Alternative Dispute Resolution Success Story

ADR Neutrals Aid Settlement of Pfizer Penalties Case

Pfizer, Inc. and the United States reached a mediated settlement of a multimedia penalty case arising from regulatory violations of the Resource Conservation and Recovery Act (RCRA), Clean Water Act (CWA), and Emergency Planning & Community Right-to-Know Act (EPCRA), avoiding potentially lengthy litigation. The alleged violations, which occurred at Pfizer's facility on the Thames River in Groton, Connecticut, included improper container management, failure to conduct (and/or properly document) required inspections and training, discharge of effluents exceeding limits established by a National Pollutant Discharge Elimination System (NPDES) permit, discharge without a NPDES permit, and failure to properly report releases as required under the Toxic Release Inventory (TRI) program. Pfizer contended that it was innocent of most of the alleged violations, and the Environmental Protection Agency (EPA) referred the case to the Department of Justice (DOJ) for litigation.

To avoid litigation, Pfizer, EPA, and DOJ agreed to consider alternative dispute resolution (ADR). Pfizer, however, preferred arbitration, while the government preferred mediation. The parties engaged Michael Young as a neutral convener to help them design a mutually agreeable ADR process. After about six months of intermittent negotiations, a written ADR protocol was agreed upon.

The protocol's two-phase process established a middle ground between arbitration and mediation. In a neutral evaluation phase, Pfizer and the government each submitted to mediator Judge Kathleen Roberts briefs addressing the alleged statutory and regulatory violations in light of the facts at the Pfizer facility. For example, the issues briefed included what constitutes an adequate inspection under certain RCRA regulations and whether used Raney nickel is a hazardous waste under RCRA. Judge Roberts studied the briefs and provided the parties with an oral evaluation of the strength of their arguments. That evaluation informed the subsequent mediation phase, in which Judge Roberts mediated face-to-face negotiations in September and October 1997. These sessions helped resolve most of the questions of regulatory interpretation, but the parties did not reach an agreement on penalty amounts. Having traveled most of the way to an agreement, however, the parties continued to work together in followup conference calls, some with Judge Roberts' participation, and reached a settlement in principle in April 1998.

ADR SUCCESS PROFILE
Pfizer, Inc.

Site Description:
Pfizer, Inc.'s pharmaceutical manufacturing and research facility on the Thames River in Groton, Connecticut

Disputed Issue:
The penalty amount to be paid and terms of an injunction resulting from Pfizer's violation of regulations under the Resource Conservation and Recovery Act, Clean Water Act, and Emergency Planning & Community Right-to-Know Act

Alternative Dispute Resolution Tools Used:
Convening to help the parties design a written ADR protocol, *neutral evaluation* of specified technical issues, and *mediation* of negotiations to reach a settlement

ADR Participants:
Pfizer, Inc.

U.S. Department of Justice

U.S. Environmental Protection Agency

EPA Region: 1

State: Connecticut

Settlement Benefits Both Parties and the Community

Under the settlement, which was ultimately formalized in a consent decree, Pfizer agreed to pay a penalty of $625,000 and in addition to undertake two projects, valued at approximately $175,000. The larger project addresses chemical waste management at university labs. Pfizer, with the help of a consultant, is now assessing waste handling practices at the University of Rhode Island (URI) and will work to develop better training, reduce the volume of waste created, and implement a waste management plan. Using its experience at URI, Pfizer will develop a generalized waste management process for universities and provide training to other schools. In the second project, Pfizer will provide training for secondary school teachers in chemical hazards and safety, waste minimization, spill response, and proper waste disposal.

The willingness of Pfizer and the government to work together with the help of ADR neutrals led to a result that was not only in their mutual interest, but also generated dividends for the community. By resolving their dispute in mediation, both sides saved time and money that would otherwise have been devoted to litigation. In addition, the positive experience of working together to resolve this dispute is likely to improve the relations of the parties in the future in a way that litigation would not. Moreover, the educational community at both the university and high school level will now have access to Pfizer's expertise as part of the supplemental projects included in the settlement.

This ADR success story is based on a panel presentation made by Ellie Tonkin of EPA Region 1 to a meeting of the Civil Enforcement Section of the Attorney General's Interagency ADR Working Group on February 24, 1999.