

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

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

I. Call to order, Commissioner roll call

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

Commissioners Absent: Commissioner Runbeck

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

II. Call to the public

Mike Means, of Metro Institute, advised the commission on the improvements of the computer-based testing (CBT). The pass rate for computer-based testing in the first month (6/03) was 18%, compared with the average pass rate for the prior paper-based testing of 24%. The pass rates for computer-based testing in the second month (7/03) was 20% to 25%. As of June 30, 2004, the CBT pass rate has gone up to 40%. Mr. Means stated people are taking a more active role in preparing for tests. A motivating factor could be the money paid to take these tests. He feels this pass rate is good for the state and it will continue to improve if people prepare for the tests. He interviewed test takers and found those that did not do as well was because they did not prepare for the test by studying the study materials.

Improvements for test delivery include categorization of questions that correspond with a particular graph or label so all the relevant questions are asked at the same time. This is one issue that has been disconcerting to test takers in the past. They will also implement grading by category. Today, the test taker receives one score for the whole exam. Mr. Means stated they will give test takers a grade by category along with a total grade. Scores will be given based on how many questions were answered correctly on each section of the test. Sections include laws and regulations, graphs, labels, and identification. He feels staff at Metro Institute and the Commission cannot currently explain to test takers what they did wrong. Grades by category will give them some direction where test takers went wrong. Mr. Means stated they have added additional computers for the tests. They have extra computers beyond those necessary by contract requirement at all test locations. A problem Metro institute has confronted is computers freezing when a test question

has a lot of parts. He investigated the problem and found the computer servers in Utah (at Utah State University) need to be removed outside of Utah State. The high traffic on the servers is causing the delays in processing information. The file server will be moved to a commercial location with an up-rate of 99.6%, up from the Utah State up-rate of 98%. This file server will be connected directly eliminating any problems. A black box is also being implemented to record every key stroke of everyone involved with the test to diagnose problems should they arise. The reporting on the pass rates will include a T-factor to determine the validity of the questions, average time taken on the tests, reports for large companies about the status of their employees who have taken tests. Mr. Means added Metro is not absolutely perfect but they strive to be and he personally gets involved in all aspects of the tests at Metro.

III. Communication with Commissioners

Commissioner Peterson stated he received an e-mail from Michelle Bolton at the National Federation of Independent Businesses. Ms. Bolton is eager to meet with SPCC representatives to speak about proposing legislation regarding landscapers and licensing requirements. Commissioner Fraker received an e-mail from Ross Exterminating regarding unlicensed activity and passed it onto Ms. Gervase to handle.

IV. Consent Agenda

Commissioner Peterson 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. Bartsch, Brent Ward | The Landscape Company (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture) |
| 2. Cassidy, Paul Hudson | Cassidy Fisheries (Activating Qualifying Party for new business license in "B9" Aquatic Pest Control) |
| 3. Englehart, Gary Castle | Desert Castle Pest Control (Activating Qualifying Party for new business license in "B1" General Pest/Public Health) |

4. English, John Patrick

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

5. Feuillet, Eben Sief

IPM Solutions (Activating Qualifying Party for new business license in "B1" General Pest/Public Health and "B8" Wood Destroying Insect Inspection)

Pulled

Commissioner Hartley had a question regarding the activation of the "B1" and "B8" categories, but not the "B2." He wondered whether this was an oversight or done by design. Mr. Feuillet appeared and stated he had problems with the "B2" exam. Commissioner Hartley asked Mr. Feuillet if he understood the limitations of not having a QP license in "B2." Mr. Feuillet responded that he did and added he has someone to contract out "B2" work if need be. Commissioner Fraker asked staff whether there is a conflict doing wood reports while not licensed in "B2." Lisa Gervase responded there is no conflict as long as they work within the scope of the category. Commissioner Fraker stated as long as you have an applicator license in "B2," you can do the reports but cannot do business in "B2" with just a "B8." He further added Mr. Feuillet could do the inspection but not the work without a QP "B2" license. Mr. Feuillet asked whether there is a fee for reapplying after ninety days. Commissioners Peterson and Baker stated they believed there was a fee. Robert Tolton stated there was no fee to broaden. Commissioner Fraker added the fee only applied to test.

MOTION:

*To approve activating QP for new business license in "B1" and "B8" by Commissioner Hartley.
Seconded by Commissioner Allen.*

VOTE:

6 - 0 Motion carried.

