

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

**COMMISSION MEETING  
FRIDAY, November 12, 2004 - 9:00 A.M.  
MINUTES**

**I. Call to order, Commissioner roll call**

**Commissioners Present:** Commissioners Paul Baker, Mike Fraker, Robert Hartley, Virgil Robinson and Jack Peterson

**Commissioners Absent:** Commissioners Tom Allen and Debbie Runbeck

**Staff Present:** Solicitor General Representative Christine Cassetta (for agenda items VIII.A. and B.), Dave Colvin, Vince Craig, Lisa Gervase, Carl Martin, Robert Tolton, Eric Bauer, and Assistant Attorney General Christopher Munns

**II. Call to the public**

*Bert Putterman from Arizona Exterminating stated that he, as a former Commissioner, understands the pressures and issues facing the Commission, specifically with regard to inconsistencies in the rules and regulations governing the industry. He appealed to the Commissioners to use good judgment in deciding how to handle cases presented before them. He stated that currently, bureaucratic procedures take over in the decision-making process and the Commissioners do not have the opportunity to pass judgment early in the complaint process. As an example, he cited a use inspection that occurred on one of his trucks in Tucson a couple of weeks ago. He stated that his company was approaching 50 use inspections last year, that they cooperated with the inspectors and has nothing to hide. He stated that the regulation by the SPCC is productive for the most part. However, in this recent inspection, a new employee who had been working for 45 days was monitoring Sentricon stations, which are self-contained, passive baiting systems with sticks of wood in the ground and small transmitters for checking. Mr. Putterman stated that they get a hit showing activity on maybe one out of a few hundred, meaning that there may or may not be the use of Recruit bait, which is the active pesticide in this situation. During the course of a day, an inspector monitoring stations may actually replace two to four tubes of bait. He stated that the bait tubes are prepackaged, self contained stations, and neither their company nor the consumer ever touches the product. The stations, when they are closed up, are*

completely locked down. During the course of the day some of the bait may be replaced. This employee went through an online, one and half hour, DOW-sponsored training program in termite biology and the Sentricon system, how to monitor and use equipment and record results. At the same time, this employee had gone through training to become a pest control licensee in Arizona. Due to the fact that he was working in Tucson, there was a limited testing schedule, and he was scheduled for testing on November 17<sup>th</sup>. He stated that the SPCC inspector told them that the employee was in violation because he was not licensed and was applying termiticides. Mr. Putterman stated that he was caught off guard by this, because their company had direct supervision of the employee, as they were in radio contact with him via Nextel phones. Further, the employee had been trained and had worked in a one-on-one situation with a trainer in the field for two weeks before. Mr. Putterman stated that he was directed to the statute that was changed last year. Now the requirement is "immediate", one-on-one supervision, not merely "direct" supervision. Mr. Putterman stated that he participated extensively in the meetings that led to this law change. He stated that the intent of the laws and rules at the time surrounded pre-treatments by people making liquid applications at night without supervision a few days after being hired, and that he supports this intent. He stated that he supports immediate supervision if a new employee is making termiticide applications. He stated that there is a provision in our law for direct supervision, where a pest control operator can go out in the field for 90 days and treat 16-20 houses a day with a dozen different pesticides at their discretion without being licensed. He stated that in his recent case, it is a situation in which someone is doing nothing more than mechanically monitoring bait stations in the ground with a product that no one ever touches, and they were told that they were in violation of the immediate supervision standard. He stated that he understands that it is in the law, but the Commission should use judgment and direct staff to do the same, and not look at things in only a black-and-white capacity. The issue of judgment is very broad. He stated that he understands that we are working on the statutes again, and he knows there is a movement to make rule changes that are overdue. He doesn't want the Commissioners to be removed from the decision-making process. He stated that when he served on the Commission, all complaints that came through were vetted by Commissioners prior to settlement conferences and hearings. They had the ability to either say that a violation was cited in the law but did not think the circumstances fit the law, or to say that the violation may not be cited in the law, but still find a venue to pursue it. He stated that in the past, the Commissioners used more judgment, and now, It's all been rendered into bureaucratic process. Inquiries, complaints, and settlement conferences are held before the Commissioners even see the issue. He stated that settlement conferences are very powerful venues, and that it is a brave man who goes into a settlement conference without an attorney. He stated that these supposedly informal agreements are often done strictly by blackmail and he doesn't think that the process is correct. He understands that things should be expedited, but not so

*much so that the Commissioners become just a board of directors that rubber-stamps the annual budget and sees what comes back from the hearing officers.*

*Kirk Smith, of Chem-Tech Supply, stated that he has been providing training for QPs for the past year in the "B2", "B7", and "B8" categories. He stated that he has spent a fair amount of time going over Wood Destroying Insect Inspection Report forms and Fungi Inspection forms. On WDIIRs, it says in bold letters that it is not a fungi or mold inspection report, yet page two, in section eighteen under excessive moisture there is a check off box that says that if you find dry rot, it needs to be reported. Dry rot is a species of wood-destroying fungus. Mr. Smith stated that he doesn't know anyone in this room, including himself, who can identify a specific species of fungi. He stated that this is an inconsistency that needs to be changed to say either that any type of fungus being present needs to be reported, or fungus references should be eliminated altogether on the report. Also, on the graphing section of the report, dry rot is listed as a graphical item. He stated that on the fungi inspection report, there is nothing requiring any type of a wood-destroying insect discovery report on the form. And yet in study materials, the inspection process between the two is almost identical. Mr. Smith then commented on attitudes towards training throughout the state. He stated that the agency has put together a recommended reading list of materials for people who are trying to get an applicator license or QP license. In italics it says "Careful study of these materials is necessary for success. Exam questions come from these study materials. Exam preparation courses may supplement but cannot replace study of these materials." Mr. Smith stated that this is his philosophy. He is a firm believer that people need to read through these materials at least once. What bothers him is something that came up recently in the latest issue of the APMA journal. Inside, Metro Institute has a two-page advertisement in which they talk about their training program and success rate at passing. It states, "Most sales professionals and pest control technicians simply don't have the time nor the desire to spend hours reading through manuals and books. Our course fees are far less than the expense you incur by paying multiple testing fees and lost time on the job." Mr. Smith interprets this statement to say that you don't need to study, and that you can take the training program instead. He feels this is the wrong attitude to have.*

*Mike Means from Metro Institute appreciated Mr. Smith bringing this issue to the attention of the Commission. Mr. Means stated, however, that Mr. Smith's perception of Metro Institute's advertising is totally incorrect. He stated that they recommended at every single training session for the past six months that they need the training manual even after they pass the test, to be used for reference on a daily basis. He stated that they do provide eight hours of training for applicators, just like Mr. Smith does for QPs. Mr. Means stated that they cover the book, chapter by chapter, but don't teach to the test. They understand that this would be a conflict of interest. He stated that they teach a general overview, and spend proportional*

*amounts of time for each category as indicated on the blueprint. Mr. Means firmly believes that everyone should study the study materials.*

*Lisa Gervase stated that for anyone who is not aware, business license renewals and QP license renewals were mailed out last Wednesday. She suggested if there are people who have not yet received them, they should call the SPCC. She stated that almost 100 businesses and QPs have renewed online so far. She encouraged people to renew online, because the process time for obtaining the renewed license is a few days, rather than several weeks with a paper renewal.*

### **III. Communication with Commissioners**

*Commissioner Robinson stated that he had a telephone conversation with Dr. Pfeiffer.*

*Commissioner Peterson praised Carl Martin for recent educational training on laws and regulations.*

### **IV. Consent Agenda**

#### **A. Applications for New Business License**

##### **Qualifying Party**

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|----------------------------------|---|
| <b>1. Bennett, Imogene F.</b>    | <b>Aquatic Ecosystems of Arizona</b><br>(Activating Qualifying Party for new business license in "B9" Aquatic Pest Control)               |
| <b>2. Branum, Gary Lafon</b>     | <b>Flood Control District of Maricopa County</b> (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control) |
| <b>3. Jenkins, Jeffrey Brian</b> | <b>Arizona Lake and Pond Management</b><br>(Activating Qualifying Party for new business license in "B9" Aquatic Pest Control)            |
| <b>4. Keaney, Paul John</b>      | <b>Landscape Expressions, Inc.</b><br>(Activating Qualifying Party for new business license in "B3" Right of                              |

Way/Weed Control and "B5" Turf & Ornamental Horticulture)

- 5. Moran, James Michael**      **Northern Arizona VA Health Care System** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
- 6. Oldham, Brian Wayne**      **Ant Brian Exterminating** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

*Pulled - Mr. Oldham present.*

*Commissioner Robinson stated that in the information provided to the Commissioners, it was undisclosed as to whether Mr. Oldham had a felony conviction, and yet there is a police report. Commissioner Robinson stated that on the application he did not see anywhere where Mr. Oldham would have had to disclose anything of that nature. Robert Tolton stated that when someone applies for an applicator license or QP license, they have to indicate if they have had a felony, and when they apply for a business license, staff lets the Commissioners know if a felony was disclosed or not. Commissioner Robinson stated that Mr. Oldham already has a QP license and believes that he disclosed a felony during the QP application process. Robert Tolton stated that he actually did not disclose a felony, but that there was information brought to the Commission indicating that there may have been a felony conviction. He stated that staff did a background investigation, and determined that there was no felony conviction. Commissioner Robinson stated that he would then be good to go. Commissioner Fraker: asked what the arrest report was in reference to. Robert Tolton stated that Mr. Oldham was arrested, but no conviction was substantiated. Upon doing a background investigation, staff found that no complaint was filed for any charge. Commissioner Baker asked if Mr. Oldham was in the audience. Lisa Gervase and Robert Tolton stated that he was in the audience. Commissioner Fraker asked if staff was satisfied. Robert Tolton stated that they were satisfied because staff cannot substantiate whether there was a conviction or not. He stated that just because there is a police report does not necessarily mean that there was a conviction. Commissioner Fraker asked the Assistant Attorney General whether this matter should be publicly discussed, given that it is of a felony nature. Chris Munns stated that generally, documents received from law enforcement are not to be used for*

any other purpose than what the Commission is currently doing with them now. He stated that if the Commissioners are discussing this matter in a general nature it is okay, but getting into the details, the events that occurred, including people's names and what happened is left for private discussion. A general high-altitude discussion is okay. Further, the documents are just for the review of the Commissioners. Commissioner Fraker then stated that it appears that the offender is no longer subject to registration per current law, and asked if he was once registered. Chris Munns stated that he has been registered, even though there was no conviction. Commissioner Fraker stated that there is no way that he can vote for a registered sex offender. Commissioner Robinson stated that he has not been convicted, so it may not have happened. Commissioner Peterson expressed that it was an odd situation, in that he was registered, but there was no conviction.

