

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

**COMMISSION MEETING
FRIDAY, March 11, 2005 - 9:00 A.M.
MINUTES**

I. Call to order, Commissioner roll call

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

Commissioners Absent: Commissioner Hartley and one vacancy

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

II. Call to the public

Chairman Peterson reminded Commissioners to eliminate "side-bar" discussions, ex-parte discussions during breaks or other times, and to not provide Commission documents to anyone. Requests for documents/information must go through the public records request process.

III. Communication with Commissioners

Commissioner Peterson stated that a woman named Sandy Sieno contacted him to discuss an old case regarding the trapping of gophers, and she said a lot of things about discrimination, etc. This was a 1991 complaint involving unlicensed activity, and Staff is dealing with the situation. Commissioner Peterson stated that he also had minimal legislative discussions with Carl Martin.

IV. Summary of Current Events, Activities, Notices

- ▶Upcoming Continuing Education (SPCC-sponsored, free, 6 hours each):
 - 3/18/05 (Apache Junction High School Auditorium)
 - 4/27/05 (Phoenix location)
 - 4/29/05 (Tucson - Pima County Board of Supervisors Auditorium)

Lisa Gervase stated that notice of the Phoenix and Tucson CE classes will be mailed out with applicator renewal forms around April 1st, and there will also be a

notice on the SPCC website. All three courses are geared toward applicators but they are also informative for business owners and QPs, and emails should be sent to SPCC Inspector Jason Aanderud to confirm attendance. She stated that the SPCC is also participating in, but not sponsoring, two CE courses: March 30 in Phoenix and March 31 in Tucson. Mike Francis and Commissioner Baker will be speaking at the Phoenix course and SPCC Inspector Brian Kennedy and Commission Baker will be speaking at the Tucson course.

►Licensing Exams Study Material/Questions review/validation status

Lisa Gervase stated that she has begun a thorough, methodical review of licensing exams and study materials. The SPCC's 18 exams have been divided into two 9-exam projects, and contract consultants are working on two of the exams currently. She stated that they want to verify that the exam questions do not contain double negative wording, that they come from the study materials and that they are appropriate in relation to what applicators and QPs do on the job.

►Complaint Process Education status

Lisa Gervase stated that since October 2004, staff has been working on putting in writing exactly what the complaint process steps are, including creating an informative notice letter to respondents in complaints and informing consumers involved. There has been a lot of input from industry members, and a sample copy of this notice will be put on the website soon. Additionally, anyone involved with a complaint will be informed by mail. The goal is for people to understand the process so that they may be able to make informed decisions at settlement conferences.

►Industry issues of interest:

Chlorpyrifos phase-out by 12/31/05

Lisa Gervase stated that when she was recently in Washington, D.C. with Environmental Protection Agency (EPA) members, pest control industry members, and others, her understanding was that as of December 31, 2004, Chlorpyrifos products are not supposed to be manufactured anymore, and there is a year phase-out period in which existing supplies can be used up, and she wanted industry members to at least be aware of this phase-out. Commissioner Baker stated that he believes that after December 31, 2005, if you have the product in your possession, then you have to dispose of it as hazardous waste, and there probably will not be any buy-back provisions. Commissioner Peterson stated that industry members should voice their opinions because he realizes that it costs a lot to hire someone to haul off hazardous waste. He also commented that the product was pulled because of unreasonable health effects. Commissioner Baker stated that the product is a common material, it was being purchased over the counter at Home

Depot, taken home, and was found in the urine of children, and the product is also off patent. Commissioner Fraker commented that one of the primary reasons the product was pulled is because of agricultural use and that it ended up in the food chain, not because of pest control industry members using the product. He stated that once the agricultural use is gone, it is not feasible for the manufacturer to supply the product to the pest control industry because the pest control industry is relatively small in comparison. Commissioner Baker recommended putting some notice on the SPCC website maybe in October, November and December.

Lisa Gervase asked industry members to watch the SPCC website regarding the opportunity to do business in mosquito abatement. She stated that the goal of the public and private sectors working together is to eliminate ground-based fogging. She stated that once she gets a list of green pools, etc., she will post information on the website.

►Commission member appointment status

Lisa Gervase stated that Governor Napolitano is very busy making appointments to the 266 Boards and Commissions in the state of Arizona, and that the SPCC will have to wait for appointments. Commissioner Hartley will continue to serve for the time being.

V. Consent Agenda

A. Applications for New Business License

Qualifying Party

- | | |
|--------------------------------|--|
| 1. Ahrendt, Garry D. | Flagstaff Golf Maintenance Company II, LLC. (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture) |
| 2. Birkemeyer, Keith V. | ProBest Pest Management (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) |

- 8. Oare, Robin Lynett **Par #1 Pest Control (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**

- 9. Pleger, Sr.; Donald A. **Cutting Edge Land Solutions (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)**

- 10. Stenbridge, Kevin Edward **Wild Horse Termite and Pest Solutions (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects, "B4" Fumigation and "B8" Wood Destroying Insect Inspection)**

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 "B9" Aquatic Pest Control)**

- 2. Ethington, Collin Scott **Modern Pest Solutions, Inc. (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)**

- 3. Matheson, Stephen Tad **Rid A Bird, LLC. (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. McDaniel, David Lee **Younger Brothers Pretreat & Home Services, LLC. (Activating Qualifying Party for existing business license in**

