



Janet Napolitano
Governor

STATE OF ARIZONA
Structural Pest Control Commission

Lisa Gervase
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COMMISSION MEETING
THURSDAY, November 9, 2006, 9:00 A.M.
MINUTES

I. Call to order (9:06 a.m.), Commissioner roll call

Commissioners Present: Bert Putterman, Patrick Black (9:10 a.m.), Dan DeVere (9:12 a.m.), Debra Runbeck (9:13 a.m.), Paul Baker, Dave Burns, Dave O'Neal

Staff Present: Vince Craig, Lisa Gervase, Mike Francis, Robert Tolton, Magdalena Vazquez, Lorena Villela, Vicky Hamm, Melissa Cornelius, Assistant Attorney General and Jeanne Hann, ADOA Rules Consultant.

II. Call to the public

Lisa Gervase, Executive Director of Arizona Structural Pest Control, introduced the SPCC's two newest employees: Lorena Villela the new Legal Assistant and Vicky Hamm the Business Manager. Lisa also introduced Jeanne Hann the Rules consultant for the agency. Lisa also introduced Melissa Cornelius the Assistant Attorney General.

III. Communication with Commissioners

Commissioner Burns indicated he received e-mails sent by Michael Pfeiffer and Robert Hartley, relating to rules. Commissioner O'Neal said that he received the same.

Commissioner Putterman stated he talked with industry members, including Norman Goldenberg and Mike Katz, about the rules.

IV. Summary of Current Commission Events, Activities, Notices

Lisa Gervase congratulated DLC Resources for receiving the Spirit of Enterprise award from A.S.U.'s Business School. The award is for the ethics, energy and excellence in entrepreneurship. She mentioned the two-page Industry Notice that was mailed on October 30, informing businesses of the CE schedule, law changes, rule changes, and other notices. Lisa also provided an update about the schedule of and attendance at the SPCC's ILT (Initial Licensure Training courses) and CE (Continuing Education) courses. Lisa indicated that for Calendar 2006 the SPCC has held ILT classes in Scottsdale, Tucson, Flagstaff and Yuma. The SPCC staff participated in 14 CE classes in 2006 and has held 6 SPCC-sponsored classes around the state. The most recent class was last Friday, November 3, which had 206 participants. SPCC encourages people to attend a technical based training course from CE Providers, as well as the SPCC's all-day course.

License Renewals: About 185 businesses and 231 QPs have renewed on-line to date. Lisa encouraged businesses and QPs to renew their licenses on-line. The on-line license renewal notice was mailed out on Oct. 30th, with the industry notice.

She indicated that the three new laws (child care facility notice, limited weed control license exemption, utility employee license exemption) have been posted on the website. Lisa also provided an update regarding the number of license applications processed by the SPCC in the past four months (over 1,000). The amount of license applications processed has been: 789 applicator applications, 153 applicator-broadening applications, 43 QP applications, 11 QP broadening applications, and 23 business licenses. The SPCC also handles about 100 telephone calls per day. She also explained that she and the SPCC staff has spent countless hours meeting with and responding to requests and questions from the Auditor General and the Governor's Office and Legislature's Budget Offices.

The SPCC held it's annual tenure award ceremony and presented awards to four of the staff members: Vince Craig 15 years, Maggie Vazquez 5 years, Alan Pugh 5 years, and Robert Tolton 5 years. At the 2005 tenure award ceremony, 17 SPCC staff members received awards for service for 5 or more years.

With regards to inspections, the SPCC conducts about 5 to 10 per day, which are compliance/educational inspections. A particular inspection to note was an overt pretreat monitor on a 30,000 square foot building, conducted to ensure compliance with laws, rules and label.

Ms. Gervase stated that with regard to the Child Care facility notice law, which goes into effect January 1, the SPCC has already been educating people on how to comply with that law. The Department of Health Services who sponsored the

law change is in the process of updating its rules. Once they have drafted the rules they will send them to the SPCC to view. Lisa provided DHS with names of QPs who may be interested in helping draft the rules.