6. Jones, Arizona C.

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

7. Manciet, Edward Louis

No Bugs Allowed (NBA) Termite & Pest Control (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)

Pulled

Commissioner Baker had a question regarding a letter from Benjamin Partin that appeared to be unsigned. Since it was unsigned, Commissioner Baker feels it is not valid. Robert Tolton stated he believed the letter was signed. Commissioner Baker recommends the writer sign the letter next time because it appears to be printed. Mr. Tolton believes it is a signature because he told Mr. Partin to sign the letter in his presence. Commissioner Baker recommends a "John Hancock" because Mr. Partin's signature looks like printing. Mr. Tolton honestly believes the letter is signed because he asked Mr. Partin to sign the letter and that was what he submitted before him - Mr. Partin's signature is printed.

MOTION: *To approve activating QP for new business license in "B1", "B2", and "B8" by Commissioner Baker.
Seconded by Commissioner Allen.*

VOTE: *6 - 0 Motion carried*

8. Nair, Scott Wood **Troon North Golf Limited Partnership, R.L.L.P.** (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. Chapman, Robert E. **Valley Bee Control, Inc.** (Activating Qualifying Party for existing business license in "B1" General Pest/Public Health)

2. Cromley, Gary Dean **Cromley Exterminating** (Activating Qualifying Party for existing business license in "B1" General Pest/Public Health)

3. Killenbeck, Arthur L. **Hometeam Pest Defense, L.L.C.** (Activating Qualifying Party for existing business license in "B8" Wood Destroying Insect Inspection)

4. Smithlin, Peter **Foothills Grounds, Inc.** (Activating

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

C. Applicants for QP Testing

1. **Amborn, David Lee** "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)
2. **DeBride, Joseph Ashley** "B2 and B8" (Control of Wood Destroying Insects and Wood Destroying Insect Inspection)
3. **Grower, Jr.; Rey M.** "B1" (General Pest/Public Health)
4. **Hicks, Trent Larry** "B8" (Wood Destroying Insect Inspection)
5. **Lomeli, Jeremiah Bryant** "B7" (Fungi Inspection)
6. **Martinez, Isaac** "B1, B2 and B8" (General Pest/Public Health, Control of Wood Destroying Insects and Wood Destroying Insect Inspection)
7. **Neff, Joey Ryan** "B1" (General Pest/Public Health)
8. **Pierce, Jesse Roy Lee** "B3" (Right of Way/Weed Control)
Pulled

Commissioner Fraker had a question regarding the year that Mr. Pierce's experience began. It was clarified that Mr. Pierce's original experience was from 1964-1973 and then 1994 to present. Commissioner Fraker didn't catch the 1994 to present experience.

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

VOTE: *6 - 0 Motion carried.*

9. **Rodriguez, Mike Junior** "B1, B2 and B8" (General Pest/Public Health, Control of Wood Destroying Insects and Wood Destroying Insect Inspection)

Pulled

Commissioner Hartley was not enamored with the paperwork because the verification of experience was signed by a HR person at Truly Nolen, rather than by him as QP. He stated the commission needs standards to verify the paperwork and experience. Commissioner Hartley stated he had a problem with the paperwork and forms submitted by Mr. Rodriguez. Commissioner Robinson stated they accept verification from relatives and staff might need to check this out when families submit signed verification of experience. Robert Tolton stated they have modified the verification experience forms requiring them to be notarized. He added Mr. Rodriguez had a difficult time getting all of the verification of experience for the original QP application so they used the forms from the previous application and they had to modify it from years to hours because the forms changed. Commissioner Hartley further stated that QPs are responsible for running a business so they should be the ones verifying experience. He also stated a relative could not verify the experience they are looking for. Commissioner Peterson asked what they should do if the QP is a relative. Commissioner Hartley responded that it does not matter because the relative is the QP. Commissioner Fraker asked whether the QP should be verifying experience instead of an HR person. Commissioner Hartley stated where it is possible, they should only accept verification from a QP. Commissioner Peterson added he had no problem with the forms in this application and acknowledged the problems of obtaining information from previous employers to get verification. Commissioner Baker asked if it was possible to accept verification solely from the QP. Lisa Gervase responded that they could add a line stating the Commission has a preference for QPs but the law does not require any particular person to verify experience. She further added the forms were modified to include notarization where the person signing is swearing it is a true and accurate statement.

Commissioner Peterson commented that applicants should show up at the Commission meeting when their applications are being considered.

MOTION: To approve QP testing by Commissioner Hartley.
Seconded by Commissioner Fraker.

VOTE: 6 - 0 Motion carried.

10. Schiefelbein, James W. "B2 and B8" (Control of Wood Destroying Insects and Wood Destroying Insect Inspection)

11. Shisler, William Weekly "B1 and B3" (General Pest/Public Health and Right of Way/Weed Control)

Pulled

Commissioner Robinson questioned his experience because he thought that Mr. Shisler's had only been licensed in "B1" since April 21, 2004. Lisa Gervase clarified that Mr. Shisler has been licensed and obtaining experience since 1994, not 2004. Commissioner Robinson read the date incorrectly.