“B2” Control of Wood-Destroying Insects, and “B8” Wood Destroying Insect Inspection)

5. Nukala, Jr.; Karl Brandt Target Pest Solutions, LLC.
(Activating Qualifying Party for existing business license in “B2” Control of Wood-Destroying Insects)

6. Olson, Steven N. City of Kingman: Parks & Rec.
(Activating Qualifying Party for existing business license in “B3” Right of Way & Weed Control and “B5” Turf & Ornamental Horticulture)

C. Applicants for QP Licensure

1. Bollier, Michael Emerson “B5” (Turf & Ornamental Horticulture)

2. Gonzalez-Anaya, Jose R. “B3” (Right of Way & Weed Control) and “B5” (Turf & Ornamental Horticulture)

3. Oare, Robin Lynett “B3” (Right of Way & Weed Control)

4. Pruitt, Robert Early “B5” (Turf & Ornamental Horticulture)

5. Simonson, William Joseph “B3” (Right of Way & Weed Control) and “B5” (Turf & Ornamental Horticulture)

Pulled-Mr. Simonson appeared.

Commissioner Robinson stated that no suspensions were listed on the application, but on the record it indicates that Mr. Simonson’s license was suspended back in 1997. Mr. Simonson stated that while with Arborscape, his wife Jackie was General Manager and he was QP, and he did not see any suspension letter until the last few months while going through records, and he thinks it was because of failure to pay renewal fees. He stated that he thinks that Jackie sent a letter back to the Commission saying that the punishment was too much and that the renewal notice had been misplaced or filed away. Lisa Gervase stated that if you look at the fact that his former

applicator license expired in May 1996, and that it was suspended in October 1997, it would appear that the suspension was due to nonrenewal and not because of any disciplinary action or failure to comply with an Order or pay a civil penalty. Commissioner Robinson asked if Mr. Simonson had to retest. Lisa Gervase stated that he did have to retest in 2002.

MOTION: To approve QP testing in "B3" and "B5" by Commissioner Robinson.
Seconded by Commissioner Runbeck.

VOTE: 5-0 Motion carried.

6. Strickland, Richard John "B1" (General Pest & Public Health)

7. Voyles, Gregory Lynn "B3" (Right of Way & Weed Control)

D. Request for Company Name Change

1. Lesueur Pest Control Services to ScorpionTech Termite and Pest Control

2. Sun City Lady Bug to Aardvark Pest Control

End of Consent Agenda

MOTION: By Commissioner Baker to accept Consent Agenda with the exception of those items pulled for discussion (A4, C5), and to include the "B4" Fumigation category in Item A10 that had been omitted from the Agenda. Seconded by Commissioner Fraker.

VOTE: 5-0 Motion carried.

VI. Complaints against Licensees

**A. Bulwark Exterminating LLC. (BL)/Adam Seever (Member)/Todd Martin (QP)
- Case # 2004-158**

Mr. Martin appeared.

Mr. Martin stated that he is fine with the proposed settlement terms.

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

VOTE: 5-0 Motion carried.

B. Strike Force Pest & Termite Control, Inc. (BL)/Robert Norton (CEO/President/QP)/Skyler Lee Kidwell (App) - Case # 2004-122

*Jason Kelly, attorney for the complainants, appeared.
Scott Richardson, attorney for the business and QP, was present.
Complainant Robert Barnes was present.*

Mr. Kelly stated that he was not at the settlement conference, and that his client, Mr. Barnes, a realtor has no problem with the proposed resolution. Mr. Kelly stated that they are still investigating the structural damage to Mr. Barnes' home and they are investigating Strike Force's insurance. Commissioner Baker asked if Mr. Kelly was going to have someone given an estimate of the damage done by termites that Strike Force did not identify. Mr. Kelly stated that contractors would not remodel the house because the structural termite damage was so bad. Commissioner Baker stated that it is tough to prove structural damage, unless someone certifies it or the termites have been there for years. He asked if anyone identified what species of termites were there. Mr. Kelly stated that he did not think anyone identified them. Commissioner Runbeck stated that the consumers would be handling this matter via a claim through Strike Force's insurance or a lawsuit. Commissioner Fraker stated that the Matrix does not list any priors against Strike Force's business license, but in looking at the February meeting agenda, Strike Force was cited for A.A.C. R4-29-413 and A.R.S. § 32-2321, which are the same the same violations as those cited in this case. Vince Craig stated that because the paperwork from February's case has not been fully processed and signed, it is not yet considered a prior. Lisa Gervase stated that a violation is not considered to be a prior violation unless the Commission issued an Order before the date of the alleged violation in the current case. So, the closer in time that the violations occur, the less likely it is that the older one will be considered a prior.

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

Seconded by Commissioner Baker.

VOTE: 5-0 Motion carried.

