

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

**COMMISSION MEETING
FRIDAY, May 14, 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, Mike Francis, Lisa Gervase, Carl Martin, Robert Tolton, Maggie Vazquez and Assistant Attorney General Blair Driggs

II. Call to the public.

Dr. Michael Pfeiffer of Pesticide Training Resources stated he provides continuing education to the industry. Dr. Pfeiffer's concerns are the mandates that came from the Commission in February regarding continuing education to be entered into the Structural Pest Control Commission data base so members from the industry can renew on-line. Dr. Pfeiffer stated he was able to test the system by April 15, prior to that date Dr. Pfeiffer was unable to use the system and he was told by SPCC staff that he had to update his computer system. Dr. Pfeiffer voiced his concerns with the concept of entering the data, since it will take a week. Dr. Pfeiffer asked if this matter could be put on a future meeting Agenda for discussion. Commissioner Peterson responded "yes" and asked Ms. Lisa Gervase if this can be placed on a future Agenda and she responded "yes."

III. Communication with Commissioners

Commissioner Hartley and Commissioner Baker have had some discussions with Dr. Pfeiffer about the on-line procedures.

IV. Consent Agenda

Commissioner Baker stated he pulled some of the applications because information was left blank regarding "financial responsibility" even though proof of liability insurance has been provided. Commissioner Baker requested that all information be filled out, so that no information is left out on the application. Commissioner Peterson concurred that application forms should be completely filled out, and staff

needs to verify the detail of applications are completed. Commissioner Peterson further asked that people who sign and verify the practical experience forms, to list their job titles so that the Commission knows who these persons are and whether they have the authority and knowledge to sign the forms.

A. Applications for New Business License

Qualifying Party

- | | |
|--|---|
| 1. Abel, Kurt William | McCann's Pest Elimination, LLC.
(Activating Qualifying Party for new business license in "B1" General Pest/Public Health) |
| 2. Alexander, Michael Thomas | King Exterminating, LLC. (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) |
| 3. Cenatiempo, Kris Neal
<i>Pulled</i> | Zero Tolerance Pest Solutions
(Activating Qualifying Party for new business license in "B1" General Pest/Public Health) |

Commissioner Baker said that the Financial Responsibility section of the application was left blank, and should have been completed even though the Insurance Certificate of Liability is attached. Commissioner Baker wondered what else may be missing on the application. Commissioner Peterson wants all information filled out on the application even if an applicant merely writes, "see attached" and attaches the detailed information.

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

VOTE: *7 - 0 Motion carried.*

- | | |
|--------------------------------|--|
| 4. Elkins, Ronald Frank | Artistic Land Management, Inc.
(Activating Qualifying Party for new business license in "B5" Turf & Ornamental Horticulture and "B9" Aquatic Pest Control) |
| 5. Guss, Vance | Sun Lakes Pest Control (Activating Qualifying Party for new business license) |

in "B1" General Pest/Public Health, "B2" Control of Wood-Destroying Insects, "B3" Right of Way/Weed Control and "B8" Wood Destroying Insect Inspection)

6. Hamilton, Kevin Deane

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

7. Henson, Jr., Ernest Lee

Pulled

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

Same discussion as for Tab 3 - information was left blank. Commissioner Baker wants the public to know that we are being consistent in the way we do things.

MOTION:

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

VOTE:

7 - 0 Motion carried.

8. Kohler, Bradley B.

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

9. Modeer, Christopher D.

Eagle Crest Golf Club Limited Partnership (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

10. Mollerup, Kevin Paul

Regency Pest & Termite Services
(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)

11. Nerone, Joseph Anthony

Ariat Services, 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)

- 12. Orozco, Samuel G.** **Gold Canyon Landscaping** (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)
- 13. Pearce, Chandler Abe** **Economy Pest Control, LLC** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
- 14. Peterson, Curtis Alan** **Legends Landscape Management, Inc.** (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)
- 15. Pitts, Ronnie Hugh** **Arizona Dragon Slayer Exterminating** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
- 16. Reardon, Richard** **Sun State Lawn & Landscaping Corporation** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)
- 17. Sarnicki, David** **Xceptional Pest Management** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
- 18. Strait, Paul Samuel** **Good Fella's Pest Control** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
- 19. Talkington, Gerald** **Ambassador Grounds Control, LLC** (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)
- 20. Walsh, Kevin Brent** **Desert Forest Golf Club** (Activating

Qualifying Party for new business license in "B5" Turf & Ornamental Horticulture)

21. Wuellner, Jr., Todd G.

Trilogy Golf Club at Vistancia
(Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

B. Applications to activate Qualifying Party for Existing Business License

1. Collins, Jason Paul
Pulled

Younger Brothers Pretreat & Home Services, LLC. (Activating Qualifying Party for existing business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

Pulled for lack of information on forms and same discussion as above.

MOTION:

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

VOTE:

7 - 0 Motion carried.

2. Curtis, Richard Nielson
Pulled

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

Commissioner Fraker wanted to create a discussion concerning Centurion Environment's application. Commissioner Fraker stated this company is owned by a real estate company. He was concerned about this company's awareness that any entity with financial interest in a property cannot conduct a wood destroying insect inspection or write a WDIIR. Ms. Lisa Gervase stated that the statement is on the wood report itself that whoever is doing the inspection is signing or verifying that they have no financial interest in the property. Commissioner Fraker asked staff to send them a letter informing them of this.

MOTION:

*To accept by Commissioner Fraker.
Seconded by Commissioner Runbeck.*

VOTE:

7 - 0 Motion carried.

3. Hageman, Edward

Ecolab Pest Elimination Division (Activating Qualifying Party for existing business license in "B5" Turf & Ornamental Horticulture)

4. Martinez, Alejandro

Creative Environments Maintenance Services, LLC (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

5. Osweiler, Joseph John

David's Pest Control (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

6. Piper, Bob Lee

Piper Pest Control (Activating Qualifying Party for existing business license in "B5" Turf & Ornamental Horticulture)

7. Salcido, Jenifer Renee

Younger Brothers Pretreat & Home Services (Activating Qualifying Party for existing business license in "B1" General Pest/Public Health)

8. Todd, Terry V.

Pulled

Vistoso Partners, L.L.C. (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

Pulled for lack of information on forms and same discussion as above.

MOTION:

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

VOTE:

7 - 0 Motion carried.

C. Applicants for QP Testing

1. Bialowitz, Michael S.

"B3" (Right of Way/Weed Control)

- 2. **Chavez, Corina Ann** "B1, B2 and B8" (General Pest/Public Health, Control of Wood-Destroying Insects and Wood Destroying Insect Inspection)
- 3. **Espinosa, Rene** "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)
- 4. **Gloria, Peter A.**
Pulled "B1, B2 and B8" (General Pest/Public Health, Control of Wood-Destroying Insects and Wood Destroying Insect Inspection)

Commissioner Robinson questioned whether Mr. Gloria was a licensed applicator. Mr. Robert Tolton stated Mr. Gloria has been licensed since 2001, and apologized for not having the licensing computer printout in the Commission books on this issue.

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

VOTE: *7 - 0 Motion carried.*

- 5. **Hawkins, Johnathan R.** "B8" (Wood Destroying Insect Inspection)
- 6. **Heinrich, Daniel Scott** "B2 and B8" (Control of Wood-Destroying Insects and Wood Destroying Insect Inspection)
- 7. **Hutchinson, Peter James** "B1, B2, B3, B5 & B8" (General Pest/Public Health, Control of Wood-Destroying Insects, Right of Way/Weed Control, Turf & Ornamental Horticulture and Wood Destroying Insect Inspection)
- 8. **Keith, Joshua** "B1" (General Pest/Public Health)
- 9. **Leo, Anthony James**
Pulled "B1" (General Pest/Public Health)

Mr. Leo appeared and answered Commissioners' questions.

Commissioner Peterson asked who Karen Carlisle was who signed the Verification of Practical Experience form. Mr. Anthony Leo stated that Ms.

Carlisle is the Human Resource person and either she or Kent Sexton sign the experience verification forms. Commissioner Peterson wanted to confirm that Ms. Carlisle can vouch for Mr. Leo's experience.

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

VOTE: *7 - 0 Motion carried.*

- | | |
|--|---|
| 10. Liechty, Jason Garrett | "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture) |
| 11. Northrup, Jr., Daniel D. | "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture) |
| 12. Orr, Robert Lloyd | "B1" (General Pest/Public Health) |
| 13. Peaty, Paul Earl | "B1, B2 and B8" (General Pest/Public Health, Control of Wood-Destroying Insect and Wood Destroying Insect Inspection) |
| 14. Pugh, Alan Paul | "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture) |
| 15. Raines, Diane Jane
<i>Pulled</i> | "B1" (General Pest/Pubic Health) |

Ms. Diane Raines appeared and answered Commissioners' questions.

