

**Structural Pest Control Commission  
Pima County Administration Building  
Board of Supervisor's Hearing Room  
130 West Congress, First Floor  
Tucson, AZ 85701**

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

**AGENDA**

**I. 9:00 A.M.: Call to order, Commissioner roll call**

**Commissioners Present:** Commissioners Paul Baker, Robert Hartley, Virgil Robinson, Debbie Runbeck and Jack Peterson

**Commissioners Absent:** Commissioners Mike Fraker and Mary Leavitt

**Staff Present:** Eric Bauer, Mike Francis, Lisa Gervase, Robert Tolton, and Assistant Attorney General M. Elizabeth (Lisa) Burns

**II. Call to the public**

*Susan Tomlinson, owner of North Country Pest Management, welcomed the Commission to Tucson. She stated that her company rearranged its appointments with customers so that all of its staff could be here today.*

**III. Communication with Commissioners**

*None.*

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

*Lisa Gervase stated that two beloved staff members, John Herwehe and Jason Aanderud, passed away in the past month. For those who knew them and those who would like to know a bit more about them, staff has posted tributes to them on the Commission's website.*

☞ Watch Web site for status of *Proposed Law and Rule Changes.*

[www.sb.state.az.us](http://www.sb.state.az.us)

*Lisa Gervase stated that the Commission is seeking a sponsor for a bill of proposed law changes. Also, staff will soon have a draft of proposed rule changes on the Commission's website in anticipation of stakeholder meetings.*

✓ Chlorpyrifos Phase Out: Unlawful to use for pretreatments after 12/31/05. See web site notice for more detail.

*Lisa Gervase also encouraged users of Chlorpyrifos to look at the Environmental Protection Agency's notice about the phase out.*

⇒ CEU (Continuing Education Units) and ILT (Initial Licensure Training) courses posted on web site. Registration: 480-CEU-SPCC; [CEU@sb.state.az.us](mailto:CEU@sb.state.az.us); 480-ILT-SPCC; [ILT@sb.state.az.us](mailto:ILT@sb.state.az.us)

*Lisa Gervase stated that staff has instituted easy ways for people to RSVP for courses utilizing two dedicated phone lines and two dedicated email addresses. She encouraged people who are new to the industry and people who have been in the industry to attend these informational, educational classes regarding the Commission's laws and rules and how to practice the profession safely and stay out of trouble. She also stated that she and Mike Francis are the current ILT coordinators.*

## **V. Consent Agenda**

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

#### **Qualifying Party**

- |                                  |  |
|----------------------------------|--|
| <b>1. McPheron, Vicki Lynn</b>   | <b>Landscapes R Us, LLC. (Activating Qualifying Party for new business license in "B3" Right of Way &amp; Weed Control)</b>  |
| <b>2. Bailey, Gerald Douglas</b> | <b>All Pest Management (Activating Qualifying Party for new business license in "B1" General Pest &amp; Public Health)</b>   |
| <b>3. Gonzales-Anaya, Jose</b>   | <b>Par Landscape Construction Co., Inc. (Activating Qualifying Party for new business license in "B3" Right of Way &amp; Weed Control and "B5" Turf &amp; Ornamental Horticulture)</b> |

- 4. Blankenship, Zachariah Polo Exterminating, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)
- 5. Felix, Ronald David AJF Engineering, Inc. (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. Cummings, Jo Nell Cummings Termite & 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)
- 7. Curtis, Richard Nielson Curtis Termite & Pest Service (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)
- 8. Bingham, Joseph Trent American Dyna-Mite Exterminating (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)

**B. Applications to activate Qualifying Party for Existing Business License**

- 1. Kemp, Dennis Lee Desert Forest Golf Club (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)

- 2. Davis, Claude Alanson      **Bugsy Pest Control, LLC. (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health)**
  
- 3. Heaslip, William J.      **Tucson Country Club (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)**
  
- 4. Harris, Richard Kennedy      **Praying Mantis Termite & Pest Control (Activating Qualifying Party for existing business license in "B8" Wood Destroying Insect Inspection)**

**C. Applications for Qualifying Party License**

- 1. Adams, Steven Lee      **"B3" (Right of Way & Weed Control)**
  
- 2. Giles, Ricky Harlan      **"B3" (Right of Way & Weed Control)**
  
- 3. Stapley, Mark Curtis      **"B2" (Control of Wood-Destroying Insects) & "B8" (Wood Destroying Insect Inspection)**
  
