

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

**COMMISSION MEETING
FRIDAY, February 10, 2006, 9:00 A.M.
MINUTES**

I. Call to order, Commissioner roll call

Commissioners Present: Commissioners Paul Baker, Patrick Black, Dave Burns, Dan DeVere, Robert Hartley, and Debbie Runbeck

Commissioners Absent: One Vacancy

Staff Present: Eric Bauer, Rosemary Celaya, Vince Craig, Mike Francis, Lisa Gervase, Robert Tolton, Helen Turner, and Assistant Attorney General Christopher Munns

★Congratulations to Member Paul Baker for his appointment to a second term on the Structural Pest Control Commission.

★Welcome of new Members Dan DeVere and Dave Burns to the Arizona Structural Pest Control Commission.

Lisa Gervase stated that Dan DeVere was timely appointed to a 3-year term to replace Commissioner Robinson. Commissioner Devere, the small business representative, stated that he is a golf course superintendent from Flagstaff.

Lisa Gervase stated that Dave Burns was appointed to replace Commissioner Fraker, who held over and served on the Commission for the past year after his term had expired in January, 2005. So, Commissioner Burns' term will expire in January, 2008. Commissioner Burns, Vice President and QP of Burns Pest Elimination, stated that he has been involved in the industry for over 20 years.

Lisa Gervase stated that Commissioner Black was appointed to replace Commissioner Peterson, not Commissioner Leavitt, so that is why Commissioner Peterson was not able to serve today. Commissioner Black's term will expire in 2008 also. The Commission is waiting for someone to be appointed to replace Commissioner Leavitt. Commissioner Hartley is graciously holding over and continuing to serve as the Commission waits for the Governor's office to make an

appointment for his replacement. There will probably be another Commissioner training session in the near future once the new set of Commissioners is established.

II. Call to the public

Dr. Dawn Gouge, an entomologist for the University of Arizona, appeared to ask the Commission to support legislative bill SB 1350 regarding child care facility pre-post notification. She stated that several exemptions have been written into the bill, and there is an amendment before Senator Allen. The bill's primary function is to promote the transfer of information. As the mother of a 4-year-old asthmatic child, she believes that it is desirable to have that type of information. The bill also writes in notable requirements for the child care facilities. She stated that although the requirements could at times be burdensome for the industry, there certainly are sensible exemptions, and she hopes the bill will encourage the reduced use pesticides. She stated that some of the registered pesticides used are negatively impacting children's health. Commissioner Runbeck stated that this issue will be addressed later in today's meeting during discussion of Agenda Item XVII.B. Then, the Commissioners will have the opportunity to provide their input and hear more from Ms. Gouge and others who may wish to speak.

III. Communication with Commissioners

Commissioner Runbeck stated that she traded emails with a personal injury attorney who was concerned about the proposed weed control exemption because he had a client who was injured. She referred the attorney to Lisa Gervase.

Commissioner Baker stated that he had a conversation with Jack Root regarding the continuing education ("CE") approval process.

IV. Summary of Current Commission Events, Activities, Notices

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

www.sb.state.az.us

✓ Business License & Qualifying Party License Renewal status - *renewal deadline was December 31, 2005. All licenses not renewed are expired and those licensees cannot operate.*

☞ 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

V. Consent Agenda

A. Applications for New Business License

Qualifying Party

- 1. Gielow, Ryan R.** **Gielow Exterminating Group (Activating Qualifying Party for new business license in "B2" Control of Wood-Destroying Insects and "B8" Wood-Destroying Insect Inspection)**

- 2. Hicks, Trent L.** **Title Termite & Pest Solutions, 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)**

Commissioner Burns stated that both the applicant for QP and the business licensee have worked for him in the past. Chris Munns stated that Commissioner Burns doesn't necessarily need to recuse himself unless he feels that his relationships would affect his judgment.

MOTION: *To approve the application for new business license in "B1", "B2" and "B8" by Commissioner Burns.
Seconded by Commissioner Baker.*

VOTE: *6-0 Motion carried.*

- 3. Tweten, Douglas M.** **Bugman 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. Dennee, Darrall J. Complete Yard Care By CHC (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)
- 5. Neff, Joey R. Neff Exterminating, Inc. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health and "B2" Control of Wood-Destroying Insects)
- 6. Wagner, Robert M. Wagner 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)
- 7. Potkonjak, Nikola Tri State Pest Management (Activating Qualifying Party for new business license in "B1" General Pest & Public Health and "B2" Control of Wood-Destroying Insects)
- 8. Saitman, James S. Sundance Kids (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)

B. Applications to activate Qualifying Party for Existing Business License

- 1. Simons, Daniel P. Casey's Exterminators (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. **Stromnes, Jill M.** **Pratte Building Systems, LLC.
(Activating Qualifying Party for existing
business license in "B2" Control of
Wood-Destroying Insects)**

3. **McDaniel, David L.** **Canyon State Termite & Pest Control,
LLC. (Activating Qualifying Party for
existing business license in "B1"
General Pest & Public Health)**

4. **McNeil, Lucinda S.** **Maricopa Exterminating Co. (Activating
Qualifying Party for existing business
license in "B1" General Pest & Public
Health)**

5. **Salcido, Jenifer R.** **Younger Brothers Pretreat & Home
Services, LLC. (Activating Qualifying
Party for existing business license in
"B2" Control of Wood-Destroying
Insects)**

6. **Ragel, Carl D.** **Century 22 Pest Control (Activating
Qualifying Party for existing business
license in "B3" Right of Way & Weed
Control)**

