PEST CONTROL ENFORCEMENT ADVISORY COUNCIL

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

FACILITATOR’S SUMMARY REPORT OF THE OCTOBER 18, 2005 MEETING

WEST PALM BEACH, FLORIDA

Meeting Design & Facilitation By

Florida Conflict Resolution Consortium

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OVERVIEW OF COUNCIL’S KEY DECISIONS

TUESDAY, OCTOBER 18, 2005

Opening and Meeting Attendance
Chairman Meahl opened the meeting shortly at 9:05 AM, and the following Council members were present:
Ray Capelouto (vice-chair), Tim Hulett, Phil Koehler, Bob McGranaham, Richard Meahl (chair), Pete Quartuccio (secretary), Erica Santella, and DR Sapp.

Members Absent: Elizabeth Allen, Al Hoffer, and Steve Rutz.

Members offered appreciation to Tim Hulett, for his generous hospitality toward members and staff.

DACS Staff Present
Mary Cohen, Steve Dwinell, Mike Page, and Stacey Reese.

Public Present
Michael Beckers, James Box, Norman Goldberg, and David Walston.

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, 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
✓ To Hear a Legislative Issues Update
✓ To Hear an Update on DACS Rule Development Efforts
✓ To Consider Refinements to Council’s Organizational and Procedural Guidelines
✓ To Hear a Report from the Consumer Education Subcommittee
✓ To Discuss Enforcement Statistics and Representative Enforcement Case Sample/s
✓ To Discuss Compliance Assistance Request Issues
✓ To Discuss Compliance Resolution Rates
✓ To Discuss Implementation of Neutral Scheme Inspections Recommendations
✓ To Discuss Post Construction Treatment Minimum Standards
✓ To Consider Public Comment
✓ To Identify Needed Next Steps, Assignments, and Agenda Items For Next Meeting
Approval of July 19, 2005 Facilitator’s Report
The Council voted unanimously, 8 - 0 in favor, to approve the July 19, 2005 Facilitator’s Report as presented.

Review and Approval of Updated Workplan and Meeting Schedule
Following a review of the Workplan, included as pages 3 - 5 of the agenda packet, the Council took the following actions.

Council Action:
The Council voted unanimously, 8 - 0 in favor, to approve the Council’s workplan and meeting schedule as presented.

Approved Meeting Schedule:
January 17, 2006—Live Oak, Florida
April 18, 2006—Jacksonville, Florida
July 18, 2006—Apopka, Florida
October 17, 2006—Tallahassee, Florida
(Attachment 2—Workplan)

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.

Council Action:
The Council voted unanimously, 8 - 0 in favor, to accept the report as presented.

Summary of Discussion and Member’s Questions and Comments:
There will likely be changes proposed to Chapter 482.
The mold-remediation bill will be considered during the 2006 legislative session.
FDACS will keep the Council updated on legislation impacting the industry.

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, 8 - 0 in favor, to accept the report as presented.

Steve Dwinell stated that since they had conducted rule development workshops, there will only be one rule adoption hearing, and asked for the Council’s recommendations on location. The consensus was for a central location, with the hearing starting at 10:00 AM.
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, took place. In addition, a facilitated workshop process to consider refinements to the WDO Inspection Report form began in September of 2005, and there are two additional workshops scheduled.
- Tim Hulett asked if the approved rule would be presented to the Associations. Mike Page said a copy would be provided.
- Ray Capelouto raised the question about contracts.
- D.R. Sapp asked a question about the anniversary date of contracts.

Refinements to Council’s Organizational and Procedural Guidelines
Jeff Blair, Council Facilitator, proposed that the Council consider a policy that would provide an explicit mechanism to ensure that all stakeholder views were considered for each agenda item. The proposal provides that members who will be absent at an upcoming meeting could send their written comments to the Facilitator and DACS, and their comments would be presented by the Facilitator during the appropriate agenda item.

Council Action:
Motion—The Council voted unanimously, 7 - 0 in favor, to approve the proposal regarding absentee member comments as amended. The adopted policy is as follows:

Any member of the Council who wishes to have their comments/opinions read into the record at a meeting they will not be able to attend, may send their written comments by e-mail or fax to the facilitator and the Department of Agriculture. The member should identify the agenda item/s that the comment/s pertain to. The facilitator will read the absentee member’s comments into the record during the discussion portion of the specific agenda item the member is commenting on, and the member’s comments will be included in the Facilitator’s meeting summary report. The Council member may only make one comment per agenda item, and each comment will be limited to a maximum of five-hundred (500) words.

