



STATE OF ARIZONA

Janet Napolitano
Governor

Structural Pest Control Commission

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Lisa Gervase
Executive

Structural Pest Control Commission
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COMMISSION MEETING
FRIDAY, July 14, 2006, 9:00 A.M.
MINUTES

I. Call to order, Commissioner roll call

Commissioners Present: Commissioners Paul Baker, Patrick Black, Dave Burns, Dan DeVere and Debra Runbeck

Commissioners Absent: Bert Putterman and one Vacancy

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

II. Call to the public

Ken Frederick, Owner and QP of Conquistador Pest & Termite, Inc., in Tucson, and President-elect of the Arizona Pest Professional Organization ("AZPPO"), stated that he has met with and discussed rule changes with numerous licensees, Commission staff and national leaders in the pest control industry. He stated that he has learned a lot, and commends Commission staff's excellent work. He stated that AZPPO is working on written comments to the proposed rules to be considered by the Commission. He asked that the Commission consider all input from staff, the industry and any others. Commissioner Runbeck asked if the Commission has the AZPPO's comments on record. Lisa Gervase stated that nothing has yet been

submitted. Through the informal process, the Commission has received numerous verbal comments, but written comments only from Nisus Corporation and two industry members, that have already been provided to the Commission.

Nate Scheer, representing Nisus Corporation, thanked the Commission and its staff for posting the draft rules on the Commission website. He asked that the Commission move as quickly as possible on the rules.

III. Communication with Commissioners

Commissioner Baker stated that Gloria Kilian contacted him three times in the past three days.

IV. Summary of Current Commission Events, Activities, Notices

☛ Status of Proposed Law and Rule Changes. Also, watch web www.azleg.state.az.us and www.sb.state.az.us

Lisa Gervase stated that the Commission is scheduling a separate open public meeting on Tuesday, July 25, 2006 for a Commission vote to move forward with the rules packages. As a brief history on this project, the Commission stated in a 2001 5-Year Rule Report that it would complete rules revisions by March 2002. The Commission was implementing many law changes that became effective in 2003, and in January 2004 current Commission staff started informally working on rules revisions. A first rough draft of rules revisions was created in January/February 2005, while the Commission worked on law changes to provide a foundation for some of the anticipated rules changes, and for clean-up purposes. However, Commission support for the proposed laws changes was withdrawn in January 2006. The focus since then has been more heavily on the rules changes. The rules changes have been discussed at almost every public meeting since January 2005, the Docket was opened in July 2005, and there have been numerous stakeholder meetings. The SPCC also has received input from industry members, consumers, homeowners' associations, and legislators. The SPCC now has a commitment to get the rules done by June 2007. There are numerous procedural deadlines that the Commission has to meet before this date. The Governor's Regulatory Review Council ("GRRC") and the Secretary of State have procedures for promulgating rules and each agency likely will make changes to the rules once they're filed with them. She stated that the rules may not be perfect, but we need to move on. If, after finalizing the rules, the Commission wants to change or add things, then the Commission can open another rule package. She thanked Eric Bauer for creating a Cross-Reference sheet that matches the current rules to their locations in the proposed rules packages. If someone is interested in a particular rule, they can find it in the proposed rules packages and see the proposed revision. The SPCC is proposing repealing all of the Commission's current rules to reorganize

the flow of the rules and then rewriting them to be clear, concise, and understandable. The substance of many rules is carried over from the current rules to the proposed rules packages, and some rules are new. People will be able to provide additional verbal and/or written comments at the Commission's open public meeting to be held on July 25, 2006.

Commissioner Burns stated that, based on the sheer volume of material in the proposed rules packages, he is not sure that he can make a sound decision in two weeks even though he's been part of the process. Commissioner Black asked if the Commission is required to vote on July 25 if it meets on that day. He stated that he doesn't want to push a Commissioner to make a vote unless they felt comfortable. He also asked if we could push back such a meeting and vote. Lisa Gervase suggested that it be a separate meeting to be able to focus on the rules and receive input, rather than combine it with regular monthly business. The Commission can decide on July 25 if they are comfortable, but there is no requirement to take a vote at that meeting. She added that industry members have been aware of the rules all along and she would think that they would be ready. Commissioner Runbeck stated that this process has been going on forever. Unfortunately, because of the way things work in government, we have an uprooted Commission and many of the Commissioners originally involved in this project are gone. The new Commissioners aren't as familiar. However, this could drag on forever. We are never going to make everyone happy, but we need to do something. We discussed a year ago proposed rules changes, staff, the Commission and all have been involved, so we hope that things have been flushed out as best they can since that time. Commissioner Black added that he is prepared to come on July 25 and vote. Commissioner DeVere stated that he feels like Commissioner Burns feels because he is relatively new and might need more time to read the rules packages. He stated that he can meet on July 25, but may not be comfortable with voting then. Commissioner Runbeck stated that maybe that's what we need to do then, so we can at least get some discussion and keep moving forward. Commissioner Burns stated that it is not his intent to stall the process, but he just doesn't want to have to be committed to making a decision on July 25. He also stated that he understands that this has been an ongoing long process, but if the rules package turns out bad, then their names, not the names of the previous Commissioners, will be on the package. He stated that he wants to see a good rules package that maybe we don't have to redo two years into the future. Lisa Gervase stated that everybody needs to be pushed a little bit and there have been plenty of opportunities for people to review, discuss, understand and opine. Consensus to schedule the meeting for Tuesday, July 25.

