



STATE OF ARIZONA

Structural Pest Control Commission

9535 E. Doubletree Ranch Road
Scottsdale, Arizona 85258-5514
(602) 255-3664 - (602) 255-1281 fax
<http://www.sb.state.az.us>

Janet Napolitano
Governor

Lisa Gervase
Executive Director

NOTICE OF COMMISSION MEETING FRIDAY, September 14, 2007, 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, 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, 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. Vallery).

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)

⇒**“MyAccount” system** - new licensee information management tool online – lets business and individual licensees update vitals information, review testing history, print renewal forms during renewal processing times, print licenses, allows businesses to add and delete applicator employees, and allows all licensees to reset their passwords - via the website www.sb.state.az.us. More features to come.

⇒New Schedule: CE (Continuing Education) courses posted on web site. Registration : 480-CEU-SPCC; <mailto:CEU@sb.state.az.us>

⇒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. Hardy Pest Control	Glenn K. Hardy "B1" (General & Public Health Pest Control)
2. Aggressive Coyote Pest Control	Michael R. Ball "B1" (General & Public Health Pest Control)
3. Scorpiontech Termite & Pest Control, Inc.	Dwight D. LeSueur "B1" (General & Public Health Pest Control), "B2" (Control of Wood-Destroying Insects) and "B8" (Wood-Destroying Insect Inspection)
4. Competition Pest Control	Christopher M. Winder "B1" (General & Public Health Pest Control)
5. Killco Pest Control	Kevin L. Kennedy "B1" (General & Public Health Pest Control)
6. Award Services	Lewis W. Bence "B3" (Right-of-Way & Weed Control)
7. Journey Pest Control, LLC.	John A. Bates "B1" (General & Public Health Pest Control)
8. 3 Brothers Weed Control, LLC.	Pedro Perez "B3" (Right-of-Way & Weed Control)
9. AZ Valley Wild	Glenn M. Reames "B1" (General & Public Health Pest Control)
10. Legacy Pest Control, LLC.	Adam D. Johnson "B1" (General & Public Health Pest Control)
11. Grounds Control, Inc.	Kenneth M. Romero "B3" (Right-of-Way & Weed Control)
12. FM Golf Holdings, LLC.	Michael W. Rothenberg "B3" (Right-of-Way & Weed Control) and "B5" (Turf & Ornamental Horticulture Pest Control)

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

<u>Qualifying Party</u>	<u>Business</u>
1. Barbara B. Gile	West Side Weed Control "B5" (Turf & Ornamental Horticulture Pest Control)

- | | |
|-----------------------|--|
| 2. Jousty M. Maglanoc | Apocalypse Termite & Pest Control “B2”
(Control of Wood-Destroying Insects) |
| 3. John F. Kennedy | Bison Golf & Country Club, LLC. “B3”
(Right-of-Way & Weed Control) and “B5”
(Turf & Ornamental Horticulture Pest
Control) |
| 4. Frank A. Sanchez | Black Jack Pest Control “B1” (General &
Public Health Pest Control) |
| 5. Michael E. Gibson | Agave Environmental Contracting, Inc.
“B5” (Turf & Ornamental Horticulture Pest
Control) |
| 6. Jason R. Hopkins | Alert Pest Control “B1” (General & Public
Health Pest Control) |
| 7. Tim D. Powell | Schendel Services, Inc. “B1” (General &
Public Health Pest Control) and “B4”
Fumigation |

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. Brian L. Walker | “B1” (General & Public Health Pest Control) |
| 2. Gary D. Slone | “B3 (Right-of-Way & Weed Control) and “B5”
(Turf & Ornamental Horticulture Pest Control) |
| 3. Adrian Moreno | “B3 (Right-of-Way & Weed Control) |
| 4. Keven D. Connolly | “B1” (General & Public Health Pest Control),
“B2” (Control of Wood-Destroying Insects)
and “B8” (Wood-Destroying Insect
Inspection) |
| 5. Donald D. Aswegan, Jr. | “B1” (General & Public Health Pest Control),
“B2” (Control of Wood-Destroying Insects)
and “B8” (Wood-Destroying Insect
Inspection) |
| 6. Donald W. Parker | “B1” (General & Public Health Pest Control),
“B2” (Control of Wood-Destroying Insects)
and “B8” (Wood-Destroying Insect
Inspection) |

