

FY 2012 TEMPLATE

ECR Policy Report to OMB-CEQ

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

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

ECR is defined in Section 2 of the memorandum as:

“third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term “ECR” encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A (of the OMB/CEQ ECR Policy Memo) and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.”

The report format below is provided for the seventh year of reporting in accordance with this memo for activities in FY 2012.

The report deadline is February 15, 2013.

We understand that collecting this information may be challenging; however, after compiling previous reports, the departments and agencies are requested to collect this data to the best of their abilities. The 2012 report, along with previous reports, will establish a useful baseline for your department or agency, and collect some information that can be aggregated across agencies. Departments should submit a single report that includes ECR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2012 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, copies of prior year synthesis reports are available at www.ecr.gov.

Name of Department/Agency responding:	U.S. Environmental Protection Agency
Name and Title/Position of person responding:	Richard Kuhlman Director
Division/Office of person responding:	Conflict Prevention and Resolution Center
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Date this report is being submitted:	February 15, 2013

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2012, including progress made since 2011. 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. Environmental Protection Agency (EPA) has been engaging in and providing significant programmatic/institutional support for ECR for decades. As a result, the Agency has one of the more advanced ECR programs in the executive branch. EPA continued to provide high levels of programmatic/institutional capacity for ECR during FY 2012 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

Transparency in EPA's Operations and Open Government - On April 23, 2009, EPA Administrator Lisa Jackson issued a memo entitled "Transparency in EPA's Operations," in which she articulated a set of general principles requiring Agency employees to "provide for the fullest possible public participation in decision-making" and to "take affirmative steps to solicit the views of those who will be affected" by EPA decisions. In furtherance of the Administrator's memorandum on transparency and the President's Open Government Directive of December 8, 2009, EPA released its Open Government Policy on April 7, 2010, and Data Quality Plan on May 18, 2010. Together these two documents address how EPA will approach the issues of transparency, participation and collaboration in its work. EPA has also established a web page (www.epa.gov/open) where web users can read the EPA's Open Government Plan and Data Quality Plan, view information about Agency innovations in Open Government, and be kept up to date about upcoming Open Government related events. EPA's ECR program, by promoting the "Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving" articulated in the OMB/CEQ ECR policy memorandum, plays a key role in supporting increased transparency and the principles of open government in EPA operations.

EPA's Strategic Plan - EPA's ECR program supports all five goals in EPA's 2011-2015 Strategic Plan: 1) taking action on climate change and improving air quality; 2) protecting America's waters; 3) cleaning up communities and advancing sustainable development; 4) ensuring the safety of chemicals and preventing pollution; and 5) enforcing environmental laws. EPA's Administrator, in her cover letter for the Strategic Plan, explicitly recognizes the value of dialogue on environmental issues, stating, "we will engage citizens to hear all

the voices that must be part of our nation's dialogue on environmental issues." ECR is an important way to promote and facilitate this communication. As in previous years, the Agency used ECR in activities supporting each of the five Strategic Plan goals in FY 2012. The breadth of EPA's support for ECR across the full range of the Agency's business is reflected in our response to question 3, in which we report 203 ECR cases for FY 2012 covering all ECR application contexts and decision-making forums.

ECR Strategy - During FY 2012, EPA's Conflict Prevention and Resolution Center (CPRC) continued implementing its second strategic plan (2011- 2015) with its renewed commitment to bringing people together to solve their environmental problems. CPRC approaches this commitment in two ways. First, we respond to client requests for help with facilitation, mediation, conflict coaching, or advice. Second, we work to build EPA's conflict prevention and resolution capacity. In the coming years we will maintain a strategic focus on using good practice, demonstrating results, building knowledge and skills, and cultivating opportunity for the use of ECR and collaborative problem solving (CPS) at EPA. The strategy contains measurable performance objectives and describes the anticipated approach to reaching these objectives. In FY 2012, as in previous years, CPRC developed and implemented an annual operating plan with specific action items and dedicated personnel and funding to further the objectives of the ECR strategy.

Assure that the Agency's Infrastructure Supports ECR

EPA provides a high degree of support for ECR through the Agency's infrastructure. The CPRC is headed by EPA's Dispute Resolution Specialist, who is appointed pursuant to the Administrative Dispute Resolution Act of 1996 (ADR 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.

EPA's ADR Policy - 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 regulations;
- 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 is used in many contexts at EPA including adjudications, rulemaking, policy development, administrative and civil judicial enforcement actions, permit issuance, administration of contracts and grants, stakeholder involvement, negotiations, and litigation.

Federal Interagency Coordination and Conflict Resolution - EPA is committed to using collaboration, early consultation, and ECR approaches for projects under the Executive Order 13604 -- Improving Performance of Federal Permitting and Review of Infrastructure Projects. Tools that support these areas will be used appropriately to address infrastructure project reviews and permitting by EPA. Early project coordination and ECR practices will ensure that projects avoid, minimize, and otherwise mitigate, as appropriate, any detrimental impacts so that completed projects deliver the best outcomes possible for the project applicant, impacted communities, and the environment. Such an approach may include how to work together, resolve challenges, and reach agreement when disagreements occur. Where use of a neutral third party is appropriate, EPA will work with Agency internal resources, the U.S. Institute for Environmental Conflict Resolution, and other involved federal agencies to provide joint inter-agency conflict resolution training, or select and hire an experienced neutral third party to help resolve the issue as expeditiously as possible.

Senior Leadership Support for ECR Use - Senior EPA leadership continues to provide encouragement and support for the use of ECR, as it has for more than three decades. In FY 2012, EPA's Deputy Administrator, Assistant Administrators, and Regional Administrators engaged in and supported the use of ECR in high-profile matters, including the following cases and projects:

- Bristol Bay Watershed Assessment,
- Cape Cod Litigation Settlement,
- CERCLA 108b,
- Collaborative For Environmental Sustainability Of Southern New England,
- EPA-DOI-USDA Air Quality MOU,
- Oregon Fish Consumption Implementation,
- GE/Housatonic River, and
- New Bedford Harbor.

ECR Outreach, Education, Training, and Career Development - As in previous years the Agency emphasized outreach, education, training, and career development activities to promote the increased use of ECR in FY 2012. Our ECR outreach, education, training, and career development activities included the following:

CPRC and Other EPA Headquarters Outreach, Education, Training, and Career Development Activities

