

**NOTICE OF COMMISSION MEETING
FRIDAY, November 12, 2004
9:00 A.M.
Structural Pest Control Commission
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258**

Note: *Comments* on any item may be made to the Commission by attending the meeting to speak, or communicating with Lisa Gervase at lisagervase@sb.state.az.us, fax (602) 255-1281, mail at the above address, or phone (602) 255-3664.

Please quiet your cellular telephones and pagers. Do not hold telephone or other conversations in the hallway outside of the Commission room, as voices carry.

Pursuant to A.R.S. § 38-431.02, notice is given to the members of the Structural Pest Control Commission and to the General Public that the Structural Pest Control Commission will hold a meeting open to the public, as indicated on the following agenda.

Pursuant to A.R.S. § 38-431.03(A)(3), the Commission may vote to go into executive session to obtain legal advice for matters on the agenda. Pursuant to A.R.S. § 38-431.03(A)(2), the Commission may vote to go into executive session to discuss records exempt from public inspection. Pursuant to A.R.S. § 38-431.03(A)(1), the Commission may vote to go into executive session to discuss personnel matters. The executive session will not be open to the public. All items under discussion or for consideration are subject to possible decision and vote by the Commission.

AGENDA

- I. Call to order (Chairperson), Commissioner roll call (Mr. Bauer)**

II. Call to the public (Chairperson). Each speaker is limited to five minutes. This is the time for the public to comment. Members of the Commission may not discuss items that are not on the agenda. Therefore, action taken as a result of public comment are limited to directing staff to study the matter or scheduling the matter for further consideration and decision at a later date.

III. Communication with Commissioners (Chairperson)

IV. Consent Agenda

Items will be read and voted on in one group excluding those pulled for discussion. Any matter on the Consent Agenda will be removed from the Consent Agenda and discussed as a regular agenda item upon the request of any Commissioner. All persons are encouraged to stay for the entire Commission meeting. However, a person who appears for a matter on the consent agenda may leave after the Commission approves the consent agenda in its one vote; and a person who appears for a matter on the consent agenda that was pulled from the consent agenda is free to leave after the Commission votes on that matter.

For new business and existing business license applicants, if applicants do not appear and the Commissioners have questions, those applications may be denied or tabled to a future meeting.

A. Applications for New Business License (Mr. Tolton)

Qualifying Party

- | | |
|----------------------------------|---|
| 1. Bennett, Imogene F. | Aquatic Ecosystems of Arizona
(Activating Qualifying Party for new business license in "B9" Aquatic Pest Control) |
| 2. Branum, Gary Lafon | Flood Control District of Maricopa County (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control) |
| 3. Jenkins, Jeffrey Brian | Arizona Lake and Pond Management
(Activating Qualifying Party for new business license in "B9" Aquatic Pest Control) |

- 4. **Keaney, Paul John** **Landscape Expressions, Inc.**
(Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

- 5. **Moran, James Michael** **Northern Arizona VA Health Care System** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)

- 6. **Oldham, Brian Wayne** **Ant Brian Exterminating** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

- 7. **Partin, Benjamin Carl** **InspeCTech of Virginia** (Activating Qualifying Party for new business license in "B8" Wood Destroying Insect Inspection)

- 8. **Rogers, Kenneth Wayne** **NAA Services Corporation** (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control)

- 9. **Ryan, Thomas John** **Southwest Pest Control, Inc.** (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)

- 10. **Smith, Jeremie Matthew** **Grande Valley Golf Club** (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

B. Applications to activate Qualifying Party for Existing Business License (Mr. Tolton)

- 1. **Agius, Dennis George** **Baron Pest Control, Inc.** (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

Horticulture)

2. **Ciulla, Lawrence J.** **Universal Pest Control, Inc.** (Activating Qualifying Party for existing business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)
3. **Elkins, Ronald Frank** **Artistic Land Management, Inc.** (Activating Qualifying Party for existing business license in "B1" General Pest/Public Health and "B3" Right of Way/Weed Control)
4. **EstaBrook, Trent Richard** **Desert Pest Control** (Activating Qualifying Party for existing business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)
5. **Gaunt, Robert Edward** **Rim Country Applicators** (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)
6. **Gross, J. Michael** **CTM Pest Control** (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control)
7. **Martinez, Alejandro** **The Groundskeeper** (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf & Ornamental Horticulture)

For Qualifying Party applicants, Temporary Qualifying Party Applicants, renewal applicants, and name change requests, if applicants do not appear and the Commissioners have questions those applications may be denied or tabled to a future meeting. An applicant that the Commission approves for licensure is approved subject to passing required exams and a clean background report. If the background report reflects information that was not disclosed on the application, the applicant will not be allowed to sit for an exam and the application will be placed on a future agenda for the Commission's reconsideration.

C. Applicants for QP Licensure (Mr. Tolton)

- 1. Aesch, Jr., Harold Walter** "B2 and B8" (Control of Wood-Destroying Insects and Wood Destroying Insect Inspection)
- 2. Amenta, Jonas** "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)
- 3. Bird, Bradley Adrian** "B5" (Turf & Ornamental Horticulture)
- 4. Branum, Gary Lafon** "B1" (General Pest/Public Health)
- 5. Busch, Donald** "B1" (General Pest/Public Health)
- 6. Cones, John William** "B3" (Right of Way/Weed Control)
- 7. Davis, James Lawrence** "B1" (General Pest/Public Health)
- 8. Etheridge, Kevin Michael** "B7" (Fungi Inspection)
- 9. Forreider, Robert Wayne** "B1" (General Pest/Public Health)
- 10. Godinez, Eric Jon** "B1 B2 and B8" (General Pest/Public Health, Control of Wood-Destroying Insects and Wood Destroying Insect Inspection)
- 11. Goemaat, Ruth Ann** "B3" (Right of Way/Weed Control)
- 12. Ledezma, Alberto Carrillo** "B3" (Right of Way/Weed Control)
- 13. Lowe, Eric Allen** "B1" (General Pest/Public Health)
- 14. Kane, James Ray** "B3 and B5" (Right of Way/Weed Control and Turf & Ornamental Horticulture)
- 15. McPheron, Vicki Lynn** "B3" (Right of Way/Weed Control)
- 16. Michael, Christopher Keith** "B1 and B3" (General Pest/Public Health and Right of Way/Weed Control)

- 17. Mongiello, Michael Angelo** “B3, B5 and B9” (Right of Way/Weed Control, Turf & Ornamental Horticulture and Aquatic Pest Control)
- 18. Pinnecker, Douglas Keith** “B7” (Fungi Inspection)
- 19. Richardson, Stephen Paul** “B1 B2 and B8” (General Pest/Public Health, Control of Wood-Destroying Insects and Wood Destroying Insect Inspection)
- 20. Tjaarda. Harmen** “B3 and B5” (Right of Way/Weed Control and Turf & Ornamental Horticulture)
- 21. Wilson, Christopher Ibarra** “B1” (General Pest/Public Health)
- 22. Workman, Jason Thomas** “B1” (General Pest/Public Health)

End of Consent Agenda

V. Complaints against Licensees

The Commission may discuss, consider and take action on any matter below. The Commission’s action may include those set forth in A.R.S. § 32-2321(A), such as an administrative warning, civil penalty up to \$1,000.00 per violation, probation requirements, suspension or revocation. This action may be taken pursuant to a Consent Agreement or a matter may be sent to a Formal Hearing. The Commission may issue an advisory letter pursuant to A.R.S. § 32-2321 (N). A matter also may be continued for further investigation.

