

February 25, 2013

MEMORANDUM TO: William M. Dean, Regional Administrator, Region I
Victor M. McCree, Regional Administrator, Region II
Charles A. Castro, Regional Administrator, Region III
Elmo E. Collins, Regional Administrator, Region IV
Eric J. Leeds, Director, Office of Nuclear Reactor Regulation
Glenn M. Tracy, Director, Office of New Reactors
Catherine Haney, Director, Office of Nuclear Material Safety
and Safeguards
Mark A. Satorius, Director, Office of Federal and State Materials
and Environmental Management Programs

FROM: Roy P. Zimmerman, Director */RA/*
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM 13-001 – PILOT
PROGRAM – POST-INVESTIGATION ALTERNATIVE DISPUTE
RESOLUTION EXPANSION

Purpose:

The purpose of this enforcement guidance memorandum (EGM) is to provide enforcement guidance to regional and program offices regarding the expansion of the scope of use of post-investigation alternative dispute resolution (ADR) for a 1-year pilot period. The pilot program will expand the scope of post-investigation ADR to include all escalated non-willful (traditional) enforcement cases with proposed civil penalties. This does not include violations associated with findings assessed through the Reactor Oversight Process (ROP).¹ The current scope of the ADR program is limited to discrimination and other wrongdoing cases after the Office of Investigations has completed an investigation. While this EGM expands the scope of post-investigation ADR, the NRC is not expanding early-ADR beyond discrimination allegations.

Background:

The term “ADR” refers to a number of voluntary processes, such as mediation and facilitated dialogues that can be used to assist parties in resolving disputes and potential conflicts. These techniques involve the use of a neutral third party, either from within the agency or from outside the agency, and are voluntary processes in terms of the decision to participate, the type of

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¹ Reference to the ROP also includes the construction ROP.

process used, and the content of the final agreement. Federal agency experience with ADR has demonstrated that the use of these techniques can result in more efficient resolution of issues, more effective outcomes, and improved relationships between the agency and the other party.

In August 2004, the Commission published a revision to the Enforcement Policy to include the use of ADR in the enforcement program for discrimination and other wrongdoing cases. Since its implementation, the staff has evaluated the program and found it to be effective, timely, and generally viewed positively by both internal and external stakeholders. The NRC's use of ADR has resulted in opportunities for improving public safety by including broader and more comprehensive corrective actions in the resultant agreements than might have been achieved through the traditional enforcement process.

On December 16, 2010, the NRC Chairman issued a memorandum, "ADR Implementation and Assessment" (ADAMS Accession No. ML12030A228). In it, the Chairman listed several tasks including determining if the ADR program should be expanded. As part of the staff's efforts to engage its internal and external stakeholders and to respond to the tasking memorandum, the staff held a public meeting on November 8, 2011, to solicit views on various aspects of the ADR program and solicited written comments through a *Federal Register* notice (76 FR 64124). Stakeholders expressed support for the expansion of the ADR program to the extent possible.

In SECY-12-0161, "Status Update, Tasks Related to Alternative Dispute Resolution in the Allegation and Enforcement Programs," dated November 28, 2012, the staff notified the Commission of its intent to expand post-investigation ADR and offer it as an option for escalated non-willful (traditional) enforcement cases with proposed civil penalties for a 1-year pilot period. This does not include violations associated with findings assessed through the ROP.

At the completion of the pilot period, the staff will evaluate the result of the pilot program and seek Commission approval for the permanent inclusion in the Enforcement Policy if the expanded scope is deemed beneficial to the advancement of the agency's mission.

Enforcement Guidance:

Scope:

The pilot program expands the scope of the use of post-investigation ADR. Cases eligible for post-investigation-ADR include discrimination and other wrongdoing cases after an investigation is complete; as well as all enforcement cases for escalated non-willful (traditional) enforcement cases with proposed civil penalties. This includes those cases where the NRC has substantive questions or uncertainty concerning providing the licensee credit for identification and/or corrective action and thus the considered civil penalty is also uncertain.

The expansion of the program does not include violations associated with risk significant findings assessed through the ROP significance determination process (SDP). If an issue results in both a traditional enforcement violation and a finding assessed through the ROP, post-investigation ADR may only be used for the traditional enforcement violation, including the proposed civil penalty. The NRC is not expanding the use of early-ADR beyond discrimination allegations.

This pilot program will continue to be in place for approximately 1-year from the date of the issuance of the corresponding Federal Register Notice which is projected to be issued on March 1, 2013.

Process:

The overall process and conduct of the post-investigation ADR program does not change (e.g., specific points in the enforcement process where ADR may be requested or the issues which can be resolved).

If ADR is not offered, the reason should be included on the strategy form.

Roles and Responsibilities:

The EGM does not change the established roles and responsibilities associated with the ADR program, as outlined in the NRC Enforcement Policy and Manual with the exception that the regions will have the added responsibility as the lead negotiator for escalated non-willful (traditional) enforcement cases with proposed civil penalties as indicated below.

Office of Enforcement:

The Director, OE, will continue to have overall ADR program responsibility and can serve as the lead NRC negotiator for any ADR mediation session and will serve as the lead NRC negotiator for discrimination cases. This responsibility may be delegated to the Deputy Director, OE.

OE will maintain the responsibility for discriminatory cases.

Region:

Regional Administrators or Deputy Regional Administrators serves as the lead NRC negotiator for ADR sessions involving cases (other than discrimination) for their region. This responsibility may be delegated to the Regional Division Directors after consultation with the Director, OE. Such consultation may occur telephonically or via electronic mail discussing the need for the proposed delegation, identifying the person to be designated as lead negotiator and providing the basis for such designation.

Regional Administrators or Deputy Regional Administrators have the authority to sign and issue ADR confirmatory orders involving cases (other than discrimination) for their region after obtaining concurrence from the Director, OE.

cc:

R. W. Borchardt, EDO
M. Weber, DEDMRT
M. Johnson, DEDRPP
SECY

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