PEST CONTROL ENFORCEMENT ADVISORY COUNCIL

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

FACILITATOR’S SUMMARY REPORT OF THE APRIL 19, 2005 MEETING

ALACHUA, 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, APRIL 19, 2005

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

DACS Staff Present
Steve Dwinell, Phil Helseth, Bruce Nicely, Mike Page, and Stacey Reese.

Meeting Facilitation
Jeff Blair.

Agenda Review and Approval
The Council voted unanimously, 8 - 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 an Update on DACS Rule Development Efforts
✓ Council Effectiveness Assessment Survey Report and Discussion
✓ Compliance Assistance Request Issues Update
✓ To Hear a Strategy Update for Coordinating Enforcement Efforts Related to New Construction Pre-Treatments
✓ To Discuss and Consider Borates Application Issues
✓ To Review and Discuss Representative Enforcement Case Sample
✓ To Discuss Enforcement Response Strategy Proposals
✓ To Discuss DACS Neutral Scheme Inspections Frequency Proposal
✓ To Consider Public Comment
✓ To Identify Needed Next Steps and Agenda Items For Next Meeting

Approval of January 18, 2005 Facilitator’s Report
The Council voted unanimously, 9 - 0 in favor, to approve the January 18, 2005 Facilitator’s Report as amended.

Amendments to Report:
(Page 2) Review of Compliance Assistant Request SOP “if DACS afraid of an inspection…” Clarification: DACS does not want to be put in a position to mediate between a consumer and the pest control company.

Tim Hulet asked for a word change on: “Member’s Questions Comments,” to read: “Is selectively reporting”.

PCEAC APRIL 19, 2005 REPORT 1  May 12, 2005 Version
R. Capelouto asked for clarification on B. McGranahan (page 5) Scenario #1 “OLE” Please spell out as Office of Ag Law Enforcement.

T. Hulett (page 5) “Not worth changing whole……” to read “a few bad apples”.

**Review and Approval of Updated Workplan**

Following a review of the Workplan, included as pages 3 and 4 of the agenda packet, the Council took the following actions.

**Council Action:**
The Council voted unanimously, 9 - 0 in favor, to approve the Council’s workplan as presented.  
*(Attachment 3—Workplan)*

**Update on Agency Enforcement Activities**

Mike Page, FDACS, reported on Agency enforcement activities utilizing a handout with enforcement statistics, and answered Council member’s questions.

**Summary of Discussion and Member’s Questions and Comments:**

A. Hoffer requested that another (third) column be made to separate the compliance assistance statistics from the for cause statistics. The report will be changed to reflect this request.

A new law enforcement officer has been hired by DACS. This position has been established so that one officer is now dedicated to work specifically on Pest Control/Pesticide issues and can perform investigations and follow through to prosecution. He is being supervised by Office of Ag Law Enforcement but receives his assignments from Division of Agricultural Environmental Services. The workload from the previous inspector will be divided between other inspectors. Mike indicated that this action has been taken in response to comments/concerns expressed by the Council.

**Legislative Issues Update**

Steve Dwinell, Assistant Division Director of the Division of Agriculture and Environmental Services, reported on legislative issues related to the Agency and answered Council member’s questions.

**Summary of Discussion and Member’s Questions and Comments:**

Steve Dwinell indicated that at this point in the session the budget looked good for the Department, and that if any Council member was interested in the progress of pest control related bills to email him and he will relay the latest.
**Update on Agency Rule Development Efforts**

Steve Dwinell, Assistant Division Director of the Division of Agriculture and Environmental Services, reported on current Agency rule development efforts, and answered Council member’s questions.

*Summary of Discussion and Member’s Questions and Comments:* 

There are currently three (3) Rule Changes in process at this time for Rule 5E-14:

#1 (106) Modification to the requirement that a complete treatment be done according to label directions, that would allow for secondary treatments as long as there is a complete primary treatment that has been completed in compliance with label requirements for a full treatment.

