



# Arizona Department of Agriculture

## Office of Pest Management

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### Meeting Minutes – for the Task Force on the Regulation of Structural Pest Management- November 16, 2011

1. Roll Call – Jack Peterson, Chairman & OPM Acting Director  
In Attendance: Dave Burns, Lin Evans, Jimmy Fox, Ken Fredrick, Phil Hemminghaus, Will Rousseau, and Kirk Smith  
Absent: John Boelts
2. Current Status of the Office of Pest Management and coordination with the Department of Agriculture, including:
  - Listserv Signup – <http://listsrv.ada.gov/> - Jack Peterson
  - Changes, updates or other items out of the ordinary  
Mr. Peterson stated that he had forwarded an email from Jason Fletcher regarding his views on the regulation of his business.
  - License renewal reminder mailed out – reminder of deadlines – Robert Tolton  
Mr. Tolton stated that online renewal opened on November 1, 2011 and will close on January 30, 2012. He recommended that if anyone had not yet received their renewal form that they contact the office. He explained that 262 QPs had renewed online and 61 had renewed on paper, also 203 businesses renewed online and 51 had renewed on paper as of November 15, 2011. Upon talking about renewals Mr. Smith inquired if there had been any changes as of yet to businesses and qualifying parties. Mr. Tolton responded that until a decision has been made in legislature there will be no changes to the qualifying party or business licenses.
3. Topic discussions and possible actions
  - Decisions to date: no inactive licenses
  - Continuing Education Revenue – a review of the revenue brought in and a discussion of future continuing education efforts by OPM.  
Mr. Peterson stated that the revenue brought in this fiscal year will very likely be down from fiscal year 2011. He explained that OPM would continue giving CE classes on laws and rules to help keep licensees in compliance.  
MOTION: Will Rousseau motioned to continue OPM providing CE in the areas of laws, rules, and compliance.  
Second by Lin Evans
  - VOTE: 8-0
  - Qualifying Party – What should the requirements be, should the requirements be the same for all categories – weed, general, can we test for that, are there exceptions, should there be changes, a general discussion on QPs of the future.  
Mr. Peterson stated that nothing has changed yet. He explained that the Task Force was put in place to recommend change to the legislature. Until the legislature puts changes into effect things will continue to operate as they have.  
Mr. Peterson explained that in a way industry and OPM have different views on the QP license. He further explained that industry has looked at the QP as someone who is qualified to run the business, and OPM is testing people to make sure they know how to properly use pesticides. Mr. Peterson

stated that he feels that 3000 hours is ridiculous and is impossible to verify. Mr. Burns agreed with Mr. Peterson and explained that he feels a testing procedure can be put in place to test knowledge of pest control business without having to verify hours. Mr. Evans questioned if it was possible, in addition to what Mr. Burns suggested, to have a panel of experts certify the tester's knowledge in the field. He stated that he feels that some of the industry does not fit into what structural pest should be regulating. Mr. Smith commented that he feels if the Qualifying Party is changed and made to be the responsible party that the joint responsibility should also be changed. Mr. Fox asked what the job of the Qualifying Party really is. Mr. Burns stated that the Qualifying Party is responsible for the actions that take place that are governed in structural pest. Mr. Tolton stated that the Qualifying Party is responsible for regulating the pest management operations of the business. Mr. Burns poses the question of whether a test could be developed to test someone to determine whether they possess the knowledge and necessary experience factors to become the qualifying party.

Mrs. Farenga explained how the process worked in the 2 week Economic Entomology class she took that prepared individuals to be able to run a business.

Mr. Wilcott, a licensed applicator, questioned if a QP is needed.

Mr. Etheridge, Contractors Termite and Pest Control, explained that he believed the handy man exemption is \$750 annually, not per property. He explained that he believes that the Qualifying Party should be held to a higher standard and responsibility. He stated that they should be responsible for the day to day operations of the business and the training the employees of the business and maintaining the CE requirements for the Applicators that are employed at the business. He said that they should also be responsible for writing company protocol. He explained that as statute is currently written the financial responsibility is currently on the business license, but he feels that should be moved to the Qualifying Party's responsibility. He feels they should also be responsible for maintaining all of the documentation. He stated that he believes that a Qualifying Party should not have to hold an Applicator License. He explained that is the way the California Licensing works. Mr. Etheridge explained that Qualifying Parties need to have some standard of practical knowledge that can be demonstrated through a test, and still believes that the 3000 hours should be required on the application.

Mr. Evans stated that he feels Mr. Etheridge is saying that the QP needs to be the owner of the business. Mr. Etheridge stated that he does believe that the QP needs to be very present in the business operations.

Mr. Burns stated that he feels that the more regulation there is, it becomes a hindrance on those who are doing pest control work properly.

Mr. Rousseau does agree that the agency is there to protect the consumers from the materials used in schools, business, and homes. The agency should make sure that the materials used are legal and properly applied. However, he does not believe it is the agency's duty to protect the consumer from a fraudulent operator. He feels that it needs to be determined if the Qualifying Party will be kept and if it is kept then what is the criteria to qualify for that license.

