

ELRA Environmental Enforcement Mediation Program Fact Sheet

Overview

The new Environmental Litigation Reform Act (ELRA) allows the Florida Department of Environmental Protection (DEP) to address cases with penalties of less than \$10,000 through administrative proceedings instead of traditional circuit court proceedings. The law also establishes a mechanism for mediation at no cost to the Respondent and authorizes the Florida Conflict Resolution Consortium (FCRC) to coordinate mediator selection and payment. This fact sheet explains how a Respondent to a DEP-ELRA Notice of Violation (NOV) can utilize mediation under this law. Mediation usually enables the respondent to an enforcement action, the DEP, and possibly others to reach a satisfactory settlement agreement more quickly and with lower costs than proceeding to administrative hearing or going to court.

What is Mediation and When is it Appropriate?

Mediation is an informal negotiation process in which a mediator assists parties in developing a mutually acceptable agreement. The mediator is neutral and has no authority to make a decision or recommend an outcome.

Mediation can provide an opportunity for the Respondent and DEP to:

- ❑ Talk constructively about what they want to achieve in a settlement;
- ❑ Consider the constraints and challenges they each face in reaching agreement;
- ❑ Explore a range of creative solutions that may address the legal and other issues;
- ❑ Shape a consent order that best addresses the environmental impacts and both the Respondent's and the DEP's interests.

Compared to going to administrative hearing or court, mediation often results in:

- ❑ Reaching settlements sooner;
- ❑ Spending less time and resources in reaching a settlement;
- ❑ A better solution for the Respondent, the agency, and the environment;
- ❑ Improved relations between the DEP, the Respondent, and the public.

It is anticipated that mediation will be appropriate in most ELRA enforcement cases. Mediation may not be appropriate in cases where a precedent is sought by one or both parties or when the only issue is a difference in interpretation of the law that may only be resolved by an administrative law judge opinion.

Summary of the Steps in the ELRA Mediation Process

1. The Department of Environmental Protection issues a Notice of Violation (NOV).
2. The Respondent signs a consent order complying with the NOV, petitions DEP for an administrative hearing within 20 days or chooses to go to circuit court by filing a written notice opting out of the administrative process within 20 days of the NOV.
3. The Administrative Law Judge (ALJ) issues an initial order that sets a hearing date for not more than 180 days after the department has referred the initial petition to DOAH.
4. The Respondent may submit a mediation request to the Florida Conflict Resolution Consortium any time after they file the petition for hearing but not later than 10 days after the receipt of the Initial Order from the ALJ.
5. The FCRC provides a panel of mediators for the Respondent to choose from.
6. The Respondent selects a mediator within 15 days of receipt of the proposed panel of mediators.
7. The mediation must be completed 15 days prior to the hearing date set by the ALJ. The parties may request an extension if necessary.
8. If there is an agreement, the DEP and the Respondent sign a consent order.
9. If there is not an agreement, the parties proceed to an administrative hearing.
10. The FCRC will ask the mediation participants to complete a brief mediation evaluation survey.

How Does a Respondent Initiate the Mediation Process?

The Respondent initiates the mediation process by contacting the Florida Conflict Resolution Consortium by phone, FAX or e-mail. The mediation request should include: the name of the Respondent, the case number from the DEP Notice of Violation, and the contact person's name, phone/fax numbers, and e-mail address. The request can be made at the same time as the petition for administrative hearing, but no later than 10 days after receiving the initial order from the administrative law judge.

Contact Information for the Florida Conflict Resolution Consortium

Address: 2035 East Paul Dirac Drive
Tallahassee, FL 32310
Attn.: Lisa Fowler

Phone: 850-644-6320
Fax: 850-644-4968

E-mail Address: lfowler@fsu.edu

CRC Web Page: <http://consensus.fsu.edu>

Contains ELRA Fact Sheet, Practitioner Directory (list of mediators), user guide, and more.