7. **Glotzer, Steven H.** **ValuePest.Com (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)**

8. **Mastalsz, Jimmy** **Artistic Land Management, Inc.
(Activating Qualifying Party for existing
business license in "B3" Right of Way &
Weed Control)**

9. **Harper, John H.** **William T. Jenkins, Inc. (Activating
Qualifying Party for existing business
license in "B3" Right of Way & Weed
Control)**

10. Cross, David A. **Praying Mantis Termite & Pest Control (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects, "B3" Right of Way & Weed Control, "B4" Fumigation, "B5" Turf & Ornamental Horticulture, "B8" Wood-Destroying Insect Inspection, and "B9" Aquatic Pest Control)**
11. McClure, Jennifer L. **John's Termite & Pest Control, Inc. (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)**

C. Applications for Qualifying Party License

1. Staron, Paul D. **"B8" (Wood-Destroying Insect Inspection)**
2. Underwood, Robert L. **"B1" (General Pest & Public Health) and "B9" (Aquatic Pest Control)**
3. Young, Jerry N. **"B1" (General Pest & Public Health) and "B2" (Control of Wood-Destroying Insects)**
4. Kozluk, Paul E. **"B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects) and "B8" (Wood-Destroying Insect Inspection)**
5. Gilles, Donald D. **"B1" (General Pest & Public Health)**
6. Carrasco, Raul T. **"B1" (General Pest & Public Health)**
7. Siegfried, Jr.; Thomas J. **"B9" (Aquatic Pest Control)**
8. Stevens, Mitchell E. **"B1" (General Pest & Public Health)**

Lisa Gervase stated that Mr. Szymanski, who has recently been employed by Termico Solutions, LLC, has a QP license and will probably be on the March Commission meeting agenda to activate his QP license for the business. Mr. Szymanski stated that Michael Thomas is a certified applicator who is registered to a branch, and his temporary QP license expires on February 21, 2006. Mr. Roehl stated that Mr. Thomas still has several months to go until he is able to attain the requisite number of practical experience hours, so he won't be able to qualify yet to be the company's QP. He stated that he and Mr. Szymanski have legal documents, a memorandum of understanding between them, and they are not pursuing anyone else for the QP job. Mr. Szymanski stated that he and Mr. Roehl have a partnership and he is currently working for the company. Commissioner Burns asked if there is anything that would prohibit or prevent Mr. Szymanski from being the QP of the company. Lisa Gervase stated that Mr. Szymanski has the correct background in the "B1", "B2" and "B8" categories and it is just a matter of placing him on the agenda for approval.

MOTION: To approve a 60-day temporary QP renewal by Commissioner Burns.
Seconded by Commissioner DeVere.

VOTE: 6-0 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. TruGreen LandCare, LLC. (BL) - Case # 2005-058

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

VOTE: 6-0 Motion carried.

B. American Pride Services, LLC dba American Pride Termite & Pest Control (BL)/Michael Smoot (APP) - Case # 2005-042

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 Black.
Seconded by Commissioner Hartley.

VOTE: 6-0 Motion carried.

C. Bye Bye Birdie (Unlicensed Company)/Ernest Stephens (Owner) - Case # 2005-022

Mr. Stephens appeared.

Commissioner Black asked what the range of penalties is for unlicensed activity. Vince Craig stated that a few months ago the Commission approved staff's Enforcement Response Program ("ERP") for unlicensed activity. Staff starts off with a base range. The base terms consist of a \$300 civil penalty if the violation is associated with mechanical pest control or a \$500 civil penalty if there is a pesticide control violation. Then, staff takes aggravating and/or mitigating circumstances into account, if applicable, and adjusts the civil penalties as appropriate. Mike Francis added that the Commission may impose a Cease and Desist Order and up to a \$1,000 civil penalty for the first violation and up to a \$2,000 civil penalty for the second violation. Commissioner Burns asked how much bird work Mr. Stephens does. Mr. Stephens stated that he performs 2-3 jobs per week. Commissioner Burns asked how much revenue he brings in. Mr. Stephens stated that most jobs are \$600, though some jobs are minimal. Commissioner Baker asked what Mr. Stephens' plan is. Mr. Stephens stated that on February 14, 2004, he sent a letter to the Arizona Registrar of Contractors saying that he was thinking about starting business. He stated that he was told that surety bonds said they needed one year of experience to qualify for license, and that they also needed to pass an exam. At that time, regarding a pest control license, no one seemed to know what type of license they needed. He stated that the year was almost up when this violation occurred. He also stated that they didn't do any more unlicensed work after this complaint was filed. He stated that his plan is to get licensed and get a QP. Commissioner Burns asked if Mr. Stephens has warranties that need to be taken care of. Mr. Stephens stated that he has one, and he keeps putting it off.

Commissioner Hartley stated that he originally questioned the \$300 fine because the Commission used to impose \$500 fines in similar cases; however, after reading staff's logic, he agreed with the \$300 fine.

