PEST CONTROL ENFORCEMENT ADVISORY COUNCIL

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

FACILITATOR’S SUMMARY REPORT OF THE
OCTOBER 17, 2006 MEETING

TALLAHASSEE, FLORIDA

Meeting Design & Facilitation By

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OVERVIEW OF COUNCIL’S KEY DECISIONS

TUESDAY, OCTOBER 17, 2006

Opening and Meeting Attendance
Chairman Capelouto opened the meeting at 9:12 AM, and the following Council members were present:
Ray Capelouto (chair), Steve Dwinell, Al Hoffer, Tim Hulett, Phil Koehler, Bob McGranahan, Richard Meahl, Pete Quartuccio (vice-chair), Erica Santella, and D.R. Sapp.
Members Absent: Elizabeth Allen.

Jeff Blair noted that the Council will need to elect a new secretary at the January 2007 meeting. The secretary is third in-line for the chair’s position.

DACS Staff Present
Marlene Czerniak, Phil Helseth, Bev Kerwin, Mike Page, and Debbie Lewis.
DACS EPC staff was also present.

Public Present
Matt Dempsey, Norm Goldenberg, and John Mangold.

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

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

Status Update on Member Appointments
Steve Dwinell, Assistant Division Director of the Division of Agriculture and Environmental Services, reported that with the exception of Al Hoffer and the DACS member (Steve), all other member’s terms expire on October 31, 2006. Steve reported that DACS has received nominations and appointments will be made prior to the next PCEAC meeting.
**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, Meeting Schedule, and Workplan)
- To Hear a Status Update Regarding Council Member Appointments
- To Conduct the Annual Election for the Secretary Position
- To Hear an Update on Agency Enforcement Activities
- To Hear a Legislative Issues Update
- To Hear an Update on DACS Rule Development Efforts
- To Hear a Report from the Consumer Education Subcommittee
- To Discuss Enforcement Statistics and Representative Enforcement Case Sample(s)
- To Discuss Issues Regarding Pretreatment Preconstruction Contracts with Builders
- To Discuss Common Names of WDO’s Covered in Contracts
- To Discuss the “Three Strike” Rule
- To Consider Public Comment
- To Consider Council Member’s Comments
- To Identify Needed Next Steps, Assignments, and Agenda Items For Next Meeting
- To Conduct a Joint Session with the Council and DACS Inspectors

**Approval of July 18, 2006 Facilitator’s Report**
The Council voted unanimously, 9 - 0 in favor, to approve the July 16, 2006 Facilitator’s Report as presented.

**Review and Approval of Updated Workplan and Meeting Schedule**
Following a review of the Workplan, included as pages 4 - 7 of the agenda packet, the Council took the following actions.

**Council Action:**
The Council voted unanimously, 9 - 0 in favor, to approve the Council’s workplan and meeting schedule as presented.

**Approved Meeting Schedule:**
January 16, 2007—Fort Lauderdale
April 17, 2007—Fort Myers
July 17, 2007—Live Oak
October 16, 2007—Apopka
January 15, 2008—Palm Beach
April 15, 2008—Gainesville
*(Attachment 2—Workplan)*
**Legislative Issues Update**

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

*Council Action:*
The Council voted unanimously, 10 - 0 in favor, to accept the report as presented.

*Summary of Discussion and Member’s Questions and Comments:*

- At this point, DACS is not planning any proposing any changes to Chapter 482.
- Any changes resulting from the Chapter 482 Workshops can be implemented by rule.

**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, 10 - 0 in favor, to accept the report as presented.

*Summary of Discussion and Member’s Questions and Comments:*

Steve reported on several rule development efforts. They are as follows:

- DACS will be conducting rule making to correlate the rule with statutory changes to Chapter 482.051(6) regarding secondary treatment for new construction.
- DACS will be conducting rule making to correlate the rule with statutory changes regarding the revocation of the 3 year requirement for limited certification exams.
- The changes to the WDO reporting form should be complete 11/16/06.
- DACS is contemplating changes to the “cell phone” rule, per Council recommendation, but does not currently have any draft language.
- Fumigation rule changes are forthcoming, DACS will have a workshop in Nov/Dec.
- DACS will be work shopping proposed changes to 5E14.149(3) regarding major violations and fines for a first offense for failure to obtain an ID Card for persons performing pest control without an ID card.
- At this time there are no amendment to 5E14.149 regarding the listing of the certified operator’s name on employees’ quarterly disciplinary reports under development.

