

Structural Pest Control Commission  
9535 East Doubletree Ranch Road  
Scottsdale, Arizona 85258

COMMISSION MEETING  
FRIDAY, DECEMBER 12, 2003 - 10:00 A.M.  
MINUTES

I. Call to order, Commissioner roll call

Commissioners Present: Commissioners Baker, Fraker, Hartley (until 1:00 p.m.), Peterson, Robinson and Runbeck

Commissioners Absent: Commissioner Allen

Staff Present: Jason Aanderud, Dave Colvin, Vince Craig, Mike Francis, Lisa Gervase, Carl Martin, Robert Tolton, Maggie Vazquez, and Assistant Attorney General Blair Driggs

II. Call to the public

*None*

III. Communication with Commissioners

*None*

*Ms. Lisa Gervase stated that hard copies of the TARF Report will no longer be provided to the Commissioners because this information is on the SPCC web site.*

*Ms. Gervase informed the Commissioners that items XIV. B and C and XVI. A will be heard before the Consent Agenda.*

IV. Scheduling of future meetings/agenda items

Current Proposed dates and locations

January 9, 2004 . . . . . Scottsdale, AZ  
February 13, 2004 . . . . . Scottsdale, AZ  
March 12, 2004 . . . . . Scottsdale, AZ  
April 9, 2004 . . . . . Tucson, AZ

May 14, 2004 ..... Scottsdale, AZ  
June 11, 2004 ..... Scottsdale, AZ

*Commissioner Fraker reminded everyone that the April 9, 2004 meeting will be held in Tucson, Arizona.*

**V. Consent Agenda**

**A. Applications for New Business License**

- |   |  |
|---|--|
| <b>1. Brown, Kristopher D.</b><br><i>Pulled</i> | <b>Mr. Pack Rat Inc. (Activating Qualifying Party for new business license in “B1” General Pest/Public Health, “B2” Wood Destroying Insect Control and “B8” Wood Destroying Insect Inspection)</b> |
|---|--|

*Mr. Brown appeared and answered Commissioner’s questions.*

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

**VOTE:** *5 - 0 Motion carried.  
(Commissioner Hartley recused)*

- |                                   |  |
|-----------------------------------|--|
| <b>2. Hargrove, Darren</b>        | <b>America’s Pest Control, LLC. (Activating Qualifying Party for new business license in “B1” General Pest/Public Health, “B2” Wood Destroying Insect Control, “B3” Right of Way/WeedControl and “B8” Wood Destroying Insect Inspection)</b> |
| <b>3. Henderson, Jason Preece</b> | <b>A Bee &amp; Pest Pro (Activating Qualifying Party for new business license in “B1” General Pest/Public Health)</b>  |
| <b>4. Hixon, Randy Albert</b>     | <b>Hixon Home Services, Inc. (Activating Qualifying Party for new business license in “B1” General Pest/Public Health)</b>   |
| <b>5. Hurtt, Brian J.</b>         | <b>Home Town Pest Control (Activating</b>  |

*Pulled* Qualifying Party for new business license in “B1” General Pest/Public Health, “B2” Wood Destroying Insect - Control and “B8” Wood Destroying Insect Inspection)

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

**VOTE:** *5 - 0 Motion carried. (Commissioner Hartley recused)*

6. Maskulka, David J. Home Town Pest Control (Activating Qualifying Party for new business license in “B3” Right of Way/Weed Control and “B5” Turf & Ornamental)

7. Torre, John J. *Pulled* Rim Country Pest Applicators (Activating Qualifying Party for new business license in “B1” General Pest/Public Health, “B3” Right of Way/Weed Control and “B5” Turf & Ornamental)

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

**VOTE:** *5 - 0 Motion carried. (Commissioner Fraker recused)*

*Commissioner Peterson said that the insurance certificate does not reflect that the insurance meets the statutory requirements. Mr. Robert Tolton informed the Commission that he spoke to Mr. Torre, who said he has the current insurance “rider” which will be sent to the SPCC. Mr. James Blasko, of Rim Country Pest Applicators, appeared and brought a new insurance certificate.*

## **B. Applications for Existing Business License**

1. Carpenter, Stanley W. Extra Step Pest Control (Activating Qualifying Party for existing business

license in “B1” General Pest/Public Health)