MOTION: To approve QP testing by Commissioner Robinson.
Seconded by Commissioner Hartley.

VOTE: 6 - 0 Motion carried.

12. Steffenson, Sr.; James H. "B2 and B8" (Control of Wood Destroying Insects and Wood Destroying Insect Inspection)

13. Zehr, Kevin Robert "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)

Pulled

Commissioner Baker had a question regarding the application marked "B1" with no hours under "B1." Lisa Gervase added that Mr. Zehr is not going for a "B1" license and the application was marked incorrectly.

MOTION: To approve QP testing by Commissioner Baker.
Seconded by Commissioner Fraker.

VOTE: 6 - 0 Motion carried.

End of Consent Agenda

MOTION: By Commissioner Allen to accept Consent Agenda with the exception of those items pulled for discussion (Tabs 5, 7, 20, 21, 23, 25).
Seconded by Commissioner Fraker.

VOTE: 6 - 0 Motion carried.

V. Applications for Qualifying Examination not on the Consent Agenda

A. Birkmeyer, Keith Vincent "B1" (General Pest/Public Health)

Mr. Keith Vincent Birkmeyer appeared and answered Commissioners' questions.

Mr. Birkmeyer stated he is a certified operator in Florida equivalent to the QP here. From 1992 to 1999, he was employed by Terminix and in 1999 was hired by his current employer FMC. Commissioner Fraker inquired whether Mr. Birkmeyer's

Florida license is still active. Mr. Birkmeyer responded in the affirmative.

MOTION: *To approve QP Testing in the "B1" category by Commissioner Fraker. Seconded by Commissioner Baker.*

VOTE: *6 - 0 Motion carried.*

B. Graham, Marc Eric "B1, B2, B3, B4 and B8" (General Pest/Public Health, Control of Wood Destroying Insects, Right of Way/Weed Control, Fumigation, Wood Destroying Inspect Inspection)

Mr. Marc Eric Graham appeared and answered Commissioners' questions.

Commissioner Peterson stated this issue deals with the supplement added regarding Mr. Graham's experience. Commissioner Peterson asked if the problem was on the first form submitted and signed by DJ Barr verifying 1600 hours. Mr. Graham stated he came to work at Sun Lakes Pest Control in August of last year and was the general manager under the qualifying party Vance Guss. Mr. Graham is the new owner of the business and wants to test to become a QP. Commissioner Peterson asked why Mr. Guss would not give Mr. Graham a letter. Mr. Graham stated it was not required by law and he did not ask him for a letter. Mr. Barr was the previous owner before Mr. Guss.

MOTION: *To approve QP Testing in the "B1, B2, B3, B4 and B8" categories by Commissioner Baker. Seconded by Commissioner Allen.*

VOTE: *6 - 0 Motion carried.*

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

A. Killenbeck, Arthur L. Hometeam Pest Defense, LLC

Mr. Arthur L. Killenbeck appeared and answered Commissioners' questions.

Commissioner Peterson stated Mr. Killenbeck has requested a ninety-day extension because he missed passing the exam by one question. Mr. Killenbeck stated he realizes a ninety-day extension is not part of the program and requests a sixty-day extension and after the sixty days will reapply for another sixty-day extension. This will allow him to get to his ninety-day lockout period so he can retest and reapply for a B2 QP. Mr. Killenbeck is requesting this because of the responsibilities on him as the temporary qualifying party and wants the company to remain in business. He passed the other tests with no problems and had no reservations about retesting and passing the test. Commissioner Peterson stated Mr. Killenbeck is asking for a

