OVERVIEW OF COUNCIL’S KEY DECISIONS

TUESDAY, JANUARY 18, 2005

Opening and Meeting Attendance
Chairman Hulett opened the meeting at 9:05 AM, and the following Council members were present: Ray Capelouto, Al Hoffer, Tim Hulett, Phil Koehler, Bob McGranahan, Richard Meahl, Pete Quartuccio, Steve Rutz, Erica Santella, and DR Sapp.

Agenda Review and Approval
The Council voted unanimously, 10 - 0 in favor, to approve the agenda as presented including the following objectives:
✓ To Approve Regular Procedural Topics (Agenda, Report, and Workplan)
✓ To Hear an Update on Agency Enforcement Activities and Case Examples
✓ To Hear a Legislative Issues Update
✓ To Review Compliance Assistance Request SOP (Standard Operating Procedures)
✓ To Review Borates Inspection Protocols for New Construction Applications SOP
✓ To Review and Discuss Representative Enforcement Case Samples
✓ To Discuss Enforcement Response Guidelines/Fine Structure
✓ To Discuss DACS Neutral Scheme Inspections Strategy and Policy
✓ To Discuss Proposal for Determining the Presence/Absence of Preventive Residual Soil Treatments
✓ To Consider Public Comment
✓ To Identify Needed Next Steps and Agenda Items For Next Meeting

Approval of July 20, 2004 Facilitator’s Report
The Council voted unanimously, 10 - 0 in favor, to approve the July 20, 2004 Facilitator’s Report as presented.

Review and Approval of Updated Workplan
Following a review of the Workplan, included as pages 2 and 3 of the agenda packet, the Council took the following actions.
Council Action:
The Council voted unanimously, 10 - 0 in favor, to approve the Council’s workplan as presented. (Attachment 3—Workplan)
Update on Agency Enforcement Activities
Joe Parker, FDACS, reported on Agency enforcement activities utilizing a handout with enforcement statistics, and answered Council member’s questions.

Member’s Questions Comments:
Period reported is from 01/01/01 – 12/31/04.
• Tim Hulett raised a concern that the press is misreporting on enforcement statistics without delineating between complaints and inspections.
• Members requested that future reports be done annually instead of for a 4 year period.
• Bob McGranahan requested for future reports to be differentiate between consumer complaints and FDACS inspections.
• Mike Page emphasized that an improved tracking system is currently being developed.

Legislative Issues Update
Steve Rutz, Division Director of the Division of Agriculture and Environmental Services, reported on legislative issues related to the Agency and answered Council member’s questions. Following is an unedited list of highlights from the report:

• Mold Remediation (HB 319 and SB 590) is under consideration.
• Home Inspection Bill (HB 315) is also under consideration.
• Worker Protection Safety Standards, possible changes regarding MSDS.
• Homeland Security, continuing to encourage industry to be vigilant in reporting potential problems; Department receiving funds this year to be used for equipment, training, and laboratories.
• Incident Command Teams/Centers. The Department participated in mock tabletop exercises for emergency/disaster response and will also be participating in 2005.

Review of Compliance Assistance Request SOP
Mike Page, Bureau Chief for DACS, presented a PowerPoint presentation and answered Member’s questions.

Member’s Questions Comments:
• Issue raised that the PCO’s want the inspection done in lieu of complaint against company
• Potential that this service to consumer will streamline FDACS services
• Challenge to FDACS seen, but great potential to serve consumers
• Could PCO fill out form so process is started with PCO?
• Is industry asking FDACS to be an extension agent?
• Suggested we try it and handle problems/situations individually and be reported to Council
• Richard Meahl wants process to help PCO avoid complaint filing – if DACS afraid of an inspection – PCO wants inspection to be done, not on a complaint basis.
• Al Hoffer – as a PCO he likes it, allows consumer to get information without filing complaint, allows DACS to satisfy consumers without bureaucracy.
• Tim Hulett – can PCO fill out the form?– When DACS and consumer meet often there is a resolution.
• Ray Capelouto – if licensee knows that CA could become an inspection, they will try to correct problems up front to the best of their ability.
• How does consumer know that this avenue exists? - It is communicated to consumer at time of call.
• Phi Koehler – has talked to many people who do not want to file complaints against companies, consumers often have a personal relationship with PCO, and this gives them a chance to resolve this issue, will remove disincentive for calling DACS.

