

COMMISSION MEETING
September 13, 2002
MINUTES

I. Call to order and roll call

Commissioners present: Commissioner Fraker, Hale, Hartley, Micuda, Peterson

Commissioners absent: Commissioner Burrows and Robinson

Staff Present: Executive Director, Jerome Davis, Barry Levitch, Pamela Ulbrich, Richard Mars, Dirk S. VandenBerg, Sr., Michael Francis, Carl Martin, and Assistant Attorney General Blair Driggs

II. Approval of July Minutes TAB 1

Tabled until the next meeting because there is no reason in Minutes for "Denials."

III. Call to the public (Each speaker limited to five minutes)

None

IV. Correspondence with Commissioners

A letter from Scott Richardson regarding case # 2002-021 - Vice-Chairman Micuda.

V. Scheduling of future meetings/agenda items

October 11, 2002Scottsdale, AZ
November 8, 2002Tucson, AZ
December 13, 2002Scottsdale, AZ
January 10, 2003 Scottsdale, AZ
February 14, 2003 Scottsdale, AZ
March 14, 2003Scottsdale, AZ
April 11, 2003 Scottsdale, AZ
May 9, 2003 Tucson, AZ

Vice-Chairman Micuda cannot attend the November 8, 2002 meeting. Discussion by Commissioner Hale on other locations.

VI. Consent Agenda.

Items will be read and voted on in one group excluding those pulled for discussion.

A. Applications for New Business License

1. **Carpenter, Jimmy D.** dba **Bug Stop Pest Control (Activating Qualifying Party for new business license in “B” General Pest)..... TAB 2**
2. **Connors, Norman** dba **Fireman’s Pest Control (Activating Qualifying Party for new business license in “B” General Pest) TAB 3**
3. **Harder, Thomas W.** dba **Tom Harder Pest Control (Activating Qualifying Party for new business license in “B” General Pest) TAB 4**
4. **Kostes, William L.** dba **The Country Club @ DC Ranch (Activating Qualifying Party for new business license in “E” Weed Control, “E-1” Aquatic Weed Control & “F” Turf & Ornamental) TAB 5**
5. **Madrid, Gregg** dba **Madrid’s Termite & Pest Control (Activating Qualifying Party for new business license in “B” General Pest & “C” Wood Destroying Organisms)..... TAB 6**
6. **Mastalsz, Jimmy** dba **Landworks, SW (Activating Qualifying Party for new business license in “E” Weed Control)..... TAB 7**
7. **Mollerup, Kevin** dba **Regal Pest & Termite Services (Activating Qualifying Party for new business license in “B” General Pest & “C” Wood Destroying Organisms)TAB 8**

B. Applications for Existing Business License

1. **Harper, John Hazeltine** dba **Williams T. Jenkins, Inc. (Activating**

Qualifying Party for existing business license in “F” Turf & Ornamental) . TAB 9

2. Petkoff, Anthony R. dba Tonto Rim Pest Control, PLLC (Activating Qualifying Party for existing business license in “C” Wood Destroying Organisms) TAB 10

3. Rable, Andrew J. dba Bartlett Tree Experts (Activating Qualifying Party for existing business license in “F” Turf & Ornamental) TAB 11

C. Applicants for QP Testing

1. Anderson, James V. “B & C” (General Pest & Wood Destroying Organisms) TAB 12

2. Blankenship, Daniel L. “C, H & D” (Wood Destroying Organisms, Wood Preservation & Fumigation) TAB 13

MOTION:

To approve to test for “H” only by Commissioner Peterson.

Seconded by Commissioner Micuda.

Denied C & D because the applicant was not in attendance and additional information is needed to verify experience.

VOTE:

5 - 0 Motion carried.

3. Cale, Scott Richard “B” (General Pest) TAB 14

4. Galloway, Timothy R. “E & F” (Weed Control & Turf & Ornamental) TAB 15

5. Painter, Jr.; Ricky Bert “C” (Wood Destroying Organisms). TAB 16
Pulled

MOTION: To approve by Commissioner Hale.
Seconded by Commissioner Peterson.

VOTE: 5 - 0 Motion carried.

- 6. Russell, Patrice C. “B & C” (General Pest & Wood Destroying Organisms) TAB 17
- 7. Schnubel, Kurt E. “H” (Wood Preservation) TAB 18
- 8. Slingluff, Jeffrey J. “B & C” (General Pest & Wood Destroying Organisms) TAB 19

D. Applicants to Broaden Qualifying Party

- 1. Crook, William Joseph “E & F” (Weed Control & Turf & Ornamental) .
..... TAB
- 2. Smith, Paul K. “E & G” (Weed Control & Golf Course Management) TAB 21

20

E. Request for Temporary Qualifying Party Certificate and/or Extension

- 1. Bingham, Joseph Trent dba American Dyna-Mite Exterminating
..... TAB
22
- 2. Eadie, Lee Burtram dba TruGreen ChemLawn TAB 23
- 3. Painter, Jr.; Ricky Bert dba Termite Specialist, Inc. TAB 24
Pulled

MOTION: To approve by Commissioner Micuda.
Seconded by Commissioner Peterson.

VOTE: 5 - 0 Motion carried.

F. Treatment Proposals

1. Access Pest Control TAB 25

**G. Continuing Education Committee Minutes
August 2002 MeetingTAB**

26

H. Settlement Conferences (Cases Already Heard by Commission)

1. Kenneth T. Alvestad - Case # 2002-080TAB

27

Violation resulting from the failure to disclose a felony conviction on three separate occasions.

Resolution:

1. That Kenneth T. Alvestad, certification # 000029 VII, B be issued an Administrative Warning and a civil penalty in the amount of \$300.00 for violation of A.R.S. § 32-2321 (B)(4)(9) (Grounds for disciplinary action) to be paid within 30 days of the date of the order.

2. That Kenneth T. Alvestad, certification # 000029 VII, B be required to obtain 2 additional CEU hours in the area of Laws and Regulations for violation of A.R.S. § 32-2321 (B)(4)(9) (Grounds for disciplinary action) to be accomplished within 90 days of the date of the order.

2. Bio-Chem Services - Case # 2001-314TAB

28

Violation resulting from failure to file TARF's as required under Statute.

Pulled

Resolution:

1. That the Business License # C 4147 BC, Bio-Chem Services be issued an Administrative Warning for violation of A.A.C. R4-29-417(A) (TARF).

2. That the Qualifying Party for Bio-Chem Services, William Jones QP # 456 BC be issued an Administrative Warning for violation of A.A.C. R4-29-417(A) (TARF).

3. That the Business License # C 4147 BC, Bio-Chem Services be issued an Administrative Warning for violation of A.A.C. R4-29-107(A) (Failure to Respond).

4. That the Qualifying Party for Bio-Chem Services, William Jones QP # 456 BC be issued an Administrative Warning for violation of A.A.C. R4-29-107(A) (Failure to Respond).

5. TARG fees and late fees in the amount of \$13,880.00 will be paid within 30 days of the Commission Order.

MOTION: To approve by Commissioner Peterson.
Seconded by Commissioner Micuda

VOTE: 5 - 0 Motion carried.

3. Scottsdale Exterminating - Case # 2002-067 TAB 29
Violations resulting from the failure to submit TARG's as required.

Resolution:

1. That the Business License # C 4358 BCE, Scottsdale Exterminating be issued an Administrative Warning for violation of A.A.C. R4-29-417(A) (TARG's).

