

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

COMMISSION MEETING
FRIDAY, January 9, 2004 - 9:30 A.M.
MINUTES

I. Call to order, Commissioner roll call

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

(Commissioner Allen arrived at 9:55 A.M.)

Commissioners Absent: *None*

Staff Present: 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. *Ms. Gervase mentioned that the SPCC received two thank-you letters, one from a Realtor about the assistance that Inspector Jason Aanderud provided with a termite issue, and one from Barbara McKenzie (Zap Pest Control) pertaining to the help that licensing staff provided.*

III. Communication with Commissioners. *None*

IV. Consent Agenda

A. Applications for New Business License

1. Agee, Byron Scott Action Termite Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Wood Destroying Insect - Control and "B8" Wood Destroying Insect Inspection)

2. Andrews, Chester D. Arizona On Line Pest Control (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" *Pulled*)

**Wood Destroying Insect - Control, and
"B8" Wood Destroying Insect Inspection)**

MOTION:

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

VOTE:

*6 - 0 Motion carried. (Commissioner Allen
not present).*

Commissioner Baker requested a discussion on the semantics of the word "On-Line" because he felt that this company may be doing pest control over the Internet. Ms. Lisa Gervase stated that this is an existing company that changed ownership and previously received Commission approval. The company was a corporation and it is now a sole proprietorship. A name either has to be registered with the Secretary of State or the Corporation Commission. Ms. Gervase further stated if a company is not properly practicing pest control then it is an issue for enforcement. No other Commissioners had any concern.

3. **Blankenship, Daniel Lynn** Overall Pest Control (Activating Qualifying Party for new business license in "B2" Wood Destroying Insect - Control)
4. **Buell, Justin Isaac** JCB Exterminating (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
5. **Collman, Carl** Eco Sense Pest Management (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
6. **Curry, Roy LaVern** Spirit Pest Control (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
7. **Garcia, Sr., Nicolas Tabarez** Desert Ornamental Turf & Weed Solutions (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental)
8. **Kosatka, Michael** Cromley Exterminating (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)

Ms. Gervase commented that staff now had an insurance certificate reflecting that proper insurance is in place.

9. Mastalsz, Jimmy Harvest Landscaping, Inc. (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control)
10. Ondrus, Eric Lee Emergency Response Pest Control (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
11. Renshaw, Kenneth W. Valley Bee Control, Inc. (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
12. Rogers, Stanley Erman
Pulled Reforestation Services, Inc. (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control)

MOTION:

*To approve by Commissioner Runbeck.
Seconded by Commissioner Hartley.*

VOTE:

6 - 0 Motion carried. (Commissioner Baker Abstained)

Commissioner Baker asked Mr. Rogers if they plan to have a physical office in the State of Arizona. Commissioner Baker has concerns of a company coming from out of State to do work and he feels the law should change in this regard so that there is a location for the SPCC to inspect.

Mr. Stanley Rogers stated that their company operates totally off of its vehicles, and only does Right of Way work for the railroads. Mr. Rogers stated that their trucks will be equipped with daily spray logs, labels, etc., and their company does in-house training for their employees, and those records are maintained in their main office. Mr. Rogers further stated their company has never been sanctioned and they only hire experienced licensed people.

13. Strong Roy Collier Prescott Pest Control (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
14. Turner, David James Turner Tree Management, LLC.

(Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental)

15. Tyree, Charles Winford

The F. A. Bartlett Tree Expert Company (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control & "B5" Turf & Ornamental)

This license was approved subject to an insurance certificate reflecting that proper insurance is in place being received by the SPCC office within one week.

B. Applications for Existing Business License

1. Ahrendt, Garry D.

Baron Pest Control, Inc. (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control & "B5" Turf & Ornamental)

2. Todd, William Davidson

Sun Lakes Homeowners Assoc. # 2, Inc. (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental)

3. Welsch, Frederick Thomas
Pulled

TruGreen LandCare, LLC. (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control)

MOTION:

*To approve application to activate in the "B3" and "B5" categories by Commissioner Runbeck.
Seconded by Commissioner Fraker.*

VOTE:

7 - 0 Motion carried.

