

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

**COMMISSION MEETING MINUTES  
THURSDAY, February 10, 2005 - 1:00 P.M.  
FRIDAY, February 11, 2005 - 9:00 A.M.**

**February 10, 2005 - 1:00 P.M.**

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

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

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

**Staff Present:** Jason Aanderud, Mike Francis, Lisa Gervase, Robert Tolton, Eric Bauer, and Assistant Attorney General Christopher Munns

**II. Laws**

**A. HB 2516**

*Barry Aarons, representing the Arizona Pest Management Association, appeared.*

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

*Doug Pinnecker, representing Contractors Termite & Pest Control, Inc., appeared.*

*Scott Richardson, attorney, appeared.*

*The Commission expressed its displeasure that the APMA had this bill folder opened in late January 2005, without any discussions or involvement by the SPCC.*

*Mr. Aarons stated that the APMA merely wanted to solidify the SPCC's policy of how it views joint responsibility. He stated that it is a generic concern, not connected to any one, two or three cases. He stated that Commissioner Fraker showed him some language that could become rule, but rule making is a long and involved process.*

*Commissioner Fraker stated that the Commission has been taking a positive step in interpreting the Joint Responsibility Rule fairly. Having language that mirrors reality is a step in the right direction, whether this bill is the best language or exact answer, he doesn't know, but that it is a step in the right direction for the protection of the people in the industry.*

*Commissioner Hartley stated that the whole idea of joint responsibility goes way back to early 1990s. He stated that he was a big proponent of the Commission having some ability to be subjective about what was reasonably expected from business licensees and QPs when they had someone go out in the field and blatantly violate what they had been trained to do. In the early 1990s, the Commission was more subjective and told companies what they could better to avoid violations, but once companies caught on to the cliches they could use, they blamed the little guy for everything and did not take responsibility for anything, which is just as bad. He stated that over the past 2-3 years there seems to be a good equilibrium, and he thinks it is because of the work of and feedback from staff. He stated that training and supervising is subjective, and the thing he has against the bill is that it takes away their subjectivity and creates an adversarial position about what constitutes proper training and supervision. He stated that it is never going to be perfect, but if staff has done an adequate job of evaluating what the business licensee and QP have done in supervising, training, providing proper equipment and safety, then the Commissioners feel they can trust staff's judgment as to enforcement and penalty actions. He stated that the proposed bill creates a semantics game, and it seems like no one wins except the attorneys. Applicators have to shoulder responsibility too, or else the licensing structure shouldn't require them to have separate licenses.*

*Chairman Peterson asked if the intent of the bill was to take away the Commission's discretion or make it so that the Commission has to hire an expert to show that training was or was not adequate. Barry Aarons stated that the intent is not to take away one iota of the Commission's authority and no discretion is taken away. Their goal is to clarify and give authority to Commissioners to proceed with rules to further define what is expected of license-holders. Chairman Peterson stated that he does not think the language in the bill does this.*

*Commissioner Runbeck stated that she thinks business licensees and QPs should be held responsible for what their employees do, despite training and supervision. She stated that if an applicator does something wrong and gets in trouble, the company just accepts the fine or Administrative Warning, fires the employee, and the employee just goes to another company. She stated that companies need to keep close enough tabs on their employees. She also stated that they were dealing with administrative law, not criminal law, and that an "innocent until proven guilty" standard does not apply. She stated that she does not think the Commission has*

*taken away a business license or QP license for something that an applicator did. She stated that the Commission is exercising discretion for sanctions right now, which is good, but it takes away the clout of the Commission to turn it around and say that the Commission has to prove that companies did not supervise or educate. She stated that she is thinking as a public member, and that if someone screws up spraying on her property, she wants to know that the company is responsible and that the SPCC can do something about it. She stated that as a homeowner, she does not want to have to file a lawsuit in superior court for a civil remedy, because this is a huge time and money expense for a relatively small pest treatment. She wants to be able to file a complaint with the SPCC, to know that it will be adjudicated and that there is enough clout.*

*Mr. Pinnecker stated that most companies will make the customer/homeowner whole at their expense, but with regard to licensing, the companies should not be held accountable for an employee run amuck. Commissioner Runbeck stated that maybe Mr. Pinnecker's company will make the customer whole, but other businesses may not. She stated that business licensees and QPs have been assessed at most an Administrative Warning if they show training records, etc. She stated that what she sees this bill doing is turning things around, and the way the Commission has been handling it is a much better way.*

*Commissioner Baker stated that the system isn't broken and doesn't need fixing. He stated that he concurs with Commissioner Runbeck's point of view that the Commission has been fair and even-handed and has not unduly picked on a particular business licensee or QP. He stated that he thinks that staff has given the Commissioners the information necessary to make a valid judgment. He stated that they are just trying to make sure that people have done what they can to fix bad situations.*

*Mr. Aarons stated that things are not necessarily broken, but some maintenance is needed to keep an equilibrium. He stated that there is a modicum of agreement that this is what they should be driving towards. He stated that the regulatory authority of the Commission is two fold: 1) to protect the consumer, and 2) to also provide fair and equitable treatment towards the person who holds the license that the Commission has conveyed. He stated that the legislative process is a marathon, not a sprint, and he is certainly open to tweaking language because he is just trying to clarify, not change, the law. He stated that the Commission can then feel free to adopt or promulgate any rules that they want to further clarify.*

*Mr. Aarons stated that three circumstances led to the APMA wanting to pursue this bill now. Commissioner Runbeck stated that at first Mr. Aarons said this bill was not the result of any specific instances, but now he is saying there are certain circumstances pushing the edges. Mr. Aarons stated that this is an issue that has*

*been discussed for several years. He stated that some policy action was taken in November 2002, but it became a bit muddled in application.*

*Commissioner Runbeck stated that there has been an overreaction to concerns about a muddled policy statement.*

*Commissioner Fraker acknowledged that the joint responsibility issue has been a concern for a long time. He stated that there has been a strict interpretation in the past and that it was not until recently, upon the good makeup of the Commission a little before his time (a little over six years) realized that this was not the fair approach and changed the approach. He stated that they now look more closely at staff's research. He stated that one of his concerns is that when the members of the Commission change, they might once again take a strict interpretation of the Joint Responsibility Rule and say that documentation for training, etc. is not really taken into consideration, which would be a giant leap back five years. He stated that having a better understanding now in black and white about how the Commission is to handle the issue will prevent that from happening. He stated that even going back ten years, the strict interpretation approach may have been a good approach to turn the industry around, but he thinks that companies are more responsible now and take care of customers, and training is more important now because of the challenges that the pest control market has. He stated that he thinks the Commission does need to address this issue in order to state what a good policy or procedure is relative to who is responsible. If not, it will be up in the air, subject to change based on the makeup of the Commission, which changes from year to year. Commissioner Fraker stated that he is not in favor of the language exactly the way it is stated in the bill and that he prefers Lisa Gervase's language (in proposed rule before the Commission).*

*Mr. Aarons stated that the language may not be perfect or even good, but he is sensing a conceptual agreement. He suggested starting with the November 2002 policy statement to use as a template for statutory language change. He stated that he had not seen the rule-making language until Commissioner Fraker showed it to him earlier today. He stated that the Commission can still have the authority to prescribe rules and policies.*

*Lisa Gervase stated that although there was no formal vote at the November 2002 meeting, the verbalized policy is something along the lines of what she put in the proposed rule change that was copied to Mr. Aarons. She stated that it was never put into a written policy statement nor was the rule-promulgation process continued. She became director of the SPCC a few months after that and has been collecting data from Commissioners, industry members, the public, etc. regarding concerns about statutes and rules. She stated that they now have the first decent draft of rule changes to address this.*

*Mr. Martin stated he is an environmentalist and represents the APMA. He stated that statute lays out before the public and to licensees the requirements for business and QPs to train, equip and supervise and do a few other things in order to maintain your license in good standing with this Commission, and failing to do these things means you are subject to discipline, including revocation. He stated that the Joint Responsibility Rule does not give the sort of latitude that the Commission has enjoyed in its discretion the last few years. If a QP fails to discharge a duty under the statute then the Commission should take their license away, and the Commission should be doing that a lot more often if there's evidence that the business licensee or QP has done wrong. He suggested delineating the authority in statute and then, if the Commission wants further clarification, it can further promulgate rules.*

*Commissioner Runbeck stated that putting the responsibility on the applicator is not going to encourage cleaning out bad individuals when an applicator goofs up. She stated that the company will either let the applicator continue working for them because they don't have to worry about a slap on the hand, or they will fire the applicator and another company will hire them because they are not going to have to worry about responsibility. She suggested that maybe there should be a law, but maybe it should say that the business licensees and QPs are responsible unless they show they have trained their employees. Commissioner Runbeck stated that unfortunately the Commission has been broadsided by this proposed bill and it is too late to propose anything else in the legislature. Mr. Aarons said that if the Commission decides to go in a different direction and the APMA can agree on that, then they can strike HB 2516 for next Wednesday. He stated that there is a lot of time and flexibility in the legislative process.*

*Chairman Peterson expressed displeasure that the bill was dropped without any pre-conversation. He stated that they are supposed to be working together, and there is nothing worse than surprise. He stated that he cannot determine whether the Commission should lay trust in this. He stated that there is a bill out there, the Commissioners do not like the language, but maybe they can come to an agreement that they are not necessarily opposed to a bill but want to amend it.*

*Commissioner Hartley stated that he is always in favor of having things anchored in law and then having rules that follow. He stated that he would prefer a bill similar to rule, but something in writing whereby a company has a chance to provide what the Commission is looking for with regards to documentation of training, etc. Mr. Aarons stated that they have until Tuesday at 4:00 p.m. to submit language for amendment that could be considered by the Commerce Committee on Wednesday. He stated that they can also by agreement publicly allow them to continue this bill on and make those changes on the floor. He stated that he can visit with the sponsor of the bill, Representative Trish Groe from Kingman, and agree with the*

*Commission and with her that if the changes were not made that she will withdraw the bill. He stated that he thinks they can come up with language that everyone will be happy with, that will anchor this in law and will enable the Commission to further delineate in rules. Lisa Gervase asked if he is suggesting that if a law passes, then the Commission does not have authority to pursue possible disciplinary action unless it does something more in rules than it already has now. Mr. Aarons stated that this is not what he is saying. He stated that they are not trying to limit or take away any rule-making authority that the Commission has. He stated that hopefully the language would be clear enough that the Commission would not need any additional rules. But he stated that he has seen regulatory agencies who have had legislation that delineates something, and over time they like to clarify with the rule-making process. Mr. Aarons stated that all he is saying is that the Commission will not have that option taken away. Lisa Gervase asked Mr. Aarons if he is suggesting that there is a need to further delineate something in rule, if something like this joint responsibility language is passed in statute, in order for the Commission to pursue possible violations. Mr. Aarons stated that this is not what he is suggesting, and that they can come up with clear statutory language that will give the Commission such authority.*

*Commissioner Runbeck stated that this came up as a surprise to her and that she read the bill as indicating an attempt for businesses to get out of any kind of responsibility for the acts of their employees. She stated that she is not sure that they can accomplish the proposed wording today and actually have staff do it with direction from the Commission. She stated that she has no problem laying out what is required, but she stated that the Commission should still hold the business licensees and QPs responsible unless they can show us they have met training and supervision standards.*

*Commissioner Baker stated if the Commission was revoking licenses left and right, then there might be a potential for abuse, but this is not happening. He stated that usually there is just an Administrative Warning for the business licensee, and nobody said that their licenses are to be revoked after a certain number of violations. Mr. Aarons stated that if the Commission is doing something that is working, then it should codify it so people understand how it is working. He stated that he is not saying that the system is broken. He stated that Commissioner Fraker articulated well that over the past five years there has been some reasonable give and take. This is preventive maintenance so that we do not create a circumstance with a new set of Commissioners where something does break. Commissioner Hartley stated that over the last 5-7 years, the Commission has done a good job of looking at these issues with the right attitude. He stated that he does worry about future Commissions, and he will not be a part of them. He stated that he does not like the language of the law, it needs to be tweaked, but it is a good opportunity for the Commission to act on something that will help Commissions in the future. Lisa*

Gervase agreed that the Joint Responsibility Rule needs to be amended. She stated that for the past two years, since November 2002, the Commission has interpreted the rule differently than it reads. She stated that there is a sentence in the November 2002 Commission meeting minutes that gives the consensus: "Carl Martin stated that they have not drafted an official report on the issue. The consensus is that the companies should be able to express that they have met all of the reasonable obligations in order to avoid sanctions against the business licensee and QP. This allows for the idea and it puts the responsibility on them." Lisa Gervase stated that that is as far as the Commission came with setting out a verbal policy, and that is basically how the Joint Responsibility Rule has been interpreted since that meeting. She stated that they do want to codify it, and that is why staff put the rule language before the Commissioners last month and this month to change the rule. She stated that it would probably be quicker to take that proposed rule language and substitute it for the house bill language that has currently been proposed. She stated that the language currently proposed does do more than what is being represented to the Commissioners from a legal standpoint. She stated that it is not codifying the practice that the Commission has been taking since November 2002. She stated that the Commission needs to give her some direction as to what it would like her to do as far as presenting a position to representatives Reagan and Groe.

