

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

**COMMISSION MEETING
FRIDAY, April 8, 2005 - 9:00 A.M.
MINUTES**

I. Call to order, Commissioner roll call

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

Commissioners Absent: Commissioner Debbie Runbeck

New appointee: Mary Leavitt observed meeting

Staff Present: Jason Aanderud, Eric Bauer, Dave Colvin, Vince Craig, Mike Francis, Lisa Gervase, Robert Tolton, and Assistant Attorney General M. Elizabeth (Lisa) Burns

II. Call to the public

None.

III. Communication with Commissioners

None.

IV. Summary of Current SPCC Events, Activities, Notices

»Continuing Education Courses

Thanks to Jason Aanderud, and many other staff members, the SPCC's annual CE course held on March 18 was a success, with approximately 175-200 people in attendance. Upcoming CE courses will be April 27 in Phoenix and April 29 in Tucson.

»Applicator License Renewals

Close to 7,000 applicator license renewal forms were mailed this week. Online renewals have been available since April 1, and the benefits of the online renewal process are that it is a quick way to renew and it provides immediate feedback.

»Commission member appointment status

Governor Napolitano has appointed Mary Leavitt, from Prescott Valley, to replace Commissioner Tom Allen as a public member. She will begin serving next month.

V. Consent Agenda

A. Applications for New Business License

Qualifying Party

- 1. Aungst, Cheryl Louise** **Stoneridge Golf Course, LLC.**
(Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)

- 2. Brown, Kevan Charles** **Arizona/Western Vegetation Regulators** (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control)

- 3. Cervantes, Melanie Dawn** **Tramonto Landscape** (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)

- 4. Denny, Claudia A.** **Round Valley Pest Control, LLC.**
(Activating Qualifying Party for new business license in "B1" General Pest & Public Health)

- 5. Gunn, Raymond E.** **Knock'M Out Pest Control** (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects, and "B8" Wood Destroying Insect Inspection)

- 6. Jernigan, William Edward** **Four Peaks Landscape Management, Inc.** (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)

B. Applications to activate Qualifying Party for Existing Business License

- 1. Graham, Marc** **Sun Lakes Pest Control** (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects, "B3" Right of Way & Weed Control and "B8" Wood Destroying Insect Inspection)

- 2. Kunnen, Harold J.** **HouseMaster Home & Termite Inspections** (Activating Qualifying Party for existing business license in "B7" Fungi Inspection)

- 3. Pinnecker, Douglas Keith** **Contractors Termite & Pest Control, Inc.** (Activating Qualifying Party for existing business license in "B7" Fungi Inspection)

- 4. Root, Jack Dallas** **Tacit Services, LLC.** (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control)

Commissioners received and reviewed a copy of a written objection to this application, received from Phyllis Farenga via facsimile this morning

C. Applicants for QP Licensure

- 1. Acevedo, Audel** "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture)

- 2. Alston, Matthew Tanner** "B1" (General Pest & Public Health)

- 3. Dobert, Gary Keith** "B8" (Wood Destroying Insect Inspection)

- 4. Durkalec, Stanley Robert** "B1" (General Pest & Public Health), "B2" Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)

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| 5. Dyer, Joseph Michael | “B1” (General Pest & Public Health) |
| 6. Egurrola, John Manuel | “B1” (General Pest & Public Health) |
| 7. Glick, Dale Earl | “B2” (Control of Wood-Destroying Insects) |
| 8. Keil, Terry Joe | “B1” (General Pest & Public Health) |
| 9. Loreng, Edward Charles | “B3” (Right of Way & Weed Control) and
“B5” (Turf & Ornamental Horticulture) |
| 10. Murphy, James Albert | “B1” (General Pest & Public Health) |
| 11. Myers, Douglas Mark | “B1” (General Pest & Public Health), “B2”
(Control of Wood-Destroying Insects),
“B3” (Right of Way & Weed Control) and
“B8” (Wood Destroying Insect Inspection) |
| 12. Myers, Rodney Lee | “B3” (Right of Way & Weed Control) and
“B5” (Turf & Ornamental Horticulture) |
| 13. Nabozny, Joseph Daniel | “B1” (General Pest & Public Health), “B2”
(Control of Wood-Destroying Insects) and
“B8” (Wood Destroying Insect Inspection) |
| 14. Pleasant, Roger Wesley | “B3” (Right of Way & Weed Control) and
“B5” (Turf & Ornamental Horticulture) |
| 15. Priess, Robert Allan | “B1” (General Pest & Public Health), “B2”
(Control of Wood-Destroying Insects) and
“B8” (Wood Destroying Insect Inspection) |
| 16. Pyon, Jung Won | “B1” (General Pest & Public Health) |
| 17. Ritter, Jr.; Phillip Adam | “B3” (Right of Way & Weed Control) and
“B5” (Turf & Ornamental Horticulture) |
| 18. Smith, Dana Ray | “B3” (Right of Way & Weed Control) and
“B5” (Turf & Ornamental Horticulture) |

End of Consent Agenda

Commissioners Peterson and Fraker noted that noted that no items were pulled for discussion or questions and they commended the work of staff for helping to ensure that the applications were processed thoroughly and smoothly.

MOTION: By Commissioner Hartley to accept Consent Agenda.
Seconded by Commissioner Baker.

VOTE: 5-0 Motion carried.

VI. Request for Temporary Qualifying Party License Renewals

A. Bidwell, Stephen Ralph Ground Effects Landscaping

Mr. Bidwell appeared.

Commissioner Peterson noted that Mr. Bidwell was granted a temporary QP renewal at the February meeting. He also noted that the incorrect social security number was on the fingerprint card for his QP application, perhaps because someone else filled it out, and this has caused further delay in the application process. Mr. Bidwell acknowledged that he signed the fingerprint card, not realizing that the social security number was incorrect. He stated that he then went to the Sheriff's Department in Tucson this past Tuesday, got a new fingerprint card, and sent it to staff. He stated that he is waiting for approval to test. Robert Tolton stated that his application has been held up because staff does not have the results from his background investigation. He stated that Mr. Bidwell's temporary QP application was submitted in December, 2004, and Mr. Bidwell's QP application was submitted the week of the February, 2005 Commission meeting. He stated that it takes four to six weeks for the background investigation to be processed, and after staff receives results, then Mr. Bidwell's application for QP licensure will be on the next Commission meeting agenda.

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

VOTE: 5-0 Motion carried.

B. Kilian, Gloria Kilian's Termite & Pest Control Co.

Ms. Kilian appeared.

Commissioner Peterson noted that Ms. Kilian was granted a temporary QP renewal at the February meeting and asked what the hold up is in getting a QP license. Ms. Kilian stated that she will have to wait approximately 60 days to retake the test. She stated that she has a couple of interested parties to be her QP, but she will not know for a week or two. Commissioner Peterson noted that over the past approximately three and a half years, Ms. Kilian has operated through a temporary QP off and on for a total of a year and a half. Commissioner Baker asked Ms. Kilian what her plan is if she does not pass the exam. Ms. Kilian stated that she will hire a QP like she has done in the past. Commissioner Baker noted that every time a QP leaves Ms. Kilian, she comes back before the Commission to ask for a temporary QP. He stated that it is difficult for the Commission to approve the request given the length of time that this practice has been going on. Ms. Kilian stated that she has no control over her QPs leaving her, that she does not have help in passing the test and that she is doing it on her own. She also stated that her family members have died, and that, while she realizes that it is not an excuse, she has had her share of difficulties.

