



# Arizona Department of Agriculture

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## January 11, 2012 Minutes for the Task Force on the Regulation of Structural Pest Management

1. Roll Call – (10:11AM) Jack Peterson, Chairman & OPM Acting Director

PRESENT: John Boelts, Dave Burns, Kirk Smith, Jimmy Fox, Phil Hemminghaus, Ken Fredrick

LATE(10:17AM): Lin Evans and Will Rousseau

2. Current Status of the Office of Pest Management and coordination with the Department of Agriculture, including:

- Listserv Signup – <http://listsrv.azda.gov/> - Jack Peterson
- Changes, updates or other items out of the ordinary
- License renewal reminder – deadlines have passed – late fees apply – Robert Tolton

*Mr. Tolton stated that the OPM is in the last few weeks of the renewal. Late fees are in effect as of January 3, 2012. He stated that currently about 94% of QPs have renewed and 85% of businesses have renewed. He urged anyone who has not renewed who wants to keep their license to renew as soon as possible.*

3. Topic discussions and possible actions

- **Recommendations to date from the TF:** 1) no inactive licenses – have to maintain CEUs and pay to continue licensure and certification, 2) continue holding OPM CEU classes dealing with laws, rules and keeping persons in compliance, and 3) discontinue state required criminal background investigations
- Qualifying Party – Discussion of QP discussion paper to help determine recommendations for what the requirements should be for obtaining and broadening or should the QP be eliminated, a general discussion on QPs of the future.

*Mr. Peterson posed some questions to the Task Force about obtaining the initial Qualifying Party(QP) license. He stated that ultimately being a regulatory agency that someone needs to be held responsible. He said that the discussion needed to be in part about who the responsible person is. Mr. Evans stated that he definitely feels that a responsible party is needed. Mr. Rousseau asked if every applicator needed to be a responsible person or if you just need one per office. Mr. Peterson explained that each business is required to have one QP. Mr. Rousseau asked if that applies when a business has offices located all over the state. Mr. Burns responded that the business was still only required to have one QP but the Branch office has a Branch Manager who assumes responsibility for the actions of that branch, but ultimately the responsibility is still carried by the QP. Mr. Burns also stated that certain parts of the responsibility are shared by the QP and the Business owner. He gave the example of the shared responsibility of insurance. Mr. Peterson stated that record keeping in his mind was a responsibility that was easily rolled into the responsibilities of the QP. Mr. Craig stated that on the west coast that the states seemed to be similar in having a responsible party of some kind, whereas on the east coast they were not so focused on the responsible party. He explained that he believes the reason for the differences between the east and west coasts are because the west coast is more focused on structural issues. Mr. Peterson stated that the closest thing to a QP from a Department of Agriculture standpoint would be a custom applicator. Mr. Craig stated that currently it is the business license holder to maintain the records. He feels if the record keeping responsibility was passed to the QP it would not make much sense due to the QP being able to leave or be terminated from the company. However, he also stated that when someone is sent to review the records from the compliance department, they do go and see the QP for those records. Mr. Rousseau disagrees and thinks that the QP needs to be responsible for maintaining*

