

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

**COMMISSION MEETING (VIA TELEPHONIC CONFERENCE CALL)
WEDNESDAY, February 15, 2006, 12:00 P.M.
MINUTES**

I. Call to order, Commissioner roll call

Commissioners Present: Commissioners Paul Baker, Patrick Black, Dave Burns, Dan DeVere, Robert Hartley, and Debbie Runbeck

Commissioners Absent: One Vacancy

Staff Present: Eric Bauer, Mike Francis, and Lisa Gervase

II. Discussion and Vote re: Legislative Bills/Proposals

Jennifer Barnett, attorney for the Institute for Justice, appeared.

Lisa Gervase stated that she emailed to the Commissioners a letter that she drafted for Senator Leff and another document with proposed language regarding legislative bill SB 1221. The Commission voted at last Friday's Commission meeting to instruct her to draft a letter to Senator Leff regarding how the Commission could support the bill. Commissioner Runbeck asked if this proposed language is pretty much the same language that the Commission had used in its previous proposal that was in the omnibus bill. Lisa Gervase stated that it is a combination of what the Commission proposed in its omnibus bill plus the addition of language regarding someone performing lawn, tree or garden maintenance. That was language that came up in the past couple of months during discussions with Senator Leff and other stakeholders. The other addition was paragraph "E" regarding hours of training. Commissioner Runbeck asked if there are any suggestions as to how many hours that should be. Lisa Gervase stated that she is not sure if the Commission wants to have that language in there, but she included it for the Commission's consideration; it can be crossed out if necessary. She stated that the Commission has to be reasonable with any proposals, and maybe any unnecessary language should be crossed out.

Commissioner Baker asked if Ms. Barnett has any objections to the language. Ms. Barnett stated that she is curious about how the Commission would enforce the "hours of training" clause in paragraph "E". Commissioner Baker stated that he is

concerned about the safety of the individual doing the application, especially if the individual has difficulty understanding the English language on labels. He also stated that applicators should have the opportunity to have safety equipment available. Ms. Barnett stated that her purpose is not to jeopardize anyone's safety, but if the purpose of the bill is to exempt people from licensure, and then this proposed language would bring people under the control of the Commission, then this is a concern. She asked if inspectors will be driving down the street and pulling people over. How will the Commission practically enforce this law? Commissioner Runbeck asked who would be enforcing the requirements for records and training against unlicensed people. Lisa Gervase stated that the Commission is charged with enforcing anything in its statutes. As a practical matter, the Commission does not and hasn't had the resources to drive around patrolling for unlicensed activity. The Commission comes across this information primarily in other ways. If an inspector does come across someone, the inspector would determine if that person is exempt and if they are not exempt, then the Commission would issue a Cease and Desist Order and a civil penalty of up to \$1,000 for a first offense. Commissioner Runbeck asked what enforcement authority the Commission would have over an exempt person who doesn't keep proper records. Lisa Gervase stated that one of the conditions for exemption is that a person keeps proper records. Regarding potential misuse violations, those cases would be referred to the Environmental Protection Agency ("EPA"). Commissioner Runbeck noted then that if someone doesn't meet all of the conditions for exemption, the Commission can use enforcement action against the person. Lisa Gervase stated that they are trying to reach a compromise, trying to figure out a reasonable way that weed control people don't have to be licensed. The Commission is looking for a more formal way to support the proposal. Commissioner Runbeck stated that she understands that people have troubles with government agencies that try to reach too far, but if this law passes with no controls, then the safety of children, animals, etc. will be at risk.

Commissioner Hartley stated that he has read over what Lisa Gervase has put together and he thinks that she has done an excellent job on it. She has covered what the Commissioners want to say, and she is being proactive in an attempt to compromise, saying that the Commission won't be in people's faces but also won't give up its mission statement just because some legislator wants their yard sprayed or some lobbying group has influence. He stated that he also likes the nine examples on page 2 of the letter regarding why the Commission is concerned about the level of training and competence of unlicensed applicators. He stated that he has been in the industry for 37 years and has been through cycles in which exemptions have been created, then something bad happens, then the exemption hole is filled again, and so on. It is a back and forth cycle. When a legislator's relative's yard is decimated by herbicides, then they will go back to tighter restrictions again. Commissioner Black agreed with Commissioner Hartley.

