Fraker commented to give argument for both sides of this issue is that most of the time when an inspector comes to a site, asks to see an identification card, wants to do a Use Inspection, the next thing he does is get on the telephone and call and verify that person who says who he is and is up to date on what the card says it is.

Chairman Micuda stated the most compelling interest here is Dirk's staff and is there some way to accommodate their interests without having the hassle and expense of dealing with these things because the way we are dealing with them now seems to be inadequate, we either need to "step up to the plate" and do a much better job or just get rid of them and if we get rid of them are their alternatives for Dirk and his people and what occurs to him is you ask for a driver's license or we either spend some money on technology so that people can have a lap top and have wireless access to the database somehow or they make a telephone call and get the information that way which would be the most updated information in any event. The database will always be more current then ID cards.

Commissioner Fraker suggested that we leave it as written and do not delete it as this point and time, one less change and work on the effectiveness of issuing the card. Chairman Micuda stated right now APMA is taking the position to get rid of them and Commissioner Fraker commented it

is in and he does not think it is an issue they would entertain. It was a mixed issue. Chairman Micuda stated we could go either way and it is important that we all be on the same page with this one and not be introducing amendments to try and change it somehow because we can all agree if we are going to take it on we can do better and if not, we probably ought to get rid of it. Commissioner Fraker asked Commissioner Burrows his thoughts on this matter. Commissioner Burrows is big on identification and knowing who is where they are suppose to be and what they are doing. This has come more to the forefront since 9-11. Commissioner Burrows is under the opinion that people who are working in a public setting that are going to homes should display some kind of identification on their person so that when they go up and knock on the door and they say "hi, I'm from ABC Pest Management you called for service" that they have an ID card that identifies them as that person.

Commissioner Burrows stated we could do a three-year annual renewal and put it on a rotation basis so that everybody is not coming in at the same time. Commissioner Fraker agrees with that and it is something we should look at and he thinks three years is reasonable if there have been category changes, people change their physical appearance, so if we do a three-year renewal with updates on categories and photographs, so if we put that on a rotation basis we don't have 500 people coming in to get renewed.

Carl Martin stated the only other use of the ID card that has not been mentioned is that these cards do allow those who are certified applicators to go and purchase restricted use products from a distributor and without a certification the dealer would be violating the law to sell those products to them. However, the practical effect to that is that companies have relationships with their suppliers and there are very few restricted use products in the structural pest control arena anyway, but they have relationships with their companies and they know whom they are delivering to and whom they are giving to, so companies will occasionally call us if there is a question, but typically speak to the company and not to the employee about showing them a card. There was a consensus among the Commissioners in regards to Commissioner Burrows suggestions of the card renewals.

Lisa Gervase stated the next item is on page 15 and would affect lines 21 and 24 there seems to be some confusion in changing it to right-of-way weed control versus just right-of-way or weed control so the position of the APMA is they want these as two separate categories. "Right-of-way and weed control," even though realistically her understanding is that they are much of the same. Commissioner Hale stated the right-of-way weed control and regular weed controls are using the same chemicals, but not the same concept. Chairman Micuda wanted to know if they are close enough to keep them together. Commissioner Hale stated they are close enough to keep them together. Carl Martin wanted to know if we called it right-of-way and weed control and mix the two categories that are now separate into one category that maintains the distinctness of each. Chairman Micuda asked what is APMA's problem.

Carl Martin responded APMA sees right-of-way weed control as being a move away from those who do weed control in ornamental areas to forcing them into a category of right-of-way use of herbicides, we were not intending that this is a mistake on the writing part by legislative counsel, it should have said right-of-way and weed control and he believes that would have eliminated most

of the problems. Do you agree Commissioner Fraker.

Commissioner Fraker responded by saying the response was it is two separate areas of work right-of-way you are doing weed control you think about residential and commercial establishments, right-of-way work is a different arena. Commissioner Hale stated if you look at number five turf and ornamental horticulture pest and weed control are all one of the same and weed should be inserted there. Carl Martin responded they would have liked to have done that but, however, there is quite a disagreement in the industry with regard to turf and ornamental horticulture pest control is and the current statute indicates for the treatment of insects and other pests and not including weeds and so we couldn't just throw weed into that category like it is in other states. Chairman Micuda suggested to Lisa Gervase that is something she and Carl could talk to them to help them understand what is going on. Lisa Gervase stated if we add the word "and" it satisfies everybody's concern or confusion. Commissioner Fraker asked about the exams. Is the exam in the past for right of way any different from the weed control exam? Carl Martin responded they are virtually the same. Commissioner Fraker so if you can test in one and pass you are really qualified to work in both areas. Carl Martin responded there is no right-of-way qualifying party, so you have to have a weed qualifying party to run a right of way business and both weed and right-of-away courses work as continuing education, so these have been blended from the beginning. Chairman Micuda stated you need to explain all of that to them because this is another one they just misunderstand.

