



# Arizona Department of Agriculture

1688 W. Adams Street, Phoenix, Arizona 85007  
(602) 542-3575 FAX (602) 542-0466

## **Task Force on the Regulation of Structural Pest Management** **Notice of Meeting and Agenda**

*The following minutes are for the meeting held on June 13, 2012 in Room 206 at 1688 West Adams Street, Phoenix, AZ 85007 (the Department of Agriculture Building)*

The minutes for the meeting are as follows:

### **1. Roll Call – 9:30 A.M.**

*Present:* Chairman Jack Peterson, Ken Fredrick, Kirk Smith, Lin Evans, Will Rousseau, Phil Hemminghaus, Staff Members, and Audience/Industry Members

*Late:* John Boelts (arrived at 10:02 A.M.)

*Absent:* Jimmy Fox

### **2. Listserv Signup – <http://listsrv.azda.gov/>**

### **3. Current Status of the Office of Pest Management and coordination with the Department of Agriculture, including changes, updates or other items out of the ordinary**

*Mr. Peterson stated that July 13, 2012 marked the one year anniversary of the OPM being under the direction of the Department of Agriculture. He indicated he felt everything had worked out well. He explained that all departments, with the exception of the Compliance Department, are fully integrated. He stated agricultural employees are performing OPM tasks and OPM employees are performing agricultural tasks. He stated the Compliance Division has not been integrated because it is unique and the agricultural and OPM inspections each have different sets of inspections and protocols.*

### **4. Task Force recommendations to date:**

- **no inactive license requirements – all licenses whether active or inactive have to obtain *Continuing Education Units (CEU)* and pay to continue licensure and certification,**
- **continue holding OPM CEU classes dealing with laws, rules and keeping persons in compliance,**
- **discontinue state required criminal background investigations,**
- **continue *Termite Action Report Form (TARF)* at reduced fee,**
- **business names go through the *Secretary of State or Arizona Corporation Commission* and only address when names are misleading, and**
- **continue the requirement for a *Qualifying Party***

### **5. Subcommittee reports and recommendations on statute and rule changes:**

#### **a. Golf course**

- **See proposed rules (dated July 11) beginning at page 59; A.R.S. §§ 3-363(13) & 3-3501**

*Mr. Tolton stated he felt this rule change would give the golf course community what they are looking for as well as allow the Department of Agriculture to regulate without being overburdened.*

*Mr. Kevin Etheridge, with Contractors Termite and Pest Control, asked if there had been a study done of the revenue that would be moved from OPM to the Department of Agriculture. Mr. Peterson stated that it had been discussed but he could not remember the exact amount that had been figured. Mr. Tolton stated that he had looked at the number of licensed businesses that use the words golf course or country club in their name and came up with less than 100. He explained that there are pest management companies that perform work for golf courses and some of them will no longer be needed, so there will be a lot more affected. He explained that he also looked at the number of applicators who hold the typical golf course categories of B3 Right of Way and Weeds, B5 Turf and Ornamental, and B9 Aquatics. He stated it is hard to determine which applicators are golf management related and which are landscape management related as they both hold the same categories.*

*Mr. Robert Shuler, with Arizona Crop Protection Association, stated to his understanding when golf courses move over to the Department of Agriculture and if they make an application to a pond they need to be licensed under Arizona Pollutant Discharge Elimination System (AZPDES) Permit. Mr. Peterson stated that was his understanding also.*

*Mr. Smith mentioned that soil fumigation was still under the Department of Agriculture, even if the target is rodents.*

*Mr. Smith asked if once the transition occurs if the golf applicators are going to obtain agricultural approved CE hours. He also asked the agricultural and OPM approved CE hours would cross over. Mr. Peterson stated that ultimately the goal would be to make the CE courses be accepted for both the Department of Agriculture and OPM.*

*Mr. Ron Elkins, with City of Phoenix, asked if in municipal courses when treating reservoirs that feed into residential areas if it would still be under the Department of Agriculture. Mr. Peterson stated that it would.*

- **Place treatments by golf courses under ADA's Environmental Services Division**

*Mr. Peterson explained if a golf course is performing work on their own course then they would be considered a private applicator. Mr. Smith asked if his understanding that a certified applicator would be allowed to perform treatments on a golf course was correct. Mr. Peterson stated they would be a golf applicator. Mr. Smith asked if the golf applicator was under the "umbrella" of the Department of Agriculture. Mr. Peterson stated that was correct. Mr. Smith asked if the exam was going to be what is currently being used for the Department of Agriculture. Mr. Peterson stated the decision about what the test would consist of has not been finalized. Mr. Smith asked if the Regulated Grower was going to be the responsible party for each golf course. Mr. Peterson stated that was correct. Mr. Smith asked if a company owned multiple golf courses would they need a Regulated Grower for each individual golf course. Mr. Peterson stated a company that covers multiple golf courses only needed one Regulated Grower. Mr. Smith stated that the Regulated Grower would be for a company and not a specific golf course. He asked who is responsible for the golf applicator if they misuse a pesticide on an application. Mr. Peterson stated in the agricultural industry it could be the responsibility of both the golf applicator and the Regulated Grower. He stated each case is unique. He stated under the worker protection standard an employer is held responsible, but if it is dealing with restricted use products then the certified applicator is also held responsible. He stated the applicator is always responsible regardless of the situation.*

