OVERVIEW OF COUNCIL’S KEY DECISIONS

TUESDAY, JANUARY 17, 2006

Opening and Meeting Attendance
Chairman Meahl opened the meeting shortly at 9:08 AM, and the following Council members were present:
Elizabeth Allen, Ray Capelouto (vice-chair), Al Hoffer, Tim Hulett, Phil Koehler, Bob McGranaham, Richard Meahl (chair), Pete Quartuccio (secretary), Erica Santella, and DR Sapp.

Members Absent: None.

DACS Staff Present
Steve Dwinell. Phil Helseth, and Stacey Reese.

Public Present
Matt Demsey, Lynn Hoffer, Jeff Lee, and Michael McDaniel.

Meeting Facilitation
The meeting was facilitated by Jeff Blair from the Florida Conflict Resolution Consortium at Florida State University. Information at: http://consensus.fsu.edu/

Project Webpage
Information on the project, including agenda packets, meeting reports, and related documents may be found in downloadable formats at the project webpage below:
http://consensus.fsu.edu/DACS/pest_control.html

Agenda Review and Approval
The Council voted unanimously, 9 - 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
✓ To Hear a Legislative Issues Update
✓ To Hear an Update on DACS Rule Development Efforts
✓ To Hear a Status Update Regarding Council Member Terms and Council’s Statutory Mandate
✓ To Consider Refinements to Council’s Meeting Attendance Policy
✓ To Hear a Report from the Consumer Education Subcommittee
✓ To Hear an Update on the WDO Form Workshop Process
✓ To Hear an Update on the WDO Neutral Scheme Pilot Project
✓ To Discuss Enforcement Statistics and Representative Enforcement Case Sample/s
✓ To Review Statistics and Trends Related to Compliance Assistance Requests
✓ To Hear a Report and Discuss Africanized Honeybees and Implications to PCO’s
✓ To Discuss and Provide Recommendations Regarding Prior Notifications for Inspections
✓ To Discuss Requirements for Termite Contractors to Provide Service if Assuming a Contract
✓ To Consider Public Comment
✓ To Identify Needed Next Steps, Assignments, and Agenda Items For Next Meeting
Approval of October 18, 2005 Facilitator’s Report
The Council voted unanimously, 9 - 0 in favor, to approve the October 18, 2005 Facilitator’s Report as amended.

Amendment to the Report:
Correct spelling of Norm Goldenberg in meeting attendance list.

Review and Approval of Updated Workplan and Meeting Schedule
Following a review of the Workplan, included as pages 4 - 6 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 and meeting schedule as presented.

Approved Meeting Schedule:
April 18, 2006—Jacksonville, Florida
July 18, 2006—Apopka, Florida
October 17, 2006—Tallahassee, Florida
January 16, 2007—Fort Lauderdale, Florida
(Attachment 2—Workplan)

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

Council Action:
The Council voted unanimously, 9 - 0 in favor, to accept the report as presented.

Summary of Discussion and Member’s Questions and Comments:
SB 1388 proposes legislation:
• Clarifying a provision exempting certain mosquito control activities related to pest control.
• Defines “direct supervision” by licensed operators.
• Governs the use of pesticides for preventing subterranean termites.
• Changes language regarding the Limited Landscape Certification (LLC).

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.

Council Action:
The Council voted unanimously, 9 - 0 in favor, to accept the report as presented.
Summary of Discussion and Member’s Questions and Comments:
Steve reported that three rule development workshops for amendment to 5E14-105, Contracts, and Rule 5E14-149, Enforcement Response Guidelines, were conducted around the State. The proposed draft rule has been reviewed by the Division and is waiting for the Agency to sign-off, prior to proceeding with a rule adoption hearing.

Status Update on Member’s Terms and Council’s Statutory Mandate
Steve Dwinell, Assistant Division Director of the Division of Agriculture and Environmental Services, provided Council members with an update on the status of their terms, and answered member’s questions. With the exception of Al Hoffer whose term expires on 8/21/07, all member’s terms expire on 10/31/06. This is not term length for the Agency representative.

Council Action:
Motion—The Council voted unanimously, 9 - 0 in favor, to have a letter drafted on behalf of the Council, thanking Steve Rutz for his years of valuable service. Letter is to be drafted by FDACS staff for the Council Chair’s signature.

