



STATE OF ARIZONA

**Structural Pest Control Commission**

Janet Napolitano  
Governor

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Lisa Gervase  
Executive Director

**COMMISSION MEETING  
FRIDAY, March 9, 2007, 9:00 A.M.  
MINUTES**

**I. Call to order (9:18 a.m.), Commissioner roll call**

Commissioners Present: Patrick Black, Dan DeVere, Paul Baker, and Dave O'Neal

Commissioners Absent: Bert Putterman, Debra Runbeck, and Dave Burns

Staff Present: Vince Craig, Lisa Gervase, Mike Francis, Robert Tolton, Magdalena Vazquez, Lorena Villela, and Assistant Attorney General, Beth Campbell

**II. Call to the public**

*None*

**III. Communication with Commissioners**

*None*

**IV. Summary of Current Commission Events, Activities, Notices**

*Ms. Gervase reminded everyone that the Commission's new rules go into effect April 7<sup>th</sup>; mentioned that an industry notice would be mailed to all Business Licensees within the next couple of weeks that will list key areas of the rule changes and many other topics. The notice also will be on the new SPCC website, which was launched March 1, 2007. Ms. Gervase stressed that industry members should pay special attention to the notice and any changes that may affect them.*

*Business and Qualifying Party Licenses that were not renewed by 12/31/06 are expired and cannot operate. There were very few Businesses and QPs who did not renew. The Commission has met its 75% online renewal goal, saving the SPCC and Industry a substantial amount of time and money.*

*There are two more CE courses scheduled for this year. One will be held in Apache Junction on March 16, 2007. The next one will be held in Bullhead City on April 19, 2007. For the CE course held in March, there are currently four hundred fifteen individuals registered to attend and there is still room for approximately two hundred more individuals. The SPCC will continue to discuss the laws, and changes to the laws and rules at each CE course, as it had done so in the past. The CE course schedule is listed on the website. Ms. Gervase offered to provide a private CE course about the laws and rules changes to groups of fifty or more people. Interested folks can contact Ms. Gervase for arrangements.*

*Ms. Gervase provided a brief update about the National Pest Management Association's (NPMA) February Legislative Day in Washington D.C., including the round table discussion regarding issues affecting states. Fred Willey from the Arizona Pest Professional Organization (AzPPO) attended the conference as a representative of Arizona. Ms. Gervase encouraged industry members to be aware of issues ongoing nationally. One way to do this is to get involved with the state association. The annual NPMA conference is in October.*

*Ms. Gervase mentioned the upcoming meetings of the Association of Structural Pest Control Regulatory Officials (ASPCRO), in mid-March (Albuquerque) and in August (Charleston). Ms. Gervase encouraged participation in both NPMA/AzPPO and ASPCRO.*

## **V. Consent Agenda**

### **A. Applications for New Business License Activating Qualifying Party License**

<b><u>Business</u></b>	<b><u>Qualifying Party</u></b>
1. Golf Verde Santa Fe, Inc.	Jesse E. Diehl ("B3" & "B5")
2. Terra Green, LLC.	Ross Mariano ("B3", "B5" and "B9")
3. House Doctor Exterminating	David M. Ramos ("B1", "B2" and "B8")
4. Joint Facilities Management, LLC.	Justin C. Ruiz ("B3" and "B5")

5. Surprise Pest Control

Michael J. Patton (“B1”)

*Pulled by Commissioner DeVere. Jeffrey White and Michael Patton appeared. Mr. White said Mr. Patton would be the active QP until he (White) receives his QP license.*

**MOTION:** *To approve the application for new business license in the “B1” category, by Commissioner DeVere.  
Seconded by Commissioner O’Neal.*

**VOTE:** *4 – 0 Motion carried.*

6. Moxie Pest Control

Kelcey G. Loveland (“B1”)

*Pulled by Commissioner DeVere. Kelcey G. Loveland, owner of Moxie Pest Control, and Jason Walton, owner of Walton Holdings, appeared.*

*Commissioner DeVere questioned the similarity of the name with another business, Moxie Pest Service, listed on the agenda. Ms. Gervase said Moxie Pest Service was not included on the Consent Agenda because Moxie Pest Control’s application was received first and staff wanted the Commission to consider any possible confusion between the similar names. Mr. Walton said he owns the rights to the name of both companies nationally. He added that it works the same way as a franchise. He signs a licensing agreement with the individuals running their business under the Moxie name. There would be no confusion because each company is assigned to a different county and each company is aware that they do not have a right to advertise or conduct business, using the name Moxie, outside of their designated county.*

