

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

**COMMISSION MEETING
FRIDAY, June 11, 2004 - 9:00 A.M.
MINUTES**

I. Call to order, Commissioner roll call

Commissioners Present: Commissioners Allen, Hartley, Peterson (agenda items I through XI, except items VI.A and IX.A), Robinson and Runbeck (agenda items VI.A, IX.A, XII.A, and XIV.A).

Commissioners Present via Telephone: Commissioners Peterson and Runbeck

Commissioners Absent: Baker, Fraker

Staff Present: Dave Colvin, Vince Craig, Mike Francis, Lisa Gervase, Manny Jacobo, Carl Martin, Robert Tolton, Maggie Vazquez, and Assistant Attorneys General Blair Driggs and Christopher Munns

II. Call to the public

Eric Ruden, Vice President of Northwest Exterminating in Tucson, Arizona, stated he experienced problems with the new computer based testing. Mr. Ruden completed testing for his qualifying party license in four categories and the core. During testing, he was interrupted three times because the computer timed out, his tests would not score, and on one occasion had to wait over half an hour to log in. Mr Ruden stated he has three major issues with the computer based testing: continual problems with the administration of the test, study material that is poorly outlined and questionable, and questions that are vague and misleading. He feels the test can be an intimidating process for his technicians, who may have limited educational backgrounds. Problems associated with the test are unnecessary distractions resulting in poor performance. Mr. Ruden commented on problems his technicians experienced on the June 8 exam. He sent five technicians to test and the testing center was shut down the entire morning because of computer problems. One technician received a passing grade and later had to retake the exam because Metro had no record of him passing. Two technicians had to retake exams on the same day because of technical problems. He expressed his concerns that Metro closed for a week because of an illness with the staff. Two dozen incidents of problems have been reported to him regarding the computer based testing. Mr. Ruden feels the study material is not clear and concise. He stated the recommended study material does not correspond with the exam. Mr. Ruden

requests that his certified Technical Director be allowed to test so he can teach the information to his employees. He feels the test questions lack quality content and rely on ambiguity and opinion rather than factual information. Mr. Ruden related concerns about his difficulty reading the graphs, pictures of pests, and required readings that were not tested. Mr. Ruden had not previously discussed his concerns with staff, but detailed his concerns in a letter brought to the Commission meeting. After researching this matter, Lisa Gervase will respond to Mr. Ruden's concerns.

III. Communication with Commissioners

Commissioner Hartley presented Assistant Attorney General Blair Driggs an exemplary service award for recognition and meritorious service to the Arizona Structural Pest Control Commission. Lisa Gervase introduced new Assistant Attorney General Christopher Munns.

IV. Consent Agenda

Commissioner Hartley stated items will be read and voted on in one group excluding those pulled for individual discussion by the Commissioners or staff. He then asked the Commissioners which items they wanted to pull for discussion.

A. Applications for New Business License

Qualifying Party

- | | |
|------------------------------------|--|
| 1. Caputo, Thomas M. | Silver Bullet Pest Control (Activating Qualifying Party for new business license in "B1" General Pest/Public Health) |
| 2. Corderman, Randall Scott | Robson Ranch Arizona Construction Company (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control, "B5" Turf & Ornamental Horticulture and "B9" Aquatic Pest Control) |
| 3. Heinrich, Daniel Scott | D & S Termite Solutions, LLC (Activating Qualifying Party for new business license in "B2" Control of Wood Destroying Insect and "B8" Wood Destroying Insect Inspection) |
| 4. McDaniel, David L. | D & S Termite Solutions, LLC (Activating Qualifying Party for new |

business license in "B1" General Pest/
Public Health)

5. Northrup, Jr., Daniel D.

ABC Scapes, Inc. (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

6. Ruden, Noran Eric

Northwest Service Solutions, Inc. (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)

7. Russell, Patrice C.

Buzzard Pest Management, Inc. (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Control of Wood Destroying Insect and "B8" Wood Destroying Insect Inspection)

B. Applications to activate Qualifying Party for Existing Business License

1. Shoffner, Russel Jon

Bulwark Exterminating, LLC (Activating Qualifying Party for existing business license in "B2" Control of Wood Destroying Insect and "B8" Wood Destroying Insect Inspection)

C. Applicants for QP Testing

1. Bailey, Gerald Douglas

"B1" (General Pest/Public Health)

2. Flood, Thomas L.

"B1" (General Pest/Public Health)

3. Hight, Jr., Henry Boyntoro

"B1" (General Pest/Public Health)

4. Hoffman, Richard Arthur

"B1, B3 and B5" (General Pest/Public Health, Right of Way/Weed Control and Turf & Ornamental Horticulture)

5. Lisonbee, Darrell L.

"B1" (General Pest/Public Health)

- 6. Mitchell, Daniel James** "B3" (Right of Way/Weed Control)
Pulled

Commissioner Peterson pulled because the form needed to be filled out completely under signature verifying authority. Commissioner Peterson asked who Donald Smith is in relation to the company. Mr. Mitchell appeared and answered Commissioners' questions. Mr. Mitchell stated Donald Smith is the person he is purchasing the company from and is the current Qualifying Party. Mr. Mitchell stated he has been working for the company.