Council’s Statutory Charge—Chapter 482.243, F.S.
The Council reviewed their statutory charge, as provided below:
“The Pest Control Enforcement Advisory Council is created within the department. The Commissioner of Agriculture shall appoint all members of the council. The purpose of the council is to advise the Commissioner of Agriculture regarding the regulation of pest control practices and to advise government agencies with respect to those activities related to their responsibilities regarding pest control. The council shall serve as the statewide forum for the coordination of pest control related activities to eliminate duplication of effort and maximize protection of the public.”

Council’s Meeting Attendance Policy Proposal
Jeff Blair, Council Facilitator, proposed two changes to the Council’s Organizational and Procedural Guidelines. Following are the changes and the Council’s action respective to them.

Meeting Attendance Policy
Any members of the Pest Control Enforcement Advisory Council who fails to attend three two consecutive regularly scheduled meetings, or misses four or more meetings in any two year period will be contacted by the Department to determine why the member was not able to attend and if the member still wishes to serve on the Council. If the member cannot demonstrate his or her absence was for good cause, which includes but is not limited to personal or family illness or military service, or no longer wishes to serve on the Council, the Department will request the member submit a written resignation from the Council to the Commissioner of Agriculture. If the member refuses to resign, the Council will recommend to the Commissioner of Agriculture the member’s appointment be terminated and a new member be appointed as a replacement.

Council Action:
Motion—The Council voted unanimously, 9 - 0 in favor, to adopt the proposed revised Meeting Attendance Policy as amended.
Amendment:
Meeting Frequency Policy
The PCEAC shall meet quarterly starting with January of each year. Regularly scheduled meetings will held in January, April, July, and October of each year. Additional meetings may be called by the Agency or Council chair as required.

Council Action:
Motion—The Council voted unanimously, 9 - 0 in favor, to adopt the proposed revised Meeting Frequency Policy as presented.

Consumer Education Subcommittee Report/Update
Elizabeth Allen reported she would give the report at the April 2006 meeting.

Update on the WDO Form Workshop Process
Steve Dwinell and Jeff Blair reported that the WDO Form Workshop process would be complete On January 18, 2006.

Overview of Process and Goals
The Florida Department of Agriculture And Consumer Services, Division of Agricultural Environmental Services, convened a series of three facilitated workshops to consider refinements to the DACS 13645, Wood-Destroying Organism Inspection Report form. The workshops are iterative in nature, with the work products of each workshop forming the basis for subsequent workshops.

The workshop process is inclusive with a focus on public participation. Each of the issues and options were evaluated and ranked for acceptability by the workshop participants. Options enjoying a sufficient level of support were be discussed, refined, and re-ranked to enhance the level of acceptability. At the conclusion of the process, all viable options will have been thoroughly evaluated, and DACS will be in a position to draft a rule that takes into consideration the concerns and preferences of each of the key stakeholder/interest groups.

The key stakeholder/interest groups that have been encouraged to participate in the workshop process are as follows: pest control operators and their various state associations, the real estate industry, the insurance industry, a legal specialist in WDO related claims, consumer interests, and a participating representative for the Department of Agriculture. All members of the public are welcome to attend the workshops.

Following the third and final workshop, a revised WDO Reporting Form will be prepared based on options that were supported during the course of the workshops. The Proposed Form will then be prepared as a proposed rule and additional input considered during rule development.

Update on the WDO Neutral Scheme Pilot Project
Phil Helseth, Division of Agriculture and Environmental Services, provided the Council with an update and status report on the implementation of WDO neutral scheme inspections, a strategy based on Council input, and responded to member’s questions and comments.
Overview of Issue
Phil reported that the WDO Neutral Scheme Pilot Project is a three month project, using four inspectors around the State. Through December, 2005 a total of 39 inspections have been conducted. Phil reported that the problems discovered with the WDO reports evaluated are related to: WDO inspectors not reporting wood decay, the use of standard (boilerplate) language for not inspecting certain areas, use of outdated forms and standard language, multiple reports on the same property. However, Phil reported that in general most reports appear to be in compliance.

Agency Enforcement Activities and Representative Enforcement Cases
Phil Helseth, Division of Agriculture and Environmental Services, reported on agency enforcement activities and responded to member’s questions and comments.

