



STATE OF ARIZONA

## **Structural Pest Control Commission**

**Janet Napolitano**  
Governor

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**Lisa Gervase**  
Executive Director

### **COMMISSION MEETING FRIDAY, July 13, 2007, 9:00 A.M. MINUTES**

#### **I. Call to order (9:03 A.M.), Commissioner roll call**

Commissioners Present: Paul Baker, Patrick Black (telephonically until 12:25 p.m.), Dave Burns, Dan DeVere, Dave O'Neal, Debra Runbeck

Commissioners Absent: None (One vacancy)

Staff Present: Vince Craig, Mike Francis, Lisa Gervase, Robert Tolton, Magdalena Vazquez, Lorena Villela, Keely Verstegen, Assistant Attorney General

#### **II. Call to the public**

*None*

#### **III. Communication with Commissioners**

*All Commissioners received a letter from Jack Root regarding his recommendations as the consultant for University Termite and Pest Control, in Case No. 2005-069.*

#### **IV. Summary of Current Commission Events, Activities, Notices**

*Ms. Gervase said that as of June 30, 2007, 7,604 Applicators renewed; approximately 80% of those Applicators renewed online. Applicators who had not renewed as of June 30<sup>th</sup>, have expired licenses, and that list is on the Web site.*

*The "My Account" feature of the Web site is now available so that licensees can update vital information, review testing history, print renewal forms during renewal processing*

times, print licenses, and allows businesses to add and delete applicator employees. Ms. Gervase encouraged members of the public to continue to look at the Web site for updates.

## V. Consent Agenda

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

#### Business

#### Qualifying Party

1. Hatch Pest Control

Clint R. Shafer ("B1")

*Pulled by Commissioner Burns. Mr. Tolton said Mr. Shafer disassociated from Atomic Pest Control effective July 13, 2007.*

*Clint Shafer and Brock Hatch, owner of Hatch Pest Control, appeared. Commissioner Burns questioned Mr. Shafer's role as the QP. Mr. Shaffer said he's been in business for 10 years, and teaches high school. His daily involvement would be limited unless there are questions. He primarily would be meeting with Mr. Hatch monthly.*

**MOTION:** *To deny the application for new business license in the "B1" category due to minimal involvement in the business and if there was an emergency, the QP's unavailability could be a danger to the public, by Commissioner Baker.  
Seconded by Commissioner DeVere.*

**VOTE:** *3 – 3 Motion failed (Commissioners Burns, Baker and O'Neal opposed).*

*Discussion: Mr. Shaffer said that he would be available to be contacted throughout the day; however, he would not be physically present. Commissioner Baker asked how he would be able to answer his phone while in a classroom. Commissioner Runbeck said the Commission has approved people in the past who do not live in the same city.*

*Commissioner Burns said that in this situation Mr. Shafer told the Commission that he would be in the classroom. He said that previously they approved a garbage man who said the employer was aware, and he was able to take phone calls all day long. Mr. Shafer said he has time between each class period. He said he also has a lunch break, and added that the longest time that it would take him to respond to a phone call would be 50 minutes.*

*Commissioner Burns said A.R.S. 32-2314 (G)(2) requires the QP to be readily available to the Applicators and employees of the business. Commissioner Black asked if Mr. Shafer's current employer was aware that he is involved in Pest Control. Mr. Shafer said yes, he works for a small campus.*

*Commissioner Runbeck asked how long he has been working as a QP as a second business. Mr. Shafer said for some time and that he's always available when needed, including one time when he was on vacation. He said he has a flexible daily schedule because he is in an alternative high school teaching twelve to fifteen kids.*

*Commissioner Burns said he would personally feel more comfortable if they had something from Mr. Shafer's employer acknowledging that Mr. Shafer can retrieve telephone calls immediately if necessary.*

**MOTION:** *To approve the application for new business license in the "B1" category with the condition that Mr. Shafer provide the Commission with a letter from his current employer, due within thirty days of the Commission meeting, outlining that he could leave his classroom for calls related to his second business in case of an emergency, by Commissioner Burns.  
Seconded by Commissioner Black.*

**VOTE:** *5 – 0 - 1 Motion carried (Commissioner Baker abstained).*

*(Break from 10:35 A.M. to 10:44 A.M.)*

- |                                |                              |
|--------------------------------|------------------------------|
| 2. Southwest Green Solutions   | John P. English ("B3" & "5") |
| 3. Desert Dwellers             | Robert L. Orr ("B1")         |
| 4. Ernie's Exterminators, LLC. | Ernesto B. Magana ("B1")     |

**B. Applications to activate Qualifying Party for Existing Business License.**

<b><u>Qualifying Party</u></b>	<b><u>Business</u></b>
1. Jared P. Peterson	Home Guard Pest Control ("B1")
2. John N. Beebe	Atomic Pest Control ("B1")
3. Scott A.P. Ford	Ford Pest Control ("B1")
4. Jason M. Rogers	Yuma Golf & Country Club ("B3" & "B5")
5. William G.L. Beard	Palo Verde Landscape ("B3", "B5")
6. Brian S. Doherty	Irish Pest Control, LLC. ("B5")