7. [George L. Young](#) "B1" (General & Public Health Pest Control)

D. Business License Name Change Requests: (Mr. Tolton)

1. [City of Yuma – Recreation Complex to City of Yuma](#)
2. [Desert Pest Control, LLC. to Parker & Desert Pest Control](#)
3. [JTSB Termite Technology to Termtech Pest Control](#)
4. [Favian Pest Control to Killum Pest Control Co.](#)
5. [Adieux Termite Company to Adieux Termite & Pest Control](#)
6. [Baron Pest Control, Inc. to Baron Pest Solutions, Inc.](#)

**E. Applicants for new Applicator Licenses: "(See list on website under agenda)."
(Mr. Tolton)**

1. [Licenses to be Issued for completed applications.](#)

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 or Renewal: (Mr. Tolton)

1. [Gloria L. Kilian](#) "B1" (General & Public Health Pest Control)

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

None

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

1. [Nick P. Ingertson](#) "B2" (Control of Wood-Destroying Insects)

D. Business License Name Change Requests: (Mr. Tolton)

None

VII. Complaints: (Mr. Craig)

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 notice 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 issue a Cease and Desist order and/or impose 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) for unlicensed activity involving other than weed control. 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. **Paul's (BL)/Paul Vanasse, II (QP)/Jeremiah Lomeli (QP)/Keith Nicholas (APP) - Case No. 2006-038**

This complaint contains allegations that between 2-2-06 and 4-26-06, Keith Nicholas did not properly perform pretreatments to *three* sites; two home construction sites in Congress, Arizona and one commercial site in Wickenburg, Arizona. All three were post-tension monolithic slab types. The two sites in Congress required a gallon amount of 268.28 and 268.57 respectively. Mr. Nicholas wrote on the pretreat tags that he applied 220 gallons and 230 gallons, thus shorting both sites by 48.28 and 38.57 gallons (18% and 15%). However, during the investigation, Mr. Nicholas confessed that he falsified the tags and the specific amount of gallons applied is unknown. The site in Wickenburg required 879.22 gallons. Mr. Nicholas falsified the treatment record for the Wickenburg site, and indicated he applied 835 gallons. However, SPCC's video indicates he only applied 69.18 gallons, thus shorting the site by over 800 gallons (or 91%). Additionally, Mr. Nicolas failed to post the pretreatment tag to the site in Wickenburg. Neither the business licensee, nor the qualifying party could account for how much chemical Mr. Nicholas was obtaining or applying. The qualifying party failed to provide documentation that Mr. Nicholas was being supervised.

Staff recommends that this complaint be dismissed against Mr. Vanasse's qualifying party license because Jeremiah Lomelli was the supervising qualifying

party.

The following proposed resolution was reached:

1. That **Paul's, BUS LIC #5749**, be issued an **Administrative Warning**, pay a **\$600.00 civil penalty**, and **extend the five-year responsibility for retreatments to seven years for the three addresses outlined in the investigation report**, send a certified letter to each owner of the properties, informing them of the extension and copy the SPCC with the letters and the mailing certification numbers (due within 30 days of the entered date of the Commission Order), and serve a six-month probation whereby all pretreatments and final grade work shall be pre-reported for six months, 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. § 32-2321(B)(4) (Applied pesticide inconsistent with label requirements), A.A.C. § R4-29-402 (Incorrect quantity applied), and A.A.C. § R4-29-408(A) (Failed to attach pretreat tag to the site), due to A.R.S. § 32-2308 (Joint Responsibility).

2. That **Jeremiah Lomeli, QP LIC #3119**, be issued an **Administrative Warning**, pay a **\$900.00 civil penalty**, obtain **3 hours of continuing education (separate from that required for license renewal) in the topics of Qualifying Party Responsibilities and Laws (due within 30 days of the entered date 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 laws/rules), via § A.R.S. 32-2314(G); and A.R.S. § 32-2321(B)(5) (Misuse due to a lack of supervision), A.R.S. § 32-2321(B)(4) (Applied pesticide inconsistent with label requirements), and A.A.C. § R4-29-408(A) (Failed to attach pretreat tag to the site), due to A.R.S. § 32-2308 (Joint Responsibility).