✓Applicator License Renewal status - Licenses not renewed by May 30 are expired (cannot operate). Must renew before July 29 to avoid retesting. Renew Online Now www.sb.state.az.us

Lisa Gervase stated that over 85% of licensed applicators have renewed their licenses, and nearly 75% of those renewals were done online. A list of people who haven't renewed their applicator licenses is on the Commission's website, so it is easy for business owners to check on the status of their employees.

⇒ILT (Initial Licensure Training) courses posted on web site. Registration: 480-ILT-SPCC; ILT@sb.state.az.us

V. Consent Agenda

A. Applications for New Business License and Activating Qualifying Party License

<u>Business</u>	<u>Qualifying Party</u>
1. Western Weed Control, Inc.	Lee A. Spencer ("B3" Right of Way & Weed Control)
2. D.O.A. Pest Control Service	Leslie C. Robbins ("B1" General Pest & Public Health)

Mr. Robbins appeared.

Commissioner Burns asked if Mr. Robbins will have an active daily role in the management of the business. Mr. Robbins stated that he will be making sure everything is done according to rules and regulations. He stated that he understands his responsibilities and will be available all the time. Commissioner Burns stated that he is not an advocate of the rental license program and wants to make sure that Mr. Robbins clearly understands that he has responsibilities even though he may not be an equity holder in the company.

MOTION: *To approve the application for new business license in "B1" by Commissioner Burns.
Seconded by Commissioner Black.*

VOTE: *5-0 Motion carried.*

3. RDB Management and Construction, LLC.	David D. Stevens ("B3" Right of Way & Weed Control)
4. MC Pest Control	Jung W. Pyon ("B1" General Pest & Public Health)

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| 5. Arizona Bug Company | Kody F. Robinson ("B1" General Pest & Public Health) |
| 6. Red Ant, Inc. | Anthony J. Mazeika ("B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood-Destroying Insect Inspection) |
| 7. Rim Country Applicators | Robert E. Gaunt ("B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture) |
| 8. Arizona Innovative Home Inspections, LLC. | Steven L. Davis ("B8" Wood Destroying Insect Inspection) |
| 9. Crowley's Pest Control | Terrence G. Crowley ("B1" General Pest & Public Health) |
| 10. B.M. Termite & Pest Control, LLC. | Larry C. Holmes, Jr. ("B2" Control of Wood-Destroying Insects and "B8" Wood-Destroying Insect Inspection) |

B. Applications to activate Qualifying Party for Existing Business License

<u>Qualifying Party</u>	<u>Business</u>
1. Jonathan D. DeBee ("B2" Control of Wood-Destroying Insects and "B8" Wood-Destroying Insect Inspection)	Your Exterminating Solution

Commissioner Burns stated that this appears to be a rental license arrangement, as the QP is in Sierra Vista and the business is in Cottonwood. He asked how the QP will manage the business in a long-distance relationship. Robert Tolton stated that Mr. DeBee has been a QP for this company for approximately three years already, and today he is simply asking to activate his QP license in the "B2" and "B8" categories. The business is opening a branch office in Cottonwood, and the other business owners in Cottonwood operate in the "B1" category.

MOTION: *To approve the application to activate qualifying party for existing business license in "B2" and "B8" by Commissioner Burns.
Seconded by Commissioner DeVere.*

VOTE: 4-1 Motion carried (Commissioner Baker opposed).

2. Harry Davis, III Ozone Pest Control
("B2" Control of Wood-Destroying Insects and "B8" Wood-Destroying Insect Inspection)
3. Joey R. Neff Neff Exterminating, Inc.
("B8" Wood-Destroying Insect Inspection)

C. Applications for Qualifying Party License

1. James C. Somers "B1" (General Pest & Public Health)
2. Kandy K. Van Meeteren "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture)
3. Chad D. Lowder "B1" (General Pest & Public Health)
4. Joshua D. O'Connor "B1" (General Pest & Public Health)

Mr. O'Connor appeared and answered the Commission's questions.

MOTION: To approve by Commissioner Baker.
Seconded by Commissioner Black.

VOTE: 5-0 Motion carried.

