PEST CONTROL ENFORCEMENT ADVISORY COUNCIL

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

FACILITATOR’S SUMMARY REPORT OF THE NOVEMBER 20, 2003 MEETING

ORLANDO/APOPKA, FLORIDA

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OVERVIEW OF COUNCIL’S KEY DECISIONS

THURSDAY, NOVEMBER 20, 2003

Opening and Meeting Attendance
Chairman McGranahan opened the meeting at 10:12 AM, and all Council members were present with the exception of Phil Koehler.

Agenda Review and Approval
The Council voted unanimously, 10 - 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 a Report on Public Record Requirements for Agency Enforcement Actions
- To Discuss Council Meeting Locations
- To Discuss DACS’s Complaint Response Procedures Proposal
- To Discuss DACS Enforcement Priorities Proposal
- To Consider Public Comment
- To Identify Needed Next Steps and Agenda Items For Next Meeting

Approval of September 18, 2003 Facilitator’s Summary Report
The Council voted unanimously, 10 - 0 in favor, to approve the September 18, 2003 Facilitator’s Report as presented.

Review and Approval of Updated Workplan
Following a review of the Workplan, included as page 8 of the agenda packet, the Council took the following actions.

**Council Action:**
The Council voted unanimously, 10 - 0 in favor, to approve the Council’s workplan as amended. The Council reviewed and made changes to the workplan, included in: (Attachment 3—Workplan)

Update on Agency Enforcement Activities and DACS Enforcement Priorities Procedures Proposal
Wayne Gale, Bureau Chief for DACS, reported on Agency enforcement activities and answered Council member’s questions. In addition, Wayne reviewed proposed agency enforcement priorities and solicited Council feedback. Wayne Gale indicated that DACS' priorities have remained substantially the same, however, with the hiring of more inspectors, enforcement methods would be refined to enhance enforcement goals designed to comply with new laws. Following comments, the Council unanimously voted in favor of supporting the proposed 2004 enforcement priorities.

**Council Action:**
The Council voted unanimously, 10 - 0 in favor, to support DACS' proposed enforcement priorities for 2003 – 2004.
Following are the proposed enforcement priorities with Council feedback:

A. CONSUMER COMPLAINTS

WDO

Contract Disputes

Pesticide Misuse
Asulox issue—
   Joint investigation with Bureau of Compliance Monitoring.
   Memorandum from Bureau being drafted.
   DACS will talk to registrant to determine any chemical difference between products.

Comments from Council
   Companies losing accounts to other companies who are using product illegally.
   DACS may be able to determine if there is a way to differentiate chemically between the agriculture and landscape use of the product.
   Registrant may be able to dye agricultural use product.
   There is a problem with dumping chemical into old containers and using product illegally.
   DACS could review purchase and inventory records to ensure no misuse.
   This is a labeling issue and not a health/safety issue.

General Comments on Consumer Complaints
   Include company complaints against other companies.
   How much time is spent on company to company complaints?

B. UNLICENSED OPERATORS

Advertising
   Use phone book as one method to detect.

Tips
   Licensed operators should call in when activity is spotted.

Landscape Maintenance Inspections
   Best if can catch them applying treatments, otherwise they claim yardman exemption or they were only carrying the chemicals.
   Use more inspectors with a smaller geographic area to improve enforcement.
C. TERMITE PRECONSTRUCTION TREATMENTS

Liquid

Borates
Borate treatments for new construction are very difficult to enforce. Due to timing, working on analytical and other investigative techniques. Three (3) companies/manufacturers, DACS has met with only one, March 23, 2004 deadline vis a vis registration and efficacy standards. Use dyes to indicate amount of coverage. Are rarely being applied correctly. Use a core sample of the wood to analyze proper application. Require a liquid perimeter treatment. Note: would have to required in the labeling in order to enforce, Mandate use of dyes.

Baits

General Comments
Record keeping, check for pretreat companies. Investigate and research use of dyes with registrants.

C. FUMIGATION CLEARANCE

Notices Sent
DACS will be checking on companies that purchase Vikane to determine if they are sending in notice. Recent rule changes are being enforced.

Clearance Devices

Initial One-Hour Aeration
Trained Personnel
Signs and Locks

General Comments
Rule changes will require enforcement procedure changes to comply. Need a notification to companies of inspection results within 24 hours.

D. Additional Priorities Suggested by Council
Postconstruction treatment enforcement records requirements.
**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. There are two issues currently being proposed: limitation of personal liability for pesticide drift for agricultural uses and a pressure treated wood bill.

**Public Records Requirements for Agency Enforcement Actions**
Wayne Gale, Bureau Chief for DACS, reported on the requirements as requested by the Council. Following are the highlights of the report:

- Pest Control Licensees are listed on the agency disciplinary action list posted on internet only when the action is taken against the company.
- If an action is in process only a pending status will be listed on the website.
- Everything on file is public record and available for review if requested.
- A company can be listed only if an action is taken by DACS and guilt is determined, otherwise, only the individual whom the action is filed against can be listed.

