

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

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

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

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

**Commissioners Absent:** Commissioner Virgil Robinson

**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**

*Commissioner Peterson stated that this past month has been busy, with about 3 or 4 contacts. He received questions from people regarding licensing and testing, and also regarding whether Homeowners Associations can spray common areas. He answered some of these questions but also directed these people to the Commission's website.*

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

**☺Applicator License Renewals - ~54% renewed on-line. ~1,000 not yet renewed. Retesting required after July 29, 2005**

*Lisa Gervase stated that there are between 6,500 and 7,000 licensed applicators in this state. The licenses of the approximately 1,000 of those who have not yet renewed their licenses this year expired after May 30. She stated that this is not an*

*unusual statistic, as there is a lot of attrition and turnover in the pest control industry. Still, staff is trying to figure out a way to reduce the amount of turnover.*

**☞ Watch Web site for future postings about Law and Rule Proposed Changes**

*Lisa Gervase asked that interested people provide their email addresses to her and that they pay attention to emails for notification about future postings.*

*Lisa Gervase stated that industry slogan bumper stickers are now available and that the Commission plans on ordering enough for each licensed business, to be mailed out in about a month.*

*Lisa Gervase stated that the Commission is working with the Registrar of Contractors to educate homeowners and buyers about pest management services and about what to expect when buying a home.*

*Lisa Gervase stated that the Commission is also working on a “helping hands” program for people who need contractors and subcontractors but can’t afford them. She stated that the Commission will evaluate whether the program will work pertaining to pest management services and, if it will, then they will seek help from the industry.*

**V. Consent Agenda**

**A. Applications for New Business License**

**Qualifying Party**

- |                                 |  |
|---------------------------------|--|
| <b>1. Alexander, Michael T.</b> | <b>Sun-Tech Pest Control (Activating Qualifying Party for new business license in “B1” General Pest &amp; Public Health, “B2” Control of Wood-Destroying Insects and “B8” Wood Destroying Insect Inspection)</b> |
| <b>2. Acevedo, Audel</b>        | <b>Acevedo Brothers Landscaping, Inc. (Activating Qualifying Party for new business license in “B3” Right of Way &amp; Weed Control and “B5” Turf &amp; Ornamental Horticulture)</b>                             |

- 3. Monell, James Charles      Monell Pest Management (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)
- 4. Gibbs, Gary Scott      Smart Choice Pest Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)
- 5. Moorby, Reginald Earle      Hound Dogs Weed Control (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control)
- 6. Doherty, Brian Scott      Irish Pest Control (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)
- 7. Heinrich, Daniel S.      Termico Solutions, LLC. (Activating Qualifying Party for new business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)
- 8. Price, Barry Paul      Agua Fria Union High School District #216 (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)
- 9. Wild, Nancy J.      AridScape Concepts, 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. Huber, Andrew Joseph      Troon North Golf Limited Partnership, R.L.L.P. (Activating

**Qualifying Party for existing business license in "B3" Right of Way & Weed Control, "B5" Turf & Ornamental Horticulture and "B9" Aquatic Pest Control)**

- 2. Loreng, Edward Charles**      **Trugreen Chemlawn (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)**

*Pulled-Mr. Loreng appeared.*

*Commissioner Baker noticed that Mr. Loreng listed two addresses on his application and wondered if he would be acting as an "out-of-state" QP. Mr. Loreng stated that he previously lived in Bangor, Maine but has lived in Fountain Hills since February 2005 and is currently and permanently living here. He stated that he had a business in New Jersey and then moved to Maine, where he also had a business. He stated that he sold both of those businesses and hopes to retire out here in Arizona.*

**MOTION:**      *To approve activating QP for existing business license in "B3" and "B5" by Commissioner Baker. Seconded by Commissioner Runbeck.*

**VOTE:**      *6-0 Motion carried.*

- 3. Seemann, Douglas Lee**      **D & S Termite Solutions, LLC. 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, "B5" Turf & Ornamental Horticulture and "B8" Wood Destroying Insect Inspection)**
- 4. Payne, Frederick G.**      **The Pigeon Guy, Activating Qualifying Party for existing business**

license in "B1" General Pest & Public Health

**C. Applications for Qualifying Party License**

- 1. Keil, Terry Joe "B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)

*Pulled.*

*Commissioner Baker questioned the self verification of experience. Robert Tolton stated that Mr. Keil's application has a reciprocation verification from Iowa saying that Mr. Keil has had a license in Iowa in the categories for which he is applying in Arizona. Commissioner Fraker asked whether the Commission checks that the criteria for licensure in Iowa is similar to that in Arizona. Robert Tolton stated that he contacted someone from Iowa who verified the information.*

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

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

- 2. Golightly, William Hal "B4" (Fumigation)
- 3. Harris, Richard Kennedy "B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)
- 4. Harper, John Hazeltine "B3" (Right of Way & Weed Control)
- 5. McDonald, Jon Christopher "B1" (General Pest & Public Health)
- 6. Moody, Bryan McKay "B9" (Aquatic Pest Control)
- 7. Perelgut, Bruce Mark "B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)
- 8. Schrag, Robert Dugan "B1" (General Pest & Public Health)