There are a number of people being monitored via consent agreements. The person in Yuma, whose amended consent agreement was considered by the Commission in September, is to be evaluated by an addictionologist. The SPCC was able to help him by researching and finding a referral to a physician in Yuma who is Board Certified.

V. Consent Agenda

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

Business

Qualifying Party

1. AZ Bug Free, LLC Jeffrey J. Slingsluff (“B1”, “B2” and “B8”)

Pulled by Commissioner Burns. At the request of Commissioner Burns, Mr. Tolton clarified that Mr. Slingsluff sold the assets of his business “No Bugz of Arizona” to Mr. Saitman, and is activating his QP license for AZ Bug Free.

2. Crooked Tree Golf Course Joseph Forden (“B3” and “B5”)
3. No Bugz of Arizona, Inc. James S. Saitman (“B1”)

Pulled by Commissioner Burns. Same as Item 1. Also, Commissioner Putterman asked about Mr. Cummings active role in the management of the business. Mr. Saitman explained that he would be active in the B1 category and Mr. Cummings would be active in the B2 and B8 categories.

4. No Bugz of Arizona, Inc. James G. Cummings (“B3” and “B8”)

Pulled by Commissioner Burns. Same as Items 1 and 3.

MOTION: To approve the application for new business license for #1, #3 and #4 by Commissioner Burns.
Seconded by Commissioner O’Neal

VOTE: 7 – 0 Motion carried.

5. Mother Nature and Son’s Pest Control Michael Jason Robbins (“B1”)

B. Applications to activate Qualifying Party for Existing Business License

<u>Qualifying Party</u>	<u>Business</u>
1. Carle M. Staub	Custom Weed & Spray Service (“B5”)

C. Applications for Qualifying Party License

1. Craig S. Collins	“B1”
2. Shigeki Saimo	“B3”
3. Alfredo Gonzalez, Jr.	“B1”
4. Joe Botello	“B3”

D. Business License Name Change Requests

1. Bug Babes Exterminating to Reliable Pest Control Services

End of Consent Agenda

MOTION: *By Commissioner Putterman to accept Consent Agenda with the exception of the items pulled for discussions (A1, A3 and A4).
Seconded by Commissioner Runbeck.*

VOTE: *7- 0 Motion carried.*

VI. Applications not on Consent Agenda

A. Request for Temporary Qualifying Party License Renewals

1. Kenneth E. Stavely “B3” and “B5”

In response to Commissioner Putterman’s question as to whether Mr. Stavely has tested yet, Mr. Tolton indicated that Mr. Stavely does not intend on becoming a QP himself. Commissioner DeVere stated that he is the superintendent for the organization and is on-site. Commissioner Baker asked if Mr. Stavely was present. Mr. Stavely was not present.

MOTION: *By Commissioner Devere to approve the renewal of the temporary QP license.
Seconded by Commissioner Runbeck*

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

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

None

VII. A. Sol Design, LLC. (Unlicensed Company) – Case No. 2000- 026

No appearances. This is the second case for this gentleman. The SPCC is asking that the Commissioners issue a cease and desist order and issue up to a \$2000.00 civil penalty on the second penalty. Mr. Craig stated that this gentleman has not paid his second civil penalty.

MOTION: *To issue a cease and desist order and a \$2000.00 Civil Penalty, by Commissioner Runbeck. Seconded by Commissioner Black.*

VOTE: 7-0 Motion carried

Discussion: *Commissioner Putterman questioned at what point does this become criminal. Ms. Gervase stated there is nothing in the statute that allows it to become criminal if they violate the commission order. According to Ms. Gervase, the SPCC has the authority to send the case to the Attorney General's Office and they can seek an injunction. Ms. Gervase further stated we (the SPCC) have the injunctive authority but, it is at the discretion of the Attorney General, at what point they seek the injunction. Ms. Gervase stated this is the first time we have someone who has ignored the order three times.*

MOTION: *To send the file to the Attorney General's Office to seek injunctive action by Commissioner Putterman. Seconded by Commissioner Burns*

VOTE: 7 – 0 Motion carried

B. Justin Smith (APP) – Case No. 2006-037

Mr. Smith was not present.