- 4. Hunt, Steven Carl      **"B1" (General Pest & Public Health)**
  
- 5. Jameson, Deborah A.      **"B1" (General Pest & Public Health)**
  
- 6. Pannell, Shane Dennis      **"B1" (General Pest & Public Health)**

**D. Business License Name Change Requests**

- 1. **Advanced Home & Termite Inspections, LLC. to Advanced Termite Inspections, LLC.**
  
- 2. **Pestbusters Exterminating Company to Bug Babes Exterminating**

## End of Consent Agenda

**MOTION:** *By Commissioner Runbeck to accept Consent Agenda. Seconded by Commissioner Robinson.*

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

## VI. Applications not on Consent Agenda

### A. Request for Temporary Qualifying Party License Renewals

*None.*

### B. Applications to activate Qualifying Party for New or Existing Business License

*None.*

### C. Applications for Qualifying Party License

#### 1. Denny, Sean Daniel "B1" (General Pest & Public Health)

*Commissioner Peterson noted that Mr. Denny just got an applicator license in July of this year. Robert Tolton stated that staff had a question about Mr. Denny's verification of a significant amount of practical experience. Before July, Mr. Denny did not have an applicator license since May, 1998. He stated that Mr. Denny said he is a sales manager and did not have any other experience, so that is why staff wanted to put this application before the Commission. Commissioner Peterson noted that the Commission's rules state that "practical experience" shall not include sales work. Commissioner Baker stated that field work is more important because each house is different. Commissioner Robinson agreed, stating that sales people may know how to talk but may not know how to work in the field.*

**MOTION:** *To deny QP testing in "B1" based on lack of practical experience by Commissioner Runbeck. Seconded by Commissioner Baker.*

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

*Mr. Denny appeared later in the meeting and this item was revisited.*

*Mr. Denny stated that he over the past five years he has approximately 3,500 hours of field experience, gained from working every summer for his dad, Mike Denny, doing spray work and training spray techs. He stated that there are records showing all of his work in every aspect of general pest control. Mr. Denny stated that his intention is to get a QP license and work for himself, as his dad is retiring and breaking the business up between his brothers and sisters. Mike Francis stated that staff reviews the applications and has conversations with the applicants. In this case, there was lots of documentation that a substantial percentage of the 3,500-4,000 hours were in sales, so that is why staff brought this matter before the Commissioners for their review. Robert Tolton stated that he was unaware of the work done during the 90-day summers. Mr. Denny stated that he did acquire practical experience during those summers even though he did not have an applicator license during those times. Commissioner Runbeck asked that staff look at the spray records for evidence of field experience.*

**MOTION:** *To rescind the denial of QP testing in "B1" based on lack of practical experience by Commissioner Runbeck.  
Seconded by Commissioner Baker.*

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

*Lisa Gervase stated that staff would consider the application incomplete and would request more information so that Mr. Denny would not be up against any time frames problems. However, the sooner that Mr. Denny can supply the records to staff, the better. Commissioner Runbeck told Mr. Denny that he would need to talk to staff to determine what records would be sufficient.*

**2. Kilian, Gloria Louise** **"B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects), "B3" (Right of Way & Weed Control) & "B8" (Wood Destroying Insect Inspection)**

*Ms. Kilian appeared.*

*Commissioner Baker asked Ms. Kilian what her plan is this time to pass the exam and how it is different from before. Ms. Kilian stated that hopefully she can find someone to tutor her. She stated that her scores were quite high*

*in some areas and that she did pass the core test. She asked if the Commission is providing initial license training. Mike Francis stated that they are doing so for applicators, but there is also a lot of carry over of material into the QP realm. Commissioner Runbeck asked if the applicant meets all of the requirements for QP licensure. Mike Francis stated that, although staff chose to put this application before the Commissioners due to Ms. Kilian's past history and the length-of-time element, he does believe that the application meets the practical experience requirement.*

**MOTION:** *To approve QP testing in "B1", "B2", "B3" and "B8" by Commissioner Runbeck. Seconded by Commissioner Baker.*

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

## **VII. Complaints**

### **A. Kilian's Termite & Pest Control (BL)/David Pritchard (APP)/Brent Janse (APP) - Case # 2002-065**

*Ms. Kilian 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 Runbeck. Seconded by Commissioner Robinson.*

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

### **B. Bye Bye Birdie (Unlicensed)/Ernest Stephens (Owner) - Case # 2005-022**

*Tabled.*

*Mike Francis stated that a settlement conference was held but no agreement was reached. Commissioner Robinson asked how this case differs from the case a couple of years ago where a boy was doing pest control services but it was ultimately decided that his actions fell outside of the Commission's jurisdiction. Mike Francis stated that this case here is different in that there was advertisement, surveys of the site, and identification of the pests. It meets all of the criteria for the business of structural pest control. Lisa*