VII. Unlicensed Activity Complaints

A. Kathleen Crary (Unlicensed) - Case # 2004-137

Mike Francis stated that a settlement conference was attempted, and normally staff would request a \$500 civil penalty and a Cease and Desist Order. He stated that the circumstances were a little different in this case, and he would have no problem only imposing a Cease and Desist Order. He stated that Ms. Crary was not amenable to a civil penalty. Commissioner Runbeck stated she thinks that Ms. Crary's Malathion use was a little overboard and that it was part of her business. She stated that the circumstances were egregious, that the comments in the letter written by Ms. Crary show no regard for safety or the use of the product, and that Ms. Crary should be fined. She stated that she does not know how much money Ms. Crary made in the associated real estate deal, but that Ms. Crary probably made at least \$1,000 in commission. Commissioner Peterson stated that this case may be worse than some of the landscape cases because of how Ms. Crary used the product. He asked what started this whole thing. Mike Francis stated that the complaint was instigated by a neighbor of this structure that Ms. Crary was trying to sell. He stated that it was probably a personality issue, and that signs were posted as to what was being done. He stated that Ms. Crary is not a real estate agent, but is a broker who was trying to do some service for an elderly couple and help dispose of property; she did what she thought what was reasonable to take care of the bugs, and a minimal amount of Malathion was used, although it has a high odor. He stated that the neighbor continues to complain and SPCC staff received a call from her after notice of the meeting went out. Commissioner Peterson asked if the Malathion was mixed within label rates. Mike Francis stated that it appears that it was, but staff does not know for sure because they did not see the original container. Commissioner Robinson agreed that the circumstances were egregious, but \$1,000 may be a little stiff. He stated that he remembers a case where an unlicensed person put chemical into another container and only received a \$500 civil penalty.

MOTION: *To issue a Cease and Desist Order and to impose a \$1,000 civil penalty against Kathleen Crary, to be paid within 30 days of Commission Order by Commissioner Runbeck.*

Seconded by Commissioner Baker.

AMENDED

MOTION: *To amend the motion to issue a Cease and Desist Order and to impose a \$500 civil penalty against Kathleen Cray, to be paid within 30 days of Commission Order by Commissioner Runbeck.
Seconded by Commissioner Baker.*

VOTE ON AMENDED MOTION: 5-0 *Amendment passes.*

VOTE ON ORIGINAL MOTION: 5-0 *Motion carried.*

B. Greenjeans Landscaping LLC. (Unlicensed Company)/Candee S. Condray (Member) - Case # 2004-156

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

VOTE: 5-0 *Motion carried.*

C. Sol Design (Unlicensed Company)/Eddie Muniz (Owner) - Case # 2004-117

Mike Francis stated that this case was pulled from last month's agenda, and that Mr. Muniz wanted to show staff that at different points of time he had tried to get a QP. Staff did not feel that anything was presented that would mitigate the violation, and Mr. Muniz did not agree to a resolution. Commissioner Runbeck asked if this was a second offense. Mike Francis stated that it was. Lisa Gervase stated that Mr. Muniz did pay the \$500 civil penalty in the first case. Commissioner Baker stated that the violation in this case is blatant, and that Mr. Muniz should receive the maximum fine. Commissioner Peterson stated that a \$2,000 fine seems high. Commissioner Runbeck stated that the message from Mr. Muniz seems to be that he tried to comply with the law but had a hard time doing so, and therefore he decided not to comply. This is a second offense, there are no mitigating factors, the aggravating factor is that Mr. Muniz knew better, and this was a blatant violation.

MOTION: *To issue a Cease and Desist Order and to impose a \$2,000 civil penalty against Sol Design/Eddie Muniz,*

*jointly and severally, to be paid within 30 days of Commission Order by Commissioner Baker.
Seconded by Commissioner Runbeck.*

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

D. Mike Vize (Unlicensed) - Case # 2004-113

Mr. Vize was present.

Mr. Vize stated that he is an employee (Facilities Manager) and parishioner (part-owner) of Our Lady of Immaculate Conception Catholic Church in Cottonwood, Arizona. He stated that bought Roundup concentrate from Walmart and mixed it according to label directions, and didn't know it was against the law to spray it. He stated that he has used this product previously at his house but has no intention of being in the business of structural pest control. Commissioner Baker asked what happened to Ms. Clark, the complainant, regarding her sensitivity to the chemical. Dave Colvin stated that he talked to Ms. Clark, who was concerned when this happened, but she did not complain to him about any ill effects and is not planning on being in that area again. Dave Colvin was unable to determine whether there were any label violations. Mr. Vize stated that Ms. Clark has not been to the Parish since the incident. Christopher Munns stated that the Commission may want to consider some statutory provisions.

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

VOTE: 5-0 Motion carried.

(Executive Session from 9:45 A.M. to 10:00 A.M.)

Commissioner Runbeck asked if they could confirm whether or not the church owns the property. Mr. Vize stated that the church owns the property outright, and that he could get a paycheck stub verifying his status as an employee. Commissioner Baker asked what the church's plan for treating the weed problem will be from now on. Mr. Vize stated that they have been pulling the weeds and have not used Roundup since the incident. Commissioner Runbeck stated that she does not think that a Cease and Desist Order would be appropriate, and that the case should be dismissed, even though this may not be consistent with how they have treated other cases in the past. She thinks this a gray area of the law. Commissioner

Baker stated that a fine would be appropriate. Commissioner Peterson stated that this is a tough gray area regarding the owner/employee distinction, and the Commission needs to come to a resolution on this issue in their laws/rules discussion. Commissioner Fraker did not see a lot of difference between this case and several other cases in which an owner of a property had an employee apply a product with no applicator license or QP license. He stated that Mr. Vize was only doing what he thought was the right thing to do, but the Commission should not treat the case differently. Commissioner Runbeck stated that she was not seeing this case differently because it involves a church, but because different facts and legal interpretations may justify a different result, and sometimes following past precedent is not the best way to go. Commissioner Fraker stated that the Commission needs to remain consistent in their position until they make a law/rule change. Commissioner Robinson stated that this case is different from cases in the past because Mr. Vize is not going from property to property and spraying.