Agency Enforcement Activities and Representative Enforcement Cases
Mike Page, Bureau Chief of Entomology and Pest Control, reported on agency enforcement activities and responded to member’s questions and comments.

Council Action:
The Council voted unanimously, 8 - 0 in favor, to accept the report as presented.

Summary of Discussion and Member’s Questions and Comments:
- FDACS has begun the implementation of a Case Tracking database to identify trends. Target date for completion is June 30, 2006.
- D.R. Sapp raised the question about the reduction of fines from year to year. Mike Page reported there are some fines in a pending status. Steve Dwinell reported that various reasons might be contributing factors: the fine formula has been adjusted, more companies are requesting formal hearings, number of large fines has decreased, and some fines pending.
Erica Santella raised a concern about the consistency of the inspectors during roadside inspections. Mike Page asked for an example.

Tim Hulett raised a concern regarding the way the report is written and presented. Mike Page responded that he agreed with the concern and is in the process of changing the report so the numbers reported are broken down in a more useful format.

D.R. Sapp raised the concern of inspectors giving opinions at the site. Mike Page asked that he talk with him after the meeting.

Mike Page reported on Fumigation Field OP that was conducted September, 2005 in South Florida. A handout was presented.

Phil Koehler asked for the resolutions of the fumigation field op. Mike Page answered that it just occurred in September so the files are still being compiled.

Richard Meahl asked how many inspectors were involved. Answer: 11 inspectors in a 2 ½ day operation. He stated that he was impressed with the operation and felt it was a good use of time.

D.R. Sapp raised the concern that inspectors are showing up at facilities without prior notice. He stated that this is a change. Mike Page reported that he is not encouraging the inspectors to do this and he will check into the issue. Steve Dwinell suggested that the Council look at this issue as a topic for a later meeting. He suggested the Council take this issue up as an agenda item and make a recommendation to FDACS.

Compliance Assistance Request Issues Discussion
Mike Page, Bureau Chief of Entomology and Pest Control, reported on compliance assistance request issues and responded to member’s questions and comments.

Council Action:
The Council voted unanimously, 8 - 0 in favor, to accept the report as presented.

Overview of Issue:
In general, member’s expressed appreciation for the success of this new process. Mike reported there were 95 cases to date, and all but two of the cases were resolved as a result of the process. Mike commented that this process was also useful in tracking the activities of the FDACS inspectors. Mike reported that the majority of cases were in the category of “termite treatment/contract”.
Compliance Resolution Rates Discussion
Steve Dwinell, Assistant Division Director of the Division of Agriculture and Environmental Services, reported on compliance resolution rates, and responded to member’s questions and comments.

Council Action:
The Council voted unanimously, 8 - 0 in favor, to accept the report as presented.

Overview of Issue
Steve reported data on the rates of violation per type of inspection. WDO complaint inspections, fumigations, and misuse investigations had the highest rate of violations per inspection. Preventive treatment for new construction had a relatively low rate and this may represent progress in the area of preventive treatment compliance. In response to the Council’s recommendation, the Bureau of Entomology and Pest Control is implementing a pilot program to conduct inspections on WDO inspection procedures during licensee inspections (discussed in detail in the following agenda item). The Bureau will also be conducting additional statewide enforcement operations (SEO’s) for fumigation aeration and clearances.

Implementation of Neutral Scheme Inspections Recommendations Discussion
Steve Dwinell, Assistant Division Director of the Division of Agriculture and Environmental Services, reported on the implementation strategy related to neutral scheme inspections, a strategy based on Council input, and responded to member’s questions and comments.

Council Action:
The Council voted unanimously, 8 - 0 in favor, to accept the report as presented, and to support the pilot project effort.

Overview of Issue
Steve Dwinell reviewed the proposed pilot project for neutral scheme inspections of WDO inspections and led the discussion. The Council supported the proposal with the addition of inquiries into supervision and training of the WDO inspectors. The pilot project will be conducted for three months and the Department will provide an interim report on the pilot project at the next meeting. It is anticipated close to 100 of these inspections will be conducted over the next three months.

Summary of Discussion and Member’s Questions and Comments:
• To date fumes and lawn maintenance are the planned focus.
• Steve Dwinell asked the Council if they had any recommendations/comments for FDACS on this Pilot Project. Asked for motion on position of Council (approve, comments for change, placement on agenda for future meeting, etc.).
• Mary Cohen reported that FDACS is generally looking for trends not violations.
• Will be tested for 3 months.
• Pete Quartuccio offered that it would be helpful for this to be brought back to the Council at the end of the three month period for discussion/recommendations. Stated this should be a good tool.
Norman Goldberg raised the question of what is prompting the Pilot Program. Steve Dwinell answered that there is some level of non-compliance as a result of complaints and this is an attempt to obtain more information from the routine license inspections that are currently being conducted.

