



STATE OF ARIZONA

Structural Pest Control Commission

Janet Napolitano
Governor

Lisa Gervase
Executive Director

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NOTICE OF COMMISSION MEETING FRIDAY, March 9, 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, IV, and XVII 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.

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

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

⇒National Pest Management Association (NPMA) Legislative Day Update

⇒Association of Structural Pest Control Regulatory Officials (ASPCRO) Update

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. Golf Verde Santa Fe, Inc.	Jesse E. Diehl (“B3” Right-of-Way & Weed Control and “B5” Turf & Ornamental Horticulture)
2. Terra Green, LLC.	Ross Mariano (“B3” Right-of-Way & Weed Control, “B5” Turf & Ornamental Horticulture and “B9” Aquatic Pest Control)
3. House Doctor Exterminating	David M. Ramos (“B1” General Pest & Public Health, “B2” Control of Wood-Destroying Insects and “B8” Wood-Destroying Insect Inspection)
4. Joint Facilities Management, LLC.	Justin C. Ruiz (“B3” Right-of-Way & Weed Control and “B5” Turf & Ornamental Horticulture)
5. Surprise Pest Control	Michael J. Patton (“B1” General Pest & Public Health)
6. Moxie Pest Control	Kelcey G. Loveland (“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. Todd D. Hyatt	Salt River Project (SRP) (“B3” Right-of-Way & Weed Control and “B9” Aquatic Pest Control)
2. James S. Saitman	No Bugz of Arizona, Inc. (“B4” Fumigation)
3. Manuel C. Salas	Paz Pest Control (“B2” Control of Wood-Destroying Insects and “B8” Wood-Destroying Insect Inspection)
4. Paul J. Heihn	Modern Pest Solutions, Inc. (“B3” Right-of-Way & Weed Control)

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| 5. McGary A. Bays | Bryant Pest Control (“B2” Control of Wood-Destroying Insects and “B8” Wood-Destroying Insect Inspection) |
| 6. Jay W. Bancroft | Creative Environments Maintenance Services, LLC. (“B3” Right-of-Way & Weed Control and “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)

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| 1. Michael E. Gibson | “B5” (Turf & Ornamental Horticulture) |
| 2. William T. Pulley | “B2” (Control of Wood-Destroying Insects) and “B8” (Wood-Destroying Insect Inspection) |
| 3. John T. Royalty | “B3” (Right-of-Way & Weed Control) |
| 4. William A. Head | “B2” (Control of Wood-Destroying Insects) |
| 5. Virginia M. Rench | “B3” (Right-of-Way & Weed Control) |
| 6. Lee J. Hicken | “B2” (Control of Wood-Destroying Insects) and “B8” (Wood-Destroying Insect Inspection) |
| 7. Thomas O. Pittman, III | “B1” (General Pest & Public Health) |
| 8. Scott D. Mishler | “B1” (General Pest & Public Health), “B2” (Control of Wood-Destroying Insects) and “B8” (Wood-Destroying Insect Inspection) |
| 9. John W. Noyes | “B5” (Turf & Ornamental Horticulture) |
| 10. Edward W. Schroeder | “B1” (General Pest & Public Health) |
| 11. Richard A. Turney | “B3” (Right-of-Way & Weed Control) |
| 12. Gregory S. Perez | “B3” (Right-of-Way & Weed Control) and “B5” (Turf & Ornamental Horticulture) |

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 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 issue 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) 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. Nichols & Sons Landscaping, Inc. (Unlicensed) - Case No. 2006-039

This complaint contains allegations that Nichols & Sons Landscaping, Inc. (NSL) performed weed control services without licensure and did not meet the licensing exemption for weed control. NSL used application equipment that held more than eight gallons.

Commission's Option: For a first violation, issue a written notice of correction that contains a warning and a copy of the Law that provides full notice of the exemption requirements pursuant to A.R.S. § 32-2311(C)(1).

B. Nicolas Lucero (APP) - Case No. 2006-036

This complaint contains allegations that on 3-30-06, applicator Nicolas Lucero performed a pretreatment to a site located in Tucson, Arizona. Mr. Lucero applied 603 gallons of termiticide to the site. Per label instructions, Mr. Lucero should have applied about 757 gallons to the site, an approximate 154.49-gallon shortage. SPCC staff confirmed what appeared to be sufficient training and supervision on the part of Mr. Lucero's employer. Mr. Lucero has not responded to SPCC notices in this matter, and the residence at his last address of record is vacant.

Commission's Option: Send the matter to hearing.

C. Kent Griffith (APP) - Case No. 2006-025

This complaint contains allegations that from 7/11/05 to 3/17/06, Applicator Kent Griffith performed pest management services at the University of Arizona in Tucson, Arizona using the name Catalina Bee. Mr. Griffith performed the work with an expired applicator license and did not hold a qualifying party license or a business license.

The following proposed resolution was reached:

That **Kent Griffith APP LIC #010678** be **REVOKED** 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(1)(2)(4) (Performing pest control work and applying pesticides without a business license, qualifying party license or applicator license). [If Mr. Griffith's license is revoked, he is precluded from obtaining a license for five years.]