*Mr. Schnieker stated he felt there was not benefit in giving golf courses a whole "special" section in rule to do things. He stated it seemed like the agency was allowing the golf courses to escape from Qualifying Parties (QPs). He stated the agency spent so much time forcing everyone else to acquire QPs, but then the golf course industry gets off scot-free. He indicated he felt it did not seem like a rational set of regulations. He stated it seemed like a bunch of special cases for a small group of people who talked their way out of a lot of regulation. Mr. Peterson replied that the reason for the change was because the application methods for the golf courses more closely resembled those of the agricultural industry than the structural pest control industry. Mr. Schnieker stated he felt most things under OPM should be moved under the Department of Agriculture, and do away with the duplicity of all the regulations.*

*Mr. Smith asked when golf courses are applying pesticides to water if that would be under the Department of Agriculture or OPM. Mr. Peterson stated if they are applying it as a golf applicator it would be under the Department of Agriculture. Mr. Smith asked if every golf course application was going to have to start being reported on 1080s. Mr. Peterson stated if it is commercially applied or on the ground water protection list they will have to report it. He stated otherwise the golf courses will have their own records they have to keep.*

- **Leave treatment of golf courses for hire under OPM**

*Mr. Peterson explained if someone is doing work on a golf course for hire, then they will remain a commercial applicator and continue to be certified under OPM.*

**b. Devices**

- **Definition of device – See A.R.S. § 3-3502(9)**

*Mr. Smith asked if "contrivance" is the appropriate word to use in the definition of device. He explained that many people may not know what a "contrivance" is. He stated that he had many of his applicators read the definition and none of them knew what a "contrivance" was. He suggested the word just be removed and be replaced with "an instrument or mechanical device". Mr. Evans suggested leaving the word and defining it. Mr. Larry Bard, with Nose Knows indicated it was discussed in the subcommittee and they had decided to leave the word "contrivance" in the definition because the definition of device was going to include dogs.*

- **Devices exempt from licensure and registration requirements – See A.R.S. § 3-3503(B)(16); A.A.C. R3-7-304(A); see also A.R.S. § 3-3515(A)(6)**

*Mr. Craig stated he felt if an individual was to use a device that was not harming the public or the environment that they should not be regulated. He indicated the new language would allow those individuals to be able to perform work with those devices without being licensed. He stated this would protect the reputation and integrity of the Department of Agriculture.*

*Mr. Smith asked if his understanding of the exemption being that individuals who perform pest control without the use of registered pesticides and all they use are devices they are not required to be licensed with OPM. Mr. Peterson responded that it would make the individuals who use devices on the list under Arizona Administrative Code R3-7-304 exempt from being licensed.*

*Mr. Fredrick stated he felt it was confusing. He explained that under law and rule it explains that in order to advertise to perform pest management services you need to be licensed even if an individual is not using a pesticide. He gave the example of "Mr. Packrat" in Tucson. He explained that "Mr. Packrat" does not use any kind of pesticides, he only uses traps and other devices, but he advertises it as a pest control service. He stated he felt if anyone is going to advertise to perform work as a pest control means they should be required to be licensed. Mr. Smith stated in rule it also stated if an individual was to only be using the devices listed and not licensed with OPM they are required to state that they are not a licensed pest control company in all advertisements.*

*Mr. Smith asked if individuals performing pest control work with the exempt devices would now have to put "not a licensed pest control company" on their trucks instead of their business license number. Mr. Peterson stated in all written and verbal advertisements a company would have to state that they are not licensed, but the trucks had not been addressed. Mr. Robert Tolton, OPM Licensing Supervisor, stated he felt the advertisement on the trucks was "written". Mr. Smith and Mr. Peterson agreed that advertisements on a truck would be considered written.*

*Mr. Fredrick stated he is concerned about the change. Mr. Peterson stated he felt the change was good. He explained he felt that individuals should not be required to be licensed through OPM to be able to do common things. He explained that the agency should inform the consumer what they should be looking for. He stated one thing that needs to be explained to the consumer is that they need to make sure they are hiring someone who has insurance.*

*Mr. Smith asked if there were a lot of phone calls from consumers asking for recommendations of companies they could use. He asked if an individual has a pigeon problem and they need to find a company to handle that, but they are no longer licensed through OPM, how will the agency handle giving them a recommendation? Mr. Tolton explained the agency never provides a recommendation to anyone. Mr. Peterson stated they are directed to look up the pest control companies themselves.*