5. James S. Saitman "B4" (Fumigation)

Commissioner Baker questioned the kind of work Mr. Saitman did in California, noting that he has jumped around a bit and has had different kinds of jobs. Mr. Saitman was not present, so Robert Tolton stated that staff does a thorough look into each applicant's history, including the categories of licensure, especially when they are from out of state. Mr. Saitman was licensed in California to do fumigation, and, according to the California Structural Pest Control Board, there were no issues with his license there. Commissioner Baker stated that he likes to be able to see an applicant in person, especially if there is a small red flag. He stated that it sounds like Mr. Saitman has a clean record, but fumigation work is a bit odd and there are lots of different things you can do in that area. Commissioner Runbeck stated that the Commission does not have a requirement that an applicant be present at a Commission meeting. She asked whether staff was comfortable after

talking with him. Robert Tolton stated that the Commissioners wouldn't have the application in front of them if staff wasn't comfortable. Commissioner DeVere asked if Mr. Saitman was going to continue working in the same area fumigating rodents. Robert Tolton stated that Mr. Saitman told him that he is not going to get involved in anything with which he is not familiar.

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

VOTE: *5-0 Motion carried.*

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| 6. Eric J. Godinez | "B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects) and "B8" (Wood-Destroying Insect Inspection) |
| 7. Napoleon O. Pisano, Jr. | "B1" (General Pest & Public Health) |
| 8. Thomas M. Van Duinen | "B1" (General Pest & Public Health) |
| 9. Foree R. Cooley | "B1" (General Pest & Public Health) |
| 10. John E. Jung | "B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects) and "B8" (Wood-Destroying Insect Inspection) |
| 11. Saul C. Marquez | "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture) |
| 12. Jesse E. Diehl | "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture) |
| 13. Dean J. Isaac | "B1" (General Pest & Public Health) |

Commissioner Burns stated that Mr. Isaac used to work for his company and is not currently employed there. He stated that he doesn't believe that he needs to recuse himself. He added that he personally didn't verify the experience and that his technical director does that. Commissioner Runbeck asked if we are okay with Commissioner Burns participating in this item. Lisa Miles stated that it is okay just as long as Commissioner Burns can base his decision on today's application and information only and not on the past relationship.

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

VOTE: 5-0 Motion carried.

14. William M. Boswell "B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects) and "B8" (Wood-Destroying Insect Inspection)

D. Business License Name Change Requests

1. Zeb-Tec Services to Zeb-Tec Termite & Pest Control
2. Carefree Weed Control to Carefree Tree Service

End of Consent Agenda

MOTION: By Commissioner Baker to accept Consent Agenda with the exception of the items pulled for discussion (A2, B1, C4, C5, C13). Seconded by Commissioner DeVere.

VOTE: 5-0 Motion carried.

VI. Applications not on Consent Agenda

A. Request for Temporary Qualifying Party License Renewals

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

Mr. Jung appeared.

Lisa Gervase stated that this is Mr. Jung's first request for renewal and that the Commission just approved him today for QP testing. Mr. Jung stated that he is trying to be proactive in case he doesn't pass the test(s), though in reality he has been preparing for the past 5 years.

MOTION: To approve a 60-day temporary QP renewal in the "B1", "B2" and "B8" categories by Commissioner Black. Seconded by Commissioner Baker.

VOTE: 5-0 Motion carried.

2. Michael T. Connors

"B3" (Right of Way/Weed Control)

Mr. Connors appeared.

Commissioner Baker asked if Mr. Connors has taken any tests. Mr. Connors stated that his application just got approved on June 9. Commissioner Baker noted that this is Mr. Connors' second request for renewal. Mr. Connors stated that the first time he needed to be proactive because his background check wasn't yet complete. He stated that there is a 3-week period from approval of the application to him notifying the Commissioners of being here today. He stated that if he were to have failed the test, then he would have to come back. He stated that his check didn't make it here for renewal and he had a disassociation of the QP in his company. He added that when he was studying for the test, it seemed like the test had changed a bit and he thought he needed to study some more. He stated that he doesn't anticipate failing, but if he does then he needs a back-up plan. Commissioner Runbeck asked when the application for testing that was approved at the June 9 Commission meeting actually submitted. She asked what was going on from March through May, when the Commission approved a temporary QP extension the first time. She asked him if he was proactive in submitting the application. Mr. Connors stated that he was. Commissioner Runbeck stated then that it appears to be just the Commission's hold-up that took a while. Robert Tolton added that Mr. Connors' QP application was received on April 25, the background report came on May 11, which put him on the June agenda. Commissioner DeVere asked when Mr. Connors plans on testing. Mr. Connors stated maybe within the next week.