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

VOTE: *7-0 Motion carried*

C. University Termite & Pest Control, Inc. (BL)/Richard Rupkey, II (QP)/Casey James Rose (APP) – Case No. 2005-073

Rick Rupkey, Qualifying Party, was present. Commissioner Putterman (jokingly) thanked Mr. Rupkey for showing some interest. Rupkey stated he is comfortable with the settlement. Mr. Rose no longer works for University. Commissioner Baker asked about the confusion over two different products being used. Mr. Rupkey stated that as the QP, he has to rely on the records his applicator made; the record indicates the two products were applied. Commissioner Baker asked about the status of the consumer. Mr. Rupkey replied that the consumer's allegations weren't substantiated.

MOTION: *To accept the 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 Office of Administrative Hearings, by Commissioner Black.
Seconded by Commissioner Putterman*

VOTE: *7 – 0 Motion carried*

D. University Termite & Pest Control, Inc. (BL)/Richard Rupkey, II (QP) – Case No. 2005-069

Scott Richardson was present on behalf of the Business and QP. Mr. Richardson would like to renegotiate this matter due to the fact that he was recently retained. Lisa Gervase stated sending this matter to hearing would be more efficient, as the matter always can settle before hearing, then the hearing would be vacated and the proposed settlement brought back to the Commission. Whereas, if the matter is sent back to settlement and no settlement is reached, an extra step is added to the process.

MOTION: *To send the matter to hearing by Commissioner DeVere.
Seconded by Commissioner O'Neal.*

Commissioner Putterman asked if there was a response to the complaint. Ms. Gervase stated, "yes", and it is in the Commissioners' materials, with all of the complaint information. Commissioner Black suggested sending the case back to settlement, and then the case would come back to the Commission to send it to hearing if no proposed settlement is reached, so the Commission can determine why it didn't settle. Commissioner Runbeck stated that if we draft a Complaint for Hearing now, we are limited to the current record, and it may be better to obtain a more formal response from the licensees as to the alleged violations.

Motion and Second withdrawn. Per Commissioner Baker, the matter is tabled to further discuss settlement.

E. Truly Nolen (BL)/Robert Hartley (QP) – Case No. 2005-086

Attorney Scott Richardson is present and representing the business and QP. This matter was tabled from last month to allow the Commission time to read Mr. Richardson's letter refusing the settlement offer. Commissioner Runbeck said that the Commissioners had read the letter. Mr. Richardson stated that his main point is that he does not feel it is a violation to sell a general pest service without an applicator license. There is no definition of "making a recommendation", which would require a license. The second one is the R4-29-302(A) violation, where the statute cited in the first sentence (providing an exception) no longer exists. He also thought that there were duplicative citations to statute or rule for the same facts. Commissioner Black asked Mr. Richardson if he agreed that there were some violations, but indicated the salespeople needing a license was not one of them. Mr. Craig stated that after the settlement conference, we did have an agreement to everything except the salesperson license issue. He further stated that the investigator should cite all applicable statute and rule violations, then during the settlement negotiation, some that may not be necessary may be eliminated.

Commissioner Burns asked whether the Commission could state its interpretation of the salesperson statute. Commissioner Putterman stated that for QP license experience, the SPCC doesn't accept sales work.

Commissioner Black suggested that when considering an interpretation, the Commission must consider policy and consumer concerns. When deciding this case, it must be based on the facts. Commissioner Burns said that a true salesperson sells jobs, explaining what will be serviced, price, etc. But, before a pesticide is applied, a licensed applicator is on site and decides what product/procedure to use. Ms. Cornelius cautioned the Commission about discussing this issue outside the scope of the agenda case, and suggested that the Commission look at the facts of the pending case, as it is a fact-specific case.

Mr. Tolton stated that with respect to licensing, the SPCC looks at the activities that the applicant conducts, not their title. If they offer to do pest control or do pest control activities, then that is what the SPCC considers in licensing. If they only do sales work, that experience is not considered.