Lisa Gervase the next item is on page 16, line 13 the APMA wants to change 30 calendar days to 90 calendar days. A licensed applicator desiring to work in a category for which the applicator is not licensed shall become licensed in the category in which they want to work within the current law is 30 calendar days of beginning work and they want to change it to 90. Commissioner Fraker stated what was discussed at the meeting the scenario would be if they hired a new person he can work 90 days before he gets certified with training. In general pest control he can train for two days and then go in the field by himself. He can work for 90 days before being certified, if you have an employee who works in your termite department for five years and never has had a "B" category license decides he wants to get certified in the "D" category he only has 30 days whereas any other individual who comes in off the street has 90 days. Carl Martin stated that is exactly right remember the licensee does not have to take a core exam again and he also has experience in the rudiments of pest control even if it is in a different category. Further Carl would suggest if we are going to change anything we would want to go the way Commissioner Hale suggested and change it from 90 for a new hire down to 30 that we require for a licensed applicator. Chairman Micuda commented that he has never understood of letting people work and not be licensed. Commissioner Hale stated that on one side it states clearly that an employee must be working under the supervision of a licensed applicator. Commissioner Fraker stated that is only for applying termiticide. The area in pest control is totally different, they always sent a new hire that works in the "C" category to work with someone who is certified that same criteria does not apply to general pests. Chairman Micuda stated he has to agree with Commissioner Hale because if we are going to change something we ought to be going in the direction of shortening the time frame rather than lengthening it that puts pressure on people to do what they need to do. If there is one seam of the changes here is to make people more accountable, so hopefully people of industry are getting better service and we are seeing fewer problems. Lisa Gervase does not know if it appropriate to raise anything new back to the APMA at this time other than opposing the changing to 30 to 90, but do we want to propose

changing the 90 to the 30. The 90 days a new employee has to 30 or do we want to leave that alone for now and raise that in another legislative package. Commissioner Fraker stated we leave the 90 days alone and if anything we will stick to the 30 days. Chairman Micuda stated we can talk about that during the year. Commissioner Fraker stated they made a valid point to some degree in this, but Carl Martin made a point they already have taken the Core and have made it through the safety, all they have to do is take an 80 or 90 question exam regarding general pests and then they are certified and that should not take a long time.

Lisa Gervase stated the next is more of a question and it is on page 18, line 18 and this is the financial security coverage it is for pesticides, herbicides, fumigation, care, custody and control, a rights-of-way, wood destroying insect inspection report and errors and omissions. Fungi inspection report errors and omissions and pollution transit there was some questions as to why the phrase pollution transit was being proposed as an addition. Chairman Micuda stated that was a suggestion Scott Richardson made because of some issues he has run into and Chairman Micuda cannot remember exactly what the deal was, but he does remember Scott talking about it. Carl Martin stated it seemed to provide coverage for accidents in which there was a spill of toxic substance, it seemed to provide a specific coverage for that and that is why he is interested in seeing it included apparently he was not present during this discussion yesterday from what Barry Aaron's stated. Lisa Gervase stated so the thinking is that this is for better protection, so we should require that financial security to cover that type of event. Commissioner Fraker stated it is important and a point was made "whoever squeals the loudest gets the attention in that type of environment." It was Bert's issue that pollution transit should be under DOT and it does not have anything to do with pest control.

Lisa Gervase stated the next issue out of the APMA meeting would be on page 25, lines 37 and 38 and this is under the section that it makes it a violation for a licensee to not have their Commission ID card in their possession at all times and the APMA was proposing not adding this similar too not requiring the Commission to issue the ID cards. Commissioner Burrows responded they need to have identification on their person at all times. They need to be readily identifiable. Chairman Micuda responded in regards to the last statement Carl Martin made is that these ID's are used to get their chemicals and that made a lot of sense and we need to do it and which means that provision stays in and which places a burden upon SPCC to take a look at this part of the scheme and make it better than it is. Commissioner Fraker responded to clarify a couple of things and he agrees, most of the time there is about half a dozen or four named providers of pesticides in the area and most the time you fill out an application and specify and give a copy of your certification prior to any purchasing of any pesticides, so they have that on file. It is not general practice to go in and say here is my ID card and I want to buy a gallon.