*Mr. Harvey Logan, with Western Exterminator Company, stated to the best of the agency's ability he would like to see the consumer protected from "phony" devices being used for pest control. Mr. Henry Schneiker, with International Accommodations, stated that the OPM and the Department of Agriculture have no business regulating any device. He stated there needed to be a statement added in statute that states that. He indicated that OPM is specifically precluded from regulating devices. He stated OPM needs stick to regulating pesticides and stay out of everything else. He stated, as an example, he felt it did not make sense that bird control was only regulated under specific circumstances. Mr. Peterson stated the concern with the use of devices was the high potential for harm and fraud. Mr. Schneiker stated the agency cannot regulate morality.*

- **Certification of individuals using an animal to identify pests – See A.A.C. R3-7-201(C)(5)**

#### **c. Pesticide groundwater use reporting**

- **See updates to R3-7-505**

*Mr. Peterson explained that the concept of the rule is that if a company uses a chemical that has been detected in the last 5 years that is on the ground water protection list, they need to report it by county on a quarterly basis.*

*Mr. Peterson stated he had reviewed several labels to see if the label required the product to be irrigated in. He explained he found that the chemicals he reviewed did not have to be watered in for 21 to 30 days. He stated the chemicals stay active until they are watered in unless they are applied directly to the soil, and in turf situations it would not be soil applied.*

*Mr. Peterson stated he had Mr. David Hall, IT Manager for the Department of Agriculture, put together a list of the chemicals that had been detected in the last 5 years. He stated that most of the products listed on the Ground Water Protection list are agricultural products and will not be used in structural pest control. He stated the amount of reporting that would be required would be very small.*

*Mr. Fredrick stated he was not in favor of reporting applications of chemicals on the ground water protection list. He asked how a private owner, that allows people to hire individual to perform pest control on their own property without a business license, would be regulated if they used a chemical that was on the Ground Water Protection list. He asked if the private*

*applicators would be required to report the use of Ground Water Protection list chemicals as well. Mr. Peterson stated they would need to report everything just the same as any other business. He explained that the only thing a private owner gets a break on is a Business License. Mr. Evans stated the only exemption to having to report the use of these products would be if an individual were to apply products themselves on their home.*

*Ms. Courtney Levinus, with Capital Consulting, asked what form would be used to report the use of the Ground Water Protection list products. Mr. Peterson asked if Ms. Levinus was referring to an application for a final grade termite treatment. Ms. Levinus indicated she was. Mr. Peterson stated the intention of the agency was to modify the TARF form and data base with a slight change to be able to report the use of these products. Mr. Peterson stated that for other applications they would use a simplified version of the 1080.*

*Mr. Fredrick asked since the start of the reporting of the use of chemicals on the Ground Water Protection list if the list had grown. Several agricultural industry members stated it had grown. Mr. Peterson stated the list had also gone down. Mr. Fredrick stated his concern was that it was going to be mutated into something that would require the industry to report everything. Mr. Rousseau stated he is in favor of the reporting because then the agricultural industry has true hard numbers that can show what the actual usage is. He stated it helps with being able to register the compounds as well as defuse arguments with individuals who would rather people not use any pesticides. Mr. Fredrick stated he did not want to end up having to report everything. Mr. Boelts stated on the agricultural side of things it has been fairly painless to report the use of the products. Mr. Rousseau stated he felt that if the agricultural industry had to report the use of specific compounds then the structural industry should have to report the use of the same compounds. Mr. Peterson stated he felt the Ground Water Protection list would evolve as new chemistry is changing so much. Mr. Smith stated the Department of Environmental Quality (DEQ) has already required permits to be obtained and keep records for individuals who apply chemicals to water. Mr. Schnieker stated he felt there was very little gain for the amount of over head being imposed upon the industry. He stated he does not see the benefit that justifies it. He stated he sees it as being another excuse to keep the TARF data base around and expand it over time.*

## **6. Latest draft of proposed statute and rule language, including these specific topics:**

### **a. 18 – Minimum age for certification**

*Mr. Peterson stated nationally the new regulations will be moving toward having a minimum age of 18 for commercial pesticide application. He explained insurance companies have stated that insuring an individual under the age of 18 is very expensive. Mr. Fredrick asked if it included laborers helping do things such as drill holes. Mr. Peterson stated that it did not include laborers.*

### **b. Required Criminal background investigations by employers – law required – not state initiated**

*Mr. Peterson stated the reason this was put on the agenda was because the industry wants regulation to show that they have to do a background investigation. Mr. Peterson stated his feelings were that the agency should stay out of the background investigations that are conducted. He stated he felt there was so much liability on an employer that he doesn't know how they could afford not to conduct a background investigation for their employees.*

*Mr. Smith clarified that when an individual applies to become licensed they still have to show proof of legal residency.*

*Mr. Fredrick asked if background checks would still be required for individuals who are applying for business licenses. Mr. Tolton stated that we have not conducted background investigations on business licensees.*