Summary of Discussion and Member’s Questions and Comments:
For the fourth quarter of 2005 (October – December) there were 150 complaints, of which 42 were for compliance assistance and 108 for cause. There were also 956 neutral scheme inspections conducted.
Of the total 1106 complaints and inspections, 62 remain open/no response. There were 14 fines for a total of $19,400. Three enforcement cases were challenged and sent to DOH for administrative hearings. The challenges were to DACS’ authority and all cases were decided in favor of the Agency.

Statistics and Trends Related to Compliance Assistance Request
Phil Helseth, Division of Agriculture and Environmental Services, reported on compliance assistance request statistics and responded to member’s questions and comments.

Summary of Discussion and Member’s Questions and Comments:
Phil reported that there have been 125 cases closed to date and it is too early to infer trends. However, the statistics seem to correlate with general complaint statistics. Many were WDO related. The main issue seems to be a failure to communicate, and explaining contracts. Phil reported that the process is working and well received by inspectors.

Council Action:
Motion—The Council voted unanimously, 9 - 0 in favor, they want to receive a detailed compliance assistance report at each meeting.

Report and Discussion on Africanized Honeybees and Implications to PCO’s
Steve Dwinell reported that Africanized Honeybees are being found all over Florida and with increased frequency. It is thought that they are being introduced through ports and by beekeepers bringing the bees in from other states. FDACS Division of Apiary Inspection is recommending that if wild bees are located and not in a contained bee box they should be destroyed. The major concern is public awareness and education.
This will become a big issue for PCO’s since beekeepers are not allowed to destroy swarms and PCO’s will be called upon to provide this service in the future. The bees are easy to destroy, but it is dangerous if not done properly. The Agency is considering removing the exemption allowing beekeepers to capture and transport hives, since with the presence and increasing prevalence of AHB’s the danger is now too great to continue this practice.

**Development of Recommendations Regarding Prior Notifications for Inspections**
This agenda item was raised at a previous meeting by D.R. Sapp. He was concerned that inspections were being done without prior notification and questioned why the change in policy. Phil Helseth reported that there is no policy in place that requires prior notification for routine inspections. At this time 80% - 90% of the inspectors are notifying the companies of the upcoming inspections. Jeff Blair summarized the issue and identified that it appears this issue has been handled and no action from the Council is necessary at this time. The Council agreed and no further discussion took place.

**Requirements for Termite Contractors to Provide Service if Assuming a Contract from Another Pest Control Company Discussion**
Phil Koehler identified a range of options for the Council to evaluate. Member’s were asked to rank the acceptability of the various options using a 4-point acceptability scale where 4 = acceptable, 3 = minor reservations, 2 = major reservations, and 1 = not acceptable. Following the ranking of options, participants were requested to express their reservations, if any, with the options.

**Summary:**
After all of the options were evaluated, the only option that had significant support was for the status quo, making no changes to related to requirements for assuming contracts from another PCO. However, members agreed that this should be an education issue and referred to the Education Subcommittee.

**Council Action:**
Motion—The Council voted unanimously, 9 - 0 in favor, to refer this issue to the Education Subcommittee for recommendations.

**Options Acceptability Ranking Exercise Results**

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<th>4=acceptable</th>
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<th>1= not acceptable</th>
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<tr>
<td>Initial Ranking 1/17/06</td>
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<td>3</td>
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**Members Reservations and Comments:**
R. Capelouto: To leave things the way they are allows termite protection companies to become insurance companies.
Al Hoffer: The way things are encourages incompetent treatment and discourages competent treatment.
D.R. Sapp: Has never liked the 5 year treatment.

Require the new company to treat, even though there may be no need to treat.

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Members Reservations and Comments:
T. Hulett: Concerned about putting down unnecessary chemicals.
E. Santella: Should not prevent a company from putting down new chemicals to fix a poor previous treatment.
D.R. Sapp: Contrary to IPM. Not the way to go, from an environmental perspective.
A. Hoffer: Does not solve the problem.

Require the new company to reimburse the company that treated for a fair amount to cover the cost of their treatment.

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Members Reservations and Comments:
D.R. Sapp: No way to enforce, probably not legal.

Require companies to provide a 5 year contract, no annual renewals. Money would be due to the company without yearly renewal by the homeowner.

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Members Reservations and Comments:
T. Hulett: Companies would fall by the wayside, go out of business and resurface.
E. Santella: Companies go out of business and she doesn’t see how this addresses that.
P. Koehler: Supports because it eliminates some of the current loopholes.
Require companies to provide a contract for 5 years and charge the full amount up front.

