



# Arizona Department of Agriculture

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**Arizona State Land Department - Auditorium  
1616 W. Adams St., Phoenix, AZ 85007  
April 18, 2011 at 10:00am**

## **Meeting Minutes for the Task Force on the Regulation of Structural Pest Management**

*The minutes for the meeting are as follows:*

### **1. Roll Call – Jack Peterson, Chairman & OPM Acting Director – Call to Order 10:00 A.M.**

*Present:* Jack Peterson, Jimmy Fox, John Boelts, Ken Fredrick, Lin Evans, Phil Hemminghaus, and Dave Burns

*Absent:* Will Rousseau and Kirk Smith

### **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

*Mr. Peterson stated all of the Applicator License Renewals had been sent out. He indicated all Applicators should have received their renewals by now.*

*Mr. Peterson stated there had been a lot of work on the statutory language and regulatory language.*

### **3. Topic discussions and possible actions**

- Recommendations to date from the TF:
  - i. no inactive license requirements – all licenses whether active or inactive have to maintain CEUs and pay to continue licensure and certification,
  - ii. continue holding OPM CEU classes dealing with laws, rules and keeping persons in compliance,
  - iii. discontinue state required criminal background investigations,
  - iv. continue TARFs at reduced fee,
  - v. business names go through the SOS (*Secretary of State*) or ROC (*Registrar of Contractors*) and only address when names are misleading, and
  - vi. continue the requirement for a QP
- Recordkeeping (February 15 handout) and reporting – discussion of requirements and recommendations

*Mr. Peterson stated at the February Task Force Meeting that there had been a summary handout of the record keeping requirements. He explained that he had sent out an email to the members of the Task Force explaining the statutory language that covered the reporting requirements. Mr. Peterson asked Mr. Boelts what his thoughts were regarding the reporting*

requirements. Mr. Boelts stated his reason for wanting to bring up the reporting requirements was for the sake of ground water protection. He explained that he did not want it to be "glossed over" in the review of the laws and rules.

Mr. Peterson explained the reporting requirements as they currently are. He stated in agriculture applications, if an individual is soil applying an active ingredient that is on the Arizona Department of Environmental Quality's (ADEQ) "Ground Water Protection List" they are required to report that application to the Department of Agriculture. The individuals are required to report by submitting a 1080 form. Mr. Peterson stated at the end of the year the information obtained from the 1080 submissions is then provided to the Arizona Department of Environmental Quality, who then reports to the legislature on the information received.

Mr. Peterson stated the concern regarding the reporting requirements is that the products that may be applied structurally may be a risk for ground water. He explained his main concern was Termite Pre-Treats. He stated currently most Pre-Treats are reported via TARF. He stated in his view the TARF would be a good mechanism to report the active ingredients on the "Ground Water Protection List". Mr. Boelts stated he was concerned not only about structural applications but with Golf Courses as well.

Mr. Tim Goeringer, with JHTG, Inc. dba Orkin Pest Control, asked if the "Ground Water Protection List" would be expanded once the agencies are integrated due to soil injections. Mr. Peterson stated that any agriculture used product has to go through a review by ADEQ. He explained that whether it is soil applied or not ADEQ does a review on its active ingredient. He stated it is not based on the chemicals use, it is based on the fact that it is an agriculture use product. He stated ADEQ looks at the chemical characteristics of a product, and if the review shows there is potential for it to leach in to ground water it is put on the list and has to be reported.

Mr. Goeringer stated he feels that once the agencies are integrated that the "Ground Water Protection List" will expand to include the chemicals used on the structural side. Mr. Evans stated he felt it only made sense to include any products applied by the structural pest control industry that may have the potential to leach in to ground water. Mr. Peterson stated the chemicals used in pre-treats are his main concern for ground water protection. Mr. Burns stated that all pre-treatments are contained treatments. He explained that he felt the list was more based on the uncontained chemicals used that presented a runoff issue. He stated there has been potential of leaching found in the reviews that have been conducted. Mr. Robert Shuler, with Western Growers Association, stated that the "Ground Water Protection List" did not deal with chemical runoff issues. He indicated that he did not see it necessary to add to the list. He explained he felt the existing list should be used by individuals in the structural pest control industry, and if an individual uses a product on the list it would require them to report it. Mr. Peterson agreed with Mr. Shuler and stated he was not looking at creating a whole new structure, but to use the list as it currently is and have the structural pest control industry report when using those products.

