

Structural Pest Control Commission
Pima County Administration Building
Board of Supervisor's Hearing Room
130 West Congress, First Floor
Tucson, AZ 85701

COMMISSION MEETING
FRIDAY, October 10, 2003 - 9:00 A.M.
MINUTES

I. Call to order and roll call

Commissioners Present: Commissioners Allen, Baker, Fraker, Hartley, Peterson, and Runbeck

Commissioners Absent: Commissioner Robinson

Staff Present: Vince Craig, Mike Francis, Lisa Gervase, Brian Kennedy, Carl Martin, George Schellhorn, Robert Tolton, Maggie Vazquez, and Assistant Attorney General Blair Driggs

Ms. Lisa Gervase introduced staff and what they do at the SPCC, and Mr. Blair Driggs of the Attorney General's Office. Ms. Gervase summarized how the process works as the Commissioners go through the Consent Agenda and then proceeded on to the remaining part of the Agenda. Ms. Gervase thanked the Industry and the Public for their attendance at the meetings and said they should regularly review the SPCC Web Site for information. Ms. Gervase further stated the meetings are generally held the second Friday of every month and the majority of time they are held in Scottsdale, Arizona.

II. Approval of Minutes

September 12, 2003 (regular session) Minutes.

MOTION: *To approve the September 12, 2003 (regular session) Minutes as Amended by Commissioner Allen and seconded by Commissioner Runbeck.*

VOTE: *6 - 0 Motion carried.*

Commissioner Peterson stated that the September 12, 2003 Minutes did not reflect that the MATRIX is not consistently used. The MATRIX was not consistently used with two seemingly similar cases: Alliance Pest Management, Inc., Case # 2003-016, and Cochise

Termite & Pest Control, Case # 2003-025. It was voted that this information would be reflected on the September 2003 Minutes. Ms. Lisa Gervase stated that staff has met in a training session on the use of the MATRIX, and training will be ongoing.

September 12, 2003 (executive session) Minutes

MOTION: *To approve the September 12, 2003 (executive session) Minutes by Commissioner Peterson and seconded by Commissioner Runbeck.*

VOTE: *6 - 0 Motion carried.*

III. Call to the public.

Mr. Andy Weber of SOS Exterminating expressed his concern about situations where pest control companies are not paid by builders for termite Pretreatments, but still are responsible to the homeowner to perform retreatments for five-years and the final grade treatment. There is no recovery for the pest control company, but the homeowners can go to the Register of Contractors Recovery Fund for assistance. He suggested that the SPCC rules be revised to accommodate this situation.

Mr. Dave Matthews of Solutions Pest Services, Inc., stated his concerns about his perceived lack of notice to the pest control industry about the new Wood Destroying Insect Inspection Report Form "WDIIR." Mr. Matthews stated there was no notice of when the WDIIR was ready, nor how the industry was notified and not everyone has Internet access. Mr. Matthews did say the form was good, but he felt that non-destructive probing should be defined. He also did not feel that there should be a separate "fungi" licensing category.

IV. Communication with Commissioners

Chairman Fraker received a letter from Kevin Keaney, the U.S. Environmental Protection Agency "EPA" Chief, Certification and Worker Protection Branch, praising Carl Martin for his contribution to the 2003 North American Pesticide Applicator Certification and Safety Education Workshop which was a success.

V. Scheduling of future meetings/agenda items

Ms. Lisa Gervase asked the Commissioners to view the next six scheduled meetings that will be held in Scottsdale, Arizona. Ms. Gervase stated the Agenda is posted on the Internet eight or nine days before the meeting. Ms. Gervase further stated the Minutes are posted on the Web Site after they are approved and there is month difference because

they have to be on the Agenda for approval.

Current Proposed dates and locations

November 14, 2003Scottsdale, AZ
December 12, 2003 Scottsdale, AZ
January 9, 2004. Scottsdale, AZ
February 13, 2004Scottsdale, AZ
March 12, 2004 Scottsdale, AZ
April 9, 2004 Scottsdale, AZ

Commissioner Peterson stated he may not be attending the March 2004 meeting if he attends the AAPCO Conference. Ms. Gervase stated the Commission Room has been enlarged and the carpet installation will begin on October 20, 2003, so the room will be ready for the November 14, 2003 meeting and it should accommodate 20 to 30 more chairs in the room.

