

NRC's Alternative Dispute Resolution (ADR) Program

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Agenda

- The major components of the ADR program
- Program Trends
- Issues to Consider

ADR Program - Background

- In 1992, NRC issued its general ADR policy (57 FR 36678)
- In 2004, the NRC started the use of ADR in its enforcement process – two parts
 - Pre-Investigation (i.e. “Early ADR”) ADR
 - Post-Investigation ADR
- Cornell University administers the day-to-day activities of the program
- Participation is voluntary



Pre-Investigation ADR

“EARLY ADR”

(including Licensee Sponsored ADR)



Early ADR

- **Scope:** Offered *prior to the initiation of an OI investigation* to an individual who articulated a *prima facie* case of a discrimination complaint
 - The NRC is not a party
 - Settlement of the **technical safety concerns** is **NOT** within the scope of the program
- **Goal:** To encourage early and open discussion between the employer and the individual at the earliest stages of litigation, if possible
- **Intended Benefits:** Resolution of the dispute in a timely manner may minimize damage to the overall safety conscious work environment (SCWE) of the facility by resolving the dispute before prolonged litigation or OI investigation

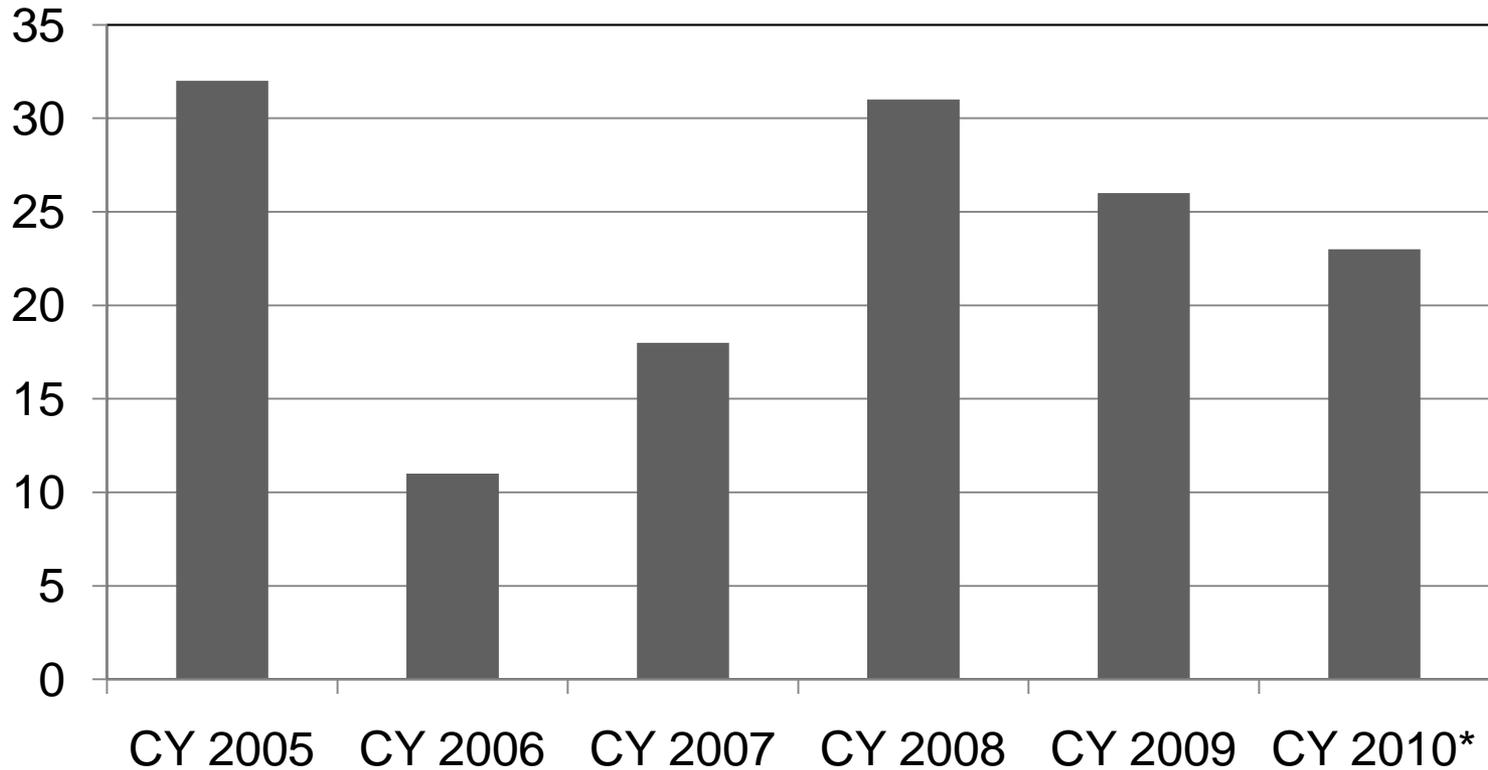


NRC Differences in Discrimination Cases

- Unlike the DOL, the NRC does not have the authority to grant personal remedies in discrimination cases
- Rather, the NRC places a high value on ensuring that the company has created a work environment where employees feel free to raise regulatory and safety concerns without fear of retaliation
 - i.e. Safety Conscious Work Environment (SCWE)
- A Complainant has a much longer statute of limitations for filing of an NRC complaint than a DOL complaint
- The NRC has “employee protection rules” e.g. 10 CFR 50.7, that prohibit licensees (and others) from retaliating against an employee for engaging in a protected activity

