

**NOTICE OF COMMISSION MEETING
FRIDAY, October 10, 2003
9:00 A.M.
Pima County Administration Building
Board of Supervisor's Hearing Room
130 West Congress, First Floor
Tucson, AZ 85701**

Directions: From I-17 south or I-10 south to Tucson:

Exit #258 toward Congress St./Broadway. Left on West Congress St. Slight right onto West Broadway Blvd. Left on South Church Ave. Left on West Congress St.

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 Minutes (Ms. Gervase)

September 12, 2003 (regular session) Minutes. **TAB 1**

September 12, 2003 (executive session) Minutes (Notebook pocket item)

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

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

VI. Consent Agenda (Ms. Gervase)

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)

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|--------------------------------|------------|---|
| 1. Fowler, R. Gene | dba | Move ‘Em Out Pest Control (Activating Qualifying Party for new business license in “B1” General Pest/Public Health and “B3” Right of Way/Weed Control) TAB 2 |
| 2. LeDune, Michael L. | dba | Mike’s SWAT Team, Inc. (Activating Qualifying Party for new business license in “B1” General Pest/Public Health) TAB 3 |
| 3. Stratton, Bradley G. | dba | Mike’s SWAT Team, Inc. (Activating Qualifying Party for new business license in “B2” Wood Destroying Insects and “B8” Wood Destroying Insect Inspection) TAB 4 |

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

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|-------------------------------|------------|--|
| 1. Buxton, John E. | dba | DSR Termite & Pest Control (Activating Qualifying Party for existing business license in “B1” General Pest/Public Health) TAB 5 |
| 2. Cranston, Laurel J. | dba | All-The-Scapes (Activating Qualifying Party for existing business license in “B5” Turf & Ornamental Horticulture) . . TAB 6 |
| 3. Hageman, Edward E. | dba | Ecolab Pest Elimination Division (Activating Qualifying Party for existing business license in “B1” General Pest/ Public Health, “B2” Wood Destroying Insects, “B3” Right of Way/Weed Control, and “B4” Fumigation) TAB 7 |
| 4. Hughes, Abe R. | dba | Desert Pest Control (Activating Qualifying Party for existing business license in “B3” |

Right of Way/Weed Control) TAB 8

- 5. Miller, Ernest dba Rec. Centers of Sun City West (Activating Qualifying Party for existing business license in “B3” Right of Way/Weed Control and “B5” Turf & Ornamental Horticulture) TAB 9

- 6. Sneer, Scott Loren dba Proven Ecological (Activating Qualifying Party for existing business license in “B1” General Pest/Public Health) TAB 10

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 reconsideration.

C. Applicants for QP Testing (Mr. Tolton)

- 1. Derryberry, Joseph L. “B1, B2, B4, and B8” (General Pest/Public Health, Wood Destroying Insects, Fumigation, Wood Destroying Insect Inspection) TAB 11

- 2. France, Scott M. “B1, B2, & B8” (General Pest/ Public Health, Wood Destroying Insects, and Wood Destroying Insect Inspection) TAB 12

- 3. Herndon, Robert J. “B2” (Wood Destroying Insects) TAB 13

- 4. Hoover, Jr.; William C. “B1” (General Pest/Public Health) TAB 14

- 5. Kaufman, Russell W. “B1, B2, and B8” (General Pest/ Public Health, Wood Destroying Insects, and Wood Destroying Insect Inspection) TAB 15

- 6. Loreng, Edward C. “B3 and B5” (Right of Way/Weed Control and

Turf Ornamental Horticulture) TAB 16

7. Potkonjak, Nikola “B1 and B2” (General Pest/Public Health and Wood Destroying Insects) TAB 17

8. Schmeits, Larry T. “B1, B2, and B5” (General Pest/Public Health, Wood Destroying Insects, and Turf & Ornamental Horticulture) TAB 18

9. Welsch, Frederick T. “B3 and B5” (Right of Way/ Weed Control and Turf & Ornamental Horticulture) TAB 19

10. Willingham, Keith “B1 and B4” (General Pest/Public Health and Fumigation) TAB 20

11. Wilson, Erik R. “B3” (Right of Way/Weed Control) TAB 21

12. Zimmerman, Robert J. “B5” (Turf & Ornamental Horticulture) TAB 22

D. Request to Broaden Qualifying Party (Mr. Tolton)

1. Hageman, Edward E. “B5” Turf & Ornamental Horticulture TAB 23

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

1. DSR Termite & Pest Control to DSR Pest Management TAB 24

End of Consent Agenda

VII. Request for Temporary Qualifying Party Renewal not on the Consent Agenda (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. Henderson, Jason P. dba A Bee & Pest Pro TAB 25

- 2. Hunt, Steven Carl dba S & B Pest Technologies TAB 26
- 3. Kaufman, Russell W. dba Terminix Commercial TAB 27
- 4. Lentini, John T. dba Common Sense Pest Management
..... TAB 28

