



STATE OF ARIZONA

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Lisa Gervase
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**Structural Pest Control Commission
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**COMMISSION MEETING
TUESDAY, July 25, 2006, 9:00 A.M.
MINUTES**

I. Call to order, Commissioner roll call

Commissioners Present: Commissioners Paul Baker, Patrick Black (arrived at 9:14 a.m.), Dave Burns, Bert Putterman and Debra Runbeck

Commissioners Absent: Dan DeVere and one Vacancy

Staff Present: Eric Bauer, Lisa Gervase, Robert Tolton, Mike Francis, Kellie Smith and Assistant Attorney General M. Elizabeth (Lisa) Miles

II. Ant Brian Exterminating (Business License No. 8369), Brian W. Oldham (Qualifying Party License No. 2029, Applicator License No. 940470)

Commission's consideration of Summarily Suspending Ant Brian Exterminating's business license, and Mr. Oldham's qualifying party and applicator licenses.

Lisa Gervase stated that on this past Friday, Commission staff faxed the investigative report, police report and indictment to the Commissioners. As soon as staff learned that Mr. Oldham had been indicted, the SPCC started an investigation.

SPCC Commission Meeting Minutes - July 25, 2006

Thanks to the work of Inspector Kellie Smith and Supervisor Tony Harback, the SPCC was able to quickly obtain information. Mr. Oldham was indicted on 23 counts of theft, burglary, prescription fraud, and fraudulent credit card use. He admitted most of these crimes. The alleged actions occurred in his role as a licensee of the Commission while providing pest control services to customers.

MOTION: *To summarily suspend Ant Brian Exterminating's business license and Mr. Oldham's qualifying party and applicator licenses pursuant to A.R.S. § 32-2329 because of an immediate public health, safety and welfare threat that requires immediate action, by Commissioner Putterman.
Seconded by Commissioner Baker.*

VOTE: 4-0 *Motion carried (Commissioner Black not present).*

Lisa Gervase then stated that there is a pending complaint with this licensee that has already been voted to hearing and another complaint alleging a violation of a Commission Order. She recommended consolidating the three cases for the purpose of going to hearing. The hearing will probably be in September because it has to occur within 60 days of summary suspension. Commissioner Putterman asked how the Commissioners can include something that they haven't yet seen. Lisa Miles stated that they can get a brief from staff if they want to. Lisa Gervase stated that the pending complaint is for failure to comply with a Commission Order regarding not submitting TARFs and TARF fees in a previous complaint. So, staff opened another complaint, and the Commission's only options would be to vote it to hearing or dismiss the complaint. Commissioner Runbeck asked if there would be any problem with that not being specifically listed on an agenda. Lisa Miles stated that it is reasonably related to the agendized matter. Commissioner Putterman and Commissioner Burns did not want to send a complaint to hearing without seeing the file.

MOTION: *To consolidate this summary suspension matter and the one complaint already sent to hearing, by Commissioner Putterman.
Seconded by Commissioner Baker.*

VOTE: 4-0 *Motion carried (Commissioner Black abstains).*

III. Jordan P. Dietz, Applicator License Applicant, Case 2006-006

Commission's consideration of Proposed Consent Agreement to issue Mr. Dietz an applicator license, if he complies with the licensing requirements, via a Consent Agreement. This action would be in lieu of conducting the Review of the

Commission's denial of Mr. Dietz' license that was voted on at the Commission's July 14, 2006 meeting.

Lisa Miles, Assistant Attorney General for the State of Arizona, appeared.

Lisa Miles stated that Mr. Dietz was amenable to settlement in lieu of review of this matter. A proposed consent agreement was reached that would allow Mr. Dietz to get a license if he passes the exams, on the condition that he will be under a 12-month probation with probation requirements, and will need to appear quarterly and have reports from his employer.

MOTION: *To accept proposed resolution in lieu of a review of the Commission's previous Decision, by Commissioner Black. Seconded by Commissioner Burns.*

VOTE: 4-1 *Motion carried (Commissioner Putterman opposed).*

IV. 50th Annual ASPCRO (Association of Structural Pest Control Regulatory Officials) Conference: August 27-30, 2006, New Orleans, LA

Commissioner Baker agreed to go to the conference.

V. Proposed Rulemaking

Fred Willey, from the Arizona Pest Professional Organization, appeared.

Adam Kunz, attorney, appeared.