- The CPRC continued efforts to build internal EPA capacity to prevent or appropriately resolve disputes. CPRC delivered 13 training courses of a duration greater than two hours reaching 228 participants throughout the Agency, and delivered an additional number of training and outreach events with a duration shorter than two hours to dozens of participants inside and outside EPA. CPRC provided multiple deliveries of training on Interest-Based Negotiation and The Power of Apology. In addition, CPRC developed new training on conflict management for regulation developers and sponsored advanced facilitation training for EPA ECR Specialists. Staff members in Regions 2, 3, 4, and 9 provided critical support for CPRC-sponsored training. The CPRC evaluated each training course, as described below in question 5. Participants included EPA staff members from the Agency's water, waste, chemical safety, and pollution prevention programs; EPA staff members from the Office of the Administrator, Office of Environmental Information, and Office of Research and Development; EPA legal staff in the Office of General Counsel; and all ten Federal Facility Regional Program Managers who support the enforcement program for the Federal Facilities Enforcement Office in the Office of Enforcement and Compliance Assurance (OECA).
- The CPRC sponsored EPA Conflict Resolution Day events in October 2011. This day of presentations coincided with International Conflict Resolution Day. Headquarters activities during the week included expert speakers on interest-based negotiations, conflict resolution concepts, and resolving workplace conflict, and an ECR exhibit staffed by EPA ECR experts. Several EPA regional offices also hosted presentations.
- The CPRC sponsored an exhibit, provided handouts, and gave a presentation on ECR at the 2012 National Association of Remedial Project Managers Conference.
- The CPRC sponsored an exhibit, provided handouts, and offered information on ECR services at the 2012 On Scene Coordinators Training Conference.
- EPA participated in the May 2012 National ECR Conference in Tucson, AZ. EPA attendees delivered training and made presentations at the conference.
- The CPRC provided two training presentations on collaboration, ECR, and public involvement at EPA's regularly scheduled training on the EPA Regulation Development Process.
- The CPRC conducted regular bi-weekly fifteen-minute presentations on collaboration and ECR for new hires.
- The CPRC completed a conflict resolution needs assessment survey of key EPA audiences to determine whether existing CPRC training meets their needs. The findings were used to inform CPRC's 2012-2015 training strategy.
- The CPRC continued to implement an ECR outreach and marketing strategy for the Agency, including identification of target audiences and working with representatives from those audiences to improve communications and service delivery to on-the-ground staff.
- The Office of Water's Office of Wetlands, Oceans, and Watersheds (OWOW)

held a retreat on October 17, 2011, featuring training on communication styles, sensitivity awareness, and change management. On March 21, 2012, OWOW managers received training on giving and receiving feedback.

Regional Outreach, Education, Training, and Career Development Activities

- Region 2's (New York) Office of Regional Counsel (ORC) provided training to Region 2 attorneys on interest-based negotiation with a focus on how to avoid escalation of conflict. ORC's ECR Specialist also partnered with the CPRC to conduct two all-day training events on interest-based negotiations for On-Scene Coordinators and Remedial Project Managers in Region 2's Superfund Program. The training satisfied continuing education requirements for the attendees. In addition, ORC, in coordination with Region 2's Emergency and Remedial Response Division (ERRD), hosted a training program presented by an expert facilitator from the Consensus Building Institute on the dynamics of government apologies. The training featured a guest appearance by ERRD's division director, who conveyed a real-life example of a public apology to a community near a Superfund site. Region 2, led by a facilitator in the Office of Policy and Management in consultation with ORC's ECR Specialist and other facilitators in the Region, began designing a full-day facilitation training program. The goal of the training is to build capacity for facilitation in Region 2 given the rise in demand for facilitation that we have seen in recent years. The training program, which will take place in FY 2013, will serve to develop a facilitation corps within the Region. In addition, ORC's ECR Specialist collaborated with two other regional ECR Specialists to design and present a full-day training program at the biennial national ECR conference in May 2012. The program trained practicing ECR experts and others on mediation under EPA's Part 22 administrative enforcement provisions. The goal of the training was to build capacity for outside neutral third parties in the ECR community to conduct mediations under Part 22.
- Region 3's (Philadelphia) capacity for ECR is implicit in the Region's implementation of the Agency's strategic plan. In addition, in FY 2012, the Region 3 Collaboration Network team continued its activities to increase awareness and develop skill levels in order to implement collaborative decision-making throughout the Region. Such activities included collaboration, negotiation and active listening training and workshops for EPA personnel. Furthermore, collaboration trainers have been mentoring employees, advising teams and facilitating meetings. Region 3 also has provided mediation workshops to employees to increase awareness and promote the use of ECR and enhance ECR skills.
- Region 4's (Atlanta) Office of Environmental Accountability disseminates information on ECR and types of case support provided by the Agency in such efforts (e.g., contracting/funding support, mediator services and training); provides training opportunities to legal and other Regional staff; and provides support to Regional management and staff on ECR activities, as well as to headquarters' ECR efforts. This year the Region has supported or sponsored several topical trainings, including: "Conflict Resolution" (October 2011);

Mediation in Defensive Litigation" (March 2012); and Shared Neutrals Alternative Dispute Resolution (August 2012), in its efforts to promote the use of ECR and other collaborative activities in the Region. Region 4 has instituted a Regional ECR team of three lawyers that meets regularly to discuss ways to build, promote and support ADR in the Region, including training and case support. The Region also connects with the Superfund, Environmental Justice and other program offices concerning collaborative activities. Finally, two employees from the Region 4 Office of Civil Rights attended 40 hours of mediation training as part of the application to become part of the Atlanta Federal Executive Board's ADR group.

- Region 8 (Denver) continues to be a consistent leader in the use of ECR across all statutory and media programs. In FY 2012, Region 8's ADR Coordinator began development of a Region-wide ECR knowledge transfer process, the aim of which is to engage staff and management in the use of ECR in new ways, to educate new and mid-career staff on when and how to make use of effective environmental collaboration and conflict resolution processes, and to provide access to new ECR tools and internal collateral duty staff consultants, who can assist staff and management in analyzing the conflicts they face and aid in designing appropriate dispute resolution processes.

Planning for Future Outreach, Education, Training, and Career Development Activities

During FY 2012 the CPRC also prepared for several activities to be implemented in FY 2013 and beyond, including:

- Completion of an Agency-wide ECR/CPS training strategy, and
- FY 2013 Conflict Resolution Day activities, including workshops on interest-based negotiation, confidentiality under the ADR Act, and collaborating with communities about disaster preparedness.

International ECR Outreach – CPRC worked to develop international capacity and expertise in ECR during FY 2012, meeting with visitors from Cyprus, the People's Republic of China, Indonesia, and Thailand. CPRC staff members explained EPA's public involvement and ECR programs, addressed questions, and explored the potential application of public involvement and ECR processes in these countries. CPRC staff also worked with EPA's Office of International and Tribal Affairs in designing its Public Participation Toolkit Website and reviewed ECR-related presentations for Morocco, Central America, and Chile for EPA regions and OECA.

Invest in Support of Programs

Over the years, EPA has made considerable investments to support its ECR program, a trend that continued in FY 2012:

ECR Personnel - In FY 2012, the Agency had seven and a half FTEs in the CPRC (including a temporary reduction of a half FTE due to a staff member's short-term assignment to another agency) and an additional two and a half FTEs in the New England,

Denver, and San Francisco regional offices devoted to ECR. In addition, at least 29 other individuals support the ECR program as part of their job responsibilities or on a collateral duty basis. For example, each EPA regional office has at least one staff member who serves as a liaison for ECR activities. These regional ECR staff members support ECR education/training; draw on existing regional resources to resolve disputes; build expert knowledge, skills, and capacity; track requests for assistance/ECR cases/projects; coordinate regularly with the CPRC; and contribute to the development of the ECR annual report.

Office of Administrative Law Judges - The Office of Administrative Law Judges (OALJ) continued to make ADR a priority, offering the neutral mediation services of an administrative law judge in nearly all environmental cases filed with the Office. Over the course of the year, the parties in a majority of EPA cases affirmatively accepted ADR services from OALJ. OALJ anticipates that, when another ALJ is hired, the scope of the ADR program could correspondingly reach more parties and contribute to the successful and efficient resolution of enforcement actions.