*Mr. Rousseau stated he felt that it was not the place of the government to be involved in background investigations. Mr. Fredrick stated he has been doing background investigations for 20 years for his business and he will continue to perform them for all new employees. He stated his background investigations are nowhere near as in depth as the one that the agency performs. He explained you get what you pay for. He stated if you wanted to pay for a better quality background investigation you could. Mr. Peterson stated the background investigation the agency conducts is as good as it can be at that moment in time.*

**c. Supervision of uncertified individuals**

*Mr. Peterson stated that only 2 uncertified individuals could be supervised at one time. He explained the definition for laborer had been added because a laborer is not considered an uncertified individual. He stated uncertified individuals are not the individuals drilling holes or digging trenches. He explained an uncertified individual is anyone dealing with the pesticide after the container has been opened. Mr. Schnieker stated he had no objections to laborers, but he stated he does have an objection to uncertified people applying pesticides. He stated they should become licensed before they start applying.*

**d. Private owner registration – business license exemption**

*Mr. Peterson stated the purpose of this was to allow people to apply on their own property. He explained they would still have to have insurance, a certified applicator, and a Qualifying Party (QP). He stated these individuals would not have to have a business license. He indicated it is similar to government because we would not require them to have a business license.*

*Mr. Fredrick stated his concern is that something bad will happen relating to private owner registrations of individuals that will reflect badly upon the agency.*

*Mr. Bob Wagner, with Wagner Pest Solutions, stated the issue he had with the private owner registration was regarding bed bugs. He explained that the landlord has the right to charge a resident if they deem that the resident brought bed bugs into the structure. He stated his company probably services 30-50 units per day for bed bugs. He indicated everyday every property states that the resident brought the bed bugs in. He stated it is a continuous thing that they are charging the residents to treat the units. He stated he feels if they are charging residents to perform a pest control service, they are in the business of pest control and they should be required to have a business license. Mr. Smith asked if an individual lived in an apartment and they were paying the apartment owner for treatment and that treatment doesn't work, does the individual come to OPM to file a complaint against the apartment complex? Mr. Peterson stated that if something was done improperly you would file a complaint against the complex with OPM. Mr. Smith stated you could file a complaint against them as long as they are licensed as a private owner. Mr. Rousseau stated they would have to be licensed as a private owner in order to legally be performing the treatment. Mr. Evans asked if they would still be required to have a Certified Applicator and a Qualified Applicator. Mr. Peterson stated they would still be required to have both a Certified and Qualified Applicator, they just would not be required to hold a business license. Mr. Fredrick stated that Mr. Wagner had a point, that if an apartment complex were to be making extra income over the individuals rent for treating for bed bugs they should be licensed to do that.*

*Mr. Smith asked if the joint responsibility clause should be modified to include private owners. Mr. Peterson stated in his mind private owners would be on the hook just like everyone else, the only thing they would be getting a break on would be the business license. He stated he felt that the joint liability language was strong enough to include everyone.*

*Ms. Levinus stated she felt there should be a provision put in the language that states that the private owner could not do it for profit. She explained that would keep them from being able to charge above and beyond. She stated right now the apartments have to hire a licensed company. She stated the complex does charge the resident for the service if the resident is at fault, but under the new private owner registration the apartment community would be a private owner and be able*

to supplement their income by treating their units for hire or for profit. Mr. Casey Cullings, Assistant Attorney General, stated to his understanding the apartment complex is charging the tenants to recover their costs, not to make a profit. He stated for any sort of damage that a tenant caused whether it is bug related or not, the land lord would be recovering their costs. He stated if the landlord hired a third party company, the company would be making a profit but that would be a part of the landlords' costs. He stated if the landlord is doing it themselves they cannot up charge to make a profit. Mr. Wagner stated that the only reason that he sees a landlord charge an extra fee is when a resident refuses to prepare for a service. He explained the landlord does that through a lease addendum. He asked how it would be regulated to ensure that a landlord is not charging for a profit by performing their own work as a private owner. Mr. Fredrick gave the example of one of his friends moving into an apartment complex, and on the lease his friend signed it stated that the apartment was bed bug free upon move in. The apartment complex assumed that his friend brought the bed bugs in with him and charged him \$1100.00 to do the bed bug treatment. He stated he doesn't see how a private owner has the right to charge for a treatment but not be required to have a business license. Mr. Peterson stated he sees that the private owner registration may be putting the tenant at the mercy of a landlord, because if an individual can treat, they can charge.