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Members Reservations and Comments
B. McGranahan: Unenforceable, multiple owners possible, no way to keep track.
R. Capelouto: Companies will run into major financial issues due to the collection of money being out of balance with monies spent.

Remove the requirement for a 5 year contract on new construction. Require a 1 year contract. All contracts after that would be remedial and fall under a different part of the rule.

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Members Reservations and Comments:
R. Capelouto: Would be a real blow to consumer protection. Would encourage companies to not apply label strength products.
D.R Sapp: Agreed with R. Capelouto.
T. Hulett: FDACS would not accept. System is not broken so don’t fix it.
A. Hoffer: May be better off focusing on pre-treat issues.
P. Koehler: Supports this option because it is not fair to hold the PCO responsible because the homeowner will invariably do something to break the barrier.

Require all wood in the structure to be treated with borates and provide a lifetime contract on the house.

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Members Reservations and Comments:
D.R. Sapp: Outside the authority of FDACS. Discriminates against materials and methods.
Require new companies after the 1st year when taking over an account to install monitors and document quarterly inspections to detect termites and treat when necessary.

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Members Reservations and Comments:
D.R. Sapp: FDACS does not have authority to enforce. Would drive up cost to consumers.
T. Hullet: This is penalizing the company that picked up the renewal.

Recommend that FDACS initiate rulemaking regarding assumption of contracts between companies.

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Members Reservations and Comments:
E. Santella: Seems there are a lot of other issues that the Council can work on. Workshops are expensive and time consuming. A good subject for the Education Subcommittee to address.
T. Hulett: Should focus on the initial treatment and it’s enforcement. Feels the Council should go back and address it as an education issue and not as a problem until it is one.
P. Quartuccio: Agrees with T. Hulett. Fighting the same battle, folks that are not doing the initial treatments correctly.
S. Dwinell: In a situation where companies are taking over from a company that has done a good job, you are penalizing the initial company.
D.R. Sapp: This has been happening for years and is not a new problem.
E. Allen: Can see the point and questioned if there is another way that customers can be educated. Doesn’t feel that FDACS is responsible for this and it is the responsibility of the PCO.
P. Koehler: Feels there is something wrong that another company can step in after the initial treatment and expense has been incurred by the initial company. Feels that a 5 year warranty is not appropriate.
R. Capelouto: Creates a disincentive for companies to do good work. Feels that a law, with detailed boundaries about what is treatment is needed.
E. Allen made a motion this be referred to the Education Subcommittee for handling.

Public Comment
Council Chair, Richard Meahl, invited members of the public to address the Council. No members of the public addressed comments to the Council.
Agenda Items and Assignments for the April 18, 2006 Meeting

Update on Council Member’s Terms/Re-Appointments—FDACS
Workplan and Meeting Schedule Updates—Jeff Blair
Update on Legislative Issues—Steve Rutz
Rule Development Status—Steve Dwinell
Report of the Consumer Education Subcommittee—Elizabeth Allen
Report on the WDO Workshops Process—Steve Dwinell
Report on the WDO Neutral Scheme Pilot Project—Steve Dwinell
Review of Statistics and Trends Related to Compliance Assistance Requests—Mike Page
Enforcement Statistic Discussion and Enforcement Case Study Scenario Sample—Mike Page
FDACS Exam Update

Next Meeting Date and Location
April 18, 2006—Jacksonville, Florida

Future Meeting Dates and Locations
July 18, 2006—Apopka, Florida
October 17, 2006—Tallahassee, Florida
January 16, 2007—TBD
April 17, 2007—TBD
July 17, 2007—TBD
October 16, 2007—TBD

Adjourn
The Council voted unanimously, 9 - 0 in favor, to adjourn at 1:40 PM.

Staff Assignments
- Update Council on status of their terms/re-appointments.
- Provide a detailed compliance assistance request report.
- Schedule a joint meeting with inspectors for the next Apopka meeting.
- Draft letter of appreciation for Steve Rutz from the Council.
- DACS will issue a memo indicating that post construction treatments must comply with the label requirements (from the July 19, 2005 meeting).
- DACS should develop a mechanism for conducting neutral scheme inspections for post construction treatment label requirements (from the July 19, 2005 meeting).
ATTACHMENT 1

