



STATE OF ARIZONA

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COMMISSION MEETING
MONDAY, AUGUST 1, 2006, 8:00 A.M.
MINUTES

I. Call to order, Commissioner roll call

Commissioners Present: Commissioners Paul Baker (telephonically), Patrick Black (telephonically), Dave Burns, Bert Putterman and Debra Runbeck

Commissioners Absent: Dan DeVere and one Vacancy

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

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

Complaint No. 2006-009: The Commission considered whether to send this matter to formal hearing, and consolidate it with Complaint 2005-075 that previously was voted to hearing, and Inquiry 2006-100 (Complaint 2006-031) wherein the Commission voted to summarily suspend the licenses. The Commission previously voted to consolidate that latter two matters into one hearing. This complaint involves allegations that the licensees failed to comply with a Commission order in Complaint 2004-011, by failing to submit the TARFs and TARP fees and TARP late fees as ordered.

Complaint 2006-031: Pursuant to A.R.S. § 32-2329, the Commission also considered whether to continue the Summary Suspension of Ant Brian's Business License and Brian Oldham's Qualifying Party and Applicator Licenses.

MOTION: *To send Complaint 2006-009 to formal hearing, and consolidate it with Complaints 2005-075 and 2006-031, by Commissioner Black.
Seconded by Commissioner Baker.*

VOTE: 5-0 *Motion carried.*

MOTION: *To continue the summary suspension of Ant Brian Exterminating's business license and Mr. Oldham's qualifying party and applicator licenses by Commissioner Putterman.
Seconded by Commissioner Baker.*

VOTE: 5-0 *Motion carried.*

III. Proposed Rulemaking

The Commission sought comments from the audience at the outset and throughout its consideration and review of proposed rules R4-29-210 through R4-29-708 in the Administrative, General, Operational Rule package and proposed rules R4-29-101, -102, -105, -301, -303, -607, and -608 in the Termite Treatment/Wood-destroying Insect Rule package. There were no comments. The Commission considered the written comments received at its July 25, 2006 meeting, as it considered and reviewed these proposed rules.

Commissioner Burns wanted to change the scope of work of the fumigation (B4) license category to remove burrow fumigation and place it in the scope of work for the general pest control (B1) license category, in these proposed rules. He anticipated having a written legal opinion from the Attorney General's Office about whether this change could be handled in rule, or would require a law change, based on his request at the July 25, 2006 meeting. Ms. Miles explained that a written opinion, as opposed to an informal verbal opinion takes time, and that this is not a simple question because it may need a law change. She believes that this is not an issue that has been considered for this rule package, and asked for the Commission's consensus for direction.

Commissioner Black thought that the Commission would be opening a separate, new rule package to consider this, and other, issues. Commissioner Runbeck believes that this type of change would be problematic without a law change. Commissioner Putterman thought that the Commission gave specific instruction to provide a written opinion. Ms. Miles explained that Commissioner Burns, at the July 25, 2006 meeting, expressed a desire for a written opinion, but that after a lengthy

discussion among the Commissioners about this issue, the conclusion was to consider this in a separate, new rule package since it has not been through the stakeholder process, and then at that time obtain advice about whether it can be changed in rule or would require a law change.

Commissioner Burns requested a written opinion because he disagrees with the informal statement that the scope of work change cannot be done in rule. He believes that burrow fumigation should not be done as part of the B4 license category. Ms. Miles explained that she must act for the Commission as a body, as it is problematic to act for individual Commissioners. Perhaps this should be a future agenda item.

The Commission's consensus was that when the Commission considers changes to propose in a future new rule package, after completing the current rule packages, for Ms. Miles to provide an informal verbal legal opinion as to whether burrow fumigation can be changed from the B4 to B1 license category in rule, or whether this would require a law change.

Commissioner Burns commented that if it cannot be changed in rule, he wants a written opinion because he will pursue it further.

Commissioner Baker absent from 10:24 - 11:11 a.m.

MOTION: *To file the Notice of Proposed Rulemaking for the rules that the Commission addressed in the Administrative, General, Operational rule package, with the changes made by the Commission, by Commissioner Black.
Seconded by Commissioner Putterman.*

VOTE: 5-0 *Motion carried*

Commissioner Baker left at 4: 15 p.m.

MOTION: *To adopt "Plan A" (not "Plan B" - "label is the law") in the Termite Treatment rule package with the language changes made by the Commission, by Commissioner Putterman.
Seconded by Commissioner Burns.*

VOTE: 4-0 *Motion carried*

MOTION: *To file the Notice of Proposed Rulemaking for the rules that the Commission addressed in the Termite Treatment rule package, with the changes made by the Commission, by Commissioner Black.
Seconded by Commissioner Putterman.*

VOTE: 4-0 *Motion carried*

- IV. **Adjournment - 5:23 p.m.** (Motion by Commissioner Putterman, Seconded by Commissioner Black).