*Ms. Gervase reminded the Commission of other businesses in similar situations that have recently been before the Commission, where the Commission has declined to accept similar names.*

*Mr. Walton said it would be damaging to all of his companies if they have to use different names, because of the brand recognition with “Moxie”. He said they would not be able to franchise.*

*Commissioner O’Neal was comfortable with both names, in light of the geographic diversity. Commissioner Black said that each company has its own QP.*

**MOTION:** *To approve the application for new business license in the “B1” category, by Commissioner Black.*

*Seconded by Commissioner DeVere.*

**VOTE:** 4 – 0 *Motion carried.*

**B. Applications to activate Qualifying Party for Existing Business License**

<u>Qualifying Party</u>	<u>Business</u>
1. Todd D. Hyatt	Salt River Project (SRP) ("B3" and "B9")
2. James S. Saitman	No Bugz of Arizona, Inc. ("B4")

*Pulled by Commissioner DeVere. Mr. James. S. Saitman appeared.*

*Mr. Saitman indicated he was interested in the fumigation license for use on gophers only and added that there are two other applicators working for him whom he is trying to get licensed, however at this time, he would be the only one conducting fumigations for the company.*

**MOTION:** *To approve the application to activate Qualifying Party for Existing Business License in the "B4" category, by Commissioner DeVere.  
Seconded by Commissioner O'Neal.*

**VOTE:** 4 – 0 *Motion carried.*

3. Manuel C. Salas	Paz Pest Control ("B2" and "B8")
4. Paul J. Heihn	Modern Pest Solutions, Inc. ("B3")
5. McGary A. Bays	Bryant Pest Control ("B2" and "B8")
6. Jay W. Bancroft	Creative Environments Maintenance Services, LLC. ("B3" and "B5")

**C. Applications for Qualifying Party License**

1. Michael E. Gibson	"B5"
2. William T. Pulley	"B2"

3. John T. Royalty "B3"

*Pulled by Commissioner DeVere. Mr. John T. Royalty appeared.*

*In response to Commissioner DeVere's question about Mr. Royalty also being on the agenda for a temporary QP license renewal, Mr. Tolton said he spoke to Mr. Royalty's previous employer who agreed to provide written verification, yet failed to provide it. He later met with Mr. Royalty and between the two of them was able to verify experience that was equal to what the former employer had verbally verified. In response to Commissioner DeVere's question about experience, Mr. Royalty said he was applying in the B3 category and, although he has some experience in the B5 category, he does not have sufficient experience as required by law to obtain that category now.*

*Commissioner Black questioned the length of time in which Mr. Royalty has held the temporary Qualifying Party License and asked why he is only now applying for his QP license. Mr. Tolton clarified that this temporary license was originally issued in November of 2006, he was awaiting the results of the background investigation and at the same time was having a difficult time obtaining the verification from the former employer. Mr. Royalty had previously obtained Temporary Qualifying Party licenses while employed with two different companies, once in 2003 and once in 2005. He changed jobs in 2003 and again in 2005, negating his need for a QP license after beginning the application process those two prior times.*

**MOTION:** *To approve the application for a Qualifying Party license in the "B3" category by Commissioner Black. Seconded by Commissioner DeVere.*

**VOTE:** 4 – 0 *Motion carried.*

4. William A. Head "B2"

5. Virginia M. Rench "B3"

6. Lee J. Hicken "B2" and "B8"

7. Thomas O. Pittman, III "B1"

8. Scott D. Mishler "B1", "B2" and "B8"

9. John W. Noyes "B5"

10. Edward W. Schroeder "B1"

11. Richard A. Turney "B3"

12. Gregory S. Perez "B3" and "B5"

13. Christopher W. Brinton "B1", "B2" and "B8"

**D. Business License Name Change Request**

1. Handyman Maintenance, Inc. to H.M.I Commercial Landscape
2. Ex-Men Exterminating Termite & Pest Control, LLC. to Ex-Men Exterminating
3. Irvin D. Smith Pest Control to DPC

**End of Consent Agenda**

**MOTION:** *To accept the Consent Agenda with the exception of the items pulled for discussion (A5, A6, B2, & C3), by Commissioner O'Neal.  
Seconded by Commissioner Black.*

**VOTE:** *4 – 0 Motion carried.*

**VI. Applications not on Consent Agenda**

**A. Request for Temporary Qualifying Party License and Renewals**

1. John T. Royalty "B3"

*Commissioner Black requested additional clarification with regard to the issue in obtaining verification of experience. Commissioner Black said he was confused as to why Mr. Royalty had qualified work experience in the past but, he did not have the experience now. Mr. Tolton said it was because there was a mistake in the way the former employer calculated the work experience hours. Mr. Tolton said the former employer calculated the hours toward the B3, when in actuality the hours should have been counted toward the B5. Also, because experience must be obtained within the 5 years before filing an application, that changed what experience counted toward his application.*

