

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

COMMISSION MEETING
FRIDAY, February 13, 2004 - 9:30 A.M.
MINUTES

I. Call to order, Commissioner roll call

Commissioners Present: Commissioners Allen, Fraker, Hartley and Peterson

Commissioners Absent: Commissioners Baker, Robinson and Runbeck

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 a thank-you letter was received praising the front office telephone personnel and Inspector Alan Pugh. Ms. Gervase also mentioned that SPCC will be providing a Continuing Education Class on March 19, 2004 at the Apache Junction High School Auditorium.*

III. Communication with Commissioners. *Commissioner Hartley mentioned receiving a telephone call from Josh Schumacher, Bayer, who asked him a question on procedures.*

IV. Consent Agenda

A. Applications for New Business License

1. Denny, Claudia A. **K/J Pest Control** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)

Ms. Gervase commented that SPCC will be getting an updated insurance certificate.

2. Dunn, Oby Allen **All-Pro Pest Control** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Wood

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

3. Ghiz, John

Budget Brothers Termite & Pest Elimination (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Wood Destroying Insect-Control, and "B8" Wood Destroying Insect Inspection)

4. Hitchcock, Lia Marie

1st Choice Termite & Pest, Inc. (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

5. Macis, Tony H.

CTM Pest Control (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

Commissioner Hartley knows Mr. Macis who was a Manger for Truly Nolen.

6. Pace, Cody James Hamilton
Pulled

Pace Pest Control (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)

Ms. Gervase commented that SPCC will be getting an updated insurance certificate.

Pulled to discuss alternative names because there is a licensee, "Pace Pest Control".

MOTION:

To approve the business name Pace Family Pest Control, LLC contingent upon all appropriate documentation being submitted to the SPCC, by Commissioner Allen. Seconded by Commissioner Hartley.

VOTE:

4 - 0 Motion carried.

7. Phillips, Kevin Kenneth Sias

Westin La Paloma Resort and Country Club (Activating Qualifying Party for new

business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

Ms. Gervase commented that SPCC will be getting an updated insurance certificate.

8. Reed, Dennis R. **Integrated Landscape Management, LLC** (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf and Ornamental Horticulture)

9. Shimkus, Edward B. **The Golf Club Scottsdale** (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

10. Townsend, John Dwain **Apex Landscape Maintenance, LLC.** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

B. Applications for Existing Business License

1. Cons Jr., Joseph Robert **S.O.S. Exterminating Inc.** (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control & "B5" Turf & Ornamental Horticulture)

Ms. Gervase commented that SPCC will be getting an updated insurance certificate.

2. Schnubel, Kurt Edward **Osrose, Inc.** (Activating Qualifying Party for existing business license in "B2" Control of Wood-Destroying Insects)

C. Applicants for QP Testing

1. Ahearn, James Robert "B1" (General Pest/Public Health)

2. Aviles, Hector Enriquez "B1" (General Pest/Public Health)

3. **Campsen Jr., Raymond F.** "B1, B2 and B8" (General Pest/Public Health, Wood Destroying Insect-Control and Wood Destroying Insect Inspection)
4. **Cenatiempo, Kris Neal** "B1" (General Pest/Public Health)
5. **Cozzens, Dustin Trevor** "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)
6. **Crowner, Evert Edward** "B2 and B8" (Wood Destroying Insect Control and Wood Destroying Insect Inspection)
7. **Feuillett, Eben Sief** "B1, B2 and B8" (General Pest & Public Health, Control of Wood-Destroying Insects and Wood Destroying Insect Inspection)
8. **Gniffke, Chad James** "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)
9. **Joy, Patrick Harold** "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)
10. **Noreus, Matthew Allan** "B5" (Turf & Ornamental Horticulture)
11. **Paul, Edward Joseph** "B1, B2 and B8" (General Pest/Public Health, Control of Wood-Destroying Insects and Wood Destroying Insect Inspection)
12. **Piper, Bob Lee** "B5" (Turf & Ornamental)
13. **Sanchez, Frank A.** "B1" (General Pest/Pubic Health)
14. **Styer, Lee Franklin** "B1, B3 and B5" (General Pest/Public Health, Right of Way/Weed Control and Turf & Ornamental Horticulture)
15. **Trott, Roger Fremont** "B1, B2, B3 and B8" (General Pest/Public Health, Wood Destroying Insect Control, Right of Way/Weed Control and Wood Destroying Insect Inspection)

Commissioner Hartley knows Mr. Trott who worked in management and sales for Truly Nolen in Tucson.