If a Consent Agreement is not executed by the deadline stated in the Consent Agreement Transmittal letter, the case will be sent to the Office of Administrative Hearings.

A. Oliver Exterminating of Arizona, Inc. dba Arizona Exterminating (BL)/Bertram Putterman (President of Corp. & QP)/Kent Bos (App) - Case # 2004-058 (Mr. Colvin)

This complaint contains allegations that on 02/11/03, Licensed Applicator Kent D. Bos completed an inaccurate WIR (currently known as WDIIR)) by not reporting conditions conducive for a property located in Tucson, Arizona.

The following proposed resolution was reached:

1. That **Kent Bos Applicator LIC # 000262** be issued an **Administrative Warning** pursuant to A.R.S. § 32-2321(A), for a violation of A.R.S. § 32-2321 (B)(1)(violating rules), to wit, A.A.C. R4-29-413 (A)(12)(Visible Conditions) and A.A.C. R4-29-414(B)(1)(b)(Wood Infestation Reports: Conditions Conductive) (did not report stucco below grade).

Commission's Options:

1. **Accept** the proposed resolution;
2. Return the matter to settlement conference to **Modify** the proposed resolution based on stated factors and rationale;
3. **Reject** the proposed resolution and send the matter to hearing based on stated factors and rationale.

B. Burr Exterminating/Bruce Burr (BL, QP & App) - Case # 2004-036 (Mr. Colvin)

This complaint contains allegations that Bruce D. Burr Licensed Applicator #760546 on 02-20-04 mis-used the 98-2 fumigate(methyl bromide) product by not properly posting signs prior to fumigation, failed to have two trained applicators performing the fumigation, and applied the product to a site/items not allowed by the label instructions. This matter was sent back to settlement at the October 8, 2004 Commission meeting to discuss a \$3,000 civil penalty on both Mr. Burr's applicator license and QP license, and a possible one-year probation where Mr. Burr is to pre-report fumigations or where his fumigation work is limited.

The following modified proposed resolution was reached:

1. That **Burr Exterminating BUS LIC #4044** be issued an **Administrative Warning, be on a probation reporting period for 12 months, and have all applicators take an additional six (6) hours of continuing education in the fumigation category** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for violations of A.R.S. § 32-2321(B)(1) (violating rules)(3 counts), to wit, A.A.C. R4-29-301(A) (Misuse of any pesticide) (did not properly post signs prior to fumigation, did not have two trained applicators on site, applied the product to a site/items not allowed by the label instructions).

2. That **Bruce D. Burr QP # 9** be issued an **Administrative Warning and a Civil Penalty of \$3,000.00(due within 30 days of the Commission Order), be on a probation reporting period for 12 months, and obtain an additional six (6) hours of continuing education in the fumigation category** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(1) (violating rules)(3 counts), to wit, A.A.C. R4-29-301(A) (Misuse of any pesticide) (did not properly post signs prior to

fumigation, did not have two trained applicators on site, applied the product to a site/items not allowed by the label instructions).

3. That Bruce D. Burr APP LIC # 760546 be issued an Administrative Warning and a Civil Penalty of \$3,000.00 (due within 30 days of the Commission Order), be on a probation reporting period for 12 months, and obtain an additional six (6) hours of continuing education in the fumigation category pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(1) (violating rules)(3 counts), to wit, A.A.C. R4-29-301(A) (Misuse of any pesticide) (did not properly post signs prior to fumigation, did not have two trained applicators on site, applied the product to a site/items not allowed by the label instructions).

Commission's Options:

1. **Accept** the proposed resolution;
2. Return the matter to settlement conference to **Modify** the proposed resolution based on stated factors and rationale;
3. **Reject** the proposed resolution and send the matter to hearing based on stated factors and rationale.

C. Cochise Termite & Pest Control/Donald Ramey (BL & QP) - Case # 2004-054 Mr. Colvin)

This complaint contains allegations that Business Licensee and Qualifying Party Licensee Donald Ramey allowed Cochise Termite & Pest Control personnel to complete 375 non approved WIRs (supposed to be WDIIRs) from September 18, 2003 through 3-31-04.

The following proposed resolution was reached:

1. That Cochise Termite & Pest Control BUS LIC #4337 be issued an Administrative Warning pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321 (B)(2)(violating chapter), to wit, A.R.S. § 32-2301(23) and 32-2304(A)(25)(Wood destroying insect inspection reports shall be on form approved by SPCC).

2. That Donald Ramey QP LIC # 861 be issued an Administrative Warning pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321 (B)(2)(violating chapter), to wit, A.R.S. § 32-2301(23) and 32-2304(A)(25)(Wood destroying insect inspection reports shall be on form approved by SPCC).

Commission's Options:

1. **Accept** the proposed resolution;
2. Return the matter to settlement conference to **Modify** the proposed resolution based on stated factors and rationale;
3. **Reject** the proposed resolution and send the matter to hearing based on stated factors and rationale.

D. Eliminex/Robert Schor (President & QP)/Dustin Vrska (App) - Case # 2004-068 (Mr. Colvin)

This complaint contains allegations that Dustin Vrska, Licensed Applicator #020336, misused the Termidor 80 WG pesticide, and the Business License #5508 and Qualifying Party Robert Schor, License # 3128, did not maintain treatment records and did not submit a TARF for s termite treatment in Phoenix, Arizona.

The following proposed resolution was reached:

Note: Because the structure is not infested with termites and the structure is under a five year warranty, Eliminex President and Qualifying Party Robert Schor did not believe that it was currently prudent to perform a retreatment of the Consumer's structure.

1. That **Eliminex, BUS LIC # 5508, and Robert Schor, President, jointly and severally** be issued an **Administrative Warning** and a **\$200.00 Civil Penalty (due within 30 days of the Commission Order)**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(1) (violating rules), to wit, A.A.C. R4-29-301 (Misuse of any pesticide) (did not drill holes within 12 inches & inspect interior for spills), A.A.C. R4-29-417(A) (did not submit TARF), A.A.C. R4-29-305(A) (did not leave required information) and A.A.C. R4-29-307(A) (did not make treatments records), due to A.A.C. R4-29-104 (Joint responsibility).

2. That **Robert Schor, QP LIC # 3128**, be issued an **Administrative Warning and a \$200.00 Civil Penalty (due within 30 days of the Commission Order)** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(1) (violating rules), to wit, A.A.C. R4-29-301 (Misuse of any pesticide) (did not drill holes within 12 inches & inspect interior for spills), A.A.C. R4-29-417(A) (did not submit TARF), A.A.C. R4-29-305(A)(did not leave required information) and A.A.C. R4-29-307(A)(did not make treatments records).

Note: Staff recommends that the matter of Dustin Vrska Licensed Applicator # 020336 be

sent to administrative hearing.

Commission's Options:

1. **Accept** the proposed resolution for the BL and QP, and send the matter regarding the Applicator to hearing;
2. Return the matter to settlement conference to **Modify** the proposed resolution based on stated factors and rationale;
3. **Reject** the proposed resolution and send the matter to hearing based on stated factors and rationale.

E. M.D. Pest & Termite, Inc. (BL)/John Donahue (QP & App) - Case # 2004-070 (Mr. Colvin)

This complaint contains allegations that on 08/21/03 Licensed Applicator John Donahue completed an inaccurate WIR (currently known as WDIIIR) by not reporting visible evidence of previous treatment for a property located in Tempe, Arizona.

