

FY 2008 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 third year of reporting in accordance with this memo for activities in FY 2008.

The report deadline is January 15, 2009.

We understand that collecting this information may be challenging; however, after compiling previous reports, the departments and agencies can collect this data to the best of their abilities. The 2008 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 2008 ECR reports. You

may be contacted for the purpose of clarifying information in your report. For your reference, copies of the analysis of FY 2006 and FY 2007 ECR reports will be 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 |
| Contact information (phone/email): | 202.564.0696 |
| Date this report is being submitted: | January 14, 2009 |

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2008, including progress made since 2007. 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.]

EPA has been engaging in and providing significant programmatic/institutional support for ECR for decades. As a result, the Agency now 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 2008 in each of the four areas identified in the OMB/CEQ ECR policy memorandum.

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

EPA's ECR program furthers all five goals in EPA's Strategic Plan: 1) clean air and climate change; 2) clean and safe water; 3) land preservation and restoration; 4) healthy communities and ecosystems; and 5) compliance and environmental stewardship. In addition, the Agency's Strategic Plan and the Administrator's Action Plan both explicitly recognize the importance of using collaborative approaches, such as ECR, to break through institutional and other barriers, produce more effective and durable decisions, and boost the potential for agreement. As in previous years, the Agency used ECR in activities supporting each of the five Strategic Plan goals in FY 2008. 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 more than 200 ECR cases for FY 2008 covering all ECR application contexts and decision making forums.

EPA's Conflict Prevention and Resolution Center (CPRC) continued implementing an internal strategy to increase the use of ECR by providing superior ECR services; building knowledge, awareness, and skills; and enhancing EPA's organizational capacity. For each of these goals, the ECR strategy contains measurable performance objectives and describes the anticipated approach to reaching these objectives. The ECR strategy covers the period from 2006-2010 and is explicitly linked to the Agency's strategic goals. In FY 2008, as in previous years, the CPRC developed and implemented an annual operating plan with specific action items and dedicated FTEs 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. The CPRC provides policy support and access to neutral third party services for ECR as well as alternative dispute resolution (ADR) used in other contexts.

The Agency's ADR policy (65 FR 81858, December 2000), which states EPA's strong support for the use of ECR and other forms of ADR to deal with disputes and potential conflicts, contains many themes in common with the OMB/CEQ ECR policy memorandum. In particular, it articulates the following expected benefits from ADR/ECR:

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

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

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

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

Senior EPA leadership continues to provide encouragement and support for the use of ECR, as it has for the past three decades. In FY 2008, EPA's Administrator, Assistant Administrators, General Counsel, and Regional Administrators initiated and engaged in high-profile ECR cases, including the Montana-Wyoming facilitated discussion on water quality standards, Total Coliform negotiated rulemaking, and the Coeur d'Alene Lake Management Plan dialogue. These cases and others reflect an increasing complexity in the types of situations for which ECR is being considered and used at EPA.

As in previous years the Agency emphasized outreach, education and training activities to promote the increased use of ECR. These activities are described in question 7 below.

Invest in Support of Programs

Over the years, EPA has made considerable investments to support its ECR program, a trend which continued in FY 2008. In FY 2008, the Agency had eight FTEs in the CPRC and two and a half FTEs total in the New England, Denver, and San Francisco regional offices devoted to ECR. In addition, more than 20 other individuals support the ECR program as part of their job responsibilities or on a collateral duty basis. The Office of Administrative Law Judges continued to provide judges to serve as mediators in administrative enforcement cases when requested by parties. Judges on EPA's Environmental Appeals Board are also trained to serve as mediators.

In FY 2008, EPA used more than \$4.4 million in ECR services (e.g., neutral third parties for ECR cases, ECR training) on more than 83 active task orders under its Conflict Prevention and Resolution Services Contract, which is administered by the CPRC. The contract provides one-stop shopping for all headquarters and regional offices to access ECR services in a cost-effective, efficient manner, with most services being initiated within two weeks of a request.

EPA also utilized more than \$169,000 of services for a total of six active projects through its interagency agreement with the U.S. Institute for Environmental Conflict Resolution (USIECR). A portion of the funding available under the interagency agreement provided ongoing support to the National Roster of Environmental Dispute Resolution and Consensus Building Professionals. EPA is among the few federal agencies to provide support for the National Roster.

EPA continued to strengthen its partnership with other federal agency ECR programs during FY 2008. EPA and the U.S. Department of the Interior furthered their collaboration on evaluating the effectiveness and outcomes of ECR through the Systematic Evaluation of Environmental and Economic Results project, as described in question 5 below. EPA and USIECR also continued work under their interagency agreement on a range of projects, including the Coeur d'Alene Lake Management Plan case and a series of "collaboration workshops" for EPA and other federal agency staff involved in the National Environmental Policy Act review program.

