

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

**COMMISSION MEETING  
FRIDAY, December 10, 2004 - 8:30 A.M.  
MINUTES**

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

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

**Commissioners Absent:** One vacancy

**Staff Present:** Dave Colvin, Vince Craig, Mike Francis, Lisa Gervase, Robert Tolton, Eric Bauer, and Assistant Attorney General Christopher Munns

- A. For discussion, consideration and action** - Evaluation of Executive Director's performance. The Commission will go into Executive Session to discuss this item pursuant to A.R.S. § 38-431.03(A)(1) and (A)(5).

**MOTION:** *To enter Executive Session by Commissioner Hartley. Seconded by Commissioner Baker.*

**VOTE:** 5-0 *Motion carried (Commissioner Runbeck out of the room).*

**MOTION:** *To increase the salary of the Executive Director, Lisa Gervase, to the maximum of the E3 category, retroactive to July 1, by Commissioner Runbeck. Seconded by Commissioner Hartley.*

**VOTE:** 6-0 *Motion carried.*

- B. For discussion, consideration and action** - Election of Commission officers for 2005.

*Commissioner Baker asked if Commissioner Peterson could be re-elected as Chairperson even though he has not yet been re-appointed by the Governor to*

serve on the Commission. Lisa Gervase stated that he could be re-elected as Chairperson, and then if he is not re-appointed by the Governor, then another vote could be taken or the Vice-Chairperson, Commissioner Fraker, could assume the Chairperson duties.

**MOTION:** To nominate Commissioner Peterson as the Chairperson of the Commission for 2005 by Commissioner Robinson.  
Seconded by Commissioner Runbeck.

**VOTE:** 6-0 Motion carried.

**MOTION:** To nominate Commissioner Runbeck as Vice Chairperson of the Commission for 2005 by Commissioner Baker.  
Seconded by Commissioner Hartley.

**VOTE:** 5-0 Motion carried (Commissioner Runbeck abstained).

**MOTION:** To nominate Commissioner Robinson as Secretary of the Commission for 2005 by Commissioner Hartley.  
Seconded by Commissioner Fraker.

**VOTE:** 6-0. Motion carried.

Commissioner Peterson thanked Commissioner Hartley for being present at 71 consecutive Commission meetings while missing none in his six years as a Commissioner.

## II. Call to the public

Commissioner Peterson advised the people in the audience to fill out a speaker card if they have any intention of speaking at the meeting, because the meeting may move along quickly and he did not want anyone to miss their opportunity to speak.

Lisa Gervase stated that business license and QP renewals were due on December 1, although they may still be submitted without a late fee until December 31. She stated that so far, 63% of business licensees and 66% of QPs have renewed, with roughly 25% of those being done online. She stated that online renewals are good because this allows licensees to get their paper licenses in the mail a lot more quickly than if staff has to process paperwork. She stated that approximately 750-800 licensees still have not renewed, and staff mailed reminder notices yesterday.

*She stated that if they do not renew by the end of the month, their licenses will expire, they will have to pay a late fee and they will not be able to operate after December 31. Lisa Gervase expressed appreciation toward Robert Tolton and other staff for their time in selling the online renewal process and for very quickly processing renewals so that people know where they stand. She also mentioned the all-day, CE course that was held two days ago on December 8, which had over 200 industry members in attendance. She stated that there will be more classes in the spring, with upcoming notification of the dates. She stated that the Commissioners have a copy of the letter that she received from Virginia, thanking Mike Francis for his help at a national level in educating one of their pesticide supervisors as to how to handle termite inspections. She stated that she also has a sample of the emails that she has received about the recent CE courses that staff has been providing which indicated that their efforts are appreciated by the industry. She also stated that she too appreciates Commissioner Hartley's willingness to continue to serve as a Commissioner, and that she has not yet heard anything from the Governor's office about appointments.*

*John Gerodimos, QP for Arizona Rainfall Weed Control Services, appeared to recount his experience with the online renewal process. He stated that he attempted to renew his QP license online yesterday, and was given a message that he could not spray because he did not have an applicator license. He stated that he was unaware that this would happen, and that the SPCC at one time told him that he did not need an applicator license if he had a QP license. He also stated that this issue was not brought out to him during a couple of previous truck inspections, even though he was not spraying and only had a spray rig. He stated that he feels left behind because now, in order to spray, he has to retest for his applicator license, even though he teaches and trains applicators, goes to schools and learns about new products and how to apply them. He stated that he is certified in the "B3" and "B5" categories and does not think it is fair that he should have to retest for both of these categories. Lisa Gervase stated that this issue will be on the January agenda and the discussion will address the approximately 100 QPs who have not maintained their applicator licenses. She stated that it will likely be a legal issue and they will seek advice from Christopher Munns. She stated that Robert Tolton would be able to advise Mr. Gerodimos with regard to his specific situation.*

**III. Communication with Commissioners**

**IV. Consent Agenda**

**A. Applications for New Business License**

**Qualifying Party**

1. Archambo, Peter G.                    **G & H Pest Control East (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)**
  
2. Esman, Gregory Scott                **GSE Horticultural Services, Inc. (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)**
  
3. Heihn, Paul Joseph                    **Modern Pest Solutions, Inc. (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)**
  
4. Mansperger, Jay Paul                **Valley Commercial Landscape, LLC. (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)**
  
5. Navis, Gary Lee                        **Weeds Beware, LLC. (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control)**
  
6. Nelson, Douglas George              **Nelson Weed and Pest Control, Inc. (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B3" Right of Way/Weed Control, "B4" Fumigation and "B5" Turf & Ornamental Horticulture)**
  
7. Painter, Jr., Ricky Bert                **Termite One Pest Management (Activating Qualifying Party for new business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)**

- 8. Peters, Tanya Marie                      Tanya’s Pest Control, LLC. (Activating Qualifying Party for new business license in “B1” General Pest/Public Health)
  
- 9. Phelps, Kelly                                Kelly Phelps Pest Control, LLC. (Activating Qualifying Party for new business license in “B1” General Pest/Public Health)
  
- 10. Wood, Clark Edward                      Clarke Mosquito Control (Activating Qualifying Party for new business license in “B1” General Pest/Public Health and “B9” Aquatic Pest Control)
  
- 11. Wooldridge, Donald W.                      Q.P. Services, Inc. (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. Andrews, Chester                              DSR Pest Management Activating Qualifying Party for existing business license in “B1” General Pest/Public Health, “B2” Control of Wood-Destroying Insects and “B8” Wood Destroying Insect Inspection)
  
- 2. Barr, Delmar James                              Move ‘Em Out Pest Control (Activating Qualifying Party for existing business license in “B1” General Pest/Public Health)

*Pulled-Mr. Ralph Clardy, owner of Move ‘Em Out Pest Control, was present.*

*Lisa Gervase stated that staff requested that this item be pulled so they could inform the Commissioners about a pending complaint involving Move ‘Em Out Pest Control and let them decide if it has any impact on their decision whether to activate Mr. Barr’s QP’s license for this business. Mike Francis*

*stated that there appears to be a falsification of information provided when the original business license was granted around September or October 2003. He stated that staff found out about it during the renewal process this year, an investigation is already in progress, and the matter will likely be put to the Commissioners in an upcoming month. Commissioner Peterson asked if the information is something that would have kept the business licensee from becoming licensed. Mike Francis stated that it would have. Commissioner Peterson asked how this would affect the current applicant. Christopher Munns stated that if the information were to be used as grounds for a denial, then the information would have be given as a reason for the decision, so that Mr. Barr could present his account of the events. Lisa Gervase stated that it was sort of a "Catch 22" situation. In order to operate with a business license, you also need to have a licensed QP. She stated that staff thinks the business licensee lied about having a QP when they obtained their business license, and it looks like they are trying to get a QP now and become legal. She stated that staff would want some assurance that the QP will take care of the management of the business. She also stated that the complaint could then be dealt with as a separate issue. Commissioner Peterson stated that a similar situation had come up before, and it seemed awkward to not approve the QP. Mike Francis stated that Mr. Bar was not involved at all in the complaint.*

