

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

**COMMISSION MEETING
THURSDAY, November 10, 2005 - 9:00 A.M.
MINUTES**

I. Call to order, Commissioner roll call

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

Commissioners Absent: Commissioner Debbie Runbeck

Staff Present: Eric Bauer, Rosemary Celaya, Vince Craig, Mike Francis, Lisa Gervase, Carissa Kittleson, Charmayne Skow, Robert Tolton, Helen Turner, Ron Walker, and Assistant Attorney General M. Elizabeth (Lisa) Burns

II. Call to the public

None.

III. Communication with Commissioners

None.

IV. Summary of Current Commission Events, Activities, Notices

Business and QP License Renewals: ENCOURAGING ALL TO RENEW ON-LINE.

The online renewal system became available on November 1 at 6:00 a.m., and business licensees and qualifying parties should have received their hard copy renewal applications in the mail by that time. Staff worked diligently in getting those out in the mail with the help of one industry member's high-school aged son, who volunteered as part of a class requirement. Trevor Turcott, from Amera Sun City

Pest Control, Inc., was the first person to renew a business and qualifying party license. Of the qualifying parties and businesses that have renewed so far, approximately 50% of those renewals have been done online. Staff encourages online renewals because it saves time in processing the renewals. Licensees can go to a public library or use the Commission's customer service terminal in the front lobby of the Commission office if they do not have internet access.

Watch Web site for status of *Proposed Law and Rule Changes*. www.sb.state.az.us

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

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

An Initial Licensure Training ("ILT") class was conducted by the Commission this week in Flagstaff. Yesterday, also in Flagstaff, the Commission conducted a Continuing Education ("CE") class that was well attended, with 65 people. Mike Francis, Vince Craig and Kellie Smith did excellent jobs.

Lisa Gervase acknowledged the Commission's new and "behind the scenes" staff members who many Commissioners and industry members have not had the chance to meet. Charmayne Skow, the new Director of Administration and Finance. She comes from the Arizona Department of Administration, where she just spent a year handling administrative and accounting matters. Rosemary Celaya is the new Executive Assistant. She was a Program Project Specialist for the Arizona Department of Agriculture, and spent two years with a private software company. Carissa Kittleson is the new Accounting Technician, handling the myriad of detailed tasks necessary to properly process money handling. Helen Turner has been with the Commission for over a year now, and many industry members have worked with her. She helps Jean Keating and Robert Tolton with licensing matters, helps with the ILT and CE classes processing, and many other projects.

The Commission is actively looking for inspectors. Interested people should leave their resumes with Mike Francis.

In the most recent edition of the Arizona Business Gazette, Lady Bug Pest Control and Lisa Miller were featured.

V. Consent Agenda

A. Applications for New Business License

Qualifying Party

- 1. Doherty, Brian Scott** Irish Pest Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)
- 2. Brown, III; Albert J.** Beard Pest Control (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)
- 3. Beal, Jr.; Gary Lamoyne** Maximum Exterminating, 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)
- 4. Josephson, Kyle Sperry** Sperry Pest Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)
- 5. Cons, Jr.; Joseph Robert** Allscape Environmental, LLC. (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)
- 6. Pearce, Terry Ray** Nu-Treat Pest Services, LLC. (Activating Qualifying Party for new business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)
- 7. Wagner, Robert Michael** Nu-Treat Pest Services, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)

- 8. Michel, Ryan Troy Defense Pest Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)

- 9. Johnston, Janet B. Johnston's Pest Solutions (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)

- 10. Lisonbee, Darrell L. Pest-X, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)

- 11. Mollerup, Kevin Regency Pest & Termite Services, 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)

- 12. Gloria, Peter Alfonso Convenient Termite & Pest Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

B. Applications to activate Qualifying Party for Existing Business License

- 1. Hall, Ronald Paul Western Exterminator Company (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

2. **Nabozny, Joseph Daniel** **Prime Pest Control, LLC. (Activating Qualifying Party for existing business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)**
3. **Watkins, Billy Wayne** **Safeguard Pest Control, Inc. (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health)**
4. **Sheffield, Allen Nalder** **Preventive Pest Control, LLC. (Activating Qualifying Party for existing business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)**
5. **Busch, Donald** **ABC Pest Control, Inc. (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health)**
6. **Bradney, Gerald Kevin** **City of Mesa: Parks (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health)**
7. **Pisano, Jr.; Napoleon O.** **Lawn Doctor Of Mesa (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control)**