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

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

D. The Buginator (Unlicensed Company)/Kenneth James McCullough (Owner/APP) - Case # 2005-055

Commissioner Baker stated that we could have the potential to see more cases like this one. He suggested creating some standard language regarding that if an unlicensed person puts up a website advertising pest control services, it should somehow be clear that they are not licensed. Lisa Gervase stated that she does not believe that it is appropriate to advertise on a website if you are not yet licensed. However, the Commission does not have any legal authority to require such people to put a notice on their website informing people that they are not licensed. Commissioner Baker stated that standard language might be helpful here though, so it doesn't look like the Commission is favoring anyone. Commissioner Black asked if Mr. McCullough has complied and if the advertising language has been removed. Vince Craig stated that he has complied with the terms, though staff still needs to have him sign the consent agreement. Commissioner Black asked if there was no civil penalty because of a lack of evidence. Vince Craig stated that advertisement alone may not indicate that someone is doing unlicensed pest control work, and, in fact, Mr. McCullough told staff that he didn't do unlicensed work. Vince Craig also stated that he created a few "hotmail" accounts to see if Mr. McCullough would solicit his services; he did not. Commissioner Baker stated that he went onto Mr. McCullough's website and saw that he did comply. Lisa Gervase stated that the Commission's legal authority for disciplinary action against unlicensed activity is limited to imposing a civil penalty and/or a Cease and Desist Order. As an encouragement for someone to change the language on their website, staff can reduce the civil penalty.

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

Seconded by Commissioner DeVere.

VOTE: 6-0 *Motion carried.*

E. Cross Exterminating, Inc. (BL)/Gary Cross (Owner/QP)/Donald Parker (APP) - Case # 2005-088

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 DeVere.
Seconded by Commissioner Black.*

VOTE: 6-0 *Motion carried.*

F. All Animals Rescue & Transportation, LLC. (Unlicensed Company)/Robert Young (Member) - Case # 2005-081

*Mr. Young appeared.
Heather Young was present.*

Commissioner Baker asked Mr. Young if he is comfortable with the resolution. Mr. Young stated that he is and that he agreed with the settlement terms. Commissioner Burns asked Mr. Young if he is going to handle his bird and rodent control. Mr. Young stated that he is not. He also stated that they only did pigeon traps and that was just a small part of their business, as they are busy with other stuff.

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

VOTE: 6-0 *Motion carried.*

G. Scottsdale Exterminating (BL)/Donald Siegelen, Jr. (QP/President)/ Donald Donegan, Sr. (APP) - Case # 2005-094

Commissioner Black asked if there was a failure to respond to the complaint. Vince Craig stated that there was a lack of communication between staff and the company. They verbally responded to the complaint, but the law requires a written

response, so that is why they were given an Administrative Warning. Commissioner Black asked who would be responsible for paying the \$2,400 civil penalty against the business licensee. Vince Craig stated that Mr. Siegelen, Jr. would be responsible because he is the business licensee and QP. Commissioner DeVere asked if the respondents have made an effort to get a QP license. Vince Craig stated that they are currently working under another license and going through the testing process. Commissioner Burns noted that they knew about the licensing requirements. Commissioner Runbeck asked what would be the maximum that the Commission could do on this case. Vince Craig stated that, outside of the parameters of the ERP, the Commission could send this matter to hearing, where an ALJ's recommendation could be a \$1,000 civil penalty per count. He added that the respondent is not unlicensed, but is working on activating a license. Commissioner Black asked why the respondent let his license lapse. Vince Craig stated that Mr. Siegelen, Jr.'s mother was the accountant. The mother died in November, 2003, and afterwards the respondents didn't take care of the finances, and it caught up with them. Commissioner Hartley stated that one of the reasons that the Commission came up with the Matrix was so that they put some standards together and get rid of subjectivity. The penalty falls within the mainstream of the Matrix and, though some of the Commissioners may not like the settlement terms, he believes that the violations are not particularly extreme or egregious and the Commission should accept the proposed resolution. Commissioner Baker asked if the respondent made any attempt to get CE hours once his license expired. Robert Tolton stated that both Mr. Donegan and Mr. Siegelen, Jr. have current applicator licenses; only their QP and business licenses expired.

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

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

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. Brian W. Oldham, Qualifying Party License No. 2029 B1 B2 B8 (Issued 05/22/1998) (Expires 12/31/2006) and Applicator License No. 940470 B1 B2 B5 B8 (Issued 06/08/1994) (Expires 05/31/2006)**

Lisa Gervase stated that this matter was on last month's Commission meeting agenda for possible suspension. The morning of that meeting, Mr. Oldham submitted a check for \$2,300 to the Commission and the Commission decided to take no action, giving him benefit of the doubt that the check would clear. However, the check didn't clear after staff ran it through a few times. Yesterday, Mr. Oldham paid the full amount plus a non-sufficient funds ("NSF") fee by cashier's check. The business license has been suspended for lack of insurance as of December 3, 2005, so Mr. Oldham shouldn't be operating right now. There is another case involving Mr. Oldham that was sent to the Attorney General's Office for collections in October, 2005 for nonpayment of TARF fees. The Commission doesn't need to take any action today, as this current matter is now resolved.

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 entered into a probationary consent agreement in July, 2005 as a condition of getting an applicator license with the Commission. He is being monitored for a specific period of time and has to make quarterly reports and appearances before the Commission. The reports from his probation officer and employer are glowing. He has been promoted and requires minimal direction to perform his duties. Commissioner Runbeck stated that the Commission doesn't enter into these consent agreements lightly and she is happy when these types of agreements work out because they like to give people a chance. Commissioner Hartley commended Mr. Iovinelli and stated that stories like this one reinforce his faith in human nature. Lisa Gervase stated that probably at the next meeting she may ask the Commission to step down the appearance requirement to less than every three months. Commissioner Runbeck suggested that perhaps they could choose to require appearances only twice a year. Commissioner Black stated that he would support that. He asked how long Mr. Iovinelli has to do this. Lisa Gervase stated that his probation is scheduled to last for two years from July, 2005. She asked when Mr. Iovinelli's criminal probation ends. Mr. Iovinelli stated that his criminal probation will end in April, 2006 at the earliest and April, 2007 at the latest. Commissioner Burns asked how often Mr. Iovinelli gives reports from his employer and probation officer to the Commission. Lisa Gervase stated that he does these things every three months, and this can still remain the same regardless of a motion that reduces the frequency of his appearances before the Commission. Commissioner Runbeck stated that the reporting requirement should remain at every three months.

