



STATE OF ARIZONA

Janet Napolitano
Governor

Structural Pest Control Commission

9535 E. Doubletree Ranch Road
Scottsdale, Arizona 85258-5514
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Lisa Gervase
Executive

NOTICE OF COMMISSION MEETING FRIDAY, September 8, 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: 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 Helen Turner by email: helen@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 (Mr. Francis)

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)

☞ Law Changes and Proposed Rule Changes. Also, watch web www.azleg.state.az.us and www.sb.state.az.us

*Laws: 9/21/06 effective date for limited weed control license exemption, notice of applications at child care facilities, limited utility employee license exemption.

*Current Proposed Rules: Anticipated GRRC agenda: 1/07.

*Future Proposed Changes: Issue list being formed. Communicate ideas to Lisa Gervase

✓ Applicator License Renewal status - Licensees who did not renew by July 29 must reapply - cannot be operating.

☞ ILT (Initial Licensure Training) courses posted on web site. Registration: 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 and Activating Qualifying Party License (Mr. Tolton)

| <u>Business</u> | <u>Qualifying Party</u> |
|---|--|
| 1. Pointman Pest Control | Mark S. Paterson ("B8" Wood-Destroying Insect Inspection) |
| 2. L & M Pest Control & Landscaping, LLC. | Mitchell Evan Stevens ("B1" General Pest & Public Health) |
| 3. Pro-Turf International, Inc. | Jeremie Matthew Smith ("B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture) |
| 4. Felix Pest & Inspection Services, LLC. | Ronald David Felix ("B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood-Destroying Insect Inspection) |
| 5. Bruce Burr Pest Control, LLC. | Bruce D. Burr, Jr. ("B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood-Destroying Insect Inspection) |

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|------------------------------|--|
| 6. MX Total Pest Control | Thomas L. Camp (“B1” General Pest & Public Health, “B2” Control of Wood-Destroying Insects, “B3” Right of Way & Weed Control “B5” Turf & Ornamental Horticulture and “B8” Wood-Destroying Insect Inspection) |
| 7. National Exterminating | Kelly Clark Denny (“B1” General Pest & Public Health) |
| 8. Independence Pest Control | Benjamin Joshua Denny (“B1” General Pest & Public Health) |
| 9. Freedom Exterminating | Claudia Ann Denny (“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. Dave Lannes (“B1” General Pest & Public Health) | A Busy Bee Removal Company |
| 2. Scott A. Anderson (“B3” Right of Way & Weed Control and “B5” Turf & Ornamental Horticulture) | Seville Golf & County Club |
| 3. Napoleon O. Pisano, Jr. (“B1” General Pest & Public Health) | Lawn Doctor of Mesa |
| 4. David Joseph Maskulka (“B3” Right of Way & Weed Control and “B5” Turf & Ornamental Horticulture) | CareScape, Inc. |
| 5. Marla Cauliene McCarroll (“B1” General Pest & Public Health) | HomeTeam Pest Defense, LLC. |
| 6. Thomas John Siegfried, Jr. (“B9” Aquatic Pest Control) | Flood Control District of Maricopa County |

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. Ronald David Felix | "B7" (Fungi Inspection) |
| 2. Jason M. Rogers | "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture) |
| 3. Brooks Elliot Crandell | "B1" (General Pest & Public Health) |
| 4. Robert J. Bartelme | "B1" (General Pest & Public Health) and "B5" (Turf & Ornamental Horticulture) |
| 5. Daniel W. Monson | "B3" (Right of Way & Weed Control) |
| 6. Daniel S. Heinrich | "B1" (General Pest & Public Health) |
| 7. Gregory T. Kahler | "B3" (Right of Way & Weed Control) |
| 8. Festus J. Kahn | "B1" (General Pest & Public Health) |

D. Business License Name Change Requests

None

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)

None

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

None

C. Applications for Qualifying Party License

- | | |
|-----------------------------|---|
| 1. Charles Michael Pfeiffer | "B3" (Right of Way & Weed Control) and "B5" Turf & Ornamental Horticulture) |
|-----------------------------|---|

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. 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. Contractors Termite & Pest Control (BL)/Kevin Etheridge (QP)/Douglas Pinnecker (QP) - Case No. 2005-076 (Mr. Craig)

This complaint contains allegations that on 1-9-02, the Business Licensee failed to perform a complete treatment on the third occurrence (within 5 years from the date of

the pretreatment). The complete treatment was not performed (to the exterior patio area and sunken living room) because it was against the company's policy to treat through expensive flooring and because of the consumer's desires. However, the company's treatment records did not clarify that a "full treatment" was not rendered and the circumstances. The consumer alleges she has never refused a complete treatment. On 8-2-06, the company completed the treatment based on the homeowner's preference, which was observed by SPCC staff.