Commissioner Putterman said that the facts of this case reflect misuse, and he wants the case settled, so the salesperson issue should be handled separately. Mr. Craig stated that the salesperson did identify pests and wrote an inspection report, not just sales. Commissioner Putterman suggested resolving the misuse and opening a new complaint regarding the salesperson issue. Then, SPCC staff can audit Truly Nolen's records to see who needs to be licensed. Mr. Hartley stated that Truly Nolen doesn't license pest control salespeople. He considers if they don't apply pesticides, they don't need to be licensed.

Ms. Cornelius suggested issuing an Advisory Notice for the 32-2325(6) issues and sending the rest of the case back to settlement, then the Commission can research the interpretation of the salesperson issue. Mr. Richardson and Commissioner Putterman said that there is no violation of 32-2325(6) in this case. Commissioner Burns said that the complaint is whether a salesperson must be licensed. Every day, people at retail stores where pesticides are sold make recommendations. Commissioner Runbeck said that the Commission must look at what this salesperson did. Commissioner DeVere said that recommending a pesticide to a consumer is different than recommending a pesticide to a licensed applicator.

Commissioner Black suggested handling the salesperson issue at another meeting. The Commission cannot establish a policy today without proper notice on the agenda.

Ms. Gervase added that this issue may be on the January 2007 agenda.

MOTION: *To send case back to settlement and dismiss the 32-2325(6) alleged violation without prejudice. The Commission will get a written legal opinion and then agendaize the topic for a meeting after receiving the opinion, by Commissioner Black.
Seconded by Commissioner Baker.*

VOTE: *7 – 0 Motion carried.*

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

None

IX. Review or Rehearing of Previous Commission Decisions

None

X. Consideration of Suspension of Business, Qualifying Party and/or Applicator Licenses for Non-payment of Civil Penalties and/or Nonpayment of Renewal Fees [Possible Dismissal of Cases without prejudice, if applicable].

A. *Dennis L. Ray Applicator Licensee No. 030236 (“B1”, “B2” and “B8”) Ms. Gervase stated Mr. Ray has not paid the civil penalty ordered by the Commission.*

MOTION: *To suspend Dennis L. Ray’s applicator license for non-payment of civil penalties by Commissioner Putterman.
Seconded by Commissioner Baker.*

VOTE: *7 – 0 Motion carried. (Roll call vote: Commissioner Putterman- Yes, Commissioner Black- Yes, Commissioner Devere- Yes, Commissioner Runbeck- Yes, Commissioner Baker- Yes, Commissioner Burns- Yes, and Commissioner O’Neil- Yes).*

(Break from 10:24 a.m. to 10:40 a.m.)

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. *Brian Wayne Oldham (QP & APP) dba Ant Brian Exterminating (BL) OAH Case #'s: 05A-075-SPC, 06A-031-SPC and 06A-009-SPC – SPCC Case #'s 2005-075, 2006-031 and 2006-009.*

No appearance by the licensees. Ms. Cornelius, representing the state, asked that the Commissioners adopt the ALJ’s recommendations including the conclusions of law and the findings of fact.

MOTION: *To accept the ALJ’s Findings of Fact and Conclusions of Law, by Commissioner Devere.
Seconded by Commissioner Putterman.*

VOTE: *7 – 0 Motion carried*

MOTION: *To adopt the ALJ's Recommended Order to revoke all three licenses (the Business, QP and Applicator), by Commissioner Devere. Seconded by Commissioner Baker.*

VOTE: *7- 0 Motion carried. (Roll call vote: Commissioner Putterman- Yes, Commissioner Black- Yes, Commissioner DeVere- Yes, Commissioner Runbeck- Yes, Commissioner Baker- Yes, Commissioner Burns- Yes, and Commissioner O'Neil- Yes).*

B. SOS Exterminating, Inc. (BL) Stephen F. Weber (QP) – OAH Case # 04A-160-SPC – SPCC Case #2004-160.

Ms. Cornelius stated on behalf of the state on this matter this case went before the office of Administrative hearings for formal hearing on Aug 22, 2006. Lisa Miles Assistant Attorney General represented the State. Ms. Cornelius indicated that based on the Administrative Law Judge's recommendations, she asked that the commission adopt the Findings of Fact and Conclusions of Law and the recommended order for an administrative warning and a \$200.00 dollar civil penalty against the BL and the QP.