*Gervase asked if this matter should be tabled until later in the meeting agenda when the Commissioners will be talking about proposed guidelines for how to deal with unlicensed pest control cases. Commissioner Peterson stated that the matter should be tabled.*

*Later in the meeting agenda, after discussion of agenda item XVII.A., Commissioner Peterson stated that this case should be tabled until the December Commission meeting, after the Commission has had time to evaluate and discuss the draft guidelines and possible scenarios.*

**C. Phoenix Exterminating, Inc. (BL)/Jeffrey J. Eaton (Secretary/QP/APP) - Case # 2005-021**

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

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

**D. Robert James Ryan (APP) - Case # 2005-006**

*Commissioner Peterson noted that the proposed resolution in this case provided that the continuing education ("CE") be in the category of safety, but the violations in this case have to do with measurements and the application calibration, so he would like to see the CE be modified accordingly. Commissioner Baker agreed that the subject matter of the CE class should be in the area of the violation. He also recognized that the time element could come into play if no such classes are available for 90 days but the CE is due within 30 days. Lisa Gervase stated that the Commission could accept the proposed resolution with an amendment about the CE class being in the category of measurements and calibration instead of safety. Commissioner Hartley asked how S.O.S., Mr. Ryan's employer, has addressed the shortage with the consumer. He stated that such information should be reflected for the public to see instead of being buried in the Commission's records. Commissioner Robinson asked, if an area was partially sprayed, how one would know whether the area was being over-sprayed upon a retreatment. Commissioner Hartley stated that there are several options when a site is identified as having been under-treated. Usually, the consumer is made aware and then there is an extension of the*

guarantee. However, usually a company won't go back and dump more gallons on a site, especially if there is a general lacking of chemical on the whole site as opposed to a more specific lacking of chemical in a particular area such as a garage.

**MOTION:** To accept proposed resolution with the amendment that the Continuing Education be in the category of measurements and calibration and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Runbeck.  
Seconded by Commissioner Baker.

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

**E. Mickey's Termite & Pest Control, Inc. (BL)/Mickey Millen (President/CEO/QP)/John O'Coin (APP) - Case # 2004-102**

*Mr. Millen 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 Runbeck.  
Seconded by Commissioner Baker.

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

**F. Bugman Exterminating, Inc. dba Bugman Exterminating (BL)/Douglas M. Tweten (President/CEO/QP) - Case # 2005-014**

*Mike Francis stated that the Commission received a letter from Mr. Tweten prior to the meeting saying that he could not be here today. Mike Francis also stated that the number of counts (29) are based on the number of months over the initial 90-day unlicensed period that the two applicators applied pesticides on behalf of Bugman Exterminating. Commissioner Peterson asked if the penalty in this case is consistent with past similar cases. Mike Francis stated that it is. Commissioner Baker stated that ignorance of the law is not an excuse, and that it is a QP's responsibility to keep up. Commissioner Peterson echoed this comment, stating that there*

are all kinds of training classes available in addition to the ones put on by the Commission.

**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 Robinson.  
Seconded by Commissioner Baker.

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

**G. Ray's Exterminating, Inc. (BL)/Raymond J. Sarnocinski (Owner/QP) - Case # 2005-040**

*Mr. Sarnocinski appeared.*

*Mr. Sarnocinski stated that in a settlement conference with Jason Aanderud, he agreed with the amount that needed to be paid but asked for documentation. He stated that he played "phone tag" with Mike Francis, who assured him that he would get the records to compare them with the TARFs that he believed that he owed. He stated that there were 9 TARFs that apparently were not filled out properly that he still does not have. He asked the Commissioners if this matter could be put off until next month so that he could have a chance to review the records. He stated that he has records dating back to 1986. Commissioner Peterson asked Mr. Sarnocinski how he keeps track of what he has and has not paid. Mr. Sarnocinski stated that he does so mostly by TARF numbers and payment. Commissioner Peterson asked Mr. Sarnocinski if he has a log book. Mr. Sarnocinski stated that he does and that he can go back and check cancelled checks. Commissioner Peterson asked staff if the Commission would refund money if they found that Mr. Sarnocinski had overpaid. Lisa Gervase stated that they would. Mike Francis stated that Inspector Ron Felix was very thorough when checking the records/numbers in the database. He also added that the records were mailed recently and that Mr. Sarnocinski should probably receive them today. Mr. Sarnocinski stated that although his business is making money, he does not have the money today to pay for the TARF fees because he had \$60,000-\$70,000 to pay for his son's medical bills. Commissioner Peterson stated that his health and the money he collects for TARF fees are two different things. Commissioner Runbeck asked what the time frame is for payment of the TARF fees. Mr. Sarnocinski stated that, according to the agreement, he has 30 days, but he would like to have 90 days instead. Commissioner Runbeck asked Mr. Sarnocinski if he is*