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

VOTE: *4 - 0 Motion carried.*

- 7. Nukala, Jr., Karl Brandt** "B1, B2 & B8" (General Pest/Public Health, Control of Wood Destroying Insect and Wood Destroying Insect Inspection)
- 8. Perone, Robert Gennaro** "B1" (General Pest/Public Health)
- 9. Reynolds, Justin Wade** "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)
- 10. Sears-Lake, Adrienne L.** "B3" (Right of Way/Weed Control)
- 11. Smith, Paul Edward** "B1" (General Pest/Public Health)
- 12. Smith, Paul Kevin** "B3" (Right of Way/Weed Control)
- 13. Wilson, Erik Robert** "B5" (Turf & Ornamental Horticulture)

End of Consent Agenda

MOTION: *By Commissioner Allen to accept Consent Agenda with the exception of those items pulled for discussion (Tab 14).
Seconded by Commissioner Robinson.*

VOTE: *4 - 0 Motion carried.*

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

Qualifying Party

A. Trott, Roger Fremont

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)

Commissioner Hartley stated this issue has to do with the name change of the company. Lisa Gervase stated that the SPCC notified the current Foothills Pest Control that Maly & Associates Foothills Pest Control applied for a new business license with a similar name, "Maly & Associates Foothills Pest Control." The attorney representing Foothills Pest Control sent the SPCC a letter objecting to Maly & Associates using the word "Foothills." The SPCC received a new trade name certificate from the applicant. The applicant changed the name to "Maly & Associates Pest Control." Commissioner Peterson asked if the company had changed their insurance to match the new name. Ms. Gervase responded that they are in the process of getting a new insurance certificate. Commissioner Allen asked if they could approve contingent upon receiving all paperwork. Ms. Gervase stated that they could approve the new name "Maly & Associates Pest Control, LLC" without the word "Foothills."

MOTION: To approve New Business License by Commissioner Allen.
Seconded by Commissioner Robinson.

VOTE: 4 - 0 Motion carried.

VI. Applications for Qualifying Examination not on the Consent Agenda

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

Commissioner Robinson had a question because "B5" was also marked on his license application and it seems he does not have the experience for "B5." Mr. Michael Spencer Bayne appeared and answered Commissioners' questions. Mr. Bayne stated his application is for Right of Way/Weed Control only. Commissioner Peterson questioned the verification of experience because they received two forms with different dates. Mr. Bayne submitted a form showing 3000 hours of experience from January 2003 to February 2004. Commissioner Allen commented that three thousand hours seems like a lot for that time period. Commissioner Allen stated the first form had three thousand hours from March to December of 2003, which seems like a lot of hours for nine months. Mr. Bayne responded by saying he did not know why those dates were marked when it was three months before he received his applicator's license. Commissioner Allen asked why the form was submitted with an incorrect date. Mr. Bayne did not know why the form was submitted incorrectly. Commissioner Allen stated thirteen months is still not enough to put in three thousand hours and asked staff for verification. Mike Francis stated the person signing the verification form verified the three thousand hours and the second form

was submitted after staff questioned the three thousand hours. Mr. Francis said the dilemma is that Mr. Bayne signed off on the form from March to December of 2003. Commissioner Allen asked if they had the correct paperwork to approve. Mr. Francis said they have a verbal verification from Mr. Shelton. Commissioner Allen asked if that was sufficient. Commissioner Hartley stated the verification from Mr. Shelton showed the date from certification until December rather than showing the employment date, which would mean any date prior to certification was not being considered for experience. Commissioner Hartley said the other form showed his actual employment date in January and certification date in March, which was a clerical error. Commissioner Peterson stated the dates then extend on to February of 2004 and questioned why that date changed because he signed it on March 8. Commissioner Hartley asked where the February 2004 date came from. Mr. Bayne stated that they were branched off until January 2003, so it should have been January 2003. Commissioner Robinson stated that it then becomes a year time frame at sixty hours a week. Commissioner Peterson stated that submitting two forms, unverified by Mr. Shelton and changed to fit the standard reflects on moral character. Commissioner Hartley asked Mr. Bayne if he had three thousand hours of experience. Mr. Bayne responded that he was branch manager of A & E for one year and had receipts of all the product he purchased. Commissioner Hartley stated that Mr. Bayne had to work sixty hours a week for a year to get three thousand hours of experience. Mr. Bayne said that sixty hours a week sounds like too many hours. Commissioner Hartley stated they will table this matter. Mike Francis added that this matter was tabled last month and a vote needs to be taken one way or the other. Lisa Gervase added they could table this until the end of the meeting so additional documentation verifying Mr. Bayne's time could be provided. Mr. Bayne said Mr. Shelton does not know exactly the amount of hours he has but does verify and sign off on the hours. Commissioner Allen advised Mr. Bayne to go back and see how many hours he had from January 2003 until now. Mr. Bayne asked if that is the only time his hours count until he was certified. Lisa Gervase responded that is not the case. Commissioner Allen advised Mr. Bayne to fill out the form correctly. Lisa Gervase suggested tabling this matter for one hour. Commissioner Hartley stated there might be a misunderstanding you can only apply experience once you become certified. Mr. Bayne added he then has way more than three thousand hours. Commissioner Hartley said they needed to verify the hours and to go back five years before he was certified and tell the Commission of his experience and provide verification. Matter tabled for one hour. Mr. Francis had a conversation with Mr. Bayne and determined he has been in the landscaping industry since 1987. According to Mr. Francis, during that time, he did normal landscaping duties excluding chemical applications. Starting from the beginning of 2002 he had been requested to provide pre and post emergent services to his accounts. He actually did some of these services. He realized he needed a license so he branched off with A & E. In 2002, he had between 700-800 hours and in 2003 with A & E had a 53 hour work week, which would equal the 3000 hours. Commissioner Robinson asked Mr. Bayne what kinds of post emergent material he used. Mr. Bayne responded Round-Up and Quick-Pro. Commissioner Robinson asked Mr. Bayne what kind of non-selective materials he used. Mr. Bayne stated he was the