VI. Consent Agenda

Ms. Gervase stated that any items about which the Commissioners have questions will be pulled from the Consent Agenda. Ms. Gervase stated an amendment to the application for Mr. Edward E. Hagemen to add license category B8.

A. Applications for New Business License (Mr. Tolton)

- | | | |
|-------------------------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Fowler, R. Gene | dba | Move ‘Em Out Pest Control (Activating Qualifying Party for new business license in “B1” General Pest/Public Health and “B3” Right of Way/Weed Control) |
| 2. LeDune, Michael L. | dba | Mike’s SWAT Team, Inc. (Activating Qualifying Party for new business license in “B1” General Pest/Public Health) |
| 3. Stratton, Bradley G. | dba | Mike’s SWAT Team, Inc. (Activating Qualifying Party for new business license in “B2” Wood Destroying Insects and “B8” Wood Destroying Insect Inspection) |

B. Applications for Existing Business License (Mr. Tolton)

1. Buxton, John E. dba DSR Termite & Pest Control (Activating Qualifying Party for existing business license in "B1" General Pest/Public Health)
2. Cranston, Laurel J. dba All-The-Scapes (Activating Qualifying Party for existing business license in "B5" Turf & Ornamental Horticulture)
3. Hageman, Edward E. dba Ecolab Pest Elimination Division (Activating Qualifying Party for existing business license in "B1" General Pest/ Public Health, "B2" Wood Destroying Insect, "B8" Wood Destroying Insect Inspection, "B3" Right of Way/Weed Control, and "B4" Fumigation)

For the record to add "B8" Wood Destroying Insect Inspection.

4. Hughes, Abe R. dba Desert Pest Control (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control)
5. Miller, Ernest dba Rec. Centers of Sun City West (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)
6. Sneer, Scott Loren dba Proven Ecological (Activating Qualifying Party for existing business license in "B1" General Pest/Public Health) TAB 10
Pulled

Mr. Sneer appeared and answered Commissioners' questions.

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

VOTE: *5 - 0 Motion carried.*

Commissioner Baker was concerned about Mr. Sneer's ability to be active in the daily management of this business since he lives in Vancouver, Washington. Mr. Sneer stated he does not

plan to move to Arizona, but he does come down for meetings once or twice a month. Mr. Sneer stated Proven Ecological has companies in four different states, they have been in the business for the last 18 years, and he is available by cell phone. Mr. Sneer further stated that they have monthly technical and safety meetings at which the employees are taught to be wise and efficient when they do their jobs. Mr. Sneer was asked about the licensing status of his employees and he stated there are five (5) employees in Arizona, one is in training and they are all licensed. Commissioner Baker and Chairman Fraker expressed concern about not having someone in authority immediately available to respond to emergencies, such as a major spill. Chairman Fraker would like to see the Qualifying Party be local and encourages all QPs to be local from a safety standpoint, and that this issue may need to be addressed in legislation.

C. Applicants for QP Testing (Mr. Tolton)

1. Derryberry, Joseph L. “B1, B2, B4, and B8” (General Pest/Public Health, Wood Destroying Insects, Fumigation, Wood Destroying Insect Inspection)
2. France, Scott M. “B1, B2, & B8” (General Pest/ Public Health, Wood Destroying Insects, and Wood Destroying Insect Inspection)
3. Herndon, Robert J. “B2” (Wood Destroying Insects)
4. Hoover, Jr.; William C. “B1” (General Pest/Public Health)
5. Kaufman, Russell W. “B1, B2, and B8” (General Pest/ Public Health, Wood Destroying Insects, and Wood Destroying Insect Inspection)
Withdrawn

Applicant withdrew his application. No Commission action.

