

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

**COMMISSION MEETING
FRIDAY, April 9, 2004 - 9:00 A.M.
MINUTES**

I. Call to order, Commissioner roll call

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

Commissioners Absent: None

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

II. Call to the public.

Applicator Renewals

Ms. Lisa Gervase reported that the Applicator Renewal Notices were mailed and many licensees have used the online renewal. Ms. Gervase further stated that the renewals are due on May 1. Individuals can either go to a public library, the SPCC office, Metro Institute's Phoenix office, or Arizona Pest Control Co. In Tucson to renew. Commissioner Robinson asked if the CEUs are in the system. Ms. Gervase responded that the six CEU hours are in the system and anyone can check the web site to verify the required six hours. If not, then they should call the CEU provider to have them input online. Commissioner Fraker stated that he renewed online, and that it was an easy process, and that he was e-mailed back with verification that the transmission was successful.

Treatment Proposals

Ms. Lisa Gervase stated the Treatment Proposals are no longer in the Commission notebooks. The Treatment Proposals will now be reviewed and approved in house by staff.

Tucson Meeting

Mr. Bruce Tennenbaum of Arizona Pest Control Company thanked the Commission for coming to Tucson and hoped that there will be more people attending the October 2004 meeting. Mr. Tennenbaum further stated for those individuals who do not have access to renew online that they can renew at his office.

Commissioner Fraker suggested that the applicator fill out and sign the form and companies keep the written verification in the office for protection. Commissioner Baker asked if there was a mechanism to verify that the transmission was successful. Ms. Lisa Gervase responded that licensees receive an e-mail confirmation, can print the confirmation screen, and can check the web site. Ms. Gervase further stated that if a company is going to renew for an applicator, the applicator is still responsible for the accuracy of the renewal questions.

III. Communication with Commissioners

Commission Peterson stated that all of the Commissioners' received the letter from Dr. Michael Preiffer asking questions about training per license category and on-line C.E. data entry. These issues have been taken care of by SPCC.

Commissioner Peterson further stated that he has been contacted by Michelle Bolton from the Federation of Independent Businesses with an idea to exempt landscapers from licensing. Mr. Carl Martin will give an update on the legislation. Commissioner Peterson informed Ms. Bolton that he would like to have a discussion on this issue.

IV. Consent Agenda

Commissioner Peterson gave a brief description of how the Commission reviews each section. If a tabbed item is not pulled, that means the Commission has no questions.

A. Applications for New Business License

1. Furchtbar, James E.

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

- 2. **Markell, Jerrold Patrick** **Lucky Dogs Weed Control, L.L.C.**
(Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)
- 3. **Peterson, Kevin Cecil** **Desert Pro Weed Control, Inc.**
(Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control)
- 4. **Watkins, Billy W.** **The Pigeon Guy** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
- 5. **Ziemba, Mark L.** **Ultrax Pest Control** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)

B. Applications for Existing Business License

- 1. **Eisenberg, Steven L.** **Enviro Pro Pest Management Services**
(Activating Qualifying Party for existing business license in "B1" General Pest/Public Health)
- 2. **Killenbeck, Arthur Leroy** **Hometeam Pest Defense, LLC**
(Activating Qualifying Party for existing business license in "B1" General Pest/Public Health)

Mr. Robert Tolton stated that this item and items B.7 and VI.A are related. The applicant for this item and item VI.A is the same individual who would like to have his temporary qualifying party renewed in order to activate that category. He is currently testing in another category. The applicant for item B.7 is the former qualifying party who is activating for another company.

- 3. **Kudes, Gary W.** **City of Phoenix Parks** Activating Qualifying Party for existing business license in "B9" Aquatic Pest Control)

4. Lauch, Mark Anthony
Pulled

Lake Maintenance Service (Activating
Qualifying Party for existing business
license in "B9" Aquatic Pest Control)

Commissioner Peterson stated he would like for Mr. Mark Lauch to explain why he is activating his qualifying party license again for this company because previously, Mr. Lauch left Lake Maintenance. Ms. Lisa Gervase stated that previously Lake Maintenance was imposed a \$3,000.00 civil penalty for unlicensed work and the final payment was to be paid by February 26, 2004, but Mr. Moody paid the remainder of the civil penalty on April 8, 2004.

Mr. Moody was present, but Mr. Lauch was not. Commissioner Peterson asked Mr. Moody why Mr. Lauch was with Lake Maintenance and then dissociated. Mr. Lauch wanted to know what his position was as far as being responsible for any unlicensed work that Lake Maintenance had done. He was concerned, so wrote a letter to the SPCC. He had not intended it to be a disassociation, but a letter to find out his position before the Commission because he was being threatened with a class 6 felony for unlicensed activity. Commissioner Peterson stated what he recalls is that Mr. Lauch was disassociating himself. Mr. Moody then stated that Mr. Lauch never wrote a letter or telephoned Lake Maintenance and he was hired for a consulting job in New Mexico. Mr. Lauch became disenchanted with the New Mexico Company because they were doing work in Arizona using Mr. Lauch as a qualifying party in New Mexico. Mr. Lauch came back to Arizona. Mr. Moody stated that Mr. Lauch found out there was no problem and Lake Maintenance was willing to pay their fines.

Mr. Moody characterized his former problems and licensing issues with the SPCC as technicalities or de minimis violations. Commissioner Baker stated that it has been Mr. Moody who has failed the system and needs to stop blaming the system because there are over 1,000 companies in this State who are able to get their CEUs, and who meet the minimum standards to keep their licenses.

Ms. Lisa Gervase asked Mr. Moody about Mr. Mark Lauch's role in the daily management of the business. Mr. Moody responded that Mr. Lauch will be the qualifying party who will be active on a day-to-day basis. Mr. Moody is the general manager and the owner of the company.

MOTION:

To approve by Commissioner Hartley.

Seconded by Commissioner Allen.

VOTE:

6 - 1 Motion carried. (Commissioner Fraker opposed)

5. Lopez, Raymond J.

Scottsdale Weed Control & Fertilization (Activating Qualifying Party for existing business license in "B5" Turf & Ornamental Horticulture)

6. McGhee, Lee Eric

Enviro Pro Pest Management Services (Activating Qualifying Party for existing business license in "B2" Control Wood Destroying Insects and "B8" Wood Destroying Insect Inspection)

7. Nunez, Hector G.

J & S Pretreat Company, Inc. (Activating Qualifying Party for existing business license in "B1" General Pest/Public Health)

C. Applicants for QP Testing (Mr. Tolton)

1. Barton, Frederick W.

"B3" (Right of Way/Weed Control)

2. Batchelder, Eric

"B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)

**3. Brower, Kenneth D.
Pulled**

"B5" (Turf & Ornamental Horticulture)

Commissioner Robinson asked Mr. Kenneth Brower about his practical experience. Commissioner Robinson wanted to point out that there is more to the Turf & Ornamental category than just spraying tree stumps and asked Mr. Brower if he has additional experience. Mr. Brower stated they only treat tree stumps. Commissioner Robinson asked Mr. Brower why he is not applying for the "B3" Right of Way/Weed Control category. Mr. Brower stated he was told he only needed the Turf & Ornamental to get a Qualifying Party License. Mr. Brower further stated his only experience is treating tree stumps and he has an applicator license in the Turf &

Ornamental category. Commissioner Robinson asked Mr. Brower if he was licensed in the "B3" category. Mr. Brower stated that he treats along the transmission lines and is not licensed in the "B3" category. Commissioner Allen stated that the "B3" category seems like it would be the appropriate category.