Lisa Gervase stated the next issue is on page 26, line 16, in this section it simply states the Commission can proceed with disciplinary action against a business licensee if the business licensee changed it name or majority ownership and failed to notify within 30 days. Currently it states all "persons who hold warranties issued by the licensee," Lisa is not sure why the APMA wants to change the word "persons" to the "holders of all warranties on properties" to her it is saying the same thing in just a different way. Ms. Gervase reiterated page 26, line 16 where the business licensee if they change its name or majority of ownership they are suppose to notify within 30

calendar days all persons who hold warranties that were issued by the licensee. APMA wants to change persons to the holders of all warranties on properties. Ms. Gervase is not sure what the distinction is there. Chairman Micuda does not think that will get through legislative counsel because he does not see the difference either. They are basically using five words to say one. Point it out to APMA because it will either force them to better articulate what they are trying to accomplish.

Lisa Gervase stated the next proposed change would be on page 31, it would be inserted above line 36 it would be a new section. The section right above that is the wood destroying insect inspection reports. It talks about those reports only being completed by an applicator, so forth and so on, being on file with the business licensee and that their evidence of the existence or absence of wood destroying insects visible at time of the inspection. The APMA wants a new section right under that which would be the mold inspection reports and of course that goes hand-in-hand with the mold issue. Similar to that is the APMA is assuming the mold category passes they want to be grand fathered in anyone that has a "C" category license by the end of 2003 that they would be grand fathered into the mold category that they wanted to be licensed in the mold category. Our feeling is the whole point of having a separate category is to show competence in that category. Chairman Micuda stated to shield yourself from that burden and if you don't want it. If we were to take it on the requirements would have to be rigorous for someone to demonstrate they can do this category. Commissioner Fraker stated that someone would have to demonstrate they can do any new category. Commissioner Fraker stated APMA's argument was that currently the way the law is written they are responsible and they can work in the "C" category because is it wood destroying organisms, so currently they can use products and apply in that category, if you eliminate that category in wood destroying organisms' area to wood destroying insects then they are losing something that they are currently licensed. Chairman Micuda stated part of the idea of segregating out mold and clarifying what is happening is to shield people that are licensed in that category from liability and responsibility and dealing with that, so you can't do that and say I want to be grand-fathered into a new category. Commissioner Fraker commented he is not arguing APMA's point, he is just explaining what their point was that they feel they are currently licensed to do that which they are. They could apply fungicides right now under the current license and if that goes away and a new category is made then they lose that right, so they feel they are on the losing end. Lisa Gervase commented the response to that is if they are currently doing it and they are doing it confidently they should be able to pass the requirements that would be in place if this new category passes the legislature. Chairman Micuda stated then there is no point in changing organisms to insects.

Lisa Gervase stated one issue that evidently came out of the APMA meeting was the Commission "shall" adopt Rules with regard to the wood destroying insect inspection and mold inspection forms. Ms. Gervase does not think that is currently required where the WIR form that is may be in Rule, but does not think by requiring Commission approval that necessarily has to be in Rule and it would probably be more cumbersome to require that being done in Rule, so that may just be an education point to the APMA that if we are going to have these types of forms then the Commission needs to approve them that we can do it at a Commissioner meeting by a vote rather than the Commission adopt Rules to do that. Chairman Micuda stated the concern here is that there hasn't been a willingness demonstrated to do it up until now, so people are thinking what is the incentive to do it in the future. Chairman Micuda stated it has to do with our credibility, we tell you we are

committed to try and address these issues within the next year and if we don't they can propose something the next year and that is something they ought to be able to rely on . Lisa Gervase stated they can certainly come to a Commission meeting if they didn't feel she was doing her job by putting these things on the Agenda and presenting draft forms to the Commission and come to the call of the public. Chairman Micuda stated if they have a concern they should raise it with the Commission and with you and fortunately that has not happened.