MOTION: To deny the extension of the Temporary QP by Commissioner Robinson, based on the applicant not passing the test now or in the past, the fact that even if a 60-day extension would be granted the extension will expire before the time she is permitted to retest, and no good cause shown for the delay in procuring a QP.
Seconded by Commissioner Hartley.

VOTE: 5-0 Motion carried.

Ms. Kilian asked how much time she has to hire a QP. Robert Tolton stated that Ms. Kilian's current temporary QP is valid until April 14. Ms. Kilian argued that others have received temporary QP renewals and feels that she is being denied because she is from Tucson. She stated that she needs a temporary QP until she can hire a QP or get her own QP license, because she has been in business for 34 years. She stated that she is working on it, but it is a long process. She stated that the Commission provides a big list of potential QPs for her to hire, but it takes a while to narrow down the list and to get people to respond to her telephone calls. Commissioner Peterson acknowledged that the process can be time consuming but informed her that the Commission has made its decision to not renew Ms. Kilian's temporary QP license. Ms. Kilian stated that she is going to continue working anyway, that she is going to sue the Commission and the state will pay for it, and that she will fight the Commission to the end. Ms. Kilian then left the room. Commissioner Fraker then commented that he believes that the Commission

has been more than fair with Ms. Kilian, and that the audience members, while they see the discussion here today, they are not privy to the Commission book materials that lay out her long temporary QP history since late 2001, on and off. Further, he stated that if Ms. Kilian is in fact qualified to be a QP, then she should be able to pass the test, but she has been unsuccessful on previous attempts. The Commission and staff have bent over backwards for Ms. Kilian. Commissioner Baker added that the standards must be the same for everyone who chooses to be in this occupation.

C. Price, Troy L.

Schendel Pest Control of AZ, Inc.

Joseph Allen, who moved to Arizona from out of state to work for Schendel Pest Control, has submitted an application for QP licensure but does not have an applicator license. Commissioner Robinson asked if a 60-day extension would be enough for Mr. Price even if Mr. Allen was on a "fast track". Robert Tolton stated that if Mr. Allen tests and passes next week, he may be able to be on May's agenda to activate his QP license for the business, but the company would still have to shut down for three days. Commissioner Fraker stated that situations like this one really concern him because here a company is asking the Commission to grant a temporary QP extension to someone who has no intention of being a QP, and this runs contrary to his feeling about how this process should operate. He stated that he thinks that the Commission should take this into consideration in their policy statement. He also stated that he would have liked Mr. Price to be here today to explain why he is not testing or has not tested, even though there is no legal requirement for him to do so. Commissioner Hartley stated that he is hesitant to grant an extension here especially because it is in the "B4" fumigation category. He stated that Mr. Price's certification dates back to 1976 and there have been a lot of changes in fumigation law since then.

MOTION: To deny the extension of the Temporary QP since no good cause for not procuring the QP license has been shown, fumigation has had many changes since 1976 and not being current can have serious consequences, Mr. Price has no intention of obtaining a QP license, and there is no explanation about why he is not applying for a QP license, by Commissioner Baker.
Seconded by Commissioner Hartley.

VOTE: 5-0 Motion carried.

D. Sutera, Joel Anthony

Unicorn Pest Control, LLC.

Mr. Sutera appeared.

Mr. Sutera stated that he passed the "Core" exam last week and is scheduled to take the "B1" General Pest/Public Health exam next week. Commissioner Robinson asked Mr. Sutera why he did not start testing sooner. Mr. Sutera stated that he has been busy keeping his business going. He also stated that his former QP retired suddenly. Robert Tolton stated that as of April 6, Mr. Sutera has passed the "Core" exam, but he could not say whether Mr. Sutera is scheduled for another exam.

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

VOTE: *5-0 Motion carried.*

VII. Complaints against Licensees

A. Arizona Classic Exterminating (BL)/Kirt Boylan (Owner/App) - Case # 2004-144

*Mr. Boylan appeared.
Jack McClure, from Chemtech Supply, commented.*

Mr. Boylan stated that with regard to the current complaint, while he was servicing a residence, the next door neighbor's dog came over to Mr. Boylan's securely closed rodenticide container. He stated that he was in eyesight of the bucket as the dog grabbed it and consumed part of a bait block. He stated that he immediately called poison control and told Commission Inspector John Herwehe about the incident the next day. He showed the Commissioners a similar bucket and stated that it falls apart within six times of opening it. He stated that he no longer uses this type of bucket and now uses a more durable one. He then asked the Commission to dismiss the case. Commissioner Robinson stated that he does not see what else Mr. Boylan could have done to rectify this situation, and he hopes that if this type of thing happens to him that he will have the presence of mind to go through the steps that Mr. Boylan went through. Commissioner Hartley complimented Mr. Boylan for reacting properly in an unforeseen circumstance. Commissioner Fraker agreed that Mr. Boylan did everything he could have done under these unfortunate circumstances. He used the manufacturer's bucket as it is delivered to pest control operators, and there was no injury to anyone or to the animal. He stated that you would have to ingest maybe 20 blocks or so for it to have an effect. He noted that Mr. Boylan has an outstanding record with no marks. Mr. McClure stated that it

takes approximately six pounds of the material to kill a 22-pound dog, and that there was not even enough chemical on the job site to kill a dog. Commissioner Fraker stated that if Mr. Boylan had left the material on the ground or unattended, then that would be a different situation. Commissioner Peterson asked what the label says. Dave Colvin stated that under the precautionary area of the label it states to keep animals out of the material. He stated that the reason that staff filed a complaint for Commission review is because the biggest concern of the Environmental Protection Agency (EPA) is to keep people and animals out of contact with containers of concentrate or bait. He stated that staff did not want to set aside this complaint on its own.

MOTION: To dismiss the complaint by Commissioner Hartley.
Seconded by Commissioner Robinson.

VOTE: 5-0 Motion carried.

MOTION: To enter Executive Session for legal advice pertaining to agenda items VIII.B, VIII.C, and X.A, by Commissioner Hartley.
Seconded by Commissioner Fraker.

VOTE: 5-0 Motion carried.

(Executive Session from 9:50 A.M. to 10:15 A.M.)

B. Ark Exterminating (BL)/Jackie C. Wheeler (Owner) - Case # 2004-153

MOTION: To offer the Respondent a modified proposed resolution with the modification that only the TARFs are to be submitted and late TARP fees are to be paid, totaling \$704; and removing the proposed administrative warning and civil penalty. If the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Baker.
Seconded by Commissioner Hartley.

VOTE: 5-0 Motion carried.

C. Armor Termite & Pest Control (BL)/W. Dale Witter, Sr. (Owner) - Case # 2004-164

Respondents have submitted the 27 required TARFs, 24 of which were late, and have paid the fees and late fees totaling \$408 (\$384 fees and late fees for the 24 TARFs, plus \$24 for the three TARF fees).

