

NOTICE OF COMMISSION MEETING
FRIDAY, August 8, 2003
9:00 A.M.
Structural Pest Control Commission
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258

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 in 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 and roll call (Chairperson, Ms. Vazquez)**
- II. Approval of July 11, 2003 (regular session) Minutes. TAB 1**
- III. Call to the public (Each speaker 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.

IV. Communication with Commissioners

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

Current Proposed dates and locations

September 12, 2003Scottsdale, AZ
October 10, 2003Tucson, AZ
November 14, 2003Scottsdale, AZ
December 12, 2003 Scottsdale, AZ

VI. 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 Commission member.

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)

1. Kilmer, Darril A. dba Dorado C.C., Inc. (Activating Qualifying Party for new business license in "E" Weed Control) TAB 2

B. Applications for Existing Business License (Mr. Tolton)

1. Bartko, Joseph dba Mesa Country Club (Activating Qualifying Party for existing business license in "E" Weed Control and "F" Turf & Ornamental) TAB 3

2. Fox, Grady dba North Country Pest Management (Activating Qualifying Party for existing business license in "E" Weed Control, "E-1" Aquatic Weed and "F" Turf

& Ornamental) TAB 4

3. Frink, Clifford William dba Troon North Gold Company (Activating Qualifying Party for existing business license in “E” Weed Control and “F” Turf & Ornamental) TAB 5

4. Sneer, Scott Loren dba Proven Ecological Pest Control (Activating Qualifying Party for existing business license in “C” Wood Destroying Organisms) TAB 6

For Qualifying Party initial applicants, applicants to broaden, temporary applicants, and renewal applicants, if applicants do not appear and the Commissioners have questions those applications may be denied or tabled to a future meeting. Any applicant that the Commission approves to sit for an exam is approved subject to 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 re-review.

C. Applicants for QP Testing (Mr. Tolton)

1. Brodie, Robert Michael “B” (General Pest) TAB 7

2. Flood, David M. “E & F” (Weed Control and Turf & Ornamental) TAB 8

3. McDaniel, David Lee “B & C” (General Pest and Wood Destroying Organisms) TAB 9

D. Treatment Proposals (Mr. Colvin)

1. RUSH Termite and Pest Control TAB 10

End of Consent Agenda

VII. Application for New Business License not on the Consent Agenda (Mr. Tolton)

- 1. Fickett, Timothy dba Bug on the Run Pest Control (Activating Qualifying Party for new business license in “B” General Pest) TAB 11

VIII. Request for Temporary Qualifying Party License Renewal (Mr. Tolton)

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

- 1. Flood, David M. dba Rancho Manana Golf Club TAB 12
- 2. Henderson, Jason P. dba A Bee & Pest Pro TAB 13
- 3. McKenzie, Barbara dba Zap Pest Control, Inc. TAB 14

IX. Treatment Proposals not on the Consent Agenda (Mr. Colvin)

- 1. Patriot Pest & Termite Control TAB 15

X. Complaints and/or Settlement Conferences (Mr. Craig)

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 of not more than \$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 dismiss a matter as set forth in A.R.S. § 32-2321(J) or issue an advisory letter pursuant to A.R.S. § 32-2321(N). A matter also may be continued for further investigation.

If the 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.

- 1. Anteater Exterminating Inc. - Case 2001-190 TAB 16

The complainant alleges Qualifying Party Mr. Shawn Kleinstiver listed fictitious conditions conducive on a Wood Infestation Report to obtain additional money to rectify the condition.

SPCC Inspector Robert Guzzi noted that the conditions conducive listed on the WIR were correct.

SPCC Compliance/Enforcement found no evidence of a violation.

Staff's Recommendation: Dismissal

2. First Inspections Termite & Bat Removal - Case # 2000-309 TAB 17

The Complaint contains allegations of violations resulting from Applicator Milroy George Kellogg failing to note evidence of previous treatment on the Wood Infestation Report form (WIR) and Applicator Jeremy Youngquist failed to fill drill holes in conjunction with a post construction treatment.

