

12. Public comment.

CONTACT PERSON FOR INFORMATION:

Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary of the Corporation, at (202) 336-8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336-8800.

Dated: August 16, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

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NUCLEAR REGULATORY COMMISSION

Enforcement Program and Alternative Dispute Resolution; Request for Comments and Announcement of Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments and announcement of public meetings.

SUMMARY: On December 14, 2001 (66 FR 64890), the Nuclear Regulatory Commission (NRC) announced its intent to evaluate the use of Alternative Dispute Resolution (ADR) in the NRC's enforcement program, which is defined in the NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions (Enforcement Policy)". The NRC is undergoing this evaluation because government-wide, ADR techniques have proven to be efficient and effective in resolving a wide range of disputes. On March 12, 2002, the staff conducted an ADR workshop to evaluate the strengths and weaknesses associated with its use in the enforcement area. The staff has evaluated the outcome of this workshop and concluded that: (1) There may be a role for ADR in the enforcement program; however, further review is needed, (2) if ADR has a role, the NRC should focus on areas resulting in the largest benefits, (3) a pilot program should be the first step to implementation, and (4) additional stakeholder input is needed.

The staff concluded that in order to make any final recommendations for incorporation into the enforcement program or the development of a pilot program, additional stakeholder input is

necessary. As a result, additional comment is being sought and a number of public meetings and workshops are being scheduled at various locations throughout the country. Various options associated with the development of a pilot program for the use of ADR in the enforcement process will be discussed. Information on ADR is available on the NRC's Web site at www.nrc.gov: select What we Do, Enforcement, then Public Involvement in Enforcement.

DATES: The comment period expires October 21, 2002.

ADDRESSES: Submit written responses to the questions contained in the Discussion section of this Notice to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T-6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments may be submitted by e-mail to nrcprep@nrc.gov. Copies of comments received may be examined at the NRC's Public Document Room, located at One White Flint North (O1-F21), Rockville, Maryland, 20852-2738.

FOR FURTHER INFORMATION CONTACT:

Barry Westreich, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 (301) 415-3456, e-mail bcw@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

"ADR" is a term that 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. The Administrative Dispute Resolution Act of 1996 (ADRA) encourages the use of ADR by Federal agencies, and defines ADR as "any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, mini trials, arbitration, and use of Ombuds, or any combination thereof." 5 U.S.C. 571(3). These techniques involve the use of a neutral third party ("neutral"), either from within the agency or from outside the agency, and are typically voluntary processes in terms of the decision to participate, the type of 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 the quicker and more economical resolution of issues, more effective outcomes, and improved

relationships. The NRC has a general ADR Policy, 57 FR 36678; August 14, 1992, that supports and encourages the use of ADR in NRC activities. In addition, the NRC has used ADR effectively in a variety of circumstances, including rulemaking and policy development, and Equal Employment Opportunity (EEO) disputes.

Although a few enforcement cases have been resolved through the use of "settlement judges" from the Atomic Safety and Licensing Board Panel, pursuant to 10 CFR 2.203 there has been no systematic evaluation of the need for ADR in the enforcement process. As a result of previous stakeholder input, the staff is considering the development of a pilot program for the use of ADR in the enforcement process.

Discussion

On December 14, 2001, a **Federal Register** notice (FRN) was issued soliciting comments on the use of ADR in the enforcement process (66FR64890). The 60-day comment period was extended to March 29, 2002. A workshop was held on March 12, 2002. The responses to the FRN and those expressed at the workshop indicated that the views on the appropriateness and potential usefulness of ADR techniques were widely varied. The industry and its legal counsel embraced the use of ADR techniques broadly and the public interest stakeholders were generally opposed to exploring possible uses of ADR in enforcement. Also, many stakeholders appeared to misunderstand what ADR is and how it can be used.