Commissioner Runbeck stated that she would like to see something like, "a business licensee or QP may be held jointly responsible for the acts of another person...unless they can reasonably demonstrate to the Commission (with staff making the determination and the Commission having the opportunity to approve it) that they have met all of their responsibilities and duties under the laws..." Mr. Aarons stated that this sounds like a softer affirmative defense. She stated that for mitigation the Commission can consider reasonable steps taken, and this leaves a lot to the Commission's discretion. The burden of proof still needs to be on the business licensees and QPs. Lisa Gervase suggested writing it out before making a motion. Mr. Aarons asked if discussion could be recessed and tabled for tomorrow so that word could be put to paper.

(Break from 2:40 P.M. to 2:50 P.M.)

(Below is the continuation of the discussion on Friday, February 11, 2005.)

Chairman Peterson stated that the Commissioners were given some language this morning by Lisa Gervase, Mr. Aarons and Mr. Richardson. Commissioner Runbeck stated that the Option #1 language is simple, easy to understand and acceptable, but that Option #2 has awkward phrasing and is unclear. Mr. Richardson stated that the language should be as simple as this: "A business licensee, QP or applicator may be held jointly responsible for the acts or omissions of a person under their

*supervision upon a showing of a failure of such licensee to properly train, equip or supervise such other person.” After much back and forth discussion about the burden of proof and shifting burdens, Commissioner Runbeck stated that she felt like yesterday they made a lot of progress in trying to come up with a way of finding wording that would satisfy everyone, but now if the Commission has to find a lot of evidence after the applicator screws up, then she stated that she would oppose the bill, even if she has to speak as a private citizen before the legislature.*

*Mr. Martin stated that it is preferable to hold the individual who has done something wrong responsible and then punish them appropriately for that bad act. He stated that if QPs fail to train, equip and supervise, then they should not have a license, and if business licensees routinely do that, then they ought not to be in the business of structural pest control.*

*There was more back and forth discussion among Commissioners and audience members about the burden of proof.*

*Lisa Gervase summarized that where they started and where she thought they were at the end of yesterday’s discussion was to codify in statute the practice that the Commission has been using since November 2002. She stated that Option #2 is the codification of that practice. She stated that Option #1 is more of an affirmative defense, whereas the bill as currently written is a complete shifting of the burden whereby the Commission has to prove that the business licensee or QP had some duty and did not abide by that duty before they could be found responsible for a violation committed by their applicator. She agreed that the Joint Responsibility Rule as currently written is a strict liability rule but that the Commission has taken a more reasonable interpretation over the past two-plus years. She stated that there was a time that the business licensees and QPs were held responsible no matter what they did; then there was a shifting where every business licensee or QP blamed everything on and fired their applicators, and that does not do anything to change behavior. She stated that the business licensees and QPs have the power to change their behavior to make sure that there is safe practice of pesticide use. She stated that by not having them have that level of responsibility, we might run the risk that we have that pendulum swing back, and the Commission will not get records of training and supervision. She stated that if they are just trying to codify the way the Commission has been operating, which is what she has been hearing at APMA meetings and reading in their minutes, the November 2002 SPCC Commission meeting minutes, and Mr. Richardson’s September and November 2004 memos to the APMA, Option #1 or #2 does that.*

*Chairman Peterson asked that Mr. Richardson and Lisa Gervase continue the discussion and draft proposed language outside of the Commission meeting room.*

*(Lisa Gervase and Mr. Richardson left the Commission meeting room to continue their discussion and returned later in the meeting.)*

*After receiving additional clarification from the Commission, draft language was presented to the Commission.*

**MOTION:** *To accept the proposed language for A.R.S. §32-2308 (HB2516) as presented by Mr. Richardson with modifications by Lisa Gervase, by Commissioner Hartley.  
Seconded by Commissioner Runbeck.  
[Copy of this language dated 2/11/05; 4:30 pm, in “joint responsibility” legislative file.]*

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

## **B. Possible Legislative Proposals**

*Kevin Etheridge, representing Contractors Termite & Pest Control, Inc., appeared.*

*Brian Ferris, representing Terminix, Inc., appeared.*

*Lisa Gervase provided the Commission with a seven-page outline regarding proposed, future law changes, which is a compilation of things that industry members, consumers and staff members have mentioned to her over the past year or so. The possibility is that the Commission will draft language over the summer and seek a sponsor for the next legislative session to pursue any of these ideas that the Commission agrees with. She stated that she would be looking for a “yes”, “no”, or “maybe” for each idea. She welcomed more verbal ideas from anyone in the audience. She stated that once the Commission gives her direction, she can put a new draft together and put it on the website and start getting people’s input.*

*Item #1 (Add a definition of “person” to include the state and political subdivisions for purposes of licensing and enforcement.): If desired, this would be proposed as a separate bill after lengthy, continuing discussions with stakeholders. Many political subdivisions have been coming in to the SPCC seeking licensure, but it’s important to continue to more formally work on this issue. Commissioner Runbeck stated that she would want licensure required for school districts for safety of the children. Commissioner Baker stated that he would like QPs to represent school districts. Chairman Peterson stated that the Arizona Department of Transportation (ADOT) would also be included as a political subdivision. Commissioner Baker asked what the differences in responsibilities are between business licensees and QPs. Lisa Gervase stated that the primary differences are that business licensees are responsible for insurance, record-keeping, responding/reporting to the*

*Commission, whereas QPs are responsible for training, equipping and supervising applicators. She stated that political subdivisions could be exempt from fees if the Commission thought that was appropriate and the legislature approved it. She stated that having business licenses under the SPCC's current statutory structure actually protects them because a QP license is held by an individual who could leave their employment. In such a case, a political subdivision without a business license would be stuck without the ability to get a temporary QP, so having the business license actually helps them. She stated that political subdivisions typically already have the financial responsibility in place. She stated that the SPCC needs a contact person to receive notices or speak on behalf of the business licensee. Commission consensus to pursue as a separate bill, with stakeholder input.*

*Item #2 (Restoring the felony penalty for unlicensed activity.): This was in the SPCC statute as a Class 6 felony before the September 2003 law changes, but disappeared when the laws changed. Lisa Gervase stated that prosecution is typically not pursued, which may be why the language was taken out. Chairman Peterson asked if it was a deterrent. Mike Francis stated that from an enforcement standpoint, if the inspectors advise the unlicensed operators or landscapers that they could be guilty of a felony, it can change their behavior more than just saying that they will be given a slap on the wrist. Commissioner Baker stated that the object is to get them to stop or become licensed, whatever it takes. Chairman Peterson noted that it is a felony in other states, such as Texas and Florida. Commission consensus to draft a separate bill and then go from there.*

*Item #3 (Change "Certification" and "Qualification" to "License" throughout.): Housekeeping change. Commission consensus to pursue.*

*Item #4 (Amend the part of definition of "business of structural pest control" pertaining to the "use of devices" to eliminate, exterminate, control or prevent infestations; and the definition of "device".): Mr. Etheridge commented against narrowing the definition, due to consumer protection and liability concerns if unregulated persons performed pest control work. Mr. Ferris commented against narrowing the definition because devices are used for legitimate pest control work, and for consumer protection reasons. There was discussion about defining "device" further and/or limiting unlicensed work to that which is not for "hire". However, each possible solution discussed had undesirable ramifications. .*

*Commissioner Baker stated that the Commission took a little bad publicity, but hopefully people read about it and will stop doing these types of things. She stated that the newspapers are going to print whatever they want to print anyway. Chairman Peterson stated that he is not concerned about a sophisticated customer because they probably know enough to not be taken advantage of. He stated that*

he is concerned that the little old lady in her house will be taken advantage of. Chairman Peterson asked if the Commission wants to regulate devices to protect the public from being ripped off or to protect their safety. Commissioner Hartley stated that if an idiot is placing spring-loaded rat traps all over the house, they can hurt people and pets, and it needs to be regulated for the protection of the consumer. Commissioner Runbeck stated that an owl on an antenna could fall off and hit someone on the head. Commissioner Fraker stated that he sees no difference between that and advertising for the installation of bird repellent, stainless steel spikes and electrical wiring for pigeon control. He stated that if you are advertising for the business of structural pest control, then you come under the SPCC's jurisdiction and regulation. Mike Francis stated that companies that do not use pesticides but that do sell bird work to residential customers using bird barriers and spikes also use gels, which are products that, if applied incorrectly, will trash a house because of the heat. He stated that if an installation has gone wrong and a consumer calls, and if the SPCC cannot regulate it, then the SPCC cannot give relief to the consumer. The consensus was to leave the definition as is, and for the Commission to use enforcement discretion on a case by case basis.

*Item #5 (Add WDIIR language to FIR.):* Lisa Gervase stated that the intent of the fungi inspection category is that it is supposed to be limited to being in connection with the sale or refinancing of real property, like the wood inspection report, and that additional language was never put in the definition of Fungi Inspection Report like it is in the definition of WDIIR. Consensus to pursue.

*Item #6 (Change "Wood-Destroying-Insect Report" to "Wood-Destroying Insect Inspection Report"):* This is a housekeeping change. Consensus to pursue.

*Item #7 (Amend term of Commissioners.):* Lisa Gervase suggested possibly amending the terms of the Commissioners from three years to something longer than three years. Chairman Peterson stated that terms at other Boards/Commissions are five years. Lisa Gervase stated that the terms of the two Boards she sat on were five years. Commission discussion that it takes at least a year to learn the ropes, a second year to be completely productive and then the third year is the last year. There is a lot of work to do on a monthly basis in preparing for the Commission meetings. Consensus to pursue term increase to 5 years.

*Item #8 (Amend Commission per diem compensation.):* Lisa Gervase stated that the range of per diem compensation among boards/commissions is somewhere between \$30 and \$250. An increase would also help add to the perception of professionalism of the industry they are regulating. She stated that a lot of boards are at \$30. Commissioner Runbeck stated that the two boards she is on pay \$30. Commissioner Runbeck stated that consideration should be given to the amount of preparation required. She stated that the Naturopathic board gets \$200 and their

*Commission books are one fourth of the size of the SPCC Commission books, although there appears to be no relationship between the amount of work required and the compensation amount. Mr. Martin spoke in favor. Mr. Etheridge spoke in favor of the Commissioners getting the maximum allowable, notwithstanding the fact that this Commission, under Lisa Gervase's direction, has never fallen short of budget, so the Commission can afford it. Consensus to pursue between \$100 and \$200.*

*Item #9 (Delegating licensing of applicators to staff): There's an inconsistency between statute and reality, in that staff regularly handles issuing applicator licenses unless the applicator has a prior felony conviction, in which case staff brings it for review before the Commissioners. Ms. Gervase asked if the Commissioners want to have all applicators brought before the Commission, or only felony applicants, QPs and businesses. There was discussion about background checks for all applicator applicants, not allowing a licensee who has a felony conviction to broaden into another category without coming back before the Commission again, increasing license fees to account for the costs of background checks, and having different licensing requirements for weed control applicants. Consensus for the proposed amendment #9, to pursue as a housekeeping change.*

*Item #10 (IPM at Schools Guidelines report to Governor, etc., IPM guidelines in general - annual report.): Lisa Gervase asked about the annual IPM Guideline report to the Governor, the legislature, etc. Chairman Peterson stated that they should not have to do it unless there are pesticide incidents related to school, or perhaps if the Commission has done something good, that should be in there also. Consensus to seek change to only report if there are incidents or activities to report to the Governor and Legislature, instead of an IPM guideline report that may be repetitive.*

*Item #11 (Mandatory Suspension for nonrenewal.): Lisa Gervase stated that there is a provision in statute that makes it mandatory to suspend a license for nonrenewal within 30 calendar days of the renewal date. Yet, the rules state that a license expires and the license holder can pay a late fee for 60 days and after 60 days they have to retest. Consensus for the language to be changed to "may".*