Note: John Donahue, President, agreed to pay the Consumer \$300.00 for termite damage repairs.

The following proposed resolution was reached:

1. That **M.D. Pest & Termite Inc. BUS LIC #5103 & John Donahue, President/CEO, jointly and severally** be issued an **Administrative Warning**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(2) (violating rules), to wit, A.A.C. R4-29-413(A)(11)(Wood Infestation Reports: Visible and accessible evidence of previous treatment) (did not report patched drill holes)).
2. That **John Donahue, Qualifying Party LIC #1845** be issued an **Administrative Warning and a \$200.00 Civil Penalty(due within 30 days of Commission Order)**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(2) (violating rules), to wit, A.A.C. R4-29-413(A)(11)(Wood Infestation Reports: Visible and accessible evidence of previous treatment) (did not report patched drill holes)).
3. That **John Donahue, Licensed Applicator LIC #960173** be issued an **Administrative Warning and a \$200.00 Civil Penalty (due within 30 days of Commission Order)**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(2) (violating rules), to wit, A.A.C. R4-29-413(A)(11) (Wood Infestation Reports: Visible and accessible evidence of previous treatment) (did not report patched drill holes)).

Commission's Options:

1. **Accept** the proposed resolution;
2. Return the matter to settlement to **Modify** the proposed resolution based on stated factors and rationale; or
3. **Reject** the proposed resolution and send the matter to hearing based on stated factors and rationale.

F. **Action Termite Control, LLC (BL)/Byron Scott Agee (QP)/Michael Saldivar (App)/Cleve Collins (App) - Case # 2004-077 (Mr. Craig)**

This complaint involves allegations that two Action Termite Control employees-- Michael Saldivar and Cleve Collins failed to follow label instructions while using a termiticide. Structural Pest Control (SPCC) staff witnessed Mr. Saldivar wearing shorts and a short sleeve shirt while mixing Termidor termiticide. SPCC staff witnessed Mr. Collins, wearing shorts and a short sleeve shirt, while applying Termidor termiticide. However, the termiticide label requires that all mixers, handlers and applicators wear long pants and long sleeve shirts as personal protective equipment. A response from Attorney Scott Richardson (representing the business license and qualifying party) stated that proper training was supplied to the applicators. Both applicators responded to the complaint stating that they did not wear the proper protective clothing due to the heat. SPCC Staff reviewed the training records. The training documentation was as follows:

1. 1/15/04 (Termidor label—Read in Entirety ... Trucks—what needs to be on them) [signed by both applicators]
2. 3/22 – 3/25 (Cleve Collins training with Mike Boswell, Termidor Label ... Equipment) [not signed by either applicator involved]
3. 4/30/04 (Baiting systems / termite biology) [signed by both applicators]

The Applicators agreed to the following proposed resolution:

1. That **MICHAEL SALDIVAR, APP LIC #980547**, be issued an **Administrative Warning, a \$200.00 Civil Penalty (due within 30 days of the Commission Order) and obtain 3 additional hours of continuing education in the category of laws (1 hour) and safety (2 hours) (separate from what is already required by Statute (due within 90 days of the Commission Order))**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B)(1)(Violating Laws or Rules), to wit, A.A.C. R4-29-301(A) (Mixing termiticide without wearing the required protective clothing).

2. That **CLEVE COLLINS, APP LIC #020892**, be issued an **Administrative Warning, a \$200.00 Civil Penalty (due within 30 days of the Commission Order) and obtain 3 additional hours of continuing education in the category of laws (1 hour) and safety (2 hours) (separate from what is already required by Statute (due within 90 days of the Commission Order))**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B)(1)(Violating Laws or Rules), to wit, A.A.C. R4-29-301(A) (Applying termiticide without wearing the required protective clothing).

NOTE: Mr. Saldivar and Mr. Collins request a two-month payment plan. SPCC Staff did not consider the business license or qualifying party jointly responsible for the violation of misuse because documentation submitted by the qualifying party, which was signed by the two applicators, indicates that the “entire” Termidor label was considered as part of the training. Part of the label includes protective equipment.

Staff recommends that the complaint be dismissed against the Business License and Qualifying Party License.

Commission’s Options:

1. **Accept** the proposed resolution for the applicators and dismiss the complaint against the BL and QP;
2. Return the matter to settlement to **Modify** the proposed resolution based on stated factors and rationale; or
3. **Reject** the proposed resolution and send the matter to hearing based on stated factors and rationale.

**G. Branham’s Exterminating (BL)/Larry Joe Branham (QP)/Richard Lucken (App)
- Case # 2004-099 (Mr. Craig)**

This complaint contains allegations of misuse (pesticide drift). On 5-11-04, a consumer telephoned the SPCC to report pesticide drift from soil being treated by Applicator Richard Lucken of Branham’s Exterminating. The consumer alleged the drift came in contact with her – 44 feet from the pretreat site. While Richard Luke and qualifying party Larry Joe Branham denied the allegations of drift, swab samples from a cable television box, 44 feet from the pretreat site, confirmed the presence of the chlorpyrifos (2.0 ng/sq inch)– the active ingredient of the termiticide.

The Business Licensee, Qualifying Party and Applicators agreed to the following proposed resolution:

1. That **BRANHAM'S EXTERMINATING, BUS LIC #5238 (Larry Joe Branham, Owner)** be issued an **Administrative Warning**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B)(1)(Violating Laws or Rules), to wit, A.R.S § 32-2321(B)(4)(applying pesticide in a manner that may harm the public) and A.A.C. R4-29-304(C)(performing a non-target contamination)(due to A.A.C. R4-29-104 (Joint Responsibility)).

2. That **Mr. Larry Joe Branham, QP LIC #1027**, be issued an **Administrative Warning, a Civil Penalty of \$300.00 (due within 30 days of the Commission Order), obtain 3 additional hours of continuing education in the category of pretreatments, laws and safety (separate from what is already required by Statute (due within 90 days of the Commission Order)) and serve a six month probation (whereby Mr. Branham shall pre-report all termite pretreatments)**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B)(1)(Violating Laws or Rules), to wit, A.R.S § 32-2321(B)(4)(applying pesticide in a manner that may harm the public) and A.A.C. R4-29-304(C)(performing a non-target contamination)(due to A.A.C. R4-29-104 (Joint Responsibility)).

3. That **Mr. Richard Lucken, APP LIC #030884**, be issued an **Administrative Warning, a Civil Penalty of \$300.00 (due within 30 days of the Commission Order) and obtain 3 additional hours of continuing education in the category of pretreatments, laws and safety (separate from what is already required by Statute (due within 90 days of the Commission Order))**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B)(1)(Violating Laws or Rules), to wit, A.R.S § 32-2321(B)(4)(applying pesticide in a manner that may harm the public) and A.A.C. R4-29-304(C)(performing a non-target contamination).

Commission's Options:

1. **Accept** the proposed resolution;
2. Return the matter to settlement to **Modify** the resolution based on stated factors and rationale; or
3. **Reject** the proposed resolution and send the matter to hearing based on stated factors and rationale.

H. Cowboy Pest Control (BL)/William Wilson (QP) - Case # 2004-015 (Mr. Craig)

This complaint involves allegations that William Wilson (qualifying party and Sole Proprietor) of Cowboy Pest Control allowed Jeffrey Childers (unlicensed applicator) to perform fourteen termite inspections and apply pesticide without the benefit of an applicator license. Mr. Childers was hired on 3/28/03, but was still performing the duties of an

applicator until 2/10/04.

