

**NOTICE OF COMMISSION MEETING
THURSDAY, November 10, 2005, 9:00 A.M.**

**Structural Pest Control Commission
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258**

NOTICES

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

For people who need language interpretation services or a reasonable accommodation for a disability, please contact Michael Francis by email: mike@sb.state.az.us, fax: (602) 255-1281, mail: SPCC office address, or phone: (602) 255-3664.

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

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

Pursuant to A.R.S. § 38-431.03(A)(3), the Commission may vote to go into executive session to obtain legal advice for matters on the agenda. Pursuant to A.R.S. § 38-431.03(A)(2), the Commission may vote to go into executive session to discuss records exempt from public inspection. Pursuant to A.R.S. § 38-431.03(A)(1), the

Commission may vote to go into executive session to discuss personnel matters. Pursuant to A.R.S. § 38-431(A)(4), the Commission may vote to go into executive session to discuss pending or contemplated litigation. The executive session will not be open to the public.

All items except items I, II, III, and IV are subject to decision and vote by the Commission.

AGENDA

I. 9:00 A.M.: Call to order (Chairperson), Commissioner roll call (Mr. Bauer)

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

III. Communication with Commissioners (Chairperson)

IV. Summary of Current Commission Events, Activities, Notices (Ms. Gervase)

- ⇒ Business and QP License Renewals: Renewal forms mailed 10/28. **RENEW ON-LINE.**
- ⇒ Watch Web site for status of *Proposed* Law and Rule Changes. www.sb.state.az.us
- ✓ Chlorpyrifos Phase Out: Unlawful to use for pretreatments after 12/31/05. See web site notice for more details.
- ⇒ CEU (Continuing Education Units) and ILT (Initial Licensure Training) courses posted on web site. Registration: 480-CEU-SPCC; CEU@sb.state.az.us; 480-ILT-SPCC; ILT@sb.state.az.us

V. Consent Agenda

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

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

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

Qualifying Party

- 1. Doherty, Brian Scott** **Irish Pest Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**

- 2. Brown, III; Albert J.** **Beard Pest Control (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**

- 3. Beal, Jr.; Gary Lamoy** **Maximum Exterminating, Inc. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)**

- 4. Josephson, Kyle Sperry** **Sperry Pest Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**

- 5. Cons, Jr.; Joseph Robert** **Allscape Environmental, LLC. (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)**

- 6. Pearce, Terry Ray** **Nu-Treat Pest Services, LLC. (Activating Qualifying Party for new business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)**

- 7. Wagner, Robert Michael** **Nu-Treat Pest Services, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**

- 8. Michel, Ryan Troy Defense Pest Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)

- 9. Johnston, Janet B. Johnston's Pest Solutions (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

- 10. Lisonbee, Darrell L. Pest-X, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)

- 11. Mollerup, Kevin Regency Pest & Termite Services, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

- 12. Gloria, Peter Alfonso Convenient Termite & Pest Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

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

- 1. Hall, Ronald Paul Western Exterminator Company (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

- 2. Nabozny, Joseph Daniel Prime Pest Control, LLC. (Activating Qualifying Party for existing business license in "B2" Control of Wood-

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|------------------------------------|--|
| | Destroying Insects and "B8" Wood Destroying Insect Inspection) |
| 3. Watkins, Billy Wayne | Safeguard Pest Control, Inc. (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health) |
| 4. Sheffield, Allen Nalder | Preventive Pest Control, LLC. (Activating Qualifying Party for existing business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection) |
| 5. Busch, Donald | ABC Pest Control, Inc. (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health) |
| 6. Bradney, Gerald Kevin | City of Mesa: Parks (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health) |
| 7. Pisano, Jr.; Napoleon O. | Lawn Doctor Of Mesa (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control) |

For Qualifying Party applicants, Temporary Qualifying Party Applicants, renewal applicants, and name change requests, if applicants do not appear and the Commissioners have questions those applications may be denied or tabled to a future meeting. An applicant that the Commission approves for licensure is approved subject to passing required exams. Qualifying Party applicants are not placed on the Agenda until the Commission receives a background report.

