Department of Energy
Washington, DC 20585

December 13, 2006

Dinah Bear
General Counsel
Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Diana Espinosa
Deputy Assistant Director for Management
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Ms. Bear and Ms. Espinosa:

Pursuant to the November 28, 2005, Memorandum on Environmental Conflict Resolution jointly issued by the Chairman of the Council on Environmental Quality and the Director of the Office of Management and Budget, enclosed please find the Department of Energy's first annual progress report.

If you or your staff have questions concerning the report, you may contact Kathleen Binder, Director of the Department's Office of Dispute Resolution, at 202-586-6972 or kathleen.binder@hq.doe.gov or Beverly Stephens, Environmental Protection Specialist, at 202-586-5942 or beverly.stephens@eh.doe.gov.

Sincerely yours,

Mary B. Neumayr

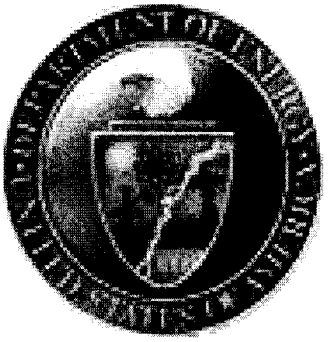
Mary B. Neumayr
Deputy General Counsel for
Environment and Nuclear Programs

Enclosure

Environmental Conflict Resolution

First Annual Report

December 2006



U.S. Department of Energy

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I. INTRODUCTION

A. Background

On November 28, 2005, the Chairman of the Council on Environmental Quality (CEQ) and the Director of the Office of Management and Budget (OMB) jointly signed a Memorandum on Environmental Conflict Resolution (ECR Memorandum) directing Federal agencies to seek to increase the effective use of ECR and collaborative problem solving (see Appendix A). The direction given to Federal agencies in this memorandum complements and furthers Department of Energy (DOE) practices and strategies that have been used consistently for many years.

This report constitutes the Department's first annual progress report to CEQ and OMB, as directed by section 4.(g) of the ECR Memorandum. In accordance with guidance provided by CEQ and OMB, this report includes information through fiscal year (FY) 2006 about DOE progress in implementing the ECR Memorandum.

Section 2 of the ECR Memorandum defines ECR 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 relating to energy, transportation, and land use." The ECR Memorandum also recognizes that there are a broad array of partnerships, cooperative arrangements and unassisted negotiations used by Federal agencies to manage and implement their programs. For purposes of preparing this report, DOE has adopted this broader view of ECR and defines ECR to include all types of collaborative problem solving processes used to prevent or resolve an environmental conflict regardless of whether a third party is used. The information in this report includes examples where a third party has been used. This report also includes examples of other collaborative processes that do not involve use of a third party but which also have been effective in resolving or preventing an environmental conflict, such as the use of regular meetings with environmental regulators and the use of various committees and boards designed to engage stakeholders in the early stages of decision-making processes.

B. Report Methodology

To provide guidance to Federal agencies implementing the ECR Memorandum, a staff-level interagency ECR Steering Committee consisting of representatives from various agencies was formed. This committee, with assistance from the U.S. Institute for Environmental Conflict Resolution[1], developed a report template and questionnaire to be used by agencies for this first annual report (see Appendix B). As discussed in section

[1] The U.S. Institute for Environmental Conflict Resolution is an independent federal agency created by Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. For more information, see www.ecr.gov.

II.E.1 below, DOE has also created an internal working group to assist in the implementation of the ECR Memorandum.

DOE used the survey developed by the ECR Steering Committee and added one additional question. See Appendix C for a copy of the DOE report survey. The DOE report survey was distributed to points of contact from various programs and site offices throughout the DOE complex and 28 responses representing 26 different DOE sites/programs were received.

II. Implementation Progress

A. Benefits of Using Environmental Conflict Resolution

In the current budget climate, DOE sites are aware of the benefits of using ECR techniques to avoid and/or resolve environmental conflicts. This is evidenced by the use of a wide variety of ECR and collaborative problem solving techniques discussed in section II.B. below. Fifty-seven percent of DOE sites believe that the enhanced use of ECR would help their site in minimizing the occurrence of one or more of the following challenges identified in the ECR Memorandum:

- Protracted and costly environmental litigation;
- Unnecessarily lengthy project and resource planning processes;
- Costly delays in implementing needed environmental protection measures;
- Forgone public and private investments when decisions are not timely or are appealed;
- Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and
- Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unintended conflicts.

B. Extent of Current Use of Environmental Conflict Resolution

DOE uses environmental conflict resolution and collaborative problem solving techniques to prevent and resolve environmental conflicts. For example, 42 percent of the DOE sites use ECR to some extent, and another 19 percent who have not used it believe ECR might be useful. The sites which have not used ECR and do not believe that it is applicable are for the most part small sites that have not had significant environmental conflicts requiring resolution. Table 1 shows the results of the questionnaires completed by DOE sites.

Table 1: Extent of ECR Use

Extent of ECR Use	Number of Sites Responding
Not at all, not applicable	10
Not at all, but might be useful	5
Sometimes used, but could be used more frequently	3
Used often, but recognize that it could be used more	4
Full use of ECR made as appropriate	4

Section 2 of the ECR Memorandum defines ECR 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 relating to energy, transportation, and land use." The ECR Memorandum also recognizes that there are a broad array of partnerships, cooperative arrangements and unassisted negotiations used by Federal agencies to manage and implement their programs. For purposes of preparing this report, DOE has adopted this broader view of ECR and defines ECR to include all types of collaborative problem solving processes used to prevent or resolve an environmental conflict regardless of whether a third party is used. The information in this report includes examples where a third party has been used as well as examples of other processes (not involving a third party) which the Department has used to resolve or prevent an environmental conflict.