Focus on Accountable Performance and Achievement

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

Section 2: Challenges

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

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2008 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR “case or project” is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

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

| | Cases or projects in progress ¹ | Completed Cases or projects ² | Total FY 2008 ECR Cases ³ | Decision making forum that was addressing the issues when ECR was initiated: | | | | | Of the total FY 2008 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 | __7__ | __4__ | __11__ | __6__ | __0__ | __0__ | __5__ | Voluntary Programs, State Standards | __11__ | __0__ |
| Planning | __9__ | __7__ | __16__ | __7__ | __0__ | __0__ | __9__ | Interagency, Inter-regional, and Inter-office Coordination | __15__ | __1__ |

¹ A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2008 and did not end during FY 2008.

² A “completed case” means that neutral third party involvement in a particular matter ended during FY 2008. 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 FY2008 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).

| | | | | | | | | | | |
|--|--|------------|------------|--|-----------|-----------|-----------|---|--|-----------|
| Siting and construction | __0__ | __1__ | __1__ | __0__ | __0__ | __0__ | __1__ | Environmental justice community controversy | __1__ | __0__ |
| Rulemaking | __3__ | __2__ | __5__ | __3__ | __0__ | __2__ | __0__ | | __3__ | __2__ |
| License and permit issuance | __3__ | __2__ | __5__ | __2__ | __3__ | __0__ | __0__ | | __5__ | __0__ |
| Compliance and enforcement action | __53__ | __89__ | __142__ | __30__ | __94__ | __15__ | __3__ | Misc. | __127__ | __15__ |
| Implementation/monitoring agreements | __5__ | __2__ | __7__ | __4__ | __0__ | __0__ | __3__ | Misc. | __7__ | __0__ |
| Other (specify): Voluntary Programs, State Oversight, etc. | __13__ | __6__ | __19__ | __7__ | __0__ | __2__ | __10__ | Voluntary Programs, etc. | __16__ | __3__ |
| TOTAL | 93 | 113 | 206 | 59 | 97 | 19 | 31 | | 185 | 21 |
| | (the sum should equal Total FY 2008 ECR Cases) | | | (the sum of the Decision Making Forums should equal Total FY 2008 ECR Cases) | | | | | (the sum should equal Total FY 2008 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 2008 ECR Cases ⁸ | Decision making forum that was addressing the issues when ECR was initiated: | | | | | Of the total FY 2008 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 | __2__ | __2__ | __4__ | __2__ | __0__ | __0__ | __2__ | Voluntary Programs, State Standards | __4__ | __0__ |
| Planning | __1__ | __0__ | __1__ | __1__ | __0__ | __0__ | __0__ | | __1__ | __0__ |
| Siting and construction | __0__ | __1__ | __1__ | __0__ | __0__ | __0__ | __1__ | Environmental justice community controversy | __1__ | __0__ |
| Rulemaking | __3__ | __0__ | __3__ | __1__ | __0__ | __2__ | __0__ | | __1__ | __2__ |
| License and permit issuance | __1__ | __1__ | __2__ | __0__ | __2__ | __0__ | __0__ | | __2__ | __0__ |
| Compliance and enforcement action | __37__ | __82__ | __119__ | __10__ | __94__ | __15__ | __0__ | | __105__ | __14__ |
| Implementation/monitoring agreements | __3__ | __1__ | __4__ | __3__ | __0__ | __0__ | __1__ | State Rulem | __4__ | __0__ |

⁶ A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2008 and did not end during FY 2008.

⁷ A “completed case” means that neutral third party involvement in a particular matter ended during FY 2008. 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 FY2008 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).

| | | | | | | | | | | |
|--|--|-----------|------------|--|-----------|-----------|----------|--------------------|--|-----------|
| | | | | | | | | aking | | |
| Other (specify): Voluntary Programs, State Oversight, etc. | _5_ | _3_ | _8_ | _4_ | _0_ | _2_ | _2_ | Voluntary Programs | _6_ | _2_ |
| TOTAL | 52 | 90 | 142 | 21 | 96 | 19 | 6 | | 124 | 18 |
| | (the sum should equal Total FY 2008 ECR Cases) | | | (the sum of the Decision Making Forums should equal Total FY 2008 ECR Cases) | | | | | (the sum should equal Total FY 2008 ECR Cases) | |

4. **Is your department/agency using ECR in any of the substantive priority areas (i.e, NEPA, Superfund, land use, etc.) you listed in your FY 2007 ECR Report? Please also list any additional priority areas identified by your department/agency during FY 2008, and indicate if ECR is being used in any of these areas.**

| List of priority areas identified in your department/agency FY 2007 ECR Report | Check if using ECR | Check if use has increased since FY 2007 |
|---|--------------------------|--|
| Interagency Disputes | X | <input type="checkbox"/> |
| National Environmental Policy Act | X | X |
| Superfund Program | X | <input type="checkbox"/> |
| Regulation Development | X | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| List of additional priority areas identified by your department/agency in FY 2008 | Check if using ECR | |
| Wetlands Program | X | |
| _____ | <input type="checkbox"/> | |
| _____ | <input type="checkbox"/> | |
| _____ | <input type="checkbox"/> | |

Please use an additional sheet if needed.