*withdrawing his agreement. Mr. Sarnocinski stated that he is not and that he just wants to finish figuring out what he owes. Commissioner Peterson asked Mr. Sarnocinski if he could go to the Commission office in Scottsdale and take care of the money. Mr. Sarnocinski stated that he can do it by telephone once he reviews the records. Lisa Gervase stated that when Mr. Sarnocinski opens his mail he will have a spreadsheet and he can determine whether there are any discrepancies. He has 30 days to pay, but the Consent Agreement can be amended. Commissioner Baker appreciated the health concerns and proposed that Mr. Sarnocinski pay half of the fees owed within 30 days, and then pay the late fees within 30 days after that. Commissioner Peterson stated that this idea makes sense because it would provide additional time to allow any possible discrepancies regarding the amount actually owed that may come to light in the coming days to be dealt with before all of the money is due, thereby reducing the possibility that any refund would need to be made. Commissioner Robinson asked when Mr. Sarnocinski's son became sick. Mr. Sarnocinski stated that it happened in 1999 and he has been paying \$1,000 a month for approximately 5-6 years. He stated that he did not have insurance on his children and that he probably should have declared bankruptcy. Commissioner Robinson noted that Mr. Sarnocinski's TARF violations happened after his son became sick. Mr. Sarnocinski stated that he had a previous complaint in 2002.*

**MOTION:** *To accept proposed resolution with the modification that Ray's Exterminating, Inc. pay one half of the TARF fees within 30 days of the entered date of the Order and pay the remainder of the TARF fees within 60 days of the entered 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 Hartley.*

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

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

*None.*

**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].**

*None.*

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

**A. Christopher Kane - Case No. 2005-015 - Possible reopening Complaint, accepting Consent Agreement & Order, and lifting Suspension**

*Lisa Gervase stated that in August, 2005, the Commission had dismissed without prejudice a pending complaint against Mr. Kane and suspended his applicator license for nonpayment of renewal fees. As it turns out, Mr. Kane was not getting his mail because he had not informed the Commission of his address change. He has since gotten in touch with staff, is in the process of retesting, and wants to honor the previous consent agreement. His employer has already paid the \$100 civil penalty on his behalf.*

**MOTION:** *To reopen complaint number 2005-015, accept the proposed resolution for Christopher Kane's applicator license #030341 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 lift the suspension of Christopher Kane's applicator license #030341, by Commissioner Runbeck.  
Seconded by Commissioner Baker.*

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

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

*None.*

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

*None.*

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

*None.*

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

- A. Licensee's Probation Reporting: Guillermo Sotelo, Applicator License 040825 - Case 2004-120.** Mr. Sotelo did not appear. Tabled until future meeting.

*Commissioner Runbeck asked if an expiration date of Mr. Sotelo's probation was noted when the Commission granted an applicator license pursuant to the consent agreement. Lisa Gervase stated that it would be in November, 2007, but Mr. Sotelo can petition for an early release. Commissioner Baker suggested that maybe after a certain amount of compliant probation served, the Commission can choose to cut down the frequency of Mr. Sotelo's appearances before the Commission as long as staff gets the records indicating that he is being compliant with the terms of his probation. Lisa Gervase stated that the next time that one of these licensees appears that has been fully compliant for several months, she may have a proposal for modifying these types of consent agreements.*

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

*Mr. Sanchez appeared.*

*Lisa Gervase stated that she has received documentation indicating that Mr. Sanchez continues to be compliant with the terms of the consent agreement. He will probably be released from criminal probation next month. She stated that she has an Alcoholics Anonymous ("AA") meeting list and letters from his probation officer and employer every month. Commissioner Baker commended Mr. Sanchez as a model for these types of consent agreements and conditional license grants. He stated that the Commission has made an effort to try to help people out and that it takes cooperation on his end also to make it work. The public realizes that it is getting a good citizen to represent the pest control industry. Lisa Gervase added that the efforts of Mr. Sanchez provides motivation to spend the resources to continue to work with people in these types of situations now and in the future.*