2. That the Qualifying Party for Scottsdale Exterminating, Donald Sieglen QP # 790 BCE be issued an Administrative Warning for violation of A.A.C. R4-29-417(A) (TARG's).

4. University Termite & P.C. - Case # 2002-002 TAB 30
Violations resulting from the application of a termiticide.

Pulled

Resolution:

1. That the Business License # C 4114 A, University Termite & P.C. be issued an Administrative Warning for violation of A.A.C. R4-29-301(A) (Misuse of a pesticide).

2. That all "C" category Certified Applicators employed by University Termite & P.C. be required to complete one additional CEU in a label class, or Pre-treat.

MOTION: To approve by Commissioner Peterson.
Seconded by Commissioner Micuda.

VOTE: 5 - 0 Motion carried.

5. University Termite & P.C. - Case # 2002-021 TAB 31

Allegations resulting from an application of a termiticide.

Pulled

Resolution:

Staff has investigated the allegations and found violations.

Recommendations to Office of Administrative Hearings.

On August 21, 2002, a Settlement Conference was held at SPCC Offices in Tucson. No Agreement between SPCC staff and University Termite & P.C. could be reached.

*MOTION: To send to OAH by Commissioner Micuda.
Seconded by Commissioner Hale.*

VOTE: 5 - 0 Motion carried.

End of Consent Agenda

*MOTION: By Commissioner Micuda to accept Consent Agenda as read with the exception for those items pulled for discussion.
Seconded by Commissioner Fraker.*

VOTE: 5 - 0 Motion carried.

VII. Decision and Recommended Order by Administrative Law Judge

1. Ramon Llamas - Case # 2001-371 TAB

32

*MOTION: To approve Finding of Fact Conclusion of Law by Commissioner Micuda.
Seconded by Commissioner Peterson.*

VOTE: 5 - 0 Motion carried.

*MOTION: To accept Recommended Order to revoke Qualifying Party and Certification with no time delay by Commissioner Peterson.
Seconded by Commissioner Fraker.*

VOTE: 4 - 1 Motion carried.

VIII. Complaints and/or Settlement Conferences (1st Time Before Commission)

1. Bill's Pest and Termite Company - Case # 2002-077TAB 33

Allegations resulting from an inaccurate Wood Infestation Report.
Table - Commission would like for the consumer to be present.

Staff has investigated the allegations and found no violations.

Recommendation to Dismiss.

Vice-Chairman Micuda would like a letter sent to the consumer to attend and defend actions.

2. Workman Home Services - Case # 2002-045TAB

34

Violations resulting from the application of a termiticide.
Table - Rewrite - address soil samples and resubmit to the Commission.

Proposed resolution:

1. That the Business License # C 5805 BC, Workman Home Services be issued an Administrative Warning for violation of A.A.C. R4-29-301(A) (Misuse).

2. That the Qualifying Party for Workman Services, Emily Workman QP # 1875 BC be issued an Administrative Warning for violation of A.A.C. R4-29-301(A) (Misuse).

3. That the Certified Applicator Allen Workman # 860383 BCE, be issued an Administrative Warning for violation of A.A.C. R4-29-301(A) (Misuse).

3. Zeb-Tec Services - Case # 2002-095TAB 35

Allegations of violations resulting from the preparation of a Wood Infestation Report.

Staff has investigated the allegations and did not find a violation.

Recommendation to Dismiss.

*MOTION: To Dismiss by Commissioner Peterson.
Seconded by Commissioner Hale.*

VOTE: 5 - 0 Motion carried.

IX. Felony Applicants

36 **1. Carrillo, MoisesTAB**

Not present.

37 **2. Hicks, Arthur LeonTAB**

Not present.

38 **3. Rios, CruzTAB**

*MOTION: To approve by Commissioner Micuda.
Seconded by Commissioner Fraker.*

VOTE: 5 - 0 Motion carried.

39 **4. Shambaugh, Robert AllenTAB**

Not present.

40 **5. Snelling, David JosephTAB**

*MOTION: To approve by Commissioner Micuda.
Seconded by Commissioner Hale.*

VOTE: 4 - 1 Motion carried.

X. Case StatusTAB
41

Discussion by Dirk S. VandenBerg, Sr. on case status.

Chairman Hartley asked a question of how fast are complaints coming into SPCC. Mike Francis responded, they are slow and we are averaging out a couple a week and that can be

consumer generated or staff generated. Chairman Hartley asked if we are getting a lot of consumer generated. Mike Francis responded that we are not getting as much now as we have in the past. It has tapered off. Right now SPCC gets consumer generated complaints, we get calls which we go out and look at first, but the actual piece of paper submitted on a complaint form is probably down right now to three or four a month average. Chairman Hartley stated this last summer the termites both in Phoenix and Tucson have been extremely scarce and not very active because of the drought down there and a lot of times complaints follow termite activity. If you can see them and there is a problem with them they make complaints, so that may be part of the reduction in that, it may pick up now that the rains have taken place.

XI. EPA - Allen Demorest

Discussion by Allen Demorest who thanks the Commission for allowing him to introduce himself and will briefly address the Commission. Allen Demorest is with the EPA Project. Mr. Demorest is the Project Officer for the Structural Pest Control Commission Cooperative Agreement that EPA has with the Commission. Allen Demorest is also the Project Officer for the Arizona Department of Agriculture and the Hawaii Department of Agriculture. It is through this Cooperative Agreement that they cooperate on Enforcement, Training, Implementation of Field Initiatives and Projects. It is through this Cooperative Agreement that establishes primacy or the state's ability to take the first crack at these cases and through this relationship is really the guts of our relationship. Mr. Demorest sees a few challenges and opportunities in the future related to cross jurisdictional issues, training for compliance and relationships and communication. As for cross jurisdictional issues, Mr. Demorest sees some areas for us working together on restricted use pesticides, computer based testing and also with tribes. There is a definite need for certification and training and Mr. Demorest thinks this Commission has reached out in the past and he hopes it continues to meet that need. As far as training for compliance, what he meant by that is both internally which applies to structural staff members just to make sure they are keeping up with all the training opportunities that are out there, but also to the certified applicators with respect to taking what we see in enforcement and the major areas of violations and turning that into training material, testing material, it sort of closes the loop on that, so that we make sure that we are taking the areas where we are seeing the noncompliance and create opportunities and training, so that a reduction in our need for any heavy handed compliance. Finally, in the area of relationships in communication, Mr. Demorest hopes that we can maintain a strong relationship with EPA and the Commission. Mr. Demorest would also like to extend that to the Commission itself, in the past the relationship has been primarily isolated to the staff and he just wants to put that out there. Mr. Demorest is willing to meet and talk to the Commission to go over any EPA policy issues, interpretations of FIFRA or to hear from you areas that you feel are concerns or areas that we should get into where we might be of assistance to you either financially or in support. Mr. Demorest feels that it can happen in two ways and that is ensuring the we are meeting the basic needs of the community and protecting their concerns about health and the environment, but also setting up the program, so that we are meeting these complex needs and issues of the future some of them relate to cross jurisdictional issues and other homeland securities or other issues that come up. It has been the commitment on Jerry's part and others to be an agency that is a leader and

would like to support that. Commissioner Hale would like to know where they are located. Mr. Demorest said he is in San Francisco in the Regional Office. Chairman Hartley would certainly entrain your participation when we get to the agenda item on Exam Validation, he has a couple of questions that he would like to hear EPA's feedback on.