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

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

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 2008, EPA continued to collect and analyze its evaluation data in detail and responded by using the results generated to help inform our ECR practice and program about potential areas for improvement.

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 Conflict Prevention and Resolution Services contract, administered by the CPRC, which allows us to quickly and regularly identify current ECR cases where external service providers are serving as neutral third parties, and the

nature of the cases. Our interagency agreement with USIECR provides similar utility.

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

Assessing the Environmental and Economic Outcomes of ECR

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

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

- Environmental Effects – an index of environmental effects tailored to each case and aggregated into categories to facilitate analysis across cases based on judgments of the importance, probability, magnitude of the environmental and natural resource effects from several different sources.
- Economic Valuation of Environmental Effects – the values of environmental effects are calculated where relevant and credible economic valuation studies exist.
- Effects on the Community – an analysis of how a decision addressed the relationship between conservation and use of natural resources and the effects that the decision had on regulating use.

- Effectiveness of the Decision– a comparison of results related to the efficiency of the decision making process, such as:
 - Information Sharing – the extent to which information is shared at different points before, during, and after the ECR process.
 - Social Capital – existence of relationships among parties that may productively transfer to situations other than the case being evaluated, as well as benefits to the ECR process and effects on morale and public image.
 - Financial Statement Results - Changes in the assets, liabilities, costs and revenues of parties.
 - Time to Reach and Implement a Decision – estimated savings in terms of time and money.

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

In FY 2008, we identified a preliminary set of 17 Superfund ECR cases to be evaluated using SEEER in FY 2009 and began the process of securing an Information Collection Request from OMB, as required by the Paperwork Reduction Act. At the invitation of DOI, CPRC staff gave a presentation on SEEER in November 2007 as part of the DOI Dialogue on Collaborative Conservation and Cooperative Resolution series.

6. Describe other significant efforts your agency has taken in FY 2008 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not fit within the Policy Memo’s definition of ECR as presented on the first page of this template.

EPA has a long history of working collaboratively with its stakeholders to further the Agency’s human health and environmental mission. 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 are continuing to collaborate in ways other than the use of ECR as defined in the policy memo in FY 2008. These examples are described below for their respective offices.

Office of Enforcement and Compliance Assurance (OECA) - OECA has utilized mechanisms other than ECR to resolve environmental issues and conflicts. Through its management of the National Environmental Justice Advisory Council, a federal advisory committee, OECA is coordinating discussions about several environmental

issues, including the impacts of goods movement on air quality in communities, and the development of nationally consistent screening approaches for identifying environmental justice populations.

The State Review Framework (SRF) process, created in 2004 by EPA in collaboration with the states in order to provide consistency in the level of enforcement activities across states and in EPA oversight of state compliance and enforcement programs, helps to provide a level playing field as states compete for business development. Under the SRF, EPA evaluates authorized state enforcement and compliance programs on 12 standard criteria for effectiveness in monitoring, enforcement and data management, and an optional 13th criterion that allows for discussion of other program tools, innovations, or results. After completing reviews of 50 states and 4 territories, in FY 2008 OECA worked with states through the Environmental Council of the States (ECOS) to obtain feedback and suggestions for the SRF. Based on that feedback, the review criteria and guidance for conducting the evaluations were modified. OECA is now implementing the second round of reviews. This collaborative process took place without a neutral third party or a written agreement.

OECA has also created, funds, and continues to foster programs to support collaborative problem-solving among external stakeholders. Through the administration and management of the EPA Collaborative Problem-Solving Cooperative Agreement Grant Program, the Office of Environmental Justice is building technical knowledge and skills among staff to better understand how communities and other stakeholders can work collaboratively to address environmental justice concerns, including the use of alternative dispute resolution (ADR).

Further, beginning in FY 2005, OECA began working with the states to develop a new compliance monitoring strategy (CMS) for the Clean Water Act. OECA worked closely with the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) to develop a document that provides guidance for states in implementing effective monitoring programs while allowing the states the flexibility they need to target resources where they are most needed in their individual states. The three-year iterative process, in which OECA and the regions worked directly with states, ASIWPCA and ECOS in meetings, document sharing, and conference calls, resulted in a strategy that was issued in early FY 2008. In FY 2008, OECA provided training to regions and states to help them prepare to implement the new CMS in FY 2009.