3. That **Keith Nicholas, APP LIC #000891**, be issued an **Administrative Warning**, pay a **\$1,290.00 civil penalty**, (due within 30 days of the entered date 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 laws/rules), via A.R.S. 32-2321(B)(2) (Falsified three treatment records), A.R.S. § 32-2321(B)(4) (Applied pesticide inconsistent with label requirements), A.A.C. § R4-29-402 (Incorrect quantity applied), and A.A.C. § R4-29-408(A) (Failed to attach pretreat tag to the site), due to A.R.S. § 32-2308 (Joint Responsibility).

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. Hometeam Pest Defense (BL)/Arthur Killenbeck (QP)/ Marla McCarroll (QP/APP)/Isaac Martinez, Jr. (APP)/Timothy Wortman (APP) - Case No. 2006-041

This complaint contains allegations that between the dates of 4-4-06 and 6-21-06, Hometeam services allowed weed control applicator Tim Wortman to perform termite

control services (using Termidor termiticide) without immediate supervision. Additionally, a newly hired applicator was allowed to perform termite services using Termidor between the dates of 6-29-06 and 8-1-06 without immediate supervision. The termite qualifying party, Mr. Killenbeck, and the weed qualifying party, Marla McCarroll, stated they were unaware that the applicators were performing such work. Additionally, Mr. Killenbeck stated that the company structure prevented him from supervising the termite applicators. The responsibility of supervision was placed on Service Manager Isaac Martinez. Mr. Martinez alleges he believed all applicators (licensed or unlicensed) had 90 days to be licensed in other categories. Additionally, he assumed "direct supervision" (via phone, radio), rather than "immediate supervision" (within eye-shot or hearing) was all that was required for the unlicensed termite applicators. During this investigation, staff noted that 20 termite action report forms (TARFs) in connection with the treatments these two applicators performed, contained the names of two different applicators. On 5-31-07, Mr. Wortman's applicator license expired. Mr. Wortman was contacted for a settlement conference, however he chose not to participate.

Staff recommends that this complaint be dismissed against Ms. McCarroll's qualifying party and applicator license because the violations occurred in the category of wood destroying insects (B2) and Ms. McCarroll is the qualifying party in the weed control (B3) category. Because Mr. Wortman's applicator license has expired and he cannot renew it, staff recommends that the complaint regarding his license be dismissed without prejudice.

The following proposed resolution was reached:

1. That **Hometeam Pest Defense, LLC, BUS LIC #5390**, be issued an **Administrative Warning**, pay a **\$1,000.00 civil penalty (due within 30 days of the entered date of the Commission Order)**, and that the following field supervisors, service managers and general managers (**John Propst - GM, Chris Conover - SM, Al Faaaliaga - SM, Carl Swinford - Field Supervisor, Mike Booth - SM, Marla McCarroll - GM, Patrick Mott - SM and Leroy De La Paz - Field Supervisor**), attend one of the **SPCC Continuing Education Classes scheduled for the 2007-2008 continuing education year (that can be used toward their license renewals)**, 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. § R4-29-302(A) (Business Licensee allowed applicator to apply pesticides without being licensed in the B2 category), A.A.C. § R4-29-417(F) (TARFs did not contain the names of the actual applicators); and A.R.S. § 32-2325(5)(A)(B) (Unlicensed applicators performed wood destroying insect control without immediate supervision and five hours of training) and A.R.S. § 32-2312(H) (Applicator not licensed within 30 days of beginning pest control category-work), due to A.R.S. § 32-2308(A) (Joint Responsibility).

2. That **Arthur Killenbeck, QP LIC #8275**, be issued an **Administrative Warning and pay a \$1,000.00 civil penalty (due within 30 days of the entered date of the Commission Order)**, and attend one of the **SPCC Continuing Education Classes scheduled for the 2007-2008 continuing education year (the CE shall be separate from that required for license renewal)**, 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. 32-2314(G) (Qualifying party failed to supervise); and A.R.S. § 32-2325(4) (Termite applicator applied pesticides without being licensed in the B2 category), A.R.S. § 32-2325(5)(A)(B) (Unlicensed applicators performed

wood destroying insect control without immediate supervision and five hours of training) and A.R.S. § 32-2312(H) (Applicator not licensed within 30 days of beginning new pest control category-work), due to A.R.S. § 32-2308(A) (Joint Responsibility).