Some of the environmental conflict resolution and collaborative problem solving techniques to prevent and resolve environmental conflicts used by DOE include the use of a third party to resolve or prevent a conflict, but most of the techniques that DOE has used for many years with great success do not. For example, DOE sites use, when appropriate, a third party to assist in permit negotiations with their regulators or to facilitate meetings with stakeholders and regulators. In addition, DOE makes extensive use of techniques, such as advisory boards and committees made up of local citizens potentially affected by DOE activities, to advise DOE officials on environmental matters and address environmental issues before they become a source of conflict. See Table 2 for details regarding DOE's use of ECR techniques.

Table 2: Type of ECR Use

Type of ECR Use	Number of Sites*
Use of third-party neutrals	3
Use of citizen advisory boards	8
Use of collaborative decision making (with regulators and/or stakeholders)	14
Use of public participation processes under NEPA and CERCLA	15
Use of dispute resolution clauses in cleanup agreements	4
Use of other ECR activities	1

* Some sites reported use of more than one ECR technique

B.1 Use of Third-Party Neutrals

When appropriate, DOE sites use third-party neutrals to assist in the prevention or resolution of environmental disputes. Sometimes the decision to use a third party is made after a dispute has arisen and DOE officials believe that using a third party may assist the parties in resolving a difficult and complex environmental dispute. In other instances, the decision to use a third party is made before a dispute arises because DOE officials anticipate that use of a third party may assist in avoiding conflicts.

In FY 2006, the following three DOE sites used a third-party neutral to resolve or prevent an environmental dispute:

- Stanford Linear Accelerator Center
- Rocky Flats Closure Site
- Waste Isolation Pilot Project

Stanford Linear Accelerator Center (SLAC)

SLAC is a DOE scientific research facility that spans 426-acres and is managed and operated by Stanford University. Currently, SLAC is using a facilitator to guide technical and policy discussions at its monthly Core Team meetings related to the environmental remediation of soil and groundwater. The Core Team, which began in the fall of 2005, consists of representatives from DOE, Stanford University and the State of California Regional Water Quality Control Board (RWQCB). A separate group of

individuals, representing a higher level of management from DOE, Stanford and the RWQCB, is utilized to address those issues which cannot be resolved at the Core Team level.

Rocky Flats Closure Site

DOE's Rocky Flats Closure Site, a former nuclear weapons facility located approximately 16 miles northwest of Denver, Colorado, is a DOE-owned cleanup and closure site formerly operated by Kaiser-Hill Company. Currently, Rocky Flats is cooperating with the Trust for Public Lands (TPL), to negotiate the purchase of mineral rights underlying portions of the site. When the Federal Government purchased the property that became Rocky Flats, it purchased some, but not all, of the mineral rights underlying that property. As a result, a number of parcels within the site contain privately-owned mineral rights. In 2007, DOE anticipates transferring portions of Rocky Flats to the U.S. Fish and Wildlife Service (FWS) to be operated as a national wildlife refuge, in accordance with the Rocky Flats National Wildlife Refuge Act of 2001.

In the National Defense Authorization Act for Fiscal Year 2006, Congress resolved the issue of whether DOE or FWS should bear responsibility for obtaining certain essential mineral rights by appropriating to DOE a lump sum for the purchase. Under the Act, any amount remaining from the appropriation, after purchasing the essential or other mineral rights, passes on to the Natural Resources Trustees for the Site for them to use for the purchase of additional mineral rights or for the development of habitat restoration projects (purposes consistent with the Refuge). The Trustees include both DOE and FWS, as well as three State of Colorado officials. DOE and FWS personnel worked together to identify four parcels that contain commercially developable deposits of sand, gravel and/or clay.

TPL is a non-profit organization that has provided land acquisition services to other federal agencies. TPL volunteered to negotiate the mineral rights purchases with the owners. TPL agreed to operate under the provisions of the Authorization Act, including paying no more than fair market value for each parcel as determined by an appraisal paid for by DOE. Under the arrangement negotiated between DOE and TPL, TPL will buy the mineral rights from the current owners, and then DOE will buy those same rights from the Trust at the same price paid by TPL.

Waste Isolation Pilot Plant (WIPP)

WIPP is the world's first underground repository licensed to safely and permanently dispose of transuranic radioactive waste left from the research and production of nuclear weapons. In FY 2006, the State of New Mexico issued, for public comment, a draft permit for the receipt and disposal of remote-handled transuranic waste and certain facility operational changes at WIPP. A number of stakeholders objected to the draft permit and requested a public hearing, triggering a regulatory requirement that the State attempt to resolve the issues giving rise to the opposition. Although not specifically required by State regulations, an official from the New Mexico Environment Department

(NMED) acted as a facilitator during a two-month series of meetings among NMED, DOE, DOE's prime contractor for WIPP operations, and the intervening stakeholders. As a result of the meetings, the participants (with certain exceptions), agreed to a number of changes to the draft permit enabling a public hearing on a narrower scope of issues. After a lengthy public hearing in June, the hearing officer recommended that the State adopt the draft permit as changed during the pre-hearing meetings. On October 16, 2006, the Secretary of NMED approved the final permit.

B.2. Use of Site Specific Advisory Boards/Citizen Advisory Boards

At DOE, public participation provides open communications, both formal and informal, between DOE and its stakeholders concerning DOE's missions and activities. Early involvement enables DOE to make more informed decisions and build mutual understanding and trust between DOE and the communities which host its facilities. Consequently, many potential conflicts are prevented and litigation can be avoided.

Use of citizen boards and committees is one public participation technique that DOE routinely uses to foster open communication between it and its stakeholders, and to ultimately avoid environmental conflicts. One example is DOE's use of Site Specific Advisory Boards/Citizen Advisory Boards (SSABs/CABs). These Boards were created by DOE's Office of Environmental Management in the early 1990s to involve stakeholders more directly in DOE cleanup decisions. Currently, there are seven local site Boards that have been organized and chartered under one Federal Advisory Committee Act (FACA) charter. Local site Board membership include diverse views, cultures, and demographics from affected communities and regions directly affected by site cleanup activities, e.g., representatives from local governments, Tribal Nations, environmental and civic groups, labor organizations, universities, industry, and other interested parties. DOE, the U.S. Environmental Protection Agency, and State governments serve as ex-officio members on the local boards. Site boards are tasked with submitting consensus advice and recommendations to DOE on key environmental management issues. Through public meetings, individual site boards give voice to a diversity of community views and provide a channel for two-way communication between DOE and the public on key site issues and upcoming decisions. DOE provides each board funding for administrative and technical support. By involving stakeholders early in the process, potential future conflicts are minimized. Board meetings ultimately provide forums where issues can be discussed and resolved in an efficient and cooperative manner, decreasing the chances of costly legal or regulatory actions.