MOTION: *To approve a 60-day temporary QP renewal in the "B3" category by Commissioner Black.
Seconded by Commissioner DeVere.*

VOTE: *5-0 Motion carried.*

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

None

C. Applications for Qualifying Party License

None

D. Business License Name Change Requests

1. Proven Ecological to Alpha Ecological

Scott Sneer, from Alpha Ecological, and Robert Snyder, from Proven Ecological, appeared.

Lisa Gervase stated that staff got some information from Daniel Graham, owner of Alpha Pest Control, Inc., about telephone listings of another Alpha Pest Control. There is an Alpha Ecological in Washington state, with several subsidiaries, operating in a handful of states. When the Washington corporate office wanted to expand their air duct cleaning business into Arizona as Proven Air, Qwest set up phone lines as Alpha because that is the parent company. This was an error on Qwest's part, and staff got a letter from Qwest admitting to the error. There is no evidence that Proven Ecological improperly did business as Alpha Pest Control. There was confusion between the two companies. Staff sent a letter to both Proven Ecological/Alpha Ecological asking them to correct the situation. From a regulatory standpoint, the inquiry was closed because there was no violation. Commissioner Baker asked how long Proven Ecological has been in operation in Arizona. Robert Tolton stated that it has been licensed in Arizona since 1995. Commissioner DeVere asked why Proven Ecological, having worked in the pest control business in Arizona for the past 10 years, would want to change their name to Alpha Ecological, given that we already have an Alpha Pest Control. Mr. Sneer stated that one of his goals since he became CEO has been to consolidate the names included in their website and books because of the confusion. He stated that they have placed over 250 ads in Arizona and it would have been cleaner if they had consolidated names. He stated that their advertisement logo, which he presented to the Commissioners, has been registered nationally. After approval from the Secretary of State, we will clearly define ourselves as Alpha Ecological, the green approach. He stated that he doesn't think that there will be a lot of confusion. Commissioner Runbeck asked if their trucks will just say Alpha Ecological. Mr. Sneer stated that their look is going to be very distinctive from Alpha Pest Control. Commissioner Runbeck asked if people are going to look at this advertisement and only see Alpha Pest Control and not see the word Ecological. Mr. Sneer stated that this advertisement is clearly different from a one-line listing in the yellow pages. Commissioner Runbeck asked if there is any concern from a statutes, rules and regulations standpoint if the advertisement logo emphasizes Alpha and not Ecological. Lisa Gervase stated that there are rules about 2-inch lettering the use of the primary part of the name. Commissioner Runbeck stated that she thinks that the name change to Alpha Ecological is fine as long as the name change is not to Alpha Ecological Pest Control, but they may need to work with staff regarding the logo. The real question is convolution in the marketplace. Lisa Gervase recommended not putting "Pest Control" on the truck, as it may be a concern. Commissioner Runbeck stated that if the logo and truck markings are not in synch with the name as registered with the Commission or if there are other violations of the representation of the Alpha Ecological name, then there will be complaints and disciplinary action could be taken. Commissioner Black stated that he appreciated that Mr. Sneer brought the logo to the attention of the Commissioners. Mr. Sneer

stated that it is not in their best interests to have convolution with Alpha Pest Control. Lisa Gervase added that it would also not be in their best interests to spend a lot of money on signage only to then have a problem with the Commission's regulations. Commissioner Burns stated that when they answer the telephone, they can't answer as Alpha Pest Control or Alpha Ecological Pest Control. Adding the words "Pest Control" will make it difficult for consumers to distinguish between the two companies. He expressed concern that the name change request treads closely on an already-existing company. Mr. Sneer asked if it would be problem to answer the phone saying: "Alpha Ecological, we do pest control"? Commissioner Runbeck stated that she doesn't think so. Lisa Gervase added that if the Commission approves Alpha Ecological and the company gets brand recognition, if they tread too close by adding "pest control" to their name and the Commission doesn't renew the business license in December, then the company will have wasted a lot of resources. Commissioner Baker stated that if, as a consumer, he calls the company, he wants to know who he is talking to. He stated that there have been a few problems in their industry in this regard, particularly if one company gets a bad reputation. Mr. Sneer stated that he will do his best to comply.

MOTION: To approve the name change request by Commissioner Black.
Seconded by Commissioner DeVere.

VOTE: 4-1 Motion carried (Commissioner Burns opposed).

(Break from 10:10 A.M. to 10:20 A.M.)