The workshop consisted of an overview of the agency's enforcement program to a panel consisting of: one independent ADR specialist; four ADR specialists from various Federal agencies; representatives from the Nuclear Energy Institute (NEI); representatives from the Union of Concerned Scientists; representatives from two law firms representing nuclear utilities; and, representatives from two law firms representing environmental whistle blowers. The panelists discussed the merits and debated the usefulness of ADR techniques in the context of the enforcement process.

Overall, many of the participants (*i.e.*, industry representatives, agency ADR experts, and an attorney from the environmental whistle blower community) believed that ADR could be used beneficially in the NRC enforcement process. They also did not think that any particular areas of the enforcement process should be eliminated from consideration. These participants noted that any decision to

use ADR was not irrevocable and the results, either from a pilot, or some type of full-scale implementation, would need to be evaluated. The attorney from the environmental whistle blower community who was in favor of ADR confined her suggestions to the use of ADR in 10 CFR 50.7 discrimination cases and suggested a model that the NRC might follow based on DOE experience. Most participants also recommended taking a flexible view on what types of ADR techniques should be used and noted, for example, that facilitation could also be used effectively, as well as mediation. Those participants supporting the use of ADR recommended that a wide pool of third party neutrals should be available for the parties to select from for any particular dispute.

The citizen group representative was opposed to ADR on the grounds that ADR would only provide an opportunity for the enforcement process to be weakened. In written comments, it was noted that if ADR was to have a role, it should only be considered for establishing the fact set that is then used by the NRC staff to determine sanctions, for example, as to when a non-conforming condition was identified or whether the cause of the violation was wilful. However, its use would be "distasteful" when ADR is used in a case that involved a challenge to a proposed sanction. In respect to the potential need for confidentiality in ADR, this commentator noted that more deals brokered behind closed doors can only expand the widely perceived impression that NRC has an inappropriate close relationship with the industry it regulates.

Conclusions and Plans for Developing a Recommendation

Based on review of the comments received and provided during the March 12, 2002, workshop, the staff has reached several conclusions and plans to proceed as follows:

- There *may* be a role for ADR in the enforcement program.

Based on the many pros and cons regarding the use of ADR in the NRC enforcement program and that many of the comments received were opposed on the same issues, the staff cannot draw any final conclusions regarding whether ADR should ultimately have a role in the enforcement program and, if it does have a role, how it should be incorporated. However, based on review of stakeholder input, the staff believes that there are areas in the enforcement program which may benefit from the incorporation of ADR and that these areas should be reviewed further.

The staff needs to specifically evaluate whether the use of ADR will not detract from the overall objective of the NRC enforcement program—deterrence and achieving lasting corrective actions, maintaining safety, increasing (or at least maintaining) public confidence, and increasing (or at least maintaining) effectiveness.

- If ADR has a role, NRC should initially focus efforts on areas resulting in the largest benefits.

Commentors provided a wide range of potential benefits and drawbacks to using ADR. While the staff recognizes that it needs to evaluate all benefits and drawbacks, the staff believes that the largest benefits of implementation of ADR in the enforcement program are greater efficiency, lower costs, and better timeliness. Therefore, the staff plans to narrow the initial focus and scope of its review and evaluation of the use of ADR to areas that would realize these benefits. The staff plans to review whether ADR should be incorporated into one of the following areas of the enforcement program for reactor and materials cases: cases involving potential discrimination and cases involving potential wrongdoing. Historically, these types of cases have taken the most time and resources for all parties involved. However, while the staff plans to limit the scope of its review at this time, the staff is not precluding expanded use of ADR in the future. Specifically, if incorporation of ADR is appropriate and demonstrates a benefit, the staff will review further use of ADR in other areas.

- If ADR has a role, it should initially be implemented as a pilot program.

Based on review of the stakeholder's comments, it is clear that some stakeholders, both internal and external, do not see the benefits of incorporating ADR into the enforcement program. In fact, some believe it will have a negative impact on the enforcement process. Therefore, if the staff recommends incorporation of ADR into the enforcement program, it will recommend initial implementation as a pilot program. The staff believes that implementation of a pilot will better demonstrate whether the benefits can be realized, provide confidence that there will be no, or minimal, negative impacts, and will provide additional information for how ADR can be further incorporated into the enforcement program. For a pilot to be successful in demonstrating the use of ADR, the staff believes that the pilot program should include a representative sample of cases. There should be a sufficient number of cases included in the pilot to adequately exercise the enforcement

process but not too many that will overwhelm the staff and process. The pilot should specifically address at which points in the enforcement process ADR should be used.

