PEST CONTROL ENFORCEMENT ADVISORY COUNCIL

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

FACILITATOR’S SUMMARY REPORT OF THE JULY 20, 2004 MEETING

FORT LAUDERDALE, FLORIDA

Meeting Design & Facilitation By

Florida Conflict Resolution Consortium

Report By Jeff A. Blair
Florida State University

jblair@fsu.edu
http://consensus.fsu.edu
OVERVIEW OF COUNCIL’S KEY DECISIONS

TUESDAY, JULY 20, 2004

Opening and Meeting Attendance
Chairman Hulett opened the meeting at 9:13 AM, and the following Council members were present:

Agenda Review and Approval
The Council voted unanimously, 11 - 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 Hear A Status Report on the Temiticide Efficacy Rule
♦ To Review Compliance Assistance Requests Revisions
♦ To Review Borates Inspection Protocols for New Construction Applications
♦ To Discuss Preventive Treatment for New Construction Records Inspections
♦ To Discuss Feasibility of Determining the Presence/Absence of Preventive Treatments
♦ To Consider Public Comment
♦ To Identify Needed Next Steps and Agenda Items For Next Meeting
♦ To Hold a Joint Meeting with DACS Inspectors

Approval of April 22, 2004 Facilitator’s Summary Report
The Council voted unanimously, 11 - 0 in favor, to approve the April 22, 2004 Facilitator’s Report as presented.

Review and Approval of Updated Workplan
Following a review of the Workplan, included as page 2 and 3 of the agenda packet, the Council took the following actions.
Council Action:
The Council voted unanimously, 11 - 0 in favor, to approve the Council’s workplan as presented. (Attachment 3—Workplan)
Update on Agency Enforcement Activities and
Mike Page, Bureau Chief for DACS, reported on Agency enforcement activities utilizing a handout with enforcement statistics, and answered Council member’s questions.

Member’s Questions Comments:
• Tim Hulett and Ray Capelouto questioned the reduction in fines collected.
• Steve Rutz responded that they are utilizing a more practical approach to collecting fines, focusing on a realistic and collectable fine level.
• Al Hoffer suggested the increase in inspectors and improvements of the applicators may also contribute to the lower fine level.
• D.R. Sapp stated that the industry has new tools to work with that have not been available in the past (better products) and this may also attribute to the reduction in fines.
• T. Hulett asked if the Council would like to add the Administrative Fines Protocol to the agenda for future meetings.
• Steve Dwinell explained that the Administrative Fines Protocol is currently being addressed through the rule development process.
• Member’s requested that enforcement reports/statistics be provided in writing at each meeting.

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:

• Pest Control Enforcement Trust Fund was reauthorized.
• AES is implementing the Farm Worker Safety Act.
• The Agency is currently working on Legislative Budget Requests for next session. DACS will be focusing on maintenance and homeland security issues.

Status Report/Update on Termiteicide Efficacy Rule
Steve Dwinell reported that the efficacy rule is in effect and 40 products are currently registered with the following breakdown: 34 soil applied residual products, 4 baits, and 2 wood treatment. ASPCRO has also met with USEPA and requested that they revise their efficacy review process to include borates and baits, in addition to soil applied residual applications. Other states are considering the adoption of efficacy rules.

Revisions to Compliance Assistance Request Form
Council Action:
Motion—The Council voted unanimously, 11 - 0 in favor, to approve the proposed Compliance Assistance Request form as amended.
Amendments:
First line: Person Consumer or PCO
Add check box to form: May the PCO be contacted and/or present if there is a meeting?
Add a space for: Description of issues/problems in the “Summary of Assistance Visit” section.
Comments related to the Form:

- The Council requested that DACS review and discuss the form with the inspectors and implement its usage as soon as feasible.
- An SOP needs to be developed and reviewed by the Council at the next meeting.
- The form should be available on DACS’s website.