Commissioner Peterson asked who Mark Raines was. Ms. Raines responded that Mr. Mark Raines is the Qualifying Party for Tag Exterminating and the owner. Commissioner Robinson asked if staff calls each person who signs the verification form. Ms. Lisa Gervase said "no". The purpose of the form is so that we obtain the information in writing rather than calling each person. The SPCC cannot call each individual based on the amount of applications SPCC receives. Ms. Gervase states if we have questions we do call. Commissioner Robinson further asked if we verify the number of hours. Ms. Gervase responded that we do not call verify the number of hours and reiterated that is the purpose of the verification form. If something does not make sense, we will call or send a follow-up letter for more details.

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

VOTE: 7 - 0 Motion carried.

16. Ross, Richard M. "B2, B5 and B8" (Control of Wood-Destroying Insects, Turf & Ornamental Horticulture and Wood Destroying Insect Inspection)
Pulled

Mr. Richard Ross appeared and answered Commissioners' questions.

Commissioner Peterson asked Mr. Ross who William Sherrill was. Mr. Ross responded that Mr. Sherrill is the QP. Commissioner Peterson asked if the verifications could be notarized. Mr. Blair Driggs stated all the notary does is verify their signature. Commissioner Baker asked if the verification form is the Commission's. Ms. Gervase responded "yes." Commissioner Baker stated a line could be added for a title. Ms. Gervase stated that information is on the form and staff will do a better job returning forms if any information is left blank.

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

VOTE: 7 - 0 Motion carried.

17. Shoffner, Russel Jon "B2 and B8" (Control of Wood Destroying Insects and Wood Destroying Insect Inspection)

D. Request for Company Name Change

- 1. Landscaping By Northwest to Northwest Landscaping, LLC**
- 2. Northwest to Northwest Exterminating**
- 3. Phoenix Pest & Termite Control, Inc. to Phoenix Pest & Termite Control**
- 4. Stormin' Norman Pest Control, Inc. to Norm's Bug & Bee Control**
- 5. Berrett Pest Control to Blue Sky Pest Control TAB 51**

End of Consent Agenda

MOTION: *By Commissioner Allen to accept Consent Agenda with the exception of those items pulled for discussion (Tabs 3, 7, 22, 23, 29, 33, 38, 44 and 45).*

Seconded by Commissioner Runbeck.

VOTE: 7 - 0 Motion carried.

V. Applications for New Business License not on the Consent Agenda

Qualifying Party

A. Trott, Roger Fremont
Tabled

Maly & Associates Foothills Pest Control, LLC (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Control of Wood-Destroying Insect, "B3" Right of Way/Weed Control and "B8" Wood Destroying Insect Inspection)

Mr. Robert Tolton stated Maly & Associates Foothills Pest Control, LLC registered the trade name. Currently, the SPCC has a licensed company by the name of Foothills Pest Control that is currently licensed, insured and in good standing, and it is their registered trade name. Mr. Tolton stated upon receiving the documentation which meets SPCC requirements, staff wanted to inform the Commission of a similar company with the same name. In addition, SPCC received an Insurance Certificate with the name of Foothills Pest Control Maly & Associates, so there is a question of what name they will be using. Commissioner Fraker asked if we notified Foothills Pest Control and Mr. Tolton stated "no." Mr. Tolton further stated he did notify Mr. Trott that this matter would be on the Agenda for review with the conflict of the name. Commissioner Peterson stated this matter should be tabled and directed staff to seek clarification on the name.

VI. Applications for Qualifying Examination not on the Consent Agenda

A. Bayne, Michael Spencer "B3" (Right of Way/Weed Control)
Tabled

Tabled because Mr. Michael Spencer Bayne did not appear to answer Commissioners' questions.

B. Jones, Arizona Casey "B1" (General Pest/Public Health)

Mr. Arizona Casey Jones appeared and answered Commissioners' questions.

Ms. Lisa Gervase stated this was tabled from last month because of a pending investigation of alleged unlicensed activity against Mr. Jones. One instance of unlicensed activity was verified at an apartment complex and Mr. Jones has been fully cooperative with the Commission's investigation. Ms. Gervase stated neither she, nor Mr. Mike Francis, has reviewed the complaint file, so it has not yet gone to

settlement conference. Mr. Jones does not know that the proposal will likely be for an Administrative Warning and a \$400.00 civil penalty against his applicator license for the unlicensed activity. Mr. Jones stated he would agree with the fine. Ms. Gervase stated to Mr. Jones to keep in touch with Inspector Guzzi. Commissioner Allen wanted to make sure that Mr. Jones was aware of his rights, that he does not have to agree to the terms. Ms. Gervase responded that Mr. Jones has the option of going to Administrative Hearing. Commissioner Allen did not want Mr. Jones to feel that he was being "strong armed" into agreeing to something that is not agreeable to him. Ms. Gervase just wanted to let Mr. Jones know the status of the case and that it should not affect his approval for his QP Application.

MOTION: To approve QP Testing in the "B1" category by Commissioner Hartley. Seconded by Commissioner Runbeck.

VOTE: 7 - 0 Motion carried.

C. Mansperger, Jay Paul "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)

Mr. Jay Paul Mansperger appeared and answered Commissioners' questions.

Commissioner Peterson stated the concern that the applicant is verifying his own Practical Experience. Mr. Mansperger stated there are supporting documents that he submitted on his behalf from individuals who verified the type of services that were rendered. Commissioner Peterson asked Mr. Mansperger if these were individuals that he worked for and he responded "yes." Commissioner Peterson asked Mr. Mansperger if he was the owner and operator of the company. Mr. Mansperger responded "yes." Commissioner Runbeck asked if Mr. Mansperger had been operating illegally for the last six years. Mr. Robert Tolton stated that there are landscapers who are unaware that they are required to have a license to spot spray for Weed and Turf & Ornamental control. Mr. Tolton further stated that Mr. Mansperger would like to continue operating his business, and would like to seek his Qualifying Party License, and he was told he would have to disclose that his was operating his business to prove his experience. Mr. Tolton stated that staff believes he has the experience, just that he is verifying his own experience with supportive letters from customers. Commissioner Runbeck asked if we have addressed the unlicensed activity in the past. Mr. Tolton stated Mr. Mansperger came in on his own free will and he is no longer spraying and that any pest control work is contracted out. Commissioner Robinson stated if we have an individual that was actually caught doing unlicensed work we treat that individual differently than an individual who comes in on his own free will. Ms. Lisa Gervase responded yes we do, we do not have an investigation pending nor have evidence that Mr. Mansperger was conducting work without licensure, beyond his statements used to prove his experience to get a license. Ms. Gervase stated the law does not preclude someone from using this experience while unlicensed. The goal is to help people get licensed if they want to continue performing pest control work. Commissioner

Fraker asked Mr. Mansperger how he obtained his formal training before starting his own business. Mr. Mansperger responded that he follows the directions that are on the label and uses common sense.

MOTION: *To approve QP Testing by Commissioner Hartley.
Seconded by Commissioner Robinson.*

VOTE: *7 - 0 Motion carried.*

VII. Complaints against Licensees

A. Robert Chevalier - Case # 2003-136

Commissioner Fraker recused himself because Mr. Chevalier is a former employee. Neither the Respondent nor the Complainant appeared.

Commissioner Runbeck questioned whether the termite treatment worked since the termites came back, and whether Mr. Chevalier returned the \$400.00 to the consumer. Mr. Colvin stated that he received a letter from the consumer stating she received the \$400.00 and then two weeks later she called and stated that she did not receive the \$400.00 and would be taking Mr. Chevalier to court. Commissioner Runbeck would like to assess a \$400.00 civil penalty. Commissioner Peterson stated we have to be consistent with similar cases, and perhaps Mr. Chevalier would sign a Consent Agreement agreeing to pay the consumer the \$400.00, otherwise it would be in the form of a civil penalty. Commissioner Allen stated the consumer would be able to pursue this matter in court and the Commission can assess a civil penalty. Commissioner Hartley is concerned from the consumer stand point that she put out \$400.00 and did not receive anything. Commission Hartley stated that the proposed settlement terms stinks even though staff did a good job with the information they had at the time and he would like to see it renegotiated. Commissioner Peterson stated we need a suggestion of what needs to be done. Do we want this settled through a Consent Agreement, so the \$400.00 is returned to the consumer? Commissioner Hartley would like to see the consumer reimbursed the \$400.00. Commissioner Allen stated that he would accept the proposed settlement terms of the \$400.00 civil penalty and administrative warnings and that Mr. Chevalier reimburse the consumer the \$400.00. Ms. Lisa Gervase reiterated the terms that are to be part of the Consent and that is \$400.00 to reimburse the consumer and \$400.00 for the civil penalty. Commissioner Peterson asked, if this goes to hearing, whether the Administrative Law Judge can order that the consumer be reimbursed. Ms. Gervase responded "no." Attorney General Blair Driggs stated we could ask for more money as a civil penalty only.