*Commissioner DeVere questioned how Mr. Royalty could obtain a temporary QP license in both the B3 and B5 categories if he didn't have the experience to get a QP license in the B5 category. Mr. Tolton explained that the current rules only require an applicant to hold an Applicator license in the categories in which the applicant desires a temporary QP license.*

**MOTION:** To issue the temporary QP renewal in the “B3” category, by Commissioner Black.  
Seconded by Commissioner O’Neal.

**VOTE:** 4 – 0 Motion carried.

2. James R. Potts “B3” and “B5”

*Mr. James R. Potts was not present.*

*Mr. Tolton said Mr. Potts has submitted his QP application and passed the B3 test, but not the B5 test. He has the experience for both categories.*

**MOTION:** To issue the temporary QP renewal in the “B3” and “B5” categories, by Commissioner DeVere.  
Seconded by Commissioner O’Neal.

**VOTE:** 4 – 0 Motion carried.

3. William R. Stewart “B3” and “B8”

*Mr. William R. Stewart was present.*

*Mr. Stewart has submitted his application, but has not been approved (so, has not tested) because the SPCC is awaiting his background check.*

**MOTION:** To issue the temporary QP renewal in the “B2” and “B8” categories, by Commissioner O’Neal.  
Seconded by Commissioner Black.

**VOTE:** 4 – 0 Motion carried.

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

1. Moxie Pest Service Joseph R. Cons, Jr. “B3” and “B5”

*Joseph R. Cons, QP, and Brady Bruce, Owner, appeared. Mr. Tolton explained that the owner, Mr. Bruce holds a QP license in the B1 category only. Mr. Cons holds a QP license in the B3 and B5 categories. The Business will conduct only B3 and B5 work under Mr. Cons’ QP license until Mr. Bruce obtains his QP license in the B3 and B5 categories. The Business cannot conduct B1 work because it does not have a QP active in that category.*

**MOTION:** To approve the application to activate Qualifying Party for New Business License in the “B3” and “B5” categories, by Commissioner O’Neal. Seconded by Commissioner Black.

**VOTE:** 4 – 0 Motion carried.

### C. Application for Qualifying Party License

1. Katrina B. Hruska “B1”

*Katrina B. Hruska appeared.*

*Commissioners indicated they received a statement from Ms. Hruska’s former employer alleging that Ms. Hruska is not of good moral character. The Commissioners felt that because the employer had not filed a police report or provided the Commission with a copy of the police report that she allegedly filed, they lacked the basis to deny the application. The Commissioners agreed that Ms. Hruska did not have any felony or misdemeanor convictions. Her current employer is aware of the prior employer’s allegation.*

**MOTION:** To approve the application for a Qualifying Party License in the “B1” category, by Commissioner Black. Seconded by Commissioner DeVere.

**VOTE:** 4 – 0 Motion carried.

**Break: (from 10:12 a.m. to 10:22 a.m.)**

### D. Business License Name Change Requests

None

## VII. Complaints

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

*Terry Nichols, owner, and David Dickson, Nichols’ consultant, appeared. Mr. Craig said the company became compliant once they found out they were non-compliant and took every step necessary to become compliant. The company contacted Mr. Dickson, an experienced QP in the weed industry, to help them get into compliance by researching inactive QPs that may be available to Nichols. In the meantime, they will hire a licensed company to honor its contract with Fountain Hills for weed control.*



**MOTION:** *To 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, by Commissioner Black. Seconded by Commissioner O'Neal.*

**VOTE:** *4 – 0 Motion carried.*

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

*Mr. Lucero was not present. Mr. Craig said that Mr. Lucero has not responded to notices of this complaint.*

**MOTION:** *To send the matter to hearing, by Commissioner Black. Seconded by Commissioner DeVere.*

**VOTE:** *4 – 0 Motion carried.*

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

*Kent Griffith was not present.*

**MOTION:** *To accept the 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 O'Neal. Seconded by Commissioner Black.*

**VOTE:** *4 – 0 Motion carried.*

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

*Mr. Camilo did not appear. The Commission recalled its discussion at the prior Commission meeting about the prior proposed resolution of this complaint. Mr. Craig explained why Mr. Camilo would not agree to license revocation, and that revocation would not be consistent with similar cases. Commissioner Baker asked if Mr. Camilo's license is suspended for a year, whether it is automatically reinstated after the year or whether the Commission could require him to appear before them before reinstating his license. Ms. Gervase said typically, once the suspension is satisfied, it is lifted. Ms. Campbell (Assistant Attorney General) said that if there were additional terms added to the proposed agreement then Mr. Camilo would have to agree to them, and the Commission would need a basis in the Order not to lift the suspension if he was to be required to appear before it as a condition of lifting the suspension. If he violates the Order, the Commission has the authority to file a*

complaint. Commissioner O'Neal asked Commission staff to update the Commissioners on the progress of the Mr. Camilo's compliance with the Order so that the case does not have to go before the Commission again before the suspension period is over.