D. Request for Business License Name Change

- 1. Five Starr Termite & Pest Control to 5 Star Termite & Pest Control, Inc.**
- 2. Truguard Pest Control to Safeguard Pest Control, Inc.**

E. Treatment Proposals

- 1. A Security Pest Control Co.**

- 2. Action Termite Control, LLC**

Pulled - Discussion by Commissioner Peterson about having a graph to draw a diagrammatic description if something is found during the treatment. Mr. Dave Colvin stated a diagram could be shown on graph paper. Commissioner Allen responded that the Treatment Proposal meets all the other requirement and graph paper can be added.

MOTION: *To approve and attach graph paper to the Treatment Proposal, by Commissioner Hartley.
Seconded by Commissioner Allen.*

VOTE: *4 - 0 Motion carried.*

- 3. Allgon Exterminating, Inc.**

- 4. Bug Off Pest Control**

- 5. Conn Pest Control Verde Valley LLC**

- 6. CTM Pest Control**

Pulled - Commissioner Peterson stated the Treatment Proposal does not contain the Business License number.

MOTION: *To approve and to place the Business License Number on the Treatment Proposal, by Commissioner Allen.
Seconded by Commissioner Hartley.*

VOTE: *4 - 0 Motion carried.*

- 7. Terminix**

Pulled - Commissioners requested that when there is more than one treatment proposal (here there were six), they should be separated in the Commission books to be able to distinguish each proposal .

MOTION: *To approve by Commissioner Allen.*

for Mr. William Stewart which will be placed on the March 2004 Agenda.

VI. Complaints and/or Settlement Conferences

A. First Inspection Consultants - Case # 2000-041

MOTION: *To accept Case #2000-041 enforcement response program 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 Fraker.
Seconded by Commissioner Allen.*

VOTE: *4 - 0 Motion carried.*

Commissioner Fraker asked Mr. Vince Craig if the Respondent agreed to the terms and he responded "yes." Commissioner Peterson stated that not timely providing requested records was a blatant law violation, and asked if the Respondent corrected the treatment. A complete treatment was performed and the warranty was extended. Mr. Craig stated that the shortage was 32 gallons and only the exterior was treated, not the interior. Commissioner Fraker stated that there was an error in determining the type of slab foundation. It was a floating slab, not monolithic. Therefore, both the interior and exterior should have been treated.

VII. For information and discussion, not action:

A. Complaint Status Log

VIII. Felony Applicants

A. Bramlet, Michael Edward

Mr. Bramlet appeared and answered Commissioners' questions. He was convicted of assault, and had a gun with him. Ms. Gervase mentioned that Mr. Bramlet's felony was in 1998 and not in 1988.

Tabled because the Commissioners would like for the other three Commissioners who were not present to hear this matter. Information concerning Mr. Bramlet will be forwarded to those Commissioners for discussion at the March 2004 meeting. Mr. Bramlet was encouraged to bring a supervisor from his current employer as a reference.

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

VOTE: *2 - 2 Motion failed. (Commissioners Fraker and Peterson opposed)*

Mr. Bramlet is still on parole (until 7/04), and Commissioners Fraker and Peterson would like to see a longer clean track record before approving his application. Mr. Bramlet has been out of prison for 6 months. Commissioner Allen stated that this offense occurred five years ago. Commissioner Hartley stated this is a serious charge, but the State has dealt with this appropriately, and based on the merits Mr. Bramlet far exceeds some people that we have seen before the Commission, and a negative vote will hold him back. The Commission was in favor of placing this on the March Agenda, rather than making a motion to deny Mr. Bramlet so he would not have a denial on his record.

Commissioner Peterson questioned Mr. Bramlet about the "escape" that sent him to prison for 3 years. Mr. Bramlet stated that he reported late to his work release program and his probation was violated. He was 24 hours late because he was dealing with a personal matter concerning his marriage and he did not know it would result in escape charges and send him to prison. Mr. Bramlet stated he currently works in a night club as a bar back. Mr. Bramlet further stated that he does drug screening once a month, has turned his life around, and is involved with the church.

B. Hayes, Ronald Earl

Mr. Hayes appeared answered Commissioners' questions. Convicted of possession of drug related equipment and chemicals. Probation from 10/99 to 10/03.

MOTION: *To approve by Commissioner Fraker
 Seconded by Commissioner Hartley*

VOTE: *4 - 0 Motion carried.*

Mr. Ronald Hayes stated he was involved with his brother who was wanted by the FBI. Mr. Hayes stated his conviction was a felony. Mr. Hayes further stated his brother brought the items to his trailer, but he was aware of them. His brother has served six years of a 10-year sentence. Mr. Hayes had a prior conviction in Nevada for embezzlement which was a misdemeanor. Mr. Hayes informed the Commission of the 360 hours of community service and has done monthly urine screens for the last five years. Mr. Hayes submitted letters of recommendation from his probation officer and his current employer. Mr. Hayes is currently certified in Nevada.