2. Eubank, Aaron Culbertson Titan Pest Control, LLC. (Activating Qualifying Party for existing business license in “B2” Wood Destroying Insect - Control and “B8” Wood Destroying Insect Inspection)

3. Killenbeck, Arthur LeRoy Home Team Pest Defense, LLC. (Activating Qualifying Party for existing business license in “B5” Turf & Ornamental)  
*Pulled*

*MOTION: To approve upon proof of proper insurance being provided to the SPCC within one week by Commissioner Peterson.  
Seconded by Commissioner Baker.*

*VOTE: 6 - 0 Motion carried.*

*Commissioner Peterson stated his concern about the liability insurance not including the “care, custody and control” clause. Mr. Hector Nunez for Home Team Pest Defense, LLC, stated he was not made aware that this insurance was not acceptable when he submitted it to the SPCC three weeks ago.*

4. McKenzie, Barbara Dianne Zap Pest Control, Inc. (Activating Qualifying Party for existing business license in “B1” General Pest/Public Health)

5. Ryser, Frank R. Evergreen Spray Service, Inc. (Activating Qualifying Party for existing business license in “B1” General Pest/Public Health)

**C. Applicants for QP Testing**

1. Bartley, Jr. Frederick W. “B2 and B8” (Wood Destroying Insect Control and Wood Destroying Insect Inspection)

2. Cahill, Christopher Sean “B1” (General Pest/Public Health)  
*Pulled*

**MOTION:** *To approve for QP testing by Commissioner Peterson.  
Seconded by Commissioner Runbeck.*

**VOTE:** *5 - 0 Motion carried. (Commissioner Fraker recused)*

**3. Cassidy, Paul Hudson “B9” (Aquatic Pest Control)**

*Discussion by Commissioner Baker about Qualifying Party Licensees not having physical offices in the State of Arizona. Commissioner Hartley also stated if a pest control company is going to do work in Arizona they should at least have a branch office. Mr. Paul Cassidy of Aquatic Consultants, Inc., appeared to answer questions, but Ms. Lisa Gervase interjected and cautioned the Commission about discussing a topic that was not agendaized.*

**4. Cross, David Allen “B9” (Aquatic Pest Control)**

**5. Harris, Richard Kennedy “B4, B8 and B9” (Fumigation, Wood Destroying  
Pulled Insect Inspection, and Aquatic Pest Control)**

**MOTION:** *To approve for B2, B4, B8 and B9 categories, contingent upon Mr. Harris providing the SPCC a written statement within one week that his application is to include the “B2” category by Commissioner Baker.  
Seconded by Commissioner Hartley.*

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

*Ms. Lisa Gervase stated A.R.S. § 32-2323 (B) requires an individual to be licensed in both B2 and B8 categories to perform inspections and Mr. Harris applied for licensure only in the “B4,” “B8,” and “B9” categories. If he desires to have applicators performing inspection work, he’ll need to have a QP license in the B2 category. Ms. Gervase further stated that Mr. Harris currently holds a “C” license and he has experience in the “C” category to test in the “B2” & “B8” categories. Mr. Blair Driggs confirmed that a Qualifying Party Licensee must have both categories (“B2” and “B8”). Mr. Driggs further stated if Mr. Harris has the experience then he should take the “B2” exam. Commissioner Fraker stated that Mr. Harris does not show any application work in the “B2” category, but he has been certified since 1998 in the “C” category. Mr. David Cross appeared and*

*stated Mr. Harris is his supervisor and that Mr. Harris does not have a problem with taking both examinations for the "B2" and "B8" categories.*

- 6. Kohler, Bradley B. "B1" (General Pest/Public Health)
- 7. Kuta, Jason Michael "B2 and B8" (Wood Destroying Insect - Control and Wood Destroying Insect Inspection)
- 8. Osweiler, Joseph John "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental)  
*Pulled*

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

**VOTE:** *5 - 0 Motion carried. (Commissioner Hartley was not present)*

*Commissioner Runbeck stated Mr. Osweiler answered "yes" on his application to the question about whether he has had a pest control license refused, revoked, or suspended. Mr. Joseph Osweiler stated, he did not receive his renewal notice for certification in 1999, so his license was suspended or revoked. Mr. Robert Tolton stated Mr. Osweiler's license was not suspended as part of a disciplinary action, it expired because of his failure to renew timely.*

- 9. Potkonjak, Nikola "B1" (General Pest/Public Health)
- 10. Spahr, Jason Spencer "B1" (General Pest/Public Health)
- 11. Swan II, John Edward "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental)
- 12. Waichulaitis, Bruce Allen "B1" (General Pest/Public Health)

**D. Request for Company name change**

- 1. Gecko Integrated Pest Management & Real Estate Services to Gecko Pest Management, Inc.
- 2. The Termite Advisory Service, Inc. to The Termite & Home Inspection Service, Inc.