*Item #12 (Grounds to Refuse to issue Business License name.): Lisa Gervase stated that the current grounds to refuse a business license name are if the name is not registered with the Secretary of State or Corporation Commission or if it is misleading or implies a distorted representation of the business. She stated that sometimes the Commission has had issue with names that can be confused with other similar names, but that is not a specific ground deny the name. Consensus is that a name that is too similar to another business name is "misleading" so this*

*statute already provides the Commission discretion to deny a name on this basis. No proposed change needed.*

*Item #13 (Temporary QP License.): Lisa Gervase stated that the law in this area says that a business licensee can get a temporary QP merely upon a "disassociation" from their current, permanent QP. She stated that the Commission has been interpreting "disassociation" to mean death, termination, resignation, or significant disability. She asked for guidance as to the reasonable interpretation or definition of "disassociation". She stated that in order to get a temporary QP, all you need to be is a licensed applicator, and you get it for 60 days. Lisa Gervase suggested maybe having a policy statement about what constitutes disassociation for the time being. She also suggested defining the time frame between the time of disassociation and the time when a business licensee could obtain a temporary QP. (For example, is it a disassociation if a company's QP died six months ago and the company is just now requesting a temporary QP?) Lisa Gervase stated that staff could probably come up with a list of all of the reasons that there have been over the past two years. Robert Tolton stated that those reasons could be narrowed down to death, resignation/retirement, and military service. Christopher Munns stated that substantive policy statements are flexible and can allow for additions, but statutes are not, and so a policy statement might be a better way to deal with this issue right now. Lisa Gervase stated that she needs some direction from the Commissioners, because it takes a lot of time to draft these types of things and move forward. Consensus to draft substantive policy statement about what constitutes disassociation, and when, in order to obtain a temporary QP license.*

*Lisa Gervase stated that she recognizes the time involved, and that it is important to have these types of meetings where the Commissioners are present. She also stated if they are done in this forum, folks cannot say that they weren't given notice and an opportunity to hear the discussion and provide input. Commissioner Fraker agreed that it is important for the Commissioners and not just staff to see these issues, so that laws are not created without the knowledge and/or input from the Commissioners. Discussion among Commissioners about scheduling another meeting, separate from the regular meeting, to continue with legislative discussions.*

*Regarding the proposed rules changes, consensus was for the Commissioners to begin reviewing the proposed changes, article by article at the next meeting. Chairman Peterson suggested that they keep scheduling meetings even if not all of the Commissioners can make it, because they need to keep moving forward. He stated that they should plan for a full-day meeting starting at 9:00 a.m. on Thursday, March 10, the day before the regularly-scheduled March Commission meeting (post-script: lack of quorum to convene meeting on 3/10). Lisa Gervase stated that she will retain the current rule draft until they discuss it, and then once she has the comments from the Commissioners she will produce a new draft.*

*(Recess from 4:40 P.M. to 9:00 A.M. tomorrow)*

### **III. Rules**

*Tabled for future meeting.*

**February 11, 2005 - 9:00 A.M.**

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

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

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

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

#### **II. Call to the public**

*Scott Richardson asked for a future agendized discussion of whether to issue a period of moratorium, perhaps a year, to allow the landscapers to come in to the SPCC without the SPCC raising the issue of whether their experience was legal or illegal, to get these folks licensed.*

*Ronald George Jacobs suggested creating a category of QP license who could handle multiple applicators who perform weed control to make sure they were insured, certified, and their CEUs were intact. Chairman Peterson suggested this is something that can be discussed under potential changes to law or rules in the future.*

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

*Commissioner Hartley stated that at the end of January he attended a meeting in Casa Grande put on by Phyllis Farenga, a license holder in Marana, Arizona. He stated that former Commissioner Bruce Tennenbaum and a couple people from the Governor's office were there. He stated that he was there representing his company, Truly Nolen, but that he also intertwined his role as a Commissioner.*

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

*Lisa Gervase stated that the Commission is holding an annual CE course on Friday, March 18 at the Apache Junction High School Auditorium. She stated that there will also be two all-day CE courses in April-one in Tucson and one in Phoenix. She stated that staff will get notices out for these free courses as soon as they have specific dates and locations.*

*Lisa Gervase stated that the Commission will also be getting a new Assistant Attorney General Representative, Lisa Burns, starting on Monday, and she will be more able to provide 60 percent of her time to the SPCC than Christopher Munns has been able to do, because he has been pulled in too many directions and represents at least one other large agency that takes up a lot of this time. Lisa Burns has been an attorney with the Attorney General's office for ten years.*

*Lisa Gervase stated that there have been questions from members of the industry about the proper wood destroying insect inspection form to use for inspections for the sale or refinancing of property. A notice is now on the SPCC website to help clarify that issue as well as to help educate industry members and their customers (builders, lenders, realtors) about the requirements.*

*Chairman Peterson noted that today is Christopher Munns' last SPCC Commission meeting and thanked him for his work.*

## **V. Consent Agenda**

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

#### **Qualifying Party**

- |                                    |  |
|------------------------------------|--|
| <b>1. Aleksiewicz, Matthew J.</b>  | <b>Common Ground Services, LLC.</b><br>(Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)          |
| <b>2. Bancroft, Jay William</b>    | <b>Agave Environmental Contracting, Inc.</b><br>(Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture) |
| <b>3. Bollier, Michael Emerson</b> | <b>CareScape, Inc.</b> (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control)  |

- |                                     |   |
|-------------------------------------|---|
| <b>4. Cozzens, Dustin Trevor</b>    | <b>Urban Forest Tree Care, Inc.</b> (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)  |
| <b>5. Eaton, Jeffrey Jay</b>        | <b>Phoenix Exterminating, Inc.</b> (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control)   |
| <b>6. Gerhart, Craig J.</b>         | <b>Phoenix Exterminating, Inc.</b> (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) |
| <b>7. Ledezma, Alberto Carrillo</b> | <b>IRI Golf Management, L.P.</b> (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)   |
| <b>8. Long, Anthony M.</b>          | <b>Y-Not Pest Control &amp; Service, Inc.</b> (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)   |

*Pulled-Mr. Long appeared.*

*Chairman Peterson noted that Mr. Long is applying to become a QP with another business and asked him how he would carry out QP duties while employed with Truly Nolen. Mr. Long stated that this would be his last month with Truly Nolen and that he had already put in his resignation.*

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

**VOTE:** *4-0 Motion carried (Commissioner Hartley recused).*

- |                                      |  |
|--------------------------------------|--|
| <b>9. Michael, Christopher Keith</b> | <b>Great Western Pest Control, Inc.</b> (Activating Qualifying Party for new |
|--------------------------------------|--|

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

**10. Neff, Joey Ryan**

**Neff Exterminating** (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)

**11. Nukala, Jr.; Karl Brandt**

**Target Pest Solutions, LLC.** (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, and "B8" Wood Destroying Insect Inspection)

**12. Robbins, Leslie Carter**

**Frontline Exterminating, LLC.** (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)

**13. Ross, Richard M.**

**Bug Off Pest Control, LLC.** (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)

**14. Trejo, Damon Bruce**

**Grasshopper Landscaping & Maintenance, LLC.** (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)

**15. Twito, Michael Dean**

**EMR Golf Club, LLC.** (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. Branum, Gary LaFon**

**Flood Control District of Maricopa County** (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health)

**2. Davis, Jerome**

**ABC Pest Control, Inc.** (Activating Qualifying Party for existing business

license in "B1" General Pest & Public Health)

**3. Hicks, Trent Larry**

**Casey's Exterminators** (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects, and "B8" Wood Destroying Insect Inspection)

**4. Lyng, William Arthur**

**NaturZone of Arizona** (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control)

**5. Ziemba, Mark L.**

**Safeguard Pest Control, Inc.** (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health)

*Pulled-Mr. Ziemba appeared.*

*Commissioner Fraker stated that Mr. Ziemba is coming from Safeguard Pest Control, but he noticed when reading the file and application that the corporate documents say Trueguard. He asked Mr. Ziemba about the status of the business and if he has changed the corporation name. Mr. Ziemba stated that the ownership explained to him that Trueguard was the original name, Truly Nolen requested a name change, and so there was a hearing that changed the name. Robert Tolton stated that originally the license was issued under Trueguard Pest Control, apparently there was an issue between Truly Nolen and Trueguard, they were required to the change name, and so they changed the name Safeguard. Commissioner Runbeck noted a certificate of amendment to the Articles of Incorporation that indicate that the corporate name was changed to Safeguard (page 304).*

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

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

**C. Applicants for QP Licensure**

1. **Glarum, John Brian** "B1" (General Pest & Public Health)

*Pulled-Mr. Glarum appeared.*

*Chairman Peterson noted that Mr. Glarum self-certified his experience. Chairman Peterson asked Mr. Glarum if his firm was small. Mr. Glarum stated that it just consisted of himself. Commissioner Runbeck noticed that Mr. Glarum was licensed and working in another state and that is why he was verifying his own experience.*

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

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

2. **Goldey, Jonathan** "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture)
3. **Jernigan, William Edward** "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture)
4. **Kirkham, Darren John** "B1" (General Pest & Public Health)

*Pulled-Mr. Kirkham appeared.*

*Chairman Peterson asked about the self-certification of experience. Mr. Kirkham stated that he is from another state and has verification for the past two years from Texas.*

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

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

5. **Kunnen, Harold Jay** "B7" (Fungi Inspection)
6. **Monell, James Charles** "B1" (General Pest & Public Health)
7. **Nabozny, John David** "B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects) and

"B8" (Wood Destroying Insect Inspection)

*Pulled.*

*Chairman Peterson noted that in the file it appeared that the former QP passed away in June. Robert Tolton verified this. Chairman Peterson asked what the company has been doing in the interim. Robert Tolton stated that he does not know. He stated that he was informed about this by one of the SPCC's Tucson inspectors. He stated that they contacted him, staff got the paperwork rolling, and he does not believe that they are operating after the passing of the former QP/owner and that they are starting anew. Chairman Peterson stated that this is good that they are not operating in the interim.*

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

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

- 8. Prater, III; William Carlos** "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture)
- 9. Royalty, John Thomas** "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture)
- 10. Saxton, Jr.; John Franklin** "B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)
- 11. Sutera, Joel Anthony** "B1" (General Pest & Public Health)
- 12. Waldmann, Winfried Theodor** "B3" (Right of Way & Weed Control)

#### **D. Request for Company Name Change**

##### **1. King Exterminating, LLC. to King Pest Control**

#### **End of Consent Agenda**

**MOTION:** *By Commissioner Hartley to accept Consent Agenda with the exception of those items pulled for discussion (A8, B5, C1, C4, C7). Seconded by Commissioner Fraker.*

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

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

**A. Bidwell, Stephen Ralph** Ground Effects Landscaping

*Mr. Bidwell appeared.*

*Chairman Peterson stated that a letter of separation saying that the QP was leaving was dated November 7, and then a request came for a QP was made on December 7. He asked Mr. Bidwell if he was a one-man show. Mr. Bidwell stated that he is the owner of Ground Effects Landscaping in Tucson, and that it is a small business. Chairman Peterson stated that when a QP separates there ought to be a letter behind it to apply for QP testing. He noted a 30-day delay and also noted that Mr. Bidwell came in almost two months later to request an extension. Commissioner Fraker asked Mr. Bidwell why he waited 30 days. Mr. Bidwell stated that he was in Tucson and was searching for another QP, but it was very difficult to find one and at that point he wanted to do it himself. He stated that as the owner of a small business he is out in the field constantly working and dealing with clients, and studying for the test. He stated that he knows it is a difficult exam and needed the extra amount of time to further prepare himself. He stated that he has sent in his fingerprint card to the SPCC. Commissioner Fraker noted that Mr. Bidwell wrote a two-line letter requesting his temporary QP. He encouraged Mr. Bidwell and others not to wait 30 days to apply if qualified for a temporary, and instead to do it right away because it takes a while to get through the steps. Mike Francis stated that as of this date, Mr. Bidwell has not submitted any application for QP testing to Robert Tolton. Mr. Bidwell stated that last week he got his fingerprint card and the application, and then on Tuesday of this week he sent in the application and fee to Robert Tolton, even though he did not put to the attention of Robert Tolton. Chairman Peterson stated that staff might receive it today. Commission Baker asked Mr. Bidwell if he has a copy of what he sent in. Mr. Bidwell stated that he does. Commissioner Baker advised Mr. Bidwell to make a copy of it in case it is lost in the mail and that if he has it with him now to give staff a copy. Chairman Peterson stated that the Commission is continuing to look at this issue because they don't want people abusing the system and being in the application business without a QP for an extended period of time. Mr. Bidwell stated that this was not his case. Chairman Peterson noted that this was Mr. Bidwell's first request for renewal. Commissioner Runbeck stated that she would support a first request for renewal but probably would not support a second request for renewal.*

**MOTION:** To approve temporary QP renewal by Commissioner Runbeck.  
Seconded by Commissioner Fraker.

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

**B. Kilian, Gloria**

Kilian's Termite & Pest Control Co.