Mr. Schneiker stated that he feels the whole concept of the Qualifying Party should be eliminated.

Mr. Peterson asked how liability would be dealt with. Mr. Schneiker stated that every corporation, Partnership, or Sole Proprietorship has liability. Mr. Peterson stated from the consumer protection point of view how does the agency go about getting anything from a company started by an applicator that has no responsible party. Mr. Schneiker said that if the individual is going to be a "crook" then nothing is going to stop him from being one.

Mr. Tolton clarified the process to become a Qualifying Party. He explained that you must start as an Applicator. He stated that there are several levels of licensure. He further explained that if the business is a Sole Proprietor then the agency would go after the individual, and if the business is an LLC or Corporation the agency would go after a manager member or officer because they would be the ones responsible for the business.

Mr. Fredrick feels that all of the discussion about the Qualifying Party proves that it is a mess. He feels that no matter what, the responsibility lies with the business owner. Mr. Burns feels that on the consumer protection side of this, the state needs to verify that the business has the financial responsibility and that all the applicators know how to properly apply the pesticides.

Mr. Denny, with Metro Institute, explained that there is a completely different skill set between the Applicator and QP licenses. He feels that to be a QP you not only have to know how to apply pesticide, but you also have to know why you are doing it. He stated that the roll of a QP is to be an educator, a leader, and to be responsible.

Mr. Pruner, with Orkin Pest Control, feels that everything Mr. Denny listed for responsibilities is correct, but he feels that in some cases it becomes very impractical for the QP to be responsible for day to day operations. He feels that if a business has more than one office location there is no practical way to manage them all, especially if financials are included. Mr. Tolton explained that the QP gives authority to the Branch Manager to operate a branch office in only the categories the Branch manager possesses that the QP is active in. Mr. Burns feels that it is the QP's responsibility to set the standard for the business as to how things operate in each branch.

Mr. Tolton stated that the way the law is written the Qualifying Party needs to be at the main office of the business once every 30 days. Technically the Qualifying Party does not have to be at any of the branches. However, if the QP does not go to the branches and OPM does an inspection and finds issues OPM would go after the QP license holder.

Mrs. Farenga stated that she knows several QP's who have quit the corporations they were working for because they felt they were being used as scapegoats.

Mr. Rupkey, Sr., owner of University Termite and Pest Control, stated that things are being looked at from two points of view; licensure and rules and regulations. He explained that the industry has been trying to determine what should be in law and what should be in rule. He feels that law should be definitions and rules should state what the responsibilities are. He stated that it makes less difference of what licenses an individual holds than it does to know what they do, what they are responsible for, by who, and to what level.

Mr. Craig stated that upon researching other states he discovered that states in the west do have similar licenses to a QP. He reviewed his findings with the Task Force.

Mr. Peterson asked if the discussion of QP licenses could be put on hold and that he would have a meeting with staff to discuss possible options and put a discussion paper together to help narrow the focus. The Task Force agreed with this approach.

- Background investigations – should government's role be to require this, should it continue, should there be changes – a general discussion on the future of these background investigations.

Mr. Cullings stated that he had done some research on A.R.S. Title 32 that regulates several different licensing boards, including pest management. He explained that he looked to see which of the boards covered under Title 32 required background investigations. He stated that there are probably about 40 licenses if not more, and almost all of them have requirements about the individual applying for the license being of good moral character. A little more than half of the entities have specific authority to require applicants to submit fingerprints.

Mr. Peterson questioned if it should be the government's role to require background checks. Mr. Burns stated that he felt that unless it was required by law he did not feel that it was the government's role to require background checks. Mr. Peterson explained that the state has to accept a certain level of liability with not requiring them. Mr. Rousseau asked who gets background checks. Mr. Tolton explained that all Qualifying Party and Applicator applicants receive a background check. He stated at the previous meeting that he had been asked the question of how many denials there had been. He explained that there had been 11 denials the prior fiscal year, 9 of them had failed to disclose on their application and 2 were found to be very untruthful during the interview process. Mr. Peterson stated that the Department of Agriculture does not perform background checks.

Mr. Witcher, with Scorpion Tech Termite & Pest, stated that the industry cannot perform the same level of background investigation as OPM can. Mr. Tolton explained that in private industries the background investigation is typically for the immediate preceding 7 years. However, the states background investigation go through AZDPS(Arizona Department of Public Safety) and the FBI (Federal Bureau of Investigation) which shows everything within that individuals record within the United States. Mr. Evans asked how much it costs to do a background check. Mr. Tolton responded that to get a background investigation based on agency requirements it is \$24.00 to run the background investigation. He also stated from his understanding to get a fingerprint clearance card on your own it costs about \$125.00. He explained that the \$24.00 fee goes directly to DPS and they

will run the background checks for that fee. Mr. Smith asked if somebody has a felony conviction if they still have to go before the committee. Mr. Peterson stated that at the last meeting he explained that the agency has stopped bringing the applicant before a committee unless their conviction is within three years or less or they fail to disclose their conviction. He stated that if the background investigations are no longer done at the agency it will be up to the business owner to decide if they want to do them or not.

