

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

**COMMISSION MEETING
FRIDAY, December 9, 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, Debbie Runbeck and Jack Peterson

Commissioners Absent: None

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

★Acknowledgment of Commissioner Leavitt's service as a Public Member on the Arizona Structural Pest Control Commission

Commissioner Peterson presented Commissioner Leavitt with a plaque in appreciation of her service on the Commission from May through December 2005.

II. Call to the public

None.

III. Communication with Commissioners

None.

IV. Summary of Current Commission Events, Activities, Notices

⇒Renew on-line www.sb.state.az.us. Business and QP License Renewals: Due 12/1. Late fees after 12/31. SPCC Front counter has customer computer terminal to renew on-line.

Lisa Gervase encouraged licensees to renew their licenses online, as the process

is more efficient than handling paper renewals. She stated that the approximately 50% of renewals so far have been done online and staff wants to see that number increase. For their convenience, licensees can renew their licenses on the Commission's computer terminal in the Commission's office.

☞ 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

Lisa Gervase stated that the Commission recently conducted a continuing education course in Yuma where she, Mike Francis and Vince Craig made presentations. There was a nice turnout and the attendees felt appreciative that the Commission came to Yuma.

☞ *Lisa Gervase stated that she sent an end-of-year report to the Environmental Protection Agency ("EPA") regarding the Commission's enforcement actions. The Commission conducted approximately 1,200 inspections in a 12-month period. Disciplinary actions from resulting complaints were noted, including the numbers of Administrative Warnings, Civil Penalties, Suspensions, Cease and Desist Orders, etc. Commissioner Peterson complimented staff on its fine work regarding the EPA report. Lisa Gervase also sent a computer based testing site audit report, which has also been provided in writing to the Commissioners. Any issues from the last year have been corrected. Commissioner Peterson noted that the computer testing environment seems to be more neutral now. Lisa Gervase stated that staff wants examinees to realize that they need to study the Commission-recommended materials, and that they may not have success if they just go to classes.*

V. Consent Agenda

A. Applications for New Business License

Qualifying Party

1. Lopez, Gilbert

Ash Land Pest Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)

2. Hageman, Edward E. **Karsten Pest Technologies, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects, "B3" Right of Way & Weed Control, "B4" Fumigation, "B5" Turf & Ornamental Horticulture, and "B8" Wood Destroying Insect Inspection)**

3. Lee, Ronald D. **Ground Specialties & Irrigation, Inc. (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control)**

4. McDonald, Jon **Lighthouse Pest Control (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**

5. Heinrich, Daniel S. **Canyon State Termite & Pest Control, LLC. (Activating Qualifying Party for new business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)**

6. Schram, Sr.; Robert **Pestco (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**

7. Ritter, Jr.; Philip A. **Tony's Multi-Service Firm, Inc. (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)**

8. Durkalec, Stanley R. **Stans Pest Control (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**

9. Curry, Roy L. **Spirit Pest Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**

10. Garduno, Jr.; Michael L. Arizona Maintenance & Environments, Inc. (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control)

B. Applications to activate Qualifying Party for Existing Business License

1. Kolander, Robert J. Regal Pest & Termite Services (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. Siegfried, Jr.; Thomas J. Flood Control District of Maricopa County (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control)
3. Pruitt, Sr.; Robert E. Certified Pest Control (Activating Qualifying Party for existing business license in "B5" Turf & Ornamental Horticulture)
4. Snyder, Robert C. Proven Ecological (Activating Qualifying Party for existing business license "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

C. Applications for Qualifying Party License

1. Kniphuisen, Richard J. "B2" (Control of Wood-Destroying Insects)
2. Ostlund, Erik A. "B5" (Turf & Ornamental Horticulture)
3. Sexton, Jr.; Paul K. "B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects), "B3" (Right of Way & Weed Control) and "B8" (Wood Destroying Insect Inspection)

Pulled.

Scott Richardson, attorney for Mr. Sexton, appeared.

Commissioner Hartley noted that Mr. Sexton's practical experience does not appear to have been gained within the previous 5 years and asked why Mr. Sexton is spreading his experience hours over all of his categories. Scott Richardson stated that he has represented Mr. Sexton for 20 years and knows that Mr. Sexton is a busy man. Robert Tolton stated that Mr. Sexton's experience in the "B2" and "B8" categories ran concurrent before the "C" category was split up into the "B2" and "B8" categories. At the time, Mr. Sexton was doing both duties under one license.

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

VOTE: *7-0 Motion carried.*

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

Pulled.

Scott Richardson, attorney for Ms. Buechle, appeared.

Ms. Buechle was present.

