

**Department of Agriculture and Consumer Services Facilitated Pest Control Regulatory  
Issues Meetings**

**Alternatives to the Administrative Procedure Act Rulemaking Process:**

**A Case Study**

**Jeff A. Blair**

**Florida Conflict Resolution Consortium**

**Florida State University**

## **Introduction**

In an effort to protect the public's safety, The Department of Agriculture and Consumer Services (DACS) periodically determines that they need to make some changes to Chapter 482, the statute regulating the pest control industry, and to Chapter 5E-14, the Rules of the DACS Bureau of Entomology. Public agencies are not always sensitive to or aware of the effect that their actions may have on other parties. In the process of initiating rule and law changes the Department often finds its rules and laws challenged by both the pest control industry and various groups of concerned citizens.

In 1997, the Department realized that it was time to consider several law and rule changes. For the past three years the department had been unsuccessful in having their proposed changes to Chapter 482 approved by the Legislature. In an effort to minimize opposition and to foster a consensus building effort between the department, the pest control industry, and the public, the Department of Agriculture and Consumer Affairs (DACS) sponsored a series of five statewide facilitated public input meetings. These meetings took place during the month of August in 1998.

This case study assesses what effect facilitated public input meetings have on the process of proposing policy, rule, and law changes. It describes the facilitated process used to conduct these meetings and why it was used. Finally, this study discusses the results of this process and what role it played in the participants' ability to achieve a broad-based consensus on the direction that the pest control industry should be taking in the coming years, as well as, what policy, rule, and law changes that they could expect to see.

## **Background**

DACS is required to regulate the pest control industry by the authority established in Chapter 482 (the Structural Pest Control Act, 1992) and they have established the rules and regulations on how to regulate the industry under chapter 5E-14 (Entomology – Pest Control Regulations, 1995). In Chapter 482, section 482.051, titled "Rules," states "the department shall adopt rules to carry out the intent and purpose of this chapter. Prior to proposing the adoption of rule, the department shall counsel with members of the pest control industry concerning the proposed rule. The department shall adopt rules for the protection of the health, safety, and welfare of pest control employees and the general public...".

## **The Traditional Approach to Rulemaking**

Prior to August of 1998, the agency followed the requirements of the law if not the intent of it. The Department of Agriculture and Consumer Services (DACS) had solicited public feedback for their proposed law and rule changes according to the requirements of the Administrative Procedures Act (APA). They would develop their proposals and solicit public comment if it was requested or if they were challenged during rulemaking. However, in 1996, this act was amended to strengthen the remedies for petitioners who wished to challenge an agency's rules. Nevertheless, the amended APA process only requires that public hearings are held after proposals and policies have already been formulated by the agency. Prior to 1998, DACS would propose changes and amendments to rules and laws with the intent of improving them; however, according to industry professionals this was done without prior input from them. This left the industry with their only opportunity to provide comment by requesting a public workshop or hearing under the provisions of Chapter 120. Section 120.54 requires that agencies "shall provide notice of the development of proposed rules... and that they may hold public workshops for the purposes of rule development". If a public workshop or hearing is held "the agency must ensure that persons responsible for preparing the proposed rule are available to explain the agency's proposal and to respond to questions or comments regarding the rule being developed". This process was historically used to solicit public comment, but these comments were rarely incorporated into the development of the proposal. Steve Dwinell, Bureau Chief of the Bureau of Entomology, stated that, due to industry challenges, the agency has, for three consecutive years been unsuccessful in making needed rule changes to Chapters 482 and 5E-14. The agency would propose a bill or rule change, receive public comment, possibly modify their proposal, and then wait to see if the industry or public would challenge it.

During this same timeframe, the industry's associations and lobbyists would propose changes to Chapter 482 and 5E-14 without first discussing them between themselves or with the agency (DACS). As one industry professional stated "we just tried to sneak them through". He verified that, since the inception of Chapter 482 in 1959 and earlier regulations dating back to 1947, the industry has not been successful in the passage of a single law or the adoption of a single rule change.

## **New Approach to Rulemaking**

The Department had come to recognize that being at odds and in conflict with the industry was not an effective way to regulate the industry or to protect the health, safety, and welfare of industry employees and the public. Steve Dwinell felt that if the agency could utilize a format where they could explain the how, what, and why behind their actions and recommendations, perhaps the industry would better understand their motivation and, in the process, be more willing to support the agency's proposals. In addition, Mr. Dwinell felt that it might be more desirable and efficacious to solicit the industry's support by incorporating their input into the design of the agency's proposals and not waiting until they were ready to implement them.

In light of their inability to move forward with rule and law changes and as a result of the negative feedback that the agency had been receiving from the industry's associations, Steve

Dwinell realized that the current relationship between the department and the industry was not very productive or cooperative. He realized that dealing with the relationship issues would probably go a long way toward establishing trust and in initiating a collaborative working relationship with each other.

With these considerations in mind, Steve Dwinell decided to explore some alternative methods for soliciting and incorporating public input into the rule and law change process.