MOTION: *To issue a Cease and Desist Order against Mike Vize, by Commissioner Robinson.
Seconded by Commissioner Baker.*

VOTE: 2-3 *Motion failed (Commissioners Baker, Fraker and Runbeck opposed).*

MOTION: *To dismiss the complaint against Mike Vize, by Commissioner Runbeck.
Seconded by Commissioner Baker.*

VOTE: 2-3 *Motion failed (Commissioners Baker, Fraker and Robinson opposed).*

MOTION: *To issue a Cease and Desist Order and to impose a \$100 civil penalty against Mike Vize, to be paid within 30 days of Commission Order, based on mitigating circumstances and a necessity to issue a Cease and Desist Order, by Commissioner Baker.
Seconded by Commissioner Robinson.*

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

E. Maricopa County Property Maintenance LLC. (Unlicensed Company)/Scott Van Drunen (Member)/William Kopcheck (Member) - Case # 2004-131

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

VOTE: 5-0 Motion carried.

VIII. For review, consideration and action: Request for Rehearing or Review of Commission Order

**A. A Landscape Team, LLC (Unlicensed)/Garrett L. Rissmiller (Member)
- Case # 2004-018**

Lisa Gervase stated that the Commission, in October 2004, had imposed a Cease and Desist Order and a \$500 civil penalty for unlicensed activity, and the respondent has filed a timely Request for Rehearing or Review, citing grounds of "Accident or surprise which could not have been prevented by ordinary prudence," "Excessive penalties," and "Error in the admission of evidence," as enumerated in A.A.C. R4-29-502(C)(3),(5)&(6).

MOTION: To deny rehearing or review of Commission Order because no facts or reasons were presented to justify a review, by Commissioner Runbeck.
Seconded by Commissioner Baker.

VOTE: 5-0 Motion carried.

IX. Felony Applicants

A. Berg, Paul Joseph

Mr. Berg appeared.

Mr. Berg stated that after his release from prison (December 1, 2003), he worked for a warehouse in Tolleson, Arizona until a knee injury made it too difficult to perform job duties. He has been employed for several months by Professional Exterminators, and he does applications around buildings and houses. He stated that he served his full time at a minimum security (Level 1) prison without seeking parole, and is also seeking counseling, has successfully completed a course, and is a registered sex offender in Arizona. Commissioner Peterson asked if Mr. Berg's behavior is considered to be a disease. Mr. Berg stated that it is not, and that he

had a lot of trauma prior to the event, and put his feelings aside and did not deal with his problems correctly. He stated that he talked things out through counseling and moved back closer to his family where he has support. He stated that he does not see the behavior repeating itself. Commissioner Robinson expressed sympathy for Mr. Berg, stating that everyone makes mistakes, but also stated that the nature of this offense justifies denial. Mr. Berg stated that he is only looking to get an applicator license and has not interest in starting his own business. Commission Baker stated that if the Commission approves Mr. Berg for testing and he then obtains a license, there is nothing that could stop him from moving up the ranks. Commissioner Fraker noted that Mr. Berg has been employed and unlicensed in the pest control industry for nine months already, which is well over ninety days, and this issue needs to be addressed also.

MOTION: To deny application based on a felony conviction, lack of good moral character, the severity of the crime, the details of the arrest and the multiple charges, and that this is one of the top reasons on the substantive policy statement to deny a license, by Commissioner Fraker.
Seconded by Commissioner Runbeck.

VOTE: 5-0 Motion carried.

B. Pearson, Bryan Robert

Mr. Pearson appeared - application tabled.

Mr. Pearson stated that he has an extensive history, including possession of marijuana, he became clean on August 3, 2001, completed probation in February, 2002 and went through a 12-step fellowship. Mr. Pearson stated that he started working with The Beekeeper Total Bee Control, Inc. last year and they terminated him after ninety days to be in compliance with the law. He started working for Total Bee again while waiting for his hearing before the Commission. Mr. Pearson stated that he was subjected to random drug tests during his 1997-2002 probation and that he did have a few dirty tests. Mr. Pearson stated that he works for two pool companies almost full time and kills bees in the afternoons, and that his employer could not be here today because of the high number of bees flying around right now. Commissioner Runbeck asked how the Commission would know whether Mr. Pearson has been clean or whether he just hasn't been caught. Mr. Pearson stated that he would take a urinalysis test if necessary. Commissioner Peterson noted that the Commission has had other felony applicants report to the Commission on a quarterly basis as a condition of granting them a license. Christopher Munns stated that if the Commission wants to issue a license with conditional terms, they would have to do it via an agreement, table it, and then come back when the agreement is signed, unless they can work out the terms here today. Mr. Pearson stated that

he would have no problem with fulfilling additional conditions. Commissioner Peterson advised Mr. Pearson to work on coming to terms with staff and then return to face the Commissioners.