C. Applications for Qualifying Party License (Mr. Tolton)

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|---------------------------|---|
| 1. Janz, Mark Paul | "B5" (Turf & Ornamental Horticulture) |
| 2. Olson, Karl Ed | "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture) |

3. Vollmer, Mary Lyn "B5" (Turf & Ornamental Horticulture)
4. Williams, Thomas Sayer "B3" (Right of Way & Weed Control)
5. Hixon, Mark Scott "B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)
6. Pedroza, Eliberto Rivas "B1" (General Pest & Public Health)
7. Sindelir, Jessy Ryan "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture)
8. Romero, Kenneth M. "B1" (General Pest & Public Health), "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture)
9. Holmes, Jr.; Larry C. "B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)
10. Sardina, Salvatore "B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)
11. Ingerston, Nicholas P. "B1" (General Pest & Public Health)

D. Business License Name Change Requests

None

End of Consent Agenda

VI. Applications not on Consent Agenda

A. Request for Temporary Qualifying Party License Renewals (Mr. Tolton)

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

1. Smoot, Michael “B1” (General Pest & Public Health), “B2” (Control of Wood-Destroying Insects) and “B8” (Wood Destroying Insect Inspection)

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

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

None

C. Applications for Qualifying Party License

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

None

VII. Complaints

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

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

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

A. PK'Z Pest & Termite Control (BL)/Patrick Ellis (President/QP/APP) - Case # 2005-032 (Mr. Craig)

This complaint contains allegations that on 2-24-05, Patrick Ellis, while performing a residential termite "pretreatment" in Prescott, Arizona, failed to apply the correct amount of termiticide to the linear footage. The site required 441.23 gallons. Mr. Ellis applied 288 gallons. This is a 166.44-gallon shortage. Patrick Ellis attributes the violation to lack of experience treating linear footage on floating slabs.

The following proposed resolution was reached:

1. That PK'Z Pest & Termite Control BUS LIC # 8185 be issued an Administrative Warning pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(1) & (4) (Violating Rules), to wit, A.A.C. R4-29-407(B) (Preconstruction treatments: Establishment of Barriers...)(... critical areas shall be treated at a rate of four gallons of chemical ... per ten linear feet for each foot of depth...).

2. That Patrick Ellis QP LIC # 8192 be issued an Administrative Warning pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(1) & (4)(Violating Rules), to wit, A.A.C. R4-29-407(B) (Preconstruction treatments: Establishment of Barriers...)(... critical areas shall be treated at a rate of four gallons of chemical ... per ten linear feet for each foot of depth...).

3. That Patrick Ellis APP LIC #000532 be issued an Administrative Warning, pay a \$300.00 Civil Penalty, perform a complete exterior treatment with Termidor via trenching and/or rodding to the subject property (that shall be monitored by an SPCC representative), extend the warranty on this property for two additional years and shall send the owner of the subject property and the SPCC evidence of the warranty extension, and obtain two (2) hours of Continuing Education in the category of Pretreatments beyond that required by statute (**due within 60 days of the Commission Order**) pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S. § 32-2321(B)(1) & (4) (Violating Rules), to wit, A.A.C. R4-29-407(B) (Preconstruction treatments: Establishment of Barriers...)(... critical areas shall be treated at a rate of four gallons of chemical ... per ten linear feet for each foot of depth...).

Commission's Options:

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

B. Conn Pest Control-Prescott, LLC. (BL)/Arnold Shelton (Member/QP)/Zachary Roush (APP) - Case # 2005-035 (Mr. Craig)

This complaint contains allegations that on 2-28-05, Zachary Roush performed a residential termite "pretreatment" in Prescott, Arizona. Mr. Roush shorted the site by 108.13 gallons, and falsified the pretreatment tag with a different application time and number of gallons of termiticide. Mr. Roush's whereabouts are unknown and on 9-13-05, his applicator license was suspended for failure to pay renewal fees.

Staff's Recommendation: Dismiss the complaint against the Business License and Qualifying Party License, and to dismiss the complaint without prejudice against Zachary Roush. His applicator license will automatically be revoked in 9/05. If he wants to activate his license, this complaint would be pursued against his applicator license.

Commission's Options:

1. **Accept** staff's recommendation in whole or in part; or
2. Send the matter to **hearing**.

