

Department of Veterans Affairs (VA)

Questions for 2007 ECR Policy Reports (Revised July 19, 2007)

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). 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 memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the second year of reporting in accordance with this memo for activities in FY07.

The report deadline is January 15, 2008.

We understand that collecting this information may be challenging; few departments or agencies have collected this data in the past. We ask that you make a good faith effort to acquire the data to the best of your ability. The intention is to establish a useful baseline for your department or agency, while collecting 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 2007 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, a copy of the analysis of FY 2006 ECR reports is available at www.ecr.gov.

Name of Department/Agency responding:	<u>Department of Veterans Affairs</u>
Name and Title/Position of person responding:	<u>Edward L. Bradley, Director, Investment and Enterprise Development Service</u>
Division/Office of person responding:	<u>Office of Asset Enterprise Management</u>
Contact information (phone/email):	<u>202-461-7778</u>
Date this report is being submitted:	<u>January 15, 2008</u>

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, 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.]

VA Response: Historically, there have not been a significant number of VA projects where Environmental Conflict Resolution (ECR) would be appropriate. However, VA is committed to increasing the use of collaborative decision making and alternative dispute resolution (ADR) processes. VA is actively advocating the use of joint fact-finding and other ADR processes to ensure that reliable, credible, technical, and scientific information is available to stakeholders engaged in the ECR processes and collaborative resource management efforts.

To help us accomplish these goals, VA has formed an ECR working group. The group's members represent the Veterans Benefits Administration (VBA), Veterans Health Administration (VHA), National Cemetery Administration (NCA), Office of General Counsel, Office of Resolution Management, and Office of Asset and Enterprise Management. The group meets regularly to work on policy and guidance for the Department and discusses situations in which ECR might be appropriate. Additionally, VA has revised VA Directive 5978, "Alternative Dispute Resolution," to encourage the use of ADR where appropriate (see Attachment). We have also modified our ADR website to include a page for ECR.

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.

Response Note: VA interpreted "minor" to be "few or no" barriers.

	Extent of challenge/barrier		
	Major	Minor	N/A
a) Staff expertise to participate in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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 2007 by completing the table below.

Context for ECR Applications:	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:			Of the total FY 2007 ECR cases indicate how many your agency/department initiated: participated in but did not initiate:
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	
Policy development							
Planning							
Siting and construction	1		1			1	1
Rulemaking							
License and permit issuance							
Compliance and enforcement action							
Implementation/monitoring agreements		2	2		2		2
Other (specify):							
TOTAL	1 (the sum should equal Total FY 2007 ECR Cases)	2	3	2 (the sum of the Decision Making Forums should equal Total FY 2007 ECR Cases)			3 (the sum should equal Total FY 2007 ECR Cases)

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. 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 FY2007 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 2007, and indicate if ECR is being used in any of these areas.

VA Response: VA did not identify any priority areas in our FY 2006 report. VA's relatively small environmental docket is comprised mostly of enforcement actions with EPA or state agencies. The process for resolving these actions is dictated largely by regulatory and statutory requirements. VA has a history of successfully settling enforcement actions through an informal process and without the assistance of a third party.

List of priority areas identified in your department/agency FY06 ECR Report	Check if using ECR	Check if use has increased since FY 2006
_____	<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 2007	Check if using ECR
_____	<input type="checkbox"/>
_____	<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]

VA Response: Due to the limited number of environmental conflicts in which VA is involved, VA has determined that extensive tracking is neither appropriate nor necessary.

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

VA Response: VA does not have a formal process for making this determination; however, each environmental matter is evaluated individually to determine whether initiating or participating in ECR would be beneficial.

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.

VA Response: VA's three Administrations, VBA, VHA, and NCA, include public outreach as an integral component of how they conduct their business. For instance, public outreach is a component of VA's compliance with NEPA for construction and other projects that have an impact on the environment. Through its public outreach VA works to prevent environmental conflict from developing. In the event that such conflict cannot be resolved, VA believes that the principles of ECR can be applied to arrive at mutually acceptable solutions.

Outside of NEPA, VA's environmental activities center on complying with federal, state and local environmental requirements. In the event of

environmental violations, VA works with regulatory agencies to settle the matter; however, during such negotiations, regulators will not relinquish their responsibility to resolve environmental violations to a third party. The process for resolving these actions is dictated largely by regulatory and statutory requirements. VA has a history of successfully settling enforcement actions through an informal process and without the assistance of a third party.

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.

VA Response: Presently, most of VA's ECR is initiated after being served a Complaint from EPA. Because the EPA's Office of Administrative Law Judges uses a mediation program to facilitate settlement of administrative civil penalty enforcement cases under a set of federal environmental laws, parties, like VA are offered an opportunity to participate in an ADR proceeding with an Administrative Law Judge serving as a neutral.

In FY 2007, VA settled two compliance actions with EPA through the EPA's Office of Administrative Law Judges mediation program. These are the only actions completed in FY 2007 that presented an opportunity to utilize any form of ECR. Both actions involved violations of the Resource Conservation and Recovery Act (RCRA). Through the mediation process, EPA agreed to a reduction in fines and VA agreed to implement a Supplemental Environmental Project.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) 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.

VA Response: As discussed above, VA settled two EPA compliance actions through mediation with an EPA Administrative Judge. VA has a history of successfully settling enforcement actions through an informal process; however, in these cases, EPA chose to file an administrative compliance action. Once a compliance action is filed, the litigation process proceeds according to deadlines imposed by regulations and by the tribunal. By placing the cases on the mediation docket, the parties were afforded the opportunity to meet and complete a settlement. Although VA believes these matters would have settled eventually, participating in the mediation offered by the EPA saved both parties time and money by avoiding discovery and a trial.

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.

VA Response: Based on VA's limited need for ECR, it was not difficult to collect the data for this report.

Question 2 needs to have another choice (a "no/none" column).

Please attach any additional information as warranted.

Report due January 15, 2008.

Submit report electronically to: ECRReports@omb.eop.gov

National Oceanic and Atmospheric Administration (NOAA)

Questions for 2007 ECR Policy Reports (Revised July 19, 2007)

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Name of Department/Agency responding:

National Oceanic and Atmospheric
Administration

Name and Title/Position of person responding:

Timothy Keeney, Deputy Assistant
Secretary for Oceans and
Atmosphere

Division/Office of person responding:

Undersecretary's Office

Contact information (phone/email):

Leila Afzal; Leila.Afzal@Noaa.gov;
301-713-9660

Date this report is being submitted:

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, 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.]

DARRP – NOAA, through its Damage Assessment, Remediation, and Restoration Program (DARRP), acts as a trustee to restore coastal and marine resources belonging to the public and that are injured by oil spills and hazardous substance releases. DARRP collaborates with co-trustees (Federal, state, and tribal), party(ies) responsible (RP) and the public at large to address restoration of injured or lost natural resources in a process called natural resource damage assessment (NRDA).

NOAA's cooperative assessment agreements encompass many implementation principles identified by the OMB/CEQ guidance. NOAA's agreements frequently contain mechanisms (e.g., establishing work groups or councils) for coordinating efforts to address concerns and responsibilities under applicable law. (Regulations for both CERCLA and OPA require that proposals to restore injured natural resources be in accordance with applicable laws or regulations.) Provisions of NOAA's agreements also specify the decision making authority of the parties, provide dispute resolution procedures and list specific duties, objectives, and authorities for the purpose of facilitating implementation.

Office of Ocean and Coastal Resource Management (OCRM) – OCRM is often called upon to assist with resolving conflicts between state and federal agencies, industry, and tribes regarding the use and conservation of coastal resources. These may be resolved informally through information sharing or more formal mediation processes agreed to by the parties. Examples would include how to frame agreements to stay the timeframe for state consistency reviews when more time is needed to produce information necessary for a state to reach its decision; and advice to states on how the CZMA consistency review timeframes apply to the two-step national/regional process announced by the Corps of Engineers in 2007 for the development of nationwide permits under the Clean Water Act section 404 program.

National Marine Sanctuary Program (NMSP) -- The National Marine Sanctuary Program has a number of areas where ECR has been employed, typically using unassisted collaborative problem solving. Notable areas include the ongoing management plan reviews required under the National Marine Sanctuaries Act, development of the co-trustee partnership with the Department of the Interior and State of Hawaii to implement the Papahānaumokuākea Marine National Monument.

The Office of Habitat Conservation and associated regional fisheries habitat programs primarily use existing appeal, elevation and referral protocols under the Magnuson-

Stevens Act (essential fish habitat provisions), Clean Water Act (§ 404(q)), Fish and Wildlife Coordination Act, Federal Power Act (fishway prescriptions), Energy Policy Act (trial-type hearings), National Environmental Policy Act, and other relevant laws and Executive Orders to resolve interagency disagreements.

The Office of Sustainable Fisheries (SF): SF interacts with constituents and partners through the Magnuson-Stevens Fisheries Management and Conservation Act (MSA), the Atlantic Coastal Fisheries Cooperative Management Act (ACA), the National Environmental Policy Act (NEPA), and other relevant laws, which guide the Office in formulating and implementing regulations needed to sustain the Nation's living marine resources. SF, in conjunction with Agency Regions and Science Centers, works with other states, the 8 MSA Councils, the 3 Interstate Marine Fisheries Commissions (Commissions), professional organizations, NGOs, constituent groups, and other Federal agencies.

While SF does not use ECR directly, the processes used in development of management plans and associated regulations under MSA (and within the NEPA process) require interaction and negotiation between Councils, states, constituents, and SF/Regions/Science Centers. In working with the Commissions, SF/Regions/Science Centers participate in the Commission process, which includes discussions and negotiations by all parties. As such, SF has successful methods in place to reach out directly to individual states, other Federal agencies, NGOs, and other groups.

Office of Protected Resources (PR): PR interacts with States and Tribes in the Northwest region in matters such as the Pacific Salmon Recovery Planning, Take Reduction Teams under the Marine Mammal Protection Act (MMPA). Stakeholder meetings have been used (especially with Fishery Management Councils) to develop alternative Reasonable and Prudent Alternatives (RPAs) under Section 7 of the ESA. Facilitators are used at the Take Reduction Team meetings.

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	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
k) Lack of resources for staff capacity building	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m) Lack of budget incentives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input checked="" 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 2007 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.]

Using the strict definition that a case or project is "an instance of neutral third party involvement", NOS has not had any cases or projects this year.

Context for ECR Applications:	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated: participated in but did not initiate:
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)	
Policy development		8	8	8				8
Planning								
Siting and construction								
Rulemaking								
License and permit issuance								
Compliance and enforcement action								
Implementation/monitoring agreements								
Other (specify):								
TOTAL		8	8	8				8 (the sum should equal Total FY 2007 ECR Cases)

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. 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 FY2007 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 2007, and indicate if ECR is being used in any of these areas.

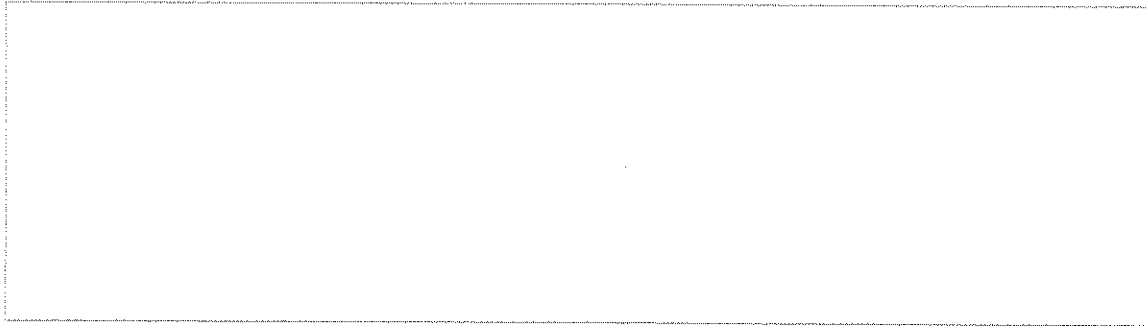
List of priority areas identified in your department/agency FY06 ECR Report	Check if using ECR	Check if use has increased since FY 2006
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<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 2007	Check if using ECR	
_____	<input type="checkbox"/>	
_____	<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]

OCRM -- Percent of federal consistency projects submitted where the project was modified due to consultation with the applicant to meet State CZM policies.

NMSP -- The NMSP already routinely employs informal methods of environmental conflict resolution as part of its mandated responsibilities to protect and manage national marine sanctuaries, and now the Papahānaumokuākea Marine National Monument. Such responsibilities include working with constituents, marine users and others to identify management issues, uses, and other potential concerns regarding impacts on sanctuary resources and determining what, if any, steps are necessary for the NMSP to take, including such things as issuing guidance, issuing permits, initiating consultation, and/or issuing or amending regulations, including using marine zoning as a management tool. As many management issues cut across a variety of interests, it is essential that the NMSP ensure opportunities for different points of views to be heard, discussed and included. Management plan reviews have been a critical vehicle to raise and address important management issues and include these diverse points of view. An integral part of the decision making process include working with the community, through scoping processes, sanctuary advisory councils, subject-specific working groups and public meetings, to help make those decisions. Since these mechanisms are so inherent to the NMSP, there is no specific ECR performance measure. However, there are NMSP performance measures that assess components of what ECR strives to achieve. One such measure is assessing the impact of our sanctuary advisory councils: "By 2010, Sanctuary Advisory Councils will provide significant input on 150 priority projects across the NMS." The NMSP received input from the sanctuary advisory councils on 84 projects in FY07, a significant increase from 67 projects in 2006 and far exceeding the 2007 target of 40 projects. This high number shows the commitment of the NMSP to incorporate local knowledge of both the sanctuary resources and the community into sanctuary management. It also shows the high level of commitment and dedication of the NMSP advisory council members, many of whom volunteer their time to serve on the councils.



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

DARRP - As early as 1994, NOAA sought to undertake NRDA's cooperatively by: (1) Meeting with stakeholders (e.g., seminars and regional discussions) in order to discuss ideas to encourage greater cooperation in future cases; and (2) Applying environmental conflict resolution and collaborative problem solving principles and mechanisms to pending cases. The OPA NRDA regulations served as the paradigm for more cooperative thinking and practice. To date, improved dialogue has helped move nearly a dozen adversarial cases into more cooperative models.