Commissioner Runbeck stated that the only license period she sees documented in her records is in 2005. Robert Tolton stated that Ms. Buechle was doing a lot of the work under her husband's supervision, her husband passed away, and she recently obtained a license. She did office work, scheduling, ride-alongs, etc. Scott Richardson stated that this situation is not unlike the situation with Barbara McKenzie from Zap Pest Control, Inc., who the Commission approved for testing after her husband passed away. Commissioner Runbeck stated that if staff is okay with this, then she would be also. Commissioner Robinson added that this situation is similar to situations in which people gain experience while working unlicensed and the Commission gives them credit for that work anyway.

MOTION: *To approve QP testing in "B1", "B2" and "B8" by Commissioner Hartley.
Seconded by Commissioner Fraker.*

VOTE: *7-0 Motion carried.*

5. **Gielow, Ryan R.** **"B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects), "B3" (Right of Way & Weed Control) and "B8" (Wood Destroying Insect Inspection)**

Pulled.

Commissioner Peterson asked if office manager verified the practical experience hours. Robert Tolton stated that Mr. Gielow's father held the business license, the father passed away, Mr. Gielow has been unable to obtain a QP, so he went to work for several different companies, had an office manager, and worked under a QP. The only person who has been constant, besides an applicator and Mr. Gielow, has been the office manager.

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

VOTE: 7-0 *Motion carried.*

6. **Paterson, Mark S.** **"B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)**
7. **Beltran, Robert A.** **"B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)**
8. **Stromnes, Jill M.** **"B2" (Control of Wood-Destroying Insects)**
9. **Salcido, Jenifer R.** **"B2" (Control of Wood-Destroying Insects)**
10. **Gibson, Jonathan D.** **"B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture)**
11. **Crowley, Terrence G.** **"B1" (General Pest & Public Health)**

D. Business License Name Change Requests

1. Viking Pest Control to Viking Pest Technology

End of Consent Agenda

MOTION: *By Commissioner Fraker to accept Consent Agenda with the exception of those items pulled for discussion (C3, C4, C5). Seconded by Commissioner Runbeck.*

VOTE: 7-0 Motion carried.

Commissioner Fraker complimented staff's efforts in paying close attention to detail on the applications. He stated that in the past, some applications have not been complete and correct. Things move on a lot more quickly now though, as the Commissioners have to ask fewer questions about the applications.

VI. Applications not on Consent Agenda

A. Request for Temporary Qualifying Party License Renewals

1. Thomas, Michael D. Termico Solutions, LLC.

Mr. Thomas appeared.

Dennis Roehl, owner of Termico Solutions, LLC, appeared.

Mr. Thomas stated that he wants to be approved for a regular QP license so that he can be the QP for Termico Solutions eventually. Commissioner Robinson asked what the status of Termico is regarding getting a QP for January. Mr. Roehl stated that they have contacted 23 people from the inactive QP list and are in discussions with 3 of them. Commissioner Robinson asked if they seem to have a "hot prospect". Mr. Roehl stated that they do have a first choice but will have to wait until January because that individual is not inactive now. He stated that it is difficult to get a QP and he is doing the best he can. Commissioner Fraker asked why Mr. Roehl, as the owner, can't qualify for a QP license. Mr. Roehl stated that he does not have the requisite experience. Commissioner Baker asked what the plan is if all 3 of their possibilities don't work. He stated that the Commission prefers that they get their own QP license(s) instead of hiring another QP. Mr. Roehl stated that his short-term goal is to get an applicator license, and he is scheduled to do that in January. Then, he would pursue the experience hours after that for a QP license. Mr. Thomas stated that he is pursuing a QP license but doesn't yet have the

requisite number of experience hours, and will probably have the hours in February. Commissioner Baker noted that the hold up is because of the experience hours and not because of a lack of studying for the exam. Mr. Roehl stated that in case the time frames don't overlap, he is trying to find a QP. Commissioner Fraker encouraged them to do their due diligence because the Commission might not be so lenient next time.

MOTION: *To approve a 60-day temporary QP renewal by Commissioner Runbeck.
Seconded by Commissioner Leavitt.*

VOTE: 6-1 *Motion carried (Commissioner Robinson opposed).*

2. Hunt, Edward L. Centurion Environments, LLC.

Mr. Hunt appeared.

Commissioner Fraker asked what Mr. Hunt's status is with regard to his attempts to get a QP license. Mr. Hunt stated that he will have everything in to the Commission on Wednesday, including fingerprints. He stated that his company has had to recover from someone who swindled a lot from them, and they have also had a QP who stepped away quickly with little notice. He stated that they are in the process of selling out their pest control routes and then keeping the termite part of their business as long as they can. He stated that as a back up plan, the QP who stepped away from them, at Curtis Pest Control, has agreed to help them out, and they would fold their company and work for his company. He stated that if approved, he will be QP and partner of the company. Commissioner Baker asked when Mr. Hunt plans on taking the test. Mr. Hunt stated that he would do so soon. Commissioner Baker noted that Mr. Hunt wasn't on the list today to be approved for testing, so it would be January at the earliest.

