



Arizona Department of Agriculture

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November 21, 2012

The Honorable Janice K. Brewer
Governor, State of Arizona
State Capitol
1700 W Washington St.
Phoenix, AZ 85007

The Honorable Steve Pierce
President of the Senate
Arizona Senate
1700 W Washington St.
Phoenix, AZ 85007

The Honorable Andrew Tobin
Speaker of the House
Arizona House of Representatives
1700 W Washington St.
Phoenix, AZ 85007

Dear Governor Brewer, President Pierce, and Speaker Tobin:

We are pleased to report the findings and recommendations of the Office of Pest Management Task Force (Task Force) on the regulation of structural pest management as required by Laws 2011, chapter 20, section 6 (SB1194). This legislation required the Director of the Arizona Department of Agriculture (ADA), Donald Butler, to appoint a nine member¹ task force to study the regulation of structural pest management in Arizona, specifically as it relates to the following four items:

1. A review of all laws and regulations governing structural pest management in this state.
2. A review of possible organizational configurations within the ADA for structural pest management regulation.
3. A review of personnel and funding issues relating to the administration of structural pest management regulation within the ADA.
4. Statutory changes necessary to accomplish the future structural pest management program.

Upon the effective date of SB1194, the ADA assumed management of the Office of Pest Management (OPM) through an intergovernmental agreement and has already accomplished some of the items listed above in provision 2:

- The ADA swiftly cut the OPM budget by 28%.
- The OPM moved into vacant space available in the ADA building. OPM is no longer paying rent for office space in Scottsdale; they are sharing rent and overhead expenses with ADA.

¹ One member resigned in May and was not replaced.

- The new organizational structure and reduction of government has been beneficial for both the Office of Pest Management (OPM) and the ADA and will continue to achieve economies of scale in licensing, inspection, technology and continuing education certification.
- The OPM was placed in the ADA's Environmental Services Division (ESD) to give a level of consistency in pesticide regulation. ESD oversees pesticide use compliance for agricultural purposes.

Since August 2011, the Task Force and its subcommittees held over eighteen public meetings to review the laws and regulations governing structural pest management and to develop proposed statute and rules. The Task Force developed the proposed statutes and rules on parallel paths to help ensure appropriate regulatory oversight. The proposed OPM statutes cover general authorities, similar to the ADA's statutes. The corresponding rules provide detail and clarity to the proposed statutory provisions.

As the Task Force reviewed the current statutes and rules, they particularly focused on developing a fair regulatory package that would be less burdensome on the regulated industry while continuing to provide protections for the public. The following examples of Task Force recommendations demonstrate that balance:

- Reduce the education requirement to become a Qualifying Party (QP) from the confusing and burdensome 3,000 verifiable hours to simply two years of applicator licensure, which is a common requirement in other states.
- Allow some QP licensees to broaden their license into other QP categories upon passing the required test without needing to satisfy the experience requirement.
- Reduce the TARF fee from \$8 to \$2 per report and reduce the information required on the TARF and when it needs to be reported.
- Eliminate mandatory government background checks for licensees; the regulated business will be responsible for their own employee screening. This reduces the backlog of state background checks and allows the OPM to process applicator licenses more quickly and efficiently.

The recommended revisions of the OPM's statutes and rules will change the OPM's entire funding structure. Currently the OPM receives a large portion of its funding through the TARF (termite action report form) fees. This current funding structure creates two problems: (1) a heavier burden is placed on companies involved in termite work compared to other pest control companies and (2) the perception that the part of the industry that pays the TARF fees has greater control over the OPM. The Task Force's proposed funding structure bases fees primarily on the number of applicators a company has rather than the type of company. Thus larger pest management firms with more pesticide applicators will pay more than the smaller pest management firms. The new funding structure will also intentionally result in a net decrease in the OPM's revenue. These changes will reduce the overall fee burden on the industry while still providing sufficient operating monies to the OPM, which through the help of the ADA has already reduced its operational costs.

One of the things evident from the Task Force meetings is that reform brings about a host of consequences, all of which will not be fully realized without some experience. Reform will remain a work-in-progress with further fine tuning and more dialogue with stakeholders. The Task Force recommends continuing the current operational model, i.e. the OPM managed as a separate unit under the Arizona Department of Agriculture (ADA) for the time being. The current model is well suited to further fine tuning because there is an OPM Advisory Committee, specifically for structural pest issues, already functioning and in place. This model of operation was recommended by a summit of agricultural interests that pre-dated the legislation establishing the Task Force.