Mr. Scott Richardson, appeared on behalf of SOS and the QP. He argued that rule R4-29-104 joint responsibility shouldn't be strict liability. He said that the Commission considered training, supervision, equipping in another SOS case, but not in this case. Ms. Gervase stated that the commission did take into account proper training, supervision and equipping at the time of settlement. But, when there was no settlement resolution and the case went to hearing, the SPCC couldn't claim that the joint responsibility rule was different than it's written, which is strict liability. Ms. Cornelius stated that the administrative law judge gave a lot of attention to Mr. Richardson's argument; however, Mr. Richardson never presented any evidence to substantiate the argument. Mr. Richardson indicated that the reason evidence was not presented in the first hearing was because they did not have knowledge that strict liability would apply until after the fact. Ms. Cornelius stated that you have to look at the law that was in place at the time, which in this case is strict liability. Ms. Gervase stated the notice is the investigate report which specifically notes the joint responsibility rule and in the April 2005 Commission meeting this was discussed. Commissioner Runbeck stated that she feels there are two separate issues, one is equity and one is law. Commissioner Runbeck stated that Mr. Richardson is arguing the law, and the ALJ must apply the laws and rules and not an unwritten agency policy used during settlement conferences. In equity, the agency can use its policy to consider evidence of training, etc. as a mitigating factor. Mr. Richardson stated that the

commission continues to have discretion over the matter. Commissioner Black stated that if he thought that Mr. Richardson's concern was a real concern for the industry then he would hesitate to adopt the ALJ's Findings of Fact and Conclusions of Law. Commissioner Putterman stated that the Commission can't modify the findings or conclusions without reading the whole record. But, it can modify the order without doing so. He's not sure the order is necessary, as the point is made with the findings and conclusions. Ms. Gervase stated that the Commission can issue an order without any discipline. Mr. Richardson stated that he is asking for dismissal.

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

VOTE: *7-0 Motion carried.*

MOTION: *Accept the ALJ's Recommended Order, by Commissioner Black.
Seconded by Commissioner Baker.*

VOTE: *3 - 4 Motion failed. (Commissioner Putterman- No, Commissioner Black- Yes, Commissioner Devere- Yes, Commissioner Runbeck- Yes, Commissioner Baker- No, Commissioner Burns- No, Commissioner O'Neal- No).*

MOTION: *Advise the business license and QP of the Findings of Fact and Conclusions of Law, and take no disciplinary action, by Commissioner Putterman.
Seconded by Commissioner Baker.*

VOTE: *7 – 0 Motion carried. (Commissioner Putterman- Yes, Commissioner Black- Yes, Commissioner Devere- Yes, Commissioner Runbeck- Yes, Commissioner Baker- Yes, Commissioner Burns- Yes, Commissioner O'Neal- Yes).*

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 Licensee on Probation.

- A. Joseph D. Wilkerson, Applicator License No. 060328 – Case No. 2006-003.

Ms. Gervase stated that Mr. Wilkerson was present to report his status and in addition Ms. Gervase received a letter from his employer stating that Mr. Wilkerson has been doing a great job. Mr. Wilkerson stated that the SPCC should be receiving a letter from his probation officer soon, and that he still has 180 hours of probation hours to complete.

XVI. Applicants with Criminal Convictions.

- A. Anthony Moreno

Anthony Moreno was present. This case was tabled from Oct 14. Mr. Moreno stated that he has been working for a Tucson company for a year as of next month. His duties are as a landscaper. Commissioner Black added that Mr. Moreno has not had any problems since the incident, had no priors and that Mr. Moreno was 22 years old at the time of the offense.

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

VOTE: *7 – 0 Motion carried.*

- B. Tyrus C. Etheridge

Mr. Etheridge was not present. The timeframe was checked to verify if there was enough time to table it because the Commissioners had questions of the applicant.