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

**VOTE:** 6-0 *Motion carried.*

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|----------------------------------|---|
| <b>3. Dawson, Patrick Eugene</b> | <b>Instar, Inc. (Activating Qualifying Party for existing business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)</b> |
| <b>4. Reynolds, Justin Wade</b>  | <b>Ocotillo Golf Club (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf &amp; Ornamental Horticulture)</b>   |
| <b>5. Swan, John Edward</b>      | <b>Westscope Environmental, Inc. (Activating Qualifying Party for</b>   |

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

**6. Walters, Jack David**

**Creative Environmental Maintenance Services, LLC. (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)**

*Pulled-Mr. Aesch appeared.*

*Commissioner Peterson stated that Mr. Aesch was on the agenda last month but was not present, so the Commissioners tabled the item for this month so they could ask him questions. Commissioner Peterson asked if Ellen Aesch was Mr. Aesch's wife. Mr. Aesch stated that she was. Commissioner Peterson asked Mr. Aesch how big his firm is. Mr. Aesch stated that it was big enough to be sued by the 3<sup>rd</sup> largest pest control company in the world. Commissioner Peterson stated that the Commission has had issues in the past with spouses verifying experience. Commissioner Baker asked if anyone other than his wife could verify his experience. Mr. Aesch stated that he has been in the industry for twelve years, been in business for six years, has been a QP for roughly six years, he owns his company, does the work for all the major custom builders in town, does multi-million dollar pre-treats every day and calibrates all the equipment. He stated that he has more patents in the pest control industry (fourteen) than anyone else in the country, and has thirteen more patents pending. Commissioner Baker stated that they just want to make sure that he has the experience, and whether someone other than his wife can verify this. Mr. Aesch stated that lots of people know him and everybody understands what they do. He stated that they do pre-treats, they put pest tubes in slabs and walls. He said the Commissioners could call DuPont and Paul Hardy for verification. Commissioner Peterson stated that he does not know anything about Mr. Aesch except what he has read on paper, and that this process has to occur in a public forum. Commissioner Fraker stated that Mr. Aesch was not here*

at last month's meeting, so they were unable at that time to ask these questions.

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

**VOTE:** 5-0 Motion carried (Commissioner Baker out of the room).

2. Birkemeyer, Keith Vincent "B2 and B8" (Control of Wood-Destroying Insects and Wood Destroying Insect Inspection)
3. Bollier, Michael Emerson "B3" (Right of Way/Weed Control)
4. Bryant, James Douglas "B1" (General Pest/Public Health)
5. Burns, Marce Wilson "B1, B3 and B9" (General Pest/Public Health, Right of Way/Weed Control and Aquatic Pest Control)
6. France, Scott Michael "B2" (Control of Wood-Destroying Insects)
7. Green, Marcus Lee "B1" (General Pest/Public Health)
8. Kelley, Derold Lee "B1" (General Pest/Public Health)
9. Robertson, Steven Knight "B5" (Turf & Ornamental Horticulture)

#### D. Request for Company Name Change

1. Osmose, Inc. to Osmose Utilities Services, Inc.

#### End of Consent Agenda

**MOTION:** By Commissioner Hartley to accept Consent Agenda with the exception of those items pulled for discussion (B2, C1). Seconded by Commissioner Fraker.

**VOTE:** 6-0 Motion carried.

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

**A. Busch, Donald**

ABC Pest Control

*Mr. Busch appeared.*

*Commissioner Peterson asked if this was Mr. Busch's second request to renew his temporary QP license. Robert Tolton stated that it was. Commissioner Robinson asked why Mr. Busch had not taken the test before October 8, given that he was given a renewal on October 8. Mr. Busch stated that he had taken the test twice and was given the wrong test the first time. He stated that he was told that he had to wait a week and was scheduled again for this afternoon. Commissioner Peterson stated that the temporary QP was initially given to Mr. Busch on August 19, and he did not take the test until November 24. He asked why Mr. Busch waited so long to take the test. Mr. Busch stated that one of the tests he took before did not count, his partner died, he became busy running his business, and he also needed time to study. He asked if Mr. Busch could have made it on an agenda for September to test for his QP license, given that he was approved for his temporary QP. Lisa Gervase stated that he could have made it for October, but probably not September. Commissioner Fraker stated that the crux of the problem with temporary QPs is that they should be qualified at the point they are granted the temporary QP. He stated that a temporary QP should not be issued unless the person has some credentials or experience and is qualified to run a business. He stated that the Commission has a history of issuing temporary QPs to almost anyone who has some practical experience. He stated that Mr. Busch apparently did not think that he would be able to pass the test, or he would have taken the test shortly after getting his temporary QP. Mr. Busch stated that he has taken the test twice. Commissioner Fraker stated that he has not passed the test though. Commissioner Peterson stated that if someone is granted a temporary QP, they should at least be on the next agenda to get permission to take the QP test, and in Mr. Busch's case, certainly by October. Mr. Busch stated that time just slipped by and this was not intentional. Commissioner Baker asked Mr. Busch how a denial today would impact his customer base. Mr. Busch stated that he planned on hiring a QP.*

**MOTION:** *To deny the extension of the Temporary QP by Commissioner Robinson, based on the lack of urgency and the applicant not presenting good cause for the delay in procuring a QP license, as indicated by his lack of success on the QP exam, and not proceeding timely*

*with the process currently.  
Seconded by Commissioner Hartley.*

**VOTE:** 6-0 Motion carried.

**VI. For review, consideration and action: Reconsideration and review of Temporary Qualifying Party Renewal Denial**

**A. Richardson, Stephen**

DSR Pest Management

*Mr. Richardson appeared.*

*Lisa Gervase stated that Mr. Richardson was on the October agenda for a request for a temporary QP renewal and was denied. He filed a timely request for review of that denial, and his appeal is based on the two reasons stated in a November 12 letter that staff received from him. She stated that the Commission today has just approved to activate someone (Chester Andrews) as the QP for Mr. Richardson's business. Lisa Gervase asked if Mr. Richardson will wanted the Commission to review the denial of Mr. Richardson's temporary QP, given that Mr. Andrews has been approved to active his QP for this business. Mr. Richardson stated that he just wanted a review about what happened in October. He stated that the rules says that he has to pass a course, obtain a QP himself, or hire a QP. He stated that he was in the process of doing that and had to request for a temporary QP at the time because his QP ran out in between meetings and he needed an extension. He stated that he has hired a certified employee and has a QP. He stated that he did not have a chance to speak and explain himself in October, and he wants to tell the Commission that he is in compliance and wants to appeal the denial because he does not want it on his record. Commissioner Peterson asked if Mr. Richardson needed an extension so that he could apply for QP testing. Mr. Richardson stated that he has applied for QP testing, has set standards for his new QP (Mr. Andrews) who appeared today, and at least wanted to submit his application for extension. Commissioner Peterson asked what the Commission's options were. Lisa Gervase stated that they could grant or deny a petition for review or rehearing. Christopher Munns stated that if they grant it, they could then affirm or modify to effectively reverse their previous decision. Commissioner Runbeck noted that approval was granted at the November 12 meeting for Mr. Richardson to take the QP test. She asked Mr. Richardson if he has yet tested. Mr. Richardson stated that he is in the process of that and that he is not the best test-taker. He stated that he is scheduled to take the QP test in January. He stated that it is an expensive and difficult test. He also stated that in the law, it says that he can obtain his own QP license or hire a QP,*

and that the extension does not require him to pass the test. He stated that he activated a QP and just does not want the previous denial on his record. Commissioner Runbeck asked if Mr. Richardson could withdraw his initial request for temporary QP renewal that the Commission has voted on, so there would be no denial on his record. Christopher Munns stated that if the Commissioners were to approve for rehearing or review, the matter would be back before them. Then, Mr. Richardson could offer to withdraw, and then the Commission could approve his withdrawal, the matter would be taken away from the discretion of the Commissioners, and then it would not be on his record as a final decision. Commissioner Robinson asked if Mr. Richardson failed in taking the tests in the time frame he had in 2002-2003. Mr. Richardson stated that he has a problem taking tests and has to use all of his resources. Commissioner Fraker stated that Mr. Richardson has made the right step in getting someone qualified for his company, and that the action the Commission took in the past was proper. Commissioner Runbeck asked what the effect would be of Mr. Richardson having the denial on his record. Lisa Gervase stated most professional/occupational applications require applicants to list denials, suspensions and revocations, but then also give the applicant a chance to explain them. She stated that the denial on his record will probably have no substantive effect in preventing him from obtaining a license, although it would keep him out of the online renewal process. Christopher Munns stated that in order to grant a review, one of the seven reasons enumerated in Rule R4-29-502 would have to apply, and that here it would probably be reason #1 regarding an irregularity in Mr. Richardson's previous hearing that prevented him from describing his case and denied him a fair hearing.

