



STATE OF ARIZONA

Structural Pest Control Commission

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Janet Napolitano
Governor

Vacant
Executive Director

**NOTICE OF PUBLIC MEETING
FRIDAY, October 19, 2007, 2:00 P.M.
Structural Pest Control Commission
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258**

Minutes

I. Call to order (2:01pm) Commissioner roll call

Commissioners present: *Paul Baker, Patrick Black, David Burns, Dan DeVere, Tim Johnston, Dave O'Neal, Debra Runbeck*

Commissioners absent: *None*

Staff present: *Vince Craig, Assistant Attorney General Dennis Carpenter, Mike Francis, Lisa Gervase, Robert Tolton, Christine Vallery, Maggie Vazquez Assistant Attorney General Keely Verstegen*

II. Call to the public:

Rick Rupkey Sr. is present to discuss the confusion regarding the education group being formed. The objective is to create a task oriented relevant study material examination packet. What Mr. Rupkey has learned because of the committee with the Commission it becomes cumbersome to deal with the open meeting laws and minutes. Mr. Rupkey would rather form a work group than a committee of industry members including but not limited to AzPPO members. With the purpose of bringing

to the Commission study materials that are task related and an improvement of what we have now. Examination questions would directly address the study material. The work group would like to bring all the new materials to the Commission as a recommendation. Mr. Rupkey would like to begin working as a work group. The first meeting is Friday October 26, 2007.

III. Communication with Commissioners

Chairperson Runbeck has disclosed she has had numerous phone calls and e-mails about agenda item Number V. All Commissioners had agreed that they had received copies from Chairperson Runbeck. Commissioner's Burns and Black also disclosed numerous e-mails regarding agenda item Number V. Commissioner Black also disclosed an e-mail from a former employee of the SPCC staff and was directed by the Attorney Generals Office to disclose this communication at this time and supply the other Commissioners with a copy. Assistant Attorney General Keely Verstegen stated at this time, its only allegations and has not been investigated and cannot be discussed at this meeting today, but can be put on a future agenda.

Commissioner O'Neal disclosed that he had a phone conversation with Ken Fredrick and during that conversation Ken Fredrick told Commissioner O'Neal that while speaking with Ms. Gervase the topic came up about her review hearing, she got irritated and said she would sunset the agency if she were to get fired. Commissioner O'Neal told Mr. Fredrick to contact the other Commissioner's immediately. Mr. Fredrick was not present.

IV. Applicants for new Applicator Licenses:

MOTION: *To approve by Commissioner Johnston.
Seconded by Commissioner Baker.*

VOTE: *7-0 Motion carried.*

VI.(A). Applications to activate Qualifying Party for Existing Business License:

Qualifying Party

Business

1. Timothy S. Hendricks

Assured Environments (“B1”)

Mr. Timothy Hendricks was present. Commissioner Baker was concerned that the home base for Assured Environments was in New York. Mr. Hendricks expressed to the Commission the reason he is before them today is because the previous Qualifying Party disassociated without notice. He also expressed that Assured Environments has two employees here in Arizona. One employee works solely on one account and the other employee was hired only three months ago. Mr. Hendricks states he will be in town once a month or when needed, but when he is not in town and a emergency should occur they have a Board Certified Entomologist (“BCE”), and two subcontractors that can be contacted at all times. Commissioner Burns asked what the time frame was to get a Qualifying Party inline. Mr. Hendricks stated no more than a year. Assured Environments only does commercial accounts only.

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

VOTE: *6-1 Motion carried. (Baker opposed)*

V. Personnel Matters

Chairperson Runbeck opened with an introductory that she will read some e-mails from people who could not be present and some that were, then if the other Commissioners make any introductory comments. Then we will let Ms. Gervase address the Commission. After that she will open it up to the general public.

Commissioner O’Neal wanted to seek legal advice. Commissioner O’Neal stated that Ms. Gervase wants her review hearing open to the public.