C. Applications for Qualifying Party License

1. **Janz, Mark Paul** **"B5" (Turf & Ornamental Horticulture)**
2. **Olson, Karl Ed** **"B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture)**
3. **Vollmer, Mary Lyn** **"B5" (Turf & Ornamental Horticulture)**
4. **Williams, Thomas Sayer** **"B3" (Right of Way & Weed Control)**

- 5. Hixon, Mark Scott **“B2” (Control of Wood-Destroying Insects) and “B8” (Wood Destroying Insect Inspection)**
- 6. Pedroza, Eliberto Rivas **“B1” (General Pest & Public Health)**
- 7. Sindelir, Jessy Ryan **“B3” (Right of Way & Weed Control) and “B5” (Turf & Ornamental Horticulture)**

Pulled.

Commissioner Peterson stated that the cover sheet for this applicant notes that he has over 10,000 hours of experience in each of the two categories in only a 35-month span, which would average out to about 68 hours per week. Robert Tolton stated that this is a typo that staff did not catch. Actually, the applicant has over 3,200 hours in the “B3” category and over 3,500 hours in the “B5” category.

MOTION: *To approve QP testing in “B3” and “B5” by Commissioner Baker.
Seconded by Commissioner Leavitt.*

VOTE: *6-0 Motion carried.*

- 8. Romero, Kenneth M. **“B1” (General Pest & Public Health), “B3” (Right of Way & Weed Control) and “B5” (Turf & Ornamental Horticulture)**
- 9. Holmes, Jr.; Larry C. **“B1” (General Pest & Public Health), “B2” (Control of Wood-Destroying Insects) and “B8” (Wood Destroying Insect Inspection)**
- 10. Sardina, Salvatore **“B2” (Control of Wood-Destroying Insects) and “B8” (Wood Destroying Insect Inspection)**

Pulled.

Commissioner Peterson questioned the experience hours. Evidently the employment start date for one employer was a typographical error. Robert Tolton stated that because Mr. Sardina had to go to several different employers to get practical experience verification, it was quite an effort to get

the total number of hours. He has about 3,000 hours in "B2" and about 3,000 hours in "B8". Mr. Sardina was a temporary qualifying party for approximately two months, and this experience is counted in the total number of hours. Mr. Sardina's company has a current, valid qualifying party working for them.

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

VOTE: 6-0 *Motion carried.*

11. Ingerston, Nicholas P. "B1" (General Pest & Public Health)

D. Business License Name Change Requests

None.

End of Consent Agenda

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

VOTE: 6-0 *Motion carried.*

Commissioner Baker stated that he is concerned with applicants who have their practical experience verified by a family member, though he does not know what the Commission can do about it. Lisa Gervase stated that this is one industry where there are a lot of family businesses, so that is why this might happen quite a bit. Unless staff has some other information that would make them doubt the verification, they tend to accept it. If necessary, staff can always get other information to verify or corroborate the family member's verification.

VI. Applications not on Consent Agenda

A. Request for Temporary Qualifying Party License Renewals

1. Smoot, Michael "B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)

Mr. Smoot appeared.

Commissioner Robinson noted that it appears that Mr. Smoot is struggling to get a qualifying party for his company. Mr. Smoot affirmed this. He stated that since the last qualifying party left, his company has been seeking a full-time qualifying party, not just "renting" one. He stated that he is interviewing two people right now and will be making a decision and submitting the paperwork next week. Robert Tolton stated that Mr. Smoot's temporary qualifying party license expires on November 13. Commissioner Peterson asked if Mr. Smoot is thinking about getting his own qualifying party license. Mr. Smoot stated that he is currently testing for the core category and will then broaden his license to the termite categories. He stated that he does have the requisite experience. Commissioner Robinson asked if there was a monetary issue with his last qualifying party. Mr. Smoot stated that he was contacted by the Commission and told that the previous qualifying party had withdrawn. When Mr. Smoot attempted to contact him, he would not return the phone calls. Commissioner Baker noted that this is Mr. Smoot's first extension request.

