



STATE OF ARIZONA

Structural Pest Control Commission

Janet Napolitano
Governor

Lisa Gervase
Executive Director

9535 E. Doubletree Ranch Road
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NOTICE OF COMMISSION MEETING FRIDAY, April 13, 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. 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)

⇒Business and Qualifying Party License Renewal Status: Licenses that were not renewed by 12/31/06 are expired and licensee cannot operate.

⇒Applicator License Renewal Process: Began 4/1/07. Renew online with Renew EZ and save \$5.00!

⇒CE (Continuing Education Courses). SPCC's course schedule posted on website. Registration: 480-CEU-SPCC; CEU@sb.state.az.us

⇒New Rules – effective 4/7/07!

⇒Industry Notice mailed to all Business Licensees in 3/07.

⇒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. Home Guard Pest Control	David E. Poplin (“B1” General Pest & Public Health)
2. Fountain of the Sun Country Club	Jerrold P. Markell (“B3” Right-of-Way & Weed Control and “B5” Turf & Ornamental Horticulture)
3. Desert Mountain Exterminating	Luis R. Molinar, Jr. (“B1” General Pest & Public Health)
4. Scottsdale Exterminating	Donald L. Siegelen, Jr. (“B1” General Pest & Public Health)
5. All Organic Pest Control, LLC.	David Saggio (“B1” General Pest & Public Health)
6. Strickland Pest Control	Richard J. Strickland (“B1” General Pest & Public Health)
7. Horizon Inspection Service, LLC.	Dennis T. Nobley (“B8” Wood-Destroying Insect Inspection)
8. Pest Police Pest Control, LLC.	Michael B. Hull (“B1” General Pest & Public Health, “B2” Control of Wood-Destroying Insects and “B8” Wood-Destroying Insect Inspection)
9. Simone Applications	Brian K. Simone (“B3” Right-of-Way & Weed Control and “B5” Turf & Ornamental Horticulture)

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

<u>Qualifying Party</u>	<u>Business</u>
1. Joseph R. Wright	American Building Maintenance Co. (“B5” Turf & Ornamental Horticulture)
2. Ronald G. Hassler	Chemtech (“B1” General Pest & Public Health)

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| 3. Tony H. Macis | CTM Pest Control (“B3” Right-of-Way & Weed Control) |
| 4. Dennis R. Reed | Enviro Control, LLC. (“B3” Right-of-Way & Weed Control and “B5” Turf & Ornamental Horticulture) |
| 5. Lee A. Spencer | Western Weed Control, Inc. (“B5” Turf & Ornamental Horticulture) |
| 6. James R. Potts | Caretaker Landscape Management, Inc. (“B3” Right-of-Way & Weed Control and “B5” Turf & Ornamental Horticulture) |
| 7. Daniel R. Wilbur | Suncoast Pest Control (“B1” General Pest & Public Health) |
| 8. Kevin C. Peterson | Enviro-Tech Pest Control (“B3” Right-of-Way & Weed Control) |
| 9. Thomas J. Siefgried | Flood Control District of Maricopa County (“B1” General Pest & Public Health) |

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. Eliberto R. Pedroza | “B1” (General Pest & Public Health) |
| 2. John A. Bates | “B1” (General Pest & Public Health) and “B2” (Control of Wood-Destroying Insects) |
| 3. Matthew R. Hanrahan | “B2” (Control of Wood-Destroying Insects) and “B8” (Wood-Destroying Insect Inspection) |
| 4. James A. Wittman | “B1” (General Pest & Public Health) |
| 5. Brady D. Bruce | “B1” (General Pest & Public Health) |
| 6. Gus C. Salazar | “B3” (Right-of-Way & Weed Control) and “B5” (Turf & Ornamental Horticulture) |
| 7. Von R. Carlson | “B1” (General Pest & Public Health) |
| 8. Jeffry D. Griffin | “B1” (General Pest & Public Health) |

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| 9. Jared P. Peterson | “B1” (General Pest & Public Health) |
| 10. Clint A. Pyle | “B5” (Turf & Ornamental Horticulture) |
| 11. Keith E. Whitted | “B3” (Right-of-Way & Weed Control) and
“B7” (Fungi Inspection) |

D. Business License Name Change Requests

1. Complete Yard Care by CHC to CYC Landscaping

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

None

D. Business License Name Change Requests

1. TLC Pest Control to Community Pest Control

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. William Pettycrew (APP) - Case No. 2006-051

This complaint contains an allegation that on 8-13-06, William Pettycrew performed a pretreatment in Prescott Valley, Arizona. Mr. Pettycrew should have applied 394.61 gallons; however, Mr. Pettycrew applied 332.84 gallons (short by 61.77 gallons). After SPCC staff informed him of the shortage, Mr. Pettycrew applied the difference to the exterior stem wall via rodding and trenching. Evidence indicates that the violation was due to a mathematical error.