**MOTION:** To grant reconsideration by Commissioner Hartley.  
Seconded by Commissioner Runbeck.

**VOTE:** 6-0 Motion carried.

Mr. Richardson then withdrew his request for temporary QP renewal.

**MOTION:** To accept the withdrawal of Mr. Richardson's request for temporary QP renewal by Commissioner Runbeck.  
Seconded by Commissioner Robinson.

**MOTION** Motion and second withdrawn by Commissioners  
**WITHDRAWN:** Runbeck and Robinson.

(It was determined that a withdrawal of a request to renew the Temporary QP was not a votable issue.)

## VII. Complaints against Licensees

*Lisa Gervase stated that as Commission meeting dates approach, there is a flurry of activity to move complaints toward settlement conferences. She stated that over the last couple of months, staff has worked on crafting letters to respondents that outline the complaint process and procedure, including settlement conferences. She stated that she has had people review and provide comments, including Charlie Silvers and Brian Ferris, and the letters have been instituted this week. She stated that hopefully within the next month or two, people will be more informed about what to expect. Commissioner Peterson asked if Arizona Exterminating had an opportunity to respond to the letter, based on their involvement in the Commission meeting last month. Lisa Gervase stated that she emailed the letter to Bert Putterman, but he has not responded.*

### A. Knight Pest Control (BL)/Leonard Knight (QP & App) - Case # 2004-083

**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 Runbeck.*

**VOTE:** 6-0 Motion carried.

### B. Parker Pest Control (BL)/Jerald Hooper (QP & App)/Mark Paterson (App) - Case # 2004-091

*Dave Colvin stated that the nature of the complaint was that a depth of foot treatment was to be made at part of the structure. He stated that the customer/contractor/builder/homeowner chose not to contact Parker Pest Control to treat the specific area, and the company continued to treat. Commissioner Fraker stated that there was quite a shortage here. He stated that it appeared that the applicator told the builder on several occasions that he needed to be notified so he could do the treatment. Commissioner Fraker stated that he would hate for that alone to be an issue for a violation, based on an applicator not properly coordinating a treatment with a builder. He stated that dealing with builders and coordinating treatments is a major hurdle at times. He sees the failure as being that the applicator should have recorded or at least attempted the depth of foot issue afterwards. He asked if the Commission would still be addressing this violation if he had*

*documented the depth of foot issues at that point in time. Dave Colvin stated that they would be, and that the issue is the enforcement action to be taken. The licensee had an opportunity to mitigate the treatment, perhaps by rodding the area. Commissioner Baker asked if it was Dave Colvin's opinion that the applicator did not make enough of an effort to mitigate. Dave Colvin stated that there was paperwork that a warranty was issued, but the statute is clear that a licensee cannot issue a warranty if a treatment is not done according to regulation. Commissioner Fraker stated that we all know that there are situations where you cannot perform, and if this is the case, a violation is not warranted. He asked if there would still be an action if the applicator had trenched and/or rodded to the best of his ability 3-4 feet and documented it. Lisa Gervase stated that legally there would be, but staff probably would have recommended dismissal. Commissioner Fraker stated that he does not want a pre-treater getting a violation on the basis that there was not coordination between the "lifts" and the builder. He stated that the area was not treated, but a lot of times they do not have control in those situations. Lisa Gervase stated that it is possible that a recommendation of dismissal would have been justified if the pest management company documented a written notice letter to the builder for them to treat in "lifts", even if the applicator had not gone so far as to try to do the rodding. She stated that staff recognizes the difficulty in coordination, but it is incumbent upon the licensee to document that they attempted treatment and/or could not treat, rather than just telling staff after the fact that they did not try. Commissioner Fraker stated that the crux of the matter is that they did not tell the Commission at all. Lisa Gervase stated that the Matrix worksheets would have been looking at a civil penalty for violations, whereas staff thought that an administrative warning was appropriate because of the coordination difficulties, and the builder should have some responsibility here.*

**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:** 6-0 Motion carried.

**C. Armor Termite & Pest Control (BL)/W. Dale Witter, Sr. (Owner) - Case # 2004-093**

*Commissioner Hartley stated that we have sent out lots of notification about the new Wood Destroying Insect Inspection Report (WDIIR) forms, and maybe a Commission Order would get their attention.*

**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 Runbeck.*

**VOTE:** 6-0 *Motion carried.*

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

*Mr. Silvers appeared.*

*Commissioner Peterson made a comment that the Commission has historically issued a \$500 penalty to people who stated they do not know anything about the law, but here we could be issuing a \$400 penalty to someone who does know about the law, who is licensed and in business. Commissioner Hartley asked what was unclear regarding the requirements for licensure. Mr. Silvers stated that he submitted numerous pages of documentation trying to explain why his action took place. He stated that he understands the intent of the Commission. He stated that as manager and QP of the company, he read the law and misinterpreted the law in A.R.S. §2312 (E) and (F). He stated that he thought that he was following the letter of the law and that he could allow someone to apply pesticides past 90 days as long as there was direct supervision, because subsection (F) applied to him and it says nothing about 90 days in that subsection. He stated that he accepted the proposed resolution because after much effort and documentation, it was determined that as a QP he was responsible for looking outside of the wording of the law. He stated that he wants the Commission to know that he was doing the best he could to operate the business, but he did not think there was anything left up to interpretation in the wording of the law. He stated that he ceased operation after meeting with inspectors that day. Commissioner Baker asked Mr. Silvers how long he has been in business and if he has had any other employees licensed. Mr. Silvers stated that he has been a QP since around 1989-1990, and has had previous people licensed under his QP. He stated that his problem was that the law stated "within ninety calendar days of employment", but his employees are not spraying right from the start of employment. He stated that his employees start by pulling weeds, mowing grass, etc., and once they gain experience, they decide for monetary or employment reasons to become licensed themselves. He stated that spraying is usually incidental to a landscape company, so he has had people come work for him who have*

*been employed past the 90 days without spraying. Commissioner Baker asked Mr. Silvers why people would want to become licensed. Mr. Silvers stated that most foremen on landscape properties need to control weeds, and one of the best ways is through chemical application. Commissioner Baker stated that it is hard for him to believe that, as long as Mr. Silvers has been in business and had other people licensed to work for him, that he did not know that 90 days was the marker. Commissioner Baker stated if you are in business this long, you have to take responsibility and you should know the law. Commissioner Hartley stated that Mr. Silvers has a type of business other than general pest control. He stated, as an example, that if he hires someone to work for him for 25 years in general pest, and they work in the office and do not have to be licensed, and then he decides to send this person out to do pest control, the point in time that they go out to start applying pesticides is when the 90-day clock starts. Commissioner Hartley stated that the issue is whether the employees are just pulling weeds or if they are also spraying. He stated that if he had some documentation he might be more sympathetic, and asked if the employees were spraying after 90 days. Mr. Silvers stated that out of over 300 employees that are in field operation at the time, his company limited many of these people from ever touching chemicals without a license and without direct supervision. He stated that they never allowed an unlicensed employee to apply pesticides without direct supervision, and even this was very limited. He stated the intent was to have these people become licensed. He stated they had a couple of employees who sprayed very selectively a few times, supervised, for a short period of time. Lisa Gervase stated that the employees were spraying past the 90 days. Commissioner Runbeck stated that the law is unclear. Lisa Gervase stated that the current law may be unclear, but the law prior to 09/17/03 applies because the applications by these two employees took place before the law changed. Commissioner Runbeck recommended clearing up the current law. Lisa Gervase stated that this is on the list of priorities. Mr. Silvers stated that this has been a fantastic learning experience and that he was on board with being in compliance. He stated that the reason that this came to the surface is because he was asked by an inspector to produce documentation, and their own logged information is what got them in trouble.*