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

**VOTE:** 4-1 Motion carried. (Commissioner Fraker opposed)

- 7. **Partin, Benjamin Carl** **InspeCTech of Virginia** (Activating Qualifying Party for new business license in "B8" Wood Destroying Insect Inspection)
- 8. **Rogers, Kenneth Wayne** **NAA Services Corporation** (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control)
- 9. **Ryan, Thomas John** **Southwest Pest Control, Inc.** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)

*Pulled-Mr. Ryan appeared.*

*Commissioner Baker expressed concerned about possible public confusion due to Southwest Pest Control, Inc., having a name similar to other pest control companies. He stated that someone with a complaint against Southwest Pest Control, Inc. could mistakenly believe another similarly named company was guilty by association. He asked if staff has a recommendation, and why the current company chose the Southwest name.*

*Thomas Ryan from Thomas Ryan's Exterminating stated that he was trying to change the company name to Southwest Pest Control Incorporated. He stated that the other business with a similar name, Great Southwest, is closed and the license is expired. He stated that the name had already been approved through the Corporation Commission and was registered with the Secretary of State. Commissioner Baker stated that he had no personal issues with Mr. Ryan, but was instead concerned with name recognition and public confusion, and stated that it was at least in Mr. Ryan's favor that the other company was no longer in business. Robert Tolton stated that there are four similar names listed, and they are current and active companies, registered with the SPCC. The one that is not registered was the original Southwest Pest. Commissioner Fraker stated that there is a registered company called Great Southwest, which is similar in name to Southwest, and that the other companies are either expired or closed. Mr. Ryan stated that the name Southwest Pest was approved in 1998 by the board, and that Great Southwest Pest Control has been around since 1984. He asked why there is a problem now if the Southwest Pest name was approved in 1998. Commissioner Peterson stated that he is comfortable with the name because it is different and has been approved by the Secretary of State. Commissioner Fraker asked if staff contacts companies with similar names to put them on notice. Robert Tolton stated that staff does not. Mr. Ryan stated that he was under the impression that if the name was not registered with the Secretary of State and the Arizona Corporation Commission, then the SPCC could deny the name. Robert Tolton stated that the law states that the Commission shall not approve a name that is not registered with the Secretary of State or the Corporation Commission. However, this does not mean that the Commission has to approve those names that are approved by the Secretary of State or Corporation Commission. Mr. Ryan stated that he wanted to incorporate his business and he checked to see the availability and status of the name, the Corporation Commission said it was available, he got the name and had it approved. He stated that he did not realize he was going to have a problem with the SPCC. He stated that had he anticipated a problem he might have thought otherwise. Commissioner Baker stated that the Commission has run into this problem on more than one occasion, and he does not know how to fix this. He suggested that people try to find names that are more identifiable with what they do so that they do not run into problems associated with somebody else having a similar name. Commissioner Fraker stated that the law says that we have to protect people from similar names, and this name is similar. Mr. Ryan stated that he published an ad in the newspaper saying that if you have an issue, come forward. He asked if there was anyone from Great Southwest present in the audience. Chris Munns stated that Commissioner Faker may have been referring to an older statutory provision. Chris Munns stated that the*

*Commission can consider under A.R.S. §2304(B)(18) whether a name will likely be misleading to public. Neither the Secretary of State nor the Corporation Commission does any type of analysis like this. They just make sure that no one else has the name. They do not endorse whether or not it is misleading. The proposed new name would have to be exactly the same as a previous name for it to be denied. Commissioner Fraker stated that his thought is to approve the name, but that another company with an existing similar name has the right to know that there is someone applying for a similar name or name that might be confused. Or, he stated that the Commission could approve the name with an endorsement from another similarly-named company that they have no objection. Mr. Ryan stated that the Corporation Commission puts the articles of incorporation in the paper for this very reason. Lisa Gervase offered a summary and her perspective on the discussion. She stated that going to the Corporation Commission and the Secretary of State just gives someone a name as long as there is not another absolutely identical name incorporated or registered with either of those offices. It does not give someone the right to operate in a certain profession or occupation under that name unless that separate state agency gives that authority. Here, the name also needs approval to be approved by the SPCC. The Commissioners can refuse a business license name if they believe it is going to be misleading to the public. She stated that she is not sure if the Commissioners want to delegate their judgment or statutory authority to other businesses with similar names. These other businesses are on notice if they read public information, such as articles of incorporation or the SPCC Commission meeting agenda. If businesses want to pay attention, they can come forward and staff will do what the Commission asks. She stated that staff can table it or approve it subject to someone else giving staff an approval letter. She mentioned the possibility that the SPCC may not get any responses, or they may receive objections from people who do not have a legal right to object. She stated that it is a judgment call for the Commissioners, and it is staff's job to bring all the facts to the Commissioners. Other companies are on notice by the newspaper process, and the SPCC agendas are public information that other companies can see. Mr. Ryan stated that he still does not understand why he is having a problem now, considering that in 1984 Great Southwest started their business, then Southwest Pest in 1998 was approved by the Commission, and now they are no longer in business and are expired. Commissioner Peterson stated that the Commissioners have not yet made a decision. He stated that they just need their questions answered so they can make an informed decision. Commissioner Baker told Mr. Ryan that the Commissioners have a responsibility to protect the public. He stated that the name will probably be approved, that the Commissioners are not picking on him, and that he should not take this discussion personally. Commissioner Fraker stated that this is*

*a sensitive matter for industry members. He stated that in his company, 25-30 years of time and effort and lots of money have been put into advertising and developing the goodwill of his company name, and that is why this matter is not taken lightly. If someone is to take unfair advantage of this, this is the industry concern. Commissioner Peterson suggested that maybe something can be put on the SPCC website regarding the process, alerting industry members to keep an eye on newspapers. Bert Putterman elaborated by suggesting that a statement be put on the SPCC website that states that merely going through the Corporation Commission and Secretary of State is not sufficient. He stated that he his company, Arizona Exterminating, has had experience with someone trying to get a similar name, Arizona Pest Control.*

**MOTION:** *To approve activating QP for new business license in "B1" by Commissioner Hartley. Seconded by Commissioner Baker.*

**VOTE:** *4-1 Motion carried. (Commissioner Fraker opposed)*

**10. Smith, Jeremie Matthew** **Grande Valley Golf Club** (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. Agius, Dennis George** **Baron Pest Control, Inc.** (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

**2. Ciulla, Lawrence J.** **Universal Pest Control, Inc.** (Activating Qualifying Party for existing business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

**3. Elkins, Ronald Frank** **Artistic Land Management, Inc.** (Activating Qualifying Party for existing business license in "B1" General

Pest/Public Health and "B3" Right of Way/Weed Control)

4. **EstaBrook, Trent Richard** **Desert Pest Control** (Activating Qualifying Party for existing business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)
5. **Gaunt, Robert Edward** **Rim Country Applicators** (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)
6. **Gross, J. Michael** **CTM Pest Control** (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control)
7. **Martinez, Alejandro** **The Groundskeeper** (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

#### **C. Applicants for QP Licensure**

1. **Aesch, Jr., Harold Walter** "B2 and B8" (Control of Wood-Destroying Insects and Wood Destroying Insect Inspection)

*Tabled for next month*

*Robert Tolton stated that he spoke with Mr. Aesch, who stated that he intended to submit another application. Commissioner Baker stated that it appeared that he had his wife verify that Mr. Aesch's employment experience. Commissioner Baker asked if this was legitimate, and if Mr. Aesch's wife had the credentials, like being a vice president, to do this. Lisa Gervase stated that the reason that Mr. Aesch is applying for a QP license is because his current QP, Don Methven, has failed to comply with prior Commission orders and staff is seeking compliance from him. Commissioner Robinson stated that the application does not list experience in the "B8" category, and he wondered if Mr. Aesch has the relevant experience. Lisa*

*Gervase stated that he was previously licensed in the old "C" (Wood Destroying Organisms) category, which is now "B2", "B8". Commissioner Fraker asked if he has applied before. Robert Tolton stated that he did in 2002, but was unsuccessful. Lisa Gervase stated that Mr. Aesch was issued a temporary QP in February 2002, it was renewed in October 2002, December 2002, and February 2003, and then a subsequent renewal was ultimately denied. He then hired Don Methven as his QP. Robert Tolton stated that Mr. Aesch is the president of the corporation and a QP in "B1", and his wife is the secretary/treasurer. Mr. Aesch is not qualified yet for "B2" and "B8" licenses, and may be losing his QP in those categories. Commissioner Peterson stated that it would have been nice to see him here today. Commissioner Robinson requested that this matter be tabled for next month's agenda. Commissioner Fraker stated that he thought the Commission might have already approved Mr. Aesch. Robert Tolton stated that it was Mr. Aesch's son that was previously approved.*

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| <b>2. Amenta, Jonas</b>              | "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)  |
| <b>3. Bird, Bradley Adrian</b>       | "B5" (Turf & Ornamental Horticulture)   |
| <b>4. Branum, Gary Lafon</b>         | "B1" (General Pest/Public Health)   |
| <b>5. Busch, Donald</b>              | "B1" (General Pest/Public Health)   |
| <b>6. Cones, John William</b>        | "B3" (Right of Way/Weed Control)  |
| <b>7. Davis, James Lawrence</b>      | "B1" (General Pest/Public Health)   |
| <b>8. Etheridge, Kevin Michael</b>   | "B7" (Fungi Inspection)   |
| <b>9. Forreider, Robert Wayne</b>    | "B1" (General Pest/Public Health)   |
| <b>10. Godinez, Eric Jon</b>         | "B1 B2 and B8" (General Pest/Public Health, Control of Wood-Destroying Insects and Wood Destroying Insect Inspection) |
| <b>11. Goemaat, Ruth Ann</b>         | "B3" (Right of Way/Weed Control)  |
| <b>12. Ledezma, Alberto Carrillo</b> | "B3" (Right of Way/Weed Control)  |
| <b>13. Lowe, Eric Allen</b>          | "B1" (General Pest/Public Health)   |

- 14. Kane, James Ray "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)
- 15. McPheron, Vicki Lynn "B3" (Right of Way/Weed Control)
- 16. Michael, Christopher Keith "B1 and B3" (General Pest/Public Health and Right of Way/Weed Control)
- 17. Mongiello, Michael Angelo "B3, B5 and B9" (Right of Way/Weed Control, Turf & Ornamental Horticulture and Aquatic Pest Control)
- 18. Pinnecker, Douglas Keith "B7" (Fungi Inspection)
- 19. Richardson, Stephen Paul "B1 B2 and B8" (General Pest/Public Health, Control of Wood-Destroying Insects and Wood Destroying Insect Inspection)

*Pulled-Mr. Richardson appeared.*

*Commissioner Hartley asked Mr. Richardson how many times he has taken the test. Mr. Richardson stated that he had difficulty taking the test and was almost successful. He stated that he had to start all over again in testing when it changed from paper to computer. He stated that he also had some family issues that took precedence over passing the test. He acknowledged that at the October meeting last month in Tucson, the Commissioners told him not to drag his feet. He stated that he has a plan, and he is going to secure the license. Commissioner Hartley applauded Mr. Richardson's tenacity.*

**MOTION:** *To approve QP testing in "B1", "B2" and "B8" by Commissioner Hartley.  
Seconded by Commissioner Baker.*

**VOTE:** *5-0 Motion carried.*

- 20. Tjaarda, Harmen "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)
- 21. Wilson, Christopher Ibarra "B1" (General Pest/Public Health)

**22. Workman, Jason Thomas "B1" (General Pest/Public Health)**

**End of Consent Agenda**

*Commissioner Hartley pointed out a typographical error in the Commission Book on the cover sheet for item C15 (Vicki Lynn McPheron). The experience section listed the number of hours as being in the "B1" category, when in fact the experience was obtained in the "B3" category.*

**MOTION:** *By Commissioner Baker to accept Consent Agenda with the exception of those items pulled for discussion (A6, A9, C1, C19). Seconded by Commissioner Fraker.*

**VOTE:** *5-0 Motion carried.*

**V. Complaints against Licensees**

*Lisa Gervase stated that items V.J. and V.Q. are pulled. Charlie Silvers, the QP involved in the complaint (item V.J.), asked how long the complaint process would take, considering that the complaint took place over six months ago. Lisa Gervase stated that this would be a question for staff, that staff will be contacting Mr. Silvers to reschedule a settlement conference as soon as possible, and the matter will likely be on next month's agenda.*

**A. Oliver Exterminating of Arizona, Inc. dba Arizona Exterminating (BL)/Bertram Putterman (President of Corp. & QP)/Kent Bos (App) - Case # 2004-058**

*Bert Putterman present.*

**MOTION:** *To accept proposed resolution 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 Hartley.  
Seconded by Commissioner Robinson.*

**VOTE:** *5-0 Motion carried.*

**B. Burr Exterminating/Bruce Burr (BL, QP & App) - Case # 2004-036**

**MOTION:** *To accept proposed resolution 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 Hartley.  
Seconded by Commissioner Fraker.