The following proposed resolution was reached:

That **William Pettycrew, APP LIC #000772** 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. R4-29-402 (Improper quantities applied to the square footage).

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. Nathan Estrella (APP) - Case No. 2006-065

This complaint contains an allegation that on 8-24-06, Nathan Estrella performed a pretreatment in Tucson, Arizona. Mr. Estrella should have applied 471.29 gallons; however, he applied 688 gallons, which resulted in 217.61 gallons more than what was required. Rather than measuring each section of the home, Mr. Estrella only measured the length and the width, thus applying the amount based on those calculations.

The following proposed resolution was reached:

That **Nathan Estrella, APP LIC #020197** be issued an **Administrative Warning and obtain 3 additional hours of continuing education (CE) in the category of Laws (separate from the CE required for license renewal) (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. R4-29-301(A) (Misuse of pesticide by not following label rate instructions) and A.A.C. R4-29-402 (Improper quantities applied to square footage).

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. Johnny Ray Aguirre (APP) - Case No. 2006-069

This complaint contains allegations that on six different occasions, Mr. Aguirre misrepresented a fact to obtain and renew his applicator license. Mr. Aguirre was convicted of a felony in 1980. However, on his initial Applicator License application on 7-10-03 and five renewal or broadening applications from 3-04 to 12-05, he marked "no" for the question "Have you ever been convicted of a felony? An offense that is undesignated, or has been expunged, is still considered a felony."

The following proposed resolution was reached:

That **Johnny Ray Aguirre, APP LIC #020197** be issued an **Administrative Warning, pay a \$100.00 Civil Penalty and obtain 3 hours of continuing education (CE) in the category of Laws (separate from the CE required for license renewal) (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. § 32-2321(B)(3) (Misrepresenting a material fact in obtaining a 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.

D. Melinda Adele Baker (Unlicensed Applicator) - Case No. 2007-026

This complaint contains an allegation that Ms. Baker misrepresented a fact to obtain her applicator license. Ms. Baker was convicted of a felony in 1989. However, on her initial Applicator License application on 11-29-06, she marked “no” for the question “Have you ever been convicted of a felony?” However, upon allegedly realizing she marked the wrong box, Ms. Baker submitted another application on 2-21-07, marking “yes” to the question and informed SPCC staff of her mistake. On 3-1-07, SPCC staff filed a complaint against Ms. Baker.

Ms. Baker does not hold an applicators license and did not when this complaint was filed. Therefore, there is no discipline that the SPCC can take against her. The issue of whether Ms. Baker will be approved to take the Applicator license exams is being considered under agenda item XVI.F at this meeting.

Therefore, staff recommends that this complaint be dismissed.

E. Sexton Exterminating (BL) - Case No. 2006-066

This complaint contains allegations that Sexton failed to comply with a Commission Order. From 5-25-06 to 11-25-06, the business licensee was ordered to pre-report all termite pretreatments as a term of the company’s probation for failing to apply the correct amount of termiticide to a pretreatment site. However, the SPCC never received a report from the company during that time period. Sexton performed 50 pretreatments during that time period, which should have been reported.

The following proposed resolution was reached:

That **Sexton Exterminating, BUS LIC #5465** 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)** 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. § 32-2321(B)(1) (Failed to comply with a written order of the Commission).

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. Dusty Randall Dukeman (APP) - Case No. 2006-064

This complaint contains an allegation that on 8-27-06, Randall Dukeman performed a pretreatment in Tucson, Arizona, and shorted the site by 72.57 gallons. He should have applied 467.57 gallons; however, he applied 395 gallons. Mr. Dukeman did not measure the site, but obtained measurements from the builder.

The following proposed resolution was reached:

That **Dusty Randall Dukeman, APP LIC #060626** be issued an **Administrative Warning, pay a \$100.00 Civil Penalty and obtain 1 hour of continuing education (CE) in the category of Laws and/or Measurements (separate from the CE required for license renewal) (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. R4-29-301(A) (Misuse of pesticide by not following label rate instructions) and A.A.C. R4-29-402 (Improper quantities applied to square footage).

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. Sam the Bugman! (BL)/Salvatore Fanelli (QP)/Gina Rehberg (QP/APP) - Case No. 2006-008

This complaint contains allegations that in the summer of 2003, Sam the Bugman's termite qualifying party, Gina Rehberg, performed termite services but failed to create records for some of those treatments. Additionally, the business licensee failed to file termite action report forms (TARFs) for three pretreatments performed by Ms. Rehberg. Finally, the business licensee failed to perform final grades to four sites pretreated in 2003. Ms. Rehberg's qualifying party license expired on 12/31/05 and her applicator license expired on 5/31/06. Her current whereabouts are unknown.