The following terms were proposed:

1. That **First Inspection Termite & Bat Removal, LIC # 5591**, be issued an **Administrative Warning**, pursuant to A.R.S. § 32-2321(B)(2) (Disciplinary action), for a violation of A.R.S. § 32-2324 (Wood Infestation Reports), A.A.C. R4-29-413(A)(11) (Wood infestation reports; information required), A.A.C. R4-29-410(D) Post-construction treatments for subterranean termites (based on A.A.C. R4-29-410 (Joint Responsibility)).
2. That **Mr. Theodore Lafforthun, QP # 1310**, be issued an **Administrative Warning**, pursuant to A.R.S. § 32-2321(B)(2) (Disciplinary action), for a violation of A.R.S. § 32-2324 (Wood Infestation Reports), A.A.C. R4-29-413(A)(11) (Wood infestation reports; information required) and A.A.C. R4-29-410(D) Post-construction treatments for subterranean termites (based on A.A.C. R4-29-410 (Joint Responsibility)).
3. That **Applicator Jeremy Youngquist** be issued an **Administrative Warning**, pursuant to A.R.S. § 32-2321(B)(2) (Disciplinary action), for a violation of A.R.S. § 32-2324 (Wood Infestation Reports), A.A.C. R4-29-413(A)(11) (Wood infestation reports; information required) and A.A.C. R4-29-410(D) Post-construction treatments for subterranean termites (based on A.A.C. R4-29-410 (Joint Responsibility)).

NOTE: Attorney Gregg Thurston representing the Business License, Qualifying Party, and Applicator, agreed to the proposed terms. Staff was unable to contact Applicator Milroy George Kellogg (CERT. # 990609, EXPIRED 5/31/02) due to the fact, that there is no evidence he still in the pest control industry.

Staff's Recommendation: Staff recommends that the terms be accepted as proposed and that the issue involving Applicator Milroy George Kellogg be sent to the Office of

Administrative Hearings.

Staff further recommends that the violations regarding the business license, the qualifying party and Applicator Youngquist be backdated to March 9, 2001.

(A settlement conference was held on 2/27/01. This case should have been presented at the March 9, 2001 Commission Meeting.)

3. Tucson Exterminating - Case # 1998-018 TAB 18

The complaint alleges Qualifying Party Mr. Troit Stowe completed an improper Wood Infestation Report.

The Investigator did not document any violations.

Staff's Recommendation: Dismissal

4. Timothy Fickett - Case # 2003-082 TAB 19

This case was presented during the June 13, 2003 Commission Meeting. The Complaint contains allegations of violations resulting from Applicator Timothy Fickett completing the work of structural pest control without the benefit of a license. Furthermore, while performing the unlicensed activity, Mr. Fickett sold a consumer (Dr. Krishnan Bala) a bait station, he described (verbal and written) as Sentricon. However, the bait station was actually First Line. A settlement conference was originally conducted on June 30, 2003. Mr. Fickett agreed to a penalty of \$900.00.

However, at the June 13, 2003 Commission Meeting, the Commissioners informed Compliance/Enforcement Staff that the Civil Penalties did not match the severity of the violations. Commissioner Baker expressed his opinion of a Civil Penalty of \$1,500.00 be issued against Mr. Fickett, which would be due within 30 days.

A telephone settlement conference was held on July 22, 2003, 11:30 a.m. Investigations Supervisor Craig and Inspector Wyatt Simons were present to represent the Commission. Mr. Fickett represented himself.

The following terms were proposed:

1. That **Applicator Timothy Fickett (CERT. #000471 (exp 5/02))** be issued a **Civil Penalty** in the amount of **\$750.00** and an Administrative Warning pursuant to A.R.S. §

32-2321(B)(2) (Disciplinary action), for violation of A.R.S. § 32-2325(1) and (2) (Unlawful acts). The Civil Penalty is due within 30 days of the Commission Order.

2. That **Applicator Timothy Fickett (CERT. #000471 (exp 5/02))** be issued a **Civil Penalty** in the amount of **\$500.00** and an Administrative Warning pursuant to A.R.S. § 32-2321(B)(3) (Disciplinary action) for violation of A.A.C. R4-29-301(B)(... falsification of any pesticide record). The Civil Penalty is due within 30 days of the Commission Order.

3. That **Applicator Timothy Fickett (CERT. #000471 (exp 5/02))** be placed on **Probation from August 22, 2003 to January 22, 2004**, whereby he must pre-report all termite treatment activity to the Commission.

NOTE: Mr. Fickett was agreeable to the terms as proposed. The combined Civil Penalty of \$1,250.00 is \$350.00 higher than the proposed terms of the previous settlement conference.

The Civil Penalty for unlicensed activity was changed from \$500.00 to \$750.00 due to the fact that as a certified applicator Mr. Fickett knew a business license was required to perform such work. The \$500.00 Civil Penalty and six-month probation for falsifying a termite record was based on the fact that the Matrix Enforcement Guidelines only recommends a Value of 4 for “willfully” violating a law. However, the act of falsifying a treatment record far exceeds a Value of 4. Therefore, Compliance/Enforcement staff views the act as a Value 8. Value 8 + Value 2 (general use pesticide) equals a value of 10. The Enforcement Matrix Guideline suggests a \$500.00 Civil Penalty for a value of 10 and probation.