the control of the applicators in the field, the inventory of materials, how chemicals are applied, who is applying the chemicals, and to keep those records. He explained that the person in the responsible party role for all of these things is rarely the business owner. Mr. Boelts feels that one of the issues with the QP is that they have too much "territory" to cover. He stated that there is no way practically that they can be out doing all the things that are currently required of them. Mr. Burns stated that he disagreed with Mr. Boelts. He stated that he feels that there are many large companies that operate extremely efficiently with one QP. Mr. Boelts posed the question of if there is not a responsible party at each branch to make sure chemicals are being stored and applied properly, how is a QP that is in another city responsible for the day to day functions of that branch. He stated that he feels that the consumer would be happier knowing that there is a responsible party that is around to oversee the day to day operations. Mr. Burns stated that he feels that the branch managers that are in place cover being the responsible party for the day to day operations. He explained that when someone needs records from that branch they go to the branch manager. He also stated that if there is an issue with the operations of the branch and branch manager then it would ultimately come back to the QP. Mr. Boelts stated that he does not see the point of the QP. He stated that he only sees purpose for a responsible party and not the QP. Mr. Fox added that the branch's activities were limited to the expertise of the branch manager. Mr. Rousseau asked if the branch manager being a responsible party was a requirement in the current law. Mr. Tolton responded that in current law that it was a requirement to the branch manager to act as a responsible party. Mr. Smith stated that his understanding was that the QP needed to visit each branch office at least once a month. Mr. Craig responded that the QP does not have to visit the branch offices of the business; they only have to visit the main office once every 30 days. Mr. Tolton stated that ideally the QP is responsible for the pest control related activities of the business. He also stated that for the agency the QP is a point of contact. Mr. Burns feels that you cannot penalize a branch of a business without penalizing the whole business. He explained that is why the state needs someone who is ultimately responsible. Mr. Craig stated that every party has rules and statutes that they need to follow. If a party commits a violation under the Arizona Administrative Code specifically for that type of licensee the agency goes after the person that committed the violation. If the QP trained the applicator how to do their job properly then the QP is not held responsible for the applicators violation. He explained that the agency only goes after the business or the individuals' supervisor if they were not providing proper supervision or training. Mr. Peterson explained that in agriculture if an applicator is not properly performing their job the Department of Agriculture would most likely go after that particular applicator. Mr. Peterson further explained that if many applicators are caught not properly performing their job the agency will then go after the supervisor for not providing proper training. Mr. Boelts explained that the reasons he thinks there should not be a QP. He feels that the QP is very oddly set up. Mr. Hemminghaus asked if there are any requirements for the branch manager. Mr. Tolton stated that the branch manager is a licensed applicator who has been promoted to a level of supervisory. He explained that the job of the branch manager is to report to the QP. He stated that 90% of the branch managers that he has dealt with would be able to qualify to obtain their QP license. He stated that the branch manager needs to be a licensed applicator and they must be licensed in the categories in which the branch is going to operate. Mr. Peterson stated that he does not feel that the licenses for the two agencies are too far apart. Mr. Boelts feels that the responsibility for the proper storage and use of pesticides should fall on the person who is overseeing the applicators on a day in and day out basis. Mr. Burns feels that neither of the agencies completely understand the other. He recommended for the agency to put together a side by side comparison of the QP, Business, and Custom Applicator licenses. Mr. Craig stated that the proper storage of chemical was already a responsibility of the supervisor. He explained that the QP is responsible for everyone under their supervision, but statute also states that the supervisor is also responsible for everyone under their supervision. Mr. Evan commented that he feels that the PCA(Pest Control Advisory) should be included in the comparison of the licenses.

Mr. Rousseau asked what the feeling is about the required experience. Mr. Peterson stated that he feels there are 3 categories that do need a higher level of experience. He stated that those categories are aquatics, fumigation, and termite treatments. He felt that those three categories are ones that a pest control company could easily rip off the consumer. Mr. Rousseau stated that to his knowledge in order to perform pest control in those areas you must pass a test to demonstrate competency in those areas. Mr. Peterson stated that was correct. Mr. Rousseau feels that the hour requirement should be eliminated. He posed the question of "Does 3000 hours magically make you more qualified?". He stated that the hour requirement is a barrier to entering the pest control business. He explained his feeling is that if you can demonstrate your competency through a given test that you should be able to obtain a QP license. Mr. Denny, with Metro Institute, stated that the test demonstrated the knowledge of the category, but he feels there is no substitute for experience. Mr. Tolton stated that the applicator exams are less difficult than the QP exams for the categories. Mr. Evans asked if the QP is the one who routinely diagnoses a

