



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

December 12, 2017

EA-17-101

Mr. Travis Snowder
President/Chief Executive Officer
Qal-Tek Associates, LLC
3998 Commerce Circle
Idaho Falls, ID 83401

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$22,400, NRC SPECIAL INSPECTION REPORT 030-34866/2017-001

Dear Mr. Snowder:

This letter refers to the inspection conducted on April 24-25, 2017, at your facility in Idaho Falls, Idaho. The purpose of the inspection was to review the circumstances surrounding your staff's April 13, 2017, notification to the U.S. Nuclear Regulatory Commission (NRC) of a transportation event (Event Notification 52676) where your staff identified dose rates on a shipment of radioactive material that were in excess of NRC and U.S. Department of Transportation limits.

The inspection also included reviews of documents submitted to the NRC following the onsite inspection, as well as interviews with the common carrier personnel involved with transportation of the package that was the subject of the event report. The results of the inspection were discussed with you and your staff during the exit briefing conducted on August 17, 2017, and the details regarding two apparent violations were provided in NRC Inspection Report 030-34866/2017-001, dated October 11, 2017 (NRC's Agencywide Documents Access and Management System (ADAMS) Accession ML17236A425).

On November 9, 2017, a predecisional enforcement conference was conducted in the Region IV office with you and a member of your staff to discuss the apparent violations, their significance, their root causes, and your corrective actions. During the conference, you stated that you did not contest the violations and you provided additional information about your long-term corrective actions.

Based on the information developed during the inspection and the information that you provided during the conference, the NRC has determined that violations of NRC requirements occurred. These violations are cited in Enclosure 1, Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report.

The violations involved failures to: (1) package radioactive sources in a containment system securely closed by a positive fastening device that could not be opened unintentionally during normal transport, and (2) ensure that a package of Class 7 (radioactive) material offered for

transportation was designed and prepared for shipment so that the radiation levels did not exceed 2 milliSv/hour (200 millirem/hour) at any point on the external surface of the package and the transportation index did not exceed 10. Specifically, on April 11, 2017, your staff packaged radioactive sources at a temporary jobsite in New York City, New York, for shipment by common carrier to your Idaho Falls, Idaho, facility. During the shipment, three radioactive sources came out of the inner lead containment system, which provided shielding, but remained inside the outer transport package. As a result, radiation levels at the external surface of the package, and at a distance of one meter (transportation index reading), exceeded regulatory limits.

The NRC considers these violations significant because they resulted in dose rates on the external surface of the package which could have led to unintended radiation exposures to members of the public. Although the NRC concluded that it was unlikely that a member of the public actually received a dose in excess of NRC's annual limit of 100 millirem, the dose rates on the exterior surface of the package could have, under different handling scenarios, resulted in doses to members of the public in excess of NRC limits. Therefore, these violations have been categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level II problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$22,400 is considered for a Severity Level II problem. The NRC considered whether credit is warranted for both *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC determined that credit is not warranted for *Identification* due to a missed opportunity to identify the failure to use a positive fastening device on the inner containment system of the package. Specifically, the radiation safety officer who prepared the package for shipment from New York City to Idaho Falls noted that the containment system did not have a positive fastening device, but did not raise the concern to management. In addition, the failure to use a positive fastening device was not identified when the package was initially prepared for transport from Idaho Falls to New York City. Since *Identification* credit is not warranted, a base civil penalty is considered.

However, the NRC concluded that *Corrective Action* credit is warranted based on your immediate- and long-term corrective actions. After the incident, you instituted a self-imposed ban on shipments with sources in lead-shielded containers until an internal investigation was completed and immediate- and long-term corrective actions could be implemented. You modified procedures to clearly show (including pictures) how to package these types of sources and containment systems, and conducted function-specific training on the new procedures and the lessons learned from the event. Individuals are only allowed to package these types of sources after successful completion of the training.

As part of your more comprehensive and long-term corrective actions, you instructed your staff on the importance of following procedures, raising questions related to potential procedure deficiencies, and raising questions or seeking guidance concerning activities and tasks that are not specifically addressed by procedures. In addition, you hired a quality assurance manager and reallocated additional management resources to globally address the adequacy of existing procedures, perform auditing and review functions, address staff questions related to procedures, and provide greater management oversight of work activities. Since *Corrective Action* credit is warranted, further escalation of the civil penalty is not appropriate.