Break from 10:30 A.M. to 10:40 A.M.

**IX. Recommended Decisions and Orders of the Office of Administrative Hearings (OAH)
Administrative Law Judges (ALJs)**

A. Adobe Termite Control/Jerry P. Fisher (Cases Consolidated for Hearing) - OAH
Docket # 00A-218-SPC/SPCC Case # 2000-218 and OAH Docket # 01A-057-
SPC/SPCC Case # 2001-057

MOTION: *To approve Findings of Fact and Conclusions of Law, by Commissioner Hartley.
Seconded by Commissioner Fraker.*

VOTE: *4 - 0 Motion carried.*

MOTION: *To accept Recommended Order that an Administrative Warning be issued against Adobe Termite Control's business license No. 5509 and to revoke Mr. Fisher's Qualifying Party License No. 1458 B1 B2 B8 and Applicator License No. 940129 B1 B2 B8, by Commissioner Hartley.
Seconded by Commissioner Allen.*

VOTE: *4 - 0 Motion carried.*

Commissioner Hartley questioned revoking an already expired license. Mr. Driggs stated if the Commission revokes a license, the licensee cannot seek to renew the expired license.

B. Adobe Termite Control/Jerry P. Fisher - OAH Docket # 01A-243-SPC/SPCC Case # 2001-243

MOTION: *To approve Findings of Fact and Conclusions of Law, by Commissioner Hartley.
Seconded by Commissioner Allen.*

VOTE: *4 - 0 Motion carried.*

MOTION: *To accept Recommended Order that an Administrative Warning be issued against Adobe Termite Control's business license No. 5509 and to revoke Mr. Fisher's Qualifying Party License #1458 B1 B2 B8 and Applicator License # 940129 B1 B2 B8, by Commissioner Hartley.
Seconded by Commissioner Allen.*

VOTE: *4 - 0 Motion carried.*

Mr. Blair Driggs explained that there were no prior violations to justify more severe discipline on the business license because there was no disciplinary action imposed in any case before the violations occurred in these cases against Adobe.

C. Adobe Termite Control/Jerry P. Fisher (Cases Consolidated for Hearing) - OAH Docket # 02A-130-SPC/SPCC Case # 2002-130, OAH Docket # 02A-134-SPC/SPCC Case # 2002-134 and OAH Docket # 02A-135-SPC/SPCC Case # 2002-135

MOTION: *To approve Findings of Fact and Conclusions of Law, by Commissioner Hartley.*

Seconded by Commissioner Allen.

VOTE: 4 - 0 *Motion carried.*

MOTION: *To modify the grammar of the Recommended Order and issue an Administrative Warning against Adobe Termite Control's business license No. 5509 and to revoke Mr. Fisher's Qualifying Party License #1458 B1 B2 B8 and Applicator License # 940129 B1 B2 B8, by Commissioner Hartley.*
Seconded by Commissioner Allen.

VOTE: 4 - 0 *Motion carried.*

Commissioner Harley stated this is sending a message out to the industry. Mr. Driggs stated the laws changed during the last legislative session to allow more than an administrative warning against a business licensee in certain circumstances, but the key to having a "prior" is to have an actual discipline imposed by the Commission before a future violation occurs.

D. All West Pest Management d.b.a. Rawhide Pest Management/Jay Josephs/John D. Lewallen - OAH Docket # 02A-117-SPC/SPCC Case # 2002-117

MOTION: *To approve Findings of Fact and Conclusions of Law as amended (4, 5, & 7 were modified to read A.R.S. § 3-2321(B)(2)), by Commissioner Hartley.*
Seconded by Commissioner Allen.

VOTE: 4 - 0 *Motion carried.*

MOTION: *To modify the grammar of the Recommended Order and issue Administrative Warnings against All West Pest Management d.b.a. Rawhide Pest Management's business license No. 5791 and Mr. John D. Lewallen's applicator license No. 030046 B1 B2 B8. And, strike the recommended third paragraph and add that All West Pest Management d.b.a. Rawhide Pest Management, Jay Josephs and John D. Lewallen, jointly and severally, pay \$4,648.00 in TARG fees and \$4,648.00 in late TARG fees within 30 days, by Commissioner Hartley.*
Seconded by Commissioner Allen

VOTE: 4 - 0 *Motion carried.*

Commissioner Peterson asked about the procedure to collect the fees. Ms. Lisa Gervase stated the case will be sent to the Attorney General's Office for collection if the respondents fail to pay.