Commissioner Hartley stated that Mr. Brower has 4500 hours of experience in the "B5" category. Mr. Blair Driggs stated that Mr. Brower has been certified for over two (2) years in the "B5" category and whether he is using the entire category, he has been certified by the Commission in the "B5" and that is his experience given to him by the State of Arizona.

Commissioner Fraker asked what the correct licensing category is if Mr. Brower is treating stumps. Ms. Lisa Gervase referred the Commission to A.A.C. R4-29-102(5) and read the language for the right of way/weed control and turf and ornamental categories. Commissioner Baker felt that Mr. Brower is in the wrong category and he should be licensed in the "B3" category. Discussion among the Commissioners that the "B5" category is the broader of the two categories.

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

VOTE: *7 - 0 Motion carried.*

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| 4. Davey, Joseph A. | "B1" (General Pest/Public Health) |
| 5. Durkalec, Stanley R. | "B1" (General Pest/Public Health) |
| 6. Clark, Paul Jay | "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture) |
| 7. Foster, Karl Andrew | "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture) |
| 8. Gatyas, III, Stephen M. | "B1" (General Pest/Public Health) |
| 9. Jones, Arizona Casey | "B1" (General Pest/Public Health) |

Ms. Lisa Gervase stated there is a pending investigation against Mr. Arizona Jones for possible unlicensed activity. Mr. Jones confirmed that there is an investigation pending at this time. Mr. Jones stated that he is a licensed applicator and he treated two apartment units at an apartment complex when he was employed by another company. Commissioner Fraker stated this matter should be tabled until the issue is resolved. Commissioner Peterson stated this matter will be tabled until this issue is resolved. Mr. Dave Colvin asked Mr. Jones if he has done any other work. Mr. Jones responded "no." Commissioner Runbeck asked Ms. Gervase how any sanction against Mr. Jones for unlicensed activity will affect his QP application. Ms. Gervase responded that it will be handled as a separate complaint against his applicator's license. Since this is a pending investigation and the facts are yet to be determined, it may or may not affect his QP application. Commissioner Allen stated to Mr. Jones that he should resolve this matter with staff before he goes forward.

10. Kozluk, Paul Edward

Pulled

"B1, B2 and B8" (General Pest/Public Health, Control Wood Destroying Insects and Wood Destroying Insect Inspection)

Mr. Scott Richardson, attorney, appeared on behalf of the company.

Commissioner Peterson stated that Mr. Paul Kozluk is applying for his qualifying party license because the business license and the former QP's license expired on December 31, 2003. Ms. Gervase further stated that the business was sent a letter to not do any work after the license expired, but that Mr. Kozluk's experience verification form states that he has been employed there as of last month which raises the question if the business is operating. Mr. Scott Richardson stated that he does not have any knowledge as whether they are doing business. Ms. Gervase stated that Mr. Kozluk started the testing process. Mr. Robert Tolton stated that Mr. Kozluk was in the office and he informed Mr. Kozluk that he could renew the Business License, but the former QP License could not be renewed until the former QP retests because he was past the 60-day period after expiration of his license. Mr. Tolton further stated that Mr. Kozluk wants to be the backup QP if this (failure to timely renew) occurs again. Commissioner Fraker asked for clarification about what licenses expired. Mr. Tolton stated that Mr. Kozluk has never had a QP License, but his business license and the license of the QP who activated the business both expired. Commissioner Fraker asked if they are doing business and Mr. Tolton responded that they are not

doing business.

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

VOTE: *7 - 0 Motion carried.*

- 11. **Kuhnen, Edward Fair** "B5" (Turf & Ornamental Horticulture)
- 12. **Larios, Luis Acosta** "B1" (General Pest/Public Health)
- 13. **Leto, Salvatore** "B1, B2 and B8" (General Pest/Public Health, Control Wood Destroying Insects and Wood Destroying Insect Inspection)
- 14. **Michaud, Scott Michael** "B1" (General Pest/Pubic Health)
- 15. **Miller, Joseph Theodore** "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)
- 16. **Palmer, Michael Raymond** "B1" (General Pest/Public Health)
- 17. **Pitts, Ronnie Hugh** "B1" (General Pest/Public Health)

- 18. **Rosado, Michael** "B1" (General Pest/Public Health)

Commissioner Baker stated he was concerned about the felony conviction. Mr. Robert Tolton stated that Mr. Michael Rosado was approved previously by the prior Commission and there are no new felonies. Mr. Tolton further stated the Commission has received Mr. Rosado's background information and there are no new felony incidents.

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

VOTE: *7 - 0 Motion carried.*

- 19. **Sexton, Jr., Paul Kent** "B1, B2, B3 and B8" (General Pest/Public

Health, Control Wood Destroying Insects, Right of Way/Weed Control and Wood Destroying Insect Inspection)

20. Schilling, David Henry

“B3 and B5” (Right of Way/Weed Control and Turf & Ornamental Horticulture)

21. Smith, Jeremie Matthew

Pulled

“B3 and B5” (Right of Way/Weed Control and Turf & Ornamental Horticulture)

Commissioner Peterson pulled because of the nature of the business and the number of times Mr. Smith has moved from company-to-company. Mr. Jeremie Smith stated he changed jobs because of having a new baby, the job is closer to home, and for more money.

MOTION:

To approve by Commissioner Allen. Secoded by Commissioner Fraker.

VOTE:

7 - 0 Motion carried.

22. Stern, Jon Eric

“B1, B2, B5 and B8” (General Pest/Public Health, Control Wood Destroying Insects, Turf & Ornamental Horticulture and Wood Destroying Insect Inspection)

23. Stout, Jr., Charles A.

Pulled

“B1, B2, B3, B5 and B8” (General Pest/Public Health, Control Wood Destroying Insects, Right of Way/Weed Control, Turf & Ornamental Horticulture and Wood Destroying Insect Inspection)

Commissioner Robinson wrote a letter of recommendation on behalf of Mr. Charles Stout.

MOTION:

To approve by Commissioner Baker. Secoded by Commissioner Runbeck.

VOTE:

6 - 0 Motion carried. (Commissioner Robinson recused)

24. Sumner, Christopher P.

“B1” (General Pest/Public Health)

25. Tolbert, Kevin Paul

"B2 and B8" (Control Wood Destroying Insects and Wood Destroying Insect Inspection)

D. Request for Company Name Change

1. Access Pest Control, Inc. to The Beekeeper Total Bee Control, Inc.

End of Consent Agenda

MOTION: *By Commissioner Hartley to accept Consent Agenda with the exception of those items pulled for discussion (Tabs 9, 15, 21, 22, 30, 33 and 35).
Seconded by Commissioner Runbeck.*

VOTE: 7 - 0 Motion carried.

V. Applications for Qualifying Examination not on the Consent Agenda

A. Wilkinson, II; Kevin Robert "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)

Mr. Kevin Robert Wilkinson, II appeared and answered Commissioners' questions.