MOTION: *To return the matter to settlement to modify the resolution with an Administrative Warning, \$400.00 civil penalty and \$400.00 reimbursement to the consumer, or send the case to hearing, by Commissioner Runbeck.*

Seconded by Commissioner Hartley.

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

B. Christopher Kane - Case # 2003-122APP

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 Robinson.
Seconded by Commissioner Fraker.*

VOTE: 7 - 0 *Motion carried.*

C. Stephen Scott - Case # 2003-107APP

Mr. Dave Colvin stated that the Business License portion has been resolved and the applicator listed inaccurate information on the pretreatment tag. Commissioner Baker questioned why only an additional six gallons was added to the plumbing areas when according to the calculations they were 41 gallons short. Commissioner Baker asked for clarification of why and how they added to the plumbing protrusions. Mr. Dave Colvin explained that this was a post-tension slab and explained the retreatment. Commissioner Peterson stated the warranty was extended an extra year. Commissioner Runbeck questioned the difference between this case and the prior case. They both had the incorrect calculation information on the tag and in the prior case a civil penalty was assessed and this case there is not a civil penalty. Mr. Colvin stated the difference is that one of the treatments was a restricted use pesticide which puts a greater aggravating value than the other case. Commissioner Peterson stated in one you see five points and the other one is two.

Commissioner Fraker stated he has a problem with a statement Mr. Scott made in his Witness Statement "after a year as a pretreater you get to the point where you can tell just by looking at the slab that it is properly treated." Commissioner Fraker would like for staff to have a discussion with Mr. Scott and to send him to a pretreat class. Commissioner Runbeck had a question for an industry member because Mr. Scott indicated that he applied the correct amount of chemical, but he filled out the tag wrong and does not compare his calculations. Commissioner Fraker stated that this is something that needs to be discussed. Mr. Scott cannot verify the 256 gallons to do the job without at least a stopwatch, just based on experience

Commissioner Fraker further stated that applicators can use a site gauge on the truck to tell how many gallons are applied. The other way is to look at your watch and time the duration of the application when the equipment is turned on based on the gallons a minute that the equipment applies. Commissioner Fraker's company uses electronic flow meters to calculate how much comes out of the hose. This is something to be discussed on a future agenda or in a staff meeting. Because

violations are being issued and it is hard to use the site gauge. Commissioner Fraker stated what would be typical, is that you do your calculation, you figure out how much is needed to be applied, you treat it, and then you write down your calculation because you have no verifiable way of knowing what was applied. Commissioner Runbeck assumed that everyone has flow meters. Commissioner Fraker commented there are different kinds of flow meters, there are some that click off per gallon, and meters at the end of the hose, and there is no enforcement that they have some type of flow meter on the trucks. Commissioner Hartley stated anytime someone wants to cheat, they can cheat. Covert operations are the best thing to do because there is no substitute if a flow meter is on a truck. Commissioner Peterson stated this is something that can be discussed at a future meeting if there is an industry standard and making it fool safe for the consumer.

Commissioner Allen asked if we need to educate Mr. Scott because of some of the indications that he gave in his statement are cause for concern. Commissioner Peterson stated he has to go through the effort of the worksheet of what he did in this case.

Ms. Lisa Gervase stated that Mr. Scott agreed to attend the pretreatment calculation workshop, but it did not get placed on the document. The disciplinary action is for an Administrative Warning and to attend a pretreatment calculation workshop and it was not properly on the Agenda, and it would be proper to make a verbal amendment.

MOTION: To accept enforcement response program terms (with the addition of the pretreatment calculation workshop) and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Runbeck.
Seconded by Commissioner Hartley.

VOTE: 7 - 0 Motion carried.

D. Economics Laboratory Incorporated dba Ecolab Pest Elimination Division/Leon T. Glaser - Case # 2003-067

Commissioner Baker stated that, on 6-9-03, Mr. Strong admitted to the illegal storage and he "was not aware that it was being stored at this location." Commissioner Peterson asked if there was anyone from ECOLAB present. No one was present until the Commission concluded its discussion and voted on this matter, then Steve Strong, Regional Manager, appeared. Discussion between Commission Peterson and Baker about the statement that was made by Mr. Strong and whether Ecolab knew about the improper storage, and that the proposal is for a good penalty for the violation. Commissioner Baker said it appears that the proposal is a double civil penalty, but Commissioner Peterson responded that they are separate licenses for QP and Applicator. Commissioner Hartley stated for the record that there is no

one here for ECOLAB to stand up and explain this to us. For members of the Commission who are not well versed in pesticides, this is a restricted use pesticide that is a highly toxic and explosive material. If it gets wet, it is a major problem. Commissioner Hartley commended the staff and inspectors in handling this case. Commissioner Hartley further stated that is why we are here and he is shocked that they are not here to explain this and would not like a repeat of this matter.

Lisa Gervase stated the company that owns this company in Arizona is a national or international company and Mr. Francis sent a very strong letter this week to the CEO explaining this case and suggesting that they notify all of their subsidiaries of how to properly store chemicals. Commissioner Fraker stated that this is one of the most toxic products, it is at the top of the list and it points to Mr. Ferguson, the area manager, to properly handle, but he has no SPCC license. Commissioner Fraker further stated that Mr. Ferguson is the one who lied to the inspector and he walks without discipline because he holds no SPCC license. The other individual who is in charge is also not licensed, and who is not available, and not in town.

Commissioner Allen asked since they do not have licensed individuals does this not make it unlicensed activity. Ms. Lisa Gervase responded that they have a licensed qualifying party, but it was other corporate individuals who were making decisions and the QP was not active in the daily management of the business. Commissioner Baker commented that he is outraged that no one showed up for the meeting. Ms. Lisa Gervase stated that the inspectors are doing follow up inspections to verify continued compliance.

Mr. Vince Craig stated that staff went to ECOLAB's office to verify the restricted use pesticide records to ensure that the individuals name corresponds to a licensed applicator. Commissioner Peterson stated that everyone voiced their distaste with this matter and that staff did a good job.

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.*

At 10:45 A.M. Commissioner Peterson announced that Steve Strong appeared from Ecolab. Commissioner Peterson briefly explained the Commission's serious concern about the safety hazards of this improper RUP storage, and the SPCC's frustration about the lack of action that can be taken against Messrs. Strong and Ferguson, who were primarily responsible.

Commissioner Peterson informed Mr. Strong that his employees “screwed up” and they did not know what they were doing and that their regional manager stated that they only store pesticides on the trucks. Mr. Strong responded that was a misrepresentation of the comment. Mr. Strong stated they were at fault and they take ownership for that and the associate was terminated. This could have been avoided if he had put these chemicals into the warehouse, it is Ecolab’s fault for not following up on him and they realize that. Mr. Strong commented to the service vehicles was a true statement that we brought our products in, dispense them, and then put them on the vehicles. Ms. Strong stated there were some associates who did not show up, so the products stayed in the warehouse and did not get put on the vehicles. Commissioner Peterson stated then it was only half a lie. Mr. Strong stated if you want to look at it that way, it fell through the cracks. Mr. Strong further stated that Ecolab wants to adhere to all the laws, rules and regulations, and they immediately dispensed with everything that day and did not bring anything into the warehouse, and the warehouse was shut down. Mr. Strong commented that this matter was dragged out for a while and now they are imposed penalties on 2004 taxes instead of 2003. We accept responsibility for our people and it was quickly rectified.

Mr. Strong asked the Commission what was the outcome of the vote. Commissioner Peterson responded that we agreed to the recommendation, with the penalty, administrative warning, education and a \$2700.00 fine, and a letter was sent to your corporate headquarters. Mr. Strong stated if you look at the letter that was sent to the inspectors that they have complied with every request they asked, we have invited them to the job site and to our warehouse to inspect.

E. Rutherford Exterminating, Inc./ Terry Rutherford (QP & APP) - Case # 2004-022

Complainant appeared and answered Commissioners’ questions.