C. Ranks, Rodney Scott

Mr. Ranks appeared.

Mr. Ranks stated that he has not had any problems since the last offense, and he submitted a letter from a prospective employer. Commissioner Runbeck noted that Mr. Ranks had submitted letters of recommendation from a lot of people. Mr. Ranks stated that at one time he had an installation services business, in which his company would install signs, cabinetry, etc., but they lost their contract with their major partner and so he no longer has the business. He stated that he was greatly in debt at the time of the offense and made a bad decision at the time. Commissioner Peterson asked what has changed since then. Mr. Ranks stated that he is no longer greedy. He stated that he was married but then became divorced because of his incarceration. A long-time family friend who is the owner of a weed control services company gave Mr. Ranks an employment opportunity. Commissioner Fraker stated that the offense was recent and seemed like more than occasional, and involved trafficking and shipping of eighty pounds of drugs a long distance. Mr. Ranks stated that he was caught back in 1998 and was only convicted more recently in February 2001. He also stated that he did not know how the operation worked, fifteen other people were involved, and he was not a trafficker but was rather a low-level packager who transported the goods from A to B. He stated that a court has re-issued all of his rights, dismissed the charges, and the Arizona Department of Clemency approved this with the Governor.

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

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

D. Ruiz, Robert James

Robert Tolton stated that this application was tabled from last month's agenda. He made several phone calls to get in touch with Mr. Ruiz or his employer, but was unsuccessful and does not have any additional information. Lisa Gervase stated that if this application is tabled again for next month's agenda (April 8) and Mr. Ruiz still does not appear, then his application will close shortly thereafter on April 22.

E. Sokol, Jerry Lee

Mr. Sokol appeared.

Mark Denny, Sr., representing Denny's Quality Pest Control, LLC, appeared.

Mr. Sokol stated that he had a drug problem in the past from the age of 12 until his late 20s, and has been clean for about 12 years, his last conviction being in 1992. Mr. Sokol was on supervised parole after his release from jail in the mid-1990s, during which time he submitted to random drug and alcohol tests, all of which were clean, and he does not drink or do drugs now. Since his release, his jobs have varied from food service to roofing because it is hard to get work with his criminal history, although people tend to keep him for a while after they hire him. He worked for the May Company for seven years. He has been working for Denny's Quality Pest Control, LLC since May, 2004. Mr. Denny taught Mr. Sokol how to spray through September, 2004, and then terminated him because of lack of business, but then rehired him in January 2005. Mr. Denny stated that Mr. Sokol is on the job every day, his customers like him, he is personable, intelligent, dependable, and Mr. Denny wanted to give him another chance. Commissioner Peterson asked Mr. Sokol what has changed in his life that keeps him from repeating his past detrimental behaviors. Mr. Sokol stated that he is mature now after such a long period of self-gratification in which he did what he wanted when he wanted. He stated that he grew up, saw the errors in his life, and decided that he wanted to do something productive in his life. Commissioner Peterson noted that Mr. Sokol's last arrest was in 1992. Commissioner Runbeck stated that upon reading Mr. Sokol's file, she had marked "No", but after hearing him today she changed her mind.

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

VOTE: *5-0 Motion carried.*

(Break from 11:00 A.M. to 11:15 A.M.)

X. For discussion, consideration and possible action

A. HB 2516

Scott Richardson appeared.

Lisa Gervase stated that the bill passed the House of Representatives on Thursday, March 3 and is now at the Senate. She stated she is working with Trish Groe, the sponsor of the bill, to get the bill amended regarding the provision in paragraph C that requires rules to be adopted by the Commission. Lisa Gervase stated that rules, while important, will not be able to be passed by the time a law is effectively changed, and she does not want the Commission to be put in a position of failure.

Mr. Richardson stated that when they went back to negotiate, paragraph C was added per staff's suggestion. He stated that if paragraph C is removed, there would be a standard-less standard and an expert would be needed for hearings at the Office of Administrative Hearings, and, under A.R.S. § 32-2304(A)(1), rules would still have to be adopted. Nevertheless, they will try to remove paragraph C. Commissioner Peterson stated that he would like to see paragraph C removed.

B. Future Law Changes

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

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

Brian Ferris, representing Terminix, Inc., appeared.

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

Item #14 (Owner/Occupier licensing exemption.): Lisa Gervase noted a theory that it may be okay to spray pesticides at a location where only you or your family may be exposed to the product, but if the unsuspecting public might be exposed, then there may be a problem. Mr. Martin pointed out that non-pesticidal pest control is not comprehended in the language. Christopher Munns stated that there is no statutory definition of "occupy" in the SPCC statutes, and suggested that clarification probably would be needed. Commissioner Runbeck suggested adding language that would cover persons/businesses/entities to whom the Commission might want to extend the licensing exemption, such as Arizona Public Services (APS). Commissioner Robinson pointed out a problematic example of city water meter readers who carry insecticides to spray, and questioned whether the city or the homeowner owns the specific property that is being sprayed. Commissioner Peterson stated that he is more concerned about how the law applies to health care, day care, and restaurant businesses. Commissioner Runbeck stated that employees should be entitled to some protection at places where they have to be everyday for work, implying that only licensed applicators should be spraying there. Commissioner Peterson stated that the Occupational Safety and Health Administration (OSHA) mandates certain protections to employees. Commissioner Runbeck stated that defining "owner/occupier" as anything other than "residential" could lead to problems in the future, and that specific exceptions for commercial entities such as Salt River Project (SRP) and APS could be made. Lisa Gervase asked what "occupy" means in the context of someone who owns and lives in a multi-unit apartment complex. Does the person occupy just his/her unit, can he/she occupy the outside grounds, and can he/she address a cockroach problem in another unit? Commissioner Baker suggested that childcare, adult care and health care should be exempted, along with others possibly. Commissioner Peterson thought that it would be ridiculous for people not to be able to spray Raid on a porch