Mr. Frederick Welsch of TruGreen LandCare, LLC, stated that this application should be in the "B3" and "B5" categories. Mr. Robert Tolton stated that Mr. Frederick Welsch's application was for the "B3" category only and that he had not yet passed the "B5" exam when he submitted his application. Commissioner Robinson confirmed that Mr. Welsch's

application only listed the "B3" category.

Mr. Frederick Welsch stated he did not plan to activate his QP until he passed both the "B3" and "B5" categories. Ms. Lisa Gervase asked Mr. Welsch when he passed the "B5" exam. Mr. Welsch stated he passed the "B5" on November 25, 2003.

The exam results provided to the SPCC from the testing vendor, Metro Institute, reflect that Mr. Welsch did not pass the B5 exam.

Mr. Mike Francis quickly researched the Metro Institute Web site for more information, and found that it reflected that Mr. Welsch had passed both the "B3" and "B5" exams. Having confirmed this, the Commission granted this license in both the B3 and B5 categories.

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| 4. Willingham, Keith | Western Exterminator Company (Activating Qualifying Party for existing business license in "B4" Fumigation) |
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C. Applicants for QP Testing

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|-------------------------------------------------|---------------------------------------------------------------------------------------------|
| 1. Beebe, John Nelson | "B1" (General Pest/Public Health) |
| 2. Englehart, Gary Castle | "B1" (General Pest/Public Health) |
| 3. Espinoza, Robert C.
<i>Pulled</i> | "B2 and B8" (Wood Destroying Insect - Control and Wood Destroying Insect Inspection) |

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

VOTE: *7 - 0 Motion carried.*

Ms. Lisa Gervase suggested that the Commission handle Tab 37 before handling this agenda item and the item in Tab 30. Tab 37 pertains to Ms. Jenifer Salcido who is requesting a Temporary Qualifying Party License renewal and Tab 30 pertains to Ms. Salcido's application for a QP license in the "B1" category only. Mr. Robert Espinoza's application is in the "B2" and "B8" categories. These two applicants plan to both be QPs for the same business licensee, in their respective license categories, once they pass the exams. Since the three items are related, the Commission handled Ms. Salcido's renewal request first and then the two QP applications.

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| 4. Kudes, Gary W. | "B9" (Aquatic Pest Control) |
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- 5. Leyva, Angela M. "B2 and B8" (Wood Destroying Insect - Control and Wood Destroying Insect Inspection)
- 6. Lyng, William Arthur "B1" (General Pest/Public Health)
- 7. McElhannon, Steven D. "B3 and B9" (Right of Way/Weed Control and Aquatic Pest Control)
- 8. Nair, Scott Wood
Pulled

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

VOTE: *6 - 0 Motion carried. (Commissioner Robinson recused)*

- 9. Pace, Cody James Hamilton "B1" (General Pest/Public Health)
- 10. Peterson, Kevin Cecil "B3" (Right of Way/Weed Control)
- 11. Salcido, Jenifer Renee
Pulled

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

VOTE: *7 - 0 Motion carried.*

See discussion from Tab 22 above.

- 12. Twito, Michael Dean "B5" (Turf & Ornamental)

D. Request for Company name change

- 1. Rim Country Pest Applicators to Rim Country Applicators
Pulled (in error)

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

VOTE: *7 - 0 Motion carried.*

E. Treatment Proposals. None

End of Consent Agenda

MOTION: *By Commissioner Hartley to accept Consent Agenda with the exception of those items pulled for discussion (Tab 2, Tab 12, Tab 18, Tab 22, Tab 27, Tab 30 and Tab 32).
Seconded by Commissioner Fraker.*

VOTE: *6 - 0 Motion carried. (Commissioner Allen not present).*

V. Applications for Qualifying Party Examination not on the Consent Agenda

1. Aungst, Cheryl Louise **“B3 and B5” (Right of Way/Weed Control and Turf & Ornamental)**

Ms. Aungst appeared and answered Commissioners’ questions.

