FY 2009 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 fourth year of reporting in accordance with this memo for activities in FY 2009.

<u>The report deadline is January 15, 2010</u>.

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 2009 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 2009 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, copies of prior year synthesis reports are available at www.ecr.gov.

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Date this report is being submitted:	1/20/10

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2009, including progress made since 2008. 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.]

While NRC currently does not use neutral facilitators or Alternative Dispute Resolution processes to resolve environmental conflicts, the Commission uses NRC employees to facilitate at NRC public meetings. NRC decided to use NRC employees to act facilitators because of the technical nature of NRC's regulatory program. The NRC facilitators staff public meetings and workshops involving NRC licensing, policy development and rulemaking activities.

The NRC recently began a training program for new facilitators at the NRC. Currently 14 staff members are in the training program which uses outside contractors to teach general public meeting and facilitation skills. The objective of the training program is to develop a skilled cadre of facilitators throughout the NRC to assist in NRC public outreach programs, including the convening and facilitation of environmental conflict resolution processes and public meetings.

In FY '07 NRC established a training course on NEPA for environmental project managers and attorneys. The training course is offered several times a year at the NRC training center and includes classes on various subject areas. This year the course included a class on tribal Consultation which included discussion of outreach, consultation and coordination with tribal governments. Trainers are from the Nicholas School of the Environment at Duke University and NRC. The course syllabus was developed by the Nicholas trainers and NRC staff.

Section 2: Challenges

2. Indicate the extent to which each of 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	Not a challenge/ barrier
	Check **only** one		
a) Lack of staff expertise to participate in ECR	☐	☑	☐
b) Lack of staff availability to engage in ECR	☐	☐	☑
c) Lack of party capacity to engage in ECR	☐	☐	☑
d) Limited or no funds for facilitators and mediators	☐	☐	☑
e) Lack of travel costs for your own or other federal agency staff	☐	☐	☑
f) Lack of travel costs for non-federal parties	☐	☑	☐
g) Reluctance of federal decision makers to support or participate	☐	☐	☑
h) Reluctance of other federal agencies to participate	☐	☐	☑
i) Reluctance of other non-federal parties to participate	☐	☐	☑
j) Contracting barriers/inefficiencies	☐	☐	☑
k) Lack of resources for staff capacity building	☐	☐	☑
l) Lack of personnel incentives	☐	☐	☑
m) Lack of budget incentives	☐	☐	☑
n) Lack of access to qualified mediators and facilitators	☐	☐	☑
o) Perception of time and resource intensive nature of ECR	☐	☑	☐
p) Uncertainty about whether to engage in ECR	☐	☐	☑
q) Uncertainty about the net benefits of ECR	☐	☑	☐
r) Other(s) (please specify): _____	☐	☐	☐
s) No barriers (please explain): _____			

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2009 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[1]	Completed Cases or projects [2]	**Total FY 2009 ECR Cases**[3]	**Decision making forum that was addressing the issues when ECR was initiated:**				Of the **total FY 2009 ECR cases** indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)	Sponsored[4]	Participated in but did not sponsor[5]
Context for ECR Applications:									
Policy development			0						
Planning			0						
Siting and construction			0						
Rulemaking	1		1	1				1	
License and permit issuance			0						
Compliance and enforcement action			0						
Implementation/monitoring agreements			0						
Other (specify): _____			0						
TOTAL	1	0	1	1	0	0	0	1	0
	(the sum should equal **Total FY 2009 ECR Cases**)			(the sum of the Decision Making Forums should equal **Total FY 2009 ECR Cases**)				(the sum should equal **Total FY 2009 ECR Cases**)	

[1] A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2009 and did not end during FY 2009.

[2] A "completed case" means that neutral third party involvement in a particular matter ended during FY 2009. 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.

[3] "Cases in progress" and "completed cases" add up to "Total FY2009 ECR Cases".

[4] Sponsored - to be a sponsor of an ECR case means that an agency is contributing financial or in-kind resources (e.g., a staff mediator's time) to provide the neutral third party's services for that case. More than one sponsor is possible for a given ECR case.

[5] Participated, but did not sponsor - an agency did not provide resources for the neutral third party's services for a given ECR case, but was either a party to the case or participated in some other significant way (e.g., as a technical expert advising the parties).

4. Is your department/agency using ECR in any of the substantive priority areas you listed in your prior year ECR Reports? Indicate if use has increased in these areas since they were first identified in your ECR report. Please also list any additional priority areas identified by your department/agency during FY 2009, and indicate if ECR is being used in any of these areas. Note: An overview of substantive program areas identified by departments/agencies in FY 2008 can be found in the FY 2008 synthesis report.