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 29
- 2. Dains, David TAB 30
- 3. Hodgson, Kevin Brent TAB 31
- 4. Jarrell, Barry Wayne TAB 32
- 5. Jones, Peter TAB 33
- 6. Mansfield, Charles Mark TAB 34
- 7. Setla, David R. TAB 35

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 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 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. Arizona Rainfall - Case 2003-022 TAB 36

The Complaint contains allegations of violations resulting from Applicator Karold Harper performing a pine tree application in a manner where the pesticide came into contact with a resident's home. The closest tree being treated was 15 feet from the non-targeted home. Samples taken by SPCC Staff substantiate the drift.

The following terms were proposed to:

1. That **Arizona Rainfall** (Mr. John Gerodimas, owner), **BUS LIC # 5502**, be issued an **Administrative Warning** and a **Civil Penalty of \$200.00 (due within 30 days of the Commission Order)** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(2) (violating rules) and A.A.C. R4-29-301(A) (misuse of any pesticide) (due to A.A.C. R4-29-104 (Joint Responsibility)).
2. That **Mr. John Gerodimas, QP LIC # 2001**, be issued an **Administrative Warning** and a **Civil Penalty of \$200.00 (due within 30 days of the Commission Order)** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(2) (violating rules) and A.A.C. R4-29-301(A) (misuse of any pesticide) (due to A.A.C. R4-29-104 (Joint Responsibility)).
3. That **Mr. Karold Harper, APP LIC # 020647**, be issued an **Administrative Warning** and a **Civil Penalty of \$200.00 (due within 30 days of the Commission Order)** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(2) (violating rules) and A.A.C. R4-29-301(A) (misuse of any pesticide).

NOTE: Misters Gerodimas and Harper agreed to the terms as proposed.

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

2. Contractor's Pest & Termite - Case 2003-086 & 2003-086-APP TAB 37

The Complaint contains allegations of violations resulting from Applicator Spude shorting a pretreat application by 24 ½ gallons. SPCC calculations indicate the pretreatment required 138.50 gallons. Mr. Spude applied 114 gallons. Training records were provided after the complaint was filed.

Training records substantiate that Mr. Spude should have known how to calculate the gallons required. Mr. Spude has stated that the violation was a mathematical error. The company alleges that no training could have prevented a mathematical error. The company has applied additional gallons to rectify the shortage.

The following terms were proposed to:

1. That **Mr. Ramon Spude, APP LIC # 010018**, be issued an **Administrative Warning** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(2) (violating rules), A.A.C. R4-29-301(A) (misuse of any pesticide) and A.A.C. R4-29-402 (not applying proper quantity, strength and dosage).

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

Staff's Recommendation: That the complaint against Contractor's (2003-086) be dismissed and the terms regarding Mr. Spude (2003-086-APP) be accepted as proposed.

3. Timothy Fickett - Case 2003-099 TAB 38

The Complaint contains allegations of violations resulting from Mr. Timothy Fickett performing the work of structural pest control without the benefit of a license. On **8-21-03**, Mr. Fickett performed a termite treatment and issued a fraudulent termite warranty, despite the fact that he did not possess the license to honor the warranty.

Mr. Fickett is a licensed applicator and is fully aware of the laws governing the work of structural pest control.

This is the second occasion in which Mr. Fickett has performed the work of structural pest control without the benefit of a license and issued a fraudulent pesticide record. On **7-22-03**, less than thirty days prior to this violation, Mr. Fickett agreed to a \$1,250.00 Civil Penalty and a Cease and Desist Order for a similar violations in connection with a different case (Case #2003-082).

The following terms were proposed:

1. That Mr. Timothy Fickett be issued a **Civil Penalty of \$1,000.00 (due within 30 days of the Commission Order)** pursuant to A.R.S. § 32-2328(B) (Unlicensed structural pest control). Note: Mr. Fickett was issued a Cease & Desist Order in the matter on September 18, 2003.

2. That Mr. Timothy Fickett, **LIC APP # 020865**, be issued an **Administrative Warning and a Civil Penalty of \$500.00 (due within 30 days of the Commission Order)** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(2) (violating the rules), A.A.C. R4-29-301 (making a fraudulent pesticide record).

3. That Mr. Timothy Fickett, **LIC APP # 020865**, be issued an **Administrative Warning and a Civil Penalty of \$800.00 (due within 30 days of the Commission Order)** and his license be **SUSPENDED for sixty (60) days** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2325(1) and (2) (Engaged in the business of structural pest control without a business license or qualifying party license).

NOTE: Mr. Fickett did NOT accept the terms as proposed.

Staff's Recommendation: 1. That Mr. Fickett be issued a **\$1000.00 Civil Penalty** for a violation of A.R.S. 32-2328(B) (Unlicensed Pest Control Activity).

