I. INTRODUCTION AND PROCEDURAL MATTERS

A. Introductions
Jeff Blair and Bob Jones, facilitators with the Florida Conflict Resolution Consortium, welcomed members and the public to the third negotiation session. Committee members and audience introduced themselves (see, attachment 2 for list of observers). Committee member Norm Smith, Certified Pest Control Operators, had an emergency and could not participate in the negotiation session.

B. Meeting Schedule Revisions
At the August meeting, the Committee agreed by consensus to the following revisions to the adopted meeting schedule:

- #3 August 20, Orlando
- #4 September 10, Orlando
- #5 October 2-3, Orlando (concluding at mid-day on October 3)
- #6 November 12-13, Orlando (2nd day noticed)

C. Review and Approval of July 9, 2002 Committee Summary Report and Minutes
The Committee members present voted unanimously, 8 - 0 in favor, to approve the minutes and facilitators’ summary report from the July 9, 2002 meeting as presented.

D. Agenda Review and Approval
The Committee voted unanimously, 8 - 0 to approve the proposed agenda as presented.

E. Assignments Overview
- Steve Dwinell (D.) will bring back language reflecting the equivalent on the USDA/FS scale to the ASTM wood damage scale.
- Steve D. will bring back initial draft rule language based on the conceptual agreements for soil applied residual treatments.
- Steve D will bring back a DACS proposal establishing minimum conditions for approval of test design protocols.
- Steve D. will bring back initial conceptual statements on Bait Systems for review in September
II. STRATEGY FOR COORDINATING THE STATE AND FEDERAL RULEMAKING PROCESS

To introduce the coordination presentation and discussion, the facilitators reviewed with the Committee the overall committee goal statement:

The purpose of this negotiated rulemaking proceeding is to seek consensus among the members of the committee for establishing efficacy and performance standards for registering termiticides for use as a preventative treatment on new construction, provided that federal efficacy performance standards may be adopted by reference, as intended by recently enacted legislation, chapter 487-041, Laws of Florida.

In addition, the facilitators noted that Frank and Bob agreed to serve on behalf of the Committee as liaisons and collaborate on sharing information and reporting to the Committee on the national and EPA initiatives. Steve agreed to serve to inform the EPA and national initiative on the Florida initiative. The Committee reviewed the consensus coordination statement developed at the July 9 session and added the following language (see underlined below):

The Committee should establish close coordination and communication including reporting and sharing information with the federal and national initiative. The Committee will review and adopt any agreements reached at the federal level during their efforts. The Committee will seek a clear understanding of what EPA is doing and will clarify what Florida needs and what would be acceptable for inclusion in the State rule by DACS from EPA and the national initiative. Any standard adopted by EPA subsequent to the development of the proposed rule should be adopted by the Department provided the conditions of the statute are met by the EPA standards.

Arnold Layne, EPA Acting Associate Director, OPP, US EPA, made a presentation to the Committee covering the:

a. Overview of Federal Pesticide Regulation
b. Historical Background of Termite Control Products Regulation
c. Current and Future Issues
d. Status of Bait Testing Guidelines
e. Status of Termiticide Bait P.R. Notice

Following the presentation the Committee engaged in a question and answer session with Mr. Layne.
III. SOIL APPLIED RESIDUAL TREATMENTS—CONCEPTUAL AGREEMENTS

The Committee first discussed the heading for this section and agreed to change it from “soil barrier systems” to read: “soil applied residual treatments. They then reviewed, ranked and revised the conceptual statements revised after the 1st survey. Members reviewed the comments from the 2nd survey and suggested revisions to the conceptual statements. The Committee agreed to begin identifying terms that could be defined in a section in the rule. A “clean version” of the statements is followed by the revised statements in strikethrough/underline format and Committee member comments.

Definition section

The Committee agreed that the rule should include a definitions section. The first definition they discussed and agreed upon was that of “structures and their contents.”

For the purpose of the rule the term structure and its contents shall mean: the building, both structural and nonstructural components assembled as a part of the construction.

| 8-20-02 Acceptability Consensus Ranking—Structure and its Contents definition |
|---|---|---|---|---|---|
| 4 | 3 | 2 | 1 | **AVERAGE** |
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8-20-02 Comments and Suggestions
a. Leave cellulose out of definition?
b. Does definition of the new construction include whole building not just frame.