**MOTION:** To reject the proposed resolution and send the matter to hearing, by Commissioner Black.  
Seconded by Commissioner O'Neal.

**VOTE:** 1 – 3 Motion failed (Commissioner Black- Yes, Commissioner DeVere- No, Commissioner O'Neal – No and Commissioner Baker-No).

**Discussion:** Mr. Craig said that the offer of license revocation was an issue because the licensed company for which he was working was possibly being untruthful. The company alleged that Mr. Camilo was not working for them; however, they provided Mr. Camilo with a blank invoice book with the company name and a company sign, giving the appearance that he was working for them and not doing unlicensed work.

**SECOND MOTION:** To accept the proposed resolution and that the case be placed on the Commission Agenda the month before the suspension ends for the Commission to review whether Mr. Camilo has complied with the terms of the Consent Agreement, 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 O'Neal.  
Seconded by Commissioner DeVere.

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

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

Mr. Ortiz appeared, Owner of Ortiz Pest Control, appeared.

Commissioner Black asked why he would allow an applicator to apply without a license for three years. Mr. Ortiz said that it was his fault that there was a noncompliance because he allowed the applicator to continue to work because he was a really good employee and he received many calls from customers with regard to the employee's good work. The employee is honest, good and has a family to support. Commissioner O'Neal asked if the Commission staff felt that the settlement agreement is sufficient for the circumstances of the case. Mr. Craig said this case is unique, in that the applicator was unlicensed for such a long time. If the Commission used the amount of time that the applicator was unlicensed as a basis for a civil

penalty, it would be astronomical. The SPCC did not feel that was realistic and Mr. Ortiz would not be able to comply. They did not want to set Mr. Ortiz up to fail and that is why they arrived at the proposed Civil Penalty. Commissioner O'Neal asked if Commission staff felt Mr. Ortiz would commit this again. Mr. Craig said he did not know, but the reason he proposed it the way he did was because there was no misuse involved and the unlicensed applicator was being trained and supervised. There is one prior complaint on this company from April 6, 2004. The prior complaint was for the same issue, regarding a different applicator. Commissioner Black said that shows a pattern of noncompliance and added that it did not look good for Mr. Ortiz. He asked Mr. Ortiz to explain why he allowed this to happen. Mr. Ortiz said the previous issue was different because the applicator only worked for him for a period of two weeks. He said he allowed the current applicator to work because the applicator came highly recommended, appeared to know the business well and also because he was a single father. The applicator is no longer conducting applications. Mr. Ortiz has him doing maintenance work until he is able to get licensed. He made the mistake of not firing and hiring him right back, but in ten years of business, he has not had any customer or misuse problems. Commissioner Black was persuaded by the fact that Mr. Ortiz could have used the fire and rehire loophole to avoid this complaint, but admonished Mr. Ortiz not to commit this violation again, or he will argue for license revocation.

Ms. Gervase reminded everyone that the loophole of firing and hiring someone right back to avoid the 90-day license requirement will no longer be available after the new rules go into effect April 7<sup>th</sup>.

**MOTION:** To accept the 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 O'Neal.

**VOTE:** 4 – 0 Motion carried.

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

Craig Gerhart was present represented by his attorney Scott Richardson. Mr. Richardson said the company had an employee who was beyond the 90-day licensing requirement. The company was attempting to do the fire and rehire loophole in the law but their paperwork did not support it.