MOTION: *To approve a 60-day temporary QP renewal by Commissioner Runbeck.
Seconded by Commissioner Robinson.*

VOTE: 7-0 *Motion carried.*

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

None.

C. Applications for Qualifying Party License

None.

VII. Complaints

A. Lewis Exterminating Service Inc. dba Alliance Pest Management (BL)/Paul Kozluk (President)/Vincent Lewis (Secretary) - Case # 2005-036

Scott Richardson, attorney for Lewis Exterminating Service, Inc., appeared. Mr. Lewis appeared.

Commissioner Peterson noted that the matrix of the violation in this case indicated a pesticide toxicity of 2, and he asked whether during the over-a-year period that they didn't have license, they ever used more than a general use pesticide. Vince Craig stated that the TARFs classified the pesticides used as general-use and not restricted-use. Mike Francis stated that a non-chlorpyrifos based termiticide is classified as a general-use pesticide. Mr. Lewis stated that he does general pest and termite work and also exclusion. Commissioner Baker asked why Mr. Lewis didn't get a QP. Mr. Lewis stated that several items on the application were not filled in, it was mailed back, but he wasn't aware that it came back. Scott Richardson stated that when they found out that this happened, Mr. Lewis joined another company and the other company didn't know they were operating illegally. Commissioner Peterson asked if Mr. Lewis used any restricted-use pesticides. Mr. Lewis stated that he did. Mike Francis stated that staff looked at some service tickets but can't be sure that all services were performed with non-restricted-use pesticides.

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: *7-0 Motion carried.*

B. Flatline Termite & Pest Control (BL)/Sam Laures (President/APP) - Case # 2005-039

Commissioner Fraker questioned the recommendation to reimburse the consumer for a termite retreatment. Vince Craig stated that the opportunity for creativity is one

of the benefits of a settlement conference, which may include helping the consumer. It seemed more beneficial to use the funds to address the termite problem rather than impose a civil penalty. Commissioner Peterson noted that this case is unique in that the applicator was willing to pay the consumer, and he suggested that in the future, the Commission could allow this more often if a company or person is willing. Vince Craig stated that making the consumer whole is one of the mitigating factors in the Enforcement Response Program (“ERP”) guidelines.

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

VOTE: *7-0 Motion carried.*

(Executive Session from 9:35 A.M. to 9:50 A.M.)

MOTION: *To accept proposed resolution with the caveat that it is not standard practice to seek reimbursement for a consumer, but the Commission does evaluate the circumstances of the violation(s) and the disciplinary actions on a case-by-case basis. 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: *7-0 Motion carried.*

C. Gerald Kjelland (APP) - Case # 2005-049

Mr. Kjelland appeared.

Commissioner Peterson noted that in this case the applicator became licensed because a felony was never disclosed to the Commission. He asked what the Commission’s disciplinary options are now that the applicator is already licensed. Lisa Miles stated that the potential violation is “misrepresentation to obtain a license”. So, the Commission has all disciplinary actions available against his applicator license. The case can be resolved via consent agreement or via a formal hearing. Lisa Gervase stated that there are several ways to charge the counts. Staff charged the violations as one count, though it could have been more than one count due to Mr. Kjelland’s failure to report a felony conviction on one application and five renewal forms for the years 2000-2004. Commissioner Robinson asked

if, when answering “no” to the felony question on the application and renewal forms, Mr. Kjelland really didn’t think he had a felony conviction and that the court system had taken care of it. Mr. Kjelland stated that it was his understanding that the status of the crime committed was in limbo and wouldn’t be considered a longstanding felony as long as he followed the court’s orders by taking anger management courses. After following the court’s orders, it would be reduced to a misdemeanor. He stated that he believed that he didn’t have to declare it as a felony unless and until it was officially declared a felony. Commissioner Peterson noted that it was a class 6 felony that could be reclassified as a misdemeanor. Commissioner Baker asked if Mr. Kjelland has had any problems or arrests since this episode. Mr. Kjelland stated that he has not. Mike Francis stated that a background check confirmed no further instances.

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 Leavitt.*

VOTE: 7-0 Motion carried.

D. William Thomas Gage (APP) - Case # 2005-056

Commissioner Runbeck asked if, instead of sending the matter to hearing, it would be a more efficient use of staff resources to dismiss the case without prejudice. Lisa Gervase stated that it would be, but they would have to weigh the fact that Mr. Gage still has a license to practice. Commissioner Fraker asked what prevents the Commission from suspending Mr. Gage’s applicator license. Lisa Miles stated that there is no legal basis for summarily suspending his license as there is no immediate threat to the public. And, his license can’t be suspended for nonrenewal because his renewal time has not run yet. There is a 1996 conviction, misrepresentation, etc., but no immediacy. The closest thing that the Commission could do would be to ask for revocation of his license in a hearing.