Environmental Appeals Board – In February 2010, the Environmental Appeals Board (EAB) launched a pilot ADR program. The program offers parties the option of participating in ADR with the assistance of an EAB Judge acting as a neutral evaluator/mediator. The primary purpose of the pilot program is to provide a neutral, confidential forum for the settlement of cases before the EAB. In FY 2011, EAB expanded the pilot program to include permit cases. The program now offers parties in enforcement appeals, petitions for reimbursement under section 106(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and permit appeals the option for an early neutral evaluation of the strengths and weakness of the case conducted by an EAB judge and attorney who will not participate in the decision if the case fails to settle.

Office of Solid Waste and Emergency Response - Since 2006, the Office of Solid Waste and Emergency Response (OSWER) and its Office of Resource Conservation and Recovery (ORCR), has used ECR services. These services include supporting efforts for certification programs for electronic equipment recyclers, developing a memorandum of understanding and implementing a national vehicle mercury switch recovery program, planning and convening stakeholder meetings regarding EPA's regulatory efforts concerning issues under section 108(b) of CERCLA, and establishing a stakeholder dialogue on sustainable financing of municipal solid waste recycling programs. OSWER's Federal Facilities Restoration and Reuse Office continued to use ECR services with other participating federal agencies in FY 2012.

Regional Support for ECR – Some specific examples of EPA regional programmatic support for ECR include the following:

- Region 1's (Boston) culture of support for ECR has remained strong throughout FY 2012. As in previous years, the Regional ECR Program is managed by a full-time senior attorney-mediator. Approximately ten other regional staff members from a variety of program areas and professional backgrounds provide support to the ECR Program on a collateral basis by agreement of their managers. Most of them are trained mediators and facilitators with varying degrees of experience who

serve as in-house neutral third parties when they are needed and available. The group also includes a contracts specialist from the Superfund branch who handles ECR contracting issues and paperwork. At the highest levels of management, Regional leaders are aware of the services provided, frequently direct parties (both inside and outside of the Agency) to the ECR program, and are generally receptive to the use of ECR when it is proposed for projects within their areas. Because of the proliferation of collaborative approaches to environmental problem-solving, there has been a growing demand for facilitation services, which the Region is addressing, in part, with in-house resources. Workload permitting, staff with ECR skills are supported in their participation on the ECR team and in their efforts to develop and hone their skills.

- Region 5 (Chicago) took the following steps to build programmatic/institutional capacity for ECR in FY 2012: (1) drew on Agency conflict resolution specialists in the CPRC; (2) assigned staff in the Region 5 ORC to support programs; and (3) worked to build partnerships with other agencies via the Chicago Federal Executive Board shared neutrals program.
- Region 6 (Dallas) has taken steps to expand ECR usage in all relevant areas and has focused its efforts in two substantive ways. First, the Region has increasingly supported ECR in the context of civil administrative enforcement activities. The Region believes that settling cases quickly through the OALJ mediation process results in a faster outcome and resources can then be re-directed to other cases or activities. Second, the Region has expanded the use of facilitation in relation to community involvement and outreach. By engaging communities in identifying issues and possible solutions to environmental issues, the Region can create a better result that respects communities.
- Region 7 (Kansas City, KS) encourages and supports the use of ECR in addressing a widening range of Agency matters. The Region has aggressively expanded its use of ECR concepts in FY 2012, building on the addition of an ECR Specialist to the staff and expanded usage of staff designees from FY 2011. The past year was the first year in which all divisions in Region 7 utilized internal ECR support in various processes. In FY 2012, the Region has taken another step by supporting a full-fledged collaborative process program/strategy, which is in the early stages of development. This program will be headed by the ECR Specialist who has increased FY 2012 performance objectives on the use of ECR and advancing the concepts within the ORC and other programs. A key foundation of this activity will be a continued expansion of practical applications in the field and translating those experiences into better training and learning opportunities for all programs. The Region also strengthened its collaboration with the CPRC and is exploring the feasibility of inter-regional collaborations in the future. The Region will continue to regularly participate in the ADR opportunities offered by OALJ in contested administrative cases. The Region will also continue its general promotion of ECR through LAN Bulletin Board notices, informational e-mails targeted at Regional managers, and various offerings of ECR training. The aggressive stance on integrating ECR concepts into Region 7 operations has been felt in the case and project work arena. In particular, all divisions have participated this past year in some form of ECR process. Some utilized services in a neutral third party context, but many interactions were consultative, coaching, and advisory in nature. The addition of dedicated staff has made a difference in presenting ECR at more

"upstream" intervals which can yield a greater array of tools for programs to use when performing their work. Upstream awareness is believed to correlate directly to prevention of downstream conflicts within and outside the agency in the longer term. Practical training and management support will be important for expanding these efforts beyond FY 2012.

- Region 9's (San Francisco) Regional Facilitator (RF) facilitated numerous meetings to advance Agency goals and partnerships, and increase the effective use of ECR. In particular, the RF facilitated a number of internal meetings that increased Regional staff and managers' familiarity with a variety of facilitation tools, enhanced participation in Regional environmental planning and decision-making, and improved skills to further Regional environmental goals. These included:
 - Facilitating retreats for the Space Steering Committee and Project Action Teams, planning for future Regional building needs, including several environmental issues associated with Regional building needs. The RF also consulted with individual teams and facilitated the ongoing Space Steering Committee meetings.
 - Working with the Regional Water Division's Clean Water Act Section 106 Tribal Grant Decision meetings and Team building meetings. This is the fifth year the RF has worked with this group to develop and refine their grant proposal evaluation process and to work on building a highly functioning team.
 - Facilitating quarterly Regional Tribal Operations Committee (RTOC) meetings and providing consultation and coaching to EPA's RTOC co-chair and Tribal Program office.
- Region 10 (Seattle) continued its efforts to increase the effective use of ECR and to build institutional capacity by working with our programs, employees, and outside stakeholders to identify opportunities to use ECR tools. The Region worked with its ECR Specialists as well as specialists from CPRC to identify and evaluate ECR cases, and to identify specific ECR processes to use for cases when the Region determined that the use of ECR was appropriate. The Region continues to have a strong presence in Superfund and the Office of Water, and is developing a greater presence in other programs as is evidenced by the Air Program's use of ECR. In addition, the Region invested in ECR processes that were tailored to address environmental justice and Tribal issues. When appropriate, the Region emphasizes the use of ECR tools in decision-making such that the process becomes more transparent to the public. The ORC encourages the routine consideration of ECR in both our administrative and judicial cases.

Contracting for External ECR Services - In FY 2012, the CPRC continued providing ECR services under its seventh Conflict Prevention and Resolution Services (CPRS) Contract, which has a ceiling of \$55,000,000 over five years. The contract provides all EPA program offices, regional and field offices, and laboratories with comprehensive access to neutral third parties and related services all over the country, with most services being initiated within two weeks of a request. In FY 2012, EPA used about \$4.7 million in ECR services (e.g., neutral third parties for ECR cases, ECR training) on 104 active task orders under the CPRS Contract.

Interagency Agreement with the U.S. Institute for Environmental Conflict

Resolution – EPA’s interagency agreement with the U.S. Institute for Environmental Conflict Resolution (USIECR) continues to provide cooperative support for conflict prevention and resolution assistance. The interagency agreement supports the National Roster of Environmental Dispute Resolution Professionals, training courses, and the National ECR Conference. It also provides access to neutral mediation and facilitation services for cases and matters in which EPA and USIECR have a shared interest, such as those involving the National Environmental Policy Act and intergovernmental conflicts. In FY 2012, EPA utilized about \$100,000 of services for a total of seven active projects through the interagency agreement.