3. That **Isaac Martinez, Jr., APP LIC #950616**, be issued an **Administrative Warning and pay a \$200.00 civil penalty and obtain 3 hours of continuing education (separate from that required for license renewal purposes) in the topic of Laws (due within 30 days of the entered date 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 laws/rules), via A.R.S. § 32-2325(4) (Termite applicator to applied pesticides without being licensed in the B2 category), A.R.S. § 32-2325(5)(A)(B) (Unlicensed applicators performed wood destroying insect control without immediate supervision and five hours of training) and A.R.S. § 32-2312(H) (Applicator not licensed within 30 days of beginning new pest control category-work), due to A.R.S. § 32-2308(A) (Joint Responsibility).

Commission's Options:

1. **Accept** the proposed resolution, and dismiss this complaint regarding Marla McCarroll's applicator license and qualifying party license, and dismiss without prejudice regarding Timothy Wortman's applicator 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.

C. Tom Settles (APP) - Case No. 2007-007

This complaint contains an allegation that on three different applicator license applications, between 2003 and 2006, Mr. Settles misrepresented a fact to obtain his applicator license. On each application, Mr. Settles marked "no" when asked, "Have you ever been convicted of a felony?" However, in 2006, he marked "yes" regarding a felony conviction. While law enforcement records indicate Mr. Settles was arrested, court records no longer exist which would have established the disposition of that crime. Therefore, the allegation is unsubstantiated. It should be noted that Mr. Settles was 18 years old at the time of the conviction. He is now 74 years old.

Staff recommends that this complaint be dismissed.

D. Bill's Home Service Company (BL)/William Bennett (QP)/Sean Brewster (APP) - Case No. 2007-025

This complaint, stemming from a licensee, contains allegations that on 9-21-06, applicator Sean Brewster issued a Wood Destroying Insect Inspection Report (WDIIR) and failed to note evidence of wood destroying insects, damage, evidence of previous treatment, and conditions conducive to infestation. Qualifying Party William Bennett provided SPCC staff with training documentation concerning Brewster, that indicates the violation was not the result of a lack of training. On 10-5-06, Mr. Bennett, went to the home to conduct an inspection; however, he failed to note existing drill holes as evidence of previous treatment.

The following proposed resolution was reached:

1. That **Bill's Home Service Company, BUS LIC #4320**, 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), via A.A.C. § R4-29-413(A)(11) (Failed to note visible evidence of previous treatment), due to A.R.S. § 32-2308 (Joint Responsibility).
2. That **William B. Bennett, QP LIC #1862**, 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), via A.A.C. § R4-29-413(A)(11) (Failed to note visible evidence of previous treatment).
3. That **Sean Brewster, APP LIC #030792**, be issued an **Administrative Warning, obtain 3 hours of continuing education (separate from that required for license renewal) in the topics of Laws and Termite Inspections (due within 30 days of the entered date 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), via A.A.C. § R4-29-413(A)(8)(9)(11)(12) (Failed to note visible evidence of past or present infestation, visible and accessible evidence of damage from wood destroying pests, visible evidence of previous treatment and visible evidence of 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.

E. M.D. Pest & Termite, Inc. (BL)/John Edward Jung (Temporary QP, APP)/Joey Garcia (APP)/Gordon Schmidt (APP)/Howard Tarvin (APP) - Case No. 2007-002

This complaint contains allegations that between the dates of 10-10-06 to 11-13-06, John Jung and licensed applicators of M.D. Pest & Termite, Inc. (MDPT) performed pest management services without the benefit of a valid qualifying party license. Mr. Jung alleged that SPCC staff provided no notification that his license was expired. Mr. Jung also alleged that he received some sort of letter from SPCC, but could not recall what was in it. It should be noted that SPCC staff mailed two letters to Mr. Jung. The first letter, dated 7-17-06 (the issuance of his temporary qualifying party license), indicated his temporary license would expire on 10-9-06. And, the second letter, dated 10-23-06, indicated his license had expired.