**E. Treatment Proposals**

- 1. Above & Beyond Exterminating**
- 2. Gecko Pest Management, Inc.**
- 3. Precision Pest Control**
- 4. Premier Pest Management, Inc.**
- 5. Son - Ray Pest Control**
- 6. Tucson Exterminating**

**End of Consent Agenda**

**MOTION:** *By Commissioner Hartley to accept Consent Agenda with the exception of those items pulled for discussion (Tab 1, Tab 5, Tab 7, Tab 10, Tab 14, Tab 17 and Tab 20).  
Seconded by Commissioner Runbeck.*

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

**VI. Applications for Qualifying Party Examination not on the Consent Agenda**

- 1. Latella, Domenic C. "B3" (Right of Way/Weed Control)**

*Mr. Latella appeared and answered Commissioners' questions.*

**MOTION:** *To approve QP Testing in the "B3" Right of Way/Weed Control by Commissioner Baker.  
Seconded by Commissioner Robinson.*

**VOTE:** *3 - 3 Motion failed.*

**ROLL CALL VOTE:**

*Commissioner Hartley - Yes  
Commissioner Peterson - No  
Commissioner Robinson - Yes  
Commissioner Runbeck - No*

*Commissioner Baker - Yes  
Commissioner - Fraker - No*

*Commissioner Fraker stated staff asked the Commissioners to review Mr. Domenic Latella's application to see if it meets the minimum requirements of 3000 hours within the preceding five years.*

*Commissioner Runbeck commented she had some concerns about Mr. Latella's application, in that Mr. Latella's 3000 hours were more than five years ago and he is also verifying his own work. Commissioner Runbeck further questioned which law was being applied because his application was received in August 2003.*

*Mr. Latella stated that over one year ago he applied for Qualifying Party Licensure to the Commission in the "B3" category. He was approved, but because of medical problems he did not test. Mr. Latella stated he had no knowledge of the new law change which reduced the number of years in which experience could be counted. Mr. Latella gave a brief description of his background experience.*

*Mr. Robert Tolton stated that the SPCC received Mr. Latella's application in August 2003, but it was incomplete, so it was returned to Mr. Latella and SPCC received the new submission in November 2003.*

*Ms. Lisa Gervase asked the Commissioners for a break to review Mr. Latella's application. [Break from 12:10 P.M. to 12:20 P.M.] Ms. Gervase stated Mr. Latella's application was filed in August 2003, so the former law governs - requiring the experience be obtained in the preceding 8 years, not 5 years. The confusion was that his application was incomplete and the additional information was received in November 2003 (after the new law went into effect), but the filing date of August 2003 controls. Therefore, Mr. Latella meets the experience requirements within the preceding eight years.*

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

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

**2. Nair, Scott Wood "B5" (Turf & Ornamental)**

*Mr. Nair appeared and answered Commissioners' questions.*



**MOTION:** *To approve QP Testing in "B5" Turf & Ornamental by Commissioner Baker.  
Seconded by Commissioner Peterson.*

**VOTE:** *5 - 0 Motion carried. (Commissioner Robinson recused)*

*Mr. Scott Nair stated he graduated from the University of Michigan in 1980 with a degree in science and agronomy. Mr. Nair has also been employed in five or six states (including Texas, Arizona and California) as a golf course superintendent. The last five years he has been working in the State of Illinois for Eagle Ridge Inn & Resort which is associated with Troon Golf. Mr. Nair's responsibilities were working with the applicators, applicators obtaining credentials, and involved with all aspects of running the facility on a daily basis. Mr. Nair further stated he has been working for four years with Mr. Jeff Spangler at Troon North Golf Club in Scottsdale, Arizona. Mr. Nair reports directly to Mr. Spangler who operates Troon Golf worldwide.*