Lisa Gervase commented that is the end of the information she has from what Barry Aarons briefed Carl Martin and Ms. Gervase on yesterday from what came out of the APMA meeting. Chairman Micuda commented the biggest two issues are the "mold" thing and it sounds like everyone is ok with changing organisms to insect. Reiterated the mold and fungi issue and branch offices although he does not feel they have a real problem at least the four of us do not have a problem and we will revisit that and try to make sure the accountability is there that ought to be there for branch offices. Carl Martin stated that would be done next year. Commissioner Burrows stated the four of them should not make that decision today, he thinks we need to bring Commissioner Hartley, Commissioner Peterson into this because of his knowledge with the agriculture with the fungi and mold issues. Commissioner Burrows further stated that all of the Commissioners need to come together before they can have a "yea" or "nay" whatever it might be on this issue. Chairman Micuda stated we still have plenty of time. Chairman Micuda asked Lisa Gervase if this could be going to hearing before the next Commissioner meeting, and she responded it could be at the Committee on Monday, February 3, at 1:30 P.M. One Committee or it might be at the Congress and Military Affairs Committee which is where Representative Reagan is the vice-chair and we schedule another telephone conference on Tuesday, February 4, 2003 at 9:00 A.M. if that does happen for Ms. Gervase to brief everybody on what happened at that Committee meeting, so it would be nice if we had some decision as to a position on it, but certainly if the Commission cannot take a position at this point, she suspects that the "mold" issue is the only issue and APMA will go over to the people at the legislature and present their desired changes on the 'fungi' to "mold" issue and adding the mold inspection report language. Chairman Micuda stated to try and separate that out, we suggested a number of things that you could go to them and try to work out and does anybody have a concern about a Motion to support Lisa in going to APMA and conveying our responses to everything except the mold issue. Commissioner Burrows does not have a problem except that the "mold" is separated out. Commissioner Hale stated putting it that way is not too bad, but does not want to put his name to this document. Chairman Micuda understands that and it is the same thing as we did last time, he is not so much saying that we are endorsing the document as much as we are endorsing in giving Ms. Gervase some authority to engage in negotiation in order to try and tweak some things along the line so we can agree on them and his impression of the only thing that is hanging out there is that there is a good deal of concern and some disagreement is the mold issue.

Commissioner Fraker has a question and agrees with Commissioner Burrows we need to get some more input on the mold issue. Chairman Micuda commented what he was going to suggest if we can get a Motion on everything else and let Ms. Gervase and Mr. Martin to move forward on everything else maybe we can all get together on another conference call just about the mold issue. Commissioner Fraker stated we need to give Ms. Gervase direction to go forward because and not let the mold thing drag us down because there are too many positive things that need to be accomplished. Commissioner Fraker had a question that things could be placed in different

envelopes or remove things and put them in a different bill. Commissioner Fraker would hate to see this mold issue scuttle the bill and that is probably from what he can see that is really outstanding and might be objectionable. Carl Martin stated to the Commissioner's that is doable, but we need to remember that the change in wood destroying organisms to insects is dependent on not losing the responsibility over an area that is already clearly in statute. In other words if we go to the legislature and we change organisms to insects and it is not tied somehow to maintaining those organisms some other way the legislature is going to see us as bailing on an authority we already have been given by them and that is going to be a retreat on public protection and they are not going to go along with it and they will scuttle the bill. Chairman Micuda stated that is the whole issue he was raising on talking about the scope of regulation of the effect of fungi and mold and whatever and what APMA has done is exactly that they haven't retreated as much and are just moving forward. Commissioner Fraker had a question for Commissioner Hale if we left fungi in as the way it is and do not replace it with mold and left fungi in as stated the way it is printed now and we drop the other mold items is that something you would get behind. Commissioner Hale stated yes he is behind that. Chairman Micuda stated that is a good compromise. Commissioner Fraker stated Mr. Martin is right because Mr. Aaron's made that point the other day with the legislature, if you take something away and you don't replace it with something it is going to be a big problem. Commissioner Burrows stated we need to address this mold thing as a totally separate issue and if that is the way around it and leave fungi as it is, we need to do that. Chairman Micuda stated regardless of what we do over the next year we will be grappling with this mold issue. Chairman Micuda suggested the wording to the Motion is to give Lisa Gervase direction, authority to go APMA and relate everything the Commission has talked about on the different issues that either support or we are looking for a compromise or just a better understanding of a provision including keeping in fungi at least for the Commission's purposes and keep the mold issue isolated so we can try another telephonic conference to talk about it and maybe a part of that maybe Mr. Martin can explore with APMA about putting the mold issue into a separate folder. Commissioner Fraker commented to Mr. Martin that we need to communicate with Mr. Aarons and part of the message is from a regulatory standpoint the way the statutes are written now that the fungi if we change the first part with the insects which everybody agrees on that the fungi has to stay and then given that the message will carry and the Board will buy that argument and then we deal with the mold some other way. Chairman Micuda asked someone to make a Motion.

*MOTION: That we endorse and have Lisa Gervase carry this bill forward with the recommendations that we've made and discuss that with APMA and Barry Aarons by Commissioner Fraker.
Seconded by Commissioner Burrows.*

VOTE: 4 - 0 Motion carried.