XII. Computer Based Testing (CBT) - Committee Update Status TAB 42

Vice-Chairman Micuda is chairing this committee and they have had a couple of meeting to draft the RFP in which you have here is the draft they came up with. They are looking at this as a final, and they are asking for approval from the Commission to move forward with it. Chairman Hartley feels it is an excellent piece of work Commission Micuda and all the people that worked with you on the Committee. Vice-Chairman Micuda stated, he has to give Richard and Hugo a lot of the credit because they did a very good job on the RFP. Vice-Chairman Micuda feels this RFP is better than the first one. Carl had some input as well, Commissioner Fraker did and I had a small part. The bulk of the work was Richard and Hugo. Vice-Chairman Micuda thinks the Committee came up with something that addresses most of the concerns that he is aware of, and is pretty happy with the outcome. Commissioner Peterson had a question and has read through it and liked it, but he has just a couple of questions because he is dealing with something similar. One thing it does not talk about is the transfer of the money, the timeliness and how all that is going to occur. In my situation they will be dealing with a large amount of money, how will it be transferred. Chairman Hartley stated no monies will be transferred, it will go directly to their bank account. Commissioner Peterson, we lose it completely? Chairman Hartley stated it is out-sourced. Chairman Hartley stated the Commission stands to gain a huge amount from this because we have been charging a \$30.00 registration fee and a test and we've been required to have people give the test and the facilities. We are dropping and will be going to CBT, but will still be charging \$30.00, but now that will be nothing more than to get a registration to test and to monitor give them their card and the money for testing is an out device. Commissioner Peterson does not have a problem with this, it is a good deal. Second question Commissioner Peterson has is the security of the test. The security of the exams was a question. What he would like to know is how the tests will be secured and how this process will take place. Richard Mars stated he believes that with Hugo's input everything will be scrambled as it goes over the Internet and it will be scrambled as it comes back, so we have complete control over that, when they give the test it all has to be proctored and at least one individual there and it can be done by video. Carl Martin stated there are several security issues that present themselves obviously, first would be the transmission of the exam data itself to the contractor and presented to candidates who will be taking the examination. The RFP comprehends that issue and before an award would be made the contractor would have to demonstrate that they would be able to handle the data the test items themselves to keep them secure and administer the input so they remain secure, so that they would not be able to walk out the door or someone would not be able to take a disk and copy them. The RFP comprehends that by suggesting that they have to have all the technical know how skills and abilities to meet the standard of doing this testing which is a national standard. This is part of the national protocol that already exists. The second issue would be with regard to candidates in the room which is obviously a security issue which presents itself if I'm in the room with Richard and we are pals which we are and we want to get

through this thing because we don't want to pay another fee. How is the contractor going to keep me from communicating to Richard vocally or hand signaling, We provided through security separation of work stations and also proctoring situation. Finally, if there are additional security issues perhaps, we can answer those specifically for you. Commissioner Peterson has two more questions. It talks about tests feedback when a person goes and takes an exam and they don't pass is there is going to be some code given and they are going to be given their test's scores. How will feedback occur. Richard Mars stated they will be informed if they passed or failed and that will be in written form. Their employer will have access to the application if they don't tell them they can find out or whoever paid for it. Carl Martin stated in that part of the RFP there is a discussion of what has to be delivered to candidates when a test is scored. A raw score will be given and then it will be scaled and will tell them what percentage they passed and etc. That is comprehended again by the RFP that idea that they get feedback whether they passed the examination. Further, there will be a survey instrument of some sort that will allow candidates to feed back on things like the testing center, did they treat me well, was I able to register well, did I think the test was fair, perhaps those sort of questions, we do that currently by paper and pencil in our testing center. We just transfer over electronically on the screen, so they take their test, they go up to the desk and get a permit. Commissioner Peterson asked one last question what is the source of the test, is SPCC providing these tests? Richard Mars states "yes" we are. What we have currently and they can always be changed and modified. Chairman Hartley stated David Broadstreet has rewritten.

*MOTION: To move forward on RFP by Commissioner Peterson.
Seconded by Commissioner Micuda.*

VOTE: 5 - 0 Motion carried.

XIII. HB-2189 - Termiticide Reporting

Discussion by Carl Martin stated extensive outreach has been done to groups, community groups, public groups and industry groups that might have some comments for this Commission concerning the requirements that existed in 2189 and how we might implement that reporting requirement. We made extensive contacts, staff, Pam, I and others. There may be some of those folks here, we wanted to agendaized that item, so you could hear their comments if they did come. Commissioner Peterson asked if they could see what questions were asked. Carl Martin stated we have not done the survey, we are not at that point, this is our first step in trying to get feedback from the public concerning what there interest in this data is and how they would like to have that data available to them. This is just step one. The survey will come down the road a bit. Chairman Hartley asked what was given to them. Carl Martin responded just an invitation to be here, a reference to what we were talking about some of the language in the statutes, so they could see what we are dealing with and the opportunity to come and say I've read this and it looks like it is good, bad or indifferent. For the Public Notice for this Meeting it was drafted and Pam distributed and also we made telephone contact and put it in the newspaper. Chairman Hartley asked who was here. Vice-Chairman Micuda stated the whole effort here was to get whoever has an interest in this issue. We did not want to limit ourselves just to a survey or a particular mechanism, we looked to open the

gates to every option that is available to try and get some feedback, so that we can deal with this issue the best we can, so we can move forward. Barry Aarons introduced himself in the capacity as the Executive Director of the Arizona Pest Management Association. Mr. Aarons has been participating as have other members of our association with Commissioner Micuda and Commissioner Fraker and a number of members of staff and as you are probably aware I have been working with Carl Martin with this issue in the legislature. Mr. Aarons would like to compliment Carl on his efforts with us, keeping in touch with us, working with us on this and as a matter of fact, several other pieces of legislation. Mr. Aarons has been working with this group and thinks the direction the Commission is going to seek out information and then depending upon the public reaction perhaps going out to find out in a more broad appeal of people in a survey which he doesn't think we have come to the point where we are actually saying we are going to do that yet. Mr. Aarons asked Commissioner Micuda to comment on that if he would, but then we have to decide at that point do we want to go back to the legislature and have them refine, repeal, change or another way modify, so as to address the issue that Representative May wanted to have addressed and yet not over burden the industry or create reporting requirements and costs that the Commission is not in a position to be able to undertake. Mr. Aarons would hate after opening the newspaper this morning the Governor saying the budget deficit is more egregiously out of whack more than what we could have ever imagined it could be and will tell you that the thought of having additional costs even for a board that gets its fees from licensing, it is probably not a good time to do that. Mr. Aarons volunteered on behalf of the association and as a registered lobbyist to visit with Representative May and any other members of the legislature along hand-in-hand with representatives of this Commission to discuss those if and when that becomes appropriate, so we continue to participate with what he fondly dubbed as the Friday Group with Commissioner Micuda, Commissioner Fraker, Carl Martin and other members and we will continue to participate in that we are seeking a win situation in that. Mr. Aarons would be happy to answer any other questions, but there is not a lot more that he can offer here today. Vice-Chairman Micuda made a comment that they have not concluded that we are going to do a survey at this point as Barry stated. We are giving it a lot of attention, there are a lot of different issues involved and then you add in the budget issues and some of the politics involved, it is a complicated issue and basically the point here is we have somewhat of a mandate from statute saying that certain things need to be reported there are a lot of practical and other problems in doing that and feels comfortable when we figure out exactly how we want to handle this and approach Representative May and whoever else. Mr. Aarons has no doubt they will be very receptive to whatever resolution we come up with. Mr. Aarons stated he has worked with the Arizona Association of Realtors and has worked with their lobbyists on a regular basis on issues unrelated to this Commission directly with the Central Arizona Home Builders Association with the Southern Arizona Home Builders Association and the Arizona Chamber of Commerce, Phoenix Chamber of Commerce and those other business organizations who are stake holders who hold a stake in this issue and at the appropriate time he would be more than happy to take with him either Carl or a member of this Commission to sit down with those groups. In his 31 years of lobbying the legislators who he has most respected have always come to him when he comes with a piece of legislation and say what is the problem we are trying to solve and how far do we need to go to solve this problem and together with those stake holders at the appropriate time sometime between now and the beginning of the next legislative session, we can identify that effectively and come to a