As part of this initiative, NOAA has:

- Solicited ideas of a broad-based stakeholder working group, to better promote the cooperative assessment process. Ideas include a framework on cooperative damage assessments, identifying more important issues, such as funding and statute of limitations, that face the cooperative NRDA process (see NOAA's Cooperative Assessment Project Framework (2003) and its Compendium that provides a framework for conducting cooperative NRDA's).
- Developed a clearinghouse of information on cooperative damage assessments and guidance on ECR on online (see: www.darrp.noaa.gov/partner/cap/index.html). This site includes the cooperative framework and information on cooperative approaches, tools, sample documents, and cases.
- Sponsored a national forum on cooperative NRDA – on June 9/10, 2004, San Diego, CA, bringing together for the first time practitioners from relevant stakeholder groups. At least 20 different companies and 28 states attended with 170 practitioners in attendance. The workshop culminated the efforts of the broad-based stakeholder.

Following the 2004 national forum, NOAA and certain RP representatives sponsored workshops on cooperative damage assessments. There was great interest in continuing the dialogue on NRDA in regional settings, and trustees and RPs committed to organizing regional workshops on improving efficiency and coordination while reducing conflict and confrontation in NRDA cases. The regional workshops included meetings in the southeastern U.S. (including EPA Regions 4 & 6, April 13/14, 2004,

Savannah, GA), in the Great Lakes (EPA Region 5, Nov. 1/3, 2005, Chicago, IL), and in the northeastern U.S (including EPA Regions 1 & 2, May 30 to June 1, 2006, Newport, RI).

OCRM -- The CZMA consistency regulations provide for OCRM mediation between parties in disputes over the application of the CZMA federal consistency provisions. (15 CFR 930.44 and 15 CFR 930 Subpart G, Secretarial Mediation).

Overall, the National Marine Fisheries Service participates in ECR processes if such a process is proposed by a Federal action agency or is found to provide benefits (identified in Section 1(a) of the OMB-CEQ ECR Policy Memo) over existing appeal, elevation and referral protocols established under the aforementioned laws.

National Marine Fisheries Service (NMFS) -- Overall, the National Marine Fisheries Service participates in ECR processes if such a process is proposed by a Federal action agency or is found to provide benefits (identified in Section 1(a) of the OMB-CEQ ECR Policy Memo) over existing appeal, elevation and referral protocols established under the aforementioned laws.

The Office of Protected Resources always uses an ECR process for Take Reduction Teams and often uses in difficult Endangered Species Act negotiations.

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.

NMFS -- NMFS, the Federal Energy Regulatory Commission, and parties regulated under the Federal Power Act and Energy Policy Act, agreed to settlement in two instances prior to proceeding to trial-type hearings under the Energy Policy Act.

Within the Office of Sustainable Fisheries at the NMFS, the processes used in development of management plans and associated regulations under MSA (and within the NEPA process) require interaction and negotiation between Councils, states, constituents, and SF/Regions/Science Centers. In working with the Commissions, SF/Regions/Science Centers participate in the Commission process, which includes discussions and negotiations by all parties. As such, SF has successful methods in place to reach out directly to individual states, other Federal agencies, NGOs, and other groups.

For the National Ocean Service: See responses to Questions 8 and 9 below.

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.

DARRP – DARRP and co-trustees have furthered public and industry understanding of pollution incidents, including how industrial activities can affect the Nation's natural resources and associated services. How NRDA can help restore injured natural resources and the role of interested parties in identifying restoration projects to benefit their communities is better understood.

The integration of remedial and assessment/restoration investigations, planning, and activities has proven a successful paradigm for achieving restoration-based settlements for damage assessment cases.

To date, NOAA has successfully completed dozens of clean-up and restoration projects – having relied on cooperative efforts to accelerate the protection and recovery of natural resources for over 4,000 acres of coastal and marine habitat.

OCRM -- CZMA Visioning: In 2006 and 2007, the Office of Ocean and Coastal Resource Management (OCRM), in partnership with the Coastal States Organization, conducted a project in which coastal managers, stakeholders, and federal agency partners engaged in identifying future improvements to coastal management. The project sought ideas for legislative changes through an improved Coastal Zone Management Act, as well as administrative improvements. In the summer of 2007 stakeholder meetings were held in Waltham, MA; Chicago, IL; Atlanta, GA; Honolulu, HI; and San Francisco, CA. An outcome of these forums has been a set of core principles and specific options to consider in drafting a proposal for reauthorizing the

Coastal Zone Management Act.

NMFS -- 1. An appointed Task Force worked with a facilitator and presented recommendations to the NMFS on whether or not to approve a request from the states of Washington, Oregon, and Idaho to lethally remove California Sea Lions to address the conflict between healthy sea lion populations and at-risk salmon populations at the Bonneville dam.

2. In 2007, NMFS contracted with the firm CONCUR, Inc. to provide facilitation and agreement-focused mediation for several marine mammal take reduction teams (e.g., Pelagic Longline and Harbor Porpoise Take Reduction Teams). The take reduction team process is highly structured in terms of goals and deadlines. Specifically, teams have 1 year to develop measures that reduce bycatch of marine mammals in particular commercial fisheries within 6 months of implementation. The facilitators efficiently conducted take reduction team meetings and effectively assisted NMFS in meeting statutory and management goals.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) 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.

DARRP - Alcoa (Point Comfort) NPL Site Cooperative Assessment, Integrated Remediation and Restoration (CAIRR) Project

The National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, along with other Federal agencies, faces the challenge of balancing competing interests in order to carry out its congressional mandate to protect and restore the public's trust resources in the oceans and on the coasts of the United States. NOAA regularly undertakes Cooperative Conservation by following principles for engaging in collaborative problem solving and Environmental Conflict Resolution (ECR) in its interactions with stakeholders. NOAA uses these principles in order to avoid litigation, achieve quality and timely outcomes, reduce transaction costs, and engender trust among stakeholders when controversies arise.

With NOAA leading the way, our collaborative partnership with EPA, federal and state co-trustees, industry, and local communities successfully integrated Remedial Investigation and Risk Assessment (RI/RA), natural resource restoration planning and project construction into a seamless solution to restore the Lavaca Bay estuary.

Partners:

Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, Texas General Land Office National Oceanic and Atmospheric Administration The U.S. Fish and Wildlife Service, USEPA, Cities of Port Lavaca and Point Comfort, Calhoun County & Calhoun Co. Navigation District, Alcoa

Alcoa Point Comfort Operations (PCO) began integrated production of aluminum and other products in the 1940's. Aluminum smelting operations ceased in the 1980s, but bauxite refining continues. In the late 1960's, PCO added a mercury cell chlor-alkali plant to produce caustic soda (and chlorine gas) for bauxite processing. Operation of that plant, through 1977, released mercury (Hg) and Hg laden wastewater to Lavaca Bay and to underlying aquifers. In April 1988, the Texas Department of Health issued a "closure order" prohibiting the taking of finfish and crabs for consumption from areas near the facility due to health risks posed elevated mercury concentrations. This action indicated that a CERCLA response might prove necessary and the site was proposed for the National Priorities List (NPL). The Point Comfort/Lavaca Bay Superfund Site (the Site) was placed on the NPL in 1994. The Site's Record of Decision for sources control and

clean-up to reduce risk posed by elevated levels of mercury and hydrocarbons in sediment was issued jointly by the State of Texas and EPA on December 20, 2001.

NOAA's vision of a collaborative process catalyzed the team's adoption of the integrated paradigm (CAIRR). The partners' cooperation led to the rapid completion of remedial actions and restoration construction at the Site. Empowered by the shared fundamental goal "betterment of the environment and natural resources", the team of diverse partners overcame all challenges presented and delivered results to the Public. This is an exemplar of the CAIRR partnership approach.

The Trustees and Alcoa recognized that it would be possible to use the information gathered in the RI/FS & Risk Assessments to assess natural resource damages due to the similarity of the data requirements. In 1997 a Memorandum of Agreement between Alcoa and the Trustees enabled funding and enhanced formal cooperation. Simultaneous investigations of risk and injury were conducted, effectively combining remediation with restoration planning. The entire team, working collegially, drew from the "communicative planning" approach to complete the RI/FS, Risk Assessments and NRDA. Applying the idea that with the "wicked problems" (i.e., in planning theory - complex contaminant and sociopolitical problems) such as this, there are no correct or incorrect answers - only better and worse ones, decisions were made that allowed the partnership to succeed. The remedial and restoration actions, i.e. appropriate compensation for all resource losses attributable to Site releases (including due to all remedial actions), were set forth in the universal settlement.

The CAIRR paradigm permitted comprehensive coverage of all CERCLA issues associated with the Site, fostered good working relationships among the trustees, Alcoa, and the local community, and resulted in nearly universal support for these restoration actions within the local community.

In January 2005, the final response and restoration legal agreements (consent decrees) were 'simultaneously' entered by U. S. District Court for the Southern District of Texas. Construction was rapidly initiated on all restoration projects and completed by August 2006.

Alcoa created 70 acres of intertidal salt marsh on Aransas National Wildlife Refuge and create 15 acres of new oyster reef in Lavaca Bay. Additionally, Alcoa built new fishing piers at Six Mile Park, Point Comfort Park, and at the Bayfront Peninsula in Point Comfort; replaced an existing auxiliary boat ramp and constructed a new timber dock at Six Mile Park; made improvements at Magnolia Beach; and constructed new timber docks at Six Mile Park and at Lighthouse Beach. All projects were completed during the timeframe.

Once the wetland project is certified as successful, ALCOA will cause the transfer 729 acres of land to be preserved by the U.S. Fish and Wildlife Service as part of the Aransas National Wildlife Refuge adding to Whooping Crane Habitat under protection and management.

OCRM -- *Mediation between the Navy and California Coastal Commission:* In 2007, the assistance of the Office of Ocean and Coastal Resource Management was requested to mediate a dispute between the Department of the Navy and California Coastal Commission in regards to sonar exercises off of the California coast that were alleged to be harmful to marine mammals. OCRM assisted with developing the format for the mediation discussions and arranging for a mutually agreed upon expert to answer the questions of the parties in regards to sonar in the marine environment. Although the dispute between the Navy and Commission is still being resolved, mediation discussions resolved most of the issues that the parties were in disagreement on.

NMFS -- In 2007, the Pelagic Longline TRT was charged with reducing serious injury and mortality (bycatch) of long-finned pilot whales, short-finned pilot whales, and Risso's dolphins to levels approaching a zero bycatch rate in the Atlantic pelagic longline fishery. The team is composed of a diverse group of stakeholders, including commercial fishermen, environmental conservationists, academics, and federal and state representatives, each with their own views on reducing bycatch. The facilitators worked with each team individually to determine their position relative to the issue and how they might be willing to compromise to achieve the goal. The facilitators used this information throughout TRT meetings to shape the deliberations in such a way that all team members were comfortable with the resulting recommendations. Having facilitators manage the process was especially useful because NMFS could participate without seeming to "drive" the process or the outcome, which may have hindered deliberations or limited participation from team members. Facilitation was also key in keeping the team on track in terms of managing limited meeting time and organizing information in an easy to follow format that expedited the process.

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, 2008.

Submit report electronically to: ECRReports@omb.eop.gov

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

U.S.D.A. Forest Service (USFS)

Questions for 2007 ECR Policy Reports (Revised July 19, 2007)

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). 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 memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the second year of reporting in accordance with this memo for activities in FY07.

The report deadline is January 15, 2008.

We understand that collecting this information may be challenging; few departments or agencies have collected this data in the past. We ask that you make a good faith effort to acquire the data to the best of your ability. The intention is to establish a useful baseline for your department or agency, while collecting 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 2007 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, a copy of the analysis of FY 2006 ECR reports is available at www.ecr.gov.

Name of Department/Agency responding:	USDA/Forest Service
Name and Title/Position of person responding:	Martha Twarkins/NEPA Specialist
Division/Office of person responding:	Ecosystem Management Coordination
Contact information (phone/email):	202-205-2935 mtwarkins@fs.fed.us
Date this report is being submitted:	_____

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, 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.]

Nationally, the USDA Forest Service has taken several steps to build programmatic and institutional ECR capacity in 2007. Examples include:

- Developing processes to incorporate some of the Western Governors Criteria in the Forest Service's budget allocation process
- Incorporation of collaboration in the directives for the National Forest Management Act Planning Rule
- Development of collaboration training nationally for implementation of the National Forest Management Act Planning Rule
- Development of collaboration training for use nationally – that can be used as a web-based tool or taught on site

Existing examples include:

- Use of mediation in appeal resolutions
- Implementation of the Secure Rural Schools Act mandates that include the Resource Advisory Committees
- Implementation of the community wildfire protection policies (as part of the Healthy Forest Restoration Act)
- Collaboration included with the Stewardship contracting authority
- Collaboration included in the Off Highway Vehicle Rule
- Collaboration included in the National Fire Plan – 10 year Comprehensive Strategy 2001

Regionally and locally, the USDA Forest Service has taken several steps to build programmatic and institutional ECR capacity in 2007. The Forests responded that to some degree (see attached FS percentages for question 'Actions taken in response to the November 2005 ECR Policy Memo') they have taken action to all Section 5 (a) items identified in the memo.

Note: the term ECR is not used extensively above. It is understood that the term 'collaboration' as used above includes the evaluation of the situation to determine if ECR is appropriate or the use of collaboration without the use of a third party neutral will meet the needs of the situation.

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	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
r) Other(s) (please specify): Some respondents mentioned lack of funding, perception that ECR is a lengthy process, FACA violations, or lack of staff as being barriers encountered in advancing the appropriate and effective use of ECR.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No barriers (please explain)			

Twenty-six respondents answered this question with four of them stating that they did not have any “significant issues that would have required an ECR approach” and therefore had “no barriers to report.” Thirteen respondents explained that they “have not used ERC” because they had “successfully used collaborative efforts without use of ERC. One respondent reports that “local situations and demand did not warrant ECR solutions” and that “competing demands, higher priorities, and workforce reductions kept ECR efforts a low priority.”