MOTION: To approve a 60-day temporary QP renewal by Commissioner Baker.
Seconded by Commissioner Hartley.

VOTE: 5-1 Motion carried (Commissioner Robinson opposed).

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

None.

C. Applications for Qualifying Party License

None.

VII. Complaints

A. PK'Z Pest & Termite Control (BL)/Patrick Ellis (President/QP/APP) - Case # 2005-032

Commissioner Fraker asked if this is Mr. Ellis's second pretreat violation. Vince Craig stated that there was a prior violation where Mr. Ellis failed to apply the correct amount of Termidor. Commissioner Fraker asked if Mr. Ellis is on a reporting status with the Commission. Vince Craig stated that he is

and that this is how this violation was discovered by Kellie Smith, the Commission's northern Arizona inspector. Commissioner Baker asked if the enforcement response guidelines were used to arrive at the proposed settlement. Vince Craig stated that it was. Commissioner Baker asked if the homeowner was notified about this. Vince Craig stated that the homeowner was not notified because it was a newly constructed home. Commissioner Baker asked why the penalty was only \$300. Vince Craig stated that the values could have been higher had staff not requested an additional treatment and warranty. Staff viewed making the consumer whole as more important than the monetary penalty. The Commission has approved this as a mitigator. Commissioner Robinson asked if the retreatment will be monitored. Vince Craig stated that it will. Commissioner Baker asked how good the warranty is, stating that if he was the consumer, he wouldn't want to be stuck with a bad pest control company. Vince Craig stated that other companies aren't likely to accept someone else's warranty. Commissioner Fraker stated that he is irritated by this because Mr. Ellis, as the qualifying party and applicator, had the excuse that he doesn't understand the depth of foot issue with pretreats. Therefore, he shouldn't be doing pretreats. Also, this is only one monitor. He may have shorted other sites too. Commissioner Baker stated that at least the continuing education requirement should be beneficial. Commissioner Fraker stated, however, that the CE hours are not related to the moral character issues here regarding taking money and not doing the job. He also added that he doesn't think that Mr. Ellis should be doing pretreats and that the Commission should add more restrictions to the monitoring. Today's discussion is transcribed in the meeting Minutes and can be included in the file of any subsequent cases. And, the sentiment of today's discussion can be contained in a cover letter with this consent agreement. The cover letter could convey that "the Commission is extremely concerned about the violation, especially given that this case is a second offense. If there is a future similar violation, a more severe penalty will likely be imposed." Commissioner Leavitt asked if the civil penalty could be amended to be more than \$300. Vince Craig stated that the whole purpose of having the additional treatment and two-year warranty was to protect the consumer, but he added that staff can go back to the table and look at the monetary aspect if the Commission so chooses. Commissioner Fraker asked what the civil penalty would be if no mitigators were taken into consideration. Vince Craig stated that it would be \$600. Lisa Gervase added that the Commission could also choose to disagree with the penalty lying more with the applicator license and could shift more responsibility to the qualifying party or business license. Commissioner Peterson stated that he does not want to take out the consumer benefit portion but he thinks that Mr. Ellis should still be required to take CE classes and not have the civil penalty reduced because of it. To modify the civil penalty, they could put it to 10 points instead of 8 in the

guidelines, which would raise the civil penalty to \$500. Commissioner Baker expressed concern that the Commission does not know who the consumer is. A new owner might not be notified. Mike Francis stated that information comes from paperwork that the builder supplies with the purchase. Vince Craig added that it is within staff's means to have the Northern Arizona inspector pay a visit to make sure that the consumer is informed. Commissioner Peterson asked if staff would need to go back and talk to Mr. Ellis about these amended terms. Lisa Gervase stated that the Commission can approve the terms upon Mr. Ellis accepting these extra parameters.