MOTION: *To step down the frequency of Mr. Iovinelli's required appearances before the Commission from once every three months to once every six months, by Commissioner Black.
Seconded by Commissioner Hartley.*

VOTE: 5-0 *Motion carried (Commissioner Baker abstained due to being out of the room).*

XVI. Applicants with Criminal Convictions.

A. Armstrong, Michael W.

Commissioner Runbeck noted that the Commission tabled this application from last month's meeting because Mr. Armstrong did not appear then either. Robert Tolton stated that he has not heard anything from Mr. Armstrong and did not receive the return certified mail receipt from him regarding notice of today's meeting.

Commissioner Hartley stated that he would feel uncomfortable voting on it without seeing him. Robert Tolton stated, however, that his application is up against the end of the time frame that staff has to process it. Commissioner Black suggested that the Commission should deny the application. Commissioner Runbeck stated that the Commission cannot deny an application merely because the applicant did not appear before the Commissioners. Chris Munns affirmed this, stating that it is a legal standard. Commissioner Runbeck noted, however, that Mr. Armstrong was convicted of one of the felonies on the Commission's presumptive deny list. Commissioner DeVere noted that the felonies occurred a while ago in 1991 and 1995 and that he had glowing recommendations from his employer. Commissioner Black agreed. Lisa Gervase stated that, if Mr. Armstrong's application is denied, he will be notified of the Commission's decision and his legal rights regarding an informal settlement conference and/or hearing. Commissioner Burns asked whether, after being denied, he could still re-apply again later. Lisa Gervase stated that he could.

MOTION: To deny based on lack of good moral character, and having a felony conviction, by Commissioner Black.
Seconded by Commissioner Baker.

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

B. Sakievich, David W.

Commissioner Runbeck noted that the Commission tabled this application also from last month's meeting because Mr. Sakievich did not appear then either. Robert Tolton stated that the scenario here is similar to that of the previous applicant in that he has not heard anything from Mr. Sakievich and did not receive the return certified mail receipt from him regarding notice of today's meeting. Commissioner Runbeck reminded the Commissioners that, in considering the application, they should consider the underlying offense and not whether he appeared before the Commissioners.

MOTION: To deny based on moral turpitude in light of the nature of the offense and having a felony conviction, by Commissioner Black.
Seconded by Commissioner Hartley.

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

XVII. Commission Updates and Reports; Miscellaneous Action Items.

A. Election of Commission Officers for remainder of 2006

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

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

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

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

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

VOTE: *6-0 Motion carried.*

(Break from 10:00 A.M. to 10:15 A.M.)

B. Legislative Bills/Proposals

1. SB 1221 - weed control license exemption

*Kevin Etheridge, from Contractor's Termite & Pest Control, Inc., appeared.
Susan Tomlinson, from North Country Pest Management, Inc., appeared.
Gavin Gallifant, from National Environmental Solutions, Inc., appeared.
Mike Means, from Metro Institute, appeared.
Brian Ferris, from Terminix, Inc., appeared.*

Lisa Gervase stated that this bill essentially exempts all people from licensure if they are doing lawn, garden, tree or shrub maintenance and applying herbicides for the purpose of weed control. The exemption does not apply to someone using a restricted-use pesticide or sterilant. This is Senator Leff's bill directly. The bill went through the Senate, and by now it is probably on the House Commerce Committee

agenda. If anyone is interested in seeing the bills, visit the Arizona State Legislature website. The Commission's bills are typically assigned to the commerce committee, sometimes the environmental or natural resources committee.

Commissioner Runbeck asked what the Commission has told the legislature regarding this weed control license exemption bill. Lisa Gervase stated that the Commission is not taking an official position, though she has expressed the Commission's concerns and has been asked lots of questions from the industry, legislature, consumers, etc. She stated that she has proposed suggestions for amendments to the language of this bill. Commissioner Burns stated that it was his understanding that Senator Leff made the comment that the Commission supported the bill. Lisa Gervase stated that she didn't personally hear the comment and that it may have been taken out of context. However, to say that the Commission supports the bill as currently written is not an accurate statement. Mr. Etheridge stated that he attended the recent committee meeting and, while he can't quote verbatim, he stated that Senator Leff did make that comment in the context of the amended language that had been supported by the Commission. Ms. Tomlinson stated that her company provides weed control. She stated that if this type of amendment passes, there is no reason that she should go through what she goes through to be licensed or even carry insurance. She thinks that this amendment may be a knee-jerk reaction to being sued, and it opens up the door in the future to making designations between types of chemicals used in deciding whether certain applications constitute pest control. The choice of product should be up to the licensed applicator or QP. She encouraged the Commissioners to pass a motion saying that they don't support this bill because it undermines the Commission's purpose, and she stated that the Senator should get copies of such a motion. She also stated that she was bothered by what she had recently read in the newspaper, namely that one reporter headed his article by saying that landscapers don't need to be licensed to spray weeds, which is not yet true, and that Senator Leff didn't see the big problem in spritzing a few weeds. She stated that she emailed Senator Leff but she doesn't know if people are listening. Commissioner Hartley stated that he thinks this is bad law. He stated that he thinks that Senator Leff is acting without enough background regarding herbicides and their potential harm to the environment. Just because you can buy something at Home Depot, it doesn't mean that you can't do harm with it. Even though a weed control product may not be particularly dangerous from a mammalian toxicity standpoint, that doesn't mean it isn't harmful to plants. He thinks that if this bill passes, it will only be a matter of time before we are back here after someone decimates a yard with Roundup and people will be blaming the Commission. The Commission is between a rock and hard place. Legislation will be passed and we will go through another cycle. He stated that he would be in favor of a motion by the Commission stating that they are not in favor of the bill. Commissioner Runbeck stated that as she recalls, this issue was part of the Commission's omnibus bill before Senator Leff decided to pull it out