The National Forests in Florida commented that “there is a high level of public support for most forest management activities in Florida. The public supports our prescribed burning program, which treats approximately 125,000 acres annually. The public also supports our timber sale program, which focuses on habitat treatments for Federally listed species such as the Florida scrub jay and the Red-cockaded woodpecker. The only controversy to date has been with the recent designation of motorized recreation trails. The forest is reducing existing trails by over half, which has created controversy for user groups who want more trail opportunities and environmental groups who want less. We have worked closely with the groups at all levels of the planning process. In the early stages of the process (5 years ago) professional facilitators were contracted, but the effort failed to resolve the conflicts actually created more polarity among the groups. Since that time we have been working on our own building relationships and trust with these groups.”

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2007 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.]

Context for ECR Applications:	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases, indicate how many your agency/department initiated: participated in but did not initiate:
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)	
Policy development	___	___	___	___	___	___	___	___
Planning	23	8	31	___	___	___	___	20 11
Siting and construction	5	1	6	___	___	___	___	4 2
Rulemaking	___	___	___	___	___	___	___	___
License and permit issuance	13	2	15	___	___	___	___	4 11
Compliance and enforcement action	___	___	___	___	___	___	___	___
Implementation/monitoring agreements	9	0	9	___	___	___	___	5 4
Other (specify): ___undisclosed___	___	2	2	___	___	___	___	1 1
TOTAL	50	13	63	63	___	___	___	34 29 (the sum should equal Total FY 2007 ECR Cases)

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. 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 FY2007 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 2007, 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
Protracted and costly environmental litigation	X	X
Unnecessarily lengthy project and resource planning processes (planning delays)	X	X
Costly delays in implementing needed environmental protection measures	X	X
Forgone public and private investments when decisions are not timely or are appealed (administrative appeals)	X	X
Lower quality outcomes when environmental plans and decisions are not informed by all available information and perspectives	X	X
Lost opportunities when environmental plans and decisions are not informed by all available information and perspectives	X	X
Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.	X	X
_____	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2007	Check if using ECR	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	

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]

This year the USDA Forest Service instituted a new budget process that recognizes the work accomplished by partners.

The appeals regulations as well as the Healthy Forest Restoration Act objection process recognize and encourage the use of ECR.

For the last two years, the Agency has contacted each National Forest unit (over 155 units) individually to query their use of ECR. This informed those units unfamiliar with the tools available as well as quantify how the agency is using ECR.

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

Through available collaboration training as well as access to assessment tools employees are provided the information necessary to determine if collaboration or ECR is appropriate and would be helpful to the situation.

Each region and the Washington Office also have social scientists and partnership/collaboration positions that can help field units determine whether to initiate and/or participate in an ECR process.

In the case of legislated rule such as the Stewardship Authority and Healthy Forest Restoration Act, the Agency is directed to collaborate. This may include the use of ECR.

Other Forest Service policies direct the Agency to use collaboration (Forest Planning Directives, OHV rule, National Fire Plan, Appeals rules etc).

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.

The National Partnership Office was established in 2003 to facilitate the Agency's work with communities. Collaboration is a component of that program.

The National Partnership Network consists of employees in the Washington Office and across the Regions that have skills, expertise and duties to facilitate collaboration with communities as well as assist units with collaboration and/or ECR.

The National Partnership Resource Center consists of a web-based library consisting of a variety of tools and resources for employees use. This includes collaboration-training modules, links to collaboration resources and NGO newsletters and resources.

The Ecosystem Management Coordination social scientist developed a collaboration training geared toward facilitating Forest Planning on the units. This was accomplished with a variety of collaboration experts from within the Agency and two Universities.

The Agency has instituted performance standards that rate leaders on their use of collaboration and work with communities.

The Agency developed a handover memo to ensure that when a leader moves from a unit the key stakeholders and their issues are passed onto the next leader for the area.

The Agency participated in and supports the Western Collaboration Assistance Network (WESTCAN).

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.

1. The Tongass Futures Roundtable (TFR) brings together a diverse group of stakeholders long involved with the Tongass National Forest to discuss how to incorporate our economic, cultural, and ecological values in public policy issues throughout the region.

The Roundtable seeks to explore how a broad range of stakeholders can address these public policy issues and work together to achieve a long-term balance of healthy and diverse communities, vibrant economies, responsible use of resources -including timber, while maintaining the natural values and ecological integrity of the forest.

The Tongass Forest Plan was remanded back to the Forest by the court to reconsider the market demand that was identified in the 1997 Forest Plan. As part of this amendment process, there are working groups of the TFR that have charters to meet the goals identified. One such working group is the Framework Committee which has the following goal: Craft clear Tongass Land Use Management Plan recommendations – basic framework: 12 month time-out from timber sales in undeveloped areas along with timber sales going forward in currently developed areas of forest with examination and reshaping of the Standards and Guides to make them more economic. Other working groups include: Quality of Life, Economic Sustainability, Restoration, Young Growth, Bridge Timber, Mapping Committee, and an Administrative Committee. Each working group has a Charter and is composed of TFR members and other skilled and knowledgeable individuals.

The Tongass Futures Roundtable is the foundation that made possible the settlement of four lawsuits so that injunction proceedings were not needed. This allowed a "bridge" timber supply to be available until the Forest Plan Amendment is completed. The Roundtable is also an active participant in the Tongass Forest Plan Amendment process, contributing work products and collaborating on results. Some of their first products have been draft reports on setting of watershed-scale priorities for restoration of forest and freshwater habitats on Prince of Wales Island, and future harvest level capacity of second rotation forests on the Tongass National Forest.

2. The San Juan National Forest is a member of the Animas River Stakeholders Group, which is an open membership forum with approximately 35 parties who regularly attend meetings. Their group focuses on cleaning up a watershed that has been contaminated with heavy metals from over 400 abandoned mines. This Group was able to overcome a large amount of mistrust among parties to reach agreement on many projects and to secure

funding. The San Juan inferred that one benefit of using ECR is that more than 55 cleanup projects have been completed at a cost of about \$13 million since 1991. They conclude that if the watershed had been subject to Superfund, the costs would likely have been up to five times this amount and less work would have been accomplished.

3. The Payette National Forest hired an outside facilitator to lead an Interdisciplinary team (IDT) through the planning process for a controversial amendment to the Forest Plan for management of bighorn sheep and the conflict with domestic sheep grazing. The IDT is composed of representatives from 3 states, 4 Indian tribes, and Forest Service specialists.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) 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.

The Lolo National Forest worked with a very diverse group of stakeholders in the development of 13 Restoration Principles for the National Forests of Montana. The 13 principles were developed and agreed to by a group of people with varied interests. Over a period of less than 1 year full consensus was reached. The group included people who have litigated many projects on the Forest and in the Region. Differences of opinion about national forest stewardship, and the “winner take all” structures, have led to decades of polarization among our citizenry and near paralysis on the ground. Over time, responsible people on many sides of forest issues concluded the present system was failing – failing our timber workers and timber-dependent communities, failing the ecological health of our forests, failing our responsibility to future generations. That left a question: Despite our differences, could key parties come to the table to see if there was a “zone of agreement” we share, a common ground set of ideas we could and build on to generate positive work on the ground?

In August, 2006, Artemis Common Ground invited nine people from industry, the conservation community, US Forest Service, state of Montana, and the non-profit sector to explore that question. After an all day meeting, everyone concluded that common ground might be created around the idea of on- the- ground restoration: work to restore the health of our national forests. The group formed a Steering Committee whose mission was to engage more community interests in an effort to develop Restoration Principles and an action plan to have those implemented on the ground.

In January, 2007, thirty-four representatives of conservationists, motorized users, outfitters, loggers, mill operators, state government and the Forest Service held its first meeting at Lubrecht Experimental Forest, facilitated by the National Forest Foundation. All present agreed the restoration goal was worth pursuing; they agreed to work by consensus—meaning that everyone had to agree before a proposal was accepted; they set August 1 as the deadline to finish their work; and they all personally committed to help get the job done.

The group contained long-time adversaries, and the effort was not easy. Success depended on honesty, ability to listen, to disagree respectfully, and most centrally, on learning how to focus on building the “zone of agreement”. In such a process,

loggers do not become environmental activists and conservationists do not change into timber mill managers. People retain their different perspectives—but they develop the ability to be able to say, “We disagree on these issues over there. But we can agree on this specific point. Let’s start with that, and see if we can broaden areas of agreement, and if successful, figure out a better way to make good things happen on the ground”.

That is what the Montana Forest Restoration Working Group did. At their last meeting, August 1, 2007, all recommendations were given final, unanimous approval. Next, the group agreed to change its name to the Montana Forest Restoration Committee (MFRC)—reflecting its new mission to see that the approved Restoration Principles and Implementation Plan are put into practice.

Finally, members of the group were asked if they wanted to continue to be involved in the effort by serving on the new MFRC. Every person in the room raised their hand.

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.

The survey should be developed to easily assess how each Agency is accomplishing the objectives identified by OMB and CEQ. It should assess the Agencies need for ECR and accompanying use of and success of those techniques. Those responses should be easily tabulated and comparable from year to year. In a highly decentralized agency such as the Forest Service, gathering data in commentary vs. tabular form from all 155 units is arduous and not the best use of employees limited time.

Data is not comparable year to year. Anecdotal information cannot set a baseline of data from which to analyze or build upon. Key indicators related to efficiencies in processes are currently not used. (Ie time and money).

We suggest contracting the development of the survey to a firm that specializes in such tools.

Please attach any additional information as warranted.

Report due January 15, 2008.

Submit report electronically to: ECRReports@omb.eop.gov

Environmental Protection Agency (EPA)

Questions for 2007 ECR Policy Reports (Revised July 19, 2007)

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). 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 memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the second year of reporting in accordance with this memo for activities in FY07.

The report deadline is January 15, 2008.

We understand that collecting this information may be challenging; few departments or agencies have collected this data in the past. We ask that you make a good faith effort to acquire the data to the best of your ability. The intention is to establish a useful baseline for your department or agency, while collecting 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 2007 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, a copy of the analysis of FY 2006 ECR reports is available at www.ecr.gov.

Name of Department/Agency responding:	U.S. Environmental Protection Agency
Name and Title/Position of person responding:	William E. Hall Acting Director
Division/Office of person responding:	Conflict Prevention and Resolution Center
Contact information (phone/email):	<u>202.564.0214/hall.william@epa.gov</u>
Date this report is being submitted:	January 15, 2008

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, 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.]

As a long-standing leader in the federal ECR community with an established program, EPA continued to provide significant levels of programmatic/institutional capacity for ECR during FY 2007 in each of the four areas identified in the OMB/CEQ ECR policy memorandum.

Integrate ECR objectives into Agency Mission Statements, Government Performance and Results Act Goals, and Strategic Planning

EPA's ECR program furthers all five goals in EPA's Strategic Plan: 1) clean air and climate change; 2) clean and safe water; 3) land preservation and restoration; 4) healthy communities and ecosystems; and 5) compliance and environmental stewardship. In addition, the Agency's Strategic Plan and the Administrator's Action Plan both explicitly recognize the importance of using collaborative approaches, such as ECR, to break through institutional and other barriers, produce more effective and durable decisions, and boost the potential for agreement. As in previous years, the Agency used ECR in activities supporting each of the five Strategic Plan goals in FY 2007.

EPA's Conflict Prevention and Resolution Center (CPRC) continued implementing an internal strategy to increase the use of ECR by providing superior ECR services; building knowledge, awareness, and skills; and enhancing EPA's organizational capacity. For each of these goals, the ECR strategy contains measurable performance objectives and describes the anticipated approach to reaching these objectives. The ECR strategy covers the period from 2006-2010 and is explicitly linked to the Agency's strategic goals.

Assure that the Agency's Infrastructure Supports ECR

EPA provides a high degree of support for ECR through Agency infrastructure. The CPRC is headed by EPA's Dispute Resolution Specialist, who is appointed pursuant to the Administrative Dispute Resolution Act of 1996. The CPRC provides policy support and access to neutral third party services for ECR as well as alternative dispute resolution (ADR) used in other contexts.

The Agency's ADR policy (65 FR 81858, December 2000), which states EPA's strong support for the use of ECR and other forms of ADR to deal with disputes and potential conflicts, contains many themes in common with the OMB/CEQ ECR policy

memorandum. In particular, it articulates the following expected benefits from ADR/ECR:

- Faster resolution of issues;
- More creative, satisfying and enduring solutions;
- Reduced transaction costs;
- Fostering a culture of respect and trust among EPA, its stakeholders, and its employees;
- Improved working relationships;
- Increased likelihood of compliance with environmental laws and regulation;
- Broader stakeholder support for agency programs; and
- Better environmental outcomes.

EPA's ADR policy is intended to meet the following objectives, similar to those in the OMB/CEQ ECR policy memorandum:

- Promote understanding of ADR/ECR techniques;
- Encourage routine consideration of ADR/ECR approaches to anticipate, prevent, and resolve disputes;
- Increase the use of ADR/ECR in EPA business;
- Highlight the importance of addressing confidentiality concerns in ADR/ECR processes;
- Promote systematic evaluation and reporting on ADR/ECR at EPA; and
- Further the Agency's overall mission through ADR/ECR program development.

Based on the ADR policy, EPA adopts a broad perspective on what qualifies as ECR -- any technique to address environmental issues that involves a neutral third party, whether or not the participants' goal is to reach agreement. ADR/ECR can be used in many contexts including adjudications, rulemaking, policy development, administrative and civil judicial enforcement actions, permit issuance, administration of contracts and grants, stakeholder involvement, negotiations, and litigation.

Senior EPA leadership continues to provide encouragement and support for the use of ECR, as it has for the past three decades. In FY 2007, EPA's Administrator, General Counsel, and Regional Administrators initiated and engaged in high-profile ECR cases, including the Montana-Wyoming facilitated discussion on water quality standards and the Coeur d'Alene Lake Management Plan dialogue. These cases and others reflect an increasing complexity in the types of situations for which ECR is being considered and used at EPA.

As in previous years the Agency emphasized outreach, education and training activities to promote the increased use of ECR. These activities are described in question 8 below.