## **XVI. Applicants with Criminal Convictions.**

### **A. Morency, Robert Louis**

*Mr. Morency appeared.*

*Thomas McCormick, II, from General Exterminating, Inc., appeared.*

*Mr. Morency stated that he is on unsupervised probation until October, 2006. Mr. McCormick stated that Mr. Morency has been employed with General Exterminating for 94 days, that he believes in giving people a chance, and to this point so far he would vouch for Mr. Morency. Commissioner Peterson noted that it has been about 4 years since Mr. Morency committed the crimes and asked if he has had any troubles since then. Mr. Morency stated that he passed an intense probation which has 94% failure rate. He stated that he was checked on all the time. Commissioner Runbeck expressed concern with Mr. Morency's criminal record, given the repeated property offenses. She stated that she is concerned about putting him in a position where he has access to people's property. Mr. Morency stated that there is nobody in his life right now who will influence him like he was influenced before. He stated that he has been married for 3 years with and has a 2-year old daughter. He also stated that his wife was his girlfriend and the one in the car at the time that these crimes were committed. Commissioner Runbeck asked if restitution has been paid. Mr. Morency stated that it has. Commissioner Baker asked Mr. Morency why he picked this industry. Mr. Morency stated that he responded to an advertisement in the newspaper and that he likes doing this work. Mr. McCormick stated that Mr. Morency has been doing general pest control until the past week when he has been only a laborer for termite work. Commissioner Peterson asked Mr. Morency what caused him to commit the crimes. Mr. Morency stated that he borrowed a car to reapply at his old job, and that is why he served 8 and half months in jail. He stated that someone else had stolen the car and he used it. Commissioner Runbeck noted, however, that Mr. Morency had a pile of keys in his lap, including a "jiggle key". Mr. Morency stated that there were keys on the floor but that he did not steal the car. He stated that it was a combination of the fact that he had a bad job and the people he was hanging around with, but those people are out of his life now. Commissioner Peterson asked Mr. Morency who is responsible for his actions. Mr. Morency stated that he is, and that he made the decision to get behind the wheel of both vehicles, even though he did not steal them. Commissioner Runbeck asked Mr. Morency what other jobs he has held. Mr. Morency stated that for 2 and a half years he was warehouse manufacturer for a bag-making company, but he was let go during cutbacks.*

*Commissioner Runbeck suggested that perhaps another conditional license grant/consent agreement with probation like the ones implemented for Messrs. Sanchez and Sotelo could be done here for Mr. Morency. Commissioner Peterson*

suggested forming an agreement whereby the Commission could hinge the granting of an applicator license upon being employed in the pest control industry, and that the Commission would receive notification if he is no longer employed. That way the Commission would know Mr. Morency's whereabouts. Lisa Gervase suggested that the matter could be tabled while staff and Mr. Morency try to reach an agreement and bring a proposal to bring to the Commission. Commissioner Runbeck mentioned, however, that Mr. Morency and Mr. McCormick are up against the 90-day initial unlicensed employment time frame. Mr. McCormick stated that he does not have much work right now for Mr. Morency anyway. Lisa Burns stated that it appears that the Commissioners would like to agree to grant an applicator license to Mr. Morency subject to probationary terms. She then suggested some parameters for an agreement, to which the Commissioners and Mr. Morency agreed, to be reduced to a consent agreement for execution.

**MOTION:** To approve subject to the following probationary terms and conditions: that, upon Mr. Morency successfully passing the applicator exam, he shall serve a one-year probationary term during which time he shall notify his employer of the probationary agreement, that his employer shall report quarterly to the Commission regarding Mr. Morency's performance on the job, that Mr. Morency shall notify the Commission within ten days if he changes employers, that he shall notify his new employer of the probationary agreement within three days and ensure within five days that the new employer provides verification to the Commission that they are aware of the agreement, that the new employer then assumes the duties of reporting quarterly to the Commission regarding Mr. Morency's performance on the job, and that with reasonable notice Mr. Morency shall appear before the Commission, by Commissioner Runbeck.  
Seconded by Commissioner Baker.