Mr. Burns stated most of the chemicals on the "Ground Water Protection List" that are being used in the structural pest control industry are being used by the individuals who do B3 and B5 work. Mr. Fredrick asked if there was a way when TARFs are submitted to have it automatically added to a ground water protection report. Mr. Peterson stated that he could see it be as simple as adding a box on the TARF form for ground water protection. He stated that in those cases all that would have to be done would be check the box when submitting the TARF. Mr. Vince Craig, Compliance Supervisor for the Department, stated TARFs would be an easy way to track termite treatments, however it would not be as easy to get the necessary reports done by the other industry members. Mr. Phyllis Farenga, with It's Our Turn, stated she does a lot of low volume weed control with pre-emergent. She explained that the well drillers she knows have indicated they have been hitting water at about 350 feet. She stated she felt leaching is not necessarily an issue everywhere in Arizona.

Mr. Boelts stated he would like to see what options there are to expediently report and gather the information regarding the ground water protection. He feels the treatments involving chemicals on the "Ground Water Protection List" need to be reported so that accurate information can be gathered so that products can continue to be registered. He stated that he would like to see reports from all people using pesticides that are on the "Ground Water Protection List". He explained that reporting the chemicals that are used on that list has value in being able to continue to register those chemicals. Mr. Peterson stated from his understanding the members of the Task Force were requesting a regulatory package that included the authority to address ground water protection use reporting. Mr. Evans stated that he felt including that in the regulatory package was necessary.

Mr. Peterson stated the 1080 form that is already being used for agricultural pest control could be used for structural pest control so that a new form and system would not have to be created. Mr. Fox stated his concern was the added burden of reporting. He explained that most treatments that would need to be reported would be herbicide related, but there would be a lot of additional reporting done by the companies. Mr. Boelts stated the reporting was not always a part of the requirements for the agricultural industry and it was an added burden to the industry when it was put in place several years before. He explained he feels there is value in the burden of having the structural pest control industry report the use of chemicals on the "Ground Water Protection List". He stated his concern is if only the agriculturally used chemicals are being reported, ADEQ may look at the amount of chemical found in the ground water samples and determine that the chemical is being misused and it could affect the product registration. Mr. Burns asked if there was something in statute that eliminates the structural pest control industry from having to report. Mr. Peterson stated he believed Mr. Burns was correct. However, he provided an example that if all of the chemical used on the "Ground Water Protection List" is not reported and the chemical is detected by ADEQ, it will appear to them that it is a bad product if there is not much use of that chemical reported. Mr. Fredrick asked how the chemicals are detected. Mr. Peterson stated there is a network of monitoring wells around the state. Mr. Fredrick stated no matter how much reporting the structural pest control industry is required to do, the information will still not be accurate because of the pesticide use by homeowners. He explained that a lot of weed control product is applied by private home owners. Mr. Fredrick stated he is not in favor of having the burden of having to report more than the industry is already required to do. Mr. Hemminghaus asked if there is a specific time after the application that 1080s are submitted. Mr. Boelts stated that it was required to be reported within a week. He stated while he does not want to create a ridiculous amount of work he does believe that the treatments should be reported because it is a useful tool in order to keep chemicals that are useful able to to be reregistered. Mr. Burns asked how the private individual usage would be factored in. Mr. Evans stated there is no good answer for Mr. Burns' question. He explained that regulations are getting more complex and that is why he is interested in having as many structural chemicals that are similar to the ones on the "Ground Water Protection List" reported chemicals so they can continue to be registered. Mr. Goeringer stated that he has no issues reporting on termite jobs, but cannot see reporting on smaller jobs that are low paying jobs around a home. Mr. Evans stated that those jobs would not apply because if the chemical is not soil applied it does not have to be reported. Mr. Kevin Etheridge, with Contractors Termite and Pest Control, stated California has a pesticide usage report that is similar to the idea being discussed. He explained that he encourages coming up with a simplified form, possibly a monthly report, in order to report so that it would be less of a burden.

Mr. Burns asked if there is a difference between soil applied and over the top of crop applied. Mr. Evans said that there is a difference. He explained residual herbicides have to be reported even though they are applied over the top. Mr. Burns explained that in the structural industry the herbicide that is used is typically used over the top and not applied beneath the surface. Mr. Evans stated if a termiticide is applied below the surface it needs to be reported. Mr. Burns

stated reporting termiticides that are on the "Ground Water Protection List" would be simple to include into TARFs. He explained he wanted to know how the herbicide reporting would be handled. Mr. Peterson stated if an individual was going and applying herbicide on turf then it would not need to be reported, however if they were applying on rocks it would need to be reported because it would be considered soil applied. Mr. Shuler stated he needed to find out if ADEQ considers any other applications other than agricultural. Mr. Peterson stated that he liked Mr. Etheridge's idea of a monthly report. He explained that the language will be drafted for the ability to address reporting regarding ground water protection. Ms. Farenga stated other states have a very simple form in place to report chemicals regarding ground water protection, but she added those states are hitting ground water at 60 feet. Mr. Boelts stated in Yuma ground water is hit anywhere from 3 feet to 30 feet.