- |                             |                                      |
|-----------------------------|--------------------------------------|
| 7. Brian W. Stadler         | ELS Maintenance, Inc. (“B3” & “B5”)  |
| 8. Charles Michael Pfeiffer | Arcadia Landscape Inc. (“B3” & “B5”) |

**C. Applications for Qualifying Party License**

- |                          |             |
|--------------------------|-------------|
| 1. John F. Roots, III    | “B1”        |
| 2. Jesse Hagan           | “B3” & “B5” |
| 3. Paul K. Sexton, Jr.   | “B1”        |
| 4. John M. Weber         | “B2” & “B8” |
| 5. Thomas R. Alvarado    | “B3”        |
| 6. Brian R. McClaskey    | “B1”        |
| 7. Glenn K. Hardy        | “B1”        |
| 8. Michael P. Juliano    | “B1”        |
| 9. Marc A. Watts         | “B1”        |
| 10. Mark E. Mell         | “B1” & “B5” |
| 11. Timothy S. Hendricks | “B1”        |
| 12. Steven R. Chrismer   | “B5”        |
| 13. Darryl A. Ogden      | “B1”        |
| 14. Jonathan D. Gibson   | “B3” & “B5” |
| 15. Randy G. Darris      | “B2” & “B8” |
| 16. Edward L. Owca       | “B1”        |
| 17. Damon L. Stafford    | “B1”        |
| 18. Frank A. Sanchez     | “B1”        |

*Pulled by Commissioner Runbeck. Mr. Sanchez was present.*

**MOTION:** *To approve the application for Qualifying Party in the “B1” category by Commissioner O’Neal. Seconded by Commissioner DeVere.*

**VOTE:** 6 – 0 Motion carried.

19. Michael R. Ball, Jr. “B1”

**D. Business License Name Change Request**

None

**E. Applicants for new Applicator Licenses**

1. Licenses to be ratified that were issued since 9/17/03 law change.
2. Licenses to be issued for completed applications in the current month.

**End of Consent Agenda**

**MOTION:** *To accept the Consent Agenda with the exception of the items pulled for discussion (A1, C18,) by Commissioner Burns.  
Seconded by Commissioner Baker.*

**VOTE:** 6 – 0 Motion carried.

**VI. Applications not on Consent Agenda**

**A. Request for Temporary Qualifying Party License and Renewals**

1. Phil Elmore Wendel “B1”, “B2”, “B5” & “B8”

*Ms. Gervase said Mr. Wendel submitted a letter with reasoning for the renewal of the Temporary QP. The Commission is awaiting the results of the background check. Attorney Scott Richardson appeared on behalf of Mr. Wendel. Commissioner Runbeck said she would abstain because she previously voted no for the application.*

**MOTION:** *To approve the request for Temporary QP renewal, by Commissioner Black.  
Seconded by Commissioner Baker.*

**VOTE:** 5 – 0 - 1 Motion carried (Commissioner Runbeck abstained)

2. Frank A. Sanchez “B1”

*Mr. Sanchez was present.*

**MOTION:** *To approve the request for Temporary QP renewal, by Commissioner DeVere.*

*Seconded by Commissioner Black.*

**VOTE:** 6 – 0 Motion carried.

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

1. *None*

**C. Application for Qualifying Party License**

**1. Dane J. Deal “B1”**

*Mr. Deal appeared. Commissioner Runbeck asked if there was something in the Statutes that prohibited the Commission from issuing Mr. Deal a license when his license was revoked in another state. Ms. Versteegen said that 32-2304 (A)(18) said that the Commission shall deny a license to anyone who has had their license revoked within a period of five years. Ms. Gervase explained that Mr. Deal had a Company Registration Certificate and an Operators License in California, which were revoked in March of 2003. Mr. Deal applied for an applicator license from the Commission in September 2003, and did not disclose the revocation. Mr. Deal said that the application asked if he had an applicator license revoked. He said his Pest Control License expired in California. He said what was revoked was the Wood destroying Organisms license. Commissioner Runbeck said that the California ALJ wrote that Mr. Deal had taken great steps in correcting the problem and that Mr. Deal was very cooperative in the investigation. Ms. Versteegen said the law is fairly broad in that it just says deny the license. Commissioner Burns said he felt the Commission did not have any reason to vote and wanted to make sure Mr. Deal understood that if the Commission voted, it would go on the record. Commissioner O’Neal said the Commission’s hands are tied because 32-2304(A)(18) is broad and say’s “shall” deny. Commissioner Runbeck mentioned the negative consequences of a license denial. Mr. Deal said he’s like to withdraw his application.*

