

Advanced Practical Training

ENVIRONMENTAL LITIGATION

MANAGING ENVIRONMENTAL CASES



WHAT IS JUDICIAL CASE MANAGEMENT?



- **Judicial participation to Influence, Guide, Direct Case Processing**

- **Goals:**
 - **Fairness**
 - **Efficiency**
 - **Affordability**



NECESSITY OF JUDICIAL CASE MANAGEMENT

- **Litigation Complaints:**

- Expensive
- Slow
- Complex
- Inequitable



- **Case Management maintains integrity of judicial process by assuring that -**

- laws and procedures are applied equally
- cases are processed fairly and efficiently

WHY PARTICULARLY MANAGE ENVIRONMENTAL CASES

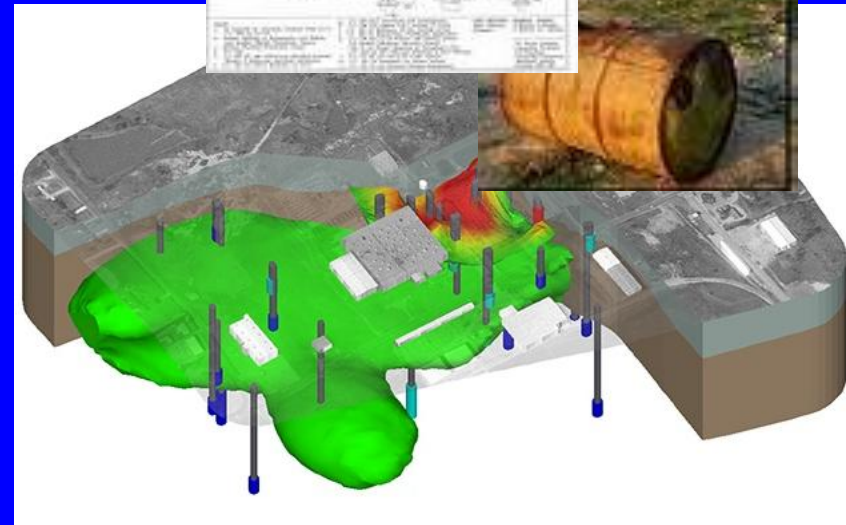


Imbalance-

- Wealthy Sources Cause Environmental Degradation
- Citizens Suffer Environmental Impact

Complexity in:

- Law
Statutes, Regulations, Policies,
Guidance, Permits
- Facts
 - Standards
 - Science
 - Tests
 - Technology



ATTRIBUTES OF EFFECTIVE JUDICIAL CASE MANAGEMENT

- **Active Rather Than Passive**
- **Focused on Substance,
Not Just Procedure**
- **Responsive - Quick to Act**
- **Consistent —**
- **Firm, but Fair**
- **Informed**



SPECIFIC OBJECTIVES OF CASE MANAGEMENT

- **Ensure case progression**
- **Proper sequencing and flow**
- **Reduce legal issues**
- **Reduce facts**
- **Explore settlement and ADR**
- **Resolve preliminary matters early**
- **Prevent negative tactics**



POTENTIAL TOOLS FOR MANAGING ENVIRONMENTAL CASES

- **Alternative Dispute Resolution**
- **Pre-trial Scheduling Orders**
- **Stipulations**
- **Pre-Trial Orders on Motions**
- **Pre-Trial Conferences**



ALTERNATIVE DISPUTE RESOLUTION (ADR)

- **ADR = A Process for the amicable resolution of disputes**
- **Benefits:**
 - **Speeds resolution**
 - **Speeds remediation or remedy**
 - **Avoids expenditures of parties**
 - **Avoids overuse of court's time and resources**
 - **Offers broader, more flexible remedies**
 - **Offers confidentiality**
 - **Maintains good public face**
 - **Maintains good relations between parties**
 - **Provides sounding board**
 - **Helps the parties identify and narrow issues**
 - **Provides opportunity for evidence exchange**
 - **Prepares parties for hearing**



ADR PROCESS

- **Mediation/Facilitation/Evaluation**
- **Informed Neutral engages with parties**
- **Focuses parties on issues to be resolved**
- **Encourages information exchange**
- **Offers input on issues**



PRE-TRIAL SCHEDULING ORDERS

- **Requirements:**
 - Counsel must meet to discuss case
 - Status reports
 - Exchange of witness lists
 - Exchange of trial exhibits
 - Production of evidence
- **Set deadline for:**
 - Discovery/Exchange
 - Motions and terms thereof
- **Set Hearing Date**
- **Notify Parties as to hearing procedures**
- **Establish terms of contact**
- **Notify parties of penalty for violation**



STIPULATIONS

- Undisputed facts
- Witness testimony
- Authenticity of evidence
- Admissibility of evidence at hearing
- Agreements as to points of law
- Agreement as to potential penalty



PRE-TRIAL ORDERS

- **Amend Complaint, Amend Answer**
- **Add, dismiss, substitute parties**
- **Require evidence exchange**
- **Dismiss action or counts**
- **Summary Judgment**
- **Bifurcation**
 - **Parties**
 - **Issues**



PRE-TRIAL CONFERENCES

- **Ensure efficient hearing**
- **Identify:**
 - **Contested issues**
 - **Need for additional pre-hearing orders**
- **Familiarize parties with procedures**
 - **Numbering system**
 - **Evidentiary rules**



NECESSITY OF SANCTIONS

- **Encourage compliance with case management**
- **Ensure fairness and efficiency**
- **Affirm judicial authority**



CONSIDERATIONS AS TO SANCTIONS

- **Nature and consequence of the misconduct**
- **Willful or by mistake**
- **Isolated or a pattern?**
- **Extenuating circumstances**
- **Proper person to sanction**
 - Counsel
 - Client
- **Accomplishment of sanction**
- **Timing**



TYPES OF SANCTIONS

- Reprimand of Counsel
- Preclusion/waiver/striking of issue/evidence
- Monetary Fine
- Cost shifting
- Denial of Compensation/fees
- Grant/Denial of Extra Time
- Removal/bar Counsel
- Dismiss/Entry of Judgment
- Referral for Criminal Investigation



CONCLUSION

Case Management is an important tool to ensure that environmental cases are processed in a fair and efficient manner.