E. Joey S. Koniaz - OAH Docket # 02A-110-SPC/SPCC Case # 2002-110

MOTION: *To modify the Findings of Fact and Conclusions of Law (Number 1 was modified from “A.R.S. § 32-2321 (B)(1)(5)” to “A.R.S. § 32-2321(B)(2)(5)) by Commissioner Fraker.
Seconded by Commissioner Fraker.*

VOTE: *4 - 0 Motion carried.*

MOTION: *To accept the Recommended Order to revoke Mr. Koniaz’s Applicator License # 010008 B1, by Commissioner Hartley.
Seconded by Commissioner Fraker.*

VOTE: *4 - 0 Motion carried.*

E1. Alan Perry - OAH Docket # 02A-109-SPC/SPCC Case # 2002-109

MOTION: *To approve the Findings of Fact and Conclusions of Law, by Commissioner Allen.
Seconded by Commissioner Hartley.*

VOTE: *4 - 0 Motion carried.*

MOTION: *To modify the Recommended Order and impose a civil penalty in the amount of \$500.00, not \$300.00, on Mr. Alan Perry to be paid to the Commission within 30 days of the effective date of the entered Order, by Commissioner Allen.
Seconded by Commissioner Hartley.*

VOTE: *4 - 0 Motion carried.*

**E2. Alan Perry - OAH Docket #02A-152-SPC/SPCC Case #2002-152
Pulled**

Ms. Gervase informed the Commissioners that the SPCC has not yet received the Recommended Decision from the Office of Administrative Hearings.

F. Jason Starr - OAH Docket # 02A-114-SPC/SPCC Case # 2002-114

MOTION: *To approve the Findings of Fact (with minor amendment to Finding 1) and Conclusions of Law, by Commissioner Hartley.
Seconded by Commissioner Fraker.*

VOTE: *4 - 0 Motion carried.*

MOTION: *To modify the Recommended Order (minor grammar changes) and to revoke Mr. Starr's Applicator License # 010893 B1 B2 B8, by Commissioner Allen.
Seconded by Commissioner Hartley.*

VOTE: *4 - 0 Motion carried.*

G. Ricky G. Tarpley - OAH Docket # 02A-151-SPC/SPCC Case # 2002-151

MOTION: *To approve the Findings of Fact and Conclusions of Law, by Commissioner Allen.
Seconded by Commissioner Fraker.*

VOTE: *4 - 0 Motion carried.*

MOTION: *To accept Recommended Order to revoke Mr. Tarpley's Applicator License # 000141 B2 B8, by Commissioner Allen.
Seconded by Commissioner Fraker.*

VOTE: *4 - 0 Motion carried.*

X. Recommended dismissals of cases, without prejudice, against Businesses, QPs and Applicators; and suspension of these Business, QP and Applicator Licenses, for nonpayment of renewal fees

A. Don's Termite Service, Inc./Dennis Crawford/Melissa Babirak - Case #99-037 - recommend dismissal without prejudice against Business License, QP License and two Applicator Licenses; and suspension of Crawford's QP license (#1917) and Applicator License (#960365), and Babirak's Applicator License (#960364) for nonpayment of renewal fees.

B. Milroy George Kellogg - Case #2000-309 - recommend dismissal without prejudice against Applicator Kellogg and suspension of Kellogg's applicator license (#990609) for nonpayment of renewal fee.

C. Joseph Phillips - Case #2000-268 - recommend dismissal without prejudice against Applicator Phillips; and suspension of Phillips' applicator license (#000521) for nonpayment of renewal fees.

D. Tucson Pest Max - Case #1998-182 - recommend dismissal without prejudice against Business License (#5441), QP License (#1829) and Applicator License (#941003); and suspension of all three licenses for nonpayment of renewal fees.

Commissioner Allen asked whether cases that are dismissed without prejudice can be reopened. Ms. Lisa Gervase responded "yes." Commissioner Peterson stated this is for

judicial efficiency. Mr. Blair Driggs suggested that all four above matters be voted on as a group.

MOTION: *To dismiss without prejudice the above cases and suspend the above licenses for nonpayment of renewal fees, by Commissioner Allen
Seconded by Commissioner Hartley.*

VOTE: *4 - 0 Motion carried.*

XI. Reconsideration of Denial of Qualifying Party License in B5 Category

A. Emmord, Jr.; Ralph Frederick "B5" Turf and Ornamental

MOTION: *To reconsider the denial of Mr. Emmord's application to test in the B5 qualifying party license category and to approve Mr. Emmord for qualifying party testing, by Commissioner Allen.
Seconded by Commissioner Fraker.*

VOTE: *4 - 0 Motion carried.*

Ms. Lisa Gervase stated that Mr. Emmord was denied to test in the "B5" category for a qualifying party license at the November 2003 meeting. Ms. Gervase further stated an informal settlement conference was held with Mr. Emmord before this matter was sent to hearing. It was determined that Mr. Emmord does hold an applicator license in the B5 category, which was issued in May 2003. Also, Mr. Emmord does have the required turf and ornamental experience.