Invest in Support of Programs

Over the years, EPA has made considerable investments to support its ECR program, a trend which continued in FY 2007. In FY 2007, the Agency had seven FTEs in the CPRC and one and a half FTEs total in the New England and Denver regional offices devoted to ECR. In addition, more than 20 other individuals support the ECR program as part of their job responsibilities or on a collateral duty basis. The Office of Administrative Law

Judges continued to provide judges to serve as mediators in administrative enforcement cases when requested by parties. Judges on EPA's Environmental Appeals Board are also trained to serve as mediators.

In FY 2007, EPA used more than \$5 million in ECR services (e.g., neutral third parties for ECR cases, ECR training) on more than 90 active task orders under its Conflict Prevention and Resolution Services Contract, which is administered by the CPRC. The contract provides one-stop shopping for all headquarters and regional offices to access ECR services in a cost-effective, efficient manner, with most services being initiated within two weeks of a request.

EPA also utilized more than \$100,000 of services for a total of four active projects through its interagency agreement with the U.S. Institute for Environmental Conflict Resolution (USIECR). A portion of the funding available under the interagency agreement provided ongoing support to the National Roster of Environmental Dispute Resolution and Consensus Building Professionals. EPA is among the few federal agencies to provide support for the National Roster.

EPA continued to strengthen its partnership with other federal agency ECR programs during FY 2007. EPA and the U.S. Department of the Interior furthered their collaboration on evaluating the effectiveness and outcomes of ECR through the Systematic Evaluation of Environmental and Economic Results (SEEER) project, as described in question 5 below. EPA and USIECR also continued work under their interagency agreement on a range of projects.

One important example of the EPA-USIECR collaboration during FY 2007 was the Program Assessment of Early Involvement and Collaboration in the EPA National Environmental Policy Act (NEPA) 309 Review Process completed by USIECR for the Agency's Office of Federal Activities (OFA) in October 2006. Similar to a situation assessment, the program assessment was completed to learn how EPA reviewers and federal agencies currently work together to solve problems that arise during NEPA environmental review. The assessment identified opportunities for earlier and more collaborative approaches at all levels of coordination, and recommended steps to enhance collaboration in the NEPA review process. Currently, CPRC and OFA are implementing many of the recommendations made by the assessment. This application of assessment methodology is notable because federal agencies rarely sponsor program assessment approaches using ECR.

Focus on Accountable Performance and Achievement

EPA has put a major emphasis on accountable performance and achievement for ECR. Our efforts in this area are described in detail in the response to question 5 below.

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	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
k) Lack of resources for staff capacity building	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input checked="" 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 2007 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.]

Note: The first table presents ECR case information using EPA's definition of ECR, based on its ADR policy, which includes situations in which participants are using a neutral third party but not seeking agreement.

Context for ECR Applications:	Cases or projects in progress ¹		Completed Cases or projects ²		Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated: participated in but did not initiate:	
	Cases or projects in progress ¹	Completed Cases or projects ²	Federal agency decision	Administrative proceedings/appeals		Judicial proceedings	Other (specify)	Initiated:	participated in but did not initiate:		
Policy development	10	6	11	0	0	5	0	0	14	2	
Planning	4	6	5	0	10	5	0	0	10	0	
Siting and construction	0	1	0	0	1	1	0	0	1	0	
Rulemaking	2	0	2	0	2	0	0	0	2	0	
License and permit issuance	1	1	1	1	2	1	0	0	1	1	
Compliance and enforcement action	34	42	30	34	76	8	4	Misc.	69	7	

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. 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 FY2007 ECR Cases".

Implementation/monitoring agreements Other (specify): Voluntary Programs, State Oversight, Program Development, etc.	3	4	7	4	0	0	3	2	5
	9	11	20	6	0	2	12	15	5
TOTAL	63 (the sum should equal Total FY 2007 ECR Cases)	71	134	59	35	10	30	114 (the sum should equal Total FY 2007 ECR Cases)	20 (the sum should equal Total FY 2007 ECR Cases)

Note: The second table presents ECR case information using the OMB/CEQ definition of ECR.

Context for ECR Applications:	Cases or projects in progress		Total FY 2007 ECR Cases ⁶	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated: participated in but did not initiate:		
	Completed Cases or projects	Federal agency decision		Administrative proceedings/appeals	Judicial proceedings	Other (specify)	initiated:		participated in but did not initiate:	
Policy development	6	4	10	5	0	0	5	9	1	
Planning	1	2	3	2	0	1	1	3	0	
Siting and construction	0	0	0	0	0	0	0	0	0	
Rulemaking	1	0	1	1	0	0	0	1	0	
License and permit issuance	1	1	2	1	1	0	0	1	1	
Compliance and enforcement action	18	40	58	16	34	8	0	51	7	
Implementation/monitoring agreements	3	2	5	3	0	0	2	2	3	
Other (specify): Voluntary Program, State Oversight, etc.	6	5	11	4	0	2	5	6	5	
TOTAL	36	54	90	32	35	10	13	73	17	
	(the sum should equal	(the sum should equal	(the sum of the Decision Making Forums						(the sum should equal	

⁴ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

⁵ A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. 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.

⁶ "Cases in progress" and "completed cases" add up to "Total FY2007 ECR Cases".

Total FY 2007 ECR Cases)	Total FY 2007 ECR Cases)	Total FY 2007 ECR Cases)	Total FY 2007 ECR Cases)	Total FY 2007 ECR Cases)	Total FY 2007 ECR Cases)	Total FY 2007 ECR Cases)	Total FY 2007 ECR Cases)
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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 2007, 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
Interagency disputes	X	X
National Environmental Policy Act	X	X
_____	<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 2007	Check if using ECR	
Superfund Program	X	
Regulation Development	X	
_____	<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]

EPA believes that it is very important to track the use and outcomes of ECR and has been working toward that end with other federal and state partners since before the OMB/CEQ ECR policy memorandum was issued. Our efforts addressing performance and accountability are threefold. First, we continue to collaborate with USIECR and others to evaluate the practice of ECR. Second, we are utilizing multiple approaches to gauge the use of ECR at EPA. Third, we are continuing to develop an evaluation process to assess the environmental and economic outcomes of ECR. Each of these is described briefly below.

For the past several years, we have collaborated with USIECR, and other federal and state agencies in the development and use of common evaluation instruments to assess the practice of ECR. In FY 2007, EPA contributed data from 10 cases (or approximately 20% of the total dataset) to a large multi-agency dataset that is being analyzed to explore how well ECR is performing. The Agency is also analyzing its own evaluation data in detail and responding by using the results generated to help inform our ECR practice and program about potential areas for improvement.

EPA has three methods for gathering data about the use of ECR throughout the Agency. The first method is the Conflict Prevention and Resolution Services contract, administered by the CPRC, which allows us to quickly and regularly identify current ECR cases where external service providers are serving as neutral third parties, and the nature of the cases. Our interagency agreement with USIECR provides similar utility.

The second method is a network of headquarters office and regional staff members who are designated to assist with the ECR annual reporting process, some of whom also provide additional ECR program services as needed by their respective organizational units. These individuals are able to confirm preliminary ECR case lists generated by the CPRC and supplement such lists with additional ECR cases. The

third source of information about ECR use is the CPRC's request and services tracking system in which CPRC staff log requests received for ADR/ECR services and record which services are provided in response. While none of these three methods of tracking ECR use is sufficient by itself, and each presents unique data quality challenges, together they provide EPA with the information it needs to track and understand trends in ECR use.

Our third methods and measures effort addresses the outcomes of ECR. The Systematic Evaluation of Environmental and Economic Results (SEEER) is a joint project of the CPRC and the U.S. Department of Interior's (DOI's) Office of Collaborative Action and Dispute Resolution (CADR). SEEER's goal is to quantify the results of using ECR. The SEEER project is the first known systematic effort to compare the environmental and economic results of ECR to its alternatives. The findings of SEEER may assist public decision makers and other stakeholders in determining how to address important environmental and natural resource issues and whether ECR may be appropriate in a given situation.

The SEEER evaluation methodology produces information on the results of ECR compared to the alternative including the following:

- Environmental Effects – an index of environmental effects tailored to each case and aggregated into categories to facilitate analysis across cases based on judgments of the importance, probability, magnitude of the environmental and natural resource effects from several different sources.
- Economic Valuation of Environmental Effects – the values of environmental effects are calculated where relevant and credible economic valuation studies exist.
- Effects on the Community – an analysis of how a decision addressed the relationship between conservation and use of natural resources and the effects that the decision had on regulating use.
- Effectiveness of the Decision– a comparison of results related to the efficiency of the decision making process, such as:
 - Information Sharing – the extent to which information is shared at different points before, during, and after the ECR process.
 - Social Capital – existence of relationships among parties that may productively transfer to situations other than the case being evaluated, as well as benefits to the ECR process and effects on morale and public image.
 - Financial Statement Results - Changes in the assets, liabilities, costs and revenues of parties.
 - Time to Reach and Implement a Decision – estimated savings in terms of time and monetized.

Preliminary results from applying SEER to a limited set of cases suggest possible savings, potential environmental benefits, increased organizational effectiveness, and more durable agreements from using ECR compared to the alternative. EPA has found the SEER methodology to be feasible and relevant to our evaluation of ECR outcomes. Together with our partners at DOI, we are continuing to refine the approach and plan to expand its application to additional cases in the near future.

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

EPA's system for making a decision to initiate and/or participate in an ECR process is addressed under its ADR policy. Under the ADR policy, the Agency's decision to use ADR/ECR in a particular matter must reflect an assessment of the specific parties, issues, and other factors. Considerations relevant to the appropriateness of ADR/ECR for any particular matter include, at a minimum, the guidelines in section 572 of the Administrative Dispute Resolution Act of 1996 and any applicable Agency guidance on particular ADR/ECR techniques or ADR/ECR use in specific types of disputes. Decisions regarding initiation or participation in an ECR process are made by individual headquarters and regional offices on a case-by-case basis. Situation assessments in various forms are used to help determine whether ECR is appropriate and what type of process to use in a given situation. ECR program staff in the CPRC and in the Regions can help assess whether and which form of ECR should be used in a particular matter.

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.

EPA has a long history of working collaboratively with its stakeholders to further the Agency's human health and environmental mission. EPA headquarters and regional offices have provided examples of how we are continuing to collaborate in ways other than the use of ECR in FY 2007. These examples are described below for their respective offices.

Office of Compliance - In preparing for the launch of the Enforcement Compliance History Online Internet site that provides access to enforcement and compliance information to the public, EPA worked with the states to develop a network of data stewards. Each state assigned a data steward to assist with data quality of the posted data and address reported data errors. The stewards initially presented issues and concerns about what data would be accessible and how it would be presented on the screen. EPA and the states worked through these issues without a neutral third party or

a written agreement.

Office of Environmental Justice (OEJ) - OEJ implemented an Environmental Justice Collaborative Problem-Solving Cooperative Agreement Program, in which 10 awards, totaling \$1 million, were made in 2007. These programs seek to build capacity among community organizations to build collaborations among different stakeholders to address environmental justice issues. In addition, OEJ completed a collaborative problem-solving documentary video in 2007. This video is a significant training resource which documents the lessons learned from an environmental justice project in Spartanburg, South Carolina.

Office of Pesticide Programs (OPP) - OPP routinely engages affected stakeholders on numerous important regulatory issues through public notice and comment opportunities and public meetings. While these procedures do not involve ECR facilitation or mediation, they draw on principles important to ECR—airing of issues in a manner that allows participation by all affected interests and a reasoned response on every issue that is raised. In addition, OPP makes extensive use of federal advisory committees to address complex and contentious issues. OPP uses the Federal Insecticide, Fungicide and Rodenticide Act Scientific Advisory Panel to obtain independent peer review and advice on novel or controversial scientific issues and the Pesticide Program Dialogue Committee to explore a wide range of pesticide policies—both substantive and procedural—with a diverse group of stakeholders. Information about OPP's public participation process and advisory committees appears on www.epa.gov/pesticides.

Office of Water (OW) - OW often initiates early involvement with stakeholders in an effort to prevent conflict and avoid unresolved issues. In addition, all OW offices report that they are relying on more outreach and stakeholder involvement, even without the services of facilitators, to gather information and to assemble the various perspectives held by diverse stakeholders. One office noted that it has modeled some of its outreach and public meetings to reflect the best practices and techniques observed at facilitator-led events. More specifically, interagency agreements, public meetings and listening sessions, Internet outreach, publications highlighting innovative case studies, and training staff in facilitation and negotiation techniques are all tools that OW has applied in order to provide information to our stakeholders, obtain their input on key OW actions, and help resolve issues.

Region 1 (Boston) - A significant focus of the Region's work is in collaboration with its partners in the State, non-profit, and private sectors to address environmental issues. The Asthma Regional Council is an ongoing collaborative effort to understand and confront the asthma epidemic and collaboratively pursue solutions with other agencies and entities. We provided neutral assistance to help them reach agreement about whether and in what form to continue as a collaborative process. Their ongoing work

is generally conducted, however, without any formal ADR/ECR assistance.

In the Superfund program context, Region 1 has convened a number of processes to enhance communication between and among the Agency and the various stakeholders where challenging and/or controversial remedies are at issue. The purpose of many of these processes is not to reach agreement but rather to promote understanding, good Agency decision-making, and to help the Agency be as responsive as possible to stakeholders' concerns. Region 1 has such processes underway at the GE-Pittsfield Site in Massachusetts, Centredale Manor Site in Rhode Island, and Elizabeth Mine Site in Vermont, to name a few.

Region 3 (Philadelphia) - The Anacostia River is recognized as one of the most polluted rivers in the country, which EPA selected it as one of the first four rivers for its Urban Rivers Restoration Initiative in 2003. To address the specific issue of a number of 'hot spots' of contaminated sediments in the river, EPA chairs the Anacostia Watershed Toxics Alliance (AWTA), a partnership formed in 1999 comprised of 25 public (including EPA, U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, several Department of Defense facilities and agencies, the District of Columbia, Maryland counties, and others) and private entities (including PEPCO, Washington Gas & Light). Studies conducted by ATWTA have confirmed elevated levels of Polycyclic Aromatic Hydrocarbons (PAHs), Polychlorinated Biphenyls (PCBs) & metals in the sediments, which may pose unacceptable risk to human health and aquatic organisms. These contaminants are the result of both historic industrial operations along the riverbanks and ongoing upstream surface runoff.