**VOTE:** 5-0 Motion carried.

**C. Cochise Termite & Pest Control/Donald Ramey (BL & QP) - Case # 2004-054**  
*Attorney Jana Flagler was present for the BL & QP.*

**MOTION:** *To accept proposed resolution 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 Hartley.  
Seconded by Commissioner Fraker.*

**VOTE:** 5-0 Motion carried.

**D. Eliminox/Robert Schor (President & QP)/Dustin Vrska (App) - Case # 2004-068**  
*Mr. Schor appeared.*

*Mr. Schor stated that they have taken steps to make sure that paperwork will not be lost in the office. Mr. Schor stated that, regarding item 2 of the proposed resolution, he supplied Dave Colvin with applicator Dustin Vrska's training records, and CEU's that Mr. Vrska took prior to doing treatment that had to do with labels, MSDSs and pesticide safety. Mr. Schor stated that in the settlement conference, Dave Colvin stated that Mr. Vrska had not signed a paper stating that he had read the Termidor label. Mr. Schor stated that it was not stated in the laws and regulations that each label needs to be signed by each technician. Mr. Vrska passed each test he took with close to a 100. Mr. Schor stated that they give their termite technicians specific instructions that 12 inches is the law, they must check the inside of the house when done, and that Mr. Vrska did not do this in this case. Mr. Schor believes that putting liability on the QP for the applicator's failure to follow the label is a tough call. Commissioner Fraker asked Mr. Schor if he was not happy with the proposed resolution. Mr. Schor stated that he was not happy with item 2, because Mr. Vrska stated to Dave Colvin during an interview that he was not trained properly. Mr. Schor stated that Mr. Vrska is not here and has not responded to Dave Colvin's phone calls. Mr. Schor agrees that there is an infraction but does not think he as the QP should be liable. Vrska has not been employed with the company since June. The last time Mr. Schor spoke with Mr. Vrska, Mr. Vrska stated that he never said he was not trained properly. Dave Colvin stated that it came down to whether the training was*

verifiable and site specific. There was documentation generally speaking about continuing education credits in labeling, but no documentation was submitted that verified training for labeling requirements regarding this specific task. Commissioner Robinson asked if Mr. Vrska was still in business. Mr. Schor stated that he currently is not. Lisa Gervase stated that Mr. Vrska's applicator license is active until May 2005. Commissioner Hartley asked why a fine was assessed in item 1 against the business license. He asked if there was a prior violation. Dave Colvin stated that there was an A.A.C. R4-29-301 (Misuse of a pesticide) prior.

**MOTION:** To accept proposed resolution for the BL and QP 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 matter regarding the Applicator to the Office of Administrative Hearings, by Commissioner Hartley.  
Seconded by Commissioner Baker.

**VOTE:** 5-0 Motion carried.

**E. M.D. Pest & Termite, Inc. (BL)/John Donahue (QP & App) - Case # 2004-070**

**MOTION:** To accept proposed resolution 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 Baker.

**VOTE:** 5-0 Motion carried.

**F. Action Termite Control, LLC (BL)/Byron Scott Agee (QP)/Michael Saldivar (App)/Cleve Collins (App) - Case # 2004-077**

*Scott Richardson, attorney for the business and QP, appeared.*

*Commissioner Hartley expressed concern that staff is recommending dismissing the complaint against the business license and QP even though part of the allegation is that the applicators were wearing Bermuda shorts while making a treatment. He stated that the Commission has gone back and forth in their opinion on the idea of shared responsibility, either with the business license and QP getting off even though they did not train, equip and supervise very well, or with the business license and QP being found jointly*

responsible in cases where they have done all they can do. Commissioner Hartley stated that the Commission does not seem to end up in the middle with a compromised position. He stated that in this case he does not think, after reading the complaint, that the company did everything right in terms of training or supervision, although the settlement makes it look like they did. He stated that he thinks he would know if one of his employees was wearing shorts somewhere. Scott Richardson disagreed, stating that there are several ways you can look at the Joint Responsibility Rule (A.A.C. R4-29-104). It can be seen as a "no fault" rule. Or, proof by staff and Commission could be required in order to inflict joint responsibility on the business and QP. Or, there could be some element of "affirmative defense" or "rebuttable presumption" where the business and QP can produce training records and evidence of what they have done to supervise. He stated that the reality of the world out there is that you cannot watch every applicator in every instance. Applicators can be trained perfectly, but ultimately they can decide to apply using short sleeved shirts without knowledge of the business and QP. Scott Richardson stated that they submitted training records, and Vince Craig said in the settlement conference that the complaint against the business and QP would be dismissed. Scott Richardson stated that they accepted that and submitted documents that were sufficient to show they had undertaken the duty of training, equipping and supervising. He stated that the supervision requirement does not go so far as to say that you have to be everywhere at all times, and in this case there should be no fault. Commissioner Baker asked why the business licensee and QP were not present for the Commissioners to ask them if they normally allow employees to wear shorts and short-sleeved shirts. Scott Richardson stated that no one said that there might be some questions for them, and that the notice they got was that the business and QP would be dismissed from case. Vince Craig stated that staff asked these questions during their investigation, which was complete before the settlement conference. The answer given by the QP was that it was not a practice to allow employees to wear shorts and short-sleeved shirts. He stated that in this particular case, there was a specific violation, and the respondent provided evidence of specific training for Termidor and also signatures of applicators, verifying the training. He stated that staff considered what is reasonable for QPs to know, and that some industry members present at the meeting today are probably not aware of what their applicators are wearing now. Commissioner Baker asked if the company has a policy towards long-sleeve shirts and pants. Scott Richardson replied that he does not know if it is in writing, but that the applicators are trained about what to wear. Commissioner Baker asked when the responsibility of the QP stops. Scott Richardson stated that it depends on whether a consumer/homeowner, etc. is injured. He stated that if an employee goes out and makes a mistake despite perfect equipping,

*supervising, and training, the QP may still be subject to civil liability if a person, home or pet has been damaged. The consumer will be protected in that regard. But, he stated that from a regulatory aspect, you cannot be everywhere at all times, and some good sense must be used. He suggested that maybe we should only have applicator licenses and make them solely responsible. Commissioner Baker asked if the company made all the employees know the policies, and if the employees committed violations without the knowledge of the company. Scott Richardson stated that the company did not have knowledge, and that the statute does not say that a QP has to ride along on every visit. He stated that this is the basic problem the industry has in trying to figure out what a QP does. Commissioner Baker expressed concern that the QPs can absolve themselves of responsibility. Scott Richardson suggested that for the result to be otherwise, the law would need to be changed. Lisa Gervase offered a summary and her perspective of the discussion by recalling the November 2002 meeting in Flagstaff, in which she was advocating for a position about how the Commission is interpreting the Joint Responsibility rule (A.A.C. R4-29-104). She stated that no formal documents came out of the meeting, but the consensus she gleaned was that the Commissioners were not interpreting the rule as being a "strict liability" rule. She stated that the Commission then moved away from that position and said that it would be analyzed on case-by-case basis with staff conducting the investigation. Other cases and other laws and rules give some guidance, but it is nearly impossible to craft a statute or rule that tells QPs and business licensees exactly what to do to get out of joint responsibility. Businesses vary in size and they need to use their own judgment also. She stated that staff uses common sense on case-by-case basis and interviews people. Staff then makes a decision: yes, no, or not sure, let's bring it to the Commission. The Commission always has all the documents available concerning the full background investigations, responses, etc. to make an informed decision. The Commissioners may differ and they are the ultimate judges. Commissioner Robinson disagreed with Commissioners Hartley and Baker. He stated that one of the first things you are taught as an applicator after you pass the test is to read the label, including knowing the proper protective equipment. He stated that the applicator should have the responsibility in this case. Commissioner Hartley stated that Lisa Gervase summarized very well the November 2002 meeting. He stated that it is one thing for an applicator to know that they have to wear the proper protective equipment, and it is another thing for the company to have the obligation to supply it. He asked if the company and QP have the proper materials on the truck or if they saw the applicators drive away in shorts without the proper protective equipment and assumed that they would go get the proper clothes. He stated that he would have liked to interview the business licensee and QP as to what is available to employees. He stated*

*that there should be a program in place where the company or QP checks periodically see if the proper protective equipment is still on the truck. He believes there was some sloppiness on the part of the company and QP. Scott Richardson emphasized that staff was happy with the responses, and that he would have had his client at the meeting if he was not told that the complaint would be dismissed. He stated that the law is not specific and uses broad terms. He asked what is sufficient. Is it training on each product that you use, reminding people in training that they need to wear protective gear as described in the label, or do we need to go to the next step and have QPs check each truck at the beginning of the day? He stated that the industry is having an extremely hard time figuring out what standard they have to meet. Dave Colvin stated that he handled this investigation. He stated that during the investigation up front on the site of violation, the inspector conducted an interview and inspection of the vehicle. Before even being prompted, the applicator told the inspector on site that he did have the equipment and that the company actually bought it. The inspection revealed that the company did provide coveralls. Regarding training records, Dave Colvin questioned the validity of the records, and the training was confirmed by documentation by the applicator promptly, as opposed to being done long after the incident when education or corrective measures could have been taken after the fact. Staff believes the applicators took it upon themselves to wear shorts. Commissioner Peterson asked the industry Commission members how they handle uniforming, and what the norm is. Commissioner Fraker stated that his company provides uniform service, long-sleeve shirts and long-pants.*

**MOTION:** *To return the matter to settlement to modify the proposed resolution based on stated factors and rationale, by Commissioner Hartley.  
Seconded by Commissioner Baker.*

**VOTE:** 0-5 *Motion failed.*

**MOTION:** *To accept proposed resolution for the applicators and dismiss the complaint against the BL and QP, 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 Baker.*

**VOTE:** 4-1 *Motion carried. (Commissioner Hartley opposed)*

**G. Branham's Exterminating (BL)/Larry Joe Branham (QP)/Richard Lucken (App)  
- Case # 2004-099**

**MOTION:** *To accept proposed resolution 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 Hartley.  
Seconded by Commissioner Robinson.*

**VOTE:** 5-0 *Motion carried.*

**H. Cowboy Pest Control (BL)/William Wilson (QP) - Case # 2004-015**

**MOTION:** *To send the matter to Administrative Hearing by Commissioner Hartley.  
Seconded by Commissioner Fraker.*

**VOTE:** 5-0 *Motion carried.*

**I. Cowboy Pest Control (BL)/William Wilson (QP) - Case # 2004-055**

**MOTION:** *To send the matter to Administrative Hearing by Commissioner Hartley.  
Seconded by Commissioner Robinson.*

**VOTE:** 5-0 *Motion carried.*

**J. Environmental Earthscapes Inc., dba The Groundskeeper/Kevin Killmer (President/CEO)/Robin Jablonski (Vice President)/Charlie Silvers (QP) - Case # 2004-044**

*Pulled by staff.*

**K. Hoffman's Pest Control (BL)/Russell Hoffman (QP) - Case # 2004-067**

**MOTION:** *To accept proposed resolution 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 Hartley.  
Seconded by Commissioner Baker.*

**VOTE:** 5-0 Motion carried.

**L. Instar (John Beebe Owner)/Dallas Hoffman, Sr., (QP) - Case # 2004-066**

**MOTION:** To accept proposed resolution 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 Hartley.  
Seconded by Commissioner Baker.