*Ms. Kilian appeared.*

*Ms. Kilian stated that she had a QP for about a year and a half, but he left in December 2004, and this is why she is here today. Chairman Peterson asked Ms. Kilian if she has requested to be a QP. Ms. Kilian stated that she is set up for testing in about a week. Commissioner Runbeck stated that it appeared that Ms. Kilian applied for QP testing in September 2004 and she had a QP working for her at that time and this QP left in December 2004. Commissioner Fraker asked Ms. Kilian if this is the first time she has applied for a QP license for herself. She stated that she applied before but did not complete the process. She stated that she did okay with the paper test and passed the core category but had a problem with the computer testing and her application closed because her six months ran out. She then reapplied. Commissioner Fraker stated that the file noted that temporary QPs were issued on 12/14/04, 05/09/03, 03/09/03, 01/09/03, 03/08/02 and 11/09/01. Robert Tolton stated that Ms. Kilian's husband was the QP for the company, he died, Ms. Kilian got a temporary QP and was given a renewal of that temporary QP until March 2002. During that time frame she hired someone to be her QP. This person stayed for some time and then disassociated, and then she applied for and got another temporary QP. During that time frame she had been approved for testing. In January 2003 she applied again for a temporary QP and received three renewals which carried her until July 2003, at which time she had hired an individual to qualify the company, the temporary QP went away and the company was in business. In January 2004, Ms. Kilian re-applied for a QP license in the "B1", "B2", "B3", and "B8" categories. She was approved for the "B3" category and in the following months was approved for "B1", "B2", and "B8". Shortly thereafter the application was closed because six months had passed and she had to wait 90 days before re-applying. She re-applied in September 2004 for QP testing and at this point she has not taken or passed any exams in this time frame. In December 2004 her QP disassociated and she then submitted an application for a temporary QP. Her current QP application expires in March 2005. Commissioner Fraker noted that Ms. Kilian tested once in her previous six-month time frame, and the test scores were not good. Ms. Kilian stated that she had computer problems with the test in Tucson. Commissioner Baker asked Ms. Kilian if she has a temporary QP lined up. Ms. Kilian stated*

that she did, and that the SPCC has a huge list of QPs but only a few are near her. She stated that she has talked to a few of them but they do not have the "B1", "B2" and "B8" qualifications that she needs. She stated that she needs to pass the test within 30 days. Chairman Peterson asked Ms. Kilian how big her firm is. Ms. Kilian stated that her firm consists of one applicator. Chairman Peterson noted that this one applicator has been spraying for two years and stated that the Commission is supposed to make sure that people in the business know what they are doing. Ms. Kilian stated that this applicator is qualified. She stated that she thinks that they are doing well as a company and that the Commission does not have any complaints against them. Commissioner Baker stated that the problem he sees is that the statute does not restrict the number of temporary QPs a person can get. He stated that it becomes difficult to approve them when someone constantly comes in to the Commission over a three or four year period and has to rent QPs and get temporary QPs. Ms. Kilian stated that her husband was the QP until he died, so she hired a QP who was with the company for over a year, and in the meantime it was difficult for her to test when she was doing the QPs' jobs for them. She stated that basically she was the QP doing the work, running the business, and she has been doing this for five years.. She stated that her husband helped her run the business for six months until he died from cancer. She stated that she asked for a QP because she did not have a QP at the time and her employee had a temporary QP after her husband died. Robert Tolton stated that Ms. Kilian was issued a temporary QP in November 2001 that carried through until May 2002. Between May 2002 and January 2003 someone was the QP for that company. Between January 2003 and July 2003 she had a temporary QP for the business. In July 2003, someone activated for them and that carried them until December 2004. Commissioner Runbeck stated that she would support a first request for extension because Ms. Kilian is scheduled for testing and her application for QP licensure will expire in March. She stated that as of April this extension will expire and she will have to hire someone. Ms. Kilian asked what she should do if she cannot find a QP. Commissioner Baker stated that it was her responsibility to find someone.

**MOTION:** To approve temporary QP renewal by Commissioner Runbeck.  
Seconded by Commissioner Hartley.

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

**C. Royalty, John Thomas**

TruGreen LandCare, LLC.

Mr. Royalty appeared.

*Chairman Peterson stated that this was another situation in which a letter of disassociation came in and then 30 days later a request for a QP was made. Commissioner Fraker asked if Mr. Royalty has tested for his QP license yet. Mr. Royalty stated that today he was approved to test. Commissioner Runbeck noted that there was a letter in the file for verification of practical experience which was supposed to be in by January 26. Robert Tolton stated that Mr. Royalty applied for a temporary QP and had said he was working on getting his application submitted for QP testing but wasn't able to do this successfully until the day of or the day before the February Commission meeting cutoff date. He stated that Mr. Royalty's application will be handled shortly.*

**MOTION:** *To approve temporary QP renewal by Commissioner Fraker.  
Seconded by Commissioner Hartley.*

**VOTE:** 4-0 *Motion carried (Commissioner Baker abstained because he was out of the room).*

**D. Sutera, Joel A.**

Unicorn Pest Control, LLC.

*Robert Tolton stated that William Bempohl, who was Mr. Sutera's former QP, had submitted a letter to the Commission saying that he was not longer with the business, and that Mr. Sutera stated that he found out about this when no renewal was submitted for the QP license. Mr. Sutera then applied for a temporary QP. Mr. Sutera was approved on today's agenda for QP testing.*

**MOTION:** *To approve temporary QP renewal by Commissioner Runbeck.  
Seconded by Commissioner Fraker.*

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

*(Break from 10:35 A.M. to 10:45 A.M.)*

**VII. Complaints against Licensees**

**A. 5 Star Termite and Pest Control (BL)/Shelby Hawkins (President/CEO/QP)/Frederick M. Cox (App) - Case # 2004-121**

*Complainants Greg and Jean Brown appeared.  
Mr. Frederick Cox, applicator, appeared.*

*Mr. Brown addressed the Commission and stated that the complaint centers around a real estate purchase termite inspection. 5 Star did not advise him of visible termite evidence and damage which ultimately has been determined to be excessive, the impact of which has been financially and emotionally devastating. He stated that the proposed resolution seems to cover the primary issue in this case, but he stated that he wants to bring up another issue or concern, which is 5 Star's failure to have the liability insurance necessary for licensure. Chairman Peterson asked staff if 5 Star is insured as required by law. Mike Francis stated that according to the statements that staff received from the insurance company, it did state that they were insured, but after talking to Ms. Hawkins it turns out that when the complaint was filed it was determined that they did not have the insurance in place. He stated that the Department of Insurance is doing some investigation. He stated that they are current with their insurance now, but at the time of the complaint they and staff were not aware of the lack of insurance. Chairman Peterson asked if something has been learned from this error so it will not happen again. Mike Francis stated that staff does not actually see the policy so they cannot verify it and they take the word of the insurance company based on the documents they receive. He stated that it is up to the business licensee to make sure the proper insurance is in their policy. He stated that they have 17 years of information about the house that was under a termite contract for most of those years, but inspectors never found termite activity. He stated that it is frustrating as a consumer to have purchased such a house, and now they are trying to fix it because it is not sellable. Commissioner Baker apologized for the Commission not getting notification to the consumers. However, Dave Colvin stated that on January 18 he called Mrs. Brown and left a message on her phone recorder. Ms. Brown stated that she checks her messages daily and never received a message. Commissioner Runbeck asked if the Commission provides written notice. Dave Colvin stated that Mrs. Brown was notified of the settlement conference on 01/18/05 at her address. Commissioner Runbeck asked what the prior violation was against the business licensee. Vince Craig stated that it was an A.R.S. §2324 (D) violation regarding responsibility for the accuracy of the inspection, which is the same thing that happened in this case. Dave Colvin stated that a Consent Agreement was dated August 29, 2001 for that case. Commissioner Runbeck asked if Mr. Cox is still employed. Mr. Cox stated that he is. Commissioner Runbeck asked if an Administrative Warning is the best they can do versus applicator. Mike Francis stated that when it comes to the writing of a settlement agreement, the Matrix is used, and in this case it did not warrant a civil penalty, but the Commissioners can send it back to staff to modify the agreement if they so choose. Commissioner Baker stated that he cannot understand how a property can have a series of termite problems, then can get a clean bill of health and then three months later there are a lot of termite problems. Mr. Cox stated that he has been an*

employee of for 5 Star for about 10 years. He stated that he did the inspection at this home and it was not a clean report. He stated that he did list evidence of subterranean termites in the guest house, pool house and studio, among other evidence, and it was treated by Zeb-Tec Services. He stated that under the damage section he listed subterranean termite damage to the shed door and window and the frame work in the pool house, the report was signed, and he never did a supplemental report. He stated that he did not find evidence in the main house, which was obstructed by the tenant's goods. He stated that when he wrote the report he needed more paper to list the damage, the report went to his desk, and when someone called for the report it got turned in unfinished so not all the damage was listed. Commissioner Runbeck asked whose fault this was. Mr. Cox stated that it was his fault. Commissioner Baker stated that he thinks there needs to be a fine assessed against Mr. Cox, the applicator. Chairman Peterson stated that the Commission has a cooperative agreement with the Environmental Protection Agency (EPA) which encourages consistency in enforcement. He asked how it would be possible to further penalize. Mike Francis stated that if staff has Commission direction, then this can be taken into account when modifying the penalty. He stated that Commissioners Baker and Runbeck have expressed their beliefs. He also stated that since Mr. Cox is here today, the Commissioners could suggest something it would be a done deal if he agrees to it. Otherwise the matter would go back to staff. Commissioner Fraker asked if this is Mr. Cox's first infraction as an applicator. Mike Francis stated that it is. Commissioner Fraker asked if an Administrative Warning is the maximum allowable penalty in such a situation. Mike Francis stated that an Administrative Warning is the maximum allowable penalty for a first time violation of a business licensee, but not for an applicator. He stated that staff considers everything, including the egregiousness of the violation, his accountability, and in this case staff did not believe that Mr. Cox was malicious. He stated that in order to increase the culpability factor, there has to be a showing that the violation was knowing and willful. He stated that although the effects of the violation were substantial, it was just an oversight by Mr. Cox and he did not doctor the wood report. Commissioner Fraker noted that Mr. Cox has been an employee for ten years and this is his first infraction. He told Mr. Cox that being busy is not an excuse, and that when he realized that the report inadvertently went off his desk and to the title company or mortgage company, this would have been an opportune time to follow up with a supplemental report or attach an addendum with the additional graph and comments saying that the report was submitted unbeknownst to him. He stated that once the report is gone does not mean it is over; it is not over until someone accepts the contract. Mr. Brown added that their complaint had to do with the main house, not with the peripheral buildings, although they did later find termites and damage in the midst of a remodel in inaccessible

areas. He also provided photos to staff. Commissioner Fraker stated that it is important to have inspections done on the whole property. He also acknowledged that these situations are very emotional, but that the house is not falling down. Commissioner Runbeck stated that she was mainly concerned that the consumers relied on a company that they had hired to give a good report, and that an Administrative Warning is a little light. She asked if the Matrix would allow the Commission to assess a \$200 fine, and, if so, whether it could be done here at the meeting today. Chairman Peterson stated that he would prefer that it go back to staff and it goes through the Matrix. Commissioner Baker also recommended adding CEUs to the penalty. Chairman Peterson stated that this still will not provide complete resolution to the consumers, and that they will end up in a civil suit to recover damages.

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

**VOTE:** 4-1 Motion carried (Chairman Peterson opposed).

**B. Contractor's Termite & Pest Control/Kevin M. Etheridge (President/CEO)/ Doug Pinnecker (QP)/Scott Tanner (App) - Case # 2004-105**

Dave Colvin stated that the violation concerned the quantity, strength and dosage used in a pre-treatment.