MOTION: *To approve QP Testing in the “B3” and “B5” Right of Way/Weed Control and Turf & Ornamental categories by Commissioner Hartley.
Seconded by Commissioner Fraker.*

VOTE: *7 - 0 Motion carried.*

Mr. Robert Tolton requested the Commission review this application to decide whether Ms. Aungst had the necessary experience and/or education. The manner in which her experience was recorded on the experience verification forms was not clear. Moreover, the experience and/or education must have been obtained within the past five years.

Commissioner Robinson referred to the back of Ms. Aungst’s Verification of Practical Experience form where additional hours were listed for each license category. Commissioner Robinson further stated that as a Golf Course Superintendent, it is difficult to calculate Ms. Aungst’s experience in hours. Furthermore, Ms. Aungst has been a Superintendent for three or four years, she has control of all pesticides, and has to make pest control decisions every day in her job.

Ms. Cheryl Aungst stated she has been in the business for the last 17 years, she has been licensed for many years, and has a bachelor’s degree in zoology.

There was some discussion about calculating Ms. Aungst’s experience, which led to the conclusion that she had the required experience.

2. Chapman, Robert E. **“B1” (General Pest/Public Health)**

Mr. Chapman appeared.

MOTION: *To approve QP Testing in the "B1" General Pest/Public Health category by Commissioner Baker.
Seconded by Commissioner Hartley.*

VOTE: *7 - 0 Motion carried.*

Mr. Robert Tolton requested Commission review of this application only to point out that Mr. Robert Chapman's experience is solely in bee control.

3. Hogue, Kevin Lynn "B1"(General Pest/Public Health)

Mr. Hogue appeared.

MOTION: *To approve QP Testing in the "B1" General Pest/Public Health category by Commissioner Baker.
Seconded by Commissioner Runbeck.*

VOTE: *7 - 0 Motion carried.*

Mr. Robert Tolton pointed out a question about Mr. Kevin Hogue's letters of recommendation.

4. Payne, III. , Frederick G. "B1" (General Pest/Public Health)

Mr. Payne appeared.

MOTION: *To approve QP Testing in the "B1" General Pest/Public Health category by Commissioner Runbeck.
Seconded by Commissioner Baker.*

VOTE: *7 - 0 Motion carried.*

Mr. Robert Tolton requested Commission review to decide whether Mr. Payne had a sufficient number of hours of Practical Experience.

Commissioner Runbeck stated that Mr. Payne has 30 to 36 months of current, full-time Practical Experience, which is sufficient.

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

A. Salcido, Jenifer Renee Younger Bros. Pretreat & Home Services, LLC.

Ms. Jenifer Salcido appeared and answered Commissioners' questions.

MOTION: *To approve renewal by Commissioner Fraker.
Seconded by Commissioner Runbeck.*

VOTE: *7 - 0 Motion carried.*

Ms. Jenifer Salcido stated she was applying for the renewal before it expires because the temporary was issued on December 5, 2003 and it expires on February 5, 2004. The Commission felt that there was good cause for the delay in procuring her QP license due to insufficient time to study and take the license exams, and the need to obtain the renewal at the January Commission meeting because the Temporary QP License would expire before the Commission met again.

VII. Complaints and/or Settlement Conferences

A. John Andrew Bates - Case # 2003-130

MOTION: *To accept Case # 2003-130 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 Robinson.
Seconded by Commissioner Runbeck.*

VOTE: *7 - 0 Motion carried.*

B. Burr Exterminating - Case # 2003-103

MOTION: *To accept Case # 2003-103 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 Hartley.
Seconded by Commissioner Runbeck.*

VOTE: *7 - 0 Motion carried.*

Commissioners Baker and Peterson questioned the analysis of giving Burr Exterminating three points on the MATRIX for the goodwill mitigating factor because the company only took corrective action after the SPCC became involved. Commissioner Baker questioned whether even taking corrective action should be considered "goodwill."

Commissioner Fraker felt that goodwill is appropriate when a company takes corrective action regardless of the motivation.

