

July 16, 2012

OPM Task Force,

Its-Our-Turn.com has a collective knowledge of the issues spanning the last 35 years. Its-Our-Turn.com is a grass-roots effort that is not influenced by AzPPO's (Arizona Pest Professional Organization) culture and corporate money. We believe this gives us a unique perspective and we should be heard. We have forwarded 293 petitions and comments to the OPM Task Force from people who want to see streamlined regulations that do not create barriers to entry. These people clearly do not agree with the stated AzPPO position of status quo, nor do they agree with the direction the OPM Task Force has taken.

I would like to comment on the latest proposed statutes and rules revised July 11, 2012. I think serious issues remain and have not been properly addressed by the OPM Task Force.

The very existence of the QP (Qualifying Party) is a serious problem. There are only a few states in the Union that have the concept of a QP - the rest of the nation does not need a QP and works safely and efficiently without a QP. The QP has little to do with protecting consumers and is primarily used to protect pest control companies from new competition and to provide a scapegoat for those same companies.

Back before the SPCC (Structural Pest Control Commission) Sunset hearing, the Arizona legislature has told the SPCC not to force QPs on political subdivisions - see SB-1388. Yet the SPCC went around the legislature and used rule to try and force QPs on political subdivisions. During the Sunset hearing, Senator Barbara Leff commented about how the SPCC had ignored the legislature - providing yet another reason to sunset the SPCC. And Jack Peterson, you were there so you cannot plead ignorance.

The OPM Task Force is now recommending that political subdivisions are required to have QPs. Are you joking? I think the legislature has been quite clear in saying they do not want political subdivisions to have QPs. Do you really think you can get away with this? Do you really think AzPPO has enough money and influence lined up that you can push this through the legislature and secure your job as future Director?

As OPM staff has pointed out in the past, the legislature already trusts all of the political subdivisions to apply pesticides without a QP. The applicator and political subdivision both share responsibility and that system has worked successfully for years without incident. The fact that this has worked so successfully for all these years demonstrates that there is no need for the QP - not for political subdivisions and not for commercial applicators.

AzPPO has spent a lot of money and effort trying to keep the QP rules in place and even expand the role of the QP. The AzPPO members have repeatedly said they want the QP as a barrier to entry to protect them from new companies or companies that

want to expand into other areas. We have them on tape making these statements and have pointed them out to you to in past letters.

The OPM Task Force has been sent 61 petitions that specifically asked the OPM Task Force to stop requiring a QP license to apply unrestricted pesticides. The OPM Task Force has been sent an additional 71 petitions asking the OPM Task Force to eliminate the arbitrary experience requirements for the QP license - using a comprehensive test instead. That's more petitions that AzPPO has paid PCO members so I think you should pay attention to the rest of the pest control industry. Streamline the regulations - get rid of the QP altogether or at least for unrestricted pesticides.

The OPM Task Force now wants every licensed applicator to register with OPM before going to work for an employer (R3-7-208). And you want access to tax records to determine if an individual is an employee (ARS 3-3503.B.20). Outrageous. There is no legitimate reason for OPM to have either regulation. This is simply a tool to harass small business owners. Streamline the regulations - get rid of the new registration and tax record searches.

Which brings me to the allowing people to work for 90 days without a license (R3-7-401.G). The applicator is either licensed (certified) or not. Period. No license, no commercial pesticide applications. Period. It is like allowing an airline pilot to fly passengers for 90 days without a license. Training is an issue and Arizona's education system is pathetic. We think Arizona would benefit from putting the emphasis on a more formal educational structure. The whole concept of a temporary uncertified applicator just complicates the regulations without significant benefit to anyone. Streamline the regulations - get rid of temporary uncertified applicators.

The OPM Task Force is proposing to increase the paperwork overhead of small companies significantly by requiring all customer receipts to include EPA registration numbers for unrestricted pesticides (R3-7-306) and all service records for unrestricted pesticides to include EPA registration numbers (R3-7-501). Perhaps this is fairly simple for a large computerized business to accommodate because they normally pre-print all of that information before the applicator runs his route. However, this is a huge overhead for a small business that specializes in custom work and hand-writes the receipt and service record after performing the work for each customer. This information serves no purpose for the customer or the business and is just useless overhead. Streamline the regulations - get rid of the EPA registration number requirement for all unrestricted pesticides.