Mr. Bard stated he believed the Landlord Tenant Act as modified by the legislature last year under A.R.S. 33-1319 indicates that owners are required to do an inspection within 7 days of reporting an infestation, and if that is confirmed by a licensed pest control company they then have another 7 days to treat the infestation. He stated he didn't believe they were allowed to recharge the fees for the treatment to the tenant. He stated he believed it was the owner's responsibility. Ms. Levinus stated she believed that the act that Mr. Bard mentioned was in a draft version that was not the version that was passed and signed by the governor. She stated there are no requirements on the landlord for the response time. She explained the only requirements on a landlord are that they cannot rent an infested unit and they have to provide educational material to all new tenants about tenants. Mr. Peterson asked if it also stated that the tenant had to cooperate and the landlord has to fix the infestation. Ms. Levinus stated that was in a draft version of the bill and it was substantially amended in the House. Mr. Rousseau stated that this exemption was to allow an owner who had proper licensing and registration to be able to make his own applications. He stated the only thing they are saving on is the business license. He asked where the additional exposure to the public or the environment was if the private owner was complying. Mr. Peterson stated there is no way for the agency to know if the landlord charges tenants for the treatments. He stated the only way the agency would be notified is if someone complains and that is when the agency would get involved. Mr. Wagner stated he felt the way to avoid any issues is to make landlords obtain a business license if they want to perform pest control on their property. He stated if they are making money performing pest control, then they are in the business of pest control and therefore should be required to obtain a business license. Mr. Peterson asked if Mr. Wagner was stating that private registration should be eliminated. Mr. Wagner stated he was. Ms. Levinus stated she also represents Arizona Multihousing Association and she indicated that the association has discussed the private owner registrations and that they have no interest in it. She explained they do not want the liability that goes along with performing pest control. She stated the owners she talked to stated they will continue to hire out and contract for pest management services. She stated they also do not want the insurance premium.

Mr. Peterson stated that he felt that the discussion was an indication that the private owner registration is not needed.

**e. Qualifying party**

**i. Political subdivisions, including state agencies – requiring a qualifying party**

Mr. Peterson stated that the issue in the past was the agency trying to require political subdivisions to have business licenses when they are not in the business of pest management.

*Mr. Smith stated he had spoken with many political subdivisions and all of them seem to be ok with the proposed language. He stated the only issue seems to be with school districts. He asked if each individual school district was going to be required to hold an individual QP or would they be allowed to contract for a QP. He stated that previously this was an issue when the agency was the Structural Pest Control Commission and several school districts were preparing to file lawsuits in regard to this issue.*

*Mr. Rousseau asked if it was a common practice for school districts to be doing their own pesticide applications. Mr. Smith stated that some school districts do, but it depends on the size of the school district. Mr. Rousseau stated that he would think it would be advantageous, if it was a large school district, for the school district to obtain a QP and the training and perform their own pest control as opposed to hiring out. He stated he did not think the agency should be making it difficult for the school districts to be economically competitive, but he stated he also feels that they should not be allowed to make their own applications with no requirements. Mr. Smith stated that the biggest issue he has seeing with school districts is individuals going out in t-shirts and shorts making applications and immediately after kids going out and playing in the field that was just treated. Mr. Tony Scarfo, with Phoenix Union High School District, stated he felt there should be some oversight. He stated he has had his QP for over 20 years and he believes the school districts do need the oversight of a QP. Mr. Rousseau stated he felt that Phoenix Union High School District was a good example of a large school district who would perform all of their own pest control treatments and it would be economically advantageous. Mr. Scarfo stated Phoenix Union High School District has 18 sites.*

*Mr. Schnieker stated he recalls several times that the legislature has stated they do not want the requirement of a QP imposed upon governmental entities. He stated during the Structural Pest Control Commission sunset review Ms. Barbara Leff stated the legislature told the agency not to require governmental entities to hold specific licenses and that the agency did it anyway, and that was just another reason for legislature to sunset the agency. He stated that agency staff in the Task Force meetings has stated that legislature has trusted the political entities to perform pest control without QPs and there have not been any major problems. He stated he feels there is no reason for the agency to suddenly require the political entities to have them now. He stated the agency is not requiring QPs to fix a problem. He explained that the only reason is that individuals are trying desperately to justify QPs as a barrier to entry. Mr. Ron Elkins, with the City of Phoenix, stated he felt that requiring political subdivisions to have a QP is a good move.*

**ii. Are the requirements set right to obtain and broaden?**

*Mr. Peterson stated that the proposed statute would allow individuals to broaden into Right of Way and Weeds and Turf and Ornamental categories if you become licensed as a QP in General Pest or Termite Treatments and Inspections. He stated he feels this is a necessary change because if a business owner works their business and decides they want to broaden into other categories they are stuck and can't broaden unless they work for someone else. He asked the Task Force for their input.*