*Pulled.*

*Commissioner Baker questioned the self verification of experience. Robert Tolton stated that the experience was verified by Mr. Schrag's father, who is the business licensee and QP. Mr. Schrag is the employee*

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

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

**9. Sponholz, Robert**                    **"B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)**

*Pulled.*

*Commissioner Baker questioned the self verification of experience. Robert Tolton stated that Mr. Sponholz held a license in California, was a company owner in California, and staff received verification of his experience from Any-Day Pest Control in California. Robert Tolton also stated that he contacted someone from California who verified the information.*

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

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

**10. Riley, Timothy John**                    **"B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)**

**11. Amelotte, Stephen Earle**                    **"B1" (General Pest & Public Health), "B3" (Right of Way & Weed Control) and " B 5 " (Turf & Ornamental Horticulture)**

**12. Morin, Jeffrey Robert**                    **"B3" (Right of Way & Weed Control)**

- 13. Stevens, Jr., Charles D.      “B1" (General Pest & Public Health),  
“B2" (Control of Wood-Destroying  
Insects) and “B8" (Wood Destroying  
Insect Inspection)
- 14. Neff, Joey Ryan                “B2" (Control of Wood-Destroying  
Insects)

**D. Business License Name Change Requests**

- 1. The Termite & Home Inspection Service, Inc. to Fuller Inspections,  
Inc.

**End of Consent Agenda**

**MOTION:**    *By Commissioner Hartley to accept Consent Agenda with the exception of those items pulled for discussion (B2, C1, C8, C9).  
Seconded by Commissioner Fraker.*

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

**VI. Request for Temporary Qualifying Party License Renewals**

*None.*

**VII. Complaints**

**A. REO Landscaping (Unlicensed)/Rodrigo Ortiz (Owner) - Case # 2004-169**

**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:**        6-0    *Motion carried.*

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

**MOTION:**    *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the*

Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Hartley.  
Seconded by Commissioner Fraker.

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

**C. Foliage Etcetera (Unlicensed)/Arthur Glissendorf (Owner) - Case # 2005-011**

*Lisa Gervase stated that Mr. Glissendorf called staff two days ago and said he would not be able to attend today's meeting because of a doctor's appointment. Commissioner Peterson asked if this case involved an over-application. Jason Aanderud stated that the calculations were confusing, but that the area in question was very large, larger than 1,000 feet. The inspector checked the label and the application amount was within the label directions.*

**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:** 6-0 Motion carried.

**D. B & G Landscaping (Unlicensed)/Steven Gibbany (Owner) - Case # 2005-013**

*Lisa Gervase stated that Mr. Gibbany called staff on June 29 and said he would not be able to attend today's meeting because he does not have reliable transportation. He expressed concern about the proposed resolution but he did accept it.*

**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 Runbeck.*

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

**E. Arizona On Line Pest Control (BL)/Chester D. Andrews (Owner/QP)/Stephen Paul Richardson (APP) - Case # 2004-173**

*Mr. Richardson appeared.*

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Commissioner Baker asked if the homeowners have been notified and, if so, whether any response has been received. Jason Aanderud stated that there has been no communication with the consumers, but the company is providing extra Termidor for post-construction treatment. Mr. Richardson stated that it wasn't his intent, at 3:00 in the morning, to miss-apply the termiticide by 15 gallons. He stated that it was easier to settle than to argue. He stated that Arizona On Line Pest Control does not operate and that DSR took over responsibility for the home in question and the homeowners have been contacted. He stated that what the Commission does not see in the file is that the builder didn't have a patio on the property and the builder was supposed to call but didn't. He stated that the builder poured the patio without notification of the pre-treat. He stated that as a business person and owner of the company, his responsibility is to the homeowner. He stated that within 30-40 days, he admitted his mistake and took a \$200 course with Chemtech. Commissioner Peterson asked if it is common to have zero linear feet. Commissioner Fraker stated that there are never zero linear feet in a home. Mr. Richardson stated that he doesn't know if the mistake was fixed or not. He stated that when they built the house, the plans, including the garage, were 1,786 square feet. He stated that most slabs in Tucson are monolithic. He stated that although in the past he has sprayed chemical while others measured, these two properties were the first two pre-treats that he ever performed by himself. He stated that it is an expensive lesson, but well learned.

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

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

**F. Sun Devil Termite & Pest Control (BL)/Jim Eyerly (Owner/QP)/Charles Wells (APP) - Case # 2004-167**

Mr. Eyerly appeared.  
Mr. Wells appeared.

Mr. Eyerly and Mr. Wells both stated that they are fine with the proposed resolution. Commissioner Runbeck confirmed that the proposed penalty in this case was assessed only against the applicator and not against the business licensee or QP.

**MOTION:** To accept proposed resolution for the applicator and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, and to dismiss the complaint against the business and qualifying party licensees, by Commissioner Baker. Seconded by Commissioner Leavitt.