at a daycare facility. Commissioner Fraker stated that people who turn a structure into something other than a single-family residence should be in a different class of responsibility, because it would be a big deal if someone is injured. Commissioner Peterson questioned how the SPCC would be able to protect people by passing such a law, because he doubted that people would know that licensing is required, and he questioned how big the risks are with certain pesticide applications. Commissioner Baker replied that the public could be walking into a possible exposure that they may not be aware of. Commissioner Peterson suggested that it might be easier to look at the products themselves instead of merely examining the owner/occupier definition. Commissioner Baker stated that people have caused harm with bug bombs and that even Raid can be harmful. He suggested that the added responsibility distinction should be made when someone is extracting funds in exchange for providing a service. Commissioner Runbeck stated that these business people could include licensing and insurance expenses in their costs of doing business. Commissioner Runbeck clarified the discussion by stating that the exemption could be said to not apply to someone who is doing business out of the home where the public could be exposed. Commissioner Peterson recommended limiting the list to facilities like healthcare and daycare, because if the list of non-exempt entities is expanded too broadly, then the legislature might not agree. Consensus to begin with limiting this exemption to residential property, and perhaps create additional exemptions for utilities and others.

Item #15 (90-day applicator licensing deadline.): Should the 90-day time frame that a business has to employ unlicensed applicators begin with when a person first applies pesticides or should it begin with when someone performed any act of the business of structural pest control? Commissioner Robinson stated that in the golf course industry, they hire people and then a year later push them to get licensed. He stated that the hire date seems irrelevant with regards to the 90-day clock. Lisa Gervase stated that the Commission has been interpreting "employment" to mean "applying pesticides", and that it is a factual determination on a case-by-case basis. Commissioner Baker stated and Commissioner Peterson agreed that 90 days seems reasonable under the guidelines of applying pesticides. Commissioner Fraker noted an example of someone a few months ago who was a "B1" but not "B2" licensee who was checking bait stations but not applying pesticides, and this person could report back to the company and tell the company whether an application needs to take place. Lisa Gervase stated that according to A.R.S. § 32-2324, wood inspections can only be made by a licensed person with certain training. Commissioner Fraker stated that the 90-day clock should start once a person bridges the gap from being in the office to being in the field. Mr. Pinnecker asked how the Commission knows when a person begins applying pesticides. Lisa Gervase stated that the Commission requests records. Mr. Ferris stated that statutes in New Mexico are similar, except that they say "in the role of an applicator", and this can include a Centricon technician who is working under the direction of a pesticide label. Commissioner Peterson stated that this might be even tougher to

verify. Lisa Gervase asked if they should change the things that require immediate supervision, and suggested that maybe Centricon baiting stations should just require direct supervision. Commissioner Fraker suggested that striking the phrase "of employment" would be a step in the right direction. The Commissioners agreed that 90 days is an appropriate time frame, except that Commissioner Baker stated that 90 days could be a short period of time to become licensed. He suggested possibly having a tiered approach whereby the Commission could require that the core exam be passed in 90 days and then another exam be passed after that. Commissioner Fraker stated that there is some valid reasoning behind having a stepping stone process; in Indiana, a registered employee/apprentice, in order to get a termite license, had to complete twelve jobs with graphs, etc., and this information was submitted to the State so that there was verifiable on-the-job experience doing treatments. All of this was done before taking the termite exam. He stated that one of the problems in Arizona is that a person can pass an exam without ever having mixed a termiticide or patched a hole, etc. Consensus to have the 90 days begin upon applying pesticides.

Item 16 (Immediate supervision for unlicensed employees applying pesticides for termites.): Should immediate supervision (current practice) or only direct supervision be required for someone putting in baiting stations? Should immediate supervision be required for certain restricted use pesticides (RUPs)? Currently, any termite-related work requires immediate supervision. Lisa Gervase stated that monitoring is not the same thing as the application of termiticide, and the law is clear about the difference. Commissioner Peterson stated that he does not see why two people are needed to check the wood. He did think that two people should be present while spraying around the wood, because the quality of a termite treatment is not as evident to consumers as is the quality of a weed or ant treatment because the results of a termite treatment are not as immediately visible. Commissioner Runbeck noted the potential for harm, however, when someone sprays for weeds, because the chemical could spray to a dog's food dish or somewhere else. Mr. Ferris stated that Centricon bait monitoring is not rocket science and should be exempt from immediate supervision. He stated that the labels are simple, the choices are simple, and there is low toxicity. He believes that putting bait in the stations should also be exempt from immediate supervision. He stated that rodent bait stations are different, however, because they are more dangerous. Commissioner Peterson pointed out and Commissioner Baker agreed that it is critical that termite bait stations be placed away from crawl spaces, etc., so that children are not harmed. Commissioner Fraker agreed that there is a potential for harm with bait stations and that an unlicensed termite technician needs to have someone with them who is licensed in "B2". Commissioner Peterson directed staff to keep the requirements the way they are now. Regarding the second issue about RUPs, Commissioner Baker stated that he believes that all fumigants are RUPs, and if they are not, then he still thinks they should require immediate supervision. Lisa Gervase stated that she will put this topic on a draft list for public comment.

