

**Structural Pest Control Commission  
9535 E. Doubletree Ranch Road  
Scottsdale, AZ 85258**

**COMMISSION MEETING  
FRIDAY, January 14, 2005 - 9:00 A.M.  
MINUTES**

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

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

**Commissioners Absent:** Commissioner Hartley and one vacancy

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

**II. Call to the public**

*Michael Pfeiffer, owner of Pesticide Training Resources, has experienced difficulty in checking data entered into the online CE reporting tool for mistakes. He thought that staff would make any and all changes he requested, but they have only made some. He stated that he was informed by staff that additional changes are not needed and would not be made. Commissioner Peterson stated that it would be appropriate to consider this matter for a future agenda for discussion. He asked Dr. Pfeiffer if he has had communications with staff recently. Lisa Gervase stated that staff has had ongoing communication with Dr. Pfeiffer. She stated that he continues to be the only approved CE provider with concerns about the reports that can be printed from the online reporting system. She stated that staff is committed to making any needed changes, and have done so. She stated that the changes that Dr. Pfeiffer requests are aspirational, but not needed, and that just like with any electronic medium, aspirational changes are wonderful when you have the time to make them. She stated that the system works well, and the reports that can be downloaded make it easy for people to double-check their entries.*

*Susan Tomlinson, owner of North Country Pest Management, Catalina, Arizona, represented the Arizona Pest Professional Organization. She stated that it is a newly-formed, non-profit trade association for the pest industry, dedicated to the betterment of the trade through ethically-run businesses and education. She stated that active membership is open to QP license-holders and business owners/managers, and Allied Membership is available to others interested in the*

industry. She stated that she, along with Ken Frederick from Conquistador Pest & Termite in Tucson and Fred Willey from Invader Pest Management in Phoenix, started working on this project in May. She stated that there is joint membership with the National Pest Management Association. She stated that at this point, anyone who is currently a member of the NPMA from Arizona is automatically a member of AzPPO, and that they currently have 41 members. She stated that next week they have their first meetings. They will be in Tempe on Tuesday at Target Specialty Products, and then in Tucson on Thursday at UNIVAR Warehouse. They are offering free membership to Arizona companies until July 1, when joint membership fees will apply to both organizations. She stated that the free membership is now being offered to NPMA if anyone signs up bet now and July 1. She stated that they also will offer discounted registration to the Southwestern Conference of the NPMA in Albuquerque at the end of month. She stated that they are a "one company, one vote" organization, so all companies, whether a one-person or a multinational operation, will have one vote within the organization. She stated that she has green flyers for any QPs that did not receive postcards that went out last week. She stated that she is looking forward to a fun time getting this organization off the ground.

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

Commissioner Robinson stated that he had a letter late yesterday from Rick Robinson of DLC Resources, who had some concern about the testing procedures. Lisa Gervase stated that she received the letter via email last night, responded to Mr. Robinson, and will forward it on to the Commissioners.

Commissioner Peterson stated that he received a call from a firm that was asking to be put on an agenda because they thought some stuff had been missed in their application. Commissioner Peterson stated the agenda was amended based on that conversation, but by the next morning when Commissioner Peterson made a couple more calls and pulled the item from the agenda. He stated that it was too much missing information and too late to put it on the agenda, and that it was a unique situation for him. He suggested that when someone has a situation when they feel something should be on agenda, he encourages them to work with staff and use put it in writing. He stated that we are an instantaneous society, but when it comes to licenses, people rely on regular mail. He stated that it is appropriate for such people to give a call to staff and only to the Commissioners if they feel they cannot move along anymore with staff. He also suggested that people make sure Lisa Gervase is engaged in the process.

### **IV. Summary of Current SPCC Events, Activities, Notices**

*Lisa Gervase stated that staff has completed the business license and QP license renewal process. Those business licensees and QPs that did not renew before December 31 have expired licenses and cannot operate. She stated that a total of about 101 licenses expired, and they were roughly evenly split between business licensees and QPs. She stated that staff mailed reminder notices two days ago to those 101 licensees, informing them that they cannot be operating, their licenses have expired, and that if QPs do not renew by March 1, they will have to complete the whole application and retesting process. She stated that roughly 38% of the renewals were processed online, which is 10% more than the number of applicator renewals that were processed online in May. She stated that roughly 94% of licensees did renew. She also stated that they will have continued Commission-sponsored CE courses. The next CE course, geared mostly toward applicators, will be March 18 at the Apache Junction high school auditorium, and then there will be a couple more courses in April. She encouraged people to keep an eye out for notices. Commissioner Peterson asked if 94% is the normal ratio. Lisa Gervase stated that it is, and that for every licensee that does not maintain their license, there is at least one who comes in, so there is generally a slight, steady increase from year to year. She stated that some people retire, some close their business, some die, and that this year there were approximately 25 licensees in one of these situations.*

**V. Consent Agenda**

**A. Applications for New Business License**

**Qualifying Party**

- |                                  |                                                                                                                                                                                         |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. Bayne, Michael Spencer</b> | <b>Epic Landscape Construction, Inc.<br/>(Activating Qualifying Party for new business license in "B3" Right of Way &amp; Weed Control)</b>                                             |
| <b>2. Cluff, Claud Eldred</b>    | <b>City of Chandler Park Maintenance<br/>(Activating Qualifying Party for new business license in "B3" Right of Way &amp; Weed Control and "B5" Turf &amp; Ornamental Horticulture)</b> |
| <b>3. Crosier, Terry Dale</b>    | <b>Phoenix Elementary School District #1<br/>(Activating Qualifying Party for new business license in "B3" Right of Way &amp; Weed Control)</b>                                         |

- 4. Denny, Claudia A.                    **ABC Pest Control, Inc. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**
  
- 5. Hoffman, Dallas R.                **Bugsy Pest Control (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**

*Pulled-Mr. Jeffrey Kregg, statutory agent of Bugsy Pest Control, appeared.*

*Commissioner Baker asked what the respective roles of Jeffrey Kregg and Dallas Hoffman are going to be. Mr. Kregg stated that he is trying to start up a new company, and Mr. Hoffman is going to be working for him. Mr. Kregg stated that he needs a QP because he does not have enough years experience, and that Mr. Hoffman will essentially be training him.*

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

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

- 6. Matheson, Stephen Tad            **Rid A Bird (Activating Qualifying Party for new business license in "B1" General Pest & Public Health and "B2" Control of Wood-Destroying Insects)**
  
- 7. Meisenheimer, Steven            **Vista Verde Landscape Installation & Tree Care (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)**
  
- 8. Ramirez, Arturo Gonzales        **Knock'M Out Pest Control (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)**

- 9. Sikes, Troy Nolan** **Pro Clean Pest Elimination (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**
  
- 10. Welsch, Fredrick Thomas** **Wheat's Landscaping & Maintenance (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)**
  
- 11. Wilkinson II, Kevin Robert** **K & K Turf Pests & Weed Control (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. Casacchia, John Alfred** **Recreation Centers of Sun City, Inc. (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control, "B5" Turf & Ornamental Horticulture and "B9" Aquatic Pest Control)**
  
- 2. France, Scott Michael** **Care-Free Termite Protection, LLC. (Activating Qualifying Party for existing business license in "B2" Control of Wood-Destroying Insect)**
  
- 3. Hight Jr., Henry Boynton** **Courtesy Pest Control (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health)**

**C. Applicants for QP Licensure**

1. Adkins, Scott Everett "B3" (Right of Way & Weed Control)
2. Branum, Gary Lafon "B9" (Aquatic Pest Control)
3. Daniel Jr., David Eugene "B3 and B5" (Right of Way & Weed Control and Turf & Ornamental Horticulture)
4. Holdeman, William Richard "B3 and B5" (Right of Way & Weed Control and Turf & Ornamental Horticulture)
5. Gunn, Raymond Eugene "B1, B2 and B8" (General Pest & Public Health, Control of Wood-Destroying Insects and Wood Destroying Insect Inspection)
6. Lindsay, Richard Barton "B3" (Right of Way & Weed Control)
7. Neumeyer, Michael Joseph "B1" (General Pest & Public Health)

*Pulled-Mr. Neumeyer appeared.*

*Commissioner Runbeck noted that the vast majority of his experience is being verified by him. She stated that this is similar to a case last month where the Commissioners had questions for someone who's wife was verifying experience. Commissioner Runbeck stated that the information indicates that Mr. Neumeyer had his own business. She asked if Mr. Neumeyer already had a business license from 1999-2002. Mr. Neumeyer stated that when he had his business up and running he went through a very drastic life change-a divorce, and his mail did not catch up to him in time and some things lapsed. Robert Tolton stated that Mr. Neumeyer did hold a QP license, in 2002 it did lapse, and he had not come back to the Commission until now.*

**MOTION:** *To approve QP testing in "B1" by Commissioner Runbeck.  
Seconded by Commissioner Fraker.*

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

8. Olander, Robert Lee "B3" (Right of Way & Weed Control)

*Pulled-Mr. Olander appeared.  
Mike Denny, of U.S. Pest Control, commented.  
Henry Hight, of Courtesy Pest Control, commented.  
Jim Forler, of Eastwood Enterprises Landscape Services, commented.  
Kirk Smith, of Chem-Tech Supply, commented.*

*Commissioner Baker stated that the experience verification documents from several people list 300 hours of experience with each person verifying experience, for a total of over 3,000 hours. He asked Mr. Olander to explain this, particularly considering that it covers a four-year span in one category. Mr. Olander stated that he has approximately fifty residential houses that he has been doing for years. He stated that he picked out certain houses that he has had long enough to where he has had enough hours. He stated that he would have gotten a license to spray years ago if he had known that he needed it. He stated that he got a landscape license years ago and now wants a weed license. He stated that they were approached and told that he needed a QP to continue spraying for weeds. He stated that they picked twenty customers they had had for years, made a special page they could send to every customer for them to notarize and sign. Commissioner Baker stated that they were unfamiliar with the way he was trying to process this, and that his explanation helped. Commissioner Peterson stated that Mr. Olander must have good customers if they were willing to go out and get these things notarized. Mr. Olander stated that he sent out twenty in the hopes of getting ten. He stated that he thought he would get only get five, but nineteen came back notarized. Commissioner Fraker stated that in reviewing the ten that he sent in, it says that he had 300 hours experience over a four-year period with each person. He noticed that at least a portion of them pertain to mowing lawns, trimming bushes, and doing ornamental work. Mr. Olander stated that he just does landscaping on the side, but not much anymore. Commissioner Fraker asked what portion of the 300 hours is actually spent applying herbicides. Mr. Olander stated that he did not go through the calculations and try to figure that out. He first asked whether carrying the materials on the truck and trailer, which is with him ten hours a day, counts towards the number of hours. He stated that they have chemical and a sprayer, and that for the amount of time spraying, it's approximately 10-20 minutes here or there for a residential house. Commissioner Fraker stated that according to his calculations, if an hour was spent at each of ten residences, with ten minutes for herbicide applications, multiplied by 48 months, this would equal a total of 8 hours per customer, meaning a total of 80 hours experience (8 hours multiplied by 10 customers), and this is a long way from the 3000 hours which is required by law. Mr. Olander stated that they also have four commercial properties and other residential customers that he did not include. Commissioner Fraker stated that even if he had 50*

customers at 8 hours per customer, this would still be only 400 hours. Mr. Olander stated that probably two dozen customers he has had for ten years, and that he also did not include the commercial companies he worked for who had him doing spraying work. He stated that he has approximately 25 years of experience total. Commissioner Fraker stated that only 5 years of experience can be counted. He asked if Mr. Olander has been licensed while doing these applications. Mr. Olander stated that he has not. Commissioner Robinson stated that this situation may be like that in the golf course industry. He stated that he runs 50,000-55,000 man-hours per year to maintain a golf course, and that their spraying time is probably about 500 hours, based on their spray equipment and meter. However, he stated that they have to have materials available, have to be in control of those materials, have to keep records. He stated that they are not particularly like a PCO operator who would go out and work eight hours a day spraying. Mr. Olander stated that they can take the sprayer out at any time. He stated that he had asked for input from a cousin who works for the city who is going through the process of getting his license right now, and the cousin said that if you have material (a sprayer and Roundup) that can be accessed and used at any moment, then these hours would be counted towards experience. Commissioner Fraker stated that he believes that Mr. Olander is doing the right thing in going through this process, but he does not think that Mr. Olander's experience qualifies for anywhere near the 3,000 hours required by law to apply to take the QP test. He stated that if Mr. Olander is approved for testing, he thinks the Commission would be doing a disservice to those in the industry who have the requisite experience and who have put in the time, hours and effort. He stated that even though the Commission wants to bring in the landscaping people and train and qualify them to make applications, they do not want to open up a Pandora's box for every residential lawn maintenance person to use this avenue to qualify for a QP, with minimal hours, when chemical applications are probably less than 5% of their business. Commissioner Runbeck stated that the State is going to have to make up its mind whether it wants to regulate this type of business. She stated that if the Commission is going to enforce their laws and rules on people for whom pest control is a very small part of their business, then the Commission is going to have to find a way to do it without requiring these people to be out spraying 40 hours per week. She stated that it would be unfair to deny licenses to these people because they do not make enough chemical applications. She suggested that maybe they shouldn't be required to have licenses. She called it a "Catch 22", stating that maybe there is a need for a specialized license, and that the proper avenue might be to go through the legislature. She stated that in the meantime, she doesn't think the Commission can continue to cite these people for unlicensed work and not allow them to use that experience toward obtaining a QP license. She

wants to encourage them to take the test so that the Commission knows that at least they know what they are doing. Commissioner Baker stated that, in theory, the Commission is going to see a lot more of this. The question is: how does a landscaper justify the experience hours and get a license when chemical applications are not a big part of the business? He also mentioned that just because the Commission approves someone to take the QP test, this does not necessarily mean they will pass the test. Commissioner Fraker stated that the Commission should not make exceptions for people who do not qualify through the law in hopes that at some point in the future the problem is corrected. He suggested maybe making lower experience requirements. He stated that the same thing is true on the general pest control end of the scale: the Commission denies licenses to people who do not have 3,000 hours of experience, makes few exceptions, and should not make exceptions for landscapers. Commissioner Robinson suggested putting landscapers and golf course maintenance people under the Department of Agriculture regulation. He acknowledged that it likely would not happen. Commissioner Peterson stated that maybe the question is: what do we consider as qualifying for 3,000 hours of experience? Lisa Gervase stated that what constitutes practical experience, in the laws and rules, is up to the discretion/interpretation of the Commission, and they have a lot of latitude. She stated that she is not sure that the Commission is treating people differently, and that we still need to look at each application for QP licensure on its own merits. Commissioner Fraker stated that his interpretation is that practical experience for structural pest control is not mowing lawns and trimming oleanders. Mr. Olander stated that he was just concerned that it would take ten more years to get the requisite experience, but only experience within the past five years counts. He also stated that when he was given a list of names of QPs he could try to work under after he got core and right of way/weed control licenses, he contacted them and they laughed at him because they were concerned about the money and what he makes per week. He stated that he does not spray chemicals everywhere and only buys two 2.5-gallon jugs per year. He stated that he feels that having chemical in his trailer covers the stuff he learned in the books he needed to take the tests (such as containing and controlling potentially dangerous spills, paying attention to chemicals, preventing leaks when driving), and that these hours should be counted.

