



Arizona Department of Agriculture

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

The following minutes are for the meeting held on October 17, 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 9:35 A.M. – Jack Peterson, Chairman & OPM Acting Director

Present: Jack Peterson, John Boelts, Lin Evans, Ken Fredrick, Kirk Smith, Staff Members, and Audience/Industry Members

Late: Jimmy Fox

Absent: Phil Hemminghaus and Will Rousseau

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

a) Listserv Signup – <http://listsrv.azda.gov/> - Jack Peterson

b) Budget

Mr. Peterson indicated there were concerns that the OPM budget was going to negatively affect the Department of Agriculture. He stated the budget is in "good shape". He explained there is more funding in the Pest Management fund than the agency plans on spending. He stated as a part of the proposed package the funding sources are being changed to decrease the fund balance.

c) Changes, updates or other items out of the ordinary

3) Review and discussion of overall draft statutory and regulatory language that is prepared to come to final recommendations. <http://www.azda.gov/OPM/OPMHandouts.html> Handouts – Release 8/15/2012 - latest change summary follows at the end of this agenda or is posted on 10/11/2012.

Mr. Peterson stated the draft of the rules and statues were sent out on August 15, 2012. He stated on October 5, 2012 after a final meeting was held a document with the final changes was sent out.

Mr. Peterson stated there was an addition made to the language to state if an applicant is convicted of specific felonies or misdemeanors involving moral character they can be denied licensure.

Mr. Peterson asked if there were any changes the Task Force members or Audience members felt needed further discussion. Mr. Casey Cullings, Assistant Attorney General, indicated the August

15, 2012 changes had not been discussed either. Mr. Peterson stated none of the changes had been discussed. He explained he is not sure if the changes need to be discussed. He stated the changes can be reviewed and discussed if needed, but he did not see the changes made as substantive changes.

Mr. Peterson stated the section regarding keeping Wood Destroying Insect Inspection Reports in numerical order was removed. He stated continuing education course notification requirements were added so the providers would be required to notify the agency of when the courses were scheduled to take place. He explained currently the providers that are approved to provide continuing education courses need to be contacted by individuals seeking continuing education hours to confirm when courses would be held. He stated if the course time and date is known it should be reported to the agency so it can be posted on the website so the industry has access to it.

Mr. Smith stated in reading the definition for "Immediate Supervision" on page one of the August 15, 2012 proposed changes, he feels it limits immediate supervision to only in the case of using pesticides because it does not include devices. He asked if it was not a concern to be immediately supervised if using a regulated device. Mr. Peterson stated immediate supervision was not needed for regulated devices. He explained immediate supervision has to do with the relative toxicity of the products being used.

Mr. Joe Sigg, with the Arizona Farm Bureau, stated the issue with devices he discovered was the definition was way too broad. He stated it was also unclear in the fact that it appears devices are only regulated if the individual using them is a licensed applicator. He explained it seemed if an individual was not licensed using a device that person would not be regulated, but the unlicensed individual would then have to advertise indicated they are not a licensed Applicator. He stated if devices need to be regulated then it should be regulated. He feels that a regulation has been formed, but a way to bypass regulation has also been created. He stated his concern was the way OPM is currently structured, a lot of time and energy could be wasted on this issue. He stated it should either be completely regulated or not regulated at all. He explained if it is going to be regulated it should be done in such a way that it is enforceable. He believes at this point the system being created is not enforceable. He stated his recommendation to the Task Force for the time being would be to bypass the issue of devices until it can be revised. Mr. Peterson stated there were specific devices listed in law that the agency was not going to regulate. Mr. Vince Craig, OPM Compliance Manager, reviewed the definition of "device" as it is written in the proposed law. He reviewed the proposed rule R4-29-304 exempting specific devices from regulation.

Mr. Fredrick stated his concern was the individuals using these devices are still making identifications of the pests and performing inspections. He stated in definition an individual has to hold a license in order to perform an inspection and to identify pests. He stated he feels there will be confusion over this issue. Mr. Craig stated the reason this rule was made was without it the agency would be required to regulate all use of devices. He stated with the definition of pest control it would allow regulation on anyone no matter what they use if they were trying to control a pest. Mr. Craig stated when it comes to identification the OPM inspectors see identification differently than others. He explained if an individual sees a bird and says they are going to put up a bird spike the inspectors do not see that as identification. He stated if an individual identified what kind of bird and species it was then that would be considered identification. He explained when it gets to the point where an individual uses a term other than a basic term to describe the pest that is when inspectors would consider it identification. He stated the basic

purpose of this was to prevent the agency from regulating everyone using a device when there are specific devices that are not harming the environment or the public.