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

*Seconded by Commissioner O'Neal.*

**VOTE:** *4 – 0 Motion carried.*

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

*There were no representatives from Norstar Pest Control present.*

**MOTION:** *To send the matter to hearing, by Commissioner Black.  
Seconded by Commissioner DeVere.*

**VOTE:** *4 – 0 Motion carried.*

**VIII. Requests for Review or Rehearing or 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 Decision 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**

*None*

## **XV. Reporting by Licensees on Probation**

*None*

## **XVI. Applicants with Criminal Convictions**

A. Adrian A. Mendoza

*Mr. Adrian A. Mendoza appeared.*

*Mr. Mendoza said he currently works for Kino Sports Complex maintaining the baseball fields. The position he currently holds requires him to obtain an applicator license. He said his employer was not able to attend because of the company's workload, but offered his employer's phone number. Mr. Mendoza was 18 years old at the time of the incident and has not had any occurrence since.*

**MOTION:** *To approve by Commissioner O'Neal.  
Seconded by Commissioner Black.*

**VOTE:** *4 – 0 Motion carried.*

## **XVII. Commission Updates and Reports; Miscellaneous Action Items.**

A. Commission training (previous handout on 2/9/07)

*Tabled*

B. Legal Advice regarding A.R.S. section 32-2325(6) as to whether a "salesperson" is required to be licensed, and if so, when.

*Tabled*

C. Status Report: Al's Tree & Yardwork, Inc.

*Ms. Gervase said the Attorney General's Office will not seek injunctive relief on this case because they did not feel there was sufficient immediacy due to the length of time from the occurrence of unlicensed activity to the time it was sent to the Attorney General's Office. Mr. Francis added this case was forwarded to the EPA due to possible misuse. Commissioner O'Neal asked why they felt there was no immediacy. Ms. Gervase said there was no ongoing, imminent public threat that would justify injunctive relief, which is a legal remedy that requires such a finding.*

D. Complaint status log

*Report in Commissioners' materials.*

#### E. Computer Based Testing "CBT" Status and Statistics

*Report in Commissioners' materials.*

#### F. Expenditure report

*Ms. Gervase handed out an expenditure report to the Commissioners before the meeting.*

#### G. Case Status Report

*Ms. Gervase offered to e-mail the report. The Commission said that providing it at the next meeting was sufficient.*

#### H. Inquiry and Complaint Process Flowchart

*Ms. Gervase provided a copy of the flowchart to the Commissioners before the meeting. The Commission discussed in detail the process as reflected on the flowchart and discussed the procedure of issuing corrective work orders for de minimis violations and examples of what would constitute a de minimis violation. Staff would handle these matters as Inquiries with a Corrective Work Order for de minimis violations instead of filing Complaints. If the CWO is complied with, then the Inquiry is closed. If it is not a de minimis violation or the CWO is not complied with, then the SPCC would file a Complaint. Ms. Gervase said that after a discussion with Commissioner Putterman, she felt the Commissioners may not be aware of the level of detail that staff provides to folks involved in a Complaint, so she explained the Complaint Process Notice, that has been on the website for two years, and is provided to folks involved in a Complaint. The Complaint Process Notice is provided along with a copy of the investigative report after the investigation is complete. This is different from the Notice of Complaint that is sent to licensees, within 10 days of filing a Complaint, that only has a brief statement of the complaint. Ms. Gervase also explained that staff has a scope of work in a checklist format - one for processing Inquiries and one for processing Complaints. Once an investigation of a Complaint is complete, staff typically schedules a settlement conference. If a conference is scheduled, a Settlement Conference Notice is sent to the licensee to let them know what to be prepared for. All Complaints come to the Commission to decide whether to send a matter to hearing, dismiss a complaint, accept a proposed consent agreement, issue an advisory notice, etc., as is stated on every monthly Commission agenda. Ms. Gervase explained Commissioner Putterman's and Commissioner Burn's position about settlement conferences, as they have stated in prior Commission meetings too. She also said that Commissioner Putterman mentioned that the SPCC could provide clearer information so that people do not feel that they have to agree to a violation or reach a proposed resolution before a Complaint comes to the Commission.*

*Based on a consensus of the Commission, Ms. Gervase will amend the Notice of the Complaint Process and Settlement Conferences to more clearly reflect the options. The Commission also asked that the flowchart be added to the website once it's finalized because it's an excellent snapshot of the process without having to read a narrative.*

## **XVIII. Approval of the minutes and Continuing Education Programs**

### **A. February 9, 2007 (regular session) Minutes**

**MOTION:** *To approve the February 9, 2007 Minutes by Commissioner Black.  
Seconded by Commissioner DeVere.*

**VOTE:** *4 – 0 Motion carried.*

### **B. Continuing Education Program Applicants**

**MOTION:** *To approve the CE Program Applicants, by Commissioner Baker.  
Seconded by Commissioner O'Neal.*

**VOTE:** *4 – 0 Motion carried.*

## **XIX. Scheduling of future meetings/agenda items.**

### **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 – 11:23 a.m.**

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

**VOTE:** *4 – 0 Motion carried.*