### **The Parties: Their Interests and Relationships**

The Department of Agriculture and Consumer Services (DACS) is charged with regulating the pest control industry and protecting the health of the public. Their position is to do whatever they have to in order to achieve this. Discussion with DACS indicates that their interest is to find an effective way to do so, preferably with the support, rather than the opposition, of the industry and the public. For example, they would like to hire more compliance and enforcement inspectors to make sure that the industry is following the proper guidelines for the storage, application, and disposal of pesticides. In addition, the segments of the public who are registered with the department as chemically sensitive, have been criticizing the agency for what they believe to be the agency's pro-industry use of chemicals stance.

DACS has been frustrated in their attempts to implement certain law and rule changes that they believe will better serve the needs of the public as well as those industry professionals who desire to work under the guidelines of the law. In addition, Steve Dwinell and other agency personnel felt that their relationship to the industry and to the public was sometimes strained and occasionally acrimonious. There had been few, if any, successful outcomes from attempts to consult with and work together with the industry and concerned citizens. Most of their interactions had been reactive and not collaborative in tone. In effect, their relationship could be described as the regulators against the regulated. They perceived each other as having different if not opposing interests. In this process, DACS' interest was in determining how they might propose and implement law and rule changes by including the industry and the public in the development process. Their hope was that, by including the other stakeholders in the process from the beginning, they could formulate well thought out policies supported by the industry and the public. If they could forge a consensus between the different interest groups they would be more likely to avoid challenges and ultimately gain approval from the Legislature.

The agency reports that they have has been trying to work with the chemically sensitive public, but they feel that some of the claims are unreasonable and have no objective scientific basis to them. The agency further states that they receive frequent and constant complaints from some of the members.

Discussion with the industry professionals and their associations indicated that they felt that they were not being listened to and that regulations were in effect being forced on them without their input. Their position was that they want to pass laws and regulations that support their interests and that they were being unfairly regulated. They felt that DACS was doing an inadequate job of enforcing their own regulations and that properly trained and licensed professionals were at a competitive disadvantage from unlicensed applicators. Additionally, like DACS, they wanted better enforcement.

Industry representatives characterized their relationship with the agency as antagonistic and noncollaborative. Analysis indicates that their interests include being regulated, protected from unlicensed activity, making a profit, developing fair guidelines for dealing with the public, and being included in the development and future direction of the industry. They also felt that, if they could work together as a profession while simultaneously working with DACS, the industry could be improved and laws and regulations would support their interests rather than work against them.

The industry feels a degree of antagonism toward the chemically sensitive public. Association representatives believe that this segment of the public has been actively attempting to negatively influence their customers and interfere with their business. They state that laws requiring the industry to give chemically sensitive individuals prior notification are unfair and unreasonable and, that certain registrants are using confidential notification information to scare and intimidate their customers.

The segment of the public that was represented at the meetings were representatives of people on the chemically sensitive registry. Their position is that pesticides are harmful to people and to the environment and they would like to see them banned. Their interests were in making sure that any changes to the law do not weaken the notification requirements and that new and stronger laws are proposed and implemented. Their relationship to the industry was often contentious and usually hostile. They report feeling that the industry has no concern for their unique situation and that it is insensitive and indifferent to the health and protection of the public and the environment. Finally, they state that DACS should be strengthening the laws to protect them from what they perceive as the harmful affects of the use of pesticides and other chemicals.

### **Rule Development Workshop Outcomes**

As a result of this series of rule development workshops, the industry reports feeling that, for the first time ever, they were listened to. They understand what the agency's motivations are and, in many cases, they will be able to support them. Conversations with Mel Edelstein, CPCO president, indicate that the industry is not going to initiate any legislation this year so that the different associations and the agency can discuss their proposals prior to making them. They expect that they will continue to use this same facilitated meeting process in order to sustain and nurture their improved relationship of trust, respect, and cooperation with the agency. Mel Edelstein stated, during a interview, that the industry has been transformed and that, as a direct result of the facilitated meetings, the different associations are communicating with each other and working collaboratively to support their mutual interests. He anticipates that the associations and DACS will work with each other, build a consensus, and present a unified package for law and rule changes to the Legislature and the agency, respectively, in 2000. He feels that this can be accomplished by using the same process that was used for the meetings held in August of 1998.

Finally, although in many cases they disagree with the position of the chemically sensitive citizens, for the first time they were able to communicate and explain their interests and desired outcomes and, on some issues, to find common ground.

Conversations with Steve Dwinell indicate that the agency feels that the process was very effective in allowing them to present, clarify, and discuss their proposals as well as providing

them with an opportunity to respond to the industry's concerns. In addition, it gave DACS a chance to listen to the industry and to the public in a format that encouraged mutual participation and respect for each other's differences and agreements. As a result of these meetings, the agency has implemented several policy changes that were identified as concerns by the industry (Pest control Examination Workgroup & Complainant Policy, 1999). He feels that there is a marked difference in tone and quality of the communications between them.