Mr. Boelts asked what the reference point was for the language that was put together. Mr. Craig stated other states were contacted for a basis of the language. He explained that Colorado, Texas, and Indiana all have similar language in their laws. Mr. Boelts asked if the regulators Mr. Craig spoke with in obtaining this information had informed him this language for laws and rules worked well in their states. He asked if there was a lot of push back or controversy of the issue. Mr. Craig stated they did not have any of those kinds of issues. He stated personally he liked the position of Indiana currently holds which is not regulating any devices at all. He explained their view is they regulate only pesticides because pesticides can harm the environment and the public.

Mr. Henry Schnieker, with International Accommodations, stated he agreed with Mr. Craig because he felt the agency had no business regulating pest control devices. He stated the agency should stick to solely regulating the use of pesticides. He stated identifying "creatures" was something many individuals and groups do that has nothing to do with pest control. He stated "the mere act of identifying creatures should have nothing to do with pest control". He stated pest control should strictly be the use of pesticides.

Mr. Peterson stated he feels OPM should definitely not be regulating the use of all devices.

Mr. Smith asked if OPM was no longer going to be involved in determining a proper name for pest control business. Mr. Peterson stated that was correct. Mr. Smith asked if someone used the words Bird Control in their business name if that name would be allowed to be used if that company only used devices. He explained the name itself would be advertisement. Mr. Tolton stated the way the proposed language is currently written the business would have to indicate in their advertisement that they are not a licensed pest control company. Mr. Craig stated in North Dakota they have similar structure for their pest control industry. He explained they have both licensed and unlicensed companies. He stated they want the unlicensed companies to advertise that they are not licensed so that it educates the consumer. Mr. Sigg asked how unlicensed people would be regulated. Mr. Evans stated by definition there is no way to regulate unlicensed individuals. Mr. Sigg stated they are being regulated because they are being required to disclose they are not a licensed company by the agency. He explained that is why his suggestion for the time being would be to remove the regulation of devices.

Mr. Culling stated he is comfortable with the language. He explained this issue went before a subcommittee. He stated he felt it addresses the concerns that were brought up properly. He stated if individuals are using pesticides or devices without a license, there are provisions in the language that allow the agency to properly deal with it even if they are not required to be licensed.

Mr. Harvey Logan, with Western Exterminator, stated he was on the device committee. He explained he felt one of the purposes of the Office of Pest Management was the protection of the public. He stated if no regulation or control were put on devices consumers could easily be "ripped off" and it is a disservice to the public.

Ms. Courtney Levinus, with AZPPO, stated AZPPO agrees with Mr. Siggs recommendation to not regulate the devices at this time. She stated within their membership it is still an issue that is being debated. She indicated a consensus has not been reached. She stated she felt it would be a good idea for the Task Force to either allow another subcommittee to meet on the issue, or make it a work in progress. She stated it would be beneficial for it to be an ongoing process and have it continued to be worked on.

Mr. Fox stated it is a work in progress. He stated he felt it would be unreasonable to assume the current language as written is the end of the work that will be required for it. He explained there are a lot of things that will probably need to be changed once OPM is moved under the Department of Agriculture. He stated there are areas of pest management that are not currently regulated such as landscape contractors. He stated they are not required to have a license if they use less than a certain amount of chemical. He stated they are not regulated daily, but if they violate the guidelines of what allows them to be exempt from licensure they fall under regulation.

Mr. Peterson stated he is hearing that the devices issue could potentially pose a problem legislatively. He stated he felt those concerns need to be listened to, but he explained currently where the agency stands everyone performing pest control services has to be regulated. He stated the list of exempt devices gives some "leeway" in not having to regulate everything. He explained hearing from individuals involved in the legislative process telling the Task Force it will cause an issue if it is not removed, that he has a hard time not accepting their advice. He stated he does not want the bill to "die" based on the agency trying to regulate the use of devices. Mr. Craig stated the language built for devices was very difficult because currently the devices listed to be exempt on the new language are devices compliance currently receives complaints about. He stated if further change was made to the regulation of devices the definition of structural pest management would need to be changed.

Mr. Smith said he is in favor of the drafted language.

Mr. Bard, with Nose Knows, stated he was on the device subcommittee. He stated the committee had to determine how to deal with devices that a "handyman" might use, and all of the committee agreed that it was not appropriate to regulate a handyman putting up screens on vents to keep roof rats out. He stated another issue the committee had to determine proper regulation for was certain contrivances being used in the field that are identifying pests. He stated he feels the critical part of pest control is the identification. He explained if a pest is not properly identified it cannot be properly treated. He stated he felt the task that was given to the committee to develop language to properly regulate devices was done well by the members of the subcommittee.

Mr. Craig stated he does want to stress that the agency is concerned about the use of bedbug machines. He stated it is a concern that an individual may go to the home of a consumer and say they have bedbugs without any sort of licensing or regulation. He indicated the agency strongly feels those individuals should be regulated.