“Clean” Revised Soil Applied Residual Treatments Conceptual Agreement Statements

1. The rule should address “Florida conditions” as it relates to testing in the following manner:
   a. Field tests that are conducted in conditions which approximate or are comparable to Florida relative to rainfall, temperature, representative soil types and termite species will be acceptable.

2. In relation to preventing damage and its related standards, the rule should provide the following clarifications:
   a. The testing goal for soil applied residual treatment should be defined as the protection of the structure and thereby its contents.
   b. Where wood damage occurs subsequent to treatment, testing success should equal a rating of 9 or higher under the ASTM D3345 scale or __________ (the equivalent on the USDA/FS scale- Steve Dwinell will get this at next meeting) in at least 90% of test samples.
   c. Soil applied residual treatments shall demonstrate success for a minimum of 5 years.
3. In relation to acceptable test data the rule should allow for the following:

   a. Registrants may present test data that includes field data defined in USEPA’s Product Performance Testing Guidelines for Soil Applied Liquid Termiticides (OPPTS 810.3600), or both field data and EUP data.


❖ Data generated under DACS approved protocols which include quality assurance measures, and meet one of the following, shall be accepted for review:

   a. Research following GLP (Good Lab Practice, 40 CFR Pt 168);
   b. Research conducted by USDA/FS;
   c. Research conducted by universities following established peer reviewed/evaluated protocols;
   d. Research conducted under EUPs on full scale structures under manufacturer supervision and DACS approval of protocols. EUP protocols shall have a quality assurance component consistent with EPA guidelines.

❖ Revised Soil Applied Residual Treatments Conceptual Agreement Statements with Member Comments

1. The rule should address “Florida conditions” as it relates to testing in the following manner:

   a. Field tests that are conducted in conditions which approximate or are comparable to Florida relative to rainfall, temperature, representative soil types and termite species will be acceptable. Agency may require the registrant to provide performance data on a variety of soil types.

   8-20-02 Acceptability Consensus 2nd Ranking-Revised Statement

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❖ Field tests that are conducted in conditions which approximate or are comparable to Florida relative to rainfall, temperature and termite species should be acceptable.

   8-20-02 Acceptability Consensus 1st Ranking on Original Statement

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8-20-02 Comments and Suggestions

❖ Will soil applied residual treatments include “termidor?”
❖ “Soil applied residual treatments”- change from soil applied residual treatments? 8-0
❖ Concern up to this point dealt with soil applied liquids or granules. Need to be clear on inten
❖ Note that the “other” category will be taken up at the end.
❖ Do rainfall and temperature from field conditions adequately reflect or can be extrapolate the conditions of the structure?
b. Field tests that are conducted in conditions which approximate or are comparable to Florida, but only utilize sandy soil types would require the registrant to conduct EUP’s in a variety of soil types found in Florida which should be designated in the rule. Positive results in extreme soil conditions may be extrapolated to other less extreme soil conditions.

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8-20-02 Acceptability Consensus Ranking

8-20-02 Comments and Suggestions
- Does this satisfy DACs need for discretion? Does it need further clarification? Purpose to give flexibility to ask for additional data beyond sandy soil type.
- Sandy soil types represent “best case” testing types.
- Define “extreme soil conditions”?
- Goes to EUP - typically over broader areas. 100 structures required.
- Insert soil types into (a) and delete (b)?
- Name soil type that you will get the worst performance?

2. In relation to preventing damage and its related standards, the rule should provide the following clarifications:

F. The testing goal for soil applied residual treatment should be defined as the protection of the structure and thereby its contents, and non-structural contents permanently affixed within the protected structure.

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8-20-02 Acceptability Consensus Ranking

8-20-02 Comments and Suggestions
- Need to address the statutory reference to “contents”
- Contents: things fixed to real estate and part of structure? E.g. steel structure
- Non-structural cellulose contents?
- Will the rule have a definitions section?
- Industry doesn’t include “contents.” Cover “damage” to the structure. Interior trim included Kitchen cabinets?
- Any affixed to the structure?
- Is this all part of the structure?
- Insurance: items permanently affixed to the structure.
- Contents may not be relevant in this setting.
- This needs to be more general so it can be applied to all three systems.
- Define “contents” first.
b. Where wood damage occurs subsequent to treatment, testing success should equal a rating of 9 or higher under the ASTM D3345 scale or (the equivalent on the USDA/FS scale- Steve will get this at next meeting) in at least 90% of test samples.