The agricultural community has not come lightly to this process. While recognizing the compatible elements between ADA and OPM, there are also differences. OPM regulates a retail service industry, where application of pesticides is the service, by contrast agriculture application of pesticides is just one

of the operations to produce a product. There are different implications and consequences. To this end the agricultural community has been deliberate in their considerations of the melding of ADA and OPM. Regulation of pesticide applications are in the public interest, but those licensed by both OPM and ADA are all small businesses who have investments at stake and their views must continue to be considered as we move forward. Post Task Force, additional changes must continue to be deliberate...again regulation by definition limits business, but regulation should not be used to limit business.

The Task Force recommends that its proposed statute revisions be enacted into law by the Legislature and the Governor to improve the regulation of structural pest management in Arizona and to maintain the relationship between the OPM and the ADA.

Enclosed with this letter are the recommendations of the Task Force presented in statutory and administrative rule form along with a report that highlights the process the Task Force underwent to get to this point and a synopsis of the issues that required detailed discussions and occupied a greater portion of the Task Force's time.

If you have any questions please contact the Task Force Chairman, Jack Peterson, who can be reached at 602-542-3575 or jpeterson@azda.gov. Thank you for taking the time to review this report and for giving us the opportunity to start a process which occurs rarely in government - consolidation.

Sincerely,

Task Force Members

(See following signature page)

CC: Donald Butler, Director, ADA
Members of the OPM PMAC
Members of the ADA Advisory Council

REPORT

Since July 20, 2011, the Office of Pest Management (OPM), a Title 32 agency, has reported directly to the management of the Arizona Department of Agriculture (ADA), a Title 3 agency.

- The authority for this was Senate Bill 1194, which passed with no dissenting votes and was signed by the Governor on April 5, 2011.
- Senate Bill 1194 also created a Task Force (appointed by the Director of the ADA), which has met regularly, and was charged with reporting back to the Legislature and Governor on four issues by December 15, 2012.
- The ADA management of the OPM is authorized until December 31, 2013.

Before providing its findings and recommendations on the issues identified in Senate Bill 1194, the Task Force provides additional context to be considered:

- (1) Why does the state regulate the application of pesticides?
- (2) Why has the Legislature indicated the need for reform?
- (3) Why should the OPM be under the management of the ADA?

WHY REGULATE THE APPLICATION OF PESTICIDES?

All states regulate the application of pesticides in the public interest.

The U.S. Environmental Protection Agency (EPA) regulates the use, i.e. application, storage, disposal, of all pesticides under authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The EPA delegates regulatory authority to states that demonstrate the capacity to perform and carry out the provisions of FIFRA.

FIFRA regulation in Arizona has been performed by two entities: the ADA and the OPM. The distinction is where the pesticide application occurs: the ADA on agricultural operations and the OPM in or around urban environments such as buildings, parks, and school grounds.

Of significant note is the technological advancement of "safer" pesticides - general use or unrestricted (i.e. off the shelf), in both the agricultural and structural world. Higher percentages of applications are now with general use pesticides, which prompts the question why not more de-regulation to match this usage pattern. We could envision de-regulation for a few products and as to how certain products are handled, but this would be limited for the following reasons:

- Many of the products currently used by pesticide operators (agricultural and structural) can be purchased "off the shelf". These materials tend to have a lower percent of the active ingredient; nevertheless, these are still toxic substances with dispersal issues.
- Individual household owners have the choice: they can purchase and apply pesticides themselves or they can hire licensed (professional) operators. Household owners, guided only by the pesticide label and their common sense, applying pesticides themselves are making their own decisions with their own consequences.
- People in schools, health care facilities, office buildings, apartments, and food establishments don't have the choice about pesticide applications. They rely on the licensed (professional) pesticide applicators to have the necessary training and knowledge to conduct an appropriate

pest management program. That expectation exists because mishandling causes collective consequences, unlike individuals within their own households.

- We need to continue providing regulatory protection to those least able to protect themselves or the most sensitive environments such as – child care centers, schools, hospitals, nursing homes, and healthcare facilities.
- For these reasons states license commercial or structural pesticide applicators in the public interest. A lack of regulation or regulation without integrity could lead to mishandling and then over-regulation, so we should define in advance what is needed for protection of the public.
- Unregulated commercial applications could lead to health and environmental consequences which in turn could lead to product loss – thus further complicating pest management in the urbanized world.

WHY WAS REFORM OF THE OFFICE OF PEST MANAGEMENT DESIRED?

Regulation in the public interest cannot avoid limitations on business; nevertheless, regulation should not be business limiting without reasonable regulatory rationale.