Mr. Denny stated for the 3,000 qualifying hours, the Commission has to consider that this includes drive time, lunch time, etc., and that in an eight-hour day, most of it is not spray time. Mr. Hight stated that although he has been in the agriculture and pest industry since the late 1970s and has manufactured and formulated herbicides and insecticides, he ran into the same problem when he applied for a QP license for weed control. He stated that they probably need to change the rule requiring 3,000 hours, because

*this is stopping a lot of people. He stated that he does not have 3,000 hours of practical experience as a business operator, but this doesn't mean he does not have the requisite knowledge, but this is tested for on paper anyway. He suggested that maybe the Commission should treat landscapers similar to the termite technicians, by watching them spray. Commissioner Peterson questioned whether the Commission has enough staff to do that. Commissioner Fraker stated that people like Mr. Hight, who have real life experience and knowledge should qualify. Commissioner Fraker stated that he does not qualify for a QP license in turf and ornamental work because he does not have the requisite experience within the past five years, even though he has long term experience and licenses in two states. He stated that they cannot let someone who mows lawns qualify, that the inequity needs to be addressed, and that issuing the license and ignoring the problem is not the answer. Mr. Hight stated that he understands that the Commission would be giving Mr. Olander a license to do more than merely apply herbicides, and that he may not be capable of this. But, for what he wants to do, it is tough for him to become licensed. Mr. Forler stated that he has been in business for over 30 years doing commercial properties. He stated that he does not understand why homeowners, who may not know anything about chemicals, can go to Home Depot and take a little bucket and spray, yet when it comes down to his business (when he has to get the weeds out or risk being fired), he is not allowed to spray. He stated that years ago he bought a big sprayer, was spraying pre-emergent, and found out he could not do that, so he quit, sold out and hired pest control people to spray pre-emergent. But he stated that you cannot haul them out to \$50-\$100 places to spot spray every time you get a few weeds popping out because he does not have enough hours for them. He stated that you can hula-hole them out, and they break up and come back, and he does not see a big deal in using Roundup. He stated that he guarantees there is a bottle of Roundup in every landscape trailer, and that he does not think it is fair for him to be fined \$600 on his first offense. Mr. Smith stated that he has spent a lot of time teaching people about integrated pest management, including herbicides to control weeds, and that this is one of the strategies they recommend. He stated that he has a lot of experience in turf, city parks and the public school system. He stated that poorly maintained turf leads to a lot of use of herbicides. He stated that Mr. Olander probably has experience in maintaining the turf grass properly, mowing, fertilizing, looking at compaction issues, etc., and this may be why he does not use a lot of herbicides. He stated that he deals with a lot of schools in Maricopa county that apply thousands of gallons of herbicides, and that they could eliminate 99 percent of the herbicide use if they hired a good landscape company to take care of grass properly. Mr. Olander stated that from what he read in the books, his identifying, mechanical, and cultivating-type hula-hoe and shovel experience could triple his number of hours. He stated that this past Saturday alone was a ten-hour day for three*

guys, and this would add up immediately. Commissioner Peterson stated that just being on the end of a hose is not the whole picture, and he thinks that the 3,000 hours does not need to be all at the end of the hose. He gave credit for shovels, etc., as part of an integrated pest management program.

**MOTION:** To approve QP testing in "B3" by Commissioner Baker.  
Seconded by Commissioner Runbeck.

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

Commissioner Peterson remarked that the problem is not solved yet. Commissioner Fraker stated that this discussion is more important than most of the things that are on the agenda today, because these are the kinds of things that really affect the people who are in this business. He stated that rushing through a discussion would be a disservice to them, and that they really need to address the core root of the problem, which is the issue of fairness and treating cases consistently regarding the practical experience requirement.

- 9. Pearson, Matthew Gene "B5" (Turf & Ornamental Horticulture)
- 10. Ruiz, Justin Charles "B3 and B5" (Right of Way & Weed Control and Turf & Ornamental Horticulture)
- 11. Sanchez, Mario Joseph "B3 and B5" (Right of Way & Weed Control and Turf & Ornamental Horticulture)

#### D. Request for Company Name Change

- 1. Control 365 Plus, Inc. to Bella Pre-Treat, Inc.

#### End of Consent Agenda

**MOTION:** By Commissioner Runbeck to accept Consent Agenda with the exception of those items pulled for discussion (A5, C7, C8). Seconded by Commissioner Fraker.

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

**VI. Complaints against Licensees**

**A. Adieux Termite Company (BL)/Dana Beadle (QP)/Dean Beard (App) - Case # 2004-103**

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

**B. Mister Bugman (BL)/Dennis Daley (QP)/James Daley (App) - Case # 2004-098**

*Commissioner Fraker had a question for Mr. Daley, but he was not present. Commissioner Baker stated that the applicator in this case was trained, equipped and had responsibility, and yet the information did not get from the blackboard or page into his head, because he perceived sandals as adequate protection for his feet while performing a preconstruction treatment for termites. Commissioner Baker stated that he will leave this up for discussion later when they talk about accountability issues.*

**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 Robinson.*

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

**C. Younger Brothers Pretreat & Home Services, LLC (BL)/James Younger III (Member)/Jenifer Salcido (Temporary QP - Expired 06/5/04)/Jason Collins (QP - Effective 05/23/04)/Robert Beltran (APP) - Case # 2004-095**

*Mr. Beltran appeared.*

*Vince Craig stated that the proposed terms are before the Commissioners. However, he stated that he failed to include an additional proposed term with which the business licensee and QP have both agreed, namely that an Administrative Warning for failure to comply in a timely manner with an*

A.A.C. R4-29-309(A) 24-hour request for records also be assessed against the business licensee and QP. Commissioner Peterson stated that it does not matter whether the business licensee was confused about what the Commission wanted within 24 hours. They should have at least told the Commission that there was some confusion. Commissioner Fraker asked if the business licensee and QP were signed off on the agreement. Vince Craig stated that staff has not drafted the paperwork yet, but there has been a verbal agreement and the respondents are present today. Commissioner Runbeck noted that it appears that Mr. Beltran requested a payment plan and asked if this also needs to be included in any motion made or if any kind of amendment would be necessary. Lisa Gervase stated that typically, if the Commissioners have not formally voted to accept a payment plan or set out the terms of a payment plan, depending on the circumstances, staff usually does not go beyond ninety days on a payment plan because that is the most that she has recently heard the Commissioners accept. She stated that the Commissioners can accept or reject a payment plan or leave it up to staff. Commissioner Fraker asked Mr. Beltran if ninety days is acceptable, and Mr. Beltran stated that it is.

**MOTION:** To accept proposed resolution as modified with the Administrative Warning for the business license and QP license for the R4-29-309(A) violation, 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 Fraker.

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

## **VII. Unlicensed Activity Complaints**

### **A. Cedillo Landscaping & Maintenance (Unlicensed Company)/Abundio Cedillo (Owner) - Case # 2004-100**

Commissioner Peterson stated that this case was similar to two cases last month in which staff did not actually observe the applications taking place, but the respondents admitted having applied. He asked if it was being handled consistently with those cases. Lisa Gervase stated that the two cases from last month (Maldonado Landscaping and ABM Landscape Services) had fewer mitigating circumstances; therefore the Commission imposed \$500 civil penalties in those cases. In this case, the resolution was for a \$400 civil penalty because there were additional mitigating circumstances.

**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 Robinson.*

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

**B. Complete Home Care, LLC/dba Complete Yard Care (Unlicensed Company)/John Pyle (Member) /Chris Wentland (Member) - Case # 2004-096**

*Commissioner Fraker stated that in this case he supports rejection of the proposed settlement. He thinks a warning is okay, but does not think that the Commission, upon sending someone from staff out to a company's office to inform them of licensing requirements, should impose a \$250 fine on the company who had called the Commission and inquired about the proper licensing procedures. He recognized that the company was in violation, but stated that if the Commission is going to have the landscaping people participate in the SPCC regulatory agency and become licensed, then he does not think that this is the right approach. Dave Colvin stated that the \$250 was reduced from \$500 because of respondent's efforts to come into compliance or at least acquire the information, but he also kept in mind that this company had a licensed applicator working for them, so there was some sort of knowledge of, or they should have had knowledge of, licensing requirements. Commissioner Peterson stated that when someone is already licensed, because of this implied knowledge, the penalty should not be lowered. Commissioner Baker stated that he is inclined to agree with Commissioner Fraker because, if this man had been licensed for 15-20 years, and then something changed in the law and he may not know that he is not properly licensed, then it would be unfair to fine him just because he was licensed.*

**MOTION:** *To reject proposed resolution and to issue a Cease and Desist Order only, by Commissioner Fraker.  
Seconded by Commissioner Runbeck.*

**VOTE:** 3-2 *Motion carried (Commissioners Robinson and Peterson opposed).*

**C. Double D Food Management Services (Unlicensed Company)/Donald R. Franklin (President) - Case # 2004-109**

**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 Fraker.  
Seconded by Commissioner Runbeck.

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

**D. Herbert W. Linn (Licensed Applicator #020302 (Expired 05/31/2004)) - Case # 2004-108**

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

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

**E. The Hungry Tree (Unlicensed Company)/Donna Horstman (Owner)Kingston Horstman (Licensed Applicator #020204) - Case # 2004-106**

*Mr. Horstman was 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 impose the terms in an Order, by Commissioner Runbeck.  
Seconded by Commissioner Baker.

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

**F. Valley Groundskeeping (Unlicensed Company)/August Clauss (Unlicensed Applicator), Signature Gardens (Unlicensed Company)/Theodore Heckens, Jr. (Owner) - Case # 2004-064**

*Vince Craig stated that staff was unsuccessful in scheduling a settlement conference. He stated that Signature Gardens received a Notice of Complaint, but the one for the Valley Groundskeeping individual they saw out in the field was returned as "unclaimed". Commissioner Runbeck asked if this was a first time violation for them. Vince Craig stated that it was. Commissioner Baker asked if they were still in business and operating. Vince Craig stated that they are as far as staff can determine. He stated that*

*staff has attempted phone calls and left messages but have not received any calls back. He stated that if the Commission entertains staff's recommendation for a Cease and Desist Order and/or a Civil Penalty, then we would see what would happen from that point on regarding correspondence. Commissioner Fraker recommended that they be fined substantially (\$1,000) in this case, because they made false statements to the inspector, and when the inspectors on the property asked them to wait they drove off, and now they are not responding. Commissioner Peterson asked if the Commission has imposed a \$1,000 fine before. Commissioner Fraker stated that they have in a couple of cases. Commissioner Runbeck suggested that the Commission should make it clear that action is being taken against both businesses, jointly and severally, as was recommended.*

**MOTION:** *To issue a Cease and Desist Order and to impose a \$1,000 civil penalty against Valley Groundskeeping/Signature Gardens, jointly and severally, to be paid within 30 days of Commission Order by Commissioner Fraker.  
Seconded by Commissioner Baker.*

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

## **VIII. Reporting by Licensees on Probation**

### **A. Guillermo Sotelo, Applicator License 040825 - Case 2004-120**

At the September 10, 2004 meeting, the Commission granted Mr. Sotelo his applicator license with the stipulation that his license be on probation for two years with various reporting terms. One of the reporting terms is that he periodically appear before the Commission to report compliance with the terms of his criminal probation, employment status and rehabilitation status. Mr. Sotelo took and passed three licensing exams (Core, B2, B8) within a week of being notified of his approval to test, and was issued his applicator license on September 23, 2004.