**MOTION:** To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Fraker.  
Seconded by Commissioner Baker.

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

**C. Cummings Termite & Pest Control/Jo Nell Cummings (President/QP)/Kevin Kaplan (App) - Case # 2004-092**

Dave Colvin stated that this case involves a violation of not sealing or patching post-treatment drill holes. He stated that Jerry Cummings represents QP Jo Nell Cummings, and he wanted to let the Commission know that he did intend to attend today's Commission meeting but could not

*because of prior business arrangements. Commissioner Fraker stated that in reading the documentation, he has a question as to whether there is really a violation. He stated that his question stems from a statement from Mr. Kaplan that the holes were drilled into the footer and did not go into the soil. Commissioner Fraker stated that if this is true, then the holes cannot be treated and there is no requirement to patch the holes. Dave Colvin stated that by reading the labels and the Commission's rules, it is not that defined. He stated that when the applicator first responded to the complaint, he gave an explanation of what had happened at the job two years before but then recanted that and said he couldn't remember what happened on the job because of the length of time. Commissioner Baker asked if it was normal to not plug the holes if you do not pop them. Commissioner Fraker stated that it may be poor business but is not a violation of the label. He stated that the reason to patch holes is to avoid escape of chemical, but if you don't treat, don't have to patch. Dave Colvin stated that he simply did not buy the applicator's explanation because not that many people have that good of a memory. Commissioner Fraker asked if the holes were still un-patched and whether the holes went through or not. Dave Colvin stated that by the time staff investigated the complaint, the consumer had contracted out with another company and they post-treated. Commissioner Fraker stated that we don't know anything other than the applicator's statement that he did not remember. Dave Colvin stated that if staff could have gone out to the site and placed a rod to examine the holes, then they would have done that. Commissioner Runbeck asked why there was such a length of time between the treatment, which occurred on August 20, 2002, and the complaint on May 18, 2004. Commissioner Fraker stated that it appears that the complaint wasn't filed because the consumer never paid the bill, over a year and a half went by, it was turned over to a collection agency and then the consumer filed a complaint against the company for not patching seven holes. He stated that this does not seem fair to the applicator. Commissioner Runbeck stated that this report indicates that the investigator observed no holes and the holes showed no residue and no evidence of ever being patched. Commissioner Fraker stated that it would have been beneficial if they could have ascertained whether the holes were dry holes embedded in concrete. He stated that it almost feels like the company is getting a bad deal, and he does not want to see the Commission get into situations where they feel like they have to assess punitive action against an operator because they have invested several hours in an investigation, especially when the circumstances are less than obvious. Commissioner Runbeck asked why a Civil Penalty was assessed against the QP. Dave Colvin stated that it was a violation of not filling the holes. He stated that the investigators tend to look at the rules technically and not as a "spitting contest" between the consumer and the company. He stated that there was some indication that this had been going on for some period of time and it wasn't an issue until the collection agency*

became involved. Commissioner Fraker stated that if the bill had not been paid, he would tend to believe the operator. Commissioner Runbeck asked if the QP has a prior, given that the QP is getting a \$200 Civil Penalty but the applicator is only getting an Administrative Warning. Dave Colvin stated that the reason that the applicator did not get a Civil Penalty is because it is hard to wade through what happened and what didn't happen in a two-year-old case, and when you look at Cummings' records, the applicator name is written in there not by the applicator but by someone in the office, although Mr. Kaplan recalls that there were several people on the job and disputed whether he was the applicator of record. Dave Colvin stated that staff has no evidence to dispute that claim, but if Mr. Kaplan had signed off on a receipt, then he probably would have received a Civil Penalty. Chairman Peterson stated that they need to set aside whether the bill was paid or not paid by the consumer. Commissioner Baker made a general comment encouraging industry members to fill the holes.

**MOTION:** To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Runbeck.  
Seconded by Commissioner Baker.

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

**D. Regal Pest & Termite Services (BL)/Robert Kolander (Owner/App) - Case # 2004-119**

*Mr. Kolander appeared.*

*Dave Colvin stated that this case involves a violation of operating a business without a proper QP.*

*Mr. Kolander stated that he would like to settle this matter because it has been lingering for eight months, which seems to him like an excessive amount of time to get something settled. He stated that he read the Commission meeting agenda, but that it was not his understanding from the outcome of the settlement conference that it would state that he knowingly did business without the benefit of a QP. He stated that he believes that he actually did have a temporary QP in place, and his fault was in not maintaining constant and regular communication with that temporary QP. He stated that he believes that he was duped by Kevin Mollerup, the person who sold the company to him in August 2002. He stated that Mr. Mollerup had a contract to be Mr. Kolander's QP for three years, but approximately one and*

*a half years into the contract, in March 2004, he told Mr. Kolander that he was relocating to Las Vegas and could no longer be Mr. Kolander's QP. Mr. Kolander stated that one of his licensed employees, Sal Leto, agreed to be his temporary QP and it was approved by the SPCC, and Mr. Leto started studying for his testing. Mr. Kolander stated that in good faith he disassociated Mr. Mollerup from Regal Pest & Termite Services. He stated that he had no idea that Mr. Mollerup was in the process of starting a new pest control company in direct violation of his three-year non-compete clause, and with the name of Regency Pest and Termite Services, a name as close as possible to the company name that Mr. Kolander had purchased from Mr. Mollerup. Mr. Kolander stated that in mid-April 2004 Mr. Leto, his temporary QP who had worked for him for almost two years, became badly injured, required home rest and back surgery, and turned in his truck, keys and phone and said he could not do drilling work anymore. Mr. Kolander stated that as Mr. Leto had previously totaled one of Mr. Kolander's trucks and stayed at home for an extended period without pay, he assumed that this was a similar situation. He also believed that Mr. Leto was still studying for the QP test because he informed Mr. Kolander that he wanted a QP license for his retirement. Mr. Kolander stated that Mr. Leto also works at a sports bar from which he receives steady income. Mr. Kolander stated that without informing him, Mr. Leto became an employee of another pest control company and this voided Mr. Kolander's company's temporary QP. Mr. Kolander stated that he did not know of Mr. Leto's new employment nor that it voided Mr. Kolander of his temporary QP. Mr. Kolander stated that in July 2004, after an office visit by SPCC Inspector Alan Pugh, he learned that Mr. Leto was no longer his QP. He stated that he requested Mr. Mollerup to come back to fulfill the balance of his contract and be Mr. Kolander's QP. Mr. Kolander stated that Mr. Mollerup postponed replying for two weeks and then said no, and this is when Mr. Kolander discovered that Mr. Mollerup started Regency. Mr. Kolander stated that as soon as he was told that he did not have an active QP, he immediately ceased operations and became, along with his employees, employees of another company, Top Notch Pest Control, and he hired a new QP, which is not always an easy task, all within four days. He stated that since he bought the business he has worked regularly 70-80 hours a week in the field and in the office and has spent his life savings for this business. He stated that he certainly was naive in trusting Mr. Mollerup and Mr. Leto, but did not knowingly violate not having a QP. He stated that he was at fault for not maintaining regular communications with his temporary QP and for being ignorant of the proper procedures, rules and regulations regarding temporary QP status. He stated that this is also due in part to purposely being given bad information by Mr. Mollerup in his tenure as his QP. He stated that he is currently pursuing litigation against Mr. Mollerup for deception to deactivate his license, breach of contract for both his QP license and a non-compete clause and for naming his new company*

as close as possible to Regal while pretending to be part of Regal and contact past customers. Chairman Peterson asked if the word "knowingly" is defined. Lisa Gervase stated that not having a QP does not have to be done knowingly for there to be a violation. Chairman Peterson stated that Mr. Kolander may not necessarily have intentionally done this, but he reasonably should have known. Lisa Gervase stated that there is no problem with the word "knowingly" not being in the Findings of Fact of the Consent Agreement. Commissioner Fraker stated that when the temporary QP left his truck and did not come back, Mr. Kolander knew at that point that the temporary QP was not active in the daily operation of the business, and this is also what the temporary QP stated.

**MOTION:** To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Runbeck.  
Seconded by Commissioner Fraker.

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

**E. Strike Force & Termite Control (BL)/Robert James Norton (President/CEO/QP)/Chad Eugene Little (App) - Case # 2004-127**

Mr. Norton appeared.  
Scott Richardson, attorney for the business and QP, appeared.

Dave Colvin stated that this case involves an improperly completed WDIIIR.

**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 Hartley.

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

**F. Thomas Ryan's Exterminating (BL)/Thomas Ryan (Owner/QP) - Case # 2004-145**

Marie Scialdone, an associate of Mr. Ryan's, appeared.

*Dave Colvin stated that this case involves an improper display of license and company information on the vehicle. Ms. Scialdone stated that she is an associate of Mr. Ryan and has assisted him with a lot of administrative work involved with being compliant with the complaint that was filed against him. She stated that she was involved and included in the settlement conference. Chairman Peterson stated that in this case a Southwest Pest Control vehicle was seen by an SPCC inspector (Inspector Robert Guzzi) unattended in a Circle K parking lot, the inspector went into the Circle K to look for the pest control operator, and then someone came out of the Circle K, hopped in the truck and drove away. He stated that the inspector had the number, called him on the phone, and it appears that the man was trying to avoid signing the inspection form. He stated that the man stated on the phone that he was behind the Circle K doing a treatment. Commissioner Baker asked why the man, Mr. Ryan, snuck into the truck and drove away. Commissioner Runbeck stated that Mr. Ryan stated that he knew it was an SPCC vehicle but he did not want to get held up. Ms. Scialdone stated that Mr. Ryan told Inspector Guzzi that he wanted to schedule the inspection, and the inspection took place that day. Commissioner Baker stated that the Southwest Pest Control name on the truck was not in the SPCC database, but Inspector Guzzi entered the license number and it came up as Thomas Ryan Exterminating. He stated that going around with a false name of an exterminating company is egregious. He also stated that it appears that Mr. Ryan ran away from the scene with the idea of getting away from the inspection when he knew full well that he would get a violation for having exposed chemicals in his truck and not a valid name. He stated that those are fairly significant violations and he wanted Mr. Ryan here today at the meeting to explain why he ran. Ms. Scialdone stated that it was an honest oversight when he incorporated his business earlier last year that he had not contacted the SPCC regarding the change in his name, even though the law states that you have to do business as and your truck has to display the name as your license is registered with the SPCC. She stated that Mr. Ryan thought he had notified the SPCC with the change of name when he incorporated, and it wasn't until the day of the inspection on that he became aware that that matter had not been addressed and he could not display the name of Southwest Pest Control as it was until it was approved by the SPCC, and the following day he responded to be in compliance. She stated that the name was approved at the November Commission meeting and Mr. Ryan got his QP and business license then. Commissioner Baker stated that he would believe a lot of that if he did not run, but now it appears that Mr. Ryan knew that since he was caught he should do things to comply. He stated that the public is not being served. Commissioner Runbeck stated that from January through September Mr. Ryan was running around with the wrong name of Southwest and, honest oversight or not, it was a violation. Commissioner Fraker stated that the complaint is against Thomas Ryan Exterminating. He*

asked if the complaint only goes on the record against Thomas Ryan Exterminating and whether there was also a violation against Southwest Pest Control. Dave Colvin stated that Mr. Ryan's QP license was penalized because he is the violator, and so the mark will follow him. Commissioner Fraker asked whether any violations will be noted if someone asks for a list of violations against Southwest Pest Control. Lisa Gervase stated that no violations will be noted.

**MOTION:** To return the matter to settlement conference to modify the proposed resolution based on stated factors and rationale, namely that the public is being unfairly and unduly represented because Mr. Ryan ran from the inspector and had the wrong identification of his pest control company, by Commissioner Baker.  
Seconded by Commissioner Runbeck.

**VOTE:** 1-4 Motion failed (Commissioners Fraker, Hartley, Peterson and Runbeck opposed).

Commissioner Hartley stated that he does not see anything coming back from staff that would change the outcome. Commissioner Fraker stated that the violation in this case only deals with the improper name listing. He stated that if the complaint had included violations for an unmanned truck, out of sight chemicals, running away and failure to comply with the inspector, then it would be a different story.

**MOTION:** To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Fraker.  
Seconded by Commissioner Hartley.

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

Ms. Scialdone asked what would happen next. Lisa Gervase stated that a Consent Agreement will be mailed to Thomas Ryan's Exterminating and Mr. Ryan for their signatures, to then be returned to the SPCC.