Borates Inspection Protocols for New Construction Applications SOP
Mike Page, Bureau Chief for DACS, presented a PowerPoint presentation and answered Member’s questions. Mike reported that field inspection pilot began June 25, 2004, and field inspections using the protocols began on September of 2004.

Member’s Questions Comments:
• Only one product on the market– Bora Care.
• Treatment protocol has been modified.
• Experience has shown when the test solution will lose integrity, it turns black.
• Protocol has removed requirement for field calibration.
• Adding capability for tank mix sample collection.

Results of inspections so far – 27 inspections – few complaints
Problems being found:
- builder adding untreated wood subsequent to application
- removing treated wood and replacing w/untreated wood
- tank mix results show 12-16% should be 23%
- PCO having difficulties mixing on site

• Have formulation samples been taken?
• Difference between formulation and tank mixes.
• DACS needs to discuss this with NISUS.
• Has FDACS collected “lots” of product to test? Mike Page answered that tank mixes are the problem, solubility and application issues.
• Borate use is the upcoming trend.
• Steve Dwinell suggested that the Council invite Nisus to come back before the Council for questions/problems/clarifications regarding product.
• Very important that standards are set in place to be followed by the Industry to avoid potential for anyone to be able to apply this product.
• Label change of treatment to soil, no efficacy test currently available.
• Does label address any changes done by builder after treatment? Answer: Addressed in Building Code, but still a serious problem. Could FDACS notify Building Inspector if they find problems with the use of Borates?
• FDACS has initiated a process with Department of Community Affairs. Maybe a future report to the Council from DCA.
Determining the Presence/Absence of Preventive Residual Soil Treatments

Phil Koehler presented a PowerPoint presentation regarding whether FDAC should consider a process for determining the Presence and/or absence of preventive residual soil treatments for post application testing.

The Council was asked to consider the threshold question of whether this is a good concept to explore, leaving aside the issues of logistics and resources.

Following questions and discussion the Council was asked for straw poll of support for the concept. The vote was 3 in favor (including Phil) and 7 opposed.

Member’s Questions Comments:
• D.R. Sapp - does not support this, maybe too late due to changes in industry regarding use of liquid barriers.
• Pete Quartuccio – DACS does not have enough inspectors, how would this be done?
• Phil Helseth – horizontal or vertical barrier treatment? – to be determined
• Steve Rutz - as long as liquid treatments are being used and as long as there are questions about applications, soil sampling should be an option, attempts in other states have not been 100% successful, but we should try to do something in this area.
• Ray Capelouto – if DACS is trying to determine if application is done right to protect consumer, some type of site inspection is needed. If this aim can be achieved by catching licensees who deliberately avoid requirements, then this will be more costs effective. Has DACS done this?
• Jeff Blair – refocus question – threshold question – does it make sense to have soil sampling as an option – leaving aside the issues of technology and logistics – who likes the idea of routine soil sampling as a concept?
• Steve Rutz – allocation of compliance resources is done by first determining the areas of non-compliance.
• D.R. Sapp – pre or post sampling?
• Erica Santella – issues with technology appear to be large, but good from a consumer perspective.
• Can’t we achieve oversight through the use of records inspections, instead?
• Steve Rutz - Records review can be complex and time consuming, difficult to establish clear and convincing evidence on this basis.

Enforcement Response Guidelines/Fine Structure Discussion

Steve Dwinell reported that this issue has been addressed by the rule workshops held in early January. and that most Council members attended the hearings. Members agreed, and this issue was dropped from the agenda.
Representative Enforcement Case Samples Overview/Discussion

Mike Page, Bureau Chief for DACS, provided the Council with three scenarios where enforcement is problematic and requested feedback from the Council.