sixty-day extension, after which he would ask for another sixty-day extension. Commissioner Baker asked why he needed two sixty-day extensions. Mr. Killenbeck said the law requires ninety days because he has already tested three times within his six-month period and is locked out for ninety days. Commissioner Baker asked why he believed he did not pass. Mr. Killenbeck said there is no test preparation course for the qualifying party test. Commissioner Peterson asked if Mr. Killenbeck could rent a qualifying party. Mr. Killenbeck said they could operate under another qualifying party but because of his past work in the pest control industry since 1972 and his desire to take himself to the highest level of certification in the industry, he wants to become a QP. Commissioner Fraker asked how many employees are in the company. Mr. Killenbeck responded about eighty employees, eight in the termite department. There is no other qualifying party in the termite department besides himself and two individuals approved to test today. If these two pass, Mr. Killenbeck will dissociate himself from the termite department. Commissioner Fraker asked about his experience in the termite field. Mr. Killenbeck stated he worked for two years for Terminix and was an applicator termite technician and retreat specialist in the 80s. Commissioner Fraker stated Mr. Killenbeck has not worked in the termite field recently. Mr. Killenbeck said he does help out on baiting installations, in conventional termite treatments, and in all phases of the business. Commissioner Peterson stated that in sixty days he might not have to appear before the commission if the two other applicants pass their tests. Commissioner Fraker stated this situation requires ninety days for a temporary QP, and an additional four months totaling seven months of operating a business that makes millions of dollars with eighty plus employees with no one responsible with a QP license. Commissioner Fraker further added this is a big company that can get someone who can pass this test. Commissioner Baker stated they are big enough to buy a QP. Commissioner Peterson stated the message should be to prepare ahead of time before a problem arises. Mr. Killenbeck stated the two individuals should be ready to test within thirty days. Mr. Killenbeck will test again no matter what happens to satisfy his personal goals. Commissioner Fraker asked about their time frame if the extension is denied. Mr. Killenbeck said tomorrow is his deadline. Commissioner Baker asked Mr. Killenbeck if they had a back up plan. Mr. Killenbeck stated they have no back up plan. Commissioner Baker commented to the audience the need to have a back up plan in case a situation does not work out. Lisa Gervase added that the typical back up plan temporary qualifying party extensions not granted is "renting a QP", which is not appropriate. She went on to add that Hometeam has someone who is truly active in the daily management of the business and would rather see someone like this get a short extension to get the company fully qualified and continue in the active management of the business rather than have somebody else rent their QP who would not be active in the management of the business. Typically, she is not in favor of these requests but feels each one should be analyzed on its own merits and would have to advocate on behalf of Mr. Killenbeck. She advised the Commissioners they could set any time frame for an extension. Commissioner Baker stated he thought this company had resources to comply and was bothered by their lack of a back up plan. Commissioner Allen stated he is

sympathetic to this situation and if a QP is rented, the obligation still exists to manage the business. Commissioner Robinson stated he is also sympathetic to this plight but if an extension was granted and an accident happened, the Commission would be hung out to dry for allowing a company to operate for many months on a temporary B2 QP. Joseph DeBride, in charge of the termite department at Hometeam, appeared and stated they had a back up plan but have been unsuccessful in their plan to get a QP. Commissioner Fraker asked Mr. DeBride why he had not attempted to become the QP sooner. Mr. DeBride responded that he was waiting for his background check to come through. Commissioner Fraker asked if he was waiting for three and a half years for his background check. Mr. DeBride stated he never thought about attaining his QP until a couple of months ago and the reason they lost the QP was because he left unexpectedly.

MOTION: To deny QP extension by Commissioner Robinson.
Seconded by Commissioner Allen, because Mr. Killenbeck does not qualify for an extension under the law (no good cause for the delay in procuring the QP). and would place the public at risk for operating for so long on a temporary B2 QP.

VOTE: 5 - 1 Motion carried. (Commissioner Peterson opposed)

B. Langdeau, Philip Dale The Pointe On South Mountain Resort

Mr. Philip Dale Langdeau did not appear. Commissioner Baker stated this individual has been approved to test but has yet to take any exams. Robert Tolton stated that as of June 23, Mr. Langdeau has not taken any exams. Commissioner Hartley added that he was approved to take the test in March and has not taken a test or even appeared today.

MOTION: To deny extension by Commissioner Hartley.
Seconded by Commissioner Robinson, because Mr. Langdeau failed to act in good faith to procure QP license and has not taken a test since being approved in March 2004.

VOTE: 6 - 0 Motion carried.

VII. Complaints against Licensees

A. Cochise Termite & Pest Control Company/Donald Ramey - Case # 2004-012

No appearances.

Commissioner Baker asked why no agreement was reached. Dave Colvin stated a settlement conference was held and the proposed terms were initially accepted by the licensee. Mr. Colvin added that he may have fell short on the severity since this was the qualifying party and through the complaint review process, a more

stringent settlement was proposed. The settlement conference was revisited by the SPPC and a probationary term was submitted to the parties. Mr. Ramey rejected the terms of the settlement conference. Commissioner Allen asked if no treatment records were preserved, how do they determine what kinds of treatments were made. Mr. Colvin responded that in this case, the treatment records existed but were incorrect. Lisa Gervase added that some of the records were not complete. Commissioner Hartley asked whether the Commission determined how much Tim-Bor was used and stated his concern for the consumer. Lisa Gervase responded that staff will look at the file and try to find an answer before this matter goes to hearing.