**G. Baron Pest Control, Inc. (BL)/Marcus Stern (QP)/Christopher Wacks (App)/Charles Loyd Schulz (App) - Case # 2004-085**

Chairman Peterson stated that a one-year warranty seemed short for this violation. Commissioner Fraker agreed that it is a light slap on the wrist given

*the shortage on the project. He stated that the one-year extension does not seem to make the consumer or builder whole. He stated that if this reoccurs, then the Commission needs to look at it more seriously.*

**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, and to send the matter to hearing against Applicator Charles Loyd Schulz, by Commissioner Hartley.  
Seconded by Commissioner Runbeck.*

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

**H. Coy Landscaping & Maintenance, Inc. (BL)/Michael Coy (CEO/President/QP)  
- Case # 2004-107**

*Vince Craig stated that he received a call yesterday from Mr. Coy yesterday and he asked that if the Commission does not agree with the proposed resolution that the matter be continued so that he could be present.*

**MOTION:** *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Runbeck.  
Seconded by Commissioner Hartley.*

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

**I. Joseph Eppinger (App) - Case # 2004-128**

*Mr. Eppinger appeared.*

*Mr. Eppinger stated that he is no longer employed with Maricopa County Flood Control District. He stated that he does not apply pesticides anymore, that he thought the \$500 fine was reduced, and would like it reduced. Chairman Peterson asked how many acres of cotton were affected. Mr. Eppinger stated that he does not think any acres were affected, that there was no proof. He also stated that this was his first offense. Chairman Peterson stated that looking at the penalty points, the fine looks reasonable. Mike Francis stated that staff took label violations into account and the penalty seems justified. He stated that they won't allege drift of the product and that the damage to the crop was 2,4-D related, which can do a*

considerable amount of damage. Commissioner Hartley asked Mr. Eppinger if he had sprayed 2,4-D prior to the incident and if he understood the label ramifications. Mr. Eppinger stated that he sprayed a little but did not read this part of the label. He stated that he had a QP who would go over the label.

**MOTION:** To accept proposed resolution with a possible payment plan and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Runbeck. Seconded by Commissioner Baker.

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

**J. K&S Exterminating, Inc. dba Adams Exterminating (BL)/Kenneth Duane Barnes (CEO/President/QP) - Case # 2004-110**

**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 Hartley.

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

**K. Neat Control Company (BL)/Phillip Douglas (Owner/QP) - Case # 2004-094**

Commissioner Runbeck asked if we have any idea about how much money Mr. Douglas saved by not paying premiums for nine months. She stated that we don't want people to come out ahead by saving more than the amount of the Civil Penalty imposed against them. Vince Craig stated that it appears that it was \$150 per month. Commissioner Runbeck stated that there was a savings here. Chairman Peterson stated that this case is unique and does give us cause to look at the Matrix and examine whether the penalties are at appropriate levels to be meaningful. He stated that he knows the Matrix cannot address every situation, but this here is a bad situation.

**MOTION:** To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case

to the Office of Administrative Hearings, by  
Commissioner Fraker.  
Seconded by Commissioner Hartley.

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

## **VIII. Unlicensed Activity Complaints**

### **A. Rex Lesicka (Unlicensed)/Francisco Uribe (Unlicensed) - Case # 2004-114**

*Dave Colvin stated that this case involved a misapplication of self releasing aerosol cans, resulting in an explosion and damage to an apartment building. He stated that the respondents may not have sent in a technical written response, but they did cooperate and staff did interview them at home. He stated that he talked to Mrs. Lesicka and they are depleted from this situation. Vince Craig stated that a few days prior to settlement conference, Mrs. Lesicka called him and asked for a lowering of the penalty and said they may or may not attend the settlement conference.*

**MOTION:** *To issue a Cease and Desist Order and to impose a \$1,000 civil penalty against Rex Lesicka/Francisco Uribe, jointly and severally, to be paid within 30 days of Commission Order by Commissioner Runbeck.  
Seconded by Commissioner Hartley.*

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

### **B. Manzanita Management (Unlicensed Company)/Beryl Blomquist (President/CEO) - Case # 2004-118**

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

### **C. Christopher Rendon (Unlicensed) - Case # 2004-116**

**MOTION:** *To accept proposed resolution with a payment plan and if the Consent Agreement is not executed by the*

*deadline stated in the Consent Agreement transmittal letter to impose the terms in an Order, by Commissioner Runbeck.*

*Seconded by Commissioner Hartley.*

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

**D. Sol Design (Unlicensed Company)/Eddie Muniz (Unlicensed) - Case # 2004-117**

*Tabled for a future agenda.*

**E. Sunflower Community Association, Inc. (Unlicensed Company)/Bart Wilburn (President)/Larry Allen Park (App) - Case # 2004-132**

*Mr. Park appeared.*

*Dave Colvin stated that this case involves a licensed applicator working without a business license or QP. He stated that the applicator fell under the Matrix. Chairman Peterson asked why the Civil Penalty was determined to be \$400. Vince Craig stated that the reason is because the applicator did not understand the "own and occupy" issues. Mr. Park stated that he worked for Sunflower and did not have a business license. He stated that he was under the impression that if he worked under a private entity, a QP was not necessary. However, he stated that he was told that because Sunflower is a Homeowners Association (HOA), and people own it, it is not a private entity. He also stated that he has a problem with getting enough hours for his QP license because he is a landscaper.*

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

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

**F. Watermaster and B & L, Inc.(Unlicensed)/Paul Yzagere (Business Manager) - Case # 2004-097**

*Mr. Yzagere appeared.*

Mr. Yzagere stated that he does not understand the complaint because he had never heard of the SPCC and didn't know what he was doing was against the law. He stated that he has friends who have been working for 35 years who have never heard of the SPCC. He stated that where he buys his chemical, no one has the laws posted. He stated that he was not caught spraying but just had the chemical in his truck. He stated that he thought you could spray under a certain amount without a license. Commissioner Fraker stated that it appears that Mr. Yzagere in fact knew that there were license requirements. Mr. Yzagere stated that he did but that it was only for big jobs, and they are just spraying small weeds. Chairman Peterson asked Mr. Yzagere if he was still spraying. Mr. Yzagere stated that he was not. Commissioner Fraker stated that Mr. Yzagere is not the first person who has been in here for a situation like this. He stated that Mr. Yzagere hired a licensed, bonded, and insured company but did not care to investigate himself what the requirements were to apply pesticides. Mr. Yzagere stated that he did not care because it is not his business. He stated that he thinks he should get a warning but not a fine. Lisa Gervase stated that Mr. Yzagere can request a review. Christopher Munns stated that after a request for a review in front of the Commission, he can go to superior court if he is denied that request. Lisa Gervase stated that the Commission has tried to contact Home Depot and other suppliers for landscapers, and it is not in their financial interest to post a notice because it could reduce their sales. She stated that for years there has been a requirement for licensure regardless of the amount applied, and it gets noticed a number of ways. She asked Mr. Yzagere if he is licensed with the Registrar of Contractors. Mr. Yzagere stated that the State of Arizona says he can do business for less than \$700. Lisa Gervase stated that the landscape license does not include rights to spray pesticides.

**MOTION:** To issue a Cease and Desist Order and to impose a \$500 civil penalty against Watermaster and B & L, Inc./Paul Yzagere, jointly and severally, to be paid within 30 days of Commission Order by Commissioner Runbeck.  
Seconded by Commissioner Baker.

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

**G. Mr. Juan Pantoja a.k.a. Juan Pantoja Garcia (Unlicensed Company) - Case # 2004-123**

Mr. Pantoja Garcia was present.  
Scott Richardson, representing Son-Ray Pest Control, appeared.  
Ray Rodriguez, representing Son-Ray Pest Control, appeared.

*Paula Rodriguez, representing Son-Ray Pest Control, was present.*

*Mr. Richardson stated that Ray and Paula Rodriguez are the ones whose WDIIIR was used fraudulently, and they reported this to the Commission. He stated that he understands the Commission's restraints, but Ray and Paula Rodriguez's business has been severely impacted because people think they are the ones who falsified and misrepresented. He suggested that the Commission write a letter thanking them for reporting it and then they can send the letter out to everyone else to clear their name. Lisa Gervase stated that they will get a copy of the resolution. Mr. Rodriguez stated that he is concerned that he was not invited to the settlement conference and that follow-up took so long. Vince Craig stated that the reason that this is an unlicensed case and there is nothing that the Commission could do to make the victim whole. He also stated that the respondent actually contacted staff prior to them even scheduling a settlement conference and came in because he wanted to have this issue addressed immediately. Lisa Gervase stated that staff is now copying the consumer involved on what staff is going to be doing and asking for the consumer to give input to the SPCC supervisor prior to settlement conference, but the consumer is not actually attending the settlement conference. Chairman Peterson stated that the Commission should send out a letter stating that the falsification/misrepresentation was not done by Son-Ray.*

**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 Hartley.*

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

*(Break from 12:40 P.M. to 12:50 P.M.)*

**IX. Commission's consideration of Suspension of Business, Qualifying Party and/or Applicator Licenses for Non-payment of Civil Penalties and/or Nonpayment of Renewal Fees - A.R.S. § 32-2321(F), (G), (H).**

**A. Case No. 99-049 - American Termite Pest, Inc. No. 5195 (Issued 11/13/98)/John Lee Chase (Owner) Business License**

*The Commission received and reviewed a copy of documents filed by Mr. Chase on February 8, 2005. Lisa Gervase stated that this is an old order for American Termite business license to pay a \$1,000 civil penalty. She stated*

*that the business license status is listed as expired, but this is not consistent with the fact that there was non-payment of Civil Penalties.*

**MOTION:** *To suspend the business license for non-payment of civil penalties in Case No. 99-049, by Commissioner Runbeck.  
Seconded by Commissioner Baker.*

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

- B. Case No. 96-073 - Harry T. Carlson/Qualifying Party License No. 3016 ([Issued 04/12/00] [Expired 12/31/03])/Applicator License No. 960864 ([Issued 08/26/96] [Expired 05/31/03])**

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

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

- C. Case No. 2003-136 - Robert Lee Chevalier/Applicator License No. 990813 ([Issued 08/05/99] [Expires 05/31/05])**

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

**VOTE:** 4-0 *Motion carried (Commissioner Fraker recused).*

- D. Case No. 99-122 - Dennis K. Crawford/Qualifying Party License No. 1917 ([Issued 04/17/98] [Expired 01/15/01], [Suspended 04/07/04])/Applicator License No. 960365 ([Issued 04/08/96] [Expired 01/15/01])/Don's Termite Service, Inc. No. 5538 ([Issued 06/01/98] [Expired 01/15/01])**

- E. Case No. 93-070 - Don's Termite Service, Inc., Business License No. 4408 ([Issued 04/17/98] [Expired 12/31/98])/Don S. Methven (Owner)**

- F. Case Nos. 94-006, 94-014 & 94-109 - Don's Termite Service, Inc., Business License No. 4408 ([Issued 04/17/98] [Expired 12/31/98])/Don S. Methven, Qualifying Party License No. 351 ([Issued 02/05/76] [Expires 12/31/05])**

- G. **Case No. 96-035 - Don S. Methven, Qualifying Party License No. 351 B1 B2 B8 ([Issued 02/05/76] [Expires 12/31/05])/Don's Termite Service, Inc., Business License No. 4408 ([Issued 04/17/98] [Expired 12/31/98])**
- H. **Case No. 94-235 - Estevan L. Foster/Applicator License No. 910563 ([Issued 07/09/91] [Expired 05/31/94] [Suspended 08/25/94])/Applicator License No. 950085 ([Issued 02/07/1995] [Expired 05/31/96] [Suspended 10/10/97])/Applicator License No. 990161 ([Issued 02/11/99] [Expired 05/30/99]) - Commission's consideration of Suspension of Estevan L. Foster's **Applicator License # 990161** for non-payment of civil penalty in the amount of \$500.00.**
- I. **Case Nos. 94-006, 94-014 & 94-109 - Edward C. Fowler, Jr./Applicator License No. 920854 ([Issued 12/16/92] [Expired 05/31/96])/Don's Termite Service, Inc.**
- J. **Case No. 96-035 - Edward C. Fowler, Jr./Applicator License No. 920854 ([Issued 12/16/92] [Expired 05/31/96])/Don's Termite Service, Inc.**