- **Review and discussion of overall draft statutory and regulatory language that is prepared to come to final recommendations. In addition the following topics were slated for additional change and discussion.**

Mr. Casey Cullings, Assistant Attorney General for the Department, was requested by Mr. Peterson to go over the document "OPM Proposed Statues Update – Brief Summary of Changes to March 12, 2012 Draft". Mr. Cullings reviewed all the changes that had been made since the initial draft was reviewed.

Mr. Shuler, upon reviewing "OPM Proposed Statues Update", asked if the golf courses were going to be put under the Department of Agriculture since they had completely been removed from the statues. Mr. Peterson stated that it was still undecided where golf courses were going to be placed. He explained he would prefer golf courses to stay under structural pest control.

Mr. Cullings asked if the Task Force members had any questions regarding the changes to the definitions. Mr. Fredrick asked what was going to be required of a political subdivision. Mr. Peterson stated that the political subdivisions would need to register with the agency and obtain a Qualifying Party License. Mr. Cullings stated that the Qualifying Party of a political subdivision would be responsible for supervising the applicants. Mr. Fredrick asked if this proposed change had been explained to the political subdivisions to see how they would react. Mr. Burns stated the main issue with the political subdivision was the insurance requirements because political subdivisions insure themselves differently and they did not meet the requirements that the structural laws had in place. Mr. Craig stated from a compliance standpoint the issue was political subdivisions were complaining that inspectors were going to schools and requiring the schools to obtain business licenses. Mr. Cullings stated that schools would be required to have a Qualifying Party but not to have a business license. He explained that political subdivisions do not need insurance.

Ms. Farenga asked if the intention of the agency to get rid of the administrative hearing office. Mr. Peterson stated the agency did not have that intention. Mr. Cullings stated that Title 41 covers the use of the Office of Administrative Hearings.

Mr. Peterson stated the change on section 3503 (B)(19) was to do with trying to get rid of the "rent-a-QP" issue. He explained that it would require the Qualifying Party to be a part of the day to day business.

Ms. Farenga asked if the power of the agency was going to be expanded into the ability to look at tax records. Mr. Peterson stated it was part of 3503 (B)(19). He explained that it was to ensure that the person was an employee as opposed to just being a contractor. Ms. Farenga stated she felt the agency was outside of its jurisdiction to ask for tax records. Mr. Henry Schnieker, with International Accommodations, asked if the section was saying it was going to be illegal to hire a contractor. Mr. Schnieker stated it sounded to him that the section was requiring that an individual be an employee. Mr. Peterson stated that the agency was not outlawing contractors from being in the industry. He explained that the purpose of the change of 3503 (B)(19) was to make the Qualifying Party be more engaged in the business.

*Ms. Farenga asked for explanation of what the thought was when coming up with 3-3533 (B). Mr. Cullings stated that it is not a change in the requirement. He explained that it was only a change in the wording of the language to clarify the meaning of the statute.*

*Mr. Rick Rupkey, with University Termite and Pest Control, asked if there was a time limit of time in which a complaint can stay open. Mr. Craig stated that Mr. Rupkey's questions is already covered in rule R4-29-702 (G). He explained that if an individual is licensed the office notifies them of an inquiry or complaint. He stated that if an individual is informed or notified of an inquiry or complaint while they still hold a license it will stay until it is resolved. Mr. Craig went on to state if an individual license has already expired by the time they are notified then it will not stay open for an unlimited amount of time. Mr. Cullings said that the language as it is currently drafted says until the investigation or complaint is resolved. He explained that it only stays open while the investigation is pending. Mr. Boelts stated he felt it may be a good idea to give the investigation a time limit in which it must be resolved. He stated he liked the idea of having 6 months to close an investigation. Mr. Craig responded and said there is currently a case where an applicator was issuing false WDIIRs, and because the applicator has not responded the investigation has gone beyond 6 months. Mr. Rupkey stated that 6 months may be too short of a time limit, but that he does think there needs to be a time limit. He explained he is not comfortable with investigations not having a time limit.*

*Mr. Etheridge asked why the definition for Integrated Pest Management, in statute 3-3502 (17), was not mirrored from what the EPA's definition was. Mr. Evans stated the definition the agency is using is a shorthanded version of the EPA definition. He explained he feels that definition being used in the proposed statutes is more economical.*