**Meeting Locations Discussion**
Tim Hulett proposed that the Council consider meeting in various locations around the state so that members would have an opportunity to get to know each other better, as well as ensure fairness to members located far from the Orlando area.

**Council Action:**
- **Motion**—The Council voted unanimously, 10 - 0 in favor, to rotate meeting locations between Southeast Florida, Southwest Florida, Jacksonville, Tallahassee, and Orlando. The exact locations in each region will be determined and scheduled by DACS.
- **Motion**—The Council voted unanimously, 10 - 0 in favor, to reconsider their previous action.
- **Motion**—The Council voted unanimously, 10 - 0 in favor, to add Gainesville to the list of meeting locations.

**Complaint Response Procedures Proposal Discussion**
Steve Rutz, Division Director of the Division of Agriculture and Environmental Services, reviewed a draft proposal for council consideration. Steve indicated that the intent is to get the Council’s support for the process and to reference the enforcement response guidelines in the rule. Following discussion and refinements, the Council unanimously adopted the proposed enforcement response guidelines as amended.

**Council Action:**
- **Motion**—The Council voted unanimously, 10 - 0 in favor, to adopt the enforcement response guidelines as amended.

The Council made the following changes to the draft:

- Paragraph 1:
  - Add consumer complaint form number.
  - DACS will notify business licensee when complaint received, phone call recommended.
  - Add yes no check boxes on consumer complaint form to determine whether the consumer is willing to allow the company to participate in any discussions.
Paragraph 2:
No changes were recommended.

Paragraph 3:
No changes were recommended.

Paragraph 4:
Strike the word "working" from line 5.

Paragraph 5:
No changes were recommended.

**Council Comments**

- Notify everyone at all levels.
- Need to fax this complaint response form to licensee and copy by mail.
- How can company be allowed to be on site with consumer and inspector?
- Could be intimidating in some cases.
- Can result in more rapid resolution of complaints.
- Consumer can be asked if company can be allowed to visit with inspector, this could be part of complaint form.
- Company needs to be notified.
- DACS can not grant access to company to private property.
- Investigation practice may require interviews of parties separately.
- Companies need to be notified of violations quickly so that corrective actions can be taken and unsafe practices can be stopped.
- Form number can be added to policy proposal.

*(Attachment 4—Enforcement Response Guidelines)*

**Public Comment**

Chairman McGranahan invited members of the public address the Council. No members of the public offered comments to the Council.

**Agenda Items and Assignments for January 20, 2004 PCEAC Meeting**

Jeff Blair, Council facilitator, listed issues identified during the meeting as future agenda items, and solicited additional issues from Council members. There were 7 agenda issues/items listed and the Council was asked to prioritize the issues by voting for two issues each. It was agreed that the issues receiving the most votes would be considered first, and issues that did not make the January agenda would be placed on subsequent meeting agendas. Following are the results of the ranking exercise with the vote count in parenthesis.
A. Pretreat Inspection Records Review (3)
   Lead: Tim Hulett – time: 2 hours

B. Borates (5)
   Lead: Steve Dwinell – informational, time: 2 hours

C. Contract Disputes (3)
   Lead: DACS Report, time: 30 minutes

D. DACS Inspection Consultation (7)
   Lead: Richard Meahl – time: 1 hour

E. ERG Guidelines Review (0)

F. Accountability for Improper Actions (Workplan Task A-2) (2)

G. Maintenance of Post Construction Records (1)

January 20, 2004 Agenda Items
(Based on prioritization exercise results)
   DACS Inspection Consultation Proposal—Lead Richard Meahl—Agenda time 1 hour
   Borates Informational Report—Lead Steve Dwinell—Agenda time 2 hours
   Pretreat Inspection Records Review —Lead Tim Hulett—Agenda time 2 hours
   Contract Disputes Update—Lead Steve Rutz (DACS)—Agenda time 30 minutes
   Company-on-Company Complaints Statistics Report

Agenda Items for Future PCEAC Meetings
(Based on prioritization exercise results)
   Accountability for Improper Actions (Workplan Task A-2)
   Maintenance of Post Construction Records (Workplan Task B-5)
   ERG Guidelines Review Recommendations and Approval for Rule (Workplan Task

Other Agenda Issues for Future Consideration
(Identified at previous meetings)
Following are additional agenda issues members’ expressed a desire to consider at a future date:
   Method of training inspectors (protocols) recommendations (Workplan Task D-1)
   Enforcement case file form review and recommendations (Workplan Task B-2)
   Warranty treatment recommendations
   Recommendations for enhancing cooperation between DAC and the Florida Building
   Commission on treatment issues related to new construction. (Workplan Task A)
Next Meeting Date and Location
Tuesday, January 20, 2004 at:
Mid-Florida Research and Education Center
2725 Binion Road—Apopka, Florida—407.884.2034
Note: 9:00 AM start time.