MOTION: To modify the proposed resolution with the modification that the TARFs be submitted and the \$24 in TARF fees and \$384 in TARF fees and late fees be paid. Since these already have been submitted and paid, the order should reflect this. The proposed Administrative Warning and Civil Penalty are to be removed. If the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter, send the case to the Office of Administrative Hearings, by Commissioner Baker.
Seconded by Commissioner Hartley.

VOTE: 5-0 Motion carried.

D. John's Termite and Pest Control (BL)/John W. Higley (Owner/QP)/Gregory Bustamonte (App) - Case # 2004-150

*Greg Bustamonte and Jennifer McClure, representing John's Termite and Pest Control, were present.
Complainant Linda McKenzie appeared.*

Ms. McKenzie recognized that the complaint charges a failure to include certain things on a termite report, but she is concerned because the complaint does not note everything that she believes was excluded from the report, such as excessive moisture (Item #11). She stated that other inspectors who looked at the property said that there is evidence of past water damage and dry rot. She stated that Dave Colvin sent out a Commission inspector to take additional photos and she wants the photos to be part of the public record and for the record to be complete. Lisa Gervase stated that the Commission would first need to find out if those facts are substantiated. Dave Colvin stated that Ms. McKenzie indicated these areas of concern to him, such as a blistering paint on a block wall in the master bedroom around a window, the same findings in a second bedroom. He stated that there was also some dry rot. He stated that they could not find a stain in the Arizona family room. He stated that this investigation was done in October, 2004, and Commission staff went to the property two days ago to look at the areas. When staff completed the report, there was significant damage in the attic area that should have been reported on the inspection report. If one part of an inspection report is inaccurate, then the report is

inaccurate. Based on staff's observation, there was a high probability of fresh paint on the building when the WDII was done. He stated that a visual inspection can lead to sounding and probing. Staff felt that they could not substantiate the areas of blistering of paint as evidence at the time of the investigation and did not list them in the investigation report. Ms. McKenzie stated that this case may be civilly litigated, and she was told that the records generated here would be available to the public to circulate. She does not want people from John's Termite and Pest Control to say that the State did not conclude that certain things were excluded from the report. Commissioner Peterson stated that as a regulatory agency, the Commission's job is to prove the facts, not to prove Ms. McKenzie's civil case. Lisa Gervase added that there is a distinction between allegations and facts that the Commission can substantiate. If Commission staff does an inspection nine months after the fact, they can't necessarily substantiate what was there before. Ms. McKenzie stated that the blistering and plaster that fell out of the windows in the bedroom and bathroom did exist when they got the house. She stated that she is not sure that the trim had been painted at all when the inspector was there because they chose the trim color later. Mike Francis stated that staff did create an addendum to the investigation which will be part of the file and will address these concerns, whether or not it will substantiate the allegations. Ms. McKenzie stated that from a consumer's perspective, she is not sure if an Administrative Warning and a \$200 civil penalty is typical, although she understands that a Matrix is used. But she stated that they own a home that they cannot live in because a structural engineer said it is dangerous to live in it. They live in a back house on the lot while they continue to pay a mortgage, and the penalty does not seem to be enough. Commissioner Peterson stated that the Commission does have statutory limits set by the legislature about the penalties they can impose, and they hope that everything works out well for everyone.

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.*

E. Paul's (BL)/Paul Vanasse (Owner/QP) - Case # 2004-129

*Scott Richardson, attorney for the business and QP, was present.
Jeremy Lomeli, representing Paul's, was present.*

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

VOTE: 5-0 Motion carried.

F. Vistoso Partners LLC (BL)/Brandon Wolfswinkel (Agent)/Terry V. Todd (QP)/James P. Dawson (App) - Case # 2004-142

Mr. Todd was present.

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

VOTE: 5-0 Motion carried.

G. Robert Cook (App) - Case # 2004-175

Vince Craig stated that staff reviewed training records of the applicator and deemed the training to be proper. He stated that the applicator probably did not measure the treatment site, thereby resulting in a shortage. The QP demonstrated that there was only one slab and one patio. Staff proceeded solely against the applicator and no complaint was filed against the QP or business licensee. Commissioner Baker asked if a warranty was made. Vince Craig stated that no warranty was made. Commissioner Baker stated that there needs to be something against the company, maybe a five-year warranty to protect the consumer. Commissioner Peterson stated that the Commission does not have the authority to force the company to provide a warranty. Commissioner Fraker asked what the applicator's explanation was about how he figured out how much product to use if he did not measure and did not use a graph. Vince Craig stated that no straight answer was provided.

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

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

H. McCormick Ranch Golf Club, Inc. (BL)/Stuart E. Kirk (CEO/President)/Raymond Kasprack (QP)/Terry Ortlieb (App) (Expired 5/31/03) - Case # 2004-126

Mr. Kasprack appeared.

Mr. Kasprack stated that Mr. Ortlieb works for McCormick Ranch as an equipment operator and that through the years, 90-95 percent of his time was spent mowing grass, fertilizing, etc. He stated that he has four licensed applicators and would use Mr. Ortlieb sparingly as an applicator, but he does not spray at all now. He stated that he was not aware that Mr. Ortlieb's license lapsed until the last of about seventeen applications. He stated that Mr. Ortlieb said he never received his renewal notice in the mail, and assumed that Mr. Ortlieb was re-licensed and there was probably some misinterpretation of the rules. He stated that he does the calibrations and was present while Mr. Ortlieb was spraying, and Mr. Ortlieb does no mixing.

MOTION: *To accept proposed resolution for the BL and QP and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings. Also, to suspend the applicator's license for nonpayment of renewal fees pursuant to A.R.S. §32-2321(F)(G)(H), and dismiss without prejudice the complaint against Applicator Terry Ortlieb, by Commissioner Fraker.
Seconded by Commissioner Baker.*

VOTE: 5-0 Motion carried.

I. Move 'Em Out Pest & Weed Control, LLC, dba Move 'Em Out Pest Control (BL)/Ralph Clardy (Member/App) - Case # 2004-165

Mr. Clardy appeared.

Commissioner Fraker noted that Mr. Clardy attended a settlement conference and asked why no agreement was reached. Mr. Clardy stated that at the time staff was proposing more than he could afford to pay, and he is not questioning the violations. Commissioner Peterson stated that if no agreement is reached, then the Commission's decision could be that this

matter be sent to hearing, a hearing officer would make a recommendation and then the Commission would make a final decision on that recommendation. Mr. Clardy stated that he would pay his mortgage first before a civil penalty. Lisa Gervase noted that in the Settlement Conference Memo, it appears that there was a difference between paying an offered amount over six months or a lower amount in three months. Commissioner Peterson stated that he would like to see a settlement over six months because this is a fairly significant penalty. Commissioner Fraker asked Mr. Clardy if, other than going to hearing, he would be agreeable to paying \$10,147.28 over six months. Mr. Clardy stated that he would. Commissioner Fraker informed Mr. Clardy that he would need to see staff to sign an agreement.