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

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

*Commissioner Peterson stated that it's a good thing that there are additional repercussions, i.e. a 90-day suspension, if they don't pay the money within the time frame it is due. Jason Aanderud stated that there will be no suspension if the payment terms are met. Lisa Gervase added that if a suspension is imposed, it would be automatically lifted when the TARFs are filed and the fees are paid, and the language of the Order could be written to reflect this. Commissioner Fraker noted that the Order for a similar case considered earlier in agenda item VII.B. (Ark Exterminating) provided for only a 30-day suspension. He stated that the Orders for these two cases should be more consistent. Commissioner Peterson stated that the Order for the case here seems more punitive and that a 90-day suspension seems long. Lisa Gervase stated that the opposite is actually true because the respondent in this case is given the benefit of a longer suspension period before the harsher penalty of revocation. Commissioner Fraker recommended that part of the penalty in this case could be the 30-day suspension, regardless of if and when the TARFs are filed and the fees are paid. He stated that the respondents in this case have already falsified the records and not paid the money. If you really want to drive the point home, suspend the termite license for 30 days. Commissioner Peterson accepted this idea as long as there would also be a similar 30-day suspension for the Ark Exterminating case. Lisa Gervase stated that the thought process of staff was that during whatever period of suspension that was imposed, if the TARFs were filed and fees paid, then the suspension would be lifted. But after hearing what the Commissioners have said, staff maybe could include a suspension regardless. Commissioner Fraker stated that staff needs to look at these situations on a case-by-case basis to evaluate whether there was bad intent or negligence, or perhaps just unfortunate circumstances or an accident.*

**MOTION:** To return the matter to settlement conference to modify the resolution based on stated factors and rationale, by Commissioner Hartley.

*Motion failed for lack of a second.*

*Lisa Burns stated that the Commission can pre-approve changes to the proposed resolution and then offer them to the company without returning the matter to settlement conference. If the company accepts the modified resolution, then the matter will not come back to the Commissioners for their consideration. If the company does not accept it, then it will come back to the Commissioners.*

**MOTION:** To accept proposed resolution with the modification that if full payment is not made within thirty days of the effective day of the Order that Armor Termite & Pest Control's business license will be suspended for thirty days regardless of whether full payment is made within the thirty-day suspension period, and if full payment is still not made after the thirty-day suspension that Armor Termite & Pest Control's business license will be revoked, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Baker.  
*Seconded by Commissioner Runbeck.*

**VOTE:** 1-5 Motion failed (Commissioners Hartley, Fraker, Runbeck, Baker and Leavitt opposed).

*Commissioner Hartley mentioned that a business license can have more than one category, and so a suspension or revocation should be specific to appropriate categories. Lisa Gervase stated that all that Mr. Witter is ordered to do in the proposed resolution is to resubmit the 14 TARFs completely and accurately. He has already paid the TARF fees, so discussion about suspension or revocation may be moot. Mike Francis stated that the reason that Mr. Witter has to resubmit is because he put a pretreatment and a final grade on the same TARF even though they are two separate actions. A final grade TARF is not a fee-able action but it does require a separate TARF. Commissioner Runbeck stated that the violation in this case is a lot less serious than the violation in the previous TARF case (Ark Exterminating), but it seems that the Commission is treating them the same from a disciplinary standpoint. Commissioner Baker stated that everyone in the business knows*

*what a TARF is and it doesn't matter whether the case involves 10 TARFs or 2,000 TARFs. Commissioner Peterson stated that the number of TARFs is irrelevant because the fees have already been paid. Commissioner Fraker stated that he finds a big difference between 10 TARFs and 2,000 TARFs. He also stated that although the 90-day suspension is not supposed to be more severe, from a practical standpoint it could be if the suspension was not allowed to be lifted after full payment was made.*

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

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

**H. Western Landscaping, LLC. (Unlicensed)/John Osselaer (Member)/Isidro Santibanez Gomez (Unlicensed) - Case # 2005-002**

**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 Runbeck.*

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

**I. Sunflower Community Association, Inc. (Unlicensed)/Bart Wilburn (President/CEO)/Larry Allen Park (APP) - Case # 2004-132**

**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 regarding the applicator to the Office of Administrative Hearings and to impose the terms regarding the unlicensed business in an Order, by Commissioner Baker.  
Seconded by Commissioner Fraker.*

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

**J. Salt River Project (BL)/David C. Maldonado (QP)/Steven Scott Koskella (APP) - Case # 2004-141**

*Laura Raffaelli, attorney for Salt River Project, was present.  
Paul Cherrington, David Maldonado, Steve Koskella, representing Salt River Project, were present.*

*Commissioner Peterson stated that the business licensee and QP both were given five points for mitigation for sending out an informative newsletter to people. Jason Aanderud stated that staff has already seen the letter and has approved it. Commissioner Peterson added that the Commission knew about the misuse only because the respondents turned themselves in.*

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

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

**K. High Desert Weed Control(BL)/Ralph Emmord(Owner/QP) - Case # 2004-101**

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

**L.- M.: None**

**N. American Environmental Services, LLC. (BL)/Douglas L. Seemann (Member/QP)/Steven Schauer (Member)/Irwin Noval (Member) - Case # 2004-134**

*Mr. Seemann appeared.*

*Lisa Gervase stated that staff received a phone call from Mr. Noval's attorney informing staff that they would not be here in attendance today. Commissioner Runbeck asked why nothing was put in the Order regarding*