and have it as her own bill. Lisa Gervase stated that the Commission had voted during the November, 2005 Commission meeting to include a weed control licensing exemption since it was coming. Having this issue as part of the omnibus bill would have given the Commission the opportunity to provide some input. A few people went directly to Senator Leff after the November, 2005 Commission meeting and raised concerns to her. She stated that Senator Leff called her and asked what was going on. Senator Leff started seeing the writing on the wall that there might be some opposition, so she pulled the weed control license exemption out of the omnibus bill and made it her own because she feels strongly about it. Then, after last Commission meeting's vote in January, 2006 against the omnibus bill, Senator Leff still wants to go forward with the weed bill. The flip-flopping has caused credibility issues for the Commission. Senator Leff is getting input from the Institute for Justice, landscapers, and others who support an exemption. She is being pushed by these groups and by her own personal feelings that she doesn't want someone doing the work at her house to have to be licensed. Commission staff has also provided information to Senator Leff regarding glyphosate, the active ingredient in Roundup, being on Arizona's groundwater protection list.

Commissioner Runbeck acknowledged the political concerns with all of this, especially if the Commission decides to go against Senator Leff, who was willing to sponsor its bill. Commissioner Burns stated, however, that this bill smacks in the face of the Commission's mission statement, which is "to advocate and promote, through education, training and enforcement, the safe application of pest control technologies which will result in the maximization of the health and safety of the residents of Arizona, and protection of their property and the environment." We need to explain that our mission isn't consistent with this bill. Commissioner Black asked what political capital the Commission has right now at the legislature anyway and what harm it would be doing by voting to not support this bill. Lisa Gervase stated that the Commission wouldn't necessarily be taken seriously, and this could result in future damage; it could be bad for the Commission and the industry if either wants to try to get legislative changes in the future. She stated that the Commission reports to and was created by the legislature. The Commission is up for its sunset review next year, and its appropriations are dependent on what the legislature wants to do. She also stated that she doesn't think what the Commission says will make a difference in this bill anyway, so it would be more productive to continue to have open dialogue and try to be persuasive. But, opposing the bill will only close that opportunity.

Commissioner Black questioned whether some legislative credibility fallout was from last meeting's withdrawal of support for the omnibus bill. Mr. Gallifant stated that he spoke at a commerce committee hearing last week and made recommendations for changes. He stated that he is in favor of better regulation so that he can charge people more and make more money. He also stated that a senator who voted for

deregulation is the same one who voted for more regulation on another issue. He stated that the Commission has years of integrity in Arizona and should pursue what is correct. He stated that he has been licensed since 1982 and believes that SB 1221 is bad legislation. He stated that he and Mr. Etheridge were the only ones in opposition, however. It is really odd what is going through the legislature right now because the Commission, AZPPO, etc. have not been together on these issues.

Mr. Means stated that applicators need to be spoken for also. His company trains 60-90 weed applicators per month, and they are just one company. These applicators don't know about OSHA requirements, PPE, etc. He stated that he thinks it is the duty of the Commission to protect the public, but sometimes we are just talking about homeowners and property owners. But the applicators are most at risk. He stated that if the Commission allows this bill to get by, there will be lots of people coming into this industry who know nothing. He encouraged the Commission to strongly oppose this bill. Commissioner Hartley stated that by not opposing this bill the Commission may get some short term political advantage, but in the long term he thinks it may have sold itself to the devil, and in a couple of years the Commission won't look good for not opposing this bill on the principal that it violates the Commission's own mission statement. Mr. Ferris stated that from a business standpoint, his company does not compete in the weed control business. But, the argument could be made that his business is nevertheless being discriminated against because they have to be licensed, and they don't even use pesticides that are as harmful as herbicides can be. He also stated that applying pesticides without insurance is insane. Mr. Etheridge stated that at the Commission meeting a month ago, everybody lost something. He encouraged the Commission to send a message to the legislature that it does not support this bill. He stated that the previous exemption had a one- to five-gallon limit, but the language in this bill is weaker.

Commissioner DeVere asked about Senator Leff's understanding of the Commission's position. Lisa Gervase stated that she does, but that neither the Commission nor the industry are driving this bill. They can reach a middle ground by getting the message across without offending a senator. It won't be an easy message, but the Commission can talk about its mission statement. Only four people, two of whom were industry members, spoke against this bill. No appearance was made by the NPMA or the golf course industry, and she would think that they would have a big stake in this. Commissioner Black asked if they should send a letter perhaps signed by all of the Commissioners or by Lisa Gervase. Commissioner Black asked if she would even care what the Commission has to say. Lisa Gervase stated that this is her point; maybe it would be best to not say anything to prevent doing more damage.