The Task Force and stakeholder process heard input that ranges from no regulation to excessive regulation. Neither option is acceptable. The Task Force has charted a serious course between public interest/reform on one hand and appropriate regulation by the Office of Pest Management (OPM) on the other.

Without taking sides, the Task Force understands the previous Auditor General Reports, complaints from stakeholders and the public created an environment where the Legislature believed a new operational model was needed for the OPM. Despite a variety of differing views as to how this might be accomplished, there appears to be a consensus that change was needed. In the past the OPM² exceeded its mission and created disharmony, at least among the licensed community.

There are approximately 7,300 licensed pesticide applicators among 1182 companies licensed under the OPM. Twenty four companies have 40 or more employees while nearly 1100 companies have 10 or fewer employees. Regardless of size every licensed business and applicator has the right to accountability, integrity of regulation, and evenhandedness in regulation.

License holders are simply trying to conduct legal commerce, under a regulatory scheme meant to protect the public interest. More simply, they are trying to make a living and provide jobs while complying with regulations that are fair and necessary.

The Task Force has recommended several reforms which will be detailed in further sections.

WHY SHOULD OFFICE OF PEST MANAGEMENT REPORT TO ARIZONA DEPARTMENT OF AGRICULTURE?

Forty-eight states regulate agricultural and structural pesticide use under the same umbrella. **Forty** of these states regulate under the auspices of their departments of agriculture. All of the states in the West, except for California, regulate both agricultural and structural application of pesticides under their departments of agriculture.

² The OPM name is used, but represents all predecessors including the SPCC which were specifically noted in earlier Auditor General reports.

Auditor General Report number 10-01 recommended the best option for the Office of Pest Management (OPM) was to come under the Arizona Department of Agriculture (ADA) for the following reasons:

- With respect to the regulation of the application of pesticides, their missions are comparable.
- Only the ADA and the OPM in fact have the mission and experience to regulate the application of pesticides.
- Combining the OPM's functions in some manner with an agency (ADA) that reports directly to the Governor would improve accountability.

Within a few weeks of assuming management of the OPM, the ADA closed the OPM office in Scottsdale and moved the OPM's operations to the ADA at 1688 W. Adams Street in Phoenix and closed the Tucson office and moved in with the ADA at 400 W. Congress Street in Tucson (state owned buildings that had vacant space). The ADA reduced the OPM budget by 28% and eliminated unnecessary OPM positions. Additionally, the ADA and OPM executed a management agreement under which the OPM pays the ADA \$135,000 for rent and management overhead.

The speed of these efficiencies should be noted. While the OPM is 100% funded by industry fees, government must always strive for efficiency.

Licensing for the handling of pesticides requires testing and continuing education. The ADA and the OPM are now realizing synergies and crossover efficiencies with licensing as well as in the use of technology. These enhancements serve the stakeholders by making regulation more transparent and less burdensome, and ultimately improving public service.

Through six Governors and three Directors, the ADA has established a reputation as accessible, and an agency that regulates with integrity and evenhandedness.

Since assuming management of the OPM on July 20, 2011, the ADA has managed the OPM as an intact organizational unit; much energy has merged, but not the agencies. This model has worked well and is a "walk, don't run" deliberate approach originally suggested by the agriculture community.

One of the things evident from the Task Force meetings is that reform brings about a host of consequences, all of which will not be fully realized without some experience. There is not a consensus for all the reforms, and it will remain a work-in-process with further fine tuning and more dialogue with stakeholders. The Task Force recommends continuing the current operational model, i.e. the OPM managed as a separate agency under the ADA for the time being. The current model is well suited to further fine tuning because there is an OPM Advisory Committee, specifically for structural pest issues, already functioning and in place.

COMPOSITION OF THE TASK FORCE:

This legislation required the Director of the ADA, Donald Butler, to appoint a nine member Task Force. (*See Appendix for listing of Task Force members*).

- Three people were selected as representatives of the structural industry out of the seven people who were nominated or applied.
- The three agriculture nominations submitted were selected for the 3 agriculture industry slots.
- The Chairman and the incoming Chair of the ADA Advisory Council were designated to fill two slots.
- The Director appointed Jack Peterson, Associate Director of the Environmental Services Division for the ADA, as the OPM Acting Director and Chair of the Task Force.

The legislation directed that the Task Force address the following four issues:

1. Review all laws and regulations governing structural pest management in this state.
2. Review possible organizational configurations within the ADA for structural pest management regulation.
3. Review personnel and funding issues relating to the administration of structural pest management regulation within the ADA.
4. Statutory changes necessary to accomplish the future structural pest management program.