Commissioner Peterson stated this matter was tabled from last month until the item was settled in court. Commissioner Peterson stated, we either have to deny, approve or have Mr. Wilkinson withdraw the application.

Mr. Kevin Wilkinson stated the matter was dismissed and he handed Ms. Lisa Gervase a document. Ms. Gervase read into the record that on March 16, 2004, an Order was issued from the Maricopa County Superior Court, granting the State's Motion to Dismiss without Prejudice. The document is a certified document from the Clerk of the Court. Commissioner Runbeck asked who the judge was in this matter and Ms. Gervase responded it was Virginia Rechter. Ms. Gervase stated there is no pending criminal matter.

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

VOTE: 7 - 0 Motion carried.

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

MOTION: *To dismiss without prejudice Case Number 2003-104APP and suspend the applicator license for nonpayment of renewal fees, by Commissioner Runbeck.
Seconded by Commissioner Hartley.*

VOTE: 7 - 0 Motion carried.

B. S.O.S. Exterminating, Inc./Steven Weber - Case # 2003-131

MOTION: *To accept 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 Runbeck.
Seconded by Commissioner Allen.*

VOTE: 7 - 0 Motion carried.

C. Sierra Pest & Termite Control/Robert Wilson/David Hoggatt - Case # 2003-133

Mr. Dave Colvin stated that Mr. David Hoggatt would like to agree to the proposed terms of the Settlement Conference that he initially rejected and Mr. Hoggatt is present. Commissioner Runbeck asked about the proposed terms for Mr. Hoggatt. Ms. Lisa Gervase stated that the proposed terms with respect to Dave Hoggatt's applicator license is an Administrative Warning and a \$600.00 civil penalty. It would be for the alleged violation of A.A.C. R4-29-301 (Misuse Rule). Commissioner Runbeck asked why a \$600.00 civil penalty when the Matrix provides for a \$700.00 civil penalty for a value of 13. Ms. Gervase apologized for staff using the old form. The penalty should be \$700, but staff used an old form with a \$600 penalty. Commissioner Runbeck stated she is concerned because this is a serious issue and the civil penalty should have been higher.

MOTION: *To accept enforcement response program terms, and to include in the consent an Administrative Warning and a \$600.00 civil penalty (due within 30 days of the Commission Order) against Mr. David Hoggatt; 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: 7 - 0 Motion carried.

D. Neutramite Services/ Hector Coronado/ Maria Coronado - Cases # 2003-126 and # 2003-132

Mr. Vince Craig stated the terms are different from the ERP. Mr. Craig further stated based on the legal opinion by Assistant Attorney General Blair Driggs, the Commission should strike number 4, the terms regarding Maria Coronado as she is not an industry member. Furthermore, that the Commission rescind that vote that they made at the October 2003 meeting to send that case to Administrative Hearing and to consolidate case # 2003-126 and # 2003-132. Mr. Craig clarified for the record on case # 2003-132 while the police report may have mentioned the stealing of equipment, Mr. Coronado was not convicted for the theft of the equipment.

Mr. Hector Coronado appeared and answered Commissioners' questions.

Commissioner Runbeck voiced her concern of following the proposed terms. Commissioner Peterson stated that number 1, 2 and 3, and to rescind our previous vote in October 2003 to send this matter to Administrative Hearing and to take all of Mr. Coronado's licenses away.

Mr. Craig clarified for case # 2003-132 the moral character issue when examining the ERP, the highest penalty would be Administrative Warnings, so Compliance/Enforcement staff were ascertaining if it was in the State's best interest to go to a hearing to have Administrative Warnings issued.

Commissioner Robinson asked Mr. Coronado if he was found innocent of the theft. Mr. Coronado stated that he did go to jail for theft of doing side work, but not for the theft of equipment. Commissioner Fraker asked Mr. Coronado if he was found guilty. Mr. Coronado responded "no" there were allegations, but they were not true.

Ms. Lisa Gervase asked Mr. Coronado if it was a plea bargain. Mr. Coronado responded that it was a plea bargain and the other charges were dropped because they had no case. Ms. Gervase stated there were three other charges, but as part of the plea, Mr. Coronado plead to the theft of accounts and that was what he was convicted of and not of the alleged theft of equipment. Commissioner Runbeck stated that it was not found not to be substantiated, it was just part of the plea bargain.

Commissioner Allen stated that the business license is revoked for five years, the qualifying party for five years and he would be on probation for his applicator license, so Mr. Coronado can abide by the provisions of the probation. Ms. Lisa Gervase asked the Commission to rescind the vote of the October 2003 meeting of sending this matter to hearing. Ms. Gervase summarized for the Commission to accept 1, 2 and 3 and that we strike number 4 of not issuing an Administrative Warning to Mrs. Maria Coronado and that we rescind the vote to hearing.

Commissioner Fraker asked whether there was an order of not allowing Mr.

Coronado to work in pest control industry or do termite during his probation period. Mr. Craig stated that Mr. Coronado's Yuma probation officer said that he could not work in the pest control industry, but there was no order to that affect. At this time, Mr. Coronado is entirely under the supervision of another probation officer here in Phoenix, Arizona. Ms. Gervase stated that Mr. Coronado's previous probation officer said it was part of the terms of the probation, but after reviewing the whole criminal case, it was determined that was not part of the terms of the criminal probation. Ms. Gervase does not know why the probation officer told Mr. Craig that was part of the terms. Mr. Craig stated for the record that SPCC telephoned the probation officer twice, sent certified letters to that officer as well, and the supervisor of that officer to provide the SPCC with something in writing and as of this date we have not received anything.

MOTION: To modify staff's recommendation based on legal advice, to remove number 4 (the Administrative Warning to Mrs. Maria Coronado), and rescind the vote to hearing; 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 Allen.
Seconded by Commissioner Runbeck.

VOTE: 7 - 0 Motion carried.

VIII. Unlicensed Activity

A. JDH Services, Inc. dba Desert Hills Landscaping/John Hill - Case # 2003-139

Mr. Dave Colvin stated on the advice of the Assistant Attorney General Mr. Blair Driggs, the Commission should not consider A.R.S. § 32-2321 (B)(4) (Applying pesticides in a manner inconsistent with label directions). Mr. Driggs stated that the authority for this case is A.R.S. § 32-2304 (B)(16) for the unlicensed to impose fines, since they do not have a license.

MOTION: To modify the proposed resolution by removing A.R.S. § 32-2321 (B)(4) based on legal advice by Commissioner Runbeck.
Seconded by Commissioner Hartley.

VOTE: 7 - 0 Motion carried.

B. A.M.E. Southwest Landscape and Irrigation Inc./Michael Garduno (President) - Case # 2004-030

MOTION: To accept the proposed agreement by Commissioner Runbeck.

Seconded by Commissioner Hartley.

VOTE: 7 - 0 Motion carried.

