Alternative Dispute Resolution Success Story

ALJ Brought Teamwork Approach to Navy Yard Settlement

The mediation of an EPA administrative law judge (ALJ) was instrumental in breaking a deadlock in negotiations between the Agency and the U.S. Navy over alleged violations of the Resource Conservation and Recovery Act (RCRA) at the Washington Navy Yard and Anacostia Naval Station in Washington, D.C. Acting as an alternative dispute resolution (ADR) neutral, Judge Stephen J. McGuire conducted a series of teleconferences over a period of approximately five months that resulted in four consent agreements and consent orders (CACOs). The parties "agreed to engage in ADR because they both viewed the issues involved as 'impossible' to resolve," says Judge McGuire, but the ADR process proved to be so successful that the parties continued teleconferencing to negotiate the specific language of the CACOs after the ADR itself was over. "People wanted to work together once they got over mistrust of each other and worked toward the common goal of settling the case," says Judge McGuire.

The case began with a multi-media compliance evaluation inspection of the sites conducted by EPA Region 3 and the District of Columbia in June 1995. The inspection report led to the issuance of four administrative complaints on September 30, 1996, alleging a large number of violations of RCRA Subtitle C hazardous waste management and Subtitle I underground storage tank (UST) provisions, including record keeping, reporting, corrosion protection, closure, corrective action, and training requirements. The two hazardous waste management complaints also sought total civil penalties of between $600,000 and $700,000, depending on the method of calculation. The parties managed to reach agreement on some issues, but their negotiations foundered on complicated issues concerning training requirements, corrective action procedures, and penalties. With the benefit of Judge McGuire's mediation, however, the parties finalized CACOs in May and August 1998 that resolved outstanding hazardous waste management and UST issues, established workable training and corrective action processes, and reduced civil penalties to a total of only $69,000 in the hazardous waste management cases.

ADR SUCCESS PROFILE
Washington Navy Yard

Site Description:
The U.S. Navy's Washington Navy Yard and Anacostia Naval Station in Washington, D.C.

Disputed Issues:
Personnel requiring training in hazardous waste management; dispute resolution procedures and termination provisions for RCRA corrective action; and size and appropriateness of civil penalties

Alternative Dispute Resolution Tool Used:
Mediation to schedule settlement negotiations, define and prioritize issues, exchange information, and respond to other party's concerns

ADR Participants:
U.S. Environmental Protection Agency

U.S. Navy Office of General Counsel

EPA Region: 3

State: District of Columbia

When Judge McGuire was assigned the case in November 1997, he scheduled weekly teleconferences involving attorneys from Region 3, EPA Headquarters, and the Office of General Counsel at the Naval Facilities Engineering Command, Atlantic Division in Norfolk, Virginia. He asked the parties to forget everything that had happened prior to the ADR process and to focus on points that were not in dispute. "This led to a string of minor victories," he says, "and allowed the parties to feel they had accomplished at least some goals as a 'team.'" Judge McGuire gave the participants "homework" assignments on issues to be addressed at the next teleconference. He was trying to get the parties out of "trial mode" and to focus on clarifying factual issues and their respective concerns about the case. "I reiterated that instead of each side telling me about their case, I wanted them to listen to the arguments of the other side and specifically address those concerns." Once agreement was reached on several major issues, says Judge McGuire, "you could sense a newfound confidence in the parties that they could settle the entire case."

Working Toward a Common Goal

Judge McGuire, who heads up the ALJ office's ADR effort, emphasizes his role as a facilitator who helps parties to get past adversarial attitudes and build confidence and trust in each other. Once parties see themselves as teammates with a common goal, he says, they take pride in accomplishing it. His office's ADR services consist entirely of mediation, either by teleconference or face-to-face, but that process can take any shape the parties find helpful. "The parties really craft their own process," he says. "We play it by ear. Whatever we think will add to the process, that's what we do. The crux is getting the principals to the table. We need to take off our trial hats and work toward a common goal. I tell them to listen to the other side's concerns and respond to them. Hearing and responding – this is the first step toward a constructive negotiation."

Navy attorney Susan Hulbert says the mediation was an "excellent way to work through issues" and also stresses the importance of the ADR neutral's role. "Judge McGuire's involvement was very important, because he gave both sides a sense of how reasonable their position was from a judicial point of view. He bent over backwards to be fair, and I think everyone came out of it with increased respect for each other and their agencies. The government would be well served if all agencies were required to resolve their disputes this way," she says.

This ADR success story is based on a panel presentation made by Judge Stephen J. McGuire of EPA Headquarters to a meeting of the Civil Enforcement Section of the Attorney General's Interagency ADR Working Group on February 24, 1999.