**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 Runbeck.  
Seconded by Commissioner Baker.*

**VOTE:** 6-0 Motion carried.

**E. Terminix International (BL)/Brad Stratton (QP)/Anthony Vendegna (App) - Case # 99-146**

*Mr. Brian Ferris, representing the respondents, was present.*

**MOTION:** *To accept proposed resolution for the BL and QP and accept staff's recommendation to dismiss the complaint against the applicator without prejudice, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Runbeck.  
Seconded by Commissioner Fraker.*

**VOTE:** 6-0 *Motion carried.*

**F. Terminix International (BL)/Brad Stratton (QP)/Harlan Hayes (App) - Case # 2000-033**

*Mr. Brian Ferris, representing the respondents, was present.*

**MOTION:** *To accept staff's recommendation to dismiss the complaint by Commissioner Hartley.  
Seconded by Commissioner Runbeck.*

**VOTE:** 6-0 *Motion carried.*

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

*Norma Kafer, consumer/homeowner, appeared.  
Michael Kafka, attorney for Mrs. Kafer, appeared.  
Scott Richardson, attorney for the Respondents, appeared.*

*Mrs. Kafer stated that she wanted to address the Commission about the process. She stated that about two weeks ago she was requested to attend a resolution meeting. She stated that she expected the meeting to be of a problem-solving nature. She stated that the Commission might advise consumers in the future to have their own attorney or a staff attorney be present, or else tape the meeting. She stated that in her years of working with death row inmates in Florence, all of her inmates had better behavior than Scott Richardson, who she stated verbally assaulted her.*

*Commissioner Peterson stated that not everyone hires attorneys, and it would be inappropriate for the state to provide a staff attorney because the state does not represent her. He recommended for her to have her own attorney attend. Scott Richardson stated that he does not need to respond to this. He stated that he sent a copy of a release to Michael Kafka, received revisions back from him, and that the revisions are fine. Mr. Kafka stated that this is correct. Commissioner Hartley stated that he has a problem with Item #3 in the proposed resolution. He stated that he does not consider it legal to ask Mr. Stokes to do a free termite treatment. Scott Richardson stated that the company and QP are in full agreement that they will offer the equipment and chemical. He stated that at the settlement conference, they offered to do a treatment. He stated that staff advised them that Mr. Stokes should be responsible for doing the treatment, and they were pushed to this point by staff. They decided that the applicator would do the treatment without pay and that the homeowners would not have to pay either. Commissioner Hartley asked if, under wage/hour laws, Mr. Stokes could agree to do this, stating that it seemed like a backdoor fine against Mr. Stokes. Scott Richardson stated that Mr. Stokes is going to do the treatment on his own time, and that if the Commission desires, the wording of the agreement could be modified to state that University will do the treatment free of charge. Christopher Munns stated that terms can be included in a Consent Agreement that the Commission cannot otherwise order. He stated that University can agree to perform free of charge and Mr. Stokes can agree to not accept compensation for his time. He stated that what we want to avoid is a situation where Mr. Stokes is performing pest control without a business licensee and QP. He stated that University needs to be authorizing performance under its own name. Scott Richardson stated that they have no problem with this, and that the treatment will be monitored by SPCC staff. Commissioner Runbeck stated that under Item #1 in the proposed resolution, it indicated that University would offer a complete termite treatment free of charge. Vince Craig stated that no one from staff pressured or pushed anyone into terms in the settlement conference. He stated that the terms for Mr. Stokes are quite lenient, because Mr. Stokes could be imposed a \$600-\$800 civil penalty. Commissioner Peterson stated that the terms are better for the consumer also. Commissioner Runbeck noted that under Item #1, the only payment was to the consumer, and no penalty was assessed. Scott Richardson stated that the negotiations were quite unique. He stated that they started with a small civil penalty against the business licensee, but as the money for the replacements of the kitchen cabinets increased and the homeowners could get their full \$2,500, the civil penalty then decreased. He stated that the thought was that if everyone could walk away with the consumer getting a full treatment and \$2,500, they would be happy to do it. Lisa Gervase stated that the Consent Agreement could be worded in a detailed manner to address Commissioner Hartley's concerns about who is*

responsible and whose licenses are being worked under. She stated that this is a creative settlement. She stated that lots of times applicators do not have ways to mitigate civil penalties, and this was an attempt to see what the applicator could do to mitigate, and the business licensee and QP are still on the hook for the work of the applicator. She stated that staff will physically monitor the treatment. Commissioner Hartley asked if the consumer is agreeable to having Mr. Stokes do the work. Mrs. Kafer stated that she would rather have someone else do it. Commissioner Peterson emphasized that someone from SPCC staff will be present to observe. Commissioner Baker asked who will actually make the decision about where the treatment will take place. Vince Craig stated that this would be a complete treatment. He stated that the problem is interior, as the entire house consists of parquet floors, and that even with a complete treatment, they can only be optimistic. Commissioner Runbeck stated that it sounds like a lot of work has gone into this agreement. Commissioner Hartley asked why it is so difficult for University to respond to inquiries from the SPCC. He stated that University does not seem to like to respond to record requests or respond to anything at all, and that this was very disconcerting to this Commission. Scott Richardson stated that he understands Commissioner Hartley's point of view. He stated that hopefully, in the near future, they would be bringing to the Commission something perhaps even more unique that will address these concerns.

**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 Runbeck.  
Seconded by Commissioner Fraker.

**VOTE:** 6-0 Motion carried.

### **VIII. Unlicensed Activity Complaints**

#### **A. Carescape Construction LLC (Unlicensed Company)/Mitchell Owens (Member)/Jose Olmedo Sanchez (Unlicensed Applicator) - Case # 2004-086**

**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 Fraker.

**VOTE:** 5-0 Motion carried (Commissioner Hartley out of the room).

**B. Jesse's Gardening & Landscaping, Inc. (Unlicensed)/Jesse Guevara (Owner) - Case # 2004-084**

**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 Runbeck.  
Seconded by Commissioner Baker.

**VOTE:** 5-0 Motion carried (Commissioner Hartley out of the room).

**C. Maldonado Landscaping (Unlicensed)/Freceo C. Maldonado (Owner) - Case # 2004-082**

*Commissioner Fraker stated that the way he reads the case, the respondents were not applying any pesticides and had no pesticides in their possession. Dave Colvin stated that the company was in business, but an interview of the company revealed that they had performed unlicensed herbicide applications. Lisa Gervase stated that there was no application taking place at the time of the investigatory stop, and that the applications had taken place at another time. Dave Colvin stated that the observation of the sprayer led the investigator to question the applicator, and it was determined that the company buys chemical as needed at Home Depot.*

**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 Runbeck.

**VOTE:** 6-0 Motion carried.

**D. Martell's Enterprises, Inc. dba Bill's Tree & Yard Service (Unlicensed)/William J. Martell (President) - Case # 2004-076**

*Mr. Martell appeared.*

*Mr. Martell stated that he is the owner of the company and retired some time ago for health reasons. He stated that his son, Greg Voyles, is running the*

company and that they did cease and desist when notified of a violation. Mr. Martell stated that the company consists of his son and two employees. Mr. Voyles has passed the applicator test and is now applying for his QP license. Mr. Martell stated that they just applied on weeds in the alley using herbicides. He stated that they are moving as fast as they can to become corrected. Commissioner Peterson expressed appreciation for Mr. Martell's and Mr. Voyles' efforts. Commissioner Runbeck asked Mr. Martell if he was asked to participate in a settlement conference. He stated that no one ever said anything to him about a settlement conference. He stated that SPCC Inspector Brian Kennedy asked a lot of questions when he came out to their property and stated that Mr. Martell's company was doing things correctly, but they just were not licensed. Commissioner Runbeck asked if there was any indication that a letter was sent to Mr. Martell. Mike Francis stated that there was no correspondence, no verbal communication. Commissioner Runbeck asked if it would be worthwhile to conduct a settlement conference. Commissioner Peterson suggested dealing with this right now, or perhaps conducting a telephonic settlement conference, given that Mr. Martell is from Tucson. Lisa Gervase stated that Mr. Voyles was issued an applicator license in the "B3" Right of Way/Weed Control category last month. She stated that when people take these steps by taking and passing two exams, and considering that Mr. Voyles is also applying for his QP license, these are considered substantial mitigating factors in working towards compliance. She encouraged dealing with the matter right now, because if a settlement conference were to be held, the matter would still have to be brought back before the Commissioners to approve the settlement outcome. Dave Colvin stated that he actually did hold a telephonic settlement conference on November 12. He stated that he contacted Mr. Voyles on November 7 and Mr. Voyles said that Mr. Martell would be returning soon from Mexico. Dave Colvin stated that on November 12, Mr. Martell disagreed with the \$500 civil penalty and stated that he would be showing up at the Commission meeting. Mr. Martell stated that it was true that he did not agree with the \$500 civil penalty. Lisa Gervase stated that Mr. Voyles' license was obtained after November 12. Commissioner Peterson stated that the violation took place in May. Lisa Gervase stated that this was a rare case because mitigating steps were taken very quickly, and she suggested that in previous similar cases, where people have obtained their applicator licenses so quickly after a violation, an appropriate civil penalty would have ranged between \$100-\$400.

