PEST CONTROL ENFORCEMENT ADVISORY COUNCIL

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

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

FT. MYERS, 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 19, 2005

Opening and Meeting Attendance
Chairman Meahl opened the meeting shortly at 9:25 AM, and the following Council members were present:
Elizabeth Allen, Ray Capelouto (vice-chair), Al Hoffer, Tim Hulett, Phil Koehler, Richard Meahl (chair), Pete Quartuccio (secretary) Steve Rutz, Erica Santella, and DR Sapp.

Bill Opp, Lee County Mosquito Control Director, welcomed the Council and was appreciated for the generous use of his facility.

Tim Hulett presented the gavel to Richard Meahl as the incoming chair. Tim was thanked by the Council for his year of service as Chair.

DACS Staff Present
Steve Dwinell and Stacey Reese.

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 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 amended 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 Conduct the Annual Election of Officers
✓ To Consider a Member Proxy Proposal
✓ To Discuss Enforcement Statistics and Representative Enforcement Case Sample/s
✓ To Discuss Compliance Assistance Request Issues
✓ To Discuss a Focused Enforcement Inspection Strategy and Criteria Development
✓ To Review and Discuss Consumer Education Strategies
✓ To Discuss Post Construction Treatment Recommendations Proposal
✓ To Consider Minimum Standards for Post-Construction Treatment
✓ To Consider Public Comment
✓ To Identify Needed Next Steps, Assignments, and Agenda Items For Next Meeting
Amendment to Agenda:
A minimum standards for post-construction treatment preliminary discussion was added to the agenda by unanimous agreement of the Council.

Approval of April 19, 2005 Facilitator’s Report
The Council voted unanimously, 9 - 0 in favor, to approve the April 19, 2005 Facilitator’s Report as presented.

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)

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.

Summary of Discussion and Member’s Questions and Comments:
There were no questions on the report.

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:
Steve reported that rule development workshops for amendment to 5E14-105, Contracts, and Rule 5E14-149, Enforcement Response, are scheduled. In addition, a facilitated workshop process to consider refinements to the WDO Inspection Report form will commence in September of 2005.

Annual Election of Officers
The elections nominating committee, consisting of Phil Koehler and Ray Capelouto, recommended Pete Quartuccio for the secretary position. Each year the Council will elect a new secretary who will be second in line for the chair position. Each year the vice-chair will succeed to the chair position and the secretary will succeed to the vice-chair position.

Council Action:
The Council voted unanimously, 9 - 0 in favor, to approve Pete Quartuccio as Council secretary.
**Member Proxy Proposal Discussion**

At the request of Council members, Jeff Blair presented a draft of a PCEAC Member Proxy Policy proposal. At the conclusion of an initial ranking of the proposal, a second ranking removing the requirement for the proxy to attend a meeting prior to being approved as a proxy, and a Council discussion, there was not sufficient support for the proposal. It was agreed that procedures already allow for members to send their written comments on issues to the Facilitator or DACS staff, who could then read their comments into the record during discussion of an issue during a scheduled PCEAC meeting. At the request of the Council, Jeff Blair agreed to revise the PCEAC Organizational and Procedural Guidelines to make this process explicit.

**PCEAC Member Proxy Policy Proposal Evaluated by Council**

Pest Control Advisory Council Members may nominate one individual to attend meetings in their absence.

**Selection of Proxy**

- The member must select their nominee, and in writing notify the Department of Agriculture and Consumer Services.
- The nominee must attend the next meeting of the PCEAC, and the sponsoring member must also be present.
- Prior to the next scheduled meeting of the PCEAC, DACS will notify the member if their proxy selection is approved.
- PCEAC members may notify DACS of any concerns they have regarding the nominee.

**Participation of Approved Proxy**

- The member must notify DACS and the facilitator that they will miss the next meeting and their proxy will attend in their place.
- Member must provide proxy with a copy of the upcoming meeting’s agenda and consult with proxy on the substantive discussion issues before the Council.
- Member must provide proxy with a summary of their views on each of the substantive issues under consideration at the upcoming Council meeting.
- Proxy may sit at the table and participate in all substantive discussions. Proxy should represent the member’s views on substantive discussion issues. If they wish to express a personal view on a subject after they have spoken on behalf of the member, they must identify that the view is their own, and not the member’s.
- Proxy will not participate in the discussion of procedural matters such as the yearly assessment survey.
- Proxy may not vote.
- Proxy member may not propose agenda items.
- Proxy will agree to follow all procedures as stipulated in the PCEAC’s “Organizational and Procedural Guidelines”.