Office of Pollution Prevention, Pesticides, and Toxic Substances (OPPTS) - OPPTS routinely engages affected stakeholders on numerous important scientific and regulatory issues through public notice and comment opportunities and public meetings. While these procedures do not involve ECR, they draw on principles important to ECR—airing of issues in a manner that allows participation by all affected interests and a reasoned response on every issue that is raised. In addition, OPPTS makes extensive use of federal advisory committees to address complex and contentious issues. We use the Federal Insecticide, Fungicide and Rodenticide Act

Scientific Advisory Panel to obtain independent peer review and advice on novel or controversial scientific issues and the Pesticide Program Dialogue Committee to explore a wide range of pesticide policies—both substantive and procedural—with a diverse group of stakeholders.

Region 1 (Boston) - A major portion of the Region 1 ADR program's work is 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, but not seeking agreement. An example of this is the Homeland Security Summit in which Region 1 brought together local, state, and federal officials in a range of emergency response roles to identify gaps in preparedness and opportunities for enhanced coordination and leveraging resources. Another example is the Northeast States-EPA Workshop on Siting Renewable Energy Projects at Closed Solid Waste Landfills & Contaminated Sites.

In the Superfund context, as in previous years, Region 1 has been actively engaged in efforts to communicate with affected communities regarding site remediation. The GE-Housatonic Citizens Coordinating Council in Pittsfield, Massachusetts, exemplifies this type of process in which the goal is to give citizens a forum in which to raise questions and concerns about the cleanup and to give Region 1 an opportunity to share information, learn more about citizens' concerns, and, to the extent possible, respond to those concerns. Other such facilitated non-agreement-seeking processes have been ongoing in connection with the Elizabeth Mine Site in Vermont, the Centredale Manor Site in Rhode Island, and the South Weymouth Restoration Advisory Board in Massachusetts.

Region 2 (New York) – In FY 2008 Region 2 continued to operate a community outreach office for the Hudson River Polychlorinated Biphenyl (PCB) site. This office, located in Fort Edward, New York, is staffed by a Director and Community Involvement Coordinator and houses EPA's field headquarters for the Hudson River dredging project. The office provides public information services, and is a center for project data. It was created because EPA recognizes communities' need for easy access to information about Hudson River PCBs Superfund Site activities and the desire for meaningful interaction with EPA staff and management. This effort does not involve the use of ECR.

Region 3 (Philadelphia) - The Oysters Environmental Impact Statement (EIS) has provided an opportunity for Region 3 to work with a multitude of interested parties with differing agendas and without the assistance of a neutral third party. By developing a process which was inclusive of industry, state, NGOs and federal agencies, EPA was able to include a number of alternatives in the EIS without selecting a preferred one. This allowed for a review and ranking of a number of options proposed by the Army Corps of Engineers and industry. As a result of EPA's involvement in staff and management level meetings and public forums, and being a

cooperating agency on the EIS, a vast array of alternatives moved forward for evaluation. This process has allowed project proponents and the states to analyze the alternatives and make an informed decision about the path on which to move forward being fully aware of the opposition or obstacles to each particular alternative.

EPA has begun to develop an unassisted and coordinated process with the Nuclear Regulatory Commission (NRC) and the Army Corps of Engineers related to expanding and new nuclear facilities. NRC has provided training to Region 3 and we have participated in two site audits with NRC and the Corps. In addition we facilitated the development of joint permit review meetings specifically for energy projects. Future endeavors include staff and management level meetings with NRC to further develop our National Environmental Policy Act and wetlands working relationships.

Region 3 is working collaboratively with the Pharmaceutical Research and Manufacturing Association in an effort to provide education about the proper disposal of unwanted medications and is also working collaboratively with a dispenser of medication for hospice patients to develop environmental and business solutions for the proper disposal of unused medication. Neither of these efforts involves ECR.

Region 6 (Dallas) – Region 6 has developed escalation and consultation policies as a means of resolving conflicts with Tribal governments and has a Tribal Ombudsman who reports to the Deputy Regional Administrator as an additional mechanism for resolving disputes.

Region 7 (Kansas City) - Region 7 has adopted the practice of using pre-filing negotiations in all administrative enforcement actions seeking a monetary penalty. Out of 149 administrative penalty actions the Region initiated in FY 2008, all but one case was settled by the parties in the pre-filing stage.