**MOTION:** To issue a Cease and Desist Order and to impose a \$250 civil penalty against Martell's Enterprises, Inc. dba Bill's Tree & Yard Service/William J. Martell, jointly and severally, to be paid within 30 days of Commission Order by Commissioner Runbeck.

*Seconded by Commissioner Hartley.*

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

*Commissioner Baker stated that it is important that the Commission remains consistent in their enforcement actions and impositions of civil penalties among similar cases. He suggested that, in unusual cases like this, it would be helpful for staff to come up with guidelines about what constitutes mitigating circumstances and what the appropriate weight given to the mitigators should be.*

**E. Shadow Mountain Golf Course (Unlicensed)/August Searcy (Owner)/Joseph Michael Walker (Unlicensed Applicator) - Case # 2004-088**

*Commissioner Baker noted that John Mathias, the homeowner in this situation, gave a carbon copy of the letter he wrote describing the herbicide treatment to Senator Arzberger, which he said was unusual. Commissioner Baker asked if anyone from Senator Arzberger's office commented, because he knows that the senator has an interest in the pesticide regulation area. Lisa Gervase stated that as far as she knows, they have not received any calls from her office. Commissioner Robinson stated that it was probably a disgruntled employee who turned these individuals in.*

**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 Fraker.*

**VOTE:** 6-0 Motion carried.

**F. ABM Landscape Services (Unlicensed)/James McClure (Vice President) - Case # 2004-081**

*Terry Mahoney, director of operations for ABM, appeared.*

*Mr. Mahoney stated that he sent a letter to Vince Craig about two weeks ago accepting the cease and desist order, and that they ceased and desisted on the day of the violation. Mr. Mahoney stated that he talked to one of their vice presidents in California, and that it was a corporate mistake that was made from California. He stated that after they ceased and desisted, they locked up all chemicals and sprayers in a lock box and now sub-contract out*

*the pesticide work to two licensed companies. Commissioner Runbeck asked if there were any aggravating circumstances. Vince Craig stated that staff's recommendation is to leave the discretion up to the Commissioners. He also stated that the name on the November 23 settlement letter (Fred Iseli) is not recognized on the Corporation Commission website as being a corporate officer. Commissioner Runbeck asked Mr. Mahoney if he is a corporate officer. Mr. Mahoney stated that he is not, but that Fred Iseli and James McClure are. He stated that Mr. Iseli is a signatory when they have contracts. Lisa Gervase emphasized that in order to have an acceptable resolution, someone with authority needs to speak on behalf of the company. Mr. Mahoney stated that the process would be moved up the chain. Lisa Gervase stated that this could be done by Consent Agreement.*

**MOTION:** *To accept proposed resolution to issue a Cease and Desist Order and issue a \$500 civil penalty against ABM Landscape Services/James McClure, jointly and severally, to be paid within 30 days of Commission Order, 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 Runbeck.  
Seconded by Commissioner Baker.*

**VOTE:** 6-0 *Motion carried.*

**G. Timothy Fickett (Licensed Applicator/Unlicensed Company) - Case # 2004-075 and 2004-151**

**MOTION:** *To send the matter to Administrative Hearing and dismiss duplicate complaint 2004-075 by Commissioner Runbeck.  
Seconded by Commissioner Hartley.*

**VOTE:** 6-0 *Motion carried.*

*(Break from 10:55 A.M. to 11:10 A.M.)*

**H. J & T Properties LLC (Unlicensed)/Rosemarie Fernandez (Member)/Jon Rutten (Member)/Abraham Palacio (Unlicensed Applicator) - Case # 2004-073**

*Mrs. Fernandez appeared.  
Mr. Palacio was present.*

*Lisa Gervase stated that part of the difficulty in resolving the complaint is that staff could not obtain responses before, but representatives are here today. She stated that the matter could be tabled to give Vince Craig and these respondents a chance to discuss. She stated that if the settlement conference concludes before the Commission meeting adjourns, then the Commission can decide on the matter. If the Commission meeting is adjourned before the settlement conference concludes, then the matter could be placed on next month's agenda. Mrs. Fernandez stated that she was called in May and told that the Palacios were doing some landscaping that Mr. Jon Rutten had hired them for, and that she did not know anything about the case and did not hire them. She stated that the Palacios do work for her occasionally, including tile setting and cleaning of the rental houses. She stated that someone told her in May that they could not spray, that only an owner could spray, so she and her husband went to Home Depot to buy equipment to spray in the rental houses and they were cited for that. She stated that she resents this because she has answered every phone call.*

*Commissioner Peterson then advised the parties to continue their discussion in settlement conference.*

*When they returned from the settlement conference, Vince Craig stated that the parties were interviewed separately and then together. He stated that Mr. Palacio was a laborer for hire who would wait on the street corner for contractors to pick him up to perform labor. Approximately two years ago, one of the corporate officers for J&T hired him. Since then, he and his wife performed odd jobs for J&T, such as tile work and cleaning. On the date in question, one of the corporate officers from J&T spoke with Mr. Palacio to get some herbicide from Home Depot to spray on one of the properties they own. Mr. Palacio was caught by the SPCC and was not paid for the job. Vince Craig stated that current corporate officer Mrs. Fernandez did not understand the "own and occupy" issues and stated that she spoke to the SPCC a year ago and was told that as long as she owned the properties she could treat them. However, she and the Palacios have agreed to a cease and desist order. Vince Craig stated that staff recommends cease and desist orders for the Palacios and Mrs. Fernandez. He stated that no penalty was recommended primarily because it was a labor-for-hire situation and Mr. Palacio did not hold himself out as a company or as a landscaper.*

**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:** 6-0 Motion carried.

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

**A. Complaint Status Log**

*Mike Francis stated that the Complaint Status Log should be included with the Commissioners' information. He also stated that the case involving the work done at Commissioner Peterson's Department of Agriculture office is in the inquiry stage and will likely be before the Commissioners in an upcoming month. Commissioner Peterson stated that the Complaint Status Log is big, but that the process is still moving in a positive direction, as cases are being dealt with timely.*

**X. Recommended Decisions and Orders of the Office of Administrative Hearings (OAH) Administrative Law Judge (ALJ)**

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

**A. Robert Lee Chevalier (App) - OAH Docket #: 03A-136-SPC/SPCC Case # 2003-136**

*Commissioner Fraker recused himself because Mr. Chevalier is a former employee. Christopher Munns stated that this case involves free lance pest control work. He stated that Mr. Chevalier did not appear at the hearing, they tried to contact him before the hearing without success, and they waited for fifteen minutes at the hearing, to no avail. Christopher Munns stated that with the exception of page 2, paragraph 9 (misspelling of Mr. Chevalier's name), he believes that the ALJ Findings of Fact and Conclusions of Law are accurate. He stated that the Findings of Fact and Conclusions of law are justified by the evidence presented and he urged the Commission to adopt them as modified.*

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

**VOTE:** 5-0 Motion carried (Commissioner Fraker recused).

*Christopher Munns stated that with regard to the Recommended Order, Judge Mihalsky recommended a \$700 civil penalty, as there were no mitigating circumstances. Christopher Munns stated that he believes that the*

*civil penalty is appropriate and he recommended that the Commission accept it.*

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

**VOTE:** *5-0 Motion carried (Commissioner Fraker recused).*

**XI. Orders Vacating hearings with Settlement Recommendations**

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

**A. Cochise Termite & Pest Control Company, Inc., (BL)/Donald Ramey (QP) - Case # 2004-012**

*Jana Flagler, attorney for Respondents, available via telephone if needed.*

*Christopher Munns stated that he spoke with counsel for the licensee, that they reached a consent agreement that they believe is fair and appropriate, and he urged the Commission to accept it. Commissioner Peterson asked if they would also need to rescind sending the matter to hearing. Lisa Gervase stated that the ALJ already vacated the hearing to give the Commissioners the opportunity to consider the proposed settlement.*

**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 Runbeck.*

**VOTE:** *5-0 Motion carried (Commissioner Fraker out of the room).*

**XII. Commission's consideration and action: possible suspension of Business, QP and/or Applicator Licenses for nonpayment of TARF fees, civil penalties and/or renewal fees (Ms. Gervase)**

**A. Case Nos. 2003-100 and 2003-106 - Justin Dundon (Applicator License No. 020878 (Issued 10/30/02; Expired 5/30/04) - These two cases were dismissed without prejudice against Mr. Dundon since Staff is recommending**

suspension of Mr. Dundon's Applicator License for nonpayment of renewal fees. His license will then automatically be revoked after one year.