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. Johnny Camilo (APP) - Case No. 2006-063

This complaint contains allegations that in November 2006, Johnny Camilo performed thirteen pest management services as "Bugsy Pest Control" (Bugsy). But, he was not an owner nor an employee of Bugsy, a licensed business. Mr. Camilo was an employee of Cummings Termite & Pest Control (Cummings) when he performed the services for Cummings' customers, as Bugsy.

The following proposed resolution was reached:

That **Johnny Camilo, APP LIC #060133** be issued an **Administrative Warning**, that his license be **SUSPENDED FOR ONE YEAR (from the entered date of the Commission Order)**, pay a **\$600.00 Civil Penalty (to be paid in equal installments over six months from the entered date of the Order)**. The installment payments shall be **\$100.00 a month, due within 30, 60, 90, 120, 150 and 180 days of the entered date of the Commission Order, (by cash, money order or cashiers check only)**, and obtain six (6) hours of continuing education (separate from that required for license renewal) in the category 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. § 32-2321(B)(2) (Making fraudulent records), A.R.S. § 32-2325(B)(1)(2) (Performing pest control without a business license or a qualifying party license).

Commission's Options:

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

E. Ortiz Pest Control (BL)/Luis Ortiz (QP) - Case No. 2006-060

This complaint contains allegations that from 9/03 to 10/06, qualifying party Luis Ortiz (Ortiz Pest Control) allowed an applicator to apply pesticides without a license.

The following proposed resolution was reached:

1. That **Ortiz Pest Control BUS LIC #5388** be issued an **Administrative Warning and pay a \$1,200.00 Civil Penalty (due within 30 days of the entered date of the 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.A.C. R4-29-302(A) (Allowed employee to apply pesticides without being licensed); and A.R.S. § 32-2312(E) (Employee not licensed within 90 days) (via A.R.S. § 32-2308 (Joint Responsibility)).
2. That **Luis Ortiz QP LIC #1877** be issued an **Administrative Warning, pay a \$900.00 Civil Penalty and obtain 6-hours of continuing education in the category of Laws (separate from that required for license renewal) (due within 30 days of the entered date of the 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 properly supervise); and A.R.S. § 32-2325(4)(Allowed unlicensed applicator to apply pesticides) (via 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.

F. Phoenix Exterminating, Inc. (BL)/Craig Gerhart (QP) - Case No. 2006-040

This complaint contains allegations that for at least a five-month period between 5-17-05 and 8-14-06, Phoenix Exterminating, Inc.'s qualifying party Craig Gerhart allowed an applicator to apply pesticides without a license. Mr. Gerhart that, other than the five-months period, he terminated and rehired the applicator three times to restart the "90-day" licensing time period within which his applicator was required to be licensed. The

applicator was not aware that he was terminated and rehired.

The following proposed resolution was reached:

1. That **Phoenix Exterminating, Inc. BUS LIC #8400** 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) (Allowed employee to apply pesticides without being licensed); and A.R.S. § 32-2312(E) (Employee not licensed within 90 days) (via A.R.S. § 32-2308 (Joint Responsibility)).

2. That **Craig Gerhart QP LIC #1916** be issued an **Administrative Warning, pay a \$400.00 Civil Penalty (due within 30 days of the entered date of the Order); and attend the 6 hour SPCC Continuing Education (CE) Class on 3-16-07 (separate from the CE 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), via A.R.S. § 32-2314(G) (Failed to properly supervise); and A.R.S. § 32-2325(4)(Allowed unlicensed applicator to apply pesticides) (via 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.

G. Norstar Pest Control (BL)/Eric Lund (QP/APP) - Case No. 2005-028

This complaint contains allegations that in the Spring 2005, Eric Lund, Norstar Pest Control, LLC performed pest management services without an applicator, qualifying party or business license. During the investigation, Mr. Lund produced 42 treatment records, indicating at least \$2,225.00 in services. Mr. Lund failed to honor one customer's agreement to perform additional services, which the consumer reported to the SPCC.

No agreement was reached.

Commission's Option: 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. Cornelius)

None

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

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. Adrian A. Mendoza

XVII. Commission Updates and Reports.

A. 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. Cornelius)

B. Legal Advice regarding A.R.S. § 32-2325(6) as to whether a "salesperson" is

required to be licensed, and if so, when. (Ms. Cornelius)

- C. Status Report: Al's Tree & Yardwork, Inc. (Unlicensed Company)/Al Padilla (President)/Jeremiah Padilla (Vice-President) – Case No. 2006-018: At the December 2006 meeting, the Commission imposed an Order against Al's Tree & Yardwork for unlicensed activity. The Commission also sent this matter to the Attorney General's Office to consider seeking injunctive relief because this is a second occurrence of unlicensed activity. (Ms. Cornelius)
- 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 - last report 01/12/07) (Ms. Gervase)
- H. Inquiry and Complaint Process Flowchart (Ms. Gervase, Mr. Francis, Mr. Craig, Ms. Kamm)

XVIII. Approval of Minutes and Continuing Education Programs

- A. February 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

April 13, 2007
May 11, 2007
June 8, 2007
July 13, 2007
August 10, 2007
September 14, 2007
October 12, 2007
November 9, 2007
December 14, 2007

XX. Adjournment