VII. Complaints

A. Economy Pest Control (BL)/Chandler Pearce (QP) - Case # 2005-089

Commissioner Runbeck asked why, in the proposed settlement, mitigating points were given for the QP agreeing to take continuing education ("CE"), as this wasn't something that the QP voluntarily thought of doing to correct the problem before the settlement conference. Vince Craig stated that staff handles CEs case by case. In this case, the QP thought he could send applicators to his own home to do work in categories in which they are not licensed. Staff thought that CE in laws was needed and would be a mitigator. Commissioner Runbeck stated that she thinks that it makes more sense to give someone mitigating points when they did something after recognizing a problem or violation but prior to settlement conference. Lisa Gervase stated that these enforcement guidelines, established in 2002, work fine for QPs or business licensees who more typically have the ability to take corrective action. But, typically mitigating actions are not within an applicator's control unless an

applicator spends time and money on CE. And staff would rather have them do this than pay a 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 Black.
Seconded by Commissioner DeVere.*

VOTE: 5-0 *Motion carried.*

B. Bob Anderson (Unlicensed Applicator)/Jess Allan Sixkiller, Jr. (APP) - Case # 2006-013

MOTION: *To accept proposed resolution for licensed applicator Jess Allan Sixkiller, Jr. 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. To dismiss the complaint without prejudice against Bob Anderson, by Commissioner DeVere.
Seconded by Commissioner Baker.*

VOTE: 5-0 *Motion carried.*

C. Lisa Leach (Unlicensed Company)/Kim Merrit (Unlicensed Company) - Case # 2005-083

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 Burns.
Seconded by Commissioner Baker.*

VOTE: 5-0 *Motion carried.*

Commissioner Burns noted that the respondents in this case are not in the termite industry, so they will likely pay their civil penalty and we will probably never see them again here at the Commission. But, these people are in the real estate industry and they made an ethics breach, so he believes that the Commission should refer the complaint and forward the case file to the Department of Real Estate.

MOTION: To refer this case to the Department of Real Estate, by Commissioner Burns.
Seconded by Commissioner Baker.

VOTE: 5-0 Motion carried.

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

A. Jordan P. Dietz - Case No. 2006-006 - Decision and Order denying Mr. Dietz's appeal and license denial.

Mr. Dietz appeared.

Lisa Miles, Assistant Attorney General for the State of Arizona, appeared.

After hearing argument from Mr. Dietz and Ms. Miles, the Commission discussed this matter. Commissioner Black stated that the Commission's decision is legally correct, but he thinks that the Commission may have made a mistake and wants to see what can be done. Lisa Miles stated that neither the Commission nor the ALJ found that Mr. Dietz had good moral character. Mr. Dietz can reapply for a license, but she stated that she is concerned about the integrity of the process and the Commission's decisions. If all that a respondent had to do was to wait it out for a different day and perhaps different Commissioners or the same Commissioners whose opinions might later be different, then this would undermine the whole process. Commissioner Burns stated that he didn't hear this application to begin with, but he feels an obligation to respect the previous Commissioners' opinions. He stated that he will likely stand pat because no new information or evidence has been presented at this time other than Mr. Dietz's pleading of personal reasons. Mr. Dietz stated that when this started, he applied and said he did the offenses, and he was denied because of the second offense which he thought was together with the first one. That's why he didn't disclose the second one. He stated that it was proven by a judge that it was an honest mistake and he wasn't trying to hide anything, but the Commission thought he was trying to hide something. Commissioner Runbeck stated that Mr. Dietz is correct in that the ALJ looked at it and thought it might have been confusing and that Mr. Dietz was not being deliberately deceptive. But the ALJ still made a finding regarding lack of good moral character, which was one of the bases for the Commission's denial. Lisa Miles added that the denial was based on two grounds, one of which was upheld by the ALJ, one of which was not. Lisa Gervase stated that the Commission's options are to grant or deny rehearing or review in part or in all, or Mr. Dietz can appeal to Superior Court. There could also be another option of granting a license pursuant to a conditional consent agreement with probationary monitoring terms. Commissioner Runbeck asked what the difference is between rehearing and review. Lisa Gervase stated that if the Commission thinks that there is reason to take more evidence, then the matter should go back to rehearing. If the Commission wants

to review the case without more evidence, then the Commission can review the whole record. Commissioner Burns stated that by reviewing the facts of the case before the current Commissioners, it would give them the ability to weigh the facts based on their own feelings and thoughts. He added that we should review the file so that he can determine whether the Findings of Fact and Conclusions of Law are accurate, as he was not able to personally hear Mr. Dietz and see his file. He stated that he thinks that the fact about the misstatement of the felony should be thrown out because it was an honest mistake, and the case should be weighed based on the rest of the Findings of Fact and Conclusions of Law. Commissioner Runbeck added that the Commission could review the file to see if the penalty was excessive so A.A.C. R4-29-502(C) could apply here, particularly since the ALJ found that the misstatement of the felony was an honest mistake and wasn't a deliberate omission, and Commission's original decision to deny the application was based partly on the finding that it was a deliberate omission. Commissioner Black asked if the Commission, in reviewing the record and Order to see if Mr. Dietz met his burden of proving good moral character, would then have to vote. Lisa Miles stated that it would have to vote if it ultimately changes the ALJ's Order after review, which is permissible. Commissioner Baker stated that he has been sitting on the Commission for a number of years and is upset that a new Commission is saying that the prior Commissioners didn't know what they were doing. He thinks it is difficult for them to say that previous Commissioners were in error. He stated that Mr. Dietz also is old enough to know that what he did was wrong, as he has two felonies. Yes, he made an honest mistake in disclosure; but this is not helping the industry. An independent judge agreed with the Commissioners, and the decision should not be reviewed or reheard. Commissioner Burns stated that he hopes that the previously-sitting Commissioners who made the decision understand that he believes that we usually should stand pat and uphold their previous decisions. But, based on the fact that the previous Commissioners thought that Mr. Dietz lied on his application and the ALJ thought he didn't lie, we should review. If we still decide that Mr. Dietz is not of good moral character, then fine. He stated that he is not a proponent of someone who manufactures drugs, but we should still review based on that one issue. Commissioner Black stated that he believes that the Commission's original decision to deny was based more on the fact that they believed that Mr. Dietz failed to disclose the felony on his application than the fact that the felony actually demonstrated a lack of good moral character.