#2 (105) Contract rules under development.

#3 (149) Enforcement response guidelines.

**Council Effectiveness Assessment Survey Discussion**

Jeff Blair reported that all ten (10) Council members responded to the survey ensuring that the survey results reflect the collective priorities and views of the Council.

The purpose of the workplan prioritization exercise was to ensure that topics of importance to the Council are on the agenda. This will help in the development of future Council discussion issues.

The effective assessment exercise is the Council’s view of how well they are doing on a variety of functions ranging from decision-making, representation, to time allowed for consideration. All of the functions, except one, scored at least an 8 out of a possible 10, indicating a high level of performance. The function of “Council Representation” scored an average of 7.18 with indications that the consumer perspective is essential to the Council’s ability to develop broad-based consensus on substantive issues.

*Summary of Discussion and Member’s Questions and Comments:* 

S. Dwinell asked how does this survey compare to other Councils? J. Blair answered that the Council results are consistent with other groups that he works with, in fact, even better than average. As a facilitator he can see the improvement of communication between the industry and DACS over the past 4-8 years.

**Council Representation**

E. Allen expressed a concern that when she is not present she has no back-up representative from the “Citizen” arena. J. Blair suggested that a person could send a non-voting person to represent the absent council member; however, to allow for a substitute member the statute would have to be changed.

Suggested Concept: Allow for a proxy to sit in for a Council member in their absence with no voting rights. They will sit at the Council table, participate in all discussions, but have no voting rights.
P. Koehler stated that he was concerned about the membership of the Council being fairly distributed between government/industry/citizens so that all views are available when decisions are made by the Council.

E. Santella expressed concern that this change allowing a proxy could allow for new faces to be present at each meeting, and felt that it was important to have consistency of Council members, since issues are continual from meeting to meeting.

P. Quartuccio raised the question on whether there would be a limit of the number of meetings that a proxy could attend in place of the appointed member.

J. Blair said that he will put together a draft for this issue and present it to the Council for discussion/approval at the next meeting.

S. Dwinell expressed that this Council was intended to look at how enforcement was being conducted and advise DACS on how to improve these processes.

A. Hoffer expressed that the spectrum of the Council was to advise DACS on what the Council felt would help things to run smoothly.

E. Allen agreed with P. Koehler’s comments. She also asked if there is any way to change the set-up of the Council in the future.

J. Blair stated that it would have to be changed statutorily.

Workplan
J. Blair indicated that Workplan Tasks can be added at any time.

Tailwinds
J. Blair expressed that the reason for this Council was to open the lines of communication between DACS and industry and he feels this has been accomplished.

Headwinds
J. Blair explained that the Sunshine Law was made to prevent decisions being made behind closed doors.

A. Hoffer asked that since this Council is an advisory council and not a decision making council does this law affect them? J. Blair relayed that it does apply but that it should not adversely affect the Council’s ability to function.

Compliance Assistance Request Issues Update
Mike Page, Bureau Chief for DACS, provided the Council with an update on the issue and answered member’s questions.

Mike clarified that the Council is only going to talk about Compliance Assistance cases that have been closed.

8 compliance assistance requests for this quarter.

In the past they would ask if the caller wanted to file a complaint, if “No” then the case was closed. This new process offers them an alternative to filing a complaint and solving the problem of the caller.
Summary of Discussion and Member’s Questions and Comments:

T. Hulett offered that a written procedure might be needed to offer this process to all callers up front.

D.R. Sapp expressed concern that the number of inspections being made are targeting legal pest control operators and are not based on consumer complaints.

E. Allen expressed that DACS should make the forms more available to the public and also make them more aware of the complaints filed and the findings of these complaints.

A. Hoffer stated that this was not about improving the industry but about making rules to regulate the industry and to address the problem operators.

S. Dwinell relayed that DACS just completed an “overall” of the websites and many links were broken. This has been corrected.