Interagency Partnerships - EPA continued to strengthen its partnership with other federal agency ECR programs during FY 2012. EPA and USIECR also continued work under their interagency agreement on a range of projects, including the EPA-Department of Interior-U.S. Department of Agriculture memorandum of agreement on air quality issues; a dialogue between EPA, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service on issues related to pesticides programs and implementation of the Endangered Species Act; two coastal regional workshops; and the EPA-Army Corps of Engineers Assessment. EPA also participated actively in developing the new OMB/CEQ Policy Memorandum on Environmental Collaboration and Conflict Resolution, which was issued in September 2012.

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 the response to question 5 below.

Section 2: Challenges

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

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

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2012 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 the U.S. Environmental Protection Agency’s definition of ECR, based on its ADR policy, which includes situations in which participants are using a neutral third party whether or not the participants are seeking agreement.

	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2012 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:					Of the total FY 2012 ECR cases indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)		Sponsored ⁴	Participated in but did not sponsor ⁵
<i>Context for ECR Applications:</i>										
Policy development	10	5	15	12	0	0	3	EPA-state coordination, misc.	14	1
Planning	14	16	30	13	0	0	17	Interagency collaboration, misc.	28	2
Siting and construction	11	6	17	14	0	0	3	Misc.	17	0
Rulemaking	3	7	10	5	0	2	3	Misc.	8	2
License and permit issuance	6	14	20	8	6	4	2	State decisio	16	4

¹ A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2012 and did not end during FY 2012.

² A “completed case” means that neutral third party involvement in a particular matter ended during FY 2012. 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 FY2012 ECR Cases”.

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

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

								n		
Compliance and enforcement action	27	55	82	20	43	14	5	Shared EPA and State or Tribal Decision, misc.	69	13
Implementation/monitoring agreements	4	1	5	4	0	0	1	Misc.	4	1
Other (specify): Voluntary program, misc.	16	8	24	8	2	2	12	Voluntary program, misc.	22	2
TOTAL	91	112	203	84	51	22	46		178	25
	(the sum should equal Total FY 2012 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2012 ECR Cases)					(the sum should equal Total FY 2012 ECR Cases)	

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

	Cases or projects in progress ⁶	Completed Cases or projects ⁷	Total FY 2012 ECR Cases ⁸	Decision making forum that was addressing the issues when ECR was initiated:					Of the total FY 2012 ECR cases indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)		Sponsored ⁹	Participated in but did not sponsor ¹⁰
<i>Context for ECR Applications:</i>										
Policy development	3	3	6	4	0	0	2	Misc.	5	1
Planning	2	4	6	3	0	0	3	Misc.	6	0
Siting and construction	2	0	2	1	0	0	1	Misc.	2	0
Rulemaking	3	2	5	2	0	2	1	Misc.	3	2
License and permit issuance	3	9	12	2	6	4	0		9	3
Compliance and enforcement action	19	48	67	6	43	14	4	Shared EPA and State or Tribal decision, misc.	54	13
Implementation/monitoring agreements	1	0	1	1	0	0	0		1	0
Other (specify): Misc.	3	2	5	0	2	2	1	Misc.	3	2
TOTAL	36	68	104	19	51	22	12		83	21

⁶ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2012 and did not end during FY 2012.

⁷ A "completed case" means that neutral third party involvement in a particular matter ended during FY 2012. 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.

⁸ "Cases in progress" and "completed cases" add up to "Total FY2012 ECR Cases".

⁹ Sponsored - to be a sponsor of an ECR case means that an agency is contributing financial or in-kind resources (e.g., a staff mediator's time) to provide the neutral third party's services for that case. More than one sponsor is possible for a given ECR case.

¹⁰ Participated, but did not sponsor - an agency did not provide resources for the neutral third party's services for a given ECR case, but was either a party to the case or participated in some other significant way (e.g., as a technical expert advising the parties).

	(the sum should equal Total FY 2012 ECR Cases)		(the sum of the Decision Making Forums should equal Total FY 2012 ECR Cases)	(the sum should equal Total FY 2012 ECR Cases)
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4. Is your department/agency using ECR in any of the substantive priority areas you listed in your prior year ECR Reports? Indicate if use has increased in these areas since they were first identified in your ECR report. Please also list any additional priority areas identified by your department/agency during FY 2012, and indicate if ECR is being used in any of these areas. Note: An overview of substantive program areas identified by departments/agencies in FY 2011 can be found in the FY 2011 synthesis report.

List of priority areas identified in your department/agency prior year ECR Reports	Check if using ECR	Check if use has increased in these areas
External Civil Rights (2010)	X	X
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
List of additional priority areas identified by your department/agency in FY 2012	Check if using ECR	
_____	☐	
_____	☐	
_____	☐	
_____	☐	

Please use an additional sheet if needed.

* Beginning in FY 2013, this EPA priority area for ECR is now part of the base ECR program and will no longer be tracked separately.

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

The U.S. Environmental Protection Agency (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. In FY 2012 we pursued three efforts addressing performance and accountability. First, we continued to collaborate with the U.S. Institute for Environmental Conflict Resolution (USIECR) and others to evaluate the practice of ECR. Second, we utilized multiple approaches to gauge the use of ECR at EPA. Third, we continued to evaluate ECR-related training sponsored by the Conflict Prevention and Resolution Center (CPRC). All three of these activities were initiated prior to FY 2012 and updates on each are provided below.

Evaluating the Practice of ECR

For many 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 2012, EPA continued use of the third set of OMB-approved evaluation instruments developed through this collaboration and continued to collect and analyze evaluation data in detail until the instruments expired in June 2012. During the remainder of FY 2012, we worked with USIECR to finalize procedures for the fourth set of OMB-approved evaluation instruments and plan to implement them in FY 2013.

In FY 2012, based on findings from our earlier aggregate case evaluations, we made changes to the model statements of work for neutral third party practitioners under the Conflict Prevention and Resolution Services (CPRS) Contract to emphasize the following practices:

- Inquiries about whether individual parties have the time, financial, and logistical resources necessary to participate effectively in the ECR process and - where resources are inadequate – assistance in identifying appropriate resources or in making necessary adjustments to the process to accommodate resource constraints;
- Assistance in identifying the issues that are important to resolving a controversy and solutions that will address the needs shared by the parties;
- Promoting active engagement from all participants;
- Exploring with the parties appropriate ways to incorporate high quality and relevant information resources necessary to resolve the issues; and
- Ensuring that participants have appropriate authority to make commitments on behalf of their organizations to support productive dialogue and effective implementation of any agreements reached by the parties.

Gauging the Use of ECR

EPA has three methods for gathering data about the use of ECR throughout the Agency. The first method is the CPRS 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 for shared cases.

The second method for measuring ECR use 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 tracking system, in which CPRC staff members log requests received for alternative dispute resolution and ECR services. 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.

ECR-related Training Evaluation

In parallel to the CPRC's training efforts described in question 1 above, we continued to implement a training session evaluation approach in FY 2012. This approach measures both the satisfaction of participants with presentations and logistics and the participants' view about whether the training achieved the learning goals set out in the courses. We are using the results of the training session evaluation to make regular

improvements in training delivery. In FY 2013, we plan to continue the evaluation process for CPRC-sponsored training greater than two hours in duration and begin developing additional tools to assess the impact of our training.