**Removal of Proxy**

- The Department may remove a proxy for cause.
Summary of Discussion and Member’s Questions and Comments:
Following are the ranking results and summary of the discussion on the proposal:

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<tr>
<td>Initial Ranking of draft proposal July 19, 2005</td>
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<td>*Revised Ranking without attendance requirement</td>
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* Steve Rutz proposed that the proxy not be required to attend a meeting before selection as a proxy.

Minor Reservations
Steve Rutz expressed concern with the provision requiring the person to attend one meeting before they can serve as a proxy.

Major Reservations/Not Acceptable
Erica Santella expressed that this Council should be a priority for members and if they are not able to attend on a regular basis they should re-evaluate their participation on the Council. She also asked if other committees/council allowed proxies. Jeff Blair explained that each group is set-up differently. He stated that he felt each member should decide if they think this is an appropriate policy for the Council, and not overly rely on how other groups address this issue. Erica felt that it was an honor to be chosen for this Council and member’s schedules should be arranged around the meetings.

Ray Capelouto stated that this proposal is impractical and it would be difficult to bring a proxy up to speed with the Council procedures, etc. The Council meeting requirements do not state that it is not acceptable to miss a meeting due to emergency. Ray stated that the proxy proposal is not necessary.

Al Hoffer opined that the Council is important enough to prioritize attending each meeting. He also stated that if he found he could not attend meetings on a regular basis he would resign so that a consistent member could step in.

Richard Meahl expressed that he understood the need for a member or interest group to be represented at each meeting, but a proxy concept was not the way to achieve this.

Pete Quartuccio and Tim Hulett agreed with the previous comments.
Discussion
Elizabeth Allen suggested, that since her position representing consumers and Phil Koehler’s representing science only have one member each, would member’s support proxy positions for only their positions.

Tim Hullett asked if a member cannot attend could the member have someone in the audience to state their opinion? If so, there would be no need for this proposal to be approved. This is the way that meetings are currently conducted.

Jeff Blair expressed that if a member cannot attend they can email their opinion/stance to him to be presented to the Council, by him, in their absence. Al Hoffer expressed that anyone can attend to support an issue.

Elizabeth Allen asked if the travel expenses could be covered. Steve Rutz stated that travel can be paid for by DACS if the person travels to the meeting at the request of the Department. This would be possible, but it will have to be approved by the DACS well before the meeting.

Steve Rutz asked if the meeting procedures stated that Public Comment is required. Jeff Blair answered that Public Comment is allowed as issues are discussed and is also called for at the end of the meeting.

Ray Capelouto stated that the message can be sent and received by an audience member.

Jeff Blair will prepare a proposal for the next meeting to make this procedure explicit.

Agency Enforcement Activities and Representative Enforcement Cases
Mike Page could not attend the meeting due to EOC Activation after Hurricane Dennis. Steve Dwinell reported in Mike’s absence.

Steve indicated that the main issue currently under review is operator identification cards being used by people that are not employees of the company (leasing licenses), and small fumigation companies sharing employees. The number of fines for illegal operators has increased in recent months.
Focused Enforcement Inspection Strategy and Criteria Development Discussion

Steve Dwinell presented statistics on current neutral scheme priorities and strategies. Members were provided an opportunity to discuss the policy and propose refinements. At the conclusion of Steve’s presentation, a question and answer session, and a members discussion period, members were asked to evaluate 5 proposals that were identified during the course of the discussions. Each of the five proposals for refinements to the focused enforcement inspection strategy were unanimously approved by all 10 members present. Following are the ranking results for each of the proposals evaluated by the Council:

1. Report violation rates for each type of inspection, with information on whether violations were major (substantive in nature) or minor (technical in nature).

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2. Develop a neutral scheme inspection procedure for WDO inspections for real estate transactions.

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3. Develop a mechanism for increasing inspection frequency based on compliance rate.

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4. Conduct records review for preventive treatments for new construction as part of the annual licensee inspection process.

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5. Prioritize neutral scheme inspection types based on the following set of criteria: health, safety, economic impacts, and feasibility.