*Mr. Sotelo appeared.*

*Commissioner Peterson asked Mr. Sotelo how everything was going. Mr. Sotelo stated that things were going fine day by day, he has a great relationship with his family and is still going to his meetings. He also submitted two letters on his behalf. Commissioner Peterson asked Mr. Sotelo if he has been keeping clean and if he felt he has been contributing to society, and Mr. Sotelo stated that he has been. Commissioner Fraker asked Mr. Sotelo if his employment status is still the same, and he stated that*

*it is. Commissioner Runbeck stated that the letters that Mr. Sotelo submitted do comply with the previous order that he provide letters from him adult probation officer and employer. Commissioner Robinson stated that he was impressed by Mr. Sotelo taking and passing the tests in Core, B2 and B8 within a week after being notified of his approval to test because this showed that he was prepared and ready to go. Commissioner Peterson told Mr. Sotelo to keep up the good work. Commissioner Baker asked if a motion was needed. Lisa Gervase said "No", as Mr. Sotelo was just here today to keep in touch with and report to the Commissioners, and that she would keep the letters in his license file.*

*(Break from 10:25 A.M. to 10:35 A.M.)*

**IX. For review, consideration and action: Proposed Settlements**

- A. University Termite & Pest Control, Inc.,(BL)/Richard L. Rupkey II (QP)/Trent Keith Rowley(APP) - Case 2004-004**

*Tabled for next month to allow the respondents time to negotiate.*

- B. University Termite & Pest Control, Inc.,(BL)/Richard L. Rupkey II (QP)/Jeffery H. Gould (APP) - Case 2004-087**

*Tabled for next month to allow the respondents time to negotiate*

**X. For review, consideration and action: Request for Rehearing or Review of Commission Orders, possibly with settlement proposals**

- A. Eastwood Enterprises Landscape Services (Unlicensed Company)/Alice Forler(President)/Mariano Ochoa (Unlicensed Applicator) - Case #2004-039**

*Jim Forler, representing Eastwood Enterprises Landscape Services, appeared.*

*Mr. Forler stated that when SPCC inspectors stopped him in the field, he pulled all of his stuff out of his truck and trailer, and his employees no longer use it. He stated that it is really a hardship on him, because there are gardeners out there spraying herbicides, and they are bidding on the same jobs. He stated that keeping weeds out seems to be the most important customer concern, and that it is difficult to hula-hoe a big area. He stated that Mariano Ochoa works for him and his wife is the CEO of the company and she does all the paperwork. He stated that he came to the meeting today because he is the one in the field who runs things. He stated that he*

*thinks the fine is excessive for a first offense, especially because he did not know it was illegal. He stated that he thought it was okay to use a five-gallon sprayer or backpack sprayer. He stated that he quit doing pre-emergent work, because he is not going to run his company out of compliance with the law, even though it hurts him. He stated that the problem is not going to go away and the Commission will spend half of their hours dealing with stuff like this and people like himself who do not know they are breaking the law. He stated that he thinks they should have protective equipment, and he would like to get a license, but it will take him two years to get the necessary experience. He stated that he does not think that weeds are pests and therefore the Commission should not be dealing with weeds. He stated that he would like to use Roundup that you can buy at Home Depot, and that people should not be able to buy the stuff if they cannot legally use it. He stated that his company is one of many little companies that use herbicides. Commissioner Robinson asked if Mr. Forler's correspondence meets the requirement to be a petition for rehearing. Christopher Munns stated that it does. Commissioner Fraker asked Mr. Forler if he has started going through the licensing process. Mr. Forler stated that he is not familiar with the licensing process. Commissioner Runbeck asked for information about how the \$600 fine was determined. Mike Francis stated that there was an observance of a pesticide application, and normally for consistency this would elicit a \$500 civil penalty. However, in this case, personal protective equipment required by the label was not worn, and this aggravating circumstance justified an additional \$100 to be added to the penalty. Commissioner Fraker asked Mr. Forler if he understands this. Mr. Forler stated that he does, and asked if people were always fined for their first offense. Commissioner Peterson stated that historically, they are. Mr. Forler stated that this seems pretty steep for the first offense, especially now that he is in compliance. Commissioner Peterson asked the other Commissioners if they wanted to allow reconsideration or not. Commissioner Runbeck stated that she is really torn. She stated that it is an awkward situation, and the Commission has been trying to be consistent in how they treat similar cases. She stated that typically, it is \$500 for the first time plus or minus aggravators or mitigators. She stated that if the Commission is not consistent, then a lot of other people are going to have a lot of complaints. Mr. Forler stated that he thinks the Commission should only issue a warning for the first offense. Commissioner Runbeck stated that this is not the way it has been going, but that maybe the system should be revamped so that the first offense is just a warning. Mr. Forler stated that he has used different pre-emergent companies for the past four years because they are so busy and never want to come back to spot spray. He stated that when you put the pre-emergent down, some weeds still come up. He stated that this is a problem because some areas are so green they look like grass. Commissioner Robinson stated that the Commissioners understand the*

dilemma, but that the current industry members are jumping through hoops, paying extra fees, etc. He stated that there are several companies, not necessarily like Mr. Forler's company, who are doing a lot of work with a five-gallon container. He asked if the Commission should only consider Roundup or if they should also consider other materials that you can buy at Home Depot. He stated that if we let each individual spot spray, then pressure could increase and more serious materials could be permitted to be used without a license. He asked where the Commission should draw the line of permission, whether it is at Roundup, pre-emergents or post emergent diquats. Mr. Forler stated that, after 30 years of experience, he is more qualified than a homeowner. Commissioner Fraker asked when the fine was imposed. Lisa Gervase stated that the decision imposing the fine went out on Nov 23, 2004. Commissioner Fraker asked Mr. Forler if he has paid the fine. Mr. Forler stated that he has not, and this is why he is here at the meeting today. He stated that he moved to a new home in September and did not get some mail for a month, including the letter that he was sent from the SPCC. Commissioner Peterson asked if the Commissions wanted to reconsider this case.

**MOTION:** To deny rehearing or review of Commission Order by Commissioner Robinson.  
Seconded by Commissioner Baker.

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

Mr. Forler stated that the Commission still has not fixed the problem. Commissioner Fraker asked Mr. Forler if he knows someone who has a QP license in weed control who he could hire and retain as an employee either full-time or part-time. He stated that this would be one avenue to keep Mr. Forler's operation more fluid. Mr. Forler stated that people are not going to want to do this for him.

- B. University Termite & Pest Control, Inc.,(BL)/Richard L. Rupkey II (QP) - OAH Docket 03A-100-SPC & 03A-106-SPC  
SPCC Cases 2003-100 & 2003-106**
  
- C. University Termite & Pest Control, Inc. (BL)/Richard L. Rupkey II (QP) - OAH Docket 03A-105-SPC  
SPCC Case 2003-105**

*The following discussion applies to Agenda Items X.B. and X.C.*

*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.*

*Commissioner Peterson stated that he thinks the Commission has already given full consideration to these cases, and he realizes that this step has to be taken before they can proceed further. He stated, however, that he does not see why additional argument from the attorneys is needed and asked if there was any reason to reconsider. Commissioner Runbeck stated that she would like a brief summary because she may not have been present for this case the first time. Scott Richardson stated that they were denied a fair hearing. He stated that there is a Joint Responsibility rule under which a QP and business licensee are assessed liability if there is a basis for fault. He stated that it has long been the position of this Commission, since October 2002 in Tucson, that the Joint Responsibility rule was to be plead as an affirmative defense, and that he had to come forward with a burden of meeting the standard to show that the QP and business licensee discharged their duties properly. He stated that he presented expert testimony at no objection from Christopher Munns. He stated that no expert was presented by the State, and that no standard, duty or mark was pointed to that they did not hit, that there was uncontroverted testimony that they had met the mark. He stated that despite this, the Administrative Law Judge ignored the affirmative defense rule that the Commission had adopted in October 2002 and said that the QP and business licensee would be responsible because A.A.C. R4-29-104 says you are always going to be responsible if your applicator screws up. He stated that this is not what was intended, is not fair, and that the evidence does not support this conclusion.*

*Christopher Munns stated that Scott Richardson incorrectly indicates that the Commission adopted an affirmative defense rule, and that he cannot point to a single rule or any cases that set up any sort of affirmative defense procedure for this. He stated that no expert was certified at the hearing, and that Mr. Rupkey, the "expert" to whom Scott Richardson refers, is the licensee in this matter and should not be considered any more reliable than the SPCC investigator. Commissioner Runbeck stated that in the past, when reviewing these situations, she has seen circumstances where a business licensee presents evidence that training has taken place, and they will get an administrative warning and no fine. She asked what the difference was in this case. Christopher Munns stated that information was presented by Scott Richardson and the licensee, and it was evaluated by staff and showed that the training had nothing to do with pre-treats, and instead covered topics like general biology and urban pest control management. He stated that the evidence presented at hearing, even if considered an affirmative defense, was considered by staff and determined to not be enough to be a mitigating factor, as the training was not adequate because it was not even related to*

*the matter in this case. He stated that Scott Richardson argues that if he gives a couple of training records to the Commission, then the Commission cannot take any action and has to introduce more evidence to show QP liability. Christopher Munns stated that this is not the case, and that the information instead is considered as a mitigator in determining penalty. Commissioner Runbeck asked if staff's decision was consistent with similar cases in the past. She asked if the Commission has always looked at what area the training was in and whether it applies to the current situation. Christopher Munns stated that his understanding is that staff will evaluate the training and then try to tie it to the offense, and that they are not trying to uphold a strict liability rule. He stated that Scott Richardson argues that this is an affirmative defense rule. Christopher Munns stated that staff is just trying to be fair, and that respondents cannot just bring in any CE documents to staff. It has to be related to training. He stated that if QPs and business licensees show that they have sent their applicator to related training and the applicator has become rogue, then staff will consider that. However, there was nothing like that in this case. He stated that it was considered by the ALJ, argued by both parties, and the ALJ said it was not sufficient to mitigate the penalty.*

*Scott Richardson stated "shame on the Commission" if Commissioner(s) has/have not reviewed the record in this case. He also stated that staff is suggesting that they get to decide what is enough, that staff should not have the authority to decide this, and that is why they should get a rehearing. He also stated that Christopher Munns forgets to tell the Commission that every day they held a meeting about the pre-treats that were going to occur that day.*

*Commissioner Runbeck stated that the record regarding the training is in front of them. Commissioner Peterson stated that he did not want to go through a back-and-forth discussion because they already did this once. It went to hearing once and is now back again. He stated that he would like this matter to go to superior court and would like to read the opinion because it will provide an answer. Christopher Munns stated that the Commission has already considered the record in their initial decision on the ALJ's recommendations. He stated that this determination is only on rehearing or review, and just because he is randomly referring to facts does not mean the Commission needs to read the entire record again.*

**MOTION:** *To deny rehearing or review of Commission Order by Commissioner Baker.  
Seconded by Commissioner Robinson.*

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

## **XI. Felony Applicants**

### **A. Jacobs, Ronald George**

*Application tabled for next month.*

*Mr. Jacobs appeared.*

*Robert Kolander, owner of Regal Pest & Termite Services, appeared.*

*Commissioner Peterson stated that Mr. Jacobs' felony occurred a long time ago. Mr. Jacobs stated that it was 31 years ago, and he has not had any problems before or since, and he is 50 years old now. He stated that he has been in the pest control business for approximately 15 years and has a full spectrum of experience, from structural fumigation to subterranean termites to regular route work, has been in a management position and has had keys to lock boxes. He stated that he has been out of the business for several years because he moved back to his home area of upstate New York to be with his ailing father. He stated that there are not many termites or pests in New York, and so he moved to Arizona, where his sister lives, and would like to continue in the pest control business here. Mr. Kolander stated that he has employed Mr. Jacobs for a couple of months and has received excellent comments from the customers that Mr. Jacobs has serviced. He stated that he has observed Mr. Jacobs in the fields performing general pest applications. He stated that Mr. Jacobs is very knowledgeable and reliable. Commissioner Fraker stated that Mr. Jacobs' background information in the file is somewhat limited. Robert Tolton stated that staff has not yet received verification information for fingerprints from DPS. Commissioner Fraker stated that it would be prudent to have full documentation before the Commission moves on this matter, even given the time since the felony occurred. He stated that the Commissioners do not have anything in their file other than the charge and hardly any information regarding the charge. He suggesting tabling the matter until they get more background information. Commissioner Peterson asked Mr. Jacobs if he has had any problems with the law since the felony, including DUIs, speeding tickets, domestic problems. Mr. Jacobs stated that he has only had a couple of speeding tickets which were mostly related to work. Commissioner Fraker stated that the Commissioners do not have any verification of that and would be reluctant to go forward without proper documentation, given the seriousness of the offense. Commissioner Peterson asked if it would be acceptable to approve Mr. Jacobs on the condition that he has a clean background check, so that he would not have to come back before the Commission next month. Commissioner Fraker stated that if the Commission now approves Mr. Jacobs for testing, and then information comes back that does not exactly corroborate the story told by the limited documentation they have, then he does not want to have to go through the procedure to have to then revoke the license. He asked if, in the meantime, tabling the matter would affect Mr. Jacobs' employment if he had to wait another month for approval. Mr. Kolander stated that*