Mr. Peterson asked for the opinions of the Task Force members on this issue. The Task Force members deemed the language sufficient and felt no need for further discussion.

Mr. Smith stated he had questions in regards to the rules in section R3-3-101. He asked if OPM would have any licensees who perform pest management work on golf courses. Mr. Peterson stated they would be licensed under OPM if they performed work "for hire". Mr. Smith asked if the CEUs required for the individuals licensed for golf course management under the Department of Agriculture would need to be OPM approved CEUs. Mr. Peterson stated the individuals under the Department of Agriculture would be acting as private applicators performing work only on the golf course. He explained they would need to obtain Department of Agriculture approved CEUs. He stated he would like to see the CEUs brought together to be used for both agencies wherever possible. Mr. Smith asked individuals for hire going to golf courses to perform weed control will be licensed under the Department of Agriculture or OPM. Mr. Peterson stated if they are performing work for hire on a golf course they will be licensed under OPM.

Mr. Smith asked where in the package it states how the exams are approved, authorized, and rewritten. He asked if there was anywhere in writing that states it has to be done a certain way. Mr. Peterson stated there were no specifications on how it must be done. Mr. Smith stated the exams need to be rewritten. He stated they need to reflect more efficiently on an individual's ability to be a Qualifying Party in the category in which they are applying. He asked if it would be up to the Director to make the decision on the changes on the examinations, or if it needs to be stated in rule somewhere. He stated he felt there needed to be a process created to be followed so there are a certain number of people reviewing the exams to revise them. He also stated he felt it needed to be put in rule to revise the exams on a biyearly basis. He stated in the golf course portion there are more substantial definitions of what is required to be in the exams. Mr. Peterson stated he felt it was unnecessary to put it in rule. He stated ideally it would be great to update the exams annually, but it would not happen. He stated it needs to go through a process to show the individuals taking the exams are competent in what they are doing. Mr. Smith stated the committee to revise the examination should be formed and the examination revision process should be started. Mr. Evans stated as far as he was aware there was no specificity in the examination revision process for the Department of Agriculture. Mr. Boelts stated he did not see the need to add anything in regards to the exam revision into rule.

Mr. Smith asked, considering the fact that OPM already has a fumigation exam, would the Department of Agriculture develop a fumigation exam specifically for Golf Course regulation. Mr. Peterson stated as a Private Applicator in Arizona, which they will be certified as, they are able to apply any product. He asked Mr. Smith if he was referring to soil fumigants. Mr. Smith indicated he was. Mr. Peterson stated soil fumigants have recently gone through an EPA change which requires a training program and the applicator would have to follow that process. Ms. Phyllis Farenga, with It's Our Turn, asked if an applicator is currently licensed in the fumigation category under the Office of Pest Management would be "grandfathered" into being licensed in soil fumigation under the Department of Agriculture. Mr. Peterson stated there are label specific requirements an individual using the fumigant has to meet. He stated individuals will continue to be able to use fumigants as they have in the past, but if the label requires an individual take registrant provided training the individual must take the required training. Mr. Evans asked Ms. Farenga what fumigants she was using. Ms. Farenga stated she would "rather not say".

Mr. Smith asked Mr. Peterson if his biography would be included with the rest of the task force members. Mr. Peterson stated it would be.

Mr. Cullings stated one other change to the rule in regards to record retention was the retention period was reduced from 5 years to 3 years. Mr. Smith asked if the landscape record retention was only 60 days. He asked if their record retention is only 60 days why is everyone else required to keep records for 3 years. Mr. Craig stated it was being looked at from the stand point of what kind of herbicide is being applied and does the use of that herbicide merit keeping a record for more than 60 days. He stated since they would not be using a pre-emergent the practicality was not seen in requiring them to keep their records for more than a couple of months.

a) The topics of greatest discussion during the Task Force meetings fell into the following broad categories:

- i) Termite Action Reporting Form - continuation with \$2 fee.
- ii) Qualifying Party – continuation and burden reduction in qualifications to obtain and broaden.
- iii) Criminal background investigations – not being required or done by the state.
- iv) Business names – Office of Pest Management no longer involved.
- v) Pesticide use reporting for the protection of groundwater.
- vi) Golf course regulation – under the Arizona Department of Agriculture except commercial

- vii) Devices – listing of items not regulated
- viii) Political subdivisions – requiring a qualifying party.
- ix) Others of interest to committee or recommended by audience

4) Discussion of Legislative Report – additions, deletions, changes

Mr. Fredrick drew attention to an error with regard to the Termite Action Report Form information. Mr. Peterson indicated he would have the error corrected.