C. James Kevin Gowin, Jr. (APP) - Case # 2005-037 (Mr. Craig)

This complaint contains allegations that on 2-28-05, Branch Manager James Kevin Gowin issued wood destroying insect inspection reports (WDIIRs) for two homes. Mr. Gowin failed to note evidence of termites, damage, and conditions conducive to termites (earth to wood contact and excessive cellulose debris). As a result of this, the company for which Mr. Gowin works performed exterior Termidor treatments for both homes and placed those homes under warranty.

The following proposed resolution was reached:

1. That **James Kevin Gowin Jr. APP LIC #010823** be issued an **Administrative Warning, pay a \$200.00 Civil Penalty, and obtain two (2) hours of Continuing Education in the category of Termite Inspections** beyond that required by statute (**due within 30 days of the Commission Order**) pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B) (1) (Violating rules), to wit, A.A.C. R4-29-413(A)(8, 9 & 12) (Wood infestation reports; information required) (A wood infestation report shall accurately list or report visible and accessible evidence of past or present infestation ... visible damage... visible conditions conducive).

Commission's Options:

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

D. TruGreen/Chemlawn, Inc. (BL)/Edward Loreng (President/APP) - Case # 2005-027 (Mr. Craig)

This complaint contains allegations that between about 8/03 and 2/05 (approximately 22 months), Edward Loreng of TruGreen/Chemlawn Inc. performed weed control services without a qualifying party license. As a result, his business license was invalid. Mr. Loreng alleged that he believed he was working under another company's business license by the name of Trugreen Lawncare. However, Mr. Loreng did not know the name of the qualifying party of the other business licensee, nor had he spoken with that qualifying party.

The following proposed resolution was reached:

1. That **Edward Loreng APP LIC #030355** be issued an **Administrative Warning and pay a \$2,200.00 Civil Penalty and obtain three (3) hours of Continuing Education(CE) in the category of Laws & Rules** beyond that required by statute (**due within 60 days of the Commission Order**). **The civil penalty shall consist of three (3) payments due on 12-27-05, 1-27-06 and 2-27-06. The first two payments shall be \$733.33 each. The last payment shall be \$733.34.** This is pursuant to A.R.S. § 32-2321(A) (Disciplinary action) for a violation of A.R.S. § 32-2321(B)(1) (Violating Laws), to wit, A.R.S. 32-2325(2) (Unlawful Acts) (A person shall not engage in the business of structural pest control...without a qualifying party...).

Commission's Options:

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

E. Timothy Gibbons (APP) - Case # 2005-057 (Mr. Craig)

This complaint contains allegations that on 7-14-05 and 7-15-05, Timothy Gibbons performed unlicensed pest control work. Mr. Gibbons alleged to SPCC staff that he was performing the work under licensed company Irish Pest Control. However, an interview with the qualifying party of Irish Pest Control revealed that Mr. Gibbons was not an employee and had asked that company's qualifying party to lie on his behalf.

The following proposed resolution was reached:

1. That **Timothy Gibbons APP LIC #030355** be issued an **Administrative Warning**, pay a **\$500.00 Civil Penalty**, and obtain **three (3) hours of Continuing Education in the category of Laws & Rules** beyond that required by statute (**due within 60 days of the Commission Order**). **The civil penalty shall consist of 2 payments of \$250.00 each. The first payment shall be due by 12-16-05; the second payment shall be due 1-16-06.** This is pursuant to A.R.S. § 32-2321(A) (Disciplinary action), for a violation of A.R.S § 32-2321(B) (1) (Violating Laws), to wit, A.R.S. 32-2325(1) & (2) (Performed pest control without a business license or qualifying party license).

Commission's Options:

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

F. Ronald Morales (APP) - Case # 2005-043 (Mr. Craig)

This complaint contains allegations that on 5-23-05 and 5-24-05, Ronald Morales performed unlicensed pest control work. Mr. Morales alleged to SPCC staff that he was only applying fertilizer (salt and water). However, video recordings show Mr. Morales applying pesticide around the perimeter of a window while wearing rubber gloves. Additionally, his business cards advertise "Integrated Pest Management...Rodent Control, Bee & Wasp Service". Mr. Morales is a former employee of Truly Nolen, and was soliciting Truly Nolen's customers.