The DOE sites have used SSABs/CABs for more than a decade, and these Boards' advice and recommendations have become integral to DOE's environmental decision-making processes. The following are examples of how the SSABs/CABs have assisted DOE and, in some cases, environmental regulators, in making decisions:

- Oak Ridge—With respect to the ongoing remedy selection process for a collection of ponds at the East Tennessee Technology Park, the SSAB/CAB provided a forum for discussion when direct discussions between DOE and its

regulators without the SSAB presence had been unsuccessful. By providing such a forum for public discussion of remedial issues, the SSAB helped DOE and its regulators move towards a reasonable approach to remediating ponds located at the site.

- Nevada—The SSAB/CAB has provided assistance in resolving potential issues relating to disposal of out-of-state generated mixed waste at the Nevada Test Site.

- Hanford—In 2006, Hanford received advice from the Hanford Advisory Board that assisted DOE in reaching decisions pertaining to cleanup work at the site, including with regard to prioritization and sequencing of work activities.

- Fernald—Through a collaborative process involving the Fernald Citizens Advisory Board, members of the public, the University of Cincinnati, and DOE, a conceptual design for converting an existing onsite warehouse to a Multi-Use Education Facility center was developed. Three public meetings were conducted from April through September 2006.

Some DOE sites use other types of non-FACA chartered Boards/Committees to afford local citizens the opportunity to provide DOE input about DOE environmental issues. For example, Brookhaven National Laboratory has the Brookhaven National Laboratory Community Advisory Council, a citizen advisory council, which provides advice on proposed cleanup approaches to the Laboratory Director.

B.3 Use of Collaborative Decision-making Processes with Regulators and Stakeholders

DOE sites frequently use collaborative decision-making processes with their regulators and stakeholders to prevent environmental disputes. These collaborative processes take the form of regular meetings/discussions with environmental regulators and regular interactions with stakeholders through a variety of forums. For example, DOE's Idaho Operations Office holds the following regular meetings with its regulators and stakeholders:

- Bi-monthly meetings with SSABs/CABs to discuss potential issues
- Quarterly Resource Conservation and Recovery Act (RCRA) meetings with the Department of Environmental Quality (DEQ)
- Senior Project Management meetings with DEQ and EPA Region 10 (executive level)
- Monthly meetings with DEQ regarding the site's Voluntary Consent Order for RCRA compliance
- Weekly Federal Facility Agreement/Consent Order Project Managers conference call with DEQ and EPA Region 10
- Monthly meetings with Idaho National Laboratory Oversight Program Coordinator/Governor's Assistant and EPA Region 10

In addition, Rocky Flats and the Livermore Site Office also conduct routine meetings with their regulators in order to avoid environmental conflict.

B.4 Use of Public Participation Processes under the National Environmental Policy Act and the Comprehensive Environmental Response, Compensation and Liability Act

The National Environmental Policy Act (NEPA) and CERCLA contain provisions that provide for public participation in the NEPA and CERCLA processes. More than half of the DOE sites that responded to the questionnaire indicated that the public participation processes under NEPA and CERCLA serve as a means of assisting their sites in addressing and preventing environmental conflicts.

B.5 Use of Dispute Resolution Clauses in Cleanup Agreements

In FY 2006, DOE's Savannah River Site, Oak Ridge, and the Office of River Protection (at the Hanford Site) all used the dispute resolution provisions contained in their Federal Facility Agreements to resolve environmental disputes. Under the provisions of section 120 of CERCLA, federal facilities on the National Priorities List are required to execute interagency agreements called Federal Facility Agreements (FFAs) between the key entities – DOE, EPA and the affected State - that will be involved in the cleanup, compliance and permitting processes for a particular cleanup site. FFAs are designed to integrate the remedial action provisions of CERCLA with RCRA treatment, storage, and disposal unit regulations and corrective action provisions. More specifically, these FFAs 1) define and prioritize CERCLA and RCRA cleanup commitments, 2) establish roles and responsibilities of DOE and its regulators, and 3) reflect a concerted goal of achieving full regulatory compliance and remediation, with enforceable deadlines and schedules which at most sites are negotiated on a yearly basis under a "rolling schedule." These FFAs also contain a dispute resolution process which is designed to reach agreement without litigation.

C. Priority Areas For Environmental Conflict Resolution

Use of ECR and collaborative problem solving practices can be useful on a wide variety of environmental issues. Specifically, DOE sites have identified the following priority areas where ECR could be helpful:

- Groundwater issues
- Multi-issue and multi-party environmental disputes
- Conflicts in environmental cleanup decision making
- Relationships with regulators
- Hazardous waste facility permit modifications

D. Current Level of Support for Environmental Conflict Resolution

DOE sites were asked to characterize the current level of support for ECR at their site. Out of the 26 DOE sites that responded, 13 sites identified some level of support for ECR at their site. Four of the 10 sites identified FTEs who work on ECR activities. Four out of the 10 sites also identified approximate funding for ECR activities. For example, SLAC reported that it is currently spending $2000 per month for a facilitator to support its SLAC CORE Team meetings. WIPP estimated that in FY 2006 it spent approximately $200,000 on ECR activities associated with obtaining a major permit modification. Richland Operations Office identified that it has a small budget of approximately $90,000 to $100,000 which is available for ECR activities, if needed. Oak Ridge indicated that it currently allocates approximately $350,000 to support the SSABs and approximately $150,000 for other citizen involvement activities associated with the environmental management program.