The Task Force held open public meetings as follows:

- 2011 – August 24, September 14, October 18, November 16,
- 2012 - January 11, February 15, March 16, April 18, May 15, June 13, July 18, and October 17.
- Three subcommittees were formed and held open public meetings as follows:
 - Groundwater protection use reporting: June 15 and 26
 - Golf Course regulation: June 18 and 26
 - Devices: June 19 and 26

The meetings were well attended by interested parties and participation was encouraged. Agricultural interests were also invited to attend and participate. A listserv was developed so anyone interested could receive the latest information. Meeting notices, handouts and minutes from the meetings can all be found at the following link: <http://www.azda.gov/OPM/OPM%20Task%20Force%20Information.htm>

In addition the structural pest control industry sponsored and held other meetings around the state, concerning the Task Force's activities.

PROCESS OVERVIEW:

To address the four areas laid out in the legislation, the Task Force developed two regulatory packages. The first is a rewrite of the Office of Pest Management (OPM) statutes. Unlike the Arizona Department of Agriculture's (ADA) statutes, the current OPM statutes are very detailed. The OPM statutes have been rewritten to mirror the ADA's, providing a general regulatory umbrella. Since the proposed OPM statutes have details removed, the Task Force simultaneously developed new and revised rules to pick up those details. The Task Force believes this is the best way to ensure everything works together and will be implemented smoothly upon approval by the Legislature and signature of the Governor.

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

- (1) Termite Action Report Form - continuation and fees.
- (2) Qualifying Party – continuation and qualifications to obtain and broaden.
- (3) Criminal background investigations – not being required or conducted by the state.
- (4) Business names – why is the OPM involved?
- (5) Pesticide use reporting for the protection of groundwater.
- (6) Golf course regulation – where does it fit – the ADA or the OPM?
- (7) Devices – what should be regulated?
- (8) Political subdivisions – what requirements should apply?

TASK FORCE DISCUSSION TOPICS

Termite action report form (TARF): Pest control companies file a TARF and pay an associated fee when they do a pretreatment (before a property is built) or a post construction treatment (infestations that occur after the property is built) for wood destroying insects. Reports are also filed when a company inspects a property for wood destroying insects. Pest control companies input this data into an OPM database. The TARF database is then accessible to the public who can search the database by any address. <http://tarf.sb.state.az.us/index.php>

The first criticism of the TARF was a minority of companies pay a majority of the Office of Pest Management (OPM) budget due to the large number of TARFs they submit.

Opposition to the TARF also centered on the cost, data entry time, holes in the data when filing does not occur and when treatments are not required to be filed, and the use of the data to mine for potential customers.

The TARF database is a useful and widely used tool. Since comprehensive tracking began on November 13, 2011 the database has had 223,343 hits at an average of 619 hits per day (361 days as of 11/8/2012). The OPM accounted for 7,100 of the hits, mostly done for people calling in asking questions. The hits have come from 13,101 unique IP addresses.

It takes no more than 45 seconds to enter data into the TARF database. Although a concern about poaching customers through the information available in the TARF database has been raised, users must search by an address or TARF number, therefore the ability to conduct broad searches for targeted marketing is very limited. The database is also available to everyone; so all companies have the same opportunity to use the database for marketing purposes.

Task Force Recommendation on TARFs:

- Reduce the filing fee from the current requirement of \$8 to \$2, which is more equitable and will lead to a realignment of the OPM budgets.
- Reduce the wood destroying organism record keeping requirements from five to three years.
- Require filing for pretreatments, post construction treatments and initial wood destroying inspections – eliminate supplemental inspection reporting.
- Continue to conduct record checks and collect late fees from late filers.

Qualifying Party (QP): This topic garnered the most discussion and remains perhaps the most contentious of issues among the various stakeholders. Some want to eliminate the QP requirement while others want to make it harder to obtain a QP license. The majority requested making it less burdensome path to obtain and broaden a QP license. The discussions led the Task Force to the conclusion that pest control companies need to have an individual who is ultimately accountable for the proper application and storage of pesticides. That individual is the QP. Normally, one would assume the responsible person should be the company owner. In a small firm, the QP may be the owner. But, who would be responsible when the owner is a large corporation or government entity? The Task Force believes the responsible person is like the store manager: a person on the ground engaged in the business to ensure that people are properly trained and equipped, proper records are kept, and pesticides are used (stored, transported, applied and disposed) properly. The Task Force wrote requirements that cover all parties, yet do not pose an advantage for one business over the other.