Tabled

- C. Nathaniel W. Mcatee

Mr. Mcatee was present. Mr. Mcatee stated he has been with SOS Exterminating for 2 years in January 07, as a mechanic and supervising pretreatment routes and working with contractors, not performing pest control work. Jeff Gillette, Manager for SOS, was present on behalf of Mr. Mcatee. Mr. Gillette stated that Mr. Mcatee has been with the company “on-and-off” since 1996 and was hired to do pretreats. He was licensed two prior times. Mr. Tolton stated he spoke to Sherry Tucker from the Maricopa County Adult Probation Department, who is overseeing the individuals that are being supervised by Mr. Mcatee’s Probation Officer, Mr. Wescott and according to Ms. Tucker; Mr. Mcatee has been complying with all of his criminal probation

terms including random urine samples. Mr. Mcatee will be on probation for three more years.

MOTION: To approve, by Commissioner Putterman
Seconded by Commissioner O'Neal.

VOTE: 7 - 0 Motion carried.

D. Ricardo F. Munoz

Mr. Munoz was not present. The Commissioners had questions of the applicant.

Tabled

(Break from 11:32a.m. to 11:45a.m.)

XVII. Commission Updates and Reports; Miscellaneous Action Items.

- A. *Rules: Commission's consideration of any comments received during the formal comment period, oral comments, close of the rule making record, and adoption of the Proposed Rules (voted at the 7/25 and 8/1/06 Commission meetings) as Final Rules.*

Ms. Gervase gave a summary of the process that this rule promulgation has taken. Ms. Gervase stated that Jeanne Hann, who has been assisting in promulgating the rules, is present. Based on the commissioner's discussion and votes at the 7/25 and 8/1 meetings, the rules were updated and the Notice of Proposed Rulemaking was filed. Ms. Gervase stated she met with Commissioner Putterman and Commissioner Burns on 10/17 and made suggested changes based on their comments. She provided the rules that were filed with the secretary of state, an outline of the 10/17 discussion points and suggested changes as a result of that discussion provided to the Commission via email. Ms. Gervase also indicated that she received a letter that was dated 10/12/06, and emailed to her on 11/7, from Mr. Hartley with comments on the rules. Ms. Gervase stated that on 11/8 she provided the commissioners with Mr. Hartley's comments and proposed responses to Mr. Hartley's comments.

Commissioner Runbeck stated that all commissioners have had the opportunity to review the rules after the comments and changes were made. Commissioner Putterman stated he wanted to make a disclosure. He received an e-mail from Dr. Pfeiffer regarding the rules. He said that he and Commissioner Burns met with Ms. Gervase just to ensure consistency between his notes from the 7/25 and 8/1 meetings and the final draft of rules. He was not seeking any substantive changes. The conversation between Ms. Gervase, Commissioner Burns and himself regarding the rules was not to

replace conversation made by the Commission. He further stated he was more than a bit surprised that there were proposed changes being submitted for the Commission to consider that he received yesterday [Mr. Hartley's comments and proposed responses thereto.]. He also wanted to further discuss the supervising applicator's burden of training, supervising and equipping applicators that they supervise; and keeping records of it. He believes this is a QP burden.

Commissioner Black asked if there were any changes made to the rules as a result of Mr. Hartley's comments. Ms. Gervase stated that there were four places where there were changes, as indicated in the proposed responses and copies of 4 rules attached thereto. Commissioner Baker suggested that rule -215(C) be changed from "certificate" of attendance to "verification", that new pest management technologies be added as a C.E. topic to rule -216(A), and that "fish" in rules -504(l)(1) and -605(C) be deleted because it's redundant with "animal". Consensus of Commission to do so.

Commissioner Black asked whether the suggested changes satisfy Commissioners Putterman and Burn's concerns. Commissioner Burns felt some of them did. Mr. Burns indicated that he did not meet with industry on this and all he addressed with Bert and Lisa was what was in his notes. He asked whether anyone else had a question about -301. There was no comment, so not addressed. With regard to -303(B) should be kept as generic as possible. Commissioner Putterman and O'Neal agreed. Discussion among Commissioners, and consensus to delete second sentence.