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

**B. Fountain, Derick James**

*Tabled.*

**C. Robles, Saul Ochoa**

*Mr. Robles appeared.*

*William Stewart, from Advocate Pest & Wildlife Specialist, and his wife, Sandra Stewart, appeared.*

*Mr. Stewart stated that his customers love Mr. Robles and that what Mr. Robles says about the assault incident is in opposition to what is reported, and that it seems like Mr. Robles was acting in self defense. Mrs. Stewart stated that Mr. Robles started work in landscaping and has moved into customer service, doing pest control for almost 90 days. She stated that they wouldn't come all this way to represent just anyone and that they need Mr. Robles in their office. Mr. Robles stated that he is on probation for approximately another 5 months. Commissioner Runbeck noted that Mr. Robles has an excellent report from his probation officer and the urinalyses have been negative. Mr. Robles stated that he has completed counseling for domestic violence. He also stated that he is not married now, and that although he does have contact with his ex-wife as friends, they have both moved on.*

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

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

**D. Poplin, David Eugene**

*Mr. Poplin appeared.*

*Mr. Poplin stated that his employer was unable to be here today. Commissioner Peterson noted that this offense was fairly recent and asked what was going on. Mr. Poplin stated that he is a family man who has been in the pest control industry for 15 years, and is licensed in California and Nevada. He stated that he made a poor decision, he knows it was wrong, and he is facing the consequences for that. He stated that he was in a position in which he was going through some personal issues in his life and had just left employment of two years. He also had a family to support at that point. He stated that he has been married for 14 years and has 3 kids. He stated that he is on parole for 90 days total until next month. Commissioners Peterson and Baker asked if this was just a chance to make some money. Mr. Poplin stated that his sister-in-law made the contact, although he accepted responsibility. He repeated that it was a poor decision, not reflective of his true character. Commissioner Runbeck asked what Mr. Poplin's parole included. Mr. Poplin stated that it involved random drug testing and that none of the tests have been positive. He stated that he is 35 years old now, he experimented over 19 years ago but has never been a user.*

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

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

**E. Hernandez, Hilario Enrique**

*Mr. Hernandez appeared.*

*Commissioner Runbeck noted that this offense occurred a while ago and asked if Mr. Hernandez has had any problems since then. Mr. Hernandez stated that he has not. Commissioner Baker asked if Mr. Hernandez is employed. Mr. Hernandez stated that he is employed with a high school in Marana. Commissioner Peterson asked if Mr. Hernandez has taken any anger management classes. Mr. Hernandez stated that he has and was also on supervised probation. He stated that he has his anger under control now.*

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

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

**F. Weinberg, James David**

*Mr. Weinberg appeared.*

*Commissioner Robinson asked how the relationship is between him and his son. Mr. Weinberg stated that it is good and that they are repairing it. He stated that they talk on the phone often and occasionally see each other. He stated that his son is almost 22 years old. Commissioner Peterson noted that Mr. Weinberg had anger problem and asked him if he went through classes. Mr. Weinberg stated that he did go through classes and that they were very helpful. He also stated that he is now married and his wife is here to support him. Commissioner Runbeck asked Mr. Weinberg if he is writing a book. Mr. Weinberg stated that he is in the process of doing so, and is also working on his second masters degree in business and public planning. He also stated that he has had no problems since the time of the crime. Commissioner Robinson asked Mr. Weinberg why he is interested in pest control. Mr. Weinberg stated that his current employer, Warner Landscape, does weed control work and requested that he become licensed. Commissioner Peterson stated that according to the Commission's substantive policy statement, an applicant with a record like Mr. Weinberg's is not likely to be approved. However, he stated that it is important to judge each applicant based on their own merits. He asked Mr. Weinberg if he has been in similar situations where he could have gotten angry again. Mr. Weinberg stated that while his life has not been stress free, he currently takes medication for bipolar disorder. Commissioner Runbeck asked where his son is living now. Mr. Weinberg stated that he lives in Phoenix and attends the University of Phoenix. Commissioner Robinson asked Mr. Weinberg what field his degrees are in. Mr. Weinberg stated that he has a Bachelor of Animal Science and*

*Microbiology degree and also degrees in Earth Science and Soil Science from Wyoming. He stated that he was a special education teacher for 11-12 years and got a Masters degree for that. He also stated that he is pursuing another degree from Northern Arizona University. Finally, he stated that he had worked in the past in Wyoming for a pest control person at a nursery and that he likes supervising and working in groups.*