In addition to the ECR support provided to DOE project managers at the site level, ECR support is also provided to DOE sites and DOE program offices by DOE's Office of Dispute Resolution. This office assists DOE sites and program offices in determining if a dispute may benefit from the use of a third-party neutral and in identifying and engaging appropriate individuals.

E. Actions Taken In Response to the Environmental Conflict Resolution Memorandum

E.1 DOE Environmental Conflict Resolution Working Group

In March 2006, the DOE ECR Working Group was established in order to guide DOE's implementation of the ECR Memorandum. This group is comprised of representatives of ten DOE program offices. This group coordinated the field responses to the questionnaire used to develop this first annual report.

E.2 DOE Policies

In 1995, the DOE issued its policy on Alternative Dispute Resolution (ADR) (see Appendix D). This policy documents DOE's commitment to use ADR as a management tool to prevent or minimize the escalation of disputes, and to resolve disputes at the earliest stage possible in an expeditious, cost-effective and mutually acceptable manner. This policy also supports the Department's flexible use of all ADR processes, including mediation, neutral evaluation, regulatory-negotiation, partnering[2], mini-trials and arbitration, where appropriate.

[2] Partnering is a formal process that brings key project participants (stakeholders) together to communicate effectively and work as a team to define and achieve mutually beneficial goals. An effective partnering effort relies on each stakeholder understanding the communication styles, goals, and organizational interests of the other members.

In addition, the Department has a public participation policy, DOE P, 141.2, *Public Participation and Community Relations* (see Appendix D). This policy is intended to ensure that public participation and community outreach are integral and effective parts of DOE program activities and that decisions are made with the benefit of significant public perspectives. This policy provides a mechanism for bringing a broad range of stakeholder viewpoints and community values into DOE's decision making early in the process. This early involvement enables DOE to make more informed decisions and build mutual understanding and trust between DOE, the public it serves, and the communities which host its facilities. These techniques, as evidenced by the examples discussed in section B above, are routinely used by DOE to prevent environmental conflicts.

E.3 DOE Strategic Plan

The Government Performance and Results Act requires that each Federal Agency update its strategic plan every three years and submit its plan to Congress. DOE's 2006 Strategic Plan describes DOE's mission, strategic goals, and strategies to achieve those goals. The Department's Strategic Plan addresses five strategic themes:

- Energy Security—Promoting America's energy security through reliable, clean, and affordable energy.
- Nuclear Security—Ensuring America's nuclear security.
- Scientific Discovery and Innovation—Strengthening U.S. scientific discovery, economic competitiveness, and improving quality of life through innovations in science and technology.
- Environmental Responsibility—Protecting the environment by providing a responsible resolution to the environmental legacy of nuclear weapons production.
- Management Excellence—Enabling the mission through sound management.

Within the "Environmental Responsibility" strategic theme, DOE has identified two goals: (1) Environmental Cleanup and (2) Managing the Legacy. The "Managing the Legacy" goal is to manage the Department's post-closure environmental responsibilities and ensure the future protection of human health and the environment. In response to the ECR Memorandum, DOE has identified as one of the strategies in the Plan the "use of environmental conflict resolution techniques to assist in the resolution or prevention of disputes."

E.4 Environmental Conflict Resolution Training

Prior to issuance of the ECR Memorandum, some DOE sites had already conducted training on collaborative processes for their employees, contractors and regulators. For example, the Richland Operations Office sponsored six training classes for its employees, contractors, managers and regulators on "Collaborative Negotiation." Richland plans to conduct another class in December 2006. In addition, a handbook entitled *You are Our Negotiator* has been developed for Richland and distributed to all new managers,

employees and contractors personnel who will be interfacing with the regulators. As a second example, DOE environmental staff at the Fermi Site Office have received Risk Communication training.

Since the issuance of the ECR Memorandum, DOE has undertaken one Headquarters training session on ECR. On February 28, 2006, DOE's Office of General Counsel held a one-day ECR training session which included presentations by ECR professionals and DOE Field environmental attorneys who have used ECR in the past. Another training session is planned for 2007.

E.5 Performance Measures and Tracking Costs

DOE has enlisted the assistance of its Office of the Chief Financial Officer to develop performance measures and cost tracking mechanisms.

III. Conclusion

Currently, DOE sites use a wide variety of collaborative decision-making processes that do not involve the use of a third party in order to resolve or prevent environmental disputes. When appropriate, DOE sites also use third-party neutrals to assist in resolving or avoiding environmental disputes. As DOE continues it efforts to implement the ECR Memorandum, the Department expects increased use by DOE sites of collaborative decision-making processes, as well as third party-neutrals, as appropriate.

APPENDIX A

CEQ/OMB MEMORANDUM

Executive Office of the President
Office of Management and Budget

Executive Office of the President
Council on Environmental Quality

Dear Secretary/Administrator:

The President strongly supports constructive and timely approaches to resolving conflicts when they arise over the use, conservation, and restoration of the environment, natural resources, and public lands. Consistent with the August 2004 Executive Order on Cooperative Conservation, the accompanying Memorandum on Environmental Conflict Resolution sets forth basic principles for engaging federal agencies in environmental conflict resolution and collaborative problem solving. The statement further directs agencies to increase the effective use of environmental conflict resolution and build institutional capacity for collaborative problem solving. It provides a useful compilation of mechanisms and strategies that can be used for achieving those goals.

Over the past few years, several agencies have adopted some of these mechanisms and strategies and have reported progress on improving negotiated outcomes and the implementation of agreements. We applaud the leadership those agencies have demonstrated and urge agencies that have not begun developing and implementing such approaches to begin that process.

Your support is critical to the success of the Administration's goal to increase the effective use of environmental conflict resolution and collaborative problem solving. We urge you to actively pursue the appropriate mechanisms and strategies enumerated in the accompanying policy statement. Thank you for your support in this important undertaking.

