



STATE OF ARIZONA

Janet Napolitano
Governor

Structural Pest Control Commission

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Lisa Gervase
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Structural Pest Control Commission
9535 E. Doubletree Ranch Road
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COMMISSION MEETING
MONDAY, AUGUST 14, 2006, 9:00 A.M.
MINUTES

I. Call to order, Commissioner roll call

Commissioners Present: Commissioners Paul Baker, Patrick Black, Dave Burns, Bert Putterman, Dan DeVere and Debra Runbeck

Commissioners Absent: One Vacancy

Staff Present: Vince Craig, Mike Francis, Lisa Gervase, Robert Tolton, and Assistant Attorney General M. Elizabeth (Lisa) Miles

I. Call to the public

None

III. Communication with Commissioners

None

IV. Summary of Current Commission Events, Activities, Notices

Status of *Proposed* Law and Rule Changes. Watch web www.azleg.state.az.us and www.sb.state.az.us

Applicator License Renewal status - Licenses not renewed by July 29 must reapply. Cannot be operating without valid license.

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

V. Consent Agenda

A. Applications for New Business License and Qualifying Party License

Business

Qualifying Party

1. Critter Busters

Michael E. Bollier (“B3” Right of Way & Weed Control and “B5” Turf & Ornamental Horticulture)

B. Applications to activate Qualifying Party for Existing Business License

Qualifying Party

Business

1. Steve M. Fisk
 (“B1” General Pest & Public Health)

Blackjack Pest Control

Pulled by Commissioner Putterman. Mr. Fisk and Mr. Sanchez appeared.

Mr. Fisk indicated was leasing his Qualifying Party License to the Business Licensee. Will ensure all paperwork is in order and would oversee Mr. Sanchez who he believes is well trained, until such time as he does get his license. Mr. Fisk indicated he is a full-time employee of Mastercare Pest Management Systems and has been for approximately 4 years. He wants to use Mr. Sanchez to service some accounts in Southern Arizona.

Mr. Sanchez indicated he intends to apply for a Qualifying Party License but was not in the process for testing for a Qualifying Party License.

Mr. Putterman expressed concerns regarding the concept of a rented license because the sole proprietor, Mr. Sanchez, isn’t even in the process for testing for a Qualifying Party License. It’s a shortcut to get to get into the business. Further, there would be insufficient oversight of a “rental” Qualifying Party and Business Licensee. It’s a common problem with rental licensees who are typically unfamiliar with the Rules and Laws.

MOTION: *To approve the application to activate Qualifying Party for existing business license in “B1” by Commissioner Black.
Seconded by Commissioner Baker.*

VOTE: 5-1 Motion carried.
(Commissioner Putterman dissenting).

2. Jerome Davis ("B8" Wood-Destroying Insect Inspection) AJF Engineering, Inc.

Pulled by Commissioner Putterman. Ms. Sharon Furman, co-owner of AJF Engineering, Inc. appeared.

Ms. Furman explained that Mr. Davis was on a vacation previously scheduled and could not appear. She explained that she is one of the business owners. In response to Mr. Putterman's questions regarding Mr. Davis' involvement in the business, and whether this would be an ongoing business, Ms. Furman explained that Mr. Davis will be involved in the business and has been involved in the business. He has been out in the field with each of her inspectors, he has been spending time in the office, and he has been reviewing WDIIIRs. She anticipates he will be in the office several times a week and will be very involved in training going to the field with each of her inspectors. Ms. Furman further indicated that this would be an ongoing business and that the long-term goal would be for Mr. Paul Furman to obtain his Qualifying Party License. However, he needs the requisite 3000 hours in the industry to do that.

MOTION: To approve the application to activate qualifying party for existing business license in "B8" by Commissioner Black.
Seconded by Commissioner DeVere.

VOTE: 6-0 Motion carried.

3. Stephen M. Strong ("B1" General Pest & Public Health) Ecolab
4. David L. McDaniel ("B2" Control of Wood Destroying Insects and "B8" Wood-Destroying Insect Inspection) Canyon State Termite & Pest Control, LLC.
5. Eric L. Case ("B3" Right of Way & Weed Control, "B5" Turf & Ornamental Horticulture & "B9" Aquatic Pest Control) McCormick Ranch Golf Club, Inc.
6. William S. Calvert ("B3" Right of Way & Weed Control) Asplundh Tree Expert Co.
7. Michael E. Gibson ("B3" Right of Way & Weed Control) Agave Environmental Contracting, Inc.