Future Meeting Dates and Locations
Thursday, April 22, 2004—Gainesville
Tuesday, July 20, 2004—Fort Lauderdale
October 2004—Date and Location TBD

Staff Assignments
- Contact and invite Borate registrants to attend January 20, 2004 meeting
- Solicit DACS support for eliminating yardman exemption in statute
- Report on how much time inspectors spend on consumer complaints (# cases)
- Report on any statistics available that breakdown the number and types of pretreat methods being used
- Company-on-Company Complaints Statistics Report
- Contract Disputes Update
- Determine facility locations for future meetings

Adjourn
At 1:53 PM the Council voted unanimously, 10 - 0 in favor, to adjourn the meeting.
1. Please assess the overall meeting.
   9.2 The background information was very useful.
   9.7 The agenda packet was very useful.
   9.3 The objectives for the meeting were stated at the outset.
   9.7 Overall, the objectives of the meeting were fully achieved.
   9.6 Update on Agency enforcement activities.
   9.2 Legislative issues update.
   9.4 Meeting location discussion.
   9.8 Discussion on Council meeting locations.
   9.5 Discussion on DACS’s complaint response procedures.
   9.7 Discussion on DACS’s enforcement priorities.

2. Please tell us how well the facilitator(s) helped the participants engage in the meeting.
   9.7 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.
   9.6 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.
   9.9 I was very satisfied with the services provided by the facilitator.
   9.7 I am satisfied with the outcome of the meeting.

   What progress did you make?
   9.8 I know what the next steps following this meeting will be.
   9.9 I know who is responsible for the next steps.

4. Do you have any other comments that you would like to add? We are very interested in your comments. Please use the back of this page.

   As always, very well done. I've incorporated some of these methods (for facilitating meetings) into my own company meetings.
# ATTACHMENT 2

## Pest Control Enforcement and Advisory Council

### November 20, 2003-Orlando

## Attendance Sheet

<table>
<thead>
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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.

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 inspection consultation proposal at January 2004 meeting.

5. Review Department’s website for possible recommendations on content and organization.

Task B—Enhancing Licensing and Enforcement Practices Issues


2. Review and develop recommendations on the language used in the Department’s various forms.
   A. Feasibility assessment for a possible negotiated rulemaking for the WDO report form is being conducted starting in December 2003.

3. Recommendations for dealing with illegal operators.

4. Organize discussions on task B to be specific to the different categories of pest control (i.e., Fumigation, Lawn and Ornamental, General Household Pest Control, and Termite).

5. Develop recommendations to improve effectiveness of post construction treatment standards.
6. Reach consensus on the scope of issues for council consideration.
   *Council agreed that their focus will be on developing recommendations to improve the enforcement of existing regulations; and, would recommend statutory or rule changes as a by-product of this activity and not as a primary Council focus. (November 20, 2003)*

**Task C—Enhancing Agency’s Enforcement, Education, and Training Issues**

1. Develop recommendations to ensure that there are consistent and uniform training requirements that all inspectors must achieve prior to working in the field.

2. Make recommendations on what the Agency’s enforcement priorities should be for the coming year.—Annual Task.
   *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.**
ATTACHMENT 4

ENFORCEMENT RESPONSE GUIDELINES
(Adopted Unanimously as Amended, November 20, 2003)

Proposed policy on notification of licensees and certificate holders, and identification card holders prior to issuance of an administrative complaint.

1. When the Department receives a written complaint (add form number) from a consumer regarding a pest control licensee, or holder of an operator's certificate, special identification card, or pest control identification card, the Department will send a notice to that party (add business licensee) stating the complaint, identifying the complainant and requesting a written response within 10 days.

Approved amendments not indicated above:
Add yes no check boxes on consumer complaint form to determine whether the consumer is willing to allow the company to participate in any discussions.

2. When the Department conducts an investigation, either as a result of a written complaint from a consumer or as a result of enforcement activities, the Department will review the evidence and documentation collected and make a determination using internal review procedure as to whether there is clear and convincing evidence of a violation of Chapter 482, F.S. or Chapter 5E-14, FAC.

3. The determination of the disciplinary action to be sought in the event of clear and convincing evidence of a violation of Chapter 482, F.S. or Chapter 5E-14, FAC, will be in accordance with the Enforcement Response Guidelines (ERG) draft dated September 4, 2002.

4. When the disciplinary action to be sought as a result of this process is a monetary fine in excess of $5000, or the suspension or revocation of a license, the Department will send a certified letter to the address of record notifying the responsible party that the Department intends to issue an administrative complaint. The responsible party will be given 14 working days to contact the Department to provide facts and arguments to the Department to consider to either modify the proposed administrative complaint, mitigate the proposed enforcement action, or to conclude that the proposed action should not be taken. If the certified mail delivery is refused, the Department may proceed with the proposed action without further delay.

5. If the responsible party responds to the notification that an administrative action is being considered, the Department will evaluate the additional information provided and either conduct additional investigation as warranted, modify the complaint as needed, or proceed with the complaint.