supervisor not the applicator and the applicator mixed the materials. Commissioner Allen asked if Mr. Bayne had any formal training to do these things to go along with the 3000 hours. Mr. Bayne responded no. Commissioner Runbeck asked about the form and the status regarding the hours. Commissioner Robinson wanted to know why time equates to qualification for being a QP.

MOTION: *To approve QP Testing in the "B3" category by Commissioner Allen. Seconded by Commissioner Runbeck.*

VOTE: *3 - 1 Motion carried. (Commissioner Robinson opposed)*

B. Johnson, Joseph Robert "B3" (Right of Way/Weed Control)

Mr. Joseph Robert Johnson appeared and answered Commissioners' questions.

Commissioner Hartley said the issue here is Mr. Johnson disputing a felony conviction. Mr. Johnson stated Department of Public Safety records reveal him as a convicted felon. The FBI report shows a traffic violation for fleeing an officer, reduced down to reckless driving and speed not reasonable and prudent. Mr. Johnson added this happened in 1976, twenty-eight years ago when he was eighteen years old. Commissioner Hartley asked if the fine was for \$55 and Mr. Johnson agreed. Mr. Johnson said he plans to dispute the conviction being reflected as a "fel" with DPS and has had clean background checks with the military, Mesa schools, and the DMV for his commercial driver's license. Lisa Gervase added this situation seemed odd and suggests the Commission approve pending her verification of the papers Mr. Johnson will be submitting to reflect that the conviction was a misdemeanor, not felony.

MOTION: *To approve QP Testing in the "B3" category pending verification that the felony is not on his record by Commissioner Allen. Seconded by Commissioner Peterson.*

VOTE: *4 - 0 Motion carried.*

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

A. Paul, Edward Joseph Polo Exterminating

Mr. Edward Joseph Paul did not appear.

Commissioner Hartley stated this was a first extension request. Commissioner Peterson asked, "if this was a timing thing where Mr. Paul got a temporary qualifying party license and then he has to come in because it would expire before we could do it again." Commissioner Hartley responded in the affirmative. Commissioner Allen stated Mr. Paul tested once and maybe needed an extension to test again. Commissioner Hartley asked if Mr. Paul was present.

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

VOTE: *4 - 0 Motion carried.*

B. Smoot, Michael Ray American Pride Termite & Pest

Mr. Michael Ray Smoot appeared and answered Commissioners' questions.

Mr. Smoot requested an extension because he was waiting on verification of experience in order to test. He further stated he did receive the verification last Wednesday and will submit the paperwork this week. Commissioner Robinson asked if Mr. Smoot was prepared to schedule testing. Mr. Smoot said he was ready.

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

VOTE: *4 - 0 Motion carried.*

VIII. Complaints against Licensees

A. A-1 Pest Control/Leo Renello, QP - Case # 2004-010

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 Allen.*

VOTE: *4 - 0 Motion carried.*

B. Dorado Pest Control, Inc./Glen Elrod, QP/Doug Meyers, APP and President of Dorado - Case # 2003-138

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 Peterson.
Seconded by Commissioner Allen.*

VOTE: *4 - 0 Motion carried.*

C. 1st Inspection Termite & Bat Removal/Ted Lafforthun, QP/Michael Saldivar, APP - Case # 2003-119

Commissioner Peterson stated that it appears that there are late TARFs. Commissioner Hartley stated this proposed settlement is with the applicator, and the matter will have to go to hearing against the Business and QP because they did not settle. He thinks the TARF issue will be addressed there. Scott Richardson, attorney representing the Business License and QP, stated he had no objection to this matter going to hearing.

MOTION: To accept enforcement response program terms with respect to the Applicator and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, and to send the case regarding the Business License and QP to the Office of Administrative Hearings, by Commissioner Robinson.
Seconded by Commissioner Peterson.

VOTE: 4 - 0 Motion carried.

D. Phoenix Pest Control, Inc. dba Phoenix Pest & Termite Control/Jerry Martinie, QP/James Romero, APP - Case # 2003-135

Commissioner Allen asked how different the name used by the company was from what should have been used. Lisa Gervase responded that it was close, "Phoenix Pest & Termite Control" was used and the correct name was "Phoenix Pest Control."

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 Peterson.
Seconded by Commissioner Robinson.

VOTE: 4 - 0 Motion carried.