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b. Testing success should equal a rating of 9 or higher under the ASTM D3345 scale in at least 90% of test samples.

8-20-02 Comments and Suggestions

- With non repellant chemicals, termites may rebuild mud tubes.
- This is a wood damage scale. 9 is “without significant” damage.
- Board test or EUP structures? If in EUP there is test wood you should apply the standard.
- EUPs are not done without infestation situation. These are appropriate for board tests.
- For “post treatment” damage?
- Using post construction data in support of claim for new construction
- Eliminate the USFS which isn’t using this system in Florida? Intention is not to exclude USFS
- Get the USDA/FS “equivalent” by next meeting (Steve D)

8-20-02 Acceptability Consensus Ranking

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8-20-02 Acceptability Consensus Ranking-As revised

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c. The 5 year timeframe should apply to soil applied liquid residual treatments barrier systems shall demonstrate success for a minimum of 5 years. that are applied in all new construction.

8-20-02 Acceptability Consensus Ranking-As revised

8-20-02 Comments and Suggestions

- What is 5 year timeframe? Statute says for a minimum of five years.

3. In relation to acceptable test data the rule should allow for the following:

a. Registrants may present test data that includes field data defined in USEPA’s Product Performance Testing Guidelines for Soil Applied Liquid Termiticides (OPPTS 810.3600), or both field data and EUP data. The evidence data should be based on the following criteria:

   - Application to soil
   - Florida climate
   - Florida soil types
   - A minimum number of replications as per accepted standards.

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8-20-02 Comments and Suggestions
A. First 3 bulleted comments say the same thing.
B. This is best defined area of efficacy testing. Reference the EPA standard.
   
   **b. DACS should have some discretion to allow data from experimental structures according to the following criteria:**

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8-20-02 Comments and Suggestions
• Delete this. Already addressed above.

4. The rule should address evaluation of damage and appropriate testing standards in the following manner:

   • The ASTM damage rating scale and testing standards will be used. Regarding efficacy at structures the ASTM scale will be used according to…

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8-20-02 Comments and Suggestions
• Delete this. Already addressed above.

5. Data generated under DACS approved protocols which include quality assurance measures, and meet one of the following, shall be accepted for review:

   a. Research following GLP (Good Lab Practice, 40 CFR Pt 168);
   b. Research conducted by USDA/FS;
   c. Research conducted by universities following established peer reviewed/evaluated protocols;
   d. Research conducted under EUPs on full scale structures under manufacturer supervision and DACS approval of protocols. EUP protocols shall have a quality assurance component consistent with EPA guidelines.

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8-20-02 Comments and Suggestions
• DACs will look at who and how data set generated. How to you address the quality of data. GLP is highest standard. Is it fair to apply to all data? USFS doesn’t meet the standard. USFS is the 2nd tier.
• What’s the third tier? Do we need one?
• Field data should meet GLP standards?
ISO 65 lab certification?
EUP- has 2 components. Researcher verification and PCOs.
What about the research design?
These criteria mean only that DACs will look at this. Does it meet conditions, is there an adequate test design?
Is test design a separate issue?
DACS Won't based registration solely on EUPs.

G. DACS should have some discretion to approve alternative protocols according to the following criteria:

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8-20-02 Comments and Suggestions
- Does DACS need a protocol review standard for this rule? A set of conditions to meet before protocol can be approved. **DACS (Steve) will come back in September with a proposal.**
- If there are different protocols to measure similar or the same products, the review process needs transparency. Steve will try to address.
- Need a mechanism for addressing new protocols established by EPA?

IV. BAIT SYSTEMS

A. Presentation on Bait Systems:

Ellen Thoms presented information to the Committee on Bait systems. The presentation was a collaboration between the two leading bait system companies.