IX. For information and discussion, not action:

A. Complaint Status Log

Mr. Vince Craig stated the Complaint Status Log cases are under review to ensure accuracy and substantiation of the violations that are cited in the reports. Commissioner Peterson asked Ms. Lisa Gervase about the antiquated cases and if they were catch up cases. Ms. Lisa Gervase stated there are six or seven cases that are over six months old. Ms. Gervase stated that the focus of the last year has been cleaning up the backlog and doing a more thorough and complete job of processing complaints. Now, the focus also can be on the timing. Commissioner Hartley asked why Case number 2002-121 has two complaint dates, October 02 and February 04. Mr. Craig clarified that certain parties were not notified of the complaint in October 2002. The Business Licensee was informed back in October 2002, but the Qualifying Party Licensee and Applicator Licensee were not notified until February 2004.

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

A. Ramon E. Guerrero - OAH Docket #03A-113-SPC/SPCC Case #2003-113

Mr. Blair Driggs stated that he was acting as an advocate on behalf of the State of Arizona and not as an advisor. Mr. Driggs stated this was sent to the Administrative Law Judge because Mr. Guerrero appealed the Commission's initial decision to deny him the ability to become an applicator licensee and due process allowed him to file an appeal, so this was sent to an Administrative Hearing. Mr. Guerrero had the burden of proof before the Administrative Law Judge. Mr. Guerrero did not appear at the hearing and in the Findings of Facts Mr. Guerrero was properly noticed. Mr. Guerrero failed to sustain his burden and the Recommended Order was that the Commission's denial be upheld.

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

VOTE: 7 - 0 Motion carried.

MOTION: *To approve the Recommended Order to dismiss Mr. Guerrero's*

*appeal and that the denial of Mr. Guerrero's application for licensure by the Structural Pest Control Commission be upheld and affirmed by Commissioner Runbeck.
Seconded by Commissioner Allen.*

VOTE: 7 - 0 Motion carried.

XI. Recommend dismissal of cases, without prejudice, against Business, QP and Applicator; and suspension of the Business License for nonpayment of renewal fees

A. Adobe Termite Control/Gerald Paul Fisher - Case #s 2003-101 & 2003-134 - recommend dismissal without prejudice against Business License, Qualifying Party License and Applicator License; and suspension of Business License for nonpayment of renewal fees.

Gerald Paul Fisher, QP License #1458 and Gerald Paul Fisher, Applicator License #940129 were revoked on 1-14-04 in Cases 2002-130, - 134, -135, 2001-057 & 2000-218, and 2001-243. No appeal was filed - those revocations are final.

Adobe Termite Control, Business License #5509 (Expired 12/01), would not receive more than an administrative warning in these cases if they were adjudicated, and this license has expired. If this license is suspended for nonpayment of renewal fees, it is automatically revoked one year later.

Ms. Lisa Gervase stated that the agenda item and the memo in the Commission notebooks is clear and since there is not any purpose to continue with these two cases at this point that they be dismissed without prejudice and that we suspend the Business License for nonpayment of renewal fees.

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

VOTE: 7 - 0 Motion carried.

XII. For discussion, consideration and action: Request for Rehearing or Review
Ms. Lisa Gervase asked that we not hear Tab 51 until 11:00 a.m. until Mr. Perry is present.

A. Alan D. Perry - Case # 2002-109

Mr. Blair Driggs of the Attorney General's Office stated that he was the advocate on

these two cases ,# 2002-109 and 2002-152. Mr. Driggs presented these cases to the Administrative Law Judge and then presented these same cases before this Commission in regards to the recommendation by the ALJ. In regards to the specifics of the rehearing, Mr. Alan Perry is here at his request and basically as to the legal requirements, it is his burden to convince the Commission under the Rule that there are grounds for you to review your decision and a copy of the initial presentation has been given to you for review. Mr. Driggs stated staff has been in discussions with Mr. Perry as to his requests for review to the particular decisions as to sanctions that the Commission imposed before and they have something they would like to present as an alternative if the Commission would like to consider it between Mr. Perry and staff. Mr. Perry pointed out several areas for your review, for your decision and initially he wanted you to review and do things in regards to the Findings of Facts and the Conclusions of Law, but he understands that the Commission can only review the sanctions that were imposed based on the circumstances.

In regards to case 2002-109 the Commission accepted the recommendations and other than the sanction, if you will note the Administrative Law Judge's final part of the Conclusions of Law in # 4 where the Administrative Law Judge concludes the imposition of a sizable civil penalty be supported by the evidence of a \$300.00 civil penalty and the Commission felt it was not sizable and it was modified appropriately by your legal authority to a \$500.00 fine. Mr. Perry's arguments and request is due to the excessiveness of the civil penalty.

MOTION: *To Review only the Order, based on possible excessive penalty, by Commissioner Allen.
Seconded by Commissioner Runbeck.*

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

MOTION: *To reduce the civil penalty to \$300.00 from \$500.00 by Commissioner Runbeck.
Seconded by Commissioner Hartley.*

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

B. Alan D. Perry - Case # 2002-152

Mr. Driggs stated he reviewed the case 2002-152 rehearing request by Mr. Perry. In regards to the only grounds Mr. Perry has in this review is due to the excessiveness to the findings. Mr. Driggs reviewed Mr. Perry's Request for Rehearing and it is the same arguments he put before the Administrative Law Judge. The Request for Rehearing is specific to seven particular areas and Mr.

Driggs believes the alleged misstatements and misrepresentations are not grounds and Mr. Perry has not met his burden in order for the Commission to review that decision based upon the misrepresentations and his interpretation of the facts. It was appropriate that they found he had knowledge legally of the responsibility to pay the fines at a time way before this went to hearing. Mr. Perry had notice over a year before this and actually by Mr. Perry's own admissions he acknowledged six months or so before the actual hearing in which he did not take any action in order to resolve this matter. It appears Mr. Perry was waiting until someone else could resolve it or something would happen in regards to his other activities to be able to come in. Mr. Driggs does not believe that any of the Findings of Facts and Conclusions of Law were misstated as were presented. The Administrative Law Judge reviewed and weighed the facts and made his decision in regards to whether there was a violation and Mr. Driggs's believes most of the argument was as to mitigation on behalf of Mr. Perry. Mr. Driggs made the argument in regards to the appropriate recommendation for sanctions that if the Administrative Law Judge felt it was appropriate in Mr. Perry's position not to recommend revocation to this Commission because Mr. Perry stated at the hearing that he was willing to pay those fines now and that he felt that he owed those sanctions. Mr. Driggs further suggested that there should be an additional fine for the delay and the delay was evident by the record. If you will note, the Administrative Law Judge's recommendation the ALJ tacked on the fine along with the revocation where Mr. Driggs argued there was mitigation and did not think it was sufficient enough to dismiss the complaint and just allow Mr. Perry to pay the fine. Mr. Perry feels that these are excessive along with his other arguments and Mr. Driggs would argue against finding that you did anything wrong to the Findings of Facts and Conclusions of Law that the only thing that may be of importance to this Commission on behalf of Mr. Perry that you review your decision that it was excessive penalty and Mr. Perry has an opportunity to cure his deficits that he has in these two particular cases.