Ms. Colleen Nichol-Rutherford appeared and stated she is married to Mr. Rutherford and they are going through a divorce. Ms. Rutherford stated she threatened to turn in Mr. Rutherford to the Structural Pest Control Commission because of his illegal practices. Ms. Rutherford stated she has been with Mr. Rutherford on his route when he did not spray, but left bills. Ms. Rutherford further stated that Mr. Rutherford has done pre-spraying for home subdivisions and she would help measure the house and he would not pretreat, but send a bill. Commissioner Peterson asked Ms. Rutherford to focus on the facts of the current case, and that staff would conduct follow up inspections regarding other allegations.

Ms. Rutherford mentioned facts about the history of their divorce, interactions and an attempt at reconciliation, and that on a Sunday morning during a possible reconciliation time, Mr. Rutherford sprayed her house heavily from top to bottom, including her trees and wood pile. Ms. Rutherford asked him what he was doing and

he stated no to worry that it will dry and you won't know its here. Ms. Rutherford stated she has eight cats and two dogs. Mr. Rutherford continued to spray the front of the house and Ms. Rutherford asked him why he only did three sides of the house. Ms. Rutherford stated that Mr. Rutherford stated he would do the rest of the house at a later time. Ms. Rutherford stated that they went swimming and believes that he placed something in her beverage because she does not remember leaving the swimming hole or getting home.

Ms. Rutherford stated she woke up at 3:00 a.m. and her throat felt like she had swallowed razor blades and by 8:00 a.m. she was very ill (coughing, sneezing and chest pain), and she went to the doctor. Ms. Rutherford went back to the doctor on the second week and was given portable inhalers and by the third week, she was worse. Ms. Rutherford stated at her second doctor visit, she told the doctor that her husband had sprayed her house to make her sick. Ms. Rutherford stated she ended up in the emergency room on August 30 and two brain MRI's and two EKG's and blood work were done.

Ms. Rutherford stated that Mr. Vince Craig came to her home to take samples on the outside of her home and the inside of her bedroom window and said the chemical was premethrin, but could not verify the amount of chemical. Commissioner Peterson stated that the product was misapplied and the Commission does not sample all over a house unless necessary for an investigation. For civil matters, a private professional would have to be hired. Ms. Rutherford claimed she has a doctor's diagnosis that she has neuropathy and they cannot test if she has premethrin in her blood.

Commissioner Robinson asked Ms. Rutherford if she stated to Mr. Rutherford that she may have an insect problem. Ms. Rutherford stated she had small spiders on in the inside of her home. Commissioner Allen asked about the premethrin sample data 8.8 ng per square inch and 4.5 ng per square inch around the window. Mr. Craig responded that there are no label guidelines to make a determination as to whether it is an over or under application. Commissioner Allen then asked if the test is to show that it was either present or absent. Mr. Craig responded "correct." Commissioner Peterson stated the detection level is 1 Ng to give you an idea what the level is. Ms. Rutherford stated that this test was done two and a half months after Mr. Rutherford sprayed. Mr. Craig stated there is no way to tell if he used full strength. Ms. Rutherford supplied medical documentation. Commissioner Peterson asked if premethrin is a colonestrace inhibitor and it is not. Ms. Rutherford stated that Mr. Craig told her to have the test done. Mr. Craig stated the reason why this test was done to see if Ms. Rutherford had organic poisoning. Commissioner Fraker wanted to comment that the house had been sprayed previously on two occasions with the complainant's consent.

Commissioner Hartley commented that he feels uncomfortable on how the Matrix

is used on the same individual who has a QP and Applicator license. On the Matrix we are citing him for applying a pesticide under his QP and Applicator license. Under the QP he is technically not allowed to spray chemicals and how can be cited under 301 (A) and is he directing himself as an applicator. The Matrix has a hole in it if we are citing all three licenses. The other issue of an over spray on the window of premethrin cannot be substantiated and 4.5 Ng is not an issue because it can be used inside and outside and it is not a highly toxic substance.

Commissioner Peterson stated that Mr. Rutherford agreed to the proposed settlement. Ms. Gervase stated it can be modified. Commissioner Peterson stated we have had this discussion before. Commissioner Fraker stated it depends on the case and in this case it is an application violation and it should be against the applicator, but in this case it is also against the QP who is the same person. Ms. Rutherford said that Mr. Rutherford did not live there. Commissioner Fraker stated that applicators generally do not leave receipts at their own house. Mr. Craig responded to Commissioner Hartley questions of why both licenses were sanctioned. Mr. Craig stated that as an applicator, he should have known, and as a qualifying party he should have known; therefore, he is doubly responsible because of the laws that are in effect they govern all three licenses. Commissioner Allen stated that this has been a discussion in the past and we look at as an applicator as one level of responsibility and as a QP we look at a high level of responsibility, we all agree with that and the QP is fined then it should be double. Commissioner Peterson agrees if there were two different individuals we would apply the fine to each of those two individuals, and it so happens that Mr. Rutherford has both licenses. Commissioner Hartley disagrees based on the following logic. Commissioner Hartley gave an example if there was one person and a QP, then if a guys goes out and does not leave a service ticket, we would normally take action against the applicator for not leaving a service ticket, then would take action against a QP if he was not enforcing his responsibility as a QP in training and supervising and directing in leaving a service ticket, but we would not go after the QP for not leaving a service ticket for that day. Commissioner Hartley quoted off the Matrix for the QP that he applied a pesticide on a non-target contamination, a QP is not allowed to apply a pesticide. Mr. Blair Driggs stated that the law for joint responsibility is where he ties himself and he is responsible for the same rule and statute is how you legally hold him responsible. The joint responsibility states you are jointly responsible for that same rule and that is why you can cite him for the same particular rule. Commissioner Hartley stated the Matrix stated he applied a pesticide which caused a non-target contamination, it does not say jointly, so they should have gotten him for that violation, as well. Mr. Driggs stated his Matrix states A.A.C. R4-29-104 joint responsibility.

Commissioner Runbeck questioned how long the residue would stay on a window sill. Could that have been residue from one of the prior inside treatments that was consented by Ms. Rutherford. Mr. Craig responded "no" that we do not have an

answer because Ms. Rutherford stated she cleans her home on a regular basis. Mr. Craig further stated the circumstantial evidence is too strong and he sprayed outside the window and Ms. Rutherford explained her cleaning methods. Commissioner Runbeck asked when the last treatment was and when was the swab taken. Mr. Craig responded the last treatment was on August 10, 2003 and the swab was taken on October 15, 2003. Commissioner Runbeck commented then the house was not clean for two months. Mr. Craig responded that "yes" because Ms. Rutherford was too ill to clean the house. Commissioner Fraker asked Mr. Craig if the samples were from previous applications that Mr. Rutherford had made on the interior of the home. Mr. Craig responded "no" that it could not be substantiated.

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: 4 - 3 Motion carried. (Commissioner Fraker, Hartley and Robinson opposed because they feel that this is an applicator violation, not QP and that the circumstances in this matter do not warrant the proposed discipline)

VIII. Unlicensed Activity Complaints

A. Camelback Landscape and Maintenance (L.C.)/Thomas Andrew Kirkegaard (Owner) - Case # 2004-032

Mr. Vince Craig stated that Mr. Thomas Kirkegaard initially declined the proposed settlement, but Mr. Kirkegaard was in today and he agreed to the \$500.00 civil penalty, and to the Cease & Desist Order, but he could not stay for the entire meeting.

Commissioner Peterson asked how big of a site was treated. Commissioner Peterson is concerned that two gallons of herbicide was used and it seems to be a large area. Commissioner Peterson wanted to make sure there was no problem with the label, not a question of how it was applied, but the use rate. Commissioner Robinson stated that Mr. Kirkegaard was using 1 oz per thousand which is a large area. Commissioner Peterson goes back to the question that was asked and the way it was responded to, and he responded two gallons. Commissioner Robinson stated he made a mistake, it was 1 oz per gallon. Mr. Craig stated it is not listed in the report, but would obtain the information. Mr. Craig stated he telephoned the inspector and the property was approximately 5000 square feet and the applicator was using a back sprayer doing spot treatments. Commissioner Peterson stated he used two gallons of total product versus mixed solution versus two gallons of

Round Up.

Commissioner Baker stated we accept the resolution for a \$500.00 civil penalty. Ms. Lisa Gervase stated Mr. Kirkegaard came in this morning and the Motion would be that he verbally accepted the prior offer and we will draft the Consent and if he does not sign we will draft an Order.