MOTION: To grant a review to determine whether the penalty of license denial was excessive, by Commissioner Burns.
Seconded by Commissioner Black.

VOTE: 4-1 Motion carried (Commissioner Baker opposed).

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. Michael Smoot, Applicator License, Case No. 2005-042 - Applicator License No. 020822 B1 B2 B8 (Issued 10/16/02 "B1" and 1/3/03 (B2 & B8") (Expires 5/31/07) - Commission's consideration of Suspension of Michael Smoot's Applicator License for nonpayment of civil penalties.

This item was pulled from the agenda, as Mr. Smoot paid by cashier's check the \$800 civil penalty owed, on July 12.

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. Dennis Ray - OAH Case #2005A-061 - SPC SPCC Case #2005-061

Lisa Miles, Assistant Attorney General for the State of Arizona, appeared.

Lisa Miles encouraged the Commission to accept the Administrative Law Judge's ("ALJ's") Findings of Fact, Conclusions of Law and Recommended Order.

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

VOTE: *5-0 Motion carried.*

MOTION: *To adopt the ALJ's Recommended Order, by Commissioner Burns.
Seconded by Commissioner Black.*

VOTE: *5-0 Motion carried.*

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

None

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

None

XV. Reporting by Licensees on Probation.

A. Joseph D. Wilkerson, Applicator License No. 060328 - Case No. 2006-003. Mr. Wilkerson reports the status of his compliance with criminal probation, employment status and rehabilitation status. Mr. Wilkerson was granted a license pursuant to a consent agreement in February 2006.

Lisa Gervase stated that Mr. Wilkerson is not here today. He came to the April 2006 Commission meeting, even though he didn't have to. The Order says that the burden is on Mr. Wilkerson to appear before the Commission every three months. He was here in January 2006 when the Commission was deciding on whether to grant a license to him, and a conditional consent agreement was executed in February 2006. It is possible that Mr. Wilkerson could be confused regarding when to appear, so the Commission might want to table this matter for staff to research.

XVI. Applicants with Criminal Convictions.

A. Sterling F. Fields

Mr. Fields appeared.

Commissioner Baker asked how Mr. Fields has been doing since the mid-1990s. Mr. Fields stated that the late-1980s was a string of mistakes. He got into drugs then, was incarcerated, was released in 2001 and made more bad decisions. Drugs was his downfall. He stated that he is out to prove society wrong and to show that he is capable. He stated that he has taken classes, and, since his release he has paid taxes and has been steadily employed. He stated that he is married to a wonderful woman and is involved in church. He stated that he acknowledges his mistakes, has done well since then and wants to accomplish things in his life. He stated that he appears not as a statistic, but as someone who is trying to better his life. Commissioner Black asked if Mr. Fields is employed now. Mr. Fields stated that he works for a telemarketing company as a sales representative. Commissioner Runbeck noted that Mr. Fields did cement work. Mr. Fields stated that he did this before being incarcerated. He added that telemarketing work does not provide retirement benefits, and also some people don't like telemarketers. He

stated that he wants to work in the pest control industry so that he will have more opportunities and benefits. Commissioner Runbeck asked if Mr. Fields was on parole. Mr. Fields stated that he was on parole but did not have mandatory supervision. He voluntarily stayed in a transitional living facility for a year and participated in drug testing with no dirty results.

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

VOTE: 5-0 *Motion carried.*

B. Christina M. Maunu

Robert Tolton stated that, although Ms. Maunu did not appear today, we can't table her application because of time frames deadlines. He also stated some additional information, namely that she has had no offenses prior to or after this incident. He added that the court order says that probation would be terminated because it has been successfully completed. As of June 1, 2006, Ms. Maunu is no longer employed with Custom Weed & Spray Service, but she may still want to continue with this process. The Commission had questions that couldn't be answered without Ms. Maunu.