Early ADR

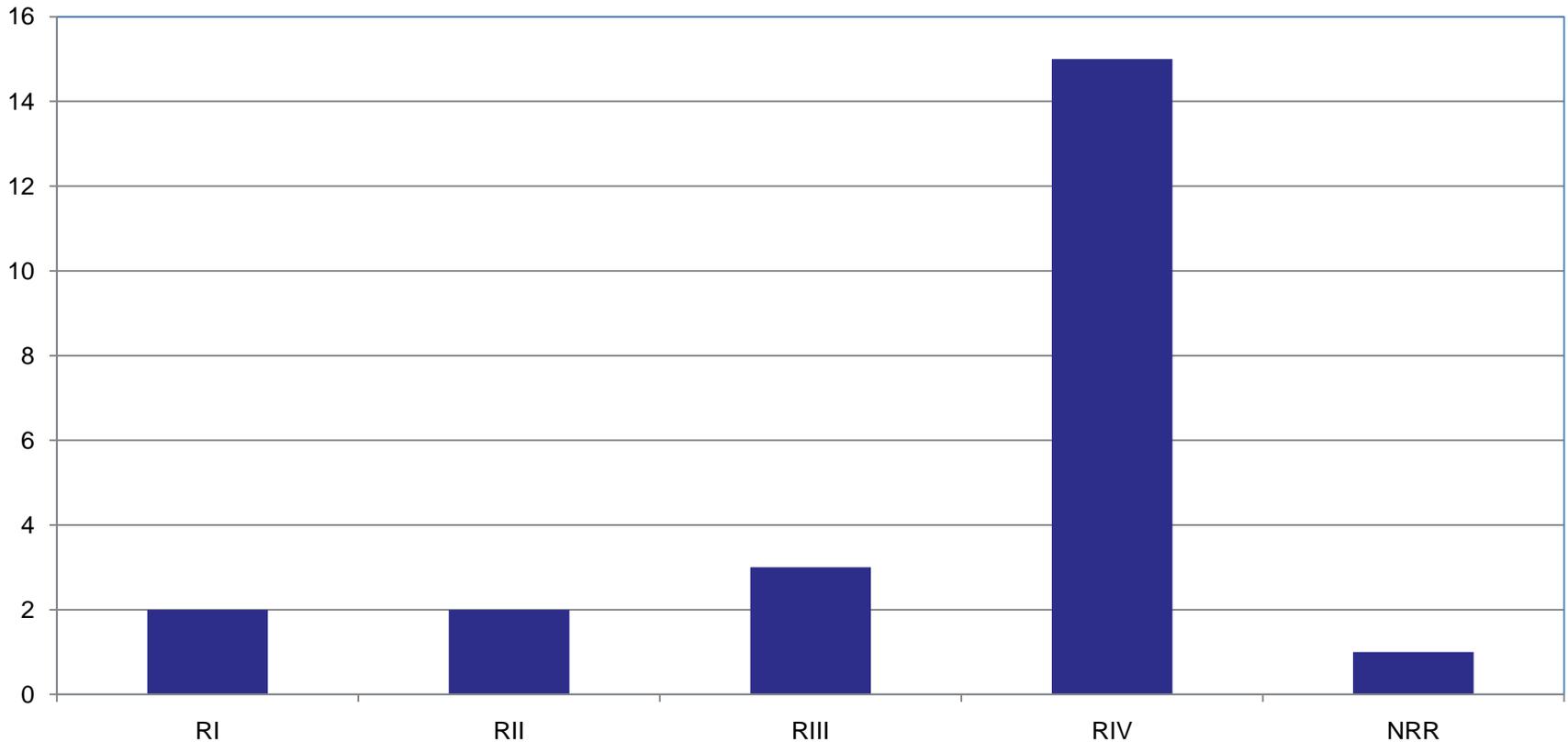
Cases Opened



* As of
8/31/10

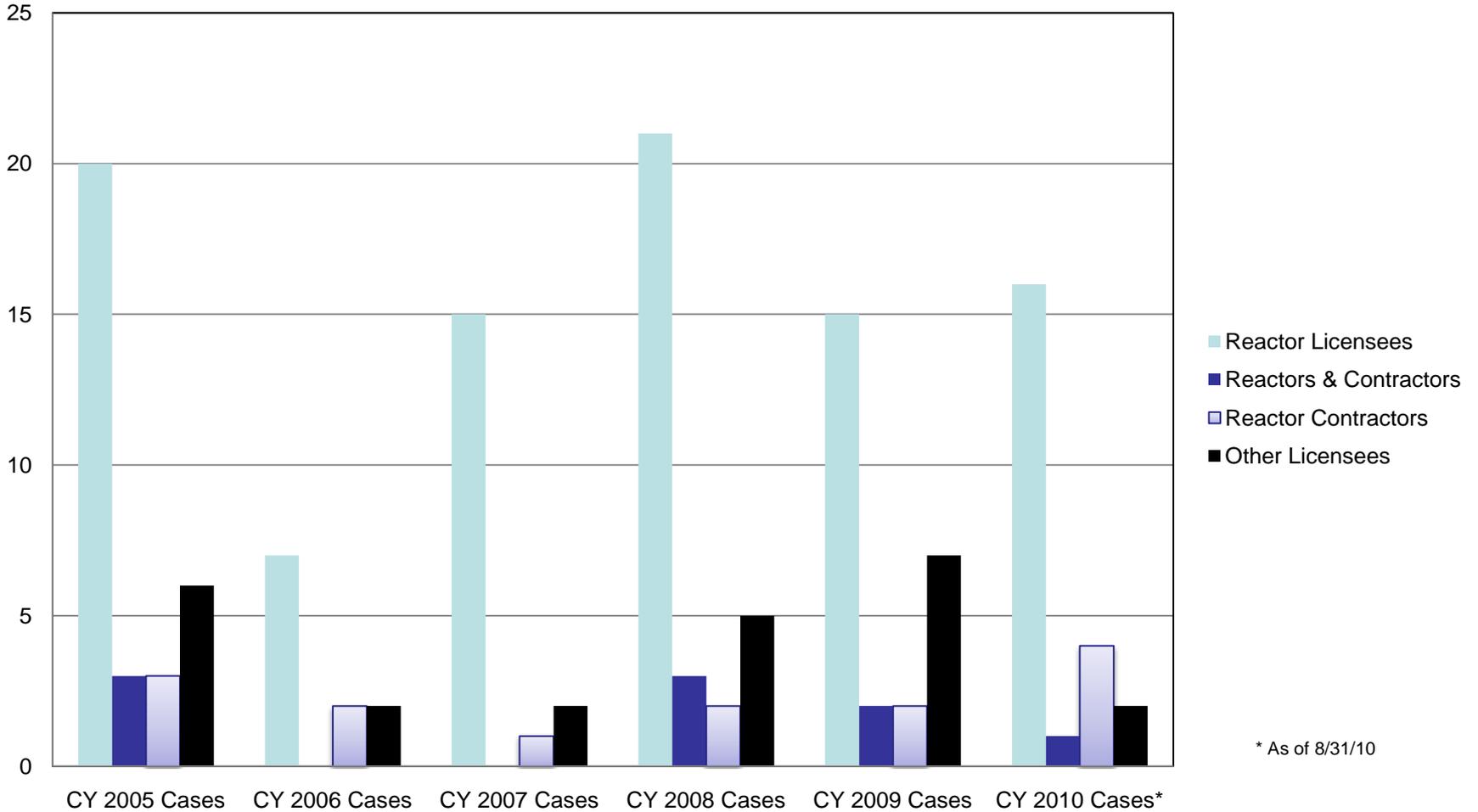
Early ADR

**CY 2010 Early ADR Cases Opened by Office
as of 8/31/10**



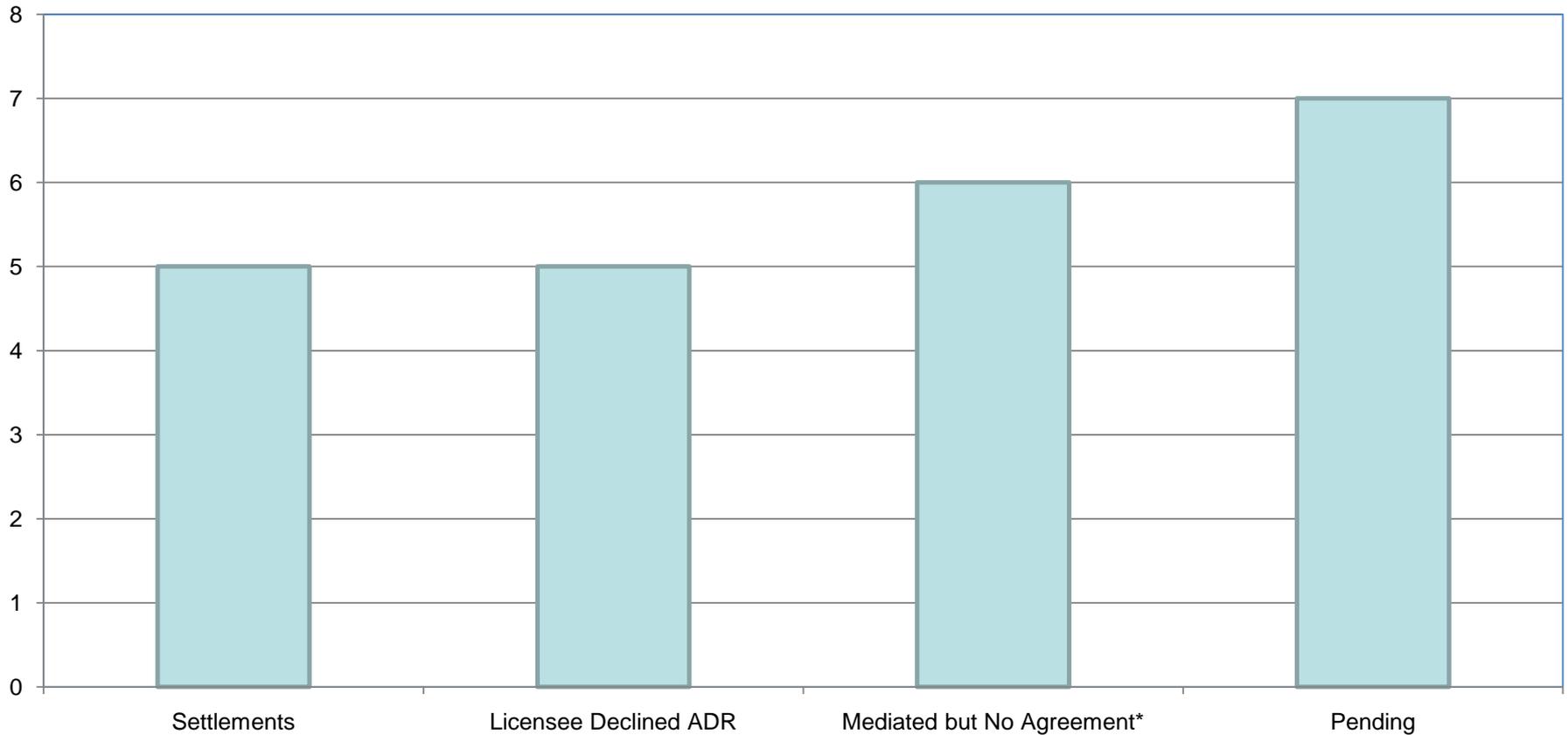
Early ADR

Defendant Type