XII. For information, discussion, and possible action:

A. Continuing Education Committee Minutes

Mr. Carl Martin reported that there were 12 requests for accreditation. Commissioner Peterson asked Mr. Martin for clarification on the University of Georgia Distance Learning course. Mr. Martin stated it is a distributed education model that includes face-to-face study via satellite classroom participation, video e-conferencing, with text books, video tapes and emails to instructors.

MOTION: *To accept the Continuing Education Meeting Minutes, by Commissioner Hartley.
Seconded by Commissioner Fraker.*

VOTE: *4 - 0 Motion carried.*

Break from 11:40 A.M. to 11:51 A.M.

B. Legislation

1. SPCC Bill (HB 2119)

Ms. Lisa Gervase discussed HB 2119 which is the Commission's bill. The Commissioners received a copy of the bill at prior meetings, and there is a link on the SPCC web site to HB 2119. Ms. Gervase mentioned the concerns that have been raised to date with respect to this bill. The first one is in respect to record retention, and a suggestion that the time frame be five years for termite treatment records, wood destroying inspection reports, and fungi inspection reports, and three years for all other records.

The second issue is being raised by State and Political Subdivisions about the definition for "persons" which specifically includes political subdivisions. Because the statute talks about persons that can be licensed as an applicator. There seems to be a feeling that the State and Political Subdivisions do not have to be licensed other than having an applicator license. One proposed amendment is to create an exemption for people who hold a registered sanitarian certification from the Department of Health Services and an SPCC applicator license and are performing Public Health Vector Control, to meet the experience and education requirement to take the QP exam. Ms. Gervase needs the Commission's opinion on this matter.

The other issue for the State and Political Subdivision is the fee issue. Whether they can afford to pay the license application fee, exam fee, and renewal fee, so there is a proposal to exempt them from the business licensee fee and renewal fee.

Mr. Carl Martin stated with Political Subdivisions that the provision of a technical expert to ensure that pesticide applications made in schools, along rights-of-way and water-ways, etc., should be a qualifying party that is a competent person to train and supervise the work of applicators.

Mr. Barry Aarons thanked Ms. Gervase and Mr. Martin for the cooperative effort on this bill. Mr. Aarons commented that the APMA has not taken any position on the State and Political Subdivision issue. Mr. Aarons made two comments that if the State and Political Subdivisions do not have to pay fees for something that the Commission is required to provide, they are now going to be subsidized from the private sector. Secondly, Mr. Aarons is discomfited by a Political Subdivision exaggerating that there is going to be an outbreak of West Nile virus if they cannot qualify for licensure. There are a lot of people in this audience who would be more than happy to be contracted by the State and Political Subdivisions to take care of pest management.

Mr. Aarons spoke about the records retention. The APMA believes that having the five-year retention on termite treatments, FIRs, and WDIIRs is appropriate. Mr. Aarons stated APMA did not understand the fact that all other records would be swept into this five-year record retention and now many of the members have suggested that is a burden. What they would suggest is bifurcating the termite treatment records for which they want to

maintain that five-year retention, but for all other treatments go back to the three years.

Commissioner Peterson stated that if there is going to be an amendment it would be more appropriate that Carl Martin introduce the amendment and not the APMA. Mr. Aarons responded by saying that APMA would assist and he has been a lobbyist for 33 years and we are early in the session and there has been an extension of three weeks.

Commissioner Peterson stated to the Commissioners they have a handout by Ms. Gervase and he would like to look at them one at a time. Commissioner Peterson stated he has no problems with the record retention. Commissioner Hartley asked for five-year and three-year retention depending on the type of record. All Commissioners are in agreement about the record retention issue.

Commissioner Peterson stated the next issue is Political Subdivision and “persons.” Commissioner Peterson further stated that they do not want to live by the same rules as everyone else. Ms. Gervase stated this has become a legal issue and there has been one formal opinion written by one County Attorney which is now being reviewed by the Attorney General’s Office. Commissioner Hartley commented that these Political Subdivisions, such as City of Phoenix and school districts need to be monitored, licensed, and inspected just as anybody else. People in public housing, public buildings and schools need the same protection as elsewhere. Commissioner Allen stated there is a huge precedent to require licensing and regulation, such as with wastewater issues and construction projects. Commissioner Peterson agrees that they need to have oversight with a QP on staff.