6. Loreng, Edward C. “B3 and B5” (Right of Way/Weed Control and Turf Ornamental Horticulture)
7. Potkonjak, Nikola “B1 and B2” (General Pest/Public Health and Wood Destroying Insects)
Tabled

MOTION: *To Deny because it does not appear that the applicant has sufficient experience, it appears that truthful information may not have been provided (which reflects on moral character), and two reference letters need to be verified because they contain the same wording and same type, by Commissioner Baker.
Seconded by Commissioner Peterson.*

VOTE: *2 - 4 Motion fails.*

Roll Call Vote

<i>Commissioner Fraker</i>	<i>No</i>
<i>Commissioner Hartley</i>	<i>Yes</i>
<i>Commissioner Peterson</i>	<i>No</i>
<i>Commissioner Baker</i>	<i>Yes</i>
<i>Commissioner Runbeck</i>	<i>No</i>
<i>Commissioner Allen</i>	<i>No</i>

Mr. Tolton stated for the record that Mr. Nikola Potkonjak said he would be present for the meeting. Commissioner Allen stated we need verification information from the all companies for whom applicant worked. Mr. Tolton said SOS Exterminating provided information for the B1 Category and Mr. Potkonjak's current employer Pest Tubes provided information for the B2 and B8 Categories. It was mentioned there is a letter from University Termite & Pest Control, but they could not give an accurate accounting of Mr. Potkonjak's practical experience. Commissioner Baker pointed out that the letters from Tracy Tucker and Russell Baker are the same letters. Commissioner Baker stated despite Mr. Potkonjak's hours with University, he would not like to deny Mr. Potkonjak's application and we should continue this matter. Commissioner Hartley asked staff who is verifying practical experience. Ms. Lisa Gervase said the information was faxed to the SPCC and the experience is scattered and it is hard to figure out his experience for the B2 and B8 Categories. Commissioner Runbeck would like for staff to contact Tracy Tucker and Russell Baker for verification on the letters. Mr. Blair Driggs stated these letters are not required by statute. Commissioner Peterson also would prefer not to deny Mr. Potkonjak's application. Even though the experience is scattered, Mr. Potkonjak

appears to have the experience. Commissioner Hartley would like for Mr. Potkonjak to reorganize his experience, so it is coherent to reflect his "B8" experience. Mr. Robert Tolton stated that Mr. Potkonjak applied for the "C" category and he would be unable to do treatment proposals in the "B8" category without being licensed in the B2 category. Mr. Potkonjak appeared at the meeting after this matter already was discussed, but the Commission tabled Mr. Potkonjak's application until he has submitted organized information about his practical experience.

- 8. Schmeits, Larry T. "B1, B2, and B5" (General Pest/Public Health, Wood Destroying Insects, and Turf & Ornamental Horticulture)
- 9. Welsch, Frederick T. "B3 and B5" (Right of Way/ Weed Control and Turf & Ornamental Horticulture)
- 10. Willingham, Keith "B1 and B4" (General Pest/Public Health and Fumigation)

Mr. Keith Willingham appeared, but the Commission realized that they had no concerns or questions - this matter was pulled in error.

MOTION: *To approve by Commissioner Baker.
Seconded by Commissioner Allen.*

VOTE: *6 - 0 Motion carried.*

Commissioner Baker questioned Mr. Willingham about a felony conviction. Mr. Willingham stated he has never been convicted of a felony. It was determined that this application was pulled in error. It was the applicant on the agenda immediately before Mr. Willingham's application that Commissioner Baker was looking at (Mr. Frederick Welsch, who was on last month's Agenda, who has a felony and was approved). Mr. Robert Tolton stated for the record that Mr. Willingham has never had a felony conviction.

- 11. Wilson, Erik R. "B3" (Right of Way/Weed Control)
- 12. Zimmerman, Robert J. "B5" (Turf & Ornamental Horticulture)
Pulled

Mr. Robert Zimmerman appeared and answered Commissioners' questions.

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

VOTE: *6 - 0 Motion carried.*

Commissioner Baker questioned Mr. Zimmerman on how he obtained 4.5 million hours of practical experience. Mr. Zimmerman explained how he calculated his hours by multiplying by 1,000. There was an error on the SPCC application form, asking applicants to multiply their hours by 1,000. Chairman Fraker clarified that Mr. Zimmerman has 4500 hours of practical experience. Mr. Zimmerman responded "yes."

D. Request to Broaden Qualifying Party (Mr. Tolton)

1. Hageman, Edward E. "B5" Turf & Ornamental Horticulture
Pulled

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

VOTE: *6 - 0 Motion carried.*

Application was pulled in error.