A notice of complaint was filed on 2/10/04, but the SPCC did not receive Mr. Wilson's written response until 8/6/04.

No proposed resolution was reached.

Commission's Option: Send the matter to hearing.

I. Cowboy Pest Control (BL)/William Wilson (QP) - Case # 2004-055 (Mr. Craig)

This complaint involves allegations of a faulty wood infestation report (WIR). On 11-16-00, William Wilson (applicator, qualifying party and Sole Proprietor) of Cowboy Pest Control issued a WIR for the sale of a home. Structural Pest Control Commission (SPCC) staff has evidence to indicate that Mr. Wilson failed to note earth to wood contact (wood skirting and a wood deck around the manufactured home) and termite damage. Investigation further indicates that the termite action registration form (TARF) was never submitted for this termite inspection. Mr. Wilson responded to the complaint, only stating that the termite damage may have not been visible since the consumers only found it when the wood skirting was removed. However, his response never addressed why he failed to note the skirting or the wood deck that surrounded the home and touched the soil as a condition conducive.

No proposed resolution was reached.

Commission's Options: Send the matter to hearing.

J. Environmental Earthscapes Inc., dba The Groundskeeper/Kevin Killmer (President/CEO)/Robin Jablonski (Vice President)/Charlie Silvers (QP) - Case # 2004-044 (Mr. Craig)

This complaint involves the Groundskeeper allowing two unlicensed applicators to apply pesticides for more than two years without possessing applicators licenses. In his response to the complaint, Qualifying Party Charlie Silvers stated that he believed the law was unclear regarding the requirements for licensure and stated that his intent was to ensure that the laws were followed. Both applicators have been removed from the duty of applying pesticides. Additionally, Mr. Silvers is no longer employed with The Groundskeeper.

1. That **ENVIRONMENTAL EARTHSCAPES INC., dba THE GROUNDSKEEPER (ROBIN JABLONSKI, VICE PRESIDENT) BUS LIC #4243**, be issued an **Administrative Warning**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B)(2)(Violating Laws or Rules), to wit, A.R.S. §

32-2312(E)(Applicator not licensed within 90 days, but applied pesticides), A.R.S. § 32-2325(4) and A.A.C. R4-29-302(A) (allowing two unlicensed applicators to apply pesticides), (due to A.A.C. R4-29-104 (Joint Responsibility)).

2. That **CHARLIE SILVERS, QP LIC #1204**, be issued an **Administrative Warning and a \$800.00 Civil Penalty (due within 30 days of Commission)**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(2)(Violating Laws or Rules), to wit, A.R.S. § 32-2312(E)(Applicator not licensed within 90 days, but applied pesticides), A.R.S. § 32-2325(4) (allowing two unlicensed applicators to apply pesticides), (due to A.A.C. R4-29-104 (Joint Responsibility)).

NOTE: While other violations were noted during the investigation of this case (improper storage facility and a Round Up barrel not properly stored), those violations were not associated with the unlicensed applicators. The inspector noted such violations while performing an office inspection and provided the company 10 days (as noted at the top of the inspection form) to rectify the situation. Those issues have been since been corrected.

Commission's Options:

1. **Accept** the proposed resolution;
2. Return the matter to settlement to **Modify** the resolution based on stated factors and rationale; or
3. **Reject** the proposed resolution and send the matter to hearing based on stated factors and rationale.

K. Hoffman's Pest Control (BL)/Russell Hoffman (QP) - Case # 2004-067 (Mr. Craig)

This complaint involves allegations that Hoffman's Pest Control allowed an applicator to apply a general use pesticide over an eight month period without being licensed. [Statute requires an applicator to be licensed within 90 days]. Qualifying Party Russell Hoffman stated that he did not realize the applicator would have to be licensed considering that he was primarily a "window washer" who only worked 40 hours a month. Mr. Hoffman further stated that when the applicator was applying, he would usually always be in contact with him via radio or in person. Investigation also indicates that the treatment records did not have the name of the unlicensed applicator recorded and the precaution statement on the treatment records did not match what is outlined in Arizona Administrative Code. The applicator terminated his employment with Hoffman's Pest Control on 5/5/04.

The Business Licensee/Qualifying Party agreed to the following proposed resolution:

1. That **HOFFMAN'S PEST CONTROL, BUS LIC #5447** be issued an **Administrative Warning**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B)(1)(Violating Laws or Rules), to wit, A.A.C. R4-29-302(A) (allowing an unlicensed applicator to apply pesticides), A.R.S. § 32-2312(E)(Applicator not licensed within 90 days), A.A.C. R4-29-305(B) (incomplete precaution statement on treatment records) and A.A.C. R4-29-307 (B)(7)(Failure to record name of applicator on treatment records) (due to A.A.C. R4-29-104 (Joint Responsibility)).

2. That **RUSSELL DEAN HOFFMAN, QP LIC #1941**, be issued an **Administrative Warning and a \$400.00 Civil Penalty (due within 30 days of Commission Order)** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B)(1)(Violating Laws or Rules), to wit, A.R.S. § 32-2312(E)(Applicator not licensed within 90 days), A.A.C. R4-29-305(B) (incomplete precaution statement on treatment records) and A.A.C. R4-29-307 (B)(7)(Failure to record name of applicator on treatment records) (due to A.A.C. R4-29-104 (Joint Responsibility)).

Commission's Options:

1. **Accept** the proposed resolution;
2. Return the matter to settlement to **Modify** the resolution based on stated factors and rationale; or
3. **Reject** the proposed resolution and send the matter to hearing based on stated factors and rationale.

L. Instar (John Beebe Owner)/Dallas Hoffman, Sr., (QP) - Case # 2004-066 (Mr. Craig)

This complaint involves an unlicensed applicator applying pesticides beyond the 90-day licensure requirement. On 4-9-04, Structural Pest Control Commission (SPCC) Staff observed an applicator performing a pest control application at a residence. The applicator informed SPCC Staff he had worked for the company for approximate a year; however, was not licensed. Mr. Dallas Hoffman (qualifying party) and Mr. John Beebe (sole proprietor) informed SPCC Staff that the applicator was hired, but then terminated before the 90-day licensure requirement and then re-hired him. Investigation substantiates that the unlicensed applicator had been applying pesticides for approximately 12 months without being licensed. Since this incident, the applicator has terminated his services with Instar and has allegedly left the State. The applicator's father has also confirmed the departure. SPCC Staff believes that, the fact that Mr. Hoffman and Mr. Beebe were aware that the applicator was unlicensed beyond the 90-day licensure requirement, indicates a willful violation.

The Business Licensee and Qualifying Party agreed to the following proposed resolution:

1. That **INSTAR and JOHN BEEBE, Owner, BUS LIC #8301**, be issued an **Administrative Warning and a \$200.00 Civil Penalty, jointly and severally, (due within 30 days of Commission)**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(1) (Violating Laws or Rules), to wit, A.R.S. § 32-2312(E)(Applicator not licensed within 90 days, but applied pesticides), A.A.C. R4-29-302(A) (allowing an unlicensed applicator to apply pesticides), A.A.C. R4-29-305(B) (incomplete precaution statement on treatment records) and A.A.C. R4-29-307 (B)(7)(Failure to record name of applicator on treatment records) (due to A.A.C. R4-29-104 (Joint Responsibility)).

