

RIC 2006 Session T2F Allegations (Alternative Dispute Resolution)

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Office of Enforcement

Nuclear Regulatory Commission

March 7, 2006



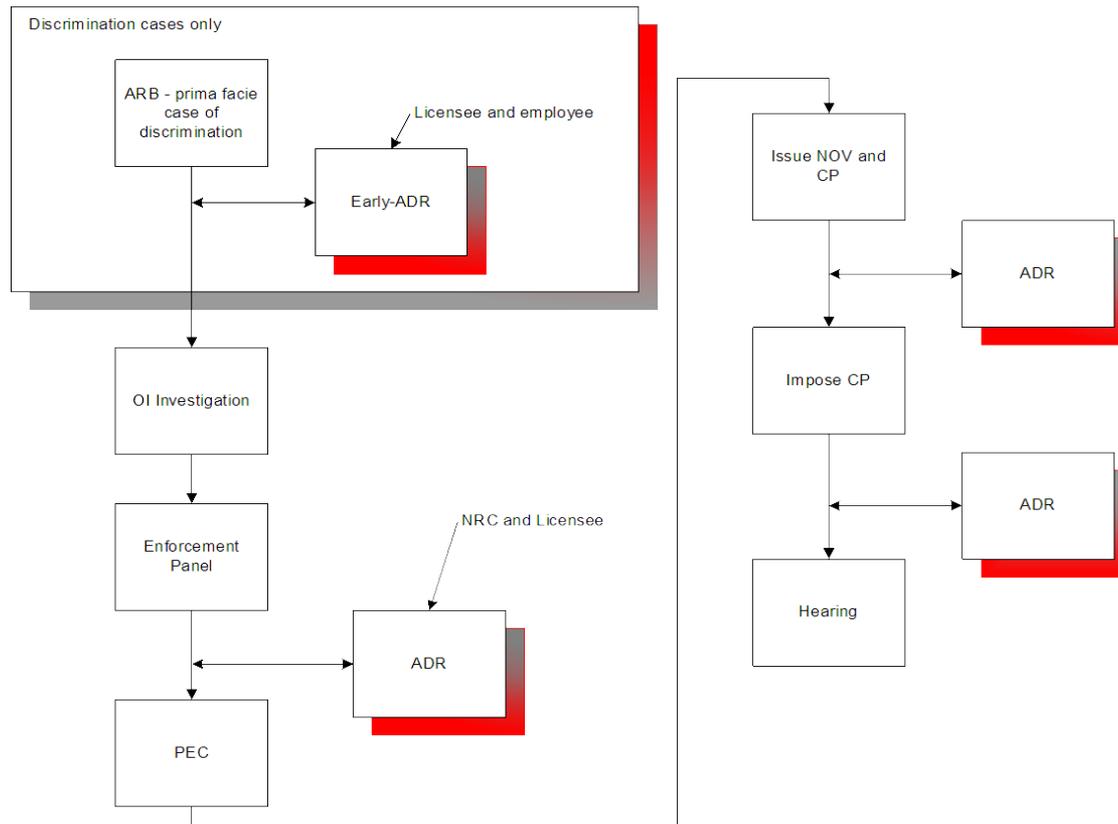
Overview

- NRC's Pilot
- Current Status
- Evaluation

ADR Pilot Program

- Began Late September 2004
- Scope: cases involving
 - Alleged discrimination for engaging in protected activity prior to an NRC investigation, technical issues are resolved through NRC allegation process
 - Both discrimination and other wrongdoing after OI has completed an investigation
- Mediation
- Voluntary
- Cornell University is the program administrator
 - Institute on Conflict Resolution
 - 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

ADR Opportunities



Early-ADR Overview

- 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
- Settlement is reviewed by NRC for restrictive agreements.

Early-ADR

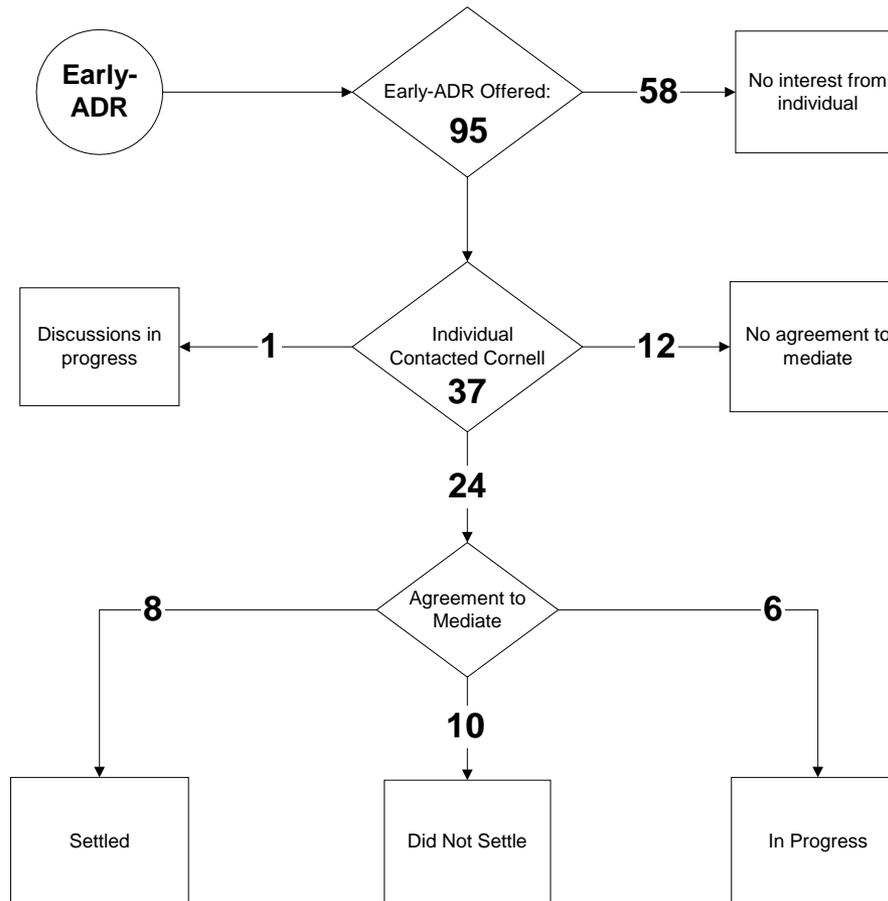
- If settled, and without restrictive agreements, the NRC will not investigate or take further enforcement action.
- If a licensee program is used, the NRC is informed and approves settlement agreement, there will be no investigation or enforcement action.
- Conducted consistent with allegation program
 - 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