MOTION: *To go into Executive Session to seek legal advice by
Commissioner O’Neal.
Seconded by Commissioner Baker.*

VOTE: *7-0 Motion carried.*

Executive Session (2:20 – 2:58)

Chairperson Runbeck stated that she has been a Commissioner for four years and Commissioner Baker is the only other Commissioner that has been on the Commission as long as her. Since her time as a Commissioner, she has heard nothing but the highest praises towards Ms. Gervase until recently. It was brought to Chairperson Runbeck’s attention that someone had contacted the Governor’s Office and stated an allegation that herself and Ms. Gervase had a personal relationship.

Chairperson Runbeck would like to make it very clear she has no personal relationship with Ms. Gervase. Her comments are professional. She also stated what a great job she has done since becoming the Executive Director.

Chairperson Runbeck is a little concerned that a professional association held a meeting and one of the topics was, "How to Control the Executive Director?" Chairperson Runbeck received numerous e-mails and would like share with the audience:

Ken Fredrick stated he appreciated the September 25th meeting and Ms. Gervase and her staff's participation. Mr. Fredrick thought some real progress was made. Mr. Fredrick also stated, "He knows Ms. Gervase feels very strongly about her position, and I ask can a working relationship be salvaged, will bad feelings get in the way of progress?"

Norman Goldenberg from Terminix could not be present today because of the National Pest Management Association Meeting. He stated that Terminix strongly endorses the retention of Ms. Gervase as the Executive Director; he went on to say Ms. Gervase is a great leader and her direction has been very well noticed because of staff's performance.

William Golightly is supportive of the Structural Pest Control Commission and especially of Ms. Gervase. He stated, "Because of her fairness, professionalism, and determination. The SPCC has achieved and surpassed their purpose."

Jim Kruger with Orkin stated he has brought many questions to the SPCC regarding the laws and rules interpretations, and never was a investigation conducted. The SPCC staff conducted vehicle inspections and presented there findings. Some items required correction, but no violations were written. Jim stated it was a good learning experience. Steve Brietweiser also with Orkin stated "Orkin supports the continuance of the SPCC with Director Lisa Gervase and staff."

Michael Katz with Western Exterminating stated the Commission and the staff run efficiently, and Ms. Gervase is a strong leader.

Chairperson Runbeck says she hopes to hear a motion today to raise Ms. Gervase's salary. Commissioner Black wanted to remind everyone in the room that the Commissioners are the policy protectors and decision makers. The Executive Director serves at the pleasure of the Commissioners. Commissioner Black wonders if the direction from the Commission has not been clear. Commissioner Black thinks over the past three months some real progress has been made. Commissioner Black also stated that he is always willing to talk to industry members, consumers and staff. As long as the issue is not an agenda item or a current investigation.

Commissioner DeVere stated he has not been a Commissioner very long and he represents the Golf Industry and Small Businesses. In his time as a Commissioner he has found Ms. Gervase to be very professional as well as her staff. Everyone in the agency is easy to get along with and easy to talk to. If there ever is a question, he expressed to call the Commission and the answer will be handled professionally.

Commissioner DeVere thinks that is a reflection on the Executive Director Ms. Gervase.

Ms. Gervase provided the Commissioners with a packet. Included in the packet is the past two performance reviews with the outcome of two pay increases. The performance review in 2003, Ms. Gervase received a 19.6% pay increase, which put her in the top grade that existed at that time. Ms. Gervase's second review in 2004-2005 was a 17.1% pay increase, which also put her in the top grade that existed at that time. Ms. Gervase put together an outline of her major accomplishments since she has been the Executive Director. Ms. Gervase summarized some of the topics. One including her fiscal responsibility, Ms. Gervase came from a private business background. She learned to do a lot with a little. Ms. Gervase has saved the agency over \$600,000 in terms of not filling high salary positions. In terms of spending many hours herself working so the agency didn't have to contract outside sources. Ms. Gervase also brought in an additional \$13,000 to the State General Fund of civil penalties in old cases that the Commission prior to Ms. Gervase ordered. That's additional to the \$100,000 pre 2003 cases. Ms. Gervase must see that all Commission Orders are met.

Ms. Gervase obtained a 21% increase for fiscal year 2008, and a 17% increase for the fiscal year 2009 in the budget appropriation. Ms. Gervase stated it is unusual for a self-supporting agency to have such a success with the legislature. The SPCC underwent a successful ten-year audit report. The audit report went public in August and only had three minor findings, all involving pertaining to operations. Ms. Gervase stated that the audit wouldn't have been as successful if everyone didn't hustle to get the backlog done. Prior to the audit beginning in May of 2006.

Ms. Gervase went on to explain the substantial technology advancements; she doesn't want to take any credit and gives the credit to Hugo Pulido and Vani Mehta.

Ms. Gervase thinks several issues have been resolved involving, licensing issues, people using devices without pesticides, institute for justice lawsuit, licensing people with felonies and misdemeanors and creating policy statements. Significant issues that's have been resolved with industry members and consumers involved. There is continued nation and statewide involvement. Educational outreach working on issues that will hopefully benefit the Arizona industry, because they are bringing information to Arizona of how other jurisdictions are regulating the pest management industry. Ms. Gervase goes on to highlight some of her major accomplishments. Creating manuals for staff to follow, having a business continuity plan, emergency response plan, and office procedures. All the things a business needs to run concisely.

Ms. Gervase provided the Commissioners written and verbal feedback from current and past Commissioners. Ms. Gervase also provided letters and e-mails from the past two in half months from industry members, large companies, small companies, Arizona only companies, pesticide manufactures, and people who work with the industry one way or another, and a variety of sources and unsolicited feedback because people know about the sunset audit and the meeting being held today. Other important items to mention, the volume of letters and e-mails unrelated to the sunset audit and Ms. Gervase's continued employment.

Included is the Sunset Audit Report and the agency's response. Ms. Gervase thinks the Sunset Audit speaks for itself. Ms. Gervase can't help to feel that it wasn't until everybody started to get wind that the Sunset Audit was going to be a good one. Ms. Gervase feels there was some maneuvering to attack her personally. This was from information that relays back to her from numerous people that attend meeting outside this forum.

Another item that is important to mention. The SPCC was ordered by the Department of Administration to put together a performance pay plan. It was completed and approved in 2006. The SPCC tracks and reports that we have met all targets. It's critical because it's the only way staff can maintain their 2.75% pay increase.

From a budget stand point. The SPCC has always stayed within there budget. Starting in April of 2003, Ms. Gervase started providing monthly expenditure and budget reports to the Commission in written memo form.

Ms. Gervase also went on to explain the relationship between the SPCC and EPA. If the SPCC does not regulate the pest management industry then the EPA will. Ms. Gervase thinks it is very important to maintain a good working relationship. The SPCC has local control over the management and regulation of the pest management industry. In the FY06 the EPA end of the year report indicates the SPCC met and exceeded their commitment, and the same was said for FY05 and FY04. FY03 the SPCC met but did not exceed. Three years prior to that in FY02 the SPCC met, but in 2001 and 2000 the SPCC met all but one commitment. The EPA reported significant problems in enforcement.

The State Ombudsmen's Office is another oversight office. In 2003 there were no investigations. In 2004 there was one investigation that pertained to the Commission issuing licenses to convicted felons. During the investigation Ms. Gervase responded to the Ombudsmen's Office exactly what the Commission does and what criteria is used, and satisfied their concerns. In 2005-2006 there were no investigations, and the 2007 report has not been published, but Ms. Gervase has not been informed of any investigations.

The SPCC put on a number of Continuing Education Courses (CE's) around the state. CE courses provide a perspective on how to stay out of trouble, not the technical information. The last CE course had been very well received and had a lot of positive feedback.

Ms. Gervase went on to summarize what Commissioner Black had stated earlier. That she does not make the laws and rules, she is just here to enforce them, which are set by the Commission. Ms. Gervase was opened to questions, but no one responded.

Chairperson Runbeck opened the floor to anyone who wanted to address the Commission or Ms. Gervase.

(Break 3:35-3:47)

Commissioner O'Neal would like to apologize to the audience for whispering to Commissioner Johnston, but he informed everyone he could not hear because he had forgot his hearing devices.

Mr. Vince Craig explained his job duties at the SPCC. Mr. Craig has been employed with the SPCC for 16 years and seven months and never once was a CE course offered in the categories of Record Keeping or Joint Responsibility. It wasn't until Ms. Gervase became the Executive Director. When a complaint is filed against a respondent the only thing the respondent received was a copy of the complaint. When Ms. Gervase came on board, the respondent now receives a copy of the investigation report. For years staff never explained the settlement conference process or complaint process until now. When Ms. Gervase became the Executive Director she taught and explained staff the laws. Mr. Craig asked why did it take five Executive Directors for this to happen? He really appreciates the direction Ms. Gervase has provided.

Daniel Monson read a letter from Rick Robinson who could not be present today. He stated Ms. Gervase's phone and door is always open. He states DLC has never been harassed or favored by the SPCC. Mr. Robinson fully supports the continuance of Ms. Gervase's employment. Daniel Monson stated he is proud to be in this industry. He has gotten nothing but great support from the SPCC and staff members. Ms. Gervase has done a lot of great things for the industry and he is thankful for her leadership. He is scared that this industry wants to go back to the 90's. He would like to keep moving forward.

Keith Whitted with Western Exterminator Company. Mr. Whitted stated when he moved to Arizona in 2005 he had received a phone call from Ms. Gervase and she personally invited him to come meet with her and was introduced to staff members. He was told the door was always open, and his experience with staff and the Executive Director has always been positive. He thinks great strides were made at the September 25th meeting.

Kevin Etheridge with Contractors Termite and Pest Control stated he's angry he has to stand up here today. He stated that Ms. Gervase was Contractors Corporate Council until she became the Executive Director. He encourages the Commission to carefully consider their decision, and that this decision is being look at nation wide by regulatory agencies. He encourages continuing the employment of Ms. Gervase.

Steve Brietweiser with Orkin said he has worked with many regulatory agencies in other states and he thinks the State of Arizona could not do any better with what they already have. He believes very strongly Ms. Gervase is an excellent leader, and an excellent administrator. Mr. Brietweiser also stated that he strongly supports

Ms. Gervase as the Executive Director and Orkin also supports her.

Thomas McCormick with General Exterminating. He stated that he likes where this industry is going. He has never felt picked on. He stated that he has never interacted with Ms. Gervase, but he stated her staff is very professional and that is a reflection of her.

Dan Sleezer with SOS Exterminating supports Ms. Gervase. At first, he felt SOS was being picked on. He thinks Ms. Gervase is very fair and her staff is very professional. He thinks her staff reflects her leadership. SOS Exterminating would like to see her remain as the Executive Director.

Doug Pinnecker with Contractors Termite and Pest Control is here in support of Ms. Gervase. He commended Commissioner Black when he said that the Commission is suppose to give the direction and if the direction is not clear how can Ms. Gervase and staff fulfill Commission orders? Without direction no one is going to be happy. He is proud to call Ms. Gervase a work associate.

Bill Hanko is a SPCC employee, but is speaking as an industry member. He is speaking to support Ms. Gervase. Mr. Hanko stated Ms. Gervase is always raising the bar for professionalism and ethics. Throughout her long career, she has been and still is intimately involved as a catalyst for change, for the better meant for both the regulatory and pest management professionals. Mr. Hanko vested no interest in standing before the Commission. He is here to share his pride for this industry, and the pride as an SPCC employee. He believes this Commission and staff recently has a better working knowledge of what is expected of them to lead this industry into the future. There is always room for improvement and further communication with the industry. Mr. Hanko stated this could be accomplished by the current staff under the leadership of Ms. Gervase. Mr. Hanko stated the pride he has to be able to work for Ms. Gervase and all staff.