Steve Dwinell stated that FDACS requests that the Council support the Pilot Project under the condition that FDACS report the findings back to the Council for further discussion/recommendations.

Neutral Scheme Inspections Pilot Project Implementation Proposal

I. Four EPC Inspectors will be assigned, one each in SE, NE, Central, and West Florida

II. Project will begin November 1st 2005.

III. Inspectors will expand their inspections of licensees that perform WDO (13645) inspections to complete a more in depth review of completed WDO inspection reports (form 13645) retained on file by the business licensee.

IV. The following procedure will be used:

1 – Chapter 482 FS requires the licensee to retain copies (hard copy or electronic) of all 13645 WDO inspections performed for a period of three years.

2 – The inspector will examine a minimum of 40 recent reports or all that were performed during the previous 12 months, which ever is less.

3 – Each inspection will be examined to determine the following:

(a) Is the current form used for the date issued? (13545 2/04 after 9/04)

(b) Does the inspector have a WDO Identification card or is he/she certified in the WDO category?

(c) Does there appear to be an impractical/unreasonable number of inspections performed by any inspector on a daily basis?

(d) Is there standard/generic language repeated in the reports as to reasons that areas were inaccessible or not inspected etc? (If so, it will be necessary to probe further by question and interview and obtain affidavit if necessary for explanation).

(e) Does the “report of findings” section contain comments about any organisms other than those defined as a WDO by Chapter 482 FS?

(f) Does the report list locations of WDOs in areas other than in, on or under the structure e.g. – live termites found in mulch outside house?
(g) Is the description of location of WDOs adequate?

(h) Are there any additional disclaimers or other language added to the report itself?

(i) Is there any indication of verbal reports being given prior to a written report being issued?

(j) Does it appear from the report that the WDO inspector may also operate as a home inspector?

V. Upon completion of the review, a narrative report will be prepared along with any supporting documentation of discrepancies found. The report will be made part of and attached to the standard business licensee inspection forms that are normally used. The case file cover sheet should be marked in three areas, those being LIC, CAR and WDO.

VI. If an inspection indicates discrepancies or other unusual circumstances pertaining to the conduct of WDO inspections, additional inspection will be conducted as appropriate.

**Post Construction Treatment Minimum Standards Discussion**
Ray Capelouto proposed that the Council consider establishing minimum standards for post construction treatment.

*Council Action:*

**Motion**—The Council voted unanimously, 0 – 8 in favor, to support developing standards for post construction treatment. There was no support for this proposal and all members voted against it.

**Motion**—The Council voted 1 – 7 in favor, to discuss the issue of issuing contracts without conducting a treatment. The proposal did not have sufficient support to achieve the 75% favorable support threshold required for consideration.

*Overview*
Ray Capelouto explained that 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.

**Ray’s 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.

**Summary of Discussion and Member’s Questions and Comments:**
- Jeff Blair suggested that he will facilitate an issues and options discussion that will begin at 12:00 and not extend past 1:30 PM. Members agreed with this proposal.
- This issue was first introduced at the July 19, 2005 meeting, and member’s agreed to discuss this topic at the October meeting. (The July 19, 2005 Report has details on page 9)
- Ray researched what other states are doing in regards to this. He cited statutes from Mississippi, South Carolina, North Carolina, and Georgia. Every state, with the exception of North Carolina, requires full adherence.
- Ray questioned the rationale for having requirements on pre-construction and having no requirements on post-construction treatments.
- Steve Dwinell stated the issues:
  - what constitutes a post construction treatment
  - can/should a licensee be allowed to issue a contract without performing any treatment whatsoever
- Erica Santella called for clarification on the issue.
- Jeff Blair stated the Council needs to agree on the issue to be discussed. Ray Capelouto stated the he does not see how the 2 issues can be separated.

**Proposal:** The Council consider the establishment of post construction treatment minimum standards in order to ensure that licensees do not issue contracts without performing some meaningful treatment.