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

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

*(Break from 10:35 A.M. to 10:50 A.M.)*

## **XVII. Commission Updates and Reports.**

### **A. Draft Guidelines (Enforcement Response Policy - ERP) for Unlicensed Activity Cases**

*Mike Francis stated that he talked with his fellow supervisors and came up with a draft of a starting point for discussion, especially regarding aggravating and mitigating circumstances. Lisa Gervase added that about a year ago, the Commission asked staff to do some case studies of unlicensed activity cases that they have been handling and to get input from the industry, unlicensed people, etc., and come up with some guidelines. In the interim, the Senate contacted her and would like something in place, or an amendment to the Commission's statutes for landscapers or gardeners. She stated that there have been a number of law changes over the years and perhaps rather than solidifying another change in law, policy would be more appropriate to try for some time before again changing the law. She stated that the legislators seemed amenable to allowing the Commission to have a safe harbor policy, but she has hesitations about doing it as a substantive policy. She suggested that perhaps the Commission can do something as policy on its website that would be honored as something more formal. She stated that the legislators seemed to favor a gardener or landscaper using 5 gallons or less of over-the-counter, ready-to-use product per site. However, that would mean that the Commission would then be taking almost the whole first paragraph out of the enforcement guidelines and not sending a notice letter. Then, the enforcement guidelines would take effect for applications of more than 5 gallons and other types of unlicensed activity. She added that the first licensing exemption for landscapers was in 1985. Commissioner Runbeck asked when the exemption was taken out. Lisa Gervase stated that in 1988, the exemption stayed and an additional exemption was created. In 1993, the landscape exemption was eliminated but the gardener exemption remained. Lisa Burns stated that this happened probably because the*

Registrar of Contractors ("ROC") changed its licensure and regulation of that industry during those times. Lisa Gervase stated that in 1999, the gardener exemption became broader, and in 2003, that exemption was eliminated. Commissioner Runbeck asked how all of this would apply to a situation such as the one on today's agenda that was tabled where clearly the pest control is not incidental. Lisa Gervase stated that this is where they would use enforcement guidelines. Commissioner Robinson stated that he disagrees with the way the Commission is handling unlicensed activity because the people who own the companies are not the ones doing the spraying. Usually it is a 19-20 year old who can't speak English. He also stated that he does not see anything addressed about over-the-counter granules. Pre-emergence is one the of the big kickers with landscape people. He stated that he also gets questions from his neighbors but can't spray legally for them. He thinks he should be able to spray unlicensed if he is not doing it for money. Lisa Gervase stated that if he was using a small amount of non-restricted, ready-to-use granules, he would be able to treat a neighbor's yard, but if he killed the neighbor's plants accidentally, his license could be disciplined. She added that even though someone can do something legally unlicensed, they can still be prosecuted for misuse under the Federal Insecticide Fungicide and Rodenticide Act ("FIFRA"). Commissioner Peterson stated, however, that as licensed applicator, you would have much more to lose. Lisa Gervase stated that the Commission may need to seek direct unlicensed misuse prosecutorial authority, not just as agents of the Environmental Protection Agency ("EPA"). Commissioner Baker agreed with Commissioner Peterson that the legislators should approach the Commission if they want help in changing the law. Commissioner Hartley stated that Roundup at Home Depot is not harmless. He stated, however, that he does not believe that a landscaper needs to have a business license with the Commission. Generally, landscapers are already being supervised by someone such as the ROC. Lisa Gervase stated that out of the approximately 1,500 landscapers licensed with the ROC, only 75 are licensed with the Commission. Commissioner Hartley stated that the landscapers say it is impossible to get a QP license for incidental spraying of weeds because they can't verify 3,000 hours of practical experience. Practically speaking, the guy at the end of the hose is going to do the damage and so that is the guy who needs to be licensed. He stated that it is not hard to get an applicator license, and he thinks landscapers should employ licensed applicators. This will protect consumers and landscapers. The Commission is prepared to license and test people who are applying these products, and he believes that it does not make sense to create any exemption(s). He suggested getting rid of business and QP license requirements. Lisa Gervase stated that this idea was posed, but some feel that they should not have any licensing. Commissioner Peterson said it the best: industry and consumers need to go to the legislators themselves. Commissioner Hartley stated that he thinks that the legislators have been reading too many newspaper articles. Lisa Gervase stated that she gave the legislators all the facts, including a big case here in Tucson where there was \$400,000 in damage. Commissioner Runbeck

*stated that once the legislature decides what it wants, the Commission will follow them. The Commission can provide insight, but the legislators ultimately make the decisions. No matter what, a legislator is going to have a constituent call and say the Commission is not fair. There's always going to be criticism that the SPCC is either doing too much, or when something bad happens, it's not doing enough. Commissioner Peterson stated that if the Commission plays an active role, he thinks they should still have guidelines. Commissioner Hartley stated that the Commission is in a no-win situation. Commissioner Robinson stated that he agrees with Commissioner Hartley. He thinks the QP may be the biggest ditch the Commission has dug for itself and that they are missing the boat by not teaching applicators how to read labels properly. He cited cases where over-the-counter products are mistaken for something else. Commissioner Peterson stated that in the interim, the Commission needs to enforce the law. Commissioner Baker suggested creating some hypothetical scenarios and seeing how they would play out. Mike Francis stated that when staff put this draft together, they tried to look at past experience, etc. in determining aggravators and mitigators, including looking at granules, type of application equipment, etc., and also considered many other scenarios.*