resolution.

XIV. A.R.S. § 32-2314 (G) - Business Name TAB 43

Vice-Chairman Micuda spoke and stated this work group that we have on for Friday's has been tasked with a number of things to take a look at and what we have is a group of people that represents just about every constituency that has an interest in what this Commission does and so one of the issues that came up either at the last board meeting or before. It has certainly come up a number of times is what should this Commission's role be with respect to Name Changes of companies. The prevailing view was that for corporations they have to go through the Corporation Commission for a name or anybody else that has a trade name whatever, and they have to go through the Secretary of State. What we found out was that any sole proprietorship or any other organization that wouldn't normally go to either of those organizations. If you go there for \$10.00 whatever it is, your company name can be searched with the Secretary of State and have it registered. It was decided that was a good idea and came up with proposed language which basically gets us out of the business of researching, investigating, and going through a process. The Commission would be going through what name is appropriate and there are two other state agencies in the business at least in part of deciding whether a business name is appropriate or not and the Structural Pest Control Commission is not one of them. The effort here was to get us out of the business of doing that, put that task where it is already placed and basically refer to those two other agencies. Chairman Hartley stated the only problem he has with this is we are relegating, as if we have real confidence with the Secretary of State and the Corporation Commission were in fact taking their responsibility seriously because we have had people come up here where we refused names and the first thing they say when they come up to the podium is the Secretary of State has already given us the A-okay, but according to our rules it was obviously a name we did not want. They have already been there and got it registered, done that, been there and it is like whatever the Secretary of States says, it has some how has some blessing to it. Barry Aarons stated there might be other practitioners who may want to comment if it is appropriate. Barry Aarons for the record Arizona Pest Management Association. Mr. Aarons thinks the question is here, is it a responsibility of the Commission and again what we might be suggesting is going into the legislature and seeking legislative change with regard to how much authority you need to have necessarily. As a former director of the incorporating division of the Corporation Commission my answer to your question is they take it very seriously, because Mr. Aarons still sits on a committee that the current corporation director has an advisory group and he will tell you they take it very seriously. Because the Code is filled with lawsuits where people had two names and so on and they do take it seriously. Number two Secretary of State takes trade names quite seriously over a number of years it has been suggested that those two functions be merged and he is satisfied that they check with each other. Mr. Aarons believes that has been going on for the last 10 or 15 years. Mr. Aarons thinks what they are saying that there are organizations that have responsibilities for trade and corporate names. At our Board meeting of our Pest Management Association earlier in the week we asked the 23 people who were there how many of them did not have either an incorporation and therefore had their name verified there or if they were not incorporated how many of them did not have a trade name and the response was zero. Therefore, we suggest if there are other organizations whose

prime function is the responsibility for authorization means either under corporation or under trade names status is it necessary and should the Commission be burdened with the responsibility of doing those names and if not, is there a way to do it, so that you can be satisfied when a company comes in for a license that the name has been cleared by an appropriate agency of the state and therefore, creates an opportunity for you not to have to deal with that. Mr. Aarons thinks that is what the group at least from his position has been suggesting. Chairman Hartley stated there in lies part of the problem, we have had people come in with names approved by said bodies and we did not like, so all he is saying is that if we do something like this and then be back here in a year if we end up with a bunch of names that have been approved by the Secretary of State and all of a sudden it becomes a major issue to this body that names are being approved by other bodies, Secretary of State and Corporation Commission that are not appropriate in this industry and it is because they do not understand this industry and therefore, we need to have some kind of jurisdiction. Chairman Hartley would not like to envision us being back there, we are already where we are and does not want to go this way and be jerked back the other way. Barry Aarons stated he appreciated the comment from Chairman Hartley and feels we may have a little bit of a philosophical disagreement as to whether it is necessary for this Commission to exercise that kind of authority and to make a qualitative decision with regard to a particular name or whether that should be merely the appropriate miss of the organizations deal with incorporations or trade names. We can continue to dialogue about that as time goes on. Commission Peterson stated one of the things that may of caused that problem is that these are new companies that are coming in whereas, we have a lot of companies that are currently not registered and so that we can have people go in and get registered with a name that is currently being used that was my question to Commission Micuda. Mr. Chairman and Commissioner Peterson, good question, we have talked about that and said that we would create a date of when you come in to renew you license you would have to demonstrate approval from the Secretary of State. There is some questions about even within our industry, but it is worth consideration and move forward to come to some kind of an agreement that perhaps we can move forward with that in legislation. We have taken no formal position that we are saying you have to do this and if you don't we are going to go to the legislature, we have not done that. We are here to say, we think this is a reasonable direction to move in and we would like to work out a resolution with the Commission because we think it is appropriate to at least reduce the circumstance that we are having of some of our industry people who believe that they should have certain names that maybe they have a disagreement with the Commission as to whether those names are appropriate. Vice-Chairman Micuda has a few more comments and does not know what Mr. Chair meant about names that have come forward that should not have been proper names and does not really understand what he was referring to and his sense is that we should not be in the business of telling companies of what names to pick. There are already two state agencies who are in the business of doing that and no question if we go this route it creates a little bit of a problem for some people who are not registered, but they have been doing business for some time it gives them a window to get registered and ultimately if there is a problem people are going to end up in court. They are going to end up in court whether we do this or whether we don't do this. Vice-Chairman Micuda thinks having something like this in place will certainly preclude litigation farther in the future and that is the whole point to have some process in place where everybody can have some certainty about the name they are picking. Vice-Chairman Micuda knows our personal feeling