*it would, because Mr. Jacobs is pushing his 90-day threshold for unlicensed work. Mr. Kolander stated that the fingerprint information was requested over a month ago, and asked why it was taking so long. Mike Francis stated that staff has not received the background information from DPS and the FBI. He also stated that this information will only substantiate the charge he has already admitted to and if there was anything additional, and it will not help to explain any of the circumstances regarding the charge they are discussing now. Commissioner Fraker stated that he would like to see more information regarding the original offense, which was a capital offense, because all they have now is the charge and what it was reduced to. He stated that the background check will also address Mr. Jacobs' behavior since the time of the offense. Commissioner Runbeck asked if more information about the original offense would even be available, because the documents they have now indicate that this is all the information Mr. Jacobs has for the case. She asked if there was another method for obtaining any other information. Mike Francis stated that what staff has experienced in the past is that if someone has an offense that occurred a long time ago, depending on the county and jurisdiction where it occurred, a lot of counties pull back their records after a certain number of years. They may not have pre-sentencing reports or full documents that people can see, so it may be very difficult if not almost impossible to obtain the true narrative of what occurred and how it occurred. Commissioner Fraker stated that he would feel more comfortable if they at least tried. Commissioner Robinson noted that the documentation they have now does tell them that it was a big offense but a light sentence. Mr. Jacobs stated that he was 19 at the time it occurred. Commissioner Fraker stated that this is an important element but it still does not tell the story. He wanted staff to at least request information from the state in which the felony occurred, and if it is not available, then the Commission could then make their decision without it. Mike Francis stated that staff requested information from the individual applicant, but has not yet requested it from the jurisdiction where the offense occurred. Commissioner Runbeck asked if the Commission would have a method to revoke a license if information came back that was inconsistent with what has been represented to the Commissioners either on the application or at the meeting. Christopher Munns stated that the way the process has been going, a motion to approve an applicant for testing essentially is a motion to approve an applicant for licensure. He stated that technically, Mr. Jacobs will not get license until he passes his exam, so the matter could come back before the Commission for approval. He stated that if the Commission chooses to proceed in this manner, then any information that comes in after today could be used to deny a license. Or, if the Commissioners are willing to withdraw their motion, then the matter could be tabled for more information, as long as they are not up against any licensing time lines. Christopher Munns stated that if the Commissioners approved the issuance of a license today and it was later discovered that the applicant had lied, they would go to hearing to revoke the license. The burden of proof would then be on the SPCC to take away the license. Right now, the burden is on Mr. Jacobs to obtain the license. Commissioner Fraker stated that Mr. Jacobs' record would be clean if the*

*Commission just decided today to table the matter for next month as opposed to having to deal with a possible revocation hearing. He stated that the normal process has not been to come back in front of the Commission after passing the test. He stated that the purpose of the background information is so that the Commissioners can make a decision based on good information before the applicant tests. Commissioner Runbeck asked if it would be a viable alternative to permit Mr. Jacobs to test and then have him come back in front of the Commission after testing. She stated that this would at least allow him to move forward to test. Commissioner Fraker stated that it is within the Commission's discretion to abstain from enforcement action on Mr. Jacobs until his application is complete. He suggested permitting Mr. Jacobs to be employed past the 90 days until the Commission obtains the information. Commissioner Runbeck asked if the Commission has the authority to extend the unlicensed employment time line past 90 days. Christopher Munns stated that they do not, and that the purpose of the law is to make sure that the government does not sit on applications and processes them quickly. Lisa Gervase reiterated that statutorily, they cannot waive the 90-day requirement, but the Commission can use their enforcement discretion. Commissioner Fraker stated that the Commission does a disservice if it brings felony applicants forward without the background information needed to make an educated vote. Commissioner Peterson suggested, however, that there would be the potential for people to come before the Commission not in good faith and play the system to be employed past the 90-day time period. Commissioner Fraker stated that this is not the case here today though. Christopher Munns stated that it would be best to refrain from saying that the Commission should not take any enforcement action after 90 days. The statute says that there will be enforcement action after 90 days, even though discretionary. Further, he stated that the Commission cannot do a conditional license grant, and that the cleanest thing to do would be to withdraw their motion and table the matter for next month. Commissioner Peterson also stated that, for the purposes of Mr. Jacobs' record being clean, voting against a motion to approve is not the same as voting for a motion to deny. Commissioner Runbeck noted that the application was submitted and signed on November 15, 2004. Lisa Gervase stated that staff received the application on December 10, 2004. Commissioner Runbeck asked how quickly staff made their request for fingerprints and the background check. Robert Tolton stated that the requests go out every Friday, it usually takes 2-3 weeks to get them back, and that the holidays may have been a reason for the delay. He stated that staff would not have had the information back before the Commission book was prepared anyway. As the cut-off date was on December 28. Commissioner Peterson stated that they can table this matter until next month's meeting so that the background investigation will be complete and the Commissioners can then make an informed decision. He encouraged staff to use enforcement discretion in the meantime.*

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

Seconded by Commissioner Runbeck.

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

**B. Martinez, Solomon Zacarias**

*Application tabled for next month.*

*Mr. Martinez appeared.*

*Jason Workman, branch manager for Safeguard Pest Control, appeared.*

*Mr. Workman stated that Mr. Martinez has been employed with Safeguard for a year now and is the most stand-up guy he has ever met in his life. Mr. Workman stated that he knew right away that Mr. Martinez would be a guy he would have for a long time. Commissioner Robinson asked if Mr. Martinez had multiple offenses in the same week. Mr. Martinez stated that he did and that he was just trying to get a little bit of money. He stated that it took a year for him to be arrested and that he did not know a warrant was out for his arrest. He stated that he moved within that year in state for better living conditions for his wife and baby on the way. He stated that he did what he had to do for his family and that was it. Commissioner Peterson asked how Mr. Martinez got himself in that situation. Mr. Martinez stated that he was living with his mother-in-law at the time in Texas, he had given her money to keep the utilities on, but she did not keep them on. Everything was off, including water, electricity and gas. He stated that it was February and cold, so he asked for help from her side and his side of the family but did not get any. He stated that he moved, had two jobs and never did this again. He stated that he thought it would be a misdemeanor, but because it was for \$1,500 it was a felony. Commissioner Peterson asked what Mr. Martinez would do if he came into this situation today. Mr. Martinez stated that he is older and wiser and that pest control is a better way to support himself and his family. He stated that his employer has treated him well. Commissioner Peterson asked if Mr. Martinez was on probation for three years. Mr. Martinez stated that this happened in 1995 and that in 1996 he turned himself in when he found out he would get three years probation, deferred adjudication. He stated that he has never used the controlled substance and does not even drink. Commissioner Runbeck stated that she is not seeing a printout for a background check. Robert Tolton stated that the situation was similar to the previous applicant. Commissioner Peterson stated that the only way to be consistent is to table this matter until next month when they get the background investigation. Commissioner Runbeck requested that if the background check does not reveal anything additional, that staff indicate on the cover sheet for next month that Mr. Martinez already has appeared, the Commissioners discussed the matter with and asked questions of Mr. Martinez and were just waiting for the background check to use for their decision, so that Mr. Martinez does not have to appear again next month.*

Commissioner Robinson asked if the holiday season has interrupted the time schedule with background checks. Lisa Gervase stated that it has quite a bit. Mike Francis stated that Mr. Martinez and his employer will receive another correspondence letter from the Commission in the near future.

### **C. Riccelli, Dennis Joseph**

*Mr. Riccelli appeared.*

*Mr. Riccelli stated that in 1989 he had purchased a video store which was one of the largest in the state, with 12,000 videos. He stated that for a while they were sending their tapes out to be repaired at a shop that was owned by Blockbuster Video, but they decided it would be cheaper to do it themselves, so they started copying labels, etc., and Blockbuster turned them in and they were brought to court. Commissioner Runbeck asked if it was fraud and copyright infringement. Mr. Riccelli stated that it was, that they were renting the videos to the public, defrauding the people of the actual original copy and case. Commissioner Runbeck asked about what happened in 1988 with regard to the felony theft conviction. Lisa Gervase stated that that matter has already been considered by the Commission. She stated that this was a rather odd situation where Mr. Riccelli has disclosed that throughout his whole history of holding licenses with the Commission, and it was not until recently when the felony question was amended to engender a more complete answer on the current renewal that he then brought the new charge before them, because he would not have had to do so before. Commissioner Peterson asked whether Mr. Riccelli was copying the videos themselves. Mr. Riccelli stated that they would fix and repair labels. He stated that from time to time the labels would come up and they would copy another one and just glue it on. He stated that he does not believe that this was the only thing going on, however. He stated that the government came in and took all of their property, and then 18 months later they closed their store. He stated that he was indicted two days before his case against the federal government came up. He stated that it was a long battle and he plead to keep his wife and two sons who were working there at the time out of it. He stated that he was making copies, but the copies he made were not going out to the public. He stated that it was a gray area of the law, and he was accused of copying nine video tapes in a store that had 12,000 video tapes. He stated that at the time, stores were actually allowed to have 3% copied videos because customers would frequently steal and copy their movies, returning the copy and keeping the original. He stated that he had less than 0.5% copied videos in their entire store. He stated that he did copy labels. He stated that there was a difference in severity, and that if a label falls off they have to go to the manufacturer to get a copy of the label and put it on.*

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

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

(Break from 11:30 A.M. to 11:40 A.M.)

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

### **A. Complaint Status Log**

*Mike Francis stated that next month's meeting would include more complaints than this month's meeting, in part due to the cutback in today's meeting to allow more time for legislative and substantive policy discussions.*

### **B. Continuing Education Minutes**

*Mike Francis stated that the Commissioners have in front of them proposed CE courses that staff has reviewed and that staff recommends for approval. He stated that the outlines can be supplied if the Commissioners would like to see them.*

**MOTION:** *To approve the Continuing Education Minutes for courses by Commissioner Baker.  
Seconded by Commissioner Fraker.*

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

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

None for January

### **D. Pest Management Industry Slogan "Contest"**

*Jason Aanderud stated that staff came up with the idea to hopefully increase public awareness and confidence within the industry licensees. He stated that the Commissioners have received a list of some of the slogans that most of staff and a few industry members have submitted, and he would like a more comprehensive list and for more people to submit ideas if they have any. He stated that they would like to have the slogan(s) by March if possible so they can issue bumper stickers or provide some other means of disseminating that slogan to industry members. Commissioner Baker asked what the process is for submitting slogans and making decisions. Jason Aanderud stated that initially, they would like staff and industry members to submit ideas, and then staff will narrow them down to a manageable number for a final Commission vote. Commissioner Runbeck stated that some of the slogans are cute but that staff should also use discretion. Commissioner Peterson asked what the prize would be. Jason Aanderud stated that if a staff member wins, then he/she gets lunch from Jason Aanderud. Lisa Gervase stated that anyone else just gets bragging rights. Commissioner Peterson suggested that*

*information about the “contest” could be posted on the SPCC website, though it need not list all of the submitted ideas. Lisa Gervase stated that Jason Aanderud is gathering the slogans and that staff will pair them down and then bring them back to the Commissioners. Jason Aanderud also stated that they may choose more than one slogan, and that one could be used only internally within the agency.*

**E. Expenditure Report - separate handout or verbal report**

*Lisa Gervase stated that as of December 31, 2004, six months into their fiscal year, 53% of the SPCC’s appropriated funds have been expended.*

**F. Case Status Report**

None for January

**G. “Perimeter-only” termiticide labels - Termidor and others (Ms. Gervase/Mr. Francis) - Discussion topic only**

*Andy Weber, representing S O S Exterminating, appeared.  
Janet Holland, representing BASF, appeared.*

*Lisa Gervase stated that a fairly new perimeter-only label for termite treatments has been recently approved by the EPA and the Arizona Department of Agriculture, and she thinks they will probably have some questions as to whether pest management professionals can simply follow that label or if there are additional statutes and rules from the SPCC that they would have to follow as well. Lisa Gervase tends to think that there would be additional statutes and rules to follow beyond just the label, but she wants input from the industry and the Commissioners, and to look at the issue from a legal standpoint. She stated that she also feels that it is important to get notice out to the industry as to what the position of the Commission is regarding the practical use of products with these types of labels. She stated that Commissioner Hartley wanted to comment on this issue but he was out of town, so she forwarded his email to the Commissioners. She stated that he feels that there is some potential for abuse, which is the concern that a lot of people have. She stated that she feels that if the Commission’s statutes and rules do go beyond the label, then consumers will have added protection. She stated that with regard to post-construction treatments, there are a couple of perimeter-only labels, and A.A.C. R4-29-410 goes beyond just allowing applicators to follow the label. She stated that she thinks it requires critical area treatments, and Commission statute requires a complete inspection. She stated that Arizona law is stricter and more conservative than the law in other states because the termite pressure in this geographical location is different than in others. She stated that if, upon further review and research, this interpretation is not correct, then the Commission will have to decide whether it is happy with what current laws and rules state. Commissioner Baker stated that there is a lot of room for abuse in this area. He stated that he has had*