Jack McClure, Chemtech Supply, indicated that the industry is totally in the dark on the proceedings. He was concerned that Commissioner Burns and Commissioner Putterman met with industry after the program was put on the Internet. He stated that if the Commission was going to discuss everything and make a decision as to what changes will be made then he felt that the public did need to be present because he felt they did not have an opportunity for input. Mr. McClure stated that the Commission was micromanaging things they had no business doing. Mr. McClure further indicated that the Commission had secret information that others did not know about.

Commissioner Black stopped Mr. McClure's comments, stating that he has been on the commission for 10 months and at the first meeting, he asked the industry or anyone to provide comments on the rules. Commissioner Black explained the process and the opportunities for comments, including today, and didn't appreciate his statements about secrecy. He asked Mr. McClure if he had provided written comments. Mr. McClure responded, "yes". Commissioner Black advised Mr. McClure that he did have a right to comment on what was posted. Commissioner Black asked Mr. McClure if the rules (that were provided to everyone), were consistent with the Commission's discussions in the last meetings.

Mr. McClure indicated he had an e-mail letting him know that Commissioner Burns and Commissioner Putterman met with industry. Ms. Gervase stated that she did not indicate to anyone that Commissioner Burns and Putterman met with industry, as she would have had no knowledge of that. Mr. McClure apologized for misrepresenting the email. He also clarified that he didn't provide written comments.

Commissioner Runbeck advised Mr. McClure that he did have an opportunity to give his input in discussing the minor changes and further stated that if he had anything to add that this was the opportunity to do so.

Mr. McClure apologized that he had taken so much of everyone's time because he did not have the opportunity or right to do so and would leave.

Commissioner Runbeck added that he did have a right to stay, however, what was currently being discussed was the minor changes to what has already been filed with the Secretary of State.

Commissioner Burns stated that –305(D)(5) regarding advising a disturbance on a pretreat be slightly changed. Commissioners discussed matter and hear input from Andy Weber, SOS Exterminating, that staff knows that they do not receive a call at 7pm to notify them the site has been disturbed. Mr. Weber indicated that the public is aware that they are responsible for it either way and that the treatment is always going to be close to the time the concrete is poured.

Ms. Gervase stated that she tried various ways to narrow the language of this rule to provide the timing and manner of notice, but nothing worked from a practical standpoint. Also, this is existing rule has been in place for 14 plus years, so she questioned how has this been handled. After more Commission discussion, Commissioner Runbeck asked if Commissioner Putterman had any suggestions. Andy Weber stated that it should be left in there.

Commissioner Putterman stated it should be listed as if an applicator is advised and provided an opportunity then the applicator should retreat. Consensus of Commission to make that slight language change. Commissioner Burns suggested a minor change to –306(L). He stated that the way it currently reads is that an application substance is in a locked storage space. The problem is the locked storage space. Ms. Gervase asked if it should read "A pesticide in a portable application equipment is kept locked." Commissioners concurred.

Commissioner Burns confirmed that clarifying changes were made to –307 pertaining to restricted use. Commissioner Burns stated all of his suggested changes are in there and the only things he was bringing up what was not in there. The next section is -403 (Supervising applicator). Commissioner Putterman stated the issue is Capital "SA" and little "sa". He stated there

needed to be a definition on supervising applicator. We can come up with a definition of what is a supervising applicator.

Commissioner Burns suggested reviewing the supervising applicator issue next time, and said that the record keeping is already covered by the QP.

Mr. Hartley, Truly Nolen, stated that if the rule requires a “position” of supervising applicator, this is too complicated.

(Break from 1:07p.m to 1:45pm.)

Ms. Gervase stated that the Commission may want to consider a slight amendment to -702 (D) to add “or otherwise protected by law”, as Scott Richardson raised a concern that some records could be confidential by law.

Commissioner Runbeck stated that Article 4 will be moved to another rule package, and conforming changes will have to be made to Articles 5 and 6 by removing Article 4.

Commissioner Burns asked about the purpose of -505 QP record keeping for pesticide purchase and disposal. Ms. Gervase clarified that this issue was not on her list of possible changes because it was not previously a concern that was raised. Commissioner Putterman questioned why the record keeping requirements are 3 to 5 years. Ms. Gervase stated it mirrors the current rule - 309(B) as it currently reads. Mike Francis stated that there has to be some type of compliance and a method of ensuring compliance to verify that things are being done and staff can make a recommendation based on the records.