*No action. Application withdrawn.*

**2. Tony W. Seddon “B1”, “B2”, “B5”&”B8”**

*Scott Richardson was present on behalf of Mr. Seddon. He wanted this on the agenda for the Commission to consider whether the renewal application was administratively complete under the APA. He said that Dave Burns said that clearly mistakes were made. Mr. Richardson said they do not know what happened to the renewal application and he did not want to place blame on anyone.*

*Commissioner Runbeck asked whether Mr. Seddon had submitted a renewal application. Mr. Seddon said no. He recently received a renewal form with a letter from Mr. Francis stating that the SPCC could not renew the application*

*because he was past the renewal dates. Mr. Richardson said that when he arrived for the Commission meeting today, Mr. Tolton told him that the renewal form and fees would have to be filed for the Commission to hear it today. Mr. Richardson said the Commission is making the argument that the QP and the BL are separate but they are not because the business license listed the QP as Tony Seddon. He said that no one called Mr. Seddon to inform him that his QP license expired.*

*Ms. Gervase explained the factual history of this renewal issue and the SPCC's legal constraints. Commissioner Burns felt there were errors on both sides and the licensee shouldn't be punished. Commissioner Runbeck disagreed that staff made errors, and questioned whether the Commission had a legal basis to deny or grant the renewal of an expired license.*

*Robert Tolton said that the business license and QP license are separate. At the time of renewing the business license, all requirements were met. The requirement for the QP renewal was not met because the SPCC hadn't received the renewal application. Failure of a licensee to receive the renewal form is not grounds for failure to renew.*

*Mr. Richardson referred to A.R.S. § 41-1074 in saying the Business License application was administratively incomplete. Mr. Richardson said no one knows if the application was lost. He repeated that Mr. Seddon was not notified. He said all he was asking the Commission to do was to consider it to be administratively incomplete. Mr. Tolton said the business renewal was administratively complete. The QP renewal wasn't received, so it can't be considered complete.*

*Mr. Richardson said that he would like the Commission to go back and allow Mr. Seddon to obtain his QP based on fairness. Commissioner Runbeck said she has concerns when Mr. Richardson speaks about fairness because of the position it puts the Commission in when making a decision. Mr. Richardson said that perhaps they would not have added facts of someone standing before the Commissioners at the January meeting and saying that everyone was contacted.*

*Ms. Gervase said Mr. Richardson's letter in this matter alleges that she stated at the January meeting that she personally telephoned every licensee whose license expired. She said she did not say that, and even listened to the January meeting recording and read the minutes, after seeing that statement in his letter. What she said in the January meeting was that in October 2006, the Commission sent out notices stating it was renewal time and to renew online. By mid-November they sent out renewal forms to businesses and QPs that had not renewed as of mid-November. At the January meeting she said the Commission would be posting on the website a list of all expired Businesses and QPs. She said at the January meeting she even had phone calls with some licensees, as their expired status came to light during calls about other issues. She said that she did not say the Commission called all the people on the expired list. There also was an additional industry notice sent in March 2007 that advised people check the web site and mentioned the online business and QP renewal system.*

*Ms. Gervase said the SPCC cannot go beyond the law that says you have to renew by December 1, and if your license is expired more than 30 days from December 31, the Commission shall not renew. She said she does not know Mr. Seddon and there is no reason to keep anyone out of business.*

*Commissioner O'Neal asked about the options. Ms. Gervase said that when the Commission became aware Mr. Seddon was expired, they contacted Mr. Seddon and advised him that the most expeditious thing to do was for him to find someone who was an inactive QP and have them serve as the QP. Ms. Gervase said that instead, the business applied for, and the Commission issued, a Temporary QP license. Ms. Gervase said at the time the BL was renewed the QP had not yet expired and as a courtesy to Business Licenses, Commission staff listed the BL name, number, and the name and categories of the QP at the time the business license is issued/renewed. When the business renewal was issued, Tony Seddon's QP was still active and valid, so his name was listed on the license form.*

*Commissioner Burns said he is concerned that the Commission is not talking about a current license they are talking about a 2008 license that says the QP is Tony Seddon. Commissioner Burns said this is a situation where it is obvious error on both sides. Commissioner Runbeck disagreed with Commissioner Burns and said she felt staff did what they were supposed to do.*

*Commissioner Runbeck said she did not feel there were errors on both sides and said the burden falls on the BL to renew his license. Commissioner Burns said the license is for 2008 and asked how it could be denied if 2008 is not here.*

*Mr. Tolton said the BL is for the purpose of operating in 2007 and the Business License and the QP are separate because they are not always the same person. He said the license could be valid one day and be obsolete the next, depending on the circumstances. Mr. Seddon questioned if the BL was obsolete, would the Commission notify the BL. Mr. Seddon said that all he is saying was that he has been in business for over 27 years and has renewed every year and said he did not want to place blame on anyone. Ms. Gervase said Mr. Seddon can resubmit an application or submit an application to activate someone else's QP to continue to conduct business.*