- Phil Koehler feels we should not legislate treatment without need.
• D.R. Sapp expressed concern about minimum standards on pre-construction treatments. If we are not careful we will jeopardize legitimate companies from doing business in the State of Florida.
• Richard Meahl agreed with D.R. Sapp.
• Ray Capeluto stated this is not a personal issue and the impact on his company has been minimal. He feels the issue is that licensees are getting into the insurance business. He raised the question of FDACS if they feel that the consumer has benefited from enforcement standards. Answer: Yes.
• Steve Dwinell restated his previous point that there are 2 separate issues for discussion.
• Mike Becker suggested that FDACS check with the State of California to see how they handled this situation.
• Jeff Blair asked if the Council would support the Council developing standards for post construction treatment minimum standards. Council voted that no change be made.
• Does the Council want to have a discussion of the establishment of post construction treatment minimum standards in order to ensure that licensees do not issue contracts without performing some meaningful treatment. One vote for having the discussion with the majority voting to not have the discussion.
• Based on lack of support, the issue was dismissed.

Public Comment
Council Chair, Richard Meahl, invited members of the public to address the Council. Members of the public addressed comments to the Council regarding:

Norman Goldberg offered appreciation to FDACS related to the new Customer Assistance efforts, and stated it was working well.

Member Comments
Pete Quartuccio offered appreciation to Ray Capeluto for his research, and conscientious effort to enhance the issue of post construction treatment minimum standards. Jeff Blair stated that it is important that the Council have discussions on all sides of all issues, and that all viewpoints are considered in the context of discussion topics. Erica Santella commented that the consumer perspective is important, especially on issues such as the post construction treatment minimum standards discussion.
Agenda Items and Assignments for the January 17, 2006 Meeting

Meeting Attendance Policy Refinements—Jeff Blair (at the request of Council members)
Review and Approval of Revised Organizational and Procedural Guidelines—Jeff Blair
Status Report and Update on Council Member’s Terms—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
Interim report on 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
Report on the Africanized Honeybee and Implications for the Pest Control Industry—Steve Dwinell
Enforcement Policy Recommendations Related to Prior Notification for Inspections—FDACS
Discussion on Requirements for Termite Contractors to Provide Service if Assuming Another Pest Control Company’s Contract—Phil Koehler

Next Meeting Date and Location
January 17, 2006—Live Oak, Florida;

Future Meeting Dates and Locations
April 18, 2006—Jacksonville, Florida
July 18, 2006—Apopka, Florida
October 17, 2006—Tallahassee, Florida

Adjourn
The Council voted unanimously, 8 - 0 in favor, to adjourn at 1:15 PM.

Staff Assignments
Research and report on term status of Council members.
ATTACHMENT 1

PEST CONTROL ENFORCEMENT ADVISORY COUNCIL
October 18, 2005—West Palm Beach, Florida
Meeting Evaluation Results

A 0 To 10 Rating Scale where a 0 Means Totally Disagree and a 10 Means Totally Agree was utilized.

1. Please assess the overall meeting.

9.8 The background information was very useful.
9.8 The agenda packet was very useful.
9.5 The objectives for the meeting were stated at the outset.
9.5 Overall, the objectives of the meeting were fully achieved.
10.0 Update on Agency Enforcement Activities and Case Examples.
9.5 Legislative Issues Update.
9.5 Update on DACS Rule Development Efforts.
9.5 Report from the Consumer Education Subcommittee.
9.5 Enforcement Statistics and Representative Enforcement Case Samples Discussion.
10.0 Compliance Assistance Request Issues Discussion.
10.0 Compliance Resolution Rates Discussion.
9.8 Implementation of Neutral Scheme Inspections Discussion.
9.8 Post Construction Treatment Minimum Standards Discussion.

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

9.8 The participants followed the direction of the facilitator.
9.8 The facilitator made sure the concerns of all participants were heard.
9.8 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?

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

4. What progress did you make?

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

5. Member Comments.

• The Council works through difficult issues very well. Our growth has been phenomenal. The post construction treatment minimum standards discussion was a difficult issue and we worked through it very well. However, missing the consumer input was huge.
ATTACHMENT 2

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

WORKPLAN BY TASK

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

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

2. Develop recommendations regarding enhancing accountability for improper acts.

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

4. Develop recommendations for improving consumer education on procedures for filing complaints (complaint process) and enhancing the visibility of the process.
   A. DACS compliance assistance requests proposal adopted at July 2004 meeting.
   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.
   B. Member Comments Process for Absent Member will be considered at the October 18, 2005 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.


11. Council considered 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 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. Considered recommendations to improve effectiveness of post construction treatment standards at the July 19, 2005 Meeting.
   A. Council will consider minimum standards at the October 18, 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.

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 will discuss enforcement issues related to ID cards at the October 18, 2005 meeting.
   M. Council will discuss compliance resolution rates at the October 18, 2005 meeting.