*Mr. Boelts stated he does not feel the 30 day minimum requirement is sufficient. He stated he did not understand how an individual could effectively accomplish what they are responsible for when only being required to be at the office once every 30 days. Mr. Peterson stated in the proposed statutes it makes the branch managers be a responsible party as well. Mr. Burns stated most Qualifying Parties are involved in daily operations. Mr. Schnieker stated he disagrees with a Qualifying Party only having to be at the main office of a business once every 30 days. He stated he feels they should have to be there daily.*

*Mr. Etheridge asked if the language of the statutes could be changed to include drywood termites. Mr. Peterson stated the language would be changed to say wood destroying organism. He explained that the word organism would keep it broad incase anything else were to have to be addressed in the future. Mr. Robert Tolton, Licensing Supervisor for the Department, stated with regards to statute 3-3502 (18) the word subterranean was removed and it was just left as "termites" in the language.*

*Mr. Etheridge stated he did not feel that \$100,000 minimum insurance policy, mentioned in proposed statute 3-3512 (B)(3)(c), was high enough coverage for termite inspections. He stated he felt the minimum should be increased to \$500,000. Mr. Tolton stated most termite companies do not obtain only the minimum insurance. He explained that industry would drive what the actual limit would be. Mr. Burns asked Mr. Tolton if there is a significant amount of termite businesses that only have \$100,000. Mr. Tolton replied that almost no termite companies start with \$100,000. He explained that those that do choose to start with the minimum insurance coverage quickly increase. He stated most insurance companies require more than \$100,000.*

*Mr. Etheridge stated that he encouraged the Task Force to lower the threshold of \$5000 for business license applications in 3-3518 (1). Mr. Peterson asked if Mr. Etheridge had a recommendation as to what he would like to see it lowered to. Mr. Etheridge stated he would like to see it at least lowered to \$2500.*

*Mr. Etheridge asked if his understanding of 3-3531 (A)(5)(b) that after 5 hours of instruction an individual can go out and fumigate is correct. Mr. Peterson clarified that an applicator has to obtain at least 5 hours of instruction from their employer before they can go fumigate. Mr. Etheridge asked if the individual has to get licensed first. Mr. Peterson stated the 5 hours of instruction were in addition to becoming licensed. Mr. Etheridge stated he is not comfortable with an individual only being required to obtain 5 hours of instruction from their employer to be able to fumigate. He explained that many fumigation crews finish fumigation jobs within a few hours. He stated that a lot of that time is for the set up and tear down of the tarps and other things needed to complete the job. He stated the fumigant is only being used for about 15 minutes of the entire job. He stated his concern is that an individual can be on a fumigation job for 5 hours but only have 15 minutes of instruction on handling the chemical. He feels that the word "fumigation" should be eliminated from 3-3531 (A)(5)(b).*

*Mr. Fredrick stated he is concerned with how far individuals will go in providing their own pest control under the exemption in 3-3515 (A)(1). Mr. Peterson stated they would still have to register with the agency to show they are falling under the exemption. He stated they will have to hold proper insurance and they will have to be a licensed applicator. He explained they just will not need a business license. Mr. Fredrick asked if that was an option why anyone would need a business license. Mr. Peterson responded it was because business licensees offer their services for sale. He explained that an individual under the exemption is only going to be applying on their property. Mr. Burns stated that in statute there is the ability to charge a resident for a service, specifically bed bugs, and he feels it needs to be addressed if there is an ability to make a profit from the exemption of owning a property. He stated that a resident has no say. Mr. Fred Willey, with Invader Pest Management, stated this issue also presents an issue with individuals renting their Qualifying Party License. He stated that a Qualified Applicator would be able to work full time for a pest management company as well as work for an apartment complex that wants to do their own pest control work on the property. Mr. Peterson explained that an individual can only qualify one or the other. Mr. Willey asked if an individual can be a technician for one company and a Qualifying Party for another. Mr. Tolton stated there is nothing that stops an individual from being a technician for one company and a Qualifying Party for another in current law. He explained there are companies who will prohibit that, however there are individuals who do both.*

