



STATE OF ARIZONA

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Governor

Structural Pest Control Commission

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**Structural Pest Control Commission
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258**

**COMMISSION MEETING
FRIDAY, October 13, 2006, 9:00 A.M.
MINUTES**

I. Call to order (9:16 a.m.), Commissioner roll call

Commissioners Present: Paul Baker, Patrick Black, Dave Burns, Dan DeVere

Commissioners Absent: Dave O'Neal, Bert Putterman, Debra Runbeck

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

II. Call to the public

Robert Hartley, Vice President of Truly Nolen of America, stated that he believes that the Commission should consider some violations as "de minimis" if they have no direct or immediate relationship to safety, health or property damage to streamline some complaints. Or, the definition of "de minimis" should be amended.

Michael Francis, Director Compliance/Enforcement, introduced the SPCC's four newest inspector/investigators who have replaced others who have left: Anthony Banks, Dean Athey, Bill Hanko and Christopher Wilson.

III. Communication with Commissioners

None disclosed.

IV. Summary of Current Commission Events, Activities, Notices

Discussion of status of rule changes. Commissioner Burns raised a concern about the language in the Notice of Proposed Rulemaking vis-à-vis the Commission’s votes at its 072506 and 080106 meetings, and wanted to review the Notice to ensure that the language was consistent with the Commission’s votes and determine whether clarifications were necessary. Commissioner Black suggested that Commissioner Burns put his questions in writing. Lisa Gervase and Commissioner Burns are to meet to review the Notice of Proposed Rulemaking in the next couple of days.

Lisa Gervase provided an update about the SPCC’s ILT (Initial Licensure Training) courses and CE (Continuing Education) courses, and reminded those interested to check the web site for upcoming classes and registration information.

V. Consent Agenda

A. Applications for New Business License and Activating Qualifying Party License

Business

Qualifying Party

- | | |
|----------------------------|------------------------------|
| 1. Capitol Pest Control | Benjamin Joshua Denny (“B1”) |
| 2. RoadRunner Pest Control | Kelly Clark Denny (“B1”) |

Jamie Bearden, appeared on behalf of this applicant. Per question from Commissioner Burns to staff, and staff’s discussion with Ms. Bearden, she is aware of the prior business licensee with the same name, whose license was suspended in 1992, and subsequently revoked. Due to the length of time, there is no concern that a consumer would think that this applicant is the prior business licensee.

- | | |
|----------------------|--|
| 3. AZ Bug Free, LLC. | Jeffrey J. Slingluff (“B1”, “B2” and “B8”) |
|----------------------|--|

Tabled

- | | |
|-------------------------------|-------------------------------------|
| 4. Hassayampa Golf Club, LLC. | Matthew Lee Kimball (“B3” and “B5”) |
|-------------------------------|-------------------------------------|

- | | |
|------------------------------|---|
| 5. Bug Doctor | James Patrick Delaney ("B1") |
| 6. Meridian Pest Solutions | Brian Edward Fisher ("B1") |
| 7. Bruce Exterminating, LLC. | Bruce D. Burr, Jr., ("B1", "B2" and "B8") |

B. Applications to activate Qualifying Party for Existing Business License

- | <u>Qualifying Party</u> | <u>Business</u> |
|-------------------------|---|
| 1. Jeffrey Lynn Ford | X-Treme Exterminating ("B2" and "B8") |
| 2. Jesse R. Pierce, Sr. | A -Nother Pest Control, Inc., ("B1", "B2" and "B8") |
| 3. Kandy Van Meeteren | City of Glendale ("B3" and "B5") |
| 4. Isaac Martinez, Jr. | Brencon Pest Control Company ("B2" and "B8") |

C. Applications for Qualifying Party License

- | | |
|--------------------------|---------------|
| 1. Cass R. Carter | "B3" and "B5" |
| 2. Richard K. Mead | "B1" |
| 3. Richard E. Lange | "B1" |
| 4. Jeffrey Kregg | "B1" |
| 5. Clinton A. Bruner | "B2" |
| 6. Bryan Finley | "B1" |
| 7. Cynthia Annette Aloe | "B2" and "B8" |
| 8. Michael P. Kropf | "B3" and "B5" |
| 9. Matthew S. Kennedy | "B1" |
| 10. Phillip Andrews | "B1" |
| 11. Matthew S. Eggleston | "B3" |
| 12. Keith E. Whitted | "B2" and "B8" |

13. Mark A. Bianco

"B3"

D. Business License Name Change Requests

1. InspecTech of Virginia to LandAmerica Property Inspection Services, Inc.
2. Landscapes 'R Us, LLC. to Landscapes 'R Us, Inc.