*Lisa Gervase stated that these cases were dismissed without prejudice against the applicator, he has not renewed his license, it has expired. Staff recommends suspension because it is unlikely that they will be able to track him down.*

**MOTION:** *To suspend the applicator license for non-payment of renewal fees, by Commissioner Baker.  
Seconded by Commissioner Robinson.*

**VOTE:** 6-0 *Motion carried.*

- B. Case No. 2001-197 - Finocchio Pest Control, Business License No. 5483 (Issued 11/14/97; Expired 12/31/00)/Steven M. Finocchio/Applicator License No. 970234 (Issued 3/18/97; Expired 5/30/99) - Staff recommends suspension of Finocchio Pest Control's Business License and Steven M. Finocchio's Applicator License for nonpayment of \$700 in civil penalties.**

*Lisa Gervase stated that his is an older case in which a civil penalty was ordered, the licenses have expired, staff was unable to obtain collections and asks that the business license and applicator license be suspended.*

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

**VOTE:** 6-0 *Motion carried.*

- C. Case Nos. 90-106 and 91-107 - David McQuaire/Applicator License No. 891030 (Issued 5/21/90; Expired 5/30/00) - Staff recommends suspension of David McQuaire's Applicator License for nonpayment of \$400 in civil penalties.**

*Lisa Gervase stated that this is a similar situation in that the applicator did not pay \$400 in civil penalties and his applicator license expired.*

**MOTION:** *To suspend the applicator license for non-payment of civil penalties, by Commissioner Runbeck.  
Seconded by Commissioner Baker.*

**VOTE:** 6-0 Motion carried.

### **XIII. Felony Applicants**

*Commissioner Baker asked if the policy statement regarding felony convictions that was sent to him from Lisa Gervase could be put in the Commission book, because he wanted to use it as a referral in front of the felony convictions. Lisa Gervase stated that it is on the SPCC website, and it might be easier to put it in the take-home binders rather than having to flip back and forth to it in the Commission materials.*

#### **A. Arevalo, Carlos Roberto**

*Mr. Arevalo appeared.*

*Commissioner Fraker noted that a category was not marked on Mr. Arevalo's application. Mr. Arevalo stated that he works for the Parks and Recreation Department in Tucson, and wants to do general pest and weeds. He stated that he has worked there for eight months and has a letter from his supervisor and coworkers. Commissioner Peterson noted that Mr. Arevalo had two incidents occurring six years apart, and asked how he is dealing with it now and whether he drinks anymore. Mr. Arevalo stated that he is older now (36 years old), just drinks occasionally at family gatherings and does not have a problem. He stated that he does not make excuses and that he just got caught before. Commissioner Peterson asked if Mr. Arevalo has just been lucky this long or if in fact he has not drunk for this long. Mr. Arevalo stated that he only drinks now when at a safe place, like with family. Commissioner Peterson noted that Mr. Arevalo has two aggravated DUIs. Mr. Arevalo acknowledged this, but stated that his last conviction was in February 1994. He stated that he is more responsible now and has a driver's license. He also stated that he has had custody of his daughter for the past eight years. He stated that if he was still a drunk, then he would not have custody and would not be successful at raising a child on his own. Commissioner Runbeck asked what Mr. Arevalo did before his current job. Mr. Arevalo stated that he was a handyman. Commissioner Runbeck asked how much time Mr. Arevalo spent in jail last time, noting that he was sentenced to four years. Mr. Arevalo stated that he only spent two years in jail and got out on parole. He stated that he was on supervised parole for a year and a half after successful completion of an alcohol treatment program. He stated that he was then on unsupervised parole. He stated that he was tested once a month, was successful and did not have a drinking problem while on parole. Commissioner Peterson asked if, at the time of the convictions, Mr. Arevalo was drinking hard, and how his lifestyle has changed since then. Mr. Arevalo stated that he has better relationships with people, including family and friends. Commissioner Peterson asked Mr. Arevalo if he was still hanging with the same people. Mr. Arevalo stated that he was not. Commissioner Peterson stated that on one stop Mr.*

*Arevalo tried to run away and that this adds another element to the incident. Mr. Arevalo stated that when you are drunk, mistakes compound, and he was scared at the time. Commissioner Runbeck stated that Mr. Arevalo should not be penalized for two incidents six years apart, but that the Commissioners want to make sure that there is not a drinking problem now and that he is not performing pest control while drunk. He stated that he has a good job and does not want to lose his job, so he would not do something stupid to jeopardize it. He stated that he is a grown man who has recognized his past mistakes and has changed.*

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

**VOTE:** *6-0 Motion carried.*

## **B. Gage, Brandon James**

*Mr. Gage appeared.*

*Commissioner Runbeck asked if Mr. Gage has a case pending for a DUI arrest on July 27, 2004. Mr. Gage stated that he spent two days in jail, paid a fine and took a class, and that the arrest was only for alcohol, not for DUI. Commissioner Runbeck asked if Mr. Gage was convicted in the past for a misdemeanor DUI. Mr. Gage stated that he was, and that it was his first. Commissioner Robinson asked Mr. Gage if he was still working at Walmart. Mr. Gage stated that he was not, that it was like a military school, and that he does not like management. Commissioner Peterson asked Mr. Gage where he was working now. Mr. Gage stated that he was working odd jobs in Payson. Commissioner Peterson noted that Mr. Gage is 22 years old and is still on probation. Commissioner Baker asked if Mr. Gage has any sponsorship in the pest control industry. Mr. Gage stated that he does not, but just wants to stop working at gas stations and get a real job. Christopher Munns stated that pursuant to statute, the Commission can only look at felony convictions as a sign of moral character, so it would be improper to base a decision on a misdemeanor DUI conviction. Commissioner Peterson stated that it appears that Mr. Gage's trouble started with his brother and asked if he was still around. Mr. Gage stated that he will be in jail for quite a while. Commissioner Baker stated that the limited time frame is a problem, but that Mr. Gage is headed in the right direction if he continues to keep himself clean. Commissioner Runbeck clarified the statute by stating that the applicant needs to be of good moral character, and that a felony conviction may demonstrate a lack thereof. She stated that his misdemeanors may demonstrate lack of moral character, and noted that the theft incident was recent. She stated that she would like to see a longer demonstration of good behavior. She also stated that if Mr. Gage can talk an employer into taking him on, and if he establishes a good history of employment, then this will make a difference in the future. Mr. Gage stated that he is working as a sales associate for someone in*

Payson.