Item 17 (Inactive Applicator Licenses - renewed annually?): Consensus to support annual renewal, with reasonable fee being charged, so that the SPCC could maintain more accurate contact information.

Item 18 (Business licenses - ability to be "inactive".): Lisa Gervase stated that currently, there is no legal allowance for business licensees to put their licenses on inactive status like there is for QPs and applicators; therefore, a non-involved business licensee could risk having their license suspended for nonrenewal or risk having someone else take their name. Consensus to treat all of the licenses the same and include a \$25 fee, just like for inactive QPs.

Item 19 (Business license "owners" and background checks.): Consensus to not pursue, but to tighten up on the regulations concerning QPs as being actively involved in the business.

Item 20 (Qualifying Party management.): Commissioner Fraker stated that it is not practical for a QP to have to go to 30 branches. Commissioner Peterson stated that he thinks that QPs should be available "daily", and the Commission can use its enforcement discretion. Commissioner Fraker stated that he has never seen an operation with multiple offices where the QPs are not glued to the phone. He stated that there was a case in which a QP was in Washington and would not return until November, and there is no way she was active in the daily management of the business. He stated that it seems that many QPs are renting their licenses and saying that they will be available by cell phone at any time, and they are just being paid for the use of their licenses. He stated that if there is a spill or some other incident requiring immediate action, it can be difficult for a distant QP to respond, and a non-licensed person could be making the important decisions in such a situation. He stated that QPs need to be here, and they should be required to be Arizona residents. He also stated that people who are not active in the business don't receive notices and don't know sometimes that their licenses are at risk. Mr. Ferris has interpreted "present" to mean that QPs must be physically present at the branch offices, not just the main business office. Commissioner Peterson asked, if a business has branch offices, whether there can be a QP at each one, and whether the Commission depends on the corporate structure to tell the Commission who is responsible. Lisa Gervase stated that businesses have to designate branch managers. If there is a violation, the Commission can cite more than one person and let the facts determine who is responsible. Commissioner Fraker stated that there are not many cases where there is more than one QP in a category. Commissioner Fraker stated that most companies (94%) are single locations, and probably 60% are being run out homes. He suggested that, for single operations, the Commission mandate that QPs must be active at the main office on a daily basis. . Commissioner Robinson stated that golf courses lease QPs, and there are one or two that handle nine or ten golf courses. Lisa Gervase stated that these are

classified as single business with difference golf courses as branches. Mr. Etheridge stated that his business has multiple branches, and if they have hard times and he has to go to California and take up residence there for six months, then he would have to fly into Phoenix every day. He stated that as it is now, he flies into California weekly and this takes a big toll. Mr. Ferris stated that it is important to look at the end result, not necessarily the amount of time spent at a location, as some businesses run smoothly with little maintenance. He also thought it would be tough to have to be in a physical location daily. Consensus to require daily management, and proceed with rules to further define.

C. Rule Changes - Previous Handout to Commissioners from the February 10, 2005 Commission Meeting

Tabled with Chairman Peterson's request that all commissioners provide their comments to Lisa Gervase before the next meeting

D. Complaint Status Log

Current status report reviewed by Commission

E. Continuing Education Minutes

Susan Tomlinson, representing North Country Pest Management, appeared.

Commissioner Baker asked for an explanation as to how the Commission is evaluating CEUs. Jason Aanderud stated that he reviews all CEU proposals. He stated that he reviews outlines, videos, CD-ROMs for computer-based courses, and biographies for people leading the courses, and he asks for more information if he has questions. If they pass his review, then they are presented to the Commissioners, and Lisa Gervase can review the decisions if the CEU providers disagree and want to appeal. He stated that several classes were not approved because they used old videos. Commissioner Fraker asked if the Commission approves classes with videos only and no instructors. Jason Aanderud stated that they do, and if they are old videos, they will be reviewed for relevancy. After students watch the videos in the classes, people will be available to answer questions about them and there is also a test. Tests are required, although they can be verbal, and this has to be indicated on the application. Ms. Tomlinson stated that their company requires six hours as a minimum (her group is required to have eighteen hours), and they also have speakers to provide advanced knowledge. She stated that the courses are valid as long as there is some interaction and score. She also did not see a problem in submitting the course proposals through only one individual as long as that individual is qualified. Commissioner Fraker stated that he is also comfortable with a one-person review committee, but he suggested that it a

course is only providing a video, that this should be pointed out by the CE provider so companies know whether to pay to send their employees. He also expressed a concern that businesses could be paying money for their employees to watch videos that they may have themselves. Mike Francis stated that in the instructions to the CEU providers, it states that any approved videotapes or audiotapes must be reviewed in the presence of a proctor, and the proctor needs to review the tape and then give a test. He also stated that staff can look into situations where problems may exist.