Commissioner Black noted that the last line of the draft letter says that “the suggested changes are intended to enable the Commission to support the legislation, as opposed to remaining neutral (not taking a position)”. Lisa Gervase stated that she was not sure which phrase to use. Commissioner Black suggested maybe saying that the Commission can’t support it as drafted. Lisa Gervase stated that it may be more positive though to say that the Commission is neutral or takes no position and can support it with the following changes. Commissioner Black stated that he would then be fine with the language as is. Commissioner Burns stated that he doesn’t like the last paragraph because he doesn’t believe that was the consensus of the Commission at the last meeting. He suggested saying that without the additional language, the Commission can’t support the bill because it goes against the mission statement of the Commission. Commissioner Runbeck asked if Commissioner Burns is suggesting saying that the Commission either supports it or opposes it. Commissioner Burns stated that this is what he is suggesting. He doesn’t want to lead someone to believe that the Commission can support this bill with its current language. Commissioner Runbeck stated, however, that she recalls that there could be a political fallout from opposing the bill language. Commissioner Hartley agreed with Commissioner Burns; the Commission can either support the bill or not support the bill, but there is no “neutral” position. If someone says that not supporting the bill means opposing it, then fine. Commissioner Runbeck asked if there is a way of saying that the Commission doesn’t support the bill without sounding as strong as saying that it opposes it. Lisa Gervase stated that she thinks that saying that the Commission does not support the bill is like saying that the Commission opposes it. By submitting this letter to Senator Leff, the Commission’s position will be documented and can be referenced in the future. We have to be cognizant about what we talked about at Friday’s meeting. She stated that she is not being shortsighted and is trying to be proactive in the long term, and she wants the Commission to be viewed in a positive way in the long term. If this legislation goes forward as written and doesn’t include the Commission’s recommended language, and the Commission has documented language about its opinion, then they can address it later. She stated that she thinks that the omnibus bill didn’t go forward because people wanted to change things in small steps. She stated that she is learning to be more patient and to take smaller steps instead of trying to do many things all at once, keeping the long term in mind. She stated that she doesn’t believe that the Commission will gain anything by taking a stronger stance other than remaining neutral or not taking a position with this letter. Commissioner Hartley stated though that it sounds like no decision is a decision; he doesn’t know what “neutral” means, other than that the Commission is supporting what the bill proposes. Lisa Gervase stated that taking no position sounds more like supporting it than does saying that we remain neutral. Commissioner Runbeck made the analogy that it is akin to the difference between voting “no” and abstaining from a vote. Abstaining doesn’t necessarily mean someone is for or against something. Politics aside, the Commission is a legislatively-created body, and

legislators are elected by their constituents. We have to live with the laws, and Senator Leff takes this exemption seriously. She stated that she wants to maintain and improve the Commission's professional image, and she doesn't think it benefits us by saying "do it our way or we are opposed to it". We need to stay positive. Commissioner Black stated that he understands that some of the fallout has to do with the Commission's 4-3 January vote. He stated that he voted in favor of moving forward with the bill, and is uncomfortable with a neutral position because this issue is in the Commission's purview. Lisa Gervase stated that the Commission has been working with Senator Leff and interested stakeholders for several months and can't imagine that she thinks that the Commission hasn't been responsive in answering questions and helping her make an informed decision. This new proposed draft is similar to what was in the omnibus bill. The fact that the bill language has changed much since then shows that Senator Leff has strong feelings about this. She stated that she thinks that this whole scenario could be played out as looking like the Commission was influenced by the industry members at the January, 2006 meeting. The Commission may not be taken as seriously now.

Commissioner Black suggested a compromise that in the last line of the draft letter they should just put a period at the end of the word "legislation". Commissioners Baker and Hartley agreed. Commissioner Hartley added that then we could let Senator Leff come to the conclusion about what the Commission would have to do if the suggested changes are not adopted. If Senator Leff reads the nine examples, none of which have to do with companies in the business trying to keep other companies from doing weed work, and she can overcome those nine objections, then he thinks this would be disrespectful to the Commission. Commissioner Burns agreed and added that Lisa Gervase has done a great job with the nine points in the letter. We should leave the ball in their court. Commissioner DeVere agreed. Lisa Gervase stated that she thinks that is fine.

Lisa Gervase stated that another thought she has is if there is a chance that the bill doesn't go forward, what will happen with the lawsuit brought by the Institute for Justice against the Commission? If the bill does not go forward, she would still expect the lawsuit to go forward. We could wait to see what the court decides and see how this might affect legislative changes in the future. Ms. Barnett stated that with paragraph "A" regarding the five-gallon or one acre limit, the exemption will not apply to either of the Institute for Justice's clients and the lawsuit will go forward; it is still a constitutional question. If the Commission opposes the bill or acts against it and the bill dies or is pulled, the lawsuit will still move forward in court and in the court of public opinion. Commissioner Runbeck stated that she doesn't think that the Commissioners are looking at this legislation as a remedy to this lawsuit; they are two separate issues. The Commission's new proposed language of the bill will still protect the public and applicators. Lisa Gervase stated that to date, she had not been informed one way or another that the bill would impact the lawsuit, regardless

of the language. Commissioner Runbeck stated that she would prefer to have her counsel present in discussion regarding the lawsuit because she, along with the other Commissioners, are all named parties of the lawsuit. Lisa Gervase stated that her opinion has been to let the court decide the lawsuit on the merits, and then look at legislation afterwards.

MOTION: *To approve the letter with the change that the sentence in the last paragraph shall end after the word "legislation" and the remainder of that paragraph shall be removed, sent the letter and enclosure to Senator Leff, and to approve the proposed bill language attachment with the change that paragraph "E" shall be removed, by Commissioner Hartley.
Seconded by Commissioner Baker.*

VOTE: 6-0 *Motion carried.*

III. Adjournment - 1:00 p.m.

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

VOTE: 6-0 *Motion carried.*