C. Frederick Bradstreet - Case # 2003-103APP

MOTION: *To accept Case # 2003-103APP 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 Runbeck.
Seconded by Commissioner Hartley.*

VOTE: *7 - 0 Motion carried.*

D. Zeb-Tec Services - Case # 2003-104

MOTION: *To accept Case # 2003-104 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 Runbeck.
Seconded by Commissioner Baker.*

VOTE: *7 - 0 Motion carried.*

Commissioner Robinson felt that the Business License and Qualifying Party should receive more than an Administrative Warning when there are two pretreatment violations (this case and the above case). Mr. Vince Craig said if a case has not yet been adjudicated, it is not a "prior violation" for a subsequent case. Neither of the cases on today's agenda for this company are a prior violation for the other.

Commissioner Baker questioned how staff treats the percentage of a termiticide shortage. Mr. Craig stated that it depends on other factors, such as the size of the property and if it is commercial or residential.

Mr. Dave Colvin stated on the first case the company went and treated the structure. Mr. Colvin stated that each case is based on its own merits for a percentage shortage.

Commissioner Runbeck pointed out that there were two different applicators who committed similar violations and asked whether training was addressed because it appears the company is not giving proper training to their applicators.

Mr. Colvin stated that there was insufficient training, which is why the QP should be issued a \$200.00 civil penalty. If there was proper training, the civil penalty would not have been applied.

Commissioner Fraker would like the company's and SPCC staff's pretreatment calculations to be placed in the Commission books. Chairman Peterson suggested that if any Commissioner wanted more factual information, to contact SPCC staff, rather than have more documents added to the Commission book.

Ms. Lisa Gervase stated in the past staff had provided more detailed information,

including the calculations. Some Commissioners want more detailed information, some do not. It can be voluminous to provide every document for every case, but staff can always answer any factual questions or fax documents on a case-by-case basis, if Commissioners have questions when reviewing the materials.

E. Zeb-Tec Services - Case # 2003-045

MOTION: *To accept Case # 2003-045 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 Hartley. Seconded by Commissioner Fraker.*

VOTE: *7 - 0 Motion carried.*

Commissioner Peterson stated the company received the “goodwill” mitigating factor, but not the applicator. Commissioner Peterson asked what the company did to correct the problem. Staff explained the warranty extension.

Mr. Dave Colvin stated the MATRIX does not make allowances for the applicator, so they do not benefit from “goodwill”, only the company does.

Commissioner Baker questioned whether staff follows-up on whether a company will maintain training records. Mr. Vince Craig stated that during office inspections they check on training for the employees.

Mr. Blair Driggs stated that training records are not required to be kept, but it benefits the company and QP to do so. During office inspections staff’s purpose in checking training records is to prevent companies from making them up later.

VIII. Unlicensed Activity

A. Gerald (Jerry) Fisher / Adobe Termite Control - Case # 2003-101

Tabled

Ms. Lisa Gervase requested that this case be tabled and placed on a future agenda when the current cases against Mr. Fisher and Adobe have been finally adjudicated, for quasi-judicial efficiency and economy. Then, the Commission can decide how best to proceed with this case.

B. Gerald (Jerry) Paul Fisher / Adobe Termite Control - Case # 2003-134

Tabled. See above note.

C. Cesar Reyes - Case # 2003-118

MOTION: *To accept recommendation to send Case # 2003-118 to the Office of*

*Administrative Hearings by Commissioner Runbeck.
Seconded by Commissioner Hartley.*

VOTE: 6 - 0 *Motion carried. (Commissioner Fraker recused)*

Mr. Cesar Reyes spoke after the Commissioners voted to send this matter to Administrative Hearings. Mr. Reyes stated he was doing landscaping work and has a business license from the City of Glendale (it is presumed that Mr. Reyes is referring to a transaction business license required for tax purposes).

Mr. Vince Craig stated, he and Inspector John Herwehe met with Mr. Reyes who admitted using Round-up, an herbicide, when he did the landscaping job.

Mr. Blair Driggs advised that the Commission could reopen this matter to hear what Mr. Reyes has to say and reconsider the prior vote, or let it go to an Administrative Hearing.

Commissioner Hartley stated this matter should go to hearing, since we have already heard the case and Mr. Reyes did not accept the agreement terms during the settlement conference. Consensus not to reopen.