6. Describe other significant efforts your agency has taken in FY 2012 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 U.S. Environmental Protection Agency (EPA) has a long history of working collaboratively with its stakeholders to further the Agency's human health and environmental mission. For disputes, the use of unassisted negotiation is very common and successful. Best efforts are made to resolve environmental conflicts without litigation, whether those conflicts arise with states, tribes, public interest groups, or facilities. EPA headquarters and regional offices have provided examples of how we continued to collaborate in FY 2012 in ways other than the use of ECR as defined in the OMB/CEQ ECR policy memorandum. These examples are described below.

Office of Air and Radiation (OAR) - OAR has benefitted greatly from the use of ECR in recent years in its work with the Clean Air Act Advisory Committee (CAAAC), its primary federal advisory committee. Neutral third party facilitation services assisted the CAAAC in producing several high quality reports over the last three years. Funding constraints in FY 2012 led OAR to decide not to use a neutral third party to facilitate the CAAAC's latest project, which was to provide advice on potential streamlining of greenhouse gas permitting. However, prior experience with ECR on the part of both CAAAC members and the staff involved in this project served the effort very well. The committee was well balanced to represent a range of views and the process went very smoothly leading to a timely and high quality set of recommendations delivered to OAR's senior leadership. The final report can be reviewed online at <http://www.epa.gov/air/caaac/reports.html>.

OAR has increased transparency through successful stakeholder involvement in its programs; it is getting more parties involved and earlier in the decision making process. This is a particular priority in its tribal and environmental justice programs. In FY 2012, OAR has also proposed more diverse membership for the CAAAC to expand these views on the committee. Having these new voices included in the earliest stages of developing recommendations will be extremely valuable to prevent or identify and address conflicts in a timely manner.

Office of Chemical Safety and Pollution Prevention (OCSPP) - To anticipate, prevent, and better manage environmental issues in FY 2012, OCSPP continued to meet with stakeholders in planned formal multi-partner federal advisory committees, such as the Pesticide Program Dialogue Committee, which meets as a full committee twice a year, with ongoing workgroup and sub-workgroup meetings. These meetings and associated workgroups allow OCSPP to efficiently and clearly engage in communication with a wide variety of stakeholders. This provides an opportunity to learn from them about any issues they would like OCSPP's Office of Pesticide Programs to address, to discuss with each other any differing perspectives on those issues, and to present updates or information on upcoming Agency activities or initiatives in an open forum. Similarly, early and clear stakeholder engagement on

several pollution prevention and toxic substances proposed rules and long-term activities (such as the development of a list of workplan chemicals that would be used for risk assessments, or the creation of a public interface for exploring EPA's chemical data) has allowed the Agency to learn about stakeholder needs and perspectives on these issues.

With regard to federal and state partners, OCSPP continues to engage in formal groups (such as State-FIFRA Issues Research and Evaluation Group and National Association of State Department of Agriculture for pesticide issues) as well as routinely meet with other agencies as part of rulemaking or other workgroups. These continued efforts contribute greatly to preventing conflicts related to environmental issues.

Office of Enforcement and Compliance Assurance (OECA) - By its very nature, OECA's Office of Environmental Justice (OEJ) does not implement policy, nor does it have direct participation in potential disputes around site-specific environmental issues or litigation. However, OEJ can and does lead or participate in facilitated policy dialogues around issues relevant to its mission, including alternative dispute resolution consultation, public participation, consensus-building, conflict analysis, dispute prevention and dispute resolution services to headquarters and regional staff and external parties. OEJ has created, funded, and continued to foster programs that support collaborative problem-solving among external stakeholders:

- Through task orders under the Conflict Prevention and Resolution Services Contract, OEJ provides educational and technical assistance to support communities affected by environmental challenges. This support includes facilitated dialogue for a wide range of communities receiving assistance under a variety of EPA grant programs.
- Through the Environmental Justice Small Grants Program, OEJ supports and empowers communities working on solutions to local environmental and public health issues. The grant program assists recipients in building collaborative partnerships to help them understand and address environmental and public health issues in their communities. Successful collaborative partnerships involve well-designed strategic plans to build, maintain and sustain the partnerships, and also to work towards addressing the local environmental and public health issues. For more information, please see <http://www.epa.gov/environmentaljustice/grants/ej-smgrants.html>
- Through its administration of the Environmental Justice Showcase Communities Project, OEJ provides funding to regional offices in support of efforts that bring together governmental and non-governmental organizations and pool their collective resources and expertise on the best ways to achieve real results in communities. The successes and lessons learned in these demonstration projects will be used to help guide the design and implementation of future environmental justice projects and will help EPA increase its ability to address local environmental challenges in more effective, efficient, and sustainable ways. For more information, please see <http://www.epa.gov/environmentaljustice/grants/ej-showcase.html>

Office of Research and Development (ORD) - ORD includes affected stakeholders on many of its important scientific issues through public notice, comment, and meetings requiring no ECR facilitation or mediation. ORD routinely uses the authorities provided under the Solid Waste Disposal Act; Clean Water Act; Safe Drinking Water Act; Clean Air Act; Toxic Substances Control Act; Federal Insecticide, Fungicide, and Rodenticide Act; Executive Orders; and other related laws, orders, and federal rules and regulations to obtain independent peer reviews and advice on addressing scientific issues.

Office of Solid Waste and Emergency Response (OSWER) – OSWER’s Office of Superfund Remediation and Technology Innovation typically utilizes its regional community involvement coordinators to work with local communities to help resolve site related cleanup issues. In addition, OSWER's Office of Federal Facilities Restoration and Reuse may utilize dispute resolution provisions in federal facility agreements associated with federal facility Superfund sites. Also, OSWER’s Office of Resource Conservation and Recovery was able to resolve a long-standing complaint from commercial sectors to clarify the application of Resource Conservation and Recovery Act (RCRA) hazardous waste regulations to pharmaceutical wastes at retail stores. By working with a number of large retailer stakeholders, it was able to provide retailers with clear guidance to help ensure the safe and responsible disposal of RCRA-listed pharmaceutical residues.

In addition, OSWER has developed the Community Engagement Initiative (CEI) to enhance OSWER’s and regional offices' engagement with local communities and stakeholders to help them meaningfully participate in government decisions on land cleanup, emergency preparedness and response, and the management of hazardous substances and waste. A CEI draft Implementation Plan was released in May 2010, and lays out specific actions and activities that EPA will undertake to achieve the goals and objectives of the CEI Action Plan. It is a working document that presents guiding principles, goals and objectives for the initiative and outlines roles and schedules. Progress and results will be assessed regularly and any changes to plans or schedules will be posted on OSWER's website at <http://www.epa.gov/oswer/engagementinitiative>.

The Superfund program is beginning to pilot the Partners in Technical Assistance Program (PTAP). It is initially piloting PTAP with universities across the country that are grantees with the National Institute of Environmental Health Sciences Superfund Research Program. Based upon the experience with the pilot, OSWER expects to expand this partnership to other colleges and universities with unique curricula specifically tailored to assisting impacted communities and nonprofits that provide communities technical assistance or capacity-building support.

Office of Water (OW) – Several of OW’s offices took steps in FY 2012 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not fit

within the Policy Memo's definition of ECR.