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

VOTE: 5-0 Motion carried.

F. Computer Based Testing “CBT” Status and Statistics

Mike Francis stated that during the month of February, 2005, 738 applicator exams and 52 QP exams were administered, and the statistics are attached for Commission review.

G. Pest Management Industry Slogan “Contest” - separate handout

Susan Tomlinson, representing North Country Pest Management, Inc., appeared.

Eric Ruden, representing Northwest Exterminating Co, Inc., appeared.
Andy Weber, representing S O S Exterminating, Inc., appeared.

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

Brian Ferris, representing Terminix, Inc., appeared.

Jason Aanderud stated that 98 total slogans were collected, staff voted on their favorite ones, and the list was narrowed down to 15 slogans. He advised the Commissioners to choose the best three slogans, and suggested that there could be a pest slogan and a weed slogan. He also stated that the SPCC seal or logo will be attached. Lisa Gervase stated that few licensing regulatory agencies, such as the Registrar of Contractors and Game and Fish, have slogans. Commissioner Fraker stated that the national industry has a rule about trying to dissuade the words “kill” or “exterminate”. He also suggested that humor should not be a part of it if the Commission wants to further establish professionalism in the industry. Ms. Tomlinson stated that public health should be an important aspect. Mr. Ruden stated that it should be clear that pesticide licensure ensures something or equals something, like the Registrar of Contractors’ “Licensed Contractors Build Confidence” slogan, and that it is short enough to fit on a bumper sticker. He also

stated that it shouldn't be made to sound like it is only an option, and not a necessity, to hire a licensed company or person. Commissioner Peterson agreed that they don't want to make it sound like people even have the option of hiring unlicensed companies or people. Commissioner Fraker suggested "Licensed protectors of health and property" or "Professional protectors of health and property". He stated that the general public may not even know that you have to be licensed to apply pesticides, and many people don't realize the contribution that the pest control industry makes to the food chain. Commissioner Runbeck agreed with Commissioner Fraker. Mr. Weber suggested something along the lines of "Licensed required to protect public health". [?-Mr. Martin stated that there is ample evidence that mere licensing of pest management professionals does not necessarily improve health and the food supply in the Unites States.] Mr. Ferris stated that he believes that emphasizing protection of health and property is important. He also stated that it is important for people to want to put these slogans on their trucks. Lisa Gervase asked if there should be a slogan for weeds and another slogan for other pests, because people generally do not think of weeds as pests from a licensing requirement standpoint, even though Robert Tolton has continually impressed that idea upon unlicensed landscapers. Commissioner Runbeck stated that there should not be a distinction between weeds and pests, and that they should be lumped together. Jason Aanderud stated that he take the comments and provide a sample slogan. [Sample slogan provided during remainder of meeting without objection.]

H. Expenditure Report

Lisa Gervase stated that through the end of February, 2005, eight months into the fiscal year, 62% of the Commission's appropriated funds have been expended.

I. Case Status Report

Lisa Gervase stated that there are currently 125 active cases in various stages. The bulk of them are in the process of having Consent Agreements and Decisions and Orders drafted for them, and some are waiting for hearing. Commissioner Peterson stated that some of the collection cases are really old, and although sending collection letters and notice of suspension letters may be the judicious thing to do, he wondered if it is worth the time and effort to go back far in the past, especially to track down people who may not even be in business anymore. Lisa Gervase stated that there is no statute of limitations in pursuing compliance. She stated that staff had looked at pre-1999 case files in hopes of getting rid of them because they were older than five years, but they found so many Orders that were not complied with, and she has a fiduciary obligation to see that State Orders are complied with. Commissioner Peterson stated that, with the Department of Agriculture, he had a situation like this where there were a back log of cases and the director said not to deal with cases that were older than five years. He recommended drawing some line in time beyond which the Commission would not deal with the cases. Lisa

Gervase asked the Commission to consider parameters based on age or amount of the civil penalty as to whether to pursue compliance with old orders. Also, the prior disciplinary action would still be reflected today, as the Orders are entered into a database. Commissioner Fraker stated that everyone has an obligation to pay their civil penalties if they have ignored them or even if the Commission did not follow through. Lisa Gervase stated that the oldest case is from 1989, and old collection cases are frequently the last priority of staff, as they deal with current and future concerns first. She also stated that approximately \$85,000 in civil penalties was collected in 2003-2004 and another approximately \$25,000 in civil penalties haven been sent to the Attorney General's Office for collections. She stated that she will provide a list of these outstanding "old" cases to the Commissioners for them to consider parameters of pursuing compliance with old orders.

XI. Approval of Minutes

A. February 11, 2005 (regular session) Minutes - separate handout

Lisa Gervase stated that the Minutes will be provided to the Commissioners for consideration at next month's meeting.

XII. Scheduling of future meetings/agenda items

Current Proposed dates

April 8, 2005

May 13, 2005 - Commissioner Hartley unavailable.

June 10, 2005

July 8, 2005

August 12, 2005

September 9, 2005

XIII. Adjournment - 2:20 p.m.

MOTION: *To adjourn by Commissioner Runbeck.*

Seconded by Commissioner Fraker.

VOTE: *5-0 Motion carried.*