Joshua Bolten
Director
Office of Management and Budget

Date: 11/28/05

James L. Connaughton
Chairman
Council on Environmental Quality

Date: 11/28/05

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Office of Management and Budget and President's Council on Environmental Quality
MEMORANDUM ON ENVIRONMENTAL CONFLICT RESOLUTION

SECTION 1. PREAMBLE

(a). Problem. This administration and those that follow will continue to face the challenge of balancing competing public interests and federal agency responsibilities when striving to accomplish national environmental protection and management goals. This is a fundamental governance challenge. This challenge can manifest itself through:

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

To address this environmental governance challenge more effectively, federal departmental and agency leadership should develop strategies to prevent or reduce environmental conflicts and generate opportunities for constructive collaborative problem solving when appropriate.

(b). Background. In June 2004, Jim Connaughton, Chairman of the Council on Environmental Quality (CEQ) hosted a meeting for senior policy officials and legal counsel from fifteen federal departments and agencies actively engaged in environmental issues. The meeting focused on preliminary policy direction and strategic program commitments for core federal departments and agencies that deal with environmental issues. It presented an opportunity to review administration priorities, learn from departmental initiatives already underway, and discuss the challenges associated with reducing environmental conflicts and improving environmental decision making.

The leadership meeting included presentations by Secretary Gale Norton for the Department of the Interior and EPA Administrator Michael Leavitt, who shared the progress their organizations have made over many years as federal leaders in the use of environmental conflict resolution and collaborative problem solving. They both recognized the considerable opportunities that existed to expand these approaches to a broader set of environmental policy areas and federal departments and agencies.

(c). Basic Principles of Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving. These principles were developed collaboratively with senior staff from the Departments of Agriculture, Commerce, Defense, Energy, Homeland Security, Interior, Justice, Transportation, Army, Navy, and Air Force, and the U.S. Environmental Protection Agency, the Federal Energy Regulatory Commission, the President's Council on Environmental Quality (CEQ) and the U.S. Institute for Environmental Conflict Resolution. The principles are attached to this policy memorandum in Attachment A.

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These principles draw on over 30 years of collective experience and research on interest-based negotiation, consensus building, collaborative management, and environmental mediation and conflict resolution. These principles provide guidance for preventing and reducing environmental conflicts as well as for producing more effective and enduring environmental decisions.

Through this policy, federal agencies are being summoned to put these principles into effect as they increase the use of environmental conflict resolution and other forms of collaborative problem solving.

(d). Policy Authorities. Since 1990, Congress and the Executive branch have encouraged federal agencies to increase the use of a wide range of consensual dispute resolution processes to prevent and resolve disputes and issues in controversy whenever possible, to enhance the operation of government and to better serve the public. See the attached list of relevant federal authorities in Attachment B.

In 1998, Congress created the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation (the U.S. Institute) to assist parties in resolving federal environmental, natural resources, and public lands disputes, to increase the appropriate use of environmental conflict resolution (ECR), to promote collaborative problem-solving and decision-making during the design and implementation of federal policies to prevent and reduce the incidence of future environmental disputes, and to increase the appropriate use of environmental conflict resolution and the ability of federal agencies and other parties to engage in ECR effectively.

In 2003, the Attorney General of the United States, in his role as Chairperson of the Interagency Alternative Dispute Resolution (ADR) Working Group established in 1998, stated that "ADR helps make the government more results-oriented, citizen-centered and provides for effective public participation in government decisions, encourages respect for affected parties and nurtures good relationships for the future." In 2004, President George W. Bush issued the Executive Order on Facilitation of Cooperative Conservation to ensure that "the Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decision making, in accordance with their respective agency missions, policies, and regulations."

In 2004, the U.S. Institute conducted a survey of selected federal agencies that have environmental and resource decision making responsibilities to determine the extent to which they promote and institutionalize the use of ECR and to identify successes and potential barriers. The survey revealed considerable variation across the ten responding departments. Among the central findings are that:

- Some departments and agencies have been engaged for several years in supporting collaborative processes and the use of ECR. Others are increasing their familiarity and commitment to ECR, developing ECR programs and assigning staff. However, several departments have yet to designate the specific responsibility for promoting ECR within their department or agency.
- Initiating and engaging in specific ECR processes is often hindered by a general lack of understanding about ECR and where to access guidance and resources.

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- The survey respondents identified some 30 statutory and regulatory arenas and a growing list of additional program areas where ECR had already been used or could be applied in the future, underscoring the potential for much broader use of these processes.

These survey findings stimulated further senior staff discussions and have prompted the following policy guidance.

SECTION 2. DEFINITION OF ENVIRONMENTAL CONFLICT RESOLUTION

Under this policy, Environmental Conflict Resolution (ECR) is defined 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 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.

SECTION 3. APPLICABILITY

This policy memorandum applies to all executive branch agencies (as defined by Title 5 USC Section 105) involved in carrying out the National Environmental Policy Act and other laws in effect to manage and conserve our environment, natural resources and public lands.

SECTION 4. POLICY DIRECTION

(a). Federal agencies should ensure their effective use of ECR and other forms of collaborative problem solving consistent with the Basic Principles of Environmental Conflict Resolution and Collaborative Problem Solving in Attachment A.

(b). 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 in performance and accountability measures to maintain a budget neutral environment.

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(c). Several mechanisms, strategies, and resources exist to aid agencies in this effort and to build internal agency capacity, including those presented in Section 5 and should be drawn on as appropriate to each agency.

(d). Agencies should consider the use of assisted negotiations through ECR when addressing environmental conflicts, utilizing their own ECR/ADR staffs, the U.S. Institute, the U.S. Department of Justice, or other ECR/ADR organizations, as appropriate.

(e). Federal agencies are encouraged to draw on the services of the U.S. Institute to review internal mechanisms and strategies for increasing the use of ECR and to assist them in developing performance and accountability measures consistent with P.L. 105-156.