E. Santella expressed concern that fltermitehelp.org addressed more than just termites. S. Dwinell acknowledged.

B. Nicely raised the issue that not all telephone calls are being counted in these numbers. Several Council members agreed that this was a valid point and should be corrected. R. Capelouto expressed concern that this would not reflect accurate numbers. P. Helseth/B. Nicely relayed that the numbers are reported by each inspector on their monthly reports but these numbers are not used for this report.

Compliance assistant is a call where a consumer has a question regarding their pest control, may be a complaint or a request for information.

R. Meahl expressed that the caller be asked if they have contacted their pest control operator. This is on the form.

S. Dwinell proposed that the numbers of the enforcement report be placed on the agenda for the next Council meeting. R. Capelouto asked that the results of these numbers also be reported.

Mike indicated that DACS will report the “flavor” of a few of these cases and ask the Council is this is what they envisioned for this process.

#1 Assisted pest control

#2 Assisted consumer with a termite infestation and provided information regarding law/contract/etc.

#3 Assisted consumer regarding Centricon hits in the monitoring system.
#4 Assisted consumer regarding complaint about pest control company billing after cancellation of service.

#5 Assisted consumer on sensitive list with lawn application within perimeters.

#6 Assisted consumer regarding complaint about pest control company billing after cancellation of service and threatened them with reporting to the Credit Bureau.

#7 Assisted pest control company regarding pre-treat.

T. Hulett feels this is a positive process for both DACS and the industry.

S. Dwinell feel this is a good process that is working.

A. Hoffer expressed that the inspector should not be asked to be a mediator, but a person to state laws, etc.

**Representative Enforcement Case Sample Discussion**

Mike Page, Bureau Chief for DACS, provided the Council with a fourth case sample and answered member’s questions.

Mike distributed a document titled: “Enforcement Case Scenario IV”. The first three cases were presented at the January 2005 meeting.

*Summary of Discussion and Member’s Questions and Comments:*

D.R. Sapp – proposal is on right track, should go after the owner.

M. Page – inspectors getting affidavits from business owners.

P. Koehler – Important to regulate this activity, many violations of pesticide application by this segment of the industry.

P. Koehler raised the question of who is the consumer. He also asked what kind of agreement is there between the lawn care person and the consumer. If there is an agreement then there should be a paper trail to access.

E. Allen asked that the details of this issue be made known to the public (referenced her own lawn care person).

D.R. Sapp noted that he feels this is one of the biggest deficiencies.
E. Santella asked about the progress of the memo she asked DACS to prepare for lawn care professionals to give to customers regarding using licensed applicators. S. Dwinell said that this issue is on DACS public relations agenda for June/July of 2005. A news release will be published from the Commissioner of DACS.

**Coordinating Enforcement Efforts for New Construction Strategy**

Steve Dwinell reported that he had met with DCA regarding the Florida Building Commission’s code efforts to address the issue of termite protection in buildings and provided the Council with a copy of a document that DACS and DCA has jointly developed titled, “Termite Protection in Buildings”. This document contains the relevant Florida Building Code sections, and answers to a list of 25 frequently asked questions (FAQ’s). In addition, contact information is provided for both agencies. The intended audience is Building Officials, and the intention is to enhance a consistent interpretation and enforcement of termite requirements around the State,

**Borates Application Issues Discussion**

Steve Dwinell and Mike Page, FDACS, reported there is currently only one company registered and approved to sell borates for preventative treatment in new construction.

Steve indicated that Nissus provides a warrant as required by law and has efficacy data to support.

DACS will monitor the use of borates and continues to do their own research and inspections to ensure efficacy and the proper us of the product.

**DACS Neutral Scheme Inspections Frequency Proposal**

Phil Helseth, FDACS, provided the Council with an overview on the types and numbers of neutral scheme inspections performed. These statistics are included as a part of BEPC’s quarterly statistics (Reviewed at each meeting by Mike Page).