OW's Office of Ground Water and Drinking Water OGWDW convened two meetings of the National Drinking Water Advisory Council (NDWAC). Among other things, OGWDW uses NDWAC to support collaborative policy reviews and potential conflict resolution. NDWAC is composed of a diverse set of stakeholder representatives of environmental groups, the drinking water industry, and public health and public interest groups. OGWDW seeks out diverse views from NDWAC to ensure that the range of voices and opinions are heard. Where needed, NDWAC forms special subgroups to work on specific issues.

Also during FY 2012, OGWDW continued to work with neutral third party facilitators for the agency's outreach for the following activities:

- Executive Order 13563 Retrospective Reviews and Executive Order 12866 Rulemaking - The purpose of this activity is to support the Agency's intent to improve collaboration with our partners during regulatory review and the early development of rules for the actions listed below. Some of these were tailored to be sensitive of key stakeholder groups with divergent issues. They were structured to utilize venues such as webinar and public meeting sessions to provide the opportunity for exchanges of information and ensure the inclusion of all interests and points of view. These activities are:
 - The Consumer Confidence Rule Review;
 - The Long Term 2 Enhanced Surface Water Treatment Rule Review;
 - The Lead and Copper Proposed Rule; and
 - The Perchlorate Proposed Rule.
- Hydraulic Fracturing (HF) Guidance Development - OGWDW is continuing to work with a neutral facilitator for the Agency's outreach in discussions about HF. This facilitation is tailored to the low level of trust between and among some key stakeholder groups with divergent issues. During a public comment period for the draft guidance, EPA held a facilitated public meeting to 1) present background information about the draft guidance and its purpose, and previous outreach in developing the guidance; and 2) to provide a listening session for comments from the attendees. Given the contentious nature of concerns regarding HF, information exchange opportunities are more appropriate using neutral facilitators for webinars and public meetings.

OW's Office of Science and Technology (OST) continued to support collaboration and conflict resolution in several ways. OST supported OW's efforts to promote the use of effective facilitation for development of the Urban Waters Federal Partnership. OST's Deputy Office Director began facilitating meetings to improve the working relationship between the Office of Water and EPA's Office of Policy using ECR principles. This helped demonstrate to OST staff and the management team, upper management's belief and commitment to the power and effectiveness of mediation and ECR. The OST senior management team has also been particularly effective in interactions with states on approval and disapprovals of state water quality submissions. These interactions

have benefitted greatly from past experience with use of ECR involving a highly effective neutral third party.

In January and February 2012, OW and OECA held a series of five workshops around the country to discuss a draft framework for an integrated planning approach to municipal stormwater and wastewater management. OW, OECA, and regional managers led the workshop discussions. Key external stakeholders involved in the workshops included elected officials representing the National League of Cities and the Conference of Mayors, environmental groups, state National Pollutant Discharge Elimination System (NPDES) officials, and utility managers representing the National Association of Clean Water Agencies and the National Association of Flood and Stormwater Management Agencies and Water Environment Federation. These stakeholders participated in a dialogue about the principles, elements, and tools for implementation associated with the integrated approach, as well as impediments municipalities face.

Region 1 (Boston) - As in recent years, a major portion of the Region 1 ECR Program's work was devoted to anticipating, preventing, mitigating, and/or better managing conflict through enhanced communication. This often takes the form of facilitated dialogues, conferences, and other stakeholder processes aimed at sharing information, generating ideas, promoting understanding of diverging perspectives, clarifying misunderstandings, and building relationships.

In this vein, during FY 2012, the Region began working with other stakeholders to convene a Southeastern New England Estuaries collaboration to address watershed issues on a regional basis in this sensitive swath of coastline and related watersheds. The Region continued to play a leadership role in maintaining the momentum of the New England Green Chemistry Challenge, a multi-sector partnership aimed at promoting the awareness and application of green chemistry principles across the Region. FY 2012 also saw a continuation of the Region's longstanding practice of using ECR approaches to address environmental justice concerns, wherever appropriate. Neutral facilitators assisted with a range of community engagement and environmental problem-solving efforts, including those designed to elicit and be responsive to community concerns in areas affected by the New Bedford Harbor Superfund remedy and the Housatonic River cleanup. The Region provided in-house facilitation to assist with the annual three-day environmental meeting with the ten New England tribes from Maine to Connecticut and, most recently, in-house facilitators helped engage community stakeholders in scoping a health impact assessment to inform remedial decisions at a contaminated elementary school with disproportionately high asthma rates in Springfield, MA.

Region 2 (New York) - Region 2 participated in a number of collaborative efforts on environmental issues that did not utilize the assistance of a neutral third party. In FY 2012, two major areas of such collaborative efforts are inter-governmental collaborative work and efforts focused on communities. With respect to the inter-governmental efforts, Region 2 has been among a number of federal agencies working

collaboratively with the Mid-Atlantic Regional Council on the Ocean, a group of mid-Atlantic states concerned with ocean and coastal resources. Region 2 organized the Virtual Forum on Climate Adaptation for New York and New Jersey, a series of recurring discussions with climate change leaders from New York and New Jersey to share information and best practices. The EPA/Department of Housing and Urban Development/Department of Transportation Sustainability Partnership built capacity for facilitating their own meetings through retreats facilitated by the Office of Regional Counsel's ECR Specialist and then began self-facilitation to run their biweekly meetings more effectively. Region 2 participated in writing portions of the National Climate Assessment (Northeast Region) in a collaborative process with other federal agencies, state government, and non-governmental organizations.

Region 2 also worked closely with communities in FY 2012 in a manner that promoted ECR. For example, Region 2 worked with communities including Onondaga County, Binghamton, Trenton, Jersey City, and Syracuse on EPA's Building Blocks for Sustainable Communities Program. The program is designed to address communities' development goals, improve quality of life, and become more sustainable. EPA produced technical options papers that offered potential pathways to address the disparate interests of multiple stakeholders within the communities. The options papers addressed topics such as green infrastructure and EPA's "Complete Streets" program. Region 2 also worked with communities such as Patterson, NJ and Onondaga County, NY to integrate Federal Emergency Management Agency hazard mitigation plans with other local planning documents such as land use plans. Region 2 engaged Columbia University to develop a tool that helps communities avoid conflict when integrating the hazard mitigation plan with other local planning documents.

Region 3 (Philadelphia) - Region 3 seeks to engage in facilitative and collaborative activities involving EPA, states, local communities, non-governmental organizations, and other federal agencies where appropriate within the Region. In addition, Region 3 also seeks opportunities to minimize potential disputes with responsible parties in matters, when possible, through negotiation. By way of example, various programs within Region 3 will issue "Show Cause" letters to responsible parties, intended to apprise such parties of statutory violations and penalty assessments and provide an opportunity for the parties to negotiate a resolution of the matter without the need of litigation. One Regional program, the Oil and Prevention Branch, successfully resolved 28 penalty matters (resulting in consent agreement and final orders) as a result of negotiations following the issuance of "Show Cause" letters during FY 2012.

Region 4 (Atlanta) - Regional activities or efforts by the Region that might not exactly meet the definition of ECR, but still represent efforts to better manage and defuse environmental issues, include: case negotiations to resolve matters; training of attorneys, and regional and state inspectors on negotiation skills; facilitation and settlement tools, such as the use of supplemental environmental projects; and Regional/state collaborative efforts, such as partnership activities and agreements (e.g., watershed planning groups). The Region also uses its environmental compliance

assistance programs to reduce potential human exposure to toxics and promote better environmental compliance in a non-adversarial setting.