The following proposed resolution was reached:

1. That **Ronald Morales APP LIC #000006** be issued an **Administrative Warning**, pay a **\$500.00 Civil Penalty**, and obtain **three (3) hours of Continuing Education in the category of Laws & Rules** beyond that required by statute (**due within 60 days of the Commission Order**). **The civil penalty shall consist of 2 payments of \$250.00 each.**

The first payment shall be due by 12-27-05; the second payment shall be due 1-27-06. This is pursuant to A.R.S. § 32-2321(A) (Disciplinary action) for a violation of A.R.S § 32-2321(B) (1) (Violating Laws), to wit, A.R.S. 32-2325(1) & (2) (Engaged in the business of structural pest control without a business license and qualifying party license).

Commission's Options:

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

VIII. Requests for Review or Rehearing of Previous Commission Decisions. (Ms. Gervase)

None

IX. Review or Rehearing of Previous Commission Decisions. (Ms. Gervase)

None

X. Consideration of Suspension of Business, Qualifying Party and/or Applicator Licenses for Non-payment of Civil Penalties and/or Nonpayment of Renewal Fees [Possible Dismissal of Cases without prejudice, if applicable]. (Ms. Gervase)

A. Litchfield Termite Division, LLC, dba Litchfield Termite Division, Business License No. 2483 (Issued 1/16/90; Suspended 7/19/05), and Kenneth Rael, Applicator License No. 880394 B1 B2 B8 (Issued 1/20/89; (Expires 5/31/06) - Case No. 2004-056 - Commission's consideration of Suspension of Kenneth Rael's Applicator License for nonpayment of civil penalty fees.

B. Charles Schulz, Applicator License No. 020928 B1 B2 B8 (Issued 12/31/02; Expired 5/31/04) - Case # 2004-085 - Commission's consideration of Suspension of Charles Loyd Schulz's Applicator License for nonpayment of civil penalties and renewal fees.

XI. Consideration of lifting Suspension of Business, Qualifying Party and/or Applicator Licenses. (Ms. Gervase)

None

XII. Recommended Decisions and Orders of the Office of Administrative Hearings' Administrative Law Judges. (Ms. Burns)

None

XIII. Settlement Proposals [not part of Complaints agenda item]. (Ms. Burns)

None

XIV. Consideration of Informal Settlement Conference proposed resolutions [for License Denial Applicants]. (Ms. Gervase)

None

XV. Reporting by Licensees on Probation. (Ms. Gervase)

- A. Robert J. Iovinelli, Applicator License # 050756 - Case No. 2005-030.** Mr. Iovinelli reports the status of his compliance with criminal probation and his employment. Mr. Iovinelli was granted a license pursuant to a consent agreement in August 2005.

XVI. Applicants with Criminal Convictions. (Mr. Tolton)

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

- A. Fountain, Derick James**
- B. Castro, Jorge Armando**
- C. Berry, Kyle Foremaster**
- D. Antinarelli, Ian Joseph**

XVII. Commission Updates and Reports.

- A. Draft Guidelines (Enforcement Response Policy - ERP) for Unlicensed Activity Cases (Mr. Francis/Mr. Craig).**
- B. Possible Future Law Changes (Ms. Gervase).**
- C. Possible Future Rule Changes (Ms. Gervase).**
- D. Complaint Status Log (Mr. Francis/Mr. Craig).**
- E. Computer Based Testing “CBT” Status and Statistics (Mr. Francis).**
- F. Expenditure Report - separate handout or verbal report (Ms. Gervase).**
- G. Case Status Report (Ms. Gervase).**
- H. *Gloria Kilian, dba Kilian’s Termite and Pest Control, Co., vs. Structural Pest Control Commission, Case No. C20053438* (Ms. Gervase).**

XVIII. Approval of Minutes. (Ms. Gervase)

- A. October 14, 2005 (regular session) Minutes**
- B. Continuing Education Minutes (Mr. Francis/Mr. Craig)**

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

Current Proposed dates

December 9, 2005
January 13, 2006
February 10, 2006
March 10, 2006
April 14, 2006
May 12, 2006
June 9, 2006
July 14, 2006

XX. Adjournment