The staff notes that use of an ADR pilot program would be voluntary for all parties, including the NRC. Therefore, if implementation of the pilot for a specific case would compromise the enforcement process, NRC could withdraw from ADR for the case. Other parties would have the same option. In such cases, the NRC would follow the current enforcement process.

- Additional stakeholder input is warranted.

As stated, stakeholder input is very mixed on a number of issues important to the use of ADR. In order to make any final recommendations for incorporation of ADR into the enforcement program, or even the development of a pilot program, additional stakeholder interactions are necessary.

In view of the above, the staff seeks additional input from the public and other stakeholders in written form or at workshops to be scheduled throughout the country over the next few months. The staff proposes to evaluate the use of ADR in a pilot program, initially for some percentage of wrongdoing and discrimination cases in both the materials and reactor areas. The staff is currently evaluating whether to use ADR in a number of points in the process. Specifically, (1) following identification of wrongdoing or an allegation of discrimination but prior to a full investigation into the matter, (2) following an investigation that substantiates the matter but prior to an enforcement conference, (3) following the issuance of a Notice of Violation and Proposed Imposition of Civil Penalty but prior to any Imposition of Civil Penalty, and (4) following an Imposition of Civil Penalty but prior to a Hearing on the matter. The staff requests that comments be focused on issues related to the implementation of a pilot program at the above steps in the NRC process, and include factors such as what ADR techniques would be useful at certain points, what pool of neutrals should be used, who should attend the ADR sessions, and what ground rules should be implemented. Also, the staff requests that comments be focused on the pros and cons of ADR as they relate to these points in the process and in maintaining safety, increasing public confidence, and maintaining the effectiveness of the enforcement program for the above noted areas.

The staff also plans to hold several public meetings and workshops at

various locations to solicit stakeholder input. Specifically the staff plans to hold meetings and workshops, tentatively scheduled at the following locations and dates:

- Hanford, WA: Week of September 2, 2002
- Chicago, IL: Week of September 16, 2002
- San Diego, CA: Week of September 23, 2002
- New Orleans, LA: Week of October 7, 2002
- Washington, DC: Week of October 14, 2002

The staff will provide specific information regarding the meeting dates times and locations on the NRC's Web site at www.nrc.gov select What We DO, then Public Involvement in Enforcement. Once the actions identified above have been completed, the staff will provide the Commission a proposed pilot program for approval or will provide an alternative recommendation regarding the use of ADR.

Dated at Rockville, Maryland, this 13th day of August, 2002.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

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NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on September 9, 2002, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Monday, September 9, 2002—1 p.m. until the conclusion of business.

The Subcommittee will continue its review of the proposed resolution of Generic Safety Issue (GSI)-185, "Control of Recriticality Following Small-Break LOCAs in PWRs." The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee

Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301-415-8065) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: August 14, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02-21256 Filed 8-20-02; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Fire Protection; Notice of Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on September 11, 2002, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows: Wednesday, September 11, 2002—8:30 a.m. until the conclusion of business.

The Subcommittee will review the staff's Fire Protection Research Plan, status of fire protection research activities, fire protection inspection

process and findings, and other related matters, including industry activities. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify one of the ACRS staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and allotted therefor can be obtained by contacting either Mr. Sam Duraiswamy (telephone 301/415-7364) or Mr. Timothy J. Kobetz (Telephone 301-415-8716) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: August 14, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02-21257 Filed 8-20-02; 8:45 am]

BILLING CODE 7590-01-P

PEACE CORPS

Proposed Peace Corps Information Quality Guidelines

AGENCY: Peace Corps.

ACTION: Proposed guidelines.