E. Request for Company Name Change (Mr. Tolton)

1. DSR Termite & Pest Control to DSR Pest Management

End of Consent Agenda

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

VOTE: *5 - 0 Motion carried. (Commissioner Allen was out of the room.)*

VII. Request for Temporary Qualifying Party Renewal (not on the Consent Agenda)

1. Henderson, Jason P. dba A Bee & Pest Pro

Mr. Henderson appeared and answered Commissioners' questions.

MOTION: *To deny extension by Commissioner Peterson.
Seconded by Commissioner Runbeck.*

VOTE: *6 - 0 Motion carried.*

Mr. Jason Henderson stated that his QP extension will expire on October 25, 2003 and he can then retest on November 15, 2003. Mr. Henderson stated he was caught in a trap that he had to change over to CBT and has tested three times and he is not passing. Before he had tested on paper and was passing. Mr. Henderson further stated he cannot pass the chemical portion of the test. Commissioner Hartley stated Public Health has merged with General Pest and he will have to study that as well. Commissioner Baker asked if they extend what is the date. Mr. Blair Driggs stated a temporary would be good for 60 days and on November 15, 2003 is when he can retest. Commissioner Runbeck asked for clarification of what tests Mr. Henderson passed. Mr. Robert Tolton stated Mr. Henderson did not pass the Core and General Pest. There was some discussion on when Mr. Henderson would receive his test scores and Mr. Tolton stated all test scores were graded the same day. Ms. Josie Priest of A Bee & Pest Pro spoke on behalf of Mr. Henderson and stated they cannot afford another QP, since the company is small.

The Commission was not in favor of a 4th renewal because it did not believe that Mr. Henderson was being active in taking the exams. He has had sufficient time to take and pass the exams. His temporary was issued in 2/03, and CBT didn't begin until 6/03. There was not good cause presented for the delay.

2. Hunt, Steven Carl dba S & B Pest Technologies

Mr. Hunt appeared and answered Commissioners' questions.

MOTION: *To approve extension by Commissioner Peterson.
Seconded by Commissioner Hartley*

VOTE: *6 - 0 Motion carried.*

Mr. Steven C. Hunt stated their QP left abruptly and he did not feel prepared to test and run the business -- between managing the business and performing all applications, he has not had time to study and test. Commissioner Baker asked if there was a training educational process for the QP's. Ms. Lisa Gervase stated on SPCC's Web Site the book listing reflects all study materials and there are educational providers to offer training. This was Mr. Hunt's first renewal request since receiving his temporary in 8/03.

3. Kaufman, Russell W. dba Terminix Commercial

Mr. Kaufman withdrew his request to renew his temporary qualifying party.

4. Lentini, John T. dba Common Sense Pest Management

Mr. Lentini did not appear.

MOTION: *To deny second renewal by Commissioner Peterson.
Seconded by Commissioner Allen.*

VOTE: *6 - 0 Motion carried.*

Commissioner Runbeck asked about the delay in Mr. John Lentini's application. Mr. Robert Tolton stated Mr. Lentini's application was incomplete when he submitted it to the SPCC. Commissioner Baker stated if the QP does not pass then they are not in business and 60 days is an adequate time frame to test and one renewal is sufficient. Mr. Tolton stated that a company representative stated they can get an inactive QP to activate the business. Commissioner Hartley questions the B2 and B8 categories, since he was only approved for B1. Mr. Blair Driggs stated he was approved at the December 2003 meeting. Commissioner Hartley asked if we denied the B2 & B8 categories.

Mr. Tolton stated Mr. Lentini was going to do the B1 and another individual was to do the B2 and B8 categories. The Commission did not believe that there was good cause for the delay in testing to grant a renewal.

Break from 10:45 A.M. to 11:00 A.M.

VIII. Felony Applicants (Mr. Tolton)

1. Bates, John Andrew

Tabled

Mr. Robert Tolton stated Mr. John Bates could not appear because of his work schedule. Commissioner Baker asked how many times do you table an application before a decision is made. Ms. Lisa Gervase stated it depends on whether the application would still be within the time frame rules.

2. Dains, David

Tabled

Mr. David Dains appeared and answered Commissioners' questions. This matter was tabled because more information is needed from Mr. Dains concerning his felony convictions and his employer Burns Pest Control. Ms. Lisa Gervase stated it is up to the applicant to supply all the court documents.

3. Hodgson, Kevin Brent

Mr. Hodgson appeared and answered Commissioners' questions.