Because of the complex nature of the contaminants (including their sources), the Region 3 Office of Regional Counsel worked with the other EPA members of AWTA to develop a mechanism to fund the remediation of the hotspots that relies on a continuing, collaborative partnership among AWTA's members (which include regulators, "responsible parties" under the Comprehensive Environmental Response, Compensation, and Liability Act, private property owners and federal land managers). By meeting regularly, communicating all of EPA's options for accomplishing cleanups (including enforcement), and finalizing a "White Paper" which documents the implementation options being considered, in FY 2007 EPA continued to help AWTA address the contaminated sediments without costly, time-consuming litigation.

Likewise, EPA Region 3 continues to work collaboratively as a member of the Schuylkill Action Network (SAN), a collaborative effort focused primarily on source water protection under the Safe Drinking Water Act. SAN participants include EPA, the state and local governments, industry and individuals. There are a number of workgroups which focus on the four major threats to safe drinking water in the

Schuylkill watershed: storm water, pathogens, mine drainage and agriculture.

Region 10 (Seattle) - The Region 10 Office of Regional Counsel offers pre-filing negotiations with the parties in most Administrative cases. This often results in warnings issued or enforcement actions modified or withdrawn, if appropriate, saving considerable time and resources for all parties involved.

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.

One of EPA's most significant ECR achievements in FY 2007 was the more than 10% increase in the number of ECR cases. The total of 134 cases reported in FY 2007 compares to 117 cases reported in FY 2006.

Beyond this direct measure of ECR use, we note an increasing level of complexity in the types of situations in which ECR is being used. These more challenging ECR cases feature high profile policy contexts, such as coal bed methane development and water quality standards in Montana and Wyoming; multiple layers of governmental and other stakeholders, as in the Coeur d'Alene Lake Management Plan case; and critical scientific concerns, such as those present in the Detection and Quantitation Federal Advisory Committee. EPA's ECR practice evolved to meet these challenges in FY 2007 and will continue to adapt as we face even more complex cases in the future.

In addition to these overall notable achievements, we highlight several important accomplishments below that should help to further ECR use at EPA and elsewhere.

ECR Outreach, Education, and Training - In FY 2007, our ECR outreach, education, and training activities included:

- An exhibit, handouts and presentation on ADR at the National Association of Remedial Project Managers Training Conference.
- An exhibit, handouts, poster and presentation on ADR at the National Community Involvement/Training Conference.
- A four-hour training presentation on collaboration at the Association of State and Territorial Solid Waste Management Officials annual meeting.
- A four-hour training presentation on ADR to EPA Regions 1 and 3 federal and state environmental justice coordinators, part of an effort to conduct such training in all EPA regions.
- A presentation to the ECR Quarterly Forum on situation assessments.
- Four 90-minute training presentations on collaboration, ECR and public

involvement at EPA's regularly scheduled training on the EPA Regulation Development Process.

- A four-hour training presentation on collaboration for the Community Action for a Renewed Environment (CARE) EPA project officers.
- Regular bi-weekly half hour presentations on collaboration and ECR for new hires.
- Development and administration of a survey on ADR training and experience for new hires and existing EPA employees.
- Participation in the review and related training on the "NEPA and Collaboration" Manual published by CEQ earlier this year in cooperation with the US Institute for Environmental Conflict Resolution (<http://ceq.eh.doe.gov/nepa/nepanet.htm>).
- Updates to the ADR pages on the EPA Region 1 web site, an updated and reformatted ADR fact sheet, a brown bag on a mining mediation in Papua New Guinea, and outreach to the local community in Region 1.
- A Continuing Legal Education seminar on domestic and international ECR as well as opportunities for ECR in Region 2

During FY 2007 EPA also designed and developed presentations and programs on ECR to be implemented for FY 2008 including:

- An exhibit, handouts, exercises and several presentations for Conflict Resolution week.
- Development of a training and experience survey on ECR and collaboration for the Office of General Counsel.
- ADR training for community involvement coordinators.
- A six-hour training module on collaboration for mid-managers and senior staff level employees.
- Two-day training modules in using and participating in ADR for enforcement and counseling attorneys.

International ECR Outreach - EPA worked with the governments of China and Thailand to develop capacity and expertise in ECR during FY 2007:

- China – EPA presented two four-hour workshops on ECR to more than 100 national, regional and local environmental officials in China in September 2007 and prepared materials for a third workshop to be conducted in FY 2008.
- Thailand – EPA has worked with the Ministry of Natural Resources and Environment since 2001 to develop a conflict prevention and resolution center in the ministry and to train mediators and government officials. In FY 2007 Ministry officials traveled to the US and met with EPA, U.S. Department of the Interior, U.S. Department of Transportation, CEQ and Federal Energy Regulatory Commission dispute resolution officials to discuss ECR programs of mutual interest. Since 2002 Thailand has trained more than 100 environmental mediators and more than 400 government officials in ECR with EPA's assistance.

ECR Client Strategies - As part of the Conflict Prevention and Resolution Center's (CPRC's) ECR strategy implementation, staff have piloted a "client strategy" approach that could be used for each program and region at EPA to assess the best opportunities to support the consideration and use of ECR and collaborative problem solving. These client strategies are used to inform CPRC about resource decisions. As of FY 2007, CPRC has completed seven client strategies for programs such as the Office of Federal Activities, Community Action for a Renewed Environment, and Superfund. Client strategies have proven to be a productive approach to familiarizing EPA's programs and regions with the CPRC and in informing the CPRC about the unique needs these clients have.

Water Law Office - The Water Law Office (WLO), located in EPA's Office of General Counsel, has taken initiative to identify opportunities to use ECR that can avoid resource-intensive litigation with uncertain outcomes and continues to effectively support clients when they choose to initiate or participate in ECR. In FY 2007, for example, in litigation involving water quality standards related to coal bed methane energy development affecting the states of Montana and Wyoming, WLO assisted in the conduct of an ECR process, devoting substantial resources to assisting the facilitator and the states to seek a non-litigated resolution. WLO also advised clients in a decision to use ECR in a dispute between Kentucky and the city of Cincinnati, OH concerning wastewater treatment and drinking water issues. WLO's engagement on ECR serves as an important example of how federal agency attorneys can play a significant role in helping agencies to further OMB/CEQ's goal of increasing the effective use of ECR.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) 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.

**Use of the Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving
by US Environmental Protection Agency in the Federal Advisory Committee on Detection and Quantitation Approaches and Uses in Clean Water Act Programs**

Under the Clean Water Act, the US Environmental Protection Agency (EPA) is responsible for approving analytical procedures for monitoring wastewater pollutants. Detection (determining a pollutant's presence) and quantitation (determining the quantity

of the pollutant) are significant issues for regulators, the regulated community, environmental laboratories that analyze wastewater for monitoring and compliance purposes, other agencies that must use EPA-approved analytical methods, and those who focus on human health and the environment.

By 2005, when EPA chartered the Federal Advisory Committee on Detection and Quantitation Approaches and Uses in Clean Water Act Programs (Committee), concerns with the Method Detection Limit (MDL) procedure as published in 40 CFR Part 136, Appendix B were well characterized. The charge to the Committee was “to provide advice and recommendations on approaches for the development of detection and quantitation procedures and uses of these procedures in Clean Water Act programs.” The Committee made recommendations and completed its work in December 2007.

Informed Commitment and Accountability—The USEPA Office of Water made available to the Committee the Engineering and Analysis Division Director to Chair the Committee, participate fully on behalf of the Office of Water and represent the views of the Office of Water. The Deputy Assistant Administrator for the Office of Water appeared at several meetings to listen to the findings and engage with the Committee members. Technical assistance was provided via agency participation in technical work group meetings as well as agency funding of a pilot study of a new procedure. The US EPA Office of Water was accountable by participating in the process at every Committee meeting, bringing Agency views to the table, and organizing cross-Agency groups between sessions to communicate Committee deliberations and prepare for Agency representation. The process was transparent and accountable to the public through Federal Register notices, posting of Committee agendas and materials to a website, provision of teleconference lines for public participation, and public comment opportunities at each Committee meeting.

Balanced, Voluntary Representation—The Committee included 21 members balanced with the affected interests of the environmental community (4 seats), environmental laboratories (4 seats), industry (4 seats), public utilities (4 seats), states (4 seats) and one member from EPA. All parties were interviewed as part of a situation assessment and potential participants identified who would be willing to voluntarily serve on the federal committee, if appointed, under provisions of the Federal Advisory Committee Act. Some of the interested organizations had participated in litigation and public hearings around the issue of developing a new method for detection and quantitation at 40 CFR Part 136 Appendix B. All parties continued to participate in Committee meetings and EPA provided travel and per diem support to those who needed financial assistance in order to attend. Committee rules were structured so that no consensus decisions could occur without participation of at least one member of each caucus (the term used to identify each interest grouping).

Group Autonomy—As a member of the Committee, EPA engaged with all participants in developing the protocols and the definition for consensus-based decisions, and used the assistance of a neutral facilitation team. The Committee made recommendations and prepared a report representing the views of all Committee members. The neutral

facilitation team served the whole Committee.

Informed Process—The Committee had a scope of reviewing detection and quantitation approaches and uses in Clean Water Act programs. The debate about changing the detection and quantitation approaches was quite technical. Early on, the Committee reviewed the universe of detection and quantitation approaches, prepared a short list of approaches for pilot testing, and agreed by consensus to characteristics of what Committee members needed a procedure to do. A scope of work for a pilot study was developed by a sub group (balanced with representatives from all caucuses) and brought to the full Committee for approval. Because the Committee members wanted to have pilot study results (a six month period) to inform final decision-making, the Committee formally requested a time extension from EPA. The time extension was granted and the Committee was re-chartered through December 31, 2007. Pilot study results were reviewed and Committee members weighed the results in decision-making around a recommended detection and quantitation approach.

Openness—All Committee participants and the public received agendas at least two weeks prior to each Committee meeting and meeting materials were posted to the public website. Teleconference lines were open for public participation at all Committee meetings.

Timeliness—The Committee completed its work and a report with recommendations on time by December 31, 2007. EPA provided views of the Office of Water throughout the process and at its conclusion, EPA representatives committed to taking through rulemaking a new approach to detection and quantitation.

Implementation—By having an EPA representative on the Committee, EPA ensured that possible decisions could be implemented consistent with federal law and policy. At several points, EPA experts briefed Committee members on legal and policy issues. Prior to final Committee recommendations, EPA representatives tested possibilities for both implementation and committed resources to implementation.

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.

In general, collecting these data posed little difficulty at EPA. We view this ECR annual report template as a reasonable data collection instrument for future ECR annual reports and we especially support maintaining this format for the FY 2008 annual report. Continuing to use this data collection instrument next year will allow agencies to initiate the data collection process much sooner than in previous years. There are three minor areas in which the template questions could be strengthened, as described below.

Questions 1 and 8 present significant opportunity for generating overlapping responses. We recommend including “notable accomplishments” under question 1 next year to

minimize potential redundancy.

On question 2, it could be clearer what the “N/A” response means, because some of our staff were not sure how to interpret it. For example, “not a barrier” might be a more appropriate response.

On question 3, the case categories related to initiating ECR are also ambiguous. Does initiated mean an entity first had the idea or proposed ECR? Does it mean an entity hired the neutral? Or something else? It is not clear that knowing which organization initiated ECR is particularly useful. For future reporting, we recommend changing “initiated” to “sponsored.” An ECR case sponsor (and there can be more than one sponsor for a given case) demonstrates a greater commitment than other participants by providing resources or institutional support.

Please attach any additional information as warranted.

Report due January 15, 2008.

Submit report electronically to: ECRRReports@omb.eop.gov

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

Federal Energy Regulatory Commission (FERC)

Name of Department/Agency responding:	Federal Energy Regulatory Commission
Name and Title/Position of person responding:	Jacqueline S. Holmes, Associate General Counsel -- Energy Projects
Division/Office of person responding:	General Counsel
Contact information (phone/email):	202-502-8198 jacqueline.holmes@ferc.gov
Date this report is being submitted:	January 15, 2008

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, 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.]

The Commission continued to build programmatic/institutional capacity for ECR in 2007. The Commission has integrated ECR objectives in its goals and objectives, GPRA goals and strategic planning. In its Strategic Plan, the Commission notes that it "encourages the use of alternative dispute resolution procedures" as part of its guiding principle of *Due Process and Transparency*. The annual Performance Budget Request to the Office of Management and Budget tracks environmental collaborative problem-solving and Alternative Dispute Resolution (ADR) processes (including ECR) and identifies specific performance measurement data and results supporting the Commission's ADR and ECR initiatives.

As previously reported (see the Commission's response to question 4 in the First ECR Annual Report to OMB-CEQ), the Commission has full time Dispute Resolution Service (DRS) staff dedicated to ADR and ECR use. In addition, three other offices, the Office of the General Counsel, the Office of Energy Projects, and the Office of Enforcement, coordinate with each other and the DRS to maximize the use of collaborative problem-solving in discussions among stakeholders during our NEPA processes and to informally resolve disputes on matters of environmental compliance. The Commission integrates ADR in its new employee and career development training sessions. ADR is also a component of outreach presentations to international delegations visiting the Commission.

In addition, the Commission maintains a toll-free DRS helpline, provides a direct DRS e-mail address, and maintains an Enforcement hotline to facilitate government and public communication regarding environmental and non-environmental disputes. The Commission's website at www.ferc.gov contains links to the Commission's rules, brochures and outreach materials providing the public with information on how to start an ADR process, become an intervenor, or file a complaint on an environmental project-related matter. The main page of the Commission's website provides information on the Commission's Dispute Resolution Service. The Commission also invests in and supports Commission-wide training to expand employees' knowledge and skills relating to ADR methods

and tools for conflict prevention and resolution, such as facilitation and interest-based negotiation for environmental collaborative problem-solving.