MOTION: To accept proposed resolution to impose a \$10,147.28 Civil Penalty and to allow a 6-month 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 Baker.
Seconded by Commissioner Fraker.

VOTE: 5-0 Motion carried.

J. Winter Bros. (BL)/Burghard Winter (QP/App) - Case # 2004-163

Mr. Winter appeared.

Mr. Winter thought that a \$1,000 civil penalty was an excessive settlement offer for the charge of applying an outdoor pesticide indoors. Commissioner Fraker asked Mr. Winter if he is questioning the label. Mr. Winter stated that the product label did not limit its use to outdoors only because it said "for use outdoors or in well-ventilated areas". He stated that it can be applied to kittens and puppies also. Mr. Winter recounted the incident at the Arizona Department of Agriculture in Phoenix, stating that he heard aggressive bees on the 4th story, there was no way to get to the 4th story, so he made an extension, had a bee suit on, and they went after his face right away. Some bees were in light fixtures. He stated that the entry way to the building had to be closed. He stated that he applied a very low toxicity dust, and then the open-air-return air conditioning system turned on. One person smelled the chemical and people then evacuated. He stated that he opened windows and got a bowl of fruit out of the area. He stated that he was not allowed to get other food and utensils out of the area. He called the Commission right away. Risk Management personnel came to the site and informed him that he did not need to clean up the material as it was of no risk to human health.

Commissioner Robinson asked Mr. Winter if he carries an insecticide for indoor use only. Mr. Winter stated that he uses Sevin for indoor use and Tempo dust for outdoor use. Commissioner Fraker noted that the label says that Sevin can be used outside or in well-ventilated areas, but that language is in the pet, insect control section of the label. He stated that there are other products whose labels would read differently than this product label and might have been a better choice. But this "Sevin", which was purchased at Walmart, was not specified for bees. He stated that the primary indicator of culpability here is that Mr. Winter said that he should have waited until everyone was gone before applying the dust. He stated that sometimes we have to tell people that they will have to wait for the bees to be removed. Mr. Winter stated that there is always a risk with pesticides, but that bees are worse than the dust he applied. Commissioner Fraker stated that if he was in Mr. Winter's position, he would have been less concerned about someone being stung than about a potential misapplication of a product, because it is not Mr. Winter's responsibility if someone is stung. Vince Craig stated that during settlement conference, without mitigators, staff was suggesting a \$1,000 civil penalty, but they were also discussing possible CEUs to reduce the civil penalty to \$600. Commissioner Fraker asked Mr. Winter if he would prefer going to a hearing versus paying \$600 and obtaining the CEUs. Mr. Winter asked if he was misreading the label. Commissioner Baker informed Mr. Winter that this product cannot be applied in this situation. Commissioner Fraker stated that even if everything was done according to the label, Mr. Winter still showed poor judgment to allow drift to occur. He stated that there are certain situations like this one where you may want to consult someone more experienced in bee control who may be able to do the job without pesticides. Mr. Winter agreed to pay the fine and take classes. Vince Craig stated that this penalty is consistent with Enforcement Response Program (ERP) guidelines.

MOTION: To accept proposed resolution to impose a \$600 Civil Penalty and obtain 3 "additional" hours of CEUs in safety/label directions, within 30 days of the effective date of the order, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Baker.
Seconded by Commissioner Fraker.

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

VIII. Unlicensed Activity Complaints

A. Doc's Landscape Maintenance (Unlicensed)/Derek O'Connor (Owner) - Case # 2004-140

MOTION: *To issue a Cease and Desist Order, and to impose a \$1,000 civil penalty against Doc's Landscape Maintenance/Derek O'Connor, jointly and severally, to be paid within 30 days of Commission Order by Commissioner Robinson.
Seconded by Commissioner Hartley.*

AMENDED

MOTION: *To amend the motion to issue a Cease and Desist Order, and to impose a \$500 civil penalty against Doc's Landscape Maintenance/Derek O'Connor, jointly and severally, to be paid within 30 days of Commission Order by Commissioner Hartley.
Seconded by Commissioner Robinson.*

VOTE ON AMENDED MOTION: 4-1 *Amendment passes (Commissioner Peterson opposed).*

VOTE ON ORIGINAL MOTION AS AMENDED:

4-1 *Motion carried (Commissioner Peterson opposed).*

B. Professional Landscape (Unlicensed)/Mike Settle (Owner) - Case # 2004-152

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

VOTE: 5-0 *Motion carried.*

C. Ralph Teran (Unlicensed) - Case # 2004-135

Mr. Teran appeared.

Jon Busier, Mr. Teran's immediate supervisor from Maricopa Community College (Estrella Mountain), appeared.

Mr. Busier stated that their campus was cited for unlicensed operations, but previously on May 10, 2004, Mike Gillispie was introduced at a meeting as QP for the Community College district, but was taken off the SPCC agenda for activation because their district failed to provide insurance. He stated that they stopped spraying. He stated that he would like to either take on the responsibility for the \$250 civil penalty because Mr. Teran was under Mr. Busier's direction or have the Commission dismiss the case. Commissioner Baker expressed appreciation to Mr. Busier for offering to take on the responsibility. Commissioner Peterson acknowledged the confusion about licensing requirements for political subdivisions and asked what could be done about this case. Lisa Gervase stated that there was confusion by college employees about whether there was a QP in place, leading to the pest control work being done. The Commission is currently not enforcing the need for political subdivisions to hold QP and business licenses, due to differing legal opinions about the law, but they still would have had to use a licensed applicator. The Commission does not have jurisdiction to take action against Mr. Busier, only against Mr. Teran - even though he and Mr. Busier were acting under the misimpression that the school had a QP and business license. Mr. Busier stated that Mr. Teran has passed the "Core" exam and will be testing again for the weed control category this coming Friday. He stated that the day the Commission inspector came out they told him that Mr. Gillispie was the QP because they thought he was. Then they found out that they don't need a QP and just needed an applicator, due to the Commission using its enforcement discretion currently with regard to political subdivisions. He stated that they have been going full circle for a year trying to do things right, and now the lowest man on the totem pole is suffering the brunt of this. Commissioner Hartley expressed confusion, noting that Mr. Teran is being cited for performing structural pest control without a business license or QP license and wondering why wouldn't the Commission charge him as performing structural pest control without an applicator license. Lisa Gervase stated that the wrong statutory citation was noted and that the applicator statute should be noted (32-2325.4, not 32-2325.1.2). Mr. Busier stated that at the time they were applying herbicides, they were under the impression that Mr. Teran did not have to be a licensed applicator as long as they had a QP. Dave Colvin stated that within the first 90 days of employment, Mr. Teran could have been applying herbicides without an applicator license if working for a business licensee. Commissioner Hartley noted, however, that the district was not required to have a business license and QP. Mr. Busier stated that the 90-day grace does not apply because the district does not have a business license. Commissioner Fraker also acknowledged that if the district was required to have and did have a business license and QP, there would have been no violation because Mr. Teran was not making applications past the 90-day time period.

MOTION: To dismiss the complaint by Commissioner Hartley.
Seconded by Commissioner Baker.