Overview of Questions, Discussion, and Public Comment on the Form:

- D.R. Sapp questioned statement in NOTE section of form regarding the inspector making recommendations.
  - Steve Dwinell explained this is to serve as a reminder to the inspector not to make recommendations.
- D.R. Sapp asked if the person requesting assistance could be the company or a consumer.
  - S. Dwinell answered yes for both.
- R. Capelouto questioned if the inspector would give the consumer/company this option.
  - R. Capelouto questioned how the report would be distributed.
  - S. Dwinell stated that would be directed by the Council.
- S. Dwinell explained this is to serve as a reminder to the inspector not to make recommendations.
- B. McGranahan questioned if the PCO and the consumer could be present at the same time.
  - S. Dwinell explained that if everyone is in agreement.
  - P. Koehler asked for details of the process.
- R. Meahl stated that the original intent of the form was for the company to use the form and
  - S. Dwinell explained it will depend, and will be on a case by case basis. If it is elevated to a complaint then the company will be contacted. If a company makes the contact the consumer will be contacted.
- R. Meahl stated that the original intent of the form was for the company to use the form and
  - S. Dwinell explained if the company makes the contact the consumer will be contacted.
- S. Rutz asked for clarification of “Summary of Assistance Visit” line item.
  - S. Dwinell stated that it would be for the findings of the inspector.
- S. Rutz stated it might be helpful to have some history/reason for the call.
  - R. Capelouto recommended that the Council allow the inspector to use discretion in using the form.
  - J. Blair called for a vote to add line for history to the form.
  - B. McGranahan asked for the first line to be changed to Person/Pest Control Company.
    - Council approved.
  - J. Blair called for other questions/discussions.
  - R. Meahl questioned if the assistance call would be filed as a complaint.
  - S. Dwinell stated this assistance call will not be counted as a formal complaint unless a complaint is warranted.
  - E. Santella questioned when this would start being used and how it would be presented to the public and could it be posted to association websites for use by the public.
  - S. Dwinell answered that a Staff Meeting is being held for the inspectors following
    - The Council’s meeting and it will be presented to them with the expectation for immediate use once the revisions are made. He also stated that as with all new systems/forms, this is a work in progress and may need reforming once use begins.
• D.R. Sapp stated that the way the call is handled from the onset will most likely dictate the direction of the call.
• D.R. Sapp recommended that the form be approved with changes today and put into effective immediately.
• E. Allen reported concerns that the consumer would not be served by the inspector taking the “easy paperwork” route. She suggested that both forms be sent to the consumer with explanations of their purpose, and give the consumer the choice.
• S. Dwinell stated that a Standard Operating procedure would be developed.
• P. Koehler stated that he would like to have the form implemented immediately and the Standard Operating Procedure be addressed at a future Council meeting.
• J. Blair called for questions/statements from audience.
• Suggestion for signature line.
• Suggestion that the fact this is a consultation and not a formal complaint should be clarified in the NOTE section.

Borates Inspection Protocols for New Construction Applications
Mike Page reviewed the contents of a test kit and demonstrated the protocols the inspectors will use for testing for the application of Borates used in new construction.

Overview of Questions and Discussion:
• How will the inspector use kit?
  o Inspector will make a map of the general frame of the house.
  o Locate 10 sites to test, two of which have to be plumbing.
  o Number spots on wood and also on diagram.
  o Conduct test, allowing solution to dry.
  o Make determination if the hit is positive/negative.
  o If negative, the inspector starts to move out until they receive a positive reading.
  o Paperwork is completed.
  o Report made to enforcement group.

• B. McGranahan asked if dye is required during application.
  M. Page said it is not required.

• P. Koehler asked if termites are found in a structure, would it be possible to test the site to determine if Borate treatment are present after the fact.
  M. Page said that is possible because as long as there are Borates present the test will be still be effective for indicating their absence/presence.

• T. Hulett stated it would be important to ensure the house was treated by the builder.
Preventive Treatment for New Construction Records Inspections
Steve Dwinell reported to the Council and answered member’s questions. Steve presented a written report summarizing the results of DACS’s pilot program for conducting preventive treatment records inspections.

Overview of Questions and Discussion:
- B. McGranahan asked whether the county records have been checked and if they are up to date.
- Hoffer stated this is a way to check the entire system to see if there is a consistent result.