Those who would like to make it easier to obtain or broaden a QP license are concerned about the current requirement of 3000 hours of verifiable work experience in the applicable category of pest management. Applicators have had difficulty getting their employers to verify these hours as is required for initial QP licensure. Current QPs who own their own business cannot broaden their QP license, and thus cannot expand their business, unless they work for 3000 hours under another person who does have a QP license in that category. For most small business owners this is not a workable option.

The biggest argument against requiring a QP at all is that the requirement is a barrier to business entry and individual applicators should be held responsible, negating the need for a QP. Additionally, many have noted it has been difficult for individuals seeking to become QPs to obtain experience verification from their employers as is currently required and the business practice of contracting for QPs works against the responsibility argument.

In fiscal year 2012, the Office of Pest Management (OPM) approved 144 individuals for QP testing (which means they had 3000 verifiable hours) and 119 new business licenses were approved. Each of these new businesses had a QP. This is a significant number of new opportunities for income and growth, which contradicts the barrier to entry argument. Moreover if the QP requirement were dropped entirely, over 7000 applicators would be operating without a responsible supervisor.

Last, experience has demonstrated that a business will try and avoid a problem by terminating the QP and then lay blame on that person. To limit this escape mechanism, the Task Force believed it important to combine the QP with the business to ensure consumers are not harmed by unethical operators.

Task Force Recommendation on Qualifying Party:

- Maintain the requirements to have a QP.
- Change the experience requirement to obtain an initial QP to licensure for two years as a licensed applicator, instead of 3000 verifiable hours. This change would maintain an experience requirement, be easily verified by the OPM, and requires no input from employers, creating a significant reduction in regulatory burden.
- Allow easier broadening of a QP license in several categories by only requiring testing.
 - If certified in the Industrial and Institutional category (spray homes, hospitals, child care centers, food handling establishments, nursing homes etc.) allow testing into the 1) wood destroying organisms, the 2) turf and ornamental, and the 3) right-of-way categories.
 - If certified in the wood destroying organisms category, allow testing into the 1) turf and ornamental and the 2) right-of-way categories.
 - If certified in the turf and ornamental category allow testing into the right-of-way category and vice versa.
 - However, broadening into the industrial and institutional, fumigation and aquatic categories would require two years of experience as a licensed applicator in those categories.
 - The industrial and institutional category allows spraying in areas where the most sensitive populations will be.
 - The fumigation category deals with highly toxic pesticides therefore the potential for harm is great if an application is conducted improperly. (There was a tragic accident associated with this in Utah where two young girls were killed.)
 - The aquatic category allows toxic materials into a body of water. This is a sensitive area with potential for significant environmental damage if not conducted and monitored properly. Once harmed there is no easy correction of a problem.

Criminal background investigations: The legislature has given authority to most agencies in Title 32 to do background investigations. Until recently, the OPM has been exercising its discretionary power to conduct background investigations of all applicators.

Four concerns were raised with respect to ending background investigations of applicants.

1. Potential harm to consumers by applicators with a criminal past.
2. Individual companies that do not perform background investigations on employees will have a cost savings and thus an economic advantage over those companies who do.
3. High level background investigations can only be conducted by the state, so private companies' background investigations will not be as effective.
4. Having the state conduct the background investigations, on a non-law enforcement position, shifts liability to the state.

Background investigations by the state can take up to 6 months resulting in license processing delays. The Task Force found that private companies can provide these investigations. State pricing for background investigations is less than what most private companies charge for the service, so the state is actually competing with these private companies. The Task Force found that companies not conducting background checks on their employees are likely at a marketing disadvantage with those that do.

Background investigation by the state is a moment in time – nothing ongoing unless someone tries to broaden into new license categories. Private investigation companies have the ability to do ongoing and annual updates.

Task Force Recommendation on Criminal Background Investigations of Licensees:

- Discontinue background investigations and leave the issue as a business decision.
- Maintain the ability to cancel or not renew or issue a license for someone with a felony.
- Maintain information on the website and on consumer resource materials about this topic.

Company Names: The Office of Pest Management (OPM) historically has been involved in approving pest control company names. When a proposed name is close to another company, it puts the OPM in a no win situation. One licensee or the other is going to be unhappy with the OPM's decision to approve or disapprove a name.

The OPM should not generally be involved in naming as it is unwarranted business interference. The Secretary of State and Corporation Commission are responsible for name registration.