*Summary of Discussion and Member’s Questions and Comments:*

A. Hoffer stated that the inspectors should be allowed to use their judgment and go after the operators that they feel are in violation, instead of being held to a required number of inspections per month/year. Reward the inspector for a more thorough inspection that leads to a correction of a violation.

T. Hulett agreed that “good companies” should be inspected, but he feels that the companies that are consistently violating should be inspected more frequently until they are in compliance.

D.R. Sapp agreed with T. Hulett and P. Helseth – good job to DACS.

S. Dwinell liked the idea of turning the inspections around and suggested that DACS should look into a system to encompass T. Hulett’s suggestions. He also asked that a list of common violations be developed.
P. Koehler suggested that role model could be the driver license system where points are assigned for violations.

D.R. Sapp raised concern that a company’s size make a points system difficult to manage fairly.

M. Page suggested that a focused enforcement mechanism should be prepared to propose to the Council for a future meeting.

S. Dwinell stated that there is authority for DACS to tie the frequency of inspections to the severity and type of violation.

E. Allen asked if a check of the company’s inventory would be an easier way to catch violations.

P. Koehler asked are we targeting businesses or individuals. He pointed out these guidelines would need to be separated.

P. Koehler asked what if the 2 were integrated when brought back to the Council. List of violations and using this list as a conversation starter.

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 July 19, 2005 Meeting

Member Proxy Proposal—Jeff Blair
Rule Development Status—Steve Dwinell
Enforcement Statistic Discussion and Enforcement Case Study Scenario Sample—Mike Page
Status and Update of Compliance Assistance Requests—Mike Page
Identification of Most Common Violations and Development of a Focused Enforcement Inspection Strategy Based on Criteria—DACS
Consumer Education Strategies—Elizabeth Allen
Post Construction Treatment Recommendations Discussion—Elizabeth Allen

Next Meeting Date and Location
July 19, 2005—Ft. Myers, Florida; Richard Meahl assumes Chair’s position

Future Meeting Dates and Locations
October 18, 2005—Palm Beach, Florida
January 17, 2006—Live Oak, Florida

Adjourn
The Council voted unanimously, 10 - 0 in favor, to adjourn at 2:30 PM.
ATTACHMENT 1

MEETING EVALUATION RESULTS

April 19, 2005—Alachua, Florida

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

1. Please assess the overall meeting.

9.4 The background information was very useful.
9.7 The agenda packet was very useful.
9.8 The objectives for the meeting were stated at the outset.
9.6 Overall, the objectives of the meeting were fully achieved.
9.4 Update on Agency enforcement activities and Case Examples.
9.4 Legislative issues update.
9.4 Update on DACS Rule Development Efforts.
9.6 Council Effectiveness Assessment Survey Report and Discussion.
9.6 Compliance Assistance Request Issues Update.
9.4 Strategy Update for Coordinating Enforcement Efforts for New Construction.
9.1 Borates Application Issues Discussion.
9.2 Representative Enforcement Case Samples discussion.
9.4 Discussion on Enforcement Response Strategy Proposals.
9.7 Discussion on DACS Neutral Scheme Inspections Frequency Proposal.

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

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

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

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

4. What progress did you make?

9.7 I know what the next steps following this meeting will be.
9.8 I know who is responsible for the next steps.
5. Member’s Written Comments.

- Good Meeting.
- Facilitator needs to wear a less conservative tie.
- Remind us about the meeting.
- Some folks still speak out of turn!!
- Don’t forget to remind us 2 – 3 days prior to the meeting to review the minutes and work packet. Many of us need this gentle nudge.
- provide an update of “Limited” meeting, so we are all on the same page.
- The group is truly evolving in a positive direction. The first several meetings seemed like a waste, but it would appear this is a part of the natural progression.
ATTACHMENT 2

MEETING ATTENDANCE

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

Staff:
Jeff Blair, FSU/FCRC
Steven Dwinell, FDACS
Phillip Helselth, FDACS
Bruce Nicely, FDACS
Michael Page, FDACS
Stacey Reese, FDACS

Public:
John Mangold, Terminix
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.