(f). The Director of the Office of Management and Budget (OMB) and the Chairman of CEQ will convene periodic leadership meetings of departments and agencies to advance progress on this policy. The U.S Institute shall convene a quarterly interagency forum of senior departmental staff to provide advice and guidance and facilitate interagency exchange on ECR.

(g). 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 as fostered by Section 4(e).

SECTION 5. MECHANISMS AND STRATEGIES TO INCREASE THE EFFECTIVE USE OF ECR AND IMPROVE AGENCY CAPACITY

Federal agencies are directed to increase the effective use of ECR and build institutional capacity for collaborative problem solving. The following mechanisms and strategies are among those that can be of use in pursuing these aims.

(a). Departments/Agencies with Existing or Developing ECR Programs

(1). Integrate ECR objectives into Agency Mission Statements, Government Performance and Results Act Goals, and strategic planning through:

- Identifying relevant GPRA goals and link to agency strategic plans.
- Aligning plan for implementation of ECR with agency's strategic plan goals
- Aligning of planning, budgeting, and accountability systems to facilitate collaboration.
- Setting performance goals for increasing use of ECR; explore why goals may not be met and what steps are necessary to meet them in the future
- Tracking annual costs of environmental conflict to the agency and setting goals for reduction in such costs
- Identifying annual resource savings and benefits accrued from collaborative solutions

(2). Assure that Agency's Infrastructure Supports ECR through:

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- Drawing on agency dispute resolution specialist and existing agency ADR resources pursuant to the Alternative Dispute Resolution Act of 1998
- Providing leadership support
- Setting internal policy directives
- Integrating use of ECR into performance plans
- Creating incentives to increase appropriate use
- Supporting staff outreach, education, and training
- Documenting other useful forms of ADR such as un-assisted principled negotiation

(3). Invest in Support of Programs through:

- Assigning staff and direct resources to support programs
- Performing internal self-audit of priority environmental goals or problems and areas of expanding or challenging conflict and assess potential value and appropriateness for using ECR or other collaborative problem solving processes
- Identifying existing program resources and future needs
- Fostering collaborative leadership at all levels through recruitment and career development.
- Building expert knowledge, skills, and capacity by strengthening intellectual and technical expertise in ECR and collaborative problem-solving.
- Documenting demonstration projects and dispute system design results
- Implementing tracking systems for requests for assistance, ECR cases and projects
- Identifying efficient methods to access project funding
- Building partnerships with other agency programs
- Supporting early assessment and assistance for ECR and collaborative problem solving so that subsequent savings can occur through improved outcomes and reduced administrative appeals and litigation.

(4). Focus on Accountable Performance and Achievement through:

- Periodic progress reports
- Issuing guidance on expected outcomes and resources
- Conducting program evaluation
- Conducting ECR case and project evaluation
- Responding appropriately to evaluation results to improve appropriate use of ECR.

(b). Departments/Agencies without ECR Programs.

(1) Draw on any of the above mechanisms in 5(a) that may be applicable. For example, perform internal audit of areas where environmental conflicts are occuring; inventory annual costs of environmental conflict their their agencies and set goals to reduce those costs; identify annual savings from using collaboration which could be tracked on a specific case through evaluation processes

(2) Demonstrate increased use of ECR by applying to cases and under conditions consistent with the Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving in Attachment A.

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

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

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Attachment B.
ADR and ECR Authorities; Policies

- Administrative Dispute Resolution Act of 1996 (ADRA)
- Regulatory Negotiation Act of 1996
- Contract Disputes Act of 1978, as amended
- Alternative Dispute Resolution Act of 1998
- Environmental Policy and Conflict Resolution Act of 1998 (P.L. 105-156)
- Executive Order 12988, "Civil Justice Reform" (February 5, 1996)
- Presidential Memorandum, "Designation of Interagency Committee to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking" (May 1, 1998)
- Environmental Policy and Conflict Resolution Advancement Act of 2003 (P.L. 108-160)
- Executive Order 13352, "Facilitation of Cooperative Conservation" (August 4, 2004)

Recycled Paper

APPENDIX B

REPORT FORMAT AND SURVEY DEVELOPED BY ECR STEERING COMMITTEE

First ECR Annual Report to OMB-CEQ 6/03/06 rev.

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 and is included in the accompanying footnote.[1]

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 first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	_____
Name and Title/Position of person responding:	_____
Division/Office of person responding:	_____
Contact information (phone/email):	_____
Date this report is being submitted:	_____

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check all that apply	
☐	Protracted and costly environmental litigation;
☐	Unnecessarily lengthy project and resource planning processes;
☐	Costly delays in implementing needed environmental protection measures;
☐	Foregone public and private investments when decisions are not timely or are appealed;

[1] Under this policy, Environmental Conflict Resolution (ECR) is defined 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 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.

☐	Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and
☐	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

If so, please list.
If not, please explain.

3. To what extent does your department/agency already use ECR?

Check only one	
☐	Not at all, not applicable
☐	Not at all, but might be useful
☐	Sometimes used, but could be used more frequently
☐	Use often, but recognize it could be used more
☐	We make full use of ECR, as applicable

Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

If not, please explain.

Please attach any additional information as warranted.

Submit report electronically to:

ECRReports@omb.eop.gov

APPENDIX C

DOE SURVEY

First ECR Annual Report to OMB-CEQ

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 and is included in the accompanying footnote.[1] For purposes of this questionnaire, DOE is interested in obtaining information on your use of all collaborative processes used to prevent or resolve environmental conflicts, including the use of third parties.

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 first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	_____
Name and Title/Position of person responding:	_____
Division/Office of person responding:	_____
Contact information (phone/email):	_____
Date this report is being submitted:	_____

1. Do you think that the use of ECR would help your site minimize the occurrence of any of the following?

Check all that apply	
☐	Protracted and costly environmental litigation;
☐	Unnecessarily lengthy project and resource planning processes;
☐	Costly delays in implementing needed environmental protection measures;

[1] Under this policy, Environmental Conflict Resolution (ECR) is defined 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 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.

☐	Foregone public and private investments when decisions are not timely or are appealed;
☐	Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and
☐	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unintended conflicts.