E. Territorial Termite & Pest Control/Kenneth Van Zandt, QP - Case # 2003-141

Commissioner Allen asked why an agreement was not reached. He asked if there was a dispute regarding exceeding the ninety days to get the applicator licensed. Dave Colvin stated "no", but that the applicator had a disability and the QP felt it gave him an exception to the ninety day rule. Lisa Gervase added that the QP has been in an accident and needs time to recuperate. She believes this is at least, in part, why the matter was not able to be discussed and possibly settled. She feels the matter needs to be sent to hearing in case it doesn't settle, but scheduling a hearing will be done after communicating with the QP about possible dates that the QP can attend and again trying to settle. Commissioner Allen asked if the QP ever contacted the Commission about the applicator's disability and whether there was an exception to the 90-day rule. Mr. Colvin responded no because the QP felt the

Commission allowed people to get an extension. Commissioner Allen asked staff if they knew this to be the case. Mr. Colvin said he was not aware of any exception. Commissioner Hartley stated this can be sorted out in a hearing and strongly advises companies that think they are going to have a problem to let the Commission know because they are willing to work with companies to get them licensed before problems arise. Commissioner Allen added this was just shy of seven months.

MOTION: *To send Case No. 2003-141 to the Office of Administrative Hearings by Commissioner Robinson.
Seconded by Commissioner Allen.*

VOTE: *4 - 0 Motion carried.*

F. Tucson Exterminating/Sherman Holmes, QP/Russell Stewart, APP - Case # 2003-108

Commissioner Hartley inquired whether an agreement was reached. Scott Richardson, representing the QP and Business License, stated no agreement was reached. Commissioner Allen asked Mr. Richardson to explain why. Mr. Richardson stated Mr. Stewart's renewal did not arrive in the mail so the QP called the Commission, which told him it was probably a matter of paperwork. According to Mr. Richardson, the application was never submitted and now he is being charged as an unlicensed applicator even though he inquired about the renewal. Mr. Richardson said it would be best to sort this out at a hearing.

[Off track discussion: Commissioner Robinson commented that this same thing happened to his company recently, where a renewal application was sent and you do not know if it was received. Commissioner Robinson's company called twice and they were told by the Commission there was no way of knowing if it had been received. Commissioner Robinson understands staff is busy and added this could happen to anyone. He said there needs to be a resolution so you know paperwork has been received and suggests sending it certified mail. Lisa Gervase emphasize the option of online renewals where the applicator knows immediately that their license has been renewed. Ms. Gervase added that about 6,200 license renewal forms went out and 32% renewed online. She further added they have currently processed 4,200 renewals leaving a couple thousand to be manually processed by three people, as part of their daily tasks. This is why the Commission is moving towards online renewals. Other options of proof of delivery are certified mail or hand delivery. Commissioner Peterson inquired about the licensing time frame and Ms. Gervase responded that they have to do an administrative completeness review in seven days, a substantive review in thirty or sixty days, and the total renewal has to be voted on within sixty or ninety days. Ms. Gervase states the time frame is too short because there is no way they can do an administrative review in seven days on several thousand renewal applications. Commissioner Hartley suggested that he "always follows his money" to alleviate problems by following financial transactions as proof of delivery even if an application gets lost. Ms. Gervase added

they go by post mark date rather than received date because it takes time to go through thousands of renewal forms. Commissioner Robinson added it would take a law change to go by when an individual is certified and do a revolving twelve months to split your months into twelve sections. Commissioner Hartley and Ms. Gervase agreed it would require a law change.]

MOTION: *To send Case No. 2003-108 to the Office of Administrative Hearings by Commissioner Allen.
Seconded by Commissioner Peterson.*

VOTE: *4 - 0 Motion carried.*

G. Absolute Exterminating Co./William Miller (QP & APP) - Case # 2003-149

Scott Richardson stated he represents Business Licensee and QP, William Miller, who was present with him. Commissioner Hartley stated that the parties had reached a resolution.

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 Peterson.
Seconded by Commissioner Allen.*

VOTE: *4 - 0 Motion carried.*

H. Paul's Pest Control (BL)/Paul J. Pete Vanasse II (QP)/Gary Fortune (APP) - Case # 2003-140

Scott Richardson stated he represents the Business Licensee and QP. Commissioner Hartley noted this as another case where no agreement was reached. Mr. Richardson stated he just got involved in this matter and thinks it would be best to go to hearing. Commissioner Peterson had a question regarding the mitigating factor "other benefits" in looking at cases and penalties. He noticed differences in obtaining an additional hour of CEU or having points added. Vince Craig stated they use the ERP as a guideline and based on the allegations and the evidence in connection with this case, they believe the benefits should be no greater than one point. Lisa Gervase added sometimes no points are given. Commissioner Peterson stated there might be a case in which they require them to get additional CEUs and no points would be deducted. Mr. Craig said that was correct and it is based on their best judgment on a case-by-case basis.

MOTION: *To send Case No. 2003-140 to the Office of Administrative Hearings by Commissioner Allen.
Seconded by Commissioner Robinson.*

VOTE: 4 - 0 Motion carried.

I. Safeguard Termite Technology/Tad Hansen, QP and APP - Case # 2003-038

Commissioner Allen asked whether it would be an feasible to go with option #2, suspending the license for failure to pay renewal fees, since Safeguard has been unresponsive. Lisa Gervase stated that was the reason they added option #2 because it would be futile to go with option #1, sending the case to hearing, when those two licensees are no longer in the business as evidenced by their non-renewal. Commissioner Robinson asked, "if it went to hearing, how would they know how much to charge someone if they did not turn in any TARP fees and whether they collected TARP fees?" Ms. Gervase responded her guess is they did collect TARP fees because it is required in the industry but there is no way to determine at this point the number of TARP's not filed or collected and the records are probably not obtainable since they are no longer in the business. She further stated if the case went to hearing and the Commission ordered them to pay TARP fees, it would go uncollected. She recommends option #2 because option #1 would be unsuccessful and the case could later be reopened if it is dismissed without prejudice.