VOTE: 5-0 Motion carried.

IX. For review, consideration and possible action:

A. Licensee's Probation Reporting: Guillermo Sotelo, Applicator License 040825 - Case 2004-120.

Mr. Sotelo was present.

Lisa Gervase stated that Mr. Sotelo reports to the Commission every three months, she has reviewed the documents from his employer and probation officer, and he has been compliant. Commissioner Peterson stated that he thinks this process is working well and he applauded Mr. Sotelo for keeping clean and thanked him for coming here from Yuma. Commissioners Hartley and Baker also commended Mr. Sotelo.

B. Licensee's Probation Reporting: Benjamin Sanchez, Applicator License 050236 - Case 2005-007.

Mr. Sanchez was present.

Lisa Gervase stated that the reporting requirements are similar for Mr. Sanchez in that he was issued an applicator license with probationary terms. She stated that Mr. Sanchez has been compliant and has provided positive documents from his employer and probation officer. Commissioner Peterson commended Mr. Sanchez for his efforts.

C. Proposed resolution to obtain license: Felony Applicator License Applicant Bryan Robert Pearson - Case 2005-024.

Mr. Pearson appeared.

Lisa Gervase stated that Mr. Pearson was at the March Commission meeting and the Commission tabled the matter to see if he could reach a resolution with staff. She stated that she submitted a proposed resolution, and this morning Mr. Pearson brought character references from his psychologist, a person he sponsors from Narcotics Anonymous (NA), and others. Mr. Pearson stated that he has been a member of NA since August 3, 2001, and he represents the voice of his home group at the area service level. This Saturday he will be taking the voice of his home group and representing it at the next level. Lisa Gervase stated that this proposed resolution will be a little different than the two above because Mr. Pearson is off criminal probation and staff proposes that Mr. Pearson does random urinalysis (UA)

tests with the Commission directing them per paragraph 22 in the proposed resolution, although she has not solidified exactly how staff would conduct them and she does not know yet how much the process will cost. Mr. Pearson stated that he would pay for the tests. Commissioner Peterson asked if Mr. Pearson is attending Narcotics Anonymous meetings and whether there is a sign-in sheet. Mr. Pearson stated that there is a sign-in sheet for people on parole or probation. He stated that it is difficult for people not on parole or probation to be allowed to sign in, so he can give a list of all the meetings he attends. There are over 100 meetings per week in the Phoenix valley area. He stated that he has not dropped a UA test in two years and he will keep receipts to show that he tested in case the results do not make it to the Commission. Lisa Gervase stated that there could be some additional details to work out, and that she is not sure if the Commission could accept the burden of checking Mr. Pearson's attendance at NA meeting.

MOTION: To accept proposed resolution with the instruction that staff implements an internal monitoring system to ensure that the terms are met, by Commissioner Fraker. Seconded by Commissioner Baker.

VOTE: 5-0 Motion carried.

(Break from 11:45 A.M. to 11:55 A.M.)

X. For review, consideration and action: Request for Rehearing or Review of Commission Orders suspending Business and Qualifying Party Licenses

- A. Case No. 93-070, Don's Termite Service, Inc., Business License # 4408
Case Nos. 94-006, 94-014 & 94-109, Don's Termite Service, Inc.,
Business License # 4408 and Don S. Methven's Qualifying Party
License # 351 B1 B2 B8
Case No. 96-035, Don S. Methven's Qualifying Party License # 351 B1
B2 B8**

For the Commission to consider whether to grant rehearing or review, and if so, to consider lifting the suspensions against **Don's Termite Service Business License and Don Methven's Qualifying Party License** for nonpayment of civil penalties.

Mr. Methven appeared.

Lisa Gervase stated that at the February Commission meeting the Commission voted to suspend business license #4408 and QP license #351. Don's Termite Service and Don Methven filed a motion for review.

Mr. Methven stated that the 1993 case and the three 1994 cases are 11 and 12 years old, and that the 1996 case has been resolved. He stated that in 1998, his house burned down, it was a 100 percent total loss, and all of his Don's Termite Service records went up in smoke, although some of his records were on file with his attorney. In 1998 he sold Don's Termite Service to Dennis Crawford, and Mr. Crawford accepted all bills that were outstanding for Don's Termite Service, including a \$20,000 bill he paid to one of the chemical companies. He stated that when Mr. Crawford went out of business, Mr. Methven made the assumption that all of the bills were paid and he maintained his QP license from 1996 until now. He stated that the Commission maintained an address for him where he could be found and he believed he had paid everything. He stated that even if his records were not lost, he brought copies of three court cases today supporting the idea that "things have to be taken care of within certain time periods". Even the IRS will not pursue people after seven years, and the earliest of his cases dates back nine years. Mr. Methven requested a motion that these cases be dismissed because of the time element. He stated that the Commission could have contacted him, and over nine years he received no communication from the Commission. Commissioner Peterson asked Mr. Methven if he paid the fines. Mr. Methven stated that, to the best of his knowledge, he did pay them, that he believes they were all paid by Mr. Crawford. He acknowledged that Lisa has told him that by her records some were not paid, but he felt that if they were not paid, the Commission would have said something. Lisa Gervase stated that since there wasn't an actual hearing regarding this matter, the petition is for review more than for rehearing, and it has to be based on one of the seven reasons enumerated in A.A.C. R4-29-502(C). She also stated that Case Number 96-065 was dismissed in exchange for Mr. Methven "surrendering" his QP license. Case 96-035 is still outstanding. Mr. Methven acknowledged this. Lisa Gervase stated that Mr. Methven is the current QP for Pestube Systems, owner Harold Aesch. Commissioner Robinson asked if the Commission has any way of tracking whether someone has a license and whether someone can renew their license even if they have an outstanding civil penalty. Lisa Gervase stated that they were corresponding with Mr. Methven, thinking that the civil penalty would be paid and suspension would not be necessary as of the December, 2004 renewal period, but was not aware before that. She stated that staff now has a system for tracking and monitoring compliance, and if a licensee does not comply with a Commission order, they seek suspension, rather than denying renewal. Commissioner Fraker asked how Mr. Methven reactivated his QP license after having "surrendered" it in

exchange for dismissal of the 1996 case. Lisa Gervase stated that she is not sure what the "surrender" of Mr. Methven's QP license in 1997 meant, and whether it was a time-certain "suspension" or a "revocation", because the order did not clarify. Commissioner Fraker stated that "revoked" may have been the proper terminology. Commissioner Peterson suggested that there may have been an agreement that Mr. Methven would surrender his license and would refrain from being in the business for a certain number of years. Mr. Methven stated that he had a conference with then Commission Executive Director Bud Paulson and others, and at that time asked if he could put his license on an inactive status. Bud Paulson said that Mr. Methven could and so he did. Mr. Methven then came back before the Commission and had it reactivated so that he could be the QP for Pestube Systems. He stated that he has maintained his continuing education since that time. Commissioner Baker stated that the Commission at the time must have perceived there to be enough of a problem to force him to put his license on inactive/surrender status. Mr. Methven stated that he had applicators that were committing discrepancies and he wouldn't tolerate it, and the Commission determined it was too much and it was time to make it stop. Commissioner Peterson asked if the basis for Mr. Methven coming before the Commission to request a review is "that the decision is not justified by evidence or is contrary to law" [A.A.C. R4-29-502(C)(7)]. Mr. Methven stated that he does not have an attorney here today, but he feels that the amount of time between the time of fines and this date is way too long, and that he should have had some kind of a notice if the fines were not paid. He stated that two of the copied court cases back up the first one, and he is more than willing to take the Superior Court route if necessary. Lisa Gervase stated that if a motion for review is granted, then Mr. Methven will have to submit documentation of the legal arguments to the Commission in writing before next month's meeting.