D. Sun State Lawn Landscaping - Case # 2003-129

MOTION: *To accept Case # 2003-129 consent terms by Commissioner Hartley.
Seconded by Commissioner Baker.*

VOTE: 7 - 0 *Motion carried.*

Mr. Michael Schneider appeared and stated he has been in the landscaping business for 22 years and has been able to purchase chemicals. He felt that he should have been given a warning that this was unlicensed activity. He had no idea a license was required. Chemical suppliers have never asked him for a license. He said that he spends \$60,000 a year on chemicals. Landscaping publications he reads have not mentioned this issue. He believes that suppliers should be required to ask for a business, QP and Applicator license. He said that he agreed to accept the \$500.00 civil penalty and Cease and Desist for unlicensed activity. He further stated there are 47 outlets where chemicals can be bought. He currently has had to subcontract out all of his weed control work.

Commissioner Hartley stated that 30 years ago, the EPA wanted to take pesticides out of everyone's hands, but lobbying efforts defeated that goal. It is one thing for private use, but people doing commercial applications should know that they need to be licensed.

Commissioner Allen suggested that Mr. Schneider write an article in a trade journal

to educate the landscape industry about licensing requirements.

Commissioner Robinson asked if a QP needs to provide a license number to purchase chemicals.

Mr. Mike Francis stated if it is a restricted use-product they need to hold a license, but with general use pesticide, it all depends on the vendor.

IX. For information and discussion, not action:

A. Complaint Status Log

Mr. Vince Craig stated the Commissioners received a written Complaint Status Log.

Break from 11:15 A.M. to 11:30 A.M.

X. Felony Applicants

A. Bramlet, Michael Edward

Tabled because Mr. Bramlet was not present.

B. Granillo, Joe Valenzuela

Mr. Granillo appeared and answered Commissioners' questions.

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

VOTE: *7 - 0 Motion carried.*

Commissioner Runbeck asked how the Commission found out about the felony conviction. Mr. Robert Tolton stated Mr. Granillo disclosed it on his Applicator Renewal Application.

C. Gray, Gavin Forrest

Mr. Gray appeared and answered Commissioners' questions.

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

VOTE: *7 - 0 Motion carried.*

Commissioner Runbeck asked Mr. Gavin Gray if his sentence was strictly

probation and if his last conviction was in 1996.

Mr. Gavin Gray stated that he did not have to spend any time in prison and his last conviction was for forgery. Mr. Gray stated that someone asked him to cash a check that he should not have cashed. Commissioner Peterson asked Mr. Gray if he had an alcohol or drug problem. Mr. Gray responded that he had an alcohol problem and was in rehabilitation for nine (9) months.

D. Gould, Jeffrey Harper

Mr. Gould appeared and answered Commissioners' questions.

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

VOTE: *6 - 1 Motion carried. (Commissioner Peterson
opposed)*

Commissioner Runbeck was concerned about Mr. Jeffrey Gould's methamphetamine problem because of his most recent conviction in 2002. When asked by Commissioner Runbeck, Mr. Gould denied still using "meth". Mr. Gould said that his 1998 conviction was for possession of drugs and his 2002 conviction was for having equipment to manufacture drugs. Currently, Mr. Gould lives in an apartment, but from November 22, 2002 to September 2003, he was in rehabilitation. Mr. Gould stated he was in a 12-Step Program for 15 or 16 months and his probation will end in June 2006. Mr. Gould further stated he no longer associates with any of his old friends and is currently employed with University Termite and Pest Control. Mr. Rick Rupkey from University spoke on behalf of Mr. Gould and stated he has been employed with their company for 2 ½ months and he also works additional hours. Mr. Rupkey further stated they are satisfied with Mr. Gould's work and he does termite work which is a controlled environment, so they know his whereabouts at all times. Commissioner Runbeck stated she is not comfortable that he goes into consumers homes.

E. Schneider, Michael Shawn

Mr. Schneider appeared and answered Commissioners' questions.

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

VOTE: *7 - 0 Motion carried.*

Commissioner Runbeck asked Mr. Michael Schneider what drug was his using

at the time of his conviction and if he has used drugs since his conviction. Mr. Schneider responded "cocaine" and he has not used drugs since his conviction, and has been off probation since 1995.