about us reviewing names, it seems to me sort of willy nilly of what flies and what doesn't fly. Its standard seems to change from one meeting to the next and he only has a whole lot of confidence the information we have in front of us takes care of all the issues that we have been presented with and personally it strikes him as a waste of his time as a Commissioner to spend a lot of time whether a company should be issued ABC Pest Control or AB Pest Control, whatever. Chairman Hartley stated let me give you an example and there is nothing more he would like to get out of the name change, but abrogating all of our responsibilities in that area a company comes along and they want to call themselves Safety Pest Control and the Secretary of State states it sounds good to me, but they don't know anything about pest control and now the truck is riding down the street with the name Safety Pest Control on it and he doesn't think this Commission will be real happy or EPA will be real happy, except the Secretary of State because it has the name and if we are totally out of it and we just sit here and somebody comes up with something as absurd as that and its approved and we have no say in it. Does the Secretary of State have something in place to preclude that which he does not know, but knows they don't have the expertise in pesticide or words associated with it. Barry Aarons asked Chairman Hartley whether it is the Commission's responsibility to protect the public from using a company or not using a company based on their name. There are some names just because we are all human being that we may have a bias for or against. That comes up when you have names that have state, country, proper names, if he wanted to come before the Commission and met all the other requirements for the company Aaron's Pest Control or you probably would have no problem with that and yet it makes no representation other than that's the name of the company. Mr. Aaron's feels that is one of the issues we are driving at given that the number of licenses you have out, my understanding is about 1100, if he remembers correctly that are out there presently. If you went through all of the names, you went through the yellow pages and the number of decisions' you going to make based on names and someone is going to be remarkably small. How much time do you want to spend deciding whether Safety Pest Control which really does not mean anything more to me than Fraker Pest Control or Aaron's Pest Control or something like that. That is the question we are raising, we would come down on the side and it has little influence and therefore we are satisfied for the protection of our industry and our customers that having a name clear to prevent litigation is okay. Chairman Hartley states maybe EPA will have a contrary view on that, and he has seen them get upset about the word safe. There are certain key words in this industry Barry that are just inappropriate to use in certain circumstances, he doesn't want to totally give away any and sit here and listen to Mr. Driggs next year and tell him that is the name they chose, the Secretary of State says yes, you guys eat it because you have zero authority in rule or law. Do we want to give that up and if the vote of the Commission is to do that he will certainly be willing to go along with that, but in the future they are going to be words, key words, and phrases that come up and are not going to be very talent able to us or other people that the Secretary of State my think are fine and it is not the matter of public choice when you use certain words you may be defrauding the public. Safe Pest Control that is a dynamite company name. Barry Aarons thanked Chairman Hartley and stated he does not want to debate that issue with him because he could think of some wonderful names that he would fight very hard to get that you might think are ridiculous you might start off with Toxic Pest Control which is an interesting name for a company who engages in that. Sludge Pest Control, Ineffective Pest Control our point is that we are trying to take some of the issues that have to deal with names that come before this Commission that perhaps my not come into

the areas that you are talking about and say those have already been dealt with at the Corporation Commission and at the Secretary of States Office. When it comes to some of the other things we may have to continue the dialogue on that and we would appreciate your moving in that direction and we will provide whatever assistance we can to get you there. Chairman Hartley stated at least we opened something for dialogue, like he says we would like to be out of the name game. Barry Aarons thanked Chairman Hartley. Mike Denny, US Pest Control the fee for the registration name is \$5.00, he recently registered two name's. US Pest Control and USA Pest Control and to address Commissioner Hartley's concern they are not effective in what they do. When he originally went in and asked for US Pest Control or USA Pest Control they told him he couldn't have them because there was United States Pest Control, Inc., which is us, so with that in mind knowing that it was the same company of mine for those names they did go ahead and register them and give them to us. Mr. Denny showed this to the Commission at the last meeting. As far as the approval of names and the Boards authority to do that, obviously you have a rule to give you that authority. From the Corporation Commission or the Secretary of State would in no way change that rule you would still have to approve the company that is applying for a business license and so you would still have the opportunity if there was a conflict it would leave the public to believe that the company was representing themselves falsely. As in Safety Pest Control or We Won't Hurt You Pest Control, then you can still address that issue. The issue he is concerned about is obviously that we have a conflict right now with someone wanting a name that is very similar to ours. Mr. Denny was going to make a point at one time and come in and ask the Commission because we have two licenses available to us to register Patriotic Pest Control and I'm sure there would have been some objection to that and that is the thing the Commission should be trying to avoid. It is an unfair business practice if he was to come and say register Patriotic Pest Control or register USA Pest Control when there is something very similar existing, he would be taking advantage of Commissioner Fraker's advertising and business that he has spent a life time building. This is what the Commission should address here. Vice-Chairman Micuda stated you keep mentioning EPA and asked Allen Demorest if he had any thoughts. Allen Demorest stated where EPA would have an issue if it was EPA Pest Control and he thought that is outside FIFRA and he was unsure of where it would reside, but the US government would take issue with claims or names that could be confusing with a government agency and a non-government entity and if that is done through the Secretary of States procedures or not. Beyond that where we have authorities within FIFRA it relates primarily to sales and distribution of pesticides and namely the names of pesticides. We do have very specific rules and regulations that say what kind of endorsements or what kind of implications could be made by a name. Many times it does include some of the names that have already been mentioned and that is where we would have most of our issues is with the product name and any information that is being provided and sale of literature and claims made in conjunction of use of products. Commissioner Fraker stated that these comments are well taken and he thinks in his position regarding the groups discussion regarding this process, he thinks the Secretary of State and the Corporation Commission would be the first step for someone to take. Commissioner Fraker stated the Commission needs the ultimate final decision he doesn't think we want to give that decision up when they come before us, we still need to retain some input to avoid any situations. Vice-Chairman Micuda stated that group could resolve that issue and we could take language that we already came up with even modify it a little bit and it is another provision that retains that authority. Commissioner Fraker asked if the

Commission retains the final decision as to whether the Commission issues that Business License name or not. Vice-Chairman Micuda said yes. Commissioner Fraker asked on this procedure between the first step of somebody who is going to start a new business. Chairman Hartley stated most of the people who come in here have already been to the Secretary of State and they get up and state it has been approved by the Secretary of State. Commissioner Fraker stated this would require that documentation. Vice-Chairman Micuda stated the old issue will come up the one that you are concerned about and you have the final say. Vice-Chairman Micuda requested that Carl put this on the Agenda for the next time we meet to revisit this provision for Friday.

XV. R4-29-104 - Joint Responsibility TAB 44

Vice-Chairman Micuda stated this is one of the other issues that we tackled and there was a lot of discussion about this. What we ultimately decided to try and come up with several proposals that go in different directions. The first one is a strict liability proposal that basically says that if you are a QP or there is a business license and an applicator does something wrong the QP is also responsible. It does not matter if you are the greatest QP in the world and you did everything perfectly if your applicator misapplies something then you are liable for it. The next one is an in between the three different proposals. Basically there are a couple options here where the Commission basically would have to find some responsibility on part of the QP in such a way that it is not strict liability. There is a burden that is shouldered by the Agency to demonstrate that the QP did do something wrong and the last one creates an affirmative defense where the Commission basically takes a position that there has been a violation and the burden is on the QP to demonstrate that it didn't do anything wrong. Vice-Chairman Micuda is not sure we are going to get to a resolution on any of this today because it warrants further discussion. The work group just wanted to get a sense from the Commission of what direction ideologically you want to go. We can argue about language and everything else. We know there is at least one Commissioner here that probably likes the strict liability provision. There is an argument to be made which is that the pest control business is serious stuff and it has some merit, but the other provisions have merit as well and so you really don't see what you have in front of you today is really an offer to pick which one you like. Maybe we can't do today and maybe it is something we can put on the Agenda next time to give people a chance to digest it a little more. The work group there is a couple of things we have identified for most perspectives there is a problem with this particular rule, so we are looking at some alternatives to address the concerns. At least if you like how the rule is being applied right now it is not worded as well as it ought to be. My feelings regardless of what direction we go the rule probably warrants a change, so at least initially again what we are looking for is direction ideologically where the Commission wants to go on this notion of joint responsibility. Chairman Hartley stated there is some good verbiage that can be looked at and analyzed this is one of those pendulum problems that we always get into. The pendulum always seems to be swinging from one end of the spectrum to the other. It has gone from the QP being responsible for everything no matter what because this guy did not do it. To the other end where the QP is not guilty of anything he does not train his people and he does not give them equipment or anything and wants to come here and tell us how it is not his fault that it is really that poor guy with the certification who did it all and there is a certain subjectivity in there that is just very difficult to deal with because what is