Staff’s Recommendation: That the terms be accepted as proposed.

XI. Unlicensed Activity (Mr. Craig)

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 of not more than \$1,000.00 per violation, probation requirements, suspension or revocation. For matters involving unlicensed activity, the Commission may take action as set forth in A.R.S. § 32-2328(B), such as issuing a Cease and Desist Order and/or imposing a civil penalty of at least \$500.00 for the first offense and at least \$750.00 for a subsequent offense, without a Consent Agreement or Formal Hearing.

1. Central Home Spraying Services - Case # 2003-069 TAB 20

The Complaint contains allegations of violations resulting from Mr. Ferro performing the work of structural pest control without the benefit of a license.

The following terms were proposed:

1. That **Central Home Spraying and Robert M. Ferro** (jointly and severally) be issued a **Civil Penalty of \$750.00** and a **Cease and Desist Order** pursuant to A.R.S. § 32-2325(1) (Unlawful acts) for a violation of A.R.S. § 32-2321(B)(2) (Disciplinary action; grounds; procedure) and A.A.C. R4-29-208(A) (Qualifying party required). The Civil Penalty shall be paid within 30 days from the date of this Order.

NOTE: Mr. Ferro did NOT agree to the terms of the settlement conference.

The recommendation of a \$750.00 Civil Penalty opposed to \$500.00 is due to the fact that while Mr. Ferro never became certified, he was a registered employee for two different companies on various occasions over a total of thirty-one months.

Staff's Recommendation: Issue a Cease and Desist Order and a \$750.00 Civil Penalty against Central Home Spraying and Robert M. Ferro jointly and severally.

2. Horizons West Landscape Contractors - Case # 2003-024 TAB 21

The Complaint contains allegations of violations resulting from landscapers with Horizon West Landscape Contractors performing the work of structural pest control without the benefit of a license.

The following terms were proposed:

1. That **Horizons West Landscape Contractors and Mr. Norman Farmer** (jointly and severally) be issued a **Civil Penalty of \$750.00** and a **Cease and Desist Order** pursuant to A.R.S. § 32-2321(B)(2) (Disciplinary action; grounds) for a violation A.R.S. § 32-2325(1) (Unlawful acts) and A.A.C. R4-29-208(A) (Qualifying party required). The Civil Penalty shall be paid within 30 days from the date of this Order.

NOTE: Mr. Farmer agreed to the terms as proposed.

The recommendation of a \$750.00 Civil Penalty opposed to \$500.00 is due to the fact that Mr. Norman Farmer submitted a written statement stating that he was aware of the requirement of licensing.

Staff's Recommendation: Accept the terms as proposed.

3. The Pigeon Guy - Case # 2003-059 TAB 22

The complaint contains allegations that Mr. Frederick Payne III was performing the work of structural pest control without the benefit of a license. Mr. Payne owns and operates a business called The Pigeon Guy.

SPCC Staff has investigated this issue and learned that Mr. Payne was granted a bird exclusionary license from the State of Arizona Registrar of Contractors. The license costs Mr. Payne \$1,195.00 every two years. Both Mr. Payne and the Licensing representative from Registrar of Contractors assumed that all licensing requirements were met. Mr. Payne is the only individual whom the Registrar of Contractors has granted such a license.

Since the filing of this complaint, Mr. Payne is now working under a licensed pest control company and is in the process of obtaining his own business license.

Staff’s Recommendation: Dismissal

XII. Suspension/Revocation of Licenses (Mr. Craig)

ARS § 32-2321(F)(2) states “The certificate, license, qualification or registration may be suspended without a hearing if its holder fails within thirty days to: Pay civil penalties.”

ARS § 32-2321(H) allows the SPCC to automatically revoke a license, qualification or certificate that is suspended under paragraph (F) without a hearing after one year of suspension.

1. A Bedder Pest Control Services - Case # 2000-189 TAB 23

The Commission issued an Order on February 21, 2001, in Case # 2000-189 imposing \$1,200.00 in civil penalties to be paid within thirty (30) days from the effective date of the Order. The Business License to pay \$500.00 for Unlawful Acts, the Qualifying Party (Steven C. Barrett) to pay \$500.00 for Unlawful Acts, and the Business License to pay \$200.00 for applying a pesticide in a manner inconsistent with its product label.