MOTION: *To send Case No. 2004-012 to the Office of Administrative Hearings by Commissioner Baker.
Seconded by Commissioner Allen.*

VOTE: *6 - 0 Motion carried.*

B. DSR Pest Management/Keri Richardson Business Licensee (Formerly DSR Termite & Pest Control - Case # 2003-127)

No appearances, but the Respondents called Mr. Colvin before the Commission meeting to accept the settlement proposal for the Business License.

Lisa Gervase stated the SPPC has an update on this issue. Dave Colvin stated within the last hour, the Business Licensee Keri Richardson, agreed to the terms and will accept two administrative warnings for not submitting termite action reports, two administrative warnings for two counts of unlawful acts, and two administrative warnings and a \$400 in civil penalty for two counts of making fraudulent statements. Mr. Colvin stated Ms. Richardson agreed to this over the phone and he received a faxed confirmation. Lisa Gervase stated they would be adding this to the proposed settlement. Commissioner Baker inquired on the total fine amount. Mr. Colvin responded the total was \$400 for Ms. Richardson and \$800 for Stephen Richardson. Commissioner Baker asked how long they have been licensed and what happened in this situation, because he feels that a \$1,200 civil penalty is insufficient for making false statements. Mr. Colvin answered they have been in business about seven years and Stephen Richardson used other business license numbers without their permission after his failed attempts to gain a qualifying party license or another QP for the company. Commissioner Fraker asked if the current QP was John Buxton. Mr. Colvin stated the company is licensed with Mr. Buxton as their QP but at the time of the violations, they had no QP. Commissioner Baker stated he is bothered by these violations. Commissioner Peterson asked if there was a reason Ms. Richardson did not respond in writing but accepted the settlement an hour ago. Mr. Colvin stated that she did respond after the work was completed and pleaded no contest to the complaint. Lisa Gervase stated they do not feel it is a substantive response if someone sends a letter pleading no contest because they are not

answering the factual allegations of the complaint. Commissioner Allen asked if this was the maximum penalty allowed because he believes this to be an egregious violation of falsifying records. Ms. Gervase stated the Commission has discretion to impose any discipline allowed by law. Commissioner Peterson asked if they came in for QP testing, would the Commission notice their prior violations. Ms. Gervase stated they would be aware because they review prior disciplinary actions. She also stated they would be doing follow-up inspections.

MOTION: To accept enforcement response program terms, including the amendment that the Business Licensee be issued six administrative warnings and a \$400 civil penalty, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Allen.
Seconded by Commissioner Baker.

VOTE: 6 - 0 Motion carried.

C. Contractors Pest & Termite Control/Kevin Etheridge/Gregory J. Lowe (Applicator Licensee) - Case # 2004-013

Appearances by Kevin Etheridge, QP; Doug Pinnecker, Vice President; D. Jay Ryan, Attorney for the Business and QP licensees. Applicator Lowe did not appear.

MOTION: To accept enforcement response program terms and to dismiss the complaint against Business Licensee and Qualifying Party Licensee and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Fraker.
Seconded by Commissioner Allen.

VOTE: 5 - 0 Motion carried. (Commissioner Baker out of room from 10:20-10:25 a.m.)

D. SST Exterminators/John Saxton/Brett Alessandri - Case # 2003-128

No appearances. Business and QP licensees' attorney, Tony Behrens, called Mr. Colvin to let him know that no one would be appearing.

Dave Colvin stated Mr. Saxton's attorney called to notify them would be unable to attend the meeting. Commissioner Fraker stated he was "really put out" with this case even though staff did a good job with the penalty phase. Commissioner Fraker stated Mr. Saxton and his attorney did not even appear to answer any questions. He was impressed by a letter from the consumer Wayne Craig and feels it is unfortunate SST offers a ten-year warranty only to have Mr. Saxton state they will

not do anything since he does not guarantee the work of his inspectors. Commissioner Fraker stated they lied about the work to the SPCC inspectors and did not make an attempt to take care of the customer. He feels SST committed fraud against the consumer. Commissioner Peterson complimented investigative staff for their tenacity in bringing forth evidence in light of Mr. Saxton's denials. Commissioner Allen stated that maybe accepting the ERP is not the solution to this problem and suggests sending it to hearing so SST will have to attend. Commissioner Allen inquired whether inspectors face any restrictions regarding records to see if treatments were made. Mr. Colvin stated they have lots of paperwork to look at but this company alleged a storm moved through the area and destroyed records. Commissioner Fraker asked staff which action would get Mr. Saxton's attention. Lisa Gervase responded option #3.