MOTION: To grant review of the license suspensions (A.A.C. R4-29-502(C)(7)) in order to consider a written legal memorandum from Mr. Methven with the legal argument that seeking compliance years after the Order is contrary to law, by Commissioner Baker.
Seconded by Commissioner Hartley.

VOTE: 5-0 Motion carried.

- B. Case No. 91-060, Frederick H. Harvey's Qualifying Party License # 1149**
B3. Mr. Harvey paid the remaining balance of civil penalty ordered on April 2, 1992, in the amount of \$200.00, on March 22, 2005.

Mr. Harvey appeared.

Lisa Gervase stated that this is a case where the Commission suspended Mr. Harvey's QP license for nonpayment of a 1992 civil penalty. Mr. Harvey has paid the \$200 balance and he filed a request for review or rehearing for the Commission to consider lifting the suspension. The grounds for review or rehearing would be "(n)ewly discovered material evidence..." (A.A.C. R4-29-502(C)(4)). Mr. Harvey stated that he doesn't understand why this came up 13 years after the Order, considering that he has renewed his license and maintained his continuing education since then. Commissioner Peterson stated that the agents of the State have a duty to collect. Lisa Gervase added that his was one of a number of old cases that were re-filed in the Commission's file room with completed files instead of being monitored for compliance. Mr. Harvey asked if he would get his money back if he finds evidence that he paid the penalty. Lisa Gervase stated that he would.

MOTION: *To grant review (A.A.C. R4-29-502(C)(4)) and to lift the license suspension by Commissioner Baker.
Seconded by Commissioner Hartley.*

VOTE: *5-0 Motion carried.*

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

A. Timothy Fickett, Applicator License Nos. 980899 B1 B2 B8 [Issued 8/25/98] [Expired 5/31/99] and 000471 B1 B2 B8 [Issued 6/13/00] [Expired 5/31/02]

Lisa Gervase stated that Mr. Fickett has three applicator licenses, but the two listed above have expired and are on the agenda for the Commission to consider suspension for non-payment of renewal fees.

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

VOTE: *5-0 Motion carried.*

XII. Commission's Reconsideration of Decision at the March 11, 2005 Meeting.

A. Our Lady of Immaculate Conception/Mike Vize (Unlicensed) - Case # 2004-113

Lisa Gervase stated that this matter comes down to whether the respondent falls within a licensing exemption. Staff has found out since last month's decision that this particular church falls under the corporation of the Roman Catholic Diocese of Phoenix.

MOTION: *To reconsider the Commission's prior decision at the March 11, 2005 meeting, and now dismiss the complaint for lack of jurisdiction, by Commissioner Baker. Seconded by Commissioner Hartley.*

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

MOTION: *To enter Executive Session to obtain legal advice, by Commissioner Baker. Seconded by Commissioner Hartley.*

VOTE: 5-0 *Motion carried.*

(Executive Session from 12:30 P.M. to 12:55 P.M.)

MOTION: *To reconsider the Commission's March 11, 2005 decision to impose a Cease and Desist Order and \$100 Civil Penalty for unlicensed activity against Mr. Vize and to dismiss the complaint by Commissioner Baker. Seconded by Commissioner Hartley.*

VOTE: 5-0 *Motion carried.*

XIII. Felony Applicants

A. Brown, Michael J.

Mr. Brown appeared.

Commissioner Peterson asked Mr. Brown if he has an alcohol problem. Mr. Brown stated that he does not drink, that this incident was a one-time occurrence and that he never had a DWI prior to and has not had a DWI since the incident. Commissioner Baker asked Mr. Brown what company he was working with. Mr. Brown stated that he was working with a company but was laid off because of a lack of work, and he was not doing applications. He stated that he pleaded to probation for three years and has had clean UAs the whole time. Commissioner Robinson

asked if Mr. Brown was exceeding 55 miles per hour (mph) at the time of the vehicular manslaughter. Mr. Brown stated that the speed limit was 55 mph and it was estimated that he was going around 68 mph. There was a spot for broken-down cars to pull over and he ran into someone after drifting over into the shoulder. Commissioner Fraker noted that the offense occurred in January 1999 and Mr. Brown pleaded guilty in January 2000. He asked if Mr. Brown was in any rehabilitation program now. Mr. Brown stated that he was in New York but is not here. He stated that he has long days installing cable in houses, and he also has four children. Commissioner Fraker noted that Mr. Brown's aggravated manslaughter offense falls under the (A)(4) category in the substantive policy statement, of offenses for which the Commission will likely deny licenses.

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

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

B. Chacon, Jose Antonio

Mr. Chacon appeared.

Mr. Chacon stated that this incident happened 18 years ago. Commissioner Peterson asked what Mr. Chacon has been doing since then. Mr. Chacon stated that after he got off probation, he received an Associate's Degree in Applied Science of Engineering, he has a million-dollar landscaping company, and he coaches for youth football and little league. He stated that he has moved forward past this one incident in his life. He stated that he is also a National Guard soldier and can carry a weapon, and other government agencies are not holding anything against him. He stated that he is licensed with the Registrar of Contractors.

MOTION: To approve applicant testing by Commissioner Hartley.
Seconded by Commissioner Robinson.

VOTE: 5-0 Motion carried.

C. Cremins, Joshua

Mr. Cremins appeared.

Jonathan Debee, manager of Sierra Pest/Termite Control, Inc., appeared.

Commissioner Peterson noted that Mr. Cremins has had three convictions, the latest of which occurred in 2000. Mr. Cremins stated that he has not used methamphetamine in four years. Commissioner Baker asked Mr. Cremins if he was

under any treatment. Mr. Cremins stated that he is not. He stated that he has a fiancé with children. He stated that he is not in Narcotics Anonymous because he feels that if he is in that environment he may fall back into drug use. He stated that he has a good woman to help keep him clean. Mr. Debee stated that he has worked with Mr. Cremins for the past few months and that Mr. Cremins is diligent and goes above and beyond the call of service. Mr. Cremins is a pest control technician doing general pest control under Mr. Debee's supervision. Mr. Debee stated that his company has a random drug-testing program in which they keep track of their employees. If someone's test comes back positive, they are terminated. Commissioner Peterson noted that Mr. Cremins was arrested in 2000 for marijuana and asked what has cleaned him up since then. Mr. Cremins stated that while he was serving two years and eight months in prison, his father, who had stood behind him, passed away and was not able to see him better himself. Mr. Cremins stated that he wants to be an outstanding member of the community. A friend told him about the pest control line of work and how he can help people with their problems. Commissioner Fraker noted that 113 pounds of marijuana was involved and asked Mr. Cremins how he got in that position. Mr. Cremins stated that a person asked him if he wanted to make some money by driving a car to Tucson. He stated that he had a clue why he was driving the car to Tucson, but was also using methamphetamine at the time. He stated, however, that he made a poor decision and does not blame his judgment on the drugs. Commissioner Fraker appreciated Mr. Cremins bettering himself and wished him good luck, but stated that, in accordance with the Commission's policy statement and because the offense involves the trafficking of illegal drugs, he would not vote to approve.

