

Post-Investigation Alternative Dispute Resolution

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A decorative graphic consisting of several sets of concentric circles in a lighter shade of blue, scattered across the bottom half of the slide. The circles vary in size and are positioned in the lower-left, lower-center, and lower-right areas.

Background

- Administrative Dispute Resolution Act of 1996
 - Encourages use of ADR in enforcement cases
- Policy Development
 - Initially requested by a licensee in response to a discrimination case
 - Significant stakeholder interaction between 2001 and 2004
 - Commission approved pilot in 2004
 - Evaluation conducted and provided to Commission in 2006
 - Successful pilot resulted in continuation of program

Meeting Enforcement Program Goals

- Enforcement goals
 - Deterrence
 - Prompt identification and prompt, comprehensive corrective action
- Deterrent continues with ADR
 - Total programmatic impact to the other party is more than if nominal corrective actions were taken
 - Commitments are legally binding
 - Public notice continues
- NRC's interests are the broad, corrective actions that are furthered by ADR

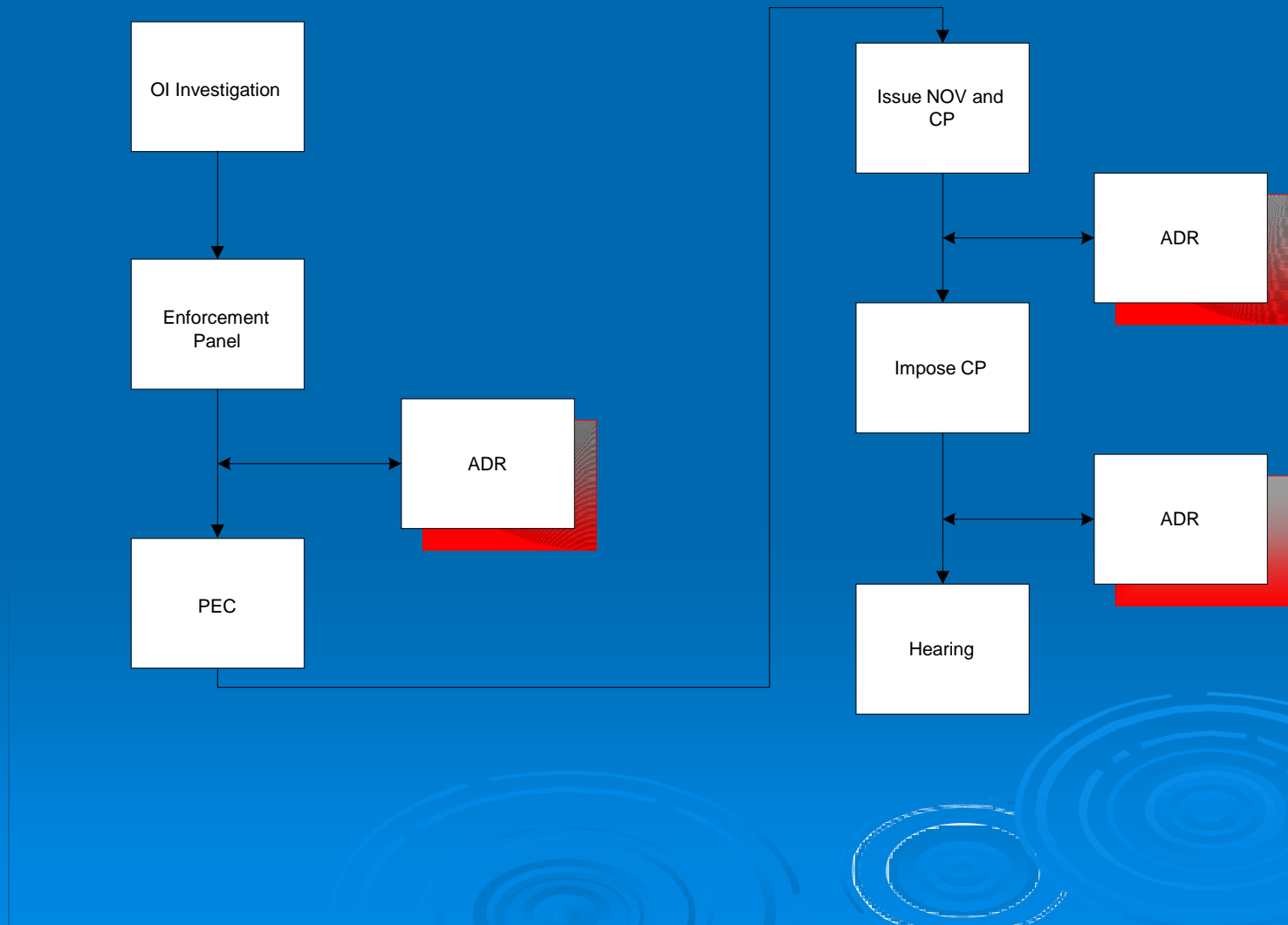
Basic ADR Program Outline

- Mediation
- Voluntary
- Cornell University is the program administrator
 - Institute on Conflict Resolution within the New York State School of Industrial and Labor Relations
 - 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

Post-Investigation ADR

- **Scope:** cases initiated after OI completed an investigation and the staff concluded that further enforcement consideration was warranted.
- **Goal:** provide a process that is less adversarial and less formal and would promote greater communication and, in turn, greater cooperation among parties
 - Typically agreements have resulted in broader and more comprehensive corrective actions than normally achieved in the traditional enforcement process and they are captured in a confirmatory order (legally binding)
- **Offered**
 - prior to a predecisional enforcement conference (PEC),
 - again when a notice of violation was issued; and
 - a final time with the issuance of an order imposing a civil penalty (CP)

Simplified Enforcement Flow Chart



Confirmatory Orders

- **Documents settlement agreement (discussions confidential)**
- **Publicly available** (serves the public interest)
 - press release
 - Federal Register Notice
- **Legally binding** – license condition if it's a licensee
- NRC staff incorporates agreement in principle into order format, other party signs a Consent and Hearing Waiver paragraph, and NRC issues the order.