Mr. Fredrick asked if it was correct that TARFs were only going to be required for pretreatments and post construction treatments only. Mr. Peterson stated that was correct. Mr. Craig stated there was no TARF fee for reporting Wood Destroying Insect Inspection Reports (WDIIR). Mr. Cullings clarified that Mr. Craig was stating while there is no fee for the WDIIR they do still have to be reported. He explained the language made it sound like it did not need to be reported. Mr. Peterson stated the language needs to be changed to clarify the filing still needs to take place for WDIIRs, but there are no fees to file. Mr. Craig asked if there was no fee for all WDIIRs or just supplemental WDIIRs. Mr. Peterson stated he felt there should be no fees for WDIIRs. He said it is currently written in rule for no fees for supplemental WDIIRs. Mr. Craig stated currently no one in industry is submitting supplemental WDIIRs. He stated all the new language is doing is clarifying that supplemental WDIIRs need to be reported, but there will be no fee associated with them. Mr. Fredrick stated he is not sure it is necessary to report supplemental WDIIRs. He stated when he is doing a post construction treatment on a home he has to submit a TARF for that. He explained he does not want to see more burdens put on a pest control company to have to submit a supplemental TARF. Mr. Peterson stated he would make sure to change and clarify that section.

Mr. Sigg stated he felt there were some formatting things on the report that needed to be corrected. He indicated there were still things that had not been added into the report that he had previously mentioned to Mr. Peterson. Mr. Peterson stated that is why the top page of the packet of information was there. He explained it was information that still needed to be reviewed before it was added to the language.

Mr. Evans and Mr. Peterson discussed making grammatical and typographic corrections to the report.

5) Next steps –

a) Discussion of legislative process and TF members desires and goals

Mr. Peterson asked the members of the Task Force if it is their hope that the bill be an Industry Bill. The Task Force members indicated they did want it presented as in Industry Bill. Ms. Levinus stated AZPPO would be representatives of the industry in favor of the bill.

Mr. Smith asked if both statute and rules were being submitted to legislature in the bill. Mr. Peterson stated it would. Mr. Smith asked if the package would include showing all of the elimination and additions that were made. Mr. Peterson stated it would show all changes.

Ms. Farenga asked if the Governor's Regulatory Review Committee process (GRRC) was trying to be avoided. Mr. Peterson stated that previously there was much detail in the statute. In the proposed statute the detail has been removed and therefore to make things work together the rules were going to be adopted under exempt rulemaking.

Mr. Smith asked if depending on the feedback from the legislature if the Task Force could be asked to come back together to make revisions. Mr. Peterson stated his view of it was if the

Task Force were to agree that the package as written be submitted the Task Force committee would be "done". He stated the Pest Management Advisory Committee(PMAC) would most likely be the mechanism to try and continue to obtain industry input on the laws and rules.

Mr. Peterson stated he would like a motion for the package and report to be submitted to legislature. Mr. Cullings stated it should be added to the motion to include the changes that were discussed during the meeting.

MOTION:

To move forward with cover letter and report and the package of laws and rules including the amendments discussed during the meeting with the allowance for further non substantive changes, and that the packages be submitted to Legislature by John Boelts

Second by Jimmy Fox

VOTE:

6-0

i) TF availability during session

Members voiced their willingness to help during the legislative session.

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

7) Call to the Public (2 minute limit per speaker)

Mr. Sigg, Ms. Levinus stated on behalf of AZPPO, Mr. Logan on behalf of Western Exterminators, and Mr. Bard all thanked the Task Force for their time commitment and dedication to completing the task that was given to them.

Mr. Schnieker, with International Accommodations, stated he has been a consumer of Pest Control Products for over 30 years and he feels the Office of Pest Management has done a very poor job of protecting him as a consumer. He stated the OPM is unable to do much to protect the consumers. He stated he felt the Task Force has added complexity and added regulation as opposed to what its original intent was, which was to "stream line" it. He stated he does not see any of the additional regulations doing anything useful for the consumers.

Ms. Farenga stated in 1988 there was 31 pages of regulations, in 1993 there was 54 pages of regulations, and in 2012 there is now "84 pages of over regulation". She stated the regulation has done nothing to bring quality to education and testing to the industry. She stated it did nothing to promote economic recovery. She stated she felt the regulation has done nothing to protect the health, welfare, and safety of the consumer. She stated new science and technology has protected the consumer. She stated she felt the regulation provided a business model for 7 major corporations to "receive a bigger share of the economic pie". She stated if legislators accept the Task Force recommendations as is "the Department of Agriculture will go up for sale to the highest bidder".

8) Set Next Meeting Date and Topic Discussion (if needed)

The Task Force decided another meeting would not be necessary.

9) Adjourn – 10:47 A.M.