- XI. Reconsideration of Commission's prior order for unlicensed activity and consideration of Assistant Attorney General's proposed consent for disciplinary action. This matter was voted on at the October 2003 meeting, and is being brought back to the Commission for further consideration.**

A. Timothy Fickett - SPCC Case # 2003-099

Mr. Fickett appeared and answered Commissioners' questions.

MOTION: *By Commissioner Allen not to reconsider the \$2000.00 civil penalty under A.R.S. § 32-2328 for unlicensed activity and to accept the consent terms for a \$500.00 civil penalty for the A.A.C. R4-29-301(A) violation.
Seconded by Commissioner Runbeck.*

VOTE: *6 - 1 Motion carried. (Commissioner Baker opposed).*

Ms. Lisa Gervase provided the Commission with a procedural overview of this matter, and a more detailed explanation in a written memo so that the Commission could consider all of its options .

Mr. Blair Driggs stated Mr. Fickett had been ordered to pay a civil penalty for unlicensed activity which was paid. Mr. Driggs stated when he went to hearing he did not have the option of presenting the unlicensed activity allegation under 32-2321 because it already had been handled under 32-2328 (and Mr. Fickett paid the civil penalty). He was only able to present the A.A.C. R4-29-301(A) allegation, so an offer was made to Mr. Fickett for a \$500.00 civil penalty which is before the Commission to consider.

Commissioner Peterson stated Mr. Fickett was cited for unlicensed activity under both the unlicensed activity statute and under the disciplinary statute. Ms. Lisa Gervase clarified that it would be more appropriate to handle unlicensed activity cases by someone who has an applicator license under the disciplinary action statutes rather than the unlicensed activity statute. She also clarified that Mr. Fickett's other case cannot be considered a prior violation because disciplinary action in that case was not taken before the date of the act in the current case.

Mr. Blair Driggs stated the Commission has jurisdiction over individuals who

have licenses, but there is a special provision for those that are not licensed.

Commissioner Runbeck stated for the sake of judicial economy, the Commission should not reconsider the \$2,000.00 civil penalty under the unlicensed activity statute. Commissioner Runbeck further stated that Mr. Driggs is asking the Commission to accept the Consent and to issue a \$500.00 civil penalty for the alleged misuse.

Mr. Timothy Fickett agreed to the \$500.00 civil penalty.

Commissioner Baker stated that Mr. Fickett should not have a license and he would like to know "why he did what he did" and he would like for Mr. Fickett to respond. He felt that Mr. Fickett's license should be revoked if the laws and rules supported this. Commissioner Baker would also like to know why Mr. Fickett did not show up for the October 2003 meeting in Tucson when this matter was considered. Mr. Fickett responded that he was working that day. Commissioner Baker asked Mr. Fickett if he knew the difference between Sentricon and First Line and why he lied to the consumer? Mr. Fickett stated that his prior employer told him to. Commissioner Baker asked Mr. Fickett if he understands the ramifications and he responded "yes."

Mr. Larry Alexander of Bug Busters, Mr. Fickett's current employer, spoke on behalf of Mr. Fickett, stating that Mr. Fickett has worked for him for the past 12 to 14 months and he would send him out to the consumer's homes because he is an upstanding employee, a good worker, is honest and he trusts him.

XII. For information, discussion, and possible action:

A. Continuing Education Committee Minutes. None

B. Legislation - Status of proposed changes voted on at December 2003 meeting

Mr. Martin stated he has forwarded the proposed changes to legislative council. On the copy of the proposed changes in the Commission books, item marked with an asterisk () were changed by legislative council and not what was submitted by SPCC. Representative Michelle Reagan will introduce the proposed bill. Mr. Martin stated there is a Plan A and Plan B. This bill, Plan A, is to do clean up; and Plan B will pertain to many continuing issues such as pest control offices out of State. Plan B will be on future agendas and continue to be discussed throughout the year, and hopefully presented at the next Legislative session.*

C. Enforcement Response Program/Matrix of Enforcement Actions - begin

discussing possible amendments

Mr. Martin explained the history of the MATRIX and asked for guidance from the Commission about possible changes. He stated that the “goodwill” mitigating factor comes from FIFRA, 40 CFR, for which the EPA provides a 20% reduction in penalties. Mr. Martin stated that the SPCC is becoming more consistent with using the MATRIX, which is only a tool.

