



STATE OF ARIZONA

**Janet Napolitano**  
Governor

## **Structural Pest Control Commission**

9535 E. Doubletree Ranch Road  
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**Lisa Gervase**  
Executive Director

### **NOTICE OF COMMISSION MEETING THURSDAY, November 9, 2006, 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: [lgervase@sb.state.az.us](mailto:lgervase@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 Helen Turner by email: [hturner@sb.state.az.us](mailto:hturner@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 members will attend either in person or by telephone conference call to 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 business conducted in executive session is confidential.

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 (Ms. Villela)**

**II. Call to the public (Chairperson).** Each speaker is limited to five minutes. This is the time for the public to comment. Pursuant to A.R. S. Section 39-431.01(G), action (if any) taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism, or scheduling the matter for further consideration at a later date.

**III. Communication with Commissioners (Chairperson).** This is the opportunity for Commissioners who may be involved in decision-making to disclose any written communication or the substance of any verbal communication that occurred with an interested person outside the public meeting, including the name of the person with whom they communicated. This ensures public confidence that deliberations and decision are made in open meetings. If there are no disclosures, the assumption is that there were no such communications.

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

☞ Proposed Rule Changes. Also, watch web [www.sb.state.az.us](http://www.sb.state.az.us)  
Future Proposed Changes: Issue list being formed. Communicate ideas to Lisa Gervase

☞ ILT (Initial Licensure Training) courses posted on web site. Registration: 480-ILT-SPCC; [ILT@sb.state.az.us](mailto:ILT@sb.state.az.us)

☺ Business License and Qualifying Party License Renewals: Due by 12/1/06. On-line renewal system opened 11/1/06.

☺ Continuing Education Courses. SPCC's course schedule posted on web. Registration: 480-CEU-SPCC; [CEU@sb.state.az.us](mailto:CEU@sb.state.az.us)

✓ Inspections to note.

☞ Reports/Cases to note.

## 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 and Activating Qualifying Party License (Mr. Tolton)

<u>Business</u>	<u>Qualifying Party</u>
1. AZ Bug Free, LLC.	Jeffrey J. Slingluff ("B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood-Destroying Insect Inspection)
2. Crooked Tree Golf Course	Joseph Forden ("B3" Right-of-Way & Weed Control and "B5" Turf & Ornamental Horticulture)
3. No Bugz of Arizona, Inc.	James S. Saitman ("B1" General Pest & Public Health)
4. No Bugz of Arizona, Inc.	James G. Cummings ("B2" Control of Wood-Destroying Insects and "B8" Wood-Destroying Insect Inspection)
5. Mother Nature and Son's Pest Control	Michael Jason Robbins ("B1" General Pest & Public Health)

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

<u>Qualifying Party</u>	<u>Business</u>
1. Carle M. Staub	Custom Weed & Spray Service ( "B5" Turf & Ornamental Horticulture)

**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)**

1. Craig S. Collins	"B1" (General Pest & Public Health)
2. Shigeki Saimo	"B3" (Right-of-Way & Weed Control)
3. Alfredo Gonzalez, Jr.	"B1" (General Pest & Public Health)
4. Joe Botello	"B3" (Right-of-Way & Weed Control)

**D. Business License Name Change Requests**

1. Bug Babes Exterminating to Reliable Pest Control Services

**End of Consent Agenda**

**VI. Applications not on Consent Agenda**

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

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

1. Kenneth E. Stavely	"B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture)
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**B. Applications to activate Qualifying Party for New or Existing Business License (Mr. Tolton)**

None

**C. Applications for Qualifying Party License**

None

**D. Business License Name Change Requests**

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. For unlicensed activity other than weed control, the Commission may issue a Cease and Desist order and/or impose up to a \$1,000.00 civil penalty for the first offense and up to a \$2,000.00 civil penalty for the second/subsequent offense, according to A.R.S. § 32-2304(B)(16). For unlicensed activity involving weed control, the Commission may issue a written notice of correction for the first violation, impose a civil penalty of up to \$250.00 for the second violation, and impose a civil penalty of up to \$500.00 for the third or subsequent violation, according to A.R.S. § 32-2311(C). 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. Sol Design, LLC. (Unlicensed Company) - Case No. 2006-026**

This complaint contains allegations that on 3-24-06, Sol Design, LLC. contracted with a

Home Owner's Association in Tucson, Arizona to treat 38 olive trees at \$35.00 each, charging \$1,395.70 (tax included). While Edward Muniz (owner) states that he is unaware of any unlicensed activity and that all work is subcontracted, witness statements, interviews and an invoice indicate otherwise. This is the third case of unlicensed activity on the part of Sol Design, LLC. in the past 4 years. The respondent has failed to respond to the notification for a Settlement Conference.

**Commission's Options:**

The Commission may: Issue a Cease and Desist Order and/or Impose a Civil Penalty of not more than two thousand dollars for the second or subsequent occurrence.

**B. Justin Smith (APP) - Case No. 2006-037**

This complaint contains allegations that on 3-6-06, Sexton Pest Control directed Justin Smith to perform final grades to 16 homes in Tolleson, Arizona. However unbeknownst to the employer, Mr. Smith directed an unlicensed individual (the employer's termite trench and drilling laborer) to perform the final grades to the 16 homes, without any supervision. SPCC staff witnessed the laborer tagging the homes without applying any termiticide and falsifying the treatment tags. The employer was notified and the majority of the homes were treated the following day. Mr. Smith has refused to cooperate with SPCC staff. He has failed to respond to the complaint and has failed to respond to notification of a Settlement Conference.