good training for one good QP might be real shlock training to another one and somebody needs to be the arbiter of what constitutes at least some degree or level in training of equipment things along those lines and at least meet a certain minimum level. Then you get a certified applicator that we tested and they have been through the process and they have had continuing education, they have done all the things the State requires, and they go off and do something totally contrary to anything ever. There has got to be something where there is relief for the QP because the QP also not only has to report to this body and defend himself, but also the actions of the certified applicator. For example, you get a certified applicator that is well trained, well equipped and he goes out to do a WIR and he has a headache that day and decides to drive around the house instead of inspecting it and that creates a tremendous liability for the company and the QP and not only in front of this Commission, but also in front of the Courts in Arizona. The court don't always look the other way and the consumer may have a great case. Anyway we get slammed both ways and just look for some subjectivity in this whole issue and there are some things written here it is just a matter of flushing it out a little more. Blair Driggs comments are not on terms of ideologically are whatever the Commission wants to do. Mr. Driggs feels comfortable with this Rule. Mr. Driggs disagrees that this Rule is not clear and concise and understandable. The Rule went through GRRC. Whether you want to clean it up or do something different with your ideologies or change the direction that is fine. As for as sticking to the Rule, he has been comfortable in advising this Commission on how to use it, joint responsibility isn't strict liability, strict liability is a special term. The discussion can go that way and he has no problem with the Commission of how they make their evaluation. By no means, the joint responsibility Rule has never been taken as strict liability. The difference between responsibility and liability is consistent with the advice that he has given this Commission on how to use this Rule. But if this Commission wants to change, this is what this discussion is for. Mr. Driggs has felt comfortable in giving the advice that has been given to this Commission. Commissioner Peterson comments that he likes what Blair just said and what he basically just said is that we do have some discretion within this body on some of that. The concern Commissioner Peterson has is there is one of these cases where the guy went out and didn't do the job right, maybe one of the cases that is going to go to hearing. The company had trained that individual properly and they had created a disincentive for him not to do it right. Because if they had created incentives for him to do certain things although the company can stand up that we trained him, we can document it, and we showed him how to do everything right and we can say to the company you are no longer responsible and we need to make sure we somehow do not lose that. That is why he liked what Blair just said, we are not in a strict liability right now but what needs to happen is that people need to come before us then and say this is why they shouldn't be held responsible. They really don't like the easy route saying, we've fired him, he is gone. Chairman Hartley stated it is impossible to define each sub-activity on its own and that is why each case stands on its own merit and it should come before the Commission and argument made and the Commission having the ability to access the input and make a decision on its own merits. Chairman Hartley has no problem with that and he does not like black and white situations. Commissioner Fraker stated he would like to back up a little bit on the joint responsibility issue that came up and the committee was formed was at the request of these Commissioners because of Dirk's dilemma and his investigations and how to deal with those hard issues like that because my understanding was Dirk's communication to us was his interpretation of the Rule (correct me if I am wrong Dirk) he had no discretion, but

to name the business licensee, Qualifying Party, etc., so the reason why we got together was to give Dirk some direction on how he is suppose to deal with it in those Settlement Conferences. Dirk S. VandenBerg, Sr., addressed the Commissioners by stating that is correct and again we have had some examples today of bringing cases before you either through settlement or whatever where there is question, should we have done more or could we have done a little bit less and passed it through without offending the members themselves. One of the reasons why we addressed this was to look at some more definition of what joint responsibility is according to our current guideline and we have administrative warning as the bottom line. The direction we have moved in and that we have been given so far is that if there is a violation the qualifying party is automatically guilty. It is where they're having to prove they are innocent instead of us having to go in and do the investigation and showing they have had the proper training. Vice-Chairman Micuda wanted to interrupt here and stated the problem here and Blair you appeared where the witness issue came up and have a Rule on this issue. My view of the present Rule it is strict liability, if you have an applicator who does something wrong and there is a violation and you're the QP your responsible under this Rule that is the way it has been applied. The cases that he heard when he was an ALJ, he never saw a case where it came forward and a QP was not held responsible for a violation of an applicator. Vice-Chairman Micuda does not remember that ever happening, so he is not sure where that puts you and there is not much discretion here at least in the way you can interrupt the Rule in a couple of different ways because of the way it is drafted. The way it has been applied in his perspective in looking at things is that it has been applied in a way that if an applicator does something wrong the QP is going to get dinged by virtue of that fact. It does not matter what the QP did or did not do. Now if he is wrong tell him because that is his perception that is exactly what he has seen since 1977, since he has been looking at these. Chairman Hartley stated if a QP is going to be named in a complaint obviously what he has seen since he has been on the Commission and prior to that is that at the discretion of the Commission the penalties imposed and the actions taken as regards to the QP of being capable of being mitigated by things like training, CEU's things like that not just talked about but actually proven and brought in front of this Commission and that in fact has happened and we have established precedent in doing that, so it is not like some infraction that everybody gets clobbered. The trend that we got here and that is where the pendulum thing is over the last year we have gotten to a point where companies have gotten some idea that if they bury the certified applicator that they somehow will be exonerated, they make him disappear or the fire this guy and all of sudden he is responsible for everything in the world when really a close inspection shows they never trained him, they never supervised him. That is really bad and therefore they should be the ones on the docket and the certified applicator should be the one meeting more of a slap on the wrist so to speak and the Qualifying Party should be the one taking a real heavy hit on it. Vice-Chairman Micuda stated the whole reason the Rule is here was to prevent the situation where someone does something wrong the QP terminates that person and states I did everything right and that person is gone. People were doing that and that is one of the reasons my understanding this Rule was promulgated. He doesn't think any of the options here get away from it. The problem that we have is a situation where a company maybe your company where the company has done everything reasonable and maybe beyond that to ensure that the applicator does everything the applicator is suppose to do and the applicator does something wrong is that a legitimate situation where the QP should get dinged or the business license. That is why it is an