Task Force Recommendation on Company Names:

- Require that names must be approved by the Secretary of State or Corporation Commission and accept these names except in situations where a name could be used to mislead people (e.g.: County Weed Control, EPA Pest Inspection).
- Provide information on business license applications about the legal aspects of using a similar name as another business – just because the name is registered, it does not prohibit or stop another company from taking legal action should they feel the name is too close to their own.

Pesticide Use Reporting for Groundwater Protection: Currently, certain **agriculture** related pesticide applications are required to be reported to the Arizona Department of Agriculture (ADA) within eight days. Specifically, any soil-applied applications of an active ingredient found on the Arizona Department of Environmental Quality's (ADEQ) groundwater protection list must be reported. (Soil-applied means it must be tilled in or the labeling recommends or requires the application of water within 72 hours of application.) This information has been valuable in situations where a pesticide has been detected in groundwater. It helps to determine if there is a concern or if it is more likely due to some other reason, which ultimately helps to determine continued availability of a pesticide for use.

The Task Force discussed extending the agriculture requirement to structural pesticide applications. Concern was raised that the addition of this requirement would require more reporting, thus making it difficult for businesses to conform since they cover large areas and homes do not fit into land legal descriptions. In addition, the small amount of pesticides on the ADEQ's groundwater protection list used in structural applications might not be worth the effort of reporting. Either way, the total picture of pesticides applied will still be incomplete because of unreported homeowner pesticide usage that is quite large in comparison.

Task Force Recommendation of Groundwater Protection Use Reporting:

- Require use reporting on a quarterly basis which includes the county of use, the pesticide name and EPA Registration number, the total amount applied, the quarter of the year covered by the report and the business license number.

Golf course industry regulatory oversight: The golf course industry requested that they be placed under agriculture jurisdiction due to the similarity of application equipment and the pesticides they utilize.

Although golf courses spray near populated areas, golf course pesticide use is quite similar to agriculture which already deals with public interface.

Task Force Recommendation on Golf Course Oversight:

- Move the regulatory oversight for golf course's use of pesticides under the ADA.
- This will be handled as a separate legislative action to the extent it entails modification of the ADA statutes.
- Leave oversight of commercial pesticide applicators who apply pesticides to golf courses and other locations under the Office of Pest Management (OPM).

Devices: The current definition of pest management includes the use of all devices. A device is something used to control a pest that is not associated with a pesticide. Examples can include hoes, bird spikes, screens, and traps. Some believe all devices should be regulated, while others believe that no devices should be regulated since a pesticide is not involved. Most of the licensure testing centers around pesticide use which is not applicable to devices.

There are some devices that are growing in popularity, but which can be a mechanism to easily defraud people by a less than scrupulous business. Bed bugs are a major national issue. People use dogs to detect them, CO₂ to freeze them and large heaters to kill them. All of these devices can work, but bed bugs are difficult and expensive to control. The EPA regulates the devices to ensure the equipment works for its intended purpose. The OPM licenses people who use these devices, to verify they can identify the pest and know how to control it.

Task Force Recommendation on Devices:

- Regulate the use of devices generally, including people controlling bed bugs.
- Provide guidance to consumers on selecting businesses that use surveillance dogs.
- Exempt applicators from licensure who only use devices listed in proposed Rule R4-29-304.
- Require firms that are exempt from licensure because they do not offer other pest control services other than the installation or use of non-regulated devices, to notify customers they are not a licensed pest control company.

Political Subdivisions: Currently political subdivisions are not required to have a qualifying party (QP). Political subdivisions should demonstrate a level of superior competency regarding all aspects of pest control. They should be transparent in what they do or have done with information readily available. Currently, no one individual is responsible for ensuring records are kept, pesticides are stored and applied properly, or proper training has been conducted.

This argument is similar to what was stated above relating to the requirement for a QP. As in a business, there needs to be a responsible person - the store manager. This one person on the ground engaged in the business ensures that people are properly trained and equipped, proper records are kept, and pesticides are used (stored, transported, applied and disposed) properly.

To uniformly enforce responsibility, we need an individual (the QP) for a political subdivision to assume this responsibility. Without it, the OPM could be pursuing thousands of applicators with no oversight. Applicators could be applying pesticides that can cause harm if misapplied, with little chance of being discovered.

Task Force Recommendations on Political Subdivisions:

- Require political subdivisions to have a QP the same as everyone else; as discussed, the burden to become a QP has been reduced considerably.
- Do not require a political subdivision to have a business license or pay business license fees.
- Allow political subdivisions to share QPs with approval of the Director.
- Provide two years to implement.