Feasibility of Determining the Presence/Absence of Preventive Treatments Discussion
Phil Koehler proposed that the Council consider developing a protocol to use soil sampling as a means of determining the concentration of soil insecticide applied, and that it be used as a compliance monitoring mechanism.
Phil provided the Council with three handouts:
Texas report on the persistence of termiticides, Virginia’s minimum rates established for pre-construction termiticide treatments, and ASPCRO’s guidance document for soil samples. Phil reviewed the three documents, answered questions, and lead a discussion on his proposed concept for Council consideration. Following discussion, and lacking a consensus, member’s provided Phil with a list of their concerns with the understanding that he will bring a revised proposal to the next meeting that addresses concerns to the extent possible.

Overview of Questions and Discussion:
A. Hoffer stated it appears to be a good idea reporting presence/no presence.
- P. Quartuccio questioned if the type of soil would affect the results.
- D.R. Sapp asked the number of states that are currently using this type of system.
- D.R. Sapp stated that the Council might be focusing on an issue that will be decreasing in usage as type of products registered change and move away from soil applied treatments.
- S. Dwinell stated that in order for this to be used it would have to be adopted as a rule.

Council straw poll for support of idea/concept:
Support: 4
Does not support: 6
Undecided: 1
Concerns:
  • Protocol must take into account soil/site disturbance.
  • Determine which sites are eligible for sampling.
  • Variations in types of soils/Consistency
  • Thinks FDACS should not spend the time on this issue.
  • Too many variances, must be taken into account.
  • Presence of the pesticide does not tell you much.
  • Can it be relied on as a tool? Can the consumer use it as a Step One.
  • Could be useful to consumers.
  • Could help consumer know if another treatment is useful/needed.
  • Elapsed time from application to testing is a problem.
  • Sub-slab areas are largely excluded, rendering soil treatment of doubtful value.
  • Perimeter areas are vulnerable to disturbances.
  • Easy to challenge and if it is challengable, then how effective is it as a tool for FDACS?
  • How does Georgia do this?
  • Steve Dwinell will investigate other states.

Public Comment
Chairman Hulett invited members of the public address the Council.
No members of the public offered comments to the Council.

Agenda Items and Assignments for the October 7, 2004 Meeting
• Agency Enforcement Activities—Member’s requested that enforcement reports/statistics be provided in writing at each meeting—Lead Mike Page (DACS)—Agenda time 1/4 hour.
• Compliance Assistance Form and Standard Operating Procedure Update—Lead Mike Page (DACS)—Agenda time 1/4 hour.
• Borates Inspection Protocols for New Construction Applications SOP Report—Lead Mike Page (DACS)—Agenda time 1 hour.
• Report/Discussion on Enforcement Response Guidelines; Fine Structure; and Overview of Representative Sample Complaint Cases—Lead Steve Dwinell (DACS)—Agenda time 1 hour.
• DACS Policy and Strategy for Neutral Scheme Inspections Report/Discussion Update—Lead Phil Helsih (DACS)—Agenda time 1/2 hour.
• Residual Soil Treatment Absence/Presence Proposal—Lead Phil Koehler, Mike Page, and Steve Dwinell—Agenda time 1 hour.
Next Meeting Date and Location
Thursday, October 7, 2004—Lee County Mosquito Control District—15191 Homestead Road; Lehigh Acres (Ft. Myers), Florida 33971; (941) 694-2174

Future Meeting Dates and Locations
Tuesday, January 18, 2005—Tallahassee—Details TBD
Tuesday, April 19, 2005—Gainesville—Details TBD

Recess
At 1:30 PM the Council voted unanimously, 11 - 0 in favor, to recess the meeting and reconvene with a joint Council and DACS inspectors meeting.

Joint Meeting with DACS Inspectors
The Council conducted a joint meeting with the DACS inspectors to discuss various issues related to enforcement.