Member’s Questions Comments:

**Scenario 1:**
- Capelouto – DACS may want to fine more than $5000 – has state attorney been approached?
  - DACS can take action under Chapter 501 (per 570).
- McGranahan – states attorney should be an option.
- Parker – Elder’s affairs (division of state attorneys) has been involved, but without much success.
- Sapp – since he has responded by showing checks not mailed, could be deceptive charge.
- Industry standards for GHP not justified by one case like this
- Seems like Chapter 501 is appropriate.
- Page – how do we determine fraud if there are no industry standards?
- Sapp – makes industry look bad, but most PCOs are not like this.
- Hulett – not worth changing whole industry for the bad apples.
- Hoffer – DACS can not solve every problem, but maybe fraud is an option. How many times can a bad apple be inspected without charge of harassment? Not certain.
- Santella – how much information on these cases can be public knowledge.
- Quartuccio – how about educating consumers about other avenues, they may be able to do more than DACS.
- Page – how to prevent this from happening in the future – are there any changes in statute or rule that could be made to address this?
- Rutz – this may be a case that the Council wants to track, question whether changes to authority is appropriate, may be premature. We may be able to proceed under Chapter 501 anyway.
- McGranahan – what about OLE? – Answer: can be used when appropriate, not sure if this is the right case for this.
- Hoffer – what about consumer groups. Local stations doing expose – could stop this practice.
- Santella – is this isolated? Answer: apparently.

**Scenario 2:**
- Hulett – regulation of home inspectors will affect this, may solve itself.
- Hoffer – member of FABI, have employed part-time home inspectors/WDO inspectors – if they are employees of company should be ok.
- Capelouto – WDO complaints are a major component of complaints – if they are poorly trained inspectors then they would yield complaints, and the company would be put at risk for insurability due to complaints and civil liability.
- Santella – what is an employee? Geographic limits are not the answer.
- Sapp – WDO complaints are difficult – remodeling often discovers damage that was not visible and accessible at time of inspection, not sure what solution is.
- Hulett – civil courts are an option, juries usually side with homeowners, home inspector industry needs to be regulated.
- Parker – Took $3,000 fine action; has set-up 800 telephone number; still finds ways to circumvent the system.
• Sapp – many companies leaving the WDO field due to liability – if regulation is too strict, only companies that are poor operators will be left.

Scenario 3
• Sapp – if an employee says that employer has directed them not to talk – could be a violation of Chapter 163.
• Hulett – company policy is that supervisor needs to be present – to avoid errors due to employee being nervous, also needs to be there to make correction to treatment if needed
• Asking employees to wait for PCO Is an ok policy as long as supervisor gets there in a reasonable time frame.
• Page – no current provision for a response time.
• Capelouto – is “upon request” too vague for enforcing provision of information.
• Page – lack of time frame is an issue.
• Santella – routine inspections are typically scheduled and allow preparation of records.
• Page – collection of samples is delayed sometimes.
• Rutz – collection of physical evidence, refusal of evidence collection could be a violation, interviewing witnesses is different.
• Meahl – wants employees to review with supervisor prior to signing any thing.
• Helseth – inspector should not state if job done correctly – tank mix not analyzed yet, so that treatment.

Illegal Operators
• Meahl – charge illegal operators for investigative costs, confiscation of property.
• Filing unpaid fines on credit report agency.
• Capelouto – what percentage of actions are taken against existing licensees operating out of category – Answer by Parker: most stringent actions have been against those who have been licensed and have let it lapse deliberately, problematic cases are those that are aware of the Bureau, fining is not always a deterrent in these cases.
• Santella – consumers will often hire unlicensed operators. Especially in lawn and ornamental – memo from department will help.
• Rutz – reporting to credit agency may require legislative action, unpaid fines can be taken to court, judgment has to be issued, two tiered fine structure $500 and $2500 may be better.
• Helseth – worst violators are those that fail to renew – can abuse provision of Chapter 482 that allows one year of no fining for failure to renew.
• Hoffer – can industry associations set up appointment to trap illegal operators – Rutz – could be used for criminal cases – those that have been operating after initial fine and C&D .
• Capelouto – what category is most common for unlicensed – answer by Parker: GHP, fumigation unlicensed is rare.
DACS Neutral Scheme Inspections Strategy and Policy Discussion
Phil Helseth, FDACS, presented a PowerPoint presentation and answered Member’s questions.