Commissioner Baker stated that he is in favor of the message, but he thinks that the Commission needs to come up with alternative ideas for the bill language instead of just saying "no" to everything in the current bill. Otherwise, the Commission will have no credibility. However, there needs to be language in the bill that addresses protection for applicators and others. Commissioner Hartley stated that it can be very difficult to compromise when you consider that back in September/October, 2005, legislators were unwilling to accept any regulation of people spraying their yards. He asked how there can be safety without regulation. Lisa Gervase stated that they first addressed this in November, 2005, and it wasn't until late December, 2005 that she found out that there were concerns with the omnibus bill that made Senator Leff pull the weed control licensing exemption issue out of the omnibus bill, and that is when the Commission lost input regarding the weed control issue. Commissioner Hartley stated that he would love to ask Senator Leff if she is in favor of having unlicensed people spray without having been trained in safety, equipment, labels, etc. He stated that he can't imagine that she would say that applicators shouldn't know anything about safety. But where else besides the Commission are applicators going to get this information? Commissioner Runbeck stated that she also can't imagine Senator Leff answering questions from the Commissioners. Stuart Goodman, the Commission's lobbyist, was able to get meetings with her and others to offer language changes and explain potential problems. But there are a lot of other interest groups out there who are also making impacts. Commissioner Hartley stated that they are special interest groups.

Lisa Gervase stated that her first proposal on December 15, 2005 was that applicators should have to be licensed if applying at schools. The licensing exemption would be limited to outdoor terrestrial control, not aquatic control, the exemption would be limited to five gallons per site or per job if using a mixed liquid or be on a residential site of one acre or less when a non-liquid was used or the liquid amount couldn't be determined, the herbicide would have to be a non-restricted product purchased over the counter, label directions would have to be followed, and treatment records would have to be kept. This was the actual bill that was drafted. She also proposed that the Commission have direct authority over people who commit misuse violations. Right now, the only authority that the Commission has is to issue a Cease and Desist Order and a civil penalty. Only the EPA under FIFRA can prosecute for misuse. Commissioner Hartley asked why, when Senator Leff pulled the weed control licensing exemption issue out of the omnibus bill, she didn't just keep that language. Lisa Gervase stated that other groups gained control and without the Commission having control over the bill, it opened the door for gutting the proposed language. Commissioner Runbeck stated that the Commission doesn't have a bill to push anymore.

Lisa Gervase stated that maybe the compromise would be that the Commission would be neutral or in support of the bill if it had certain language.

MOTION: *To instruct staff to compose written material for the senator indicating that the Commission could support the bill with changes that would promote safety and protect consumers, by Commissioner Hartley. Seconded by Commissioner Baker.*

VOTE: 6-0 *Motion carried.*

Lisa Gervase stated that she will draft language for the Commission's approval. Commissioner Runbeck asked what would happen if Lisa Gervase's draft letter was opposed by the Commissioners. She asked if the Commission would be able to conduct a telephonic meeting. Lisa Gervase stated that they could, though they would need to do it soon. Mr. Gallifant stated that time is of the essence and recommended that the Commission approve such written material by next Wednesday or else oppose it if after that. Ms. Tomlinson stated that if this bill passes, there would be no one to ensure safety and training because no QP would be involved.

2. SB 1388 - utility license exemption

Lisa Gervase stated that the language from this bill was in the omnibus bill that was discussed at stakeholder meetings and Commission meetings. When the Commission dropped its support of the omnibus bill, utilities companies still wanted to move forward with it anyway. This bill passed out of the commerce committee on February 1, 2006. Commissioner Black asked what utilities want this bill. Lisa Gervase mentioned APS and Grand Canyon Electric Co-op. Commissioner Black asked if he would need to recuse himself on this issue because he represents utilities in general, though not these particular utilities. He represents telecommunications, water and wastewater utilities. Chris Munns stated generally that if, as a Commissioner, he could make a decision that could result in more business for him, then there could be a conflict of interest. But in this case here he doesn't see any economic benefits that could arise for Commissioner Black based on his decision. He asked Commissioner Black if he thinks he can be impartial and/or if there are any statutory conflicts. Commissioner Black stated that he believes that he can be impartial and that he doesn't believe there would be any benefits for him, so he elected not to recuse himself. Commissioner Hartley stated that he doesn't have any problem with this bill, as the utilities are going to continue to perform pest control regardless of any bill being passed. Lisa Gervase stated that this bill would mirror in law what is currently taking place in practice.

3. SB 1350 - child care facility pre/post notification

*Dr. Dawn Gouge, an entomologist for the University of Arizona, appeared.
Larry Schmeits, from Washington Elementary School District, appeared.
Carl Martin, a citizen, appeared.*

Andy Weber, from S.O.S. Exterminating, Inc., appeared.

Larry, Musgrove, from Western Exterminator Company, Inc., appeared.