*Further discussion/decision tabled for next meeting to provide Commissioners more review time.*

#### **B. Possible Future Law Changes**

*Lisa Gervase stated that she has not yet found a sponsor for a bill of proposed law changes, but she figures she will probably will get one from the Senate. She wants input from the Commissioners with regard to a public utilities exemption. She stated that most of her feedback is from people who have been a part of stakeholder meetings. One of the "public utilities" emailed her and told her that they are an investor-owned company, not a public utility. Who constitutes a utility? She stated that she will likely substitute something for the word "public". The company also seemed concern about the role of the QP. They would have a QP but want to limit the duties of supervising, etc. to only during times when doing pest control services. She does not have any more meetings scheduled and needs to file the bill in a few weeks. She stated that sometime in the spring, it might be helpful for the Commissioners to show up for legislative hearings.*

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

*Lisa Gervase stated that staff has decided to restructure the rules so that they make more sense. Probably in about a month, after a decent draft of the proposed rules is ready, she will have the first stakeholder meetings.*

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

*Mike Francis stated that the complaints are continuing to move along very well. Right now, nothing is over 6 months old. The process might slow a little bit next month due to recent circumstances with staff.*

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

*Mike Means, from Metro Institute, appeared.*

*Commissioner Baker asked if there are any questions in particular that pose problems or any questions that seemed to be answered always correctly or always incorrectly. Lisa Gervase stated that that is being tracked. Mike Francis added that he reviews the tests himself. It seems like examinees get the tough ones right and miss the ones that were right out of the study material because they go too fast. Time isn't the issue though, as they have plenty of time to take the test. Commissioner Robinson asked what the top scores are and how many score between 95 and 98. Mr. Means stated that they produce a bell curve graph showing how many people pass for every 5-point increment from 0 to 100. Usually, for those who fail the exam, there is one area of the exam that they totally bomb out.*

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

*Lisa Gervase stated that the Commission has a new Accounting Director, Charmayne Skow, who has a degree in Accounting. Once she gets up to speed, staff will have an updated report.*

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

*Lisa Gervase stated that the current number of active cases (57) is the lowest it has been in a couple of years, although there are still a lot of old cases to clean up. 32 cases have been sent to the Attorney General's Office for collections and there are 122 old cases remaining from 1989-2001. Staff member Manny Jacobo has been doing an excellent job cleaning up the old cases. Lisa Gervase stated that she either wants cases closed, at the Attorney General's Office for collections, or complied with and closed by the end of the year.*

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

*Lisa Gervase stated that the judge's stay order was lifted on September 30, so as of October 1 Kilian's Termite and Pest Control can only perform pest control in the "B1" category, for which they do have an active QP. The plaintiff has filed an*

opening brief, the Commission will be filing a response brief and the judge will then make a decision.

## **XVIII. Approval of Minutes**

### **A. September 8 & 9, 2005 (regular session) Minutes**

**MOTION:** To approve the September 8, 2005 regular session Minutes by Commissioner Runbeck.  
Seconded by Commissioner Robinson.

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

Commissioner Peterson noted that on page 616 of the Commission book materials (page 6 of the September 9 regular session Minutes), it says that Mr. Kosinski “works” for the Colorado Department of Agriculture. Instead, it should stated that Mr. Kosinski “worked” for the Colorado Department of Agriculture.

**MOTION:** To approve the September 9, 2005 regular session Minutes by Commissioner Baker.  
Seconded by Commissioner Runbeck.

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

### **B. September 9, 2005 (executive session) Minutes - emailed to Commissioners on 9/30/05)**

**MOTION:** To approve the September 9, 2005 executive session Minutes by Commissioner Runbeck.  
Seconded by Commissioner Baker.

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

### **C. Continuing Education Minutes**

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

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

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

**Current Proposed dates**

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

**December 9, 2005**

**January 13, 2006**

**February 10, 2006**

**March 10, 2006**

**April 14, 2006**

**May 12, 2006**

**June 9, 2006**

**XX. Adjournment - 12:00 p.m.**

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

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