Member’s Questions Comments:
• Meahl - Routine licensee inspections - some companies complain about being inspected too frequently.
• Santella – vehicle inspections – do MSDS have to be present when dilute solutions are present? Answer – no neither are spill kits.
• Hulett – reconsider ways inspections are being done. Why should high volume producers have the most inspections – should be aimed toward companies doing the most damage – high compliance rate should be rewarded with fewer inspections – or reduced rate, Another issue for fumigations called in apparent violations – rumor is that if you call in a complaint, you can expect to be inspected – result is that they stop calling in reports of violations.
• Hoffer – Worst inspector on worst day can impact image of department – DACS should focus on violators rather than most visible company – which tend to be the better companies.
• Rutz – does it not occur that one company will complain about another, then the second company will file a complaint against the first company? Answer yes – this can lead to perceptions like Tim stated. Also, differential inspection based on compliance - Bureau can explore this – Food Safety/Compliance Monitoring has procedures for this – EPC can explore this and present proposal to Council.
• Hulett – require that pretreaters report annually on amount of pesticides versus number/area of treatment, signing affidavit or certification that treatment was done properly – little Sarbane/Oxley act for pretreaters.

Public Comment
Council Chair, Tim Hulett, invited members of the public to address the Council. There were no comments given by the public.

Agenda Items and Assignments for the April 19, 2005 Meeting
Compliance Assistance Update—Mike Page
Enforcement Case Study Scenario Sample—Mike Page
Enforcement Strategy Proposals—Mike Page
Borate Application Issues Update and NISUS participation—Steve Dwinell
Inspection Frequency Proposal for Neutral Scheme Inspections—Mike Page
Assessment Survey of Council—Jeff Blair
Building departments compliance coordination—Steve Dwinell
Rule development status—Steve Dwinell
Next Meeting Date and Location
Tuesday, April 19, 2005—Gainesville, Florida

Future Meeting Dates and Locations
July 19, 2005—Ft. Myers, Florida; Richard Meahl assumes Chair’s position
October 18—Palm Beach, Florida
January 17, 2006—Live Oak, Florida

Adjourn
The Council voted unanimously, 10 - 0 in favor, to adjourn at 2:15 PM.
ATTACHMENT 1

MEETING EVALUATION RESULTS

January 18, 2005—Tallahassee, Florida

0 – 10 Scale where a 0 means totally disagree and a 10 means totally agree.

1. Please assess the overall meeting.

9.1 The background information was very useful.
9.6 The agenda packet was very useful.
9.3 The objectives for the meeting were stated at the outset.
8.7 Overall, the objectives of the meeting were fully achieved.
9.0 Update on Agency enforcement activities and Case Examples.
9.6 Legislative issues update.
8.9 Compliance Assistance Request SOP discussion.
9.1 Borates Inspection Protocols for New Construction Applications SOP discussion.
9.6 Representative Enforcement Case Samples discussion.
9.4 Enforcement Response Guidelines/Fine Structure discussion.
9.1 DACS Neutral Scheme Inspections Strategy and Policy discussion.
7.1 Proposal for Determining the Presence/Absence of Preventive Residual Soil Treatments.

2. Please tell us how well the facilitator(s) helped the participants engage in the meeting.

9.6 The participants followed the direction of the facilitator.
9.6 The facilitator made sure the concerns of all participants were heard.
9.8 The facilitator helped us arrange our time well.
9.6 Participant input was documented accurately.

3. What is your level of satisfaction with the meeting?

9.0 Overall, I am very satisfied with the meeting.
9.8 I was very satisfied with the services provided by the facilitator.
9.4 I am satisfied with the outcome of the meeting.