MOTION: *To accept proposed resolution with the amendment that the civil penalty against the applicator be increased from \$300 to \$500 and that the Consent Agreement include a cover letter indicating the Commission's concern, 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 Leavitt.*

VOTE: 6-0 *Motion carried.*

B. Conn Pest Control-Prescott, LLC. (BL)/Arnold Shelton (Member/QP)/Zachary Roush (APP) - Case # 2005-035

MOTION: *To accept staff's recommendation to dismiss the complaint against the business license and qualifying party license. Also, to dismiss without prejudice the complaint against Zachary Roush and suspend his applicator license for nonpayment of renewal fees, by Commissioner Fraker.
Seconded by Commissioner Hartley.*

VOTE: 6-0 *Motion carried.*

C. James Kevin Gowin, Jr. (APP) - Case # 2005-037

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.

D. TruGreen/Chemlawn, Inc. (BL)/Edward Loreng (President/APP) - Case # 2005-027

Mr. Loreng appeared.

Commissioner Peterson stated that 22 months is a long time to be performing weed control services without a qualifying party license. Mr. Loreng stated that he lived in Bangor, Maine and was told that he would be able to be "taken care of" under another TruGreen company's qualifying party, but that turned out to be fictitious. He now has himself as a qualifying party.

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 Leavitt.

VOTE: 6-0 Motion carried.

E. Timothy Gibbons (APP) - Case # 2005-057

Commissioner Fraker was disturbed that Mr. Gibbons lied to Commission inspectors during the investigation. Commissioner Peterson stated that where he works, at the Department of Agriculture, it is a violation to lie to an inspector. Lisa Gervase stated that the closest violation the Commission has regards making false or fraudulent records or reports, or possibly lack of moral character. She added that the circumstances of this case will be noted in the Commission's licensing database if he applies for a QP license.

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 Robinson.

VOTE: 3-2 Motion carried (Commissioners Fraker and Leavitt opposed, Commissioner Hartley recused).

F. Ronald Morales (APP) - Case # 2005-043

Mr. Morales appeared.

Mr. Morales stated that he and Vince Craig had various disagreements when discussing this case in settlement conference. He stated that he owns and operates a home maintenance business and has not applied any chemicals and was not pursuing pest control. He stated that he consults customers and tells them how to prevent problems and discusses entry points to repair. He stated that he had business cards with his pest control license listed on them, and that sometime in the future he would probably consider integrating a pest control business with his home maintenance business. Commissioner Robinson asked what Mr. Morales did for Truly Nolen. Mr. Morales stated that he was an applicator. Commissioner Peterson asked why, when Commission staff showed him a video tape of his application, Mr. Morales said he was just using salt and water. Mr. Morales stated that he sprayed down the walls and sidewalks. Commissioner Peterson asked why a customer canceled a contract with another pest control provider so that the customer could then deal with Mr. Morales. Mr. Morales stated that all of his customers have had his own number and have left Truly Nolen and called him. Sometimes he refers them to Conn Pest Control. Commissioner Baker asked why there is a picture of an Epsom salt container in his truck. Mr. Morales stated that he uses it as a fertilizer. Commissioner Fraker asked how long Mr. Morales worked for his previous employer. Mr. Morales stated that he worked for Truly Nolen for two years and worked for Terminix for four years prior to that. He stated that he has been doing his maintenance business for a long time, mowing lawns and raking leaves. He has 5 children and needs the extra income, but is not doing pest control. Commissioner Baker asked how Mr. Morales does rodent control. Mr. Morales stated that he inspects eaves and attic spaces, tells people what damage has been done and gives them their options. Commissioner Fraker asked if Mr. Morales is passing out business cards advertising rodent and bee control. Mr. Morales stated that he has changed his business cards to reflect that he is merely doing consulting. He stated that a lot of the older people he helps out don't know the difference between bees and wasps. Commissioner Peterson questioned why Mr. Morales was wearing gloves when he told inspectors that he was only applying fertilizer. Mr. Morales stated that he had cuts and blisters on his hands. Commissioner Leavitt asked how Mr. Morales controls bees and wasps. Mr. Morales stated that he doesn't and that he only consults. Commissioner Fraker asked if Mr. Morales has ever applied pesticides since he left his last employer. Lisa Gervase stated that there is at least one witness statement from a former Truly Nolen customer that says that "Truly Nolen raised their prices and Ron offered a better deal...He is still