Although the chemically sensitive citizens are not in agreement with the use of pesticides, they report having a clearer understanding of the motivations and interests of the agency and the industry, as well as being aware of what changes to rule and law they can expect in the future. They were also given a forum to express their concerns to the industry and felt that this was a positive step in the right direction. As a result of these meetings, the chemically sensitive registrants were able to have a meeting in the fall of 1998, to present the agency with their concerns and recommendations. The workshops created an opportunity for them to open up channels of communication that did not exist previously.

Comments from the participants were very positive. The participants felt that they were being considered, listened to, and shown respect by other interests. They also indicated that the process allowed them to listen to each other in a fair and neutral format that prevented any individuals from controlling the agenda and discussion. In addition, they reported a new atmosphere of trust that they had not experienced in the past. A key element to the success of the process was in inviting as many of the potential stakeholders as possible to the meetings, allowing them to submit their own ideas for proposals, and offering them the opportunity to comment on each other's proposals prior to any actual attempts to modify regulations or to change laws. In short, the facilitated meeting process was well received by all of the participants and a sense of a real and productive dialogue was achieved.

Some of the factors that contributed to the success of the process were:

1. Involvement of the full range of interests in a process where all views are considered.
2. Establishment of ground rules and explanation of every aspect of the process prior to conducting the meeting allowed participants to openly discuss potentially divisive and controversial issues without fear of attack or ridicule.
3. Invitation for affected parties to submit proposals that were considered equally with staff proposed changes.
4. Use of a structured agenda that presented proposals, prioritized the discussion of issues and sought suggestions for refining proposals, rather than a traditional public hearing where participants present statements with little or no response from the agency or discussion among those present.
5. Hiring a neutral facilitator to help plan the meetings and manage the discussions.

### **Process Description and Evaluation**

Steve Dwinell contacted the Florida Conflict Resolution Consortium and requested assistance in designing, facilitating, and implementing a series of statewide public input

meetings. After several discussions between Steve and the Consortium, a process and procedure was agreed upon. It was decided that a team from the Consortium consisting of Dr. Tom Taylor and Jeff Blair, would design the meeting agenda, format, process, and procedures. It was also agreed that the Consortium would provide facilitation for the five meetings and issue a report at the conclusion of the process. The department agreed to organize the meetings by providing notice to the public, organizing meeting locations and sites, providing staff support, distributing the agenda packet, and having copies of Chapters 482 and 5E-14 available. In addition they would provide a meeting report on their website.

The process was designed to allow DACS and the three associations to submit up to five proposals for potential discussion, and for other interested individuals to submit one proposal each. At each meeting the facilitator would explain the meeting process and format, and the groundrules for participation. In addition, it was explained that each party would present their proposal, provide their rationale for the proposal, and respond to any clarifying questions participants had on the proposal. During this phase of the meeting only clarifying questions were invited. All opinions and discussion on the pros and cons of each proposal was reserved for when and if the group decided to discuss that particular proposal. After all proposals were presented, each participant would vote for the four proposals they wanted to discuss. Votes were tallied and the order of discussion would be determined according to vote count.

The second segment of the meeting was the discussion phase. The process afforded each person who wanted to speak an opportunity. The facilitator “stacked” names and managed the flow of the conversation by encouraging participation from all of the stakeholders. In addition, this prevented both personal attacks and any individual from dominating the discussion. The proposals were discussed in priority order (according to vote count). Finally, at the completion of the agreed upon time for each proposal, the facilitator would request that the presenter describe what they had learned from the discussion and what they intended to do as their next step.

After designing the process, the facilitators met with Steve Dwinell of DACS and presented their proposal for how to organize and conduct the meetings. Mr. Dwinell agreed to the process as proposed and notified the stakeholders of the purpose, time, place, location, and format for the five statewide meetings.

The meetings were conducted according to schedule, and attendance and participation was good at all five locations. The process worked as designed and according to interviews conducted after the meetings and by an analysis of the workshop evaluations, all of the objectives for the meeting were met.

In summary, for the first time the pest control industry felt that DACS was listening to their concerns, and that they were provided with an opportunity to be heard. The industry also felt the process allowed them to listen to each other in a fair and neutral process that prevented any individuals from controlling the agenda and discussion. In addition, the pest control industry was able to receive some feedback from a group of chemically sensitive people whom the industry has traditionally considered as adversaries. In short, the facilitated meeting process was well received by all the participants and a sense of real and productive dialogue was achieved.

The consensus from the participants is that the process works well and should be continued on a regular basis.

## **Conclusion**

The traditional process of proposing policy, rule, and law changes, and then waiting to see if they are challenged, appears short-sighted, a waste of economic resources, and usually fails to produce agreements based on the input and with the support of all of the affected stakeholders. In addition, inviting all of the potential stakeholders to the table to represent their interests, through the use of a facilitated consensus building process, can minimize costly delays and challenges. If the public and other affected parties are included in every phase of the process, agencies can begin to build new relationships with the community, relationships based on trust and mutual respect. By incorporating the public into all of the stages and facets of the process-- from development through implementation-- the efficacy of the eventual outcomes should be greatly enhanced.

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