

Structural Pest Control Commission
9535 East Doubletree Ranch Road
Scottsdale, Arizona 85258

COMMISSION MEETING
FRIDAY, November 14, 2003, 9:00 A.M.
MINUTES

I. Call to order, Commissioner roll call, Staff introductions

Commissioners Present: Commissioners Allen, Baker, Fraker, Hartley, Peterson and Robinson

Commissioners Absent: Commissioner Runbeck

Staff Present: Jason Aanderud, Dave Colvin, Vince Craig, Mike Francis, Lisa Gervase, Carl Martin, Robert Tolton, Maggie Vazquez, and Assistant Attorney General Blair Driggs

II. Approval of Minutes

October 10, 2003 (regular session) Minutes.

*MOTION: To approve with corrections by Commissioner Peterson.
Seconded by Commissioner Robinson.*

VOTE: 6 - 0 Motion carried.

Commissioner Peterson pointed out that the Motion for item VI.D.I was made by Commissioner Allen and seconded by Commissioner Peterson.

III. Call to the public.

Kevin Etheridge, of Contractors Termite & Pest Control, Inc., stated that Channel 15, an ABC affiliate, will be airing a story about termite treatments on November 25, 2003, that may reflect negatively on the industry.

IV. Communication with Commissioners

None

V. Scheduling of future meetings/agenda items

Commissioner Baker suggested having a meeting in Tucson either for April or May 2004. There was some discussion about the attendance at the last meeting in Tucson (October 2003). Ms. Gervase stated there were 62 persons who signed in as attending the meeting and only about 12 of them were not on the Agenda or folks that do not attend regularly. Ms. Gervase further stated the meetings out of own are not as productive a use of staffs' time as she would like. Chairman Fraker stated that SPCC has an obligation to reach out to the industry and public outside of the Phoenix area. The Commission decided to hold its April 9, 2004 meeting in Tucson.

Current Proposed dates and locations

December 12, 2003Scottsdale, AZ
January 9, 2004. Scottsdale, AZ
February 13, 2004 Scottsdale, AZ
March 12, 2004Scottsdale, AZ
April 9, 2004 Tucson, AZ
May 14, 2004Scottsdale, AZ

MOTION: *On April 9, 2004, the Commission Meeting be held in Tucson, Arizona by Commissioner Baker.
Seconded by Commissioner Hartley.*

VOTE: *6 - 0 Motion carried.*

VI. Consent Agenda

A. Applications for New Business License

- 1. **Berpohl, William** Unicorn Pest Control, LLC (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
- 2. **Brodie, Robert M.** R & S Pest Control Services (Activating Qualifying Party for new business license in "B1" General Pest/Public Health)
- 3. **Burgess, Patrick H.** Vistal Golf Club (Activating Qualifying Party for new business license in "B3" Right of Way/Weed Control and "B5" Turf and

Ornamental)

4. **Conn, George A.** **Conn Pest Control - Flagstaff, LLC (Activating Qualifying Party for new business license in “B1” General Pest/Public Health, “B2” Wood Destroying Insect Control, “B3” Right of Way/Weed Control, “B4” Fumigation, “B5” Turf and Ornamental, and “B8” Wood Destroying Insect Inspection)**

5. **Dawson, Patrick E.** **Centurion Environments, LLC (Activating Qualifying Party for new business license in “B1” General Pest/Public Health, “B2” Wood Destroying Insect Control, and “B8” Wood Destroying Insect Inspection)**

6. **Ford, Jeffrey Lynn** **X-treme Exterminating (Activating Qualifying Party for new business license in “B1” General Pest/Public Health)**

7. **Gorsuch, Charles T.** **Superior Weed & Pest Control, LLC (Activating Qualifying Party for new business license in “B1” General Pest/Public Health, “B3” Right of Way/Weed Control, and “B5” Turf and Ornamental)**

