



# Arizona Department of Agriculture

## Office of Pest Management

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### MINUTES

*The following minutes are for the meeting held on August 31, 2012 in Room 206 at 1688 West Adams Street, Phoenix, AZ 85007 (the Department of Agriculture Building)*

**The minutes for the meeting are as follows:**

**I. 8:02 A.M.: Call to Order (Chairperson)**

**a) Committee Roll Call (Ms. Howarth)**

*Present:*

*Chairperson Kevin Etheridge*

*Present via Phone:*

*Jack Latham, Carmella Ruggiero, Robert Wagner,  
Andrew Witcher, Ken Fredrick (came on to call at  
8:20 A.M.)*

*Absent:*

*Douglas Seemann*

**II. Approval of Minutes**

**a) July 18, 2012**

*MOTION:*

*To accept minutes by Jack Latham  
Second by Andrew Witcher*

*VOTE:*

*5-0*

**III. Review, Discussion, and Possible Action on:**

**a) OPM 2014 and 2015 Budget Request – Louise Houseworth**

*Ms. Houseworth reviewed the 2013-2015 Projected Balances handout. She explained that all state agencies are required by statute to submit a budget request to the Governor's Budget Office by September 1<sup>st</sup>. She explained that the request that is being submitted is a 2 year request for 2014 and 2015. Ms. Houseworth explained the meaning of the amounts on the Projected Balances form. She stated that she and Mr. Jack Peterson, Acting Director for OPM, had many discussions about how to portray the revenues and expenditures for 2014 and 2015. She stated it appears that from what the Task Force was doing there would be significant changes in the revenues. However, she stated because at this time the Task Force report is not completed and has not been approved by the legislature Mr. Peterson made the decision to keep the projected balances for 2014-2015 the same as 2013. She explained the same was done with the appropriation number. She explained that she felt it was realistic to expect in the future that OPM will not spend the \$2 million appropriation, but closer to the budget number for 2013 of the \$1.4 million. Mr. Peterson stated there was a budget line item for "Food" listed, and he stated he wanted to clarify in case anyone*

went "digging" through the budget. He indicated that the appropriation number has to be reached. He explained the top number on the Projected Balances form is what will really be spent. The additional money which is not being spent is put in the "Food" line item. He stated it is money that the agency knows it is not going to spend.

Ms. Houseworth addressed the strategic plan handout. She explained that the strategic plan was a new requirement for each agency. She stated the agency had until October 1<sup>ST</sup> to finalize the strategic plan. She explained on the 3<sup>rd</sup> page of the strategic plan on the resources assumptions that 2014-2018 were all done at the 2013 level for the same reasons that the budget request was done at the 2013 level.

**MOTION:** To approve the budget by Carmella Ruggerio  
Second by Jack Latham

*Discussion:*

Chairperson Etheridge stated that this year there will be a surplus, he asked if the agency was somewhat protected from a sweep. Mr. Peterson explained that the goal is to make the Pest Management fund a Trust Fund which would give it a certain level of protection, but as it currently stands there is no protection from being swept. He stated the hope is that by 2014 the agency will be able to reduce the fund balance.

**VOTE:** 5-0

**b) Criminal Background Investigations – change in process – Jack Peterson**

Mr. Peterson explained he wanted to move to doing exactly what the law says the agency is required to do. He stated that currently the agency is doing a background investigation on everyone. He explained he wanted to bring this discussion to the PMAC to gather any input the committee may have and address any concerns there may be. Mr. Wagner asked why the agency does not want to conduct background investigations any more.

Mr. Peterson stated it is time consuming and it's not what the agency should be doing. He stated he believed it was the businesses responsibility. He does not see why the government should get in the middle of that. Mr. Wagner stated the biggest issue with having the background checks done is the amount of time it takes to get them done. He stated he sees the benefit of having the background check done, but it also holds up the ability to get people licensed. He suggested continuing the background check, but approving the licensing contingent on an individual "passing" the background check. Mr. Peterson stated that Mr. Robert Tolton was already looking into the possibility of allowing testing before the results of the background investigation were received. He explained in the past it was done that way and there were issues with that because members of the industry were upset that they wasted time and money on testing if their background investigations were not going to be approved. He explained in rule it states an individual has to tell us if they have criminal convictions on their background and if they do they have to provide further information, and if they don't "they are good to go".

Mr. Witcher asked if it was going to be on the honor system. Mr. Peterson stated it was. He explained there are still people who lie to the agency now, and those are the individuals who are denied a license. Mr. Witcher asked if someone indicated they had a criminal conviction on their background would they have to go through a background check. Mr. Peterson stated that is the way he interpreted the rule. Mr. Witcher asked if it is going to be a requirement of the business to conduct a background investigation would the agency require a copy of the background investigation to be turned in as a part of the application process. Mr. Peterson stated it is not the business of the agency. He explained there is a liability as a business owner, and he believes the

*business owner should be responsible for conducting the background investigations for their own benefit. He stated the agency is a pest management regulatory agency and that the duty of the agency is to make sure the people who are performing pest management work are qualified.*

*Mr. Latham asked if an individual answers the criminal conviction question with "No" and they become licensed and it turns out the business owner did find a conviction, would the agency prosecute them for lying on their application. Mr. Tolton explained there is a statute for grounds for disciplinary action. He stated misrepresenting material fact to obtain a license is grounds for disciplinary action, and he indicated the agency has prosecuted individuals for lying on their application. He stated that the discipline varies from a fine to revocation.*