MOTION: *To accept the enforcement response program terms and if the Consent Agreement is not accepted 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.*

MOTION WITHDRAWN: *Commissioner Robinson withdrew his motion and Commissioner Allen withdrew his second.*

MOTION: *To reject the ERP resolution and send the matter to hearing because these Respondents' violations are severe, more severe action may be warranted, they were not being truthful, and did not cooperate with SPCC investigation, by Commissioner Fraker.
Seconded by Commissioner Robinson.*

VOTE: 6 - 0 *Motion carried.*

Ms. Gervase directed to write letter to Mr. Behrens explaining Commission's rationale for sending case to hearing.

Break from 10:35 - 10:45 a.m.

VIII. For information and discussion, not action:

A. Complaint Status Log

Mike Francis stated he would respond to any questions. Commissioner Fraker stated the commission staff has been busy. Commissioner Peterson noted that most of the complaints are not that old. Mr. Francis added they have cleaned up things quite dramatically.

IX. Felony Applicants

A. Banvelos, Jorge

Mr. Jorge Banvelos appeared and answered Commissioners' questions.

Commissioner Peterson asked Mr. Banvelos to describe the felony. Mr. Banvelos stated he is on probation and is eligible for early release so long as he pays his fines. Commissioner Peterson stated this incident involved methamphetamine, an addictive drug and asked why Mr. Banvelos feels he is an improved person. Mr. Banvelos stated his loving family and all the other positives in his life that he took for granted make him an improved person. His family support system, AA and NA sessions, his job, and his determination allowed him to overcome his addiction. Mr. Banvelos stated he started praying for help and believes his prayers were answered. Commissioner Allen asked how long he has been employed with Foothills Golf Course. Mr. Banvelos responded four years, four months. Commissioner Alan asked what was the amount of fines left to be paid. Mr. Banvelos answered \$300. Mr. Banvelos stated this incident involved two individuals he grew up with and no longer has contact with them. He will not contact them because if he did, his wife would end their marriage. Mr. Banvelos stated he is in charge of equipment at the golf course and they have two spray units that he calibrates. He seeks renewal for safety issues because he is in charge of the shop. Commissioner Allen asked how much his fine was to start with. Mr. Banvelos stated \$1200. Commissioner Baker asked for documentation of his drug treatment because they are not in the packet. Mr. Banvelos stated he has the documents with him and his supervisor can verify the treatment programs through the company. Steve Bell, Superintendent at Foothills Golf Course, stated Mr. Banvelos participated in their intensive second chance drug rehabilitation program and must submit to mandatory drug testing. He has complied and his work habits have improved dramatically since quitting the drug. They value his experience and abilities and would like to see him keep his license. Commissioner Fraker stated Mr. Banvelos must retest if he waited until September. Commissioner Hartley stated the Commission was getting carried away with this. Mr. Banvelos is moving in the right direction and only has a couple of months of probation left.

MOTION: *To renew Applicator License by Commissioner Hartley.
Seconded by Commissioner Allen.*

VOTE: *5 - 1 Motion carried. (Commissioner Peterson opposed)*

FIRST AMENDED AGENDA

B. Moffitt, Duane Thomas

Tabled

Robert Tolton phoned Mr. Moffitt at his residence and left a message. He also phoned his employer and discovered Mr. Moffitt was no longer employed with the

company. He does have certified notices that Mr. Moffitt received notice by mail of the meeting. Lisa Gervase stated they will contact Mr. Moffitt and see if he wishes to withdraw his application.

X. Orders Vacating Hearings with Settlement Recommendations

A. Knight Pest Control/Leonard F. Knight - OAH Docket # 00A-089-SPC/SPCC Case # 2000-089

B. Knight Pest Control/Leonard Knight/Bruce Tackett - OAH Docket # 00A-122-SPC/SPCC Case # 2000-122

No appearances.

Lisa Gervase stated these are both old cases where a verbal settlement was reached on the court house steps but was never reduced to writing. In the process of cleaning up old cases, they got the verbal settlements reduced to writing and the consent agreements are already signed by Mr. Knight.

MOTION: *To approve Consent Agreement and Order in both cases (2000-089 and 2000-122) by Commissioner Baker. Seconded by Commissioner Hartley.*

VOTE: *6 - 0 Motion carried.*

C. Sexton Pest Control - OAH Docket # 03A-046-SPC/SPCC Case # 2003-046

Appearances: Mark Bogard, attorney with Jaburg & Wilk, appeared on behalf of Sexton Pest Control and Kent Sexton for attorney Scott Richardson, Jaburg & Wilk. Lisa Gervase stated they have signatures on the consent agreement from all respondents.