*Mr. Richardson said that the APA does not say that if they do not renew then they cannot obtain their QP. Mr. Richardson said he just needed a ruling. He said that the Commission has made it to sound simple; however, Mr. Seddon will have to retake the test and will have to wait a few months. Ms. Runbeck said the Commission has no authority to vote on an application they have not received. Mr. Richardson said he requested that the administrative issue be included in the agenda. Mr. Tolton questioned what it was that needed to be administratively complete. Mr. Richardson said that no one ever notified Mr. Seddon on the deficiency. Ms. Gervase said the fact is that prior to 2003 there was not anymore handholding than requiring applicants to send in their license renewals. She said*



*Mr. Richardson is using the extra steps staff has taken to notify licensees against them.*

*Mr. Richardson said that the BL sent it in and the post office lost the QP, and they were never aware of that, but then they received a BL that says the name of the QP how were they to know. Commissioner DeVere said Mr. Seddon has renewed his business license and QP license for 26 years.*

*Commissioner Black said that Mr. Seddon was assuming that he sent in both his BL and his QP renewals because the business license also had his name as QP on it. Commissioner Runbeck said but Mr. Seddon did not submit a QP renewal.*

*Mr. Tolton said that the renewal forms each address what license it is specific to. He said that at the base of each form it says it is for that specific license only. He said that it would be assumed that the applicant read the form. Commissioner Runbeck asked if Mr. Seddon had any receipt stating he paid the QP renewal fee. Mr. Seddon said he never paid the fees for the QP renewal. Obviously, he either didn't get the renewal or didn't submit it. He just wants to renew and doesn't want to take tests again. He is not blaming anyone. He did not want to retake the test. He said he did not feel comfortable with someone else being the QP of his multi-million dollar company because he is the most qualified person in his company with the ability to run his business.*

*Commissioner Runbeck said she did not have anything against Mr. Seddon and added that her only concern was whether the Commission has the legal authority to accept the renewal.*

*Commissioner O'Neal asked if the Commission could waive the testing process to avoid the bureaucratize.*

*Mr. Francis said that when he sent the letter with a new renewal form, the letter did state that if they submitted the renewal, it would be placed on the agenda for the Commission.*

*Commissioner Burns asked what Mr. Black's thoughts were. Commissioner Black said staff did everything correctly. He is an attorney, but is open to a situation where Mr. Seddon, who has a good track record, gets his QP license back and the Commission can move forward.*

*Commissioner Baker said he agreed with Commissioner O'Neal. He said that there needs to be some common sense that needs to be brought to the law.*

*Mr. Richardson said Mr. Seddon just completed the renewal form and paid the fees.*

*Commissioner Black said that he just needed to reiterate that he felt staff did what they had to do, within the law and his vote was not any reflection otherwise. The Commission has more discretion to be flexible. Commissioner DeVere said*

he agreed with Commissioner Black, but Mr. Seddon has been in business a long time. It is the BL's responsibility to make sure his licenses are renewed, not the SPCC staff's. Commissioner Runbeck echoed Commissioner DeVere's comments.

Ms. Verstegen said that in looking at Rule R4-29-207(H) she said the Commission cannot renew a license that has been expired for more than 30 days.

Mr. Richardson argued the Administrative Procedures Act gives the Commission administrative authority to renew the license, despite the rule.

Commissioner Runbeck said if there's a debate about the Commission's legal authority, what are the risks if they act contrary to law. Ms. Verstegen said Commissioners can face personal liability and even the possibility of criminal charges. Commissioner Black said if that was really her advice, and if they interpret the law differently that there could be criminal liability, then he wanted it in writing with legal authority. He said that if she is giving that advice to a Commissioner as a public member. He said if that is her advice then he would not want to serve on the Commission.

Commissioner Black said he does not feel he could be liable for an incorrect decision. He wanted legal authority before he makes the vote. Ms. Verstegen explained the malfeasance in office misdemeanor statute that says there they could be criminally liability, statute number A.R.S. § 38-443.

Commissioner Runbeck said that Ms. Verstegen was asked about the potential risks.

**MOTION:** To approve the renewal application for a Qualifying Party License in the "B1", "B2", "B5" and "B8" categories by Commissioner Black.  
Seconded by Commissioner Baker.

**VOTE:** 4 – 2 Motion carried (Commissioners Runbeck and DeVere opposed).

Commissioner Black asked why the A.G. provided that advice. Commissioner Runbeck said that she asked her to provide the risks, to both the Commission and Commissioners. Ms. Verstegen said that if the Commission acts contrary to the AG's legal advice, and there is a legal challenge, the AG's office may choose not to defend the Commission.

Commissioner Black said that he still wants his memo.