*a similar suspension or revocation provision if the fees aren't paid in full, like in the previous TARF cases on today's agenda. Lisa Gervase stated that it was because Mr. Seemann mitigated the violations by coming forward voluntarily to the Commission and supplying the TARFs to the Commission so that they could be put in the TARF database for the benefit of consumers. Commission Baker asked who took care of the customer warranties. Mr. Seemann stated that the assets were purchased by Northwest Exterminating, including taking over warranty work, and that he stayed on board for six months to make sure that there were no issues and that the consumers were protected.*

**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 Runbeck.*

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

**O. Phoenix Pest Control, Inc. dba Phoenix Pest & Termite Control (BL)/Douglas Vanasse (Owner)/Jerry Martinie (QP)/Miguel Brambila (APP) - Case # 2004-166**

*Mr. Martinie was present.*

**MOTION:** *To accept proposed resolution for the applicator and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, and to dismiss the complaint against the business and qualifying party licensees by Commissioner Fraker.  
Seconded by Commissioner Baker.*

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

**P. K & S Exterminating, Inc. dba Adams Exterminating (BL)/Kenneth Barnes (President/QP/APP)/Shiloh Tichi (Vice-President) - Case # 2004-115**

*Scott Richardson, attorney for the business licensee (#8189), appeared.*

*Kenneth Barnes and Shiloh Tichi, were present.*

*Jason Aanderud stated that a proposed resolution was tentatively reached this morning only for the Adams Exterminating business license. No proposed resolution was reached for the QP and Applicator. Lisa Gervase added that the terms consisted of an Administrative Warning and a \$22,100 Civil Penalty against the business licensee. Scott Richardson stated that they asked for six months to pay the Civil Penalty. Commissioner Baker questioned what happens to a license if payment is not made after six months, since in prior cases on today's agenda (TARF cases), suspension or revocation for nonpayment was ordered. Lisa Gervase stated that if any licensee does not comply with a Commission Order, the Commission files a new complaint to seek suspension or revocation unless suspension or revocation is part of the original Commission Order. Scott Richardson stated that this case is different from the TARF cases. This case is more in the true nature of a Civil Penalty. He stated that they have been working on this for over a year. He stated that it is not their intention to not pay this money, but he thinks that they would start going down a slippery slope if punctuation marks are put at the end. He stated that they came forward on this case and he thinks they have demonstrated good faith and are extending the warranties for these homes. But he stated that he thinks that a suspension or revocation is unnecessary.*

*Commissioner Peterson stated that this case is bothersome, and questioned referring it to the Attorney General's Consumer Fraud Section.*

*Commissioner Fraker stated that he thinks this is probably one of the worst violations he has seen in a long time and that he has a hard time giving six months for payment. Mr. Richardson made several statements to the Commission in favor of the agreement, and the same was thoroughly discussed by the Commission members.*

**MOTION:** *To accept proposed resolution for the business licensee (log book to be exhibit) with the modifications that they have six months to pay and the notices to the homeowners (to be exhibit) provide that the homeowners are entitled to an annual inspection, a five-year warranty, contain the Company and Commission contact information, and be copied to the respective builders; and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings; and to send the matter regarding the QP and applicator to hearing, by Commissioner Runbeck.*

Seconded by Commissioner Hartley.

**VOTE:** 3-3 Motion failed. (Roll call vote: Commissioner Hartley-Yes, Commissioner Fraker-No, Commissioner Runbeck-Yes, Commissioner Baker-No, Commissioner Leavitt-No, Commissioner Peterson-Yes)

*Further discussion continued regarding whether to send the matter to a formal administrative hearing or work to offer a modified consent agreement.*

**MOTION:** To send the matter to hearing, by Commissioner Hartley.  
Seconded by Commissioner Baker.

**VOTE:** 1-5 Motion failed (Commissioners Fraker, Peterson, Runbeck, Baker and Leavitt opposed).

*Commissioner Baker proposed that the prior agreement and that all homeowners get a free, full, complete treatment if desired, be considered.*

**MOTION:** To accept the prior proposal (stated in the first motion) with the addition of a free, full, complete treatment, if desired, by Commissioner Baker.

**MOTION FAILS:** Lack of a second.

*Discussion continued.*

**MOTION:** To accept the same proposal that was previously indicated with the modification that the homeowners will also receive notification that they will receive a full, complete treatment at no cost if they request it, by Commissioner Baker.  
Seconded by Commissioner Runbeck.

**VOTE:** 1-5 Motion failed (Commissioners Hartley, Fraker, Peterson, Runbeck and Leavitt opposed).

*(Break from 11:10 A.M. to 11:25 A.M.)*

**MOTION:** *To accept proposed resolution for the business licensee (log book to be exhibit) with the modifications that they have six months to pay and the notices to the homeowners (to be exhibit) are copied to the respective builders, provide that the homeowners are entitled to an annual inspection, a five-year warranty extension, and a full treatment if they get the third occurrence of termites within ten years (the initial five-year re-treatment rule warranty period plus an additional five-year warranty period extended by the business licensee); and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings; and send the matter pertaining to the Qualifying Party and Applicator to hearing, by Commissioner Runbeck.  
Seconded by Commissioner Hartley.*

*The Commission members discussed the motion and Mr. Richardson made further statements to the Commission.*