MOTION: *To approve Consent Agreement and Order by Commissioner Hartley. Seconded by Commissioner Baker.*

VOTE: *6 - 0 Motion carried.*

XI. 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. Nathan D. Abel - Case # 2003-007

No appearances.

Lisa Gervase stated a memo was provided on this matter to recommend suspension because of nonpayment of the civil penalty and renewal fees. Commissioner Hartley asked if Mr. Abel was present.

MOTION: *To suspend the Applicator License for nonpayment of \$500 civil penalty and applicator license renewal fees by Commissioner Allen. Seconded by Commissioner Hartley.*

VOTE: 6 - 0 *Motion carried.*

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

No appearances.

Lisa Gervase stated they are recommending dismissal without prejudice of the case and suspension of the business license for nonpayment of license renewal fees. The qualifying party license has already been revoked.

MOTION: *To suspend the Business License for nonpayment of renewal fees and dismiss this case without prejudice by Commissioner Allen. Seconded by Commissioner Fraker.*

VOTE: 6 - 0 *Motion carried.*

XII. 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. Commissioner Hartley asked what "on demand" means. Mr. Martin responded certain providers provide training courses that are readily available when requested with no specific set date of the class. Commissioner Baker asked if the Formosan Termites was a video or a slide set. Mr. Martin responded that it is an on-line course with embedded video and audio and he has personally viewed the course.

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

VOTE: 6 - 0 Motion carried.

B. On-Line Continuing Education Reporting Tool; Withdrawing Approval of Continuing Education Providers who do not meet the reporting requirements

Commissioner Peterson stated all the Commissioners received an e-mail regarding the status of the on-line continuing education reporting tool. Carl Martin stated in February, the commission corresponded with companies conducting continuing education programs. The communication consisted of two parts: a request to report continuing education credits awarded to licensees for the period between June 1, 2003 and February 17, 2004, and requiring CEU providers to report using the on-line tool after February 17. The response has been favorable. Thirty providers sent "unsolicited responses" indicating this was a great system. Everyone involved has found this to be a workable system. The system allows the provider to act as an agent of the SPPC. It allows real time assurance to license renewal applicators. It also cuts down on staff time reading names and numbers of individuals, some of which are written incorrectly. Mr. Martin reported that pursuant to a discussion this morning, Dr. Pfeiffer has agreed to use the on-line reporting tool. Commissioner Peterson asked about printing out the verification. Hugo Pulido stated Dr. Pfeiffer's problem originated from a vastly outdated browser. The reason he could not generate reports was because of the old browser. The programming relies on certain capabilities and here the language was outdated. He also had the option of using Internet Explorer but opted not to use Internet Explorer. Commissioner Peterson asked if he could print out the reports. Mr. Pulido stated that even with the old browser, the codes have been rewritten to allow him to print the reports. Dr. Pfeiffer said he would use the browser but still has concerns about time needed to enter the data. Commissioner Robinson asked if trainees get a hard copy of a form indicating completion of training. Dr. Pfeiffer said they also get a hard copy. Mr. Martin stated it would be a standard operating procedure for a provider to give a trainee a certificate saying they completed the training. Mr. Pulido stated the system is set up in real time so people can check the continuing education reporting tool instantaneously. Commissioner Hartley has a concern about the ability to throw off the system and seeks a checks and balances to ensure a CEU for sale is not set up without people attending classes. Mr. Martin stated Mr. Pulido set up the system with different layers of securities where only he and Mr. Pulido have access to provider numbers. Commissioner Hartley feels spot checking is a good way to make sure the system will work.

Keith Birkmeyer, FMC, and Jack McClure, Chemtech Supply, appeared before the Commission and spoke on behalf of the on-line reporting tool.

Lisa Gervase seeks a vote on whether this is the proper CEU reporting method and

if approval for providers may be withdrawn if they do not comply with the on-line reporting.

MOTION: *To have CEU providers report C.E. using the on-line system established by the Commission and failure to do so may be cause for revocation/withdrawal of their C.E. provider approval by Commissioner Hartley.
Seconded by Commissioner Allen.*

VOTE: 6 - 0 *Motion carried.*

XIII. For information and discussion, not action:

A. Computer Based Testing "CBT" Status and Statistics (May and June)

Carl Martin stated the Commissioners have before them the two month reports on the CBT statistics and he is available to answer any questions. Commissioner Baker asked if he was satisfied with the percentages. Mr. Martin stated "people hate him less."

B. Legislation - Status of HB 2399

New version has been placed in Commissioner's handbooks.

XIV. Approval of Minutes

May 14, 2004 (regular session) Minutes

Commissioner Peterson stated the acronym for AAPCO should be corrected, which stands for the Association of American Pesticide Control Officials.