Lisa Beadle, Beadle Bug Pest Control, appeared.

Andy Weber, SOS Exterminating, appeared.

Others appeared, but did not comment.

Lisa Gervase explained the procedural aspects of the rulemaking process. Once all time frames have passed with the Secretary of State, there will be another vote, perhaps at the October 2006 Commission meeting, so that the rules could be on the December 2006 GRRC agenda. Then, if finalized, the rules would be filed with the Secretary of State in the spring of 2007. So, even if there was agreement today on the concepts, there will still be changes made by GRRC and the Secretary of State for format, etc. The Commission can review the rules today, seek any further comments today for the Commission to hear, and then the Commission can make a decision. Commissioner Putterman asked specifically what the vote in October will be regarding. Lisa Gervase stated that it would be to close the rulemaking record, adopt the final rules and then file them with GRRC for their review.

Mr. Willey stated that as a representative of the industry and President of the Arizona Pest Professional Organization (“AZPPO”), he believes that it has been difficult to provide comment at the stakeholder meetings because they have been held at times during the day when people are normally working. Lisa Gervase stated, however, that a representative from the AZPPO has been at the meetings. Mr. Willey stated that he has also spent time reviewing the proposed rules changes, though he admitted that they are sometimes slow to act in making comments. Mr. Willey provided a copy of the AZPPO’s written comments to the Commission.

Lisa Gervase stated that the latest draft has either been emailed to people or posted on the Commission’s website for months. She acknowledged that a project of this magnitude is probably not going to be perfect, but encouraged proceeding with the rules, and making future necessary changes in a future rule package. She stated that the SPCC has represented to GRRC and the legislature that the rules would be amended. The SPCC and the industry continually struggle with how to operate with antiquated rules that are inconsistent with laws and many practices.

Chairperson Runbeck asked anyone who had comments to address the Commission at the outset of the meeting. The AZPPO provided written comments. The Commissioners then began discussing the proposed rules in the Administrative/General/Operational Rules package, proceeding as consensus was reached. Chairperson Runbeck read each AZPPO written comment as it related to the rule being reviewed, and each comment was considered by the Commission.

MOTION: To enter Executive Session to obtain legal advice by Commissioner Putterman.
Seconded by Commissioner Burns.

VOTE: 5-0 Motion carried.

(Executive Session from 10:50 A.M. to 11:10 A.M.)

Commissioner Runbeck reiterated that she asked for comments at the outset of the meeting, but would again allow comments at the end of the meeting after the public has heard the Commission’s discussion and consensus. She addressed a note that Adam Kunz, attorney, wrote on a request to speak form. Mr. Kunz stated that he didn’t want his silence to be taken as consent, and criticized the stakeholder process as being insufficient in getting enough input from the industry. He is not saying that the stakeholder process was useless, just that the industry didn’t know what to think and what input to give. He also stated that he has never been invited to provide input. Commissioner Runbeck asked him to provide whatever input he would like. Mr. Kunz stated that he hasn’t had a detailed review of the rules, so is not prepared to make comments, and cannot stay for the whole meeting.

Commissioner Runbeck noted that there has been a lengthy stakeholder process and many opportunities for input, and that this meeting was noticed at the regular July 2006 Commission meeting and people had an opportunity to prepare. She again asked Mr. Kunz to summarize the things that he doesn't agree with. Mr. Kunz stated that the definition of "manner inconsistent with the label" is not clear enough. The Commission discussed his comment and the consensus was to leave the proposed language.

He also stated that just because he doesn't comment on other things doesn't mean he agrees. He stated that there hasn't been enough process. Commissioner Baker noted that he hears criticism, but no input about what could've been done differently. He stated that the Commission has attempted to get input from anyone who is interested and that the same thing happened with the laws changes process. He stated that we are never going to get complete consensus, but the bottom line is that we have to go forth with a set of rules and regulations that people can understand and that people basically agree with for the industry and agency. We are trying to build a general consensus. Otherwise we don't get anything done and this looks worse than creating a new body of slightly imperfect rules. Mr. Kunz stated that he doesn't think that the Commissioners have had the input they wish they would have had. Commissioner Runbeck asked how Mr. Kunz would have done things differently. Mr. Kunz stated that he has heard suggestions about changing the meeting times. He stated that he would have also changed the format for seeking input by reaching out more to ask more questions of people in the industry. He also stated that he doesn't think that some of the people who attended the meetings were equipped to give good input and that a lot of the pest control operators didn't understand enough what was being discussed in order to give valuable input. He stated that he would have tried, in running the meeting, to ask the pest control operators about what their interests are and how they do things. Lisa Gervase stated that the SPCC is legally required to hold only one public comment hearing, yet we have held numerous meetings, sent broadcast emails, posted meetings and drafts on the web site, discussed rules at regularly scheduled Commission meetings, etc. There is no legal requirement to do that type of outreach. If someone didn't provide input, it's not because they didn't have the opportunity. And if anyone didn't understand the impact of the rules, all they had to do was ask - any time, via any mode of communication. She stated that she has never seen an agency go to the lengths the SPCC has gone to obtain input.