Therefore, to emphasize the importance of prompt identification of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$22,400 for the Severity Level II problem. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. Alternative dispute resolution is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral mediator works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html> and in Enclosure 3.

The Institute on Conflict Resolution at Cornell University has agreed to facilitate the NRC's program as a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the Institute on Conflict Resolution at (877) 733-9415, and (2) Michael Hay at 817-200-1455 within 10 days of the date of this letter. You may also contact the Institute on Conflict Resolution for additional information about ADR. Your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day time period for payment of the civil penalties and the required written response, as identified in the enclosed Notice, until the ADR process is completed.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you should provide it in your response to the Notice. In particular, you should include in your response a discussion of the additional actions you have taken and plan to take to address management oversight of licensed activities that were discussed during the predecisional enforcement conference. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice and Procedure," a copy of this letter, its enclosures, and your response, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

If you have any questions concerning this matter, please contact Mr. Michael C. Hay of my staff at 817-200-1455.

Sincerely,

/RA/

Kriss M. Kennedy
Regional Administrator

Docket No. 030-34866
License No. 11-27610-01

Enclosures:

1. Notice of Violation and Proposed
 Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods
3. NUREG/BR-0317, Post-Investigation
 Alternative Dispute Resolution Program,
 Revision 1

cc: w/Enclosure:
M. Dietrich, Administrator
Idaho Department of Environmental Quality

**NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY**

Qal-Tek Associates, LLC
Idaho Falls, Idaho

Docket No.: 030-34866
License No.: 11-27610-01
EA-17-101

During an NRC inspection conducted on April 24-25, 2017, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

- A. 10 CFR 71.5(a) requires, in part, that each licensee who delivers licensed material to a carrier for transport shall comply with the applicable requirements of the Department of Transportation regulations in 49 CFR Parts 171 through 180, appropriate to the mode of transport.

49 CFR 173.412(d) requires, in part, that packaging must include a containment system securely closed by a positive fastening device that cannot be opened unintentionally during normal transport. If the containment system forms a separate unit of the package, it must be securely closed by a positive fastening device that is independent of any other part of the package.

Contrary to the above, on April 7 and 11, 2017, the licensee used a containment system for licensed materials that was not securely closed by a positive fastening device that could not be opened unintentionally during normal transport. In addition, the containment system formed a separate unit of the package, but it used a device that was not independent of any other part of the package. Specifically, the licensee placed a 2- by 4-inch wooden board between the lid of the containment system (a lead-shielded container) and the lid of the package in an attempt to ensure the lid of the containment system would not open during transport. As a result, the lid of the containment system opened and the three sources came out of the shielded position.

- B. 10 CFR 71.5(a) requires, in part, that each licensee who delivers licensed material to a carrier for transport shall comply with the applicable requirements of the Department of Transportation regulations in 49 CFR Parts 171 through 180, appropriate to the mode of transport.

49 CFR 173.441(a) requires, in part, that each package of Class 7 (radioactive) materials offered for transportation must be designed and prepared for shipment, so that under conditions normally incident to transportation, the radiation level does not exceed 2 mSv/hour (200 mrem/hour) at any point on the external surface of the package, and the transport index does not exceed 10.

Contrary to the above, on April 11, 2017, the licensee failed to ensure that a package of Class 7 (radioactive) materials offered for transportation was designed and prepared for shipment so that under conditions normally incident to transportation the radiation level would not exceed 2 mSv/hour (200 mrem/hour) at any point on the external surface of

the package, and the transport index would not exceed 10. Specifically, the licensee used a containment system that opened during conditions normally incident to transportation the three radioactive sources came out of the containment system but stayed inside the Type A container at some point during transit and, upon arrival in Idaho Falls, Idaho, the radiation levels on the external surface were 28 mSv/hour (2800 mrem/hour) with a transport index of 15.

This is a Severity Level II problem (NRC Enforcement Policy, Section 6.8)
Civil Penalty - \$22,400 (EA-17-101)

Pursuant to the provisions of 10 CFR 2.201, Qal-Tek Associates, LLC, is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a copy to the Document Control Desk, Washington, DC 20555-0001, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; (EA-17-101)" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved.

Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a demand for information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

You may pay the civil penalty proposed above, in accordance with NUREG/BR-0254 (Enclosure 2) and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice.

Should you fail to answer within 30 days of the date of this Notice, the NRC may issue an order imposing the civil penalty. Should you elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the licensee is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011, and the Document Control Center, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary information so that it can be made available to the public without redaction.

If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 12th day of December 2017

NUREG/BR-0254 Payment Methods

FedEx or overnight mailings must be delivered to:

U.S. Nuclear Regulatory Commission
U.S. Bank Government Lockbox
SL-MO-C2GL
1005 Convention Plaza
St. Louis, MO 63101



United States Nuclear Regulatory Commission
Protecting People and the Environment

TAXPAYER IDENTIFICATION NUMBER

You must file your Taxpayer Identification Number with the NRC. NRC Form 531 can be viewed and printed from the NRC Web site at <http://www.nrc.gov>. Select NRC Library > Document Collections > Forms > Forms (NRC). You can also obtain a form by calling the Accounts Receivable Help Desk at (301) 415-7554.

FOR INFORMATION

The Office of the Chief Financial Officer will promptly respond to all requests for information. Please contact the office at:

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DOC/ARB
Mail Stop T9-E10
Washington, DC 20585-0001
PH (301) 415-7554
E-mail FEES.Resource@nrc.gov

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DOC/ARB
Mail Stop T9-E10
Washington, DC 20585-0001
PH (301) 415-7554



NUREG/BR-0254, Rev. 7
July 2015



PAYMENT BY CREDIT CARD

Estimated burden per response to comply with this voluntary collection request: 5 minutes. This collection solicits information that will allow the respondent to transfer funds electronically. Forward comments regarding burden estimate to the Records Management Branch (I-6/E33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0190), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

The following are payment methods accepted by the NRC for payment of an annual fee, a proposed or imposed civil penalty, a full cost licensing or inspection invoice, an application fee, a revision to a reciprocity application, a registration fee, or other fees.



Mail the completed credit card authorization to:
 U.S. Nuclear Regulatory Commission
 U.S. Bank
 P.O. Box 979051
 St. Louis, MO 63197-9000

PAYMENT BY AUTOMATED CLEARINGHOUSE

The Automated Clearinghouse / Electronic Data Interchange (ACH/EDI) Network is a highly reliable and efficient nationwide batch-oriented electronic funds transfer system. The ACH/EDI is governed by operating rules that provide for the interbank clearing of debit and credit transactions and for the exchange of information among participating financial institutions.

A growing number of transactions involving the collection of funds by Federal agencies are being made through the ACH/EDI. The Federal government is the largest single user of the ACH/EDI, originating and receiving millions of transactions each month. At the NRC, collections via the ACH/EDI have been increasing each year since 1996.

ACH offers several advantages over checks:

- Provides automatic bill payment
- Eliminates postage fees
- Eliminates lost checks
- Reduces transaction time
- Reduces check writing and reconciliation fees
- Least expensive of all electronic collection systems
- Both payment and refunds (debits and credits) can be processed through the ACH/EDI Network

To respond to the growing needs of companies to electronically send payment information as well as payments between trading partners, the ACH/EDI system incorporated Corporate-to-Corporate payments. Because of the importance of moving information quickly, the NRC can now accept electronic payment through our Corporate-to-Corporate payment program.

To pay by ACH/EDI, you may obtain a copy of NRC Form 628, FINANCIAL EDI AUTHORIZATION, by calling the Accounts Receivable Help Desk at (301) 415-7554. Completed forms should be returned to the NRC Office of the Chief Financial Officer at the contact information provided under FOR INFORMATION of this brochure.

5 AMOUNT - The transfer amount must be punctuated with commas and decimal point; use of the “\$” is optional. The depositor will provide this item.

6 SENDER-DFI-NAME - The Federal Reserve Bank will automatically insert this information.

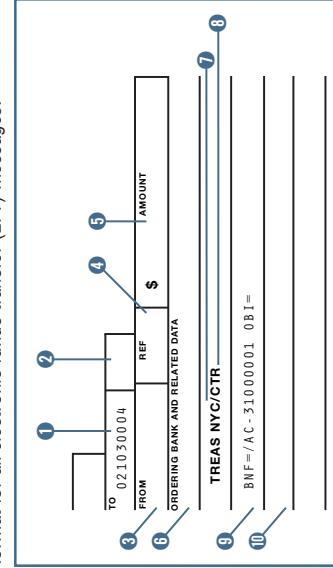
7 RECEIVER-DFI-NAME - Treasury's name for deposit messages is “TREAS NYC”. The sending bank will enter this name.