Ms. Gervase stated it could be left as the Business Licensee responsibility because the records belong to the business.

Ms. Hann confirmed whether she was to move –505(A-C) to the Business Licensee section, and leave –505(D-G), and move -403 to 505 and Article 6.

Commissioner Black stated that the QP keeps records required and if they are no longer the QP, they are no longer required to keep records. Commissioner Burns asked why the SPCC should be able to get pesticide purchase records. Commissioner Runbeck said because this is a regulated industry. If licensees aren’t required to keep records, then subpoenas are worthless.

Steve Thoenes, Beekeeper, said that the business licensees can get these records from their suppliers too.

MOTION: *To remove rule R4-29-505 (A)(5) and (6) regarding general use pesticides, by Commissioner Baker. Seconded by Commissioner Putterman.*

Motion and Second withdrawn.

Commissioner Burns stated that was all that he had. Mr. Hartley, Truly Nolen, asked about the definition of pest management services vis-à-vis the 90-day license requirement. Ms. Gervase stated that the definition of “of employment” has changed to the “day that the employee begins to apply pesticides.”

Commissioner Burns indicated that Ms. Gervase’s suggestion is not addressing when they start. What Mr. Hartley is stating, we cannot change the legal definition.

(2:40p.m.: Commissioner Baker left the meeting.)

Mr. Hartley indicated that –504(H) and – 605(C) he was confused with the whole interchange between the two. Ms. Hann stated that what it is saying that both the BL and the QP have to make sure that if one doesn’t do it then the other does it.

Ms. Gervase indicated that we did change the language to be that it does have to be a confirmed death or illness and not alleged.

Commissioner Burns indicated he was still not comfortable with the definition that requires licensing for everything. Scott Richardson suggested using the “business of structural pest control” for business licensees, and the “structural pest control” definition elsewhere. Commissioner Black felt that he understood it to be that as soon as the employee does an actual application that is when the 90 days begin. As long as they are not applying pesticides then the 90 days does not begin. He also indicated that when they apply pesticides then the 90 days begins and if they do not obtain the license within that time, they can stay employed but not apply pesticides again for that Business Licensee. They can do other work, but are precluded from using that 90 days and doing it again. You only get one shot.

MOTION: *To close the rulemaking record, make the changes made today, file the final rules, by Commissioner Putterman.
Seconded by Commissioner Burns.*

VOTE: *6 – 0 Motion carried (Commissioner Baker absent).*

(2:56 p.m.: Commissioner O’Neal left the meeting).

B. None

C. None

C. Complaint Status Log

D. Computer Based Testing "CBT" Status and Statistics.

Mr. Francis stated the reports for both D and E are in the materials. Ms. Gervase added that for CBT the State Procurement office chose Metro institute for the contract.

E. Expenditure Report.

Ms. Gervase stated it is in the materials.

F. Case Status Report.

Ms. Gervase stated it is in the materials.

XVIII. Approval of Minutes and Continuing Education Programs

A. September 8, 2006 (regular session) Minutes.

MOTION: *To approve the September 8, 2006 Minutes, by Commissioner Putterman.
Seconded by Commissioner DeVere.*

VOTE: *4 - 0 Motion carried (Commissioners O'Neal and Baker absent; Commissioner Black abstained).*

B. October 13, 2006 (regular session) Minutes.

Tabled – insufficient quorum who attended the meeting to vote.

C. Continuing Education Program Applicants.

MOTION: *Approve the Continuing Education Program Minutes by Commissioner Black.
Seconded by Commissioner DeVere.*

VOTE: *5 - 0 Motion carried (Commissioners O'Neal and Baker absent).*

XIX. Scheduling of future meetings/agenda items

Current Proposed dates

**December 8, 2006
January 12, 2007**

February 9, 2007
March 8, 2007
April 12, 2007
May 11, 2007
June 8, 2007
July 13, 2007
August 10, 2007

F. Adjournment – 3:04 p.m.

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

VOTE: *5 – 0 Motion carried (Commissioners O’Neal and*
 Baker absent).