MOTION: To accept proposed resolution to issue a Cease and Desist Order and to impose a \$500.00 civil penalty against Camelback Landscape and Maintenance LC and Mr. Kirkegaard jointly and severally, to be paid within 30 days by Commissioner Baker.
Seconded by Commissioner Allen.

VOTE: 7 - 0 Motion carried.

B. The Landscape Specialist/Lee Erway (Owner) - Case # 2004-028

Commissioner Peterson stated in this case they were spraying in a school with children present. Ms. Lisa Gervase stated to take note of the aggravating factors. Commissioner Baker asked if anyone was here from the Landscape Specialist or from the school. Ms. Gervase stated that both campuses of the school were notified in writing this week of this whole situation because they have some culpability for hiring an unlicensed company. Commissioner Peterson stated that this person made a chunk of change in this. Commissioner Runbeck asked if he was paid \$825.00 a month for two years. Commissioner Peterson reiterated that it was per month. Mr. Blair Driggs made a recommendation that it be jointly and severally with this entity as well as the individual.

MOTION: To issue a Cease and Desist Order and to impose a \$1000.00 civil penalty against the Landscape Specialist and Lee Erway, jointly and severally, to be paid within 30 days by Commissioner Hartley.
Seconded by Commissioner Allen.

VOTE: 7 - 0 Motion carried.

Commissioner Baker asked if there is anything that can be done to get the school in compliance. Ms. Lisa Gervase stated there is no legal prohibition against hiring an unlicensed pest control company and letters were sent to both directors of the schools.

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

IX. For information and discussion, not action:

A. Complaint Status Log

Discussion by Vince Craig that the Complaint Status Log is more detailed now because of our Executive Director and the number of old cases is going down. Commissioner Peterson commented that the cases are going down and there will be more cases listed for the June Agenda. Ms. Lisa Gervase stated by the end of next month we will have 21 complaints that are more than six months old from the date the complaint were opened and the goal is to finalize many of the 21 on next months Agenda. The investigations are complete on most of the cases, and they are being reviewed.

X. Felony Applicants

A. Jackson, Angela Joy

Ms. Jackson appeared and answered Commissioners' questions.

Commissioner Runbeck asked Ms. Jackson to tell them when she was released from prison, what has been going on since that time, and what is her current situation. Ms. Jackson responded that she was released on June 4, 2003 which is almost a year. Ms. Jackson stated she had to rebuild everything up in her life, since she spent three years and seven months in prison, has custody of her children on a regular basis, a home, will have a great job, and currently is on probation. Ms. Jackson's probation is for five years, but her probation officer will be going before the judge to ask for early release because she has accomplished so much in the last year. Ms. Jackson does drug testing every week for the last year with no problems. Commissioner Peterson asked Ms. Jackson if she was running with the same crowd and Ms. Jackson responded "no." Commissioner Runbeck asked Ms. Jackson if this occurred in California. Ms. Jackson stated she was a Tucson resident, she was transporting from Mexico to California. Ms. Jackson stated her husband is in jail for 18 years 10 months for the same charge. Ms. Jackson further stated she has filed for divorce and has moved ahead in her life and realized that she was very co-dependent on her husband Dennis. Ms. Jackson stated she never knew how to be her own person and prison saved her life because she was able to take all kinds of classes while incarcerated.

Commissioner Runbeck asked Ms. Jackson how she ended up employed with 5 Star. Ms. Jackson stated her previous boyfriend's sister was leaving to go to college and asked her to take her route and has been with 5 Star for almost three months. Ms. Jackson stated she has lived in Tucson for 33 years and in the three months she has learned about the environment, critters and people, and her employer runs a tight ship. Commissioner Runbeck asked Ms. Jackson where she has been taking classes and she responded, while she was incarcerated. She took her GED and plans to continue her education and the past three months have been hands-on.

Ms. Shelby Hawkins of 5 Star spoke on behalf of Mr. Jackson and her belief that those of us who make mistakes can be given a second change. Ms. Hawkins further stated Ms. Jackson wants to learn and has done well. People are saying she is sticking her neck out, but Ms. Hawkins has another employee in a similar situation who has been with her for five to six years.

Commissioner Peterson asked about the letter of recommendation from Debbie Slaw. Ms. Jackson responded that she is a newly acquired friend. Commissioner Peterson further stated the concern is that you have only been out of prison since June and are on probation. Ms. Jackson stated that she has 25 certificates of classes that she completed while in prison and used the time productively. Commissioner Runbeck thanked Ms. Jackson for coming because after reviewing the paperwork she thought this was a serious offense, but by listening to her and her employer, feels that things have changed.

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

VOTE: *7 - 0 Motion carried.*

B. DeWitt, Kevin

Commissioner Fraker recused because Mr. DeWitt is a current employee.

Attorney Scott Richardson was present for Mr. Kevin DeWitt who also appeared and answered Commissioners' questions. Commissioner Runbeck stated she was confused about the letter Mr. DeWitt sent because the new 2004 Applicator License language states that "an offense that is undesignated, has been expunged, etc . . .". Commissioner Runbeck further stated that Mr. DeWitt's letter stated that language has never appeared before now which is ironic because we have a copy of Mr. DeWitt's 2003 Applicator Renewal License which had that language on it. Mr. DeWitt asked if that was last years renewal for 2003. Mr. DeWitt further stated he did not catch it, and marked no because he was advised by his lawyer the judgment was vacated and the charges were dismissed. Mr. Richardson spoke on behalf of Mr. DeWitt. Mr. Richardson stated Mr. DeWitt received a letter on the completion of his probation, not only restoring his civil rights, but vacating the order. Mr. Richardson commented that this is a lot broader than expunging the conviction. Mr. Richardson further stated that Mr. Dewitt's former defense attorney said he did not have to answer yes to a felony question. Mr. Dewitt stated he spoke this morning to his defense attorney Samuel Castanzo and his response is still the same. Mr. Richardson stated on behalf of his client that he wants to advance in the industry and he was following his lawyer's advice.

MOTION: *To approve Applicator License Renewal by Commissioner Runbeck.*

Seconded by Commissioner Robinson.

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

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

A. Canyon State Pest Control/Jack P. Provenzano/David McQuaire - OAH Docket #99A-016-SPC/SPCC Case #99-016

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 that he has reviewed the Findings of Fact and Conclusion of Law and the hearing was done differently because Mr. Provenzano appeared and prior to the hearing he was not disputing any of the facts or the violations. Mr. Driggs was cleaning up older cases. This is a case that was set for hearing, but was vacated because of the illness of Mr. Provenzano and his wife who ultimately passed away during this time frame. Mr. Driggs vacated the hearing because he did not know how long it would take, it languished, and staff got it back on track. Mr. Provenzano stipulated in front of the Administrative Law Judge to three of the factual allegations as to the misconduct of his applicator, insufficient WIR, and this was also a hearing for Mr. McQuaire. Mr. Driggs pointed out the facts and allegations that Mr. McQuaire has not been involved in the industry since 2000. Mr. Driggs felt it was appropriate to make a request to accept it without prejudice. Mr. McQuaire is no longer in the industry and he would have to go back through the process. There was a violation that the employee did not comply with the appropriate WIR. Mr. Driggs further stated that he informed Mr. Provenzano that he would also be asking for some type of minimal fine and that it was his option to argue in front of the Administrative Law Judge for the recommendation, as well even if that recommendation came before the Commission due to the length of time and his current financial information. Mr. Driggs stated Mr. Provenzano is not here and he did not know why he did not appear. Mr. Driggs stated he did not present this case to crush Mr. Provenzano as a QP over the actions of his employee for the violation of the Wood Infestation Report. Mr. Driggs asks the Commission to accept the Findings of Fact and the Conclusion of Law that are presented and to make an appropriate Order for those violations.