Ms. Gervase gave a history background on who Mr. Perry worked for, Mr. Jack Chase, from 1995 to 2001 and there were three cases that came out in 1999 and Mr. Perry was the Qualifying Party for the Company that Mr. Chase owned at that time. Mr. Perry showed up at the hearing for those three cases and the decisions that came out of those hearings were mailed to Mr. Perry at his last known address of record, however, Mr. Chase stepped in and took over and the discipline that was imposed against Mr. Perry was never complied with. In the three 1999 cases there is a \$1,000.00 civil penalty that was ordered against Mr. Perry's QP license, a \$300.00 civil penalty against his QP license in another case, and the third case a \$2,000.00 civil penalty was ordered against his QP License and he was also ordered to take an additional six hours of Continuing Education in laws and rules. Those three orders against Mr. Perry's QP license were not complied with. One of the 2002 complaints were filed for non-compliance for one of the past orders and the

Commission ordered that his QP license be revoked and his applicator license receive a \$300.00 civil penalty. The other 2002 case pertained to violations during pretreatments for which a \$500.00 civil penalty was imposed. Mr. Perry has had numerous discussions with Ms. Gervase realizing the value of his licenses and his desire to work in the pest control industry and not be under the influence of any infamous people who do not know how to follow the laws and rules, and to take responsibility for himself and comply with these old orders and the current two orders. Ms. Gervase believes that after her discussions with Mr. Perry, he is not going to contest any of the Findings of Fact and Conclusions of Law in these three old cases and current two cases. Mr. Perry has come today prepared to address the Commission and make some statements and answer any questions you have and we discussed that if you chose to grant the Review of the two pending orders and want to do so today, Mr. Perry has come today with a cashier's check for \$2,300.00. Mr. Perry owes \$4,100.00 and he would be asking for a payment plan for the remaining \$1,800.00 and possibly he would be asking for a reduction of the \$1,800.00 for one or two reasons. As Mr. Driggs stated in the 2002-109 case the Administrative Law Judge's recommendation was for a \$300.00 civil penalty, but the Commission felt it was egregious enough to modify the civil penalty to \$500.00, the second possible area to argue a reduction in the 2002-152 case to reduce the \$300.00 civil penalty that was imposed against his applicator license, but the violation was against his QP license for not complying with the 1999 orders. There is room for consideration on the civil penalties on those two grounds. If the Commission was inclined to review the Petition on the two pending orders and modify the order, staff would want his applicator license to be on extended probation for five years with significant terms of probation such as disclosing all employers, to disclose his disciplinary past to future employers, complying with the laws and rules, labels, notify the Commission Office timely of a change of address and employment, cooperating with us by answering questions to information that he may have about violations of law and rules in the past. Currently, Mr. Perry's QP license is inactive, and if he activates his QP license it should be put on probation for a period of time, so that we can closely monitor Mr. Perry. Mr. Perry is here today to explain what he has done in signing up for continuing education and in complying with one of the old 1999 orders by signing up for six hours of Continuing Education in Laws and Rules.

Commissioner Robinson asked if Mr. Perry was contesting the \$3,300.00 fine for the 1999 violations and if it was going to be paid. Ms. Gervase responded it is too late for Mr. Perry to appeal those Orders. Ms. Gervase stated in 1999 we have the \$3,300.00 plus the additional six hours of CE in Laws and Rules. Only in the current Orders there is some wiggle room. Commissioner Robinson stated the only wiggle room is the \$200.00 on the 2002-109 and \$300.00 in the 2002-152 case.

Commissioner Fraker inquired what time frame was Mr. Perry associated with Mr. Jack Chase. Ms. Gervase clarified Mr. Perry's employment with Mr. Chase from

1995 to 2001. Mr. Perry was working with American Termite from April 1995. Mr. Perry received his applicator license in June 1995 and the first complaint that involved Mr. Perry was in 1995. Mr. Perry is no longer working for Mr. Chase which has been since 2001.

Commissioner Runbeck stated she understood that Mr. Driggs is acting as an advocate for the Commission and asked if staff had recommendations for the Commission. Ms. Gervase's recommendation is that the Commission consider granting the Review for the reasons stated in Rule A.A.C. R4-29-502.C(5) which is excessive penalties and that you accept the \$2,300.00 he is going to tender today, depending on other civil penalties in lieu of revocation, whatever the remaining civil penalty will be, work out a reasonable payment plan, put his applicator license on probation with significant terms (to those that were outlined), and if Mr. Perry activates his QP license that it be placed on probation at least two years, so that he can be closely monitored. Commissioner Fraker asked what action are we taking on the applicator license besides the probation. Ms. Gervase stated there is an Order of a \$300.00 civil penalty against the applicator license and the revocation of the QP license in case # 2002-152, but if the Commission is inclined to a reduction of the Civil Penalty that is one area as well \$300.00 versus \$500.00 in the case #2002-109 case. Commissioner Fraker then asked if the recommendation was to revoke the QP license, since there were nothing to revoke or suspend against the Applicator license. Ms. Gervase stated "no" just the \$300.00 civil penalty.

Mr. Driggs wanted to clarify that he is an advocate and he is familiar with the underlining cases and is also very familiar with Mr. Perry and Mr. Chase. The importance here is the violations are there, and the sooner Mr. Perry acknowledges and takes responsibility for his actions then this matter can be resolved. Mr. Perry also has history with Mr. Chase who can be a very persuasive individual to those he comes in contact with and Mr. Chase then takes charge of that individual. Mr. Driggs stated he asked the Administrative Law Judge for revocation because the delay was inappropriate even though Mr. Perry came forward with some explanation and found fault with some of it, it is still a violation. The Commission has the ability to review this matter and one of the grounds is an excessive penalty. Mr. Driggs further stated that this is not a Review or Rehearing on the fact of these two cases. Commissioner Peterson has a question of what Mr. Perry has been doing since 2001. Mr. Driggs stated that Mr. Perry would get hired and he would get laid off.

Mr. Perry stated he has been in communication with the Structural Pest Control Commission since October 2002 on a regular basis about the allegations against his license. Mr. Perry admitted he used poor judgement and aligned himself with people who did not follow the laws and rules. Mr. Perry stated he started working with Mr. Chase when the company was called American Termite and now is called Termite Specialists as a pest control operator in April 1995. Mr. Perry stated he

took the test to become a Qualifying Party because the company was in danger of closing down without a QP license. Mr. Perry was the only employee who could pass the QP test. Mr. Perry stated he never realized the value of his QP License and was never aware of the value of having the QP License, he was able to maintain his job and keep the company running and sustain his livelihood. Mr. Perry was never an owner of the business, nor was he ever privy to any of the correspondence that was sent to him by SPCC. Mr. Chase informed Mr. Perry that the cases did not involve Mr. Perry and that he was appealing the cases. Mr. Perry quit his job with Mr. Chase in November 2002, and was never informed of any charges against him. Mr. Perry became aware of the charges against him in November 2003 when he received a letter from SPCC. Mr. Perry stated that he has worked with other pest control companies, but when they found out he has prior violations, he would be let go from these jobs, and the only job he found was in a pizza place. Mr. Perry stated he has suffered emotionally, financially, and professionally, and has learned a valuable life lesson. Mr. Perry stated he is asking that his QP License not be revoked. Mr. Perry borrowed \$2,300.00 from his family and is willing to pay the remaining balance that is owed on the civil penalties and is signed up to take the additional Continuing Education classes on April 20.

Commissioner Peterson asked Mr. Perry if he did not know Mr. Chase's character after working with him for six or seven years. Mr. Perry responded that Mr. Chase was nice to all of his employees and he did not know that Mr. Chase did not pay off these fines. Mr. Perry contacted the Commission in 2002 and 2003 and has been trying to work out a payment plan in paying these fines.