MEETING EVALUATION RESULTS

1. Please assess the overall meeting.

9.78  The background information was very useful.
9.89  The agenda packet was very useful.
9.67  The objectives for the meeting were stated at the outset.
9.44  Overall, the objectives of the meeting were fully achieved.
10.0  Update on Agency Enforcement Activities and Case Examples.
9.89  Legislative Issues Update.
9.78  Update on DACS Rule Development Efforts.
8.43  Report from the Consumer Education Subcommittee.
9.78  Refinements to Council’s Meeting Attendance Policy Proposal.
9.89  Update on the WDO Form Workshop Process.
9.89  Update on the WDO Neutral Scheme Pilot Project.
9.78  Enforcement Statistics and Representative Enforcement Case Samples Discussion.
9.78  Compliance Assistance Request Statistics and Trends Review.
9.89  Africanized Honeybees and Implications to PCO’s Report and Discussion.
9.89  Recommendations Regarding Prior Notifications for Inspections Discussion.
9.44  Requirements for Termite Contractors to Provide Service if Assuming a Contract

2. Please tell us how well the Facilitator helped the participants engage in the meeting.

9.78  The participants followed the direction of the Facilitator.
10.0  The Facilitator made sure the concerns of all participants were heard.
9.89  The Facilitator helped us arrange our time well.
10.0  Participant input was documented accurately.

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

9.89  Overall, I am very satisfied with the meeting.
10.0  I was very satisfied with the services provided by the Facilitator.
10.0  I am satisfied with the outcome of the meeting.

4. What progress did you make?

9.78  I know what the next steps following this meeting will be.
10.0  I know who is responsible for the next steps.
ATTACHMENT 2

MEETING ATTENDANCE

Robert McGranahan, Council Member
Peter Quartuccio, Council Member
Allen Hoffer, Council Member
Richard Meahl, Council Chair
Steve Dwinell, FDACS Representative
Tim Hulett, Council Member
Erica Santella, Council Member
Raymond Capelouto, Council Member
Dempsey R. Sapp, Council Member
Phil Koehler, Council Member
Elizabeth Allen, Council Member
Jeff Lee, Public
Lynn Hoffer, Public
Matthew Dempsey, FPMA
Michael McDaniel, FDACS
Phillip Helseth, FDACS
Stacey Dallis Reese, FDACS
ATTACHMENT 3

COUNCIL’S UPDATED WORKPLAN
(Last Updated and Approved Unanimously January 17, 2006)

WORKPLAN BY TASK

TASK A—ENHANCING 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.
   D. DACS will update Council on relevant statutory issues 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.
   B. Compliance assistance requests process reviewed at each subsequent 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 discusses effectiveness assessment survey results annually at the April meeting.

8. Council Policies
   A. Council will rotate Chair position and elect new Secretary at each July meeting.
   B. Council considered a member proxy proposal at the July 19, 2005 meeting.
   C. Member Comment Process for absent members was adopted at the October 18, 2005 meeting.
   D. Member attendance policy proposal will be considered at the January 17, 2006 meeting.
   E. Council will review membership terms and statutory mandate at the January 17, 2006 meeting.
9. Coordinate enforcement strategies for new construction pre-treatments between: DACS, Florida Building Commission; BOAF (building officials), FHBA (home builders), and PCO’s.  
   A. Council reviewed “Termite Protection in Buildings” document at the April 2005 meeting.

10. Consumer Education Efforts
   A. Council discussed consumer education strategies at the July 19, 2005 meeting.
   B. Council convened a Consumer Education Subcommittee at July 19, 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.
    
   B. WDO Inspection Form workshop process was convened in September of 2005.

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. 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.
   K. Council developed recommendations for neutral scheme inspections including a set of criteria at the July 19, 2005 meeting.
   L. Council adopted a Compliance Assistance Request Process at the April 22, 2004 meeting, and revisions at the July 20, 2004 meeting.
   M. Council discussed enforcement issues related to ID cards at the October 18, 2005 meeting.
   N. Council discussed compliance resolution rates at the October 18, 2005 meeting.
   O. Council approved WDO neutral scheme pilot project at the October 18, 2005 meeting.
   P. Considered recommendations to improve effectiveness of post construction treatment standards at the July 19, 2005 and October 18, 2005 Meeting.
   Q. Council will discuss Africanized Honeybees and implications to the industry at the January 17, 2006 meeting.
   R. Council will consider recommendations regarding prior notification of inspections at the January 17, 2006 meeting.
   S. Council will consider requirements related to assumption of contracts at the January 17, 2006 meeting.