4. What progress did you make?

9.4 I know what the next steps following this meeting will be.
9.7 I know who is responsible for the next steps.

5. Member Comments:

• The Council really really needs consumer (lay person) input. As PCO’s and regulators we can only make assumptions on what consumers want. We are only able to make assumptions regarding consumer interests, and quite often we know too much about an issue to anticipate what questions/concerns consumers might have.
• The best meeting ever. Lots of good discussion.
ATTACHMENT 2

MEETING ATTENDANCE

Council Members:
Tim Hullett
Raymond Capelouto
Dempsey R. Sapp, Jr.
Pete Quartuccio
Al Hoffer
Richard C. Meahl
Bob McGranahan
Erica Santella
Phil Koehler
Steve Rutz

Staff:
Jeff Blair, FSU/FCRC
Steven Dwinell, FDACS
Stacey Reese, FDACS
Phillip Helselth, FDACS
Gary Stanford, FDACS
Joe Parker, FDACS
Michael Page, FDACS

Public:
Matt Dempsey, FPMA
Eric Marell, Cross Country Exterminators
Richard Burke, Cross Country Exterminators
Mel Kyle, Consultant
Rick Grimes, FPMA
ATTACHMENT 3

COUNCIL’S UPDATED WORKPLAN
(Last Updated and Approved Unanimously January 18, 2005)

WORKPLAN BY TASK

TASK A—Communication Between and Among the Agency, Industry, and Public Issues

1. Develop list of programmatic and operational statistics Council would like to review on an ongoing basis.
   A. Council will review enforcement statistics at each meeting.
   B. Council will review Sample Representative Enforcement Cases at each meeting.
   C. DACS will update Council on rulemaking efforts at each meeting.

2. Develop recommendations regarding enhancing accountability for improper acts.

3. Provide cases/statistics regarding disclosures for treatment failures.

4. Develop recommendations for improving consumer education on procedures for filing complaints (complaint process) and enhancing the visibility of the process.
   A. DACS compliance assistance requests proposal adopted at July 2004 meeting.

5. Review Department’s website for possible recommendations on content and organization.

6. Public Participation at Council Meetings
   A. Process amended at the April 22, 2004 meeting.

7. Council Effectiveness
   A. Council will discuss effectiveness assessment survey results at the April 19, 2005 meeting.

8. Coordinate enforcement strategies for new construction pre-treatments between: DACS, Florida Building Commission; BOAF (building officials), FHBA (home builders), and PCO’s.
   A. Council will consider strategy proposal at the April 2005 meeting.

TASK B—Enhancing Licensing and Enforcement Practices Issues

1. Review and develop recommendations on the Department’s disciplinary procedures.

2. Review and develop recommendations on the language used in the Department’s various forms.
   A. Feasibility assessment for a negotiated rulemaking on the WDO report form was completed on February 5, 2004.
3. Recommendations for dealing with illegal operators.
   A. Agency updated Council regarding statistics at the April 22, 2004 and January 18, 2005 meetings.

4. Organize discussions on task B to be specific to the different categories of pest control (i.e., Fumigation, Lawn and Ornamental, General Household Pest Control, and Termite).

5. Develop recommendations to improve effectiveness of post construction treatment standards.

6. Reach consensus on the scope of issues for council consideration.
   Council agreed that their focus will be on developing recommendations to improve the enforcement of existing regulations; and, would recommend statutory or rule changes as a by-product of this activity and not as a primary Council focus. (November 20, 2003)

**TASK C—Enhancing Agency’s Enforcement, Education, and Training Issues**

1. Develop recommendations to ensure that there are consistent and uniform training requirements that all inspectors must achieve prior to working in the field.

2. Make recommendations on what the Agency’s enforcement priorities should be for the coming year.—Annual Task.

3. Review and develop recommendations to ensure the Department has a clear, uniform, and consistent enforcement standards.
   A. Inspections procedures overview given by Agency on July 17, 2003.
   B. Agency enforcement case process overview given on July 17, 2003.
   C. Presentation on issues of concern to PCO’s given on July 17, 2003.
   D. Complaint response procedures overview given by Agency on September 18, 2003.
   E. Council will consider uniform procedures for notifying PCOs of Agency actions at a future meeting.
   F. Council discussed preventive treatment for new construction records inspection procedures at the July 2004 meeting.
   G. Council reviewed protocols for inspecting Borates used in new construction at the July 2004 and January 2005 meetings.
   H. Council conducted a joint meeting with DACS inspectors to discuss uniform enforcement procedures at the July 2004 meeting.
   I. Council reviewed Neutral Scheme Inspections Policy at January 2005 meeting.
   J. Council considered a proposal for testing for the presence/absence of preventive residual soil treatments at the January 2005 meeting.