8. Dave Lannes (“B1” General Pest and Public Health) A Busy Bee Removal Company

Pulled by Commissioner Putterman. Mr. Stephen Gatyas appeared.

Mr. Gatyas explained that Mr. Lannes could not appear today but that he was going to be the owner of the company and would participate in the “B” category pest control. He further indicated that Mr. Lannes would assist the sole proprietorship with safety issues. In response to questions from Commissioner Black, Mr. Gatyas indicated he held an Applicator’s License and had taken the Qualifying Party test 6-7 years previously but had not done so well. Mr. Gatyas explained that Mr. Lannes is currently employed by the City of Phoenix as a bus driver or in the City’s Transportation Department and that Mr. Lannes previously operated a sole proprietorship that included a non-compete clause, which has since expired. Mr. Gatyas is the only employee currently of that business.

Commissioner Burns expressed his concerns regarding Mr. Lannes’ ability to respond to emergencies if he is working full time for the City of Phoenix. Without an answer from Mr. Lannes directly to that question he is uncomfortable with approving the Qualifying Party application.

Commissioner Runbeck inquired of Staff if this question was addressed with Mr. Lannes to which Mr. Tolton responded they had not.

Further discussion ensued Commission members and the decision was made to table the matter until the September meeting.

C. Applications for Qualifying Party License

1. Juan M. Cardenas “B3” (Right of Way & Weed Control) and “B5” (Turf & Ornamental Horticulture)
2. James R. Kane “B3” (Right of Way & Weed Control) and “B5” (Turf & Ornamental Horticulture)

Commissioner Baker informs the Commission and Mr. Kane, who was present, that he pulled this matter by mistake.

MOTION: *To approve Mr. Kane’s application for Qualifying Party License by Commissioner Baker.
Seconded by Commissioner DeVere.*

VOTE: *6-0 Motion carried.*

3. Larry Salaz “B1” (General Pest & Public Health)

4. Richard J. Strickland "B1" (General Pest & Public Health)
5. James L. Davis "B1" (General Pest & Public Health)

D. Business License Name Change Requests

1. Pest Ex to Pest Ex Pest Control, Inc.

End of Consent Agenda

MOTION: *By Commissioner Putterman to accept Consent Agenda with the exception of the items pulled for discussion (B1, B2, and B8). Seconded by Commissioner DeVere.*

VOTE: 6.0 *Motion carried.*

VI. Applications not on Consent Agenda

A. Request for Temporary Qualifying Party License Renewals

1. Clyde L. Hughes ("B8" Wood-Destroying Insect Inspection)

Mr. Hughes withdrew his request because the Commission approved Mr. Jerry Davis' activation.

B. Applications to activate Qualifying Party for New or Existing Business License

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) Quality Termite & Pest Control

Steven Mullenau, business owner for Quality Termite appeared.

MOTION: *To approve the Application to activate Qualifying Party and the new business license for Quality Termite & Pest Control, by Commissioner Black. Seconded by Commissioner Putterman.*

Mr. Putterman questioned whether Mr. Camp worked for the business to which Mr. Mullenaux responded in the affirmative although he is retired but can provide the appropriate amount of time to the business to comply with the law and rules. He would have oversight in operations and training as well.

Commissioner Baker questioned the use of "Quality" in the business name. Mr. Mullenaux responded by stating that they wanted to show quality workmanship and service, and the business name was approved by the Arizona Corporation Commission. Mr. Camp has not committed to being in the office 8 hours a day although he has committed to providing oversight and meeting with the business on a weekly basis, reviewing records and providing training. The business has one employee, Casey Christensen, who has approximately 1,700 hours towards the requisite 3,000 and is working on getting his Qualifying Party license.

Commissioner Burns also expressed concerns over the business name and his disapproval over the rental license concept and the similarity with Quality Pest Management, which appears to be one and the same to the consumer.

Mr. Mullenaux indicated this Commission has already set precedent in the past by approving similar business names, e.g., "Arizona" and "Pace." Commissioner Runbeck agreed.

Commissioner Black withdrew his Motion and Commissioner withdrew his Second.