And

2. That this case be sent to the Office of Administration Hearings to address the violations of A.R.S. § 32-2325(1) and (2) (Engaged in the business of structural pest control without a business license or qualifying party license) and A.A.C. R4-29-301 (making a fraudulent pesticide record).

4. G&H Pest Control - Case 2003-106 TAB 39

The Complaint contains allegations of violations resulting from Mr. Archambo applying Siege Pro pesticide granules on a patio dining area of a Sonic Drive Inn Restaurant. Mr. Archambo assumed it was not a violation since the label did not prohibit such an application. However, the label does not allow such an application. Furthermore, A.A.C. R4-29-304 prohibits exposed granules on patios, walkways and floors.

The following terms were proposed:

1. That **G&H Pest Control** (Mr. Peter Archambo, owner), **BUS LIC # 5395**, be issued an **Administrative Warning** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(2) (violating rules) and A.A.C. R4-29-304(D) (granules on patios), (due to A.A.C. R4-29-104 (Joint Responsibility)).

2. That **Mr. Peter Archambo, QP LIC # 1851**, be issued an **Administrative Warning** and a **Civil Penalty of \$200.00 (due within 30 days of the Commission Order)** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of

A.R.S. § 32-2321(B)(2) (violating rules) and A.A.C. R4-29-304(D) (granules on patios) (due to A.A.C. R4-29-104 (Joint Responsibility)).

3. That **Mr. Peter Archambo, APP LIC # 810142**, be issued an **Administrative Warning** and a **Civil Penalty of \$200.00 (due within 30 days of the Commission Order)** pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(2) (violating rules) and A.A.C. R4-29-304(D) (granules on patios).

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

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 as set forth in A.R.S. § 32-2328(B), [former statute] 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. Hunter Creek Ranch Homeowner's Association - Case 2003-091 TAB 40

The Complaint contains allegations of violations resulting from residents of the HCRHO performing the work of structural pest control without the benefit of a license. Mr. Bayles and other residents were treating their neighbors' pine trees. Mr. Bayles alleged that he would not have performed the work if the pesticide label prohibited applications by individuals who did not own or lease the property. Mr. Bayles refuses to acknowledge that the work performed by members of the association is unlicensed.

The following terms were proposed:

1. That Mr. Jim Bayles and Hunter Creek Ranch Homeowner's Association (jointly and severally) be issued a **Cease and Desist Order** and **Civil Penalty of \$500.00 (due within 30 days of the Commission Order)** pursuant to A.R.S. § 32-2328(B) (Unlicensed structural pest control).

NOTE: Mr. Bayles did NOT accept the terms as proposed.

Staff's Recommendation: That a Cease and Desist Order and a \$500.00 Civil Penalty be issued against Mr. Jim Bayles and Hunter Creek Homeowner's Association

jointly and severally.

2. Norstar Pest Control - Case 2003-084 TAB 41

The Complaint contains allegations of violations resulting from Mr. Eric Lund performing the work of structural pest control without the benefit of a license. Mr. Lund was aware of the licensing requirements as his company (Norstar Pest Control) was licensed one year prior to this violation.

Since the filing of this complaint, Mr. Lund has applied for and received a new qualifying party license and business license.

The following terms were proposed:

1. That Mr. Eric Lund and Norstar Pest Control (jointly and severally) be issued a **Civil Penalty of \$750.00 (due within 30 days of the Commission Order)** pursuant to A.R.S. § 32-2328(B) (Unlicensed structural pest control).

NOTE: Mr. Lund did accept the terms as proposed. Compliance/Enforcement Staff proposed \$750.00 (rather than \$500.00) due to the fact that Mr. Lund was a former industry member and was fully aware of the licensing requirements.

Staff's Recommendation: That a \$750.00 Civil Penalty be issued against Mr. Eric Lund and Norstar Pest Control jointly and severally.

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

XII. Recommended Decision an Order of Administrative Law Judge (Mr. Driggs)

1. **Casa Grande Exterminating, Inc. - OAH Docket # 99A-004-SPC/SPCC Case # 99-004 TAB 42**

2. **Christopher J. O'Brien - OAH Docket # 03A-073-SPC/SPCC Case # 2003-073 TAB 43**

XIII. For discussion, consideration and action: Felony Conviction by Licensed Applicator, Qualifying Party Licensee, and Business Licensee Hector Isidro Coronado (Mr. Francis) TAB 44

XIV. For discussion, consideration and action: Continuing Education Committee Minutes

October 2003 (Mr. Martin) TAB 45

XV. For information and discussion, not action: Computer Based Testing “CBT” Status and Statistics (Mr. Martin)

XVI. For information and discussion, not action: SPCC Budget, Case Status Report, and TARF Amnesty Report (Ms. Gervase)

XVII. Adjournment