**AMENDED MOTION:** *To amend the motion to provide that the homeowners are entitled to a full treatment if they get a first occurrence of termites within ten years (the initial five-year re-treatment rule warranty period plus an additional five-year warranty period extended by the business licensee), by Commissioner Runbeck.  
Seconded by Commissioner Hartley.*

**VOTE ON AMENDED MOTION:** 6-0 *Amendment passes.*

**VOTE ON ORIGINAL MOTION:** 3-3 *M o t i o n f a i l e d  
(Commissioners Fraker,  
Baker and Levitt opposed).*

*The Commission continued to discuss its options.*

**MOTION:** *To send the matter to hearing, by Commissioner Hartley.  
Seconded by Commissioner Baker.*

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

**VIII. Requests for Review or Rehearing of Previous Commission Decisions.**

- A. Kathleen Crary - Case No. 2004-137 - Decision and Order for Unlicensed Activity issued on 5/24/05.**

*Ms. Crary appeared via telephone.*

*Ms. Crary stated that the morning of the incident, which was weeks before Mary Sullivan's complaint, she found a wasp's nest and put up two tablespoons of Malathion which had been in her shed for a while. She stated that she never put down any ant or roach powder. She stated that she had received permission from her neighbors and was doing this for a person with dementia who had been taken by another sales person. She stated that she sold the home shortly afterward and the people were fine with it. She stated that she would not have done it had she known it was wrong. She stated that she lives in a park of 416 homes, and there are lawns where uncertified people are spraying. She stated that something should be put up notifying people that you can't do this, because no one else even knew about the restrictions. Commissioner Baker asked Ms. Crary how long she has been helping her neighbors with pest control. Ms. Crary stated that she has not done this before. Commissioner Fraker asked if Ms. Crary is a licensed real estate agent. She stated that she is not and can only sell homes where people pay lot rent. Commissioner Fraker asked why Ms. Crary didn't call a licensed pest control company. She stated that the people she was helping did not have any money. Commissioner Fraker asked if Ms. Crary was paid a commission for selling the house. She stated that she was and that she only works on commission. Commissioner Runbeck stated that the \$500 fine should be considered part of the cost of selling the house. Ms. Crary stated that she did not even make \$500 selling the house. Commissioner Peterson stated that people who come before the Commission just about every month without the proper license(s) routinely are assessed a \$500 civil penalty. He suggested that she think of it as similar to receiving a speeding ticket: even if you don't do it intentionally, you still are fined. Ms. Crary stated that the difference is that she knows not to speed. She also stated that she has always called a licensed pest person since she learned about the licensing requirements. She stated that a \$500 fine is unnecessary and beyond her means, regardless of a payment plan, and that she will take this matter to the press. Commissioner Baker suggested that a payment plan be arranged.*

**MOTION:** To deny request for rehearing or review of previous Commission Order because there are no grounds to grant a rehearing/review, by Commissioner Runbeck. Seconded by Commissioner Fraker.

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

**IX. Review or Rehearing of Previous Commission Decisions.**

*None.*

**X. Consideration of Suspension of Business, Qualifying Party and/or Applicator Licenses for Non-payment of Civil Penalties and/or Nonpayment of Renewal Fees [Possible Dismissal of Cases without prejudice, if applicable].**

**A. We Got Ya Pest Control, Inc. (BL # 5782) (Issued 7/13/01) (Expired 12/31/02) (Suspended 10/29/03) (Revoked 4/22/05)/Sergio Edgar Luna (App # 010712 B1) (Issued 7/23/01)(Expired 5/31/03) - Case No. 2004-037**

*No action because Mr. Luna paid the \$900 civil penalty this morning.*

**XI. Consideration of lifting Suspension of Business, Qualifying Party and/or Applicator Licenses.**

*None.*

**XII. Recommended Decisions and Orders of the Office of Administrative Hearings' Administrative Law Judges.**

**A. Sexton Exterminating, Inc. (BL)/Rick Sexton (QP/App) - OAH Docket # 04A-008-SPC/SPCC Case No. 2004-008**

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

*Lisa Burns stated that she has only one point in paragraph 7 on page 5, the ALJ made a conclusion of law that the Commission did not have the authority to impose continuing education as part of disciplinary action. However, she believes that continuing education is actually a term of probation as there are C.E. reporting requirements. Commissioner Peterson asked how much continuing education was involved. Lisa Burns stated that Mr. Sexton argued in paragraph 8 that he only be required to take a 3-hour class in termite pre-*

*treatment but not be fined. She encouraged the Commission to accept the Findings of Fact, Conclusions of Law and Order with these terms, especially considering that Mr. Sexton did not appear, according to his testimony at the hearing, to understand termite pre-treatments.*

**MOTION:** *To adopt the ALJ's Findings of Fact and Conclusions of Law with the modification that Conclusion of Law paragraph #7 be deleted, by Commissioner Hartley. Seconded by Commissioner Baker.*

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

*(Commissioner Runbeck left the meeting at 12:20 pm.)*

**MOTION:** *To accept the ALJ's Recommended Order with the addition of a probationary period of 180 days and that Mr. Sexton shall acquire 3 additional hours of continuing education in the category of pre-treatments, by Commissioner Hartley. Seconded by Commissioner Baker.*