doing pest control for us.” Mr. Morales denied doing pest control. Vince Craig stated that a health care facility also had a contract with Truly Nolen and dropped it to hire Mr. Morales. Mr. Morales stated that the health care facility/retirement nursing home was trimming the fat off of its budget and Mr. Morales was hired as an independent maintenance person. He stated that he wipes down the chairs, cleans, and weed eats. Commissioner Baker stated that he thinks that Mr. Morales was in the pest control business and needs to be licensed. Mr. Morales stated that he has never bought pesticides. Commissioner Peterson asked if Mr. Morales is disagreeing with the proposed settlement. Mr. Morales stated that he does not have \$500 as he has been out of work for two months and has been working the graveyard shift at Walmart. Commissioner Peterson recommended approving the proposed settlement and then moving forward with it. Commissioner Fraker asked what would happen if Mr. Morales doesn’t sign the consent agreement. Lisa Gervase stated that the case would go to hearing.

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

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

(Break from 10:30 A.M. to 10:45 A.M.)

G. Xavier Martin Marquez, Applicator License No. 991073 (B1 General Pest)

MOTION: To enter Executive Session to obtain legal advice by Commissioner Fraker.
Seconded by Commissioner Baker.

VOTE: 6-0 Motion carried.

(Executive Session from 11:05 A.M. to 11:15 A.M.)

Bruce Tennenbaum, from Arizona Pest Control Company, appeared.

Lisa Gervase stated that the Commission received some information this week alleging that Mr. Marquez, who previously worked for Arizona Pest Control Company, stole property from some of the customers. Mr. Marquez has been arrested in Pima County. Mr. Tennenbaum stated Mr. Marquez

worked for him for about 7 years. When he found out about this, he immediately suspended Mr. Marquez and hired a private investigator. Mr. Tennenbaum stated that one of his customers called him and was adamant that Mr. Marquez had made a couple thousand dollars worth of charges on her credit card. Another customer called and said there were some other charges a month later on a credit card. They got Mr. Marquez on video tape. He was writing personal checks to cover the credit card that he stole. Mr. Tennenbaum also got a call from a customer's next door neighbor who they also service. The neighbor saw Mr. Marquez in the customer's house and car. Mr. Marquez got his identity: social security number, driver license number and date of birth, and opened credit card account and wrote checks to himself. Overall, there were a total of 6 customers victimized. The police did seize Mr. Marquez's computer. Mr. Tennenbaum notified every one of his customers because Mr. Marquez had keys to these properties. Ron Walker stated that he spoke to customer Patricia Logue yesterday, who said that on August 1, 2005 her overdraft account had been activated. Her bank cards were missing from a drawer after a service by Mr. Marquez. She suspected that Mr. Marquez had stolen the cards and used them. Approximately \$4,000 of advance charges were made for rental property that she rarely used. Ron Walker stated that he also spoke to George Weller, who said that after a service by Mr. Marquez there were approximately \$800 in charges made to one of Mr. Weller's rarely-used cards and that the last time he saw the card was when it was on the table when he was paying bills. Mr. Tennenbaum added that his company employs hand-held computers that tells Mr. Marquez's time in and time out of houses.

MOTION: To summarily suspend Mr. Xavier Martin Marquez's applicator license pursuant to A.R.S. §32-2329, by Commissioner Baker.
Seconded by Commissioner Hartley.

VOTE: 6-0 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].

A. Litchfield Termite Division, LLC, dba Litchfield Termite Division, Business License No. 2483, and Kenneth Rael, Applicator License No. 880394 B1 B2 B8 - Case No. 2004-056

Lisa Gervase stated that in this case a consent agreement was entered but Mr. Rael has been noncompliant with the civil penalty payments, so staff is recommending that his applicator license be suspended.

MOTION: *To suspend the applicator license for non-payment of civil penalties in Case No. 04-056, by Commissioner Baker.
Seconded by Commissioner Robinson.*

VOTE: 6-0 *Motion carried.*

B. Charles Schulz, Applicator License No. 020928 B1 B2 B8 - Case # 2004-085

Lisa Gervase stated that in this case the Commission issued a Decision and Order and Mr. Schulz has not been complaint.