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

**1. Hunt, Steven Carl S & B Pest Technologies**

**MOTION:** *To deny renewal because Mr. Hunt has not shown good reason for not taking his exams nor good cause for not yet obtaining his QP license, by Commissioner Peterson.  
Seconded by Commissioner Baker.*

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

*Commissioner Fraker stated this is Mr. Hunt's second renewal request.*

**2. Smith, Brian Lee Creative Environments Maintenance Services, Inc.**

**MOTION:** *To deny renewal because Mr. Smith has not shown good reason for not having begun his QP testing not good cause for not yet obtaining his QP license, by Commissioner Robinson.  
Seconded by Commissioner Peterson.*

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

*Commissioner Runbeck stated that Mr. Smith's letters indicate he could not find a QP and now must test, and in the past we were not so harsh on first time renewal requesters.*

**VIII. Reconsideration of applications from Applicants against whom Complaints have been filed for testing improprieties (Mr. Craig)**

*Mr. Vince Craig stated that Metro Institute found four testers with answer sheets. Reports have been included for the Commissioners' review and for the Commission to address each person individually.*

**1. Flores Jr., Victor - Case 2003-115**

*MOTION: To rescind and deny applicator testing for one year by Commissioner Peterson.  
Motion died for lack of a second.*

*MOTION: To reconsider prior approval and deny applicator application because of new information that reflects negatively on his moral character, in that he was caught with notes in the exam room, by Commissioner Peterson.  
Seconded by Commissioner Hartley.*

*VOTE: 6 - 0 Motion carried.*

**2. Guerrero, Roman - Case 2003-113**

*Mr. Guerrero appeared and answered Commissioners' questions.*

*MOTION: To reconsider prior approval and deny applicator application because of new information that reflects negatively on his moral character, in that he was caught with notes in the exam room, by Commissioner Peterson.  
Seconded by Commissioner Runbeck.*

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

*Mr. Vince Craig stated that Mr. Roman Guerrero stated he found the answer sheets. Mr. Craig further stated that Mr. Guerrero had received the answer sheets from Mr. Victor Flores.*

*Mr. Guerrero was asked if he understood the severity of his actions and he responded "Yes." Mr. Roman Guerrero stated that he had handwritten notes, but did not use them while he was testing, nor were they confiscated while he was taking the test, but were taken on his way out when asked if he had any documents with him. Mr. Guerrero stated a co-worker, Mr. Flores gave him the answer sheets. He did not know where Mr. Flores got them.*

*Mr. Blair Driggs stated the Commissioners have the ability to reconsider Mr. Guerrero's prior approval because of the new evidence about testing improprieties.*

*Commissioner Robinson explained that his "no" vote was based on Mr. Guerrero making the effort to come to the Commission meeting and the possibility that there could have been a language barrier that caused confusion during his interview by SPCC inspectors.*

**3. Osorio, Francisco - Case 2003-112**

**MOTION:** *To reconsider prior approval and deny applicator application because of new information that reflects negatively on his moral character, in that he was caught with notes in the exam room, by Commissioner Peterson. Seconded by Commissioner Robinson.*

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

**4. Perez, Jose Angel - Case 2003-114**

*Ms. Lisa Gervase stated Mr. Perez made a verbal request yesterday afternoon to continue this matter for the January 2004 meeting.*

**MOTION:** *To reconsider prior approval and deny applicator application because of new information that reflects negatively on his moral character, in that he was caught with notes in the exam room, by Commissioner Peterson. Seconded by Commissioner Robinson.*

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

*[Commissioner Hartley left the meeting at 12:55 P.M.]*

## IX. Complaints and/or Settlement Conferences

### 1. AAA Landscaping & applicator Jordan Stoklas - Case #s 2003-085 & 2003-085APP

**MOTION:** *To accept Case # 2002-085APP consent terms pertaining to the applicator, 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; and to dismiss Case # 2002-085 against AAA Landscaping and the Qualifying Party by Commissioner Peterson.  
Seconded by Commissioner Baker.*

**VOTE:** *5 - 0 Motion carried.*

*Mr. Scott Richardson, attorney for the Business Licensee and Qualifying Party, appeared and stated there are no objections to the dismissal.*