problem or if they send someone else to diagnose. Mr. Burns stated that the QP sets the service standards. He explained that when certain situations are diagnosed he has a specific protocol that his applicators follow. Mr. Evans questioned if the applicators sent out are expected to be able to handle any situation. Mr. Burns stated that he does not expect his applicators to analyze and handle any situation. He explained that he expects them to be able to look at a situation and relay it back to a technical director who has the understanding of what needs to be done, and the technical advisor is able to direct the recommendation to the field technician. Mr. Fredrick feels that the 3000 hours is not a good measure. He explained that he does feel that there needs to be some sort of minimum standard competency for the technicians. He feels that there needs to be a higher qualification for someone to be a pest control business owner. He explained that in the past it used to be that if you were an applicator for 24 months you could then apply for a QP and business license. He stated that he feels it would be very irresponsible for the Task Force to recommend lowering standards of competency that would endanger the public. He stated that the consumer expects that the agency makes sure that the pest technicians are trained properly. Mr. Tolton explained that prior to 2003 the requirement was that an individual had to have a license for 24 months to apply for a QP license. He stated that what changed that was the fact that individuals obtained and held a license for 2 years, but never performed pest control would then meet the requirements to apply for their QP license. He explained they changed the 24 months to 3000 hours, and the 3000 hours is only a year and a half of time which is less time than the requirement for 24 months. Mr. Burns feels that measuring the experience alone is not a good enough indicator of their knowledge. He stated that the quality of the tests administered in order to obtain the license is a much better indicator of where someone is qualified to run a business. He stated that the Task Force should be looking more at the testing requirement. Mr. Goeringer, with JHTG, Inc., feels that if the requirements were to be lowered that the compliance division would have their hands full because there would be massive fraud and issues. He explained that he feels there needs to be some kind of standards to have a business license. Mr. Hall, with Enterprise Pest and Weed Services, feels that the verification of the 3000 hours is relying on the honesty of the QP or Business owner. He stated that not many people open a business within 24 months of becoming licensed. He feels that standards should be lowered to make it easier to get into pest control. He stated that the requirements should be holding an applicator license for a minimum of 2 years and a competency test. Mr. Fox stated that he does not feel that the QP license is a barrier to entry. He explained that you can "rent" a QP in order to start a pest control business. He does not feel that being able to "rent" a QP is a good thing, but it is something that can currently be done. He said that in order to obtain a QP license there needs to be a true test of knowledge and skills. He feels that experience is part of it, but experience is very difficult to verify. Mr. Smith stated that he sees a problem with 3000 hours for each category. He questions how long realistically it takes to obtain 3000 hours in termite inspections. He stated that typically you might do 1 to 3 termite inspections a week which would mean it would take 3 to 5 years to obtain the experience. Ms. Farenga, with It's Our Turn, stated that she is ok with a really hard test. Mr. Etheridge, with Contractors Termite and Pest Control, stated that he feels the agency needs to keep the QP. He stated that nothing is broken with the QP. He said that he thinks 3000 hours is fair. He said that he agrees that verifying is hard to do, but he feels that if you are an employee of a company and know that you want to obtain your QP then it should be on the applicant to maintain their pay stubs as proof. Mr. Tyler, with Check List Inspections, stated that maybe the license needs to be determined by size of treatment or whether it is a residential home. He feels that if an applicator can prove that they did gain their 3000 hours of experience, and the QP refuses to help verify that maybe there needs to be a penalty for that. Mr. Peterson stated that if an individual wants to be able to verify the experience themselves then all they need to do is keep a copy of the records. John McCormick, with General Exterminating, stated that he feels that 3000 hours is not bad. He feels that if someone thinks getting their QP is worth doing that they should have no problem putting their hours in to gain their experience. He feels that people need to earn the right to start their own business. Mr. Peterson asked the industry members who attended the meeting how many were in favor of keeping the QP. The vast majority was in favor of keeping the QP in general. Mr. Hemminghaus asked what a QP license costs to renew every year. Mr. Tolton responded that it currently costs \$150.00 to renew an active QP for a year and 6 CE hours. Mr. Smith stated that the Task Force needed to look at how to structure the responsible party for golf courses and political subdivisions. Mr. Logan, with Western Exterminator Company, stated that he thinks it is important to remember that the agriculture and structural pest are two separate industries, and the two industries do not need to have exactly the same things. Mr. Willey, with Invader Pest Management, feels that a lot of companies hold their applicators back from obtaining their QP licenses because they are afraid of more competition. He stated that he would rather compete against someone who has the proper training than someone who does not. Mr. Burns stated that he feels that the number one responsibility of the Task Force is to protect the consumer. Mr. Peterson stated that he wants the agency recommendations from the Task Force to show that the Task Force has done something positive. Mr. Wolf, with