2. That **DALLAS HOFFMAN SR., QP LIC #1169**, be issued an **Administrative Warning, a \$200.00 Civil Penalty (due within 30 days of Commission), and obtain 3 additional hours of continuing education in the category of laws (2 hours) and safety (1 hour) (separate from what is already required by Statute (due within 90 days of the Commission Order))**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(1)(Violating Laws or Rules), to wit, A.R.S. § 32-2312(E)(Applicator not licensed within 90 days, but applied pesticides), A.A.C. R4-29-305(B) (incomplete precaution statement on treatment records) and A.A.C. R4-29-307 (B)(7)(Failure to record name of applicator on treatment records) (due to A.A.C. R4-29-104 (Joint Responsibility)).

Commission's Options:

1. **Accept** the proposed resolution;
2. Return the matter to settlement to **Modify** the resolution based on stated factors and rationale; or
3. **Reject** the proposed resolution and send the matter to hearing based on stated factors and rationale.

M. Litchfield Termite Division, LLC dba Litchfield Termite Division (BL)/Kenneth Rael (QP & App) - Case # 2004-056 (Mr. Craig)

This complaint contains allegations of misuse (failure to follow label for termiticide application). On 2-08-04, Mr. Kenneth Rael (Qualifying Party and Applicator) performed a post construction treatment using Termidor Termiticide. On 3/09/04 a construction supervisor contacted the Structural Pest Control Commission (SPCC) to determine if the treatment was performed correctly. The label requires drill holes to be spaced and treated at 12 inches apart. SPCC Staff noted that the drill holes created and treated by Mr. Rael were 36 to 59 inches apart. The builder hired another company to correct the treatment. During a discussion with SPCC Staff, Mr. Rael stated that he did not misuse the product,

but only placed drill holes where there was activity. SPCC Staff sent a 24-hour records request to view Mr. Rael's treatment records and thus substantiate Mr. Rael's statement. However, he has failed to comply with the request and has failed to return phone calls about on the request.

On 10-19-04 and 10-20-04, SPCC Staff attempted to telephone Mr. Rael to hold a settlement conference. However, he never returned the calls. On 10-21-04 a letter was mailed to Mr. Rael's mailing address (certified and regular mail) for a 10-26-04 Settlement Conference. Mr. Rael failed to attend.

Commission's Options: Send the matter to hearing.

N. Lumia Pest Elimination (BL)/Gary Lumia (QP) - Case # 2004-079 (Mr. Craig)

This complaint involves (Qualifying Party/Sole Proprietor) Gary Lumia failing to provide proof of financial responsibility (insurance) from 03-30-02 through 08-04-04. Furthermore, Mr. Lumia failed to respond to a 24-hour records request and the notice of complaint.

On 3-17-04, 4-17-04 and 5-18-04, Structural Pest Control Commission Staff mailed Lumia Pest Elimination letters requesting proof of insurance. The letters indicated that the last valid insurance certificate the SPCC has expired on 3-30-02. However, Mr. Lumia never responded to the three letters. On 5-21-04, the SPCC mailed a 24-Hour Request for Records via certified mail for the purpose of reviewing treatment records and determining if the company was still operating. However, the letter was unclaimed. On 5-26-04 a Notice of Complaint was mailed to Lumia. It too was unclaimed. Attempts were made to visit Mr. Lumia at the last known physical address, but with no success. On 7-12-04, telephone contact was made with Mr. Lumia and an office inspection was scheduled. Mr. Lumia provided a new address. When SPCC Staff arrived, it was discovered that Mr. Lumia provided an address for which he neither lived nor worked.

During the settlement conference, Mr. Lumia brought in his treatment records for the past three years to comply (5 ½ months later) with the 24-Hour Records Request. Additionally, he provided evidence that his insurance coverage was in tact, except for the time period between 7/12/04 to 8/03/04. Mr. Lumia alleges that he did not do pest control work during the lapse in insurance because of other side-jobs he allegedly performs. When asked why he did not comply with the three letters the SPCC mailed, he stated that his insurance agent told him they were faxed to the SPCC. When asked why he failed to originally respond to the 24-Hour Records Request and the complaint, Mr. Lumia stated that a family member was ill. When asked why he did not provide the correct address or keep the appointment for the office inspection, he stated that he could not recall.

The Business Licensee/Qualifying Party and Applicators agreed to the following proposed resolution:

1. That **LUMIA PEST ELIMINATION, BUS LIC #5691** be issued an **Administrative Warning**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B)(1)(Violating Laws or Rules), to wit, A.R.S § 32-2321(B)(12) (Failure to provide proof of insurance), A.R.S. § 32-2325(4)(Applying pesticides without an applicator license), A.A.C. R4-29-206(B)(Failure to maintain insurance), A.A.C. R4-29-309(A)(Failure to comply with 24-hour request for records) (due to A.A.C. R4-29-104 (Joint Responsibility)).

2. That **GARY LUMIA, QP LIC #3094** be issued an **Administrative Warning and a Civil Penalty of \$500.00 (due within 30 days of the Commission Order)**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B)(1)(Violating Laws or Rules), to wit, A.R.S. § 32-2325(4)(Applying pesticides without an applicator license),and A.A.C. R4-29-309(A)(Failure to comply with 24-hour request for records) (due to A.A.C. R4-29-104 (Joint Responsibility)).

NOTE: Mr. Lumia has requested a payment plan.

SPCC Staff considered the following aggravating factors:

1. Mr. Lumia held an applicator license twice previously. Therefore, he should have been aware of the need to be licensed to apply pesticides.
2. Mr. Lumia stated that personal/family problems hindered him from responding to the 24-hour records request, complaint, and the office inspection. However, he made no attempt to communicate the reasons for his failure to respond to the SPCC.
3. The SPCC mailed at least three notices requesting evidence of insurance. However, Mr. Lumia made no attempt to contact the SPCC.

Commission's Options:

1. **Accept** the proposed resolution;
2. Return the matter to settlement to **Modify** the resolution based on stated factors and rationale; or
3. **Reject** the proposed resolution and send the matter to hearing based on stated factors and rationale.

O. Phoenix Pest Control (Donald Vanasse/President)/Jerry Martinie (QP)/Linda Reid (App) - Case # 2004-045 (Mr. Craig)

This complaint contains allegations involving an inaccurate termite inspection. On 9-24-02, Phoenix Pest Control (Phoenix) applicator Linda Reid issued a WIR (currently known as Wood Destroying Insect Inspection Report - WDIIR) for the sale of a home located in Bullhead City, Arizona. On 10-2-02, the homeowners conducted a walk through of the home. On 10-8-02, an applicator with another company—while performing a pest control service—noted several areas of excessive moisture. In 3-03, Structural Pest Control Commission (SPCC) Staff investigated the allegations. SPCC Staff noted several areas of past excessive moisture in the storage room and one area (rot by the water-hose bib) on the exterior of the home. SPCC Staff determined that the evidence was present during the original inspection. Upon questioning the home buyers as to why they did not note such evidence, the home buyers stated they did not see the areas during walkthrough because the storage room was filled with items. SPCC Staff noted that Ms. Reid did appear to have proper training. Ms. Reid also confirmed her training to SPCC Staff. The WIR has an entry whereby an applicator can document any inaccessible/obstructed areas. However the applicator failed to note the obstructed areas and the exterior damage. Since the filing of this complaint, the insurance company for Phoenix has paid the Consumer \$10,361.12 for damages.

The Applicator agreed to the following proposed resolution:

1. That **LINDA REID, APP LIC #5465** be issued an **Administrative Warning**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B)(2)(Violating Rules), to wit, A.A.C. R4-29-413 (A)(5) and (12) (Failure to note obstructed areas and conditions conducive).

