

## **FY 2008 ECR Policy Report to OMB-CEQ**

On November 28, 2005, the Director of the Office of Management and Budget (OMB), and the Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR).

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving.

ECR is defined in Section 2 of the memorandum as:

*“third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term “ECR” encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making. While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A (of the OMB/CEQ ECR Policy Memo) and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.”*

The report format below is provided for the third year of reporting in accordance with this memo for activities in FY 2008.

The report deadline is January 15, 2009.

We understand that collecting this information may be challenging; however, after compiling previous reports, the departments and agencies can collect this data to the best of their abilities. The 2008 report, along with previous reports, will establish a useful baseline for your department or agency, and collect some information that can be aggregated across agencies. Departments should submit a single report that includes ECR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2008 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, copies of the analysis of FY 2006 and FY 2007

ECR reports will be available at [www.ecr.gov](http://www.ecr.gov).

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Division/Office of person responding:	Public Buildings Service, Office of Facilities Management
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Date this report is being submitted:	27 February 2009

## Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2008, including progress made since 2006. If no steps were taken, please indicate why not.

[Please refer to the mechanisms and strategies presented in Section 5 of the OMB-CEQ ECR Policy Memo, including but not restricted to any efforts to a) integrate ECR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECR; c) invest in support or programs; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

GSA has not taken any formal steps to build programmatic/institutional capacity for ECR in 2008. Our greatest need for ECR tends to arise during major new building construction projects which typically involve site acquisition and/or demolition of existing buildings. Such projects often generate a high level of interest from surrounding communities, local politicians, and national political representatives. The nature of this interest encompasses environmental, economic, and social issues.

GSA has used NEPA's public engagement procedures to manage public involvement during major projects. A long-standing concern has been the ad-hoc nature of public notification and meeting facilitation practices across the agency. Currently differences can be found region by region and often project by project. Success with ECR and NEPA requires improved awareness on the part of our project managers and greater engagement on the part of our NEPA managers. For example, it will be our NEPA managers who work with project managers to determine whether and when third-party ECR is necessary for a particular project.

In 2008 we began a review of GSA NEPA guidance, especially the *NEPA Deskguide*. It was determined that many aspects of the guide need to be extensively revised. In 2009 we will worked towards developing a nationally consistent approach to the use of ECR.

We are interested in learning how the U.S. Institute could assist us in our efforts. The nature of project management at GSA creates some unique challenges. One of the options we would like to consider is establishing a contract whereby our NEPA experts can quickly obtain ECR support before a conflict arises or after a situation has begun to unravel.



## Section 2: Challenges

2. Indicate the extent to which the items below present challenges or barriers that your department/agency has encountered in advancing the appropriate and effective use of ECR.

	Extent of challenge/barrier		
	Major	Minor	N/A
a) Staff expertise to participate in ECR	X	<input type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	X	<input type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	X	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	X	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	X	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	X	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	X	<input type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	X	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	X	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	X	<input type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	X	<input type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	X	<input type="checkbox"/>	<input type="checkbox"/>
m) Lack of budget incentives	X	<input type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	X	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	X	<input type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	X	<input type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	X	<input type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s) No barriers (please explain): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2008 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR “case or project” is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

	Cases or projects in progress <sup>1</sup>	Completed Cases or projects <sup>2</sup>	Total FY 2008 ECR Cases <sup>3</sup>	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2008 ECR cases indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)	initiated:	participated in but did not initiate:
<i>Context for ECR Applications:</i>									
Policy development	_____	_____	_____	_____	_____	_____	_____	_____	_____
Planning	_____	_____	_____	_____	_____	_____	_____	_____	_____
Siting and construction	_____	_____	_____	_____	_____	_____	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____	_____	_____	_____	_____
Compliance and enforcement action	_____	_____	_____	_____	_____	_____	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	_____	_____	_____	_____	_____	_____
	(the sum should equal Total FY 2008 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2008 ECR Cases)				(the sum should equal Total FY 2008 ECR Cases)	

<sup>1</sup> A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2008 and did not end during FY 2008.

<sup>2</sup> A “completed case” means that neutral third party involvement in a particular matter ended during FY 2008. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

<sup>3</sup> “Cases in progress” and “completed cases” add up to “Total FY2008 ECR Cases”.

4. Is your department/agency using ECR in any of the priority areas you listed in your FY 2006 ECR Report (if submitted)? (Refer to your response to question 2 in your FY 2006 report.) Please also list any additional priority areas identified by your department/agency during FY 2008, and indicate if ECR is being used in any of these areas.

List of priority areas identified in your department/agency FY06 ECR Report	Check if using ECR	Check if use has increased since FY 2006
__ 1. Potential international issues related to our Border Stations	<input type="checkbox"/>	<input type="checkbox"/>
__ 2. Resolution of Notices of Violation issued by Federal, State or Local regulators for violations by GSA for any of the major environmental laws regulating GSA conduct	<input type="checkbox"/>	<input type="checkbox"/>
3. Resolution of critical comments made by Cooperating Agencies and General Public regarding a GSA proposed action and implementation of a NEPA compliance strategy	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2008	Check if using ECR	
1.Site selection controversies on major construction projects	<input type="checkbox"/>	
2.Health/safety disputes during major renovations	<input type="checkbox"/>	

_____	<input type="checkbox"/>
_____	<input type="checkbox"/>

Please use an additional sheet if needed.

5. What other methods and measures are you developing in your department/agency to track the use and outcomes (performance and cost savings) of ECR as directed in Section 4 (b) of the ECR memo, which states: *Given possible savings in improved outcomes and reduced costs of administrative appeals and litigation, agency leadership should recognize and support needed upfront investments in collaborative processes and conflict resolution and demonstrate those savings and in performance and accountability measures to maintain a budget neutral environment* and Section 4 (g) which states: *Federal agencies should report at least every year to the Director of OMB and the Chairman of CEQ on their progress in the use of ECR and other collaborative problem solving approaches and on their progress in tracking cost savings and performance outcomes. Agencies are encouraged to work toward systematic collection of relevant information that can be useful in on-going information exchange across departments?* [You are encouraged to attach examples or additional data]

None given that we have not formally adopted ECR as explained in Section 1. We have however initiated an effort to estimate the full cost associated with delays etc. resulting from poorly managed public engagement on key projects.

6. Does your agency have a system for making the decision to initiate and/or participate in an ECR process? If so, please describe.

No formal process exists nationwide.

7. Describe other significant efforts your agency has taken to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not fit within the Policy Memo's definition of ECR as presented on the first page of this template.

See Section 1 response.

**Section 4: Demonstration of ECR Use and Value**

8. Briefly describe your departments'/agency's most notable achievements or advances in using ECR in this past year.

None.



9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2008) summarizing the presenting problem or conflict, how it was addressed through the use of the principles for engagement in ECR (Appendix A of the Policy Memo, attached), and what outcome was achieved. Please include a discussion on the extent to which this was an effective use of ECR, including reference to the likely alternative decision making forum and how the outcomes differed, how resources were expended, and what comparative benefits or drawbacks occurred as a result of the ECR process.

No cases in 2008.

10. Please comment on any difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future.

***Please attach any additional information as warranted.***

Report due January 15, 2009.

Submit report electronically to: [ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

Attached A. Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving

**Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving**

<b>Informed Commitment</b>	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives
<b>Balanced, Voluntary Representation</b>	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
<b>Group Autonomy</b>	Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties
<b>Informed Process</b>	Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants
<b>Accountability</b>	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
<b>Openness</b>	Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings
<b>Timeliness</b>	Ensure timely decisions and outcomes
<b>Implementation</b>	Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement