



STATE OF ARIZONA

## **Structural Pest Control Commission**

9535 E. Doubletree Ranch Road  
Scottsdale, Arizona 85258-5514  
(602) 255-3664 - (602) 255-1281 fax  
<http://www.sb.state.az.us>

**Janet Napolitano**  
Governor

**Lisa Gervase**  
Executive Director

### **COMMISSION MEETING FRIDAY, August 10, 2007, 9:00 A.M. MINUTES**

#### **I. Call to order (9:03 a.m.), 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, Mike Francis, Lisa Gervase, Nancy Holmes, Robert Tolton, Magdalena Vazquez, Assistant Attorney General Keely Versteegen

#### **II. Call to the public**

*Commissioner Runbeck encouraged people who had comments to speak to the Commission at the call-to-the-public or during a specific agenda item.*

*Ken Fredrick, President of the Arizona Pest Professional Organization (AzPPO), appeared before the Commission. He said that he emailed the Commissioners and the Executive Director a letter regarding changes to the statutes and concerns that PCOs have. Commissioners Runbeck, Baker, O'Neal and Johnston stated they had not received the letter. Mr. Fredrick handed out a copy to the Commissioners, and requested time on the September monthly meeting agenda to discuss it, as he decided not to read the letter aloud in today's meeting. He updated the Commission on the progress of the Organization. He urged any pest control applicator that had specific concerns to bring them before the Commission. Mr. Fredrick also urged pest control applicators and pest control companies to work through the channels and work together to a common end. Mr. Fredrick also suggested a small committee be formed to intervene. Mr. Fredrick then said that people in the back of the room said he should read the letter, so he read the letter aloud. [The letter is on file with the SPCC.]*

*Commissioner Runbeck asked that if people have concerns that they bring specific information to the Commission, or to the SPCC. It is difficult to address generalities, such*

as “not being happy with SPCC staff”. The Commission wants to work together with anyone who has concerns and resolve them, and cannot do that without specific information.

Commissioner O’Neal echoed Commissioner Runbeck’s statements, and wants specific information.

Lisa Gervase expressed her appreciation for a full Commission, welcoming the newest Commissioner Tim Johnston. Ms. Gervase also requested for all interested parties to work together toward the resolution of any existing problems. She spoke about the recent Audit and it’s input for positive resolutions. Ms. Gervase suggested that the Association take the lead in scheduling meetings where everyone is welcome to discuss issues and possible resolutions. Having regular meetings would provide a planned opportunity for people to express concerns and ideas that could be scheduled on monthly Commission meeting agendas where important concerns can be discussed, decided and prioritized.

Commissioner Runbeck welcomed Tim Johnston as the newest Commissioner.

Tim Johnston briefly mentioned his background, having spent many years in Tucson and in the pest management industry. He worked with many industry members, previously worked for Arizona Exterminating until a couple of years ago when he began Johnston’s Pest Solutions. He is happy to be on board.

### **III. Communication with Commissioners**

Commissioner Burns attended the AzPPO meeting for his company a few weeks ago in Tucson and not as a Commissioner of the SPCC, but as a representative of his company. He also received various emails from the NPMA, AzPPO and some industry members regarding Mr. Fredrick’s letter, most of which supported the letter. One didn’t support the licensing change suggestion. He didn’t respond to any of them.

Commissioner Black received Ken Fredrick’s letter. Commissioner DeVere received notice of the AzPPO meeting from a fellow golf course superintendent.

Commissioner O’Neal spent two hours with Lisa Gervase and Mike Francis regarding the Sunset Audit report and said it was a very productive meeting.

Commissioner Black received a letter from Mr. McClure regarding the testing process.

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

Ms. Gervase mentioned the “MyAccount” feature on the SPCC web site where licenses can make their own address changes, print their own licenses, etc..

Ms. Gervase stated a list is on the web site of the applicators who did not renew their licenses and expired on May 31, 2007.

Ms. Gervase stated the official (Secretary of State) published version of the New Rules is now available on the web site. She appreciates the input she has received from the

industry about suggested future changes.

Ms. Gervase stated the ILT schedule is on the web site.

Ms. Gervase summarized the process of the ten-year performance/sunset audit that the SPCC underwent from May 2006 to present, and stated that the audit report and the SPCC's response is on the Auditor General's web site. The three findings of the audit are that the SPCC needs improvement in processing its Inquiry and Complaint investigations, better monitoring of inspections, and to update and integrate its databases. Complying with the recommendations to satisfy these three findings has been underway for many months. Some items are completed and deadlines for competing the others are stated in the SPCC's response.

Commissioner Runbeck acknowledged the countless hours that are spent by agency staff when a state agency is undergoing a 10-year audit and thanked the staff of the SPCC for its work with the audit team and work in complying with the recommendations.

## V. Consent Agenda

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

#### Business

#### Qualifying Party

#### 1. Fletcher's Termite Control

Jason D. Fletcher ("B2" and "B8")

#### 2. Kat's Pest Patrol

Katrina B. Hruska ("B1")

*Pulled by Commissioner Baker. Katrina Hruska was present. Ms. Hruska said she had previously worked for Bug Snuffers. Her experience and qualifications were discussed.*

#### **MOTION:**

*To approve the application for new business license in the "B1" category by Commissioner Baker.  
Seconded by Commissioner Johnston.*

#### **VOTE:**

*7 - 0 Motion carried.*

#### 3. Independent Pest Control, LLC.

Jeff S. Loehr ("B1", "B2" and "B8")

*Pulled by Commissioner Burns. Heather Brown and Jeff Loehr were present. Mr. Loehr answered questions about this business.*

#### **MOTION:**

*To approve the application for new business license in "B1", "B2" and "B8" categories by Commissioner Burns.  
Seconded by Commissioner O'Neal.*

#### **VOTE:**

*7 - 0 Motion carried.*

- 4. **Blue Diamond Pest Control Company** Teresa M. Kitchens ("B1")
- 5. **Favian Pest Control** Cynthia L. Romero ("B1")

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

<u>Qualifying Party</u>	<u>Business</u>
1. <b>Douglas D. Dykstra</b>	White Mountain Country Club ("B3" and "B5")
2. <b>Anthony R. Crothers</b>	Sam the BugMan! ("B1")
3. <b>Jeffrey A. Barnes</b>	Dandee Pest Control ("B1")
4. <b>Paul A. Furman</b>	AJF Engineering, Inc. ("B8")
5. <b>Joseph R. Wright</b>	TruGreen Landcare, LLC. ("B3" and "B5")
6. <b>Reginald E. Moorby</b>	DTR1, LLC. ("B5")

<b>C. Applications</b>	<b>for</b>	<b>Qualifying</b>	<b>Party</b>	<b>License</b>
1. <b>Ronald T. McCann</b>		("B3" and "B5")		
2. <b>Richard S. Gragg</b>		("B1", "B2" and "B8")		

*Pulled by Commissioner Burns to disclose that Mr. Gragg was a former employee of his and he could be impartial.*

**MOTION:** *To approve the application for Richard Gragg in "B1", "B2" and "B8" categories by Commissioner Black. Seconded by Commissioner DeVere.*

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

- 3. **Jedsmond M. Maglanoc** ("B8")
- 4. **Jousty M. Maglanoc** ("B2")
- 5. **Deborah A. Jameson** ("B1")
- 6. **Cody C. Smith** ("B1")
- 7. **Michael P. Wiese** ("B1")
- 8. **Michael A. Treanor** ("B3" and "B5")
- 9. **Glenn M. Reames** ("B1")
- 10. **Daniel W. Monson** ("B5")

- 11. Gary W. Brown (“B3”)
- 12. Jacob A. Johnson (“B5”)
- 13. Brian R. Nelson (“B5”)
- 14. Stephen P. Marchal (“B8”)
- 15. Christopher M. Winder (“B1”)

**D. Business License Name Change Requests**

*None*

**E. Applicants for new Applicator Licenses**

*Licenses Issued for completed applications.*

**End of Consent Agenda**

**MOTION:** *To accept the consent agenda with the exception of items pulled for discussion (A2, A3 & C2) by Commissioner O’Neal.  
Seconded by Commissioner Black.*

**VOTE:** *7 - 0 Motion carried.*

**VI. Applications not on Consent Agenda**

**A. Request for Temporary Qualifying Party License or Renewal**

- 1. Gloria Kilian: “B1”

*Gloria Kilian was not present. Commissioner Burns recalls that the Commission informed Ms. Kilian at the previous meeting to either hire a Qualifying Party licensee for the business or to test to become the Qualifying Party. Commissioner Black asked about the status. Mr. Tolton stated the SPCC was awaiting Ms. Kilian’s second fingerprint card; her previous card did not have good impressions so the background check was incomplete. Commissioner Baker said that he was recusing himself from this matter because he has some information that he cannot disclose. This matter was tabled.*

- 2. Timothy S. Hendricks: “B1”

*Timothy S. Hendricks was present. He advised the Commission that he would be taking the test tomorrow.*

**MOTION:** *To approve the request for a Temporary Qualifying Party license renewal by Commissioner Black  
Seconded by Commissioner DeVere*

**VOTE:** *7 – 0 Motion carried.*

**3. Gary D. Slone:** "B3 & B5"

**MOTION:** *To deny the request for temp QP renewal by Commissioner Black because the business now has a QP.  
Seconded by Commissioner Baker.*

**VOTE:** *7 - 0 Motion carried.*

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

*None*

**C. Applications for Qualifying Party License**

**1. Thomas J. Marshall** ("B3" and "B5")

*Thomas J. Marshall was present and stated he has been in the industry for 25 years, eleven of those years as a Qualifying Party and has had no complaints. Mr. Marshall explained that when his clerical staff renewed his business license, she failed to renew his QP license.*

**MOTION:** *To renew Qualifying Party License in the "B3" and "B5" categories, by Commissioner Black.  
Seconded by Commissioner Johnston.*

**VOTE:** *6 – 0 – 1 Motion carried. (Commissioner Runbeck abstained).*

**2. Michael S. Robinson** ("B3" and "B5")

*Michael S. Robinson was present. He explained his license history, number of years holding a qualifying party license, and apparent difficulty of receiving his mail from the post office*

**MOTION:** To renew Qualifying Party License in the "B3" and "B5" categories by Commissioner O'Neal.  
Seconded by Commissioner DeVere.

**VOTE:** 6 – 0 - 1 Motion carried. (Commissioner Runbeck abstained).

## 2. Business License Name Change Requests

None

Break 10:08 am to 10:22 am

## VII. Complaints

### A. Bug Snuffers Pest & Termite Control (BL), Colleen O'Brien (QP), Linda Merklin (APP) - Case No. 2007-019

Ms. O'Brien and Ms. Merklin were both present. Mr. Craig explained the rationale for the settlement proposal. Ms. O'Brien explained the procedural steps the business has instituted to ensure proper notice is provided to schools. Ms. O'Brien said that the staff at the Commission was very helpful in assisting her in this matter.

**MOTION:** To accept the proposed resolution, and if the consent agreement is not accepted 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.

**AMENDED MOTION:** To offer that the proposed settlement be modified to remove the \$200.00 civil penalty for Applicator Linda Merklin and that she take 3 hours of continuing education instead of 2 hours, by Commissioner Burns.  
Seconded by Commissioner Baker.

**VOTE ON AMENDED MOTION:** 7 – 0 Motion carried.

**VOTE ON MOTION:** 7 - 0 Motion carried.

### B. Bugs R' Us Termite and Pest Control (BL), Jess Johnson, Jr. (QP), Michael Rogowski, Sr. (APP) - Case #2007-024

Commissioner Burns questioned why this is a WDIIR issue when the parties to the real estate transaction wanted this business to only conduct an inspection for dry rot. Mr. Craig stated because using a WDIIR requires specific information to be noted. Commissioner Black asked why they did not use another form. Commissioner Baker stated he wrote on

*the form, which would not have been acceptable.*

**MOTION:** *To reject the proposed resolution and issue an Advisory Notice, by Commission Burns.  
Seconded by Commissioner Johnston.*

**VOTE:** *5 – 2 Motion carried. (Commissioners Black and Runbeck opposed).*

**C. Bull’s Eye Pest & Termite Control (BL), Brian Masherella (QP) - Case No. 2007-070**

*Mr. Masherella was present. The SPCC provided an update that the business license did not maintain copies of 2 Wood Destroying insect Inspection Reports (WDIIRs) for the required five years, as he provided 11 today. Commissioner Black asked why five years of records were requested. Mike Francis said there were discrepancies in records and TARF filings. Commissioner Johnston asked why five rather than three years of records were requested. Mr. Francis said he would have to review the case file to answer that question. Commissioner Burns asked what prompted the audit. Mr. Francis said the TARF filing history was looked at to see if there were decreases in month-to-month and year-to-year filings, taking into consideration decreases in sales and the market. Commissioners Burns and Black asked how many TARF audits are triggered. Mr. Francis said less than one audit is done a month.*

**MOTION:** *To accept the proposed resolution, and dismiss the complaint against Brian Masherella’s qualifying party license, by Commissioner Black.  
Seconded by Commissioner Baker.*

**VOTE:** *7 - 0 Motion carried.*

**D. Daniel Oliver (APP) - Case No. 2007-008**

**MOTION:** *To accept Staff’s recommendation to dismiss the complaint without prejudice, because he cannot renew his license and if he applies again, his application would be flagged for further review. by Commissioner Black.  
Seconded by Commissioner Johnston.*

**VOTE:** *7 - 0 Motion carried.*

**E. Adam Lee Cary (APP) - Case No. 2007-011**

**MOTION:** *To accept Staff’s recommendation to dismiss the complaint without prejudice, because he cannot renew his license and if he applies again, his application would be flagged for further review, by Commissioner Black.  
Seconded by Commissioner Baker.*

**VOTE:** 7 - 0 Motion carried.

**F. Michael Echols (APP) - Case No. 2007-027**

**MOTION:** To dismiss the complaint without prejudice and suspend the license for nonpayment of renewal fees (automatic revocation after one year) by Commissioner Black.  
Seconded by Commissioner DeVere.

**VOTE:** 7 - 0 Motion carried.

**G. Poor Boy Termite Control, Inc. (BL), Alan Robinette (QP), Joe Pulley, Jr. (APP) – Case No. 2007-033**

*Mr. Robinette was present. Mike Francis spoke with the consumer to explain why staff was recommending dismissal. The label language is confusing and staff believed there was a label violation, but after conferring with the EPA, believes that it is not a label violation.*

**MOTION:** To dismiss the complaint by Commissioner DeVere.  
Seconded by Commissioner Baker.

**VOTE:** 7 – 0 Motion carried.

**H. Robert Espinoza (APP) - Case No. 2006-067**

*Commission consensus to send matter to Attorney General's Office for possible fraud.*

**MOTION:** To dismiss the case without prejudice and suspend the applicator license for nonpayment of renewal fees (automatic revocation after one year) by Commissioner Black.  
Seconded by Commissioner Baker.

**VOTE:** 7 – 0 Motion carried.

**I. Thomas James (APP) - Case No. 2006-062**

**MOTION:** To dismiss the case without prejudice and suspend the license for nonpayment of renewal fees (automatic revocation after one year) by Commissioner Baker.  
Seconded by Commissioner O'Neal.

**VOTE:** 7 – 0 Motion carried.

**J. Thomas Schuster (APP) - Case No. 2006-044**

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

**VOTE:** 7 - 0 Motion carried.

**K. Eastern Arizona Exterminating, Inc. (BL), Joseph Goodman (QP), Thomas James (APP) - Case No. 2007-005**

**MOTION:** To accept the proposed resolution regarding the business license and qualifying party license, dismiss the complaint without prejudice against Applicator Thomas James and suspend his license due to nonpayment of renewal fees (license automatically revoked in one year), by Commissioner Black.  
Seconded by Commissioner Burns.

**VOTE:** 7 - 0 Motion carried.

**L. Frontline Exterminating L.L.C. (BL), Darren Kirkham (QP), Joshua Seagle (APP) - Case No. 2007-020**

*In response to Commissioner Black's question about the settlement proposal, Mr. Craig explained the rationale. Mr. Craig was asked whether the SPCC tell the licensee to mail the treatment record. The suggestion wasn't made during the investigation, but Mr. Craig made it during the settlement conference. Commissioner DeVere said that it's the business licensee's responsibility to decide whether to mail the treatment record to the consumer, not the SPCC's responsibility. Commissioners Runbeck and Black agreed. Commissioner Burns asked about the drift because he didn't think there was a violation. Mr. Craig noted there was drift on the corvette T-top, toolbox and other items, because the applicator used a power sprayer to do the treatment in the garage, which was why the consumer became upset and ordered him to leave.*

**MOTION:** To modify the proposed resolution with the added term that the business licensee mail the treatment record to the consumer and provide proof to the SPCC within 10 days of the order, and if the consent agreement is not executed by deadline stated in the transmittal letter, to send the case to the Office of Administrative Hearings by Commissioner Black.  
Seconded by Commissioner Johnston.

**VOTE:** 6 – 1 Motion carried. (Commissioner Burns opposed).

**VIII. Requests for Review or Rehearing of 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].**

**A. Nathan A. Estrella - Case No. 2006-065 - Applicator Licensee No. 020197**

**MOTION:** *To suspend Nathan A. Estrella's applicator license for nonpayment of renewal fees by Commissioner Baker. Seconded by Commissioner DeVere.*

**VOTE:** *7 - 0 Motion carried.*

**B. Dusty R. Dukeman - Case No. 2006-064 - Applicator Licensee No. 060626**

**MOTION:** *To suspend Dusty R. Dukeman's applicator license for nonpayment of civil penalties and renewal fees by Commissioner Baker. Seconded by Commissioner DeVere.*

**VOTE:** *7 - 0 Motion carried.*

**C. Wayne F. Woods - Case No. 2006-016 - Applicator Licensee No. 030748**

**MOTION:** *To dismiss without prejudice and suspend Wayne F. Woods' applicator license for nonpayment of renewal fees by Commissioner Baker. Seconded by Commissioner DeVere.*

**VOTE:** *7 - 0 Motion carried.*

**XI. Consideration of lifting Suspension of Business, Qualifying Party and/or Applicator Licenses.**

*None*

**XII. Recommended Decisions 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 [for Appealable Agency Actions such as License Denials, Disciplinary actions taken without a prior hearing, and Cease & Desist/civil penalties for unlicensed activity].**

*None*

**XV. Reporting by Licensees on Probation**

**Joseph D. Wilkerson, Applicator License No. 060328 – Case No. 2006-003**

*Mr. Wilkerson was present and stated to the Commission that everything was going fine and that he still had 380 hours to complete his community service. Lisa Gervase reiterated that Mr. Wilkerson was complying with everything and that his sentence may end earlier than expected. Commissioner O’Neal congratulated Mr. Wilkerson and asked to keep us updated.*

*(Break 12:00 p.m. - 12:15 p.m.)*

**XVI. Applicants with Criminal Convictions**

**A. Derick J. Fountain**

*Mr. Fountain was present. He has not been hired by a pest control company but is currently working as an accountant. He completed his college education in 2004 with a degree in Management. Mr. Fountain wants to continue his positive lifestyle. Commissioner Runbeck said she was convinced she was going to vote “no” because of Mr. Fountain’s past charges. In talking with him she hoped she was getting the right vibes. Ms. Runbeck asked that he not disappoint her. Commissioner Baker admired Mr Fountain’s perseverance in applying a second time after being denied earlier.*

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

**VOTE:** *6 – 1 Motion carried. (Commissioner Burns opposed).*

**B. Ruben R. Ortiz, Jr.**

*Mr. Ortiz was present. He is currently working for the City of Phoenix. The incident in question happened back in '89.*