Commissioner Burns stated that many industry people don't understand the impact of the changes. The industry members on the Commission represent the industry. He stated that we have come up with a fair set of rules that is a start. If we have to continue massaging them to make changes, then we have that right. Industry members have a right to give us input about changes that they are trying to make. Commissioner Runbeck stated that we have held many, many meetings. We can

solicit public input until the day we die and people will still not be happy. But if we keep making substantive changes, then we will have to send the rule package back out so that people will be notified. We have to have a cut-off point or else you won't make the changes. We really need to do something with this because we were supposed to be done in 2002. She stated that she doesn't know what else we should have been doing in terms of gaining input. We have set appropriate meeting times and done what we can, and she can't imagine how we could've solicited more input. If we don't walk out of here today with a package we can go forward with, then 3 years from today Commissioner Burns could be sitting here as the chairperson with the same problem.

Commissioner Putterman suggested having meetings in Flagstaff or Tucson like was done 10 years ago, as web site notices may not be enough. Ms. Gervase said that the SPCC didn't rely on electronic notices, but posted notices of open meetings as required by law, sent out three written notices via snail-mail, etc. The essentially same draft of rules has been on the web and available for meeting discussions for months. Very few people showed up at the last couple of meetings, and only staff members were at the last meeting, so it was time to bring the package to the Commission.

Commissioner Runbeck said she's hearing that this industry doesn't have the time or other capacity to provide input, so questioned how much more valuable input we would get since people in the industry who want to provide input have, and others haven't shown up in the past. Why all of a sudden would that change now? That would only prolong things.

Commissioner Putterman said that AZPPO as the association had comments and has the ability to dissect this and give a presentation.

Fred Willey stated that the APMA association is not in existence any more because of not enough representation and we are now AZPPO and we work really hard. The message we were told was to bring input and I did.

Lisa Beadle, part owner of Beadle Pest Control said that her company is a "mom and pop". She has a corporate background, is educated, reads email every day, and is involved with AZPPO. The communication to smaller companies has not been there. She didn't know where the notices of meetings were and suggested that the SPCC send letters to businesses.

Ms. Gervase said that the notices are in the office, on the web site, and personal letters were sent to businesses three times. People who have been interested know where to look and how to provide input.

Commissioner Black asked how long the current draft has been available. He thought today was going to be judgment day and would be an opportunity to go through rules line by line and agree or disagree. But I see that the attorney (Adam Kunz) wasn't prepared today and didn't take the rules very seriously to be ready today. The AZPPO didn't provide written comments until today. I think there has been a lot of work and opportunity to comment on the rules. But when Commissioners are in a position to make final decision, I think people should be able to make public comments as we go today if they want. But, crowds aren't here today.

Fred Willey stated that he represents 60 people.

The Commission's review and discussion, considering AZPPO's written comments about the rules resumed through Rule R4-29-201.

MOTION: *To recess until 2:00 P.M. by Commissioner Black.
Seconded by Commissioner Putterman.*

VOTE: *5-0 Motion carried.*

(Break from 1:00 P.M. to 2:00 P.M.)

The Commission's review and discussion, considering AZPPO's written comments about the rules resumed with Rule R4-29-202.

Commissioners Runbeck, Black and Baker via teleconference; and Commissioners Putterman and Burns in person.

The Commission's review and discussion, considering AZPPO's written comments about the rules resumed through Rule R4-29-210.

Commissioner Runbeck asked whether the Commission wanted to vote on the rules thus far. Consensus not to vote, but schedule another meeting to complete the review and vote whether to file the Notice of Proposed Rulemaking. Consensus to schedule next meeting Tuesday, August 1, 2006.

VI. Adjournment - 5:20 p.m.