Region 4 promoted an assisted collaborative process for convening and facilitation of a series of hearings in response to a request from the Commonwealth of Kentucky. The Region held three facilitated public hearings in June 2012 to hear from stakeholders and the public about what actions to take on 36 draft individual NPDES permits for coal mining discharges in Kentucky. The Region provided support in developing the contracts and plans for the process, locating/selecting the convening and hearing facilitator, and provided coordination support to the overall process and hearing.

Region 6 (Dallas) – Region 6 has tried to engage stakeholders earlier in the process before issues arise or conflicts ensue. One example is substantive discussions with state counterparts to better coordinate and communicate roles and responsibilities of the various regulatory entities. Additionally, the Region has committed, whether using ECR techniques or not, to expand communication with communities, especially those surrounding regulated facilities.

Region 7 (Kansas City, KS) - Region 7 continued its practice of using pre-filing negotiations in all administrative enforcement actions seeking a monetary penalty. Many actions continue to be settled in the pre-filing stage.

Region 8 (Denver) - The National Environmental Policy Act program in Region 8 conducted an unassisted dialogue process regarding water rights on the Colorado River. These self facilitated meetings between the Army Corp of Engineers, Colorado's Department of Natural Resources, the U.S. Forest Service and U.S. Fish and Wildlife Service are intended to enhance understanding and cooperation between the parties regarding use of this limited natural resource.

Region 10 (Seattle) - As appropriate, and particularly with regard to matters of significant public interest, the Region worked with interested stakeholders as it implemented its various programs. This effort primarily manifested itself in community outreach efforts and in coordination of the Region's work products with states, tribes, local communities and other stakeholders, as well as internal training efforts. In addition, Region 10 continues to utilize the administrative dispute resolution processes articulated in administrative orders on consent and consent decrees to resolve disputes without the assistance of a neutral third party. The Region also provides opportunities for pre-filing negotiations in most administrative enforcement actions. This frequently results in EPA resolving the underlying matter without filing a case.

Section 4: Demonstration of ECR Use and Value

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

The U.S. Environmental Protection Agency's (EPA's) most significant ECR achievement in FY 2012 was the Agency's continued support for ECR cases and related services. EPA is reporting a total of 203 ECR cases for FY 2012. In FY 2012, EPA sponsored 88% of the ECR cases in which it participated and all headquarters media offices and regions supported and/or participated in ECR cases. The Agency's FY 2012 ECR cases arose in all policy contexts for ECR applications and in all decision-making forums.

Our ECR case numbers, however, tell only part of the story. The Agency's extramural expenditures on ECR cases and related services, as measured by dollars spent through the Conflict Prevention and Resolution Services Contract – EPA's primary mission contact for ECR – were \$4.7 million. The Agency also spent about \$100,000 under our interagency agreement with the U.S. Institute for Environmental Conflict Resolution and increased the number of active projects by one. These results clearly demonstrate EPA's strong commitment to using ECR to address the fundamental governance challenge described in the OMB/CEQ ECR policy memorandum and to further the Agency's mission to protect human health and the environment.

Awards for EPA ECR Efforts

In FY 2012, several EPA ECR efforts received important recognition in the form of Agency and interagency awards.

- **Oregon Fish Consumption Rate and Water Quality Standards Rule Facilitated Dialogue** – This facilitated dialogue was convened to develop a revised water quality standard for toxic pollutants that would be protective of fish consumers in the entire state of Oregon. The dialogue was jointly sponsored by EPA, the Confederated Tribes of the Umatilla Indian Reservation, and Oregon's Department of Environmental Quality. The project was prompted by earlier difficult negotiations among the three governments and their commitment to approach the problem with a more collaborative approach—with the assistance of an impartial facilitator. After nearly a decade of disagreement and frustration, leaders from the three governments chose to approach this issue in a new way. They began the dialogue with a commitment to a new goal: to reach consensus among the three governments on a final recommendation for how to protect Oregon's higher fish consumers. On October 17, 2011, as a direct outcome of this collaboration, EPA approved Oregon's revised water quality standards for toxic pollutants to protect human health, based on a fish consumption rate of 175 grams/day, or approximately 23

fish meals a month. This standard protects the most vulnerable populations, tribes and environmental justice communities who rely on subsistence fishing for their food sources. In recognition of their successful dialogue, the parties and facilitator received the first Environmental Collaboration and Conflict Resolution Award, presented at the May 2012 national ECR conference in Tucson, AZ. The award is presented in recognition of exemplary and innovative environmental collaboration and conflict resolution efforts that helped affected parties arrive at a common goal or agreement. The team of EPA employees who supported this effort also received the Agency's silver medal for superior service, the second highest honor award at EPA.

- **ECR for the National Environmental Policy Act Air Quality National Memorandum of Understanding for Federal Oil and Gas Decisions** – The “MOU Among the USDA, DOI, and EPA Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions through the NEPA Process,” signed on June 23, 2011, establishes a common set of guidelines for USDA, DOI, and EPA for analyzing and mitigating potential air quality impacts of proposed federal decisions on oil and gas extraction activities, in order to increase efficiency, certainty, and transparency. This significant agreement was the culmination of two years of intense collaboration by members of the negotiating team representing the Bureau of Land Management, EPA, the U.S. Forest Service, the National Park Service, and the Fish and Wildlife Service. The U.S. Institute for Environmental Conflict Resolution (USIECR) provided neutral facilitators, who assisted the negotiation team in reaching their agreement. The negotiating team received EPA's silver medal for superior service, the Agency's second highest honor award. EPA employees on the team also received the Agency's award for outstanding leadership in collaborative problem-solving. This case was also nominated for the first Environmental Collaboration and Conflict Resolution Award.
- **Region 5 (Chicago) ECR for Administrative Enforcement Cases** - A team of 12 staff members in Region 5 and the CPRC received an EPA bronze medal for commendable service from the Agency's Office of General Counsel for the creative use of ECR in settling a set of difficult administrative enforcement cases. The award recognizes four Region 5 case teams whose use of ECR contributed to the Agency's ability to settle or prosecute cases under the Federal Insecticide, Fungicide, and Rodenticide Act; the Emergency Planning and Community Right-to-Know Act; and the Resource Conservation and Recovery Act. It also recognizes two Region 5 ECR specialists for their effort to promote appropriate use of ECR and to assist Office of Regional Counsel attorneys and technical staff in accessing ECR resources and filing supportive documents with the Office of Administrative Law Judges. Consultations between case teams and with the ECR specialists smoothed the way in selecting mediators, filing motions, and discussing difficult challenges.

Environmental Appeals Board Alternative Dispute Resolution Program

In FY 2012, EPA's Environmental Appeals Board (EAB) reviewed its Alternative Dispute Resolution (ADR) Pilot Program and determined that it should be offered in appropriate cases on a permanent basis. This determination was based on the fact that parties in approximately 30% of the cases filed with the EAB voluntarily agreed to submit their disputes to the ADR Pilot Program. Of the nine cases that have gone through the Board's ADR process, only two failed to settle. With its 78% success rate, the Board's ADR program has achieved a substantial economic and environmental benefit for the agency, both in conserving staff resources (EAB staff as well as other agency and government staff who participate in the appeals process before EAB or in federal court) and achieving earlier environmental protection than afforded by the traditional appeals process (which can potentially proceed to judicial litigation, and thus delayed environmental protection, after the administrative process is complete).

