The new Environmental Litigation Reform Act (HB 1635) signed by the Governor in June, 2001, allows the Department of Environmental Protection, (DEP) to address cases with penalties of less than $10,000 through administrative mediation as an alternative to traditional circuit court proceedings. The law also establishes a mechanism for funding and charges the Florida Conflict Resolution Consortium (FCRC) with administering the mediation of these cases. This fact sheet explains how a Respondent to a DEP Notice of Violation can utilize mediation under this new law to seek 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 a structured negotiation process assisted by a mediator used to develop a mutually acceptable agreement to a dispute which has reached an impasse. The mediator will help participants establish guidelines for the negotiation, ensure clear communication for their problem solving, assist them in exploring their respective interests, and help to develop possible options so the parties can reach a mutually satisfactory written agreement. The mediator has no authority to make or recommend a decision or outcome for the dispute.

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 go beyond the legal issues; and
- Shape a consent order that best addresses environmental concerns and both the respondent's and DEP’s interests.

It is anticipated that mediation will prove to be appropriate in most enforcement cases seeking penalties under $10,000. Mediation may not be appropriate in cases where a precedent is sought by one or both parties or the only issue is a difference in interpretation of the law that may only be effectively decided by an administrative law judge.

**Summary of the Steps in the Environmental Enforcement Administrative Mediation Process**

1. The Department of Environmental Protection (DEP) serves a Notice of Violation, NOV.
2. The Respondent petitions for an administrative hearing within 20 days (or they may file a written notice opting out of the administrative process within 20 days).
3. The Administrative Law Judge, ALJ, issues an initial order with a hearing date not more than 180 days after the department has referred the initial petition to DOAH.
4. The Respondent submits a mediation request to the Florida Conflict Resolution Consortium (FCRC) at the time of 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 final hearing date.
8. If there is an agreement, DEP and the Respondent sign a settlement agreement.
9. If there is not an agreement, the parties may proceed to administrative hearing.
10. The FCRC sends a brief evaluation form to the mediation participants.
11. The FCRC will send a follow-up letter to determine if the agreement has been implemented 6 months after a mediation agreement or at a time period specified in the agreement.

**HOW DOES A RESPONDENT INITIATE THE MEDIATION PROCESS?**

The Respondent initiates the mediation process by calling, faxing or emailing the Florida Conflict Resolution Consortium (FCRC). 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 and fax numbers and email. 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.

**HOW DOES THE RESPONDENT SELECT A MEDIATOR?**

- The Florida Conflict Resolution Consortium (FCRC) will provide a list of mediators from its Dispute Resolution Directory for the respondent to choose from. If a Respondent wishes to consider other mediators they can request additional mediators from the FCRC or access that information on the FCRC web page http://consensus.fsu.edu (enter name and email address to obtain a password).
- Respondents are encouraged to contact their top choices and their references to assess their mediation style and their mediation and professional experience in resolving environmental issues.
- The Respondent must call, mail or fax the FCRC regarding the mediator selected, post marked or sent to the FCRC within 15 days after receiving the panel of mediators from the FCRC. The FCRC will contact the DEP once the selection has been made so that the parties can work with the mediator to schedule the mediation.
- 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 SHOULD A RESPONDENT PREPARE FOR MEDIATION?**

Preparing for mediation is different than preparing for litigation.
1. Mediation allows parties to explore interests rather than argue about positions. Come prepared to discuss your desired outcomes and constraints.

2. Mediation focuses on the future more than on determining blame for the past. Respondents should come prepared with ideas for how appropriate impact mitigation and fine payment can practically be achieved.

3. 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.

4. 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.

While the mediator will provide you and DEP with guidance, it is generally helpful for the Respondent and the DEP to be prepared to send a statement to the Mediator that includes the following:

- An assessment of the Notice of Violation indicating points of agreement and disagreement and a listing of other issues that need to be considered.
- Ideas for how the legal and other issues can be resolved.
- Information that may clarify factual misunderstandings and help in making settlement decisions.
- Requests for information that one party would like the other party bring to the mediation.
- A list of others who will attend the mediation, e.g. attorney, consultant, etc.

**CONTACT INFORMATION FOR THE FLORIDA CONFLICT RESOLUTION CONSORTIUM**
Address: 2031 E. Paul Dirac Drive, #132, Tallahassee, FL 32310,
Phone: 850-644-6320, fax: 850-644-4968, e-mail: fla.crc@mailer.fsu.edu
CRC Web Page with a Practitioner Directory (list of mediators), user guide and more.
http://consensus.fsu.edu

**OTHER INFORMATION**
DEP Administrative Fine Bill, http://www.leg.state.fl.us (enter "HB1635")
DEP Phone #s http://fcn.state.fl.us/411direct/ (select Dept. of Environmental Protection)
General DEP Enforcement Process Diagram
(It may vary by program)

**Traditional Process**

- DEP Inspection
- DEP Notice of Violation
- Settlement Negotiations
- Settlement Meetings
- Circuit Court
  - Court Order
  - Court of Appeals
    - Appellate Opinion

**New Administrative Procedure**

- DEP Inspection
- DEP Notice of Violation
- Respondent files Hearing Petition with DEP within 20 days of NOV
- Respondent Mediation Request within 10 days of ALJ Initial Order
- Mediator Selection within 15 days of receipt of mediator panel
- Mediation Session(s) (completed 15 days prior to final hearing date)
- Administrative Hearing
- Mediation Settlement-Consent Order
- Mediation Settlement-Consent Order
- ALJ Issues Initial Order with hearing date
- DEP Refers Initial Petition to DOAH
- Respondent Mediation Request within 10 days of ALJ Initial Order
- Mediator Selection within 15 days of receipt mediator panel
- Mediation Session(s) (completed 15 days prior to final hearing date)
- Final Order by the ALJ Within 180 days of Initial Order
- Consent Order
- Circuit Civil Mediation
- Circuit Court

- Respondent files Hearing Petition with DEP within 20 days of NOV
- Respondent Mediation Request within 10 days of ALJ Initial Order
- Mediator Selection within 15 days of receipt mediator panel
- Mediation Session(s) (completed 15 days prior to final hearing date)
- Final Order by the ALJ Within 180 days of Initial Order
- Consent Order
- Circuit Civil Mediation
- Circuit Court