**Commission's Options:** Send the matter to hearing.

**C. University Termite & Pest Control, Inc. (BL)/Richard Rupkey, II (QP)/Casey James Rose (APP) - Case No. 2005-073**

This complaint contains allegations of an applicator working past the time period in which he is required to be licensed. A treatment record for a weed control application using 2,4D was void of the actual percentages of mixed pesticides. During the investigation, Mr. Rose expressed that he was unsure of whether or not he actually applied 2,4-D. While Mr. Rose was licensed in the "B1" category, he was not licensed in the weed control category "B3". On 7-26-05, he applied to broaden into the "B3" category. However, he did not obtain a license in that category until 9-2-06. According to Law, Mr. Rose should have been licensed no later than 7-24-05.

**The following proposed resolution was reached:**

1. That **University Termite & Pest Control, Inc. BUS LIC # 4114** 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) (Violating laws/rules), via A.A.C. R4-29-301(B) (Treatment record is void of pesticide percentages); A.R.S. § 32-2312(H) (Applicator not licensed within thirty calendar days of beginning work) due to A.A.C. R4-29-104 (Joint Responsibility).

2. That **Richard Rupkey, II QP LIC # 1909** 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) (Violating laws), via A.R.S. § 32-2312(H) (Applicator not licensed within thirty calendar days of beginning work) due to A.A.C. R4-29-104 (Joint Responsibility).

3. That **Casey James Rose, APP LIC # 050529** 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) (Violating laws), via A.R.S. § 32-2312(H) (Applicator not licensed within thirty calendar days of beginning work).

**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 entire matter to hearing.

**D. University Termite & Pest Control, Inc. (BL)/Richard Rupkey, II (QP) - Case No. 2005-069**

This complaint contains allegations that University Termite & Pest Control, Inc. and Richard Rupkey, II failed to comply with four Commission Orders executed in early 2005 and failed to comply with a 24-hour records request.

**No agreement was reached.**

**Commission's Options:** Send the matter to hearing.

**E. Truly Nolen (BL)/Robert Hartley (QP) - Case No. 2005-086**

This complaint contains allegations that a Truly Nolen applicator misused a pesticide by applying it in a restaurant kitchen that was in operation, which is contrary to label requirements. Further investigation revealed that this applicator was working 3 months past the 90-day period in which he was required to be licensed. Additionally, another applicator (who previously held a license) was found working 1 month past the 90-day period to be licensed. A salesperson that made recommendations was working without

an applicator license and there was no direct supervision by licensed applicators over the unlicensed activity of the salesperson. No agreement was reached with the Business Licensee or Qualifying Party Licensee. A consent agreement was reached with the Applicator.

**Commission's Options:**

1. Return the matter to settlement conference based on stated factors and rationale; or
2. 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. Dennis L. Ray Applicator Licensee No. 030236 ("B1" Issued 3/17/03) (Expired 5/31/06) and ("B2 and B8" Issued 5/15/04) (Expired 5/31/06) - Commission's consideration of Suspension of Dennis L. Ray's Applicator License for nonpayment of civil penalties.

**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. Cornelius)**

A. Brian Wayne Oldham (QP & APP) dba Ant Brian Exterminating (BL) OAH Case #'s: 05A-075-SPC, 06A-031-SPC and 06A-009-SPC - SPCC Case #'s: 2005-075, 2006-031 and 2006-009.

- B. SOS Exterminating, Inc. (BL) Stephen F. Weber (QP) - OAH Case # 04A-160-SPC - SPCC Case # 2004-160.

**XIII. Settlement Proposals [not part of Complaints agenda item].**

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. Joseph D. Wilkerson, Applicator License No. 060328 - Case No. 2006-003. Mr. Wilkerson reports the status of his compliance with criminal probation, employment status and rehabilitation status. Mr. Wilkerson was granted a license pursuant to a consent agreement in February 2006.

**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. Anthony Moreno
- B. Tyrus C. Etheridge
- C. Nathaniel W. McAtee
- D. Ricardo F. Munoz

**XVII. Commission Updates and Reports; Miscellaneous Action Items.**

- A. Rules: Commission's consideration of any comments received during the formal comment period, oral comments, close of the rule making record, and adoption of the Proposed Rules (voted at the 7/25 and 8/1/06 Commission meetings) as Final Rules - e-mailed to Commissioners (10/31/06) (Ms. Gervase)
- B. None
- C. None

- D. Complaint Status Log (Mr. Francis/Mr. Craig)
- E. Computer Based Testing "CBT" Status and Statistics (Mr. Francis)
- F. Expenditure Report (Ms. Gervase)
- G. Case Status Report (Every other month) (Ms. Gervase)

**XVIII. Approval of Minutes and Continuing Education Programs**

- A. September 8, 2006 (regular session) Minutes (Ms. Gervase)
- B. October 13, 2006 (regular session) Minutes (Ms. Gervase)
- C. Continuing Education Program Applicants (Mr. Craig)

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

**Current Proposed dates**

- December 8, 2006**
- January 12, 2007**
- February 9, 2007**
- March 8, 2007**
- April 12, 2007**
- May 11, 2007**
- June 8, 2007**
- July 13, 2007**
- August 10, 2007**

**XX. Adjournment**