MOTION: *To suspend the Business License and Applicator's License for non-payment of renewal fees and dismiss this case without prejudice by Commissioner Allen.
Seconded by Commissioner Robinson.*

VOTE: 4 - 0 Motion carried.

IX. Unlicensed Activity Complaints

A. Daniel Prochaska dba Prose Landscaping LLC - Case # 2004-026

The Commission waited for Mr. Prochaska to appear. Once he appeared, the Commission took up this matter. Commissioner Hartley said that Mr. Prochaska had problems in 1998, where he was found spraying without a license. Mr. Prochaska said that when he bought the business, they guy who he bought the business from didn't tell him he needed a license, and he didn't even know about the Structural Pest Control Commission until he was pulled over. So, he sold his equipment and didn't do pre-emergent work anymore. Commissioner Hartley said that, then in February 2004, Mr. Prochaska's company was found applying Round-Up. Mr. Prochaska stated his belief that every gardener sprays Round-Up. Mr. Prochaska said that this is ridiculous for Round-up, and that he doesn't even charge for his service, and believes that Round-up is very benign. Commissioner Allen said that this is a second offense. Mr. Prochaska stated that the Commission will have to go to the next step because he is not going to pay the fine (and he walked out).

MOTION: To issue Case # 2004-026 a Cease and Desist Order and to impose a \$2,000.00 civil penalty jointly and severally against Daniel Prochaska and Prose Landscaping LLC, to be paid within 30 days of Commission Order, by Commissioner Allen.
Seconded by Commissioner Runbeck.

VOTE: 4 - 0 Motion carried.

B. Victory Lane Inc./Phil Rossi (President) - Case # 2004-023

MOTION: To accept the proposed agreement to issue a Cease and Desist Order and a \$500.00 civil penalty against Victory Lane Inc. and Phil Rossi, jointly and severally, to be paid within 30 days of Commission Order, by Commissioner Peterson.
Seconded by Commissioner Robinson.

VOTE: 4 - 0 Motion carried.

C. Warren Dewey-Dwight Weller - Case #'s 2000-315 and 2003-095

Commissioner Peterson asked whether the trailer behind Warren Weller's truck was sold. He further questioned whether staff could have searched the DMV records because the trailer is licensed. According to Commissioner Peterson, Mr. Weller sold the trailer but was unwilling to disclose the buyer. Vince Craig responded Mr. Weller did not comply with requests to disclose. Dave Colvin stated he believed that trailer was not required to have license plates because it was considered a piece of equipment rather than a trailer. Commissioner Robinson added if Mr. Weller has a backpack sprayer or trailer, he is not complying with the Cease and Desist Order. Commissioner Robinson also stated they do not know for sure if Mr. Weller was spraying but he did have a tank and you normally do not carry a tank around unless you are in business. Commissioner Peterson stated Mr. Weller was doing concrete cleaning work. Vince Craig stated they drove by his home periodically for almost a year and the trailer was in the same spot and condition and just because a Cease and Desist Order was issued does not mean they did not continue to visit that home.

MOTION: To accept the agreement to comply with the order in Case 2000-315, that Warren Dewey-Dwight Weller and Weller Weeds (jointly and severally) be issued a Cease and Desist Order and a Civil Penalty in the amount of \$500.00 due within 90 days of Commission order by Commissioner Peterson.
Seconded by Commissioner Allen.

VOTE: 4 - 0 Motion carried.

MOTION: To dismiss Case 2003-095 for lack of evidence, by Commissioner Peterson.

Seconded by Commissioner Robinson.

VOTE: 4 - 0 *Motion carried.*

X. For information and discussion, not action:

A. Complaint Status Log - Pulled

XI. Felony Applicants

A. Blocher, Bruce Harry

Mr. Bruce Harry Blocher appeared and answered Commissioners' questions.

Commissioner Hartley asked Mr. Blocher to give them a background of the incident. Mr. Blocher stated the felony happened while he was living in Montana in 1999. He shot an animal while hunting big game and could not retrieve the animal off the mountain because of bad weather. A couple of days later, he went back to retrieve the animal and saw another and shot it. He told the truth about the incident even though it is a hunting violation and was given a deferred imposition. A deferred imposition is when you meet the criteria set forth by the judge, then the record would be expunged after five years. The judge ordered Mr. Blocher to five years probation and loss of hunting privileges for life. Mr. Blocher went on to state he is in good standing with his probation officer and has less than a year left. He is currently licensed as an applicator in Montana and Nebraska and feels it is critical to get a license to further his career. He stated he had no criminal record before this incident and made a mistake he has paid for dearly. Mr. Blocher's immediate supervisor was unable to attend because he is on vacation but he is certain the supervisor would say he is doing an adequate job expected of him. He added his job is on a public golf course and it is very important to get a license and continue his career. Commissioner Allen asked if Montana uses a draw system or sells a certain number of permits per year. Mr. Blocher stated they use a combination of both. Lisa Gervase asked if restitution has been paid as ordered by the court. Mr. Blocher stated he has complied with all of the order except the financial terms, on which he is way behind. He has paid about \$6000 of the ordered \$36,000 that was due by May 2004. He stated he has never made a lot of money and is paying what he can. Mr. Blocher has a hearing scheduled in Montana for legal malpractice because his first attorney was offered two plea agreements and did not communicate these offers to him. Mr. Blocher stated he probably would have received a misdemeanor and a couple thousand dollars in fines with competent counsel.