8. **Kirkland, Brian K.** **Above & Beyond Exterminating (Activating Qualifying Party for new business license in “B1” General Pest/Public Health, “B2” Wood Destroying Insect Control, and “B8” Wood Destroying Insect Inspection)**

9. **McWilliams, Dickie Lee** **Conn Pest Control - Verde Valley, LLC (Activating Qualifying Party for new business license in “B1” General Pest/Public Health, “B2” Wood Destroying Insect Control, “B4” Fumigation, “B5” Turf and Ornamental, and “B8” Wood Destroying Insect Inspection)**

- 5. Spohn, Jeffrey Alan Arizona Public Service (Activating Qualifying Party for existing business license in “B3” Right of Way/Weed Control and “B5” Turf and Ornamental)

- 6. Tomlinson, Susan Dale North Country Pest Management (Activating Qualifying Party for existing business license in “B1” General Pest/Public Health)

C. Applicants for QP Testing

- 1. Chavez, Jr., Roberto “B8” (Wood Destroying Insect Inspection)
Pulled

MOTION: *To go into Executive Session for legal advice by Commissioner Peterson. Seconded By Commissioner Allen*

VOTE: *6 - 0 Motion carried. Executive Session from 9:45 a.m. to 10:00 a.m.*

Mr. Chavez appeared and answered Commissioner’s questions.

MOTION: *To approve QP Testing in the B2 and B8 Categories by Commissioner Hartley. Seconded by Commissioner Peterson.*

VOTE: *6 - 0 Motion carried.*

Discussion about Qualifying Parties needing to be licensed in both the B2 and B8 categories to perform B8 work. Mr. Blair Driggs stated that A.R.S. § 32-2323(B) requires an individual to be licensed in both categories to perform inspections. Mr. Chavez stated that he worked four years ago as an exterminator and is currently working as a Home Inspector. Mr. Chavez would like to do a combination of work in the termite area as a Home Inspector. Mr. Chavez was asked if he would agree to test in both the B2 and B8. Mr. Chavez agreed to test in both categories. Chairman Fraker stated that the application should be modified to include the B2 category.

- 2. Cota, Sr., Mario Acuna “B3” (Right of Way/Weed Control)
- 3. Dohert, Gary K. “B1, B2 and B4” (General Pest/Public Health, Wood Destroying Insect Control, and Fumigation)
- 4. Klafehn, Joseph W. “B1” (General Pest/Public Health)
- 5. Price, Barry Paul “B1” (General Pest/Public Health)
Pulled

Mr. Price appeared and answered Commissioner’s questions.

MOTION: *To approve QP Testing by Commissioner Peterson. Seconded by Commissioner Baker.*

VOTE: *6 - 0 Motion carried.*

Discussion about Mr. Price’s experience. Mr. Price stated he has worked for the Paradise Valley School District for the last 30 years in maintenance. Mr. Price stated he was certified in Pest Control in 1979 and his background is in Right of Way and Weed Control. Mr. Price stated he took 12 CEUs and took some classes at Glendale Community College.

D. Request for Company Name Change

- 1. Horticulture Management Systems to HMS Landscapes, Inc.

Ms. Lisa Gervase stated that Horticulture Management Systems, Inc. is merely changing its name. This is not an entity change.

End of Consent Agenda

MOTION: *By Commissioner Allen to accept Consent Agenda with the exception of those items pulled for discussion (Tab 20 and Tab 24). Seconded by Commissioner Peterson.*

VOTE: *6 - 0 Motion carried.*

VII. Applicant for Qualifying Party Testing (not on Consent Agenda)

1. Emmord, Jr., Ralph F. "B5" (Turf and Ornamental)

Mr. Emmord was present, but chose not to address the Commission.