**VOTE:** 5-0 Motion carried.

**M. Litchfield Termite Division, LLC dba Litchfield Termite Division (BL)/Kenneth Rael (QP & App) - Case # 2004-056**

**MOTION:** To send the matter to Administrative Hearing by Commissioner Baker.  
Seconded by Commissioner Hartley.

**VOTE:** 5-0 Motion carried.

**N. Lumia Pest Elimination (BL)/Gary Lumia (QP) - Case # 2004-079**

*Mr. Lumia was present.*

*Commissioner Peterson stated that Mr. Lumia has requested a payment plan. Lisa Gervase confirmed that staff will work this out with Mr. Lumia.*

**MOTION:** To accept proposed resolution 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 Hartley.  
Seconded by Commissioner Fraker.

**VOTE:** 5-0 Motion carried.

**O. Phoenix Pest Control (Donald Vanasse/President)/Jerry Martinie (QP)/Linda Reid (App) - Case # 2004-045**

**MOTION:** To accept proposed resolution for 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 dismiss the complaint against the business and qualifying party, by Commissioner Baker.  
Seconded by Commissioner Fraker.*

**VOTE:** 5-0 Motion carried.

*James Ayers, resident of the Bullhead City, Arizona home in which Phoenix Pest Control applicator Linda Reid failed to note obstructed areas and exterior damage, appeared. Commissioner Peterson explained to Mr. Ayers the result of the case, that the case was dismissed against the business and QP and that the applicator was issued an Administrative Warning. Commissioner Peterson also stated that staff can review the complaint process and resolution with him if he wishes.*

- P. Sexton Exterminating, Inc., (BL)/Rick Sexton (QP & App) - Case # 2004-008**  
*A representative from Sexton Exterminating, Inc. was present.*

**MOTION:** *To send the matter to Administrative Hearing by Commissioner Baker.  
Seconded by Commissioner Hartley.*

**VOTE:** 5-0 Motion carried.

- Q. S.O.S. Exterminating, Inc. (BL)/Stephen F. Weber (QP)/Jason Melkowski (App) - Case # 2004-074**

*Pulled by staff.*

- R. University Termite & Pest Control, Inc. (BL)/Richard Rupkey II (QP)/David Stokes (App) - Case 2004-029**

*Tabled to allow time to hold a settlement conference.*

*Mr. Rupkey was present.*

*Scott Richardson, attorney for the business and QP, appeared.*

*Commissioner Peterson remarked that with regard to conducting a settlement conference, it appears that letters and phone call correspondence were pushed together in a one-week period. He asked staff if this was how they normally communicate with respondents. Vince Craig stated that normally staff contacts respondents, setting up a specific day and time to meet, and then staff sends out correspondence confirming the date and time. Regarding this case, Vince Craig stated that staff got a message from Scott*

*Richardson's secretary saying that he would be available on Monday or Tuesday, but gave no specific time. He spoke with Scott Richardson regarding other settlement conferences on Monday and was given the impression that he would be contacted by his client. Scott Richardson stated that he was contacted through his secretary, who told him that Vince Craig wanted to conduct a settlement conference, and she advised Vince Craig that he would be available on one of those two days. Scott Richardson and Vince Craig were unable to meet in the short period of time between the 23<sup>rd</sup> and the cutoff day for the November 12 Commission meeting, and because of the cutoff, the matter came to the Commissioners. Scott Richardson stated that he could live by this process, or could go to settlement conference.*

**MOTION:** *To send the matter to Administrative Hearing by Commissioner Hartley.  
Seconded by Commissioner Baker.*

**MOTION** *Motion and second withdrawn by Commissioners*  
**WITHDRAWN:** *Hartley and Baker.*

*(Break from 10:45 A.M. to 11:00 A.M.)*

## **VI. Unlicensed Activity Complaints**

### **A. Foleyge Landscaping (Unlicensed)/Thomas Foley (Member) - Case # 2004-080**

*Mr. Foley appeared.*

*Mr. Foley stated that back in May they were cited for applying Roundup herbicide without an applicator license. He presented a copy of the 1997 law [A.R.S. §32-2311 (5)] stating who is not required to be certified or licensed. He read the law as stating that "A person who functions as a gardener by performing lawn, garden, shrubs and tree maintenance, who applies pesticides only incidentally to garden work, who sprays using spray devices or tanks having a capacity of five gallons or less and pesticides other than those in Toxic category 1" is excluded from licensure requirements. He stated that this exclusion describes him to a tee. He stated that he does not charge for the material, only for the labor. He wondered why the law has since changed, and said he did not realize what he was doing was illegal. He stated that he was fined \$500 for the first offense, and this seems a bit steep considering this behavior was legal a short time ago. He stated that his 12-year old son can go to Home Depot and buy Roundup, but he, as an adult, needs a license to apply. He also stated that if the Commission decides that people like him need to be under the SPCC umbrella, then literature needs to be provided in Spanish so that they can comply, given that a huge amount*

of the work is being performed by Hispanic people. Commissioner Peterson stated that unlicensed work will likely be an open discussion later in the agenda, and that the request for Spanish literature is an ongoing concern also. Commissioner Baker asked staff whether the \$500 was a standard penalty for the first offense. Lisa Gervase stated that prior to the law changes in September 2003, \$500 was the minimum penalty for unlicensed activity. Now the law does allow discretion, there is no minimum and a maximum of \$1,000 for the first offense. She stated that staff tends to stay around \$500, unless there are aggravating or mitigating circumstances, because that is what has been done for years.

**MOTION:** To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to impose the terms in an Order, by Commissioner Robinson.  
Seconded by Commissioner Hartley.

**VOTE:** 5-0 Motion carried.

**B. Wood "Yard" Services (Unlicensed)/Diane Woodyard (Owner)/Dana Woodyard (Owner) - Case # 2004-069**

*Mr. Woodyard appeared.*

*Mr. Woodyard stated that this happened to be a one-time issue. He stated that his company does landscape maintenance and does not offer herbicide spraying as part of their service. He stated that the officer took photos of his paperwork and signs that said that they do not offer this as a service. He stated that they did this as a favor to an elderly lady customer, and he used materials that he uses around his home residence. He asked the Commission to modify the order to take away the civil penalty and only include the cease and desist order. He stated that they had obeyed the cease and desist order since citation date, and that he had no intention of spraying before or after the citation date. Commissioner Baker asked if staff found any mitigating circumstances. Dave Colvin stated that it probably was only a one-time incident, and this could be seen as a mitigator. He stated that this is the only difference from the other cases, where the people are spraying routinely on daily basis.. He also stated that the Mr. Woodyard was not advertising for weed control.*

**MOTION:** To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to impose the terms in an Order, by Commissioner Baker.

*Seconded by Commissioner Hartley.*

**VOTE:** 4-0 *Motion carried (Commissioner Fraker out of the room).*

**C. AI's Tree & Yardwork, Inc. (Unlicensed)/AI Padilla (President/CEO) - Case # 2004-065**

**MOTION:** *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to impose the terms in an Order, by Commissioner Hartley.  
Seconded by Commissioner Baker.*

**VOTE:** 4-0 *Motion carried (Commissioner Fraker out of the room).*

**D. Amerco Real Estate Services dba Amerco Towers (Unlicensed)/Thomas Dilgard - Case # 2004-078**

*Hector Diaz, attorney for Amerco Towers and Mr. Dilgard, appeared. Hector Diaz stated that Mr. Dilgard was cooperative throughout the investigation and that Amerco agrees with the facts. They have been informed of the proposed resolution and they want the resolution to be accepted.*

**MOTION:** *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to impose the terms in an Order, by Commissioner Hartley.  
Seconded by Commissioner Baker.*

**VOTE:** 4-0 *Motion carried (Commissioner Fraker out of the room).*

**E. Arizona Native Landscapes (Unlicensed)/Jorge Perez (President)/Margarito Varelas (Unlicensed Applicator) - Case # 2004-062**

*Mr. Varelas appeared. Mr. Varelas stated that they spray small amounts of Roundup, and are in the process of getting licensed. Commissioner Baker asked if a proposed resolution was reached. Lisa Gervase stated that there was none. Commissioner Baker commented that the Arizona Department of Economic*

Security, a state agency, should be notified that they need to have licensed people doing work for them around their facility and buildings. Commissioner Peterson stated that he thinks that the Department of Administration contracts the work out. Commissioner Baker stated that then the Department of Administration needs to be notified that they are in violation of the law as well, and that they need to set good examples. Lisa Gervase joked that she was glad the unlicensed work was not done outside of the SPCC building.

**MOTION:** To issue a Cease and Desist Order and to impose a \$500 civil penalty against Arizona Native Landscapes/Jorge Perez/Margarito Varelas, jointly and severally, to be paid within 30 days of Commission Order by Commissioner Robinson.  
Seconded by Commissioner Hartley.

**VOTE:** 5-0 Motion carried.

**F. Dependable Lawn Service (Unlicensed)/Peter Brubaker (Unlicensed Applicator and Owner) - Case # 2004-063**

*Mr. Brubaker appeared.*

*Mr. Brubaker stated that he had a two-gallon bottle of Roundup, and did not know that he needed a license. He stated that he does not advertise, and he gets his Roundup at LESCO. Commissioner Baker stated that maybe the SPCC could pay for an advertisement in the Arizona Republic and maybe a couple of other papers, informing people of licensure requirements and the consequences of applying pesticides without a license. He stated that we need to get the information out to the public, because otherwise the Commission is going to continue to see these people. Commissioner Fraker stated that one positive thing is that we have not seen the same companies back here a second time. Lisa Gervase stated that there has been only one repeater. Commissioner Fraker stated that \$500 makes a statement.*

**MOTION:** To issue a Cease and Desist Order and to impose a \$500 civil penalty against Dependable Lawn Service/Peter Brubaker, jointly and severally, to be paid within 30 days of Commission Order by Commissioner Robinson.  
Seconded by Commissioner Hartley.