Auditor General Recommendations

The latest performance audit (10-L1) by the auditor general had three recommendations. Following are the three recommendations and what has been done to address them.

1.1 To more closely align Arizona's structural pest management statutes with the State's agricultural pest management statutes, the Legislature should consider amending Title 32, Ch. 22, to establish penalties for misuse of pesticides by unlicensed people.

In the drafted rules, the issue of penalties for misuse of pesticides by unlicensed people has been addressed. People maintain the right to conduct pest control activities on residential property they occupy and vacant residential property that they own. However, if people spray for others, they will need to be licensed. If they are not licensed, they will be found in violation. (Proposed A.R.S. § 32-2304(B)(11))

1.2 If the Legislature agrees with office officials regarding exemptions to licensing requirements, it should consider:

a. Modifying A.R.S. §32-2311(A)(2) to limit the exemption to homeowners; and

b. Modifying A.R.S. §32-2311(A)(6) regarding the exemption from licensing requirements for people using herbicides for weed control to specify the total quantity of liquid herbicide that can be applied to a property under the exemption.

As indicated above, section a. has been addressed by limiting the exemption to residential property where the applicator either lives or a vacant property owned by the applicator. (Proposed A.R.S. § 32-2315(A)(1))

Section b. was often referred to as the gardener exemption. This was problematic because it was unclear. This has now been clarified with specific limits set on when the exemption applies. (Proposed A.R.S. § 32-2317)

In addition, performance audit 10-1 contained a recommendation that the *pest management advisory committee representation be broadened*. This is also addressed in the proposed regulatory package. (Proposed A.R.S. § 32-2306)

TASK FORCE DISCHARGE OF DUTIES

The Task Force was directed to review laws and rules governing pest management in this state. The foregoing recommendations in the Appendix addresses this issue. The Task Force took the charge to review as a charge to institute reforms. The Task Force recommends enactment of both the revised statutes by the Legislature and Governor and rules (by the OPM).

The Task Force recommends a continuance of an intact OPM under the management of ADA. Budgets and funding issues will remain the subject on ongoing discussions along with creating a balance between regulatory needs and business needs in the marketplace. The Task Force has taken steps to fairly apportion the fee burden among license holders.

Appendix

Task Force Members appointed by Director Donald Butler

John Boelts	Boelts Farm, LLC, Yuma	John farms vegetables and various other field and row crops in Yuma County. He serves on the Arizona Farm Bureau board of directors and is the past president of Yuma County Farm Bureau. John also serves on the board of directors for the Yuma Fresh Vegetable Association. Both of these organizations support the prospects of consolidating the OPM into the Department of Agriculture. John volunteered to be appointed to the OPM Taskforce since he applies pesticides on his farm and has held and used a commercial applicators license since 1996. He believes fulfilling the mandate of the task force was imperative for both agriculture and structural pesticide users, on many levels, and sees the opportunity to streamline government in a logical way that provides a better value to industry and the citizens of Arizona. John is married and is the busy proud father of three young children 8 and under.
Dave Burns	Burns Pest Elimination, Phoenix	Dave Burns is the Owner and Qualifying Party for Burns Pest Elimination. Dave and his family started the company in the early 80's when they purchased a small exterminating company that had 1 truck and serviced 43 customers in North Phoenix. In the beginning Dave was the only service technician, his duties were servicing, scheduling, sales and record keeping. The Burns family has grown their family business to close to 300 employees, service over 75,000 customers both residential as well as commercial clients that cover most of the State of Arizona. Unlike companies that grow through acquisition, Burns prides its self on growing through sound service, customer referrals, and a strong local brand development. In close to 30 years, Burns Pest Elimination has grown to be one of the largest Family owned Pest Companies in the State. Dave is also involved on both the State and National levels for pesticide education and regulatory involvement. He most recently sat on a committee developing National Standards (best management practices) for the inspection and eradication of Bed bugs. <i>(resigned for personal reasons effective May 17 meeting)</i>
Lin Evans	Lin Evans Enterprises, Inc., Phoenix	Lin is the President of Lin Evans Enterprise a small business he started in 1986 where he works as an independent pest control advisor (PCA). Prior to starting his own company Lin was a PCA from 1974-1986 for Arizona Agro Chem. He is a partner in Elgin Nursery and Tree Farm. Lin has a BS in Zoology from Northern Arizona University. He has a MS in Zoology from Arizona State University. Lin is the current Treasurer and board member of Arizona Crop Protection Association. He is a charter member of the Arizona Pest Management Center at the University of Arizona. Lin is an Associate member of the Western Growers Association.

