

ADR in the NRC Allegation and Enforcement Programs

Nick Hilton
Sr. Enforcement Specialist
Office of Enforcement



Overview

- Background
- *Brief* Introduction to ADR
- NRC's Pilot
- Current Status
- Q&A



Background

- NRC Employee Protection Regulations
 - 10 CFR 30.7, 40.7, 50.7, 60.9, *et al.*
 - Complimentary to DOL and Section 211 of ERA
 - For NRC, adverse action includes any change in the terms and conditions of employment (*e.g.*, monetary component not required)
- NRC's concern is the work environment, DOL's concern is the individual.



ADR in the Federal Sector

- Congress initially enacted as a pilot in 1990.
- Governed by ADR Act of 1996, as amended
 - Attempted to provide balance between public's business and confidential nature of ADR
 - ✓ Agreements to Mediate and settlement agreements are not protected from FOIA requests
 - ✓ Dispute resolution communications are protected
 - Encouraged use in many areas of government
 - Streamlined neutral acquisitions



NRC Pilot

➤ Pilot Program Development

- Years in the making
- Pilot developed with multiple opportunities for public input – workshops, written comments, etc.
- Commission approved pilot, subject to public comment, spring of 2004
 - ✓ 69 FR 21166 dated April 20, 2004
- After comment period, pilot officially began in Sept 2004
 - ✓ 69 FR 50220 dated August 13, 2004



Basic Program Outline

- Scope: cases involving
 - Alleged discrimination for engaging in protected activity prior to an NRC investigation
 - Both discrimination and other wrongdoing after OI has completed an investigation
- Mediation
- Voluntary
- Cornell University is the program administrator
 - Institute on Conflict Resolution within the New York State School of Industrial and Labor Relations
 - Provides mediators and other intake services
 - Services include: advise and assist potential parties in determining ADR potential for their case
 - Nationwide roster of experienced, trained mediators
 - DOL research grant experience



Two Part Program

- **Early-ADR:** mediation between an individual who has filed a *prima facie* case of discrimination with the NRC and their employer.
- **Post-Investigation ADR:** mediation between a licensee (or other organization subject to NRC regulation) and the NRC to resolve issues resulting from an investigation. Includes both discrimination and other wrongdoing cases.



Early-ADR

- Goal: a timely resolution between the parties to help preserve a safety conscious work environment
- Completed *prior to the start* of an investigation
- NRC covers cost of mediator's service
- Mediator Selection from Cornell list
 - First notification of a potential OI investigation may be Cornell's initial call.
 - Cornell may not know, or be able to pass on, any details of an individual case.
- Settlement is reviewed by NRC for restrictive agreements.



Early-ADR

(con't)

- OSHA *may* close investigation based on settlement.
 - OSHA would likely review and approve settlement as well
- If settled, and without restrictive agreements, the NRC will not investigate or take further enforcement action.
- If a licensee program is used, the NRC is informed and approves settlement agreement, there will be no investigation or enforcement action.
- Conducted consistent with allegation program
 - Agreement to Mediate and settlement agreements not publicly available (may be subject to FOIA, with appropriate redactions).
- If negotiations fail, resume normal process



Post-Investigation ADR

- Three opportunities
 - Prior to a PEC
 - After initial issuance of a sanction (typically the NOV)
 - After imposition of a CP but before a hearing.
- Program allows 2 attempts
- Licensee pays ½ of mediator's fees
- Settlement agreement is documented as a Confirmatory Order
 - Including Federal Register Notice and Press Release



Current Status*

- Early-ADR:
 - 19 Offers made since 1st of November
 - Ten contacted Cornell
 - ✓ One individual declined after discussing
 - ✓ Five Agreements to Mediate, in process of selecting mediator or waiting for date of mediation
 - ✓ Four in process of agreeing to mediate
- Post-Investigation:
 - Nine offers
 - Three responses, all agreed to mediate
 - Two mediations completed

*As of Feb. 14, 2005



Additional Information

- Nick Hilton
 - ndh@nrc.gov
 - (301) 415-3055
- NRC ADR Program Administrator,
 - Cornell University: (877) 733-9415
- NRC Enforcement Web page
 - <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>