Region 10 (Seattle) - Under all Comprehensive Emergency Response, Compensation, and Liability Act administrative orders on consent and judicial consent decrees for performance of response actions, an administrative dispute resolution process is established for the respondents to raise disputes concerning direction or other decisions made by EPA. The final decision maker in the process is either a unit manager or the director of the Office of Environmental Cleanup. The process first involves an informal dispute resolution effort at the staff and/or first line supervisor level and includes some written statements describing the disputed issues and the parties' positions. The process may become more formal at the request of the respondent, in which case written statements and supporting documentation are required for the decision maker to consider. Agreements reached through the formal and informal processes are committed to writing. During FY 2008, Region 10 engaged in several such dispute resolution processes at Superfund sites.

Region 10 also provides the opportunity for pre-filing negotiations in many administrative enforcement actions. Where successful, the parties resolve the matters, either by not filing a case, if appropriate, or agreeing on a penalty.

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.

EPA's most significant ECR achievement in FY 2008 was the more than 50% increase in the number of ECR cases compared with the number of cases reported in the Agency's FY 2007 ECR annual report. The total of 206 ECR cases reported for FY 2008 compares to 134 cases reported for FY 2007. The difference can be attributed to both better data collection processes and an increase in the number of cases that took place. In FY 2008, EPA sponsored nearly 90% of all its ECR cases and all headquarters media offices and regions supported and/or participated in ECR cases. The Agency's FY 2008 ECR cases arose in all contexts for ECR applications and in all decision making forums. 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.

Beyond these direct measures of ECR use, we note an increasing level of complexity in the types of situations in which ECR is being used. These more challenging ECR cases feature high profile policy contexts, such as coal bed methane development and water quality standards in Montana and Wyoming; challenging public health issues, such as those in the Total Coliform negotiated rulemaking; multiple layers of governmental and other stakeholders, as in the Coeur d'Alene Lake Management Plan case; and critical scientific concerns, such as those present in the Detection and Quantitation Federal Advisory Committee. EPA's ECR practice evolved to meet these challenges in FY 2008 and will continue to adapt as we face even more complex cases in the future.

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

ECR Outreach, Education, and Training - In FY 2008, our ECR outreach, education, and training activities included:

- Thirty-six representatives from EPA Headquarters and all 10 EPA regional offices participated in the May 2008 National ECR Conference in Tucson, AZ. EPA staff attended pre-conference training and presented in numerous conference sessions. EPA's Conflict Prevention and Resolution Center (CPRC) sponsored an EPA-only pre-conference training and dialogue session the day before the ECR conference began.
- EPA developed a workshop on collaboration called "Working Together: An Introduction to Collaborative Decision Making" and certified 45 trainers to lead the workshop. The first train-the-trainer certification session was held in May 2008. The group of certified workshop leaders includes 19 Washington, DC,

staff members from EPA and other Federal agencies (Smithsonian Institution, Bureau of Reclamation and National Park Service). In addition, eight EPA regions, two EPA laboratories, the States of Delaware and South Carolina, and Federal Highway Administration-Denver now have staff members who can deliver the workshop. Eleven EPA Headquarters trainers certified in May 2008 offered Collaboration Brown Bag workshops between June and October 2008. Several EPA headquarters and regional trainers have delivered the workshop for their organizations as well as community groups through the environmental justice and Community Action for a Renewed Environment programs.

- The CPRC developed and began implementing an ECR outreach and education strategy for the Agency. Several Internet-based tools have already been designed to inform users how facilitators can help in certain situations, and how to gain meaningful stakeholder input. As part of this effort, the CPRC will revamp the CPRC's public site and intranet alternative dispute resolution (ADR) sites. Another main component includes training in interest-based negotiation skills and other related trainings co-sponsored with regional ADR staff.
- The CPRC sponsored the first-ever EPA Conflict Resolution Week in October 2007. This week of workshops and presentations coincided with International Conflict Resolution Day. Activities during the week included expert speakers on situation assessments and the attorney's role as problem-solver and an ECR exhibit staffed by EPA ECR experts.
- The CPRC trained 12 regional and two headquarters ADR staff to present workshop modules in using and participating in ADR for enforcement and counseling attorneys. This two-day train-the-trainer session covered both the substantive content of the modules and tips for preparing and presenting training workshops.
- The CPRC sponsored an exhibit, handouts and presentation on ECR at the National Association of Remedial Project Managers Training Conference.
- The CPRC sponsored an exhibit, handouts, poster and presentation on ECR at the National Community Involvement Training Conference.
- The CPRC offered four 90-minute 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 half-hour presentations on collaboration and ECR for new hires.
- The CPRC implemented a training and experience survey on ECR and collaboration for the Office of General Counsel and analyzed results for future use in supporting OGC.
- The CPRC presented a program on the use of ECR to the North Carolina Natural Resources Leadership Institute at its annual Washington, DC workshop. Participants included state officials, business leaders, and non-governmental organization leaders involved in a yearlong seminar program on collaboration in environmental decision making.
- The CPRC conducted a daylong training in ADR for Office of Solid Waste and Emergency Response's (OSWER's) Superfund Community Involvement

Branch. The program covered the use of situation assessments in identifying the appropriate types of ADR to use in a given set of circumstances.