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

VOTE: *6 - 0 Motion carried.*

4. Jarrell, Barry Wayne

Mr. Jarrell appeared and answered Commissioners' questions.

MOTION: *To approve by Commissioner Runbeck.*

1. Arizona Rainfall - Case 2003-022

MOTION: *To approve Case # 2003-022 consent terms, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings by Commissioner Peterson.
Seconded by Commissioner Allen.*

VOTE: *6 - 0 Motion carried.*

Commissioner Baker asked whether the amount of pesticide detected in the samples taken by staff (2 nanograms per square foot) constituted “drift”. Mr. Vince Craig stated the SPCC only determined whether there was drift, not based on the amount of pesticide found, because the EPA has not established any such guidelines. Commissioner Runbeck asked why the vehicle violations, such as lack of proper identification, were not part of the complaint. Mr. Craig said that the information about possible vehicle violations that was conveyed by a consumer, could not be substantiated. And, in a follow-up vehicle inspection, the vehicle was properly marked. Commissioner Peterson commented on the consistent use of the MATRIX.

2. Contractor’s Pest & Termite - Case 2003-086 & 2003-086-APP

MOTION: *To dismiss Case # 2003-086 against Contractor’s Pest & Termite and approve Case # 2003-086-APP consent terms, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings by Commissioner Peterson.
Seconded by Commissioner Hartley.*

VOTE: *6 - 0 Motion carried.*

Commissioner Runbeck asked if there was sufficient oversight by the QP. Mr. Vince Craig stated he examined the training records and spoke to the applicator supervisor who provided written confirmation of when the applicator was trained.

3. Timothy Fickett - Case 2003-099

MOTION: *To issue a \$2,000.00 civil penalty for unlicensed activity in Case # 2003-099, and to send this matter to the Office of Administrative*

Hearings for disciplinary action for unlicensed activity (preferably revocation of his applicator license), and to send this matter to the County Attorney's Office for criminal prosecution by Commissioner Allen.

Seconded by Commissioner Baker.

VOTE: **6 - 0 Motion carried.**

Commissioner Runbeck asked whether this was the strongest penalty that could be imposed against Mr. Fickett. Mr. Vince Craig said "Yes" according to the current MATRIX. Commissioner Peterson asked about criminal prosecution, since Mr. Fickett has repeated violations involving fraud. Ms. Lisa Gervase stated this is the strongest penalty that staff can recommend, based on consistent use of the MATRIX, but the Commission can issue Orders with a higher or lower penalty, but must state the rationale on the record. Commissioner Baker wanted to revoke his license immediately. Mr. Blair Driggs stated to send this matter to formal administrative hearing for due process on the license disciplinary aspect of the case, but that a civil penalty for the unlicensed activity does not have to go to hearing. Mr. Driggs advised against going over the \$1,000.00 civil penalty maximum allowed per violation against a licensee, when determining a penalty for the unlicensed activity. Commissioner Peterson asked about the goodwill category on the MATRIX, and did not believe that admitting fault is goodwill. Ms. Gervase suggested that the Commission consider removing goodwill as a mitigating factor from the MATRIX. Although goodwill for admission of fault only provides Respondents with a "1" according to the MATRIX which was approved on June 2002. Mr. Carl Martin stated that goodwill is a mitigating factor desired by the EPA, and it will probably need to be reflected in the MATRIX, as part of the agreement we have to enforce both State and Federal laws. Commissioner Runbeck stated that a \$2,000.00 civil penalty is justified on this particular incident, because Mr. Fickett has agreed to a \$1,250.00 civil penalty in a prior case involving unlicensed activity and the new statutes reflect a higher civil penalty for a subsequent offense of unlicensed activity.

4. G&H Pest Control - Case 2003-106

MOTION: *To approve Case # 2003-106 consent terms, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings by Commissioner Peterson.*

Seconded by Commissioner Allen.