Robert Tolton the Licensing Director read a letter that was signed by the majority of staff member. The letter stated that staff fully supports Ms. Gervase as there Executive Director. That the SPCC is not just a work place it's a family, and staff does not want to see a family member go.

Dirk Vandenberg an employee of the SPCC, but speaking as an industry member, he is only speaking for himself and not staff. Mr. Vandenberg gave his history with the industry, and stated when first becoming employed with the SPCC he described it as disorganized, demoralized, understaffed departments, and lacking in specific goals, direction, and strong leadership. Years ago, Mr. Vandenberg was elected by the Commission at the time to be one of a five member committee to interview numerous applicants for the soon to be vacated position of the Executive Director. Two of those applicants are in the room today one being Commissioner O'Neal and the other being Ms. Gervase. When the process was completed Ms. Gervase was hired. Over the span of her first year Ms. Gervase was instrumental in several programs. Reorganization of staff that was deemed necessary, and the changes were steady and constant. Mr. Vandenberg stated when he heard that there was a special meeting to discuss the continuance of Ms. Gervase's employment. He felt compelled to convey his personal observation of Ms. Gervase. Ms. Gervase in his personal opinion is the most intelligent, dedicated, hard working individual he has ever worked with. Ms. Gervase has taken whatever time is necessary to review, correct, inform, educate, and advise staff as well as industry members on whatever is brought in front of her. He personally enjoys working for the Commission and working with Ms. Gervase.

Marla McCarroll with Home Team Pest Defense, she has no idea why we are even here today, because all the statements today have been positive, and the Commission should consider Ms. Gervase's position.

Chairperson Runbeck thanked everyone for standing up and speaking today. Ms. Gervase forgot a few key points that a staff member brought to her attention during a break. Back to fiscal responsibility, by promoting online renewals, encouraging people to renew online, and encouraging people to renew before their licenses expire and paying triple the amount in late fees. The SPCC saved the industry \$395,000 from January 2005 to present. The other topic is an employee rating the Arizona Department of Administration (ADOA) does a statewide survey. The SPCC survey results were that 96% of SPCC employees rated their work place as outstanding, excellent, or good. The state average was 69%. Also 88% of staff was satisfied with their job and job duties, statewide 75% of state employees are satisfied with their jobs.

Chairperson Runbeck would like to thank everyone who spoke today on behalf of Ms. Gervase. Chairperson Runbeck asked Ms. Gervase if there was room in the current budget for a salary increase. Ms. Gervase stated she didn't want to answer the question without all the facts. Commissioner Black tallied up that ten industry members and four staff members who spoke publicly about their support for Ms. Gervase. No comments from the people that have the problem with Ms. Gervase. Commissioner Black stated that the time is now; otherwise, don't make them. Commissioner Black asked if there is anyone who wants to speak negatively about Ms. Gervase and her continuance as the Executive Director? Commissioner O'Neal thinks Commissioner Black is taking advantage of the situation, and that the Commission was advised by the Attorney General's Office not to say anything and Commissioner O'Neal is offended.

MOTION: *To go in to Executive Session by Commissioner Burns.
Seconded by Commissioner Baker.*

VOTE: *7-0 Motion carried.*

Executive Session (4:40-4:46)

Chairperson Runbeck stated there seems to be a misunderstanding between Commissioners. The Commissioners cannot disclose what is said in Executive Session or disclose legal advice. Commissioner Black would like to clarify his statements. He did not hear one negative comment today, and if the Commissioners have a reason to dismiss Ms. Gervase, he would like to know why. Chairperson Runbeck gave three options the Commission could do. The first one being, take no action with regards to Ms. Gervase and adjourn. A motion to terminate Ms. Gervase's employment, or a motion to increase her salary.