*Commissioner Runbeck stated her understanding that the supervisor was aware of Mr. Stoklas' aquatic pest control application. Mr. Vince Craig clarified that the supervisor did not know of the application until after it was completed. Mr. Craig further stated the supervisor is not the qualifying party licensee nor is he an applicator licensee.*

### 2. Adams Exterminating - Case # 2003-088

**MOTION:** *To reduce the civil penalty from \$600.00 to \$200.00 per each licensee and otherwise accept the recommendation for Case # 2003-088 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 Baker.  
Seconded by Commissioner Runbeck.*

**VOTE:** *5 - 0 Motion carried.*

*Mr. Kenneth Barnes appeared and stated the complainant has been satisfied. He provided the Commission with a signed receipt, copy of a check stub, and a release from the complainant. Mr. Barnes further stated he asked the complainant to obtain bids for the cleanup and she stated she would do the cleanup herself. Mr. Barnes reimbursed the complainant for several hours of research, cleanup by herself, and miscellaneous expenses.*

*Commissioner Baker has concerns about the spray/drift issue, in that only 2.8 ng per square inch was found. This may constitute “drift”, but could not have caused a problem at such a low amount. Perhaps more detailed information should be obtained from the Laboratory regarding these types of analyses. Commissioner Baker stated the Business Licensee and Qualifying Party Licensee should get credit for “ environmental benefit” under the settlement guidelines (Matrix) because the “drift” was cleaned up. He also felt that Mr. Barnes was “ripped off” by this consumer.*

*In light of the new information provided to the Commission, the previous proposed settlement should be amended, according to the MATRIX. There was discussion among the Commissioners about Aggravating and Mitigating Factors in this matter. It was decided that the licensee should be entitled to 3 points for Good Will, 1 point for Environmental Benefit, and 2 points for Consumer Benefit, which reduced the value to 7; justifying a \$200.00 civil penalty for each license, rather than a \$600.00 Civil Penalty each.*

**3. Carter Weed Control - Case # 2003-096**

***MOTION:** To accept staff’s verbally amended recommendation and Dismiss Case # 2003-096, by Commissioner Peterson.  
Seconded by Commissioner Runbeck.*

***VOTE:** 5 - 0 Motion carried.*

*Mr. Vince Craig amended staff’s recommendation after reconsidering this matter. Looking at the law in effect at the time and the employee registration form that Carter Weed Control submitted for the employee, it appears that the individual was an “apprentice”. Under the law in effect at the time, an apprentice could spray without a license in certain circumstances. The “apprentice” in this case was properly registered as an employee, but the SPCC’s registration form did not require licensees to delineate whether an employee was an apprentice.*

**4. Northwest Exterminating Company - Case # 2003-107**

***MOTION:** To accept recommendation to Dismiss Case # 2003-088 against Northwest Exterminating and Mr. Chad Berg qualifying party licensee; and proceed against Applicator Stephen Scott, by Commissioner Peterson.  
Seconded by Commissioner Robinson.*

**VOTE:** 4 - 1 Motion carried. (Commissioner Runbeck opposed)

*Mr. Dave Colvin stated that this is one of the few cases where he feels that there truly was sufficient training and supervision by the business licensee and QP, including having an in-house quality control program.*

*Commissioner Peterson asked about joint responsibility and whether the SPCC keeps track of companies and applicators who have violations.*

*Commissioner Runbeck would like to see the liability on the companies, that they should be held responsible.*

#### 5. Ortiz Pest Control - Case # 2003-090

**MOTION:** *To accept Case # 2003-090 consent terms, (to be paid in three monthly increments) 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 Baker.*

**VOTE:** 5 - 0 Motion carried.

*Mr. Luis Ortiz appeared and he agreed to the proposed settlement. Mr. Ortiz further stated this is the first offense in seven years, it will not happen again, and it was a terrible mistake.*

*Commissioner Peterson believes that it is problematic that only Administrative Warnings can be issued, and no Civil Penalty, against a business licensee unless a case meets additional legal requirements. Commissioner Peterson further questioned why no samples were taken to determine what termiticide actually was applied since records reflected two different products.*

*Mr. Vince Craig stated that the actual pesticide that was applied was Navigator 4 TC, a restricted use product. Mr. Craig further stated Mr. Ortiz filed the TARF after the case was investigated with a different pesticide name than what was applied.*