*Mr. Rousseau asked Mr. Peterson to summarize what the current suggested requirements are. Mr. Peterson stated the language states that it would require 2 years of licensure to become licensed initially. He stated initially he had set up different time frames, and the Task Force and industry indicated that 2 years was less confusing than having a separate time requirement for specific categories. Mr. Rousseau asked if Mr. Peterson was referring to the qualifications for a Qualifying Party (QP) or a Qualified Applicator (QA). Mr. Peterson stated they were one in the same. He explained that when an individual is not qualifying a company they are a QA and when they are actively qualifying a company they are a QP. Mr. Evans asked if this would eliminate the need for experience and just require a test. Mr. Peterson stated he felt it is important that an individual have experience. He stated there needs to be a certain level of*

knowledge in the individuals becoming licensed and he does not necessarily believe can test for that knowledge. Mr. Peterson gave an example of when he worked for a plumber for several years and they hired a new employee who had gone to school for plumbing and he didn't know how to actually do much. He stated he feels there needs to be some level of experience. Mr. Rousseau stated he does agree that they need to have some level of experience, but he feels that 2 years is too long. He stated he felt the requirements should be lowered. He stated he is concerned that 2 years may be a barrier to entry. Mr. Peterson stated he understood Mr. Rousseau's concern. Mr. Peterson stated his concern is if the agency does not have anyone stand up and fight for what is put forward and the legislature does not think it is right they will decide what they want to do with the laws. Mr. Peterson stated he has been to many meetings with industry members and the industry has stated they feel that 2 years is a good length of time. Mr. Rousseau feels that the requirements are too stringent. Mr. Fredrick stated he disagrees. He explained that he has been in the industry for 32 years and when he first got into the industry it was 24 months requirement to become a QP and business license. He indicated he did some research of the states around Arizona. New Mexico required one year of experience (with education) to get a business license, but all the other states around us require 24 months. He also stated that California requires 48 months to be able to obtain a termite license. He stated he did not like the term barrier to entry. He stated he believes it is a fallacy. He indicated he had asked Mr. Tolton to do some research regarding the number of new licensees over the last 2 years. Mr. Tolton shared in doing his research he found that in the last 24 months 224 new business licenses were issued and that is slightly less than the amount of new QP licenses that have been issued. Mr. Evans stated he felt the requirement of experience should be based upon the difficulty of the test. He explained if the test is simple then the experience requirement needs to be higher. He stated if the test is substantially more difficult and would be difficult to pass without experience then he would suggest lowering the experience criteria. Mr. Peterson asked Mr. Tolton what the passing rate for QP testers was. Mr. Tolton stated the passing rate for the current month was 74.3% and fiscal year to date was 66.1%. Mr. Smith asked if that was the first time testing pass rate. Mr. Tolton stated it does not break it down that way, but it states that 1.5 tests is the average to pass.

Mr. Smith asked how someone would gain the 2 years of experience in order to expand their business. Mr. Peterson indicated that the language helps businesses expand into the Right of Way and Weeds and the Turf and Ornamental categories. Mr. Smith stated he understood, but how would you go about gaining the experience in other categories? He explained that if the test is very difficult to pass it doesn't mean that an individual who can pass it will be able to know how to handle the real world experiences. He stated somehow you need to be able to gain experience, so either you go and work for another company or you hire a QP and have them work for your company so that you can do the work. Mr. Peterson stated isn't sure if there is a right number of years which if someone is in business they should be allowed to broaden into specific categories. Mr. Scarfo stated if an individual obtains their QP they should be given the benefit, since they already have the base knowledge of the industry, of dropping the requirement to 1 year of experience to be able to broaden into another category. Mr. Etheridge stated he feels 24 months is fine and does not feel it is a barrier to entry. He stated he feels it is an apprenticeship leading to professionalism. Mr. Chris Gillies, QP for Terminix, stated that Terminix would like to expand into the Turf and Ornamental category, but he does not have time to go out and get 2 years of experience. He asked in that case how he would expand. He stated he would not want to jump into the business without experience because he would want to protect himself and the company, but wants to know how he would go about getting the experience. Mr. Peterson stated the proposed rules would allow him to expand into the Turf and Ornamental category. Mr. Gillies stated he likes the proposed rule. Mr. Bard stated he felt being able to expand into Right of Way and Weeds or Turf and Ornamental if you hold the General Pest category would help solve a lot of problems. He stated that he feels that

*since unlicensed applicators are allowed to perform work for 90 days without being licensed he feels that maybe 90 days is good time frame for a QP to expand into another category.*

*Mr. Schnieker stated that since a few states around Arizona having QPs had been brought up he wanted to point out that if you were to expand your view of the United States there are a lot of states that have no concept of a QP. He stated that just because Arizona and a couple of other states that surround Arizona happen to have a QP doesn't mean that even 50% of the other states have QPs. Mr. Peterson stated it also needs to be considered that other parts of the United States don't have the pest pressures like the southern part of the United States.*