The alleged violation did not occur when Douglas Pinnecker was serving as Qualifying Party (QP). Additionally, the violation of failing to treat on the third occurrence is a Business Licensee's responsibility. Therefore, SPCC staff recommends that this complaint be dismissed against the two QPs.

The following proposed resolution was reached:

1. That **Contractors, BUS LIC # 5184** 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 rules), to wit, A.A.C. R4-29-409© (Complete treatment not performed on 3rd occurrence).

Commission's Options:

1. **Accept** the proposed resolution and dismiss against the Qualifying Party Licenses of Kevin Etheridge and Douglas Pinnecker;
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. Polo Exterminating, LLC. (BL)/Zachariah Blankenship (QP & APP) - Case No. 2006-010 (Mr. Craig)

This complaint contains allegations that on 1-05-06, Zachariah Blankenship, Qualifying Party, failed to inspect the crawl space of a home which had three entry points and failed to note significant evidence of infestation conditions conducive to infestation, when he issued a Wood Destroying Insect Inspection Report (WDIIR) for the sale of a property in Prescott, Arizona.

The following proposed resolution was reached:

1. That **Polo Exterminating, Inc. BUS LIC # 8472** 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.R.S. § 32-2324© (Failed to note evidence of

infestation) and A.A.C. R4-29-413(A)(8)(12) (Failed to note evidence and damage from wood destroying organisms and conditions conducive).

2. That **Zachariah Blankenship QP LIC # 8349** be issued an **Administrative Warning, pay a \$300.00 Civil Penalty and obtain 2 hours of continuing education in the category of Laws, ,separate from that required for the purposes of license renewal, (due within 30 days of Commission Order)** 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. § 32-2314(G) (Failed to ensure training for WDI inspections).

3. That **Zachariah Blankenship APP LIC # 990023** be issued an **Administrative Warning, pay a \$900.00 Civil Penalty and obtain 3 hours of continuing education in the category of Termite Inspections, separate from that required for the purposes of license renewal, (due within 30 days of 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), via A.A.C. R4-29-413(A)(8) (Failed to note visible evidence), A.A.C. R4-29-413(A)(9) (Failed to note damage from wood destroying organisms) and A.A.C. R4-29-413(A)(12) (Failed to note 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.

C. Truly Nolen (BL)/Robert Hartley (QP)/Gary Utter (APP) - Case No. 2006-001 (Mr. Craig)

This complaint contains allegations that on 12-7-05, applicator Gary Utter performed a preconstruction treatment to a site located in Sierra Vista, Arizona. He treated the site without knowing the specific measurements. He applied 326 gallons of termiticide. Mr. Utter should have applied approximately 428 gallons. The applicator was trained on how to perform a proper pretreatment and recommends a dismissal against the business license and qualifying party license.

The following proposed resolution was reached:

1. That **Gary Utter, APP LIC # 970166** be issued an **Administrative Warning, pay a \$300.00 Civil Penalty and obtain 4 hours of continuing education (separate from that required for the purposes of license renewal; 3 hours in Measurements, Calculations, Pretreatments or Calibration and 1 hour in Laws) (due within 30 days of 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. R4-29-402 (Incorrect amount of termiticide applied to the site), A.A.C. R4-29-408(B) (Pretreat tag not completed) and A.A.C. R4-29-107(A) (Failed to respond to the complaint in writing).

Commission's Options:

1. **Accept** the proposed resolution and dismiss against the Business License and Qualifying Party License;
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. Executive High Reach Maintenance, Inc. (Unlicensed Company)/Richard Mead (Owner) - Case No. 2006-007 (Mr. Craig)

This complaint contains allegations that in early 2006, Richard Mead (Owner) advertised for pigeon control, installed devices and applied pesticides to control pigeons. Mr. Mead does not hold a Qualifying Party License or a Business License. While Mr. Mead has learned that such activity requires a license, he initially was reluctant to cease such work. Since the filing of this complaint Mr. Mead has successfully obtained his applicator license and has filed his qualifying party license application.