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

VOTE: 7-0 Motion carried.

E. Albert Rene Pesqueira (APP) - Case # 2005-034

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

VOTE: 7-0 *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. Leroy Scott Gillespie Qualifying Party License No. 574 B1 (Issued 7/11/80) (Expires 12/31/05) - Case No. 2004-104 - Commission's consideration of Suspension of Leroy Scott Gillespie's Qualifying Party License for nonpayment of civil penalty fees.

Lisa Gervase stated that staff made some courtesy calls to Mr. Gillespie, but to date he has not paid his civil penalty. If the Commission wants to suspend his license, it could do so for nonpayment of civil penalties or for nonpayment of renewal fees if Mr. Gillespie doesn't renew his QP license by the end of the month. Commissioner Baker asked how long Mr. Gillespie's civil penalties payment has been delinquent. Lisa Gervase stated that the money was due in September and it is almost 3 months delinquent. She stated that staff did not do certified mailing notices of delinquency because they don't normally do that. However, staff left voice mail messages as a courtesy.

MOTION: *To suspend the qualifying party license for nonpayment of civil penalties in Case No. 04-104, by Commissioner Runbeck.
Seconded by Commissioner Baker.*

VOTE: 7-0 *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.

A. Oby Allen Dunn (App) - OAH Docket No. 2005A-062-SPC/SPCC Case No. 2005-062

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

Lisa Miles encouraged the Commission to accept the Findings of Fact, Conclusions of Law and Recommended Order affirming the denial of Mr. Dunn's license renewal.

MOTION: *To accept the ALJ's Findings of Fact and Conclusions of Law, by Commissioner Fraker.
Seconded by Commissioner Robinson.*

VOTE: *7-0 Motion carried.*

MOTION: *To adopt the ALJ's Recommended Order to affirm the Commission's decision to deny the license renewal, by Commissioner Runbeck.
Seconded by Commissioner Baker.*

VOTE: *7-0 Motion carried.*

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

None.

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

None.

XV. Reporting by Licensees on Probation.

A. Guillermo, Sotelo - Case No. 2004-120

Mr. Sotelo reports the status of his compliance with criminal probation and his employment. Mr. Sotelo failed to appear at the October 14, 2005 Commission meeting and this matter is for the Commission to review.

Mr. Sotelo appeared.

Mike Ehrlich, who is Mr. Sotelo's probation officer, appeared.

Lisa Gervase stated that Mr. Sotelo entered a consent agreement with the Commission to get his applicator license on the condition that he report to the Commission periodically as part of his probation. Mr. Sotelo was due to appear before the Commission at the October, 2005 meeting but did not because he had a positive random urine drug screen and was in jail for violation probation. She stated that she saw both Mr. Sotelo and his employer, Mark Williamson from Yuma, on Wednesday, and Mr. Williamson affirms his faith in Mr. Sotelo. The Commission has several options in dealing with this situation. She stated that she is sure that the Commissioners share some of her disappointment. Commissioner Peterson noted that because Mr. Sotelo failed to appear, the Commission has the authority to impose further discipline. He stated that the Commission is concerned about a recurring drug problem. He added that this is very bothersome because Mr. Sotelo is less than a year into the probation. He asked what Mr. Sotelo had to say in his defense. Mr. Sotelo apologized to staff because they gave him this opportunity. He stated that at the time of the relapse he was going through some personal problems. He acknowledged that he can't change the positive drug test now, and he realizes that he has to accept that there will be personal problems in the future and he has to learn to deal with them and move on. Mr. Ehrlich stated that there is no excuse for a relapse and he won't try to condone that. However, a relapse is not unusual and they do work with it to a point until they sometimes give up on people. He stated that they haven't reached that point yet with Mr. Sotelo. Mr. Sotelo has submitted to 120 random urinalyses ("UAs") in 19 months with only one positive test, for which he was incarcerated for 10 days. Mr. Sotelo's UAs, supervision and meetings were increased and he has taken relapse prevention every Friday since then. Mr. Ehrlich stated that when he and Mr. Sotelo came before the Commission last year, Mr. Sotelo was doing well and he stood by Mr. Sotelo. Mr. Sotelo completed Drug Court in March, 2005, and he would have been released from probation then, but because of the agreement he had with the Commission, his relapse was caught that wouldn't have been caught otherwise. Commissioner Peterson asked if Mr. Sotelo would have gone off the deep end if he hadn't been part of this program. Mr. Sotelo stated that he didn't feel good about what he did and was regretful because it had been two years since he had used. He stated that it was a totally different feeling this time. Commissioner Baker asked what Mr. Sotelo's responsibility is with Desert Web. Mr. Sotelo stated that he is a termite technician, does termite control WDIIRs, and there are also times when he trains new employees. Commissioner Leavitt asked how long Mr. Sotelo has been