*Wickenburg Weed Control, stated that he likes the 3000 hours of experience because it gives the license value. Ms. Akowski, with AMA Exterminating, stated that her company has been unable to obtain a QP for weeds because her brother was brought on as a technician who met the qualifications for 24 months and then it changed to 3000 hours. She explained that when the requirements changed it disqualified him to obtain his QP. She explained that he is certified in weed control but cannot gain the practical experience because they own their own company. Mr. Boelts stated that it is not his intention to make it easier for just anyone to get into, but to make it more workable for the professionals. He does not feel that 3000 hours is workable. Mr. Schnieker gave an example of pilots only needing 500 hours of experience in order to take passengers up in a plane and be able to charge them. He stated that he believes most commercial airline pilots have very little air time and most people don't think anything of going on a flight. He stated that more people can be harmed by a pilot than someone who is spraying for weeds and does not believe 3000 hours should be necessary to be able to obtain a QP license for weed control. Mr. McClure, with Chemtech supply, stated that today's standards for an applicator license requires no experience and very little knowledge. He explained that the training is supposed to occur under the tutelage of a QP who has passed a higher standard test. He feels that you cannot go from an applicator to running a company without a certain level of training to be able to keep the people in the public safe. Mr. Rousseau requested to see a draft of suggested language for the recommendation on the QP and the TARFs.*

- TARFs – Discussion of TARP discussion paper to help determine recommendations relating to TARFs, the benefits of the database, what changes are needed, who should pay to maintain the information, are there alternative funding mechanisms, should the submittal of TARFs continue – an open discussion on the future of TARFs.

*Mr. Peterson gave individuals in the audience who came just to talk about TARFs the opportunity to discuss their views. Ms. Hawkins, with 5 Star Pest Control, stated that she is in favor of the TARFs. She explained that the site is used several times a week at 5 Star Pest Control. Mr. Burns stated that he does not use the TARP system, but he found that a lot of realtors do use it. Mr. Peterson pointed out that the TARP data base was used about 400 times a day averaged over the 7 days of a week. He further explained that this is not a high usage time, and come spring it will average more than 400 uses a day. Ms. Farenga, with It's Our Turn, stated that she is against TARFs.*

- Future deadlines – legislative action in 2013, drafting of legislation and associated rules – other changes that are needed that have not been discussed

Old Business – task force purpose as laid out in the legislation may be 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: (Please bring your copies of the laws and rules)
  - 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 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 on items relating to the Task Force's purpose and discussions held or wished to be discussed in the future. 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.

*Ms. Farenga, with It's Our Turn, stated her views on the structure of the government that regulates the pest control industry.*

*Mr. Amalfi, with Aquatic Consulting and Testing, stated that he would like to see the Task Force review the definition of B9 category. He stated that he would also like them to review the requirements for equipping a vehicle. He feels that it is not*

*always possible to have chemicals locked during transport as it is stated in law. He stated that he believes that maybe the language needed to be changed to "secured" instead of "locked".*

*Mr. Hall, with Enterprise Pest and Weed Services, stated that he does not believe that only reviewing the previous 5 years for experience is fair. He feels that once you have the experience that knowledge does not just disappear. He feels that any experience gained should be able to be used.*

*Mr. Tyler, with Checklist Inspections, feels that home inspectors should be allowed to do the inspections for termites. He feels that home inspectors can provide a better inspection.*

7. Set Next Meeting Date and Topic Discussion

*Mr. Rousseau requests that the topic of record keeping be put on the next agenda.*

*Mr. Craig suggested any drafted language be set up to compare the current statute and the proposed statute, and also the reason for the change. Mr. Schnieker stated that he feels that the OPM laws should be proposed to be changed to Department of Agriculture laws instead of trying to create new ones.*

Next meeting set for February 15, 2012 at 10:00 A.M.

8. Adjourn – 12:30 P.M.