In addition, Steve reported that at some point in the future DACS will be conducting an omnibus rule development effort to deal with various proposed rule changes, and will keep the Council updated.

**Consumer Education Subcommittee Report/Update**

Steve Dwinell, Assistant Division Director of the Division of Agriculture and Environmental Services, reported that DACS is making progress on updating the various consumer education documents and ensuring they are available on the website. One issue of note is the need to add information about Borates and Baits to the consumer documents.
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.

Summary of Discussion and Member’s Questions and Comments:
• Mike handed out statistics for the first quarter of FY06/07.
• Mike reported there were 140 total investigations: 10 compliance assistance requests and 130 cases for cause. There were 103 neutral scheme inspections conducted, for a total of 243 investigations.
• 27 educational C & D, 22 warning and 3 fines.
• 21 final orders and settlement agreements awaiting signature in the Capitol.
• Landscape scenarios were discussed.
• Mike reviewed 5 case studies and solicited member’s comments and recommendations for how DACS should respond/enforce these type of scenarios.
• Mike explained that finding an unlicensed individual with chemicals on their truck is not usually enough to take an enforcement actions. You almost have to catch them in the act to convicit.
• Mike noted that WDO inspections being conducted by home inspectors should be an agenda item for a future PCEAC meeting.

Pretreatment Preconstruction Contracts Presentation and Discussion
Steve Dwinell, Assistant Division Director of the Division of Agriculture and Environmental Services, led the discussion.

Current Statutory and Rule Requirements for Treatment Contracts
• 482.051(3) – Provides authority for rules requiring written contracts for WDO treatment protection.
• 5E-14.105 (1) through (8).
• 5E-14.105 (3) – Provides requirements for subterranean termite protection for new construction contracts.

Issues for Discussion:
• What should be considered to be a violation of 5E-14.105 (3)?
• How can rules/interpretations be modified to allow preventive treatment for new construction to be done by licensees without a signed contract with the property owner.
• If information is not available from the builder, how can the contract be written? Builders often do not provide the information, and/or will not sign contracts.

Summary of Discussion and Member’s Questions and Comments:
• Steve Dwinell provided a handout reference sheet with existing rules.
• DR Sapp: distinction in pre and post construction contracts, pre-construction contracts are problem getting signed timely, problem determining whose name to put on the contract.
• Tim Hulett: stated that contracts needs to be clear, sending two copies of contract to cover themselves, rule allows verbal consent.
• Al Hoffer: stated there should be no rule to contacts.
• Is building code working? Sometimes.
• Joe Parker: stated contracts and warranties are separate.
• DR Sapp: suggests if they renew next year, at that point there should be a signed contract.
• Richard Meahl: suggests that not getting a final on borate treatments is the problem.
• Bob M.: stated it is not important to the builder.
• Tim H.: stated builder will not issue; no one will sign.
• Ray C.: said homebuyer does not have to sign.
• Bob M.: said scenarios are different.
• Jeff said send out contract and get a receipt and you’re covered.
• DR Sapp: said at some point in time, 2 to 3 years, need to issue a contract after verbal consent.
• Al H.: suggests using service ticket, no need to mail.
• Steve D.: stated do not worry about the mailing, it’s the issuing (existence) that matters.
• Phil K.: summed up that you need a contract issued, doesn’t need to be signed, it’s simple, from the enforcement standpoint you have a piece of paper or electronic version.
• This discussion will be continued at the Pretreat Summit.
• DR Sapp: suggests scanned/electronic copies should be acceptable.
• Erica S.: public awareness is needed, use the website too.
• Council asked to hear from inspectors.
• Larry Mitchell suggested getting a verbal, stick in file, then you have something for inspector to view.
• Phil Helseth suggests a five year requirement.
• Rich Lucas suggested companies notify inspectors for on-site inspections.
• Bruce Nicely suggests separate treatment records and warranties.
• Jeff Blair suggested putting this on the agenda for next meeting, DACS will prepare issues and options and a ranking exercise will be conducted on the options.

**Common Names of WDO’s Covered in Contracts Discussion**  
Steve Dwinell, Assistant Division Director of the Division of Agriculture and Environmental Services, led the discussion.

**Current Statutory and Rule Requirements for Treatment Contracts**
• 482.021 (28) – Provides definition of WDOs
• 482.051(3) – Provides authority for rules requiring written contracts for WDO treatment protection.
• 5E-14.105 (2) (e).