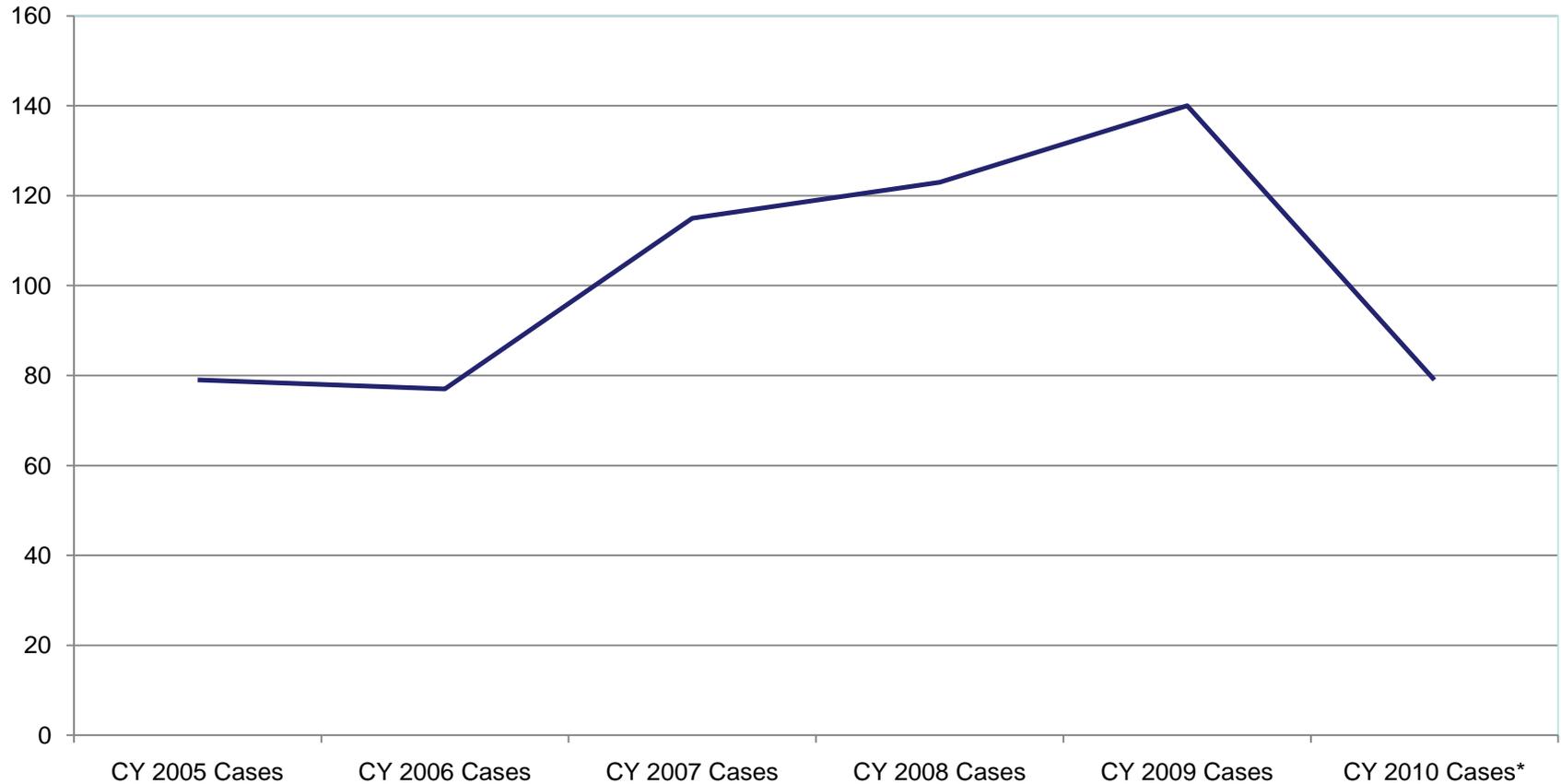
Early ADR

CY 2010 Outcomes as of 8/31/10



Early ADR

**Average Calendar Days
between Agreement to Mediate & Settlement
(*as of 8/31/10)**





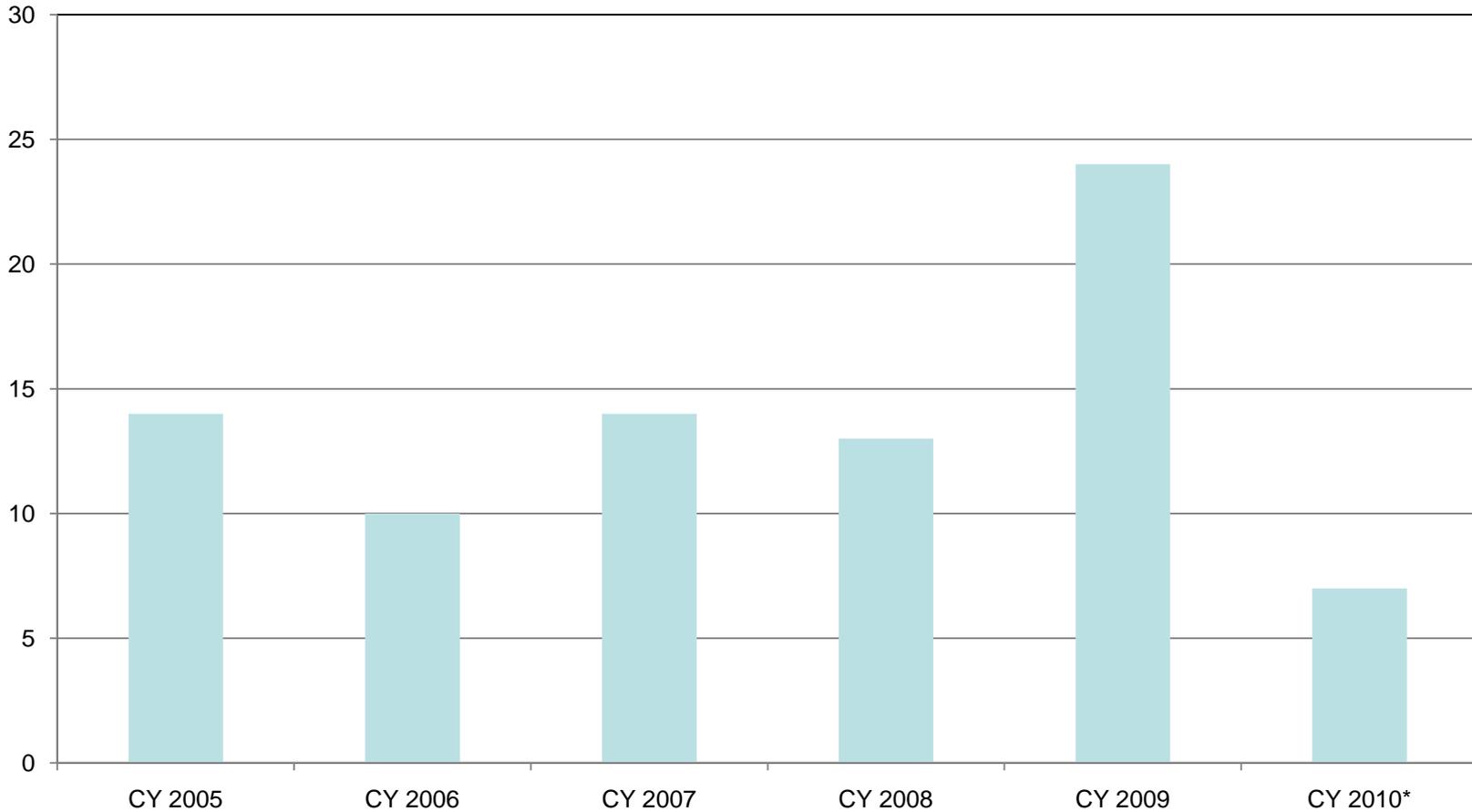
Post-Investigation ADR

Post-Investigation ADR

- **Scope:** Discrimination or other wrongdoing after OI investigation
 - The NRC is a party
 - In rare instances, for efficiency and effectiveness purposes, mediation may also include the resolution of any accompanying non-willful violations
 - Post-Investigation ADR available at three stages of the enforcement process
 - Prior to a pre-decisional enforcement conference (PEC),
 - After initial enforcement action, e.g. the issuance of a notice of violation and proposed civil penalty; or
 - After the issuance of an order imposing a civil penalty
- **Goal:** Provide a less adversarial process to resolve disputes with licensees
- **Intended Benefit:** Result in broader and more comprehensive corrective actions than may be available via traditional enforcement process