#### **D. Business License Name Change Requests**

None

## VII. Complaints

### A. Desert Shadows Landscape, Inc. (Unlicensed Company)/Ramon Martinez (President/CEO (Unlicensed Applicator) - Case No. 2007- 003

*Mr. Martinez was not present. Ms. Gervase said the Commission received a letter from Mr. Martinez stating Mr. Martinez was out of town on business.*

**MOTION:** *To Issue a cease and desist order and impose a civil penalty of \$1,000.00 dollars, jointly and severally, to Desert Shadows Landscape, Inc. and Ramon Martinez, by Commissioner Black. Seconded by Commissioner Burns.*

**VOTE:** *6 – 0 Motion carried.*

### B. Blackhawk Pest Control (BL)/Joseph Latin (QP&APP) – Case No. 2007- 012

*No one from Blackhawk was present. Commissioner Burns said that this one bothered him because when the Commission received a complaint they immediately asked for treatment records for an entire block. Mr. Craig clarified that the allegation was that every time the licensee serviced the three homes, which was on the same day, the consumer's child had seizures. The SPCC only requested records for three homes. In the investigator's report it says "block", but it's only three homes.*

*In fact, when the Commission asked the complainant when those issues occurred, the consumer's recollection of the time frames on the occurrences were off from the records they received. Ms. Gervase said that the Commission frequently is able to educate consumers after receiving treatment records of what actually occurred.*

*Commissioner Baker said that the alleged exposure issue was not substantiated, but the licensee used the product incorrectly.*

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

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

### C. Carl's Termite & Pest Control (BL)/Carl Wade Bell (QP)/Carl Earll Bell (APP) – Case No. 2007- 013

*No one was present for this matter. Ms. Gervase noted that the Agenda had the case number listed as 2007-012; however, that was a typo and the case number should be 2007-013.*

**MOTION:** *To accept the proposed resolution, and if the Consent Agreement is not executed by the date stated in the transmittal letter, to send the matter to the Office of Administrative Hearings, by Commissioner Burns.  
Seconded by Commissioner O’Neal.*

**VOTE:** *6 – 0 Motion carried.*

**D. Chad Berg (QP)/Carlos Gortariz (APP) – Case No. 2007- 017**

*Commissioner Black said he understands there was sufficient training and supervision, but why not have the business licensee extend the warranty? Mr. Craig said there was no joint responsibility by the QP and BL. Commissioner Black asked about having the applicator pay for an extra year of warranty. He said in one case the homeowner gets an extra year of free warranty but not in the second case. Mr. Craig said the Commission is being consistent. He said they have never required an applicator to extend a warranty, because the applicator doesn’t maintain the warranty.*

*Mr. Craig said that the timing of the violations in the two cases involving Mr. Gortariz are such that neither constitutes a prior violation that can be considered in determining discipline. Commissioner Runbeck said that while it does not technically qualify as a prior, if this person has a pattern then they could possibly make it higher.*

*Commissioner Burns asked if each case was considered separately in settlement conference. Mr. Craig said yes, but each is looked at on its own merits. Commissioner Black asked why both cases are being handled today when the incidents occurred four months apart. Mr. Craig said one case took longer to investigate, but got to settlement conference at the same time.*

**MOTION:** *To accept the proposed resolution, and if the Consent Agreement is not executed by the date stated in the transmittal letter, to send the matter to the Office of Administrative Hearings; and to dismiss the complaint against Chad Berg’s qualifying party license, by Commissioner Black.  
Seconded by Commissioner O’Neal.*

**VOTE:** *6 – 0 Motion carried.*

**E. Northwest Exterminating(BL)/Chad Berg (QP)/Noran “Eric” Ruden (APP)  
Case No. 2007-006**

*Dan Miller from Northwest was present, and said the company performed a retreatment for the homeowners. Ms. Gervase said the Commission received a letter from industry member Phyllis Farenga, one of the complainants, stating that she didn’t receive sufficient notice of this matter being on today’s agenda. Ms.*

*Gervase said that the other complainant, the homeowners, also provided a letter today, but it asked that the Complaint be dismissed against the Business Licensee and that no Administrative Warning be imposed. Letters to both complainants about the settlement conference and today's meeting were sent at the same time. The homeowners did provide input before the settlement conference, and for today's consideration. Commissioner Baker asked if the SPCC investigates complaints from anyone calling in to complain and expressed concern about SPCC's resource limitations.*

*Mr. Francis said there is a statute that requires the Commission to look into every complaint, whether it comes to the Commission written or orally. He said that was the reason for the inquiry process.*

**MOTION:** *To accept the proposed resolution and if the Consent Agreement is not executed by the date stated in the transmittal letter, to send the matter to the Office of Administrative Hearings, and to dismiss the complaint against the Qualifying Party License of Chad Berg and the Applicator License of Eric Ruden, by Commissioner O'Neal.  
Seconded by Commissioner Baker.*

**VOTE:** *6 – 0 Motion carried.*

**F. Rick Bessinger (APP) – Case No. 2007- 028**

*No one was present for this matter.*

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

**VOTE:** *6 – 0 Motion carried.*

**G. Carlos Gortariz (APP) – Case No. 2007- 035**

*Commissioner Black asked about the maximum civil penalty. Mr. Craig said that if it was accidental it would be \$200 but, if it was willful then \$400.00. He also felt education was necessary.*