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

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

(Commissioner Peterson left the meeting at 1:15 P.M.)

D. Iovinelli, Robert James

Mr. Iovinelli appeared.

Mr. Iovinelli stated that he stole from a storage unit, the police found the goods, and he went to prison for three and a half years. He stated that he was also doing drugs. He stated that after he got out of prison, he took automotive classes at a community college, also took alcohol management classes, and lost custody of his daughter. He stated that he has been in the pest, termite, and weed business since 1997, and this is pretty much the only thing he is good at besides working on cars. He stated that he worked on cars for a short time after getting out of prison in July, and has worked for Bircher Exterminating Services for two months. He stated that

he was certified for weeds, termites, and right of way work for sometime. He stated that he has 18 days until he will be off parole, and then he will be on probation for two years, which will probably include UAs. He stated that he has done counseling for drugs and has been in compliance since he has been out of prison. He also stated that he is currently paying restitution. Commissioner Fraker asked about the status of the child custody. Mr. Iovinelli stated that he had visitation in prison. He stated that he now gets his daughter every other weekend and one day a week, and he is paying \$150 per month for child support. Commissioner Robinson stated that this is a difficult situation because there has been such a short time since Mr. Iovinelli has been out of jail and there has been a pattern to his behavior. Mr. Iovinelli stated that he figured the best way to get on with his life would be to do the things he does best. Commissioner Baker asked Mr. Iovinelli if his current pest control company has any policy about drugs. Mr. Iovinelli stated "not really", although he does drug testing anyway, and if he fails a test he will have to go back to prison. Commissioner Fraker asked if the drug testing will continue after parole. Mr. Iovinelli stated that it will be at the probation officer's discretion. Commissioner Fraker stated that he is inclined to support Mr. Iovinelli's application, but suggested that the Commission could integrate a process like it has with other candidates about reporting findings on UAs, etc. to the Commission. Lisa Gervase stated that if that is the consensus of the Commission, then the matter would need to be tabled so that staff could work on a proposed agreement to bring back before the Commissioners. Commissioner Fraker directed staff to do so and for the matter to be tabled. He told Mr. Iovinelli that no decision would be made today, and that he would need to meet with staff to agree on terms.

E. Martinez, Solomon Zacarias

Mr. Martinez appeared.

Mr. Martinez stated that he has worked for Safeguard Pest Control for almost four months. He stated that Jason Workman from Safeguard was here on his behalf in January when he was on the agenda last time, but he could not come today. He stated that he still had to get fingerprint information after January's meeting. Commissioner Baker asked if Mr. Martinez has had any problems with the law since 1995. Mr. Martinez stated that he has had no such problems and the fingerprints came back negative. He stated that Safeguard is the only pest control company for whom he has worked. He stated that he does not have a felony conviction but had to get his misdemeanor records. Mike Francis stated that because staff did not have the results of the background information in January, the application was tabled. They now have the results, nothing additional was presented, and the application is back before the Commissioners now for their review.

MOTION: To approve applicant testing by Commissioner Fraker.
Seconded by Commissioner Baker.

VOTE: 4-0 Motion carried.

F. Peters, Brent Carl

Mr. Peters appeared.

Ike Webb, General Manager of Havasu Pest Control, appeared.

Mr. Peters stated that he works for Havasu Pest Control and has had no problems with the law since 1997. He stated that with regard to the felony incident, someone was stealing his vehicle and he took the law into his own hands. He stated that he was offered a reduction from the felony conviction, but it was going to cost more money for attorney's fees, etc., and he couldn't pay it and so he kept the felony on his record. Mr. Peters stated that he previously built boats and worked with reptiles for the Game and Fish Department until he had back surgery. He stated that a friend suggested the pest control industry. Mr. Webb stated that after Mr. Peters worked on other tasks for about a month after his three months of eligible unlicensed work were up. He stated that he thinks that Mr. Peters will be a great asset to the company.

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

VOTE: 4-0 Motion carried.

G. Ruiz, Jorge

Mr. Ruiz appeared.

Beth Conlin and her son, Kevin Conlin (QP), from Sun City Pest Control, appeared.

Ms. Conlin stated that Mr. Ruiz is a fine man, a hard worker doing termite work, never complains, and works until the job is done. He has five children. She stated that their company does random drug testing, and the last one came up fine. She stated that if a test result came up positive, she would have to let him go. Mr. Ruiz acknowledged his history of spousal abuse. He stated that he and his wife were young when they had quite a few kids. He stated that he is not with his wife anymore, he is going through a divorce but has the kids with him. He stated that his wife is incarcerated, so he has physical custody although not legal custody. Commissioner Fraker noted that Mr. Ruiz was arrested seven times between 1994 and 2004. Mr. Ruiz stated that his most recent arrest was for a disorderly conduct misdemeanor. Commissioner Fraker noted that Mr. Ruiz had a second charge because he was labeled as a habitual offender.

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

VOTE: 2-2 Motion failed (Commissioners Robinson and Fraker opposed).

Commissioner Fraker stated that Mr. Ruiz needs to demonstrate good behavior for at least some significant time period, and his record indicating continual arrests as recent as 2004 shows that he is still a risk. Mr. Ruiz stated that, regarding the case in 2004, he called 911, was trying to hold everything down, and got caught up in the system. Lisa Gervase stated that because the Commissioners are deadlocked, they might consider tabling this matter for next month's agenda when there is more than a minimum quorum of Commissioners present. Lisa Burns suggested that the Commission also has the option of continuing to deliberate this matter today. Commissioner Robinson stated that the matter should be tabled. Commissioner Fraker stated that if Mr. Ruiz has any additional information to share with the Commission, then he should bring it forward when the matter is discussed again.

H. Ruiz, Robert James

Robert Tolton stated that the Commission did receive a certified return receipt back from Mr. Ruiz from one of the mailings that the Commission sent to him. Robert Tolton stated that he has never met Mr. Ruiz and tried to contact his employer to see if he is still interested in applying and testing.

MOTION: To deny application based on the severity of an armed robbery (using a gun) felony conviction and lack of good moral character, by Commissioner Baker.
Seconded by Commissioner Hartley.

VOTE: 4-0 Motion carried.

I. Valdez, Marco Manuel

Mr. Valdez appeared.

Bill Gibson, owner/QP of Complete Landscaping, Inc., appeared.