*Commissioner Fraker commented that each case should stand on its own merits, and feels that an administrative warning for a first offense is appropriate.*

**6. Phoenix Pest & Termite Control - Case # 2003-122**

**MOTION:** *To accept Case # 2003-122 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; and proceed with Complaint 2003-122APP against Applicator Christopher Kane, by Commissioner Peterson.  
Seconded by Commissioner Runbeck.*

**VOTE:** *5 - 0 Motion carried.*

*Mr. Jerry Martinie Qualifying Party Licensee and Mr. James Romero Branch Manager (Tucson Office) appeared. Mr. Martinie stated that Mr. Christopher Kane is no longer employed with Phoenix. Commissioner Baker questioned how a pretreatment could be corrected after a slab is poured. Mr. Romero stated they corrected the site by checkerboarding the slab two months later and applying an additional 109.35 gallons of termiticide. Commissioner Robinson asked if the applicator is responsible for doing the math. Mr. Romero stated two people figure out the math and the builder gives them the square footage. Mr. Romero further stated the applicator is to duplicate the same information off the tag onto the invoice, but sometimes they do it in the office, resulting in erroneous information.*

*Commissioner Peterson raised the issue of joint responsibility and wondered who has more responsibility among the applicator, QP and business licensee.*

**7. Sexton Pest Control - Case # 2003-046**

**MOTION:** *To accept recommendation to send Case # 2003-046 to the Office of Administrative Hearings, by Commissioner Runbeck.  
Seconded by Commissioner Peterson.*

**VOTE:** *5 - 0 Motion carried.*

*Attorney Scott Richardson appeared for Sexton and the Qualifying Party Licensee and stated that they have no objection to this case going to hearing. Mr. Richardson does not represent the applicators.*

**8. Terminix Commercial - Case # 2003-111**

**MOTION:** *To accept the proposed Consent Agreement for Case # 2003-111, including a \$200.00 civil penalty each to the Temporary*

*Qualifying Party Licensee Russell Wayne Kaufman and Applicator Licensee James Bostrom, 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 Runbeck.*

**VOTE:**                    *5 - 0 Motion carried.*

*Mr. Vince Craig corrected the agenda that the proposal was that the Temporary Qualifying Party and Applicator each would be sanctioned a \$200.00 civil penalty.*

*Mr. Brian Ferris appeared for Terminix and he stated he attended the Settlement Conference and agreed to the terms.*

*Mr. Wayne Kaufman and Mr. James Bostrom also appeared and stated that they had agreed to the proposed consent terms.*

## **X. Unlicensed Activity**

### **1. Ash Creek Elementary - Case # 2003-102**

**MOTION:**    *To accept Case # 2003-102 consent terms, to issue a Cease and Desist Order to Mr. Carl Pauley and Gene Bichekas, by Commissioner Peterson.  
Seconded by Commissioner Runbeck.*

**VOTE:**                    *5 - 0 Motion carried.*

### **2. Mr. Jerry Smyers - Case # 2003-124**

**MOTION:**    *To accept Case # 2003-0102 consent terms, to Order a \$500.00 Civil Penalty and issue a Cease and Desist Order against Mr. Jerry Smyers (to be paid in three month increments), by Commissioner Peterson.  
Seconded by Commissioner Runbeck.*

**VOTE:**                    *5 - 0 Motion carried.*

*Commissioner Robinson inquired about the status of a letter that staff was working on to send to stores that sell pesticides. Mr. Mike Francis stated he has*



*a draft a letter and flyer to send to a limited list of recipients.*

**XI. For information and discussion, not action:**

**A. Complaint Status Log**

*Discussion by Vince Craig who stated the Complaint Status Log gives the Commission information of who the case is assigned to, company name, date and status of case. Sometimes a case will take longer to finalize until it is approved by the Assistant Director of the Compliance/Enforcement Division.*

**XII. Felony Applicants**

**1. Dains, David Ray**

*Mr. Dains appeared and answered Commissioners' questions.*

**MOTION:** *To deny because Mr. Dains has repetitive offenses between 1986 and 1998; the nature of the crimes reflect a strong propensity to re-offend, particularly having access to customers' homes; and there has been insufficient time to establish a clean track record, in that he was only released from prison in November 2002, by Commissioner Robinson.  
Seconded by Commissioner Runbeck.*