*Ms. Levinus stated she feels the 24 month requirement is great. She explained that it is deregulating the industry to a certain extent and it is reducing barriers to entry. She stated it should not be reduced to anything less than 24 months unless the industry and agency were to see how it goes for a couple years at the level of 24 months. She stated if after 24 months it is seen that 24 months is causing a barrier to entry it can always be addressed and deregulated further. She stated the agency should not deregulate too much and then have to come back, under pressure of the legislature, if something goes wrong and over correct. Mr. Rousseau stated if it were lowered it could also be brought back to a higher level if it was found to be too easy. Mr. Peterson stated he would rather make it easier later if it proved to be too difficult than to make it harder later because it proved to be too easy.*

*Mr. Peterson mentioned that New Mexico gave credit for a year of experience if an individual obtained a degree. Mr. Smith stated that you have to take certain qualifying classes. Mr. Stanley John, with Desert Weed Control, stated he has hired individuals who have gone to school for knowledge of the pest control industry. He stated he has fired individuals who have knowledge but not experience. He explained that someone who is intelligent enough to be a QP is not going to sit in a truck and spray for 3 years. He stated 3000 hours is a barrier to entry. Mr. Peterson asked if Mr. John felt that 2 years of experience makes it easier. Mr. John stated that he feels it is progressing, but those who have businesses are not going to go work for someone else for 2 years to get the experience. He feels it does not completely correct the issue.*

**f. Home Inspectors and evidence of damage by wood-destroying insects**

*Mr. Peterson stated that Mr. Tolton spoke to the Board of Technical Registration (BTR) and came to the conclusion that if a home inspector is going to be doing Wood Destroying Insect Inspection Reports (WDIIR) or Treatment Proposals they need to be licensed by OPM. He explained if a home inspector is just sighting damage to a property they are licensed to do that under BTR as long as they are not making an identification of termite damage.*

**g. Advertisements by persons only using devices exempt from licensure and registration requirements – A.R.S. § 3-3503(A)(1); A.A.C. R3-7-304(B)**

*Mr. Smith stated in the rule package there are several references to "Right of Way", but it is never defined. He asked if there should be a definition for "Right of Way" put in the package. Mr. Peterson stated in federal law there is a definition for it, but that he would make sure to look into it and clarify it.*

*Mr. Smith asked about Continuing Education (CE) approvals. He stated he would like to see a basic requirement of a sign in and sign out sheet to verify that the individuals are in the class for the full hours they are getting credit for.*

*Mr. Smith stated he felt a loophole was left open under R3-7-403 (A) because with having to visit a branch every 120 days if you went to the branch on day 120 and spend the night and be good for another 120 days. Mr. Peterson stated at one time it used to state once every 3 months, but at least with 120 days they are required to be there at least once every 120 days. He stated they*

could be there over night, but in 120 days they would have to be back. Mr. Smith stated all that was done was extended it from 90 to 120 days. Mr. Tolton stated that it was never a requirement before. He explained the only requirement before was the QP had to be at the main office once every 30 days.

Mr. Fredrick stated he does not like the language of "shall ensure" in R3-7-310(A). Mr. Peterson stated that is currently existing language. Mr. Fredrick stated he knew it currently existed, but if a company is not notified how can they ensure that it is retreated. Mr. Peterson stated it was if the company has been advised.

Mr. Fredrick stated the language in R3-7-310 (C) is confusing. Mr. Etheridge asked if the statement of the treatment being free of charge would disallow a company from asking the owner if they wanted to upgrade the material on a subsequent treatment. Mr. Peterson stated there was nothing that stated a company could not do that. Mr. Etheridge state in the section it states the treatments shall be free of charge, and if a company upgraded that material it would no longer be free of charge. Mr. Peterson asked Mr. Craig if there had ever been a complaint from a consumer who stated they had been wrongly charged for switching products used. Mr. Craig stated that has not happened. Mr. Schnieker stated there was a woman who had between 12 and 24 call backs within the warranty period for retreatment and she was charged for many of those treatments. He stated the termite company claimed no knowledge of the current language in rule, and the company got away with it with merely a "hand slap". He stated he feels it is not enforced. Mr. Peterson stated that something that has happened in the past he cannot enforce. He stated if this situation were to happen and it were brought to the agencies attention that the agency would do its regulatory due diligence to correct the problem.

Mr. Logan asked if providing notice to consumers could be done electronically. Mr. Peterson stated he felt adding electronic notices as being acceptable was a good suggestion. Mr. Peterson stated that he does not care if consumer notices have the EPA registration number or not. Mr. Craig stated that the EPA registration number requirement will be removed if it is not a restricted use pesticide.

Mr. James Krueger, with Orkin, asked if there was a minimum time frame that the QP had to be present at each branch once every 120 days. Mr. Peterson stated they need to be there as long as it takes to complete their duties as a QP.

Mr. Smith asked if the new matrix system was going to be included in the rule package for the penalties. Mr. Peterson stated that it would be included.

## **7. Task Force legislative report required by Laws 2011, Ch. 20, § 6.**

### **a. What to include and not to include**

Mr. Peterson stated he would like to give some sort of background as to what everyone has done. He stated he would like it to include who the Task Force members are, and go through the processes explaining what had been done.