**MOTION:** *To reject the proposed resolution and return the matter to settlement conference to offer a \$100.00 civil penalty and no C.E., and if the Consent Agreement is not executed by the date stated in the transmittal letter, to send the matter to the Office of Administrative Hearings, by Commissioner Black.*

*Seconded by Commissioner O'Neal.*

**VOTE:** 6 – 0 Motion carried.

**H. John Applegate (APP) – Case No. 2007- 036**

*Mr. Applegate was present.*

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

**VOTE:** 6 – 0 Motion carried.

**I. Robert Herndon (Former Temporary Qualifying Party Licensee and Applicator Licensee) d.b.a. Buggy Exterminating (Former Business Licensee) Case No. 2006- 061**

*Commissioner Burns asked if this individual was conducting business as Buggy Pest Control. Mr. Craig said he was doing business as Buggy. At one point he was a sole proprietorship and his license was revoked, but it turns out that he may have been doing business the entire time. Commission consensus to forward this matter to the A.G.'s office for possible consumer fraud prosecution.*

**MOTION:** *To impose a Cease & Desist Order and a \$1,000.00 Civil Penalty, by Commissioner Baker.  
Seconded by Commissioner DeVere.*

**VOTE:** 6 – 0 Motion carried.

**J. Lester Elam (APP) – Case No. 2007-015**

*Mr. Elam was not present.*

**MOTION:** *To dismiss the complaint without prejudice and suspend the applicator license for nonpayment of renewal fees (automatic revocation after one year), by Commissioner Black.  
Seconded by Commissioner O'Neal.*

**VOTE:** 6 – 0 Motion carried.

*(Commissioner Black left the meeting at 12:25 P.M.)*

**K. Arizona Exterminating Company (BL) – Case No. 2006- 054**

*Continued to September 2007 meeting, per request from licensee.*

*(Break from 12:27 P.M. to 12:55 P.M.)*

**L. Permguard, Inc. Permguard Termite & Pest Control (BL)/John Donahue (QP) – Case No. 2007-029**

*Scott Richardson appeared on behalf of the business licensee.*

**MOTION:** *To accept the proposed resolution and if the Consent Agreement is not executed by the date stated in the transmittal letter, to send the matter to the Office of Administrative Hearings, and to dismiss the complaint against the Qualifying Party licensee, by Commissioner O’Neal.  
Seconded by Commissioner Baker.*

**VOTE:** *5 – 0 Motion carried.*

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

A. Justin Smith, Applicator Licensee – Case No. 2006-037

**MOTION:** *To deny the petition on the basis that insufficient grounds were presented to justify a review or rehearing, by Commissioner Burns.  
Seconded by Commissioner O’Neal.*

**VOTE:** *5 – 0 Motion carried.*

**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.**

None

**XI. Consideration of lifting Suspension of Business, Qualifying Party and/or Applicator Licenses.**

None

## **XII. Recommended Decision and Orders.**

A. Nicholas Lucero – OAH Case 06A-036-SPC /SPC Case # 2006-036

*Mr. Lucero was not present. Keely Versteegen, Assistant A.G., appeared on behalf of the state. She said she agreed with everything in the ALJ's recommended decision, except finding of fact # 6 states that the licensee did not follow the label directions. Therefore, conclusion of law should be amended to include a violation of misuse. Ms. Versteegen also asked the Commission to impose a deadline for the civil penalty that it be paid within thirty days.*

**MOTION:** *To accept the Findings of Fact, by Commissioner Burns.  
Seconded by Commissioner DeVere.*

**VOTE:** *5 – 0 Motion carried.*

**MOTION:** *To modify the Conclusions of Law by striking the first four sentences of Conclusion #2 because they are inconsistent with the Finding of Fact #6, by Commissioner Baker.  
Seconded by Commissioner DeVere.*

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

**MOTION:** *To adopt the ALJ's recommended order with the modification that the \$300.00 civil penalty be paid within 30 days of the entered date of the order, by Commissioner Baker.  
Seconded by Commissioner Burns.*

**VOTE:** *5 – 0 Motion carried.*

## **XIII. Settlement Proposals**

None

## **XIV. Consideration of Informal Settlement Conference proposed resolutions**

None

## **XV. Reporting by Licensees on Probation**

A. Larry M. Ward, Applicator License No. 061150 – Case No. 2006-059

*Mr. Ward was present. He provided a letter from his employer saying he was good worker, and a letter from his probation officer stating he has been in full compliance.*



*Mr. Ward asked the Commission to terminate his probation with the Commission early since he has been fully compliant and wants to move on with his life.*

**MOTION:** *To modify the Consent Agreement and Order to allow Mr. Ward to provide one more set of letters as required in the terms of his current Consent Agreement and Order in October 2007, but not require him to appear before the Commission again, and if all items are compliant, to terminate the probation at that time, by Commissioner O'Neal. Seconded by Commissioner Baker.*