**VOTE:** 5-0 Motion carried.

**G. The Desert Rakers (Unlicensed)/Jose Rodriguez (Unlicensed Applicator and Owner) - Case # 2004-089**

**MOTION:** *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to impose the terms in an Order, by Commissioner Hartley.  
Seconded by Commissioner Baker.*

**VOTE:** 5-0 *Motion carried.*

**H. Christopher M. Pullen dba Pullen Lawn Concepts - Case # 2004-061**

**MOTION:** *To issue a Cease and Desist Order and to impose a \$500 civil penalty against Christopher M. Pullen dba Pullen Lawn Concepts, to be paid within 30 days of Commission Order by Commissioner Baker.  
Seconded by Commissioner Robinson.*

**VOTE:** 5-0 *Motion carried.*

**I. Felipe's Landscape (Unlicensed)/Felipe Inzunza (Unlicensed Applicator and Owner) - Case # 2004-090**

*Commissioner Peterson remarked that Mr. Inzunza requested a payment schedule.*

**MOTION:** *To accept proposed resolution with a three-month payment plan and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to impose the terms in an Order, by Commissioner Hartley.  
Seconded by Commissioner Fraker.*

**VOTE:** 5-0 *Motion carried.*

**VII. For information and discussion, not action:**

**A. Complaint Status Log**

*Lisa Gervase stated that there were 27 cases on today's agenda, and that staff is caught up on current complaints. Carl Martin amplified this to say that all complaints are being handled within the specified time frame, and justice*

*is now swift. Lisa Gervase stated that justice may be a little too swift for some people, which is why staff is putting together a written statement to give to people informing them of the complaint process. Commissioner Peterson stated that this was a good thing.*

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

**A. University Termite & Pest Control, Inc./Richard L. Rupkey II (QP)/Justin Allen Dundon (App) - OAH Docket #'s: 03A-100-SPC & 03A-106-SPC/SPCC Case #s 2003-100 & 2003-106**

*Mr. Rupkey was present.*

*Christine Cassetta, from the Solicitor General's Office, was present.*

*Scott Richardson, attorney for the business and QP, appeared.*

*Christopher Munns, Assistant Attorney General for the State of Arizona, representing the Structural Pest Control Commission, appeared.*

*Christopher Munns stated that there are three total OAH cases presented before the Commission today, two of which (03A-100-SPC and 03A-106-SPC) were consolidated. Christopher Munns represented the SPCC at the August 2004 hearings. He stated that the facts and legal arguments were fully argued and briefed at the hearing. However, he pointed out several typographical errors in case #'s 03A-100-SPC and 03A-106-SPC that need to be modified in order for the Commission to accept. He stated that with these modifications, he believes that the ALJ decisions are accurate and urges that the Commission adopt the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order as modified. Christopher Munns stated that there were three separate pleadings discussing the applicability of the Joint Responsibility rule (A.A.C. R4-29-104) by the Commission, and that the ALJ considered evidence of actual training by Mr. Rupkey. Mr. Rupkey was cross-examined by Christopher Munns. Christopher Munns stated that the rule is short and simple and reads like a strict liability rule. He acknowledged that the Commission has said that they don't think it should be applied that strictly. Staff has received evidence of training, equipping, supervising as mitigating factors. Christopher Munns stated that Scott Richardson has made references that no evidence is ever good enough to absolve a business licensee or QP of liability. However, today there are two cases on the agenda where staff recommended dismissal of complaints against business licensees and/or QPs. Christopher Munns stated that Scott Richardson is right in that it is akin to an affirmative defense for the business licensee and/or QP to provide evidence of training, equipping and supervising. Christopher Munns stated that staff uses*

common sense in reviewing evidence, and that the duties of a QP are not delineated. He stated that the SPCC inspectors understand what the standard of care is for QPs and that a policy is in place and is applied by staff. He stated that after the November 2002 Commission meeting, the Commission contemplated future action or rule-making, but never followed through. He stated that we need to be careful that we do not get into a policy discussion about how the rule should be interpreted or what a QP's duties should be. He stated that we are applying the rule in a case that has been adjudicated, and contends that the Commission needs to determine whether this recommended order falls within the policy as it is set. Scott Richardson stated that this is by far the most important case he has had in the 12-15 years he has appeared before the Commission. He stated that he does not want to talk about policy, but wants to instead tell the Commission about the evidentiary failures in this case and why the case cannot stand as written by ALJ. He stated that he had an understanding that the Joint Responsibility rule would be applied in an "affirmative defense" or "rebuttable presumption" way. He believes that this particular ALJ reads the rule as a "no fault" rule. He believes that the ALJ misunderstands how the Commission has been applying the JR rule. He stated that what is really important in this case is as follows: in order for us to either prove that we (business and QPs) have met the requirements under the law, there has to be some evidentiary basis for determining that, and it is not staff. It should be the Commissioners. He stated that there are no written standards as to how to discharge your obligations to train, equip, supervise and keep safe your pesticides, and that there are no policy statements. So, he asked how one would go about either establishing an affirmative defense or proving that someone violated their obligations as a QP. He stated that if there are no written standards, no policy statement, then this has to be done by expert testimony. He stated that Mr. Rupkey was put on the stand as an expert witness in the hearing without objection. He stated that Mr. Rupkey talked about his experience in the State of Arizona for 16 years and with the NPMA, and what his understanding was about how to supervise a business and discharge obligations. Scott Richardson stated that the three witnesses put on by the state were Vince Craig, Brian Kennedy and George Schellhorn, none of whom are QPs. Therefore, no standard of care could be established because they had no expert witnesses. Scott Richardson asked what the consequence of this would be. He answered by saying that if we are going to allow no written standards, no policy statements and no expert testimony, then the Commission subjects the industry members to a moving target that can change by person and by day, and this violates their equal protection and due process under the Constitution. They don't know what they are supposed to do to be safe from liability. He stated that if we are going to have a JR rule, there has to be something more to it so that people can know

*what they have to do, other than just saying that you have to train, equip, supervise and keep safe your pesticides. If not, then the only way to establish a standard of care is by expert testimony. He stated that they had it and the SPCC did not. Christopher Munns offered a rebuttal, stating that it was a bit disingenuous to refer to constitutional violations under due process and equal protection. Those are very difficult standards to meet and should not be alleged just to make their case sound better. He stated that Mr. Richardson confuses the issues, and that there is no charge here of a failure to comply with QP duties. The charge here is based solely on the conduct of the applicator and the language of the JR rule, which says nothing about training, equipping and supervising. Christopher Munns stated that the Commission just decided in 2002 that they will consider evidence of training, equipping and supervising, but this is not evidence of a charge of failure to comply with a duty. He stated that he agrees with Scott Richardson that there is a higher evidentiary burden, and the SPCC has to show how Mr. Rupkey fell beneath the standard of care. Christopher Munns stated that they are trying to offer mitigating evidence, but this is more like the mitigating factors in any violation you see when we consider what the appropriate sanctions are considering all of the circumstances. Christopher Munns stated that what we are looking at in this case, which is being shrouded beneath legal terms such as affirmative defense, rebuttable presumption, and shifting burdens, is that we have a rule that a person is liable under these facts. The Commissioners are the deciders. The question is whether the QP gave evidence to staff that they trained and supervised people and whether the evidence was enough to be considered a mitigating factor. Staff has recommended dismissal before based on mitigating factors and the Commissioners have acted on such recommendations. He stated that evidence was introduced at the hearing by Scott Richardson, and Mr. Rupkey did testify as to his supervision methods and equipment maintenance and how regular the maintenance checks were. In the Ghiotto (03A-105-SPC) case, there were no ride-alongs or random spot-checking at all. Christopher Munns stated that you cannot argue that it is a mitigating factor to merely send people to training classes without taking action to make sure they are actually doing these things in practice. What we are doing is seeing if this is a A.A.C. R4-29-104 violation and then weighing mitigating factors. He stated that this is not a due process, equal protection issue. This is a joint responsibility issue. Christine Cassetta stated that the state had the burden at hearing and normally the state would be last to speak at the Commission meeting as well. Commissioner Peterson allowed Scott Richardson to speak again, provided Christopher Munns would speak last. Scott Richardson stated that the problem we have here is that we are trying to apply a standard through staff that does not exist and was not proven by expert testimony. He stated that some cases get dismissed, some do not, but no one knows what*

mark they are supposed to hit. He stated that because the only evidence that was presented of an expert nature was presented by the QP, there was a complete evidentiary failure to shift the burden back to the QP, and therefore, under the law, the QP must win. Further, Scott Richardson stated that the constitutional arguments were in their briefs. Christopher Munns stated that the ALJ ruled in favor of the state. He stated that the investigators hired by the Commission are charged with investigating whether QPs comply with their duties under the law. If we accept Scott Richardson's argument, you could never have an investigator testify about whether a QP failed to meet the law, and this would be an absurd result. Christopher Munns stated that he could agree that expert testimony would be necessary in cases where there are very technical legal issues or where there is technical evidentiary case law framework. But here we have someone who's day-in, day-out job is to monitor the duties of a QP and whether they have complied. He stated that he finds it insulting to the investigators to say they are not experts in laws that they are charged with investigating and enforcing. Commissioner Baker asked Scott Richardson to define an expert witness. Scott Richardson stated that an expert witness is someone who brings to the table a level of knowledge different than the ordinary lay person and has the requisite experience that backs up that knowledge base. He asked if an inspector that is not a QP meets that standard. Commissioner Baker stated that if only a QP has met that standard, then this narrows the field and does not allow any room for other people who are not QPs who may have 20-30 years experience in a given field. Commissioner Hartley stated that it seems that what Scott Richardson is saying is that in order to be fair under A.A.C. R4-29-104, given the fact that the Commissioners created the possibility to demonstrate mitigating factors that can limit sanctions, that the Commissioners then have an obligation to create a standard by which the duties of QPs can be measured, and that there is not such a standard. But, Commissioner Hartley stated that there actually are standards, namely the whole body of law and rule of this Commission, and the interpreters for mitigation purposes are the inspectors who bring information to the Commission concerning how well a company is abiding by the huge body and conforming to the standards. He stated that it is very explicit in law and rule, and we do not need any new written law or rule defining those standards. Commissioner Robinson stated that earlier in the meeting there was a man who stated that the industry wants more discretion from the Commissioners and less written standards, and now Scott Richardson is saying the opposite, that the industry wants everything in black and white.

**MOTION:** To accept the ALJ's Findings of Fact and Conclusions of Law subject to the typographical modifications by the state, by Commissioner Baker.

Seconded by Commissioner Hartley.

**VOTE:** 5-0 Motion carried.

Christopher Munns stated that he thinks the Recommended Order is appropriate given the nature of the violations. He stated that there was evidence of several prior violations, mostly record-keeping. He urged the Commission to accept the Recommended Order. Commissioner Peterson asked what the defendant's options are should the Commission decide to approve Recommended Order. Christine Cassetta stated that normally, a motion for rehearing or review has to be filed with the Commission first. If that is denied, then the administrative remedies are complete and the defendant can then go to superior court. Commissioner Peterson asked what the total amounts of the penalties are. Commissioner Fraker stated that he believed that the total amount of the penalties in all of these cases today against Mr. Rupkey and University Termite and Pest Control, Inc. is \$7,000. Christopher Munns stated there is \$1,500 total against University, \$1,500 total against Mr. Rupkey in the first case, and \$2,000 total against University, \$2,000 total against Mr. Rupkey in the second case. There were also some probationary terms requiring the pre-reporting of pre-treatments. Commissioner Fraker stated that the Commissioners just know what is in the file, and that one of the underlying concerns seems to be that University did not cooperate with the investigation. He asked Mr. Rupkey if this was an accurate assessment. Mr. Rupkey stated that he cooperates with the inspectors and is regularly in contact with the Commission. He stated that he does not understand how they came to these conclusions and has no explanation for it. Christine Cassetta stated that the Commission is now deliberating, and that they instead need to ask limited questions. She stated that they have the record before them. Commissioner Peterson stated that even the hearing officer came back with that same opinion that there was a lack of cooperation. He stated that the Commissioners need to make their decision based on that information.

**MOTION:** To accept the ALJ's Recommended Order, by Commissioner Baker.  
Seconded by Commissioner Hartley.

**VOTE:** 5-0 Motion carried.

**B. University Termite & Pest Control, Inc./Richard L. Rupkey II (QP)/Joshua D. Ghiotto (App) - OAH Docket #: 03A-105-SPC/SPCC Case # 2003-105**

Mr. Rupkey was present.