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

**XIII. Settlement Proposals [not part of Complaints agenda item].**

*None.*

**XIV. Consideration of Informal Settlement Conference proposed resolutions [for License Denial Applicants].**

**A. Robert J. Iovinelli - Felony Applicator License Applicant**

*Mr. Iovinelli appeared.*

*Richard Bircher, Mr. Iovinelli's employer from Bircher Exterminating Services, appeared.*

*Lisa Gervase stated that this matter was tabled from the April meeting so that she and Mr. Iovinelli could negotiate a settlement. We now have criminal probation terms and the information is in the Commissioners' materials. Commissioner Peterson asked if Mr. Iovinelli is still on probation and subject to random drug tests. Mr. Iovinelli answered in the affirmative to both of those conditions. Commissioner Peterson noted that Mr. Iovinelli has had a long career and it has been a fairly short time since it ended. He asked what has changed. Mr. Iovinelli stated that he went*

to prison and realized the damage he had done to his daughter. He stated that what happened was that he made bad decisions and got in trouble, but has paid his debt, has been rehabilitated and has gotten his life back together. He stated that he got out of jail on July 28, 2004. Commissioner Peterson stated that Mr. Iovinelli has had a long history of bad behavior, and being out of jail for only one year is not a long time. Mr. Iovinelli stated that it has been 3-4 years since any drug use. He stated that he has done everything that has been asked of him, including going through counseling, urinalysis testing, and paying his fines and has also gone to business school. He also stated that he is doing community service every weekend and that his probation officer made it clear that he is on the right track. He stated that he will be off of probation in April, 2007. Lisa Gervase added that Mr. Iovinelli can petition for an early release in 2006 if he gets everything done. Commissioner Baker asked if Mr. Iovinelli is still hanging around with the same people as before. Mr. Iovinelli stated that he is not. Mr. Bircher stated that Mr. Iovinelli has been employed with his company for about ten months doing commercial pest control services such as exteriors, condos, and pool areas. Commissioner Baker asked what the difference is between what Mr. Iovinelli has been doing and what he wants to do. Commissioner Fraker stated that Mr. Iovinelli has been working without a license. Mr. Bircher stated that they had a separation and they didn't violate the 90-day rule. He added that he has nothing negative to say about Mr. Iovinelli and that he is honest and he trusts him. Commissioner Runbeck stated that she does not appreciate people playing games with the 90-day rule. Lisa Gervase stated that if the Commission approves Mr. Iovinelli to test, then probation would be triggered by the date of licensure two years into the future.

**MOTION:** To accept informal 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 Runbeck.

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

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

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

*Mr. Sotelo appeared.*

*Lisa Gervase stated that Mr. Sotelo has been compliant with the terms of his probation and has brought letters from his probation officer and employer. He has*

*had all negative drug tests, he completed the initial phase of a drug court program in June, and is doing an after care program. Mr. Sotelo's employer, Mark Williamson (Desert Web Exterminating in Yuma), wrote a letter stating that Mr. Sotelo is a dependable and good employee. Commissioner Peterson expressed appreciation to Mr. Sotelo for his efforts, and Mr. Sotelo thanked the Commission.*

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

*Tabled for August 12, 2005 Commission meeting.*

**XVI. Felony Applicants**

**A. D'Avola, Matthew Craig**

*Mr. D'Avola appeared.*

*Commissioner Peterson noted that Mr. D'Avola was off of probation as of March, 2004. Mr. D'Avola stated that he is working as a groundskeeper for Phoenix Union High School District at North High School. Commissioner Peterson asked if Mr. D'Avola had been in any trouble before this situation in 2001. Mr. D'Avola stated that he had not and is 30 years old now. He stated that he used to smoke marijuana regularly and doesn't do it anymore and has been clean since then. He stated that if the authority of the land says you can't do it, then it is not a good idea.*

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

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

**B. Duarte, Roland Carlo**

*Mr. Duarte appeared.*

*Sherrie Barfield, from Pima County Parks and Recreation, appeared.*

*Ms. Barfield stated that Mr. Duarte has been working for them intermittently off and on for five years. She stated that he has been a good employee and they trust him around the public and children. Commissioner Peterson noted that Mr. Duarte's felony happened in 1999 when he was stealing from his employer. Mr. Duarte stated that he spent some time in jail for that but has had no problems since then and is now 25 years old. He stated that since then, he has seen people close to him die from overdoses. He stated that he wants to be a leader, not a follower. He stated that he is done with a 3-year probation.*

**MOTION:** To approve by Commissioner Baker.  
Seconded by Commissioner Leavitt.

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

**C. Adams, Bryon Gene**

*Mr. Adams appeared.*

*Commissioner Peterson asked what Mr. Adams has done for his problem. Mr. Adams stated that he spent 52 weeks in anger management and hasn't had a drink since the incident in December. He stated that he sees his probation officer every other month. He stated that he has worked for Alternative Pest & Termite Control as a pest control technician since October, 2004. Dennis Hancock is his employer. Commissioner Peterson noted that Mr. Adams has had a license and this incident came up, so that is why he is back in front of the Commissioners. Mr. Adams stated that he has lived in the Verde Valley all of his life and has done pest control all of his life, starting with his father. He stated that he has never stolen, cheated or been dishonest and has been in many houses in the Verde Valley. Mr. Adams acknowledged that he was pretty rowdy growing up there but that this is his first felony. Commissioner Peterson encouraged Mr. Adams to not drink and to go to AA. Commissioner Baker stated that he would feel more comfortable approving Mr. Adams' application if there was a letter of support from Mr. Hancock. Commissioner Peterson asked if there have been any complaints against Mr. Adams. Lisa Gervase stated that she can not think of any but would have to check to be sure.*