working. Mr. Sotelo stated that he has been with the company for six years and in the business for ten years. Commissioner Baker asked what options the Commissioners have. Lisa Gervase stated that they can do one or more of several things: make a note for the record, not take action, and then in the future if there are more problems then they could take this into effect when taking action, seek an amendment to the consent agreement terms to provide for stepped up monitoring, and/or seek disciplinary actions for violating the consent agreement. Commissioner Peterson asked what the Commission's options are for violating the consent agreement. Lisa Miles stated that all of their disciplinary options are available. Commissioner Runbeck stated that she thinks it is a good idea to give people an opportunity to get their life back on track. For just one relapse, considering that he has support from his employer, probation officer and Lisa Gervase, she doesn't think that the Commission should undermine what Mr. Sotelo is trying to accomplish. Commissioner Peterson expressed disappointment because Mr. Sotelo has been the Commission's "poster child" and had set the standard for people in similar situations. He stated that he thinks the Commission should definitely make a note of this relapse. Commissioner Fraker agreed and also stated that Mr. Sotelo should think about more than just his own situation, because his success will give the Commission the confidence to help other people in similar situations to get a similar opportunity.

MOTION: *To take no action but let the record show that the Commission is aware of and will monitor the situation and will take this into consideration if there is a future violation, by Commissioner Baker.
Seconded by Commissioner Runbeck.*

VOTE: 7-0 Motion carried.

XVI. Applicants with Criminal Convictions.

A. Lindsay, Howard J.

Mr. Lindsay appeared.

Jeff Miklus, owner of Budget Brothers Termite & Pest, appeared.

Commissioner Peterson asked if Mr. Lindsay is currently on probation. Mr. Lindsay stated that he is. Commissioner Peterson asked if Mr. Lindsay has a drug problem. Mr. Lindsay stated that he does not anymore and has been clean for over three years after counseling and two twelve-step programs. Commissioner Peterson asked who Mr. Lindsay's support group is. Mr. Lindsay stated that his family supports him and he is also influenced by the embarrassment of what he did and takes responsibility for. Commissioner Runbeck asked if Mr. Lindsay is subject to

random Uas. Mr. Lindsay stated that he can be subject to random drug testing at anytime. Commissioner Runbeck noted a year-old letter from Greg Clark, Adult Probation Officer, that said that Mr. Lindsay is delinquent on his court fines and fees. Mr. Lindsay stated that he is current now. He also stated that he sees his current Adult Probation Officer, Breht Stavn, twice a month since he moved. Commissioner Peterson asked why Mr. Lindsay was behind on his court fines and fees. Mr. Lindsay stated that when he was released from jail he had nothing, was living in halfway houses, working two jobs and any amount of hours possible in trying to catch up on his fines. Commissioner Robinson asked what Mr. Lindsay does for his current employer. Mr. Lindsay stated that he just does general pest work right now. Commissioner Fraker noted that the application dated on August 22 said that he worked for U.S. Pest Control. Mr. Lindsay stated that that is who he worked for at the time he submitted the application. He worked with them for a year and a half, and worked with someone else also. For a number of reasons, the application packet was not complete; there was no pre-sentence report. Commissioner Peterson asked if Mr. Lindsay was submitting the application through his employer. Mr. Lindsay stated that he was being strung along and told that he didn't have the proper materials, so he took it upon himself to go through different people, including the Mesa Police Department, to get reports. He stated that his name was misspelled, and that is why it was difficult to find the right paperwork. Mr. Miklus stated that Mr. Lindsay explained the situation to him. He has known Mr. Lindsay for 6-7 months and people have had great things to say about him. He stated that he will vouch for Mr. Lindsay.

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

VOTE: 5-2 *Motion carried (Commissioners Fraker and Robinson opposed).*

B. Dietz, Jordan P.

Tabled.

C. Veltre, Troy K.

Tabled.

XVII. Commission Updates and Reports.

A. Election of Commission officers for 2006

Lisa Gervase stated that she has been notified of one possible appointment to fill

the public member position on the Commission, and there are a number of applicants for industry positions. She thinks that the new public member will be here in January or February. She stated that she has not heard anything about the positions of Commissioners Baker, Runbeck or Peterson. Regardless of the possible changes, there should still be quorum. Commissioner Peterson stated that he put in a request for reappointment a year ago and will continue to serve indefinitely.

MOTION: *To nominate Commissioner Peterson as the Chairperson of the Commission for 2006 by Commissioner Runbeck.
Seconded by Commissioner Baker.*

VOTE: *7-0 Motion carried.*

MOTION: *To nominate Commissioner Runbeck as Vice Chairperson of the Commission for 2006 by Commissioner Hartley.
Seconded by Commissioner Baker.*

VOTE: *7-0 Motion carried.*

MOTION: *To nominate Commissioner Baker as Secretary of the Commission for 2006 by Commissioner Runbeck.
Seconded by Commissioner Hartley.*

VOTE: *7-0 Motion carried.*

B. Possible Future Law Changes

Scott Richardson, attorney, appeared.