*Christine Cassetta, from the Solicitor General's Office, was present. Scott Richardson, attorney for the business and QP, appeared. Christopher Munns, Assistant Attorney General for the State of Arizona, representing the Structural Pest Control Commission, appeared. Christopher Munns stated that upon his review, he believes the Findings of Fact and Conclusions of Law are accurate in case # 03A-105-SPC. Both Christopher Munns and Scott Richardson adopted the same arguments and rebuttals they used in item VIII.A.*

**MOTION:** *To accept the ALJ's Findings of Fact and Conclusions of Law, by Commissioner Hartley. Seconded by Commissioner Baker.*

**VOTE:** *5-0 Motion carried.*

*Christopher Munns stated that given the nature of the violation, which included fraudulent falsification of records, he believes the Recommended Order is appropriate and urged the Commission to adopt it. He also added that the ALJ also did find a violation for false records and another record-keeping violation that he did not account for in his Recommended Order. Commissioner Peterson stated that this was a very similar recommendation. Commissioner Hartley asked what happens when you have two Recommended Orders and they overlap, requiring the same thing in both orders. He asked for clarification as to how they would be administered and what would apply. Christine Cassetta stated that staff monitors compliance in both of the different orders, and where terms are duplicate, where they are violated in one instance they are violated in the second instance.*

**MOTION:** *To accept the ALJ's Recommended Order, by Commissioner Hartley. Seconded by Commissioner Robinson.*

**VOTE:** *5-0 Motion carried.*

## **IX. Orders Vacating hearings with Settlement Recommendations**

*Christopher Munns, Assistant Attorney General for the State of Arizona, representing the Structural Pest Control Commission, appeared.*

### **A. 1<sup>st</sup> Inspection Consultants, Inc. dba First Inspection Termite and Bat Removal (BL)/Theodore A. Lafforthun (QP & App) - Case # 2003-119**

**MOTION:** To accept proposed resolution 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 Baker.

**VOTE:** 5-0 Motion carried.

**B. Inspectechs, Inc. dba Tucson Exterminating (BL)/Sherman Holmes (QP & App)/Russell William Stewart (App) - Case # 2003-108**

**MOTION:** To accept proposed resolution 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 Baker.  
Seconded by Commissioner Hartley.

**VOTE:** 5-0 Motion carried.

**C. Paul's (BL)/Paul J. Vanasee II (QP & App)/Gary Lynn Fortune (App) - Case # 2003-140**

**MOTION:** To accept proposed resolution 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 Baker.  
Seconded by Commissioner Hartley.

**VOTE:** 5-0 Motion carried.

**D. Territorial Termite & Pest Control (BL)/Kenneth L. Van Zandt (QP & App) - Case 2003-141**

**MOTION:** To accept proposed resolution 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 Baker.  
Seconded by Commissioner Hartley.

**VOTE:** 5-0 Motion carried.

**X. Commission's consideration and action of possible suspension of Business, Qualifying Party and/or Applicator Licenses for nonpayment of termite action report form (TARF) fees, civil penalties and/or renewal fees**

**A. Case No. 98-076 - Ark Exterminating, Business License No. 2244 (Issued 3/30/04)/Jackie C. Wheeler, Jr., Qualifying Party No. 772 B1 B2 B8 (Issued 3/30/84) - Commission's consideration of Suspension of Jackie C. Wheeler's Qualifying Party License for nonpayment of civil penalties and TARF fees.**

*Lisa Gervase stated that for agenda items X.A. and X.B., this morning at 9:20 the SPCC received a faxed letter from Mr. Wheeler stating that he would not be able to attend today due to a rather serious matter that came up yesterday, and he apologized for not being able to attend. Further the letter stated that he would like the matters referred to someone in the Commission office to make some arrangement to address the matter. Lisa Gervase stated that the Commissioners have a memo for Case No. 98-076 saying that an order for this case was issued in March 1999. Some, but not all, payments for TARF fees were made but not all and the civil penalty was not paid. Lisa Gervase stated that staff has had a lot of conversations with Mr. Wheeler. She stated that Mr. Wheeler has been responsive and cooperative in conversation but has put off complying with the order. She stated that the Commission's options are to suspend Mr. Wheeler's QP license for nonpayment, or the Commission could choose not to suspend, and have staff continue to send letters and make phone calls. Commissioner Baker asked when Mr. Wheeler's last payment was made. Lisa Gervase stated that the last payment was made in October 1998. Commissioner Baker asked if Mr. Wheeler has been paying his renewals. Lisa Gervase stated that the Ark Exterminating business license was issued in 2004 and Mr. Wheeler's QP was issued in 1984, and he has been paying renewals.*

**MOTION:** *To suspend the QP license for non-payment of civil penalties and TARF fees, by Commissioner Baker.  
Seconded by Commissioner Hartley.*

**VOTE:** 5-0 Motion carried.

**B. Case No. 98-095 - Ark Exterminating, Business License No. 2244 (Issued 3/30/84)/Jackie C. Wheeler, Jr., Qualifying Party No. 772 B1 B2 B8 (Issued 3/30/84)/Applicator License No. 940193 B1 B2 B8 (Issued 2/18/94) - Commission's consideration of Suspension of Ark**

**Exterminating, Business License and Jackie C. Wheeler's Qualifying Party License for nonpayment of civil penalties.**

*Commissioner Peterson asked if they were being prompted to suspend Mr. Wheeler's license twice. Lisa Gervase stated that in the previous case (Case No. 98-076), the order was only issued against Mr. Wheeler's QP license. In the second case (Case No. 98-095), however, the order was issued against both the Ark Exterminating business license and Mr. Wheeler's QP license. She stated that the Commission can only take subsequent action against the license that was ordered to do something. Commissioner Fraker asked if the Commission could suspend Mr. Wheeler's applicator license also. Lisa Gervase stated that the Commission could not, because the order was not issued against the applicator license. Commissioner Baker expressed concern with people who do not pay their penalties, but then pay their renewals and continue to operate. He stated that he does not think that this is fair to others who are in business. He stated that he wants to suspend Mr. Wheeler's applicator license also. He asked, given that the Commission could not suspend the applicator license today, how an agenda item could be created to enable the Commission to do so. Lisa Gervase stated that the SPCC does not have jurisdiction to do this, unless Mr. Wheeler has committed a more recent violation as an applicator. Commissioner Baker stated that this would be unlikely, given that Mr. Wheeler has been in the office as a QP.*

**MOTION:** *To suspend the business license and the QP license for non-payment of civil penalties, by Commissioner Baker. Seconded by Commissioner Hartley.*

**VOTE:** *5-0 Motion carried.*

- C. Case No. 96-034 - Domenic C. Latella/Qualifying Party License No. 2070 (Issued 10/21/98)/Applicator License No. 940829 B1 B2 B3 B8 - Commission's consideration of Suspension of Domenic C. Latella's Applicator License for nonpayment of civil penalties.**

Per the First Amended Agenda, posted 11/5/04, this matter was removed from the agenda because proof of Mr. Latella's full compliance with this Order was confirmed.

- D. Case No. 2003-084 - Norstar Pest Control, LLC (Business License No. 8250 - Suspended - lack of insurance 8/28/04)/Eric G. Lund, Qualifying Party No. 3215 B1 (Issued 7/13/01/Applicator License No. 010542 B1 (Expired 5/31/02) and Applicator License No. 040079 B1 (Expired**

**5/31/04) - Commission's consideration of Suspension of Norstar Pest Control, Business License, and Eric G. Lund's, Qualifying Party License and Applicator Licenses for nonpayment of civil penalties**

*Lisa Gervase stated that this was a rather unfortunate case because the order was issued against all three licenses and Mr. Lund only owes \$50. She stated that staff has sent four letters, made several phone calls, and cannot get full compliance. Commissioner Peterson asked if anyone from staff actually talked to him. Lisa Gervase stated that Ms. Maggie Vazquez had conversations with him in August and July, and that Mr. Lund signed the return receipts for the first letters but not the later letters.*

**MOTION:** *To suspend the business license, QP license and applicator licenses for non-payment of civil penalties, by Commissioner Hartley.  
Seconded by Commissioner Baker.*

**VOTE:** *5-0 Motion carried.*

*(Break from 12:30 P.M. to 12:45 P.M.)*

**XI. Felony Applicants**

**A. Castro, Jorge Armando**

*Mr. Castro appeared.*

*Mr. Castro stated that we all make mistakes, and sometimes it takes jail time to put us on the right path. Commissioner Baker asked Mr. Castro if he still associates with the same people. Mr. Castro stated that he does not, and that he has a changed attitude and life. Commissioner Baker asked how Cochise Termite Pest Control is. Mr. Castro stated that it is just a two-man operation consisting of himself and the owner, who could not be present today. Commissioner Peterson stated that the felony happened in 2000. He asked Mr. Castro if he was on probation at the same time for something similar. Mr. Castro stated that he was, and that the second time was only a misdemeanor. He stated that he was living in the Yuma area at the time. Commissioner Peterson stated that Mr. Castro was in prison for two and a half years and asked him what he has been doing since then. Mr. Castro stated that he has been working, although he is on leave right now from Cochise. Commissioner Peterson stated that he appreciates Mr. Castro's life style change, but was bothered by an official's statement that Mr. Castro had a lifestyle inconsistent with being unemployed. Commissioner Peterson stated that it appeared that Mr. Castro obtained income that was not accounted for. He asked Mr. Castro what he now*

has as a support mechanism and who keeps him straight and narrow. Mr. Castro stated that he has two daughters, although he is currently separated. He also stated that he is working for a paving company, and that it is good money. Commissioner Fraker expressed a concern that the gravity of Mr. Castro's case seems large because of the amount of marijuana possessed, and that the gravity is reinforced by the imprisonment time. Commissioner Peterson acknowledged that Mr. Castro had time in jail and asked him what caused him to change. Mr. Castro stated that he missed his family while in prison. He also stated that he has devoted time to Bible studies, and is active in MAAA. Mr. Castro stated that he has been off of probation for about a year and a half. Commissioner Peterson stated he was trying to see how Mr. Castro was getting his life in order with family, money, etc., but that it has only been a year and a half since he has been off of probation. He stated that he would vote in Mr. Castro's favor if he came back in a year with a clean track record. Commissioner Baker stated that he would vote differently also, and that Mr. Castro was doing the right thing, getting his life on the right track.

**MOTION:** To deny application based on the gravity of the offense, the amount of drugs involved, and insufficient time of rehabilitation and a clean track record, by Commissioner Fraker.  
Seconded by Commissioner Baker.

**VOTE:** 4-1 Motion carried. (Commissioner Robinson opposed)

#### **B. Daley, Brendan William**

Commissioner Baker observed that Mr. Daley did not appear at the October meeting or today's meeting. Robert Tolton stated that Mr. Daley was discharged from probation, as he received an early termination. Lisa Gervase stated that the discharge was dated in May, but staff received it on September 9, 2004.

**MOTION:** To deny application based on the fact that applicant has only been off of probation for a short time, there is insufficient evidence of a clean track record, by Commissioner Robinson.  
Seconded by Commissioner Baker.

**VOTE:** 5-0 Motion carried.

#### **C. Hunton, Jr., Douglas Merle**

Mr. Hunton appeared.

Mr. Jonathan Debee, manager at Sierra Pest/Termite, appeared.

Mr. Hunton stated that he is trying to get his life back on track and get in the industry. Commissioner Peterson asked Mr. Hunton what he has been doing since his arrest and conviction in 1998. Mr. Hunton stated that he has been supervising a landscape company until recent back injuries prevented him from doing work. Commissioner Peterson remarked that Mr. Hunton was previously selling drugs and seemed to be ingrained in the system. Mr. Hunton stated that he had to sell drugs to help the family because he was unemployed. He stated that you have to do what you have to do, and acknowledged that it was an error in judgement, a one-time occasion. He stated that since then he obtained a job, and was employed for five to six years. Mr. Debee stated that he was here to vouch for Mr. Hunton and stated that Mr. Hunton is a good hard worker. Commissioner Peterson stated that since 1998 Mr. Hunton has had no problems, except for a moving violation. Mr. Hunton stated that he just got probation for that.

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

**VOTE:** 5-0 Motion carried.

#### **D. Ortlieb, Terry Lee**

Mr. Ortlieb appeared.