Lisa Gervase stated that this bill would amend the 72-hour advance notification requirement to add child care facilities as defined in the Department of Health Services ("DHS") statutes. There would be some exemptions to this requirement, and staff has expressed some concerns from a regulatory standpoint and from an industry standpoint about the logistics of enforcing and complying with these requirements. This bill will be heard at the health committee on Monday and at the natural resources committee on Wednesday. The Commission hasn't indicated a position on this issue but has several questions. Namely, how would industry members know if there is a child care facility nearby when they apply pesticides near or in a house, golf club, hospital, etc.? Would one of the qualifying exemptions be when there is an emergency situation where a pesticide with category 2, 3 or 4 toxicity could be used? Does it make sense to have certain things exempt, such as tamper resistant bait stations? It is important to keep dangerous chemicals inaccessible to children, as they can seem to get into everything. She also stated that she suggested to DHS that a QP, not merely an applicator, should be the one who ensures compliance with the posting requirements but that child care facilities shouldn't delegate the posting responsibility to them. She also expressed concern about an unfunded mandate, as the Commission doesn't now have the appropriations to investigate and enforce this potential additional requirement. Dr. Gouge stated that this sounds like a fair assessment. She also stated that they have requested \$100,000 in appropriations, a small chunk of money, and have contacted Senator Allen, though she has not made a decision yet. Some of this bill ties into the issues in SB 1221. She stated that there are an estimated 3,000 child care providers, probably half of which are small mom-and-pop operations. She stated that they are already under the Commission's jurisdiction, so she doesn't feel like this would be a huge burden to the inspectors. The landscapers will soon be exempt, and they comprise a much larger number than the number of child care providers. She stated that she feels that this legislation is an all-around winner, as it protects providers, the schools get a break, it promotes the transfer of information, and it involves parents in the decision-making process. Children who spend 6-9 hours per day in an environment will be profoundly affected by that environment. For the safety of the children, child care providers shouldn't be doing in-house pest management; licensed applicators should be used. Commissioner Runbeck agreed that there should be regulation around our children. She asked how the Commission can enforce and regulate in this area. Commissioner Black, noting that

he has a four-year old child in child care, asked if child care facilities are now required to provide any type of notification. Dr. Gouge stated that they are not and that licensed applicators are not in place either. Mr. Schmeits stated that he works for a school district as a licensed applicator and that he has no problem complying with rules and regulations regarding child care facilities. He stated that last summer, when he was picking up a child, he noticed an applicator spraying pesticides nearby. There need to be restrictions. Mr. Martin stated that this is the kind of legislation that makes sense for children and for Arizona. With regard to possible additional cost, he stated that companies and the SPCC could have more work to do, but as far as communicating changes, the Commission is good at doing this. He stated that this bill should be adopted, as it makes the industry more professional. Mr. Weber stated that he knows a lot of women who have day care centers who go through hoops to care for others on their own. He asked how a pest control company that performs service on a Saturday, with no children around, will know if they are violating any laws or rules if they don't know that they are treating a day care center. Lisa Gervase stated that the Department of Health Services licenses child care facilities and she would think that if there is a 72-hour advance notice requirement, even if no children were present during the application, industry members would still have to post notice. Mr. Weber asked if a pest control company could be liable if hired by someone who is acting as a homeowner rather than as a caretaker. Dr. Gouge stated that a pest control company could possibly be liable. Part of the process though is that a committee has been put together to determine who would have what responsibilities and also to determine a way to make a list of registered child care facilities available to pest control companies. It would protect the industry to have this information. Commissioner Runbeck asked, if a pest control company is cited, there would be a way of addressing this in the disciplinary process. Mr. Weber stated that this could turn into a huge "he said, she said" battle. Commissioner Runbeck stated, however, that the Commission deals with this all the time. Mr. Martin stated that the child care provider is the one who has to post notification. Commissioner Burns stated that it can be difficult for a pest control company to identify whenever someone could have child care, as providers are not calling and telling pest control companies that their property is also a child care facility. Also, churches in the valley develop child care because there is a need or want for it. He stated that the application part of this bill is easy, but the posting and notification rules concern him. Dr. Gouge stated that this bill would only apply to registered child care providers. So, a group that spontaneously decides to provide child care wouldn't fall into this group. The Department of Health Services ("DHS") is putting together a laundry list of such facilities. Commissioner Burns stated that this bill doesn't address the suddenness of developing a child care facility. Big companies could spend months developing such a facility. Dr. Gouge stated that the burden of communication would be on the child care provider. There are several certificates that facilities have to post and they have to be obvious. They are cited and fined if they don't post such notification. Commissioner Black

asked what exposure or liability would there be for pest control companies if notification procedures are not followed. Dr. Gouge stated that DHS will regulate the child care providers. The pest management professionals (“PMPs”) have to give the information to the child care providers. Lisa Gervase added that the PMP needs to provide the 72-hour notice to the child care facility, and if this isn’t done, then there could be a violation. Mr. Musgrove stated that there must be criteria about where to post, etc. He also stated that coming back and making a second trip to the site is a burden. He asked if there are any exemptions in emergency situations. Dr. Gouge stated that there are some very sensible emergency exemptions listed, the same as those in the other facilities; notification needs to be on the main entrance and all treated areas. DHS wanted to take control of this. Mr. Weber stated that he is concerned that a pest control company would be on the hook if DHS doesn’t post. Mike Francis stated that this is the same as with treating the schools. If a pest control company can prove to the Commission that the notifying time frame was met, then the company will not be liable; this can be done by providing evidence of an email or other communication with a child care facility. There is a potential for liability, but it is no different than that involved with treating schools. Commissioner Runbeck asked what the exposure to the pest control providers would be if they treat child care facilities unknowingly. Lisa Gervase stated that the burden would be on the pest control company to find out whether a property is a child care facility. But, as Dr. Gouge pointed out, we are talking about licensed facilities, and DHS would probably have a list. Mr. Weber stated though that then a pest control company would have to check the DHS website for every potential customer to see if they are listed as child care facilities. Mr. Martin stated that this sounds like an area for compromise, and that the Commission shouldn’t hold industry members accountable if they don’t have the knowledge or information to comply. Commissioner Burns stated that if the industry can get someone to notify them that a particular site is a child care facility, and then the industry takes full responsibility of the notification thereafter, then this would be fine. Mr. Weber agreed. Commissioner Runbeck asked if the Commission can lend its support for this bill as long as DHS institutes provisions for notification. Lisa Gervase stated that she doesn’t know if it would be part of the bill or mere guidelines. The customer could be the one providing notice. They can work on an amendment.

