

Appropriate Dispute Resolution – Has its Time Arrived?

Normally the concept and content of our articles are drawn from the author's first hand knowledge and experience as it relates to specific issues and concerns facing the gas processing industry. While we are familiar with the various ways that disputes arise amongst stakeholders and have considerable experience in managing the operation and development of gas processing ventures, we believe that the Appropriate Dispute Resolution (ADR) process warrants close scrutiny by the gas processing industry as a means of resolving most, if not all disputes.

EUB IL 2001-1 "Appropriate Dispute Resolution (ADR) Program and Guidelines for Energy Industry Disputes was a resultant outcome of two recommendations of the Provincial Advisory Committee on Public Safety and Sour Gas (PSSG). This group was formed to specifically address a number of health and public safety concerns pertaining to the exploration, development and processing of sour gas and was conducted concurrently with the review of sulphur recovery guidelines (ID 2001-3 Sulphur Recovery Guidelines) The following two recommendations from the PSSG report express the degree of importance that the Advisory Committee and the EUB place on ADR:

"The EUB field staff become more involved in land owner-operator discussions of sour gas concerns and in multi-stakeholder groups and assist in answering and resolving issues, particularly as they relate to health and safety"

"The EUB encourage mediation efforts and increase EUB staff involvement in an attempt to resolve concerns among stakeholders outside of the hearing process"

While the thrust of the above recommendations focused principally on industry-stakeholder disputes, the ADR process fits well with disputes of any kind and in fact has been widely used in all manner of complex civil litigation cases including insurance claims for many years as a means of avoiding costly litigation.

The oil patch prides itself as the ultimate example of an unrestricted free market economy where the law of capture is understood and practiced fully. As companies we are prepared to compete and take risk, especially if we are in control of things. To overcome risk and save capital we have developed a sophisticated set of joint operating principles that have evolved into two main forms (CAPL and PJVA Agreements). Yet against this backdrop of blissful competition and cooperation, there lurk many opportunities for dispute.

Until the advent of ADR there were only three options available to the oil and gas industry namely to ignore the dispute (and perhaps get even later), seek redress through the courts or through the EUB hearing process. None of these options are particularly attractive especially with the significant cost in time, staff resources and legal fees. All too often neither party is happy with the result at the end of the hearing or court process.

Often the single biggest frustration in disputes is the time it takes to get to the hearing. And what does a hearing really provide at the end of the day? At best an administrative process which forces both parties to disclose information and try to negotiate a settlement or at worst a roll of the dice as to whose position is right. All for the price of six to nine months and a minimum of 100K\$!

Is there a better way and in what circumstances would it apply? Clearly, there is no reason why inter-company oil patch disputes are any different than the insurance industry claim settlements or for that matter industry – stakeholder disputes. In both instances the parties have opposing points of view that can be settled through negotiation, and that is what the ADR process is really all about.

Here are some examples of situations where the ADR process may be useful as an alternative to intervening on G-56 facility applications (any type), custom processing disputes (instead of common processor applications), controversial mail ballots, fee disputes and any other disputes that are commercially based. It should be noted that the ADR process does not preclude the rights of individuals or corporations to pursue the regulatory process and in fact both can run in parallel.

Why hasn't the ADR process caught on in the oil patch? No doubt there is a lack of awareness and a degree of scepticism caused by previous bad experiences in the regulatory process (not unlike the fear of going to the dentist). Further, there is a misconception that the parties will be forced into decision by a non-technical counsellor/mediator. The latter misconception is the most damaging and absolutely wrong. The ADR process is a structured approach to dispute resolution and in simplest terms provides the avenue for two parties to freely negotiate a settlement. The process can involve a facilitator/mediator who is technically expert in the business along with a professional mediator.

The three principal benefits of the ADR process are time savings, much lower cost and most importantly control over the outcome. In most instances, with an effective ADR process, the disputes can be resolved in less than a month from the first meeting to the final settlement, or have the issue passed on to an administrative tribunal.

We believe that ADR is a golden opportunity to improve the business and regulatory climate in the gas processing industry at a very low cost. With the commitment made by the EUB as requested by the public in the PSSG, the industry has an obligation to not only try this process out but to make it successful!

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