Chuck Young, supervisor at McCormick Ranch Golf Club, Inc., appeared.

Commissioner Peterson stated that this felony incident happened in 2002, your last. He stated that then in 2003 Mr. Ortlieb was stopped for speeding when there was a felony warrant out for him. Mr. Ortlieb stated that the original charge was from an accident in 2000, and eighteen months later a warrant was out for his arrest for failure to appear, and then four months later he was pulled over. Commissioner Peterson asked if Mr. Ortlieb had a court-appointed legal counsel. Mr. Ortlieb stated that he did. Commissioner Baker asked Mr. Ortlieb if he was employed. Mr. Ortlieb stated that he is employed at the McCormick Ranch Golf Club, and has been registered and certified since 1989. Mr. Young, stated that Mr. Ortlieb has been a good employee for 17 years. Commissioner Peterson stated that found drugs were found in Mr. Ortlieb's car in 2000, the time of the original accident, and also in 2002. He asked Mr. Ortlieb what has changed in the past two years and if Mr. Ortlieb was still doing the same thing. Mr. Ortlieb stated that the drugs were not his on the second incident. He stated that he was a designated driver taking people home, and he didn't realize they had drugs, so he got burned. He stated that his two children count on him for emotional and financial support. He stated that he also had some family issues, lost his mother, and did not know where to turn. Now he knows that he can go elsewhere for help and that there are people to talk to, such as probation officers and counselors. Commissioner Peterson asked Mr. Ortlieb if

he has ever spent time in prison. Mr. Ortlieb stated that he has not. Commissioner Peterson asked if he has been clean since 2000, when he was stopped with drugs. Mr. Ortlieb stated that he has. Commissioner Robinson asked Mr. Ortlieb if it would affect Mr. Ortlieb's long-term employment if he was denied today. Mr. Ortlieb stated that it probably would not. Robert Tolton stated that in May 2003, Mr. Ortlieb's felony was disclosed on the renewal application. He stated that staff sent notices to Mr. Ortlieb requesting more information, so that he could be heard by Commission concerning those responses. Subsequently, an investigator was sent out to see if the Mr. Ortlieb was working or involved in the industry, and it was determined that he was. This is an attempt to get his license back. Lisa Gervase stated that Mr. Ortlieb's license expired, but was not revoked. Commissioner Fraker stated that the narration from the police officer when he was stopped in 2002 stated that they found that Mr. Ortlieb had felony warrants for numerous violations. Commissioner Fraker asked what other violations there were, noting that Mr. Ortlieb was stopped April 27, 2002, at 5:00 a.m. Mr. Ortlieb stated that for the April 27, 2002 incident, he had dropped some other people off and was pulled over while on his way to work. He stated that he does not know what numerous violations the officer was talking about. Mr. Ortlieb stated that he thought the only one was for failure to appear in response to the 2000 accident. Commissioner Peterson stated that he appreciates Mr. Ortlieb being here, and asked him if he accepts responsibility for what he has done. Mr. Ortlieb stated that he does. Commissioner Baker stated that Mr. Ortlieb is on the right track, and that it is good that he has a job. He stated that he appreciates what Mr. Ortlieb is attempting to do, but this might be a bit premature. He advised Mr. Ortlieb to come back to the Commission when he is off probation. Commissioner Peterson stated that hopefully Mr. Ortlieb is no longer with the people who made his situation worse.

**MOTION:** To deny application based on the fact that applicant is still on probation, is a risk to the public due to methamphetamine and drug use, and it is too premature to issue a license now, by Commissioner Fraker.  
Seconded by Commissioner Hartley.

**VOTE:** 5-0 Motion carried.

#### **E. Ramon, Arnold Vernon**

*Mr. Ramon did not appear - application tabled.*

Robert Tolton stated that he spoke with Mr. Ramon's employer, who said that Mr. Ramon broke down on the Interstate 10 on the way to Scottsdale. Commissioner Baker asked if Mr. Ramon could re-apply and come back next month if the Commission denies his application today, noting that perhaps the disadvantage

would be that there would be something on his record that says he has been denied. Commissioner Robinson asked if the Commission had denied him before. Robert Tolton stated that Mr. Ramon is a licensed applicator who had an inconsistency on one of his renewal forms. Staff renewed his license subject to him submitting documentation to have the Commission review it and give a decision. Robert Tolton stated that Mr. Ramon was able to get the information to staff, and that he has met all of Robert Tolton's requests and kept in pretty good contact with staff. Christopher Munns stated that nothing could stop Mr. Ramon from applying again if he is denied today, and that based on the record and what is in the Commission book, the Commission can make the decision today to accept or deny. Robert Tolton stated that Mr. Ramon has a recollection that he actually appeared in front of the Commission with his employer at the time (Burr Exterminating) and that the Commission approved him, but staff does not have any information to that effect in their files in the Commission meeting minutes from 1995 to the present. That is why staff asked him to submit the information again and come back again. Commissioner Peterson asked what has been happening since then. Robert Tolton stated that he has not had anything since the incident in 1991. Lisa Gervase stated that Mr. Ramon was a renewal applicant in June, and that his license was renewed, so there is so no time frame problem. She stated that staff just wanted the Commission to rule on the fact that he had a felony conviction because staff does not believe it had ever been ruled on in the past.

#### **F. Soto, Jr., Bennie**

*Mr. Soto appeared.*

*Lawrence Polk, licensed applicator/foreman/co-worker/supervisor with the City of Phoenix, appeared.*

*Mr. Soto provided two letters of reference from his immediate supervisor his supervisor's supervisor. Commissioner Baker asked Mr. Soto if he has been clear and clean since any of the incidents. Mr. Soto stated that he has had a couple of DUIs, but no convictions. He stated that he is 36 years old, and his last DUI charge was at age 23. He stated that he has been married for the past nine years and has given his life to Jesus Christ. He stated that his great support is what keeps him straight. He stated that he has had a good job for the past three and a half years, and that SPCC licensure is one of the conditions of his promotion. Mr. Polk stated that Mr. Soto has been a good employee and has been promoted out of a large field of candidates to a semi-skilled position which requires SPCC certification. He stated that Mr. Soto has good attendance and is well-liked. He does athletic field maintenance, using Roundup on turf. Mr. Polk stated that in his supervisory position, Mr. Soto is responsible for opening and closing the yard, that he has keys and alarm codes and directly supervises four employees. Mr. Polk stated that he cannot think of any reason why Mr. Soto would not make a good employee.*

Commissioner Peterson asked how long Mr. Soto has been clean. Mr. Soto stated he had a domestic dispute in 2000 with his wife and realized that he needed something bigger than himself, which he calls God. Commissioner Peterson asked Mr. Soto if he has taken anger management. Mr. Soto stated that he has, but that his problem was more of an alcohol and drug dependency nature. He stated that he will always be an addict, but his options are either to continue working with a good organization, pay the bills and advance, or to go back to a secular life and another world. Mr. Soto stated that he has been clean and sober since 2000. He stated that since then he has battled with womanizing and drug use addictions. He stated that he chose to follow this pattern and has no excuses. Commissioner Peterson asked Mr. Soto if he has used any heroin. Mr. Soto stated that he has not, that he has just used alcohol, marijuana, and crystal methamphetamine, and that he has not used crystal methamphetamine since 2000. Commissioner Peterson asked if Mr. Soto has been arrested. Mr. Soto stated that he was arrested for the domestic dispute, and was detained for the DUIs in 1994, but had no convictions as a result. He stated that the assault felony took place in 1987, but had no felony convictions after that. Commissioner Peterson asked Mr. Soto if he has mature friends now. Mr. Soto stated that he is his own best friend, his wife is his second best friend, and his mother is his ultimate friend, who tells him what he likes to hear and needs to hear. Commissioner Peterson stated that there were a lot of problems involved in Mr. Soto's case and past, and urged him to not disappoint the Commission.

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

**VOTE:** 4-1 Motion carried. (Commissioner Fraker opposed)

#### **G. Teran, Ralph**

*Mr. Teran did not appear - application tabled.*

#### **XII. For information and discussion, not action:**

##### **A. Computer Based Testing "CBT" Status and Statistics**

*Carl Martin stated, looking at the numbers carefully, there is marked improvement.*

#### **XIII. Approval of Minutes**

##### **October 8, 2004 (regular session) Minutes**

**MOTION:** To approve the October 8, 2004 Minutes by Commissioner Baker.

Seconded by Commissioner Hartley.

**VOTE:** 4-0 Motion carried. (Commissioner Peterson abstained)

**September 10, 2004 (executive session) Minutes (separate handout)**

**MOTION:** To approve the September 10, 2004 executive session Minutes by Commissioner Baker.  
Seconded by Commissioner Robinson.

**VOTE:** 5-0 Motion carried.

**XIV. Scheduling of future meetings/agenda items**

**Current Proposed dates**

**December 10, 2004**  
**January 14, 2005**  
**February 11, 2005**  
**March 11, 2005**  
**April 8, 2005**  
**May 13, 2005**

*Lisa Gervase introduced Kellie Smith and Suzanne Hathon, two new inspectors that were recently hired. Lisa Gervase requested that the January 2005 Commission meeting be a policy-centered meeting, and asked if the Commissioners would be amenable to that. She suggested that instead of having agenda items that we routinely see, we could limit the items to those that we have to put on to stay within appropriate time frames, such as license applications and complaints. But, she asked that some time is left to discuss things such as possible law and rule changes, substantive policy statements, and priorities so that the Commission's position could be obtained on some issues. The Commissioners did not object to this proposal. Lisa Gervase stated that as staff comes up with drafts for legislative proposals, she would forward them to the Commissioners, and if they have thoughts on them they can let her know so that there are some talking points. She stated that one of the substantive policy statements staff will research is whether there should be an exception in the immediate supervision law for Sentricon baiting system termite applications, thereby only requiring direct supervision. She stated however; that the law is black and white, that she likely has no discretion, and a law change would probably be required if the Commission wants to go in that direction. She stated that she would not make exceptions when the law is clear, because then we would all end up on different pages and no one would know what the laws and rules are. She acknowledged that she does not know if a policy statement would be legal,*

*because then we would end up with a policy statement interpreting law differently than how the law is written, but it can be open for Commission discussion. She also advised the Commissioners to let her know if they have other topics they want to discuss. She stated that she will also be talking with Christopher Munns regarding QPs who do not maintain their applicator licenses, and that this is an issue that needs to be resolved one way or another.*

**XV. For information and discussion, not action:**

**A. Expenditure Report**

*Lisa Gervase stated that there was no expenditure report today because she did not receive the data that she needed in time from the GAO.*

**B. Case Status Report**

*Lisa Gervase stated that the Commissioners have a case status report. There are over 100 active cases that are being monitored and in which either Consent Agreements or Complaints and Notices of Hearing are being drafted. She stated that staff is also working toward obtaining compliance in old cases where TARF fees and civil penalties are still outstanding, and that civil penalties adding up to \$16,000 were sent over to the Attorney General's Office for collections last month. She stated that the amount of money in outstanding civil penalties and TARF fees is close to six figures.*

**C. Legislative discussion - unlicensed pest control activity by landscapers, and proposal to draft a licensing exemption of some sort.**

*Commissioner Peterson asked how people wanted to deal with this issue. Commissioner Baker suggested that the Commission puts some notice in big letters in the local papers on a monthly basis for three to four months regarding licensure requirements. Commissioner Peterson stated that he thinks this is a good idea, and recommending posting notices at chemical distributors. He asked if the Commission wants to require licensure for everyone who uses ready-to-use herbicides, or if the Commission instead wants some type of exemption from licensure in the law for people who use ready-to-use products. Commissioner Robinson stated that we had a case today where someone who was spraying Roundup mixed it and it ended up in the wrong bottle, which is dangerous. He stated that even though Roundup is a safer material, there is a danger of opening the door for other chemicals to be exempt. This is different from the ready-to-use products. Commissioner Baker stated that he would rather see cease and desist against anyone who is unlicensed, regardless of what they are doing. He also stated that there has to be some way of notifying every landscape company or the association. Bert Putterman from Arizona*