Examples of accountable performance and achievement during 2007 include:

- There were 79 new requests or ongoing cases (inclusive of ECR cases) involving the services of our DRS, which represented a 46.3% increase over the base year of FY04, in which there were 54 new requests or ongoing cases.
- The DRS exceeded its customer satisfaction rate of 80% for FY07. For casework concluded in FY07, the DRS received a customer satisfaction rate of 100%.
- The Commission provided a three part training course to employees: 1) Introduction to ADR processes (1 day and 30 attendees); 2) Facilitating Meetings and Technical Conferences: How to Ensure Effective Group Discussions (2 days and 36 attendees); and 3) Effective Negotiation Processes (3 days and 28 attendees). Course popularity exceeded expectations of an average of 24 students per course. The participants ranked the courses in these percentage categories: Course Content (90 %); Materials (88 %); and Effectiveness of Instructor (94 %).
- The Commission issued a revised, public educational brochure on Alternative Dispute Resolution and how to contact the Commission's Dispute Resolution Service.
- The Commission hosted a four-day interagency Conflict Coaching skills training course, led by an internationally recognized Canadian conflict coach who is a pioneer in the field of conflict coaching. Twelve ADR representatives from six agencies, including the Commission, the U.S. Department of Agriculture/Forest Service, the U.S. Department of Education, the U.S. Department of the Interior, the Securities and Exchange Commission and the Veterans Administration, attended.
- DSR staff attended three advanced training courses and one professional trainer course. Four of five of the Commission's DRS staff are trained in "Train the Trainer" skills.

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	<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input type="checkbox"/>	X <input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input type="checkbox"/>	X <input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	X <input type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input type="checkbox"/>	X <input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input type="checkbox"/>	X <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 2007 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.]

Context for ECR Applications:	Cases or projects in progress		Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated:		
	Cases or projects in progress	Completed Cases or projects			Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)	initiated:	participated in but did not initiate:	
Policy development											
Planning											
Siting and construction	16	31	47	47	47				40	7	
Rulemaking		2	2	2	2				2		
License and permit issuance	29	7	36	36	36				35	1	
Compliance and enforcement action (Numbers include 128 complaints handled by Commission's Enforcement Hotline staff)	131	135	266	266	266				256	10	
Implementation/monitoring agreements											
Other (specify): _____											
TOTAL	176	175	351	351	351				333	18	
	(the sum should equal Total FY 2007 ECR Cases)					(the sum of the Decision Making Forums should equal Total FY 2007 ECR Cases)				(the sum should equal Total FY 2007 ECR Cases)	

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.
² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. 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 FY2007 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 2007, 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
Hydropower licensing and relicensing applications	X <input type="checkbox"/>	<input type="checkbox"/>
Natural gas facility certificate applications	X <input type="checkbox"/>	<input type="checkbox"/>
Liquefied natural gas facility authorization applications	X <input type="checkbox"/>	<input type="checkbox"/>
Electric transmission siting authorization applications* (no such proposal have yet been filed)	<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 2007	Check if using ECR	
_____	<input type="checkbox"/>	
_____	<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]

In October 2007, Commission staff presented information on the DRS Evaluation and Case Tracking System to the Office of Management and Budget, the Council on Environmental Quality, and government agency attendees at the subcommittee meeting on ECR activities. Since FY00, the DRS has tracked its ADR activities and workload, inclusive of ECR activities, in a database and has developed a case evaluation survey to measure participant feedback. Over time, the database tracking system and participant surveys have been modified to measure new performance criteria, program effectiveness, and cost savings from the use of ADR and ECR.

The Commission tracks objective, measurable criteria in its databases for cases and outreach activities including the length of time required to complete a case using an ADR process and whether or not the ADR or ECR process led to a successful outcome or resolution. Currently, the casework database tracks seven ADR processes or courses of action: mediation, conciliation, facilitation, conflict coaching, inquiry, whether ADR is inappropriate, and referral of a case to a program office, such as the Office of Enforcement or the Office of Energy Projects. The outreach database tracks the following ADR (and ECR) activities: collaboration, consultation, non-case coaching, media and articles, research and applications, reports and data requests, shared neutrals mediation, presentation, facilitation (not case-related) and training others on ADR methods and skills for conflict prevention and resolution.

The original participant case evaluation survey measured the effectiveness of the particular ADR process for the specific dispute and the quality of the ADR services provided. In FY02, the case evaluation form was revised to acquire information on cost savings. Today, participants check the appropriate boxes for the types of costs savings: employee time, man hours/days, travel expenses, documents and filing costs, litigation costs and other. The evaluation also permits participants to check off the cost savings of using ADR over other

Commission dispute resolution processes (e.g., order, hearing, re-hearing, appellate review) in dollar increments of \$25,000, beginning with \$0 and ending above \$500,000. Participants also have the option of identifying the specific dollar amount saved.

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

To begin with, jurisdictional entities, stakeholders, and the public can find information about the Commission's Dispute Resolution Service on the main page of our website, and can inquire about or request that an ADR or ECR process be initiated via the DRS toll-free helpline and email address, or the Commission's Enforcement hotline. A project sponsor, stakeholders including other agencies, and members of the public may contact the DRS at any time and the DRS can initiate an ADR process informally with the parties if they are interested.

In addition, section 385.206 of the Commission's regulations governing complaints requires a person filing a complaint before the Commission to state in the initial pleading whether various dispute resolution mechanisms have been used, or if not, why not, and whether the complainant believes that ADR under the Commission's supervision could be helpful and what types of ADR processes could be used. Further, when Commission staff reviews the complaint, it may request that the DRS contact the parties involved in the proceeding to determine whether the parties will consider an ADR process to resolve the dispute in the complaint. In such instances, the DRS will typically contact the complainant and other parties mentioned within 48 hours to determine whether the parties are interested in pursuing ADR.

Specific orders issued by the Commission on individual projects, cases, or rulemakings can also direct the DRS to convene parties in a particular matter or on a set of issues to see if the parties can reach a solution through assisted negotiations.

Examples of the Commission's continuing commitment to encouraging parties to use ADR (inclusive of ECR) include action in two 2007 rulemakings:

- On November 16, 2006, the Commission issued final regulations setting forth procedures for the processing of applications to site electric transmission facilities. Those regulations encourage maximum participation from all interested stakeholders, requiring the development

of a Public Participation Plan and setting forth procedures for extensive pre-application and post-application processes. The participation plans will provide all interested parties, including affected landowners, with information on all aspects of the proposed project, including environmental impacts. The participation plans provide for public involvement during the extensive pre-filing and application processes. Further, in its order adopting the regulations, the Commission offered the services of its DRS to assist states in the planning of electric transmission facilities.

- On August 6, 2007, the Commission revised its regulations to delegate to the Secretary of the Commission the authority to direct the Commission staff of the DRS to contact the parties in a complaint proceeding and establish a date by which the DRS must report to the Commission whether a dispute resolution process to address the complaint will be pursued by the parties.

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.

In 2003, the Commission established the Integrated Licensing Process (ILP) for non-federal hydroelectric projects. This process is intended to make hydro licensing more efficient and predictable and to reduce the costs associated with licensing. The ILP specifically is aimed at improving coordination among the Commission and other agencies, including the concurrent preparation of environmental documents. It also is aimed at streamlining dispute resolution and expanding opportunities for public participation in pre-filing consultation. The success of this effort is demonstrated by the fact that the first ILP license was issued approximately one year after the application prepared under this process was filed.

In September 2006, the Commission issued a policy statement on hydro settlement agreements that set forth Commission precedent and case law, set out broad principles, and sought to provide clarity regarding the use of settlements in hydro proceedings. In issuing the policy statement, the Commission noted

that it is the Commission's hope that by providing a review of the principles established in orders dealing with settlements, parties can streamline their settlements to include only appropriate provisions. Settlements, the Commission noted, "save time and money, avoid the need for protracted litigation [and] promote the development of positive relationships among entities."

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.

- Commission staff conducted several environmental outreach initiatives within and outside the Commission to advance the use of ECR to resolve energy-related environmental conflicts. These included several Commission-sponsored "Lunch and Learn" events on facilitative partnering, environmental mediation and the costs and benefits of ECR use on environmental cases. Commission staff also moderated a panel at the American Bar Association Dispute Resolution Section conference on the economic and environmental benefits of ECR with respect to two non-federal hydropower projects.
- The Commission has begun development of a custom ADR training course for the Commission's Office of Enforcement management and staff.
- The DRS completed 41 transactional case assessments or convening sessions (100%) within 20 days of the matters being referred to the DRS.
- The DRS completed 34 transactional processes or cases (both environmental and non-environmental) in which parties agreed to pursue an ADR process. Of these, 31 (91%) were completed within 120 days after being referred to the DRS.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) 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.

In FY07, the Sacramento Municipal Utility District, Pacific Gas & Electric Co., several federal and state resource agencies, several environmental interest groups, and other stakeholders reached a settlement in the relicensing proceeding of the Upper American River Project and the Chili Bar Hydroelectric Project. These projects are located on the American River, or its tributaries, in California, and comprise eight hydroelectric developments. Examples of issues that were resolved by the settlement include: measures affecting the ecology, health and suitability of reaches downstream of the project dams in order to support native fish, amphibian, and reptile populations; water level elevations for the protection of fish; the availability of boat launches; the visual experience at the project reservoirs; measures that provide for the protection of wildlife and plants; vegetation and invasive weed management; measures to upgrade and expand recreational facilities and operations; a management plan to protect cultural resources; and project operations for hydroelectric generation.

The settlement was mediated by the Commission's Dispute Resolution Service. The DRS used five of the eight ECR principles for agency engagement: informed commitment; balanced, voluntary representation; group autonomy; informed process; and openness. A Draft Environmental Impact Statement was issued for the project in September 2007. Commission staff addressed a sixth ECR principle for agency engagement or implementation and modified some of the applicant-proposed project-related environmental measures to, among other things, require the filing of annual reports, expand the scope of some management plans, and provide an annual employee environmental awareness program. The settlement agreement is available on the Commission's website from the eLibrary feature at <http://www.ferc.gov/docs-filing/elibrary.asp>. Accession number 20070208-4003

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, 2008.

Submit report electronically to: ECRReports@omb.eop.gov

General Services Administration (GSA)

Name of Department/Agency responding:	<u>General Services Administration</u>
Name and Title/Position of person responding:	<u>Raheem M. Cash, Director, Environment Program, GSA Public Buildings Service</u>
Division/Office of person responding:	<u>Office of Applied Science</u>
Contact information (phone/email):	<u>202-208-1884</u>
Date this report is being submitted:	<u>15 January 2008</u>

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, 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 2007. 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.

Thus our focus in 2007 was to take steps to strengthen our overall NEPA management. One key goal is to establish more consistent program application and foster greater understanding of the public scoping process. One of our major accomplishments was the development of a *NEPA Integration Guide*. The purpose of this guide is to assist regional NEPA Experts in establishing or improving NEPA programs in their region, and to provide a framework for understanding NEPA integration into GSA business processes. This guide aims to increase coordination among regional NEPA Experts and other staff within the regions to improve the NEPA process and to ensure that NEPA Experts are aware of the many projects within the region subject to NEPA compliance.

The *Guide* provides illustrations of the major steps involved in large construction projects and details where the NEPA process, including public scoping and participation, fits in. During 2008 we intend to provide on-site training based on the material in the *Guide* to project managers nationwide.

We view ECR as potentially playing a key role in the public interface portions of

our NEPA procedures and recent controversies on some projects have certainly helped illustrate the importance to a small subset of project managers.

We will contact the U.S. Institute to explore how they might 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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m) Lack of budget incentives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input checked="" type="checkbox"/>	<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 2007 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.]

Context for ECR Applications:	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated: participated in but did not initiate:
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)	
Policy development								
Planning								
Siting and construction								
Rulemaking								
License and permit issuance								
Compliance and enforcement action								
Implementation/monitoring agreements								
Other (specify): _____								
TOTAL	0	0	0	(the sum of the Decision Making Forums should equal Total FY 2007 ECR Cases)				(the sum should equal Total FY 2007 ECR Cases)

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. 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 FY 2007 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 2007, 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 2007	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"/>	

[Empty box]

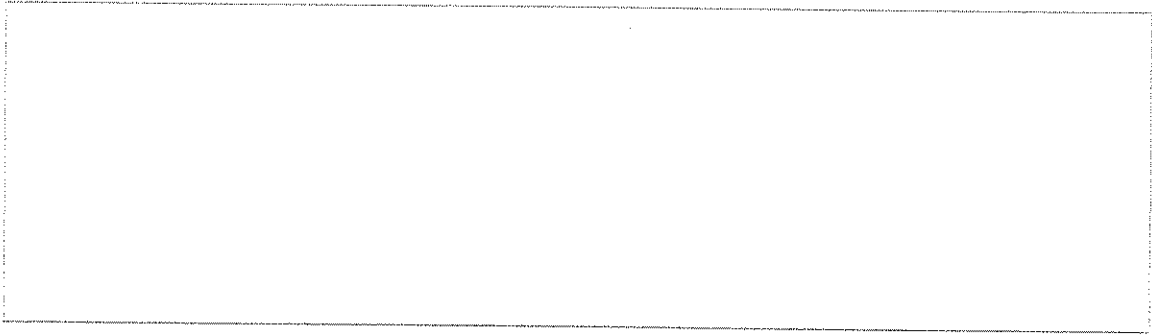
- 7. Describe other significant efforts your agency has taken to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not fit within the Policy Memo's definition of ECR as presented on the first page of this template.

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.



National Aeronautics and Space Administration (NASA)

Name of Department/Agency responding:	<u>National Aeronautics and Space Administration</u>
Name and Title/Position of person responding:	<u>Kathleen Callister, Environmental Protection Specialist</u>
Division/Office of person responding:	<u>Environmental Management Division, NASA HQ</u>
Contact information (phone/email):	<u>(202-358-1953 / Kathleen.e.callister@nasa.gov</u>
Date this report is being submitted:	<u>January 2, 2007</u>

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

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2007 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.]