Commissioner Peterson asked about corrective action. Commissioner Peterson stated there may be a disagreement if a company goes out and corrects. Commissioner Fraker stated there is past history with the MATRIX and the severity of a civil penalty, and now the MATRIX is a point process. Commissioner Baker agreed there is not enough severity in the MATRIX. Commissioner Allen stated the MATRIX addresses concerns, it provides guidance and it is only a tool. Commissioner Baker stated the MATRIX is dependable. Mr. Blair Driggs said the MATRIX is not mandatory or it will have to become a rule or statute.

Commissioner Robinson stated that staff should make the judgment calls about analyzing cases using the MATRIX. There may need to be more detail, such as instructions on the MATRIX, so staff can be consistent, but staff should not be micro-managed. Ms. Lisa Gervase stated that staff has held, and will continue to hold, “quality control” meetings regarding the use of the MATRIX.

Commissioner Fraker suggested that SPCC staff write down some case scenarios and they can help staff make a determination of how the MATRIX can be applied.

Commissioner Baker would like a summary of what transpired at the Settlement Conference, and how it was resolved. Commissioner Baker asked whether the portion on culpability can be ranked as a 5. Ms. Gervase stated there needs to be more rationale on the calculation guide.

The conclusion was for staff to amend the MATRIX as it deems appropriate, including creating some instructions/definitions, to include more detail about how aggravating and mitigating factors were determined, and if needed, to bring specific questions to the Commission.

D. Fungi Inspection License Category - seeking guidance from Commission for creating the application process, examination, study materials, and experience required to obtain this license

Mr. Carl Martin stated SPCC needs to have an exam and study materials put

together so that applicants can proceed with seeking this license category. Mr. Martin further stated there needs to be a working knowledge of where mold can be found in those structures and where they inhabit the structure.

Commissioner Hartley stated that the form that was approved can be used as a basis for questions, as well as wood preservation questions. Commissioner Hartley further stated fungi can attach itself to wood, fungi can infest structures where wood is present. There was discussion between Commissioner Hartley and Mr. Margin about how someone can differentiate fungi that causes structural problems versus those that do not. A working knowledge of fungi most likely to be, and not be, detrimental to a structure is necessary.

There was discussion about surveying licensees who performed fungi inspections in the former wood destroying organism category for guidance, determining whether probing and sounding a structure would be part of a fungi inspection category scope of work, and whether pesticide questions would be appropriate for a fungi inspection exam.

Commissioner Peterson asked whether help is needed in validating the tests. Mr. Martin responded that there is are mandated test questions based on SPCC statutes and rules. Mr. Martin plans to survey companies on what they are doing and how are they doing it to also gain validation information.

Ms. Lisa Gervase stated on the November 14, 2003 Minutes on Page 11 and 12 there was a Motion made to approve the Fungi Inspection Report form.

Larry Musgrove, Western Exterminating, questioned whether the fungi inspection report was for health reasons or structural integrity. Commissioner Allen stated the purpose is to illuminate suspect conditions such as staining, water conditions, etc. Mr. Martin stated if a licensee suspects conditions then there is ample places on the form to list this information.

Mr. Mike Francis asked what experience would qualify for the 3,000 hours required for a QP license, suggesting that it would be experience from the former "C" and "C3" categories if a licensee did previous inspections. Commissioner Peterson said that staff will have to use a "trial and error" process because there is no concrete guidance. Commissioner Hartley said that he does not know anybody that has 3,000 hours of practical experience to inspect for fungi.

Mike Means, Metro Institute, said that he thought that fungi inspection was removed from the wood destroying organism category. Commissioner Allen said that this is an evolving issue. The first step is to separate fungi from the

wood destroying organism category. The second step is to limit the interpretation of the inspection form and the scope of the license category, at the beginning of this process.

Commissioner Hartley was concerned about overlapping jurisdiction for licensing mold inspectors. Ms. Gervase stated that Home Inspectors are licensed by the Board of Technical Inspectors, but do not inspect for fungi any more than they inspect for termites. They generally make a referral to a proper professional if further inspection is needed.