- OSWER held five offerings of the International Association for Public Participation five-day public participation certificate course. Ninety-three Headquarters, Regional and state public participation staff attended the course.
- As a follow-up to the US Institute for Environmental Conflict Resolution's (USIECR's) "Program Assessment of Early Involvement and Collaboration in the EPA National Environmental Policy Act (NEPA) 309 Review Process," the Office of Federal Activities worked with USIECR and the CPRC to develop a series of "collaboration workshops" for EPA regional staff and other federal agencies involved in the NEPA review program. These workshops provided instruction in specialized collaboration skills, as well as opportunities for regional staff to obtain one-on-one assistance from EPA and USIECR collaboration specialists regarding current projects and issues.
- Region 1's (Boston) ADR program piloted a workshop called "The Power of Apology" which explored the appropriateness and timing of giving or asking for apologies in public policy decision making. Participants judged the workshop to be excellent and recommended that it be offered to other EPA regional offices and headquarters.
- A Region 2 (New York) staff member served on an ECR panel at a Fordham Law School conference entitled "Consensus Building and Institutionalizing Effective Policy and Practice: Exploring the Use of Alternative Dispute Resolution Processes in Disputes Involving Government." His remarks on behalf of EPA were later published in the Fordham Law School Urban Law Journal.
- Region 4 (Atlanta) sponsored two training sessions, "Facilitation" and "Alternative Dispute Resolution for CERCLA Attorneys", which focused on educating new Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA) attorneys and their program clients on the use of ADR/ECR in the CERCLA context.

During FY 2008 EPA also designed and developed presentations and programs on ECR to be implemented in FY 2009 including:

- The CPRC is scheduling up to five additional "Power of Apology" workshops in regional offices. The decision to hold the additional workshops is a result of the successful "Power of Apology" workshop in Region 1 during FY 2008.
- The CPRC is scheduling FY 2009 Conflict Resolution Day activities including workshops on dealing with difficult people and the use of apology in preventing or resolving conflict.

International ECR Outreach - EPA worked to develop international capacity and expertise in ECR during FY 2008:

- China – In December 2007, EPA presented a third workshop on the use of ADR in Beijing for Chinese government officials and scholars. EPA also posted ADR materials to its EPA/China Internet site.

- Middle East – EPA presented a module on the value and methods of public participation to officials from various Middle Eastern governments and non-government officials as part of an effort to build capacity in governance.
- South Korea – CPRC and ADR staff from Region 3 (Philadelphia) and Region 4 (Atlanta) hosted a delegation of South Korean journalists on a weeklong study tour to gather information about the use of collaborative processes and ECR to resolve environmental issues and conflicts.

8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2008). 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 |
| <p>The Total Coliform Rule (TCR) is the principal regulatory tool under the Safe Drinking Water Act (SDWA) that protects the quality of potable water from bacterial contamination in the distribution system and the one rule that affects all the approximately 155,000 public water systems in the United States. The TCR was last revised in 1989. Numerous changes have occurred since that time, both in the number of new regulations under the SDWA that have been promulgated and in scientific knowledge. EPA published its decision to revise the TCR as part of its National Primary Drinking Water Regulation (NPDWR) Review in July 2003. In response to recommendations from the Stage 2 Microbial Disinfection Byproducts (M/DBP) Federal Advisory Committee, the Agency also decided to consider as part of the the TCR revision whether it would be appropriate to add new requirements to address risks associated with distribution systems.</p> |
| <p>The TCR sets both health goals (maximum contaminant level goals or MCLGs) and legal limits (maximum contaminant levels or MCLs) for the presence of total coliform bacteria in drinking water and requires all public water systems (PWSs) to monitor for the presence of total coliform in the distribution system. Total coliforms are a group of closely related bacteria that are abundant in the feces of warm-blooded animals and are common inhabitants of ambient water. Although they are (with few exceptions) not harmful to humans, their presence can indicate other types of bacterial contamination. Total coliform is therefore a convenient indicator of treatment efficacy and distribution system integrity because water treatment that would control coliform would also minimize the likelihood of pathogen occurrence.</p> |
| <p>EPA drew on third party assistance in late 2006 to consult stakeholders about forming a Federal Advisory Committee to provide advice to the Agency on these issues and to facilitate a technical workshop in early 2007. As a result of this convening process, EPA formed the Total Coliform Rule/Distribution System Advisory Committee (TCRDSAC) to develop an agreement in principle regarding recommendations to EPA on 1) revisions to the TCR; and 2) what information about distribution systems is needed to better understand and address possible public health impacts from potential degradation of drinking water quality in distribution systems.</p> |
| <p>The TCRDSAC met a total of 13 times during the period of July 2007 through September 2008 and reached consensus on an Agreement in Principle with recommendations for revisions to the TCR that take a proactive approach to protect public health. It recommends maintaining an MCL for <i>E. coli</i> and replacing the MCL for total coliform with a treatment technique approach that relies on <i>E. coli</i> and total coliform monitoring to establish a framework for public water systems to assess the potential for sanitary defects and to correct them as appropriate. The Committee also recommended forming a Research and Information Collection Partnership to</p> |

develop recommendations for research and information collection efforts.