VOTE: **6 - 0 Motion carried.**

Commissioner Hartley asked about sanctioning the QP and the Applicator, since they are the same person. He felt that the Commission should only fine the QP and the Applicator when they are two different persons. Mr. Blain Driggs stated that there are three separate licenses and it does not matter if they are held by the same person. The action against the Applicator license is justified since he actually did the work, and action is justified against the QP and Business under the joint responsibility theory. Commissioner Peterson would like consistency on how all licensees are sanctioned. Commissioner Hartley suggested that QPS not maintain their applicator licenses, to avoid double exposure. Ms. Lisa Gervase suggested that this matter be addressed in legislation. Commissioner Runbeck asked if licensees can take remedial courses and Mr. Vince Craig said that can be part of the discussion during a Settlement Conference.

X. Unlicensed Activity

1. Hunter Creek Ranch Homeowner's Association - Case 2003-091

MOTION: *To issue an Order in Case # 2003-084 for a \$500.00 Civil Penalty and issue a Cease and Desist Order against Mr. Jim Bayles and Hunter Creek Ranch Homeowner's Association jointly and severally by Commissioner Runbeck.
Seconded by Commissioner Hartley.*

VOTE: *6 - 0 Motion carried.*

Mr. Vince Craig referred the Commission to a letter from Mr. Jim Bayles, President of the Hunter Creek Ranch Homeowners Association who did not agree to the terms, and that he would not be able to attend this meeting and he requested a continuance to the November 2003 meeting. Commissioner Hartley commented that Mr. Bayles does not understand that the HOA has violated the law by performing unlicensed activity. Mr. Vince Craig stated that he has spoken to Mr. Bayles in great detail and there is a transcribed memo of the conversation attached. The Commission did not grant a continuance.

2. Norstar Pest Control - Case 2003-084

MOTION: *To approve Case # 2003-084 consent terms to Order a \$750.00 Civil Penalty against Mr. Eric Lund (owner) and Norstar Pest Control jointly and severally by Commissioner Peterson.
Seconded by Commissioner Allen.*

VOTE: 6 - 0 *Motion carried.*

Break from 12:55 P.M. to 1:05 P.M.

XI. For information and discussion, not action: Complaint Status Log and Inquiry Status Log

Discussion by Mr. Vince Craig about the Inquiry Status Log containing the number of written and telephone inquiries that were received and the inspectors who are assigned and a brief explanation of what occurred. Mr. Craig mentioned the Complaint Status Log and the status of completion of the cases.

XII. Recommended Decision an Order of Administrative Law Judge

1. Casa Grande Exterminating, Inc. - OAH Docket # 99A-004-SPC/SPCC Case # 99-004

Mr. Michael Huppert was present and addressed the Commission. Mr. Blair Driggs represented the state. Mr. Driggs stated the Findings of Fact accurately reflect the information that was presented to the Administrative Law Judge, and justify the Conclusions of Law. Mr. Driggs stated that the purported prior violations that were stated in the notice of hearing are not priors because they were not similar violations or occurred after the facts of the current case, so it was recommended that part not be taken into consideration. Mr. Driggs also stated that the facts reflect on Mr. Huppert's capacity as the Qualifying Party, not the Applicator, and asked the Commission to delete the last part of the Conclusion of Law of number 6 where it stated "the evidence supports revocation of Mr. Huppert's Qualifying Party Credential and his Applicator Certificate", and to delete the Applicator Certificate. Mr. Driggs asked the Commission to adopt that Conclusion of Law with the change in number 6.

Mr. Huppert stated the Commission has been sending him communication as the Qualifying Party, Applicator and as the Business License holder and the only function he served at Casa Grande Exterminating as the Qualifying Party. Mr. Huppert stated that he asked the Commission to send all correspondence to Casa Grande Exterminating and to his home address. Go to item 12 on the certified mail issue that was returned to the Commission that it was unclaimed this pertains to office personnel who were stealing, falsifying records, and destroying records for their own personal gain and benefit. Mr. Huppert was never made aware of that fact. Item 13 states we never treated Mrs. Brown's residence since she filed a complaint. Mr. Huppert took to the hearing a signed invoice by Mrs. Brown that was dated 9-16-98. Mr. Huppert further stated he has been cooperative with Mrs. Brown and the SPCC staff to the best of his ability. It was stated there is no prior violations against the Business License and Mr. Driggs pointed out that was the case. That the Business License be issued an Administrative Warning and his Qualifying Party and Applicator License be revoked is out of line. Commissioner