Staff recommends that Ms. Rehberg's qualifying party license and applicator license be suspended due to nonpayment of renewal fees (to be revoked after one year) and that this complaint be dismissed against her, for judicial efficiency.

Because it was the responsibility of Ms. Rehberg, as the B2 (termite) applicator and B2 qualifying party to create the treatment records (and not Salvatore Fanelli, who is the B1 (general pest) qualifying party), staff recommends that the complaint be dismissed against his qualifying party license.

The following proposed resolution was reached:

That **Sam the Bugman! BL LIC #5143** be issued an **Administrative Warning, file the 3 TARFs in connection with this complaint, pay the TARF fees and late fees totaling \$48.00 [After 4/7/07, this amount will be higher per new rules] (payment of TARF fees and late fees shall be made by cash, money order or cashiers check only) and that Sam the Bugman! hire a licensed company, licensed in the B2 and B8 categories, to perform post construction treatments (in a manner consistent with a final grade) to**

the four addresses that were referenced in this complaint. Additionally, Sam the Bugman! shall send certified, return receipt letters to the consumers associated with the 3 pretreatments and the consumers associated with the 4 final grades (and copy SPCC staff with the letters and the mailing certification numbers) informing the consumers that they should contact Sam the Bugman! in the event of any termite occurrence, up to the expiration of the five year pretreatment commitment. Each letter shall specify the expiration of the five years (due within 30 days of the entered date 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/rules), via A.R.S. § 32-2321(B)(13) (Failed to perform final grades), A.A.C. R4-29-307(A) (Failure to make and maintain treatment records), A.A.C. R4-29-408(D) (Termite records are incomplete), and A.A.C. R4-29-417(A) (Failed to file TARFs).

Commission's Options:

1. **Accept** the proposed resolution and **Suspend** the applicator license and qualifying party license of Gina Rehberg due to non-payment of renewal fees [license automatically revoked in one year], and dismiss the complaint against Ms. Rehberg and Salvatore Fanelli'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.

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 License Denial Applicants]. (Ms. Gervase)

None

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

A. Larry M. Ward, Applicator License No. 061150 - Case No. 2006-059. Mr. Ward reports the status of his compliance with criminal probation (if any), employment status and rehabilitation status. Mr. Ward was granted a license pursuant to a consent agreement in November 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. Jeffrey L. White

B. Terry A. Molentine

C. Ricardo Cabello, Jr.

D. Jason L. Schilling

E. Cory John Linninkamp

F. Melinda Adele Baker

G. Christopher J. LeDune

H. Johnathon A. Sterkeson

XVII. Commission Updates and Reports.

A. University Termite and Pest Control, Inc. (BL)/Richard Rupkey, II (QP) – Case No. 2005-069 – Commission’s consideration of compliance with the Consent Agreement and Order entered on 2/9/07.

- B. Status Report: Kent Griffith – Case No. 2006-025:** At the January 2007 meeting, the Commission sent this matter to the Attorney General’s Office to determine whether there was a basis to pursue a fraud action against Mr. Griffith. (Ms. Gervase)
- C. Commission training (previous handout on 2/9/07)**
 - 1. Review of commission materials with staff and address Commission’s questions about the materials (Mr. Tolton, Mr. Francis, Mr. Craig, Ms. Gervase)
 - 2. Commissioner duties, conflicts of interest, open meeting law, grounds to consider when reviewing license applications, etc. (Ms. Verstegen)
- D. Legal Advice regarding A.R.S. § 32-2325(6)** as to whether a “salesperson” is required to be licensed, and if so, when. (Ms. Verstegen)
- E. Complaint Status Log** (Mr. Francis/Mr. Craig)
- F. Computer Based Testing “CBT” Status and Statistics** (Mr. Francis)
- G. Expenditure Report** (Ms. Gervase)
- H. Case Status Report** (Every other month - last report 01/12/07) (Ms. Gervase)

XVIII. Approval of Minutes and Continuing Education Programs

- A. March 9, 2007** (regular session) Minutes (Ms. Gervase)
- B. Continuing Education Program Applicants** (Mr. Craig)

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

Current Proposed dates

- May 11, 2007**
- June 8, 2007**
- July 13, 2007**
- August 10, 2007**
- September 14, 2007**
- October 12, 2007**
- November 9, 2007**
- December 14, 2007**
- January 11, 2008**

XX. Adjournment