*fairly decent success with a lot of these products. He stated that with a perimeter-only treatment, they have been with non-repellent termiticide, and as a result of that, there are associated issues, such as critical areas inside a structure that are not treated. He stated that with baiting programs, for example, the bait is on the outside of the house, but there is still interior pressure and problems even though the outside is clear. He stated that this can happen here also, but as long as there is an associated response, critical area inspection, and treatment, he would support the product. He stated that his concern is with high-pressure areas and multiple entry points that may not be treated. He stated that you could have a perimeter treatment that would qualify as a full treatment, but then consumers could end up with problems requiring constant retreating. Then the consumers would end up in front of the Commission because they are not satisfied. He stated that this type of information and issue is relatively new. Commissioner Runbeck stated that she got the impression that it is not entirely clear that the Commission's rules will outdo the label. She asked if a rule change would be necessary if they decide that they want the rules to overcome the label. Lisa Gervase stated that a rule amendment would be necessary, and that they would first have to do some research. She stated that if they find that current statutes and rules are not doing what the Commission would like them to do with this type of label or others that they will probably be discussing as well, then they will probably need a rule amendment. Commissioner Fraker advised treading softly with personal label interpretation. He believes that the label should be the law, and that they do not accomplish a lot with additional rules. He stated that the labels are researched and get lots of scrutiny from the manufacturers, the EPA, and other regulatory people. He stated that he understands and agrees with Commissioner Baker's concerns, and a lot of this boils down to business decisions about how companies want to proceed with the product they choose. He stated that as long as the companies conform to the label and specifically communicate the type of treatment they are giving to the consumer, then they should have the flexibility to use different products and apply them in different manners. He stated that termite proposals do delineate the type of treatment that is going to be done. He stated that as long as the proposal and label are followed and the customer is aware of the flexibility of applying and interpreting labels differently, then this should not be a concern of the Commission unless they see abuses. He stated that if the treatment is something other than a full or complete treatment, it should be communicated to the consumer. He stated that there are thousands of these types of applications going on all the time and right now, and that this product is not any different than other products. He stated that the Commission needs to know the input from a legal standpoint, and that people commit violations all the time for not following the label. He stated that people cannot follow the label all the time in this state like they do in other states, and that they have to get out the rule book also to see how to use the product legally. He stated that rules were implemented by the Commission years ago for good reasons at the time, but there needs to be change. He stated that they need to change the rules to say that the label is the law and the product should be applied according to*

*the label. Commissioner Baker advised the consumer to beware because there are issues out there that cannot be seen from here. He stated that these issues are clear to regulatory bodies like the EPA. Commissioner Peterson stated that they need to keep the rules unique in Arizona if the product is not protective according to the label. He stated, however, that if research shows that the product is protective according to the label then he would agree that the label is the law. He stated that Arizona is unique though because of the temperature, and that research may show differently.*

*Andy Weber stated that regarding A.A.C. R4-29-410, thought should be given to how the rule applies to baiting programs also. Janet Holland stated that she would like to offer the services of BASF and their research and development group, and to encourage anyone associated with their organization to bring to their attention any questions or concerns about how this product performs when used in a certain manner. She stated that a long study has transpired to get them to this point with the product and it has not been done in a vacuum. She stated that they have produced data, have gone through the EPA, ASPCRO, and have done all of the things required to label this product. She stated that they are willing and able to support their positions.*

### **XIII. For information, discussion and possible action**

#### **A. Computer Based Testing "CBT" Contract Renewal**

*Mike Means, representing Metro Institute, appeared.*

*Don Wooldridge, Area Manager for TruGreen LandCare, appeared.*

*Lisa Gervase stated that the CBT contract is due for renewal consideration, and that she forwarded a copy of the proposed contract amendments. She stated that only a few amendments will get more discussion or may not be executed as amendments. Commissioner Baker asked if Mr. Means has agreed to these amendments. Lisa Gervase stated that he has agreed to all but three, and the one regarding the price proposal is open for change, unless they keep it the way it is right now. She stated that right now, they agreed that the initial test fee would be \$48, with a \$36 fee for two retakes, and then the fee reverts back to \$48 for the third retake. She suggested keeping the retest fee at \$36 for all retakes during the six months that an application is open, because the contract sets the initial test fee set at \$48 and the retest at fee at \$36, but there was not any black and white language about how many retests were available at the \$36. She stated that application files are open with the Commission for six months, so she proposed as an amendment to keep the retest fee at \$36. She stated that Mr. Means proposed back either a flat \$44 fee for all tests or to keep the \$48 fee for the initial test and then a flat \$40 fee for retests. Commissioner Baker asked what the problem is with the \$36 fee. Mr. Means stated that the original bid was at a split price because Bruce Tennenbaum,*

*the Commission Chairperson at the time, and some of the other Commissioners, wanted a reduced price for a retest. He stated that they had an agreement that three tests was reasonable, and that if a person still failed to pass after three takes, then they would start over at the \$48 fee. He stated that it would have been easier to have a flat price for all tests, because Metro Institute's costs for testing are the same regardless of whether it is a retest or an initial test. He stated that because of the politics of the Commission at the time, they went with the split price. He stated that Lisa Gervase is asking for them to leave it at \$36 for every retest during the six-month application time frame, but because of a high number of retests, this would have a negative impact on Metro Institute's pricing structure and would reduce their revenues. Commissioner Baker asked how many people test four times. Mr. Means stated that it happens a lot. Commissioner Baker asked why, and whether it had to do with type of test being given or maybe because the test is on a computer. Mr. Means stated that there are two main problems. First, there is the Spanish language problem. He stated that a lot of people in the landscaping industry speak limited English. He stated that they are doing a Spanish test preparation course next month for lots of these people, where the information is written in English and Spanish so they can see what the equivalent English word is, because they are going to have to take the test in English anyway. He stated that the pass rates for the landscaping tests are much lower than the general pest test pass rates, probably primarily because of the language issue. He stated that the second reason for the high number of retests is that people do not prepare for the test, although there are exceptions to that. He stated that there are fewer and fewer people who say they do not know how to use computer. Commissioner Runbeck asked what the reasoning was for having a lower fee for retests, suggesting that maybe there should be even a higher fee. She stated that otherwise, it seems logical to have the same fee every time. She suggested having a \$42 fee every time, splitting the difference between \$36 and \$48, though she acknowledged that \$42 would not be an average test fee if the previous norm was to have more than one \$36 retake. Lisa Gervase stated that the Commissioners were interested in a reduced fee for retakes, and that she is just referencing the contract and evaluation worksheets from the state procurement office. Mr. Means stated that this is simply a political issue, and that the Commissioners knew there would be some resistance to computer-based testing. He stated that prior to computer-based testing, people could take a paper test a number of times for one payment of \$30. He stated that under paper-based testing, he was informed by staff at the bid proposal meeting that the average number of times a person took a test was ten. He stated that people did not bother do study because they did not have to pay extra for retesting and it only cost them a couple hours of time. He stated that for December, the number of attempts to pass the various tests is between 1.2 and 2 times. He stated that many people pay the money, study and pass on the first time. He stated that a flat fee (\$44 each time) or a split price structure (\$48 initially and \$40 for each retest) would make it simpler for people. Commissioner Runbeck stated that the idea of increasing it back to \$48 after two retests does not make a lot of sense. Mr. Means*

*stated that he does not like it either because then they have to track how many tests a person has taken. Commissioner Baker asked if March would mark the third year of the contract and when it would be up for bid again. Lisa Gervase stated that the contract is on a one-year annual renewal for four years. She stated that the contract would be up for bid again in 2007, and the RFP process will start about a year from now, because it takes about a year to go through that process. Mr. Means stated that the contract is approaching the end of its second year. Commissioner Baker stated that he prefers a flat fee. Commissioner Runbeck asked if this matter requires Commission vote, or rather if it would be up to an administrative decision. Lisa Gervase stated that she would make an administrative decision, but that she wants input from the Commissioners. Commissioner Fraker asked if the leveraging of price at a lower amount affect who gets the bid, whether the low number gets the deal. Lisa Gervase stated that there are a number of evaluation criteria. Commissioner Fraker asked if \$36 the lowest amount. Mr. Means stated that even if they had a \$48 flat fee, it would have still been the lowest amount. Lisa Gervase stated that there is no provision to increase the exam fee. Mr. Means stated that at the end of each year when the bid came up for renewal, they could ask for a price increase if they could justify it, and then the Commission could say "Yes" or "No". Lisa Gervase read from the terms and conditions of the contract, stating that basically it is a decision made by the state procurement department. Commissioner Baker stated that it does not make any sense to have other than a flat fee base. Lisa Gervase stated that her only hesitation is that there are logistical issues with people becoming accustomed to new fees, especially if the retake fee is increased. She stated that she thought that the contract documents implied that the \$36 fee was for all retakes, not just two. Commissioner Peterson stated that this issue is in the hands of the state procurement department and was not for the Commission to discuss. Commissioner Fraker asked Mr. Means if he is comfortable with way it is now, and Mr. Means stated that he is.*

*Mr. Wooldridge stated that in his previous career in education he was the North American manager for the park equipment lift core division and is certified and CBT-trained. He stated that he did research with Western Michigan University with truck drivers using CBT equipment. He stated that it has been his experience as a result of that research that there is somewhat of a barrier of orientation required to use CBT equipment at the level for tradesmen, landscapers, etc. He asked whether anything is being done by a tutorial via the internet or kiosk whereby an individual can become familiar with the testing process, stating that this should be considered by the Commission and by the providing company. He stated that it was a paper/pencil test when he took it in 1992. He stated that people should be familiar with the method of testing before they pay for and take the test. Then they can focus on the content of the test and not the mechanism necessary for taking the test. Commissioner Peterson stated that this is an excellent idea, although he does not believe that it is a requirement. Lisa Gervase stated that at computer-based testing sites, people can take practice exams. Mr. Means added that people who*

are unfamiliar with the test method can take practice tests over and over again without it counting against the time limit, so that they can then start the test when they are comfortable with the format of the test. He stated that it is a short, 20-question practice test and it shows people how to do it and how the grade comes up. Commissioner Baker asked if the practice test had real questions. Mr. Means stated that they are, and that they are easy questions not having anything to do with pest control. Commissioner Baker stated that there should be link to the practice test on a website. Mr. Means stated that they have a demo test on a separate URL that they are using to show other agencies what the test is like. He stated that no one knows about it except the people to whom they give it. Commissioner Peterson stated that it is a good idea to have a link. Mr. Means stated that it can be linked in to the SPCC website. Commissioner Baker stated that his recommendation for the practice test is to make some real, pest control-related questions (instead of asking what the state bird is or what the color of the blue sky is) so that people can know the type of questions that may be asked. Mr. Means stated that he would like the Commission to write the questions, because he does not want to cross the line to where he is giving people real test information. Commissioner Baker stated that, if needed, he would volunteer his time to generate the practice questions. Lisa Gervase stated that the website is the first place that people can go for them. Mr. Means stated that he sends out a monthly newsletter to every pest control company in the state and will send out information about the website link in February's newsletter.

## **B. Legislative discussion - Unlicensed Pest Control by Landscapers**

*Don Wooldridge, Area Manager for TruGreen LandCare, appeared.*

*Carl Martin, representing Improving Kids' Environments Southwest, a non-profit 501(c)(3) corporation, appeared.*

*Andy Weber appeared.*

*Gavin Gallifant, owner of National Environmental Solutions, appeared.*

*Scott Richardson appeared.*

*Mr. Wooldridge stated that he has a four-year teaching degree and a two-year degree in landscape and golf course management and is a certified OSHA trainer. He stated that he has been a certified applicator since 1992, is a QP, and got a business license in 2003. He stated that he understands the laws and regulations and is trained to follow them. He stated that he is concerned about his wife. He stated that she can go to Home Depot or Lowe's and get Roundup or Surflan. She can then spray weeds at their residence and around the house, and if she spills some chemical she can wash it away with a hose and put the cap on the bottle, which then goes in the trash can and then to a landfill where it should not go. He stated that for business licensees who have QPs, their crew leaders are not allowed to spray a few weeds with the chemical they bought at Home Depot unless they are licensed. He stated that in the meantime, his business records show that he has*

*trained his crew leaders about target pests and what weeds to spray, about translocation (not spraying around animals and being careful around kids), and also about how to use the chemical and properly dispose of it. He asked why these trained crew leaders cannot do the do the same thing his wife does. He suggested that instead of requiring a license to spray these chemicals, the line should be drawn at the application equipment. He stated that if he has a spray rig or a backpack sprayer then he must have labels, MSDS, etc., and he can see why the state would regulate this, but if he buys the chemical from the same source as his wife, he does not understand why the State and Commission regulates that. Commissioner Peterson asked Mr. Wooldridge if he was making a distinction between ready-to-use and mixed products. Mr. Wooldridge stated, "Yes." Mr. Wooldridge stated that it is inappropriate to allow an HOA homeowner to spray lawns after merely buying an \$8 bottle of Roundup, because for Mr. Wooldridge in his business, his business license costs \$2,000 and liability insurance costs over \$1,000. He stated that he and others like him have to be licensed in commercial application, and that this discrepancy is not fair to his employees or the industry. Commissioner Runbeck stated that because Mr. Wooldridge is a businessman, there is an added responsibility for him. She stated that if she sprays her own house, the responsibility is on her if she endangers her animals or kids. But if she hires some lawn company to come on her property it is the company's responsibility. She also stated that not all business owners are as responsible as Mr. Wooldridge may be, that some do not wear the proper PPE and spray around water fountains. She stated that there has to be some control when consumers are paying people to do the work for them, and that it does not matter if the chemical can be bought off the shelf at Home Depot. She stated that she would not want to be paying someone or having someone who is not trained spray at her child's school. Mr. Wooldridge stated that business licensees and QPs and have monthly training records for their employees, and that they are safe operating in people's front yards. He stated that his point is that if it is a prepackaged bottle of Roundup, Surflan, etc., then it should be allowable for a landscape crew leader or gardener who is properly trained to use it without licensing requirements. He stated that licensure should be required when dealing with application equipment, such as a backpack or truck or trailer sprayer. He stated that he does believe that if people are trained and do follow regulations, then applications can be safely provided. Commissioner Robinson stated that people can buy different concentrations of chemicals at Home Depot that cannot be put out through an aerosol can. He asked why someone would buy a \$42/quart can (even though it will probably last for three years) when they can spend only \$8 for a can of Roundup. He stated that people can buy pre-emergent materials at discount places, but will have to mix them, and that the only way to apply them is to mix them somehow and/or apply them through a hose-end proportioner. Mr. Wooldridge stated that if you were to limit it to one gallon, this would suffice.*