Summary of how the problem or conflict was addressed using ECR, including details of how the principles for engagement in ECR were used (See Appendix A of the Policy Memo, attached)

EPA's Office of Ground Water and Drinking Water (OGWDW) has made a long-term investment in collaborative relationships with its stakeholders, which provided a strong foundation for the TCRDSAC's success. This commitment to collaboration is reflected in: the value placed by EPA and its stakeholders on shared learning before taking positions on issues, the establishment of explicit criteria for a sound agreement and analysis of proposed options against those criteria, the active and informed participation by members through work groups and task groups, and the participants' willingness to bring up difficult issues or differences in a timely manner and at the same time listen with respect to one another. In addition, inclusive and balanced participation, stakeholder involvement in the convening process; clear protocols that covered such ECR principles as accountability, group autonomy, openness and implementation, extensive and collaborative technical analysis; and EPA's investment of staff and resources all contributed to the success of this process.

The process was transparent and accountable to the public through *Federal Register* notices, posting of Committee agendas and materials to a website, and public comment opportunities at each Committee meeting.

Informed Commitment and Accountability—The Director of EPA's OGWDW served as Chair of the Committee, demonstrating EPA's clear commitment to the process. Further, EPA agreed that, after consultation with both the Assistant Administrators of the Office of Water and the Office of Research and Development (ORD), the Chair's signature on any agreement would be on behalf of the Agency as a whole. Staff from OGWDW, ORD and EPA regional offices participated actively at every Committee meeting and on the Technical Work Group (TWG), bringing Agency views to the table. They also organized cross-Agency groups between sessions to communicate Committee deliberations and prepare for Agency representation. The Assistant Administrator for the Office of Water participated in the signing ceremony.

Balanced, Voluntary Representation—The TCRDSAC was comprised of 15 member organizations, each of which was consulted as part of the situation assessment and received letters about their possible interest in participating. Stakeholder representation was well managed by working through existing national associations and groups representing state and federal regulators, the regulated community, local government, public health experts, public interest organizations, and state consumer advocates. The category of non-community water systems was the most difficult to represent, in part because of the enormous variety among them. To address this situation, at least five members of the committee were selected in part because of their extensive experience with these kinds of small systems. In addition, EPA organized and scheduled the Small Business Regulatory Enforcement Fairness Act (SBREFA) compliance process to take place early enough in the TCRDSAC process so that Committee members could consider the SBREFA results in their deliberations. Members of the Committee generally had an excellent attendance record, due largely to their commitment to the process but also to the fact that the meetings for the full year were scheduled early in the process.

Group Autonomy—The agreed upon protocols for participation established a clear collaborative process, decision making was consensus-based, and the written Agreement in Principle was signed by all members. A neutral facilitation team served the whole Committee, and neutral technical experts provided leadership for the TWG and reported its findings to the Committee.

Informed Process—In advance of the process, EPA, working with distribution system experts, compiled existing information regarding potential health risks that may be associated with distribution systems in nine white papers. In addition, EPA developed a series of ten TCR issue papers. These distribution system white papers and TCR issue papers were used to inform EPA and stakeholders about areas of potential TCR revisions and distribution system requirements. EPA held a technical workshop in early 2007 to review these papers. In June 2007, prior to the first meeting of the TCRDSAC, a group of approximately 60 technical experts met to discuss what data and analyses existed or could be assembled to support the work of the Committee. At its first meeting in July 2007, the TCRDSAC officially formed the TWG to support its deliberations. The TWG had an open membership that continued to evolve throughout the process based on TCRDSAC needs. The TWG held a total of 13 one-day meetings to prepare presentations that provided information to the Committee to help identify issues, analyze options under consideration and address other topics at the Committee’s request. Over the course of the Advisory Committee process, the TWG set up 13 task groups to focus on specific aspects of its work. These task groups met mostly through conference calls and occasional half-day meetings. Neutral third parties provided facilitation support for all the TWG meetings, sixteen task group conference calls, and two of the task group half-day meetings.