End of Consent Agenda

MOTION: *By Commissioner Black to accept Consent Agenda with the exception of the item tabled (A1, A3). Seconded by Commissioner DeVere.*

VOTE: 4-0 *Motion carried.*

VI. Applications not on Consent Agenda

A. Request for Temporary Qualifying Party License Renewals

1. Michael R. Smoot "B1", "B2" and "B8"

MOTION: *By Commissioner Black to deny the request for renewal because the applicant has not established good cause for the delay in procuring a Qualifying Party. Seconded by Commissioner Burns. Mr. Smoot's prior QP license application closed. He has not yet submitted a new application.*

VOTE: 4-0 *Motion carried.*

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

None

C. Applications for Qualifying Party License

None.

D. Business License Name Change Requests

None.

VII. Complaints

A. J & S Pretreat Company (BL)/Mark Higginbottom (QP)/Jeffrie Frisch (APP) - Case No. 2005-071

Scott Richardson, Attorney for all three licensees, appeared. Mr. Higginbottom appeared. The Respondents agreed to the settlement terms, but questioned the statement on the agenda that the company's policy is to use the builder's blueprints to determine the measurements, rather than measure the sites. Mr. Richardson stated that this is not the company's policy, and considers termiticide shortages that are less than 10% to be minor. There was discussion between Commissioners, Respondents and Staff about whether Respondent uses a flow meter, extended the customers' warranties, and that the four sites inspected in this subdivision all had shortages. Mr. Higginbottom said that there were four different plans for this subdivision and that they verified the measurements of all four plans, but that they need to independently measure each site to account for any construction change. Mr. Craig confirmed that the applicator stated that he doesn't independently measure, but gets his calculations from his route sheet. Mr. Higginbottom attributed the applicator's comments to being nervous. Commissioner DeVere pointed out that the applicator did not even have the blueprint with him when performing these pretreatments.

The commissioners discussed the relevance if a pretreatment site is shorted, and Commissioner Baker stated that proper coverage of the site is the issue. If there is full coverage, there may be 5-10% flexibility in the amount of termiticide applied. Mr. Francis explained that one site with a minor shortage may not lead to a complaint, but multiple sites with shortages reflect a pattern of violations. Commissioner Burns felt that with post-tension slabs that are designed with a cabling system to minimize slab cracking, minimizing the likelihood of termite infestation. He believes more CE rather than civil penalties may be in order.

Commissioner Black feels that it is consistent to apply discipline as a whole to this case rather than treating each site as a violation since staff looked at it as a whole in determining whether to file a complaint. Commissioner Burns agreed and wanted more education including laws and rules. Commissioner DeVere felt that the applicator should pay a civil penalty to take responsibility.

MOTION: *To offer a consent agreement with terms slightly different than the proposal, reducing the civil penalty for each Respondent to \$100 rather than \$400, and*

keeping the remaining proposed 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 Black.

Seconded by Commissioner Burns.

AMENDED MOTION: *To increase the CE hours for the applicator to 6 rather than 3 (3 hours in measurements/calculations and 3 hours in laws/rules), by Commissioner Burns.
Seconded by Commissioner DeVere.*

VOTE ON AMENDMENT: 4-0 Motion carried

VOTE ON MOTION: 4-0 Motion carried

B. Glendale Exterminating (BL)/David Kellogg (QP)/Michael Leabo (APP) - Case No. 2006-017

David Kellogg was present. Commissioner Burns asked why there was no proposed civil penalty against the Business Licensee. Mr. Craig responded that there was no condition precedent that is required by law before imposing a civil penalty on a business licensee.

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 Burns.*

VOTE: 4-0 Motion carried.

C. Western Exterminator Company (BL)/Keith Willingham (QP)/Keith Whitted (QP)/Roy Lopez (APP) - Case No. 2006-019

Michael Katz, President of Business Licensee, and Keith Willingham, were present. Commissioner Burns thought that this violation may be considered "de minimis", and not justify disciplinary action.

MOTION: *To accept proposed resolution for the Business Licensee, QP Whitted, and Applicator Lopez, 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; and dismiss the complaint against QP Willingham, by Commissioner DeVere.
Seconded by Commissioner Black.*

VOTE: 3-1 Motion carried (Commissioner Burns opposed).

D. Mister Bugman Pest Control (BL)/Dennis Daley (QP)/James Daley (APP)/Robert Watkins (APP) - Case No. 2006-005

Jay Ryan, attorney for all four licensees, appeared. He advised the Commission that the Business Licensee retreated the sites, and issued extended warranties. The Respondents accepted the proposal, although if a similar case arises in the future, he may academically challenge the investigators' sample methodology.

Commissioner Baker expressed his concern about the extent of these shortages. Commissioner Black added that the shortages in this case are egregious. Commissioner Burns stated that the SPCC should watch every pretreatment of this company. They may do them correctly, creating an "internal fine" for the business. Commissioner Black added that the prenotification gives the SPCC notice of pretreatments that it can watch to ensure they are done correctly.

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: 4-0 Motion carried.