Lisa Gervase stated she needs some clarification only to act on this mold issue is that your position if the word organism gets changed to insect that we are okay with the proposal of adding the fungi. Chairman Micuda stated if we are adopting, we need to keep fungi and at the same time we need to separate out mold, put it into another folder if we can and then try to do your best in trying to get us together to do another telephonic conference. If it is in a separate folder and if the seven of us can't get together and talk about it then people have the opportunity to go down there and talk about

the mold issue alone. Right now those people who don't want it if it goes forward with an inclusion there isn't a chance to stop that, but if it is in a separate folder there is that option. Lisa Gervase stated so the current language of this bill your saying would basically stay as it is being proposed, but rather than change fungi to mold put anything related to mold and mold inspection reports into a separate bill. Chairman Micuda stated if APMA spent two hours talking about it, he does not understand why anybody has a problem of putting it into another folder. Everybody understands there is a lot of controversy about this and there is a lot of misinformation and he thinks everybody recognizes this proposed legislation has marks all over it, so why take the risk of it being dragged under by that one issue, we pretty much all agree on everything except that one it seems to him to make sense to carve that out and put it into a separate folder and then whoever has an opinion about that can do something about it, but it is not going to slow down the whole bill. Commissioner Fraker stated we need to portray the message to Barry Aarons that because the way the statutes read now the fungi has to stay, regardless what happens with the mold even though we want to separate it out we need fungi in there in order to our jobs. Chairman Micuda stated that Mr. Aarons understands that and that was his point early on in the discussion, he said in terms of our scope of regulations if legislature sees we are cutting back on that and it is going to get their attention and they are not going to like it and they are going to be looking for an explanation. Lisa Gervase will pass all of this information on and if there is any committee meeting both she and Mr. Martin will be there and we will report back to you on Tuesday and if there is nothing in between we won't have so much to report, but maybe the Commissioners can further discuss it. We at least have the telephonic conference scheduled if anything happens, it is already scheduled to update everybody. Chairman Micuda asked Ms. Gervase if there is anything she can think of that they can do right now in allowing you to do a better job. Lisa Gervase responded not on this bill, she thinks we have a good relationship with the APMA and Barry Aarons. Ms. Gervase feels they made a good impression at the first Committee meeting at the Commerce and Military Affairs Committee and those other two smaller bills and Mr. Martin is working on a e-mail to key legislators on whose desk this bill may be passing to let them know about it and asking them if they want to meet with us and we are available to meet with them. Ms. Gervase would like the Commissioners to give some thought again to this mold issue if this stays in this legislative session we are going to need some marching orders on it. Chairman Micuda stated the worse case scenario is that it cannot be placed into another folder and rather than have the whole bill go under we end up with mold categories there isn't anything wrong when the Commission looking at that issue and in the process trying to honor its mandate from the legislature, we can come back and say it is not workable, just like we did this last year on pre-reporting requirements. It was something that looked like it was manageable given certain things and it turned out it wasn't, so the worse case scenario if it goes in and the Commission doesn't like it and our recommendation is that it is not manageable and it is not workable and APMA would be part of that process.

Lisa Gervase stated she forgot to mention is the delayed effective date for the whole bill or just certain sections of the bill if we are going to end up with one or more new licensing categories there is going to be some work that the office needs to do in order to work with that and also in the last part of this bill there is the summary suspension language although the Commission currently has summary suspension authority under the Administrative Procedures Act this language is being added here and we may want to analyze that on how we do it and need some time to do that so maybe a delayed effective date to January 1, 2004. Chairman Micuda states if it has to go forward

the only two alternatives are killing the whole thing or letting it go through, he is in favor of letting it go through and then it makes sense in putting in that delayed effectiveness date then we can come back before the next term and say we want to throw out the mold stuff, but if the mold stuff can be put into another folder and it shows a priority and maybe that is the priority lead to call Mr. Aarons and say look can we put this into another folder and if so, how quickly can you get it done and if not, then it tells you that you need to look at an effective date that stretches it out, so we can make a case to either grapple with it or make the cases this is something we should get involved in.

Commissioner Hale made comment to Ms. Gervase on those other issues that he brought up in terms of definitions. Ms. Gervase commented she wrote those down and it would certainly be helpful if there were any other issues on the legislation on the current statutes or even rules if you wanted to make notes on those and pass them on, so they can consider those in any future legislation.

Adjournment - 11:09 A.M.

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

VOTE: 4 - 0 Motion carried.