**VOTE:** *5 - 0 Motion carried.*

*Mr. Dains stated he was convicted for burglary, theft, and drugs. His last conviction was in 1998. Mr. Dains further stated if he is arrested again and receives one more felony, he will be considered a habitual felon, and he will be spending 25 years to life in prison. Mr. Dains does not want to go back to prison - his life has changed, with education, knowledge and experience.*

**2. Speir, Ronald D.**

**MOTION:** *To deny because Mr. Speir did not disclose all felonies on his previous licensee applications and renewals, which reflects negatively on his moral character, by Commissioner Baker.  
Seconded by Commissioner Robinson.*

**VOTE:**                    5 - 0    *Motion carried.*

*Mr. Speir did not appear at the November 2003 Commission Meeting, or this Commission Meeting to answer questions.*

**XIII. Approval of Minutes**

**November 14, 2003 (regular session) Minutes.**

*Tabled to the January 2004 Commission Agenda to provide additional review by Lisa Gervase.*

**November 14, 2003 Executive Session Minutes**

**MOTION:**    *To approve the November 14, 2003 (executive session) Minutes with the correction of the time (9:18 A.M. to 9:45 A.M. to go into Executive Session), by Commissioner Baker.  
Seconded by Commissioner Peterson.*

**VOTE:**                    4 - 0    *Motion carried. (Commissioner Runbeck abstained because of absence at November meeting)*

**XIV. For information, discussion, and action:**

**A. Continuing Education Committee Minutes**

**MOTION:**    *To approve the November 2003 Minutes, by Commissioner Baker.  
Seconded by Commissioner Runbeck.*

**VOTE:**                    5 - 0    *Motion carried.*

*Mr. Carl Martin discussed the CEUs that were submitted for accreditation and the Department of Agriculture class.*

**B. Wood Destroying Insect Inspection Report - Review for possible change to box 8C language.**

*Mr. Carl Martin stated it came to the attention of SPCC that Box 8 C on the Wood Destroying Insect Inspection Report “WDIIR” may not be clear. Mr. Martin stated it is important that we have clear directions on how to fill out the report form from the Commissioners, and what language to use in Box 8. Mr. Martin further stated we need to educate the lenders on how to use the report.*

*Commissioner Hartley said that people involved in real estate transactions do not like 8A checked, so they want corrective action and a supplemental report with only 8C checked. He believes that the original intent of the inspection form was to write an original report and do corrective work on one report, without a supplemental report. He stated that if there is something on the diagram, box 8A needs to be checked.*

*Commissioner Fraker questioned what happens when a different company does the corrective work, and whether that company's report becomes "original #2". He said it would not be a supplemental report. The second company would not check box 8A, only 8C. He also questioned whether to write "as noted on diagram" in box 10. He said that instruction number "5" is self-explanatory and that the industry should follow those instructions and if there are problems with the lender or title company, the industry should refer them to read instruction number "5."*

*Commissioner Robinson questioned who pays for the report.*

*Scott Richardson, attorney, said that the report is "buyer ordered" regardless who pays for the inspection.*

*Commissioner Fraker stated the evidence of infestation or damage is noted in Box 8 A and there are some questions regarding Box 8 C. He feels that the pest control industry is trying to appease the real estate industry too much. The pest control industry should educate the real estate industry.*

*Commissioner Hartley asked if anybody has an idea of what information should go on the Supplemental form because if a company does a supplemental, does that mean 8A is blank or do they do the entire report over.*

*Ms. Lisa Gervase stated we can change 8C to read "Visible evidence of infestation found on original report." Ms. Gervase stated if you look at number 5 in the instruction section on the WDIIR form it is self-explanatory.*

*Mr. Lee McGhee of Enviro Pro Pest Management Services stated when they do a supplemental, their inspectors go back to the consumers home to do a follow-up and they might even attach another company's treatment record to their WDIIR form.*

*\*\*The consensus of the Commission, after hearing various opinions, is that the industry should follow instruction #5 on the WDIIR until/unless the Commission changes the language on this form. The pest control industry should direct the*