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

VOTE: 4 - 0 *Motion carried.*

B. Brooks, David

Mr. David Brooks appeared and answered Commissioners' questions.

Commissioner Hartley asked Mr. Brooks to describe the facts of the felony. Mr. Brooks was charged with Accessory After the Fact of Murder. He stated he was at home with his girlfriend when his friend called to borrow some gas money. His friend asked him to drive his car and then told him he had killed someone while they were in the car. Mr. Brooks stated he was terrified after this. He helped dump the body because he was scared and was threatened with injury to his person and against his family. He never mentioned anything because he was threatened. The authorities figured out what happened and Mr. Brooks turned state's evidence and was charged for not turning in his friend. He was on probation for five years and paid restitution. Commissioner Hartley asked if this happened in 1992 and whether probation has ended. Mr. Brooks responded yes to both, further stating he had no problems during probation. Commissioner Peterson asked Mr. Brooks whether he has had any problems since. Mr. Brooks said no and after three years probation, his probation officer determined he did not have to see him anymore. Commissioner Hartley asked how long Mr. Brooks has been in Arizona. Mr. Brooks responded four years. Commissioner Peterson clarified whether Mr. Brooks was scared of this individual. Mr. Brooks responded before he found out no because he was his best friend but after he found out yes. Mr. Brooks added there is no relationship anymore with this individual in Mississippi. Commissioner Allen stated Mr. Brooks was in a difficult position but helped dump a body. Commissioner Robinson stated he understood the fear factor and Mr. Brooks was stuck in a difficult position. Commissioner Allen added, "he could not say he would have acted differently in fear of his life, he certainly is not Hercules, however, he is certain he knows what his conscience would tell him to do and is voicing his opinion as a courtesy to the Commission because he feels Mr. Brooks would not do the right thing in the pest control arena." Mr. Brooks responded it was not just one individual, but five guys who all threatened to injure his family. Mr. Brooks added he has five sisters and five brothers and his family was threatened. Commissioner Hartley added this was a nasty situation that is over and done with and does not see it causing further problems to consumers in Arizona. Mr. Brooks' employer (Field Supervisor Charles Hickie with SOS Exterminating) stated Mr. Brooks is doing an excellent job, is an excellent employee who takes great care in his work, and they had no concerns regarding this incident after hearing the whole story.

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

VOTE: *3 - 1 Motion carried. (Commissioner Allen opposed)*

C. Knight, William Sterling

Mr. William Sterling Knight appeared and answered Commissioners' questions.

Commissioner Hartley asked Mr. Knight to give a background of the incident. Mr. Knight stated in 2000, he went out to a bar and met a girl who invited him back to her apartment. They stayed up late and fooled around. The next morning, he was told to leave. He left and did not hear anything about this until he was arrested a year and a half later for sexual assault. He went to court to fight the charges. On advice from counsel and because of concerns of a possible conviction, he accepted a plea to sexual abuse. He received three years probation. He has been perfect on probation and paid full restitution. Commissioner Hartley asked if the plea required him to report as a sex offender. Mr. Knight responded no. Commissioner Peterson asked whether drinking was still a problem. Mr. Knight responded that he is not allowed to drink while he is on probation and the incident happened on a Saturday night while he was out with friends. Commissioner Peterson asked if he has changed his behavior regarding partying. Mr. Knight stated he is not allowed to drink while on probation and is currently in a long-term relationship with his girlfriend of two years.

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

VOTE: *4 - 0 Motion carried.*

D. Martinez, Omar Llamas

Mr. Omar Llamas Martinez appeared and answered Commissioners' questions.

Commissioner Hartley asked Mr. Martinez to describe the felony. Mr. Martinez said he was convicted ten years ago of an aggravated DUI. He further stated it happened at a time when he had a bad attitude. He has since learned a lot about responsibility. Commissioner Hartley asked Mr. Martinez if he has given up drinking. Mr. Martinez responded no but did go to a few Alcoholics Anonymous meetings to clean up his act in the past. He said he drinks on occasion and feels he does not have a problem with alcohol. Commissioner Allen asked if he gets drunk when he drinks. Mr. Martinez said he feels bad when he gets drunk. Commissioner Allen asked how much he drinks. Mr. Martinez said he has a couple of beers at a ball game, if his brothers come over, or if he goes to a friend's house. He does not drink more than four beers at a time. Chris Fitzgerald, supervisor of Mr. Martinez, said he is a great employee who does everything and has had no problems showing up on time, nor has he appeared hung over to work. Commissioner Peterson had a concern Mr. Martinez still drinks. Commissioner Allen inquired why Mr. Martinez drove while intoxicated. Mr. Martinez said it was a night of heavy drinking ten or eleven years ago when he was 25 years old and had a bad attitude. Assistant Attorney General Blair Driggs inquired about the aggravated DUI charge as opposed

to just DUI. Mr. Martinez explained aggravated because he was driving with a suspended license for a prior DUI that happened thirty days before. Mr. Driggs asked Mr. Martinez if had any other DUI arrests. Mr. Martinez responded no and added he currently has a license and insurance. Mr. Martinez said he does not drink and drive anymore.