MOTION: To approve the Business License, by Commissioner Black.
Second by Commissioner DeVere.

Discussion ensued regarding the scope of the Motion on the table. Ms. Gervase indicated that the agenda item can be addressed in two (2) separate Motions or in one combined.

VOTE: 3-3 Motion failed (Commissioners Burns, Baker and Putterman dissenting).

Mr. Putterman reiterated his position. The Chairman requested legal advice from AAG Miles and Ms. Miles suggested that legal advice be provided in Executive Session.

MOTION: To enter Executive Session, by Commissioner Baker.
Second by Commissioner DeVere.

VOTE: 6-0 Motion carried

EXECUTIVE SESSION: (from 9:35a.m. to 9:43a.m.)

Commissioner Runbeck advises the Commission that they have until September 21, 2006 before the application time runs out on this item. Options include tabling the matter until the September meeting.

MOTION: To deny the application of Quality Termite & Pest Control, LLC by Commissioner Burns.
Second by Commissioner Putterman, because A.R.S. section 32-2304(B)(18) allows the Commission to refuse to issue a business license if the name could be misleading. The name could be misleading to the public with Qualify Pest Management because in the minds of the public "pest", "termite", "control", and "management" are all the same..

VOTE: 4-2 Motion passed (Commissioners Runbeck and Black dissenting).

C. Applications for Qualifying Party License

None

D. Business License Name Change Request

None

VII. Complaints

A. Robert Morency (APP)-Case #2006-004

MOTION: To suspend the applicator license of Robert Morency for nonpayment of renewal fees and dismiss the complaint without prejudice (license automatically revoked in one year), by Commissioner Black.
Seconded by Commissioner Putterman.

VOTE: 6-0 Motion carried.

B. Keith Breidenbach (APP)-Case # 2006-014

Mr. Dennis Hancock, owner of Alternative Termite & Pest Control, Mr. Breidenbach's employer, and the Applicator appeared.

Discussion ensued regarding how the drinking fountain contained pesticide residue by Commissioners Runbeck and Putterman. The Applicator explained that he became “dumbfounded” when he received the test results. Commissioner Baker discussed the amounts of residue actually detected and the applicator obviously made a mistake. Mr. Hancock explained that one of the chemicals detected was not even carried on his truck and the water fountain could have been contaminated at some earlier time. Commissioner Baker discussed the relative small size of a “nanogram.”

MOTION: *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Black.
Seconded by Commissioner DeVere.*

VOTE: 6-0 *Motion carried.*

C. Catalina Landscape Maintenance (BL)/Murray Dew (QP)-Case #2005-095

Mr. Murray Dew appeared.

MOTION: *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Black.
Seconded by Commissioner Baker.*

VOTE: 6-0 *Motion carried.*

Commissioner Burns after the vote, expressed concern regarding the number of CEU requirements contained within proposed Consent Agreements brought before the Commission for approval, too few if only two hours, and should be more significant, e.g., 8-10 hours. Staff indicated that they look at what is available and relevant to educate the licensee to not repeat the violation, without being overly burdensome or repetitive. Commissioner Putterman suggested that the Staff not limit it to courses already approved but to have the licensee seek out something and then present to staff for approval. Staff will look further into the matter.

VIII. Requests for Review or Rehearing of Previous Commission Decisions

None

IX. Review or Rehearing of Previous Commission Decisions

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]

- A. Keith R. Jones, Case No. 2005-051-Applicator License No. 020457 ("B3")(Issued 5/31/02)(Expires 5/31/07)-Commission's consideration of Suspension of Keith R. Jones' Applicator License for nonpayment of civil penalties.

Ms. Gervase presented the case based on materials contained with in the agency files and provided to the Commissioners for this meeting.

MOTION: *To suspend Keith R. Jones' Applicator License for nonpayment of civil penalties by Commissioner Black.
Seconded by Commissioner Putterman.*

VOTE: *6-0 Motion carried.*

XI. Consideration of lifting Suspension of Business, Qualifying Party and/or Applicator Licenses

None

XII. Recommended Decisions and Orders of the Office of Administrative Hearings' Administrative Law Judges

None

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

None

XIV. Consideration of Informal Settlement Conference proposed resolutions [for License Denial Applicants]

None

XV. Reporting by Licensees on Probation

- A. Joseph D. Wilkerson, Applicator License No. 060328-Case No. 2006-003. Mr. Wilkerson reports the status of his compliance with

criminal probation, employment status and rehabilitation status. Mr. Wilkerson was granted a license pursuant to a consent agreement in February 2006.