MOTION: *To suspend the applicator license for non-payment of civil penalties in Case No. 04-085 and non-payment of renewal fees, by Commissioner Baker.
Seconded by Commissioner Leavitt.*

VOTE: 6-0 *Motion carried.*

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.

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. Robert J. Iovinelli, Applicator License # 050756 - Case No. 2005-030.

Mr. Iovinelli appeared.

Lisa Gervase stated that Mr. Iovinelli is appearing today to fulfill his quarterly reporting requirement with the Commission. She stated that she has a record from his current employer, Bircher Exterminating, stating that he is employed as a full-time applicator and that his performance has been excellent and he can work unsupervised. Mr. Iovinelli's probation officer also made a verbal statement that he is doing well. Commissioner Peterson asked Mr. Iovinelli how everything is going. Mr. Iovinelli stated that work and his personal life are going well. Commissioner Baker expressed appreciation to Lisa Gervase for making the special efforts to work with people who are trying to get a second chance, stating that as a result they have been forthcoming and positive.

XVI. Applicants with Criminal Convictions.

A. Fountain, Derick James

Mr. Fountain appeared.

Mr. Fountain stated that he was working for one company and, though he is not working for anyone right now, he wants to try again with another company.

MOTION: *To deny based on conviction of a felony, the nature of the crimes and potential threats to consumers, by Commissioner Hartley.
Seconded by Commissioner Baker.*

VOTE: *6-0 Motion carried.*

B. Castro, Jorge Armando

Mr. Castro appeared.

Robert Tolton stated that about a half hour ago Mr. Castro provided him with two letters of recommendation regarding the nature and length of his work. Mr. Castro stated that he applied and came before the Commission last year and was told that he needed more time to develop a clean track record and that he should come back in a year. Commissioner Peterson noted that the offense occurred back in 2000. He asked if Mr. Castro has had any criminal problems before or since then or has had any other problems with the law. Mr. Castro stated that he has not. The Commission commended Mr. Castro for pursuing an applicator license and coming back to the Commission after having another year of rehabilitation and a clean record.

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

VOTE: *6-0 Motion carried.*

C. Berry, Kyle Foremaster

Pulled from the agenda.

D. Antinarelli, Ian Joseph

Mr. Antinarelli appeared.

Marc Watts, from Sexton Pest Control, Inc., appeared.

Commissioner Peterson noted that the offense happened back in 1998. Mr. Watts stated that Mr. Antinarelli has been a valuable employee for three years. Commissioner Peterson asked if Mr. Antinarelli has had any problems with the law before or since the offense. Mr. Antinarelli stated that he has not. He stated that he took the blame for using someone else's stolen cell phone and turned himself in and got probation. He admitted that what he did was wrong and he took full responsibility for his actions. Commissioner Fraker asked what job Mr. Antinarelli is performing now. Mr. Antinarelli stated that he trenches around the house before an applicator sprays and then he fills the trenches afterwards.

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

VOTE: *6-0 Motion carried.*

XVII. Commission Updates and Reports.

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

Lisa Gervase stated that just about all of paragraph A, where staff would propose sending an education notice letter, would go away if a proposed law change regarding a safe harbor exemption is passed. Then the analysis would start at paragraph B regarding whether to open an inquiry and investigate. She stated that she does not think that potential aggravators or mitigators would be affected by potential law change(s). The proposed law change idea came about only last week after being at the Legislature. Commissioner Baker asked if the Commission can conduct a trial period. Lisa Gervase stated that former staff member Jason Aanderud had come up with the scenarios and that staff has been trying to see how they would play out. Commissioner Robinson asked if there are there restricted-use products ("RUPs") that can be purchased over the counter. Mike Francis stated that, at least at do-it-yourself stores, there are not. They have to be sold by a licensed seller. If someone attempts to sell an RUP to an unlicensed person, then he/she would be in violation of state and federal laws. Staff included RUPs as an aggravating factor in case people still obtained them illegally and used them. Commissioner Peterson stated that the guidelines look reasonable to him. Lisa Gervase stated that staff will add clarifications based on the questions of the Commissioners. Commissioner Peterson asked if fumigants are included in these guidelines. Mike Francis stated that fumigants are included, as they are RUPs. The Commission acknowledged that changes to the guidelines and law can be pursued in the future as the need arises.