*Mr. Martin stated that any retreat by the Commission on licensure requirements would have the practical effect of putting children's health at risk. He stated that he*

*understands all the arguments. He made the argument that just because something is sold already diluted with water, that is essentially the same thing as buying the concentrate and then diluting with water yourself. He stated that it puts the whole practice and turns the whole notion of licensure on its head. He stated that what it says is that the licensees who are trained and who have invested much time in their professionalism are essentially doing what any homeowner can do any day of the week, so perhaps none of them should be licensed. He stated that this is a ridiculous argument in the minds of those of us who advocate for children's environmental health. He believes that the current system works and needs to be strengthened, and any notion that deals with the size of container or type of equipment is misguided. He stated that we are really talking about scope of practice, about the impacts that go beyond the time when people leave the curb in their vehicles. He stated that it does not matter whether people are buying in small or large concentrations.*

*Mr. Weber stated that the Commission today approved a man for testing who sprays for about four hours, and that once this man takes and passes the test, there is nothing that can stop him from getting a huge tanker and spraying weeds commercially, even with the little bit of experience he has. He acknowledged that experience is not necessarily always at the end of a hose and that there are different aspects of the business of structural pest control. He stated that if spraying weeds is part of that business, then the Commission needs to regulate it and license it. He stated that the Commission has tried to contact landscapers to get them licensed, and the Commission fines them \$500 because they have made attempts to inform landscapers and associations and they still do not comply. He stated, however, that he knew it would create the problem it has created now because some people truly did not know about licensure requirements. He stated that he is speaking on behalf of himself, and not necessarily S O S or the APMA. Commissioner Runbeck stated that this is not an issue of whether the Commission should be regulating landscapers. She stated that she is not inclined to back off one bit for many of the reasons Mr. Martin stated. She stated, however, that she thinks that the Commission needs to address the issue of how to get them licensed and how they get enough experience to qualify. She asked if a special type of license is needed for people for whom spraying is a very minimal part of their business. She stated that the Commission also needs to address the first time violations because it seems a little heavy-handed to impose \$500 fines for first offenses, especially when it appears to us that they did not know they were required to have a license. Commissioner Baker stated that coming from an academic setting, he typically deals with committees, groups, etc., in attempts to come together and figure out logistic ways of doing things. He stated that some recommendations need to be made and brought to the Commission for them to vote on, and they need to figure out a way to deal with this issue before it carries on for another month. He stated that they need to make guidelines and then put them into practice. He stated that they could create a separate category of licensure whereby people have to meet certain*

requirements. He stated that everyone can have their opinions and then at the end of the day everyone goes home and things have not changed. He stated that they need to move things forward, maybe getting a group of representatives together, developing something and then coming out with recommendations to propose. Commissioner Robinson asked if there could be consideration for a restriction on the materials that can be used. He stated that he likes the idea of another category, but this has to be a legislative change, and this could take a couple of years. Commissioner Baker stated that there is nothing they can do about that and that the process may have to be done that way.

Mr. Martin stated that as long as a new category does not represent a fundamental retreat from the professionalism that is expected of licensees currently, then this might be something that could be discussed and approved. However, he stated that he and many people like him would be very vocal if it does retreat. Further, he stated that it does beg the question: If standards, testing, requirements, and professionalism are going to be the same, then why not fit them under the current system? Commissioner Baker stated that at this point they do not know what the setup is going to be.

Mr. Weber stated that one of the problems is that the small guy landscaper/maintenance man with 50 homes probably does the same thing, except on a smaller scale, that S O S Exterminating does. He stated that there is a huge disparity here, that the potential for liability is huge, and that the regulation should not necessarily be different and they should have the same requirements. Commissioner Baker stated that you have to list the requirements and decide what constitutes experience, and then you can say that people doing landscaping can have a certain type of experience. He stated that he is not proposing lowering standards, and that maybe landscapers/maintenance men would need to become licensed and pass a QP exam for a certain area. Commissioner Peterson agreed that they would have to start listing criteria and ask how people will fit into this area, and what the risks are associated with this. He stated that he does not think they will have a resolution today. Commissioner Fraker agreed, stating that they will not solve the problem today. He stated that they are going to leave here today and maybe spend ten minutes in the interim thinking about this. He stated that he knows that some people are not crazy about committees, but that a committee might serve a purpose here. He suggested that it could be composed of people like Commissioner Baker, Mr. Wooldridge and a resident turf and ornamental Commissioner, who have experience and expertise in these areas. He stated that this may be the start of a solution. Otherwise, staff has their hands full with this and other things.

Mr. Wooldridge stated that he has grandchildren and the same concerns about children's health. He stated that as an area manager with TruGreen, he did not mean to imply that his crew leader who is qualified does not follow regulations

regarding 72 hours notice of spraying at schools. He thinks that he and his company have sensitivity to that and would not allowed a crew leader or someone not properly licensed to spray near schools.

Mr. Gallifant stated that he has been licensed since 1982 and if he recalls correctly, in 1994 a law was passed where regulation extended from large tanks only to also include containers of 4 or 5 gallons or less. He stated that it has been 10 years and that everyone in the landscape business knows this. He stated that when people are not required to show licenses when they buy their products at places who can sell to anyone. He stated that as a professional in the industry, it was tough for him to become licensed in landscape category, and it will be tough for other landscapers, but they need to be properly licensed and have the appropriate knowledge if they are going to be in business and for hire, no matter what their level. He stated that he has an employee who wants to start his own business and is just going to do homes. He stated that this employee will not obtain a different category of licensure than he has. He stated that the laws are not really stopping them and that they have spent ten years avoiding them. Commissioner Peterson stated that he is not opposed to having a separate committee, which would have to contain people like an agreed-upon representative from the landscape contractors, someone who is currently licensed, and someone like Carl Martin who wants children protected. He stated that someone from the Commission should chair the meeting and that someone from staff needs to be there also. Lisa Gervase stated that if they are going to have a committee, which has not proven to be successful in the past two or three years, then the Chairperson of the Committee needs to do all the administrative tasks. She stated that they could have an open public meeting where anyone can attend, but where vocal stakeholders would be specifically invited to participate in a back-and-forth discussion. She stated that then someone from the Commission would need to lobby the legislature. Commissioner Baker agreed that it should be an open separate meeting, because today's discussion is taking place toward the end of the meeting and very few people are still present.

Lisa Gervase stated that she wanted to try to get a feel for where the Commission wants to go in this issue, and this is why she presented the detailed memo containing options that they have, and an outline of legislative proposals, which is another agenda item. Commissioner Robinson asked if the legislative concern about landscapers has dropped off the radar screen. Lisa Gervase stated that it appears to have and that she is not sure why. She stated that maybe it became less of an issue after the particular legislators who were interested in this issue were re-elected or not elected, maybe the holidays played some part, and also the legislative session just started up again on Monday. She stated that she has been monitoring legislation and nothing has been proposed, and she has not been contacted by the most vocal people from the October and November meetings. She stated that if we are going to have a Commission meeting that strictly discusses laws and rules, then we need to have these people there. Commissioner Peterson stated that this issue

*is big enough and complicated enough to dominate a whole meeting. Lisa Gervase stated that if the Commission wants to leave the statutory language the way it is and change the way they handle regulation from an enforcement standpoint, then this is an option, and then the Commission could be reactive if a legislative proposal comes forward from the landscapers about some change or exemption. She stated that she is getting the impression, as Mr. Gallifant said, that this is not a new issue, and that the landscapers have been noticed formally by this agency for a while. Commissioner Runbeck suggested that rather than having an amorphous discussion, she wants to see specific proposals. She stated that she does not have a problem with enforcing the current rules, catching people and making sure they are licensed, but they have to address two things. First, regarding the practical experience definition, she stated that even pest control businesses are not at the end of the hose eight hours per day. She asked if it would also be fair to allow landscapers to include all the hours on the job when not on the end of a hose, and stated that more guidelines are needed. Second, regarding violations, she stated that she likes the idea of first-time violators getting an activity education notice and a cease and desist order. Then if they violate a second time she would not have a problem with a subsequent \$1,000 fine. Commissioner Fraker asked Commissioner Runbeck if she would be willing to give people in the real business of structural pest control (fumigation, etc.) a walk on the first offense. He stated that the law regarding landscapers has been in effect for ten years and that he does not buy it when they say they do not know about the law. He stated that we can not automatically give a landscaper a walk if we do not do the same thing with someone who does fumigation, etc. Commissioner Runbeck stated that some of the applicators do not even speak English. Commissioner Fraker stated, however, that the people who run the companies do speak English and do know the law. Commissioner Runbeck acknowledged that this is probably true, but that analysis is still going to have to be made on a case-by-case basis. She suggested maybe only having a presumption of a cease and desist order instead, unless it is really obvious that they knew, and then we could impose a fine. Commissioner Peterson asked how often we issue a \$500 or more fine for someone in the business of structural pest control who has gone through the training. Commissioner Fraker stated that it does not happen as often because they have paid the license fees, have gone through the training and paid their dues and even been fined in the past, and have lived this business for the past 20 years, and therefore know better. He stated that the landscapers need to learn this way also. Commissioner Baker asked if, instead of paying the fine, they had a certain period of time within which to become qualified or to get mandatory training. Lisa Gervase stated that the problem is that these people are not license holders, and getting compliance with orders against non-licensees is a nightmare. She stated that there are a bunch of cases like that right now, even with consent agreements, and staff is chasing them down for compliance. Commissioner Baker stated that at least this still may prevent subsequent violations.*

Scott Richardson suggested fining violators \$500, suspending the fine for six months to give them time to become licensed, and then if they comply, then drop the fine. If they do not comply, then uphold the fine. Lisa Gervase stated that we then come back to the problem of determining the proper qualifications for obtaining the QP license. Commissioner Robinson stated that the landscapers would not be able to obtain 3,000 hours of experience in six months. Commissioner Baker stated that everyone has different opinions about what constitutes experience. His opinion is that if someone is on the job site they are getting experience, and that office experience does not count. Commissioner Fraker stated that office experience does count also for the business of structural pest control. Commissioner Baker stated that it probably should not count for the business of landscaping. He also suggested that there could be various ways to value time, such as having a training/experience ratio. Commissioner Fraker stated that at 200 hours/year, a landscaper would have to work for 15 years. He stated that to people like himself and Mr. Wooldridge, giving licenses to inexperienced people is a slap in the face because we have gone through the education and licensing hoops and there is some pride in having a QP license. He stated that we would be giving the same credibility and public perception to someone who mows lawns, goes to Home Depot and buys a mixed quart of Roundup and sprays it out of the container. He stated that he finds the idea offensive to people who have dedicated a good portion of their life to pest control. Commissioner Peterson stated that he thinks you have to recognize the fact that pest control is more than just spraying, and that the man who was approved for QP testing earlier in the meeting has done other ways of integrated pest management, and that we need to give him credit for that. He stated that the man has spent a lot of time doing other things and taking preventive measures which allowed him to avoid weed control. Commissioner Runbeck stated that no matter how much you disagree with the experience of landscapers not being equal, the Commission still has to deal with the fact that if it wants to regulate these people, then it will have to provide a way of allowing them to get a license without telling them they have to spray pesticides for the requisite number of hours over a certain amount of time. She also stated that Commissioner Fraker should not consider it a slap in the face just because others have the same license. She stated that just because she has the same Bar license as other attorneys, this does not mean that everyone respects everyone the same. She stated that all applicators have to take the same test. Commissioner Robinson stated that most of the time in the golf course industry, the acting "QP" is the superintendent or assistant of the golf course. He stated that these individuals have Bachelor's degrees in agronomy, etc., but the practical experience time frame problem does not allow them to be QPs. He stated that some are adapting by renting QPs. He stated that this works, but the golf course superintendents or assistants call the shots for everything that goes on the golf course. Commissioner Peterson stated that they all seem to be in agreement that they need to treat the first time offender consistently whether in landscaping or within the pest control industry, suggesting that they are comparing applicator to applicator across industries, and they do not get off completely free for the first

offense. Commissioner Baker stated that they still need a definition of experience, because it is unfair to try to get people to come forward if they cannot attempt to meet the experience requirement. Commissioner Runbeck asked what staff recommends and what the Commission can use at the next meeting for vote or for more discussion.