ideological discussion because there are people that feel “yeah” the nature of the business whatever the QP should get dinged even though it is mitigated. There are people who feel look the QP did everything possible and did everything right and an applicator still screwed up. What could the QP have done to prevent that if you can’t come up with something then why are you dinging these people. Chairman Hartley stated he couldn’t be more than in agreement. Vice-Chairman Micuda stated that is what the discussion has been about that is what the effort is to explore this issue and to see if we can come up with a consensus where we are trying to strike a balance with competing interest here, but he also sees the other side of the continuum which is if you have done everything possible and if you are willing to say there isn’t anything you need about the pest control business that compels you to say that if you put someone on the street you are liable for whatever they do. If you are not willing to say that then it seems to me you have room to say in some situations the QP did everything the QP should have done and you shouldn’t ding the QP. Chairman Hartley stated the question is going to be asked how do we amass that information and do we try to do in Rule or do we do it on a case-by-case basis based on information supplied for that case. Chairman Hartley would hate to create a situation which somebody convinces staff that they are good guys and we never get the chance to really look at that information and now we do. Vice-Chairman Micuda stated that is why all these proposals were done and the one he liked was the last one which is to really place the burden on the QP to show they really didn’t do anything wrong. The other proposals it puts all the burden on the Commission to show that the QP did something wrong. The last proposal says well there is a violation here and we are starting out from the position that you did something wrong that is the QP, but the QP has the opportunity to come in and say look we didn’t do anything wrong now you can argue over whether the language really does everything that he just said or you can argue about the wording, but that is the point of the particular language and it opens the door for the QP to say look we did everything possible and it gives us the authority to say we recognize that and we are not going to take action against you. Andy Weber stated that the one thing that he thinks Dirk is frustrated with is the Settlement Conferences where you try to work things out. You can’t go anywhere with this because the bottom line is the QP gets dinged. Those still have to come before you and he likes the last one too. Dirk has seen enough of what the QP brings in as far as training, document supervision and he is not talking about “yeah” we went out there last night and saw this guy and the documentation is written down. It gives him the opportunity to put it down to a letter of correction other than an administrative warning. If he brings it in and you guys don’t like the settlement, you don’t have to take it, it is just a proposed settlement. Mr. Weber asked Dirk if he is wrong. Dirk S. VandenBerg, Sr., stated not really, you will need some type of guideline here as to what circumstances we are looking for what did they provide. Vice-Chairman Micuda stated that is what he eventually wanted to get to a couple of these options that was a big part of our discussion is what is it that we are trying to accomplish here. We are trying to ensure that QP’s and businesses are doing what they ought to be doing in training their staff, providing good supervision, right now he doesn’t think anybody exactly knows what all that means. Vice-Chairman Micuda thinks part of the discussion was if we went on one of those other routes where that became an issue in developing guidelines or whatever Rules. That would give the industry, staff, everybody some ideas what is supervision, training, that kind of stuff because a lot of people in the industry would like to have something that gives them some notion of what we mean by that because as a Commissioner he would like to have something to tell him what we are looking

for, what we are looking at, and Dirk and his staff would like to have something, as well. These short vague terms that are thrown around and they don't really have any meaning except that each of us hold. That is one of the reasons he likes the idea of backing off the Rule that we have because ultimately we will have something that will give us a lot more direction and the bottom line there is two ways that we want to accomplish what we want. We can get commitment from the industry or we can get compliance. Vice-Chairman Micuda sees the present Rule as a club to beat people over the head to get them to comply with what we want, he would rather have people's commitment to the whole thing and by doing that means giving them a better idea about what we are looking for having the industry part of the group and that is part of what this work group does. We got a number of people representing the industry like Andy, you've got a bunch of people who step outside their shoes and look at everything it makes sense, so that is another big part the discussions that is going on respective to these proposals. Dirk S. Vandenberg, Sr., addresses the Commission with a major concern here at least staff's side is the fact that any company or qualifying party or business can produce paper that they are having classes or CEU hours, extra hours whatever they are doing or they have in-house training or some sort of thing any company can do that. What he is looking for is some type of substantiation to that. They can write anything on paper and submit that. That is what he doesn't want to see happen, he doesn't want to just see paper come to him or walk into a settlement and say we are doing all of this, we need to substantiate that through some type of investigation process prior to the settlement. Vice-Chairman Micuda commented "right" what we all are envisioning is developing something that gives you an idea of what it is you are looking for and at the same time what is it the industry should expect of what you are looking for. We put something together that says merely bringing a couple of certificates is not enough well we need to let industry know that, but he thinks this is a step in the direction of really kind of raising the bar on everybody what is training, what is supervision, what is having your truck well equipped. Because right now it seems to him, the bar is relatively low and nobody really has a very good idea of what any of that stuff is and it is an encumbrance on the Commission to give people direction about what direction we are going in. If we all think those are good things that we should be encouraging the industry to adopt then lets give them some tools on specifically what it is they ought to be adopting not just tell them well you need to train your people well. What does that mean? Dirk S. Vandenberg, Sr., stated the last word there would try to be consistent and that is what we are trying to achieve. Vice-Chairman Micuda stated this is not going to be resolved anytime quick, so whether it is an individual Commissioners or anybody else out there that takes a look at this and have a comment send it to Carl, to staff, or send it to me, just get it to us somehow so our work group can look at it and talk about it and try to come up with something and maybe we can come back to the Commission and say well we have information and here what it is and that will prompt further discussion about where to go with this, but he thinks we are away from saying this is what we are going to do and he would like to see the process inclusive as possible, so if you have an opinion about this and you don't share it, then shame on you. Commissioner Hale stated he was going to ask that question and he is pleased to hear of where we can send this to Carl or whomever and make comments because he is certainly ready to make comments on anything that comes out and as it progresses. Mike Denny has a comment where we have a complaint right now that is being investigated where an operator went out and put Max Force Granule Insecticide on someone's counter top. We have a regular Tuesday morning half hour where we discuss proper applications

with the chemicals that we are using and we don't discuss the same chemical obviously every week we discuss that and applications and how you are going to kill them and that kind of thing and we dedicate it to training. In addition, we have outside speakers come in several times. Just five days prior to that event we had Dave Crandell from Avenis and Al Bayer come in and give half an hour on the proper use of Max Force Granule Insecticide and we documented that to the staff, we documented with letters from our other service tech's that they have had proper training and the proper use of Max Force and know not to put that on the kitchen counters, if the Commission is not going to accept that type of defense for the QP and the Business Licensee then he would like to have the Commission give some guidelines to the QP's and Business Licensee's as to what the heck else we can do.

XVI. Exam Validation TAB 45

Discussion by Chairman Hartley who stated that he and Commissioner Micuda were privileged to be in Mississippi where the great State of Florida was telling them how they were moving in the direction of validating one examine and they have four or five. They were looking at the cost of \$50,000 and they managed to get the money from EPA. They described the excruciating process of examine validation and as he was talking about their Core examine in Florida Chairman Hartley kept thinking of all the examines we have here and started to multiply. Chairman Hartley doesn't know where this issue is in terms of its importance certainly it would be nice to have validated examines, but he doesn't know of any state that has them and Florida as far as he knows is the first state to move on validating one test, so we have 50 states. Indiana has one. If we times 50 states with x number amount of tests and we are maybe talking about having two of them validated it is kind of a scary situation. Jerry asked a speaker if this was some type of a national issue, or whether there was litigation pending on this, or whether there were complaints on this, and what is the scope on this and we had some discussions later regarding some good ideas that could be pursued and Commission Micuda may want to elaborate on some of those. Involving the National Test Management Association involving the EPA at the National level to try to help out a little bit on this more than just a grant here and there for a test. Once we commit ourselves in that direction we open the book of liability if this is something we feel some reason that has to be done and then not proceeding with it may put us in a bad position. Vice-Chairman Micuda stated he believes strongly that our examines should be validated, however, what Florida was describing was the Cadillac of validation and frankly, it was somewhat misleading and does not see any reason to spend that kind of money. They had a committee of 15 people from all over the state it just went on and on. As an attorney and he could go in and defend a test with a whole lot lesser of a validation process then what they were doing and thought a lot of it was overkill. You can come up with a blue print for a test and then come up with questions and then have someone validate the individual questions. Florida was having their questions validated at \$10.00 a question. After talking with Carl, he stated he has people here in this state who will do them for \$4.00 a question. Frankly, we can do the most of it on our own and have someone validate the individual questions which cuts your costs to a fraction of what Florida is doing. The other thing is that Carl and Jack are on a