There is a balance owed in the amount of \$1,200.00. As of July 22, 2003, no payment has been received.

Staff’s Recommendation: Suspend A Bedder Pest Control Company, Business License # C 4103 and Steven C. Barrett’s Qualifying Party License # 1318 B for failure to pay civil penalty fees.

2. Ant Brian’s Exterminating, Inc. - Case # 2002-084 TAB 24

The Commission issued an Order (per Consent Agreement) on November 21, 2002, in Case # 2002-084 imposing \$2,000.00 in civil penalties and \$1,456.00 for TARF fees and late TARF fees (Total amount owed \$3,456.00) to be paid at \$600.00 a month within six months from the effective date of the Order.

The following payments were made:

1. Check # 5248 in the amount of \$600.00, dated December 19, 2002;
2. Check # 5272 in the amount of \$600.00, dated January 24, 2003;
3. Check # 5306 in the amount of \$600.00, dated March 15, 2003;
4. Check # 5331 in the amount of \$600.00, dated April 25, 2003; and
5. Check # 5375 in the amount of \$600.00, dated June 12, 2003; however, this check was returned for insufficient funds. A letter was sent to Ant Brian's Exterminating on July 11, 2003, requesting \$600.00 plus a \$15.00 NSF fee. Ant Brian's Exterminating has 12 days from the notice to pay the full amount.

There is a balance owed in the amount of \$1,056.00. As of July 24, 2003, the remaining balance has not been paid.

Staff's Recommendation: Suspend Ant Brian's Exterminating, Business License # C 5531 BC and Mr. Brian Oldham's, Qualifying Party License # 2029 BC for failure to pay civil penalty fees, TARF fees and late TARF fees.

3. Evergreen Lawn Sprinklers - Case # 98-187 TAB 25

The Commission issued an Order (per Consent Agreement) on April 14, 2000, in Case # 98-187 imposing a \$500.00 civil penalty to be paid within thirty (30) days from the effective date of the order against each the Qualifying Party, Lee Bougneit and Applicator, Joseph Urbonas. Only the Business Licensee and the Q.P. signed the Consent; and the Commission signed it on April 14, 2000. The violation occurred on November 9, 1998. Mr. Urbonas was not a certified applicator until January 20, 1999. Therefore, the Commission had no jurisdiction over Mr. Urbonas to impose a civil penalty. Therefore, the Commission should issue a formal Amendment to the Order removing the applicator, Joseph Urbonas from the Consent Agreement and Order dated on April 14, 2000.

There is a balance owed in the amount of \$500.00 against the Q.P. As of July 24, 2003, no payment has been received.

Staff's Recommendation: Enter an Amended Order removing Mr. Urbonas from the present Order dated April 14, 2000, since the Commission did not have jurisdiction over

Mr. Joseph Urbonas and suspend Mr. Lee Bougneit's Qualifying Party License # 1947 EF for failure to pay \$500.00 in civil penalty fees.

4. No Bugs Allowed Termite & Pest Control - Case # 99-035 - OAH Case # 99A-035-SPC TAB 26

The Commission issued an Order on September 12, 2000, in Case 99-035 imposing \$11,496.00 in TARF fees, late fees and civil penalties. No Bugs Allowed Termite & Pest Control and Edward L. Manciet were to pay \$1,496.00 for TARF filing fees and late TARF fees to be paid within thirty (30) days from the effective date of the Order. No Bugs Allowed Termite & Pest Control and Edward L. Manciet were to pay a \$10,000.00 civil penalty to be paid within 120 days of the effective date of the Order. The Order further states that failure of No Bugs Allowed Termite & Pest Control and Edward L. Manciet to make the Ordered payments shall result in automatic revocation of the licenses and certificates.

There is a balance owed in the amount of \$11,496.00. As of July 22, 2003, no payments have been received.

Staff's Recommendation: Revoke No Bugs Allowed Termite & Pest Control, Business License # I 2431 BC and Edward L. Manciet's Qualifying Party License # 1161 BC for failure to comply with the Order in Case # 99-035.

XIII. For discussion, consideration and possible action. Request Suspension of Expired Business Licenses and Qualifying Party Licenses which have not Renewed (Mr. Tolton) TAB 27

A.R.S. § 32-2321 (F)(1) allows the Commission to suspend the license without a hearing if the licensee does not pay renewal fees within thirty (30) days.

XIV. For discussion, consideration and possible action. The Wood Infestation Inspection Form and a Fungi Inspection Form. (Mr. Martin)

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

XVI. For information and discussion, not action: Complaint Status Log (Mr. Craig)

XVII. Adjournment