Commissioner Runbeck is willing to grant a rehearing and would like to refer this to staff to work out a recommendation. Ms. Gervase stated the first step is to grant a Rehearing or Review. Ms. Gervase further stated that she would prefer that the Commission grant the Review because she is not in favor of any rehearing to look at the Facts and Conclusions of Law, the facts stand and the Conclusions of Law stand and the only thing the Commission would be reviewing is the penalty that was imposed. Ms. Gervase suggested to the Commissioners they can either grant a review, go through the possible terms, then draft a revised order, or come back with a proposed draft order at the next meeting. Mr. Driggs stated he heard the discussion and would prefer that the Commission grant the Review because of the way the Rules are written. Mr. Driggs suggested that a Motion be made on a specific ground as to the penalties being excessive under that Rule and that the Commission is going to Review that Decision on the two cases. If you want to Review the \$500.00 fine in case # 2002-109, you should include that particular case to Review and if you don't want to reduce the \$500.00 civil penalty to \$300.00 then make a Motion to not grant the Request for Review and that would clean out that case altogether or if the Commission decides to the Review, it should be done today if the Commission decides to drop the fine from \$500.00 to \$300.00. Then in

regards to case # 2002-152 only review what is based on an excessive order and not touch the Findings of Facts and Conclusions of Law and that you then you have perimeters for staff, to either uphold the fine or reduce the fine, and take off the revocation on the Qualifying Party License. The terms and conditions could be that the QP License remain inactive, if activated be placed on probation with specific terms to either hear at a meeting or be put on a document. Commissioner Fraker agrees with Mr. Driggs and the revocation in the Order should stand, but if we want to do something with the fines we can do a reduction on the civil penalty. The Commissioners asked how long for the revocation and the rule states for five years. Mr. Perry can still work as an applicator as long as he pays the fines. Commissioner Robinson asked what is the process to obtain a QP license if it is revoked. Ms. Gervase stated if the revocation stands then Mr. Perry would have to reapply, retest, and he could not do that for five years from the date of revocation. Commissioner Runbeck stated she would like to deny the Review on the first case and just let the case be done with, since it only a couple of hundred of dollars. Mr. Driggs stated that is where the Administrative Law Judge recommended \$300.00 and it was addressed as a significant fine and when it came before the Commission it was modified to \$500.00. Commissioner Runbeck stated Mr. Perry made a good effort to be here, and has read the letter indicating it would be difficult to be here, and for him to pay the fines. Commissioner Runbeck further stated if the Commission puts enough terms on the license and to keep a close eye on the QP License to make sure he abides by terms.

MOTION: To grant a review of case 2002-152 as to the severity of the sanction and not review the Findings of Fact and Conclusions of Law only the sanction, by Commissioner Runbeck.
Seconded by Commissioner Allen.

VOTE: 7 - 0 Motion carried.

Commissioner Peterson stated that the Commissioners will only look at the Order for the \$300.00 Civil Penalty and revocation of the QP License. Mr. Driggs stated his understanding then would be based on the Motion if it passes you would only look at the Order portion.

MOTION: To leave the \$300.00 fine, but that rescind the revocation and place Mr. Perry on probationary terms, similar to the terms that was discussed by Ms. Gervase, by Commissioner Runbeck

MOTION WITHDRAWN for discussion.

Mr. Driggs stated that we need accurate terms, so staff would not be accused of putting in different terms. Mr. Driggs stated the Commission has the full range in

regards to both licenses (QP and Applicator Licenses) pursuant to A.R.S. § 32-2321 which includes revocation, suspension for a period of time, fine, probation with specific terms that need to be complied with during the probation. Mr. Driggs stated those can be used in conjunction to each other and the law states if you do revocation then there is no ability to come back into the industry to retest because of the five-year period. The ability to suspend to satisfy the issue for punishment and to pay the fine can be taken into consideration to do both in conjunction with the Continuing Education and the proof to the Commission under the terms that Mr. Perry is able to act as a QP after he activates his QP License or gets off probation or gets off suspension. Commissioner Baker asked Mr. Driggs if they can establish terms for the suspension. Mr. Driggs stated to the Commission they can give a one year to a five-year term. Commissioner Peterson asked if we suspend the QP license can we ask that Mr. Perry has to retest? Mr. Driggs said you can add those terms. Commissioner Allen stated that Mr. Perry in his capacity has a responsibility to train as a QP which he did not do to use chemicals. Mr. Perry said he did not know what he had and if he did not pass he would not have a job. Mr. Driggs stated that is why Mr. Chase's QP was revoked by the Commission, but Mr. Chase still owned the company.

Commissioner Fraker stated that you have five cases in the last four to five years and you have a responsibility as a QP regardless of the circumstances. Commissioner Fraker further stated you have to accept the responsibility and it is not about the money "it is about right or wrong." Commissioner Robinson commented that after a suspension that Mr. Perry would have to retest as a QP.

MOTION: *To pay all fees and fines and suspend his licenses for three years, and do Continuing Education and proof of his involvement in the Industry for three years, and be required to retest and pass for a QP License, by Commissioner Baker.
Seconded by Commissioner Robinson.*

AMENDED MOTION: *To pay all fines within 18 months, suspend his QP License for three years, continue annually his Continuing Education and be required to retest and for his QP exam, by Commissioner Baker.
Seconded by Commissioner Robinson.*

Motion failed due to lack of a second.

MOTION: *That Mr. Perry's QP License be suspended for three years in lieu of the revocation, during the three years he obtain the required continuing education and provide proof of his employment, that he pay all outstanding fines which if he pays*

the \$2,300.00 today the balance owed would be \$1,800.00 at \$50.00 per month and that he have to retest and pass to have the suspension of the QP license lifted and make sure fines are paid in order for the suspension to be lifted, by Commissioner Baker.

Seconded by Commissioner Robinson.

VOTE: 6 - 1 Motion Carried. (Commissioner Runbeck opposed)

Commissioner Peterson clarified the Motion for Mr. Perry which states that your QP license be suspended for three years. At the end of three years you will have to retest and continue to take Continuing Education classes during those three years. A three-year suspension in lieu of the revocation is generous as long as you show good faith, pay the fines, and in the past the Commission has been very generous to make payment terms to pay the fines.

Commissioner Peterson asked for clarification on how much money will be owed after Mr. Perry pays the \$2,300.00. Mr. Gervase stated his outstanding balance is \$4,100.00. Ms. Gervase further stated that if Mr. Perry pays the \$2,300.00 then the balance is \$1,800.00. Commissioner Baker has no problem of amending his motion for a payment plan for all the fines, so that they are paid. Discussion of Commissioners to set a time frame and allow a time payment over the three years. Commission Runbeck commented that based on the reinstatement of the license it would be contingent that all fines be paid during this period. Commissioner Baker stated that if Mr. Perry owes \$1,800.00, he would have 18 months to pay the fines. Also Mr. Perry would come in annually to prove that he is complying and at the end of three years if he met all his obligations, he can retest. Commissioner Allen asked if the time could be doubled because he feels it is time for Mr. Perry to "step up." Commissioner Allen stated it would be a hardship for Mr. Perry to pay \$100.00 per month and \$50.00 would be more appropriate.

