

# Environmental Laws and Alternative Dispute Resolution: Tools for Environmental Justice

## Alternative Dispute Resolution

Community residents are often faced with complicated decisions about environmental matters. Controversies extend from the siting of new facilities to the cleanup of abandoned contaminated property. In most of these cases, communities have to confront difficult health, economic, environmental, and quality-of-life issues. The debates about these issues can become divisive and lead to conflict.

### What is ADR?

The term alternative dispute resolution (ADR) is used to describe a range of techniques that can help people to address conflicts without having to resort to litigation, or to reach settlement more efficiently within existing litigation proceedings. ADR techniques involve a neutral third party who assists parties in designing and conducting a process for reaching agreement, if possible. This person has no stake in the substantive outcome of the effort. He/she helps orchestrate the process and ensures that it is implemented fairly and that everyone is heard and shares in the decision-making. Typically, all aspects of ADR are voluntary, including the decision to participate, the type of process used, and the content of any final agreement, although federal courts have required the use of ADR in some cases.

### What are the goals of ADR?

The goal of ADR is to have people work collaboratively together to develop and consider alternatives that can lead to mutually satisfying resolution of their issues. ADR is based on the theory that people who are involved in a controversy are the ones best able to develop a reasonable and enduring solution because they know their own needs and interests. Among ADR's objectives are:

- Faster resolution of issues;
- More creative, satisfying, and enduring solutions;
- Reduced transaction costs;
- Improved working relationships; and
- Increased stakeholder support for agency programs

## Types of ADR

ADR techniques include:

*Convening* (or Conflict Assessment) involves the use of a neutral third party to help assess the causes of the conflict, to identify the persons or entities that would be affected by the outcome of the conflict, and to help these parties consider the best way (for example, mediation, consensus building, or a lawsuit) for them to deal with the conflict. The convener may also help get the parties ready for participation in a dispute resolution process, by providing education to the parties on what the selected process will be like.

*Facilitation* is a process used to help a group of people or parties have constructive discussions about complex or potentially controversial issues. The facilitator provides assistance by helping the parties set ground rules for these discussions, promoting effective communication, eliciting creative options, and keeping the group focused and on track. Facilitation can be used even where parties have not yet agreed to attempt to resolve a conflict.

*Mediation* is a process in which a neutral third party (the mediator) assists disputants in reaching a mutually satisfying settlement of their differences. Mediation is voluntary, informal, and confidential. The mediator helps the disputants to communicate clearly, to listen carefully, and to consider creative ways for reaching resolution. The mediator makes no judgments about the people or the conflict, and issues no decision. Any agreement that is reached must satisfy all the disputants.

*Consensus Building* is a process in which people agree to work together to resolve common problems in a relatively informal, yet cooperative, manner. It is a technique that can be used to bring together representatives from different stakeholder groups early in a decision-making process. A neutral party helps the people to design and implement their own strategy for developing group solutions to the problems.

An *Ombudsman* is an official who has the authority to receive complaints and help to resolve them. EPA has ombudsmen for several programs. They are high-level employees who have the ability to look independently into citizens' concerns and facilitate the communication and consideration that can lead to a solution.