committee and there was discussion about a National Core Examine which was what he was talking to people about and didn't realize for all intensive purposes there already is one, so maybe Jack and Carl can talk about that. Someone asked Commissioner Micuda to explain what examines he was actually talking about. Vice-Chairman Micuda stated they are all the examines given by the Commission, but it seemed to him if the National Examine is something that has a utility certainly you can take the blue print and modify it as to particular categories, you have a lot accomplished already, it is just a matter of having your individual questions validated. Carl Martin stated for the record that validation just simply means that you are testing on a body of knowledge that is an established body of knowledge that people have to have in order to be practitioners in a particular profession. In the case of pest control there is a certain body of knowledge that pest control applicators have to demonstrate they have in order to do this safely to ensure the public of there safety, and to ensure the applicator is safe, and is the company is safe, so the validation of pesticide examines would be about making sure people have that knowledge. Now the National Core has been developed it is a project that has been paid for wholly out of the office of pesticide programs in Washington, D.C. EPA brought together groups as the Area National Applicators Association, Structural Pest Control people from the National Pest Management Association, regulators such as Derrick Lasinger from Georgia, myself and others, community groups, etc. The goal was to first establish a blue print for the work that entry level applicators do in pest control. What knowledge on a regular basis somebody has to have to do their job. That blue print was established from that blue print it was determined 30% of the questions need to be in the area of safety and maybe 20% of the questions needed to be in this area of how to use this equipment and 10% of the questions need to be in proper formulation. To figure out how much to put in from that blue print those numbers of questions were developed and two forms, two examinations were produced and there was a request that went out to the states asking that we need six pilot states to sample this test. There were 36 states that said, we would like to try it. We know our tests are not valid and we would like to do this. They took 16 they increased their sample group from 6 to 16 and they got feedback from those and they are putting the final touches from that feedback on that Core Examination. It should be available this fall in fact for general launch in fact, EPA eventually will tie program dollars that come to states like ours for C&T to the use of valid instruments including this Core Examination. Frankly because Jack and Carl sit on a National Committee where those discussions happen and we've been told that directly. With that he will leave the rest to Commissioner Peterson, but the Core Examine will be available and is available and has been valid. Even if we didn't take their test we simply snatch their blue print and do our own questions, we would still be ten miles ahead and that is certainly possible and that is what we are talking about. The goal here would be to get folks like Allen to commit today here on the carpet funding for blue prints for tests and allow states like ours to use the expertise and consider the expertise that are in this room to make those questions. All we need is a blue print that tells us 25% of the questions need to come from Area "A" and ten from "B" and so forth. We can make our own tests to this point until our meeting in August. CTAG was misdirected CTAG is a national group that has been looking at this. We have been looking at making whole tests and handing those out. Here is a test on Turf & Ornamental just take it and use it, but Jack and Carl sat at that August meeting and we don't need your test, we need your blue prints. We are redirecting some of that effort toward the production of blue prints, if we had the blue prints we could put together the tests. Chairman Hartley would like to hear from Allen

Demorest from EPA. Vice-Chairman Micuda stated before Allen jumps in, he would like to add his understanding for part of that process is that there had been a development of the study materials. Allen Demorest stated that we have some staff that are very well known within the Certification and Training Program and they are very creative and you will be able to do any kind of validation much cheaper than the example that has been provided. Some other things that could be done is that within our Region or even outside of our Region if we see partners that have the same interest we might be able to partner and sort of spread the cost between partners. Vice-Chairman Micuda asked if that is going on in Region 5 or 6. Carl Martin responded that is correct and the test validation is being undertaken by Region 5 EPA. Allen Demorest stated the second thing he wanted to say was you know we currently provide some funds, but he is not sure what proportion it is of your amount of that goes to support certification and training and it was raised a couple of years ago right after some CTAG or the certification training assessment group recommendations to start getting into the validation area and that was raised a couple of years ago. We certainly support the movement of meeting some of those recommendations/validations. With your movement into the Computer Based Testing as long as these other issues about the tests security matters is maintained and developed if there are costs savings within there those might be able to be transferred into other areas that might be able to broaden where we can do some validation or leveraging with other state agencies. Chairman Hartley stated the question now what do we do at this point. Vice-Chairman Micuda stated he doesn't know yet, maybe this is something we could throw at the Friday work group. People are shaking their heads. Chairman Hartley stated Carl seems to have a really good handle on this. Jerome Davis stated at the national level the ASPCO people are already prepared for this and maybe this can be a joint effort. Vice-Chairman Micuda needs more information about exactly on whether we adopt this national core and what we can use. From what's been put together for our purposes and he has the big picture, but the answer to the details and he doesn't have the details. Chairman Hartley asked Jerry if he could assign that to staff to get what information is available. Jerome Davis stated Carl has been working along with Jack and CTAG this has been a two year project. Mr. Davis does not know if it has been launched. Carl Martin stated the contractor will be delivering it to EPA for distribution this fall. EPA will handle the distribution of the blue print and the finished examine and then we will be able to look at the form and choose to do so or use the blue print for our own form. Vice-Chairman Micuda stated there are a couple of key points here, one this is the way of the future one way or another kicking or screaming whatever everybody will be pushed or dragged in having their tests validated and he agrees with that and it ought to be. Secondly, this particular Commission is in a very unique position you have two people on that National Committee and he doesn't think there is anybody in that position, so for us not to avail ourselves and take vested advantage of the whole thing is very short sided in his mind. Vice-Chairman Micuda likes the idea of having Carl and Jack get us whatever information we can get, so we are in front line to avail ourselves whether we think we can use it to move in this direction.

XVII. Executive Director's Report

Discussion by Jerome Davis, Executive Director on FMC software issues. Mr. Davis stated this will be on the next meeting Agenda. Mr. Davis stated we will be able to merge Computar within the next 90 days. Letters will be sent to the industry regarding 2189 and reporting, which is mute

at this time. Mr. Davis discussed the ASPCO meeting on pesticide tracking issues.

Mr. Davis announced there was a Memo in your packets regarding his retirement effective on December 27, 2002. Commissioner Peterson stated not to go through state system. A committee was formed to start the search for a New Executive Director and they are: Chairman Hartley, Commissioner Hale, Commissioner Peterson, SPCC staff Enforcement Director, Dirk S. VandenBerg, Sr., and someone from APMA. The search for replacement for the Executive Director time frame is to have that position filled by January 2002.

Commissioner Micuda stated he would like for the Commissioners to go to meetings once or twice per year with staff. These meetings would be EPA, ASPCO, etc.

Adjournment

*MOTION: To adjourn by Commissioner Peterson at 1:02 P.M.
Seconded by Commissioner Micuda.*

VOTE: 5 - 0 Motion carried.