Commissioner Peterson asked Ms. Gervase to read a clear concise Motion then we can put that as a Motion if Commissioner Baker will withdraw his Motion and Amendment Motion. Ms. Gervase stated Commissioner Baker made a Motion and Commissioner Robinson had seconded it and Commissioner Baker was attempting to make an amended Motion to the first which failed because of a lack of a second, so the Motion on the floor is: that Mr. Perry's QP License be suspended for three years in lieu of the revocation, during the three years he obtain the required continuing education and provide proof of his employment, that he pay all outstanding fines which if he pays the \$2,300.00 today the balance owed would be \$1,800.00 at \$50.00 per month and that he have to retest and pass to have the suspension of the QP license lifted and make sure fines are paid in order for the suspension to be lifted.

Commissioner Runbeck asked for further discussion because she liked the point that Mr. Driggs made to revisit the suspension issue after one year. Ms. Gervase stated a respondent has the prerogative to come before the Commission and request that a suspension be lifted or modified early. Commissioner Faker feels the motion is fair and it is a lot better than a five-year revocation. Commissioner Hartley asked if Mr. Perry's applicator license is valid. Ms. Gervase responded the applicator license is still valid.

Commissioner Hartley questioned Mr. Perry if he gets jobs with pest control company why they fire him. Mr. Perry responded because he has problems with the SPCC. Commissioner Hartley stated there are two levels if you work for a company, people who have an applicator license they make a nice living if they do their job and the next step up is you want to be a QP, you want to qualify a company that may give you a different job in a company and it may not. Commission Hartley informed Mr. Perry that you have an applicator license you can go out and do meaningful work. Ms. Gervase stated Mr. Perry has a "B2" and "B8" license. Mr. Perry has categories that he can go out and seek gainful employment with his applicator license. Commissioner Runbeck stated that is why she was advocating to put the QP on probation and not for suspension or revocation, so Mr. Perry would have the ability to be a QP. Commissioner Fraker stated we are preventing Mr. Perry from going back to work next month for Mr. Jack Chase. Commissioner Baker commented that if a company calls the Commission and they find out Mr. Perry has fines this is what is eliminating him form working in the industry and if this is cleared up it will allow him to work as a pest control operator.

Ms. Lisa Gervase had a question that she understands on the QP license, but on the applicator license in terms of monitoring that he not be allowed to associate with Jack Chase and put him on probation. Mr. Driggs stated that Mr. Perry will have to be up to compliance with the Structural Pest Control as to other past debts, you will also say in this Order that the \$300.00 fine against his applicator license stands or you can jump up the \$300.00 or delete the \$300.00 as for the other \$3,300.00 or \$1,000.00 outstanding that can be handled in the terms of probation that he becomes in compliance with past orders. Commissioner Baker reiterated his first Motion that he pay the fines, a three-year suspension, do CEU's, take the QP test and pass. Basically, Mr. Perry has to maintain his applicator license.

Break from 10:25 A.M. to 10:45 A.M.

XIII. For information, discussion, and possible action:

A. Continuing Education Committee Minutes

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

Seconded by Commissioner Runbeck.

VOTE: 7 - 0 Motion carried.

B. Legislation - Status of HB 2504 and HB 2119

Mr. Carl Martin stated there were two pieces of legislation. One was sponsored by the Commission and the other by the Arizona Pest Management Association. During last month's meeting, Mr. Martin spoke briefly about the legislation and the shelving of both of those bills. Through a diligent effort of a staff member of the APMA, they found a new bill that is called "A Strike Everything Bill" where the text was taken out and amended language was placed in that bill that encompasses or incorporates nearly all the provisions that we had in our previous two bills that have been shelved. That Bill was heard in Senate Commerce on Wednesday and passed 7-1 and has been sent to the Senate Rules Committee for their blessing and will go down to the floor to pass and then it goes back to the house for concurrence and then to the Governor's Office at the end of next week.

Mr. Martin further stated there was an issue that arose about landscapers in previous iterations of the statute governing the Structural Pest Control Commission. Previously, there was an exemption from licensure for persons who were gardeners who used ready to use pesticides, "premixed." That exemption was taken away some time ago and is not in the code now. The Commission has had a steady stream of landscapers before them who routinely use pesticides and herbicides, but who do not get licensed. There was a notation put forward by the Senator who is sponsoring the new bill suggesting that the landscapers do not need to be licensed because they use something that you can buy at Home Depot. Mr. Martin stated we were able to persuade the Senator there was no reason to make a change, at least not at this time. The Federation of Independent Business is interested in having this bill. In the wake of the Christian Alf experience at the legislature there is still some amenity. This is not an issue that will go away and the APMA is ambivalent to this in some degree, but their president and general counsel are not ambivalent about these issues. Their hireling either does not hear or understand and we had to go it alone, but we did win. The bill will move forward and we will get the provisions we want, but the Commission might consider for the future a fundamental review of the licensing responsibility authority mechanism of the agency. Mr. Martin suggested that we might look at who we are licensing and why are we licensing them and for what purpose we would want to continue that into the future. It is a suggestion to his credit that Mr. Richardson has been advocating for years and he has suggested that we need to sit down and talk about this issue. Even today, we had cases before you and there were questions on the categories, do I need license or don't I need a license, does the Commission have the authority to prosecute under Federal Law or State Law.

Commissioner Peterson stated that the Federation of Independent Businesses wanted to propose legislation to exempt landscapers who perform weed control from licensure, if 15% or less of their business was performing weed control. The FIB were not the only ones, the School Board Association have come forward with a proposal and almost got it adopted that any school employee at a school can use any pesticide without licensure at any time for any purpose. Commissioner Fraker asked for the Bill number. Mr. Martin responded it is HB 2399. The bill was from out of the house and it is in the Senate. The proposed language was added by amendment. The only negative vote came from Senator Gaby Gifford who remembers well that we traded last year the five-year rule keeping provision for getting rid of having to report every termiticide action.

XIV. For information and discussion, not action:

A. Computer Based Testing “CBT” Status and Statistics

Discussion by Mr. Carl Martin, who corrected his CBT report which should state March and not January. Mr. Martin stated the passing rate keeps increasing. Mr. Martin further stated that we have changed some of the testing exams and the two-hour time limit has not been adequate for completion on a routine basis. Mr. Martin was addressing the Qualifying Party, Wood Destroying Insect Control tests. The number of graphs were excessive and the number has been reduced and the test is still is a good test. The pass rate is 18% and it should increase. Commissioner Baker asked Mr. Martin if the QPs were not studying since the applicators show 40% and 25% for QPs. Mr. Martin responded that it is a combination of two things but does not have hard data on this. Mr. Martin thinks everyone who has been out on a route thinks they can run a business too. They come in and cannot pass the test because they do not study and one of the worst measurers of ability to run a pest control business is to spend time at the end of the hose. Mr. Martin stated for QPs that it is not an entry level or a minimum competency standard that we seek, like it is for applicators.