2. Have you engaged in any of the following activities in FY 06 to resolve an environmental conflict?

Y	N	
_____	_____	Use of third-party neutrals
_____	_____	Use of citizen advisory boards
_____	_____	Use of collaborative decision making (with regulators and/or stakeholders)
_____	_____	Use of public participation processes under NEPA, CERCLA, or other environmental laws
_____	_____	Use of dispute resolution clauses in cleanup or other agreements
_____	_____	Other ECR activities (please specify)

If so, please list.

3. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

If so, please list.
If not, please explain.

4. To what extent do you already use ECR?

Check only one	
☐	Not at all, not applicable
☐	Not at all, but might be useful
☐	Sometimes used, but could be used more frequently
☐	Use often, but recognize it could be used more
☐	We make full use of ECR, as applicable

Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

5. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

Please attach any additional information as warranted.

APPENDIX D

DOE POLICIES

STATEMENT OF POLICY ON ALTERNATIVE DISPUTE RESOLUTION

A. INTRODUCTION

This statement of Policy addresses the use of alternative dispute resolution (ADR) by the Department of Energy as required by the Administrative Dispute Resolution Act (ADRA), 5 U.S.C. § 571 et seq.

The ADRA authorizes and encourages agencies to use mediation and other consensual methods of dispute resolution as alternatives to traditional dispute resolution processes. The ADRA requires agencies to designate a Dispute Resolution Specialist, establish a policy addressing the use of ADR, review contracts and grants for appropriate inclusion of ADR clauses and provide for regular training on ADR.

The initiatives required under the ADRA are supplemented by the Negotiated Rulemaking Act, 5 U.S.C. § 561 et seq., which establishes a framework for use of negotiated rule making ("reg neg") to increase acceptability and improve the substance of rules.

B. POLICY

The Department of Energy is committed to the use of ADR as a management tool to prevent or minimize the escalation of disputes, and to resolve disputes at the earliest stage possible in an expeditious, cost effective and mutually acceptable manner. In furtherance of this commitment to the use of ADR, and in compliance with the ADRA, the DOE has designated a Dispute Resolution Specialist and created an Office of Dispute Resolution, with responsibility to encourage and coordinate the ADR efforts of the Department, formulate Department-wide ADR policies, disseminate information about the Department's ADR activities, including pilot programs, and provide assistance, consultation and training within the Department on ADR matters. The Department supports the flexible use of all ADR processes, including mediation, neutral evaluation, reg-neg, partnering, mini-trials and arbitration, where appropriate.

C. STRATEGIC FOCUS

The Department will strive to maximize use of appropriate ADR techniques in three main areas.

1. Dispute prevention:

   The Department believes that ADR techniques can be used as a management tool to prevent conflict from escalating into more serious disputes. For example, faced with significant changes due to realignment of its workforce, this is an important time to provide training of employees and managers in conflict resolution techniques. Mediation and other forms of ADR may be applied to workplace

related issues to promote a humane and productive workplace and a reduction in grievances, EEO and whistle blower complaints.

To prevent disputes in the contracting area, the Department may consider "partnering" large contracts when appropriate. This technique, used successfully by several other Federal agencies and by private sector companies, fosters cooperative efforts to carry out the objectives of the contract and helps to manage conflict by identifying potential disputes and planning in advance for their resolution.

Finally, "facilitated negotiations" -- mediations with large groups of disparate interests striving to reach a consensual decision on a policy issue -- will be encouraged. This may include negotiated rule makings where appropriate.

2. Early intervention:

   Where disputes cannot be avoided, early use of ADR, especially mediation, can nonetheless promote their prompt and efficient resolution and avoid the need for a more formal disposition.

3. Litigation:
   a. The ADRA amended Chapter 5 of Title 5, United States Code, to encourage Federal agencies to use ADR to resolve disputes involving their administrative programs when all participants voluntarily agree. DOE will pursue the appropriate use of ADR in administrative litigation, and will consider the use of ADR in such cases when requested by a party to the litigation or by the administrative body hearing the case.
   b. In addition, the Department will provide assistance to the Department of Justice, as requested, in support of DOJ Order 1160.1, "Promoting the Broader Appropriate Use of Alternative Dispute Resolution Techniques".
   c. Finally, the Department will encourage and assist its management and operating contractors and their counsel in applying ADR techniques in litigation brought against them.

D. ROLE OF THE DISPUTE RESOLUTION SPECIALIST

The Dispute Resolution Specialist, who also acts as the Director of the Office of Dispute Resolution, serves as a resource to all DOE components and contractors. The Dispute Resolution Specialist shall:

1. Identify categories of disputes and potential disputes that are suitable for ADR;
2. Develop ADR procedures and establish pilot projects for use by the Department in resolving appropriate disputes;
3. Identify categories of agreements, contracts and memoranda of understanding which may be suitable for inclusion of standard ADR clauses;

4. Develop education/training programs for DOE personnel in ADR techniques and applications, including conflict management and resolution skills. This shall include:
    a. introductory ADR training to assure that executives, managers and supervisors understand what ADR is, its potential benefits and where to go for assistance;
    b. ADR training for personnel having an identified role in dispute management (e.g., labor/management relations, contract disputes, litigation, administrative adjudication);
    c. skill training for an internal group of mediators.
5. Institute procedures to support more systematic use of ADR within DOE.
6. Disseminate information on ADR techniques and their applicability within DOE.
7. Ensure that procedures are in place for evaluation of ADR results, including numbers of resolutions, satisfaction of the participants and estimated cost savings.

E. REPORTING AND CONSULTATION

The Dispute Resolution Specialist may be consulted to assist in determining whether and when ADR should be used, selecting the appropriate ADR process, choosing a neutral and preparing for the ADR process. Departmental components that employ ADR processes shall report annually to the Dispute Resolution Specialist concerning their use of ADR, including the final outcome of all ADR activities, so that she/he can maintain relevant statistics.