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

**VOTE:** *7 – 0 Motion carried.*

**C. Armando V. Hernandez**

*Mr. Hernandez was present. He stated that he is currently employed by Efficiency Towing but looking to get in to landscaping. His offense happened in 1994 and restitution was totally paid.*

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

**VOTE:** 7 - 0 Motion carried.

**D. Kevin R. Conlin**

*Mr. Conlin was present with his mother Beth Conlin, owner of Sun City Pest Control. Mr. Conlin said that he is in treatment until next Friday. It’s a humbling experience and it’s going good. Mr. Conlin currently attends weekly meetings as well as random UA’s. He is in drug court until 11/08. Mrs. Conlin said he is a good son as well as a good employee and has been an applicator since 1998. He gets along well with the other employees.*

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

**VOTE:** 7 – 0 Motion carried.

**E. Richard La Placa**

*Mr. LaPlaca was present. He stated he went through an anger management course. He stated he’s had a couple of misdemeanors since 1999. Mr. LaPlaca also stated he owns and operates a successful company. He also stated he sprays for his customers and has done landscaping for 20 years.*

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

**VOTE:** 7 - 0 Motion carried.

**F. Matthew S. McKinney**

*Mr. McKinney was present and stated that he is currently employed by Copper Canyon Golf Club. He was not placed on probation but had to pay a \$250.00 fine.*

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

**VOTE:** 7 -0 Motion carried.

## **G. Roberto Chavez**

*Mr. Chavez was present. Mr. Chavez has been a licensed home inspector for five years. The incident in question happened five years ago. Once his probation is served Mr. Chavez stated that the offense would be dropped down to a misdemeanor. He said this experience has made him aware he had a drinking problem. He meets with his probation officer monthly and takes random UA tests. Mr. Chavez hopes to become a termite inspector.*

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

**AMENDED MOTION:** *To offer Mr. Chavez a consent agreement whereby Mr. Chavez would be placed on probation with the SPCC for one year after obtaining his license, with quarterly appearances before the Commission, at which he provides proof of random drug test results and reports from his probation officer by Commissioner Black.  
Seconded by Commissioner Runbeck.*

**VOTE ON AMENDED MOTION:** *4 - 3 Motion carried. (Commissioners O’Neal, Johnston and Burns opposed).*

**VOTE:** *4 - 3 Motion carried. (Commissioners O’Neal, Johnston and Burns opposed).*

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

### **A. Commission training**

*1. Lisa Gervase requested direction about whether all Commissioners would be present to address this item for the September meeting that has been tabled several months. The purpose of this was to have staff present and answer questions about SPCC processes. Some items have already been addressed in past months but some commissioners were not present, such as Complaint and Inquiry processing. Other items include License Application Processing, inspections, investigations, complaints, TARF audit procedures, scope of investigations, list of de minimis violations, and a definition of “willful and repeated”. Commissioner Black said many of these issues are related to the concerns raised by the industry in the AzPPO letter that was read this morning. Commissioner Runbeck suggested staff and industry meet to pin down the issues. Commissioner Black suggested having the SPCC processes item at the September Commission meeting at 1:00 p.m., so that people could choose whether to come to the morning or afternoon session. Ms. Gervase asked whether it would then be followed by discussion of the AzPPO letter at the September meeting. Commissioners Runbeck and Black suggested that discussion of the industry concerns raised in the AzPPO letter come after the September meeting at a separate workshop to discuss the specifics of the issues. This meeting would be separate from a regular monthly Commission*

*meeting (noticed as a public meeting, but informal), and then at the October regular monthly Commission meeting, have the AzPPO letter agendaized.*

*Ms. Gervase asked whether this plan was the consensus of the Commission. Commissioner Runbeck asked anyone who disagreed to speak up now. Consensus of all Commissioners.*