MOTION: *To accept the Guidelines (Enforcement Response Policy - ERP) for Unlicensed Activity Cases with minor changes expressed today, by Commissioner Hartley.
Seconded by Commissioner Baker.*

VOTE: 6-0 Motion carried.

B. Possible Future Law Changes

*Andy Weber, from S O S Exterminating, Inc., appeared.
Bruce Tennenbaum, from Arizona Pest Control Company, appeared.*

Lisa Gervase highlighted the changes since the last draft. She then gave a brief legislative history about the weed control licensing exemption over the years. Page 10 of today's draft says that a person conducting outdoor weed control would not need to be licensed if "a) five gallons or less of total mixed liquid herbicide is used

per site or per job, or the weed control is on a residential site of one acre or less when using a nonliquid herbicide or when the liquid amount cannot be determined; b) the herbicide is a nonrestricted product purchased over-the-counter; c) the label and labeling directions, and the Commission's laws and rules are followed." She stated that the Commission has to think about all the possible scenarios of weed control work. Commissioner Robinson asked how a hose proportioner would fit into this language. Mike Francis added that it is tough to measure 5 gallons or less. Lisa Gervase asked if the one-acre idea would work if the Commission can't determine the measurement and whether a liquid is being used. Commissioner Hartley asked if landscaping is a voluntarily licensed occupation. Lisa Gervase stated that a landscaper needs to be licensed with the Registrar of Contractors ("ROC") if performing jobs over \$750. They also have to pay workers compensation and get a tax transaction privilege license, among other possible legal requirements. Lisa Gervase stated that there are lots of people who don't have to be licensed because their jobs are under \$750. The goal is to keep it simple and enforceable. Commissioner Hartley stated that if this exemption is written into law, however, it will become a regulator's nightmare. Lisa Gervase stated that it is a regulator's nightmare right now.

Mr. Weber asked, if we have this exemption for weed control products purchased over the counter, what is to stop this from going into other forms of pest control? Lisa Gervase stated that from 1985-2003, when there was exemption, there never were any concerns about it going past weed control. If it arises, the Commission will deal with it then. The proposed language is only for outdoor, ground weed control. Commissioner Peterson thinks that what Lisa Gervase has drafted is good, although he thinks that the liquid aspect needs to be more specific. Lisa Gervase stated that over the years the Commission has not had direct authority over unlicensed people for misuse violations-they can only use misuse as an aggravating circumstance. The language that she has drafted in this proposed law change could change this and give such direct authority to the Commission. The Environmental Protection Agency's ("EPA") whole concern is misuse. The EPA says that the Commission needs direct statutory authority over unlicensed misuse cases. Commissioner Fraker asked if there is any way to limit or put some onus on larger companies. Lisa Gervase stated that the big ones have to be licensed by the ROC anyway.

Regarding public utilities, Lisa Gervase stated that she changed the wording. Some utilities are privately-owned. The goal is to include all utilities regulated by the Corporation Commission.

Regarding business licensees, Lisa Gervase stated that on page 13, paragraph (I), there is draft language about what happens to a sole proprietor's business license when the sole proprietor dies. California law allows a surviving spouse one year to

continue the business only for the purpose of winding up existing business and not for getting new customers, but the current draft does not include this limitation.

Regarding qualifying parties, Lisa Gervase stated that on page 15, number 2, a QP has to be readily available and physically present, but if there is an emergency they have to have plan for someone else to take over. She changed the language to allow documentation from a licensed health care practitioner who is not necessarily from Arizona. Lisa Gervase stated that it is important that a QP's duties are met if a QP does become unavailable in an emergency situation.

Regarding the laundry list of activities that constitute violations, Lisa Gervase suggested that under number 2 (false or fraudulent records or reports), maybe they can include "making false statements to Commission staff". Maybe they can also add a moral character clause.