F. PERIODIC EVALUATION

DOE believes that its ADR policy should continue to evolve. To that end, it has determined to periodically evaluate the ADR program and the steps taken toward its effective implementation. The Dispute Resolution Specialist will report annually to the General Counsel and the Secretary on the Department's progress in implementing this policy and will recommend any necessary revisions.

In addition, pursuant to Section 3(a) of the ADRA, the Dispute Resolution Specialist will consult with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service concerning steps to develop and strengthen the Department's ADR capabilities.

DOE welcomes and encourages input on the use of ADR from both within and outside the Department.

Issued in Washington, D.C. on September 18, 1995

_____

Robert R. Nordhaus
General Counsel

U.S. Department of Energy
Washington, D.C.

POLICY

DOE P 141.2

Approved: 05-02-03

SUBJECT: PUBLIC PARTICIPATION and COMMUNITY RELATIONS

PURPOSE

Public participation is open, ongoing, two-way communication, both formal and informal, between the Department of Energy (DOE) and its stakeholders concerning DOE's missions and activities. Effective public participation is at the core of good community relations, which is essential for DOE facilities to achieve their missions. Regular, interactive communication enables all parties to learn about and better understand the views and positions of each other.

The Department recognizes the many benefits to be derived from public participation and good community relations, for both stakeholders and DOE. Public participation provides a means for DOE to gather a diverse collection of opinions, perspectives, and values from the broadest spectrum of the public, enabling the Department to make more informed decisions. Public participation benefits stakeholders by creating an opportunity to provide input on decisions that affect their communities and our nation.

This Policy is intended to ensure that public participation and community outreach are integral and effective parts of DOE activities and that decisions are made with the benefit of significant public perspectives. This policy provides a mechanism for bringing a broad range of stakeholder viewpoints and community values into DOE's decision-making early in the process. This early involvement enables DOE to make more informed decisions and build mutual understanding and trust between DOE, the public it serves, and the communities which host its facilities.

SCOPE

This policy is designed to function as a framework within which all DOE programs, including programs of the National Nuclear Security Administration, will operate. While the policy applies to all levels of DOE, its intent is the development and implementation of effective public participation programs at each appropriate field site by management officials designated by a site's Lead Program Secretarial Officer. It is also intended that these programs will be tailored to meet specific site and stakeholder needs and that they will include performance goals for community relations. This policy is not intended to affect requirements imposed by law, regulation, or contractual agreement; neither does it expand or limit any rights available to the public under current law.

DISTRIBUTION:
All Departmental Elements

INITIATED BY:
Office of Congressional and Intergovernmental Affairs

POLICY

Public participation is a fundamental component in program operations, planning activities, and decision-making within DOE. The Department encourages such participation. Effective public participation and good community relations both rest on a foundation of positive personal relationships; DOE managers and staff are encouraged to seek to build and nurture such relationships.

The methods used to encourage public participation will vary widely in nature and scope and may include, but are not limited to, informal conversations, written and electronic communication, scheduled meetings and workshops, legally required hearings, and Federal-State-local-Tribal meetings. Under this Policy, DOE will actively seek, consider, and respond in a timely manner to the views of its stakeholders, thereby providing them an opportunity to influence decisions. Stakeholders are defined as those individuals, groups, host communities, and other entities in the public and private sectors that are interested in or affected by any of DOE's activities and decisions.

GOALS

The goals of the DOE Public Participation and Community Relations Policy are as follows:

1. DOE will actively seek to identify stakeholders, consider public input, and incorporate or otherwise respond to the views of its stakeholders in making its decisions.

2. The public will be informed in a timely manner and empowered to participate at appropriate stages in DOE's decision-making processes. Such processes will be open, understandable, and consistently followed. Managers will define clear access points for public input from the earliest stages of a decision process and will provide adequate time for stakeholders to participate.

3. Credible, effective public participation processes, including active community outreach, will be consistently incorporated into DOE program operations, planning activities, and decision-making processes, at Headquarters and in the field. Employees within the DOE complex will share responsibility for promoting and improving public participation and community relations.

4. DOE will conduct periodic reviews of its public participation and community relations efforts.

CORE VALUES

Though program-specific public participation activities may vary throughout DOE, each program will be characterized by the following core values:

Accessibility	Known avenues to DOE managers who are available, approachable, and open to the public.
Accountability	Responsibility to the public for its decisions and a willingness to provide the rationale for its decisions.
Accuracy	Commitment to the truth.
Communication	Open, two-way exchange of information, knowledge, and perspectives between DOE and its stakeholders, including its host communities.
Consistency	Stakeholder and community interactions marked by regularity and continuity.
Fairness	Objectivity and freedom from undue favor toward any side.
Honesty	Commitment to fairness, trustworthiness, and straightforwardness.
Innovation	Introduction of new ideas, methods, and approaches.
Openness	Ready accessibility and a willingness to listen, consider, and respond to the views of stakeholders.
Respect	Consideration of and sensitivity to diversity and cultural concerns of stakeholders.
Responsiveness	Timely and thoughtful consideration of and response to the needs and concerns of stakeholders and affected communities.
Scientific Credibility	Commitment to the pursuit of sound, dependable, leading edge science.
Sincerity	Openness, frankness, and truthfulness in all stakeholder and community communications.
Time/ Timeliness	Adequate amount of time for stakeholders to participate in DOE decision-making processes. Timely responses to stakeholder input and requests. Timely DOE decisions informed but not delayed by public participation.

ACCOUNTABILITY

Senior Departmental program, staff office, and field managers are accountable for ensuring that public participation and community relations activities meet the goals of this Policy, are fully coordinated, and reflect DOE principles and values. Program or staff office and project managers are responsible for ensuring that appropriate public participation and community relations activities are identified and included in their decision-making processes.

Public participation is a performance element for these managers; they will be given incentives for good stakeholder and community relations and held to measurable performance standards.

BY ORDER OF THE SECRETARY OF ENERGY:

KYLE E. MCSLARROW
DEPUTY SECRETARY