Lisa Gervase stated that she has met with legislative council but hasn't gotten an official bill yet. She stated that the legislature didn't want the unlicensed issue to be specific to any product but rather wanted it to deal with non-restricted, over-the-counter products. She stated that the legislature wants to ensure that people are able to hire someone to do some work at their property without them having to be licensed, and without any specific language about the parameters, it is very difficult for the Commission to enforce the law. The legislature wants the Commission to draft the specific language, and she feels that the Commission needs to be viewed as problem solvers. Commissioner Baker stated, however, that if the Commission proposes certain language, the legislature may say that that is not the language that they want. The legislature may not understand what they are asking. Lisa Gervase

stated that that is all the more reason for the Commission to draft the language. And she stated that she thinks that Senator Leff does understand. Commissioner Baker stated that he feels that the Commission is trying to satisfy some legislator who is getting pressure from a landscaper. Lisa Gervase stated that she thinks that the legislators do care about this issue because they are talking with her. Commissioner Baker stated that he feels like the Commission is being forced into this and he is having a hard time swallowing the implications of this, as it may create more aggravations. He asked what would happen if landscapers spray right up against a school. Lisa Gervase stated that they still have to comply with the label and can't misuse a product. In that respect, it's not a whole lot different from the requirements of the licensees, because staff acts in response to information that people give to them. She can't anticipate what future problems may occur. There have been exemptions in the past, and the Commission is in the process of writing the law language to apply to any person, not just landscaper/gardeners. The Commission will document problems and seek change down the road if necessary. Commissioner Fraker stated that he has a hard time believing that a Senator would submit a bill in an effort to protect the public and environment that would allow for landscapers to work unlicensed. They don't want to write the bill but will have the Commission write it. Lisa Gervase stated that it's not a wholesale exemption, and if future problems occur, the sponsor of the bill may receive questions. She also added that public protection is not a Senator's job. We have to find some sort of balance. Commissioner Fraker suggested that maybe the legislature wants to push the issue off on Lisa Gervase so they can get it off of their backs and their gardener does not have to be licensed. Lisa Gervase stated that she is always going to be the point person, as it is the nature of her job. But if the Commission does need to work cooperatively with the legislature. The Commission is a body created by the legislature and reports to them. Commissioner Fraker stated that he thinks the Commission is going down a slippery slope because other pest control operators could do the same thing. Treating around the outside of a house with an over-the-counter pest control product may not be that different from spraying herbicides. So, why have licenses at all? Commissioner Robinson asked whether, under the proposed law change, could a currently licensed pest management company licensed in "B1", "B2", and "B8" do outdoor weed control work and not be required to have a "B3" license? Yes, if doing the work residentially. Scott Richardson reminded everyone that insurance is an issue here. Someone who treats with a 5-gallon sprayer on a residential site could have a lot of material on their truck. He cited a City of Chandler case where a rental truck spilled and there was \$16,000 of damage that insurance would not cover. He stated that he thinks this proposed law change would be a mistake because of the potential insurance problems. Commissioner Hartley stated that he thinks this is bad legislation because it is not very enforceable. He stated the Commission isn't really going to know what is in the container, and an applicator will tell you what you want to hear. Lisa Gervase repeated that the proposed language that she submitted requires that applicators

still would have to comply with the label directions and the Commission's laws and rules regarding record-keeping. She stated that this aspect would not be very different from the way it is now and that she thinks it is enforceable legislation. Commissioner Hartley stated that, having worked in the industry for 36 years, he disagrees because he knows the games that go on. He stated that with this 5-gallon exemption, they would be opening this up to 100,000 people who want to spray weeds. Commissioner Runbeck asked what type of authority the Commission has over people they don't license. Lisa Miles stated that there is a specific statutory authority, namely a Cease and Desist Order and up to a \$1,000 Civil Penalty. Regardless of the bill, the Commission will still have this authority. Lisa Gervase added that the Commission is proposing in this bill to have direct misuse authority, because the Environmental Protection Agency ("EPA") had asked the Commission how they handle misuse violations in unlicensed cases. Commissioner Fraker stated that, even though protecting the public from misuse may be the upside, the problem is that the people who are making these applications need to be licensed and trained. Also, another problem is that unlicensed people will be competing with licensed companies. Lisa Gervase stated that over the course of the years from 1985-2003 when there was some licensing exemption, sometimes it would be specific, or it would use unenforceable language like "incidental". Scott Richardson added that there is the potential for having unmarked trucks, no MSDSs, etc. Commissioner Hartley stated that this bill needs to be dealt with at the Senate. Lisa Gervase stated that that is what will happen. Commissioner Peterson stated that as distasteful as this issue is, the Commission has bigger fish to fry. Industry members can say that they have to pay for licensure and others don't, so they are at a disadvantage. Commissioner Fraker added that from a pest control operator's standpoint, it is money taken out of their pocket. Companies who are licensed to perform work in certain categories can go out and do weed work unlicensed and make lots more money. He stated that this rubs him the wrong way because the Commission has made strides so far to get people trained, and this would be a giant leap backwards and a slap in the face to the efforts that have been made. Lisa Gervase encouraged people to contact the legislature. Scott Richardson asked if it is possible that an interpretation of this law would be such that an unlicensed person/company could spray herbicides without insurance, but already-licensed pest control people/companies may have to get the additional licensure and insurance to spray herbicides because they are already licensed.

