



# Arizona Department of Agriculture

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

The following minutes are for the meeting held on June 26, 2012 in Room 126 at 1688 West Adams Street, Phoenix, AZ 85007 (the Department of Agriculture Building)

**The meeting minutes are as follows:**

### **1. Roll Call – 10:07 A.M.**

Present:

Vince Craig, Subcommittee Chairman. Subcommittee Members Ken Fredrick (attended at 10:27 a.m.), Larry Bard, Brett Cameron, and Staff (Robert Tolton, Gary Christian, Casey Cullings, Jack Peterson) and Industry Members (Kirk Smith, Dawn Echeverria,)

### **2. Approval of June 19, 2012 Minutes**

**MOTION:**

Motion to approve by Mr. Cameron, contingent the grammatical issues were addressed.

Second by Mr. Bard

**VOTE:**

Motion passed unanimously, 3-0

Mr. Fredrick attended via telephone at 10:27 a.m.

### **3. Review and Action regarding draft Statute and Rule regarding Devices and the Director's Powers and Duties**

Mr. Craig presented a draft copy of a proposed Statute and Rule to the subcommittee. He stated that the language was based on the position that the majority of the subcommittee had last week; namely, to allow the Director to have the freedom to decide which devices would be regulated.

Mr. Bard commented on the language; specifically, he wanted to bring to the subcommittee's attention that the word "contrivance" could carry a negative connotation and was not actually all inclusive.

Mr. Craig commented on how that word is also used by the Department of Agriculture and including the word "mechanical" should result in an all inclusive definition for devices.

Dr. Smith commented on how the word is also used in EPA's definition for "devices" and explained how the use of the word would at least demonstrate consistency.

Mr. Craig read Harvey Logan's comments into the record; namely, that he was in favor of Option 1, but that it was his position that any devices used should be efficacious.

Mr. Cameron favored Option 2 because the language that has already been proposed by the Task Force for A.R.S. 3-3503 begins with the words "The director shall". It was Mr. Cameron's position that the director *shall* create rules regulating devices, rather than having the flexibility to decide.

Mr. Craig asked if anyone was willing to vote on either Option 1 or Option 2.

Mr. Craig then asked if anyone was willing to vote on a portion of one of the options.

**MOTION:** Mr. Frederick moved to adopt the proposed statute "Powers and Duties" portion of Option 1; Seconded by Mr. Cameron.

Mr. Cameron stated that he believed the language under Option 1 appeared to conflict with what the Task Force has already adopted in the proposed Statute 3-3503. The language in Option 1 states "The Director may designate by rule, which devices are exempt from regulations under this chapter." However, the proposed statute by the Task Force states "The director shall: Adopt rules that are necessary or proper to administer and implement this chapter, including administrative provisions, license and registration requirements and qualifications, training and education requirements, health and safety provisions, duties and responsibilities, recordkeeping and production of records requirements, financial security standards, licensee inspection and treatment reports requirements, disciplinary action provisions, equipment provisions, and provisions for the use, storage and application of pesticides and devices used in management."

Assistant Attorney General Cullings stated that the subcommittee could actually adopt the language in Option 1 with the word "may" and it could co-exist with the proposed Statute 3-3503, since Option 1 specifically addresses *which* devices the Director will exempt, while 3-3503 requires the Director to create rules to carry out the chapter and those rules also involve rules on devices.

Mr. Fredrick explained why he was somewhat hesitant about adopting a Rule or Statute that specifically outlined what items should not be regulated. He explained how that should be the decision of the Director.

Mr. Craig explained that placing language in the Rules or Statute exempting specific devices might contribute to the agency being consistent. He explained how a lack of having any devices in Rule or Statute could result in the administration changing their opinion whenever the agency received a new director.

Jack Peterson stated whether Option 1 or Option 2 was adopted, he desired that the Director had something in writing that would establish which devices were not going to be regulated.

Mr. Craig asked if anyone would like to insert language regarding devices being efficacious. Mr. Fredrick stated that he did not believe it would be necessary. Mr. Bard stated that the agency's concern should be with the safety of devices—such as equipment used for heat. Dr. Smith stated that the main issue the agency could face with requiring devices to be efficacious is that someone would have to determine the efficacy; and, the agency's resources were too limited to address efficacy.

**[Option 1 is as follows]:**

**A.R.S. 3-3503 Powers and Duties:**

**"The Director may designate by rule, which devices are exempt from regulations under this chapter."**

**Definitions**

**"Device means any instrument or contrivance that is intended to be used for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life."**

**Devices not requiring a business license or applicator certification:**

**The following devices are not subject to this chapter:**

- (1) a raptor, when used it to control or relocate other birds;**
- (2) physical removal of pests or the habitat of pests while cleaning;**
- (3) mechanical traps, when used without a pesticide;**
- (4) removal by mechanical means of weeds or other obstructing vegetation;**
- (5) installation, maintenance, or use of a physical barrier to remove or prevent infestation by nuisance animals;**
- (6) installation equipment used for home improvement or modifications; or**
- (7) fire arms.**

Jack Peterson stated that some of the items listed were not actual devices, but “procedures” performed without the use of a pesticide. He and the subcommittee discussed how each listed item should be edited to truly fit under the category of “devices”. The results were as follows:

- (1) **Raptors used to control or relocate other birds;**
- (2) **Physical barriers used to remove or prevent infestations by pests;**
- (3) **Mechanical traps used without a pesticide;**
- (4) **Mechanical equipment used for the physical removal of weeds and other vegetation;**
- (5) **Physical barriers used to remove or prevent infestation by pests;**
- (6) **Installation equipment used for home improvement or modifications; or**
- (7) **Firearms.**

**AMMENDMENT:** Mr. Cameron moved to amend his motion to adopt all of Option 1 with the following changes proposed by Mr. Peterson; Seconded by Mr. Bard.

**VOTE:** Motion passed unanimously.

#### **4. Discussion and Action regarding establishing guidelines for operators utilizing canines to inspect for Bed Bugs**

Mr. Bard stated that there are currently five testing protocols available for operators utilizing bed bug dogs. He stated that the National Pest Management Association (NPMA) has developed a bed bug canine test protocol with the help of a Blue Ribbon Task Force made up of industry representatives, academia, and canine experts in scent detection. The results of the task force work are summarized in the test specification noted in a chart he created and distributed to those in attendance (which has also been added to the website corresponding to this subcommittee meeting). Mr. Bard explained how the standards adopted by the NPMA are actually more accurate than the other four standards currently in existence. Mr. Bard explained how consumers should be aware of the discrepancies in the required test method and the individual agencies methods and what means were taken to rectify the variances or deviations from the prescribed method during individual certification tests.

Mr. Craig stated that as a governmental agency, the department should not “adopt” one type of testing protocol over another. He explained how the OPM’s website provided information for consumers regarding bed bugs, but that more could be done to educate consumers. Mr. Bard stated that he would work with the OPM in any way possible to further educate consumers. Mr. Peterson stated that a link to the NPMA’s website would also be beneficial.

**6. Call to the Public (2 minute limit per speaker)**

Dawn Echeverria (Orkin Pest Control) spoke about the challenges those on the subcommittee have regarding crafting rules and statutes that would have to be satisfactory to all and expressed appreciation for making the meetings public.

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

None

8. **MOTION:** Motion to adjourn by Mr. Bard; Second by Mr. Fredrick.

**VOTE:** Motion passed unanimously, 4-0

Meeting adjourned at 11:12 a.m.