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

VOTE: 3-1 *Motion carried (Commissioner Runbeck opposed, Commissioner Baker abstained).*

C. Eric G. Ramos

Mr. Ramos appeared.

Richard Schooley, from Arrow Exterminators, Inc., appeared.

Commissioner Black noted that Mr. Ramos is an applicator seeking renewal of his license. He added that this transgression kind of jumps out at you, but he also asked if Mr. Ramos was only an accomplice. Mr. Ramos stated that he was only an accomplice and that he doesn't hang around anymore with his brother; his brother needed a place to stay and stuff happened. He stated that it is a condition of his probation not to speak with his brother. Mr. Schooley stated that Mr. Ramos has been working for him for almost a year, has been a good employee, has a young wife and a baby, and he doesn't think that Mr. Ramos wants to lose them. He asked that the Commissioners take the court's recommendation into account. Commissioner Baker stated that he would like to see, for the next year, a letter from

the corporate office, on a quarterly basis, saying that Mr. Ramos is still doing well. Commissioner Black agreed. Lisa Miles stated that it would be up to Mr. Ramos, as the licensee, to ensure that his employer provides the letters. If the employer doesn't do it, then Mr. Ramos will need to tell the Commissioners that he did everything he could to get the employer to provide the information. Commissioner Burns stated that he thinks that we really need to look at the fact that he doesn't associate with his brother anymore and was in a bad situation at the time, as he didn't have control over his brother being there. He stated that he doesn't think that the Commission should make him jump through hoops over the next year. Commissioner Runbeck added that Mr. Ramos is still on criminal probation right now and has to report to an officer; a violation of that could cause more problems than the Commission could cause.

MOTION: To approve by Commissioner Black.
Seconded by Commissioner DeVere.

VOTE: 5-0 Motion carried.

D. Joseph F. Mayne

Mr. Mayne appeared.

Commissioner DeVere asked what Mr. Mayne's situation is with his kids. Mr. Mayne stated that he has joint legal custody, currently seeing them Thursday through Sunday, and is attempting to gain full custody. Commissioner Runbeck asked if Mr. Mayne is currently on probation. Mr. Mayne stated that he is and that he hasn't violated it. He stated that he sees a probation officer every 3 months and is a year and a half into the 3-year probation. He added that he was ordered to do community service, and about half of his 100 hours are done; he has been doing some tree work for churches.

MOTION: To approve by Commissioner Baker.
Seconded by Commissioner DeVere.

VOTE: 5-0 Motion carried.

E. Larry D. Bushong

Mr. Bushong appeared.

John Saxton, from SST Exterminators, appeared.

Danielle Dudsik (sp?), fiancé of Mr. Bushong, appeared.

Commissioner Runbeck noted that these offenses didn't happen all that long ago. Mr. Bushong introduced himself as being 29 years old and employed by SST

Exterminators doing trenching, cleaning up, drilling, for a little over a year now. Mr. Saxton stated that he has had no problems with Mr. Bushong. Commissioner Black asked if Mr. Bushong is on probation. Mr. Bushong stated that he is on standard probation. Commissioner Burns stated that the Commissioners have a responsibility to the public to make sure that applicators are people that customers can feel comfortable with in their homes. He stated that we are talking about a significant amount of theft here, and he can't be comfortable allowing someone just two years removed from this to walk into peoples homes and service them with this type of background. Commissioner Runbeck asked if there is anything that Mr. Bushong can say to reassure the Commissioners that they shouldn't be concerned with drugs and theft. Mr. Bushong stated that he does three urinalyses per month, has made strides to separate himself from the people in his past, is engaged now and is in the process of buying a house with his future wife. Commissioner Black asked if Mr. Bushong has ever been put in a position where he is alone while working. Mr. Saxton stated that he has not. Regarding the conviction, Mr. Bushong stated that he was in a car that was used for joyriding. Commissioner Runbeck stated that at 27 years old, Mr. Bushong seemed to be a little old to be just joyriding. She also questioned whether he also stole keys and a purse. Mr. Bushong stated that the charged was dropped from burglary to trespassing because he didn't enter the home. Commissioner Burns stated, however, that the victims don't seem comfortable with these situations, regardless of what the court says. He asked if the Commission is going to allow someone to enter people's homes unsupervised when they have two thefts in a two-year period. Mr. Bushong stated that he was not convicted of any type of theft. He admitted to being in a stolen vehicle, but not to being on someone's property. Commissioner Black asked if Mr. Bushong entered someone's house in the middle of the night. Mr. Bushong stated that he did not. He stated that he was using drugs, hanging out with the wrong people and entered a stolen vehicle, which was the wrong decision. He was incarcerated for 10 months. Commissioner Runbeck stated that the sentencing report written by the probation officer says that the defendant entered someone's home at night, stole a purse and keys and then stole a car. Mr. Bushong stated that this is not what he was convicted of and that he did not enter anybody's house. Commissioner Runbeck stated that plea agreements don't always reflect everything. Commissioner Burns asked if Mr. Bushong plead guilty to criminal trespass. Mr. Bushong stated that he pleaded to that because he didn't want to plead guilty to burglary because he never went into anyone's house. He stated that he wanted to get out of jail. Commissioner Burns also questioned whether in this case "the defendant entered the house, stole keys, purse, credit cards, and then stole a car." Lisa Miles stated that for those facts he was convicted. Commissioner DeVere asked if Mr. Bushong was driving the vehicle and was stopped by an officer who found the stolen items in the vehicle. Mr. Bushong stated that he was driving the vehicle but didn't steal the vehicle. Ms. Dudsik stated that she has lived with Mr. Bushong for about a year. She stated that she and others who they know have no problems with Mr. Bushong being in their houses. He has done his time and is