*Exterminating stated that when he was serving on the Commission in 1994, the Commission made a massive notification to golf courses and landscapers, and published trade magazines, newspapers, and notified vendors, including Home Depot. He stated that none of this is at issue, however. What is at issue is that people are making commercial applications, this is a public health issue, and this is what the Commission is here to protect. It is not an excuse to say that the chemical was bought over the counter, that spraying occurred only incidentally, or that someone is ignorant of the law. Mr. Putterman stated that it is a slap in the face to those who become licensed, pay for insurance and pay fees to the Commission that this even comes up. He stated that there have probably been 1,000 companies in the past ten years with this specific problem, and the vast majority did become licensed as part of a cease and desist order. He stated that he thinks that the others who say they will cease and desist are actually not, and that they are just more aware of who is watching them. He stated that herbicides are probably more dangerous than the vast majority of products used in pest and termite control, and that just broaching this topic is ludicrous. Thomas Foley from Foleyge Landscaping stated that there are different categories of chemicals. He stated that Roundup is nothing more than a salt, found indigenous in the earth, and it merely is given to a plant in a higher concentration than it can handle, therefore overdosing it. It is not a neurotoxin. He stated that he understands that it becomes easier for government purposes to clump herbicides together, but that they are not all the same. He also stated that many landscapers are Spanish speaking, yet no testing is done in Spanish. He asked how the landscaping industry can keep their business above the table. Commissioner Robinson stated that from golf course industry perspective, which is ninety percent Hispanic, they face the same struggles that Mr. Foley does, and that they have to spend money to train. Commissioner Baker stated that training cannot occur in another language, because this could open the door and people would not know where to stop in making accommodations. Would exams then be in another language also? Mr. Foley stated that other state departments, including the MVD and Welfare Department, have Spanish literature. Commissioner Baker stated that if you cannot read the label, then you should not be doing the work. The label is the law, and the EPA set it up this way. Commissioner Peterson stated that industries have come through as a group and put money in a pot to get things translated. A man in the audience stated that FMC has been trying to make labels in Spanish. Commissioner Peterson stated that in the United States, labels have to be in English. Mike Means from Metro Institute stated that they do training in Spanish, but applicants still have to take the test in English. Lisa Gervase stated that they need input. She stated that there is a strong group of individuals that probably already has drafted legislation and obtained sponsors for this legislative session to exempt, to some extent, landscapers from licensing, and the SPCC has to be prepared to do something other than shut the door, perhaps compromise. Carl Martin stated that as in every legislative process, we start with a position that is exactly what we would want if the world was exactly the way we wanted it. Certain*

legislators want a blanket exemption. The SPCC's starting point is that everyone of them should have to be licensed. He stated that the Commission is going to have to make a decision about where they realistically want to end up. If there are over-the-counter products used in small quantities by persons who do not do this as a routine part of their service, then we need to look at this. But if we do not come with a reasoned and rationale answer to this, one sees the probability that pest control treatments for insects in the yard will be next to fall, and then around the house, and then there would be a retreat to a restricted use standard, where all urban pesticide use would be regulated. He stated that this is a public health and environmental health menace. Some of the compromise could include multilingual training and testing, at least for those portions that are not English-dependent. Now, one could argue that the label is not English-dependent. He stated that the National Federation of Independent Business has three times the pest control members that the Arizona Pest Control Association has, and the landscape members have about five times that amount. He stated that the Commission will have to take the lead in making an argument as to why licensure makes sense. He stated that maybe it makes more sense limit the discussion to applicators and businesses who have financial responsibility, rather than discussing QPs in these circumstances. Commissioner Robinson asked what the position is in other states. Carl Martin stated that it is all over the board. Further, the EPA and federal law only talks about restricted use products, and are not players in this discussion. Jack McClure stated that the most serious violations of safety have been with weed killers. People have died in the southwest by rinsing out a container, putting water in it, and then dying from it when they used it as a water supply. He stated that there is a chemical that can travel through the soil and kill trees nearby. He stated that we need to be cautious about where we are going with this activity. He gave examples of someone spraying with a hose to rinse their chemical down the street, and another of a landscaper who was cleaning his spray rig out on the SRP canal so that no one would see what he was doing. Mr. McClure stated that one of the lead landscapers who is defining what is going on in the state legislature is the same person whose spill was cleaned up on the highway. He stated he does not have a problem with being able to purchase chemicals over the counter, but that people, especially those who cannot read labels, should not be making a living doing this activity, whether or not with ready-to-use chemicals. He stated that we need to have licensing and it needs to be held to the highest level. Mr. Means stated that Metro Institute teaches weed control classes each month in Phoenix and Tucson. He stated that they work with lots of Hispanics who are trying to pass the test. He stated that there are many people who are unlicensed who are going to do this until they get caught, and they are running into the wall of language while trying to get licensed. He stated that Metro Institute conducts Spanish classes every three months. He stated that when English is not your language, and you are under pressure of losing your job, it is difficult. Mr. Means stated that he would not want to take the test in Spanish. He stated that the best way to protect the public is to have the test in Spanish. He

*stated that the test could be made so that you can answer the question in Spanish but have to read the English label, or perhaps there could be an exemption where landscapers are required to have supervision. Andy Weber from SOS Exterminating stated something that he has not yet heard in this discussion. He stated that HOA-driven subdivisions which are maintained on large scales by landscapers make it so that the weed control is not incidental, and those people need to be licensed. Carl Martin stated that he believes that the previous exemption could work today in the law as a compromise. If that position is not accepted, then strong direction is needed from the Commission. He stated that negotiating is beginning immediately, that staff takes their direction from the Commissioners, and they need to get a sense of how to deal with the process even today. Commissioner Fraker stated that he would not be willing to compromise on the 5-gallon container issue. He stated that when the statute was changed to get rid of the exemption, it was done for the public safety. Anything retreating from that will not get the support from the people who are licensed. He stated that it does not make any difference whether a half-gallon or hundred-gallon container is being used. He stated that if they are unlicensed or uneducated in the application of materials, then there is an issue to public safety, especially to homeowners. Eric Ruden, VP of Northwest Exterminating, stated that they have a sister company of Northwest Landscaping. He stated that herbicide applications are about 1% or less of each job, but they are part of just about every job. And if there are a lot of jobs, then this is a lot of herbicide applications. Mr. Putterman stated that when the gardener exemption was put in for gardeners in 1994, it was not the Commission that advocated this. The people who did advocate talked about the image of a homey gardener who was taking care of flowers and occasionally spraying weeds. But he stated that today this is happening on a huge scale, and that companies would not get certain contracts if they did not do this service. He stated that the Commission needs to provide specific information, available nationally, on the breadth of the landscape industry and how much chemical the landscape industry buys and disseminates, and the Commission needs to discuss this with people who plead ignorance. Mr. Putterman stated that the exemption did not work in 1994, it did not protect people, and we should not give it another run. Commissioner Fraker agreed, saying that the appeal from the public is that we are too hard on the small guy, but in fact this is a big business. Mr. McClure stated that if a person does not understand the basic precepts of safety, we are going to get hammered hard. He stated that if you want to make the test easier and simpler for someone to become licensed, so be it. But if they cannot read labels and follow directions and weigh and measure, and we cannot test for that, then we will have a problem. Commissioner Peterson stated that legislatures are always in a rush, and there is pressure to get things done. He stated that as Carl Martin pointed out, the political guns that the SPCC has as compared to the political guns that other organizations have do not compare. He stated that industry members need to go to legislators, because they do understand the issues if informed about the dangers of the chemicals. He stated that it takes more than Carl*

*Martin and Lisa Gervase and himself, who are government bureaucrats. It takes industry members, who have the dirt under their nails, to talk to legislatures to tell them that they need to protect the public. He encouraged industry members to tell give examples of when they were present when the dog was killed or the tree was damaged, but acknowledged that there would probably be some compromise. Mr. Ruden stated that there are probably people in the ALCA who feel the same as the pest control industry members. He asked how to approach the fight. Commissioner Peterson stated that legislators have email, and you can let them know that you have an opinion and you are a constituent. Mr. Putterman stated that the industry fought this before, and that the Commission compromised the industry out of their position. He stated that they asked the Department of Agriculture to back them, but they did not. He stated that the golf course association did, that they were forward-thinking, and they understood that products were being used in huge quantities on golf courses. He stated that the industry does not have a loud voice, but they have been very effective in lobbying. He stated that they need uncompromised support from the Commission, the Department of Agriculture and other regulators in the state. Commissioner Peterson stated that the Department of Agriculture is a cabinet-level agency and will respond if the governor gives the go-ahead. He also stated that Carl Martin has never faltered with whatever direction he has been given, and encouraged people to forget about what has happened in the past. Scott Richardson stated that the industry wrote a little over 300 handwritten letters during the last campaign. He stated that the power of hand-written letters by constituents to legislators can often trump whatever organizations they have behind them. He also stated that licensing is not just about what product you are applying. He stated that the power of licensing is also about continuing education in the application process, making sure there is supervision, and also it is about financial responsibility and insurance. Carl Martin stated that SPCC licensees hold a membership (approximately 80-90 members) in the National Federation of Independent Business, and that they could impact one of the other big players on the other side of this debate by letting their association know that they are not satisfied with the strong position that is being taken. He stated that this is not a clear cut issue. Commissioner Baker asked if a recommendation or motion needed to be made. Lisa Gervase stated a vote was not necessary. She stated that she was getting the feeling that at least four out of the five Commissioners present are adamant that the application of pesticide in a commercial setting requires licensure, whether by a landscaper or a pest management professional. Commissioner Peterson advocated sending handwritten letters. Scott Richardson stated that they could get association members to write the letters. Commissioner Baker asked who the letter needs to go to, who the players are, and suggested that they focus on multiple legislators. Scott Richardson stated that they can make it so that the letter is tied to the home address and it is written to the home senator or representative. Carl Martin stated that Senator Left will chair her committee to at least have an exemption for landscapers that existed in the law before, and that it may go even broader.*

*Commissioner Fraker stated that we need to find every pest control owner in that district and get every employee to write a letter and tell her that she is going down the path that the people who vote for her do not like. He stated that he was going to tell her what he thinks also. He stated that they need an organized, grass-roots network or they will get killed. Scott Richardson stated that he would be monitoring the legislation and they can start a letter-writing campaign right now. Lisa Gervase asked if all pest management professionals will be notified, in addition to members of the association. Carl Martin stated that staff will continue to inform the Commissioners and will work with the pest management association. Scott Richardson suggested even making a trip to Tucson. Commissioner Hartley suggested making a position-paper supported by a bunch of people in the industry, describing what contentions they support and why, because the legislators need to be informed of the reasons and the entirety of the position. Lisa Gervase stated that thoughts could be emailed to Carl Martin, and we could see who supports the position paper. Commissioner Peterson stated that it would be good to have background legislative information included in the position paper also. Carl Martin elaborated by mentioning Mr. Putterman's and Commissioner Fraker's articulation that we have tried the gardener exemption and it has failed in the past.*

The direction from the Commission at this point is that there should not be any compromises with respect to licensing - if pesticides are applied, all licenses are required to ensure minimum competence and consumer safety.

**XVI. Adjournment - 2:35 P.M.**

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

**VOTE:** *5-0 Motion carried.*