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Michael Lesar, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration
Mail Stop T-6 D59
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Federal Register: December 14, 2001 (Volume 66, Number 241) Enforcement Program and Alternative Dispute Resolution. Request for Comments.

Dear Mr. Lesar:

This is concerning the NRC's intent to evaluate the use of Alternative Dispute Resolution (ADR) in the NRC's enforcement program. The request states that ADR has proven to be efficient and effective in resolving a wide range of disputes government-wide. Specifically, the Commission has requested responses to the following questions:

1. Is there a need to provide additional avenues, beyond the encouragement of settlement in 10 CFR 2.203, for the use of ADR in NRC enforcement activities?

No. The current system appears adequate. Since 1988, NRC has proposed approximately 1300 civil penalties that resulted in 222 orders imposing civil penalties. Only 29 requests for hearing ensued, the majority of which were settled prior to hearing. Inserting a "neutral party" using the ADR process appears unnecessary in light of the above.

2. What are the potential advantages of using ADR in the NRC enforcement process?

Little or none.

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3. What are the potential disadvantages of using ADR in the NRC enforcement process?

Additional expense and possible erosion of public confidence in the NRC's enforcement program if it is perceived that NRC is compromising safety standards by ceding authority to non-regulatory personnel.

4. What should be the scope of disputes in which ADR techniques could be utilized?

ADR could conceivably be used for all disputes but that doesn't mean it would be in the public interest to do so. IDNS does not favor use of ADR techniques in any radiation safety enforcement proceedings. IDNS is vehemently opposed to NRC forcing ADR on Agreement States.

5. At what points in the existing enforcement process might ADR be used?

ADR might be used at many points in the enforcement process but that does not mean it would be in the public interest to do so. IDNS does not favor use of ADR techniques in any radiation safety enforcement proceedings.

6. What types of ADR techniques might be used most effectively in the NRC enforcement process?

IDNS is not convinced that ADR techniques can be used effectively in the NRC enforcement process.

7. Does the nature of the existing enforcement process for either reactor or materials licensees limit the effectiveness of ADR?

Yes. The existing enforcement process appears to work effectively and efficiently. The existing policy already allows for appeal and third party resolution.

8. Would any need for confidentiality in the ADR process be perceived negatively by the public?

Probably not. IDNS is confident that reasonable members of the public understand the need for confidentiality of certain information in the regulation of radioactive materials to protect the public health and safety.

9. For policy reasons, are there any enforcement areas where ADR should not be used, e.g., wrongdoing, employment discrimination, or precedent-setting areas?

IDNS does not favor use of ADR techniques in any radiation safety enforcement proceedings.

10. What factors should be considered in instituting an ADR process for the enforcement area?

ADR is unnecessary.

11. What should serve as the source of neutrals for use in the ADR process for enforcement?

Good question. NRC is the statutorily created federal agency with authority to regulate use of radioactive materials as provided in the Atomic Energy Act. It is not NRC's job to be neutral; it is NRC's job to protect the public health and safety and to take enforcement action against entities that violate NRC's rules and jeopardize the public health and safety. Why should NRC cede its authority to "neutrals"? Entities aggrieved by NRC enforcement actions have access to the federal courts.

In conclusion, the Illinois Department of Nuclear Safety believes the current NRC enforcement program is appropriate, efficient, and effective. Introducing an ADR process would not appear to enhance the current system in any way.

Thank you for this opportunity to comment on the use of ADR in the NRC's enforcement program. Please call me at (217) 785-9930 if you have questions.

Sincerely,

Joseph Klinger /JME

Joseph G. Klinger, Chief
Division of Radioactive Materials

JGK:JME