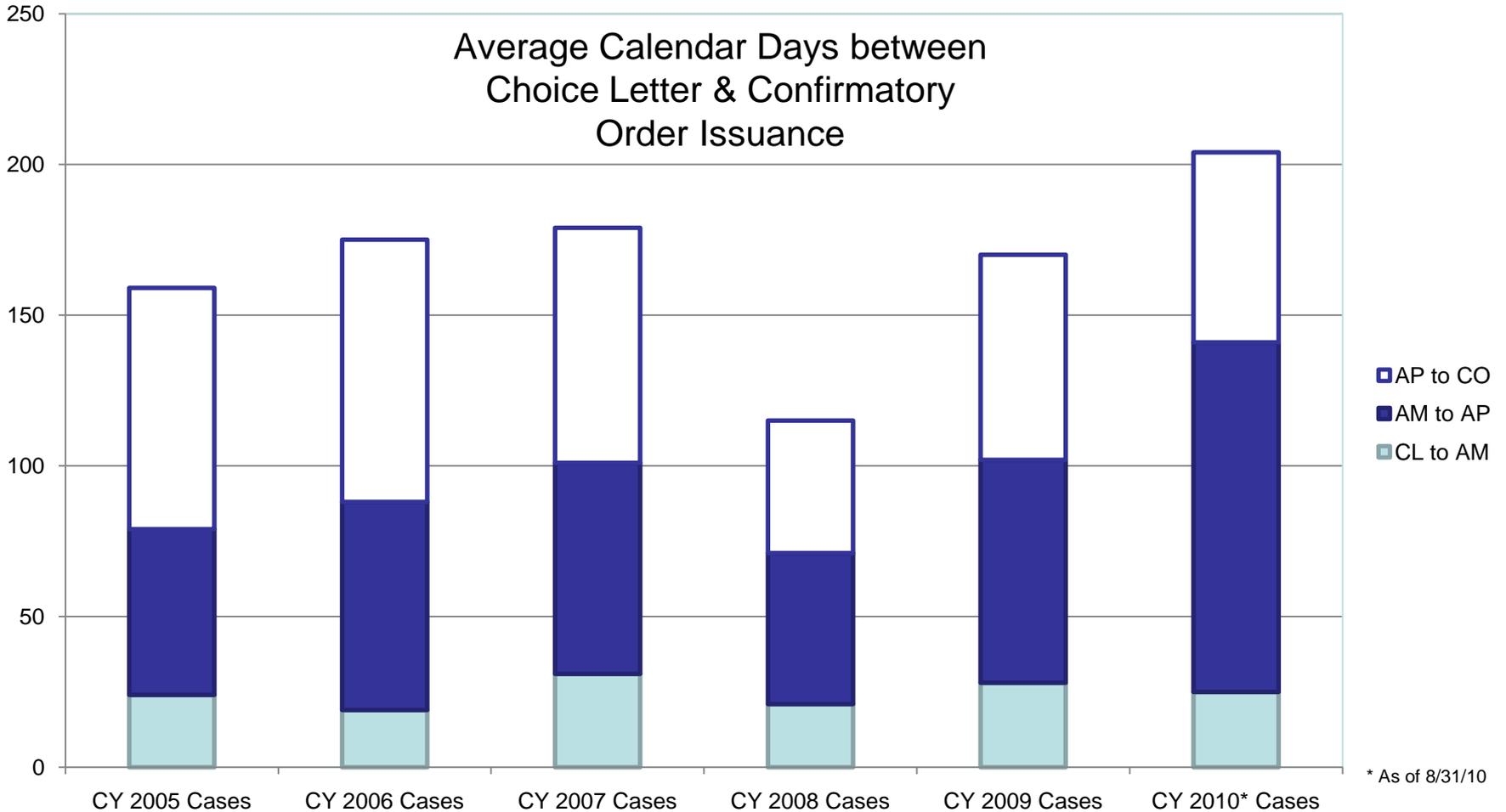
Post-Investigation ADR

Cases Opened



* As of 8/31/10

Post-Investigation ADR



ADR Program related Issues to Consider

- Whether ECP should document the mutually agreeable resolution of discrimination concerns in a “settlement agreement”
- Whether licensee/company should provide the settlement agreement to the NRC for credit under the program not knowing if the allegation of discrimination was also filed with the NRC
- Whether ECP should get involved (and if so to what degree) in the resolution of allegations of discrimination involving the licensee’s contractor



THE END