**MOTION:** *To deny application based on the fact that applicant is still on probation, the need for more time to reflect rehabilitation, the information in the police records reflect a lack of good moral character, and the stolen property charge is recent - needing more time of a clean track record, by Commissioner Fraker. Seconded by Commissioner Hartley.*

**VOTE:** 6-0 Motion carried.

### **C. Lipphardt, Ryan C.**

*Mr. Lipphardt appeared.*

*Commissioner Runbeck asked if Mr. Lipphardt's felony incident was gang-involved. Mr. Lipphardt stated that it was not. He stated that he had been driving a friend and the friend saw a guy against whom the friend had a grudge. Mr. Lipphardt stated that he then pulled up next to the guy and opened the door but never left the doorway. Mr. Lipphardt stated that his friend then beat up the guy and his car, and then Mr. Lipphardt and his friend got in Mr. Lipphardt's car and they drove away. Mr. Lipphardt stated that this happened six years ago, right out of high school and when he had just turned eighteen years old. He stated that he received a felony conviction for being the driver. Commissioner Runbeck asked Mr. Lipphardt if he took part in the yelling while driving away that was documented on the police report. Mr. Lipphardt stated that he does not remember. Commissioner Runbeck asked what Mr. Lipphardt's sentence was. He stated that he was given three years probation, but was let off after a year and half of good behavior. He stated that he has not had any problems before or since the incident and that he is not hanging around with the friend anymore. He stated that he is remorseful, knows it was wrong, and considers it a learning experience. Commissioner Peterson asked Mr. Lipphardt if he was scared of the friend giving the orders in the car. Mr. Lipphardt stated that it was a dumb thing to do. Commissioner Runbeck asked who Mr. Lipphardt's current employer is. He stated that he has been working for about a month for Bill's Homes Service Company, doing general pest control. He stated that he was previously working in the restaurant industry in Tucson, but the place where he was working caught fire. So, he responded to an ad for a decent wage and nice benefits package with Bill's. Commissioner Runbeck noted that Mr. Lipphardt attends Calvary Chapel Oro Valley church. Mr. Lipphardt stated that he moved to Tucson from Phoenix to become part of an up-and-coming outreach program.*

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

**VOTE:** 6-0 Motion carried.

**D. Ramon, Arnold Vernon**

*Mr. Ramon did not appear.*

*Robert Tolton stated that staff member Helen Turner spoke with Mr. Ramon, who said that he was no longer working with Mighty National. He stated that Mr. Ramon stated that for last month's meeting, Mr. Ramon arrived in Scottsdale from Tucson at 3 p.m. after the meeting had adjourned, so he turned around and drove home back to Tucson. Robert Tolton stated that Mr. Ramon stated that he was planning on attending today's meeting, but he is not here today. Robert Tolton stated that Mr. Ramon is a renewal applicant, so there is no time frame problem. He also stated that Mr. Ramon stated that this matter was heard before, although staff has no record of it. Commissioner Runbeck asked if staff has checked for any indication that Mr. Ramon has had any felony convictions since 1991. Robert Tolton stated that a background investigation revealed nothing. Commissioner Baker asked if Mr. Ramon was working for Mighty National anymore. Robert Tolton stated that he talked to someone from Mighty National who said that Mr. Ramon was not working for them anymore, although they did not say whether it was a voluntary or involuntary disassociation. Commissioner Robinson asked if the matter could be tabled with an ultimatum that he needs to appear, and with a letter sent to Mr. Ramon to that effect. Commissioner Runbeck stated that there needs to be a risk involved. Commissioner Baker asked if the Commission could just flat out deny Mr. Ramon. Lisa Gervase stated that Mr. Ramon is a renewal applicant who has been renewed before because there is no failure to disclose issue. She stated that staff has no evidence that the Commission ever reviewed and considered his felony. She is not sure if the Commission can give Mr. Ramon an ultimatum. She stated that the Commission could keep tabling the matter until the May renewal period, and then if he applies to renew in May then staff could decide whether to hold him up until the matter come before the Commissioners. Commissioner Fraker stated that Mr. Ramon has an active license, and as long as he does not appear he is able to continue working. Robert Tolton stated that during this past year's renewal period, staff was very diligent at checking felony disclosures. He stated that for the past three years, Mr. Ramon has disclosed his felony, but staff had not acted upon it. He stated that staff did not find any evidence of Commission approval for him. He stated that staff placed the matter on the agenda upon receiving some supplemental information from Mr. Ramon. Robert Tolton stated that Mr. Ramon said he never received notice of the October Commission meeting in Tucson, where he lives. The notice was returned as undeliverable. Robert Tolton stated that Mr. Ramon said he had car trouble on the way from Tucson to Scottsdale for the November meeting. Robert Tolton stated that staff called Mr. Ramon approximately one week ago to notify him of the December meeting, and he said he was planning on coming. Lisa Gervase stated that there was no basis for not renewing Mr. Ramon's applicator*

*license this past May, but staff wanted the Commissioners to review the felony so that staff had a record of it. She stated that the only options are to continue to table the matter, and if he does not appear for the Commissioners to talk to him, review his felony and make a public vote, then he could be flagged at the May renewal time and he will not be renewed. Commissioner Peterson asked if they could deny him now so that he would not be in business until May. Commissioner Runbeck asked if it would be appropriate to deny a renewal because he does not appear. Lisa Gervase stated that it would not be appropriate. Commissioner Runbeck stated that the Commission needs to review the felony to see if it is sufficient to prevent a renewal. Christopher Munns stated that Mr. Ramon's license was granted upon his initial application which disclosed the felony. He stated that the Commission would have to revoke the license for some grounds. He stated that they cannot do anything right now to tell him that he cannot do business. He stated that when it comes up for renewal, he would have to look at their options. He stated that action cannot be taken unless staff generates a complaint for revocation, or the renewal time comes. He stated that there is no procedural vehicle available now to take his license. Commissioner Peterson stated that this matter does not need to be on an agenda until May. Lisa Gervase stated that this was true, unless he decided to appear before then. Commissioner Baker asked if staff has an address for Mr. Ramon now. Robert Tolton stated that they do, although mail has been returned to staff. Commissioner Peterson stated that staff should tell Mr. Ramon that he does not need to appear until May. Commissioner Baker stated that a stern letter should provoke him to come before the Commission so that they could make a decision. Commissioner Runbeck stated that there is no decision to be made though. She stated that she would like a legal opinion as to whether, after all these years, they have a basis for looking at this issue. She stated that perhaps this could be addressed at a later date in executive session.*

#### **E. Renteria, Antonio Manuel**

*Mr. Renteria appeared.*

*Eric Warshaw, from AAA Landscape, appeared.*

*Commissioner Peterson stated that Mr. Renteria has a long, serious history. He asked how long Mr. Renteria was in jail. Mr. Renteria stated that in 1997, he was sentenced to 30 months in an intensive center, like a boot camp. He stated that he was supposed to be there for 6 months, but another case came up and he was indicted in a different district. He stated that he was in Colorado when an investigation was ongoing for a South Dakota incident, and he served 115 months time in South Dakota. Commissioner Robinson stated that the probation officer lists that Mr. Renteria's performance on supervised release has been "moderate", and that this did not sound like a strong backing. Mr. Renteria stated that he has been on probation for only about a year, and that he has been doing his job. He also stated that he was reporting to a probation officer every month, and then the*

probation officer told him to just turn in his monthly reports. He also stated that he has shown up when he is supposed to and has passed random urinalysis tests. Commissioner Peterson asked when Mr. Renteria was released. Mr. Renteria stated that he was released in a halfway house in July 2003 and then placed on probation in November 2003. Commissioner Fraker asked how much longer Mr. Renteria would be on probation. Mr. Renteria stated that three more years are possible depending on how he behaves. Commissioner Robinson asked how long Mr. Renteria has been working for AAA Landscape. Mr. Renteria stated that he has been working there since August 2003. He stated that he is a lead person, runs a crew, and is an interpreter for classes they hold. Mr. Warshaw stated that Mr. Renteria does pruning, handles crews, and is bilingual, so he interprets for his crew and other crews also. He stated that Mr. Renteria helps teach the apprenticeship program and helps in any way that he can. Commissioner Peterson asked why the company took the risk with Mr. Renteria. Mr. Warshaw stated that he thinks that Mr. Renteria has the talent to help the company grow and he thinks that Mr. Renteria can put forth his effort into making other employees better. He stated that Mr. Renteria is valuable, and that in order to be promoted, he needs to become spray certified. Commissioner Peterson asked Mr. Warshaw if Mr. Renteria's past concerned him. Mr. Warshaw stated that he is a chemical supervisor, so he helps in the teaching/training, but does not personally conduct the hiring. Commissioner Runbeck asked what Mr. Renteria did while inside jail. Mr. Renteria stated that he took an apprenticeship program and did golf course landscape while at the military-style camp. He also stated that he attained a certification at an Air Force base in Las Vegas. Commissioner Runbeck asked if Mr. Renteria remains in contact with the people with which he was previously involved. Mr. Renteria stated that they are all in prison and he has no plans to have contact with them after they are released because they will be deported and Mr. Renteria is a U.S. citizen. Commissioner Runbeck stated that Mr. Renteria seems to be making an effort, has been employed for 13 months, has good references from his employer, and made efforts to improve himself while inside jail. She stated that she was glad she had the chance to talk with Mr. Renteria because if she had to base her decision solely on the documents in the file, she may have voted against him. Commissioner Robinson stated that he believes that Mr. Renteria is on the right road, but the seriousness of the offenses will compel him to vote against Mr. Renteria. He stated that he does not think this will affect Mr. Renteria's current job, and if Mr. Renteria comes back to the Commission in a year he will be in better shape. Commissioner Baker stated that he hopes that AAA keeps Mr. Renteria employed for another year, that today's vote is just a hiccup for him and that he will hopefully be back shortly. Mr. Warshaw asked when they should come back. Commissioner Peterson stated that Mr. Renteria probably should not come back until he is off of probation.