MOTION: To approve applicant testing by Commissioner Allen.
Seconded by Commissioner Robinson.

VOTE: 3 - 1 Motion carried. (Commissioner Peterson opposed)

E. McGhee, Bruce Edward

Mr. Bruce Edward McGhee appeared and answered Commissioners' questions.

Commissioner Hartley asked Mr. McGhee to describe his felony conviction. Mr. McGhee stated that twenty years ago he was arrested for sale of a controlled substance. He did community service while working for the City of Scottsdale and was released from probation twenty years ago. Commissioner Hartley asked what the charge possession of a dangerous drug meant. Mr. McGhee stated that in the past, marijuana was considered a dangerous drug. Commissioner Peterson asked what hashish was. Mr. McGhee stated it is a stronger form of marijuana. Assistant Attorney General Blair Driggs stated other drugs such as heroin were also present. Mr. McGhee responded the other drugs present belonged to his roommate. Commissioner Peterson asked if hash was marijuana and Commissioner Hartley responded that it was. Mr. McGhee stated this happened in 1984 and he has been off probation for over twenty years. Commissioner Hartley asked if there were any recent problems. Mr. McGhee responded no. Commissioner Hartley asked if Mr. McGhee was self-employed. Mr. McGhee said yes and wanted to become certified to have the option to do other things. Commissioner Allen stated, "he saw a ten year history and is looking for a reason to see a behavior change." Mr. McGhee said it was 1970's and 1984, twenty years ago. Commissioner Allen asked Mr. McGhee what made him change his lifestyle in 1985. Mr. McGhee said work and marriage created responsibilities that made him change.

MOTION: To approve applicant testing by Commissioner Robinson.
Seconded by Commissioner Peterson.

VOTE: 4 - 0 Motion carried.

F. Merrick, Christopher Dennis

Mr. Christopher Dennis Merrick appeared and answered Commissioners' questions.

Commissioner Hartley asked Mr. Merrick to give the background of the incident. Mr. Merrick stated it was roughly two years ago when he got into a verbal dispute with his wife. They met at a mutual friend's house to talk. The wife was intoxicated and took off in the family vehicle to his place of residence. He followed her back and they got into an argument where he made some threats and she called the police. He fought the case and took a plea agreement to disorderly conduct. He stated he used to be certified in 1997 but let the license lapse before renewing. He is currently on intensive probation, similar to house arrest. Commissioner Robinson asked whether Mr. Merrick was intoxicated at the time of arrest. Mr. Merrick responded no. Commissioner Allen asked Mr. Merrick to describe the nature of the threats. Mr. Merrick said he did not want her to leave because she was intoxicated and attempting to drive. She was out of control, so he parked his vehicle behind hers so she could not leave. She told him she would have a friend come pick her up and he threatened to shoot someone if anyone came. Commissioner Allen asked if he had a gun. Mr. Merrick responded he did not have a gun on him. Commissioner Allen stated the police report indicated Mr. Merrick had a 9 millimeter handgun in his pants. Commissioner Allen asked if he had a gun. Mr. Merrick said he had a gun on him. Commissioner Robinson asked if he was currently married to this woman. Mr. Merrick responded no and added she lives in another state. Commissioner Robinson asked why Mr. Merrick is on intense probation. Mr. Merrick stated he was given one year probation but violated probation and had to serve six months in jail. Commissioner Peterson asked how he violated probation. Mr. Merrick said for failure to pay fines, fees, and failure to report. Commissioner Robinson said Mr. Merrick's testimony is inconsistent with the police report. Commissioner Robinson added both individuals had been drinking and there was a discrepancy regarding the gun.

MOTION: To deny applicant testing by Commissioner Robinson.
Seconded by Commissioner Allen, because the applicant has a felony, his statements to the Commission are inconsistent with facts in the police report, and there has been insufficient time and evidence for this applicant to be rehabilitated.

VOTE: 4 - 0 Motion carried.

G. Osorio, Anthony Edward

Mr. Anthony Edward Osorio appeared and answered Commissioners' questions.

Mr. Osorio stated he was convicted of an aggravated DUI seven years ago. It was aggravated because he had a work permit to drive only from Tempe to Phoenix between seven and nine o'clock. He left a Cardinals game at about eight and met some friends who had been drinking. He drove and did not notice a cop behind him and was pulled over. He received five years probation and four months in prison.

He does not drink anymore, was a student in college at the time, and was barely over the limit. Commissioner Peterson asked whether he still drinks. Mr. Osorio said no because of his religion and his family obligations. Supervisor Steve Duvall (Phoenix Pest & Termite Control) stated Mr. Osorio has been employed for two months, is an excellent employee, and wished he had ten more employees just like him. Mr. Osorio said he has had no problems since.

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

VOTE: *4 - 0 Motion carried.*

H. Salas, Jeffrey Joel

Mr. Jeffrey Joel Salas appeared and answered Commissioners' questions.