Context for ECR Applications:	Cases or projects in progress		Completed Cases or projects	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated:		
	Administrative proceedings/appeals	Judicial proceedings			Other (specify)	initiated:	participated in but did not initiate:	Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)
Policy development	0	0	0	0					0	0	
Planning	0	0	0	0					0	0	
Siting and construction	0	0	0	0					0	0	
Rulemaking	0	0	0	0					0	0	
License and permit issuance	0	0	0	0					0	0	
Compliance and enforcement action	0	0	0	0					0	0	
Implementation/monitoring agreements	0	0	0	0					0	0	
Other (specify): _____	0	0	0	0					0	0	
TOTAL	(the sum should equal Total FY 2007 ECR Cases)		0	0	(the sum of the Decision Making Forums should equal Total FY 2007 ECR Cases)				0	0	(the sum should equal Total FY 2007 ECR Cases)

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.
² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. 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 FY2007 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 2007, 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
_____	<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"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

List of additional priority areas identified by your department/agency in FY 2007	Check if using ECR
_____	<input type="checkbox"/>
_____	<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 at this time

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

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.

None at this time.

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.

NASA does not have any achievements or advances in using ECR during the past year.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) 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.

Not Applicable.

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.

None at this time.

Please attach any additional information as warranted.

Report due January 15, 2008.

Submit report electronically to: ECRReports@omb.eop.gov

National Capital Planning Commission (NCPC)

Questions for 2007 ECR Policy Reports (Revised July 19, 2007)

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). 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 memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the second year of reporting in accordance with this memo for activities in FY07.

The report deadline is January 15, 2008.

We understand that collecting this information may be challenging; few departments or agencies have collected this data in the past. We ask that you make a good faith effort to acquire the data to the best of your ability. The intention is to establish a useful baseline for your department or agency, while collecting 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 2007 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, a copy of the analysis of FY 2006 ECR reports is available at www.ecr.gov.

Name of Department/Agency
responding:

National Capital Planning
Commission

Name and Title/Position of person
responding:

Lois Schiffer, General
Counsel

Division/Office of person responding:

General
Counsel

Contact information (phone/email):

lois.schiffer@ncpc.gov; 202-482-
7223

Date this report is being submitted:

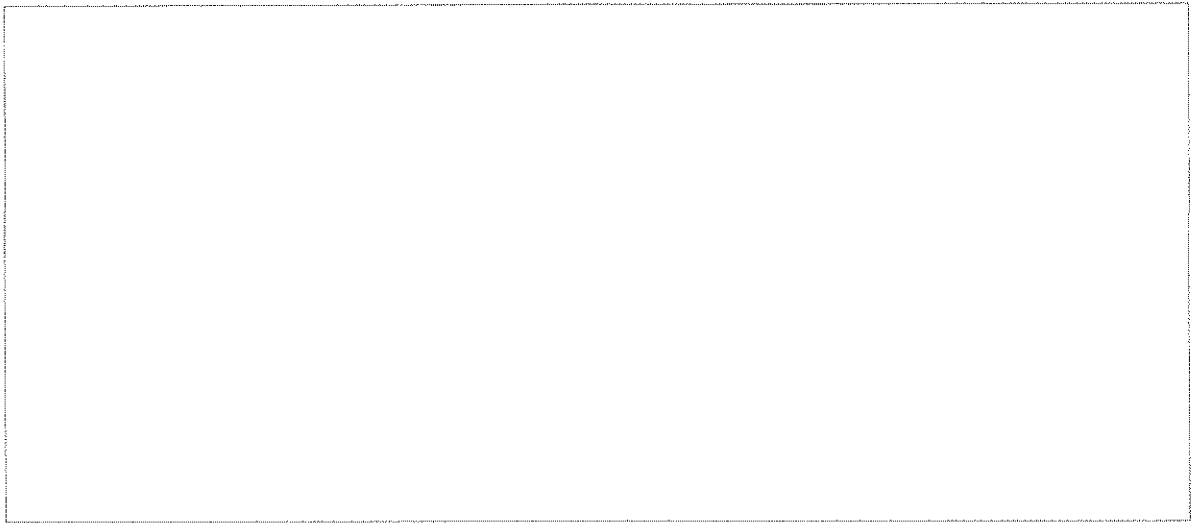
January 7,
2008

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, 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.]

NCPC is a small federal agency (approximately 45 employees) that serves as the central planning agency for the federal government in the National Capital region. We work closely with other federal agencies as well as District of Columbia government agencies to review and evaluate federal and certain District of Columbia buildings and projects in the region. We also develop a Comprehensive Plan and more targeted area or topical urban plans. We work with government agencies and private sector groups. Because of the nature of our work, we are not generally involved in significant environmental conflicts. Because of our size and the nature of our work, we do not have an Environmental Conflict Resolution program. We do have a general counsel trained in mediation and alternative dispute resolution, so that we are "building expert knowledge, skills, and capacity by strengthening intellectual and technical expertise in ECR and collaborative problem solving." She also within the past few months attended a training session on ECR and NEPA. We will continue to monitor our work to determine whether additional steps related to ECR would be productive for our small agency.



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	<input type="checkbox"/>	<input type="checkbox"/>	x
b) Staff availability to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	x
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	x
d) Limited or no funds for facilitators and mediators	x	<input type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input type="checkbox"/>	x
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input type="checkbox"/>	x
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	x	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	x	<input type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	x	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input type="checkbox"/>	x
k) Lack of resources for staff capacity building	<input type="checkbox"/>	x	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	x
m) Lack of budget incentives	<input type="checkbox"/>	x	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	x
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	x	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	x	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	x	<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 2007 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.]

Context for ECR Applications:	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated, participated in but did not initiate.	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)		
Policy development	___	___	___0___	___	___	___	___	___	
Planning	___	___	___0___	___	___	___	___	___	
Siting and construction	___	___	___0___	___	___	___	___	___	
Rulemaking	___	___	___0___	___	___	___	___	___	
License and permit issuance	___	___	___0___	___	___	___	___	___	
Compliance and enforcement action	___	___	___0___	___	___	___	___	___	
Implementation/monitoring agreements	___	___	___0___	___	___	___	___	___	
Other (specify): _____	___	___	___0___	___	___	___	___	___	
TOTAL	___	___	___0___	(the sum of the Decision Making Forums should equal Total FY 2007 ECR Cases)				___	___
	(the sum should equal Total FY 2007 ECR Cases)							(the sum should equal Total FY 2007 ECR Cases)	

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. 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 FY2007 ECR Cases".

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]

We have not undertaken other measures.

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

NCPC does not have a system for making this decision.

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.

We have more effectively identified opportunities for public participation in agency planning and review.

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.

n/a.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) 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.

n/a.

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.

n/a.

Please attach any additional information as warranted.

Report due January 15, 2008.

Submit report electronically to: ECRReports@omb.eop.gov

National Indian Gaming Commission (NIGC)

Name of Department/Agency responding:	National Indian Gaming Commission
Name and Title/Position of person responding:	Brad Mehaffy, NEPA Compliance Officer
Division/Office of person responding:	
Contact information (phone/email):	202-632-7003, bradley_mehaffy@nigc.gov
Date this report is being submitted:	

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, 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.]

The NIGC has participated in Quarterly meeting to help identify areas where ECR can be used. An NIGC representative attending the ECR and NEPA training seminar in December 2007. As NEPA projects progress, NIGC plans to implement the techniques discussed in the seminar.

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	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
r) Other(s) (please specify): Currently a lack of opportunities to engage ECR	<input checked="" 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 2007 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.]

Context for ECR Applications:	Cases or projects in progress		Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated: _____ participated in but did not initiate: _____
	Completed Cases or projects ²	Federal agency decision		Administrative proceedings/appeals	Judicial proceedings	Other (specify)		
Policy development	0	0	0					
Planning	0	0	0					
Siting and construction	0	0	0					
Rulemaking	0	0	0					
License and permit issuance	0	0	0					
Compliance and enforcement action	0	0	0					
Implementation/monitoring agreements	0	0	0					
Other (specify): _____	0	0	0					
TOTAL	0	0	0	(the sum of the Decision Making Forums should equal: Total FY 2007 ECR Cases)				(the sum should equal Total FY 2007 ECR Cases)

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. 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 FY2007 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 2007, 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
Traffic Impacts/mitigation	<input type="checkbox"/>	<input type="checkbox"/>
Historic Impacts/mitigation	<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"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2007	Check if using ECR	
Overall NEPA process	<input type="checkbox"/>	
_____	<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]

N/A

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, the decision to initiate ECR is made on a case-by-case basis.

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.

None

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.

N/A

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) 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.

The NIGC's only case mentioned during 2006 that continued into 2007, was terminated as a result of the federal action being withdrawn.

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.

N/A

Please attach any additional information as warranted.

Report due January 15, 2008.

Submit report electronically to: ECRReports@omb.eop.gov

Nuclear Regulatory Commission (NRC)

Questions for 2007 ECR Policy Reports (Revised July 19, 2007)

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). 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 memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the second year of reporting in accordance with this memo for activities in FY07.

The report deadline is January 15, 2008.

We understand that collecting this information may be challenging; few departments or agencies have collected this data in the past. We ask that you make a good faith effort to acquire the data to the best of your ability. The intention is to establish a useful baseline for your department or agency, while collecting 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 2007 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, a copy of the analysis of FY 2006 ECR reports is available at www.ecr.gov.

Name of Department/Agency responding:	U.S. Nuclear Regulatory Commission _____
Name and Title/Position of person responding:	Joan Olmstead, Attorney
Division/Office of person responding:	OGC/R&FC
Contact information (phone/email):	(301) 415-2859: joan.olmstead@nrc.gov
Date this report is being submitted:	3/4/08

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, 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.]

1. Established a training course on NEPA, including a segment on dispute resolution, for environmental project managers and attorneys. The course is offered several times a year at the NRC training center and is offered by trainers from the Nicholas School of the Environment at Duke University. The course syllabus was developed by the Nicholas trainers and staff from the Office of the General Counsel at the NRC.
2. Issued a Request for Proposals for the development and implementation of a training program for facilitators at the NRC. 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. The selection process for the training contractor is ongoing.
3. Comprehensive evaluation by a private contractor of the NEPA compliance policies and practices of the major NRC offices responsible for material licensing.
4. Discussions between staff from the Office of the General Counsel and the Udall Institute on the development of a training program on environmental conflict resolution (ECR). Several productive meetings were held, as well as the development of a template for the course. The project was not initiated because of budgetary reasons and the NRC hopes to make more progress on this proposal in CY2008. The objective of the course is to not only provide instruction on ECR but, through the selection of key NRC staff as course participants, to develop the feasibility of using ECR in such areas as the licensing of new reactors.



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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input checked="" 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 2007 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.]

Context for ECR Applications:	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated: participated in but did not initiate:
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)	
Policy development		1		1				
Planning								
Siting and construction								
Rulemaking	1	1		2				
License and permit issuance								
Compliance and enforcement action								
Implementation/monitoring agreements								
Other (specify): _____								
TOTAL	1	2		3				(the sum should equal Total FY 2007 ECR Cases)

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. 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 FY2007 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 2007, 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
__new reactor policy and rulemaking framework_____	x <input type="checkbox"/>	x <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"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2007	Check if using ECR	
Development of_NRC proposed regulations for the evaluation of license applications for in situ leachate (ISL) processing of uranium to ensure consistency with the EPA standards promulgated in response to the Uranium Mill Tailings Radiation Control Act_____	x <input type="checkbox"/>	
Development of NRC final regulations to prevent the creation future "legacy" sites where the feasibility of cleanup of the site to NRC standards would be compromised during the operation of the licensed activity.	x <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]

Development of the programs specified in Section 1 Capacity and Progress

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

Yes. Any decision to use ECR would need to conform to the normal decision-making process at the agency. Staff from the office proposing the initiation of ECR would have extensive discussions with other staff offices, including the Office of General Counsel and the Agency Dispute Resolution Specialist, to

evaluate the feasibility of using ECR in a particular circumstance. Any staff proposal to proceed with ECR would need to be approved by the Executive Director for Operations, before being submitted to the Commission for review and approval.

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.

As noted in the NRC 2006 report, the NRC staff has been using 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 interests 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, including small group meetings with individual stakeholder interests, to accomplish the following:

Through convening to ensure that all affected interests are represented in the process;

Broad and continued access to information on the NRC licensing process and

technical issues;

Personal contact between NRC staff and the public to build relationships and credibility;

Provide a forum for dialogue between the NRC and the public, as well as between the license applicant and the public;

Explicit consideration of public comments and concerns.

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.

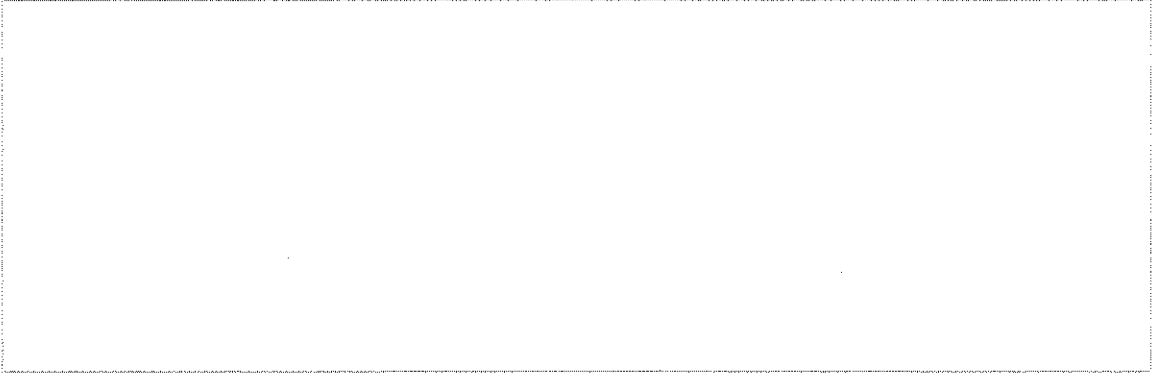
Development of the NEPA training course identified in Section 1;

Establishing the framework for a training course specifically on ECR to evaluate the feasibility of using ECR in the new reactor licensing arena;

Development and issuance of the RFP for facilitation training identified in Section 1;

Initiation of the expanded public outreach program for license applications for several new commercial reactors in Texas, Alabama, Georgia, North Carolina, and South Carolina;

Continued use of collaborative workshops in several rulemaking areas.