NOTE: After a review of Ms. Reid's training records, SPCC Staff did not find that joint responsibility applied.

Staff recommends that this case be dismissed against the Business and Qualifying Party License.

Commission's Options:

1. **Accept** the proposed resolution for the applicator and dismiss the complaint against the BL and QP;
2. Return the matter to settlement to **Modify** the resolution based on stated factors and rationale; or
3. **Reject** the proposed resolution and send the matter to hearing

based on stated factors and rationale.

P. Sexton Exterminating, Inc., (BL)/Rick Sexton (QP & App) - Case # 2004-008 (Mr. Craig)

This complaint contains allegations involving Qualifying Party and Licensed Applicator Rick Sexton performing two applications where there were pesticide shortages and one over-application at three pretreatment sites in Payson, Arizona, in September and October 2003. Treatment records from the company and the actual pretreatment tags were compared with Structural Pest Control Commission calculations. The findings indicate that two sites were treated with 232.6 and 129.6 fewer gallons (respectively) and one site was treated with 41.5 more gallons than what was required by law. Additionally, all three pretreatment tags were void of required information such as treatment times and applicator license number. The treatment records at the office were also void of the information required by A.A.C. R4-29-408©. On 1-23-04 the Structural Pest Control Commission filed a complaint against Mr. Sexton. In his response to the complaint, Mr. Sexton stated that the discrepancy in the gallons was due to bookkeeper errors and allegedly corrected records were submitted. However, SPCC Staff determined that whether the first set of records or second set of records were used, there would still be either an under application or over application.

During the settlement conference, Mr. Sexton provided another explanation for the violations that was not previously provided.

No proposed resolution was reached.

Commission's Options: Send the matter to hearing.

Q. S.O.S. Exterminating, Inc. (BL)/Stephen F. Weber (QP)/Jason Melkowski (App) - Case # 2004-074 (Mr. Craig)

This complaint contains allegations of misuse (concentration lower than what's required). On 3-25-04, Applicator Jason Melkowski of S.O.S. Exterminating performed a pretreatment with the termiticide Dagnet SFR. Label directions require a .5% mixture rate. SPCC Staff obtained a tank sample, which revealed a .372% mixture rate. While S.O.S. normally uses metering systems to mix the concentrate to water, Applicator Melkowski mixed this product himself, without the help of the metering system. An earlier investigation by SPCC revealed that applicators were not allowed to mix their own chemical unless authorized by a supervisor. Mr. Keith Williver (Field Supervisor) alleges he instructed Mr. Melkowski how to mix the product and Mr. Melkowski confirms that statement. However, Mr. Melkowski is unable to explain why the mixture indicates a shortage. Qualifying Party Stephen Weber has responded to the allegations stating, "we believe the applicator applied the termiticide correctly".

Attorney Scott Richardson, representing the BL and QP, stated an independent sampling company took a separate sample at the same time SPCC Staff took their sample. The independent sampling company had their sample analyzed through a laboratory in California, which stated that the sample result was .58%. Mr. Richardson believed that this case should be dismissed based on those findings.

However, the violation is based on the sample SPCC staff obtained—not the separate sample. The sample taken by the independent company was not a split sample of the one analyzed by the State of Arizona Department of Agriculture Laboratory. Additionally, SPCC Staff cannot verify that proper chain of custody was followed with respect to the separate sample or that the laboratory in California followed the same E.P.A. protocol and method the State of Arizona Department of Agriculture Laboratory uses.

No proposed resolution was reached.

Commission's Options: Send the matter to hearing.

R. University Termite & Pest Control, Inc. (BL)/Richard Rupkey II (QP)/David Stokes (App) - Case 2004-029

This complaint contains allegations of misuse. On 2-25-04, while performing a post construction treatment, Applicator David Stokes drilled through a stem wall and injected Termidor termiticide. The termiticide label requires that the interior of the home be checked for leaks. Mr. Stokes failed to do so, stating that the homeowner left and locked the door. However, Mr. Stokes did not begin the application to the exterior stem wall until after the homeowner left and according to the homeowner, a cell phone number was provided in the event that Mr. Stokes needed any assistance. Mr. Stokes performed this application in the presence of University Termite & Pest Control Manager Martin Segal. On 3-02-04, a notice of complaint was mailed to the Business Licensee and Mr. Stokes. No response was received timely. On 8/17/04, a Notice of Complaint was mailed to the QP. A response from attorney Scott Richardson, on behalf of all three Respondents was received on 9-08-04. Additionally, on 3-3-04, Qualifying Party Richard Rupkey II received a 24-hour records request asking for training records for Mr. Stokes. Mr. Rupkey has not complied with the request.

On 10-22-04, SPCC Staff sent two e-mails to Attorney Scott Richardson's office to obtain a date to schedule a settlement conference. On 10-23-04, another e-mail was sent to schedule a settlement conference. On 10-25-04, via telephone, and 10-26-04, in person, further attempts were made to obtain a date to schedule a settlement conference. However, staff has been unable to receive a date from Attorney Richardson, whereby a settlement conference could be conducted.

Commission's Options: Send the matter to hearing.

VI. Unlicensed Activity Complaints

The Commission may discuss, consider and take action on any matter below. The Commission may take action such as issuing a Cease and Desist order and/or imposing a civil penalty of up to \$1,000.00 for the first offense and up to \$2,000.00 for a subsequent offense, according to A.R.S. § 32-2304(B)(16). Action may be taken by Direct Commission Order without a Consent Agreement or Formal Hearing.

A. Foleyge Landscaping (Unlicensed)/Thomas Foley (Member) - Case # 2004-080 (Mr. Colvin)

This complaint contains allegations that on 05-24-04 Thomas Foley President of Foleyge Landscaping performed the business of structural pest control by directing the application of Round-Up herbicide without the benefit of a S.P.C.C. license.

The following proposed resolution was reached:

1. That Foleyge Landscaping LLC and Thomas Foley, Member, be issued a Cease and Desist Order and a Civil Penalty of \$500.00, jointly and severally, (due within 30 days of Commission Order) pursuant to A.R.S. § 32-2304(B)(16)(a)(b) (Disciplinary action for unlicensed activity), for a violation of A.R.S. § 32-2325(1)(2) (Unlawful acts) (engaged in the business of structural pest control without holding a business or qualifying party license).

Commission's Options:

1. **Accept** the proposed resolution.
2. **Modify** the proposed resolution. The Commission may: Issue a Cease and Desist order and/or impose a civil penalty of not more than one thousand dollars for the first offense.

B. Wood "Yard" Services (Unlicensed)/Diane Woodyard (Owner)/Dana Woodyard (Owner) - Case # 2004-069 (Mr. Colvin)

This complaint contains allegations that on 04-28-04 Dana Woodyard performed the business of structural pest control by applying Weed & Grass Killer herbicide from a backpack type sprayer without the benefit of a S.P.C.C. license.

The following proposed resolution was reached:

1. That WOOD "YARD" SERVICES, Dana Woodyard and Diane Woodyard, Owners be issued a Cease and Desist Order and a Civil Penalty of \$500.00, jointly

and severally, (due within 30 days of Commission Order), pursuant to A.R.S. § 32-2304(B)(16)(a)(b) (Disciplinary action taken for unlicensed activity), for violation of A.R.S. § 32-2325(1) (2) (Unlawful acts) (engaged in the business of structural pest control without holding a business or qualifying party license).