The OPM Task Force is now recommending structural pest control operators file paperwork for any ground-applied pesticide with an ingredient on the Department of Environmental Quality Ground Water Protection List (Table 3) - even though this list is strictly for crop production (R3-7-505). Structural pest control rarely involves large acreage - which is common for crop production. Don't forget, homeowners can also purchase and apply the very same pesticides in any quantity and no one is thinking about making them fill out such paperwork. All low volume usage should simply be

excluded. Streamline the regulations - get rid of this unneeded reporting requirement.

The OPM Task Force is proposing to take away your license if you fail to pay an assessed penalty within 30 days (ARS 3-3532). This can put you out of business while you fight your case in court - depriving you of the cash flow needed to fight an unjust case. Or it will put you out of business if you are a small company with family medical problems or other financial issues and cannot afford to pay. A good example is being late paying your TARF fees. There are several cases in the last few years of this happening. You should not be put out of business for de minimis violations and the associated penalties. Streamline the regulations - get rid of this unneeded statute.

Speaking of TARFs - they should be abolished. The OPM Task Force has been sent 73 petitions asking that the TARFs be abolished. The TARFs no longer serves a legitimate service to the public - if they ever did. Streamline the regulations - get rid of the TARFs.

I see no reason why a right-of-way should be treated special (R3-7-102). If I have a weed license (R3-7-102.3), why can't I spray weeds in a right-of-way? If I have an industrial/institutional license (R3-7-102.1), why can't I spray for insects in a right-of-way? Can you say barrier to entry? Streamline the regulations - get rid of this unneeded distinction.

The OPM Task Force has been sent 51 petitions asking that the existing gardener exemption be expanded to include all licensed operators. If an unlicensed person can safely apply herbicides in small volumes, certainly a certified applicator can also apply them safely. Streamline the regulations - eliminate the unneeded restrictions in the exemption.

Can you read and comprehend a federal pesticide label? There should be no distinction between structural and Ag as far as applying pesticides. The only real difference between crop production and structural is quantity of mixed/applied solution and the acreage per application and the types of pests treated. As such, putting golf courses in Ag is an unnecessary change. Golf fits under structural just fine. If you are treating fairways for weeds, the ornamental and turf should work just fine without a separate golf category. Arguing that a golf course or farm is close to communities makes no difference - it should not matter how close the houses are - you still need to make your applications in a manner consistent with the federal label that will not harm the house across the street or across the fairway.

To take it further, there is no reason to separate structural and Ag pesticide usage. They should use the same license and follow the label. We call that efficiency. Improve the education to accommodate everyone. If you need separate categories, base them on the category of pest like general pests (animals), plants, wood-destroying insects, aquatic (stage of life) and fumigation. Streamline the regulations - get rid of the unnecessary duplication and complexity.

In general, OPM and the Department of Agriculture should not regulate devices. OPM and the Department of Agriculture should only be regulating pesticides - regardless of how they are applied and what devices are used for their application. You should not be regulating birds, cats, dogs, or praying mantises. You should also not be regulating houses or buildings or the things that are a legitimate part of a building. You should not be regulating traps. You should not be regulating hair driers, cloths driers, or other appliances. You should not be regulating tanks, foggers or spray rigs. As long as someone is complying with the federal pesticide label, you should leave them alone. You should put a clear prohibition to regulating devices in statute. I am not able to think of a single device that I think you should be regulating, including dogs trained to sniff out specific bugs. The list of unregulated device list in R3-7-304 should be replaced by a statute that says you cannot regulate devices. Streamline the regulations - only regulate what actually needs regulation - the pesticides.

Overall, the OPM Task Force recommendations are inefficient, redundant and poorly thought out. OPM Task Force has failed to comply with the spirit of why the OPM Task Force was created in the first place - to streamline structural pesticide regulations. The state of Arizona is a prime example of over regulation and barriers to entry generated by and for a few good old boys.

Sincerely,

Phyllis M. Farenga  
Its-Our-Turn.com