*Mr. Burns stated he would like to see language added in 3-3535 that would suspend the use of a name for a license that has been suspended or revoked. He explained that it would prevent people who have their license suspended/revoked from being able to go out a few months after and be able to obtain a business license in the same name. Mr. Peterson stated that the section 3-3535 is to try to keep the individuals who are causing problems in the industry from reentering by just starting a new business. Mr. Tolton stated typically when a business has had an issue and been revoked or suspended most individuals do not want to use the name anyway. He explained the name is not the issue. He stated the issue is the individuals who are involved who commit the violations. He explained the goal is to keep an individual who has committed violations from going to a different company and obtaining all of their old customers and being the Qualifying Party for that company. Mr. Cullings stated if a business license is suspended, the name is also suspended and no one else can come and use the name. He explained in the case of a revocation the business license is gone and someone could try to come and use that name. Mr. Cullings clarified that if it is the same individuals going back into business that they will be blocked from getting a business license in any name.*

*Mr. Boelts asked for clarification on 3-3535 (B). Mr. Cullings stated it meant if a business's entity was another business that the agency would continue to further into the business until the actual owner(s) were found. He explained that would keep it from being a corporate screen.*

**i. QP - New proposal for mandatory experience verification – discussion and draft language review**

*Mr. Peterson stated that he had looked at the way California had their structural pest verification set up. He explained that California requires verification of experience forms to be filled out if an individual requests it. He explained that the agency was looking at having a regulation that required individuals to fill out verifications forms upon request. He stated the form would verify that the individual did work for the verifying authority and what their job duties were. Mr. Etheridge stated in California if an individual wants to obtain their operator's license, which is the equivalent of Arizona's Qualifying Party License, the employer is required to verify hours. Mr. Hemminghaus asked if there was a limited amount of years the experience could go back. Mr. Etheridge stated he did not believe there was a limit.*

*Mr. Cullings stated that the new proposed verification would be that in addition to having a two year requirement in holding the category in which you are applying to be a Qualified Applicator for, the individual is also required to have 500 hours of experience. He explained that would require some amount of experience so an individual could not just hold on to their license and do nothing with it for two years. He also stated business licensees would be required to keep their employment records for two years. Mr. Burns stated he does not like the idea of having to verify hours. He explained that verifying an employee's work in hours is a very difficult task. He further explained it is even more difficult if an individual works on commission and not every hour worked is tracked. He stated verifying a date range is easy. He said the things that an employer will know about their employees would be date of hire, date of end, and what they did for the company. He stated he wants some form that is easily measureable. Mr. Fredrick stated it would be rare to have someone obtain their license and do nothing with it for two years. Mr. Boelts added that an individual would still have to pass the test. Mr. Goeringer stated he does not understand why there needs to be a verification form. He explained that every year when he renews he is required to list all of his employees and verify the ones that are still working for him. Mr. Tolton stated that currently it is not required for a business to list all of their employees. Mr. K. Chris Miller, with The Beekeeper Total Bee Control, stated having employers verify employment dates is relatively easy. He explained that registered contractors are required to verify for themselves by submitting W-2s and pay stubs. He feels applicants should be keeping their own records. Mr. Kelly Denny, with Metro Institute, stated he felt having registered employees would make it easier to track.*

**ii. Golf courses what regulatory requirements best fit - ag or OPM**

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

*Mr. Peterson stated he felt that the majority of the package needed to be completed by July. Mr. Shuler asked if it was going to be a Department of Agriculture bill. Mr. Peterson replied that it was not. He explained that the Task Force was going to present the package to the House, the Senate, and the Governor. Mr. Shuler asked if it was going to be a Department of Agriculture bill or if it was going to be an industry bill. He explained that the reason he was asking was because if it was going to be a Department of Agriculture bill it would require the governor's approval. Mr. Peterson stated he felt that it was going to be an issue that gets worked out as the process moves along. He stated that he would go along with what is directed by the Governor. He stated that if it were his choice it would be an industry bill.*

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

4. **Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3) on any matter listed on the agenda**
5. **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.**

*Mr. Andrew Witcher, with ScorpionTech Termite & Pest Control, stated he was president of Arizona Pest Professional Organization (AZPPO). He stated he has been in the pest management industry for 8 years. He stated he has been on the AZPPO board for 3 years. He explained at the February town hall meetings they summarized the two previous town hall meetings. He stated that the meetings had about 65 people in attendance and the purpose of the meetings was to discuss the draft of the statutory changes. He explained that notice of the meeting was sent to over 1000 licensed applicators via email. Mr. Witcher reviewed some of the comments by the attendees, one being the \$8.00 TARF fee was too much.*

*Mr. Schnieker, with International Accommodations, stated that at the Tucson town hall meeting the word TARF was never mentioned. He stated that Mr. Witcher's summary was inaccurate.*

6. **Set Next Meeting Date and Topic Discussion**

*Tuesday May 15, 2012 10:00 A.M.*

7. **Adjourn – 12:08 P.M.**