Peterson asked whether Mr. Huppert presented the receipt into evidence, Mr. Huppert responded he believes he introduced it as an Exhibit at the hearing, since he gave everyone a copy. Mr. Huppert had the original in his possession. Commissioner Runbeck asked Mr. Driggs if there were any doubts about the receipt and if the residence was treated. Mr. Huppert stated it was treated before this complaint was filed. Mr. Driggs stated in regards to this receipt dated 9-16-98 the evidence that was presented at hearing were requests from the homeowner on 8-11, 8-26, 9-3, 9-3 of 1998 and as he stated, he had a copy, but does not have any notes if he actually offered it or if it was accepted as an exhibit, but if you wish to consider this the you will have to look at the hearing transcripts. Commissioner Fraker asked Mr. Huppert if he was active on a daily basis at Casa Grande Exterminating and Mr. Huppert responded he would go down once a week to look over records, speak to office staff, and to look over the records.

MOTION: *To approve Finding of Fact and Conclusion of Law with the changes noted by Mr. Driggs on Case 99A-004-SPC by Commissioner Runbeck. Second by Commissioner Hartley.*

VOTE: *6 - 0 Motion carried.*

Mr. Driggs asked the Commission to accept the Order to issue an Administrative Warning to Casa Grande Exterminating's Business License (since there are no priors). and to revoke Mr. Huppert's Qualifying License. Mr. Huppert believes revocation of his Qualifying Party License is excessive since the Business License is not being revoked. Commissioner Fraker asked Mr. Huppert if he has had any prior violations against his QP. Mr. Huppert stated that he does not believe so, although there was a TARF situation which occurred in 1998, but there were no sanctions against him. Commissioner Hartley suggested that only the termite category of Mr. Huppert's license be revoked, not the general pest category since this matter involved termite work only. Mr. Driggs stated that this matter involved Mr. Huppert as the Qualifying Party who was supposed to be managing the business and his responsibility was not limited to termite work. Unfortunately the hearing report does not fully set forth Mr. Huppert's lack of cooperation with the homeowner and SPCC staff. Otherwise, the Commission would be more comfortable revoking his whole QP license. Commissioner Hartley stated that there is precedent for taking disciplinary action against only one or more license categories of a licensee if the Commission did not feel that all license categories were involved.

MOTION: *To modify the Recommended Order and to impose an Administrative Warning against the Business License, to revoke only the "C" (termite) category of the Qualifying Party license issued to Michael Huppert by Commissioner Hartley. Seconded by Commissioner Peterson.*

VOTE: *5 - 1 Motion carried. (Commissioner Peterson opposed)*

2. Christopher J. O'Brien - OAH Docket # 03A-073-SPC/SPCC Case # 2003-073

Mr. Driggs stated that the Findings of Fact accurately reflect what took place at the hearing and the testimony will confirm the facts in this case, particularly Finding of Fact # 7 and # 8 where Mr. O'Brien admitted to the Commission staff and before the Administrative Law Judge that he lied to the Commission.

MOTION: *To accept the Finding of Fact and Conclusion of Law on Case 03A-073-SPC by Commissioner Runbeck.
Second by Commissioner Allen.*

VOTE: *6 - 0 Motion carried.*

MOTION: *To accept the Recommended Order that Applicant's appeal be dismissed, and that the Commission's prior denial of applicant's license application be upheld by Commissioner Runbeck.
Seconded by Commissioner Peterson.*

VOTE: *6 - 0 Motion carried.*

Commissioner Fraker asked about the status of his Applicator License. Ms. Lisa Gervase stated that the old statute did not include "Moral Character" as a ground for disciplinary action, as opposed to the new statute, but Mr. O'Brien's actions occurred under the old law.

XIII. For discussion, consideration and action: Felony Conviction by Licensed Applicator, Qualifying Party Licensee, and Business Licensee Hector Isidro Coronado

MOTION: *To open as a Complaint and to send to the Office Administrative Hearings for disciplinary action by Commissioner Runbeck.
Seconded by Commissioner Baker.*

VOTE: *6 - 0 Motion carried.*

Mr. Mike Francis stated that Mr. Hector Coronado holds a Business License, Qualifying Party License and an Applicator License and was convicted of a felony. He is currently on work release, but his wife appeared to answer any questions. Mrs. Maria Coronado stated her husband could not be present because he is on probation and is not allowed

to leave the county. Mr. Coronado is on probation for a Class 4 Felony for 180 days which will end on January 24, 2004. Ms. Coronado stated that Sun City Pest Control filed a complaint against Mr. Coronado for side jobs he did while he was employed by them. Mr. Francis stated Mr. Coronado did not want this on the Agenda because he wanted to appeal the complaint. Commissioner Allen questioned who Brian Hall is. Mr. Francis stated Mr. Hall was a business partner of the business license Mr. Coronado obtained for Investamite after his departure from Sun City.