Commissioner Peterson questioned about Mr. McQuaire who has not been in the business since 2000, so it was decided to vacate Mr. McQuaire's portion and will there be more costs associated for him, since he did not show up. Commissioner Peterson would like to go through the Motion to finish these cases, since we have already done the hearing. Is there a cost to us to do that? Mr. Driggs responded that it is not staff's fault or responsibility at the time of the hearing because he failed in regards at presenting this case that this is the appropriate way to handle this matter. Yes, there is no additional cost other than we might have been there a little

longer, and they charge by the hour. To the direct question, it may not of mattered how much time he would of spent as far as costs. The hearing would not of lasted more than an hour and there would not have been much of a difference. Commissioner Peterson stated it does not matter if the person shows up or not because it is their choice. Mr. Driggs further explained that letters were returned from Mr. McQuaire and we were using a 2000 address. This was a matter that was hanging for inaction on his behalf. Commissioner Peterson asked what could have been done differently. Mr. Driggs responded that we could have done an Administrative Warning and a small fine for a first offense for inaccurate WIRs. Commissioner Peterson stated we need to get this on the record. Commissioner Fraker stated that if he reappears then he has no previous violation record. Mr. Driggs responded, since it was dismissed without prejudice and if the tickler system came up you could address that situation then. Mr. Driggs is not sure if an applicator has been charged with an Administrative violation. Commissioner Peterson is concerned that if this person pops back up again we would have more costs with another Administrative hearing. Ms. Lisa Gervase asked the Commission when they get to Order to modify the ALJ's recommendation to not dismiss and to administer an Administrative Warning against the Applicator Licensee. Mr. Driggs stated this is a little different the hearing is on record and we stipulated to the facts, so actually you can reject the ALJ's recommendation to dismiss without prejudice. Mr. Driggs further stated that the Commission can reject because this was a hearing, we stipulated to the facts and to the violations. Commissioner Peterson stated he would like to look at this big issue that if there is a situation as this to move forward with the case because it would be on the record. Mr. Driggs requested that they adopt the Findings of Facts and Conclusions of Law which say that a WIR was done by Mr. McQuaire as the applicator.

MOTION: To approve the Findings of Facts and Conclusions of Law, with the exception of the Conclusion of Law #5 stating that the allegations against Mr. David McQuaire be dismissed without prejudice by Commissioner Runbeck.
Seconded by Commissioner Allen.

VOTE: 7 - 0 Motion carried.

Mr. Driggs stated he touched on this before and it is appropriate to take out #5 in the Conclusions of Law. In regards to this the violation has occurred against all the parties involved and to adopt the recommendations in regards to Mr. Provenzano, and the civil penalty amount. Mr. Driggs further stated that it would be appropriate that a sanction be imposed upon Mr. McQuaire in this regard, but not sure it would be economic to impose a fine on Mr. McQuaire, but make a record of the administrative warning that there is a violation.

MOTION: *To approve the Recommended Order with the addition of issuing an Administrative Warning to Mr. David McQuaire and that it not be dismissed against Mr. McQuaire, issue administrative warning to Canyon State Pest Control, Business License No. 2227, and issue an administrative warning to Jack P. Provenzano, Qualifying Party License No. 724 B1 B2 B8 and issue a civil penalty in the amount of \$100.00 to Jack P. Provenzano, Qualifying Party License No. 724 B1 B2 B8 which shall be paid within 60 days from the effective date of the Order by Commissioner Runbeck.
Seconded by Commissioner Baker.*

VOTE: 7 - 0 Motion carried.

XII. For information, discussion, and possible action:

A. Continuing Education Committee Minutes

Mr. Carl Martin gave the Continuing Education Report. Commissioner Peterson asked Mr. Martin if in-house training was ever opened up externally. Mr. Martin responded that the in-house training is primarily for the employees of the provider of the training. However, all training that is approved by this Commission is subject to free attendance of Commission staff to judge both the quality of the content and the delivery. The Company involved with this report always welcomes Commission staff. Commissioner Peterson stated he was thinking of some of the smaller companies that do not have many resources, to be able to attend some of the classes at the bigger companies. Mr. Martin stated he would encourage courses by Dr. Baker and his staff for the smaller companies that do not have the resources. Mr. Brian Ferris of Terminix spoke and stated he has submitted in-house Training Programs which is a week long course for new hires. Mr. Ferris further stated that in some states they do outreach to the industry such as Colorado because their rules are different and you can't be granted internal CEUs unless it is open to the public. Mr. Ferris said Terminix will provide their training material to the Commission.

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

VOTE: 7 - 0 Motion carried.

B. Legislation - Status of HB 2119, HB 2504 & HB 2399

Discussion by Mr. Carl Martin on the status of legislation. Mr. Martin stated that Governor Napolitano has signed legislation for HB 2399 and it will be become part

of the statutes which will be updated. The Commission will be given a copy of the current statutes when they become available.

Commissioner Baker asked Mr. Martin to comment on HB 2119 on political subdivisions who are seeking to avoid SPCC regulation. Mr. Martin stated that persons using pesticides in the State of Arizona whether employed by private employers or political subdivisions have to be licensed to do the work. The licensure system in Arizona works for two reasons: first, we require a demonstration of competency on the part of the person using the products, and secondly, a greater demonstration of competency on the person supervising that work and giving ongoing training to the applicator. It has been the position of the Commission that political subdivisions should have both of those persons in place in their pest management regimes even if conducted in-house. Mr. Martin stated certain opinions have been written by the Attorney General's Office from times past beginning in the late 1980s that did not clarify the issue sufficiently in the minds of Commission staff and so the Commission staff with the Commission approval put forward HB 2119 which included clarifying language making it inarguable that political subdivisions would have to have those licenses. Mr. Martin further stated that certain interest groups in the State most notably the school boards argued that licensure using pesticides is irrelevant and unnecessary. Commissioner Baker stated we heard a case today with a school and they do not see it is a problem by not having a licensed applicator. Mr. Martin stated he could not speak on behalf of the school and that they are terribly ill informed. Mr. Martin stated language was put forth and even the State's Department of Transportation argued against the position. Mr. Martin stated those items will be placed back on the Agenda for Commission discussion next year. Commissioner Peterson stated he has attended some of these meetings with Mr. Martin and these political subdivisions are willing to talk, but it is a different mind set. Commissioner Runbeck asked whether we ever got any type of feeling about Governor Napolitano's position on this matter and is she buying into the School Board's position. Mr. Martin responded that Governor Napolitano does not make comments on issues that are not before her and through her senior staff feedback which came to us is that this in line with her Healthy Child Initiative, Healthy Schools Initiative and all day Kindergarten, etc., etc., that schools should be available to all and they should be safe environments and the feedback has been encouraging.

Commissioner Peterson asked Mr. Martin if part of the concern with political subdivisions is that they do not want to have a business license. Ms. Lisa Gervase responded by stating that was part of the problem and we were willing to work with them about that issue. The competency is with the qualifying party and not the business license although it behooves them to have a business license because if the qualifying party walks out the door they are going to need a business license to get a temporary qualifying party. Ms. Gervase further stated they do not want to have a qualifying party because they think the janitor at the end of the hose who

may have an applicator license, or might not, has sufficient competence to spray pesticide in and around the schools. Ms. Gervase stated the argument is "that we have not made them do this for 20 years and they do not want to do it now." Ms. Gervase commented that this created such a political storm that it did not go through this legislative session and there will be stakeholder meetings during the summer and we will propose going back with a new proposal for the next legislative session.

Commissioner Baker commented that a list should be compiled of violations. Ms. Gervase, Commissioner Peterson and Commissioner Runbeck stated that is not necessary because they are only against companies and not the janitor working without a QP and Business License. Commissioner Runbeck asked if the janitor used the product improperly and in an unsafe manner whether we could issue a Cease and Desist. Ms. Gervase responded that the agreement is that they at least have to have an applicator license then we can go after them for unlicensed activity if they don't, and if they are licensed we can go after the license or turn it over to EPA to prosecute for misuse violations. Mr. Martin stated the schools have carte blanc to do the business of structural pest control in schools because they do not need a license. Mr. Martin further commented that they can do it without training or supervision, they do not need a qualifying party, they can do without an applicator license as long as some applicator can be claimed to be giving some direction because applicators do not have to be licensed for 90 days.

Mr. Barry Aarons of Arizona Pest Management Association complimented Mr. Carl Martin. Mr. Aarons stated this is a competitive issue. There is nothing to stop a school, the state, a political subdivision, or an agency of the federal government from hiring any one of his members that are licensed in all three entities. This has been an issue in the past, we have had on competitive issues that were passed as referred to as unfair competition. It is inappropriate to allow the political subdivisions not be put to the same requirement as a private sector regulated company. Mr. Aarons suggested that you survey other political subdivisions that do engage the private sector. Mr. Aarons has had conversations recently as the House Bill that was passed and signed by the Governor and thanked the Commission for their assistance in getting it passed. Mr. Aarons stated he has had a conversation with Sally Bender who is the lobbyist for Pima County who volunteered that they are willing to talk about a different scheme for political subdivisions and Mr. Aarons is not sure they will not oppose it as long as it is the same standard as applied. Mr. Aarons has also had conversations with Senator Mitchell and his staff who would like to address this matter who was moved by the argument the political subdivisions had, but still understands the nature of the competitive issue. Mr. Aarons also had conversations with another Senator about this and this issue did not get to the Senate, but when we came back with 2399 they were aware of the circumstances because we had to explain why we took pieces from two bills and put them together with a striker. Mr. Aarons would like to participate with SPCC and APMA and feels

it is important and it is a competitive issue and would like to be involved in any stake holder meetings.