Staff recommends that the complaints be dismissed against Joey Garcia, Gordon Schmidt and Howard Tarvin because there is no evidence that the applicators were aware that MDPT did not have a valid qualifying party; and against Mr. Jung's temporary QP license because the evidence indicates that Mr. Jung committed this violation in the capacity of an applicator—not as a temporary qualifying party. Mr. Jung's *temporary* qualifying party

license was expired when these violations occurred and he cannot renew it. Additionally he has since passed the qualifying party exam and obtained a regular qualifying party license.

The following proposed resolution was reached:

1. That **M.D. Pest & Termite, Inc., BUS LIC #5103**, 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. § 32-2325(2) (Engaged in the business of structural pest control without a qualifying party license).

2. That **John Edward Jung, APP LIC #010430**, be issued an **Administrative Warning and obtain 1 hour of continuing education (separate from that required for license renewal) in the category SPCC Laws (due within 30 days of the entered date 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 laws), via A.R.S. § 32-2325(2) (Engaged in the business of structural pest control without a qualifying party license).

Commission's Options:

1. **Accept** the proposed resolution and **dismiss** this complaint regarding the applicator licenses of Joey Garcia, Gordon Schmidt and Howard Tarvin and the temporary qualifying party license of John Jung;

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. Northwest Exterminating Co., Inc. (BL)/ Chad Berg (QP)/Kevin Estrella (APP) - Case No. 2007-037

This complaint contains allegations that on 4-2-07, Kevin Estrella did not properly perform a pretreatment in Tucson, Arizona. The slab-type was post-tension monolithic. Mr. Estrella should have applied 189.99 gallons. However, he applied 158 gallons, thus shorting the site by 31.99 gallons (16.8%). Additionally, the pretreat tag contained the pre-printed name of a termiticide which was not used at the pretreat site. While the qualifying party and Mr. Estrella himself states he was trained, the training was limited to only porches and patios and the qualifying party lacked documentation substantiating such training. Furthermore, the business licensee failed to maintain a record of Mr. Estrella's five hours of required wood destroying insect control training. The SPCC filed a complaint on 5-02-07. Mr. Estrella did not respond until 7-10-07.

The following proposed resolution was reached:

1. That **Northwest Exterminating, Co., Inc., BUS LIC #4410**, be issued an **Administrative Warning and extend the five year responsibility for termite occurrences to six years, send a certified letter to the homeowner (or to the builder if there is no homeowner in the home yet) informing them of the extension and copy the SPCC with the letter and the mailing certification number (due within 30 days of**

the entered date 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 laws/rules), via A.R.S. § 32-2325(B)(5) (Applicator applied pesticides prior to making and maintain five hours of wood destroying training) and A.A.C. § R4-29-402 (Applicator applied incorrect quantity, strength and dosages) and A.A.C. § R4-29-408(B)(9) (Incorrect chemical name on the pretreatment tag), due to A.R.S. § 32-2308 (Joint Responsibility).

2. That **Chad Berg, QP LIC #2047**, be issued an **Administrative Warning and pay a \$200.00 Civil Penalty (due within 30 days of the entered date 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), via A.R.S. § 32-2314(G) (Failure to properly train for termite pretreatments); and A.A.C. § R4-29-402 (Applicator applied incorrect quantity, strength and dosages) and A.A.C. § R4-29-408(B)(9) (Incorrect chemical name on the pretreatment tag), due to A.R.S. § 32-2308 (Joint Responsibility).

3. That **Kevin Estrella APP LIC #970943**, be issued an **Administrative Warning and obtain 3 hours of continuing education (separate from that required for license renewal) in the categories of Measurements/Calculations, Pretreatments and Laws (due within 30 days of the entered date 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), via A.A.C. § R4-29-402 (Incorrect quantity, strength and dosages), A.A.C. § R4-29-408(B)(9) (Wrote incorrect chemical name on the pretreatment tag) and A.A.C. § R4-29-702(F) (Failed to respond to the complaint within 20 days).

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.