No proposed agreement was reached.

Commission's Options:

1. The Commission may: Issue a Cease and Desist Order and/or Impose a Civil Penalty of not more than one thousand dollars for the first offense. [SPCC staff recommends a Cease and Desist Order and no more than a \$250.00 Civil Penalty because of Mr. Mead's progress toward licensing].

E. Doyle Exterminating Co., Inc. (BL) - Case No. 2005-079 (Mr. Craig)

This complaint contains allegations that for the years of 2004 and 2005, the Business Licensee did not file Termite Action Report Forms (TARFs) for termite actions it completed. A 24-hour records request was sent to the company for the purposes of viewing all of the TARFs for a three year period. During a TARF audit, SPCC staff noted 471 termite actions that were more than 30 days old, yet not reported. Since the filing of this complaint 218 of those TARFs noted during the audit have been filed. An additional 112 TARFs, which were never provided during the audit, were also submitted. However, 253 of the 471 TARFs viewed during the audit remain outstanding.

The following proposed resolution was reached:

1. That **Doyle Exterminating Co., Inc. BUS LIC # 4017** be issued an **Administrative Warning** and file the **253 TARFs** in connection with this complaint (due within 30 days of the Commission Order) and that **Doyle Exterminating Co., Inc.** pay the **TARF fees and late fees totaling \$4,048.00** (due within 30 days of Commission Order (payment of TARF fees and late fees shall be made by cash, money order or cashiers check only) pursuant to A.R.S. § 32-2321(A)© (Disciplinary action) for a violation of A.R.S § 32-2321(B)(1) (Violating rules), via A.A.C. R4-29-309(A) (Failure to provide all termite records as required by the 24-hour records request) and A.A.C. R4-29-417(A) (Failed to submit TARFs). **If all the TARFs are not fully and timely submitted, and any of the TARF fees and late fees are not paid in full by the due date, the business license of Doyle Exterminating Co., Inc. will be SUSPENDED for thirty (30) days from the respective due date. If all the TARFs and TARF fees and late fees are not submitted and paid in full, within the thirty-day (30) suspension period, the business license of Doyle Exterminating Co., Inc. shall be REVOKED on the day after the 30-day suspension.**

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)

None

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. Miles)

None

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

None

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

None

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

None

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. Virgil Keith Kanuho

B. Alfred Manuel Ray Denogean

C. Rene Anthony Solano

D. Cornelio Hernandez, Jr.

E. Mitchell Prescott Steele

XVII. Commission Updates and Reports; Miscellaneous Action Items.

A. Ant Brian Exterminating (Business License No. 8369), Brian W. Oldham (Qualifying Party License No. 2029, Applicator License No. 940470)

Complaint 2006-031 (Ms. Gervase): Pursuant to A.R.S. § 32-2329, Commission's consideration of continuing the Summary Suspension of Ant Brian's Business License and Brian Oldham's Qualifying Party and Applicator Licenses.

- B. **Guillermo Sotelo, Applicator License No. 040825 - Case No. 2004-120 (Ms. Gervase):** Commission's consideration of a proposed amended consent agreement and order for Mr. Sotelo. Mr. Sotelo was issued a license pursuant to a consent agreement in September 2004, and was to report the status of his compliance with criminal probation, employment status and rehabilitation status. Mr. Sotelo violated the terms of that consent agreement, leading to a proposed Amended Consent Agreement and Order between Mr. Sotelo and SPCC staff for the Commission's consideration. Separate handout.
- C. None
- 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 (Every other month - last report 7/06) (Ms. Gervase)

XVIII. Approval of Minutes and Continuing Education Programs

- A. August 1, 2006 (rules session) Minutes (Ms. Gervase)
- B. August 14, 2006 (regular session) Minutes (Ms. Gervase)
- C. August 14, 2006 (executive session) Minutes - e-mailed to Commissioners 8/24/06 (Ms. Gervase)
- D. Continuing Education Program Applicants (Mr. Craig)

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

Current Proposed dates

October 13, 2006
November 9, 2006 (Thursday)
December 8, 2006
January 12, 2007
February 9, 2007

March 8, 2007
April 12, 2007
May 11, 2007
June 8, 2007

XX. Adjournment