Regarding violations that merit more than a mere Administrative Warning against a business licensee, Lisa Gervase stated that on page 20, item 18, she questioned holding a business licensee responsible for failing to make an inspection of an entire structure before beginning work or providing an opinion. She asked, however, what, if anything, should be required of a business licensee if a customer doesn't want an inspection. Commissioner Fraker stated that certain labels require it but some don't. Commissioner Peterson asked if there are there times when you would go out and do a partial inspection. Mr. Tennenbaum stated there probably are not. Commissioner Fraker stated that you need to check the inside and outside of every structure before doing work on a property, adding that he has run into cases where certain product labels require full inspections. Commissioner Leavitt asked if item 18 is already covered in some of the laws. Commissioner Fraker stated that it is covered in a wood report but not in other scenarios. Mr. Weber stated that his company has looked at a house and could tell right away that they didn't want to deal with the house. He wondered why, in such a case, his company would still have to do a full inspection. Lisa Gervase stated that Mike Francis just pointed out on page 22 that in A.R.S. §32-2323(A) it says that a business licensee shall not begin work or issue documents expressing an opinion until an inspection is done. Commission staff has interpreted this as meaning that a complete inspection must be done. Commissioner Hartley asked what the word "complete" means, stating that different customers have different ideas about what a complete inspection is. He stated that he doesn't tear up walls to inspect, but some people do want him to take up the carpeting or move heavy items. Commissioner Peterson stated that they use the word "entire". Lisa Gervase stated that they interpret "entire" as complete and a visual, not necessarily moving items. Commissioner Peterson stated that he does not see any compelling reason to include this language.

Commissioner Hartley expressed concern about the definition of the term “pest control services”, that perhaps it is too broad when it comes to requiring a license within 90 days of providing services, as opposed to 90 days from applying pesticides.

Commissioner Hartley stated that he does not understand the timing issues involved with obtaining CEs in the last 12 months. Lisa Gervase stated that they are not changing anything but rather trying to have the law mirror reality of allowing 6 hours to be used in 12 months for one QP and one Applicator renewal. Staff does not accept hours past 12 months.

Lisa Gervase stated that Senator Barbara Leff has agreed to sponsor the Commission’s bill. The hope is to not have any more changes unless there is an emergency, as this is a very tedious process. Commissioner Peterson stated that they can continue to make modifications, but he thinks this is as good as it is going to get. Lisa Gervase stated that this item will continue to be on the agenda every month.

MOTION: *To move forward with this package provided that the Commission has continuous input, by Commissioner Baker.
Seconded by Commissioner Leavitt.*

VOTE: *4-2 Motion carried (Commissioners Robinson and Hartley opposed).*

C. Possible Future Rule Changes

D. Complaint Status Log

E. Computer Based Testing “CBT” Status and Statistics

Mike Francis stated that staff has not yet incorporated a bell curve on these statistics because staff still needs to make some logical interpretations. At the next meeting staff should have something more concrete.

F. Expenditure Report - separate handout or verbal report

Lisa Gervase stated that the Commission has expended 10.3% of its annual budget per month over the first four months of this fiscal year.

G. Case Status Report

Lisa Gervase stated that there are approximately 65 active cases. Roughly 37 cases totaling \$46,000 are at the Attorney General's Office for collections, and approximately 64 cases still need to be sent there. 51 old cases are being closed. Fewer than 10 cases involve current licensees where confirmation of compliance with old orders is still in process. Thanks go to legal assistant Manny Jacobo for his work on cleaning up old cases. Manny recently passed the Arizona Bar Examination.

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

XVIII. Approval of Minutes

A. October 14, 2005 (regular session) Minutes

MOTION: *To approve the October 14, 2005 Minutes by Commissioner Hartley.
Seconded by Commissioner Baker.*

VOTE: *4-0 Motion carried (Commissioners Fraker and Leavitt abstained).*

B. Continuing Education Minutes

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

VOTE: *6-0 Motion carried.*

XIX. Scheduling of future meetings/agenda items

Current Proposed dates

December 9, 2005 - *Commissioner Leavitt's final meeting.*
January 13, 2006 - *Commissioner Robinson's final meeting.*
February 10, 2006
March 10, 2006
April 14, 2006
May 12, 2006
June 9, 2006

July 14, 2006

XX. Adjournment - 1:05 p.m.

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

VOTE: 6-0 *Motion carried.*