Lisa Gervase mentioned that the Commission could add in statute as part of its disciplinary options that as probation requirements there could be continuing education ("CE") and restitution to consumers. The Commission has done this on a limited basis but might want to get statutory authority. Commissioner Hartley stated that requiring restitution might open a can of worms. It would start to change the whole complexion of this Commission and they might become a target for greedy consumers. He is not sure that the Commission wants to get into this

judicial arena. He stated that the CE idea sounds good though.

Scott Richardson brought up the insurance issue again, mentioning that he is unaware of any insurance company that writes a \$600,000 policy. Insurance companies will write either a \$500,000 policy or a \$1,000,000 policy. He stated that it would put small companies in a crunch to carry a \$1,000,000. Commissioner Peterson suggested seeing if it is practical with current industry requirements. Lisa Gervase stated that with regard to insurance, "public liability" is "general liability". Commissioner Hartley stated that the last veto of a bill had to do with insurance, so he cautioned the Commission to be very sure of the insurance requirements in the bill. Lisa Gervase added that it didn't have to do with the amounts, but with who provides it. Commissioner Peterson recommended working with insurance people to be sure. He asked why Lisa Gervase has strong feelings about \$600,000 instead of \$500,000. Lisa Gervase stated that that is the way the law reads now; no increase is being proposed, merely a clarification.

(Break from 11:25 A.M. to 11:35 A.M.)

Commissioner Fraker stated that regarding felony checks, he thinks the Commission should make an effort to do fingerprinting on everyone in the normal application. Lisa Gervase stated that the Commission has the legal authority to do that, but it is more of a logistical issue between the Commission and the industry members. But the Commission is close. Commissioner Fraker stated that he has talked to others in other industries who don't accept felony applicants and he thinks it would be easier for this Commission to not accept any. People do deserve a chance, but it doesn't have to be in the pest control industry. Lisa Gervase suggested that maybe the Commission could start fingerprinting everyone first. Commissioner Fraker stated that that would be a step in the right direction. He is bothered by the fact that the Commission can suspend a license for not paying civil penalties, but can't suspend the license of someone who commits a despicable felony. Lisa Gervase stated that the Commission could get a lot of concern from industry members regarding fingerprinting because it could delay the processing of applicants. Business licensees have a hard time getting and keeping good employees to begin with. Commissioner Fraker stated that it would almost be better to extend the time frame from three months to six months for the initial amount of time someone can work unlicensed. Commissioner Leavitt added that a background check is one of the most important things the Commission does because by licensing applicators, the Commission gives them the ability to go into people's houses, where their property and kids, etc., are.

C. Possible Future Rule Changes - separate handout

Lisa Gervase stated that she emailed out a lengthy draft of the possible future rule

