

Virginia Interagency ADR Council Pilot Presentations

Incorporating Mediation as a
Component of Silvicultural Water
Quality Law Enforcement

Virginia Department of Forestry

June 29, 2005

Pilot Overview

■ Goals

- Change the behavior of individuals who have become involved in an enforcement action to the point of Civil Penalty Assessment under the Commonwealth's Silvicultural Water Quality Law.
- The agency goal is protect Water Quality from impacts due to Silvicultural Operations (timber harvesting).

■ Participants

- Merri Hanson, Peninsula Mediation and ADR
- Tanya Denkla-Cobb, Institute for Environmental Negotiation at UVA.
- John Carroll, Deputy State Forester, DOF
- Matt Poirot, Water Resources Program Manager, DOF

Steps Taken

- Several Meetings took place to figure out how to best utilize mediation in the framework of the law enforcement process.
- Determined that the best place to fit the process was before the assessment of the Civil Penalty.
- Designed procedures and supporting documentation / forms / letters, etc. to use in the pilot phase.
- Met with the Senior Assistant A. G. for our agency to get feedback and to insure that we were meeting legal requirements.
- Compiled a list of mediators from around the Commonwealth who had a background in environmental mediation and are certified by Virginia Supreme Court to mediate civil cases or experience with multi-party cases.
- Held a training session for mediators for Pilot DOF Mediation Project.
- Implementation of the program.

Supporting Conditions & Challenges

- Supporting Conditions & Impact
 - DOF has the current law in place, the ADR process provided the agency with an opportunity to offer mediation as an option to resolve the water quality issue on a specific site and to gain some possible behavioral changes of the owners and operators in a positive manner rather than a “Law Enforcement Mode” of operation.
- Challenges & Solutions
 - The incorporation of mediation lengthens the law enforcement process which is already quite a burden to the agency. The solution was to incorporate the ADR process into a point in the agency enforcement process where it became another “Step” in the process and did not stretch out the amount of time it took to get resolution.
 - The settlement agreements which are formulated at the end of the mediation include resolution of the Water Quality problems in every case. This will shorten the time involved in additional court action, appeals of decisions, and the like.
 - Additional requirements would include required training for operators as well as requirements for planning on future sites in exchange for a reduction or removal of civil penalties being sought by the agency.

Implementing the New ADR Process

■ How It Works

- Fits into the law enforcement process prior to assessment of Civil Penalties by the DOF for a Water Quality Violation that has progressed to the penalty stage.
- Agency notifies all parties of the intent to seek civil penalties for failure to comply with a Special Order to correct Water Quality problems.
- DOF tells all parties that it will be seeking penalties in the amount of \$_____ per day of violation.
- DOF offers to mediate the dispute to see if a mutually agreeable solution can be reached, if all parties agree, DOF sets up the mediation.
- In the Pilot Project, DOF is paying for the cost of the mediation, in the future, this cost will be determined in the settlement agreement if it becomes an operational part of our process

■ Roll Out to Stakeholders

- This was done through the State Forester's Water Quality Task Force which is the main Stakeholders group.

Results Produced

- Better
 - Not sure yet, we have had two opportunities to mediate since the Pilot began, with successful settlement agreements as a result.
- Faster
 - It appears at this point to lengthen our law enforcement effort slightly, but the results are satisfactory. Long-term, if the effort changes behavior, the agency anticipates a reduced law enforcement effort will be necessary.
- Cheaper
 - Should save agency resources in the long-term due to reduced enforcement action.
- DOF is currently working with JMU under a grant to determine the success under the Pilot Project. Results will be available at a future date.

Lessons Learned

- It is important to include people who understand the role of mediation. DOF is greatly appreciative of the guidance that we received from Merri Hanson and Tanya Denkla-Cobb.
- Probably too early to tell if the effort will result in the change in behavior that the agency is seeking.
- Need to be mindful of the appropriate place to use the ADR process. DOF could have implemented the process earlier in the law enforcement effort, however, it could have easily overwhelmed our resources. We will be looking at other areas of our business to include it in the future.