MOTION: *To deny QP Testing in the B5 category because Mr. Ralph F. Emmord was not previously licensed as an applicator in the Turf and Ornamental Category and lack of verifiable experience by Commissioner Robinson.
Seconded by Commissioner Peterson.*

VOTE: *6 - 0 Motion carried.*

VIII. Felony Applicants

1. Bates, John Andrew - Renewal applicant

Mr. Bates appeared and answered Commissioner's questions.

MOTION: *To approve by Commissioner Allen.
Seconded by Commissioner Peterson.*

VOTE: *5 - 1 Motion carried. (Commissioner Robinson opposed)*

Mr. Bates stated that he was informed by an SPCC staff person that he did not have to put any information on his application about his felony conviction, since he notified us when he first applied. Mr. Francis stated that the original application is not in the file. Mr. Francis stated on all the renewals for Mr. Bates, he checked "no" and his felony conviction has never been reviewed by the Commission. Commissioners Allen and Robinson asked Mr. Bates questions about why he failed to disclose the felony conviction on the applications and renewal forms. Mr. Francis stated the new renewal form, with a differently worded question about felony convictions, prompted Mr. Bates' current "yes" answer and the investigation and it is before the Commission for its consideration. Mr. Blair Driggs stated that if the conviction has been expunged, an applicant still has to answer "yes" to the felony question on the application.

2. Cromley, Gary Dean

Mr. Cromley appeared and answered Commissioner's questions.

MOTION: *To approve by Commissioner Peterson.
Seconded by Commissioner Robinson.*

VOTE: *6 - 0 Motion carried.*

3. Robinson, Jackie R.

Mr. Robinson appeared and answered Commissioner's questions.

MOTION: *To approve by Commissioner Robinson.
Seconded by Commissioner Allen.*

VOTE: *6 - 0 Motion carried.*

Discussion by Commissioners Peterson and Allen regarding Mr. Robinson's convictions. There were some time gaps of when he was incarcerated that needed clarification. Mr. Robinson clarified for the Commission his incarceration dates and his release dates from prison. Mr. Robinson had been an independent contractor retrieving shopping carts for Bashas, Safeway and Food City. The contract was given to Arizona Retrieval and this took away business from the independent contractors. Mr. Robinson was asked by Commissioner Allen how long he has lived at his current address and about his lifestyle. Mr. Robinson stated he has been married for three years, and is currently buying his home, he goes to church, he is 52 years old, and he is trying to change his lifestyle and to maintain his freedom.

4. Robles, Eduardo Lopez

Mr. Robles appeared and answered Commissioner's questions.

MOTION: *To approve by Commissioner Allen.
Seconded by Commissioner Peterson.*

VOTE: *6 - 0 Motion carried.*

5. Speir, Ronald D.

Tabled for the December 2003 Agenda

MOTION: *To deny by Commissioner Baker
Motion died due to lack of a second.*

Commissioner Allen questioned how the Commission could deny this application when Mr. Speir only had one offense for a DUI six years ago. Commissioner Peterson stated it is a serious offense, but the Commission has not generally denied an application because of a DUI. Commissioner Fraker would like to see this tabled. Commissioner Baker stated Mr. Speir should be here if he wants to be in the industry. Ms. Lisa Gervase stated that an applicant's failure to appear is not grounds for denial.

6. Thrasher, Jason

Mr. Thrasher appeared and answered Commissioner's questions.

MOTION: *To deny because Mr. Thrasher did not disclose all felonies; the nature of the crimes reflect a strong propensity to re-offend; particularly having access to customers' homes; and he is currently on parole by Commissioner Peterson.
Seconded by Commissioner Robinson.*

VOTE: *5-1 Motion carried. (Commissioner Allen opposed).*

Mr. Thrasher stated he was convicted for forgery and drugs. He was released from prison 2 ½ months ago and is currently on parole. His Uncle is offering him a job and to make something of his life. Mr. Thrasher stated he has learned his lesson, he has custody of his 10 year old son and he does not feel he will get into trouble. The Commissioners needed clarification of Mr. Thrasher's convictions. Mr. Blair Driggs verified that there was another conviction in 1997, therefore, not all the documents were provided on this prior conviction.

