

FY 2009 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 fourth year of reporting in accordance with this memo for activities in FY 2009.

The report deadline is January 15, 2010.

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 2009 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 2009 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.

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Name and Title/Position of person responding:	Richard Kuhlman Director
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Date this report is being submitted:	January 15, 2010

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2009, including progress made since 2008. 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 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 2009 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. The Agency'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 in EPA operations. Our ECR activities also further the President's Open Government Directive of December 8, 2009 and its three principles of transparency, participation, and collaboration.

EPA's Strategic Plan - EPA's ECR program supports all five goals in EPA's 2006-2011 Strategic Plan: 1) clean air and global climate change; 2) clean and safe water; 3) land preservation and restoration; 4) healthy communities and ecosystems; and 5) compliance and environmental stewardship. The Agency's Strategic Plan explicitly recognizes 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 2009. 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 211 ECR cases for FY 2009 covering all ECR application contexts and decision-making forums. We anticipate that the ECR program, due to its breadth of tailored decision making process options and long experience working across all EPA programs, will similarly support the goals of the Agency's next strategic plan, currently under

development.

ECR Strategy - 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 2009, we began the process of developing a new ECR strategy with an expanded scope of activities, which will be connected with EPA's next strategic plan and completed in FY 2010. In FY 2009, 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 (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 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.

Mediator Confidentiality Guide - EPA continues to advance the quality and professionalism of ADR/ECR program services in furtherance of the Agency's ADR Policy. In FY 2009, the CPRC developed the "Guide for EPA ADR Neutrals on the Protection of Dispute Resolution Communications." The comprehensive guide establishes best practices and procedures for the handling and protection of ADR communications by EPA staff serving as neutrals to ensure quality ADR/ECR practice and compliance with confidentiality requirements of the ADR Act of 1996 and court rules.

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 2009, EPA's Assistant Administrators and Regional Administrators engaged in and supported the expanded use of ECR in high-profile cases, including the Coeur d'Alene Lake Management Plan dialogue, several matters involving the Chesapeake Bay program, and the Waterkeeper Alliance vs. EPA case. The Coeur d'Alene Lake Management Plan case, in particular, illustrates the kind of effective collaboration between EPA, the U.S. Institute for Environmental Conflict Resolution (USIECR), other federal agencies, tribes, state agencies, and others envisioned by the Administrator's memorandum on Transparency in EPA's Operations and the President's Open Government Directive. We feature this case in the response to question 8 below.

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 2009. Our ECR outreach, education, training, and career development activities included the following:

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

- Using the CPRC's Conflict Prevention and Resolution Services Contract, EPA's National Center for Environmental Innovation (NCEI) developed "Working Together: An Introduction to Collaborative Decision Making," a workshop designed to build collaboration knowledge, skills and behaviors. The workshop touches on the Office of Personnel Management's eight collaboration-related competencies as well as planning processes appropriate to existing conditions. The goal is conflict prevention and resolution through building the collaboration capacity of EPA staff and our federal, state, local and other partners. Numerous additional support materials are available for the 63 facilitators, who are certified to deliver the workshop in three two and a half day training sessions, to use in tailoring sessions to the needs of participants. The facilitators include individuals from 11 EPA Headquarters organizations, seven regions, two laboratories, three states, and six other federal agencies.

They have facilitated approximately 35 workshops for EPA staff, in communities, and at conferences.

- The CPRC continued 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 complete the initial update of the CPRC's public Internet and intranet sites by late spring 2010. Another main component includes training in interest-based negotiation skills and other related trainings co-sponsored with regional ADR staff.
- The CPRC significantly increased efforts to build internal EPA capacity, offering a total of 22 workshops on eight different topics related to negotiation and ECR. More than 550 EPA staff members and others participated in these offerings. Ten trainings were conducted in EPA Headquarters and twelve were conducted either in EPA regional offices or at EPA national conferences, where the audiences were primarily regional staff. Participants included EPA staff from the Agency's water, waste, air, pesticides, and toxics programs, and EPA legal staff in the Office of Enforcement and Compliance Assurance (OECA) and the Office of General Counsel. Topics of CPRC-sponsored workshops included: "Dealing with Difficult People," "Power of Apology," "Interest-based Negotiations," "Situation Assessment," "Charette - Redevelopment by Design," "Quest for Consensus," and "Introduction to Negotiations." All of these courses were designed to build the capacity of EPA staff to prevent or appropriately resolve disputes. Staff members in Regions 1, 2, 3, 5, 7, and 9 provided critical support for CPRC-sponsored training. Concurrently, the CPRC initiated evaluation of these offerings, as described below in question 5.
- The CPRC sponsored EPA Conflict Resolution Day events in October 2008. This day of presentations coincided with International Conflict Resolution Day. Headquarters activities during the week included expert speakers on the power of apology and dealing with difficult people and an ECR exhibit staffed by EPA ECR experts. Several EPA regional offices also hosted presentations.
- The CPRC sponsored an exhibit, handouts and presentation on ECR at the 2009 National Association of Remedial Project Managers and On Scene Coordinators Training Conference.
- The CPRC sponsored an exhibit, handouts, poster, presentation and three training workshops related to ECR at the National Community Involvement Training Conference.
- The CPRC offered three 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 presented a program on the use of ECR to the 2009 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.