B. Discussion of Bait System Key Questions

The Committee members reviewed briefly the 16 questions identified at Session #1. It decided to discuss some central issues raised in the presentation and then agreed to have Steve Dwinell draft an initial set of conceptual statements for consideration at the Committee’s 4th Session in September. Below is a summary of the member comments:

- Time should not be a criteria for bait systems. They should work for as long as installed and maintain.
- When should you start the clock in counting time?
- If you can demonstrate the product works as long as properly installed and maintained, will that be the equivalent of 5 years of testing?
- Perhaps 3 years of testing to take variability into account. If meet success in 3 years, might be deemed to demonstrate they will work as long as they are installed.
- Note studies show a wide range of 29-1073 days to elimination which might support
the 3 year period.

- What about more sites?
- How often the bait replaced? Whatever the product requires by direction for use is how you test it.
- What about bait cycling? If they go away and come back, may be caused by different things. Have to start off with termites and some idea what the population is? Demonstrate effectiveness. Then when they come back, demonstrate effectiveness again.
- 2 cycles may be needed to demonstrate success? Not many 2-bait cycles studied.
- If you go through a complete bait cycle, this should demonstrate success? Then monitor to detect new populations. Importance of a good survey of site
- This is for pre-treat. Does it have to replicate pre-treat conditions?
- Does the fact that you re-mediated termites in an infested structure, prove you will prevent infestation in a new structure?
- No “field plots” have been validated. Have to use in actual building. Does this present the situation that a new product gets applied (without knowing success) and used similar to bait systems?
- Note that studies involved structures with chronic and active infestations
- Many/most houses with bait systems have had some kind of liquid termiticides? These represent a mix of the two treatments?
- Members should read the EPA draft.
- Note: product didn’t prevent infestation in 1.5% of the cases
- Is there any value in the small scale field data or the lab data like there is in the soil applied residual treatment?
- Two step process? New product. 1. Before re-mediation registration, prove in some kind of field test to show through an independent study on the impact on termite population 2. If you do that then go to structures and demonstrate on actual structures. 3. Then can qualify for use on new construction.
- E.g. ant baits. What is required for successful? 1. Have to prove they will eat it. 2. Have to show it will be toxic for some period of time. 3. Have to show toxic over a range of doses (deal with dilution).
- Is this a level of detail we don’t need to get into in the rule.
- Would this cover the various species of termites? Need to test on more than one species of termite?
- Statute refers to termiticides vs. “system”. Baits don’t function unless used in a system. Label will specify the pesticide and how it is used.
- Can it be tested as a combination of liquid and bait systems?
- Most of discussion focusing on Centricon approach. What about other approaches? Test procedures should be applicable to anything we consider a “bait” system.
- Same with above ground baits as a part of a system?
- In EPA draft – 2 tiered system? Use this? No, but a 2 step process.
- Both major sellers of bait systems worked on presentation today.
- Steve D. agreed to draft up a Bait conceptual paper.
V. Next Steps.

- Schedule for the October 2-3 and November 12-13 meetings will be 1 1/2 day sessions.
- Agenda for next meeting to focus on the review of the bait systems conceptual statements draft and the soil applied residual treatment draft rule language.
- Agenda for the October meeting will include Wood systems and Others and review rule language for bait systems and soil applied residual treatment.
MEETING EVALUATION RESULTS

How Well Did the Committee Achieve the Meeting Objectives?

<table>
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<th>Objective</th>
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<td>• Review and Approval of Various Procedural Matters</td>
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<td>• Update on State and Federal Rulemaking Coordination Efforts</td>
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<td>• To Refine Conceptual Agreements on Performance Standards and Acceptable Test Conditions for Soil Barrier Systems</td>
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<td>• To Agree on Next Steps and Assignments</td>
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<td>• To Consider Public Comment</td>
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Rate the Following Aspects of the Meeting?

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<tr>
<td>Clarity of the meeting purpose and plan</td>
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<td>Background information was helpful</td>
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<td>Agenda packet was helpful</td>
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<td>Group involvement and productivity</td>
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Comments:
- I think the questions being addressed as a group instead of via email was much more productive. I do not like the questions being asked without the feedback of committee.