MOTION: To support the bill with the caveats that DHS by rules or statutes requires child care facilities to notify PMPs and maintain the notice requirement and that the Commission gets the appropriation support it needs, by Commissioner Black.
Seconded by Commissioner Hartley.

VOTE: 6-0 Motion carried.

Dr. Gouge asked if this motion means that the Commission doesn't support the bill if Senator Allen does not approve the \$100,000 in appropriations. Commissioner Black stated that he doesn't think that the appropriations request is unreasonable.

4. Others

Lisa Gervase stated that there are no amendments pending at the legislature regarding the termite issue, so it doesn't need to be discussed today and the Commission will deal with it in the rules. Lisa Gervase stated that there currently is a House bill that says that a department or agency of the state and any employee of the state doing right-of-way applications should post notice of an application at least 24 hours before an application and the notice should remain in place at least 24 hours after an application. She stated that she gets the feeling that there is not support for this bill, but if it passes, the question would arise regarding who is responsible for monitoring and enforcing it. The sponsor is Representative Barnes. She stated that she thinks that this is an Arizona Department of Transportation ("ADOT") issue, perhaps coming from a former employee who may have felt the ill effects of an herbicide application on a highway. She also expressed concern regarding the potential of receiving a floodgate of complaints and not being able to do anything about them if the Commission is not given appropriations accordingly.

C. Proposed Rule Changes

Lisa Gervase stated that after last Wednesday's stakeholder meeting, she thinks that they will need to break up the rule package into more manageable sections in order to make more progress. One section should be for administrative rules, one for minimum standard rules, and one for termite issues. That way, the meetings will be more focused. She stated that the March 4 stakeholder meeting will be rescheduled. Commissioner Burns stated that he attended last Wednesday's meeting and that it was not very productive. He stated that what he would like to see, so that the industry has involvement, is to maybe make a small group working committee so that the Commission can then better take the responses from a large group of people. Lisa Gervase stated that her thought was for staff to redraft the three packages that she mentioned and then have individual stakeholder meetings for each one. Commissioner Burns stated that he thinks that in order to make the smaller packages work, there should be committees; we need input from the Commission, industry and public. Then, when you present the information back to the group as a whole, you will have a much more rounded product. Commissioner Runbeck stated that she thinks that was essentially what Lisa Gervase was saying.

- D. Complaint Status Log - no questions/comments**
- E. Computer Based Testing “CBT” Status and Statistics - no questions/comments**
- F. Expenditure Report - separate handout or verbal report**

Lisa Gervase stated that as of the end of January, 2006, the Commission has expended 61% of its annual budget, which is a little over 8.5% per month. We are on track. She stated that staff is trying to find out why the appropriation for next year has been reduced by \$65,000; both proposals have reductions in year two of the next two-year cycle. Commissioner Black asked if staff has done any kind of review based on how much the agency is appropriated versus how much it spends. Lisa Gervase stated that they have, and that the Commission is bringing in more money than it is appropriated; the excess is put into a reserve fund (for possible emergencies) that is raided by others who don't properly manage their money.

- G. Case Status Report - none**
- H. Gloria Kilian, dba Kilian's Termite and Pest Control, Co., vs. Structural Pest Control Commission, Case No. C20053438**

Lisa Gervase stated that the Commission won at the Superior Court level with Judge Fields presiding. Ms. Kilian appealed his ruling to the Court of Appeals and the judge denied a stay of the Commission's decision as of January 17, 2006. Now, her options are to proceed with an appeal without a stay, not appeal, or ask the Court of Appeals for a stay.

XVIII. Approval of Minutes

- A. January 13, 2006 (regular session) Minutes**

Will be available at the next meeting.

- B. Continuing Education Minutes**

Commissioner Baker stated that there used to be but no longer is a committee. He asked if there is a written set of guidelines for someone who wants to get Continuing Education Units (“CEUs”). Mike Francis stated that the process hasn't really changed from when the committee was there; the review process just went down to a single person. There are still the same requirements for reviewing courses. Commissioner Baker asked if it is adequate to go to some seminar or something similar and prove that you went there. Mike Francis stated that it is not

necessarily adequate. For example, you can't go to a course on California statutes and get CE credit here in Arizona. Lisa Gervase stated that Jack Root called her in August, 2005 and asked her if his CE course in New Mexico would get approval in Arizona for renewing a license in December. She told him that if the course was already an approved course in Arizona, then fine; or he could simply submit the material to the Commission. But the laws don't allow for reciprocity. In December, she received a call asking whether the materials were reviewed for Arizona approval. However, the materials were not received. The bottom line is that the process hasn't changed; it is posted on the Commission's website. The Commission is independently required to approve courses and speakers. The providers of the courses that Commissioner Baker is talking about usually get approval in multiple states. Commissioner Baker stated that a national conference would probably be approved, but noted that the providers would have to provide their bios, etc., to the Commission. Lisa Gervase stated that this is true, but they should have this stuff anyway. Commissioner Baker asked how we can get to the point where a national meeting (as opposed to one in Arizona that is being run by someone who is not necessarily well-known) would be easily recognized as an approved provider. Lisa Gervase stated that all that is required is the course information and speaker bios. The packet of the information that is required is on the web site.

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

March 10, 2006

April 14, 2006

May 12, 2006

June 9, 2006

July 14, 2006

August 11, 2006

September 8, 2006

October 13, 2006

XX. Adjournment - 12:20 p.m.

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

VOTE: 6-0 *Motion carried.*