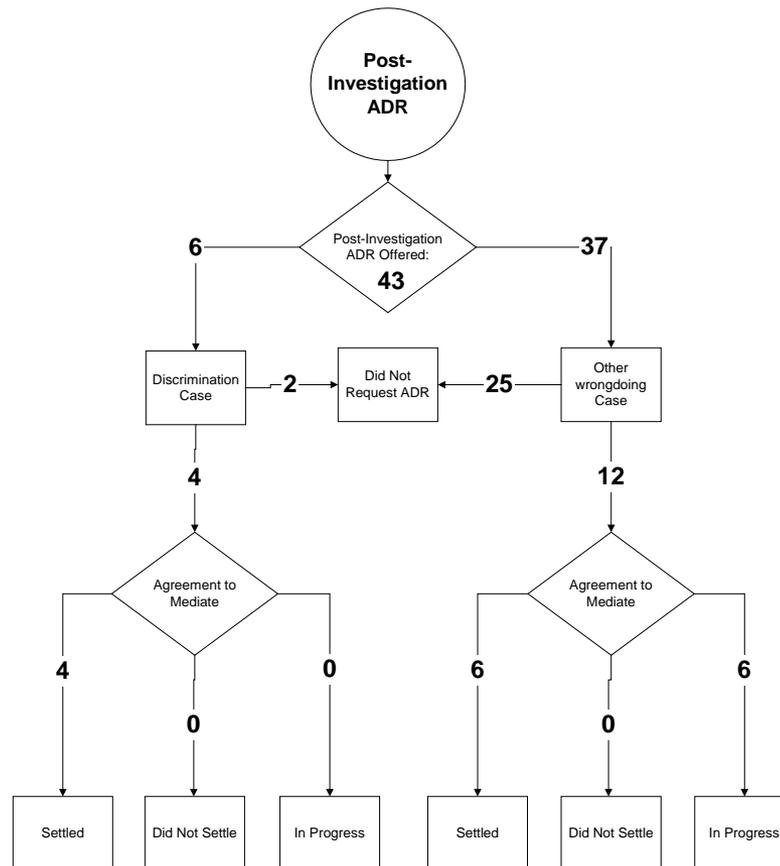
- Three opportunities
 - Prior to a PEC
 - After initial issuance of a sanction (typically the NOV)
 - After imposition of a CP but before a hearing.
- Program allows 2 attempts
- Licensee pays ½ of mediator's fees
- Settlement agreement is documented as a Confirmatory Order
 - Including Federal Register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

Case Statistics: Early-ADR

Evaluation Data



Case Statistics: Post-Investigation



Some Lessons Learned

- Who participates is important
 - Site management (a decision maker) along with an attorney may typically be best combination
 - In both Early and Post-OI, other parties typically want to talk about the issue(s), not just \$
- Timeliness
 - All parties need to be responsive (frequently has not been the case)
 - Biggest challenge to program is probably timeliness
- Be prepared to discuss interests
 - What you need, not what you want
 - Avoid positions. Positions may be overly argumentative and based on litigation posture
 - Prior thought helps make mediation session efficient

Program Manager's Overall Impressions

- Successful overall
 - Serves program interests through deterrence and broad, comprehensive corrective actions that are confirmed by order
 - Improved communications between parties at the mediation session have resulted in greater understanding and more effective actions by everyone
 - Resource savings in most cases
- Areas of improvement:
 - Communications enhancements such as program information provided to potential parties and improved mediator orientation
 - Timeliness by all parties
 - Improved responsiveness by parties
 - Increase the mediation session schedule priority
 - NRC staff improve efficiency of confirmatory order process

Pilot Program Evaluation

- Comments on evaluation criteria and pilot program overall were solicited
 - Public Meeting Oct. 11, 2005
 - Written comment period in October 2005
 - Internal stakeholder comments solicited during the same time period
- Pilot program evaluation drafted based on data as of the end of December 2005
- Pilot evaluation submission to the Commission planned for March 2006

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- NRC Enforcement Web page
 - <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>