E. Truly Nolen (BL)/Robert Hartley (QP)/Dana Herrick (APP) - Case No. 2005-086

Scott Richardson, attorney for the Business and Qualifying Party, appeared. Mr. Hartley appeared. After a discussion about why no settlement proposal could be reached, this matter as it pertains to the Business Licensee and Qualifying Party was Tabled for the Commission to consider this matter at its next meeting.

Mr. Herrick appeared and wanted this matter resolved as to his license.

MOTION: *To accept proposed resolution as it pertains to the Applicator Licensee 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.*

Discussion about whether to impose a civil penalty. Mr. Craig stated that a civil penalty is in order because the applicator knew he was acting in violation of the law since he was previously licensed, so more education would not benefit him.

Motion and Second withdrawn.

MOTION: *To offer a modification to the proposed resolution to remove the \$100 civil penalty and add 3 hours of CE in laws/rules 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 Burns.
Seconded by Commissioner Black.*

VOTE: 3-1 *Motion carried (Commissioner Black opposed).*

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].

None.

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. Benjamin Sanchez, Applicator Licensee No. 050236 - Case No. 2005-007.** *Mr. Sanchez appeared and reported the status of his compliance with criminal probation, employment status and rehabilitation status. Mr. Sanchez' supervisor, Dave Wise, appeared and spoke highly of Mr. Sanchez, considering him a model employee.*

MOTION: *To offer Mr. Sanchez an Amended Consent Agreement whereby he provides written notice of his employment and rehabilitation status to Ms. Gervase every six months until the end of his probation (November 30, 2007) and that his probation with the SPCC will automatically end on November 30, 2007 if he complies with providing this notice, by Commissioner Black.
Seconded by Commissioner DeVere.*

VOTE: *4-0 Motion carried.*

XVI. Applicants with Criminal Convictions.

A. Rene Anthony Solano

Mr. Solano appeared.

MOTION: *To approve by Commissioner Burns.
Seconded by Commissioner Black.*

VOTE: 4-0 Motion carried.

B. Larry Michael Ward

Mr. Ward appeared and answered Commissioners' questions.

MOTION: *To offer Mr. Ward a consent agreement, that once he passes the license exams, his license will be on a one year probation, with quarterly appearances before the Commission, attendance at AA meetings at least once a week, he must abstain from alcohol and drug use, he must comply with all terms and conditions of his criminal probation, and pay all costs of compliance with the Commission's order, by Commissioner Black.
Seconded by Commissioner Burns.*

VOTE: 4-0 Motion carried.

C. Pablo Pescador

Mr. Pescador appeared and answered Commissioner's questions. Dan Monson, his supervisor with DLC Resources appeared and spoke on his behalf. Commissioner Burns expressed concern about this applicant having access to customers' homes.

MOTION: *To offer Mr. Pescador a consent agreement, that once he passes the license exams, his "B3" license will be on a three-year probation, with the requirements that he report in writing any employment change within 10 days, and that if he intends to apply to broaden his applicator license into another category, he provide written notification to the SPCC, separate from his license application to broaden, at least 30 days before filing his application to broaden, giving notice of the existence of this Consent Agreement and Order and of his intent to apply to broaden his applicator license, by Commissioner Black.
Seconded by Commissioner DeVere.*

VOTE: 4-0 Motion carried.

D. Anthony Moreno

Mr. Moreno did not appear.

MOTION: *To deny due to morale turpitude and the felony conviction by Commissioner Burns.
Seconded by Commissioner Black.*

*Commissioner DeVere suggested tabling this matter to give the applicant a chance to appear and answer questions. Motion and Second withdrawn.
Application Tabled*

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

MOTION: *To continue summary suspension of these business, QP and Applicator licenses, by Commissioner DeVere.
Seconded by Commissioner Black.*

VOTE: *4-0 Motion carried*

B. None

C. None

D. Complaint Status Log – update via written log

E. Computer Based Testing “CBT” Status and Statistics – update via written memo, and Mr. Gervase provided status of State Procurement Office awarding a new CBT contract.

F. Expenditure Report – Detailed budget and expenditure report via written memo

G. Case Status Report (Every other month) – None

XVIII. Approval of Minutes and Continuing Education Programs

A. September 8, 2006 Minutes

Tabled.

B. Continuing Education Program Applicants

MOTION: *To approve by Commissioner Black.
Seconded by Commissioner Burns.*

VOTE: 4-0 *Motion carried.*

XIX. Scheduling of future meetings/agenda items.

Current Proposed dates

November 9, 2006 (Thursday)

December 8, 2006

January 12, 2007

February 9, 2007

March 8, 2007

April 12, 2007

May 11, 2007

June 8, 2007

July 13, 2007

XX. Adjournment - 12:01 p.m.

MOTION: *To adjourn by Commissioner DeVere.
Seconded by Commissioner Black.*

VOTE: 4-0 *Motion carried.*