

**NOTICE OF COMMISSION MEETING
FRIDAY, November 14, 2003
9:00 A.M.
Structural Pest Control Commission
9525 East Doubletree Ranch Road
Scottsdale, Arizona 85258-5514
www.sb.state.az.us**

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 (Chairperson), Commissioner roll call (Ms. Vazquez), Staff introductions (Ms. Gervase)**
- II. Approval of Minutes (Ms. Gervase)**

October 10, 2003 (regular session) Minutes. TAB 1

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

IV. Communication with Commissioners (Chairperson)

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

Current Proposed dates and locations

December 12, 2003Scottsdale, AZ
January 9, 2004. Scottsdale, AZ
February 13, 2004 Scottsdale, AZ
March 12, 2004Scottsdale, AZ
April 9, 2004 Scottsdale, AZ
May 14, 2004Scottsdale, AZ

VI. Consent Agenda (Ms. Gervase)

Items will be read and voted on in one group, except those pulled for discussion. Items pulled for discussion will be removed from the Consent Agenda and discussed as a regular agenda item upon the request of any Commissioner.

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. Bermpohl, William dba Unicorn Pest Control, LLC (Activating Qualifying Party for new business license in "B1" General Pest/Public Health) TAB 2
- 2. Brodie, Robert M. dba R & S Pest Control Services (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)

..... TAB 3

3. Burgess, Patrick H. dba Vistal Golf Club (Activating Qualifying Party for new business license in “B3” Right of Way/Weed Control and “B5” Turf and Ornamental) TAB 4

4. Conn, George A. dba Conn Pest Control - Flagstaff, LLC (Activating Qualifying Party for new business license in “B1” General Pest/Public Health, “B2” Wood Destroying Insect Control, “B3” Right of Way/Weed Control, “B4” Fumigation, “B5” Turf and Ornamental, and “B8” Wood Destroying Insect Inspection) TAB 5

5. Dawson, Patrick E. dba Centurion Environments, LLC (Activating Qualifying Party for new business license in “B1” General Pest/Public Health, “B2” Wood Destroying Insect Control, and “B8” Wood Destroying Insect Inspection) TAB 6

6. Ford, Jeffrey Lynn dba X-treme Exterminating (Activating Qualifying Party for new business license in “B1” General Pest/Public Health) TAB 7

7. Gorsuch, Charles T. dba Superior Weed & Pest Control, LLC (Activating Qualifying Party for new business license in “B1” General Pest/Public Health, “B3” Right of Way/Weed Control, and “B5” Turf and Ornamental) TAB 8

8. Kirkland, Brian K. dba Above & Beyond Exterminating (Activating Qualifying Party for new business license in “B1” General

Pest/Public Health, "B2" Wood Destroying Insect Control, and "B8" Wood Destroying Insect Inspection)
..... TAB 9

9. McWilliams, Dickie Lee dba Conn Pest Control - Verde Valley, LLC
(Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Wood Destroying Insect Control, "B4" Fumigation, "B5" Turf and Ornamental, and "B8" Wood Destroying Insect Inspection) ... TAB 10

10. Schultz, Barry dba All Statewide Termite & Pest Control
(Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Wood Destroying Insect Control, and "B8" Wood Destroying Insect Inspection)
..... TAB 11

11. Shelton, Arnold B. dba Conn Pest Control - Prescott, LLC
(Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Wood Destroying Insect Control, and "B8" Wood Destroying Insect Inspection)
..... TAB 12

12. Skiba, Jeffrey R. dba Grand Canyon Pest Control, Inc.
(Activating Qualifying Party for new business license in "B1" General Pest/Public Health, "B2" Wood Destroying Insect Control, and "B8" Wood Destroying Insect Inspection)
..... TAB 13

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

1. Agius, Dennis G. dba Cherokee Exterminating (Activating Qualifying Party for existing business

license in "B3" Right of Way/Weed Control and "B5" Turf and Ornamental) TAB 14

- 2. Crook, William J. dba North Valley Pest Control (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf and Ornamental) TAB 15
- 3. Davis, Jerome dba Zap Pest Control, Inc. (Activating Qualifying Party for existing business license in "B1" General Pest/Public Health). TAB 16
- 4. Montano, Manuel A. dba Alhambra School District # 68 (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf and Ornamental) TAB 17
- 5. Spohn, Jeffrey Alan dba Arizona Public Service (Activating Qualifying Party for existing business license in "B3" Right of Way/Weed Control and "B5" Turf and Ornamental) TAB 18
- 6. Tomlinson, Susan Dale dba North Country Pest Management (Activating Qualifying Party for existing business license in "B1" General Pest/Public Health) TAB 19

For Qualifying Party applicants, Temporary Qualifying Party applicants, renewal applicants and name change requests, if applicants do not appear and the Commissioners have questions those applications may be denied or tabled to a future meeting. An applicant that the Commission approves 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 reconsideration.