*2. Commissioner Runbeck suggested the Commissioners read the handouts from February 2007, and ask Ms. Verstegen if they have any questions. Ms. Verstegen advised the Commissioners not to engage in ex parte communications. Any item that could be on an agenda should not be discussed outside of the open meeting. She also advised that if a Commissioner has a statutory conflict of interest, they must disclose the conflict. If it's not a statutory conflict, but has the possible appearance of impropriety, the Commissioner does not need to recuse them self if they can act impartially. But, the Commissioner must analyze whether they can be fair and impartial and should disclose before every matter the appearance and state that they can be fair and impartial. Ms. Verstegen wrote a memo on this issue to the Commissioners involved, and can provide it to all Commissioners. She said that if there's nothing to hide, there should be no problem disclosing the relationship.*

## **B. Complaint Status Log**

*Provided to the Commissioners. There were no questions.*

## **C. Computer Based Testing "CBT" Status and Statistics**

*The Commission asked about the pass rates. Commissioner Baker mentioned that there were some issues with the pictures on the test and because it is something that is near and dear to him he is hopeful that SPCC is working on this. Mike Means of Metro Institute commented about the pictures. Mike Francis interjected at this point to articulate that - in a meeting with Mr. Means several months ago it was his understanding that Metro had been given authority to try to remedy this situation. Commissioner Baker questioned that if Mr. Means is responsible for getting the better pictures and they turn out to be incorrect insects then a bigger problem will exist. He suggested that Mr. Means goes out and gets the pictures and have them approved by SPCC for correctness. Mr. Means added that even the pictures that could be better – you know what you know. Mr. Means also addressed the scoring. The pass rates since instituting Computer based tests are much higher than the former paper/pen exams. Commission consensus for Ms. Gervase to provide a plan for updating the exams.*

## **D. Expenditure Report**

*Commissioner Black asked about the reserve fund. Ms. Gervase said it is decreasing because of increased expenses. The new budget is currently being prepared. If there are excess reserve funds, the Commission can consider appropriated expenditures for which to request approval in the two-year budget*

*submission in September 2008. When completed, Ms. Gervase will forward the 08-09 budget to all Commissioners.*

**D. Case Status Report**

*No Report*

**F. Commission discussion/decision: Procedure to follow when giving direction to staff regarding tasks and priorities.**

*Commissioner Runbeck said she's heard some grumbling as to staff direction. She said that the Commissioners want to work together and not provide individual directions due to varying opinions. To avoid this in the future when directing staff to do something, it should be done in the form of a motion, second and vote. Commissioner Black asked if the Commission can have a "catch all" agenda item. Keely Versteegen said "no"; agenda items must be specific enough to inform the public of the agency's contemplated business. Commissioner Runbeck asked that anyone who has an agenda request to go to the Chair or Ms. Gervase. Commissioner Baker clarified whether emailing Ms. Gervase and the Chair was appropriate. Ms. Versteegen said "yes". Commissioner Runbeck also noted that if a Commissioner is unhappy with a staff member's performance, to talk with the employee or to Ms. Gervase. If necessary, this can be agendized and, if necessary discussed in Executive Session. Commissioner Baker asked if the Commission is notified of any disciplinary actions with employees. Ms. Gervase said she continually updates the Commissioners on staff status and significant incidents, but not routine personnel matters.*

**G. Commission discussion/decision: Draft Substantive Policy Statement 2007-001 re: Commission's policy about issuing licenses to persons who use, to use, advertise to use, solicit to use, or perform structural pest control using a device; and for persons who make recommendations regarding structural pest control.**

*Ms. Gervase provided an overview of this issue and referred the Commissioners to a draft policy that was provided to them. Ms. Gervase said this came about for two reasons. One, the law that defines acts that require a license is rather broad. She asked the Commission to consider whether licensure is intended under the law for exclusionary only work such as for birds and rodents. The other is whether "salespeople" need to be licensed. Ms. Gervase noted that two people were present to address the Commission on this issue, likely with differing views. Ms. Gervase also summarized her research about how the EPA handles the use of regulated and unregulated devices. Ms. Gervase reiterated the need for the Commission's policy direction on this issue.*

*Fred Payne, owner of The Pigeon Guy, addressed the Commission and thanked everyone for bringing this issue up. He explained the health issues associated with pigeons, and the pest problems created by their feces. Mr. Payne has spent over \$2 million dollars and provided pigeon control services to 4,000 houses in the Valley. Using the right product in the right spot yields the best*

results. He said he doesn't use pesticides; that they exclude birds from nesting by exclusionary devices. He said that the electric shock system is very good. Mr. Payne said that his position is that use of devices should be licensed. 10% of his work is correcting others' errors. Mr. Payne ended by saying there is a health issue involved, that the CDC says dust from pigeon feces has killed people and that gases related to droppings are highly toxic. Also, feces and urine on some roofs creates a structural problem.