XIII. 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 Hartley discussed having questions about the Wood Destroying Insect Inspection Report “WDIIR” on the exam that may require a person to memorize the form, as opposed to having the form reprinted on the exam. Mr. Carl Martin stated the form should be memorized by licensees, and that the questions are the basics about knowing what to put down in what boxes.

Commissioner Peterson discussed reviewing the exam.

Trent Hicks, Casey’s Exterminators, commented about the B8 exam vis-a-vis having questions about mold.

XIV. Approval of Minutes

November 14, 2003 (regular session) Minutes.

MOTION: *To approve the November 14, 2003 Minutes by Commissioner Hartley. Seconded by Commissioner Allen*

VOTE: *6 - 0 Motion carried. (Commissioner Runbeck abstained)*

December 12, 2003 (regular session) Minutes.

MOTION: *To approve the December 12, 2003 Minutes by Commissioner Hartley. Seconded by Commissioner Robinson.*

VOTE: *6 - 0 Motion carried. (Commissioner Allen abstained)*

XV. Scheduling of future meetings/agenda items

Current Proposed dates and locations

February 13, 2004Scottsdale, AZ
March 12, 2004Scottsdale, AZ
April 9, 2004 Tucson, AZ
May 14, 2004 Scottsdale, AZ
June 11, 2004
July 9, 2004.....Scottsdale, AZ

Consideration of not holding January and June Commission meetings.

Commissioner Peterson stated because of the holidays and renewals in December and May, the Commission may want to consider not holding meetings in January and June. There were comments from Commissioners Hartley and Baker about why there should be meetings every month: the Commission has always held monthly meetings, perhaps items on the agenda for those months could be reduced, people make plans based on a 12-month schedule, there may be criticism if meetings were not held in January or June, applications may not be timely ruled on. Commissioner Baker suggested moving the January date so that it was not so soon after December or holding telephonic meetings for emergency items only. Commissioner Harley stated he is not in favor of changing the Commission meetings.

Unless otherwise directed, meetings will continue to be held on the second Friday of every month.

XVI. For information and discussion, not action:

A. Expenditure Report

Ms. Lisa Gervase stated that SPCC has used 47% of its appropriated funds as of December 31, 2003. A written report was provided to the Commissioners, including a notice about paying the Executive Director's dues to the State Bar of Arizona.

B. Case Status Report

Ms. Lisa Gervase gave the Commissioners a one page summary of cases as of January 2004. There are 99+ active cases in various stages and 7 are currently scheduled for hearings.

C. License Applications - Notice: all require a fee. As of January 2004, SPCC will be charging a fee for all license applications. There is no fee exemption for “broadening.”

Ms. Lisa Gervase stated her understanding that there is no exemption for an applicator or QP from paying a license application fee, even if they are merely “broadening”. The “broadening” fee was removed from the SPCC statutes in the 2002 legislative session, leading to the conclusion that the whole application fee must be paid. Commissioner Hartley stated his displeasure of paying an application fee, examination fees, retesting fees, and now paying even more money to broaden. Commissioner Hartley stated this is “bureaucratic mumbo jumbo.” Ms. Gervase stated the goal is to comply with the law under A.R.S. §§ 32-2312 and 32-2314 and treat everyone the same. Mr. Carl Martin stated his understanding that the fee statute under A.R.S. § 32-2317 requires an application fee and since the SPCC treats and each category as a separate license, there would be an application fee even if an applicant holds a license in one category and wants another category. The SPCC’s time of processing an application to “broaden” is equivalent to a first-time applicant.

Commission Peterson stated this issue may have to go on Plan B legislative proposals. Commission Runbeck stated \$30.00 is not a lot of money to pay for a license to enter an occupation. Other occupations pay a lot more for an application, testing fees, etc.

Mr. Blair Driggs stated he will research the law to determine the SPCC’s option. A fee will have to be paid if it is in the law, or the law can be changed.

Commissioner Hartley asked if the application forms have been changed and Ms. Gervase responded “yes.”

XVII. Adjournment - 2:05 P.M.

MOTION: *To adjourn by Commissioner Runbeck.
 Secoded by Commissioner Baker.*

VOTE: *7 - 0 Motion carried.*