Ms. Lisa Gervase suggested that school districts have one QP and a Business License per district as opposed to per school. The Commissioners agreed. As for the Public Health Vector Control, Ms. Gervase asked whether the registered sanitarian exemption should get them into the QP exam or a total exemption. There are people who are not coming to the table, but are going directly to the legislators and telling them things such as: small jurisdictions will be unable to meet the criteria for QP and therefore will not provide mosquito control and livestock and people will die. Mr. Martin stated there is one registered sanitarian in each county within the State of Arizona. The Commission desired the exemption to allow these applicants to take the QP exam, not be exempt from the exam.

For schools; however, the Commission felt that there must be a chain of command of responsibility. If there is a gap in that, consumers get hurt.

Ms. Lisa Gervase asked about the last option of business license fee exemptions for State and Political Subdivisions. Commissioner Hartley stated he does not see a problem of not having a fee for the application, but the testing vendor has a testing fee. Ms. Gervase stated that the vendor will have to comply with the law that there is no fee for an exam.

Commissioner Allen does not feel there should be a free exam. The Commission agreed to the business license application and renewal fee exemption.

Mr. Barry Aarons stated on behalf of the APMA that they support the resolutions.

2. APMA Bill and Proposed Amendment (HB 2504)

Ms. Lisa Gervase spoke on HB 2504 which is the APMA's bill. The first part of the bill talks about the termite action report form, and when it has to be filed, and under what circumstances. Ms. Gervase stated she has questions about the language of the bill. Ms. Gervase would like to add "format" on line 6 and add to line 7 "complete and accurate."

Commissioner Hartley asked Mr. Barry Aarons what problem needing correcting. Mr. Aarons, Executive Director for APMA, stated many of his members have some questions and there is some unclarity. Mr. Aarons has no problem adding "or format" and "complete and accurate" reports. The goal of the Legislature was to have a treatment trail. At least there would be a trail of companies for every initial treatment, and there would be a form, and you would know every company that has treated the home, and you could go back to the company for more information. If the Commission has some clarifying language, APMA will work with them on the issue to their satisfaction. Commissioner Hartley asked if this excludes filing TARFs on final grades. Mr. Aarons responded that is not their intention to do so and APMA will include that in their amendments. They are trying to clarify the law so there are no future disputes.

Mr. Aarons went through the second portion of the bill. There are circumstances where pretreaters will sign contracts with homebuilders, contractors to do pre-treats, and not get paid, but be responsible to do post treats for five years. This has become a severe problem in the industry. It has been suggested that they go to the Registrar of Contractors and file a complaint. It is hard for the industry member to not recoup the costs, so the option is to introduce legislation to get peoples' attention. Mr. Aarons stated the legislative proposal is, if you are not paid for the pretreat, you do not have to do the post treat. Ms. Reagan asked for resolution on this issue by having the five parties brought into this issue, which are the homebuilders, realtors, the Structural Pest Control Commission, the Registrar of Contractors and the industry represented by APMA. The parties can work on this issue and perhaps propose a change for next year's legislative session.

Commissioner Allen asked why a pest control operator would maintain a relationship with a contractor who is not paying their bills. Mr. Aaron deferred that question to Mr. Dan Sleezer, General Manager for SOS Exterminating, who said the environment in which they work involves quite a bit of politics. There are tens of thousands of dollars in billings every month, and builders find ways to avoid paying bills. If a PCO's bill doesn't meet the exact criteria of a builder, it's rejected and then late and not paid. PCOs do not file a complaint with the Registrar of Contractors if the bill is \$500.00 or less. Filing an ROC

complaint means losing the builders' business. 2% to 5% of pretreatments require retreatments over five years, and PCOs are obligated to do the retreatments even if they have not been paid.

Commissioner Allen said that it's up to the PCO to exercise its legal rights. Commissioner Hartley suggested that PCOs lien every building in case the builder doesn't pay.

Ms. Gervase stated this is off the table and no discussions should be taking place and asked the Commission if she should oppose this if it reappears in proposed legislation. The Commission expressed disfavor with this type of law change, and would oppose any such proposed legislation. Mr. Barry Aarons asked the Commission to not take a position, since it is not on the table.

Ms. Lisa Gervase stated the next issue in APMA HB 2504 is the "label is the law" for termite treatments. The rationale for this language was to move to label based enforcement to supercede any language in our rules that go beyond label requirements. For example: A.A.C. R4-29-407 that requires treating depth of foot to the top of the grade or treating abutting slabs. Ms. Gervase stated if this language is passed, it would supercede any rule that goes beyond the product label requirements for "before or during construction termite treatments".