Openness—The facilitation team, in consultation with Committee members, drafted agendas that were circulated in advance to all Committee members with request for comment. Committee meetings were announced in the *Federal Register* and were open to the public. Opportunities for public comment were provided. Meeting agendas, summaries and materials were posted to the public website.

Timeliness—The Committee completed its work and a report with recommendations by early fall 2008.

Implementation—At several points, EPA briefed Committee members on legal and policy issues and vetted recommendations for consistency. By having an EPA representative on the Committee, EPA could ensure that recommendations were consistent with federal law and policy. EPA will use the recommendations in the Agreement in Principle as the basis of a Notice of Proposed Rulemaking to the maximum extent possible consistent with the Agency’s legal obligations. The Agreement in Principle was signed formally, with signatories committing both themselves and the organizations they represented to support those components of EPA’s proposed rule that reflect the consensus of the Committee. At the last meeting of the Committee, members also reported outreach plans already underway to communicate the recommendations to others around the country. In the agreement, EPA committed to specific, future consultations with stakeholders on issues related to the TCR revisions. Planning for those consultations as well as for establishing the recommended Research and Information Collection Partnership has already begun.

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

The TCRDSAC members paid explicit attention to the quality of the outcome throughout their deliberations, seeking not only to address specific concerns and goals for improvement but also to consider the interests of the public in as objective a manner as possible. Early in its deliberations, the TCRDSAC developed ten criteria for evaluating a revised TCR and concluded in its Agreement in Principle that its recommendations, taken as a whole, adequately address these criteria. Overall, the new revised TCR paradigm is designed to trigger systems with positive total coliform/*E. coli* monitoring results to do an assessment, to identify whether a sanitary defect(s) is (are) present, and to correct such defects accordingly. The Committee stated that this "...is an improvement over the current TCR framework in that it takes a more proactive approach to identifying and fixing problems that affect or may affect public health."

The collaborative approach taken also resulted in a much more active level of engagement in supporting and implementing the recommended revisions by stakeholders than would have been achieved through a traditional notice and comment rulemaking alone.

Reflections on the lessons learned from the use of ECR

The success of the TCRDSAC process demonstrates the value both of the ECR principles and of long-term sustained investment in a collaborative relationship with stakeholders. Differences in perspectives are to be expected given the diverse interests affected by public decisions. It follows that the commitment and capacity to learn from those differences is an important ingredient in making decisions that improve public health, are seen as legitimate and are implemented effectively.

Other specific lessons learned from this process include the value of:

- A clear process map for long and complex processes, so that participants maintain a clear view of where they are in the process and what is needed to accomplish their charge in the time available;
- Organization-based membership for effective outreach to constituencies and long-term implementation of agreements reached;
- Written protocols approved by the members that specify the group's charge, what will happen if agreement is reached and if it is not, and other ground rules to ensure the transparency and legitimacy of the process;
- Shared learning strategies, including defining decision-relevant information, joint exploration of information and analysis by stakeholders' technical staff, and neutral technical experts working for the Committee as a whole along with the facilitation team to provide leadership to the TWG and serve as respected spokespersons presenting the jointly produced findings to the Committee;
- Shared criteria for what constitutes a sound agreement; and
- Facilitators who think strategically and collaboratively with EPA and its stakeholders in developing agendas, suggesting process options, facilitating meetings, working through issues individually as needed, and managing the logistics, including meeting summaries, so that the participants can focus on the issues.

- 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 | <input type="checkbox"/> | <input type="checkbox"/> |
| Unnecessarily lengthy project and resource planning processes; | X | <input type="checkbox"/> | <input type="checkbox"/> |
| Costly delays in implementing needed environmental protection measures; | X | <input type="checkbox"/> | <input type="checkbox"/> |
| Foregone public and private investments when decisions are not timely or are appealed; | X | <input type="checkbox"/> | <input type="checkbox"/> |
| Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and | X | <input type="checkbox"/> | <input type="checkbox"/> |
| Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts. | <input type="checkbox"/> | X | <input type="checkbox"/> |

- 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 EPA. We view this ECR annual report template as a reasonable data collection instrument for future ECR annual reports and we especially support maintaining this format for the FY 2009 annual report. Continuing to use this data collection instrument next year will allow agencies to initiate the data collection process much sooner than in previous years and also enable OMB and CEQ to more effectively identify ECR trends across multiple fiscal years.

A minor point of difficulty occurred in question 2. In that question, respondents were asked to rate a set of potential barriers as major, minor, not a challenge/barrier, or N/A. While this question was improved from the previous year's template, Agency respondents had difficulty choosing between "not a challenge/barrier" and N/A. Because the entire set of barriers is potentially applicable to any department or agency's use of ECR, for next year's template we recommend eliminating N/A and including "not a challenge/barrier" to eliminate confusion.

Please attach any additional information as warranted.

Report due January 15, 2009.

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 |