Richard Hanley, owner of I Cover Roof Vents, also addressed the Commission. He stated that he covers roof vents and has been in business for 3 ½ years and have worked on about 1,700 homes. He has a license with the Town of Surprise and carries liability insurance. Mr. Hanley stated that the products he purchases could be bought at any hardware store or at Home Depot. He said he uses galvanized mesh caps that are not a mechanical device. He further said that anywhere you have sewer pipes you have the possibility of rats getting through the pipe to your toilet. Mr. Hanley says his product prevents the rodent's intrusion into the home.

He explained his communication with the SPCC in 2005, and again in February 2007, including the cease and desist that the Commission vacated on June 8, 2007. Commissioner Runbeck asked Mr. Hanley his views on whether it would be beneficial to the public for people doing the work that he does to be licensed to reduce any risks. Mr. Hanley stated anyone who uses a mechanical devices, or does inspections or identifies infestations should have a license. Otherwise, they shouldn't. He doesn't spray or use bait at all.

The Commission expressed appreciation for the input from Messrs. Payne and Hanley.

Commissioner DeVere commented that EPA regulated devices include ultraviolet lights, sound generators, etc. Does that mean those who use these devices need a license?

Commissioner Burns stated the SPCC couldn't force an individual to make a corrective action on devices that are harmless to the public. Devices are anything and everything outside of Pest Control. Licensees use foams, mesh – these are listed as devices – and are not under SPCC control. He doesn't see where there's any jurisdiction over devices. Other devices are covered under Arizona Game & Fish. People who trap wildlife have licenses under other jurisdictions. If they change a structure; however, they can be held liable. We only control pesticide related issues. That's the direction we should take.

Commissioner Runbeck stated the law is broad enough to give SPCC jurisdiction. SPCC law seems to include those who use devices and we are required to license them. That's why we need to decide whether the use of devices without pesticide – should they be regulated by SPCC.

Commissioner Black stated that the intent of this Commission is to regulate proper use. The statute is very broad and all devices would fall under our

charge. But agreed with Commissioner Burns that the SPCC can differentiate between regulated and not regulated.

Commissioner Johnston stated the usage amount could open a can of worms.

Ms. Gervase will edit the draft substantive Policy Statement based on Commissioners' comments and bring it back on the September agenda.

Commissioner Burns stated that he has a problem with on-site salespeople having to be licensed. These people do not even touch pesticides. Commissioner Burns further stated that salespeople are good entries into becoming applicators – that salespeople turn into applicators and they should be eliminated from the Policy. Ms. Gervase stated that it's in the current rule - on on-site recommendations. She said maybe this needs to go into the next Rules package.

(2:30 p.m. Commissioner Baker left the meeting)

### **XVIII. Approval of Minutes and Continuing Education Programs**

#### **A. June 8, 2007 (regular session) Minutes**

*Tabled*

#### **B. July 13, 2007 (regular session) Minutes**

*Tabled*

#### **C. Continuing Education Program Applicants**

**MOTION:** To approve the CE Program applicants by Commissioner Black.  
Seconded by Commissioner DeVere.

**VOTE:** 6 - 0 Motion carried.

### **XIX. Future meetings**

*Per tentative schedule.*

### **XX. Adjournment**

**MOTION:** To adjourn by Commissioner Black.  
Seconded by Commissioner Deere.

**VOTE:** 6 - 0 Motion carried.

*Commissioner Black apologized to Keely Verstegen for his over-reaction to her legal advice at the July 2007 meeting. He said he shouldn't have raised his voice, and was sorry.*

*Meeting ended: 2:50 P.M.*