*The following discussion applies to Agenda Items IX.I. and IX.J.*

*Mr. Fowler appeared.*

*Mr. Fowler, formerly of Don's Termite Service, stated that he has not been in business for over nine years and was informed that these civil penalties were paid. Lisa Gervase stated that the orders issued in those three cases were against the applicator license, and the civil penalties were not paid. Commissioner Runbeck asked if this case will go the Attorney General's Office for collections if the Commission chooses to suspend. Lisa Gervase stated that the case is probably already there, and they have the option of whether to pursue collection. She stated that the SPCC has an obligation to seek compliance. Mr. Fowler stated that he has lived at the same address for ten years and is just now getting notice that he owes \$1,200, so it was news to him. Lisa Gervase stated that Mr. Fowler signed a Consent Agreement and Order in 1995 and the Order became effective in January 1996 and was mailed to the address of record. Mr. Fowler stated that he never received it, he had moved, and he gave the SPCC his new address. Lisa Gervase stated that staff sent three follow-up letters. Mr. Fowler stated that he only received the last one which was sent via Certified Mail.*

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

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

**K. Case No. 91-060 - Frederick H. Harvey/Qualifying Party License No. 1149 ([Issued 01/08/88] [Expires 05/31/05])/Applicator License No. 790084 ([Issued 07/19/79] [Expired 05/31/05])**

**L. Case No. 94-102 - Gary G. Hummel/Applicator License No. 910851([Issued 12/03/91] [Expired 05/31/03])**

*Item Pulled.*

**M. Case No. 03-142 - Arturo Murillo/Applicator License No. 020572 ([Issued 07/17/2002] [Expires 05/31/05])**

**MOTION:** *By Commissioner Baker to accept Suspension of licenses for items D, E, F, G, H, K, M, by Commissioner Baker. Seconded by Commissioner Runbeck.*

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

**N. Case No. 95-004 - David W. Ogburn/Qualifying Party License No. 1717 ([Issued 06/09/95] [Expires 12/31/05])/Applicator License No. 940354 ([Issued 05/04/94] [Expired 05/31/99])**

*Mr. Ogburn appeared.*

*Mr. Ogburn, owner and operator of Ultimate Solutions, stated that he received a notice that he owed \$150 and was asked to either pay it or prove that he paid it. He stated that this case is over ten years old, but people are not required to keep tax records past seven years or SPCC records past five years. He stated that he pays his renewals on time every year, and now there is a threat to take away his whole livelihood. Lisa Gervase stated that the Civil Penalty that was imposed was for \$500.00. Mr. Ogburn has made seven payments of \$50.00. The balanced owed is \$150.00. The Order was issued in January 1996. She stated that in November 1996, the first letter from the SPCC about the remaining \$150 owed was sent to Mr. Ogburn, signed by Executive Director Bud Paulson, and Mr. Ogburn did not pay the remaining Civil Penalty amount. She stated that there is a note in the file that there was a verbal agreement that he would pay the remainder of the Civil Penalty in early 1997. She stated that last year, when staff went through the records seeking compliance, they started sending letters again to obtain compliance with old orders. Commissioner Hartley stated that he applauds Lisa Gervase's efforts to collect the money, but that this case goes back many years. He is in favor of forgiving this remaining amount.*

**MOTION:** *To dismiss the remainder of the payment of civil penalties, by Commissioner Hartley.*

**MOTION** *Motion fails for lack of a second.*  
**WITHDRAWN:**

*Commissioner Runbeck stated that the matter is at the Attorney General's Office. She stated that probably the most logical thing to do is to not take action on suspension, but probably the easiest thing for Mr. Ogburn to have done would have been to write a check for \$150 months ago when he was noticed.*

**MOTION:** *To dismiss the case and vacate consideration of suspension, by Commissioner Hartley.  
Seconded by Commissioner Fraker.*

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

*Chairman Peterson asked what would happen if the Commission chooses not to pursue the matter. Christopher Munns stated that the Commissioners could move to forgive non-compliance, and close the matter.*

**MOTION:** *To forgive noncompliance and close the matter, by Commissioner Hartley.  
Seconded by Commissioner Fraker.*

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

**X. Commission's consideration of Dismissing Case without prejudice and Suspension of Business, Qualifying Party and Applicator Licenses (Ms. Gervase)**

**A. Case No. 2001-021 - American Termite Pest, Inc. No. 5195 (Issued 11/13/98)/John Lee Chase (Owner) Business License**

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

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

**MOTION:** *To dismiss Case No. 2001-021 without prejudice, by Commissioner Runbeck.  
Seconded by Commissioner Hartley.*

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

**XI. 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**

*Mr. Rupkey was present.*

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

*Mr. Richardson stated that they are not doing radio commercials, but if they start doing them, than the language will be included in any radio commercials for two years.*

**MOTION:** *To accept proposed resolution in lieu of formal hearing with the removal of paragraph 64 about logbooks, the addition of a requirement that requests for documentation made by the Commission will be in writing, and that paragraph 24 will be revised to indicate a statement that the licensing language will be included in any radio commercials for the next two years, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Runbeck.  
Seconded by Commissioner Baker.*

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

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

*Mr. Rupkey was present.*

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

*Lisa Gervase stated that there are separate agreements for Mr. Gould and for the other two licensees.*

**MOTION:** *To accept proposed resolution for the business and QP with the addition of a requirement that requests for documentation made by the Commission will be in writing and that paragraph 24 will be revised to indicate a statement that the licensing language will be included in any radio commercials for the next two years, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Runbeck.  
Seconded by Commissioner Baker.*

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

**MOTION:** *To accept proposed resolution for the applicator and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Runbeck.  
Seconded by Commissioner Baker.*

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

**C. University Termite & Pest Control, Inc., (BL)/Richard L. Rupkey II (QP) - Case Nos. 2003-100, 2003-105 and 2003-106**

**At the Commission Meeting on November 12, 2004 the Commission accepted and adopted the Findings of Fact, Conclusions of Law and Order. On December 16, 2004 the SPCC received from Mr. Scott J. Richardson, attorney for University Termite & Pest Control, Inc., a Motion for Rehearing. At the January 14, 2005 Commission Meeting the Commission denied the Petition. On February 2, 2005 a letter was sent to Mr. Richardson informing him of the Final Administrative Decision and their right to appeal to Superior Court.**

**MOTION:** *To accept proposed resolution for Case Nos. 2003-100, 2003-105 and 2003-106 with the deletion of paragraph 64 and addition that documentation made by the Commission will be in writing 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 Hartley.*

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

**(Break from 1:35 P.M. to 2:10 P.M.)**

**XII. For review, consideration and action: Commission's consideration of Informal Settlement conference proposed resolution. Re: Denial of felony Applicant Application**

**A. Sanchez, Benjamin R. - Case No. 2005-007**

*Mr. Sanchez was present.*

*Mr. Wise, Kino Sports Complex Trades Maintenance Supervisor, was present.*

*Lisa Gervase stated that at the December 2004 Commission meeting, the Commission denied an applicator license to Mr. Sanchez. She stated that Mr. Sanchez filed a timely appeal and, along with Mr. Wise, met with staff to work out a proposed Consent Agreement and Order with parameters if he is issued a license. She stated that this is similar to what the Commission did in one other case regarding having an applicant come back and report. Lisa Burns stated that a motion could be made to rescind the December 2004 Commission meeting motion, and that could be coupled with granting a license with new terms.*

**MOTION:** *To rescind the denial made at the December 2004 Commission meeting, to approve the terms set forth in the Consent Agreement and Order and to issue the license based on those terms, by Commissioner Runbeck.  
Seconded by Commissioner Hartley.*

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

**XIII. For review, consideration and action: Commission's consideration on lifting suspension of Business and Qualifying Party Licenses**

**A. Ark Exterminating/Jackie C. Wheeler - Case Nos: 98-076 & 98-095**

*Mr. Wheeler appeared. On February 1, 2005, Mr. Wheeler paid the outstanding \$4,956.00 in civil penalties in both cases.*

**MOTION:** *To lift the suspension of the business license and qualifying party license, by Commissioner Hartley. Seconded by Commissioner Runbeck.*

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

#### **XIV. Felony Applicants**

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

*Mr. Jacobs appeared.*

*Commissioner Fraker stated that they had requested more information regarding the history of Mr. Jacobs' arrest. Lisa Gervase stated that staff received the rap sheet but no other substantive documents from the 1973 matter. She stated that they have a complete background check which did not show anything additional.*

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

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

##### **B. Langham, Jonathan Scott**

*Mr. Langham appeared.*

*Darryl Maddox, representing Baron Pest Control, Inc., appeared.*

*Commissioner Baker asked if restitution was made in his case. Mr. Langham stated that it was not made by him. He stated that he was hired to take in a mortgage company and the two guys who ran it were investment bankers for another company. He stated that the other men were stealing money from a mortgage company from clients and when he went into court the only thing he was responsible for was \$549, but he did not steal any money. Commissioner Runbeck asked if there was there a scam going on. Mr. Langham stated that there was a scam run by the other guys. He stated that the only reason he was named was because he went through the paperwork with the customer. Commissioner Runbeck asked Mr. Langham if he knew anything about this. Mr. Langham stated that when he was in court, the only thing he was charged with was writing a bad check. He stated that the judge said he should have picked up on what was going on. He stated that he had been in the mortgage industry for a long time, had run companies and had a good reputation, but to lose a career out of that would have been foolish. Mr. Maddox, Director of Termite Operations for Baron Pest Control, stated that he has found Mr. Langham to be quite reputable and someone he would consider to be a*

great asset. Chairman Peterson asked Mr. Maddox if Mr. Langham told him about this before he was hired. Mr. Maddox stated that he had only heard some details. He stated that Mr. Langham has been working for Mr. Maddox since December 27. Commissioner Fraker stated that in this case, it sounds like people are getting scammed, and we don't need this in the pest control industry. He stated that in the text it indicates that Mr. Langham played an integral part of that. He stated that \$36,000 was taken from a woman not long ago, and then Mr. Langham moved from Ohio to Arizona. Commissioner Fraker stated that what bothers him is that Mr. Langham continually went to this lady and sucked more money out of her. He stated that in his mind it is a big scam and does not lay the ground work for a reliable employee who could do the same thing in a similar circumstance. Commissioner Runbeck suggested that Mr. Langham find a different job in which the State of Arizona does not have to recommend him to people.

**MOTION:** To deny application based on the fact that the details of the conviction indicate moral character concerns regarding veracity and trustworthiness, the offense was not that long ago, concerns about him repeating acts of poor veracity, and that he has a felony conviction, by Commissioner Runbeck.  
Seconded by Commissioner Hartley.

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

**C. Ruiz, Robert James**

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

**XV. For information and discussion, possible action**

**A. Complaint Status Log**

*Commission continued to thank staff for moving complaints along as quickly as possible, given the need for thoroughness, analysis and review.*

**B. Continuing Education Minutes**

*Lisa Gervase stated that SPCC Inspector Jason Aanderud is present at the meeting today and drafted the minutes for Commission consideration.*

**MOTION:** To approve the Continuing Education Minutes by Commissioner Runbeck.  
Seconded by Commissioner Fraker.

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

### **C. Computer Based Testing “CBT” Status and Statistics**

*Commissioner Runbeck stated that the average passing score is 78, and she wants to make sure that the Commission is passing enough people.*

### **D. Expenditure Report - separate handout or verbal report**

*Lisa Gervase stated that they are projected to have a positive balance at the end of the fiscal year.*

### **E. Case Status Report**

*Lisa Gervase stated that she would email this to the Commissioners.*

### **F. “Perimeter-only” termiticide labels - Termidor and others**

*Brian Ferris, representing Terminix, Inc., appeared.  
Kevin Etheridge, representing Contractors Termite & Pest Control, Inc., appeared.*