List of priority areas identified in your department/agency prior year ECR Reports	Check if using ECR	Check if use has increased in these areas
	☐	☐
	☐	☐
	☐	☐
	☐	☐
	☐	☐
	☐	☐
	☐	☐
	☐	☐

List of additional priority areas identified by your department/agency in FY 2009	Check if using ECR
Proposed depleted uranium rulemaking	☑
	☐
	☐
	☐

Please use an additional sheet if needed.

5. It is important to develop ways to demonstrate that ECR is effective and in order for ECR to propagate through the government, we need to be able to point to concrete benefits; consequently, we ask 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]

NRC does not have a formal tracking method for the use and outcomes of ECR.

6. Describe other significant efforts your agency has taken in FY 2009 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.

As noted in the NRC 2008 report, the NRC staff continues to use an expanded public outreach program in the areas of new reactor licensing and the renewal of existing reactor licenses, to accomplish many of the objectives of ECR. The NRC's experience is that disputes over the licensing of energy facilities, such as commercial nuclear reactors, emerge because of the lack of clear information on the NRC licensing process and the technical issues of concern, distrust of the agency motivations, the belief that the public is being excluded from the licensing process, as well as differing values and interest of key stakeholders. The NRC's expanded public outreach program attempts to deal with these "conflict engagement" issues through early and continuing interaction with the stakeholders concerned about a particular facility. These stakeholders include local, state, and tribal governments; advocacy groups, both national and grassroots; community organizations, such as Chambers of Commerce; the licensee or license applicant; nuclear industry organizations; and other federal agencies. We use a variety of public outreach techniques, guided by a third party facilitator or NRC staff, including small group meetings with individual stakeholder interests.

While NRC does not routinely use cooperating agency agreements, NRC currently has 16 environmental impact statements in process that involve cooperating agencies. During the FY09 reporting period, 15 of the environmental impact statements involved the Memorandum of Understanding (MOUs) with the Army Corp. of Engineers that allows each Army Corps of Engineer District Office to determine if it wishes to enter into a cooperating agency relationship with the NRC. In December 2009, NRC also signed a similar MOU with the Bureau of Land Management (BLM) for coordination of environmental reviews for uranium recovery facilities located on BLM lands or mineral estates. In other cases, NRC routinely consults with other Federal, State, Tribal and local entities during development of environmental impact statements and environmental assessments. We believe these informal efforts to seek other agencies' input achieve the spirit of more formal cooperating agency relationships.

Section 4: Demonstration of ECR Use and Value

7 Briefly describe yo*ur departments'/agency's most notable achievements* or advances in using ECR in this past year.

Commencement of NRC facilitation training identified in Section 1.
.
Initiation of the expanded public outreach program for license applications for several new commercial reactors and in situ leachate uranium recovery matters.

The NRC has also entered into a Memorandum of Understanding (MOU) to establish cooperating agency relationships with Army Corp of Engineers. Bureau of Land Management, and the Prairie Island Indian Community to assist in the preparation of NEPA environmental review documents for various licensing applications.

Continued use of collaborative workshops in several rulemaking areas.

8. ECR Case Example

a. Using the template below, provide a description of an ECR case (preferably completed in FY 2009). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance
NRC did not use a third party neutral to resolve an ECR case during FY2009
Summary of how the problem or conflict was addressed using ECR, including details of how the principles for engagement in ECR were used (See Appendix A of the Policy Memo, attached)
Identify the key beneficial outcomes of this case, including references to likely alternative decision making forums and how the outcomes differed as a result of ECR
Reflections on the lessons learned from the use of ECR

b. Section I of the ECR Policy identifies key governance challenges faced by departments/agencies while working to accomplish national environmental protection and management goals. Consider your departments'/agency's ECR case, and indicate if it represents an example of where ECR was or is being used to avoid or minimize the occurrence of the following:

	Check all that apply	*Check if*	
		Not Applicable	Don't Know
Protracted and costly environmental litigation;	☐	☑	☐
Unnecessarily lengthy project and resource planning processes;	☐	☑	☐
Costly delays in implementing needed environmental protection measures;	☐	☑	☐
Foregone public and private investments when decisions are not timely or are appealed;	☐	☑	☐
Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and	☐	☑	☐
Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.	☐	☑	☐

9. 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.

We continue to appreciate having a question that allows reporting of other types of significant efforts to "anticipate, prevent, better manage, or resolve environmental issues and conflicts" that do not fit squarely under the definition of "ECR."

Please attach any additional information as warranted.

Report due January 15, 2010.
Submit report electronically to: 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

Informed Commitment	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
Balanced, Voluntary Representation	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
Group Autonomy	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
Informed Process	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
Accountability	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
Openness	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
Timeliness	Ensure timely decisions and outcomes
Implementation	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