

Recent Activities and Highlights from the
Administrative Enforcement and Regulatory Process Section
July 27, 2015

Outreach:

Administrative Enforcement and Regulatory Process (AERP) activities were recently presented at the American Bar Association's Dispute Resolution Section's April conference in Seattle, Washington on the topic, "*The Current State of ADR is a Many Splendid Thing.*" Four representatives highlighted ADR trends, opportunities, and new tools across Sections of the IADRWG programs, inclusive of AERP. IADRWG Workplace Section representative of the Equal Employment Opportunity Commission addressed the robust use of workplace coaching to prevent and resolve disputes. From an AERP perspective, the Federal Maritime Commission (FMC) panelist highlighted current agency trends in regulatory ADR namely the continued institutionalization of existing programs (e.g. new Safety Transportation Board arbitration and mediation regulation; FMC mandatory mediation rule); enhanced focus on private party disputes (e.g. ITC, STB, FMC, FERC programs address private commercial regulatory concerns); and meeting the need for real time ADR services (e.g., FMC ombuds and rapid response teams, STB rail consumer assistance program, and FERC ADR and Landowner Helplines). The U.S. Institute for Environmental Conflict Resolution provided a robust discussion of the role of Environmental Collaboration and Conflict Resolution in facilitating and resolving environmental disputes. A former government official with National Archives and Records Administration provide an overview of NARA's work in ombuds, mediation, and facilitation to assist Freedom of Information Act professionals resolve disputes with private parties. *Submitted by Jennifer Gartlan, FMC*

Agency Program Overviews and Updates:

U.S. Environmental Protection Agency: The U.S. Environmental Protection Agency has had its current ADR program since 1999. The EPA's Conflict Prevention and Resolution Center, headed by the agency's Dispute Resolution Specialist, ensures that internal and external ADR processes are administered properly under such statutes as the Administrative Dispute Resolution Act of 1996 and Alternative Dispute Resolution Act of 1998, and leads the external environmental ADR practice, known now as Environmental Collaboration and Conflict Resolution (ECCR). The CPRC also administers the largest ADR services contract in the federal government, coordinates policy and practice with the 10 EPA Regions, and is a key participant in the IADRWG. The Dispute Resolution Specialist also ensures that internal ADR processes in the Office of Human Resources (Workplace Solutions) and the Office of Civil Rights are

fulfilled according to relevant statutes and authorities. The CPRC coordinated the EPA's FY 2014 ECCR Annual Report to the Office of Management and Budget and Council on Environmental Quality. In its ECCR Annual Report, the agency reported that it sponsored or participated in a total of 184 ECCR cases, which represents an increase of 10% over the number of cases reported for FY 2013. The EPA also reported that it used about \$6.7 million in ECCR and related services under its ADR services contract during FY 2014, which is a record level of expenditure since the EPA began its annual ECCR reporting to OMB/CEQ. The number of cases and financial investments reported reflects the EPA's ongoing support for ECCR, which extends to all of its Regional offices and all environmental programs. The ECCR Annual Report also highlighted the Sumas Mountain/Swift Creek ECCR process, which produced a negotiated agreement concerning the management of a site with naturally occurring asbestos.

Submitted by Shawn Grindstaff, U.S.EPA

United States International Trade Commission - 337 Mediation Program:

In 2008, the United States International Trade Commission ("Commission") launched the 337 Mediation Program to enhance the efficiency of the Section 337 adjudication process and managing the Section 337 caseload. The Commission's mediation program provides litigants a confidential, cost-effective, and quick mechanism of case evaluation and provides an opportunity for early settlement. All Section 337 investigations are eligible to participate in the 337 Mediation Program. There are three ways a case can proceed to mediation: the parties voluntarily agree to mediation; the Secretary or the presiding Administrative Law Judge ("ALJ") refers the case to mediation; or, the presiding ALJ may order attendance at a mediation session, pursuant to 5 U.S.C. § 556(c)(6), (8). The 337 Mediation Program is administered by the Secretary to the Commission and supervised by the Office of the Chairman. The Commission maintains a roster of experienced and accomplished mediators recruited from the ranks of distinguished retired Federal jurists and former senior counsel from intellectual property practices. Many serve in a similar capacity for the U.S. Court of Appeals for the Federal Circuit, for other federal courts, and for state courts around the country. Roster members provide a single-day session of mediation on a pro bono basis and may be available for additional sessions if parties so desire. Mediation roster members are located in major intellectual property commerce centers around the country, with new mediators and other venues being added as the program expands. The 337 Mediation Program plays an important part in ensuring the Commission's continued success in accomplishing its mission of administering U.S. trade remedy laws within its mandate in a fair and objective manner. To assess and enhance the effectiveness of the program, the Commission is developing a survey to be taken by participants in 337 investigations. Further information about the Section 337 Mediation Program may be found on the

Commission's website at

http://www.usitc.gov/intellectual_property/mediation.htm

Submitted by Sally Bromley, U.S. ITC

Federal Maritime Commission: The Office of Consumer Affairs & Dispute Resolution (CADRS) participated in 3 national port forums held by the FMC in Los Angeles (Sept. 15, 2014), Baltimore (Oct. 1, 2014), and Charleston (Oct. 30, 2014). These forums were attended by representatives from federal and state government, cargo owners, truckers, steam ship lines, labor interests, marine terminal operators, port authorities, and other stakeholders and explored underlying causes and potential solutions for port congestion. As a follow up to the forums, CADRS staff routinely have been providing rapid response and *ombuds* services to cargo owners, transportation intermediaries, truckers, steam ship lines, and marine terminal operators to help resolve challenges and disputes related to recent port congestion experienced on the east and west coasts.

Submitted by Jennifer Gartlan, FMC

Federal Energy Regulatory Commission: On April 16, 2015 the Federal Energy Regulatory Commission (FERC) approved an uncontested settlement to resolve all disputed issues related to the American Midstream (Midla), LLC plan to abandon its interstate natural gas facilities. The settlement was the result of a mediation conducted by FERC's Dispute Resolution Division (DRD) and provides continuity of gas or propane service to shippers currently served by Midla. The case was initially contentious since the applicant requested the abandonment of over 300 miles of older natural gas pipeline in two states. The mediated solution and unopposed settlement was creative and met the interest of all parties to the settlement. For more on the Midla case visit:

<http://elibrary.ferc.gov/idmws/search/results.asp> and insert: Docket No. RP14-638-000, CP14-125-000 *et al.*, *Atmos Energy Corporation v. American Midstream (Midla) LLC* and the approval date April 16, 2015. In addition to the Midla and other significant mediation achievements, FERC's Dispute Resolution Division conducted: 4 educational events on energy ADR and international energy ADR in partnership with the Energy Bar Association; presentations to 2 international delegations from South Korea and Uganda on FERC's ADR program; 3 educational sessions to FERC employees on ADR tools to employ in critical negotiations; and 2 workshops on understanding different temperament styles to have constructive dialogue in the context of working as leaders, in teams, and one-on-one.

Submitted by Deborah M. Osborne, FERC