*real estate industry to read instruction #5, for clarification about box 8A, and not believe that if box 8A is checked, even though corrective action has been taken, that the report is not a “clean” report.*

**C. Legislation(continued from 11/03 Amended Agenda)**

*Mr. Carl Martin provided the Commission with a memo on the proposed changes, which are mainly for clarification. Mr. Martin stated to change the record keeping from five years to three, would be better handled by forwarding a separate bill to the Legislature. At this time, the proposed submission to the Legislature is primarily to do clean up.*

*Commissioner Peterson addressed A.R.S. § 32-2325(2) (Unlawful Acts) on the portion “Engaging in the business of structural pest control in any category without a qualifying party licensed in that category is a Class 5 Felony.” He questioned whether this previously was a Class 6 Felony. Mr. Martin clarified that it was previously listed as a Class 6, but the proposal is for a Class 5 felony.*

*Both Ms. Lisa Gervase and Mr. Martin stated the felony language disappeared in HB 2341 and it should be restored because it will catch the attention of unlicensed companies, it also shows value to the licensee, and that only persons who have shown competency are given a license. Ms. Gervase stated the felony portion is for persons who persist in unlicensed activity, and we can then refer them to law enforcement agencies where the incident occurred. Then it will be up to these agencies to make the referral to either the County Attorney’s Office or Attorney General’s Office for prosecution.*

*retention Commissioner Hartley stated he does not like the five-year record keeping and would like to see it go back to three years, because of storage costs. Commissioner Fraker is also in agreement with Commissioner Hartley on record keeping for five years. Commissioner Baker stated this should be a minor legislative change from five to three years. Ms. Lisa Gervase stated is was a compromise with the Legislature for companies to retain records of termite work for five years, in order to avoid having to report each and every termite activity to the SPCC. The other record retention time (for records other than for termite work) changed from 3 to 5 years to coincide with the “statute of limitations” going from 3 to 5 years. It may sound like a minor change to go from 5 years back to 3 years on general pest control records. However, it opens the door to many issues.*

*Commissioner Fraker would like to take more time to read the proposed changes and decide how to proceed. Commissioner Peterson suggested that there could be*

*problems if we wait too long to submit the proposed legislative changes. Carl Martin agreed and stated that the proposed bill's sponsor is Representative Michelle Reagan, who sponsored last year's HB 2341. Moving forward with the proposed bill does not mean that changes cannot be made during the legislative session.*

**MOTION:** *To submit proposed legislative changes, acknowledging that changes may be made once a bill folder is opened, by Commissioner Peterson.  
Seconded by Commissioner Runbeck.*

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

**XV. For information and discussion, not action:**

**A. Computer Based Testing "CBT" Status and Statistics**

*Mr. Carl Martin provided a memo on Computer Based Testing, with a brief analysis and raw statistical data.*

*Commissioner Baker asked if there is a plan to look at individual questions on the tests, to which Mr. Martin answered "yes". Commissioner Peterson would like to see statistics on the number of times it takes a person to pass. Commissioner Fraker also asked if Mr. Martin has seen statistics from Metro Institute on the number of people who take Metro's classes and how many actually pass. Mr. Martin said we have not seen that data, and does not know whether it exists, but that we could request it from the vendor. Mr. Martin further mentioned that if an individual studied, they would pass the tests.*

**XVI. For information, discussion and action:**

**A. Election of Commission Officers for 2004**

**MOTION:** *To nominate Commissioner Peterson as Chairman by Commissioner Hartley.  
Seconded by Commissioner Robinson.*

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

**MOTION:** *To nominate Commissioner Fraker as Vice-Chairman by Commissioner Hartley.*

*Seconded by Commissioner Robinson.*

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

**MOTION:**    *To nominate Commissioner Runbeck as Secretary by Commissioner Robinson.  
Seconded by Commissioner Hartley.*

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

**XVII. For information and discussion, not action:**

**A. Budget**

*Ms. Lisa Gervase stated that SPCC has used 42% of its appropriated funds as of November 30, 2003.*

**B. Case Status Report**

*Ms. Lisa Gervase gave the Commissioners a one page summary of cases as of December 2003. There are 97 active cases in various stages and 13 are scheduled for hearing.*

**XVIII. Adjournment - 2:35 P.M.**

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

**VOTE:**                    *5 - 0 Motion carried.*