trying to better himself, and has found a job that he enjoys and is excited about. Mr. Bushong stated that he has made great strides in the past two years of his life and wants to continue to improve. Commissioner Baker stated that the issue is whether the past two years is a bump in the road or whether it's a life change. We don't know what Mr. Bushong may do in the near future, especially considering it has been such a short period of time since the offenses. Commissioner DeVere asked whether Mr. Bushong has been drug tested while on probation. Mr. Bushong stated that he has, without any positive urinalyses, and has also had no police contact. He added that it seems like drugs are the influence of the crimes and that he has been clean for the past couple of years. Commissioner Runbeck noted, however, that what Mr. Bushong is telling the Commissioners is contradicted by the police/pre-sentencing report and that it surprises her that these would all be errors. Mr. Bushong stated that credit card fraud is a serious offense and he doesn't see them dropping the charge. Commissioner Runbeck stated that she is asking for the facts, not the charges. Mr. Bushong stated that the stuff was in the vehicle but not in his possession. Commissioner Burns stated, however, that this contradicts the transcript that says that Mr. Bushong possessed the stuff. The social security card was in his pocket.

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

VOTE: *0-5 Motion failed (Commissioners Baker, Black, Burns, DeVere and Runbeck opposed).*

MOTION: *To deny based on the felony convictions and that Mr. Bushong has not had enough time since them to demonstrate good moral character, by Commissioner Baker.
Seconded by Commissioner DeVere.*

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

Mr. Saxton asked how long someone needs in order to demonstrate good moral character. Commissioner Runbeck stated that it is a judgment call for the Commission.

F. Marcella S. Thomas

Ms. Thomas appeared.

Tina Mank, from Yavapai County Community Health Services, was present.

Ms. Thomas stated that for the past 4 years she has been working as a General Manager for Carl's Jr. until the past 6 months, when she has been with Yavapai County as a health inspector.

MOTION: To approve by Commissioner Black.
Seconded by Commissioner DeVere.

VOTE: 5-0 Motion carried.

XVII. Commission Updates and Reports; Miscellaneous Action Items.

- A. Commission's consideration of closing pending unlicensed weed control complaints - separate handout

MOTION: To rescind the prior vote to accept the proposed consent agreement for Complaint No. 2005-016 and to close it with an educational letter, by Commissioner Baker.
Seconded by Commissioner DeVere.

VOTE: 5-0 Motion carried.

MOTION: To close Complaint Nos. 2005-048, 2005-066, 2005-044, 2005-045, 2005-047 and 2005-038 with an educational letter, by Commissioner Baker.
Seconded by Commissioner DeVere.

VOTE: 5-0 Motion carried.

B. None

C. None

D. Complaint Status Log

E. Computer Based Testing "CBT" Status and Statistics

F. Expenditure Report - separate handout

Lisa Gervase stated that the SPCC is wrapping up the end of the fiscal year, so she should have a report next month.

G. Case Status Report (Every other month)

Lisa Gervase stated that there are currently 42 active cases, 21 cases that are being monitored for revocation, and a significant number of cases at the Attorney General's Office for collections of \$200,000 in civil penalties owed.

XVIII. Approval of Minutes and Continuing Education Programs

A. June 14, 2006 (regular session) Minutes

MOTION: *To approve the June 14, 2006 Minutes by Commissioner Baker.
Seconded by Commissioner Burns.*

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

B. None

XIX. Scheduling of future meetings/agenda items.

Current Proposed dates

July 25, 2006
August 1, 2006
August 14, 2006
September 8, 2006
October 13, 2006
November 9, 2006 (Thursday)
December 8, 2006
January 12, 2007
February 9, 2007
March 8, 2007
April 12, 2007

XX. Adjournment - 12:20 p.m.

MOTION: *To adjourn by Commissioner Black.
Seconded by Commissioner DeVere.*

VOTE: 5-0 *Motion carried.*