C. Applicants for QP Testing (Mr. Tolton)

- 1. Chavez, Jr., Roberto “B8” (Wood Destroying Insect Inspection) TAB 20
- 2. Cota, Sr., Mario Acuna “B3” (Right of Way/Weed Control) TAB 21
- 3. Dohert, Gary K. “B1, B2 and B4” (General Pest/Public Health, Wood Destroying Insect Control, and Fumigation) TAB 22
- 4. Klafehn, Joseph W. “B1” (General Pest/Public Health) TAB 23
- 5. Price, Barry Paul “B1” (General Pest/Public Health) TAB 24

D. Request for Company Name Change (Mr. Tolton)

- 1. Horticulture Management Systems to HMS Landscapes, Inc. TAB 25

End of Consent Agenda

VII. Applicant for Qualifying Party Testing (not on Consent Agenda) (Mr. Tolton)

- 1. Emmord, Jr., Ralph F. “B5” (Turf and Ornamental) TAB 26

VIII. Felony Applicants (Mr. Tolton)

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

- 1. Bates, John Andrew TAB 27
- 2. Cromley, Gary Dean TAB 28
- 3. Robinson, Jackie R. TAB 29
- 4. Robles, Eduardo Lopez TAB 30
- 5. Speir, Ronald D. TAB 31
- 6. Thrasher, Jason TAB 32

IX. 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 up to \$1,000.00 per violation, probation requirements, suspension or revocation. This action may be taken pursuant to a Consent Agreement or a matter may be sent to a Formal Hearing. The Commission may issue an advisory letter pursuant to A.R.S. § 32-2321(N). A matter also may be continued for further investigation.

If 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. Pro-Best Exterminating, Inc. - Case # 2003-060 TAB 33

The complaint alleges violations resulting from Mr. Jerry Probst failing to note conditions conducive (stucco below grade) when issuing, what formerly was known as, a wood infestation report ("WIR"). The complainant alleged that Mr. Probst failed to inspect storage rooms in the home. According to Mr. Probst, the storage rooms were locked and the inaccessibility of the rooms was noted on the WIR. The consumer located termite activity in the locked rooms. On October 6, 2003, Mr. Probst performed a spot treatment to the uninspected areas of the structure.

Mr. Jerry Probst, Applicator and Vice President, and Ms. Donna Probst, Qualifying Party and President, agreed to the following proposed terms:

1. That **Pro-Best Exterminating, Inc., Business License # 3058**, be issued an **Administrative Warning** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for violations of A.R.S. § 32-2321(B)(2) (Violating rules) and A.A.C. R4-29-413 (A)(12) (Listing conditions conducive)(due to A.A.C. R4-29-104 (Joint Responsibility)), and A.R.S. § 32-2324(D) (Accuracy of an inspection).
2. That **Ms. Donna Probst, Qualifying Party License # 633**, be issued an **Administrative Warning** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for violations of A.R.S. § 32-2321(B)(2) (Violating rules), and A.A.C. R4-29-413 (A)(12) (Listing conditions conducive), (due to A.A.C. R4-29-104 (Joint Responsibility)).
3. That **Mr. Jerry Probst, Applicator License # 810072**, be issued an **Administrative Warning** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for violations of A.R.S. § 32-2321(B)(2) (Violating rules) and A.A.C. R4-29-413 (A)(12) (Listing conditions conducive).

4. That **Pro-Best Exterminating, Business License # 3058**, perform a **complete treatment** to Ms. Janet Anderson's home, issue a **one year warranty** and provide the SPCC a record of the treatment within 30 days of the Commission Order.