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Consumer Education Discussion
Elizabeth Allen presented a PowerPoint presentation with recommendations for a strategy to educate consumers regarding the pest control industry. The recommendations included brochures and bulletins, webpages and weblinks, seminars by DACS inspectors, and coordination and cooperation with the various entities associated with educating consumers on the industry and issues related to the industry. At the conclusion of Elizabeth’s presentation, a question and answer session, and a members discussion period, members voted unanimously to convene a subcommittee on consumer education. The Subcommittee is charged with reviewing existing resources, identifying resource gaps, and developing recommendations and strategies for consideration by the Council. In addition, DACS agreed to report back to the Council on the viability of the various recommendations.

Council Action:
The Council voted unanimously, 10 - 0 in favor, to convene a Consumer Education Subcommittee. Members are Elizabeth Allen (chair), Al Hoffer, Phil Koehler, Pete Quartuccio, and Steve Rutz.

Summary of Discussion and Member’s Questions and Comments:
Ideas for Consideration:
- Revise brochures
- Revise website
- Add Keyword index (i.e., termites and mosquitoes)
- Seminars

Comments:
- We may be able to use other groups to assist in consumer education such as the League of Cities and Association of Counties, and extension service.
- May also be able to tap into existing information available on Florida such as IFAS for consumer education issues.
- Need to get information developed before dissemination.
- Need to educate other groups such as real estate professionals and builders
- Consumer awareness needs to be increased
- Council can make a recommendation to IFAS to emphasize consumer education on termite and WDO issues.
- The compliance assistance form should be online.
- Inspectors should be part of educational effort.
- Department will report on actions in response to recommendations.
- Need to inventory available information.
- Should decide on what the basic information should be, and develop strategy for repeating information consistently among various websites.
Post Construction Treatment Recommendations Proposal Discussion
Elizabeth Allen presented a PowerPoint presentation with recommendations regarding post construction treatment requirements. At the conclusion of Elizabeth’s presentation, a question and answer session, and a members discussion period, member’s were asked to evaluate two proposals. Following is the evaluation ranking results for the proposals considered by the Council:

1. DACS will issue a memo indicating that post construction treatments must comply with the label requirements.

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Minor Reservations:
This will have little or no real impact.

Major Reservations:
Label is a guideline and not a requirement.

2. DACS should develop a mechanism for conducting neutral scheme inspections for post construction treatment label requirements.

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Minor Reservations:
This will be difficult to do.

Summary of Discussion and Member’s Questions and Comments:
- Rodding may be necessary in some situations due to construction.
- Information presented on damage rates in Ponte Vedra could be confounded by other factors, such as failure to renew their contract, etc.
- Trench is needed with rodding to capture material that moves up from rod hole.
- Post-construction treatment inspections are not done except as a result of a consumer complaint. Consider adding a neutral scheme inspection for post construction trench requirement.
- Post construction treatment must follow label directions.
- Most labels require trenching as an enforceable requirement.
- Consumer awareness of this requirement may help.
Minimum Standards for Post Construction Treatment
Ray Capelouto presented a written proposal regarding post construction treatment requirements. At the conclusion of Ray’s presentation, a question and answer session, and a members discussion period, member’s voted unanimously to discuss this issue in greater detail at the October 18, 2005 PCEAC meeting.

Council Action:
The Council voted unanimously, 10 - 0 in favor, to discuss minimum standards for post construction treatment at the October 18, 2005 PCEAC meeting.

Summary of Discussion and Member’s Questions and Comments
- D.R. Sapp commented that ethics and business practices cannot be mandated by PCEAC.
- Tim Hulett stated that the Council has to be very careful in how this issue is approached. He is willing to discuss but with extreme caution. He does not want to legislate something that will eventually hurt the Council.
- Erica Santella stated that the consumer education initiative should play a big part in education consumers why should stay with a reputable company.
- Steve Rutz stated that this issue is much too important to be discussed in a short format.
- Tim Hulett offered that his company always gets a signed contract.

Draft of Proposal
Background. Currently, no statute or rule exists prohibiting a licensee from issuing a post-construction termite protection agreement to a property owner without first performing treatments in accordance with industry standards. In fact, current statutes and rules allow such contract issuance in the absence of any treatments or preventive measures being performed.

The effect of the this absence of regulation is that any licensee licensed in the category of termites and other wood destroying organisms could “take over” the termite service agreements of competitors simply by marketing lower renewal prices to the competitors’ customers. Preventive contracts can similarly be issued to existing property owners who have no existing contract without the licensee performing any treatments, although this is less of a likelihood in that the issuing licensee would have no reasonably verifiable previous treatment upon which to base its own contract.