Lisa Gervase stated that she is not sure she could recommend much more than what she had already prepared in her memo. She stated that she set forth some options, as there may be more such as a suspended civil penalty. She stated that the law just says "experience" and the rule says that "practical experience may be demonstrated by actual compensated field work and shall not include sales work". She stated that it is very much open to discretion. Commissioner Runbeck stated that in other cases the Commission has used substantive policy statements to give industry members an idea of what they are looking for, and that the same could be done here. Commissioner Baker stated that an educational component, courses and degrees are necessary. Lisa Gervase stated that they provide for that. She stated that the practical experience requirement lowers to 2,000 hours if you also have 12 semester credit hours. She stated that for the purpose of putting people on notice and giving them an up-front idea of what the Commission feels is or is not practical experience, they can come up with a substantive policy statement, continue the process of amending the rule, or leave it open as it is now and determine practical experience on a case-by-case basis. Commissioner Peterson liked idea of leaving it open to vote, even though there may be some disagreement between Commissioners. Lisa Gervase also asked if practical experience differs based on the license category for which they are applying. Commissioner Fraker stated that input from the industry that will be regulated is needed. Lisa Gervase stated that they would love the input, but that it needs to be concrete rather than having discussion after discussion with no result. Commissioner Fraker stated that part of the problem is that staff does not have the knowledge of what the field experience is in the industry. He stated that they need to talk to these people and find out what the problems are and then come up with remedies for the problems. He stated that if practical experience does not fit within the laws and regulations, then the Commission can either change them or take whatever appropriate action is necessary. Lisa Gervase stated that this is partly why they notice these problems on monthly meeting agenda and encourage people to express their views, and that it is best for the Commissioners, who are voting on these issues, to hear these things from other people rather than just hearing her interpretation of everyone's input. Commissioner Fraker stated that he agrees, but also believes the problem is bigger than just trying to figure out what the 3,000 hours consists of. He stated that they need a separate Commission meeting or a committee with solid input, and they need to go to the landscapers and Registrar of Contractors to ask them to send representatives. He stated that the Commission has the responsibility of regulating people and so they need to know who the stakeholders are and what their problems are so the situation is not made worse. Lisa Gervase stated that month after month

*the Commission has been hearing concerns from landscapers and industry members and maybe a couple of public consumers, and that is why they are now hashing this out. She stated that she thinks this is the first time this topic has been a formal agenda since this came to a head in October 2004. Commissioner Baker asked if any type of public website interaction would be possible, whereby people can comment. Commissioner Runbeck suggested opening a chat room. Lisa Gervase stated that on the SPCC home page, there is a notice of legislative and rules discussion, and as soon as she gets some direction from the Commission the document will be on the web page. She stated that at one meeting, she heard four or five commissioners recommend leaving the law as it is. But then they had a concern about a legislative proposal to exempt landscapers, so they need to be prepared to compromise. She stated that at the November 2004 meeting, the Commission took the position of no compromise but directed Lisa Gervase to put together a memo outlining their options. She stated that the only option not in the memo was Scott Richardson's idea today, which they have been doing in a roundabout way, because getting licensed has mitigated the civil penalty. She asked whether the Commission wants to look at the issue from a regulatory standpoint, leaving the licensing structure as it is and deciding how to handle practical experience, cease and desist orders and civil penalties, or whether they should take the offensive and propose legislative changes to have different categories, or whether they should create a substantive policy about the practical experience requirement. Commissioner Peterson stated that they need to come up with something more that addresses practical experience. He stated that he thinks that people need a qualification to spray for hire, and they might have to be prepared to deal with it legislatively. He stated again that a broader meeting is needed to obtain more insight. Lisa Gervase stated that she has the names of some people who have appeared before the Commission who are active in landscaping associations who would be interested in participating.*

*Commissioner Runbeck stated that she thinks Lisa Gervase wants some direction from the Commissioners. She asked if it would be acceptable for the Commissioners to ask Lisa Gervase to create a substantive policy statement regarding practical experience that they can review at the next meeting, and then for her to also get some feedback from industry members regarding the proposal of changing the approach to first violations in the landscape and pest control industries. She stated that perhaps Scott Richardson's idea of a suspended fine would be a good idea. Lisa Gervase stated that it would probably would be helpful if experienced industry members in each of the licensed categories give feedback as to what should constitute practical experience. Commissioner Peterson asked if it would be better to have a separate meeting altogether of the various entities. Commissioner Fraker stated that it would, and recommended approaching the landscape association and also gardeners. He stated that the Commission, before battling at the legislature, needs to know where these people stand, even if they don't agree with the Commissioners. Commissioner Robinson asked if the memo,*

*after editing, could be put on the web because it gives a good background for reasons why landscapers need to be regulated, such workman's compensation issues and also to protect consumers. He stated that it is a good paper that explains why we believe they should be qualified and licensed. Commissioner Fraker stated that this issue is not about the money, but rather about taking steps to protect the public and property. Lisa Gervase stated that she will submit her memo to whoever is interested in getting some background and maybe put it on the web, and will seek feedback from landscapers and pest control industry members regarding the practical experience issue. She stated that these steps will probably help also if the Commission has to take a reactive stance at the legislature. She stated that she has not heard objections from too many landscapers, but just from a few very vocal people.*

**C. Qualifying Parties who did not renew their Applicator Licenses when pre-2003 law allowed a person to hold either a Qualifying Party or an Applicator license to perform pest control work - whether these people need to reapply/retest in each category for which they want to perform pest control work.**

**The Commission likely will go into executive session to obtain legal advice on this matter, pursuant to A.R.S. § 38-431.03(A)(3).**

*Lisa Gervase stated that since drafting an informational memo ten days ago, staff members have done some additional research about individuals who fall within this situation, have cleaned up their licensing database a bit, and reviewed hard files to see where people stand. She stated that the number of people in this situation has actually dropped because it turns out they may not have had applicator licenses for other reasons, namely suspensions, etc. She stated that staff has now narrowed it down, and instead of having 105 QPs who had not renewed applicator licenses, there now are 78. She stated that for as far back as she has laws to research (1970s or 1980s) until 1998, it was sufficient to have either license (QP or applicator) to perform pest control work except for in the wood-destroying insect category, in which at least the applicator license was needed. Commissioner Peterson asked if the 78 people did not put their license in inactive status. Lisa Gervase stated that the inactive status capability came into law in August of 1998. She stated that 64 of these 78 people let their applicator licenses lapse and that they could have had the ability to put them in inactive status, and the other 14 had applicator licenses which no longer existed prior to the law allowing inactive status. She stated that if all it took to go inactive as a formal status was a letter to the Commission, then maybe there is a reasonable basis to treat them as inactive and not expired. Commissioner Baker stated that the Commission should make these people make decisions, and that choosing not to fill out forms is making a decision. He stated that perhaps the Commission should write a letter to these people and give them a certain number of days to correspond. Commissioner Runbeck wanted*

some background clarification and asked why the law changed in 1998 to only require one license or the other, and then why it changed back in 2003 to require both. Lisa Gervase stated that she did not know about the 1998 change, but she tends to believe that the 2003 change was a typographical accident that occurred in a rush of legislative changes, because otherwise there is a lack of accompanying related legislative history. She stated that, aside from a possible typographical error, one of the possible reasons for the 2003 law change is that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) talks about people at the end of a hose as applicators, and does not recognize QPs. Commissioner Runbeck asked if the law should be changed back. Lisa Gervase stated that this will be a legislative discussion, but in the meantime it is not fair to leave these people, most of whom may not even have a clue about the law change, hanging. She stated that staff has had contact with a handful of these people, and that their licenses could have been inactive instead of expired. She stated that she feels like the Commission needs to take some action today. She stated that a law change could be made to classify a QP license as a super applicator license. She stated though, that ten years from now another body could be thinking the opposite. Commissioner Baker stated that these people (QPs) have already passed applicator qualifications. Commissioner Robinson stated that he is one of these people. He stated that he was licensed in California after being licensed here in Arizona. He stated that he kept his QP license active and inactive and somewhere along the line did not renew his applicator license. He stated that one of the inspectors at the time in 1997-1998 said to him that he did not need an applicator license to be able to spray. So he did not renew his applicator license because his QP license was a step higher anyway. He stated that he did go through the appropriate steps and that most of these types of people had to be certified applicators before becoming QPs. He stated that if we all kept our CEUs active to keep our QP licenses active, then this shows that we did not drop out of the picture. He stated that he does not know if he would get an applicator license if it was now required to spray because he has three or four people who do this activity. He stated that he does not understand why a QP cannot actively apply. He also stated that since September of 2003, the QP license has been diluted because people who have merely stood behind the counter and sold products have been deemed qualified to take the test. He stated that he has come up through the ranks, having had applicator licenses in Maryland, California and Arizona. He stated that he thinks the responsibility of telling people about the law change needs to be off of the backs of the inspectors in the field. Commissioner Fraker stated that Lisa Gervase is right and that his recollection is that the rules have been changed three times and the verbiage got skewed to mean what it was not supposed to mean. He also stated that he recalls that prior to 1989, you could be a QP and not have taken an app exam. Lisa Gervase stated that some people have gotten a QP license without first having an applicator license, though her list is of people who have both licenses. Commissioner Fraker stated that in 1989 he was a QP, but he was not issued his QP license right away because he had just passed the exam after the law change and was told that he then had to take the

*applicator test. He stated that there was a mixed message and a law change at the same time. He stated that his answer to this problem is Lisa Gervase's #3 recommendation, which is to consider the applicator licenses that were not renewed as inactive rather than expired, as long as they maintained the proper CEUs for their QP license. He stated that some of these people may not even be interested if they are not applicators, but we should give people the option because the use of some products require a licensed applicator. He stated that we should let them pay their renewal fees and then issue their applicator licenses. Commissioner Peterson stated that he has always looked at a QP as a super-applicator because they seem more qualified than anyone. Commissioner Baker stated that the Commission should still have them respond to a letter so that the correspondence is on record. Commissioner Peterson asked if some sort of legislative change would still be in order.*

**MOTION:** *To enter Executive Session by Commissioner Runbeck. Seconded by Commissioner Fraker.*

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

*(Executive Session from 1:45 P.M. to 2:15 P.M.)*

*Christopher Munns stated that Commissioner Robinson has to disclose his personal interest in the matter and then state on the record whether it will prejudice his ability to make an unbiased, impartial decision or judgment on the matter. Commissioner Robinson disclosed his person interest and stated that he would be supporting a recommendation that would adversely affect him.*

**MOTION:** *To have QPs who want to perform applicator work re-apply and re-test by Commissioner Robinson. Seconded by Commissioner Runbeck.*

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

**D. Substantive Policy Statement - Utility company employees who use non-restricted, ready-to-use pesticides on company sites, facilities, poles, meters, transformers, etc. Whether they fit within the "owner/occupier" licensing exemption.**

**The Commission likely will go into executive session to obtain legal advice on this matter, pursuant to A.R.S. § 38-431.03(A)(3).**

*Lisa Gervase stated that she gave to the Commissioners a brief memo and letter from Arizona Public Service (APS) with their photographs which explain their difficulties when their employees do maintenance work and encounter pests. She*

*stated that the issue is whether they fit under the “owner and occupier” licensing exemption under narrow circumstances and whether the Commission would draft a substantive policy statement in that regard. She stated that staff members have talked about this issue for hours and hours and have differing opinions as to whether the exemption only applies to homeowners and residences or whether it can be extended to business owners and their employees, and also the extent to which someone can occupy a telephone pole. She stated that she is concerned about the potential unintended consequences if the Commission is to make other than a very narrow exception. Commissioner Robinson stated that many utility companies own some property, but APS maintains easements and does not own property, which would seem to disqualify them. Lisa Gervase stated that the Commission, if it is inclined, could come up with a policy interpreting the “owner and occupier” licensing exemption. Commissioner Runbeck stated that she noticed that the draft substantive policy statement excludes easements and that work on easements requires licensure. She stated that she is also curious about the statement that “pest control treatments that are intended to eradicate or prevent pest infestations require licensure.” She stated that if the employees are spraying wasps, then this means they are eradicating pest infestations, and that this statement makes it sound like they are not allowed to do any type of pest control. Lisa Gervase stated that she was thinking about preventive versus reactive treatments, and that the employees are reacting when they open a transformer box and see a bunch of black widows. Mike Francis added that the employees are not making sure that the pests will not come back. Commissioner Runbeck stated that it is tough to draft legislation this narrowly and that she sees a possible “hornets nest” (no pun intended) with this. She stated that there already are problems with school employees spraying in cafeterias, and golf course owners can spray golf courses where people are out there all the time. Lisa Gervase stated that even a law change would have to be narrowly crafted, and usually substantive policy statements are a step in testing the waters for a law or rule change, unless there is a law change that makes a blanket exception for utilities. Christopher Munns stated that the legal definition of “person” in the statute is broad and includes the State of Arizona and corporate entities. He stated that the question deals with how they occupy land. Commissioner Runbeck expressed concern about her horses or dogs if APS or SRP is permitted to spray on her property where they have an easement. Commissioner Fraker asked if it was necessary to draft this policy statement. Lisa Gervase stated that there was no current complaint when she and Mike Francis were approached by these company representatives, and she thought there was enough of a reasonable justification to look into this to see if the “owner and occupier” exemption should be interpreted a little bit differently. Commissioner Fraker stated that the employees should be able to apply pesticides for their own personal protection, and that mailmen and meter men carry them. He stated that applications could be limited to a few target pests, such as bees and wasps. He stated that he does not believe it is a regulatory issue. Lisa Gervase asked what other situations exist where someone else can argue that they needed to apply a pesticide for their own personal protection because they*