Commission's Options:

1. **Accept** the proposed resolution.
2. **Modify** the proposed resolution. The Commission may: Issue a Cease and Desist order and/or Impose a civil penalty of not more than one thousand dollars for the first offense.

C. Al's Tree & Yardwork, Inc. (Unlicensed)/AI Padilla (President/CEO) - Case # 2004-065 (Mr. Craig)

This complaint involves allegations of unlicensed activity and misuse (over-mixing an application). On 5-6-04, Structural Pest Control Commission (SPCC) Staff observed an employee of Al's Tree & Yardwork (ATY), applying Pendulum 3.3 herbicide at a private residence. Neither the employee nor AI Padilla (president of ATY) holds a license with the SPCC. The employee's immediate supervisor provided SPCC Staff a concentrated mixture rate that would have resulted in the employee over-mixing by some 188.6 ounces. Mr. Padilla provided SPCC Staff a concentrated mixture rate that would have resulted in over mixing by some 56.8 ounces. While SPCC Staff is unable to substantiate which mixture rate was actually applied, both result in a misuse.

Jeremiah Padilla (Vice President) agreed to the following proposed resolution:

1. That AL'S TREE & YARD WORK and AI Padilla be issued a **Cease and Desist Order** and a **\$750.00 Civil Penalty, (jointly and severally)** (due within 30 days of Commission Order) pursuant to A.R.S § 32-2304(B)(16) (Disciplinary action that can be taken for unlicensed pest control activity) for a violation of A.R.S. § 32-2325(1) and (2)(performing the work of structural pest control without a business license or qualifying party).

Commission's Options:

1. **Accept** the proposed resolution.
2. **Modify** the proposed resolution. The Commission may: Issue a cease and desist order and/or impose a civil penalty of not more than one thousand dollars for the first offense.

D. Amerco Real Estate Services dba Amerco Towers (Unlicensed)/Thomas Dilgard - Case # 2004-078 (Mr. Craig)

This complaint contains allegations of performing the work of structural pest control without the benefit of a license. On 03-25-04, Compliance / Enforcement Staff received an anonymous telephone call that potential bird control work using "corn" was being applied the roof-top parking garage of Amerco Towers, a commercial building owned by Real Estate Services.

Investigation revealed that the building maintenance supervisor Thomas Dilgard applied Avitrol (as known as "corn") to the parking garage, to control a pigeon problem. Mr. Dilgard stated that he "found" a box of with about one cup of "corn" in it and based on his Internet research, decided to apply it to the parking lot. Inspector John Herwehe inspected the storage area of the building, but found no pesticide. No "corn" was noted in the garage area either. Mr. Dilgard stated that he removed the product from the parking area and threw the product in a trash dumpster because it did not appear to be working.

Mr. Dilgard stated that a licensed company is now treating the building. Inspector Herwehe obtained treatment records substantiating this statement.

A response from Amerco's attorney indicates that Mr. Dilgard and Amerco staff were unaware that performing such work was illegal. Further, the attorney stated that all staff has been informed that such work is a violation of A.R.S. 32-2325.

Amerco Towers and Thomas Dilgard (represented by Attorney Hector Diaz) agreed to the following proposed resolution:

1. That **AMERCO TOWERS** be issued a **Cease and Desist Order** pursuant to A.R.S § 32-2304(B)(16) (Disciplinary action that can be taken for unlicensed pest control activity) for a violation of A.R.S. § 32-2325(1) and (2)(performing the work of structural pest control without a business license or qualifying party).

2. That **THOMAS DILGARD** be issued a **Cease and Desist Order** pursuant to A.R.S § 32-2304(B)(16) (Disciplinary action that can be taken for unlicensed pest control activity) for a violation of A.R.S. § 32-2325(1) and (2)(performing the work of structural pest control without a business license or qualifying party).

NOTE: Compliance/Enforcement staff chose not to recommend a Civil Penalty for the following reasons:

- 1) The actual identity of the "corn" is unknown; none was available to sample. There is insufficient evidence to establish if the product was a restricted use product or a pesticide product at all.

- 2) While there is evidence of “bird control work”, the work was not solicited work for a profit. Rather, it was work performed on property owned by the management company.

Commission’s Options:

1. **Accept** the proposed resolution.
2. **Modify** the proposed resolution. The Commission may: Issue a cease and desist order and/or Impose a civil penalty of not more than one thousand dollars for the first offense.

E. Arizona Native Landscapes (Unlicensed)/Jorge Perez (President)/Margarito Varelas (Unlicensed Applicator) - Case # 2004-062 (Mr. Craig)

This complaint involves allegations of an applicator employed with Arizona Native Landscapes performing a weed control application at a State of Arizona Department of Economic security building. The applicator is employed by Mr. Margarito Varelas (statutory agent of Arizona Native Landscapes). Mr. Varelas stated that he has been applying Round Up Herbicide for two years and have been contracted with DES for four years. A statement of complaint was mailed to the A.N.L. to the attention of Jorge Perez (President/C.E.O.), however it was returned unclaimed.

Structural Pest Control Commission Staff has been unsuccessful in contacting the President of Arizona Native Landscapes.

On 10-08-04, a telephone settlement conference was held with unlicensed applicator and Statutory Agent Margarito Varelas. Mr. Varelas alleges he is the Vice President of the company (though Corporation Commission records do not substantiate his statement). No proposed resolution was reached.

Staff recommends that any action taken against Arizona Native Landscaping, Jorge Perez and Margarito Varelas should be jointly and severally.

Commission’s Options: Issue a cease and desist order and/or Impose a civil penalty of not more than one thousand dollars.

F. Dependable Lawn Service (Unlicensed)/Peter Brubaker (Unlicensed Applicator and Owner) - Case # 2004-063 (Mr. Craig)

This complaint involves allegations of unlicensed activity. On 4/20/04, Structural Pest Control Commission (SPCC) Staff observed a 2-gallon sprayer and a Roundup herbicide container in the truck bed of Peter Brubaker, owner of Dependable Lawn Service. The truck

was at the McClintock Garden Office complex. Mr. Brubaker admitted that he uses Roundup to perform spot treatments as part of his lawn service. A follow-up use inspection was performed, but Mr. Brubaker refused to acknowledge the inspection and requested that SPCC Staff speak with the property owner. SPCC Staff spoke with the property owner, informed him of the requirement for licensure and provided written documentation that he has been informed. A notice of complaint was filed. Mr. Brubaker responded by stating that the treatments he performed are merely spot treatments.

No proposed resolution was reached.

Commission's Options: Issue a cease and desist order and/or Impose a civil penalty of not more than one thousand dollars.

G. The Desert Rakers (Unlicensed)/Jose Rodriguez (Unlicensed Applicator and Owner) - Case # 2004-089 (Mr. Craig)

This complaint involves allegations of unlicensed activity. On 6/1/04 Structural Pest Control Commission (SPCC) Staff observed Jose Rodriguez of The Desert Rakers with a backpack sprayer and herbicide onboard his vehicle in a residential community. Mr. Rodriguez admitted to performing weed control work, but stated that he was not aware of the licensing requirements. A follow-up use inspection was performed to document the location of his last treatment and the amount of herbicide he applied. SPCC Staff visited the last home Mr. Rodriguez serviced and informed the homeowner of the licensing requirements; the purpose of the visit was also to ensure that Mr. Rodriguez had not performed any additional services after being verbally informed of the licensing requirements. In his response to the complaint, Mr. Rodriguez stated that the company is "no longer spraying for weeds".