**VOTE:** *5 – 0 Motion carried.*

## **XVI. Applicants with Criminal Convictions**

### **A. Mark Van Osdel**

*Mr. Tolton said Mr. Van Osdel was at the meeting however, he had to leave due to an emergency. Mr. Tolton said that the Commission could not table this application today because it would violation the Commission's substantive timeframe.*

**MOTION:** *To deny the application due to the felony conviction and the nature of the offense, by Commissioner Burns. Seconded by Commissioner O'Neal.*

**VOTE:** *4 – 1 Motion carried (Commissioner DeVere opposed).*

### **B. Roque G. Castillo**

*Mr. Castillo was not present.*

**MOTION:** *To approve by Commissioner Burns. Seconded by Commissioner O'Neal.*

**VOTE:** *5 – 0 Motion carried.*

### **C. Jason R. Ewing**

*Mr. Ewing was present. Mr. Ewing said that at 15 he became a runaway and got into drugs. But, he has been on track since he got on probation and is now getting married and work on his life. He has been with Snyders for over three months. He completed his probation two years ago. He said he left AZ Exterminating because he was past his 90 days within which to become licensed.*

**MOTION:** *To approve by Commissioner O'Neal.*

*Seconded by Commissioner Baker.*

**VOTE:** *5 – 0 Motion carried.*

**D. Timothy M. Holt**

*Mr. Holt was present. Brian Doherty with Irish Pest Control also was present to vouch for Mr. Holt's character.*

**MOTION:** *To approve by Commissioner Burns.  
Seconded by Commissioner O'Neal.*

**VOTE:** *5 – 0 Motion carried.*

**E. Jeffrey C. Dettman**

*Mr. Dettman was present.*

**MOTION:** *To approve by Commissioner Burns.  
Seconded by Commissioner O'Neal.*

**VOTE:** *5 – 0 Motion carried.*

**F. Charles L. Herman, Jr.**

*Mr. Herman was present. Paul Peaty with Ariat Services also was present to speak on Mr. Herman's behalf. Mr. Peaty said that he has received a lot of compliments from customers regarding Mr. Herman. Mr. Herman said he goes to school, works and is responsible for taking care of his baby.*

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

**VOTE:** *5 – 0 Motion carried.*

**XVII. Commission Updates**

**A. University Termite and Pest Control, Inc. (BL)/Richard Rupkey, II (QP) – Case No. 2005-069 – Commission's consideration of compliance with Consent Agreement and Order, entered on 2/9/2007.**

*Ms. Gervase said pursuant to the order, the licensees were to hire a regulatory consultant to assess University's compliance and communication with the Commission and provide a report of recommendations by August 9<sup>th</sup>. Ms. Gervase said that two-thirds of the consultant's report is the consultant's assessment of the Commission's processes. Ms. Gervase said there also are five items that the Commission had questions on whether there was proof of compliance.*

*Commissioner Baker questioned whether the consultant's report meets the requirements of the order. He said most of the recommendations are a critique of the Commission and Commission staff, and this isn't the appropriate venue to address those points. He said it is a nice first draft; however, it needs to address the details of what was required. He said there is some connection with the order but, not a great amount of connection.*

*Commissioner Burns said that the consultant could verbally address any questions today.*

*Commissioner Runbeck said that the order required the consultant to provide recommendations as to what the licensees should do, not going out and interviewing industry members and critiquing the Commission based on what the industry said. Perhaps those issues should be addressed at the call-to-the-public or as an agenda item.*

*The consultant, Jack Root, said he can redraft his report. He said his instructions on what he needed to do were pretty vague. He said that basically he looked at it not only as a compliance issue with University, but a two-way street of communication. He said that University isn't not at fault. He said that he did recommend that Mr. Rupkey needed to be replaced. He said that logs could be kept in trucks. He said there is a problem between the two entities. He said Exhibit A is all about ensuring folks are licensed in the right categories. He felt there was a personality conflict with the two entities and getting a new QP/spokesperson could help. He said that with regard to the personal interviews, he felt it was part of his job. He said he overheard the SPCC receptionist make a comment that was negative about the industry. He said that he needs to rework the report from a compliance standpoint. He said that University does have the capability to comply. He said both University and SPCC staff need to have steps to verify compliance.*

*Commissioner Black told the consultant to see the purpose in the order. This report is wrong per the order. He asked why the order term wasn't complied with, on page 7, paragraph C, lines 6-7.*

*Mr. Root said he spent time reviewing the licensees' files at the SPCC office. They are very detailed files. Commissioner Black said that the consultant's report doesn't address the licensee's compliance history.*

*Commissioner Runbeck said the consultant's report isn't to address recommendations to the SPCC. If there are recommendations on what the SPCC needs to do then, those needs to go through a different channel. Commissioner O'Neal said that regulatory agencies constantly undergo changes to stay current and meet the needs of the public and the industry.*