Office of Water ECR Efforts on Clean Water Act Section 404 and the National Environmental Policy Act

In FY 2012, the Office of Water's Office of Wetlands, Oceans, and Watersheds (OWOW) undertook several important ECR activities related to Clean Water Act Section 404 and the National Environmental Policy Act (NEPA). OWOW initiated a major effort using USIECR to launch a program assessment of the Clean Water Act Section 404 program. The purpose of the program assessment will be to:

- Identify opportunities within the current 404 permitting process to advance earlier cooperation among federal partners at all levels of coordination (regional and national); and
- Recommend what steps could be taken to promote earlier cooperation and partnerships.

OWOW also engaged with USIECR to provide rapid neutral assessment of a transportation dispute (Provo-Westside Connector) that is part of the Infrastructure Executive Order.

Further, OWOW engaged neutral third parties under the Conflict Prevention and Resolution Services Contract to initiate valuable discussions on the assumption of the 404 program in Oregon, to provide facilitation assistance for the Bristol Bay Watershed Assessment, and facilitation for the Utah NEPA/404 Merger negotiations in Region 8. OWOW's Wetlands Division has expanded their use of facilitation services to include field staff training assessments and capacity building under the Wetland Program competencies.

8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2012). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECR effort was funded The Emergency Planning & Community Right-To-Know Act (EPCRA) was enacted to protect local public safety officials and the public from potential releases of hazardous chemicals used in manufacturing and industrial operations. The statute provides the public with important knowledge of and access to information regarding the presence of hazardous chemicals in their community and releases of these chemicals into the environment within their community. EPCRA ensures that local fire departments and other emergency response personnel have the critical and timely information necessary to make the split-second decisions required to protect public safety in the event of fires or spills at a facility containing hazardous chemicals. Without the knowledge of what chemicals and potentially hazardous substances are located at a facility and notice of their release, both the health and safety of emergency personnel and the public could be at substantial risk. The Barrick Cortez gold mine, located 100 kilometers southwest of Elko, Nevada, raised just such a possibility. The Barrick Cortez gold mine was known to use hazardous chemicals in its operations, but, due to a disagreement with EPA over its reporting requirements under EPCRA, did not notify the local community of their presence or release as EPA contended they were obligated to do. EPA believed that this was a clear violation of the statute. Following nearly a year of unsuccessful attempts to negotiate a resolution of the dispute, EPA filed an administrative enforcement action against Barrick Cortez to obtain compliance with EPCRA requirements and to ensure the health and safety of local citizens and emergency response personnel. The pending litigation was sure to be difficult and costly, with an unknown probability of success for either EPA or Barrick Cortez. In response to this difficult set of circumstances, the EPA litigation team evaluated options for meeting the Agency's interests and strategically determined to seek the use of mediation to assist settlement negotiations. In collaboration with the Senior ADR Specialist of EPA's Conflict Prevention & Resolution Center serving as a convening neutral third party, EPA reached agreement with the company to use ECR and to share equally the costs of mediation. Through a careful analysis of settlement challenges, the parties reached agreement to employ John Bickerman, a nationally regarded private neutral third party, as the mediator. The parties then jointly petitioned the court and obtained a stay of litigation to focus on mediation. With approval from the Administrative Law Judge, the stay was renewed several times over the course of the negotiations.
Summary of how the problem or conflict was addressed using ECR, including details of any innovative approaches to ECR, and how the principles for engagement in ECR were used (See Appendix A of the Policy Memo, attached) Throughout the lengthy and often contentious settlement discussions, the mediator skillfully used ECR best practices to assist the parties overcome the substantial challenges to reaching a consensus. Through creating an effective collaboration between the parties, the mediator was able to open communications on contentious issues, which allowed for the exchange of critical previously

undisclosed information and facilitated the difficult deliberations. Specifically, the experts from both sides met with the mediator to compare their analyses of the chemicals manufactured during the process of extracting gold from mined rock, a critical issue in contention. Through the efforts of the experts, the issues in dispute were narrowed significantly. With the help of the mediator, the parties' counsel also explored and reached agreement on some "out of the box" ideas that were critical in reaching a creative and sustainable global settlement. Through this effort, Barrick Cortez was able to obtain needed certainty with respect to both the mine in this enforcement action and other mines it operated, which were currently under investigation by EPA. The company agreed to undertake certain obligations to test its metal extraction processes that were not required by law or regulation, which provided EPA with additional tools to improve its enforcement efforts at mining operations throughout the United States. Neither of these outcomes could have been achieved had the enforcement action been litigated in a traditional manner. The increased understanding, creative focus, and trust afforded by the mediation process were essential to the parties' success.

Identify the key beneficial outcomes of this case, including references to likely alternative decision making forums and how the outcomes differed as a result of ECR

Despite seemingly insurmountable obstacles, the mediation obtained a precedential settlement that not only ensures the health and safety of the public and local emergency response officials near the Barrick Cortez mine, it also establishes a new level of understanding about mining operations and sets an example of collaboration that will benefit mining communities throughout the nation. Through the use of mediation, EPA secured a civil penalty and compliance with EPCRA without the need for litigation, avoided the need to bring multiple legal actions to protect communities in the vicinity of other Barrick mines, and obtained the agreement of the company to perform an innovative sampling and analysis program, which will provide EPA important knowledge about the manufacturing of compounds during gold mining processes. In turn, Barrick obtained certainty on how to comply with EPCRA reporting requirements at all of its gold mines and was able to negotiate a reasonable penalty for its alleged violations at multiple facilities. The certainty for future endeavors and finality afforded by the mediation were key features that lead to a sustainable global settlement.

Due to the creativity and collaborative approach provided by mediation, fire department and emergency response personnel will have the critical and timely information necessary to protect the health and safety of the community near Barrick Cortez mining operations. But beyond that, communities throughout the nation will benefit through the results of the innovative sampling and analysis program to be established by the company.

Reflections on the lessons learned from the use of ECR

The use of mediation provided parties, in the midst of contentious litigation, an opportunity to work collaboratively, and to consider solutions that creatively met the needs of all parties and would have been unavailable in the traditional litigation of an enforcement action. This important, and once improbable, settlement will have far reaching benefits for EPA's EPCRA Program, Barrick Cortez, and gold mining communities nation-wide. It could not have been achieved without the assistance of a skilled mediator who used ECR best practices to assist the parties in shifting from an adversarial to a collaborative relationship that allowed them to consider creative alternatives. The mediator provided constant support and encouragement, offered suggestions to address occasional roadblocks, served as a buffer to the inevitable frustrations during the protracted negotiations, and kept the parties focused on their goals. In addition, the mediator's skill in providing feedback on negotiation strategies and assisting with intra-party management deliberations were essential to the success of the negotiation.

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

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

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

In general, collecting these data posed little difficulty at the U.S. Environmental Protection Agency (EPA). We appreciate OMB/CEQ's collaborative spirit in developing the new Environmental Collaboration and Conflict Resolution annual report template for FY 2013, which addresses many of the issues with past templates and will provide a sound basis for future reporting.

Please attach any additional information as warranted.

Report due February 15, 2013.

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

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

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

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