XIV. For discussion, consideration and action: Continuing Education Committee Minutes October 2003

Discussion by Mr. Carl Martin about the Continuing Education Committee change under the statute effective in mid-September. Continuing Education is now reviewed by staff and presented to the Commission for approval. There no longer will be an Advisory Committee appointed by the Commission to review C.E. courses. This change will streamline the process without losing quality. This item will continue to be on the Consent Agenda. The Commission has received great service from a number of members of the industry and members of the public who have served as members of the Continuing Education Accreditation Committee for a number of years. For the most part, these individual have not been recognized and most of them came each month for a meeting. They have made recommendations on how to improve training, participated themselves in training courses sponsored by the Commission. Mr. Martin requested that the Commission consider some form of recognition to those who have served on the Continuing Education Committee, such as sending a letter to memorialize that their distinguished service has been appreciated, and copying their license files. For those individuals who don't hold licenses, the Commission could recognize them by informing their supervisors about the service and quality of work that was performed. Commissioner Runbeck also suggested a Certificate of Appreciation.

MOTION: *To accept the Continuing Education Meeting Minutes and to also recognize the committee members as suggested by Commissioner Peterson. Seconded by Commissioner Runbeck.*

VOTE: *6 - 0 Motion carried.*

XV. For information and discussion, not action: Computer Based Testing "CBT" Status and Statistics

Discussion by Mr. Carl Martin on information that was faxed to the Commissioners. Commissioner Baker asked how other Commissioners felt about a 75% failure rate. From

an educational point of view, Commissioner Baker stated that a high failure rate reflects negatively about the training test takers received before taking the exam. Commissioner Hartley stated that under the former system, applicants paid only a \$30.00 application fee and could test as many times as they wanted to, thereby abusing the testing process. Now this is a financial impact, so the employer is going to be giving those individuals those study materials and they will study, so they can pass. Commissioner Hartley thinks in six to eight months from now we will probably see an improvement in the pass rate. Commissioner Runbeck asked if we had a psychometrician look at the tests. Mr. Carl Martin stated he has a degree in statistics, but that the Commission has not done a full blown examination validation process. Mr. Martin stated that under the leadership of the current Executive Director, the SPCC will conduct a Content Survey within the industry in a couple of the licensing categories.

FIRST AMENDED AGENDA

XV. For information and discussion, not action: Fungi Inspection Report Form (Mr. Martin)

Discussion by Carl Martin on the Fungi Inspection Report Form which is currently under development at the Commission. Mr. Martin informed the Commission that Commissioner Allen has taken a lead in this matter and has participated in our initial meetings and is working with staff to work on a draft report form that conforms to the law requirements and makes sense to the industry. Mr. Martin read a note from Mr. Barry Aarons the Director of the Arizona Pest Management Association that was left with Ms. Gervase at 1:45 P.M. today, that the APMA Board will be reviewing the Fungi Report Form draft at its 10-14-03 meeting and will be sharing recommendations with staff.

XVI. For information and discussion, not action: SPCC Budget, Case Status Report, and TARF Amnesty Report (Ms. Gervase)

Ms. Lisa Gervase stated that the Commissioners were faxed information on the SPCC Budget, Case Status Report and the TARF Amnesty Report. SPCC has spent about 11.3% of their appropriated funds to date “[Between July 1 and August 30, 2003.]”

The Case Status Report reflects a dramatic decrease in the cases under the category “pending confirmation of status” because Ms. Vazquez, Ms. Helen Turner, who is a new administrative secretary in our office, Mr. Craig, and Inspector Mr. Ron Walker have been reviewing files. About another 110 cases have been earmarked to determine whether orders have been complied with. If they have not been complied with, staff will proceed to obtain compliance with those orders regardless of how old they are. The 110 cases were found after only a quarter of the file room has been reviewed,