*Commissioner Burns said he agreed with Commissioners Black and Runbeck in that the recommendations needed to be specific with the order. He said that the communication issue was addressed to make sure that the communication issue was in line.*

*Mr. Root said that his intent was across the board. He said he used the word “client” in a broad range, not just for University. He said if there isn’t any confusion among the parties in the consent agreement, it would improve the level of compliance.*

*Commissioner Runbeck said she would like to see what the recommendations are with regard to University. Mr. Rupkey said that he would not be available next month. Ms. Gervase said she has a stack of e-mails back and forth from Mr. Rupkey and the licensees’ attorney, clarifying the consent agreement terms and answering questions. She is perplexed as to the stated lack of communication about how to comply with order terms.*

*Commissioner Burns said it was critical that University is making a good faith attempt to comply. He said that he sees good faith in an attempt to comply.*

*Mr. Richardson asked that this be put off until September so that Mr. Rupkey can attend. Ms. Gervase agreed and said that was what she initially suggested in the e-mail she sent to Mr. Richardson.*

*Commission consensus to place this on the September agenda to address the consultant’s new report and the licensees’ compliance with the order.*

**B. Commission training (previous handout on 2/9/07)**

*Tabled*

**C. Complaint Status Log**

*Provided to the Commissioners. There were no questions.*

**D. Computer Based Testing “CBT” Status and Statistics**

*Provided to the Commissioners. There were no questions.*

**E. Expenditure Report**

*Provided to the Commissioners. There were no questions.*

**F. Case Status Report**

*None.*

**G. Sexton Pest Control/Paul Sexton – Inquiry #2007-047 – Sexton’s request to pay its attorneys’ fees**

*Scott Richardson appeared on behalf of the company. Mr. Richardson provided background on the letters he sent asking what the violations were in response to the SPCC’s records request. On May 1<sup>st</sup>, he asked that the matter be placed on the*

agenda. At the May meeting, the Commission set it aside, and he argued that Sexton should receive its attorneys' fees for preparing and appearing before the Commission.

Commissioner Runbeck said she did not necessarily agree with Mr. Richardson and asked for some history. Ms. Gervase said that with regard to Mr. Richardson's requests to the inspector to modify the records request, it was modified. She then received a letter requesting that the records request issue be on the May agenda. She hadn't even been given time to respond to the letter when Mr. Richardson immediately filed a lawsuit and two days later there was a court hearing. It was all rather rushed and Ms. Verstegen, who is new, didn't have time to prepare. Before an agency can pay attorneys' fees, there has to be an "appealable agency action" or a "contested case". There also has to be a final administrative decision. None of those requirements are met here since this matter is just at the investigative stage.

Mr. Richardson argued that they could not get it on the agenda and they had to go to court for that. He said that in order to get the case adjudicated, which the Commission did, he had to prepare to argue for his client. He felt there was an adjudication because the Commission made a ruling on it.

Commissioner Burns asked whether the Assistant A.G. could provide advice since she argued this matter in court. Ms. Verstegen said she could. Ms. Verstegen said this is not a contested case, nor an appealable agency action. And, it has to be found that the action of issuing the records request was not substantially justified, which the judge did not find. Not being substantially justified is a higher burden than the statute upon which the court relied in granting fees.

Mr. Richardson argued that they prevailed in what they asked for, so the Commission should award fees.

Commissioner Runbeck said that she did not feel that issuing a records request was an action, and did not feel that the Commission found that the records request was not valid, just that the company should hear the allegations first.

Commissioner O'Neal said he did not understand the legalities. Commissioner Burns said that from a legal standpoint he did not understand. They have something in writing from Mr. Richardson. He would like to see something from the AG in order for him to make a fair and accurate judgment. Maybe after the A.G.'s information, Mr. Richardson could have 10 days to reply.

Consensus to place this on the September agenda.

Tabled.

## **XVIII. Approval of the minutes.**

### **A. May 11, 2007 (regular session) Minutes**

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

**VOTE:** *5 – 0 Motion carried.*

**B. May 11, 2007 (Executive Session) Minutes**

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

**VOTE:** *5 – 0 Motion carried.*

**C. June 8, 2007 (Regular Session) Minutes**

*Tabled*

**D. June 8, 2007 (Executive Session) Minutes**

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

**VOTE:** *5 – 0 Motion carried.*

**E. Continuing Education Program Applicants**

**MOTION:** *To approve by Commissioner O’Neal.  
Seconded by Commissioner DeVere.*

**VOTE:** *5 – 0 Motion carried.*

**XIX. Future meetings**

*August 10, 2007  
September 14, 2007  
October 12, 2007  
November 9, 2007  
December 14, 2007  
January 11, 2008  
February 8, 2008  
March 14, 2008  
April 11, 2008  
May 9, 2008*

**XX. Adjournment**

**MOTION:** *To Adjourn by Commissioner DeVere.  
Seconded by Commissioner Baker.*

**VOTE:**

*5 – 0 Motion carried.*

*Meeting ended: 2:17 P.M.*