Mr. Peterson asked if there is anything the Task Force or industry members feel should be included. Mr. Smith asked if Mr. Peterson would like each of the Task Force members to send in a bio for themselves. Mr. Peterson stated he would like each member to send a bio to be included in the report.

Mr. Smith asked if Mr. Peterson was going to recommend funding for more inspection staff on the report. Mr. Peterson stated he was not going to at this point.

### **b. Procedure**

### **c. Layout**

8. **Old Business – task force purpose as laid out in the legislation may be discussed during any discussion items or as separate discussions - the task force shall submit findings and recommendations, relating to OPM including:**
- a. **Review of all laws and regulations governing structural pest management in this state.**
  - b. **Review organizational configurations within the ADA for structural pest management regulation.**

*Mr. Joe Sigg, with the Arizona Farm Bureau, stated he has not heard anything from anyone saying that the Department of Agriculture and OPM should not merge. He stated that looking back at the legislative package, consensus is important. He indicated if there is no consensus on the package it will get dismissed. He stated even if there is consensus and all of industry agrees on what has been written it is still very difficult to get this large of a change through. He recommended that the agency take "baby steps". He stated the report should focus on that fact that the merging of the agencies should occur. He stated the report should also focus on the administrative efficiencies. He stated the industry does not have consensus on the whole package. He stated his strategic recommendation would be to go before the legislature and tell them all the things that have been done as well as all of the things that have yet to be accomplished. He explained the major point of the next session is to inform them that the merge is a good idea. He stated OPM should be kept in title 32 for a while to attempting a rewrite in title 3 to include everything. He recommended not attempt to put all of title 32 into title 3. Mr. Shuler stated he agreed with Mr. Sigg. He indicated the agency should take small steps and keep the 2 separate statues to avoid confusion.*

*Mr. Craig asked when everything merges will OPM be called Department of Agriculture? Mr. Shuler asked what the agency was called now. Mr. Peterson stated it was titled Arizona Department of Agriculture – Office of Pest Management. Mr. Shuler stated the changes to the agency should be made in title 32. He indicated there should be no operation change. He stated the only change that should be made should be the removal of the sunset, and making the changes in title 32. He stated once the changes have been made in 32 the agency should then move them over to title 3. Mr. Peterson stated that the changes had been made in title 3 that it would need to be renumbered. Mr. Shuler stated he believed that if you made the changes in 32 and changed them over to title 3 it would double the length of the bill. He indicated the legislators will not like it if the bill is doubled in length. Mr. Fredrick asked if it is not moved to title 3 until 2 or 3 years down the road will the length of the bill be long. Mr. Shuler stated if that happened then the agency would just have to make it a 3 instead of 32 instead of renumbering the whole thing. Mr. Sigg stated the other advantage would be after that experience and continuance there will be consensus and it will be less complicated. He stated consensus on this kind of a bill is key, and right now there is no consensus. Mr. Rousseau stated if the agency were to proceed that way and make the change of title down the road it would be viewed as a "house-keeping" change. Mr. Cullings stated right now the OPM and the Department of Agriculture are 2 separate legal entities. He stated that his understanding is that if OPM was left in title 32 they would continue to function as 2 separate agencies. He asked if this is how Mr. Sigg and Mr. Shuler envisioned it working or if the envisioned it being one agency with 2 titles. Mr. Sigg stated he would envision the agencies functioning just as they are. Mr. Shuler stated his intention was to keep them as they are. He asked if there was an operational impact on leaving the agency as it is. Mr. Craig asked if Mr. Peterson would continue to be the director of OPM when the agencies merge. Mr. Shuler stated under his view of it Mr. Peterson would still be the director.*

*Mr. Rousseau asked what time frame would be recommended to have the report ready. Mr. Sigg stated he would like to see the Task Force report ready for circulation as soon as possible after the November elections. He stated he would assume that several individuals are going to have to visit on a constant basis with all of the legislators. Mr. Smith asked if there is a lobbyist out there that could petition the political subdivisions saying that the political subdivisions support this package.*

*Mr. Sigg stated that cities and municipalities carry a lot of weight and there will definitely be someone who will petition the political subdivisions. Mr. Smith stated that since he is a part of a political subdivision he would like to be a part of that process and take the information to the legislators.*

- c. Review of personnel and funding issues relating to the administration of structural pest management regulation within the ADA.**
  - d. Statutory changes necessary to accomplish the future structural pest management program.**
- 9. Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3) on any matter listed on the agenda**

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

*Mr. Logan asked if the legislative package was coming toward being wrapped up. Mr. Peterson indicated that it was getting toward it and that he would like to be able to present the report to the Task Force at the next meeting unless they felt they need to meet again before that.*

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

*Mr. Peterson stated the next meeting would be scheduled when the draft report was put together enough for review by the Task Force.*

**12. Adjourn – 11:40 A.M.**