9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) 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.

The NRC has traditionally used the convening and facilitation of collaborative processes in the development of rulemaking and policy that affect safety or environmental concerns. One example from CY2007 is the convening of a collaborative workshop on the environmental review aspects of new reactor licensing. This roundtable format involved participants of all major stakeholders, including representatives of the Council on Environmental Quality. The process resulted in the identification of major issues of concern – some of which the agency was not aware of, or at least not aware of the importance of the issues to particular stakeholders. The process also resulted in the clarification of the extent of agreement or disagreement on the key issues.

A second example is the collaborative work done with the EPA and the uranium mining industry on the establishment of new NRC regulations on the licensing of ISL uranium processing facilities. This process is currently evolving and the full development is anticipated to occur in CY2008. The process began with extensive dialogue between the staff of the Office of General Counsel at the two agencies to establish the framework for proceeding with an NRC rulemaking that would significantly involve the EPA from the beginning in the development of the NRC proposed rule. Separate meetings were held between the NRC and the National Mining Association (NMA), as well as meetings between the EPA and NMC, to ensure the correct identification of the issues and interests of concern to the mining industry. The NRC then established a collaborative Working Group composed of representatives of the EPA, the NRC, and affected State governments, to develop a draft proposed rule for discussion with a broader group of stakeholders, including advocacy groups, and Native American Tribal interests, concerned about the affects of uranium processing. The Working Group is also developing the process that would most effectively involve this stakeholder community.

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.

This year's report format is an improvement. The recognition in Question 7 that there are other types of significant efforts to "anticipate, prevent, better manage, or resolve environmental issues and conflicts" is a welcome addition because not all useful agency efforts fit squarely under the rubric of "ECR."

Please attach any additional information as warranted.

Report due January 15, 2008.

Submit report electronically to: ECRReports@omb.eop.gov

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

U.S. Institute for Environmental Conflict Resolution (USIECR)

U.S. Institute for Environmental Conflict Resolution

2007 ECR Policy Report

Name of Department/Agency responding:	U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation
Name and Title/Position of person responding:	Kirk Emerson, Director
Contact information (phone/email):	520-901-8501 / emerson@ecr.gov
Date this report is being submitted:	January 18, 2008

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, 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.]

The U.S. Institute for Environmental Conflict Resolution (U.S. Institute) is a federal program established by the U.S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. To meet its mission, the U.S. Institute provides (1) case services to help parties work collaboratively to resolve environmental conflicts; (2) training and program development to increase the ability of federal agencies and other parties to engage in collaborative processes; and (3) leadership in implementing ECR policies and practices.

During FY 2007, the U.S. Institute:

- (1) Assisted several hundred stakeholders involved in over 80 environmental conflicts by:
 - providing advice on whether ECR is appropriate in a given situation;
 - referring or connecting stakeholders with qualified mediators¹;
 - analyzing conflicts and designing conflict resolution strategies; and
 - bringing parties to the table and mediating environmental disputes.
- (2) Developed and delivered training and programmatic capacity building services designed to help federal agencies and other affected stakeholders prevent, manage and resolve environmental conflicts. These services included:
 - skill building integrated into current conflict resolution processes;
 - skills training for those involved in the field of ECR, including federal agency staff, practitioners and ECR leaders in government agencies; and
 - agency-wide and interagency capacity building sessions aimed at specific needs.
- (3) Provided ECR leadership by:
 - engaging multiple agencies in an ECR evaluation study designed to advance the effective use of ECR;
 - co-leading an interagency working group at the request of the President's Council on Environmental Quality (CEQ) to complete a Handbook on NEPA and Collaboration;
 - assisting CEQ and the Office of Management and Budget (OMB) in their efforts to engage leadership throughout the federal government in discussing ways to more systematically prevent or reduce environmental conflict as directed by the November 2005 ECR policy memorandum; and
 - participating on several federal interagency committees to further the effective use of ECR.

¹ U.S. Institute staff provided direct assistance to stakeholders involved in over 80 environmental conflicts, and an additional 200 users accessed the U.S. Institute's online referral services for assistance identifying qualified mediators.

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.

Please note:

The U.S. Institute's mission is to assist federal agencies and other parties in resolving *their* disputes. The rankings below represent our assessment of barriers we have observed through our work with other agencies.

	Extent of challenge/barrier		
	Major	Minor	N/A
a) Staff expertise to participate in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m) Lack of budget incentives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input checked="" type="checkbox"/>	<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 2007 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.]

The U.S. Institute provided assistance for over 80 environmental conflicts during FY 2007. Assistance included case consultation, assessments, convening, mediator selection, process design, facilitation and mediation. Of the over 80 conflicts, 40 received in-depth ECR assessment, facilitation or mediation assistance during FY 2007. This subset of cases is characterized below.

	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated: participated in but did not initiate:		
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)			
<i>Context for ECR Applications:</i>										
Policy development	3	2	5	1	0	0	4	Joint Decision	N/A	N/A
Planning	10	4	14	6	0	0	8	Joint Decision	N/A	N/A
Siting and construction	2	1	3	2	0	0	1	Joint Decision	N/A	N/A
Rulemaking	5	0	5	4	0	0	1	Joint Decision	N/A	N/A
License and permit issuance	0	0	0	0	0	0	0	Not Applicable	N/A	N/A
Compliance and enforcement action	0	0	0	0	0	0	0	Not Applicable	N/A	N/A
Implementation/monitoring agreements	5	0	5	2	0	0	3	Joint Decision	N/A	N/A
Other (specify): <i>Land sale and combination processes (e.g., planning, policy and monitoring)</i>	6	2	8	2	1	0	5	Joint Decision	N/A	N/A
TOTAL	31	9	40	17	1	0	22		N/A	N/A
	(the sum should equal Total FY 2007 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2007 ECR Cases)					(the sum should equal Total FY 2007 ECR Cases)	

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. 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 FY2007 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 2007, 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
<p>Based on our experiences with multiple federal agencies, we think there are four broad arenas of conflict where ECR has been particularly helpful. These include conflicts or disputes which involve: 1) more than one government agency; 2) agencies and multiple stakeholders; 3) Native American Nations and one or more federal agencies; or 4) multiple levels of government such federal, state, tribal, regional and/or local.</p> <p>Specific applications of ECR to substantive areas of regulation or management where the Institute's work has been solicited:</p> <ul style="list-style-type: none"> ▪ Integrating collaboration and conflict resolution into NEPA review processes and decision making ▪ Planning for and managing species and habitat conservation under the ESA where multiple agencies and stakeholders are involved ▪ Addressing conflicts over multiple-uses on public lands and adjacent public and private lands (including recreation) ▪ Federal highway planning; shipping (ports development, rail freight, multi-modal transportation) ▪ Watershed and river basin collaborative management 	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<p>List of additional priority areas identified by your department/agency in FY 2007</p>	<p>Check if using ECR</p>	
<p>_____</p>	<input type="checkbox"/>	
<p>_____</p>	<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]

The U.S. Institute has developed and implemented a comprehensive ECR performance evaluation system. The U.S. Institute has also taken a lead role in helping a number of other agencies collaboratively develop a cross-agency evaluation and feedback system for ECR. The evaluation collaborative assures that (a) evaluation design and development efforts are not duplicated unnecessarily; (b) common methods for evaluating collaborative processes and collecting and analyzing data are established; and (c) knowledge, expertise and resources are shared to yield broad-scale benefits from improving the application and practice of ECR.

This past year marked a major milestone for the U.S. Institute's evaluation efforts. At the end of 2007, the U.S. Institute began disseminating findings from the multi-agency evaluation study (MAES) initiated in 2005. The findings shed light on how ECR performs, identify key factors that contribute to ECR success, and distill feedback from participants and practitioners that can be used to improve future conflict resolution processes. See Attachment A for additional information about MAES including a summary of preliminary findings. Highlights will be presented at the U.S. Institute's ECR2008 Conference to be held in Tucson, May 20-22.

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

Not Applicable

The U.S. Institute's role is to help agencies with their decision making regarding whether or not to initiate or participate in ECR processes.

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.

Not Applicable

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.

During FY 2007, through conflict resolution trainings, workshops, and informational services around the country, the U.S. Institute staff engaged more than 500 representatives of federal, state, and local governments, tribal nations, NGOs, environmental advocates, community-based groups, and environmental and natural resource attorneys. These sessions were part of the U.S. Institute's efforts to make ECR a more recognized and used tool for resolving *environmental conflicts*.

Also, as a result of growing demand for ECR training, the U.S. Institute launched a training program and will start offering standing courses at its offices in Tucson, AZ, and in Washington, DC, in 2008. Among the course offerings are Multi-party Negotiation, Collaborative Skills, NEPA and Collaboration, and Government-to-Government Consultation.

The U.S. Institute's training initiative is its most notable achievement for FY 2007, given the consistently positive feedback received from participants about the impacts and benefits of the trainings. For more information about the training program and the impacts and benefits articulated by participants, visit the U.S. Institute's website at www.ecr.gov.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) summarizing the presenting problem or conflict, how it was addressed through the use of the principles for engagement in ECR, 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.

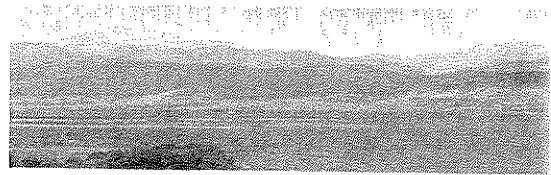
See Next Page – BLM Bridgeport Land Sale Mediation

BLM Bridgeport Land Sale Mediation

Location: California

ECR Application: BLM Land Sale

Conflict Setting: Administrative Appeals



Executive Summary

The U.S. Institute for Environmental Conflict Resolution (U.S. Institute) in partnership with the U.S. Department of Interior's Board of Land Appeals (IBLA) designed and executed a mediation process to resolve a protracted and controversial land sale involving the Bureau of Land Management (BLM), the Bridgeport Paiute Indian Colony, and the local community of Bridgeport, California. A rapid assessment was used to determine if a negotiated resolution was feasible. In the resulting cost-effective mediation, the parties were able to negotiate an innovative agreement to resolve the conflict.

Background

Mid 1990's

The Bridgeport Indian Colony proposed the purchase of the 40-acre parcel of BLM land immediately adjacent to the reservation.

Late 1990's

The proposed Bridgeport purchase was integrated into land transfer legislation developed by various California tribes.

When concerns about Indian gaming issues related to the 40-acre Bridgeport parcel threatened passage of the entire bill, the Tribe pulled the Bridgeport transfer request.

At the same time, the Tribe received a commitment from BLM to find another way to transfer the land.

2000 to 2004

The BLM subsequently considered several transfer options including a:

- 1) Land exchange,
- 2) Recreation & Public Purpose Act sale,
- 3) Congressional legislation, and a
- 4) Direct sale under the Federal Land Policy and Management Act (FLPMA).

The first three options were unsuccessful and BLM proceeded with the FLPMA option which required: (1) amending the existing Resource Management Plan (for which one protest was received and dismissed), and (2) initiating a direct sale process (for which one protest was received and addressed).

2005

The final Environmental Assessment and Decision Record was approved in June 2005. Sixteen protests were subsequently received and dismissed by the State BLM Director. However, of the 16 protests, three appeals were filed with IBLA.

2006

BLM with the support of the other parties explored the option of mediation to resolve the IBLA appeals.

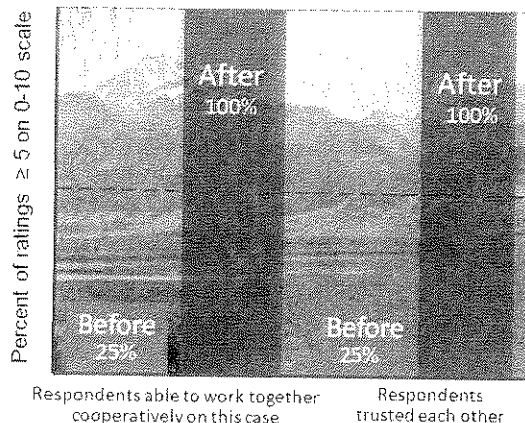
ECR Timeline

July 2006	Assessment Conducted
Feb 2007	3-Day Mediation
April 2007	Settlement agreement approved by Tribal elders

Results and Accomplishments

The following are the key outcomes and comparative benefits of the mediation:

- In the words of one participant, the mediation helped the parties negotiate **“a binding, legally enforceable agreement.”**
- In addition to resolving the land sale conflict, the participants anticipate an **“improvement in community relationships with BLM.”**
- Participants highly valued the skills and practices of the mediator, and in the words of one participant attributed their success to the mediator’s ability to get them to **“think outside the box, which resulted in an innovative solution to the conflict.”**
- In the absence of the mediation, the participants reported this conflict would likely have resulted in a **costly and divisive legal dispute**. In contrast, the assessment and 3-day mediation cost \$19,000.
- Not only did the mediation result in a cost effective outcome, but the participants reported that the mediation allowed them to **more effectively address the conflict**.
- As a result of this experience with ECR, the participants reported **mediation would be their tool of choice** if faced with a similar type of conflict in the future.



Institutionalizing ECR

The U.S. Department of Interior’s Collaborative Action and Dispute Resolution Office (CADR) enlisted the help of the U.S. Institute to build capacity for, and use of, environmental mediation within the Interior Board of Land Appeals (IBLA). This task involved establishing a Pilot Mediation Referral Program within the IBLA. The program is now being used to screen and mediate cases such as the Bridgeport dispute.

Credits

Partners

Elena Gonzalez, Director
Office of Collaborative Action and Dispute Resolution, U.S. Department of Interior
Sara Greenburg, ADR Specialist
Office of Hearings and Appeals, Interior Board of Land, U.S. Department of Interior

U.S. Institute Project Lead and Mediator

Cherie Shanteau-Wheeler, Program Manager
Litigation and Administrative Appeals
Phone: (520) 901-8542
E-mail: shanteau@ecr.gov
Web site: www.ecr.gov

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.

The U.S. Institute did not encounter any difficulties in collecting these data.

Please attach any additional information as warranted.

Report due January 15, 2008.

Submit report electronically to: ECRReports@omb.eop.gov