G. City of Mesa (BL)/Mark Woodward (QP)/Steven Glass (APP) - Case No. 2007-022

This complaint contains allegations that on 3-19-04 and 9-23-04, applicator Steven Glass performed aquatic pesticide applications on a City of Mesa golf course at the direction of qualifying party Mark Woodward. At the time of the violation, none of the respondents held a B-9 (Aquatic Pest Control) qualifying party license or applicator license. Additionally, the treatment records in connection with these applications failed to note the percentage of the active ingredient of the finished pesticide product. One month after filing this complaint, Mr. Glass applied for his applicator license in the B9 category. And, four months thereafter, he successfully passed the exam and obtained the B9 license. However, Mr. Woodward retired on 5-13-05 and his qualifying party license expired 12-31-05.

Because Mr. Woodward's qualifying party license expired prior to this complaint being filed, and it cannot be renewed, staff recommends that the complaint against him be dismissed without prejudice.

The following proposed resolution was reached:

1. That **City of Mesa, BUS LIC #4270**, 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. § R4-29-302(A) (Business Licensee allowed applicator to apply pesticides without being licensed in the B-9 category), A.A.C. § R4-29-307(B)(Company's treatment records void of percentage of active ingredient); and A.R.S. § 32-2325(2) (Performed pest control work without a qualifying party license), due to A.A.C. § R4-29-104 (Joint Responsibility).
2. That **Steven Glass, APP LIC #020736**, 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. § 32-2325(4) (Performing aquatic pest control without holding a B-9 applicator license).

Commission's Options:

1. **Accept** the proposed resolution, and dismiss this complaint without prejudice regarding Mark Woodward's 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.

H. Mariposa Horticultural Enterprises (BL)/Terry Noriega (QP)/Arnulfo Gonzalez (APP) - Case No. 2007-009

This complaint, stemming from a licensee, contains allegations that on 10-25-06, Arnulfo Gonzalez failed to follow label instructions when cleaning a chemical spill, which occurred at an intersection of 44th street and University Drive in Phoenix, Arizona. The label required the applicator to dike and contain the spill with inert material and transfer the material and liquid into another container. However, the applicator and a laborer used water and brooms to sweep the material into the storm drain. Investigation revealed the qualifying party failed to properly train Mr. Gonzalez with regard to using the herbicide. Furthermore, supervisory visits to the office were on an as needed basis, rather than at least once a month.

The following proposed resolution was reached:

1. That **Mariposa Horticultural Enterprises, BUS LIC #8246**, 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), via A.A.C. § R4-29-301(A) (Failed to follow label instructions for cleaning chemical spill), due to A.R.S. § 32-2308 (Joint Responsibility).
2. That **Terry Noriega, QP LIC #8263**, be issued an **Administrative Warning and pay a \$400.00 civil penalty and obtain 3 hours of continuing education (separate from that required for license renewal) in the categories Labels, Safety and Laws (due within 30 days of the entered date 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 laws/rules), via A.R.S. § 32-2314(G) (Failed to properly train and supervise); and A.A.C. § R4-29-301(A) (Failed to follow label instructions for cleaning chemical spill), due to A.R.S. § 32-2308 (Joint Responsibility).

3. That **Arnulfo Gonzalez, APP LIC #990545**, be issued an **Administrative Warning and obtain 2 hours of continuing education (separate from that required for license renewal) in the categories Labels and Safety (due within 30 days of the entered date 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 laws/rules), via A.R.S. § 32-2325(4) (Performed aquatic pest control without holding a B9 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.

I. Arizona Exterminating Company (BL) - Case No. 2006-054

This complaint contains allegations that from 1-06 to 1-07, a branch office of Arizona Exterminating Company used the name "Patriot Pest & Termite Control" or "Patriot Pest & Termite Control, a branch of Arizona Exterminating Co.", on termite pretreatment tags, contracts/proposals, treatment records and service vehicles. Patriot Pest & Termite Control is a licensed business in Prescott. The name "Patriot Pest & Termite Control" was the prominent or only name used and the name "Arizona Exterminating Company" (the licensed name) was not used or was not prominent. The branch office did not obtain a separate business license before conducting business in a name style different from the licensed name.

No agreement was reached.

Commission's Options:

1. Send the matter to settlement conference to issue an Administrative Warning against the Business Licensee, because an Administrative Warning is the maximum discipline allowed by A.R.S. § 32-2321(C); or
2. Send the matter to hearing.