MOTION:

To do away with background investigations by Will Rousseau

Seconded by Phil Hemminghaus

Mr. Burns asked if this motion is valid or if there is a law that is not just an OPM law that states that the pest control industry must have a background check preformed. Mr. Cullings stated that in this case there is no other law requiring the OPM to do background checks, so if this were to be dismissed then it would no longer be a requirement. Mr. Fredrick stated that he feels someone should be designated responsible to do the background checks. Mr. Rousseau agrees that there should be background checks, but they should be done by the companies.

VOTE:

7-1

In favor: Will Rousseau, Kirk Smith, Dave Burns, Jack Peterson, Lin Evans, Jimmy Fox, Phil Hemminghaus

Opposed: Ken Fredrick

- TARFs – what are the benefits, should there be changes, who should pay, alternative funding mechanisms, should they continue – an open discussion on the future of TARFs.  
Mr. Peterson explained that these forms need to be submitted for the pre-treat of a property and the first time the companies goes back to treat a property after the warranty expires, as well as for wood destroying insect inspections. He stated that currently the fee is \$8.00 for online TARFs and \$15.00 for paper TARFs. Mr. Peterson stated that the data base had been set up so that the consumer could go and find out when a property had been treated. However, not all treatments are required to be reported.  
Mr. Schneider stated that he had used the data base many times and he had found it to be very inaccurate, and completely worthless in a real estate transaction. Most lending institutions require a WDIIR (Wood Destroying Insect Inspection Report).  
Mrs. Hammer stated that unless real estate is involved most businesses won't use it at all.  
Mr. Rousseau stated that he would be curious to hear from the industry if they see any value in it.  
Mr. Fredrick stated that he does not like TARFs at all but does think that they could be a useful tool to home buyers. He feels that if TARFs are continued every treatment should be required to be reported, or eliminate TARFs and just use tags inside the electrical box as a way to inform people about who treated the property.  
Mr. Burns stated that he does not support the TARF system the way it currently exists. He believes from a consumer protection point of view that they need to be able to access what company did a treatment of a property. He feels the consumers have a right to the treatment information for preferential or medical reasons.  
Mr. Craig stated from a compliance standpoint the TARF data base is a great tool. He explained that there have been many occasions that a consumer will call and complain that a company has been out to treat several times but that they still have termites. He stated that compliance can then type in the consumers address and find out what has or has not been done to that property. For example, he stated without knowing who did the Pre-Treatment on a home they would not know who was responsible for the final grade and would not be able to contact the company if a final grade was never done.  
Mr. Etheridge stated that he probably files \$400-\$600 of TARFs per week. He stated that he would like to see the TARFs modified. He stated that he would like to see the property address have files of termite actions that were preformed along with the company name and registration number.  
Mr. Rupkey, Sr., feels that the return on investments of TARFs is less than the return on investments for doing background checks.  
Mr. Rousseau stated that he does not see a lot of support for TARFs, but does see that there are some consumer protection aspects to them. He questioned how much the agency should be involved

in the TARFs. He stated that if the agency is going to have any kind of report filed there has to be a fee.

Old Business – task force purpose as laid out in the legislation may discussed during any discussion items or as separate discussions

4. Review of all laws and regulations governing structural pest management in Arizona and changes necessary to accomplish the future structural pest management program, including:
  - Department of Agriculture’s existing statutory framework and regulatory scheme related to pesticides
    - i. Review of powers and authority statutes – comparisons and rules that fit.
  - Office of Pest Management staff recommendations on changes needed to OPM rules and laws
    - i. Certification/Licensing requirements – including insurance needs
      1. How do we reduce the burden on the industry?
        1. Does everyone need the same level of training/experience for certification?
        2. Is a QP needed or do we just need a responsible individual?
      - ii. Criminal background checks – do we need them for everyone?
5. Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3) on any matter listed on the agenda
6. Call to the Public (2 minute limit per speaker)

This is the time for the public to comment. Members of the Task Force may not discuss items that are not specifically identified on the agenda. Therefore, in response to public comments made on issues that are not listed on the agenda, the Task Force is limited to directing staff to study the matter, responding to any criticism or scheduling the matter for further consideration and decision at a later date.

Mr. Olcott stated that he was disappointed that he could not find the minutes on the website. He feels the Task Force should be asking “Why does OPM exist?”, “What is the main goal of OPM?”, and “How does the OPM know if it is doing a good job?”. He stated that complaint numbers have gone down, but he questioned if that meant the OPM was doing a better or worse job. He asked the question of what are OPM’s goals and how are they being met.

Mr. Himman, from Arizona Pest Professionals, stated that AZPPO is holding its first town hall forum December 14, 2011 at 5:30pm at Univar Offices. The address is 2090 E. University Drive in Tempe.

Mr. Witcher, President of AZPPO, wants to invite everyone to come out to the Town Hall Forum.

7. Set Next Meeting Date  
Next meeting date set for January 11, 2012 at 10 A.M.
8. Adjourn  
12:42 P.M.