Mr. Valdez stated that he has been doing construction and irrigation for Complete Landscaping since February 2000, and this is the next step to be in the pest control business. Mr. Gibson stated that Mr. Valdez has not been doing pest control for more than 90 days. Commissioner Fraker noted that Mr. Valdez was guilty of two offenses and asked if he was employed with Complete Landscaping before the offenses. Mr. Valdez stated that he was not, and that after serving six months with

the County he came out and got a job with Complete Landscaping. Mr. Gibson stated that his company is in Tucson and has been in business since 1986, and they run about 130-140 guys. He stated that he wants Mr. Valdez to take over the Qwest phone company account. He stated that Mr. Valdez lives with his two kids right behind the shop. He stated that he can hardly believe that Mr. Valdez committed these offenses. Commissioner Fraker asked Mr. Valdez how he got himself in this position of transporting. Mr. Valdez stated that he was 18 years old at the time, he lived in a border town, got involved with the wrong crowd, needed money, and it was something quick and easy to do. He is now 25 years old.

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

VOTE: *4-0 Motion carried.*

XIV. For information and discussion, possible action

A. HB 2516

Lisa Gervase stated that it looks like this House Bill will be adopted and signed by the Governor.

B. Possible Future Law Changes

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

Lisa Gervase stated that the Commissioners have an updated outline of possible future law changes they have reviewed in prior meetings. Commissioner Peterson suggested that a draft in outline form be posted on the Commission website, that the Commission obtain input from people about these proposals, and then the Commission can have another discussion in the future. Commissioner Robinson stated that if a draft is put on the website, then interested people will prepare, and if they do not come through with input, then at least they have had the opportunity. Lisa Gervase stated that she can put a rough draft on the website and then docket an opening for cleaning up old rules. She also stated that Item #14 (own/occupy issues) on the outline needs to be dealt with. Commissioner Fraker asked if it would be a good move to mail business licensees a card or some type of notification to direct them to the website. Lisa Gervase stated that she could do this for the approximately 1,200 business licensees. She also encouraged Commissioner input on the law and rule changes. Commissioner Baker stated that, regarding Item #35 (the \$30 fingerprinting process), he thinks it would be better as a Commission to have a requirement that if someone goes for fingerprints, then that person should submit the form to a potential employer. Mike Francis stated that it could be a felony

violation for someone to supply a licensing agency with a copy of a background report. Lisa Gervase stated that the Commission has to give the fingerprint card to DPS. Commissioner Baker wanted to put the onus on the applicator to come in with the requirements, whatever they are. He stated that he is trying to prevent the Commission from a situation where someone does not get the card or there is a wrong social security number, etc. Lisa Gervase stated that this does not happen often and there is probably no way get around it.

D. Complaint Status Log

The Complaint Status Log is in the Commissioners' materials.

E. Continuing Education Minutes

Commissioner Baker asked if the Commission has outlines for all educational programs. Jason Aanderud stated that it does, and he noted that Item #1 ("The Store") was put up for extra review because it is such an old tape. He stated that "The Store" is a CE provider and also a pest control company. He stated that last month approximately six tapes were reviewed.

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

VOTE: *4-0 Motion carried.*

F. Computer Based Testing "CBT" Status and Statistics - separate handout

Commissioner Robinson stated that a man in the Prescott area who took the Turf and Ornamental QP exam recently mentioned that he thought that some of the questions were not good and he would be willing to provide input. Commissioner Baker asked if staff has heard anything about training. Lisa Gervase stated that since October/November, 2004, the calls have decreased significantly, partly because as you get further into the process you work out the bugs. She stated that staff and Metro Institute have tried to make changes to eliminate the logistical problems, and there have been no recent audits. Commissioner Baker asked if there have been any studies about provider efficacy. Lisa Gervase stated that Mike Means tends to maintain statistics, and this is the only concern they tend to get. He also sees all the exams. She stated that they have worked hard to make sure that his roles as testing vendor and as CE provider are kept separate. Commissioner Fraker asked if sample testing is on the website. Lisa Gervase stated that it is on the Metro Institute website. Commissioner Fraker asked of it should be put on the

Commission website also. Commissioner Hartley stated that he is still convinced that lack of success on the exams is due to a lack of studying. He stated that his company sent an administrative person to take the "B0", "B1", "B2" and "B8" exams and she passed them all with scores in the 80s. He stated that it seems like the more people think they know about pest control, the worse they do on the exams, and that people with no prior knowledge tend to pass because they study. Commissioner Robinson asked if we want people in the industry who can read and test or who can work well. He stated that he has had two or three comments from people in the industry who say that there is a conflict of interest because people who give the test also ensure that people pass the test. He asked if staff is hearing similar comments. Lisa Gervase stated that she would prefer that people study the materials and come to the Commission's pre-licensure classes. She stated that if people do well on the exams, then Mr. Means' class looks good, but if they don't, then he gets more money for testing and re-testing fees. So, arguments can be made both ways.

G. Expenditure Report - tabled

H. Case Status Report - tabled

I. Substantive Policy Statement #2005-001 - Re: Temporary Qualifying Party Licenses.

Lisa Gervase stated that Robert Tolton drafted this substantive policy statement and Mike Francis reviewed it. Commissioner Fraker stated that he thinks it is important to address the issue of being active in the management of the business. He stated that some of the people on the agenda today are "renting" QPs, and the Commission needs to decide its stand on the issue. He believes that the Commission is not doing its due diligence by letting this practice continue, and a QP is not actively involved if only there once a month. Lisa Gervase noted that last month the Commission decided to pursue a law change that would include the word "daily". She stated that laying out the issue in a minimum standards rule seems to be the way we are headed. Commissioner Fraker stated that he thinks that QPs should be present in the state, especially in case there is an emergency. He believes that standards need to be the same for everyone, and it is not consistent to allow some people 2,000 miles away to perform the same duties as someone who is here in town. Lisa Gervase stated that the Commission might be able to limit the amount of temporary QPs or monitor the "renting" of QPs another way in a substantive policy statement. Commissioner Fraker noted that regularly the same people are here activating for different companies. Lisa Gervase stated that she can add as a possible law change a provision that you can't activate your QP license for more than one business within a certain period of time. Mike Francis added that you can't have your QP license activated for more than one business at the same

time. Commissioner Fraker stated that in Florida, you have to be a resident and work for a company for more than two years before becoming licensed. Commissioner Hartley added that the kicker there is that no one else has to be licensed, as there is no applicator license system in Florida. Here, we have a pretty decent system, and branch offices need to have an applicator in charge. He stated that the important question concerns what a QP is and what it is evolving to become. He stated that it is important to determine what it means to "qualify" a business and what the purpose of applicator licensing is.

Discussion to continue next month.

XV. Approval of Minutes

Tabled.

There is not a quorum of members that were at the February and March meetings to vote on those minutes.

- A. February 11, 2005 (regular session) Minutes**
- B. March 11, 2005 (regular session) Minutes**
- C. March 11, 2005 (executive session) Minutes - (separately e-mailed to Commissioners on 3/29/05)**

XVI. Scheduling of future meetings/agenda items

Current Proposed dates

April 8, 2005
May 13, 2005
June 10, 2005
July 8, 2005
August 12, 2005
September 9, 2005

XVII. Adjournment - 2:35 p.m.

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

VOTE: *4-0 Motion carried.*