Mr. Aarons stated the issue is the liquid termiticide under slab versus applications only to wood. The APMA deferred a decision on this issue until it heard what the Commission's position is. Commissioner Hartley does not want a law that precludes the Commission from imposing in Rule what is necessary for Arizona, which has unique termite activity. Commissioner Peterson agreed, stating that climatic conditions affect termites and efficacy, and that he doesn't want a label to limit Arizona's ability to customize treatment techniques and application. Commissioner Hartley stated that Arizona is unique for application and treatment techniques.

Dr. Jeff Lloyd of NISUS Corporation stated he is an expert in nonsoil applied termiticide treatments. Dr. Lloyd voiced his opinion that Arizona allows any type of new construction treatment, but only a "pretreatment" is subject to a 5-year retreatment requirement. Including borate treatments as a pretreatment would require everyone to step up to the same level of responsibility to perform retreatments for five years. Bora Care treatments do not trigger the five-year retreatment warranty because they are not considered a pretreat by definition. Ms. Lisa Gervase stated the law does not require what we know as pretreatments to be performed. Usually lenders require them. If a pretreatment is performed, it has to be done not only to the by product label, but also according to SPCC rules which have additional requirements. Rule also requires performing retreatments for five years after the pretreatment. But stand alone Borate treatments, if not a pretreatment and allowed by the lender, need to be TARFed, but by definition are not pretreatments so are not subject to other rule requirements, including the retreatment rule.

Commissioner Hartley said that there are several ways that have come about in the last 10 years to control termites. But, if only wood is protected, the termite entry points are not protected. Borates are good supplemental treatments, but the entry points also must be protected by a barrier. Based on his 35 years of experience with termites in Arizona, borates are a good supplement, but not a sole pretreatment. There is only one opportunity to create a soil barrier, before the concrete is poured. If that is not done, the structure must be bulldozed to create a proper barrier. The people that are susceptible to using an alternative treatment as a pretreatment are those who buy track homes because the builders are not making decisions to benefit the consumer - only the bottom line. But, once the slab is poured without a proper soil termiticide applied, the damage is done.

Dr. Lloyd said that there is no data to support the position that a traditional soil treatment is superior to any other type of treatment. Dr. Lloyd would like to come back to the Commission to provide data that is in existence for the Bora Care Product. Borate treatments prevent entry of termites and Nisus' warranty pays for any damage.

Mr. Doug Pinnecker with Contractors Termite and also President of Arizona Pest Management Association stated the original intent of changing the verbiage was to allow them to use the label as the law, and not to also have to follow the rules. The reason why they need the label to be law is because they need to be able to use the product under certain conditions that do not allow a certain amount of gallonage to be applied. For example, he wants to be able to double the concentrate and reduce the water to achieve the same percentage when necessary to prevent run-off on things such as mountainsides. But, the legislative proposal needs to restrict pretreatments to being soil applied treatments.

Mr. Kevin Etheridge owner of Contractors Termite and Pest Control stated that when they receive consumer warranty calls, it is because they are seeing termites eating carpet backing, wall board, etc. He uses Borate Products alone in California where they treat wood up to 24 inches, and are only required by the lenders to issue a "99A" which is a one year builders' warranty, not five years. There are no complaints in California and NISUS has a good product. But, in Arizona, there are random, foraging, tenacious termites, necessitating a soil treatment.

Mr. Ron Schwalb Technical Manager for NISUS Corporation stated that California has no rules that require a warranty, other than the HUD warranty on a 99A form. Boracare can be used in Arizona, but is not subject to the five-year retreatment. If the laws are written correctly, borates will have the same warranties and will have to comply with the same regulatory requirements on the applications. Commissioner Fraker asked how long Nisus' warranty was. Mr. Schwalb said it is up to five years if the applicator gives a five-year warranty.

Commissioner Peterson stated this proposed change in the law is not appropriate because it takes away the authority for customizing termite treatment requirements that are necessary in Arizona. The SPCC needs to address certain rule situations that are unworkable. Commissioner Fraker asked if the APMA would be revising the proposed language. Mr. Barry Aarons stated that they will come up with a draft, try to meet some of the needs that were articulated, distribute the draft to all the members of the association, and have either a face-to-face meeting or a telephonic poll. Commissioner Peterson asked Mr. Aarons about the APMA's membership. Mr. Aarons stated there are 60 members, with 80% or 85% members who are pretreaters. The APMA mails out 600-900 bi-monthly journals, but may have some inaccurate mailing addresses based on the SPCC's web site list of licensees.