**Summary of Discussion and Member’s Questions and Comments:**
What should be considered to be a violation of 5E-14.105 (2) (e)?
• Common names not intended to be species specific.
• New species can complicate this.
• Six species of subterranean termites.
• ESA list of common names, EPA list of common names.
Should the List Include What is Covered in the Contract?

<table>
<thead>
<tr>
<th>Include in Contract</th>
<th>Do not Include in Contact</th>
<th>Abstain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vote 1:</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Vote 2:</td>
<td>0</td>
<td>7</td>
</tr>
</tbody>
</table>

Comments on the Options:
- The definition of WDO can be expanded to include common names interpretation.
- (e.g., subterranean termites means…, dry wood termites means…, etc.).
- Common name is never species specific, now identifies Formosans – what about other species?
- DR Sapp: states there may be new species coming up.
- Phil K.: suggests current language satisfactory, problem is shouldn’t exclude Formosans from new construction.
- 20-21 species of termites, 6 species subterraneans.
- Tim H.: use the genus.
- Use lists of common names.
- Prefer to use what you don’t cover.
- Tim, Pete, Bob prefer to list what’s not covered.
- Erica will change her vote.
- Tim said easier for consumer to list exclusions.
- Second ranking: covered 0 not covered 7.
- DR Sapp and Richard Meahl do not like either option.
- DR Sapp suggests the definition of eastern subs, and to expand the definition to include common names.
- Jeff Blair suggested putting this on the agenda for next meeting, DACS will prepare issues and options and a ranking exercise will be conducted on the options.

Three Strike Rule Discussion
Steve Dwinell, Assistant Division Director of the Division of Agriculture and Environmental Services, led the discussion.

Current Statutory and Rule Requirements
- 482.0815 – Provides for revocable permit for preventive treatment for new construction.
- 482.0815 (4) – Provides for three strikes.

Issues for Discussion:
- How can 482.0815 be applied?
- Can this be applied to a deceptive trade practices?
- Statute or rules do not adequately address deceptive trade practices.
- Rule on inventory could address this – starting point
- Inventory rule would be a burden.
Summary of Discussion and Member’s Questions and Comments:
- Revocable permit.
- DACS has never documented licensee violation, the ID card holder usually does this.
- DR: concerned with balance related to large vs. small companies.
- Steve D.: adopt a rule with beginning inventory date/amount and report in/out and DACS could check at the end of the cycle.
- DR S.: stated a product is used for different purposes. The inventory idea is a nightmare and could be inaccurate.

Council Members Comment(s)
There were no comments offered by Council members.

Public Comment
Council Chair, Ray Capelouto, invited members of the public to address the Council. No members of the public offered any public comment(s).

Agenda Items and Assignments for the January 16, 2007 Meeting
- Annual Election for the Secretary Position
- Re-appointment of Members and Appointment of New Members—DACS
- Workplan and Meeting Schedule Updates—Jeff Blair
- Update on Legislative Issues—Steve Dwinell
- Rule Development Status—Steve Dwinell
- Enforcement Statistic Discussion and Enforcement Case Study Scenario Sample—Mike Page
- Pretreatment Preconstruction Contracts with Builders Options Ranking Exercise—DACS
- Discussion on Common Names of WDO’s Covered in Contracts Options Ranking Exercise—DACS
- Assumption of WDO Contracts Without Treatment Discussion—Capelouto/Sapp/Hulett

Next Meeting Date and Location
January 16, 2007—Fort Lauderdale

Future Meeting Dates and Locations
- April 17, 2007—Fort Myers
- July 17, 2007—Live Oak
- October 16, 2007—Apopka

Adjourn
The Council voted unanimously, 10 - 0 in favor, to adjourn at 12:40 PM.

Staff Assignments
Notify Council members of appointments.
ATTACHMENT 1

DACS/PCEAC MEETING EVALUATION RESULTS

October 17, 2006—Tallahassee, Florida

Average rank using a 0 to 10 scale, where 0 means totally disagree and 10 means totally agree.

1. Please assess the overall meeting.

9.88 The background information was very useful.
9.88 The agenda packet was very useful.
9.77 The objectives for the meeting were stated at the outset.
9.77 Overall, the objectives of the meeting were fully achieved.
9.88 Legislative Issues Update.
9.88 Update on DACS Rule Development Efforts.
9.77 Update on Agency Enforcement Activities and Case Examples.
9.66 Report from the Consumer Education Subcommittee.
9.77 Discussion on Issues Regarding Pretreatment Preconstruction Contracts with Builders.
9.88 Discussion on Common Names of WDO’s Covered in Contracts.
9.75 Discussion of the “Three Strike” Rule.
9.87 Joint Session with DACS Inspectors.