8 PRODUCT CODE - A product code of “CTR” for customer transfer should be the first data in the RECEIVER-TEXT field. Other values may be entered, if appropriate, using the ABA's options. A slash must be entered after the product code.

9 AGENCY LOCATION CODE (ALC) - THIS ITEM IS OF CRITICAL IMPORTANCE. IT MUST APPEAR ON THE FUNDS TRANSFER DEPOSIT MESSAGE IN THE PRECISE MANNER AS STATED TO ALLOW FOR THE AUTOMATED PROCESSING AND CLASSIFICATION OF THE FUNDS TRANSFER MESSAGE TO THE AGENCY LOCATION CODE OF THE APPROPRIATE AGENCY. The ALC identification sequence can, if necessary, begin on one line and end on the next line; however, the field tag “BNF=” must be on one line and cannot contain any spaces. The NRC's 8-digit ALC is: BNF=AC-31000001

PROCEDURE FOR ELECTRONIC FUNDS TRANSFER

The NRC can receive funds through the U.S. Department of the Treasury (Treasury) Fedwire Deposit System. The basic wire message format below complies with the Federal Reserve Board's standard structured third-party format for all electronic funds transfer (EFT) messages.



See sample EFT message to Treasury above. Each numbered field is described below:

- ① **RECEIVER-DFI#** - Treasury's ABA number for deposit messages is 021000004.
- ② **TYPE-SUBTYPE-CD** - The sending bank will provide the type and subtype code.
- ③ **SENDER-DFI#** - The sending bank will provide this number.
- ④ **SENDER-REF#** - The sending bank will insert this 16-character reference number at its discretion.

PAYMENT BY CHECK

Checks should be made payable to the U.S. Nuclear Regulatory Commission with the invoice number, Enforcement Action (EA) number, or other information which identifies the payment, written on the check. Mail the check to:

U.S. Nuclear Regulatory Commission
 U.S. Bank
 P.O. Box 979051
 St. Louis, MO 63197-9000

**NUREG/BR-0317, Post-Investigation
Alternative Dispute Resolution
Program, Revision 1**

Mediation Location and Duration

The parties usually hold the mediation at, or in the vicinity of, one of the NRC's offices. However, the parties may mutually agree upon any alternate location. Mediation sessions are usually no longer than 1 day. In some cases, the mediation may take longer than 1 day with the mutual consent of the parties.

The NRC Mediation Team

The responsible Regional Administrator or his or her designee will serve as the principal negotiator for the NRC in cases that involve wrongdoing and related technical issues, if any. When a case involves discrimination, the Director of the Office of Enforcement will normally serve as the principal negotiator. The other members of the NRC mediation team typically include an enforcement specialist, an attorney, and a staff representative who is familiar with the technical issues under discussion.

Timeliness Goals

The timely resolution of issues is one of the goals of the post-investigation ADR program. Accordingly, the NRC expects a timely progression of a case at each stage of the mediation process. In cases where the parties achieve settlement, the NRC expects to issue a CO within 90 calendar days of the date of the agency's letter offering the ADR option to an entity the other party.

Additional Sources of Information

Further information about the NRC's ADR program is available from the following:

- Cornell toll free at (877) 733-9145
- NRC ADR Program Manager in the Office of Enforcement toll free at (800) 368-5642 or (301) 415-2741
- NRC enforcement ADR program on the agency's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/adr.html

The Confirmatory Order

A CO is a legally binding document that includes the terms of the AIP. For a licensee, a CO serves as an amendment to its NRC license. Regardless of the type of entity, a CO has the same legal force against any party to which it is issued.

The NRC will only issue a CO with the prior written consent of the other party, and with a waiver of the right to a hearing. After the entity or the individual, as applicable, has completed the terms of the CO, the NRC will conduct verification activities to ensure that the terms of the CO have been satisfied in a timely manner. Because the CO is legally binding, failing to comply with its terms exposes the entity or individual to additional enforcement action.