changes. The draft rules are now on the Commission's website and she has scheduled stakeholder meetings. She especially wants to get input from industry members about termite pretreatments and the five-year retreatment rule. The draft laws define "pretreatment" in a way that doesn't limit the technology or methodology of doing a pretreatment. There still has to be a final grade, but she would like to get the industry's sense of how a pretreatment should be defined. Also, there is a problem with the five-year retreatment rule. Everyone should be subject to it. Commissioner Fraker stated that he is against the five-year requirement for retreatments and he is also against the full treatment requirement after the third occurrence. He stated that he thinks that Arizona is the only state that has this requirement. Lisa Gervase asked what a pretreatment is. Commissioner Fraker stated that he thought Lisa Gervase's language was pretty good and covered the bases. Commissioner Hartley stated that he still objects to the idea that if someone has managed to get "pretreatment" on a label, like with Boracare, every expert that he has talked to has disagreed with the idea that a topical treatment constitutes a pretreatment. It's not a bad supplement, but it's not a complete treatment. Boracare has no final grade. Lisa Gervase stated, however, that they would still have to do a final grade per the Commission's laws. Commissioner Baker stated that he would be opposed because he doesn't think Borates would be successful, particularly if applied to a stem wall as part of the pretreatment. Currently unpublished research indicates that Borates do not withstand the light; they photodegrade. This would leave the consumer with nothing. This research was done at 6 months with no control. It may take a homeowner about 6 months to build a home. Even if applied when the framing starts, the research would indicate that the material would be gone. Commissioner Peterson asked if a sub slab treatment is the only thing that works. Commissioner Baker stated that you can bait, but baiting programs in Arizona are not as successful. With Boracare, they were given a federal registration and it comes to our state with extremely limited data. From the current technology, it is still the best and most current technology to have a liquid treatment to the soil. Commissioner Fraker asked if the Commission should continue to require a soil treatment to the exterior. Lisa Gervase stated that they should and that is not changing. Commissioner Fraker stated that he would not feel comfortable unless treatment is made under the slab. However, treatment under the slab does not cover all structures. Scott Richardson noted the issue of mobile homes on posts. That would be a preventive treatment, not a pretreatment. Lisa Gervase noted that it appears that they are probably okay with the definition in law, but the rules need to be amended accordingly to noted what is included in a pretreatment. Scott Richardson suggested defining a pretreatment as a preventive treatment, so that they know what is TARFable. But then the next question concerns what is a preventive treatment. Commissioner Fraker stated that it can be difficult in situations where a house is built on a hill to figure out what is the slab. Lisa Gervase asked if it is the Commission's feeling that if you are truly doing a pretreatment, that the pretreatment has to include a sub-slab liquid termiticide and

a final grade perimeter. She stated that, despite any label language of any product, it is not a pretreatment unless it fits the requirements of the Commission's laws and rules. Commissioner Hartley stated that anyone building a custom home is going to use multiple technologies. The area that really needs protection is when builders in large tract homes pick the one that is easiest on their pocketbook regardless of the result to the consumer. Lisa Gervase stated that the Commissioners' comments have helped and staff will try to come up with some language before the first stakeholder meeting.

D. Complaint Status Log

E. Computer Based Testing "CBT" Status and Statistics

Commissioner Peterson asked when the CBT contract expires. Lisa Gervase stated that she will be issuing a request for a new proposal. The contract was only renewable for 3 or 4 years. Commissioner Peterson asked if on the Commission's website there is a list of providers that people can go to for initial license training ("ILT"). Lisa Gervase stated that they have provided this information verbally. Commissioner Peterson asked if there are other people out there who do it. Lisa Gervase stated that she is aware of 4 places that people can go for ILT. She added that they don't want the testing vendor to advertise where they are doing the testing. Commissioner Hartley stated that, regarding the CBT status and statistics, he was just at a meeting in Sedona with 24 management people in the state, and they seemed to have positive remarks about computer testing, but the quality IDs were less than satisfactory, as they could barely tell what they were identifying. He asked if it would help to adjust the pixels. Lisa Gervase stated that the Commission is working in that direction and it is just a matter of time. Commissioner Baker stated that if staff could list the photos that need clarification, there are plenty of good photographers out there who could help. Mike Francis stated that it is primarily a resolution problem. The pictures are crystal clear to begin with, but when blown up and put on the computer, there are problems.

F. Expenditure Report - separate handout or verbal report

Lisa Gervase gave the Commissioners a colored pie graph showing where they are at the end of November. The Commission spent a certain amount of appropriated funds for items up front, such as rent, so they are right on track.

G. Case Status Report - separate handout

Lisa Gervase stated that the Commission has 57 active cases in various stages, all current. Some are at the Attorney General's Office for collections, another 50 are about to be sent, and there are only about half a dozen old cases to be cleaned up.

Then, staff will go through the 1999-2000 year cases to meet the 5-year record retention requirement.

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

Lisa Gervase stated that the briefs have been filed and they are waiting to see if the judge will make rulings on the briefs or set oral argument. In next month or two we should have a decision. Ms. Kilian has just has the one QP.

XVIII. Approval of Minutes

A. November 10, 2005 (regular session) Minutes

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

VOTE: 6-0 *Motion carried (Commissioner Runbeck abstained).*

B. November 10, 2005 (executive session) Minutes - emailed to Commissioners on 11/14/05

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

VOTE: 6-0 *Motion carried (Commissioner Runbeck abstained).*

C. Continuing Education Minutes

Lisa Gervase stated that Vince Craig has been busy. Commissioner Peterson suggested that the Department of Agriculture better coordinate its approved CE with the SPCC for courses that would be appropriate for this Commission's industry members also. Lisa Gervase suggested that Commissioner Peterson submit the CE course information and staff here will review it. She also suggested that perhaps this Commission could submit its CE material to the appropriate person at the Department of Agriculture for review.

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

VOTE: 7-0 *Motion carried.*

XIX. Scheduling of future meetings/agenda items

Current Proposed dates

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

August 11, 2006

XX. Adjournment - 12:30 p.m.

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

VOTE: 7-0 *Motion carried.*