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

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

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

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

4. What progress did you make?

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

5. Member’s Written Evaluation Comments.

• Meeting was very good.
• I give the meeting a 10.
ATTACHMENT 2

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

WORKPLAN BY TASK

TASK A—ENHANCING COMMUNICATION BETWEEN AND AMONG THE AGENCY, INDUSTRY, AND PUBLIC ISSUES

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

2. Develop recommendations regarding enhancing accountability for improper acts.

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

4. Develop recommendations for improving consumer education on procedures for filing complaints (complaint process) and enhancing the visibility of the process.
   A. DACS compliance assistance requests proposal adopted at July 2004 meeting.
   B. Compliance assistance requests process reviewed at each subsequent meeting.

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

6. Public Participation at Council Meetings
   A. Process amended at the April 22, 2004 meeting.

7. Council Effectiveness
   A. Council discusses effectiveness assessment survey results annually at the April meeting.

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

10. Consumer Education Efforts
   A. Council discussed consumer education strategies at the July 19, 2005 meeting.
   B. Council convened a Consumer Education Subcommittee at 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 Inspection Form workshop process was completed in January of 2006.

3. Recommendations for dealing with illegal operators.
   A. Agency updated Council regarding statistics at the April 22, 2004 and January 18, 2005 meetings.

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

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

6. Council heard a report on FDACS Certification Exams at the April 18, 2006 meeting.
7. Council heard an update on supervision and training issues at the July 18, 2006 meeting.
8. Council will monitor new WDO contract rules and develop recommendations for enhancing enforcement as needed based on a minimum of one year of monitoring.
9. The Council discussed the use of cell phones related to advertising and soliciting rules at the July 2006 meeting, and recommended that DACS address the appropriate uses of cell phones and other new technologies.
10. The Council will seek clarification on and discuss the “common names” of WDO’s covered in contracts at the October 2006 meeting.
11. The Council will seek clarification on and discuss the “three strike rule” at the October 2006 meeting.
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 PCO's of Agency actions at a future meeting.
   F. Council discussed preventive treatment for new construction records inspection procedures at the July 2004 meeting.
   G. Council reviewed protocols for inspecting Borates used in new construction at the July 2004 and January 2005 meetings.
   H. Council conducted a joint meeting with DACS inspectors to discuss uniform enforcement procedures at the July 2004 meeting.
   I. Council reviewed Neutral Scheme Inspections Policy at January 2005 meeting.
   J. Council considered a proposal for testing for the presence/absence of preventive residual soil treatments at the January 2005 meeting.
   K. Council developed recommendations for neutral scheme inspections including a set of criteria at the July 19, 2005 meeting.
   L. Council adopted a Compliance Assistance Request Process at the April 22, 2004 meeting, and revisions at the July 20, 2004 meeting.
   M. Council discussed enforcement issues related to ID cards at the October 18, 2005 meeting.
   N. Council discussed compliance resolution rates at the October 18, 2005 meeting.
   O. Council approved WDO neutral scheme pilot project at the October 18, 2005 meeting.
   P. Considered recommendations to improve effectiveness of post construction treatment standards at the July 19, 2005 and October 18, 2005 meetings.
   Q. Council discussed Africanized Honeybees and implications to the industry at the January 17, 2006 meeting.
   R. Council consider recommendations regarding prior notification of inspections at the January 17, 2006 meeting.
   S. Council considered requirements related to assumption of WDO contracts at the January 17, 2006 meeting. The issue was assigned to the Education Subcommittee.
   T. Council discussed inspector training related to enforcement issues at the April 2006 meeting.
U. Council discussed the use of second ID cards by non-certified pest control operators for training purposes related to qualifying for licensure at the July 2006 meeting.

V. Council will conduct a joint meeting with DACS inspectors to discuss enforcement procedures at the October 2006 meeting.

TASK D—ENHANCING INDUSTRY PRACTICES

1. Council will discuss Pretreatment Preconstruction Contracts with Builders at the October 17, 2006 meeting.
2. Council will discuss and develop recommendations regarding the assumption of WDO contracts without treatment at the January 16, 2007 meeting.