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

X. Unlicensed Activity (Mr. Craig)

The Commission may discuss, consider and take action on any matter below. The Commission may take action such as issuing a Cease and Desist Order and/or imposing a civil penalty of at least \$500.00 for the first offense and at least \$750.00 for a subsequent offense, according to former statute A.R.S. § 32-2328(B). For acts occurring after 9/17/03, the civil penalty amounts are: up to \$1,000 for the first offense and up to \$2,000 for a subsequent offense, according to A.R.S. § 32-2304(B)(16). Action may be taken by direct Commission Order without a Consent Agreement or Formal Hearing.

1. Dionicio Alvarez - Case # 2003-105 TAB 34

The Complaint alleges violations resulting from Mr. Alvarez performing the work of structural pest control without the benefit of a license, and misuse of a pesticide.

On 9-15-03, Mr. Alvarez applied rodent bait to the roof of a condominium. The application was reported by a pest control company who serviced the condominium. The label of the rodent bait specifically prohibits "exposing" the product in a manner that could lead to non-target animals accessing it. While the SPCC found no evidence to indicate that non-target animals consumed the bait, Mr. Alvarez exposed the bait on the roof in a manner where it could be consumed by birds. On 10-8-08, in consultation with E.P.A. Enforcement representative Allan Demorest, the SPCC staff determined that Mr. Alvarez's actions constituted a "misuse" of the pesticide product, based on the label. Mr. Alvarez alleged he was not aware of the licensing requirements, nor that his actions constituted a misuse.

Mr. Alvarez agreed to the following proposed terms:

1. That Mr. Dionicio Alvarez be issued a **Cease and Desist Order and a Civil Penalty of \$500.00** pursuant to A.R.S. § 32-2328(B) (Unlicensed structural pest control).
2. That Mr. Dionicio Alvarez be issued a **Civil Penalty of \$200.00** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for violating A.R.S. § 32-2321(B)(2) (Violating rules) and

A.A.C. R4-29-301(A) (misuse of any pesticide).

NOTE: Due to financial hardships, Mr. Dionicio Alvarez requested that the penalty be divided into three monthly payments (\$233.00, \$233.00 and \$234.00), the first payment to be paid within thirty (30) days of the effective date of the Order and the subsequent payments to be made monthly thereafter.

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

2. Fred Morales - Case # 2003-110 TAB 35

The Complaint alleges violations resulting from Mr. Morales providing an employee of his hair salon with a compressed air sprayer containing Diazinon, and verbal recommendations on how to treat her home for lice, on 9/19/03. This treatment resulted in the employee allegedly suffering adverse health affects. While medical records do not substantiate that the person's illness was a result of the application, the alleged adverse health affects could potentially be, in part, due to Mr. Morales' verbal recommendations.

Mr. Morales alleges that he was unaware that verbal recommendations constituted performing the work of structural pest control.

The following term was proposed:

- 1. That Mr. Fred Morales be issued a **Cease and Desist Order** pursuant to A.R.S. § 32-2304(B)(16)(a) (Unlicensed structural pest control).

NOTE: While Compliance/Enforcement Staff did not propose a Civil Penalty to Mr. Morales, he was informed that the Commission may impose such a fine.

Staff's Recommendation: Issue a Cease and Desist Order against Mr. Fred Morales.

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

- A. **Complaint Status Log** (Notebook pocket item)
- B. **Inquiry Status Log** (Notebook pocket item)

XII. For information and discussion and action (Mr. Martin)

- A. **Fungi Inspection Report TAB 36**
- B. **Continuing Education Committee Minutes**

- XIII. For information and discussion, not action (Mr. Martin)**
 - A. Computer Based Testing “CBT” Status and Statistics TAB 37**

- XIV. For information and discussion and action (Ms. Gervase):**
 - A. Termite Treatment Depth of Footer Rule - Proposed Substantive Policy Statement TAB 38**

- XV. For information and discussion, not action (Ms. Gervase):**
 - A. Budget (Notebook pocket item)**
 - B. Case Status Report (Notebook pocket item)**
 - C. Executive Session Minutes - Handling and Maintaining**
 - D. TARFs - status of CompuTAR software interfacing with various business management software**
 - E. Applicator License Renewals - Researching capability for on-line renewals for May 2004**
 - F. Business License and Qualifying Party Renewals**
 - Due December 2003**
 - Continue to have list of Applicator employees**

- XVI. Adjournment**