Jose Rodriguez agreed to the following proposed resolution:

1. That **JOSE RODRIGUEZ** and **THE DESERT RAKERS** be issued a **Cease and Desist Order and a \$500.00 Civil Penalty (jointly and severally) (due within 30 days of the Commission Order)** pursuant to A.R.S § 32-2304(B)(16) (Disciplinary action that can be taken for unlicensed pest control activity) for a violation of A.R.S. § 32-2325(1) and (2)(performing the work of structural pest control without a business license or qualifying party).

NOTE: Mr. Rodriguez requested a payment plan.

Commission's Options:

1. **Accept** the proposed resolution.
2. **Modify** the proposed resolution. The Commission may: Issue a

cease and desist order and/or Impose a civil penalty of not more than one thousand dollars for the first offense.

H. Christopher M. Pullen dba Pullen Lawn Concepts - Case # 2004-061 (Mr. Craig)

This complaint contains allegations of unlicensed pest control activity. On 5-3-04, Structural Pest Control Commission (SPCC) Staff witnessed an applicator employed by Pullen Lawn Concepts perform a weed control application using Round-Up Pro herbicide. Pullen Lawn Concepts does not possess a qualifying party or business license.

On 5-24-04 (after a notice of complaint was filed), owner Christopher Pullen responded by stating that all herbicide spraying would be discontinued until all license requirements were met. The SPCC does not currently have an application on file from Mr. Pullen.

No proposed resolution was reached.

Commission's Options: Issue a cease and desist order and/or Impose a civil penalty of not more than one thousand dollars.

I. Felipe's Landscape (Unlicensed)/Felipe Inzunza (Unlicensed Applicator and Owner) - Case # 2004-090 (Mr. Craig)

This complaint involves allegations of unlicensed activity. On 6/1/04 Structural Pest Control Commission (SPCC) Staff observed Felipe Inzunza of Felipe's Landscape with a backpack sprayer and herbicide onboard his vehicle. Mr. Inzunza admitted to performing weed control work, but stated that he did not realize that he needed to be licensed. A follow-up use inspection was performed that documented the location of his last treatment and the amount he applied. In his response to the complaint, Mr. Inzunza stated he applied "Roundup" herbicide because it was incidental to his landscape work.

Felipe Inzunza agreed to the following proposed resolution:

1. That **FELIPE INZUNZA and FELIPE'S LANDSCAPE** be issued a **Cease and Desist Order and a \$500.00 Civil Penalty (jointly and severally) (due within 30 days of Commission Order)** pursuant to A.R.S § 32-2304(B)(16) (Disciplinary action that can be taken for unlicensed pest control activity) for a violation of A.R.S. § 32-2325(1) and (2)(performing the work of structural pest control without a business license or qualifying party).

NOTE: Mr. Inzunza requested a payment plan.

Commission's Options:

1. **Accept** the proposed resolution.
2. **Modify** the proposed resolution. The Commission may: Issue a cease and desist order and/or Impose a civil penalty of not more than one thousand dollars for the first offense.

VII. For information and discussion, not action: (Mr. Craig)

A. Complaint Status Log

VIII. Recommended Decisions and Orders of the Office of Administrative Hearings (OAH) Administrative Law Judges (ALJs) (Mr. Munns)

- A. **University Termite & Pest Control, Inc./Richard L. Rupkey II (QP)/Justin Allen Dundon (App) - OAH Docket #'s: 03A-100-SPC & 03A-106-SPC/SPCC Case #s 2003-100 & 2003-106**
- B. **University Termite & Pest Control, Inc./Richard L. Rupkey II (QP)/Joshua D. Ghiotto (App) - OAH Docket #: 03A-105-SPC/SPCC Case # 2003-105**

IX. Orders Vacating hearings with Settlement Recommendations (Mr. Munns)

- A. **1st Inspection Consultants, Inc. dba First Inspection Termite and Bat Removal (BL)/Theodore A. Lafforthun (QP & App) - Case # 2003-119**
- B. **Inspectechs, Inc. dba Tucson Exterminating (BL)/Sherman Holmes (QP & App)/Russell William Stewart (App) - Case # 2003-108**
- C. **Paul's (BL)/Paul J. Vanasee II (QP & App)/Gary Lynn Fortune (App) - Case # 2003-140**
- D. **Territorial Termite & Pest Control (BL)/Kenneth L. Van Zandt (QP & App) - Case 2003-141**

X. Recommended dismissal of cases, without prejudice; and suspension of Business, QP and/or Applicator Licenses for nonpayment of TARF fees, civil penalties and/or renewal fees (Ms. Gervase)

- A. **Case No. 98-076 - Ark Exterminating, Business License No. 2244 (Issued 3/30/04)/Jackie C. Wheeler, Jr., Qualifying Party No. 772 B1 B2 B8 (Issued 3/30/84) - Commission's consideration of Suspension of Jackie C. Wheeler's Qualifying Party License for nonpayment of civil penalties and**

TARF fees.

- B. Case No. 98-095 - Ark Exterminating, Business License No. 2244 (Issued 3/30/84)/Jackie C. Wheeler, Jr., Qualifying Party No. 772 B1 B2 B8 (Issued 3/30/84)/Applicator License No. 940193 B1 B2 B8 (Issued 2/18/94) - Commission's consideration of Suspension of Ark Exterminating, Business License and Jackie C. Wheeler's Qualifying Party License for nonpayment of civil penalties.**
- C. Case No. 96-034 - Domenic C. Latella/Qualifying Party License No. 2070 (Issued 10/21/98)/Applicator License No. 940829 B1 B2 B3 B8 - Commission's consideration of Suspension of Domenic C. Latella's Applicator License for nonpayment of civil penalties.**
- D. Case No. 2003-084 - Norstar Pest Control, LLC (Business License No. 8250 - Suspended - lack of insurance 8/28/04)/Eric G. Lund, Qualifying Party No. 3215 B1 (Issued 7/13/01/Applicator License No. 010542 B1 (Expired 5/31/02) and Applicator License No. 040079 B1 (Expired 5/31/04) - Commission's consideration of Suspension of Norstar Pest Control, Business License, and Eric G. Lund's, Qualifying Party License and Applicator Licenses for nonpayment of civil penalties**

XI. Felony Applicants (Mr. Tolton)

If applicants do not appear and the Commissioners have questions those applications may be denied or tabled to a future meeting.

- A. Castro, Jorge Armando**
- B. Daley, Brendan William**
- C. Hunton, Jr., Douglas Merle**
- D. Ortlieb, Terry Lee**
- E. Ramon, Arnold Vernon**
- F. Soto, Jr., Bennie**
- G. Teran, Ralph**

XII. For information and discussion, not action: (Mr. Martin)

A. Computer Based Testing “CBT” Status and Statistics

XIII. Approval of Minutes (Ms. Gervase)

October 8, 2004 (regular session) Minutes

September 10, 2004 (executive session) Minutes (separate handout)

XIV. Scheduling of future meetings/agenda items (Ms. Gervase)

Current Proposed dates

December 10, 2004

January 14, 2005

February 11, 2005

March 11, 2005

April 8, 20045

May 13, 2005

XV. For information and discussion, not action: (Ms. Gervase)

A. Expenditure Report. (Meeting handout)

B. Case Status Report

**C. Legislative discussion - unlicensed pest control activity by landscapers,
and proposal to draft a licensing exemption of some sort. (Mr. Martin)**

XVI. Adjournment