*Lisa Gervase asked if the Commission wants to consider amending laws or rules vis-a-vis new labels that have been approved by the Environmental Protection Agency (EPA) and registered by the Arizona Department of Agriculture. She stated that if we are talking about a post-construction liquid termiticide treatment, then a complete inspection has to be done and a treatment proposal has to be done. She stated that the treatment proposal has to be provided to the customer before work begins. There is confusion about whether the rule that requires that critical areas be treated applies to this type of treatment. Commissioner Fraker stated that the key thing is that on the form you designate the type of treatment that you are proposing. He stated that if on the form you say that it is a complete treatment, then it must conform with the rules that apply to a complete treatment. He stated that this issue comes up not just with Termidor but with other products also, and people can do a limited or complete treatment with lots of products. Commissioner Hartley stated that different labels have different treatments required, and the consumer can be confused about whether or not a complete treatment is being done. He stated that, given the conditions in Arizona, he needs to see more to know how effective perimeter treatments are going to be here. Chairman Peterson stated that, according to some labels, their complete treatment could be different than ours. Commissioner Fraker stated that the treatment must meet the guidelines of the label and of the rules. Commissioner Fraker stated that before the form was revised, industry members used to have to state on it whether or not it was a complete*

treatment, and now they have to write in the type of treatment. He stated that customers were better served and it was easier for them to identify the type of treatment before when there was an area to be marked. Lisa Gervase stated that companies give the SPCC a proposal, staff checks it and then gives back an approval letter. Commissioner Fraker suggested going back a few years in the rules and seeing what the language was and how it has changed. He stated that he thinks that industry members still have an obligation to fill out the form and disclose the method of treatment because it clarifies what the consumer is getting and keeps you out of hot water. Lisa Gervase asked if staff should only look at approving proposal forms that indicate these things, and also about how to get people to clarify on the treatment proposals. Commissioner Fraker stated that this is something where staff would need to change the law. He stated that if the form is marked "localized treatment only", then this is different from "complete". Chairman Peterson stated that he thinks that if a check box is provided that this will alleviate confusion. Lisa Gervase stated that they probably have discretion to do this when reviewing treatment proposals, and they would want to make sure that the industry has some notice. Mr. Ferris urged the Commission and staff to be careful on the terms used. He asked, if talking about a partial treatment, if this is lumping with the category of people doing the golf course. He also stated that the type of treatment should be labeled on a graph. Commissioner Fraker stated that what we have now is a complete treatment defined in the rules, and we are going to have a conflict between what is required in the rules and what the label dictates. He stated that he thinks that the state should stay out of the treatment specification business and let the label dictate. He stated that in our rule book, there are other items to comply with, but most of them are on the label anyway. Chairman Peterson stated that he thinks that the Commission still needs to reserve the right to deal with the labels. Mr. Etheridge stated that his company does a drywood fumigation and different types. He stated that industry members can still give a consumer a whole house warranty, and that he likes the word "limited". Lisa Gervase stated that the Commission is going to have to look at the statute and rule. She stated that in the meantime she does not know if the Commission can issue a statement to the industry telling them that they have to deal with the label and rules unless and until rules change. Commissioner Runbeck asked if the rules supersede the label. Lisa Gervase stated that it depends. She stated that a local interior treatment is not a complete interior treatment. Commissioner Runbeck stated that it would seem to be the most clear if people just had to follow the label. Commissioner Fraker stated that the rules do not take into consideration the newer products and label enhancements. Commissioner Fraker suggested to the industry that they describe the area to be treated; they should define the area of treatment more precisely, because merely saying "baiting", or "chemically treating" does not say the treatment will be provided. Mr. Ferris stated that these treatments have been going on for years. He stated that his company, which complies with the law, has not done this sort of thing. He stated that he does not want to be lumped in with people who are doing way less, and he does not want to be put at a marketing disadvantage. He stated that he has worked

*in 28 states, and if you look back at regulation, there were no labels. He stated that he is concerned with the issue of spot treatments. He stated that they are not a direct competitor, but they are out there, and the label needs to be separated from direct statute. Commissioner Hartley stated that over the last 10 years, one size fits all in termites, but things developed in other states are different. He stated that the termites in Tucson and the ones in Phoenix are different than those anywhere else and they have different habits. He stated that some of these labels, when introduced in Arizona, have not worked. He asked how the consumer is going to be served. Commissioner Fraker stated in years past a lot of these products were tested at golf courses and for several years now, almost all of these products are being tested in Arizona. He stated that they have to meet certain guidelines for Arizona as well as for other states. Lisa Gervase stated that she routinely hears that maybe not the right studies have been done for different geographical locations with termite pressure like in Arizona. Commissioner Fraker stated that the pest control industry is a constantly changing business. He stated that sticking to an old standard and not applying it to new technologies does not serve us well. Commissioner Hartley stated that there is no problem with the efficacy of new products, but he asked how we should direct our license holders so that these products can be taken advantage of. Commissioner Baker stated that the USDA tests have some problems. He stated that first, they deal with pre-treats only, and in this case we are dealing only with post-treats. He stated that second, when looking at USDA data, it is only observational data. He stated that he thinks that the homeowner needs to understand what they are getting in their treatment. Lisa Gervase asked how she should communicate what they are going to get. Commissioner Baker stated that one of the things he would look for from the state would be to file a generic form with a lot of the criteria they are looking for in the proposal. Commissioner Fraker suggested mentioning the method and area of treatment. Commissioner Baker stated that it should be marked on the graph. Lisa Gervase stated that it is in the law now. Commissioner Baker stated that it is not totally followed by all pest control operators. Commissioner Runbeck stated that what she is hearing is that the pest control operators cannot mark it as a complete treatment unless it is one. Chairman Peterson stated that the Commission needs to continue this way until things are changed. Commissioner Runbeck stated that they need to revisit forms also. Lisa Gervase stated that the Commissioners are confirming what the Staff is advising to people now. Commissioner Fraker stated A.R.S. §2323(B)(5) requires that applicators show where the treatment will be rendered. Commissioner Hartley stated that the market will start to shape what happens over the next few years. He stated that hopefully, if everyone is professional and forthright, and the consumer is the final one to choose, then the results will speak for themselves and we can avoid bogus complaints. He stated that the companies that worry him are the ones who take advantage of new technology and sell it as miracle cures to customers.*

## **G. Borate labels**

*Scott Richardson appeared.*

*Doug Pinnecker, representing Contractors Termite & Pest Control, Inc., appeared.*

*Dave (Torska), representing FMC Corporation, appeared.*

*Kevin Etheridge, representing Contractors Termite & Pest Control, Inc., appeared.*

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

*Lisa Gervase stated that in the February 2004 Commission meeting, the Commission was not in favor of a "label is the law" law change, and she had not heard anything else about it until December 2004. She stated that the Bora-Care label calls the treatment a pretreatment, but in our statute the language is broad and that language differs from rule language. Guidance is requested from the Commission, because builders and consumers want to know if this is the pretreatment they are used to in Arizona. Chairman Peterson stated that people are selling this as a pretreatment, which is defined in the rules, and asked if they can do that. Commissioner Baker stated that he has not seen any evidence about it being a stand-alone treatment for Arizona, so therefore, we don't have USDA data to support registration. He stated that there are companies that have done treatments in other parts of the United States and then come here. Chairman Peterson stated that the rules say that Boracare is not a stand-alone treatment. Commissioner Hartley asked if we want to change the rules. Chairman Peterson stated that we probably do not, until we have data that shows that the product works. Commissioner Baker stated that the Department of Agriculture could force the label change. Chairman Peterson stated that if we have questions about efficacy, then we can cancel registration. Mr. Richardson stated that the problem with Borate treatments is that the label talks about it being a pretreatment or preventive treatment. He stated that if it is a pretreatment, then there are problems, and if it is a preventive treatment, then it is TARFable. Commissioner Baker stated that he understands that the process is that the EPA passes it and then it comes down to the Department of Agriculture. Commissioner Hartley stated that Florida has approved this product as a stand-alone product with no final grade, and he thinks this is totally insane. Lisa Gervase asked if it triggers the five-year requirement of retreating. Commissioner Runbeck asked if we can somehow make the companies using it make it clear to the consumer that the consumer is not entitled to a warranty or follow-up treatment. Lisa Gervase stated that the pretreatment exists in rule, and the label calls it a pretreatment. Commissioner Runbeck stated that we are not going by the rule because it does not meet our definition. Lisa Gervase stated that by statute, any before construction or during construction treatment triggers a final grade requirement. Mr. Pinnecker stated that it is a good product to use in addition, but it is not a good stand-alone product. Commissioner Fraker stated that the manufacturer is saying that it is, and they have treated lots of homes in the south. Commissioner Runbeck asked what we are to decide. Lisa Gervase stated that it cannot be used as a stand-alone "pretreatment" by rule. Commissioner Hartley stated that it is a semantics game. He stated that it can be used for a pretreatment*

on a house. He stated that if you want to use it as a product when you build a house, then there are problems when you try to finance it. Mike Francis stated that when borate is used before or during construction, 9 out of 10 times the consumer won't even know whether borate or soil applied termiticide was used. Mr. Torska stated that this product is already being sold on the market, so there are consumers who think they are getting a full treatment but they are not. He stated that a lot of the house is left unprotected in this treatment process because it is a treatment at the frame stage, and a lot of the cellulose material is left unprotected. Mr. Etheridge asked if a one year builder's warranty that states that the builder will hire a licensed pest control company if there is an occurrence during the warranty period (99A form) could be issued if a "preventive" treatment is done. He stated that if a borate treatment is done during construction, and warranties are dated from the date of treatment, then four months of the warranty will be burned. Commissioner Hartley stated that when he was in Hawaii in October at the national meeting, over a dozen experts in the field said that as a total termite treatment, it would not be adequate. Chairman Peterson stated that in our rules, it is not a pretreat. He stated that the rules may need to be changed to clarify. Commissioner Runbeck agreed. Commissioner Fraker stated that they need to talk to the builder; the builders have their own mortgage companies. He asked if statute requires a final rod and trench with a treatment that is during construction. He stated that if it does, then a liquid treatment will have to be made. He stated that he has heard the argument that a final grade is after the landscaping is in and it is post construction. He stated that this issue is not as black and white as it seems. Mike Francis stated that it used to be that a final grade was defined as part of the pretreat although it was done post-construction. Commissioner Fraker stated that it used to be this way. He stated that we don't have a clear cut answer to all of these questions. Chairman Peterson stated that what is important is for Lisa Gervase to give a consistent answer. Lisa Gervase stated the answers to the following questions: 1) Is it a pretreatment? No. 2) If it is used as a preventive before or during construction treatment, is that okay? Yes. 3) Is a final grade, which is the vertical barriers at exterior, required? Yes. She also stated that the rules will likely change to address all of this. Mr. Etheridge asked if 99A one-year warranty or five-year warranty should be issued when you perform a final grade? Lisa Gervase stated that only a one-year warranty is required. Mr. Martin asked, if we say "Yes" to the third question, whether a second TARF is needed because it is not part of a pre-treatment and therefore it would seem that the perimeter treatment needs to be TARFed as a separate treatment. Lisa Gervase stated that a second TARF would be needed.

#### **H. Commission's options in making motions when ruling on Applications from Felony Applicants and Qualifying Party Applicants whose background reports have not yet been received**

Lisa Gervase stated that when applicants for QP licensure are on the agenda, the Commission tends to approve them subject to passing the required examination and

a clean background check coming back, so that they are not held up, even though staff may not have the rap sheet back. She stated that if the Commission approves someone to be a QP, it can really only approve someone subject to that person passing the exam, not subject to a clean background check coming back. She stated that if something then comes back in the background check, the Commission can file a complaint for failure to disclose on their application and pursue it as a disciplinary action as opposed to calling them back for reconsideration of granting their license. She stated that the only other option is to not even put them on the agenda until staff gets the background check back. Commissioners Baker and Peterson both suggested that staff wait for the background check before putting these people on the agenda. Commissioner Runbeck stated that the downside is that then there will be delays in the process and requests for renewals of temporary QPs. Commissioner Fraker stated that it is easier to extend the temporary QP than to have them test and then pass and then have to come back and be told that they will not be granted a license. He also stated that if the Commission pursues felony background checks on applicator licensing, then they have already addressed the felony issue before it even reaches the QP stage. Commission consensus for staff to not place QP applicants or felony applicants on the agenda until staff gets the background check.

## **XVI. Approval of Minutes**

### **A. January 14, 2005 (regular session) Minutes**

**MOTION:** To approve the January 14, 2005 Minutes with the appropriate typographical corrections (on page 16) by Commissioner Baker.  
Seconded by Commissioner Runbeck.

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

### **B. January 14, 2005 (executive session) Minutes - (separately e-mailed to Commissioners on 02/01/05)**

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

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

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

*Commissioner Runbeck stated that she cannot be here next month on Thursday because of a hearing. Commissioner Hartley stated that he will be in Mexico during next month's meeting. Lisa Gervase stated that she would email the Commissioners regarding scheduling of an extra meeting to discuss laws/rules.*

**Current Proposed dates**

**March 11, 2005** - *Commissioner Hartley not available.*

**April 8, 2005**

**May 13, 2005** - *Commissioner Hartley not available.*

**June 10, 2005**

**July 8, 2005**

**August 12, 2005**

**XVIII. Adjournment - 4:30 P.M.**

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

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