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

**VOTE:** 2-4 Motion failed (Commissioners Robinson, Fraker, Peterson and Baker opposed).

**MOTION:** To deny application based on the fact that applicant is still on probation, it is too premature to issue a license now-insufficient time of a clean track record, and the seriousness of the offense, by Commissioner Baker.  
Seconded by Commissioner Fraker.

**VOTE:** 4-2 Motion carried (Commissioners Runbeck and Hartley opposed).

#### **F. Sanchez, Benjamin Ricardo**

*Mr. Sanchez appeared.*

*Commissioner Runbeck asked when Mr. Sanchez was hired by Pima County. Mr. Sanchez stated that he was hired two months ago and is a trade maintenance technician. He stated that he served eight and half years of a ten-year sentence for DUI and was released on June 15, 2004. He stated that he is on community supervision until November 2005. He stated that he has not drank since November 5, 1995, the day that he turned himself into the county, where he stayed for a couple of months before going into prison. Commissioner Peterson asked what has changed now from before so that Mr. Sanchez is not motivated to drink. Mr. Sanchez stated that he attends AA meetings and has related documentation. He stated that he is no longer with his previous girlfriend and that he is not currently married. He stated that he is trying to get his life back in order. He stated that since he has been out of jail, he has worked for several landscaping companies and needs to become certified to keep his job. Commissioner Peterson stated that it appears that Mr. Sanchez has had multiple social security numbers and several aliases. Mr. Sanchez stated that he does not know how this happened, and that he probably gave the wrong SSN when he was intoxicated at the time of an arrest. He stated that he was still approved for an apartment. Mr. Sanchez stated that he was employed by Letro Landscaping and then The Groundskeeper for about a month and a half before working for Pima County. He stated that even though he does not work with pesticides and works on a baseball park, he still needs to obtain an applicator license in order to maintain his job. Commissioner Peterson noted that Mr. Sanchez worked for electronic firms previously. Mr. Sanchez stated that prior to being incarcerated he worked for a couple of electronic companies, but then switched to the landscaping industry because the electronic field varies. He stated that the pay is good in the electronics industry if you can survive some of the layoffs. Mr. Sanchez stated that he has matured, does not hang out with the same people as before, and does not want his previous lifestyle. He stated that he wants to have*

*an opportunity to pass the test and keep his job. He stated that he would have brought his supervisor from the county, but he is on vacation. Commissioner Fraker stated that Mr. Sanchez makes a good presentation and is going in the right direction, and advised him to re-apply after he is released from community supervision in November 2005.*

**MOTION:** *To deny application based on the fact that applicant is still on community supervision until November 2005, it is too premature to issue a license now, and the applicant had multiple felonies, by Commissioner Fraker.  
Seconded by Commissioner Robinson.*

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

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

*Mr. Teran appeared.*

*John (last name?), supervisor and risk manager for the Maricopa Community College District, appeared.*

*Mr. Teran stated that he works for Estrella Mountain Community College. Commissioner Peterson stated that Mr. Teran has had serious dug problems and asked when the last problem occurred. Mr. Teran stated that he has been clean and sober since 1995 and out of prison since 2000. Commissioner Peterson asked if Mr. Teran was a kleptomaniac. Mr. Teran stated that he was, because he needed ways to get money to buy drugs. He stated that he does not need to do this anymore because he does not do drugs anymore. He stated that he will have been employed with the college for four years in April 2005, the first two of those years being part-time. He stated that licensure will lead to advancement, and no one at the college is approved to apply pesticides at this time. Mr. Musare stated that Mr. Teran was employed by their sister college, Glendale Community College, for two years without benefits. He stated that Mr. Teran has been working for him since April 2003. He stated that Mr. Teran's past history was not part of the screening process and it did not jeopardize his employment with them. He stated that they plan on continuing his employment. He stated that their district has been caught up in a very convoluted pest management situation. He stated that they are under the control of their district office and need a licensed applicator. Mr. Musare stated that they have contracted out their weed control work, which is a big burden on the district to the tune of \$6,000 per year for one site. He stated that in the past, Mr. Teran has performed diligently, works late if necessary, and has high character. Commissioner Peterson asked where the people with whom Mr. Teran used to hang out are now. Mr. Teran stated that some are in prison and some are in still in the neighborhood, but that he does not live in that same neighborhood anymore. He*

*stated that he lives with his girlfriend of twelve years and her two boys, the youngest of whom is thirteen years old. He stated that he supports all of them. Commissioner Peterson asked if Mr. Teran attends Narcotics Anonymous. Mr. Teran stated that he does not and does not feel that he needs it because he has had no problems since the felony incidents. He stated that he is almost 47 years old. He stated that working at the college will be way out for him to make a career and retire. He stated that he makes no excuses for what he did in the past. Commissioner Runbeck asked if Mr. Teran has had any problems with violence or assault. Mr. Teran stated that he had a misdemeanor assault when he ran out of a store and a security guy grabbed him and then fell down. He stated that another time he opened a car door and hit a car next to him, but this was ten years ago and only caused a few hundred dollars damage. Commissioner Peterson asked what support mechanisms Mr. Teran had, given that he has an addictive personality and does not go to Narcotics Anonymous. Mr. Teran stated that he has a good job and a family with kids who depend on him. He stated that he feels he has paid his debt, and that going back to drugs will hurt him. Commissioner Fraker stated that he appreciates Mr. Teran's honesty, and that the Commissioners are in a difficult position. He stated that some applicators are not aware that when the SPCC grants a license, the license can be expanded enabling applicators to be able to go into people's homes. He stated that he understands that Mr. Teran is a maintenance person in a controlled environment, so this is unfortunate. He stated that he has a concern with Mr. Teran's extensive criminal record, four felony convictions and dozens of other arrests.*

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

**VOTE:** *4-2 Motion carried (Commissioners Fraker and Peterson opposed).*

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

**A. Continuing Education Committee Minutes**

No CE Committee Meeting Minutes for December.

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

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

No CBT Statistics for December.

**XVI. Approval of Minutes**

**November 12, 2004 (regular session) Minutes**

**MOTION:** *To approve the November 12, 2004 Minutes by Commissioner Baker.  
Seconded by Commissioner Fraker.*

**VOTE:** 5-0 *Motion carried. (Commissioner Runbeck abstained)*

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

**Current Proposed dates**

**January 14, 2005** - *Commissioner Hartley not available.*

**February 11, 2005** - *Commissioner Robinson not available.*

**March 11, 2005** - *Commissioner Peterson may not be available.*

**April 8, 2005**

**May 13, 2005**

**June 10, 2005**

*Lisa Gervase stated that a representative from the Governor's office was here today to observe the proceedings. She also stated that the January Commission meeting would be a policy-centered meeting.*

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

**A. Expenditure Report**

*Lisa Gervase stated that as of the end of November, five months into the fiscal year, the SPCC has expended roughly 45% of their appropriations, which is just about on target because they usually spend 8%-9% per month. She stated that they are doing fine and are projected to have a balance that they likely will use by the end of the fiscal year.*

**B. Case Status Report**

*Report in Commission materials. No discussion.*

**XIX. Adjournment - 12:50 P.M.**

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

**VOTE:** 6-0 *Motion carried.*