Post-Investigation ADR

➤ Not offered

- significant DOJ involvement
- Particularly egregious cases
- Repetitive

➤ The Parties

- NRC
- Licensee, Contractor or Individual

Common Party Interests

➤ Typical NRC Interests:

- Broader, more comprehensive corrective actions
 - NRC can “think outside the box” and is not bound by policy
 - Enhance the safety conscious work environment and the plant’s safety culture, ensure public confidence, continue deterrence, encourage effective corrective actions, mitigate recurrence, etc.
- Legally binding commitments

➤ Common licensee interests

- Achieving closure on the case
- Reducing the civil penalty, avoiding formal notice of violation
- Minimizing negative press

Actual Use of ADR

➤ Since September 2004

- Reactor related (includes contractors): 10*
- Materials User and Fuel Facilities: 14
- Individuals (both reactor and materials): 12

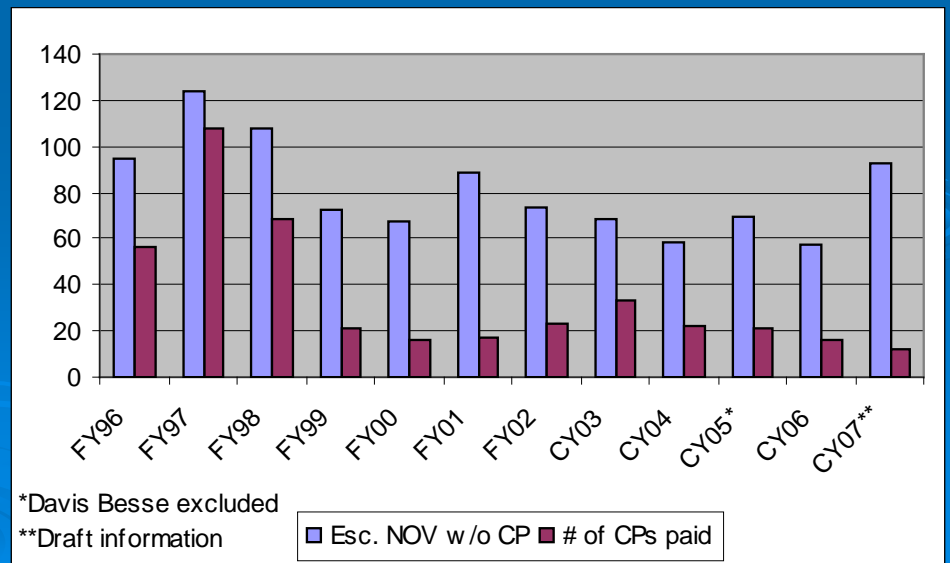
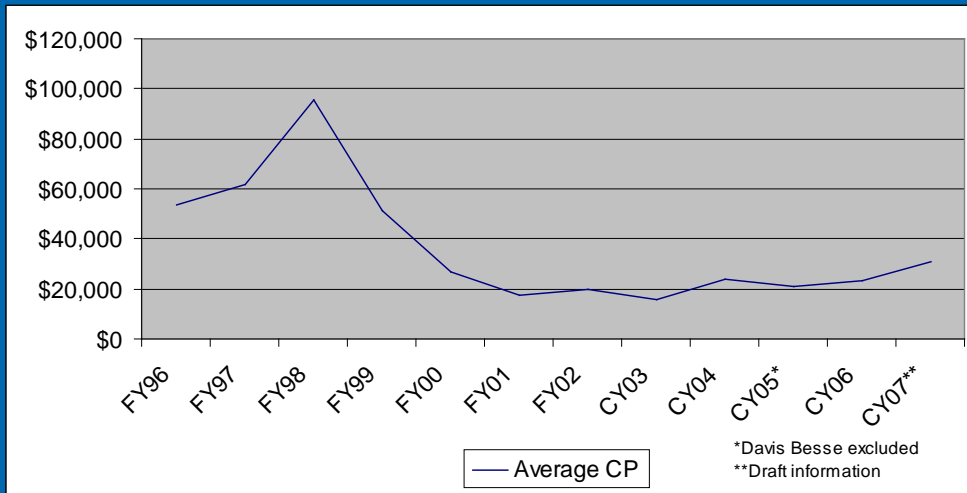
* Includes one case that NRC refused to settle

Civil Penalties

- Clear reduction in civil penalty amount in about 2000
 - Reduction due to ROP, not ADR
 - Many ADR settlements continue with some CP, although NRC will exercise discretion in recognition of broad, comprehensive corrective actions
 - Cost of the broader, more comprehensive corrective actions provides financial deterrence

Civil Penalty Data

All licensees (Reactor and Materials)



Questions?