IX. Complaints and/or Settlement Conferences

1. Pro-Best Exterminating, Inc. - Case # 2003-060

MOTION: *To approve Case # 2003-060 consent terms, 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 Hartley.
Seconded by Commissioner Peterson.*

VOTE: *6 - 0 Motion carried.*

Discussion by Commissioner Peterson concerning the MATRIX. Commissioner Peterson is concerned that there is no civil penalty, only administrative warnings. Commissioner Peterson would like to see civil penalties, as well. Commissioner Fraker has concerns about the MATRIX, he would like for SPCC staff to look at it and amend it in the future. Commissioner Peterson stated he would like to be involved in the revision of the MATRIX. Ms. Lisa Gervase stated that SPCC staff must be consistent in using the MATRIX, but the Commission has the authority to change the sanctions.

X. Unlicensed Activity

1. Dionicio Alvarez - Case # 2003-105

MOTION: *To approve Case # 2003-105 consent terms, with a three-month payment plan for the civil penalty, by Commissioner Robinson.
Seconded by Commissioner Peterson.*

AMENDED MOTION: *To reduce the civil penalty from \$700.00 to \$500.00 by Commissioner Allen.
Seconded by Commissioner Peterson.*

VOTE: *6 - 0 Amended Motion and Motion carried to execute a consent agreement for a \$500.00 Civil Penalty and Cease and Desist Order, the penalty to be divided into three monthly payments (\$166.66, \$166.67 and \$166.67), the first payment to be paid within thirty (30) days of the effective date of the Order.*

Mr. Dionicio Alvarez was present and apologized for the unlicensed activity. Mr. Alvarez stated he no longer uses chemicals and he knows he needs a license to do pest control. Mr. Alvarez further stated he does not

have the money to pay the \$700.00 civil penalty. Commissioner Fraker asked Mr. Alvarez how he came to use the chemical. Mr. Alvarez stated he was doing some landscaping work and saw a rat on the roof and he went to Lowe's to purchase the chemical. Commissioner Fraker wanted clarification of why staff recommended a \$200.00 civil penalty for "misuse". Mr. Vince Craig stated he spoke with Carl Martin, and Allen Demorest from the EPA, and that the Commission has authority to pursue a misuse violation against any "person", not only licensed persons and entities. The misuse violation in this case was placing the pesticide where there was the potential for non-target animals accessing it. Commissioner Baker disagreed with that interpretation, because it could mean any homeowner could be found in violation of misuse of a pesticide. Commissioner Allen stated we need to be consistent with unlicensed activity cases and reduce the civil penalty to \$500.00. [The civil penalty was reduced, but the violations of unlicensed activity and misuse remained.]

2. Fred Morales - Case # 2003-110

***MOTION:** To issue a Cease and Desist Order in Case # 2003-110 against Mr. Fred Morales by Commissioner Allen.
Seconded by Commissioner Baker.*

***VOTE:** 6 - 0 Motion carried.*

XI. For information and discussion, not action:

A. Complaint Status Log

Mr. Vince Craig stated there are fewer cases for this meeting because there is a new Assistant Director who reviews the cases thoroughly before they go to the Commission. Commissioner Fraker recognized that Mr. Craig that he has his hands full, and said to keep up the good work.

B. Inquiry Status Log - pulled

XII. For information and discussion and action:

A. Fungi Inspection Report

Ms. Lisa Gervase stated as of November 12, 2003, there is a new draft of the Fungi Inspection Report. There were two changes to the draft, with which the APMA recommended approved to the Commission.

Commissioner Hartley stated his concern about the Fungi Inspection Report being limited only to non-health related fungi, and that the argument pursued by former Commissioner Micuda for separating Fungi from the Wood destroying organism category was to allow for including health issues. He feels that this draft form does nothing more than what was done under the old wood destroying organism category, but add another possible inspection needed to close escrow in real estate transactions.