MOTION: *To approve the May 14, 2004 Minutes by Commissioner Hartley.
Seconded by Commissioner Allen.*

VOTE: 6 - 0 *Motion carried.*

June 11, 2004 (regular session) Minutes

Tabled - but, place on SPCC Web site as a "draft".

XV. Scheduling of future meetings/agenda items

Current Proposed dates and locations

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
January 14, 2005	Scottsdale, AZ

XVI. For information and discussion, not action:

A. Expenditure Report

Lisa Gervase stated she handed out a brief memo describing where the SPPC is with their money. They are almost at 100% of their appropriated funds with a \$2500 balance left reverting to the general fund if they have no other unexpected expenses for FY04.

B. Case Status Report

Lisa Gervase gave an updated report to the Commissioners.

C. Applicator License Renewal Update

Lisa Gervase stated they had 5272 applicator renewals as of Tuesday, of the roughly 5500 current active applicator licensees, with about 27% (1,404) renewing on-line.

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

Commissioner Fraker asked who determines the four feet rule. Lisa Gervase responded that according to a discussion about this policy at a prior Commission meeting, it appears that most labels require this, so four feet was added to this draft policy. Commissioner Baker considers the point moot as long as you protect the structure and the policy is advisory only. Commissioner Hartley stated he does not want to see this used by the industry as opposed to any agreement made with the consumer. Lisa Gervase stated they could add that this policy statement is not to be used to circumvent contractual obligations. She further stated they need to decide whether this is to be used for residential construction. Commissioner Fraker stated "he did not like it." He stated there is no evidence to justify the four feet. Commissioner Hartley stated they are not rewriting the rule but merely creating a safety valve so companies do not get cited for technicalities. Commissioner Fraker stated this policy statement should apply to residential and commercial. Discussion

among Commissioners, and statements from industry members Andy Weber, SOS Exterminating, and Kevin Etheridge, Contractors Termite & Pest, about the proper interpretation of the rule. Specifically, whether all areas under roof required a horizontal barrier to be created. Decision that the correct interpretation should be only slabs that are under roof should have a horizontal barrier created. Commission directed Ms. Gervase to rewrite policy statement for next Commission meeting.

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

Lisa Gervase stated it is important to have some policy on dealing with felony applicants. Commissioner Fraker stated that staffs' update on this revision is good. He would like to change the verbiage from "likely" to "will deny," but realizes this might cause a legal concern. Commissioner Fraker added he checked other Board's and Commission's, and they also used the work "likely." He seeks another verb making it a more positive statement a convicted felon in one of the eight categories listed should not apply. The current statement leaves it open. A couple of agencies use "will deny" with a provision that the applicant can appeal. This will allow only those applicants with special circumstances to come before the Commission rather than every "rapist and murderer." Commissioner Peterson stated this would cause a problem because then they would actually be writing the rule. Ms. Gervase stated the statute does allow you to deny an applicant for a felony. She felt they could add a line stating the SPPC has denied applicants with these felonies. Assistant Attorney General Christopher Munns stated "will deny" indicates they will not even consider the application, which contravenes the statute requiring you to evaluate the moral character of each applicant. By forcing everyone to go to hearing, there would be arguments the Commission is abdicating its statutory responsibility to evaluate everyone. Commissioner Peterson stated his concerns for sending something to hearing without having a chance to look at the case. Mr. Munns stated Commissioner Fraker's suggestion is "an exception that eats the rule." They could add convictions of these felonies carries great weight in reviewing an application. Commissioner Fraker asked Mr. Munns if there was anything stronger than "likely." Mr. Munns stated "likely" is strong and what you are really saying is the Commission takes these felony convictions very seriously and it would be difficult to prove good moral character with one of the listed convictions. Commissioner Fraker stated he could buy the "likely" but just wondered if there was another option besides "likely." Commissioner Allen stated this policy statement is a good step forward and it is more important to have the Commission vote. Attempting to achieve consistency has turned the minds and attention of the Commission rather than focusing on voting for each applicant. Ms. Gervase added that these policy statements are easy to amend as the Commission has different ideas in the future after using the policy for a while.

MOTION: *To adopt this policy by Commissioner Fraker.
Seconded by Commissioner Allen.*

VOTE: *5 - 1 Motion carried. (Commissioner Hartley opposed)*

Demonstration of electronic format of the on-line C.E. reporting tool, and providing Commission materials to the Commissioners via secure web site, by Hugo Pulido.

XIX. Adjournment - 1:25 P.M.

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

VOTE: *6 - 0 Motion carried.*