Commissioner Fraker asked Mr. Martin whether there were statistics for QPs who took an exam for March. Mr. Martin instructed the Commission to look at the last page where the summary statement is listed and see QP–WDI Termite B2, there were 36 examinations taken that month with a 16.7% pass rate and that is a statewide number for the month and we had 36 persons take the exam and 1 in 7 passed the exam and the overall pass rate for all tests was 31.5% - somewhat higher for applicators. Commissioner Fraker stated the first page showed no QP testing. Carl Martin further stated that the people in Prescott lead the pass rate. Commissioner Baker stated that five people took the WDI and nobody passed those tests.

Commissioner Fraker commented that these businesses are utilizing temporary QPs because they are not passing, so they are working the system. Commissioner Runbeck asked if there is a way of compiling information of businesses who use multiple QPs. Mr. Robert Tolton responded to Commissioner Runbeck by stating that only one temporary qualifying party is issued to a business, if it expires then they no longer qualify for a temporary. The business will need to have someone that is testing or an individual who already has a QP license. Commissioner Baker stated this goes back to the application itself because when you read they meet minimum requirements. The letters of recommendation do not tell anything about their qualification. There needs to be some discussion about the application form. This is an issue that has to be addressed and it is not solely the staff's responsibility, and the Commission should have input on this issue. Commissioner Peterson stated it will probably require some legislative change because what we are asking for, we will have to have some legal authority.

XV. Approval of Minutes

March 12, 2004 (regular session) Minutes

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

VOTE: 7 - 0 Motion carried.

March 12, 2004 (executive session) Minutes

Commissioner Runbeck asked about the blank spot for the time. Ms. Lisa Gervase responded that she did not remember the time and now that she has Ms. Vazquez's Minutes she will fill in the time.

MOTION: To approve with the time added by Commissioner Hartley.
Seconded by Commissioner Robinson.

VOTE: 7 - 0 Motion carried.

XVI. Scheduling of future meetings/agenda items

Current Proposed dates and locations

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

September 10, 2004Scottsdale, AZ
October 8, 2004 Tucson, AZ

Ms. Lisa Gervase asked the Commissioners if they have any changes for meeting dates and Agenda items to add. Commission Baker would like to add Flagstaff in August. Commissioner Peterson stated he will not be at the August meeting, but will be back the night before the May meeting. Ms. Gervase also asked the Commissioners if they have a preference on the start time for the meetings. The consensus was for a 9:00 a.m. start time, regardless of whether there is a CEU meeting before the Commission meeting. Commissioner Baker may be kidding about Flagstaff, but he would like alternative sites considered. Commissioner Peterson stated that SPCC has a lot of staff persons who would have to travel from Phoenix and the last meeting we had in Flagstaff we did not have a great turnout. Ms. Gervase stated from the October 2003 meeting we had 12 people in the audience who do not typically attend. Ms. Gervase stated we will go anywhere, but we need the benefit. Ms. Gervase was instructed to look into the August meeting to be held elsewhere. Ms. Gervase further stated if the meetings are held out of town then we have 24 to 30 hours of unproductive staff driving time. Commissioner Runbeck suggested that the meeting be held in Prescott. Commissioner Baker said he is just looking for alternatives. Commissioner Peterson said that the schedule will remain as is for now, and we will consider future changes to the locations.

XVII. For information and discussion, not action: (Ms. Gervase)

A. Expenditure Report.

Ms. Lisa Gervase said that we are into 75% of the fiscal year and have expended 65% of our appropriated funds. Ms. Gervase stated we are looking into purchasing computers and other needed items, which will use the proposed remaining funds. Commissioner Hartley asked about the status of the percentage of expenditures that if they go out at the same rate. Ms. Gervase responded that we wait to see where we are on the budget and if there are monies then we make the necessary purchases for items that are needed such as computers. Commissioner Hartley asked if there are any hidden expenses. Ms. Gervase stated we keep track of our projections and there should not be any unusual expenses that we do not know about.

B. Case Status Report

Ms. Gervase stated the April 2004 case summary was mailed to them and a week ago when she mailed the case status we had 71 active cases and now we are down to 65 active cases. Most are being monitored for compliance and most of them that need to be processed are from the 2003 and 2004 Commission meetings. We do

have eight that are old.

XVIII. For discussion, consideration and possible action: Substantive Policy Statement Re: Felony Guidelines

Discussion by Ms. Lisa Gervase stating that the Policy Statement was drafted based on the work by the Felony Guideline Committee back in July 2000. The committee consisted of Cindy Fraker, Scott Richardson, Rusty Burrows, Jerry Davis and Carl Martin and that committee came up with a guideline memo about when applicants should be denied, and when they may be given some type of discretion, and what type of questions to ask the applicants. Guidelines are not enforceable, we need to have law, rule or substantive policies. Ms. Gervase stated she took the work that was done in 2000 and drafted the policy statement that you have and it is a very rough draft. This is the first time you have seen this draft, it is probably a good idea to think about it and have some discussion and have some editing of the statement. Commissioner Peterson asked if the questions on the second page if they are a worksheet and people will fill them out when they come in as a felony applicant. Ms. Gervase stated the applicant fills out a felony questionnaire, we can have either those questions filled out or the Commission ask those questions as people come before you. Commissioner Runbeck asked who is involved in preparing this statement. Ms. Gervase stated she is the only person who has been involved. Commissioner Runbeck asked who do we get our comments to. Ms. Gervase responded that you can e-mail or fax it to her. Commissioner Baker asked that if we e-mail Ms. Gervase, then "cc" everyone else. Ms. Gervase informed the Commission if we "cc" then we have a problem with the open meeting law requirements. Commissioner Fraker would like to get some feed back from the Arizona Pest Management Association and the industry. Commissioner Baker suggested that it be placed on the web site for the industry for comments.

Ms. Gervase stated it is on the Agenda and if anyone wants a copy or has input they can call and get a copy of it. It can be put on the web site and it can be mailed to specific industry members and APMA who have expressed an interest in the statement. Commissioner Peterson instructed the Commissioners to review and if they have any comments to e-mail it to Ms. Gervase.

XIX. For discussion, consideration and possible action: Substantive Policy Statement Re: Label is the Law/Depth of Footer Rule

Discussion by Ms. Lisa Gervase on the Depth of Footer Rule which was first placed on the Agenda back in October 2003 in draft form and then we received comments from industry members and have made some changes. The second draft was done in March by Mike Francis, Carl Martin and Scott Richardson, and based on further input, final changes were made by Ms. Gervase on April 2. The only comment Ms.

Gervase has received is maybe a requirement that if any industry member avails themselves of this policy statement that they provide written notice to the SPCC , so we would have record of how often and who needs to avail them self of the policy statement, and we can monitor for compliance. Commissioner Baker asked if this policy statement is still a draft. Ms. Gervase responded it is a draft until it is approved. Commissioner Fraker stated it is a step into the right direction and there is a concern about horizontal treatment and if we can include this at the same time when treating abutting slabs or if it is a side walk or drive way. There is a need in the industry to have some clarification on this issue. Ms. Gervase stated we have drafted another policy statement for that specific issue and there are some questions that have not been answered. Once those questions have been answered, the draft will be placed on the Agenda. Commissioner Peterson would like to see this on next month's Agenda and to include the portion of notifying the SPCC in writing if a licensee avails themselves of the policy.

XX. Adjournment - 12:50 P.M.

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

VOTE: *7 - 0 Motion carried*