Ms. Lisa Gervase asked the Commission for direction on the various proposals because she may need to act before convening another Commission meeting.

Mr. Mike Denny of US Pest Control stated that all APMA members agree that label should be the law. The only debate among the association members, which includes the pretreaters, is whether before or during construction treatments should be liquid termiticides or include a broader spectrum of other treatments.

Ms. Lisa Gervase stated that was nicely summarized by Mr. Denny and asked for the Commission's position on those two items. Commissioner Hartley disagrees with label is the law language. Commissioner Fraker supports it because they have been fighting this issue a long time and feels the industry should be able to purchase a product that has been labeled by the proper entity in the state and be able to go out and apply that product accordingly without having to refer back to another book or to see if there is something else that precludes that and they do that in 49 other states and we are the only state in the union that this still exists. Commissioner Peterson stated that everyone needs to realize if that is the case, and we request efficacy data, that product will not be registered for any use for years because we are waiting for that efficacy data. Commissioner Peterson further stated if label is law and it says you can apply down to a half percent, but we think it needs to be applied at one percent, it may not be efficacious. Commissioner Fraker stated the state chemist is responsible for seeing that a product meets efficacy requirements, and that any changes apply to post-treatments as well. This discussion does not just cater to the pretreat market, but affects all termiticide applications.

Commissioner Hartley stated he is opposed to anything in law that cannot be fine-tuned in rule. The EPA was asked years ago for an opinion about whether it was okay to use less than label rate, but didn't clarify the issue. Companies began overreaching, so Arizona passed a rule to require full label rate. This saved consumers from having to file thousands of complaints regarding pretreatments. Commissioner Peterson agreed that this issue should be addressed, but not this way. Commissioner Fraker stated then the Commission will need rule changes because the rules mandate that the foot of depth be

treated to the Devil, which is impractical. Labels make exceptions for that. Ms. Lisa Gervase stated the Commission can do a substantive policy statement which can give some flexibility. Commissioner Allen asked about whether label is the law. Commissioner Fraker stated we follow the label and the rule.

Commissioner Hartley agrees with the points Commissioner Fraker is bringing up, but the solution is not to nullify our ability to fine tune in rule, our ability is to do our job and do the fine tuning in rule.

Commissioner Peterson stated to Ms. Gervase that the answer is 3 to 1 to oppose label is the law. Commissioner Hartley said that no State totally allows label to be the law - without some parameters. Commissioner Peterson wants other termite treatments to be held to the same rules as liquid termiticide termite treatments.

C. Enforcement Response Program/Matrix of Enforcement Actions

Pulled - Ms. Gervase mentioned that SPCC staff does not yet have questions for the Commissioners.

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. It was noted by Commissioner Allen the passing rate has increased.

XIV. Approval of Minutes

January 9, 2004 (regular session) Minutes.

MOTION: *To approve the January 9, 2004 Minutes, by Commissioner Hartley. Seconded by Commissioner Allen.*

VOTE: *4 - 0 Motion carried.*

XV. Scheduling of future meetings/agenda items

Current Proposed dates and locations

March 12, 2004 Scottsdale, AZ

April 9, 2004 Tucson, AZ
May 14, 2004 Scottsdale, AZ
June 11, 2004 Scottsdale, AZ
July 9, 2004..... Scottsdale, AZ
August 13, 2004 Scottsdale, AZ

XVI. For information and discussion, not action:

A. Expenditure Report

Ms. Lisa Gervase stated the SPCC has used 53% of its appropriated funds as of January 31, 2004. A written report was provided to the Commissioners.

B. Case Status Report

Ms. Lisa Gervase stated the February 2004 case summary is in their notebooks.

C. License Applications - Whether there is an application fee to “broaden” into additional license categories.

Ms. Lisa Gervase stated there were different legal opinions provided about the application fee to “broaden.” At this time, no fee will be charged unless and until the law is changed.

D. Status of Business License and Qualifying Party License Renewals

Ms. Lisa Gervase stated that the SPCC was able to process the business license and qualifying party license renewals by January 14, 2004, and all paper licenses were mailed out on February 5, 2004. About 40 businesses, 21 active QPs, and 39 inactive QPs have not yet renewed. On February 13, 2004, those 100 licensees were mailed a letter about renewing before February 29, 2004, or having to retest. This is the first time that anyone recalls in SPCC history, that renewals were processed soon enough to mail notices to those who didn’t renew of the “60-day past expiration drop dead deadline”.

XVII. Adjournment - 1:40 P.M.

MOTION: *To adjourn by Commissioner Hartley.
 Secoded by Commissioner Allen.*

VOTE: *4 - 0 Motion carried.*