Commissioner Peterson thanked Mr. Martin on behalf of the Commission because he did sit in on some of those meetings and complimented Mr. Martin on having the respect of the legislature.

XIII. For information and discussion, not action:

A. Computer Based Testing “CBT” Status and Statistics

Discussion by Mr. Martin on the Computer Based Testing Status and Statistics. Mr. Martin stated the general trend is improving. Mr. Martin stated he had been out of town for a couple of weeks and while he was gone he received 14 telephone calls from individuals who failed the exam more than once, saying there is a lack of use of study materials because they attended training classes. Mr. Martin highlighted for the Commission, the industry present, and the public present that it is insufficient to take a class and be able to pass the examination. Mr. Martin assured that if they passed they picked up additional information from somewhere outside of the class and need to study the materials to pass the exam.

Commissioner Peterson thanked Mr. Martin for the Statistics.

B. Status of SPCC’s pursuit of supplemental EPA Grants

Discussion by Carl Martin about the Cooperative Agreement with the Environmental Protection Agency. The Commission submitted two additional new ideas and sought funding for the establishment of a computer or electronic link between the Department of Agriculture’s inspection regime for restricted use product sales to be tied to our regime for certified applicator record inspections. In order to use a restricted use pesticide under FIFRA you have to be certified, we call it licensed in the State of Arizona. Mr. Martin stated we require everyone to be licensed whether it is a restricted or non-restricted use pesticide. However, in order to conduct certified applicator record inspections under our cooperative agreement required by FIFRA it would be nice to know who exactly is using them. There are a couple of termiticides that are restricted use and there are some herbicides that are restricted use, but applicators do not use restricted use pesticides often. Some of the pesticides are being used and records have to be kept and inspected under the cooperative agreement, so a grant of \$10,000.00 was sought to make a link. The money was granted but the infrastructure is not quite there to make the link and we are working closely with the Department of Agriculture’s Environmental Services Division and the Chairman of the Commission to coordinate how in the future to build a system that allows for that type of linkage.

Mr. Martin further stated that another grant for \$22,500.00 to offer tribal governments expert structural pest control regulatory training was pursued. We sought willing partners which are few. SPCC did receive the grant, but having the money and not identifying those interested, we have set that grant aside. Both grants have been set aside. Just four years ago the EPA was sending threatening letters to do better and this year they are rewarding this Commission because we have proven ourselves.

XIV. Approval of Minutes

April 9, 2004 (regular session) Minutes.

Ms. Lisa Gervase stated on Page 25 of the Minutes there is a correction, the last paragraph, first sentence. It should read: Commissioner Peterson stated that the Federation of Independent Business wanted to propose legislation to exempt landscapers who perform weed control from licensure, if 15% or less of their business was performing weed control.

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

VOTE: 7 - 0 Motion carried.

XV. Scheduling of future meetings/agenda items

Current Proposed dates and locations

June 11, 2004	Scottsdale, AZ
July 9, 2004.....	Scottsdale, AZ
August 13, 2004	Scottsdale, AZ
September 10, 2004	Scottsdale, AZ
October 8, 2004	Tucson, AZ
November 12, 2004	Scottsdale, AZ

Ms. Lisa Gervase stated the next six meeting are proposed as on the Agenda. Ms. Gervase stated that she understands that Commissioners Peterson and Baker will not be present for the June meeting and if there are any other absences, please inform us.

XVI. Discussion about conferences, seminars and courses attended, and to be attended, by staff or Commissioners

Ms. Lisa Gervase stated she wanted to let the Commission know of the key courses

and conferences that staff or Commissioners have attended this calendar year. Ms. Gervase stated that she and Mr. Carl Martin attended a PREP Course (Pesticide Regulatory Education Program) in Austin, Texas last week. This course was strictly on structural pest control issues. The EPA sponsors three of four of these PREP courses a year and this one was nice to go to because it pertained mainly to structural pest control issues. Some of the highlights of the course had to do with termiticide registrations, advocacy and enforcement, homeland security, commodity fumigations, schools IPM and the challenges with creating and enforcing wood inspection reports. Ms. Gervase further stated that Mr. Martin did a presentation on licensing pertaining to mold which was well received.

Ms. Gervase also participated in a mock hearing where Terminix's General Counsel and she role played the attorneys, another attorney played the Administrative Law Judge and we had a number of people as witnesses and jurors. Commissioner Peterson asked who won and Ms. Gervase responded that the State did by a small margin. Ms. Gervase said it would have been nice to have video taped it to use as a continuing education course.

This past week Chairman Peterson and Mr. Martin attended the Western States Regional Conference which is sponsored by EPA in Spokane, Washington. Commissioner Peterson said that not a lot of structural issues come up, but that certification funding nationally is being cut. The focus was on training that needs to be done and trying to leverage the money. Commissioner Baker wanted to respond that the funding level money for applicators in 1976 was five million dollars, current level for the whole county is 1.2 million dollars, down from 1.8 million.

Mr. Martin stated that he was intrigued by some research on dealing with aquatic toxicity and the notion of LD 50 and LC 50 is an adequate measure in dealing with the aquatic environment. Mr. Martin has some of the research and would like to share that information which does not impact our day-to-day work, but down the road we may look at aquatic pesticide use and how it may impact our environment.

Ms. Gervase stated there is another PREP Course later this year on Pesticides in Public Health it is in September in Davis, California and one of us will be attending that course Ms. Gervase said there are five for this year and based on the topics and Agenda items we chose to go to the Structural Course and someone will go in September for the Public Health Course.

Ms. Gervase said she and two of her Southern Arizona Inspectors attended a seminar in Tucson where mostly weed and turf & ornamental licensed applicators and QPs attended and there were a lot of questions about a lot of things and there is a need for Ms. Gervase or staff to get out and cover the whole state and be available for questions. Ms. Gervase further stated we have conducted a number of initial licensure training classes and attend various CE courses where we make

presentations.

Ms. Gervase stated a couple of staff members went to a seminar on Public Records / Open Meeting Law. Mr. Martin, Commissioner Allen and Ms. Gervase attended a mold seminar. Next week Ms. Gervase will have a staff member attend the National Conference on Urban Entomology Conference. In August there is AAPCO and ASPCRO. The Association of American Pesticide Control Officials (AAPCO) is in Madison, Wisconsin the first week of August and at least one representative of the Commission or staff should go, if you are interested to speak to Ms. Gervase, so we can take advantage of early registration and lower fees. It is from August 4 through the 6. Ms. Gervase stated the ASPCRO the Association of Structural Pest Control Regulatory Officials that is August 23 through the 25 in Williamsburg, Virginia. Ms. Gervase and Mr. Martin will be attending ASPCRO and Mr. Martin is scheduled to do a presentation, so if anyone from the Commission would like to attend, please let Ms. Gervase know within the next two or three weeks because we get a break on fees. The National Management Pesticide Conference is October 20 through the 23, Ms. Gervase will be attending. Again if any Commissioners want to attend, please speak with Ms. Gervase. Mr. Francis may attend the Southern Regional Pesticide Safety Workshop in Raleigh, North Carolina in September. Commissioner Peterson asked if Mr. Martin will be attending CTAG. Ms. Gervase stated that is part of AAPCO. Commissioner Peterson said that Mr. Martin did not attend last year and he is in the process of moving up and he is the head of several committees.

XVII. Status of Applicator Renewals

Ms. Lisa Gervase discussed Applicator Renewals and as of Wednesday night there were 714 on-line renewals processed, and 993 paper renewals processed. That is only about a third of the licensed applicators that have renewed which were due May 1, but they do not expire until May 31, 2004. Ms. Gervase asked that everyone spread the word because if their license expires they cannot apply pesticides.