Jimmy Fox	Evergreen Turf, Inc. Chandler	Jimmy Fox has almost 30 years of experience in the Arizona Green Industry, including the golf, landscape, and nursery sectors. Jimmy is currently the President and Co-owner of Evergreen Turf, a 1,200 acre sod farm located outside of Casa Grande, AZ. Evergreen Turf grows and supplies turf for commercial landscapes, golf courses, sports fields and residential landscapes in Arizona. Prior to that Jimmy was the sales manager for Golf and Commercial Landscape Sales at Garden West Distributors from 1988-1999, where Jimmy was one of six partners. From 1982-1988, Jimmy was in charge of golf course sales for Arizona Nursery Supply. Jimmy attended Abilene Christian University and The University of Arizona, studying Geological Engineering prior to entering the nursery supply business. Jimmy has served on the Board of Directors for both the Arizona Nursery Association and the Cactus and Pine Golf Course Superintendents Association. He has been heavily involved in the education program for the Arizona Landscape Contractors Association (ALCA) and is currently involved with the Arizona Sports Turf Managers Association. Married to his wife of 20 years, Lora, he has three children, and three grandchildren. Jimmy enjoys hunting, fishing, golfing, and hiking Arizona's back country trails...and is also an Arizona native!
Ken Fredrick	Conquistador Pest and Termite, Tucson	Ken has been in the pest control industry for 32 years when he started working for his mother and grandfather. He has been self-employed since 1991 when he took over the business. He continues to run his small business through these tough economic times. Ken has served on the Board of the Arizona Pest Management Association; he helped found the Arizona Pest Professionals Organization, and currently serves on the Pest Management Advisory Council for the Office of Pest Management.
Philip Hemminghaus	Wilbur-Ellis, Tempe	Phil is the branch Manager of the Tempe Location for Wilbur-Ellis. Wilbur Ellis is a Supplier of Agricultural Supplies, Golf, Landscape and Nursery supplies. He is the immediate past Chairman of the Ag Advisory Council for the Arizona Department of Agriculture. Phil currently serves on the board of the Cactus and Pine Superintendents Association, the Arizona Nursery Association and the Arizona Nursery Association Foundation. He has have been in the industry (golf, nursery, and ag supplies) since 1981.

<p>Jack Peterson (Chair)</p>	<p>Arizona Department of Agriculture</p>	<p>Jack has been the Associate Director for the Environmental Services Division of the Arizona Department of Agriculture since 1994. He oversees several programs, but of importance to this task force, he oversees pesticide use in the agricultural setting. In July of last year Jack was appointed the Acting Director of the OPM as they moved in with the ADA. Jack came to AZ from ND where he held several positions dealing with pesticides and pesticide regulation including overseeing the pesticide regulatory program. Jack graduated from NDSU with a BS in Ag Engineering. He is active in national organizations who work for uniformity in pesticide regulation across the country and to provide ground truthing to the EPA. Jack served as President of one, Chair of two others and has been involved in numerous other work groups. Jack has been married for 29 years and has two great kids, a son and daughter, one a graduate of, and the other a soon to be graduate of the UofA. Jack grew up in MN working on a family farm.</p>
<p>Will Rousseau</p>	<p>Rousseau Farms, Tolleson</p>	<p>Will grows mixed vegetables, carrots, onions, watermelons, wheat, corn and alfalfa in Tolleson, Litchfield Park, and Scottsdale, Arizona. Rousseau Farming Company is a vertically integrated operation with its own packing sheds, harvesting and trucking, in conjunction with the growing. Will graduated from the University of Arizona in 1979 with a B.S. in Agronomy, and has been farming on his own ever since. Will has served on the Western Growers Board of Directors for 18 years, and was the Chairman in 2006. Will is a fourth generation native of the Salt River Valley. He and his wife Leslie are the proud grandparents of four (and counting) sixth generation natives.</p>
<p>Kirk Smith</p>	<p>Maricopa County, Environmental Services Vector Control</p>	<p>Kirk is the Supervisor of Maricopa County Environmental Services Vector Control. He currently coordinates all control programs for animals vectoring disease in Maricopa County. He has both a MS and Ph.D. in Entomology from the University of California at Davis. Kirk has specialized in Integrated Pest Management strategies for Turfgrass and Urban environments since 1981. His expertise is the development of naturally occurring pathogens for commercial application. He has served on numerous commissions and committees both domestically and internationally for development of alternative pest control programs.</p>