**MOTION:** To approve applicator license renewal by Commissioner Hartley.  
Seconded by Commissioner Baker.

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

**XVII. SPCC Status update and Reports**

- A. Termite "Pretreatments" under new slabs for additions to homes under "warranty" - requirements for filing termite action report forms (TARFs) - are they "pretreatments", "post-treatments", are "final grades" required? - For discussion, input, notice.**

*Keith Birkemeyer, from Probest Pest Management, appeared.  
Brian Ferris, from Terminix, appeared.*

*Lisa Gervase stated that recently a question arose about how to report a termite action in situations where the termite treatment is for an addition on a property where the main house is currently under warranty. Staff's view is that it is considered another pretreatment because it is an addition not under warranty. Some industry members either don't TARP it or TARP it as a post treatment. She also asked if a final grade needs to be performed and if there would be a separate five year warranty from the original pretreatment. Commissioner Hartley stated that the most common circumstance he has dealt with over the years concerns a home that was treated a long time ago and has been under post-construction renewal for the past 15 years; the homeowner is adding a 100-square foot atrium and wants it to be treated. He stated that in such a case, his company has added the service in with the post-construction renewal and they pay a TARP fee on it. But they don't call it a pretreat because there could be confusion in the records. For a small addition, like a bedroom, they call it a continuation of the post-construction contract and file a TARP on it under Commission rules. Lisa Gervase asked if it is performed under a post-construction warranty or as a separate job. Commissioner Hartley stated that it is done under post-construction warranty and that they bill it as a separate job; they are increasing the renewal and you could say they are adding on the post-construction warranty. It is a matter of semantics. Mr. Birkemeyer stated that his company had the same dilemma. Is treatment of a shed a spot treatment or is it separate and is it a pretreat? Lisa Gervase suggested that they look at the laws and rules (A.A.C. R4-29-101.21) for guidance and for the definition of a pretreatment. Commissioner Peterson asked if an \$8 TARP fee is supposed to be paid. Lisa Gervase stated that it is. Commissioner Peterson asked which warranty applies if he extends his patio and then gets termites. Commissioner Fraker stated that he is not going to issue a separate five-year warranty on an addition to a property that already has a five-year warranty. How do you determine where termites came from? Or, if you treat an addition to a main structure and the main structure doesn't already have a warranty, is a warranty going to have to be issued on the addition? He stated that he doesn't think that most companies would give an extra warranty on an abutting structure if there was no warranty on the existing structure to begin with. Lisa Gervase stated that there would be no warranty unless a pest control company provided one. The initial five-year "warranty" that the Commissioners are discussing is not actually a warranty but a rule requirement. Commissioner Peterson acknowledged that for an existing structure, a treatment would not be considered a pretreatment. But what about a shed? Commissioner Hartley stated that it could go either way and that there are gray areas. Commissioner Baker stated that if you get compensation for doing something, then you should file a TARP. How the record keeping is done within each company is not relevant to the Commission. Commissioner Peterson asked though about where a "warranty" would lie if someone files a complaint with the Commission four years down the road. Commissioner Hartley stated that the way they are doing it, the addition becomes part of the house. If a homeowner lets their warranty lapse, and then calls*

*the Commission, then there will be no relief. Commissioner Peterson asked if a TARF should be paid when treating a new slab. He stated that the warranty on the whole property should not be extended based on treating only a small new section. Lisa Gervase asked if it is going to be considered a pretreatment under the five-year rule or a post-treatment that is TARFable. Commissioner Hartley stated that this probably does not come up that frequently, and usually companies handle it. Lisa Gervase stated that they will be changing the definition of pretreatment because it is outdated and does not comport with current laws. She stated that the only way to get out of it is if you do the original pretreatment and it has been less than five years since then. If you do the post-construction treatment but did not do the pretreatment, then the post-treatment would be TARFable. The first time a company touches a house it needs to file a TARF so that treatments can be traced for consumer benefit. Commissioner Hartley asked how they should handle a post-construction job under contract for ten years when the homeowners want a new bathroom and they chop up concrete and then they treat there. Is it TARFable, supplemental, pretreatment, post-treatment? Commissioner Leavitt stated that it seems more appropriate and more simple to list it as a supplemental. Lisa Gervase stated that is essentially what a post-construction treatment is. Commissioner Hartley stated that they should just get rid of the definition. Mr. Ferris stated that when a property is under contract and you pretreat an addition, he has heard that it is TARFable and that it is not TARFable. Lisa Gervase stated that, by definition, it is TARFable. Commissioner Hartley stated that he likes Commissioner Leavitt's idea about the supplemental that could be TARFable or non-TARFable. Mr. Ferris asked what the intent of TARFs is. Lisa Gervase stated that TARFs direct consumers to the companies. Mr. Ferris asked what is gained by applying another fee. Lisa Gervase stated that nothing is gained, as long as the same company is involved. If one company has already done a pretreatment, then they don't need additional paper for TARFs for a subsequent post-treatment. Commissioner Fraker recommended that the language be changed. If a house is under warranty and additional work is done, and you are the company of record, the consumers can find you. Nothing is really accomplished by adding any extra paper. Lisa Gervase clarified his suggestion that if a company has already filed a TARF for a pretreatment or post-treatment and the company does additional work for an abutting or non-abutting slab, the company does not need to file an additional TARF if that company is the company of record. Commissioner Fraker suggested that maybe it would be a good idea to list different scenarios so that all are covered. He stated that he has also heard the expression "one address, one TARF". A man in the audience stated that if there is a property where no pretreatment was done, a company that does a treatment on only a small part or addition of that property could be on record as having done a pretreatment for the property.*