Commissioner Allen would like “attacked by Fungi” removed because wood does not get attacked by fungi, he further stated it should be a Structural Fungi Inspection Report. He believes this form is a good first step to addressing health issues that are thought to be associated with mold. A pest control employee is not an indoor air quality professional, but is trained to identify conditions conducive to identifying health related mold because they are the same suspect conditions as for wood destroying insects. Commission Allen stated it is a Fungi Inspection Report that says nothing definitive about fungi without conducting a more invasive inspection or sampling. If something is suspected, the buyer or lender can determine whether to conduct sampling, testing, etc. Commissioner Allen would like the form to be renamed a Structural Fungi Inspection Form. Commissioner Allen stated that standards are evolving on how to assess mold for health reasons. He is not comfortable removing the word “possible” from the form.

Mr. Scott Richardson, attorney, stated dividing fungi inspections from the wood destroying organism category prevents unlicensed mold inspectors from wrongfully charging for structural fungi inspections; and clarifies that a wood report is only a termite report, which is what everyone believed it to be even though it was supposed to include fungi. Having two separate categories and reports clarifies the purpose of each. In reality; however, the industry needs to be able to obtain liability insurance, so it is important at this time to be cautious about the language used on the form, even though the SPCC is willing to take on the responsibility of licensing mold inspectors who conduct inspections for health reasons. Mr. Richardson further stated the form is not a guarantee and not a warranty, its purpose is merely to convey information to a buyer or lender, who may want this information. There is no one-stop shopping for all types and levels of inspections required or desired in a real estate transaction.

Mr. John Lynch, a mold inspector and agent with Russ Lyon Realty, stated that mold affects 3% to 5% of the population and it is unsightly and is a potential health concern. He believed mold to be a wood destroying organism.

Commissioner Peterson stated a consumer will have to pay for two reports if they want information about termites and fungi, but feels that separating fungi out of the wood destroying organism category focuses attention on the purpose of each and on expensive mold inspections by unscrupulous inspectors. Commissioner Hartley joked that a consumer will have to get an insect report, fungi report and then pay \$2,000.00 for a mold inspection.

Mr. Brian Kirkland from Above and Beyond Exterminating stated he has had the B1, B2, and B8 category licenses, and does not want the B7 (fungi) category because of the hysteria surrounding mold. He does not understand why the SPCC separated the "C" category. Commissioner Fraker stated the change occurred because people wanted the option of only dealing with insects and not mold.

Mr. Andy Weber of SOS Exterminating stated his recollection that former Commissioner Kip Micuda wanted the SPCC to become involved in this because of talk about SPCC being consolidated with the Department of Agriculture.

MOTION: *To approve the Fungi Inspection Report form with the four stated changes (add "structural"; delete "for fungi that attack, damage or destroy wood"; add "this is not an indoor air quality report"; and add "explain in box 8" for box 7 other), by Commissioner Hartley.
Seconded by Commissioner Allen.*

VOTE: *5 - 1 Motion carried. (Commissioner Hartley opposed).*

B. Continuing Education Committee Minutes - None.

XIII. For information and discussion, not action:

A. Computer Based Testing "CBT" Status and Statistics

Mr. Carl Martin gave a brief analysis of the "CBT" status and statistics. Commissioner Robinson would like to see the statistics by category, like staff has provided before. Ms. Lisa Gervase stated that Metro Institute provides the exam statistics, which will be given to the Commissioners with a summary memo in the future.