walked into a wasp nest. Commissioner Runbeck stated that landscapers could make the same argument. Commissioner Runbeck stated that instead of making a substantive policy statement, the Commission could consider this as an enforcement issue on a case-by-case basis and see whether the employee was doing it for personal protection. Christopher Munns stated that even with a substantive policy statement regarding personal protection, the Commission cannot make exclusions because the companies can make the argument that they can spray for weeds also on a substation on property their company owns. He stated that there is nothing in the statute that mentions personal protection or residences, and that it just says "persons applying pesticides on property that they own and occupy". Commissioner Peterson asked what these representatives are asking of the Commission, suggesting that the employees may be currently spraying. Lisa Gervase stated that they would love to have something in writing from her, but she is concerned about doing this because it may be giving an exemption to someone that the law does not include. Commissioner Baker stated though, that if you are on a construction site and you go to the meter box and see pests, you should be able to spray them and should not have to hire a professional. He stated that no enforcement action should be taken on a personal protection event. Lisa Gervase made an analogy, asking if she needed a license to smack bugs in the office. Christopher Munns stated that he does not know if they should make a policy statement saying there will be no enforcement action taken. Commissioner Peterson stated that the Commission could just say that this is a low enforcement priority. Christopher Munns stated that the Commission should not give these representatives more than they are asking for. He suggested that the Commission could say that people cannot spray the hornets nests, and not say anything about enforcement. He stated that the representatives did not limit the scope to personal protection in their letter. Commissioner Runbeck asked how "occupy" is defined. Christopher Munns stated that "occupy" is not defined. He also asked where a corporation "lives". He stated that their attorney understands that there are these issues, and that the representatives said they wanted to spray a power station that is on land owned and occupied by APS. Commissioner Robinson asked about a restaurant owner who owns a restaurant but lives offsite. Commissioner Runbeck stated that the restaurant owner occupies the property by having a restaurant there, so the owner can direct his employees to spray all they want all over the kitchen. She suggested that this could open a Pandora's box. Lisa Gervase stated that they could spray when they see a black widow because it is a personal protection issue, but then the consumer could have pesticide in their soup. She stated that the easy answer may not be the reasonable answer. Commissioner Runbeck stated that she thinks they need clarification of the definition of "own and occupy", suggesting that it should refer to the homeowner who lives there. She stated that they should change the law to make this clear and define it in the statute. She also stated that in the meantime, they could say that the law does not include personal protection. Lisa Gervase stated that she would almost rather say nothing in writing so that nothing can be used against them. She stated that the representatives want the

*Commission to put something in writing, but they cannot force the Commission to do so. Christopher Munns stated that he has often advised agencies he represents to not give legal advice to the public. He stated that the Commission can lead people to a statute section that defines a term, but the Commissioners and the agency should not be interpreting the law to the public, because it then puts them in a dangerous position. He reiterated that the company representatives have an attorney and they will have to take the risk if the statute language is vague. Commissioner Runbeck stated that the Commission has not been enforcing this at public properties and schools anyway. Lisa Gervase stated that they need to have and do have applicator licenses, but there is a possible difference of opinion as to whether they need business licenses and QP licenses. She stated that the Commission has let that issue lie because they have seen that time after time these people come in and become licensed anyway, even if they initially disagreed with the Commission's interpretation. She stated that they are just claiming that state and political subdivisions are not within the definition of "person", that "person" is not defined in their statute, and therefore state and political subdivisions do not need to have business licenses and QP licenses. Commissioner Runbeck stated that "own and occupy" needs to be defined, maybe in a rule change or addition. Lisa Gervase stated that it can be added to the rules discussion. Commissioner Fraker stated that staff could just call the representatives and tell them that the Commission has no issue with their employees using certain products to spray target pests for personal protection. Commissioner Runbeck stated that the problem could then arise when a restaurant owner accidentally sprays pesticide in someone's soup while trying to protect his/herself. Lisa Gervase stated that she is not sure that there is agreement on this issue when it comes to residential structures that people own and occupy, and that it may not be justified to say that personal protection applications are okay. She also stated that she does not want to say something verbally unless she is willing to put it in writing. Christopher Munns stated that making a statement now could lead to a problem in the future if another executive director or Commission body then changes their opinion. Lisa Gervase stated that advice should not change just because executive directors change. Dave Colvin asked how often the spraying actually occurs. Lisa Gervase stated that 800 people do repairs and maintenance on transformers, poles, etc. Mike Francis stated that he spent 14 years working for SRP in the water group and is familiar with the power operations aspect. He stated that on a daily basis, there are people who service pole-mounted or ground-mounted transformers or facilities that may not have been serviced for four months, and a wasp nest or spider nest has developed. He stated that SRP has cases of wasp freeze and bug bomb in their warehouses and employees have it in their trucks. He stated that up until the law was modified to take out the incidental and ready-to-use exemption, it was not an issue. Now, however, APS is scared that the Commission will take enforcement against people who are spraying. He stated that staff verbally told them that staff understands the nature of the business and would not take exception to them spraying bees and wasps. He stated that they want something to cover them in the future also, perhaps five years*

from now, and they want to say that they followed the Commission's lead. Commissioner Runbeck stated that it sounds like they are talking about the storage of pesticides also. Mike Francis stated that he cannot speak about APS specifically, but stated that with SRP, every cost center that does field work has a warehouse storage facility, and each one has probably no less than five 24-can cases of wasp freeze and ant spray, and that it is a common business practice in that industry. Commissioner Baker suggested simply making a statement that this issue is currently a low enforcement priority. He stated that at some other point, priorities may change. Lisa Gervase stated that they can either take steps to become licensed, or they can go to the legislature and change the law. Christopher Munns stated that the Commission probably should not commit to interpreting this section of statute and saying it does or does not cover them. He stated that what Lisa Gervase could say is that regardless of whether the statute applies, personal protection will be considered as a mitigator should a situation arise. Commissioner Baker stated that he just wants to tell them that this is a minor situation and that staff probably will not take enforcement action, but that they do have the legal authority to take enforcement action if they want.

**E. Enforcement Response Program (ERP/Matrix) - Staff's proposed revision to the June 2002 ERP**

Lisa Gervase stated that staff needs some direction on this issue. Commissioner Baker suggested that staff use and compare the current Matrix concurrently with the new proposed Matrix for a few test cases to see what the results and differences would be between the two. He stated that staff can then see whether the Matrix works or does not work in some areas, and then can modify it again if needed. Commissioner Peterson asked for a nutshell description of the changes. Mike Francis stated that pages 4-6 regarding aggravating and mitigating circumstances contain a lot more definition in the number values. He stated that it will not be as uniformly administered and that there will be more specificity to it when they try to figure out what those values are going to be. He stated that for the size of business category, they are trying to begin their analysis of a violation with a minimum starting civil penalty, and then graduate it up and down based on possibly the number of prior violations they had. He stated that with previous Matrices, staff was chastised for presetting a penalty instead of letting each violation be evaluated on its own merits. He stated that with the new proposed Matrix, staff would evaluate strictly using aggravators or mitigators, apply it to the number and then find where that numeric factor falls. He stated that they would not consider respondent cooperation to be much of a mitigator in subtracting from the civil penalty amount. He stated that they would have to trade out types of services (hours of training, etc.) to reduce the dollar amount. Commissioner Peterson acknowledged that staff assigned numbers for harm. He asked if staff has made a broad enough range where they will be able to determine the specific dollar amounts. Mike Francis stated that they had, and that most of the time, a tremendous value is not assigned. He stated that in the old

*Matrix, when there was a penalty of \$1,000 or more, most generally it was in the lowest category, and if a more egregious circumstance was involved, staff could not do anything about it. He stated that the circumstance would usually be enough for the penalty to meet the lower amount but would not be enough to meet the higher one, so they were locked into the amount. He stated that the new Matrix gives more definitive, specific areas in which to place values, and they can adjust the values if the Commission desires. Commissioner Baker supported having three distinct monetary categories consisting of "under \$100", "\$100-\$1000", and then "over \$1000". He also suggested omitting the "Harm of an undetermined amount" distinction and the "Actual or potential harm cannot be verified" distinction. Commissioner Peterson asked if staff was proposing a basic penalty and then adding or subtracting from it. Mike Francis stated that a numeric value of an aggravator or mitigator corresponds to a dollar value or license sanction equivalent. He stated that staff is not presetting or predetermining a civil penalty. He referred to the old Matrices, which said that a misuse of a product was an automatic \$1,000 civil penalty, and the industry members were upset because they said that each violation should be evaluated individually. Commissioner Peterson stated that he likes Commissioner Baker's idea about concurrently comparing the two Matrices. Lisa Gervase stated that this is a good idea to be done as an internal check. She asked if the Commissioners have any thoughts on the values of the aggravators or mitigators, noting that for some the values range from 5-4-3-2-1, and for others the values range from 5-4-3-0. She asked if the values should be 5-4-3-2-1 for all of them. Commissioner Baker stated that it does not matter to him, as long as people know the amount of the assigned values and have a chance to understand them. Mike Francis stated that one substantial change regarding mitigators is on page 6, namely that a violator who decides to settle early rather than go to hearing may be able to get a 33% reduction in the civil penalty. Commissioner Runbeck asked if this passes legal muster and if there is anything wrong with requiring a settlement conference if you want to have your fine lowered. Christopher Munns stated that there needs to be additional mitigating factors besides goodwill. He suggested that they could be things like they were discussing earlier, such as a personal protection mitigator. Lisa Gervase stated that staff's primary concern is that violators do not have the ability to mitigate down to negative numbers and out of any discipline at all. Mike Francis stated that mitigators are taken into consideration with regard to the specific violation under investigation (even though they are not Matrix values) and also with regard to settling early. If a violator chooses to take the matter to hearing, then the civil penalty amount sought will be whatever the full Matrix value was. Commissioner Peterson expressed disagreement over the idea that violators get reductions in their penalty when staff proposes solutions for them. He stated that this does not seem right, or at least the reductions should not be as great as they would be if the mitigators are taken without prompting by staff. Such mitigators could include extending a warranty to the consumer(s) or conducting training classes for their employee(s). Lisa Gervase interpreted Commissioner Peterson's idea by stating that the violator has to have taken mitigating steps before settlement*

conference and they cannot be future suggestions or part of an order. Commissioner Fraker expressed concern about people who have never been to a settlement conference and who do not know what is going to happen there, stating that it is tough for these people to mitigate. He stated that these people usually do not know about pre-notification possibilities, training classes, etc. He stated that the repeat violator knows how to work the system. Commissioner Peterson stated that part of this potential problem can be alleviated by staff developing and mailing out to respondents a letter cuing them to come to the settlement conference with their own creative ideas of mitigators. He suggested encouraging them to be proactive in their approach and giving them examples of what other people have done in the past to mitigate. Dave Colvin stated that Lisa Gervase has composed a good Settlement Conference Notice letter to respondents which informs them and prompts them. He stated that staff has been put in the position in the past where respondents say that they were not told something, but now it is on paper. He stated that he does not volunteer and provide mitigating factors to respondents easily, and that they need to have ideas before the settlement conference. Commissioner Peterson asked if the Commissioners could we see this letter. Lisa Gervase stated that she would email it to them. Mike Francis stated that staff will also compare Matrices and bring the results back to the Commissioners.

**F. Legislative Changes - proposed suggestions**

**G. Rule Changes - proposed suggestions**

*The following discussion applies to Agenda Items XIII.F and XIII.G.*

Commissioner Peterson suggested that the Commission hold a meeting the day before the regularly-scheduled February commission meeting to discuss rules and law changes. Lisa Gervase stated that for legislation, she wrote an outline and position paper. However, for rules, because she knows rules changes are needed, she stated that it was easier to start making changes right on the rules. Hugo Pulido stated that he could either install Corel on the Commissioners' laptops or convert the material to PDF before sending it out. Commissioner Peterson asked Hugo Pulido to convert the material to PDF so that all of the Commissioners are operating in one program and they do not have to worry about going back and forth.

**XIV. Approval of Minutes**

**A. December 10, 2004 (regular session) Minutes**

**MOTION:** To approve the December 10, 2004 Minutes by Commissioner Baker.  
Seconded by Commissioner Runbeck.

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

**B. December 10, 2004 (executive session) Minutes - (separately e-mailed to Commissioners on 12/30/04)**

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

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

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

**Current Proposed dates**

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

**March 11, 2005**

**April 8, 2005**

**May 13, 2005**

**June 10, 2005**

**July 8, 2005**

Commissioner Baker asked if it would be possible to hold another meeting in Tucson, perhaps in April or May. Lisa Gervase stated that she would be happy to do whatever the Commissioners want, but that the only way to get any significant number of attendees or generate enough interest outside of the Phoenix area is if staff takes the time to mail out notices to people in the Tucson area and really markets the meeting like they did for the October 2004 meeting. Commissioner Baker stated that he would just like for staff to set the meeting without advertising and without any additional notice other than on the website. Lisa Gervase stated that for the March 2004 meeting in Tucson, when staff just sent out regular notices and nothing extra, there were only approximately 12-20 people who attended who did not have to attend. At the October 2004 meeting in Tucson, however, when staff sent out a separate mailing, there were probably 50 people who attended who did not have to attend. She stated, however, that staff is planning a CE class in Tucson for April 2005. Commissioner Peterson requested that a rules and legislative meeting be held on February 10, 2005 from 1:00 p.m.-5:00 p.m., even though Commissioners Robinson and Runbeck would likely be absent for that. Lisa Gervase stated that it would be best to have as many Commissioners as possible present for such an important discussion.

**XVI. Adjournment - 3:20 P.M.**

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

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