Although the substance of the mediation session remains confidential, the details of the settlement will normally be made public via a press release and the publication of the CO in the *Federal Register*.

Post-Investigation Alternative Dispute Resolution Program



The Program

The Program Administrator

The U.S. Nuclear Regulatory Commission's (NRC's) post-investigation alternative dispute resolution (ADR) program provides an amicable process to resolve enforcement matters. It may produce more timely and effective outcomes for the NRC and an entity (e.g., an NRC licensee, certificate holder, or contractor of an NRC licensee or certificate holder) or an individual who is subject to an enforcement action. Following the congressional endorsement of the use of ADR by Federal agencies, the NRC established the post-investigation ADR program in 2004. Post-investigation ADR offers the opportunity to resolve discrimination cases or other wrongdoing and related matters through mediation rather than through the NRC's traditional enforcement process.

Post-investigation ADR refers to the use of mediation after the completion of an investigation by the NRC Office of Investigations and the staff's conclusion that pursuit of an enforcement action appears warranted. As long as the enforcement matter is within the scope of the program, the NRC normally offers post-investigation ADR at each of the following stages of the enforcement process: (1) before an initial enforcement action, (2) after the initial enforcement action is taken, typically upon issuance of a notice of violation, and (3) when a civil penalty is imposed but before a hearing request.

Mediation is an informal process in which a trained and experienced mediator works with the parties to help them reach a resolution. The parties are the NRC and the entity or an individual, as applicable, in the mediation. The mediator focuses the attention of the parties on their needs and interests rather than on their stated positions. Mediation gives the parties an opportunity to discuss issues, clear up misunderstandings, identify creative ways to address issues, find areas of agreement, and resolve their dispute.

Participation in the program is entirely voluntary. The NRC and the entity or the individual, as applicable, may withdraw from the mediation process at any time.

During the mediation, the mediator will give the parties an opportunity to discuss their views on the issue. Often, the mediator will meet privately with each party to develop a clear understanding of the party's perspective and explore and assess options. Although the mediator does not have any power to make decisions that may bind either party, he or she may ask questions intended to help the parties assess the merits of their positions, help them converse in a respectful atmosphere, and identify potential settlement options.

If the parties reach a settlement agreement during the mediation session, they will typically document the terms of their agreement in writing by developing an agreement in principle (AIP) document. The AIP is not enforceable by either party against the other, but it is the basis on which the NRC drafts a confirmatory order (CO), which is a legally binding document used to confirm the commitments made in the AIP.

However, if the parties do not reach a settlement agreement, the traditional enforcement process resumes—that is, the enforcement process continues as it would have, had the parties not engaged in ADR.

Confidentiality

Although the terms of an ADR settlement become publicly available through the issuance of the CO, with certain exceptions, the substance of the discussions during the mediation session is confidential regardless of the mediation outcome. The mediator is prohibited from discussing the mediation proceedings, testifying on anyone's behalf concerning the mediation, or submitting a report on the substance of the discussions.

Cost

The NRC and the entity or individual, as applicable, equally share the fees and travel expenses of the mediator and any meeting room fees. However, each party is responsible for its own expenses, such as travel, lodging, and legal representation.

The Mediator

The mediator is an experienced neutral individual who is mutually selected by the parties. He or she has no stake in the outcome of the mediation or any power to make decisions that may bind either party. The role of the mediator is to facilitate communication between the parties and to provide an environment where the parties have an opportunity to address their differences. The mediator uses consensus building skills and knowledge of negotiation to help the parties find ways to overcome any misunderstandings and attempt to find areas of agreement. The mediator does not act as legal counsel or provide legal advice to any party. Each party should consult an attorney for legal advice as such party deems appropriate.

The Mediation Process

Historically, most post-investigation ADR mediations have occurred at the first stage of the enforcement process (i.e., before an initial enforcement action). In those cases, the NRC presents the entity or an individual, as applicable, with the opportunity to engage in mediation with the agency before it makes an enforcement decision. If the entity or the individual elects ADR, Cornell will help the NRC and the entity or the individual, as applicable, to jointly select a mediator. After the parties select a mediator, the parties, in coordination with the mediator, set a date and place for the mediation. Typically, the mediator holds a pre-mediation teleconference with the parties to discuss logistical matters or any special needs of either party.