XIV. For information and discussion and action:

A. Termite Treatment Depth of Footer Rule - Proposed Substantive Policy Statement

Ms. Lisa Gervase stated the industry is having a problem with complying with the Termite Treatment Depth of Footer Rule and had Inspector Tony Harback draft a proposed policy statement to address this issue and guide the industry. Mr. Mike Francis stated a few problems include: possibly contaminating a water source such as along the Colorado River area where the water draw is often above the top of the footer; not being able to treat to the depth of the footer such as where cinders are used as back fill material that does not hold the termiticide; and where it makes no sense to treat to the depth of footers such as in some commercial construction. Commissioner Fraker asked that SPCC continue to work on this matter, including obtaining industry input.

FIRST AMENDED AGENDA

XIV. For information, discussion and action:

B. Legislative changes needed in 2004 session:

- 1. Include the State and Political Subdivisions in the definition of “person” to whom a license can be issued**
- 2. Restore the felony penalty for unlicensed activity**
- 3. Make all record-keeping requirements five years**
- 4. Change “certification” or “qualification” to “licensed”**
- 5. Clarify that a “fungi inspection report” is prepared in connection with the sale or refinancing of real property**
- 6. Make sure all references to the wood inspection report are consistent**
- 7. Clarify that the SPCC can establish offices (plural)**
- 8. Clarify that the Qualifying Party license application fee is for each application, not merely the initial application**
- 9. Delete reference to the Integrated Pest Management in Schools definition in the treatment proposal language**

Ms. Lisa Gervase suggested the above amendments to the laws that passed on September 17, 2003. Commissioner Fraker would like to review them and have them on the December 2003 Agenda.

C. Integrated Pest Management guidelines for structural pest control practices at schools, due to the Governor and Legislature, before December 1, 2003. Commission approval required.

MOTION: *To approve the Integrated Pest Management guidelines for schools in its entirety by Commissioner Hartley.
Seconded by Commissioner Peterson.*

VOTE: *6 - 0 Motion carried.*

Commissioner Baker suggested that the guidelines, in the future, include the benefits and impacts of IPM, including what, if any, behaviors have changed; and that Dr. Dawn Gouge, from the University of Arizona is a resource of this type of information.

XV. For information and discussion, not action:

A. Budget

Ms. Lisa Gervase stated that as of 10/31/03, the SPCC was about 1/3 into the fiscal year, and has used about 1/3 of its appropriated funds.

B. Case Status Report

This was discussed in detail. Highlighting one area of the written status report (cases scheduled for formal hearing), Ms. Lisa Gervase stated there are four cases scheduled for hearing in December 2003, and another nine cases that soon will be scheduled for hearing, including the cases involving Adobe Termite Control and Jerry Fisher, Timothy Fickett and Alan Perry.

C. Executive Session Minutes - Handling and Maintaining

Ms. Lisa Gervase requested that the Commissioners maintain the confidentiality of their copy of the Executive Session Minutes and shred them or leave them for staff to shred.

D. TARFs - status of CompuTAR software interfacing with various business management software

Ms. Lisa Gervase stated that software company FMC is testing the import utility, that Mr. Pulido created, on the S.O.S. Exterminating TARFs that contained numerous errors. Once the testing is complete, FMC will help write the specifications for all software companies to follow so that their software can import data into CompuTAR. After the testing and specifications, the import utility can be released for public consumption so that all businesses can use their business management software to submit TARFs with CompuTAR, without double data entry.

E. Applicator License Renewals - Researching capability for on-line renewals for May 2004

Ms. Lisa Gervase stated staff is researching the capability of on-line Applicator renewals for 2004. Information is being obtained from the Government Information Technology Agency and the State Procurement Office.

- F. Business License and Qualifying Party Renewals**
 - Due December 2003**
 - Continue to have list of Applicator employees**

Ms. Gervase stated that the Business License and Qualifying Party License renewals will be mailed out next week and that the SPCC will still request a list of employees and their dates of hire.

XVI. Adjournment - 1:20 P.M.

MOTION: *To adjourn by Commissioner Hartley.
Seconded by Commissioner Peterson.*

VOTE: **6 - 0** *Motion carried.*