*Mr. Latham indicated he felt it is both the business and the government's responsibility to protect the public. Mr. Witcher stated he agreed with Mr. Latham. Chairperson Etheridge asked if there was a middle ground where the responsibility of a background investigation was placed on the company, but in the case of a smaller company or lack of resources the OPM could provide a background check at the request of the company. Mr. Peterson asked how much background investigations cost. Mr. Larry Bard, with Nose Knows, stated it costs \$54.95 per year to use Crimshield. Mr. Tolton stated that through the agency the background investigations cost \$22.00. Mr. Peterson stated the agency does not want to get into competition with private industry. Mr. Bard stated the results from Crimshield come in about 3 days, and they do a county by county search for wherever the individual has ever lived.*

*Mr. Latham stated he believes there at least needs to be a requirement put in place to require the employer to perform a background investigation. He stated he believed the individuals should be given a time frame in which they have a temporary applicator license and upon the results of the background investigation being received are either approved and obtain their permanent license or get denied. Mr. Peterson stated the agency is working on reversing the process to allow individuals to test and to wait on their background investigation for approval of the license. He explained he does not understand giving the individual a temporary applicator license because if the agency were really worried about the results of the background investigation why would they be given a license.*

*Mr. Bard stated the applicants are already allowed to apply pesticides for 90 days before licensure. Mr. Latham doesn't understand what good an employee is that cannot apply pesticides. He stated there are cases in which the applicant only waiting on the background check but cannot continue to apply pesticides because the results have not come back yet. Mr. Peterson stated it would solve that by eliminating the background checks done by the agency. Mr. Latham stated it is still a concern if an individual is a sex offender and they go into someone's house. He stated the company along with the agency would be sued. The agency would be sued because the license was issued to the individual by the agency. Mr. Casey Cullings, Assistant Attorney General, stated the state has immunity from certain actions. He stated if the state is following its procedures, whatever the procedures may be, it would be hard to make the state liable in the situation just because a background check was not conducted through the agency. Chairperson Etheridge asked if the same reflection was in rule for the Qualifying Party if they answer "yes". Mr. Peterson stated it was.*

*Chairperson Etheridge stated the rule currently stated the agency is not required to perform a background check on anyone who does not disclose. Mr. Witcher asked why the agency started doing background checks if it was not required by rule. Mr. Tolton stated the question prior to conducting background investigations on every one was "is it necessary?". He indicated in the span of a year, roughly 30 individuals had been licensed, but had failed to disclose a criminal conviction. He stated at that point the agency came to the conclusion to start performing background*

*investigations on everyone. Chairperson Etheridge asked if that was made into a policy. Mr. Tolton stated it was. He explained that the rule states "The Acting Director may request a background investigation if they feel it is in the best interest of the agency." He stated at the time the background investigations started being performed on everyone, the Acting Director felt it was in the best interest to do them. He explained now the Acting Director is saying it is not in the best interest to perform background investigations on everyone. Mr. Witcher asked how many had been denied in the past year. Mr. Tolton stated 2 individuals had been denied a license, but one of the individuals was denied twice.*

*Mr. Witcher stated that he uses Crimsheild and he sees value in using them rather than just getting background results from DPS. He stated he believed it would keep the agency from looking bad in the public eye if it was a requirement from the agency that the businesses perform background investigations on the applicants. Mr. Peterson stated his concerns are then individuals will think the agency is trying to drive business to the businesses who conduct background investigations and that the agency would have to determine what quality of background investigation the companies were performing. He asked if it is a requirement, is the agency going to take regulatory action against individuals who are not performing background investigations. Mr. Tolton explained if the agency required the businesses to perform a background investigation, it would have to become part of the inspections that are done, which means the inspectors would have to go into all personnel files to make sure background investigations had been done. Mr. Fredrick stated he did not have an issue with business owners performing their own background checks. He stated he felt a business owner who chooses not to do a background investigation is not very wise. Ms. Ruggiero stated all of the golf course companies under her association perform background checks.*

*Chairperson Etheridge stated this may be a future issue for the Task Force, but he is focused on the way the rule reads now. He stated the department is not required to do a background check unless the answer to the conviction question is "yes". He indicated he heard at a recent meeting if something is only in policy do not expect to enforce it. He stated if it is a policy of the OPM to perform a background investigation it is unenforceable. Mr. Fredrick stated it is clear in rule that the agency is not required to do background checks and he stated he already performs his own background checks so he does not believe it is a big deal. Mr. Witcher stated the majority of businesses do not perform background checks on their employees.*

*MOTION:*

*To accept the rules as they are currently written by  
Jack Latham  
Second by Carmella Ruggiero*

*Discussion:*

*Mr. Peterson asked for clarification on the motion. Mr. Etheridge asked if the motion was to follow the rules as they are currently written. Both Mr. Latham and Ms. Ruggiero agreed that was the intent of the motion. Mr. Wagner asked when this will start. Mr. Tolton stated it could start immediately.*

*VOTE:*

*5-1 (motion carries)*

*Mr. Peterson stated that the agency will make sure to make it part of the website for consumer awareness.*

#### **IV. Call to the Public (Chairperson) –**

*None.*

#### **V. Adjournment – 8:44 A.M.**