What Did You Like Best About the Meeting?
- The way we nibbled on “bait” subject.
- Excellent job in a tough environment.

How Could the Meeting Have Been Improved?
- Too much time in review, must work on getting job done in time available.
### MEETING ATTENDANCE LIST

**NEGOTIATED RULE MAKING MEETING**  
**August 20, 2002, 10:00a.m.**  
**Hurston South Towers**  
**Orlando, FL**

#### SIGN IN

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<tbody>
<tr>
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<td>Wilson and Schmidt</td>
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<td>(607)540-1400 ext. 444</td>
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<td>(417)890-0820</td>
<td><a href="mailto:rex.martin@syngenta.com">rex.martin@syngenta.com</a></td>
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<td>Chuck Klein</td>
<td>BASF</td>
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<td>(919)547-2967</td>
<td><a href="mailto:kleincd@basf.com">kleincd@basf.com</a></td>
</tr>
<tr>
<td>Ron Schwalb</td>
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<td>(865)577-6119</td>
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ATTACHMENT 3

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

NEGOTIATED RULEMAKING COMMITTEE

Chapter 487.041 Florida Statutes

MINUTES OF THE THIRD MEETING

AUGUST 20, 2002

ORLANDO, FLORIDA

DRAFT FOR COMMITTEE APPROVAL

The third meeting of the Negotiating Committee for the Negotiated Rulemaking for proposed rule under authority of 487.041(4)(e) was begun at 10:08 am on August 20, 2002 by Mr. Bob Jones and Mr. Jeff Blair of the Florida Conflict Resolution Consortium in the conference room of South Tower of the Hurston Office Building at 401 West Robinson Street, Orlando. Committee members present were:

Frank Gasperini, Responsible Industry for a Sound Environment (RISE),
DR Sapp, Florida Pest Management Association
Bob Rosenberg, National Pest Management Association
Jack Glenn, Florida Home Builders Association
A. Roland Holt, Palm Beach County Florida.
Michael C. Beckers, Wilson and Schmidt Insurance
Phil Koehler, University of Florida
Steve Dwinell, Department of Agriculture and Consumer Services

Norm Smith, Certified Pest Control Operators, was absent. He called and said that due to a fire in his residence, he could not attend.

Jeff Blair and Bob Jones, facilitators with the Florida Conflict Resolution Consortium welcomed the committee members. Bob Jones presented an option for additional meeting dates if needed.

The Agenda was reviewed and approved. The Summary Report and Minutes were approved.

D.R. Sapp brought up a concern about the Summary Report use of the term “barrier treatment” versus
“liquid treatment” since some pesticides do not act as “barriers”. Steven Dwinell suggested that this be addressed during discussion of test conditions for these treatments.

Bob Jones reviewed the consensus statement on the relationship of the negotiations to the national effort on termiticide registration. The results of the discussion of this statement is included in the Summary Report.

Arnold Layne of the United States Environmental Protection Agency made a presentation on the national termiticide registration process and efforts to revise this. Key points of this presentation are reported in the Summary Report and the presentation is available as an attachment to the report.

After the presentation, the Committee discussed the timeline of the national effort. Arnold Layne stated that he could not provide a timeline for this process but was confident that the process was moving forward and would be successful.

The Committee then reviewed the statements that apply to liquid barrier treatments. It was agreed to change the term for these treatments to “soil applied residual treatments” as this was more accurate and inclusive. The results of these discussions are reported in the Summary Report.

As part of that discussion, it was decided that several work products would be provided for consideration at the next meeting. Steve Dwinell agreed to produce these work products:
- proposed guidelines for protocol approval
- proposed rule language for soil applied residual treatments

After discussion on the soil applied residual treatment statements was concluded, a presentation on termite baits was made by Dr. Ellen Thoms of Dow AgroSciences. This presentation was a collaboration of Dow and FMC, both registrants of termite bait products. The presentation is included as an attachment to the Summary Report.

After the presentation, the Committee discussed conceptual statements for bait registration. The results of that discussion are presented in the Summary Report. Steven Dwinell agreed to draft some proposed conceptual statements for consideration by the Committee at the next meeting.

An opportunity for public comment was provided. No public comment was received. The meeting adjourned at 3:51 pm.