MOTION: *To Adjourn by Commissioner Black.*

Motion Failed

Commissioner Burns stated ARS § 32-2304 (D) the Executive Director serves at the pleasure of the Commission.

MOTION: *Around ARS § 32-2304 (D) the Executive Director serves at the pleasure of the Commission. This motion is allowed under ARS § 32-2304. As the Executive Director she serves at the pleasure of us. As a Commissioner and for me it is no longer a pleasure. The motion does not involve a for cause situation. The for cause situation about her or her staff. It is in the statutory power given to each Commissioner under ARS§ 32-2304, I make a move to change the Executive Director by Commissioner Burns.
Seconded by Commissioner Baker.*

Assistant Attorney General Dennis Carpenter asked to clarify the motion. Chairperson Runbeck asked if there was a specific question for clarification. Mr. Carpenter asked because his suggestion is that Commissioner Burns wanted to change the Executive Director to somebody else. Chairperson Runbeck stated that “we don’t have somebody to change to, so the motion would need to be clear to terminate the Executive Director”. Commissioner Burns asked for a five-minute break. Chairperson Runbeck would like to go into Executive Session.

MOTION: *To go in to Executive Session by Chairperson Runbeck.
Seconded by Commissioner Baker.*

VOTE: *7-0 Motion carried.*

Executive Session (4:57-5:10)

Commissioner Burns after seeking legal advice will reword his motion.

MOTION: *ARS § 32-2304(D) The Executive Director serves at the pleasure of the Commission, this is a motion allowed by law under ARS § 32-2304 as the Executive Director serves at our pleasure, for me it is no longer a pleasure. The motion does not involve a cause for hearing. It’s the statutory power to each Commissioner under ARS § 32-2304, I move to dismiss the Executive Director by Commissioner Burns.
Seconded by Commissioner Baker.*

Discussion

Chairperson Runbeck requested an individual role call. Commissioner DeVere would like to make a statement that he is a little taken back. He knew his position when he

entered this meeting today, and it hasn't changed. He read an article that he wrote that was published in the Cactus Clippings. He stated that he would be embarrassed to be part of a Commission if at this meeting or a future meeting the Commission votes to dismiss Ms. Gervase as the Executive Director.

Commissioner Black would like to first publicly apologize to Commissioner O'Neal. He knows that this is a very emotional meeting with respect to Ms. Gervase. Commissioner Black stated that he at times questions why the Executive Director was doing what she was doing, and same as her staff. Commissioner Black tries to be fair with consumers, agency, and industry. He believes in the past three to four months the Commission has come a long way, and some real progress has been made. Commissioner Black thinks there is a better way to address the concerns rather than to dismiss Ms. Gervase. Ms. Gervase still serves at his pleasure.

Chairperson Runbeck is stunned and confused. All of her dealings with Ms. Gervase were professional. She has no idea why her fellow Commissioners want to dismiss Ms. Gervase, and it seems to her that if Ms. Gervase has done something wrong she should know about it. Chairperson Runbeck has heard comments made by her fellow Commissioners that they didn't want to embarrass Ms. Gervase in a public meeting. If there is something going on the other Commissioners could have asked for an agenda item in Executive Session so the concerns could be discussed. Chairperson Runbeck has no clue what the concerns are and she thinks the only appropriate action today would be a salary increase for Ms. Gervase.

VOTE:

Roll call

Commissioner Baker-Yes

Commissioner Black-No

Commissioner Burns-Yes

Commissioner DeVere-No

Commissioner Johnston-Yes

Commissioner O'Neal Yes

Commissioner Runbeck has a statement with a connection in giving a vote. " I am not going to be a party to this blatant attempt to undermine the fair and impartial regulation education of the pest control industry, I resign."

4-2 Motion carried.

Commissioner DeVere and Commissioner Black also resigned.

VII. Adjournment: (5:15pm)