Adjourn
The Council voted unanimously, 11 - 0 in favor, to adjourn the meeting following the joint Council and DACS inspectors meeting.
ATTACHMENT 1

MEETING EVALUATION RESULTS

July 20, 2004—Fort Lauderdale, Florida

A 0 TO 10 RATING SCALE WHERE A 0 MEANS TOTALLY DISAGREE AND A 10 MEANS TOTALLY AGREE WAS USED. FOLLOWING ARE THE AVERAGE SCORES.

1. Please assess the overall meeting.
   - 9.5 The background information was very useful.
   - 9.7 The agenda packet was very useful.
   - 9.7 The objectives for the meeting were stated at the outset.
   - 9.5 Overall, the objectives of the meeting were fully achieved.
   - 9.4 Update on Agency enforcement activities and Case Examples.
   - 9.66 Legislative issues update.
   - 9.8 Compliance Assistance Requests Revisions.
   - 9.0 Preventive Treatment for New Construction Records Inspections.
   - 8.7 Feasibility of Determining the Presence/Absence of Preventive Treatments.
   - 9.66 Joint Meeting with DACS Inspectors.

2. Please tell us how well the facilitator helped the participants engage in the meeting.
   - 9.7 The participants followed the direction of the facilitator.
   - 9.7 The facilitator made sure the concerns of all participants were heard.
   - 9.7 The facilitator helped us arrange our time well.
   - 9.7 Participant input was documented accurately.

3. What is your level of satisfaction with the meeting?
   - 9.6 Overall, I am very satisfied with the meeting.
   - 9.7 I was very satisfied with the services provided by the facilitator.
   - 9.6 I am satisfied with the outcome of the meeting.

4. What progress did you make?
   - 9.6 I know what the next steps following this meeting will be.
   - 9.7 I know who is responsible for the next steps.

5. Do you have any other comments that you would like to add?
   - ♦ Very good job.
   - ♦ Good job.
   - ♦ Go Gators!
ATTACHMENT 2

MEETING ATTENDANCE

MATTHEW DEMPSEY, FPMA
Phone: 850-933-0690
Fax: 850-906-0888

JOHN MANGOLD, TERMINIX
Phone: 813-249-4636
Fax: 813-886-6885

STEVEN RUTZ, FDACS
Phone: 850-488-3731
Fax: 850-488-2164

MICHAEL BECKERS, CPCO
Phone: 954-724-8806
Fax: 954-724-8947

ROBERT McGRANDHAW, LIVE OAK P.C.
Phone: 1-800-771-3887

NORM SMITH, CPCO
Phone: 954-724-8806
Fax: 954-724-8947

PHIL KOEHLER, UNIV FLA
Phone: 352-392-2484
Fax: 352-846-1500

G.I. LIVINGSTON, CPCO
Phone: 954-410-8809

DEMPSEY R. SAPP JR., FPMA
Phone: 352-376-2661
Fax: 352-376-2791

MICHAEL PAGE, DACS
Phone: 850-921-4177
Fax: 850-410-0724

PETER QUARTUCCIO, ALL SERVICE PEST MGMT.
Phone: 941-622-5833
Fax: 941-629-2302

RICHARD MILES, TI
Phone: 772-216-3655

PHILLIP HELSETH, DACS
Phone: 904-381-6004
Fax: 904-381-6048

STEVE BRAYER, ORKIN
Phone: 954-456-0586

RICHARD CHAD MEAHL, AERO PEST CONTROL
Phone: 352-220-1950
Fax: 352-795-2688

RICHARD C. MEAHL, CPCO
Phone: 352-212-1519
Fax: 352-795-2688
ATTACHMENT 3

COUNCIL’S UPDATED WORKPLAN
(Last Updated and Approved Unanimously July 20, 2004)

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.

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 will be considered 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.

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 is completed and process is proposed to begin in July of 2004.

3. Recommendations for dealing with illegal operators.
   A. Agency updated Council in statistics at the April 22, 2004 meeting.
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 will discuss preventive treatment for new construction records inspection procedures at the July 2004 meeting.
   G. Council will review protocols for inspecting Borates used in new construction at the July 2004 meeting.
   H. Council will conduct joint meeting with DACS inspectors to discuss uniform enforcement procedures at the July 2004 meeting.