XVIII. For information and discussion, not action:

A. Expenditure Report.

Ms. Lisa Gervase stated she passed out a lengthy memo on where our budget will end up by June 30. We are in the first year of the two-year budget cycle and it is normal to have a little more money the first year left over than if we were at the end of the two-year cycle. For the second Spring in a row, we found some EPA grant funds and part of that is money which was deposited, but had not been transferred to the SPCC accounts. Ms. Ulbrich did some digging and found that the money was on the books downtown and that had not been transferred. There was monies that were over budgeted for sample analysis, so that amount of money is extra, and

there are 11 staff vacancies. We have been able to accomplish what we have with four temporary people and contract part time people and we are looking to fill four of those current vacancies. Ms. Gervase stated that she gave information of what we plan to do with that excess money, such as prepaying for some high price items for next year, purchasing some updated office equipment, purchasing some computers, and maybe looking at some contracts in respect to the exams and study materials, training type items for the industry. Ms. Gervase stated we anticipate only having about a \$15,000.00 balance by the end of the FY 2004. Ms. Gervase gave credit to Ms. Ulbrich for watching every penny and not taking "no" for an answer when looking into how to properly handle SPCC funds. Ms. Gervase hopes to not find any money next year and that this is the last year that she is finding money. Ms. Gervase stated we are also looking at 200 old case files that the Orders may not have been complied with, to the tune of about \$200,000 which would go to the General Fund.

B. Case Status Report.

Ms. Lisa Gervase stated with Ms. Vazquez's help and one of our part time contract employees we made drastic strides in reducing the active case load to 50. These are cases and not the complaints, they are two separate categories. There are nine scheduled for hearing and the majority we are monitoring for compliance with orders.

XIX. For discussion, consideration and possible action: Substantive Policy Statement Re: Applicator with Felony Convictions - Policy Number 2004-002

Ms. Lisa Gervase stated the first Substantive Policy Statement is for Applicants with Felony Convictions and there is a draft dated April 23. Note some of the comments are in brackets and the only two additional comments have to do with item A 4, whether if someone is convicted of manslaughter we would deny a license. Ms. Gervase stated both Commissioner Runbeck and one of our Inspectors questioned and thought it was too stiff if someone was involved in a car accident that lead to death and that may be something that we do not want to deny a license for. The next item is C 9 asking where the offense occurred: whether in or around a school, church or private home. Some people questioned the relevance because it did not matter where it occurred.

There was discussion among the various Commissioners on the Applicator Felony Convictions Substantive Policy of how it should be used and adding more questions. The Commissioners decided that the questions would be used as a guideline only, but no formal policy would be adopted at this time. Commissioner Peterson asked Ms. Gervase and Mr. Barry Aarons to raise the bar in the industry, to draft legislation about felony convictions and to have the assistance of the industry. Commissioner Runbeck suggested that they list all felonies.

Commissioner Peterson said we need to go to the legislature.

Commissioner Allen left the meeting at 1:15 P.M.

XX. For discussion, consideration and possible action: Substantive Policy Statement Re: Termite Treatments/Depth of Footer Rule - Policy Number 2004-001

Ms. Lisa Gervase directed the Commission to comments that came out of the last meeting having to do with sending notice to the Commission. If a licensee avails themselves of this policy statement and actually somebody from the Commission staff suggested the notice come before availing themselves of the policy statement so that we then have the opportunity to go out and monitor the pre-treatment.

Commissioner Peterson stated after he read the policy statement why can't they call you and say this is what we are going to do and follow-up in 10 days in writing.

Commissioner Baker asked what advisory only meant. Ms. Gervase responded that it does not have the force of law. Commissioner Baker asked what does it mean to the industry if I don't document whatever documentation means to substantiate what is going on. Mr. Blair Driggs stated then you are in violation of the law. Commissioner Baker stated then it becomes non-advisory. Ms. Gervase stated they have to comply with the rule. The only time they don't have to comply with the rule if these circumstances exist and if they provide this kind of documentation to prove to us that the circumstances exist. If they don't have this documentation to prove that circumstances exist to allow them to get out of complying with the rule, then they are in violation. Mr. Carl Martin stated we are providing them an alternative method of application if certain conditions are met and if they document those conditions, otherwise they are held to the standard of the rule. Commissioner Baker stated this only takes into consideration liquids to soil. Mr. Martin responded because the rule speaks to that you have to apply liquids at this rate and this way and in some circumstances you may not have to follow that rule, you can do it this way if you document it. Commissioner Fraker stated this is better than what we have and staff has done a good job and it gives companies some latitude. Discussion among the Commissioners about calling the Commission 24 hours in advance. Further discussion that sometimes that is impossible because a decision sometimes has to be made while you are on the site at the time and sometimes it cannot be done between 8:00 a.m. and 5:00 p.m. This applies to both residential and commercial. Peterson stated the Commission does not want to give an easy out because if it is a commercial building, you are given specs and are bidding on those specs and so you know in advance and if it is going to be problematic you can respond in a timely manner.

Commissioner Peterson stated it is an advantage to make it work and if we find it is

being abused the policy can be pulled because it is not law. Ms. Gervase stated a proposal is to notice our IOD 24 hours in advance or as soon as the applicator realizes they have to avail themselves of the policy. Ms. Gervase stated documentation is important about why the 24-hour notice could not have been provided or was too burdensome, where you don't know you have to avail yourself of the policy until you are on site or the job is not scheduled until the slab is being poured. Ms. Gervase stated she could set up a 24-hour voice mail line. Commissioner Baker asked what the Commission is going to do with the information. Ms. Gervase stated if the policy calls for notification we will have to keep track of it, but our hope would be that we have sufficient notification so we can go out and monitor the application.

Mr. Martin stated that this occurs sometimes, but not all the time and when we drafted this statement it was for that purpose. Because if this is occurring all the time then this statement is inadequate. Mr. Martin asked Mr. Andy Weber how many times a month he would avail himself in this alternative way of treating. Mr. Weber stated twice. Mr. Martin stated this is a lot of discussion very little merit. Commissioner Peterson asked that they do the pre-notification call 24 hours or what is practical to have that opportunity to go out and look. Commissioner Fraker stated this would not be an issue if they were able to make these applications in accordance with the label. As long as this State is in the business of writing specifications these types of situations exist. Commissioner Baker asked for non-digital photos because digitals can be altered.

Commissioner Peterson reiterated the discussion about a 24-hour notice, or as practical and then follow up with written notice in 10 days. Ms. Gervase asked if this should be rewritten and brought back to the Commission. Commissioner Peterson stated "no" and asked that someone make a motion.

MOTION: *To implement this policy the way it is written with additional language about reasonable notification based on the circumstances, by Commissioner Fraker.
Seconded by Commissioner Runbeck.*

VOTE: *6 - 0 Motion carried.*

XXI. For discussion, consideration and possible action: Substantive Policy Statement Re: Termite Treatments/Abutting Slabs Rule - Policy Number 2004-003

Ms. Lisa Gervase stated this is the same Rule, but a slightly a different topic. This is the abutting slabs. Commissioner Peterson asked a question about the four feet. Commissioner Hartley stated it is appearing on some of the labels. Commissioner Fraker stated it is four feet from the stem wall. Mr. Andy Weber stated that there are

abutting slabs 30 feet from the building and needs for someone to explain this to him when treating slabs or asphalt. Commissioner Hartley stated he does not like the four feet because a lot of abutting patios are six feet.

Commissioner Runbeck asked for an example of concrete running out. Commissioner Peterson stated a commercial building with a concrete slab on the side. Commissioner Fraker stated we need something and according to the rules it is not definitive, you can address this with the label. Commissioner Hartley stated we are opening a can of worms with this policy and asked what has brought this policy up. Commissioner Fraker stated people are getting violations for not treating. Ms. Gervase stated the Rules require: abutting slabs to have a horizontal barrier established. What we were hearing at the bidding table is that some pretreaters lower bids because they are not treating full abutting slabs. They are only bidding maybe what is proposed or what is understood for abutting slab under the roof. The Rule does not say abutting slab under roof, but abutting slab. Ms. Gervase further stated that is why some people wanted to come up with a policy to narrow the Rule, and to have something that is reasonable out in the field, and also at the bidding table. Ms. Gervase had a concern which has not been brought up yet, what if there is no intention on the plans for a roof at the time of construction and then the owner wants to do an addition. Commissioner Runbeck asked if this policy statement is designed to help the companies because they feel the bidding is not fair or to protect the consumers. Ms. Gervase responded it is not to help the consumers because a roof could be placed over a slab for a room addition and that has not been treated with termiticide. Mr. Martin said it will literally save millions of gallons of pesticides without any purpose because we wrote a rule because we thought the label was not sufficient. Ms. Gervase asked if this has an impact on commercial or residential. Various member of the Commission responded it is for both and Ms. Gervase asked whether it should be for commercial only.

Commissioner Peterson stated there was some good discussion and more works needs to be done on this policy. Continue with new draft for future agenda.

XXII. Adjournment - 2:00 P.M.

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

VOTE: *6 - 0 Motion carried*