After the 1992 enactment of statutes requiring adherence to EPA label minimum requirements for preventative treatment, and especially after stepped-up enforcement of these statutes, many licensees unwilling to obey the law or, fearing enforcement actions, unwilling to skirt it, withdrew from this segment of the market. Now, licensees are capitalizing on the lack of minimum standards to enter this market – essentially as unregulated, unlicensed insurance companies. Consumers are implicitly poorly served by companies who specialize in the acquisition-by-marketing-alone than in the underlying procedures necessary for true protection against termites.

Proposal. The Council should decide to abandon its previous position of not contemplating advising the Department regarding the need for and content of new statutes and rules, and should recommend to the Department that it recognize that both the industry and consumers are ultimately poorly served by the absence of minimum standards for the protection of existing structures for subterranean termites, and begin both studying how best to safeguard the interests of consumers needing real protection for what is typically their largest investment, and for quality-minded licensees who understandably want to reap the benefits of performing quality work.
Public Comment
Council Chair, Richard Meahl, invited members of the public to address the Council. Two members of the public addressed comments to the Council.

Agenda Items and Assignments for the October 18, 2005 Meeting

Organizational and Procedural Guidelines Refinements—Jeff Blair
2006 Meeting Schedule—Jeff Blair
Rule Development Status—Steve Dwinell
Report of the Consumer Education Subcommittee—Elizabeth Allen
Enforcement Statistic Discussion and Enforcement Case Study Scenario Sample—Mike Page
Report on Compliance Resolution Rates—DACS
Status and Update of Compliance Assistance Requests—Mike Page
Implementation of Neutral Scheme Inspections Recommendations Report—DACS
Minimum Standards for Post Construction Treatment Discussion—Ray Capelouto
Discussion of Enforcement Issues Related to ID Cards—DACS

Next Meeting Date and Location
October 18, 2005—West Palm Beach, Florida; Hampton Inn West Palm Beach Florida Turnpike, 2025 Vista Parkway, West Palm Beach, Florida 33411; 1.561.682.9990

Future Meeting Dates and Locations
January 17, 2006—Live Oak, Florida

Adjourn
The Council voted unanimously, 10 - 0 in favor, to adjourn at 3:15 PM.
ATTACHMENT 1

MEETING EVALUATION RESULTS

July 19, 2005—Ft. Myers, Florida

0 To 10 Rating Scale Where A 0 Means Totally Disagree And A 10 Means Totally Agree.

1. Please assess the overall meeting.

9.6 The background information was very useful.
9.9 The agenda packet was very useful.
9.9 The objectives for the meeting were stated at the outset.
9.8 Overall, the objectives of the meeting were fully achieved.
9.9 Update on Agency Enforcement Activities and Case Examples.
9.9 Legislative Issues Update.
9.6 Update on DACS Rule Development Efforts.
9.9 Member Proxy Proposal Discussion.
9.9 Enforcement Statistics and Representative Enforcement Case Samples Discussion.
9.8 Compliance Assistance Request Issues Discussion.
9.8 Focused Enforcement Inspection Strategy Discussion.
9.5 Consumer Education Strategies Discussion.
9.6 Post Construction Treatment Proposal Discussion.

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

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

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

9.7 Overall, I am very satisfied with the meeting.
9.7 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?

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

5. Member’s Written Comments.

- Elizabeth Allen worked hard on her presentations.
- Good meeting.
ATTACHMENT 2

COUNCIL’S UPDATED WORKPLAN
(Last Updated and Approved Unanimously July 19, 2005)

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.
   A. Council will review Sample Representative Enforcement Cases at each meeting.
   A. 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.
   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 will discuss effectiveness assessment survey results annually at the April 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 reviewed “Termite Protection in Buildings” document at the April 2005 meeting.

9. Council will discuss consumer education strategies at the July 19, 2005 meeting.

10. Council will consider a member proxy proposal at the 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 rule development process will be convened in summer 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. Develop recommendations to improve effectiveness of post construction treatment standards.
   A. Council will consider proposal at the July 19, 2005 meeting.

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.
   *Draft reviewed and adopted by Council on November 20, 2003.*

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 will consider the development of a focused inspection strategy based on a set of criteria at the July 19, 2005 meeting.