**B. Possible Future Law Changes - update.**

*Lisa Gervase stated that a stakeholder meeting was held on June 29. Discussion went through about half of the law items on the list, with strong opposition to only one item, namely the proposal of extending the length of the Commissioners' terms. Commissioner Baker stated that with the current situation though, Commissioners could leave and then there might not be enough for a quorum. Lisa Gervase stated that she wanted longer and staggered terms, but the people who opposed the idea noted that there were past Commissioners who they did not appreciate and they were concerned that in the future they could be stuck with others. She also stated that there will be two more upcoming stakeholder meetings on July 20 at 2:00 p.m. and August 10 at 2:00 p.m.*

### **C. Possible Future Rule Changes - update.**

*Lisa Gervase stated that on June 15 she opened two formal rule-making dockets that should be in the Arizona Administrative Register today. There will be one broad rule package and then another more specific rule package for Business duties, QP guidelines on supervising, training and equipping, and supervisory Applicator duties. She stated that staff is working on language so that they can start having stakeholder meetings for the rules also. Commissioner Baker asked how some of the outlier people/groups, such as Homeowners Associations, etc., should be categorized. Lisa Gervase stated that it was the Commissioners' decision at the February, 2005 meeting that discussion regarding political subdivisions was to be set as a separate discussion. Commissioner Baker stated that instead of forcing groups and/or people into categories, maybe the Commission should make the categories fit the individuals, and that maybe there should be a commercial/noncommercial distinction. Lisa Gervase stated, however, that this doesn't deal with public protection. She stated that she is not sure that there is really a need for a different licensing structure except for the idea that some political subdivisions maybe shouldn't be required to have business licenses even though they would lose out if their QP leaves because they cannot get a temporary QP. But to make the categories fit the individuals would require a huge change to the Commission's licensing structure. Aside from landscapers and political subdivisions, she is not sure if there are any additional groups that present a concern to the existing licensing structure.*

### **D. Complaint Status Log**

*Commissioner Peterson noted that it appears that 19 cases are lined up for next month's Commission meeting. Mike Francis stated that this number is tentative. He stated that staff is getting caught up, and hopefully the number of monthly cases on the agenda will level out in the coming months.*

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

Commissioner Peterson asked if the tests and test questions are being tracked. Mike Francis stated that they are. Lisa Gervase stated that she hired Hal Golightly, QP for Western Exterminator Company, and Dean Jenny, who was with Terminix for a number of years and is now with Truly Nolen, to review the validity of the questions. She stated that for the Metro Institute Contract, they will have to go out for bids again for 2007, so in January, 2006, she will be writing new requests for new quotes for testing contracts.

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

Lisa Gervase stated that she put about \$7,000 that they had remaining into postage to cover mailings until June 30, at which time there will be approximately \$50 left after this two-year budget cycle.

**G. Case Status Report - separate handout**

Lisa Gervase stated that there are currently 103 active cases. The main changes are that staff is monitoring 61 cases for compliance with Commission Orders, there are zero cases for which Orders need to be drafted, and only 14 consent agreements, including those on today's agenda, need to be drafted. The turn-around time for drafting these documents is now down to less than a month.

**H. Gloria Kilian, dba Kilian's Termite and Pest Control, Co., vs. Structural Pest Control Commission, Case No. C20053438 - possible verbal update**

Lisa Gervase stated that after the Commission denied the temporary QP renewal and the Request for Review, Ms. Kilian filed an appeal to Pima County Superior Court. Lisa Burns will be representing the Commission in court and the judge will make a decision as to whether to uphold the Commission's decision.

**XVIII. Approval of Minutes**

**A. June 10, 2005 (regular session) Minutes**

**MOTION:** To approve the June 10, 2005 Minutes by Commissioner Baker.  
Seconded by Commissioner Hartley.

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

**B. Continuing Education Minutes**

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

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

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

**Current Proposed dates**

**August 12, 2005** - *Commissioner Leavitt unavailable.*

**September 9, 2005**

**October 14, 2005: In TUCSON**

**Pima County Board of Supervisors Auditorium**

**130 W. Congress, 1<sup>st</sup> Floor, Tucson, AZ**

**November 10, 2005: This is a THURSDAY**

**December 9, 2005**

**January 13, 2006**

**February 10, 2006**

**XX. Adjournment - 1:30 p.m.**

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

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