J. Sun Lakes H.O.A. #1 (BL)/Hermilo Marquez Quezada (QP)/Alfred Leivas (APP) - Case No. 2007-023

This complaint contains allegations that from 5-06 to 9-06, Sun Lakes Homeowner's Association (Sun Lakes), performed aquatic pest management services without the benefit of a B9 (aquatic pest management) qualifying party license or applicator license. During

this incident, Sun Lakes, the qualifying party and the applicator were only licensed to perform pest management services in the categories of weed control and turf and ornamental.

The following proposed resolution was reached:

1. That **Sun Lakes H.O.A. #1, BUS LIC #4195**, 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), via, A.A.C. § R4-29-302(A) (Applicator allowed to perform aquatic pest control without hold a B9 applicator license); and A.R.S. § 32-2325(2) (Pesticide applications performed without a qualifying party licensed in the B9 category), due to A.R.S. § 32-2308 (Joint Responsibility).

2. That **Hermilo Quezada, QP LIC #1990**, be issued an **Administrative Warning and pay a \$500.00 civil penalty and obtain 2 hours of continuing education (separate from that required for license renewal) in the topic of Laws (due within 30 days of the entered date 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 laws/rules), via, A.R.S. § 32-2325(2) (Authorized aquatic pest management services without holding a qualifying party license in the B9 category); and A.R.S. § 32-2325(4) (Applicator performed aquatic pest management services without holding a B9 applicator license), due to A.R.S. § 32-2308(Joint Responsibility).

3. That **Alfred Leivas, APP LIC #890070**, be issued an **Administrative Warning, pay a \$240.00 civil penalty and obtain 2 hour of continuing education (separate from that required for license renewal) in the topic of Laws (due within 30 days of the entered date 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 laws), via, A.R.S. § 32-2325(4) (Performed aquatic pest control without holding a B9 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)

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. Verstegen)

None

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

None

XIV. Consideration of Informal Settlement Conference proposed resolutions [for Appealable Agency Actions such as License Denials, Disciplinary actions taken without a prior hearing, and Cease & Desist/civil penalties for unlicensed activity]. (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. Mark R. Ochoa

B. Daniel Rodriguez

C. Jay F. Romero

D. David A. Heredia

E. James R. McCart

F. George Kuland

G. Richard A. Impila

XVII. Commission Updates and Reports; Miscellaneous Action Items.

- A.** University Termite and Pest Control, Inc. (BL)/Richard Rupkey, II (QP) – Case No. 2005-069 – Commission’s consideration of compliance with Consent Agreement and Order, entered on 2/9/07.
- B.** Sexton Pest Control/Paul Sexton – Inquiry No. 2007-047 Commission’s consideration of Sexton’s request for Commission to pay its attorneys’ fees
- C.** Complaint Status Log: (Mr. Francis/Mr. Craig)
- D.** Computer Based Testing “CBT” Status and Statistics: (Mr. Francis)
- E.** Expenditure Report: (Ms. Gervase)
- F.** Case Status Report (Every other month - last report 06/08/07): (No document-separate handout) (Ms. Gervase)
- G.** Commission discussion/decision: Draft Substantive Policy Statement 2007-001 re: Commission’s policy about issuing licenses to persons who use, offer to use, advertise to use, solicit to use, or perform structural pest control using a device; and for persons who make recommendations regarding structural pest control.
- H.** **1:00 p.m.:** Commission’s review, discussion and possible decision pertaining to agency policies, process and procedures

XVIII. Approval of Minutes and Continuing Education Programs

- A.** June 8, 2007 (regular session) Minutes (Ms. Gervase)
- B.** July 13, 2007 (regular session) (Ms. Gervase)
- C.** August 10, 2007 (regular session) Minutes (No document-separate handout) (Ms. Gervase)
- D.** Continuing Education Program Applicants “(See list on website under agenda)”. (Mr. Craig)

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

Current Proposed dates

October 12, 2007
November 9, 2007
December 14, 2007
January 11, 2008
February 8, 2008
March 14, 2008

April 11, 2008
May 9, 2008
June 13, 2008
July 11, 2008

XX. Adjournment