

Use of ADR in the NRC enforcement process



- Purpose of meeting
 - ▶ To inform participants of plans to develop a pilot program to evaluate the use of ADR in the enforcement process.
 - ▶ Solicit views of whether, and how, ADR might be used effectively in the enforcement process.

ADR in the Enforcement Process

History of Alternative Dispute Resolution

- The Administrative Dispute Resolution Act of 1990 and 1996 (ADR Act) encourages the use of ADR by Federal agencies. A key characteristic of the Act is the use of a neutral.
- NRC ADR Policy Statement, August 14, 1992 designated a dispute resolution specialist and supported the use of ADR in area such as licensing, contracts, fees, inspections, enforcement, rulemaking and others as appropriate

ADR

- ADR refers to a number of **voluntary** processes used to assist parties in resolving disputes and conflicts to avoid adjudication or adversarial methods.
- ADR procedures can be tailored by the parties to meet the needs of a particular dispute.
- ADR techniques being considered for a pilot include facilitation, mediation, and fact-finding.
- ADR involves the use of a neutral skilled in ADR processes to assist parties in resolving the controversy.

ADR in Enforcement

- In April 2000, the NRC was first requested to use ADR in enforcement to resolve a dispute following an April, 2000 Civil Penalty (\$110,000) and SL II NOV in a discrimination case involving First Energy (FENOC).
- The Commission denied FENOC's request to use ADR in part because the use of ADR in NRC enforcement was a significant question of Commission policy which warranted further development.
- On December 14, 2001 Federal Register Notice soliciting comments on ADR was issued. On March 12, 2002, a workshop was held in Rockville, MD to discuss uses of ADR.

ADR in Enforcement

- Workshop and comments indicate divergent views on the use of ADR.
- On June 4, 2002 the staff committed to provide to the Commission a proposed pilot program for the use of ADR in the enforcement program or an alternative recommendation by November 2002.

Why Consider ADR?

- Significant Resource savings
- Significant Timeliness savings
- Parties can be more in control of final outcome than hearing process.
- NRC can be more involved in determining acceptable corrective actions.
- Can result in acceptable outcome earlier in the process that may have greater benefit than Issuance of NOV and imposition of CP.

Previous Use of ADR in Enforcement

■ Earthline Technologies

Following imposition of \$17,600 Civil Penalty in Jan. 2002 for a SL II discrimination violation by plant manager that occurred in Feb. 1999, the licensee requested settlement discussions as allowed under 10CFR2.203.

- Facilitated meeting resulted in June 2002 agreement:

- * Agreement to use consultant to evaluate site work environment and recommend corrective actions.
- * Agreement to consult NRC on appropriate Corrective Actions.
- * Commitment to spend \$25,000 to implement settlement agreement.
- * NRC to waive CP and cite the violation as non-cited.

Pilot Program for ADR

Areas being considered for a pilot program

- “Early” ADR following receipt of allegation -
For non- egregious cases.
- ADR following an OI investigation, prior to
PEC.
- ADR following issuance of NOV
- ADR following imposition of an Order.

Potential ADR Results

- Corrective Action for technical issues.
- Early identification of problems and Corrective Action for SCWE issues.
- Funds that may have been used for Civil Penalty may go towards improving worksite conditions.
- Potential for early resolution between parties.

- In some cases may give up action against an individual.
- May give up NOV and/or Civil Penalty, which could decrease deterrence against additional violations.

Considerations

- Confidentiality of discussions and the Settlement Agreement?
- Public notice of meetings and the outcome?
- Participation in ADR discussions?
- Management review (hold time) of a settlement agreement?
- Pool of neutrals?