Mr. Wilkerson appeared and Ms. Gervase reported that he has passed all UA's and has had no probation violations and is making regular appearances before the Commission.

- B. Robert J. Iovinelli, Applicator License No. 050756-Case No. 2005-030. Mr. Iovinelli reports the status of his compliance with criminal probation, employment status and rehabilitation status. Mr. Iovinelli was granted a license pursuant to a consent agreement in August 2005. Mr. Iovinelli only reports to the Commission very six months.

Mr. Iovinelli appeared and Ms. Gervase reported that his employer is very happy with his performance and that his criminal probation was terminated as of June 1, 2006.

MOTION: *To excuse Mr. Iovinelli from any future Commission appearances but require he nevertheless submit all paperwork and letters from his employer to the Commission through January, 2007 and if compliant, end the Commission Order, by Commissioner Baker. Seconded by Commissioner Black.*

VOTE: 6-0 *Motion carried.*

XVI. Applicants with Criminal Convictions

- A. Timothy Erron Lewis

Mr. Lewis appeared.

Mr. Lewis indicated that this conviction was the only thing on his record and that he'd never do anything that stupid again.

MOTION: *To approve the Application by Commissioner Putterman. Seconded by Commissioner DeVere.*

VOTE: 6-0 *Motion carried.*

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 (Inquiry 2006-100): Commission's consideration of continuing the Summary Suspension of Ant Brian's Business License and Brian Oldham's Qualifying Party and Applicator Licenses.

Ms. Gervase indicated that this item will be on the Commission's Agenda for the foreseeable future because the law requires the Commission to vote at each of its meetings to decide whether to continue the Summary Suspension. Formal hearing is set for September 21, 2006.

MOTION: *To continue the Summary Suspension of Ant Brian's Business License and Brian Oldham's Qualifying Party and Applicator Licenses by Commissioner Putterman.
Seconded by Commissioner Baker.*

VOTE: *6-0 Motion carried.*

- B. None
- C. None
- D. **Complaint Status Log**-no questions from Commission members.
- E. **Computer Based Testing "CBT" Status and Statistics**-no questions from Commission members.
- F. **Expenditure Report** - verbal report by Ms. Gervase was made including approximately \$55,000 excess due to staff vacancies that will be used to purchase much-needed computer servers, computer equipment and supplies, leaving a zero balance for end of FY06.
- G. **Case Status Report**-Ms. Gervase indicated the last report was in 7/06 and the next report will be made 9/06.

XVIII. Approval of Minutes and Continuing Education Programs

- A. July 14, 2006 (regular session) Minutes

MOTION: *To approve the July 14, 2006 Minutes by Commissioner DeVere.
Seconded by Commissioner Baker.*

VOTE: *5-0 Motion carried (Commissioner Putterman abstained).*

- B. July 25, 2006 (regular session) Minutes

MOTION: To approve the July 25, 2006 Minutes, as amended (amending Commissioner DeVere's name to Commissioner Burns in one place) by Commissioner Black.
Seconded by Commissioner Baker.

VOTE: 5-0 Motion carried (Commissioner DeVere abstained).

C. July 25, 2006 (executive session) Minutes – separate handout.

MOTION: To approve the July 25, 2006 Executive Session Minutes by Commissioner Putterman.
Seconded by Commissioner Baker.

VOTE: 5-0 Motion carried. (Commissioner DeVere abstained).

D. Continuing Education Program Applicants

MOTION: To approve the Continuing Education Programs as noted in the C.E. Minutes by Commissioner Putterman.
Seconded by Commissioner Baker.

VOTE: 6-0 Motion carried.

XIX. Scheduling of future meetings/agenda items

Current Proposed dates

September 8, 2006

October 13, 2006

November 9, 2006 (Thursday) (Commissioner Black unavailable)

December 8, 2006

January 12, 2007

February 9, 2007

March 8, 2007

April 12, 2007

May 11, 2007

XX. Adjournment - 10:22 a.m.

MOTION: To adjourn by Commissioner Black.
Second by Commissioner Baker.

VOTE: 6-0 Motion carried.