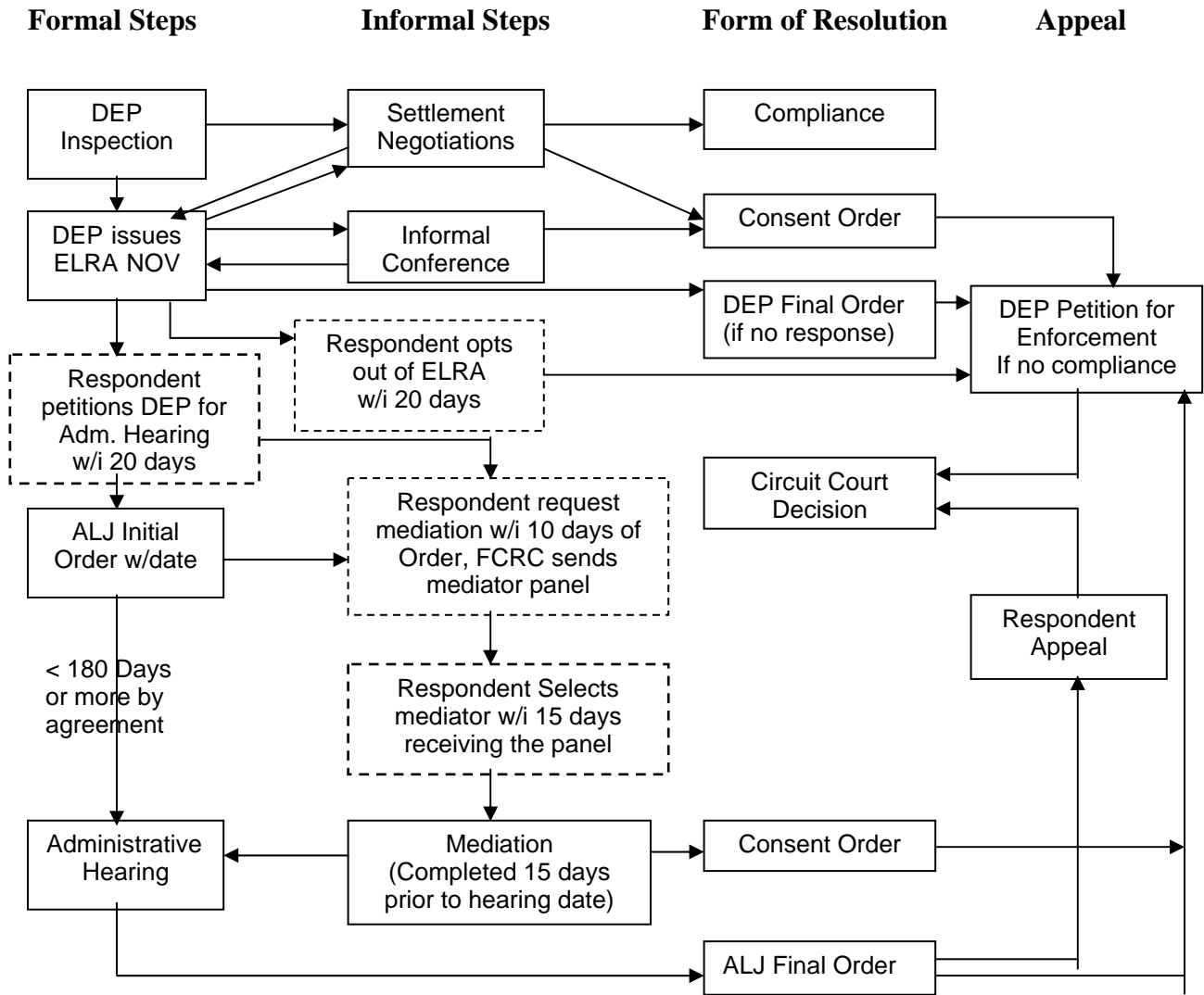
Other Information

DEP Phone Numbers http://411.myflorida.com/apps/411/tel411.public_411
(select Department of Environmental Protection)

DEP Enforcement Manual with ELRA appendices

<http://www.dep.state.fl.us/legal/legaldocuments/enfmanual/enfolist.htm>

Environmental Litigation Reform Act Procedure Diagram



How Does the Respondent Select a Mediator?

1. **The Respondent will choose a mediator** from a list of mediators in the Dispute Resolution Practitioners Directory provided by the Florida Conflict Resolution Consortium. If a Respondent wishes to consider other mediators, they can request additional mediators by contacting the FCRC or accessing the FCRC web page at <http://consensus.fsu.edu/mediators.html> (enter your name and email address to obtain a password).
2. **Respondents should contact their top choices and their references** to assess their mediation style and their mediation and professional experience in resolving environmental issues.
3. **The Respondent must notify the FCRC regarding the mediator selected** by phone, FAX, e-mail, or mail within 15 days of receiving the panel of mediators from the FCRC.
4. **The Respondent should NOT directly notify the selected mediator.** Upon receipt of the selection by the respondent, the FCRC will initiate the contract with the mediator. The mediator will contact the respondent and DEP to set a date and time for the mediation.

How Preparing for Mediation is Different than Preparing for Litigation?

- ❑ Mediation allows parties to explore interests rather than argue about positions. Come prepared to discuss your desired outcomes and constraints.
- ❑ Mediation focuses on the future more than on determining blame for the past. Respondents should come prepared with practical ideas for appropriate impact mitigation and fine payment.
- ❑ Mediation requires information on possible solutions more than information to justify positions. List the questions that need to be answered and bring or request the information that will be needed to make decisions.
- ❑ It is also helpful to have information on mitigating factors, such as, compliance efforts before and after discovery, degree of respondent control and due diligence, ability to pay, economic benefit, and history of non-compliance.
- ❑ Like litigation, mediation agreements must be consistent with the law. It is important to review or get guidance so you understand the relevant laws. Mediation can also consider other, non-legal, issues such as cost effectiveness and community impacts.

Parties may Send a Statement to the Mediator and Each Other including:

1. An assessment of the Notice of Violation indicating points of agreement/disagreement and a listing of other issues that may need to be considered.
2. Ideas for how legal, technical, and other issues can be resolved.
3. Any information that may clarify factual misunderstandings, mitigating factors, and help in making settlement decisions.
4. Information that you will, or would like the other party to, bring to the mediation.
5. A list of who will attend the mediation, e.g. attorney, consultant, etc.