Mr. Salas stated in the summer of 1999, as a 17 year old, he was caught with marijuana. He was charged with possession of drug paraphernalia. He got two years of supervised probation. It was supposed to be an undesignated offense but turned to a designated Class 6 Felony because he procrastinated and did not pay fines or finish community service as scheduled. Commissioner Peterson asked what has gone on since. Mr. Salas responded that he has not smoked pot or drank in two years. Mr. Salas stated he did have a misdemeanor for unlawful consumption when he was 20 years old. Mr. Salas has been clean for two and a half years because he is a born again Christian and has given his life to God.

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

VOTE: *4 - 0 Motion carried.*

I. Sotelo, Guillermo

Mr. Guillermo Sotelo appeared and answered Commissioners' questions.

Mr. Sotelo stated he was convicted in 1999 of possession of a dangerous drug and possession of drug paraphernalia and sentenced to probation for three and a half years. He was reinstated four times during his probation because it was revoked. Assistant Attorney General Blair Driggs stated reinstatement means he had problems with his probation and they added additional requirements to the probation. Mr. Sotelo failed to report to his probation officer. His last reinstatement was because of an additional charge. He was sentenced to three years intensive probation and placed in a residential treatment center. He completed the program at the center and requested to be placed in the drug court program. The drug court program consists of sixteen months of counseling twice a week, Narcotics

Anonymous meetings, and appearances before a judge every other week. Commissioner Robinson stated he felt no rehabilitation is going on with Mr. Sotelo. Commissioner Allen told Mr. Sotelo not to be discouraged and get things take care of and come back.

MOTION: *To deny applicant testing by Commissioner Robinson. Seconded by Commissioner Peterson, because the applicant has a felony, there is evidence of lack of rehabilitation, there is evidence of lack of personal responsibility by not complying repeatedly with probation terms and continued use of illicit substances.*

VOTE: 4 - 0 *Motion carried.*

J. Sousa, Juan

Mr. Juan Sousa appeared and answered Commissioners' questions.

Mr. Sousa stated he was certified in 1990 and the conviction was from 1977. He was charged with possession of heroin and given five years probation. Commissioner Hartley asked whether he disclosed the felony. Mr. Sousa stated he always discloses yes to the felony conviction question. He has no problems since and does not even drink since his wife past away.

MOTION: *To approve renewal by Commissioner Peterson. Seconded by Commissioner Allen.*

VOTE: 4 - 0 *Motion carried.*

Break from 10:45 to 11:00 a.m. (Commissioner Peterson no longer present, Commissioner Runbeck present via telephone)

XII. Orders Vacating Hearings with Settlement Recommendations from Assistant Attorney General Blair Driggs

A. Bill's Pest & Termite Company /Walter W. Trott - OAH Docket # 99A-046-SPC/SPCC Case # 99-046

Mr. Driggs stated the Commission sent this matter to a formal hearing. He met with the business and QP licensee and their attorney, Mr. Richardson. Mr. Driggs vacated that hearing based upon a proposed resolution, a Consent Agreement and Order was signed and provided this morning to the Commission, reached with Mr. Richardson.

MOTION: *To accept the Consent Agreement and Order, by Commissioner Robinson.
Seconded by Commissioner Allen.*

VOTE: *4 - 0 Motion carried.*

B. Knight Pest Control/Leonard Knight/Bruce Tackett - OAH Docket # 00A-089(1)-SPC/SPCC Case # 2000-089

This matter has been tabled, since Mr. Knight is not present and wishes to address the commission.

C. Knight Pest Control/Leonard Knight - OAH Docket # 00A-122(1)-SPC/SPCC Case # 2000-122

This matter has been tabled, since Mr. Knight is not present and wishes to address the commission.

XIII. Recommended dismissal of cases, without prejudice; and suspension of Business, QP and Applicator Licenses for nonpayment of TARF fees, civil penalties and renewal fees

A. All West Pest Management dba Rawhide Pest Management/John D. Lewallen - Case # 2002-117
Pulled

B. Nathan D. Abel - Case # 2003-007
Tabled

C. Strata Environmental dba Case Grande Exterminating/Michael W. Huppert (QP) - Case Nos. # 99-053 and 98-088
Tabled

XIV. For information, discussion, and possible action:

A. Continuing Education Committee Minutes

Carl Martin stated the Commission has before them the minutes and he is available to answer questions.

MOTION: *To approve the Continuing Education Meeting Minutes, by Commissioner Allen.
Seconded by Commissioner Robinson.*

VOTE: 4 - 0 Motion carried.

XV. For information and discussion, not action:

A. Computer Based Testing "CBT" Status and Statistics

Tabled

B. Legislation - Status of HB 2399

Tabled

XVI. Approval of Minutes

May 14, 2004 (regular session) Minutes

Tabled

XVII. Scheduling of future meetings/agenda items (Ms. Gervase)

Current Proposed dates and locations

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
December 10, 2004	Scottsdale, AZ

Tabled

XVIII. For information and discussion, not action:

A. Expenditure Report. (Meeting handout)

Tabled

B. Case Status Report

Tabled

C. Applicator License Renewal Update

Tabled

XIX. For discussion, consideration and possible action: Substantive Policy Statement Re: Termite Treatments/Abutting Slabs Rule - Policy Number 2004-002

Tabled

XX. Adjournment - 11:30 A.M.

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

VOTE: *4 - 0 Motion carried*