- OECA's Office of Environmental Justice, through its "Using Environmental Laws and ADR to Address EJ" training workshop, built community capacity to understand the role ECR processes could play in community efforts to address their environmental concerns. Representatives of EPA regional offices, as well as state environmental agencies have also participated in such training.

Regional Outreach, Education, Training, and Career Development Activities

- Region 2's (New York) Office of Regional Counsel (ORC) hosted a half-day training session, with an expert guest speaker, to build skills on dealing with difficult people and situations. One of ORC's ADR Specialists served on a panel to train Region 2's counterparts in the New York State Department of Environmental Conservation on mediation skills and conducted a Continuing Legal Education Training in Region 2 on legal ethics and ECR. He also organized and spoke on a panel on collaboration and climate change at the Association for Conflict Resolution Environment and Public Policy Section's annual meeting in Denver, CO, where he also served as moderator on another panel on collaborative training on ECR. In addition, he did a presentation on climate change and ECR at a conference of the Kheel Center on the Resolution of Environmental Interest Disputes.
- Region 3 (Philadelphia) established a team of four collaboration trainers (a manager from the Hazardous Site Cleanup Division and staff members from ORC, the Environmental Assessment and Innovation Division, and the Office of Enforcement, Compliance, and Environmental Justice), who each were certified through EPA Headquarters' NCEI collaboration trainer certification workshop. The Region 3 collaboration trainers have been designing and providing training classes for managers, branch retreats, project teams, and national conferences. In addition, the trainers have been mentoring project and team leaders and facilitating meetings. Finally, the trainers have established a Region-wide Collaboration Network to engage in a dialogue on collaboration and to promote the use of collaboration in all aspects of Agency activities.
- Region 4's (Atlanta) Office of Environmental Accountability (within ORC) sponsored a training called "Introduction to Alternative Dispute Resolution for New Attorneys" in December 2008. The focus was on educating new Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) attorneys and their program clients on use of ADR/ECR in CERCLA context. The Office of Environmental Accountability also began conducting a survey of use of ADR and ECR within the Region. Results will be used to determine appropriate training needs and other options for building and improving knowledge and use of ECR in Region 4.
- A Region 5 (Chicago) ADR Specialist attended the Chicago Federal Executive Board (FEB) mediation training at the Federal Aviation Administration offices in Des Plaines, IL, in February 2009, and mediated a dispute for the FEB in March 2009.
- Region 6 (Dallas) has made significant efforts to foster collaborative leadership at all levels, not only through recruitment but through career development programs. The Region has implemented a Leadership Development Program for first line managers, and are in the process of

expanding this to non-managerial GS-12 and GS-13 staff. In addition, they have established a Management Improvement Team (MIT) that consists of all managers in the Region. The MIT is a forum for Region 6 managers to enhance productivity through communication. This group has both general meetings and specific training to enhance collaborative leadership skills.

- Region 9 (San Francisco) sponsored a training session on collaboration and interest-based negotiation and a presentation by a Navajo Peacemaker at a conference on Navajo Uranium Issues in Gallup, New Mexico in November. The Region 9 Regional Facilitator taught two workshops: “Working Together: Nuts and Bolts of Collaboration” (20 participants) and “Interest-Based Problem Solving” (which uses ECR processes- 2 sessions, 76 participants). The Region 9 ADR Specialist, the Regional Facilitator, and CPRC staff made a presentation to Region 9 Senior Managers on ADR resources, success stories, and training opportunities in February 2009.

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

During FY 2009 EPA also designed and developed presentations and programs on ECR to be implemented in FY 2010 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 Regions 3, 5, 7, and 9 during FY 2009.
- The CPRC scheduled FY 2010 Conflict Resolution Day activities including workshops on interest-based negotiation and crucial conversations.

International ECR Outreach - EPA worked to develop international capacity and expertise in ECR during FY 2009:

- China – EPA posted additional ADR materials to its EPA/China Internet site.
- Middle East – EPA presented a day long workshop in Cairo, Egypt 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. CPRC also made a presentation to a delegation of government, private sector and NGO representatives from ten countries on public engagement and ECR.

Invest in Support of Programs

Over the years, EPA has made considerable investments to support its ECR program, a trend that continued in FY 2009.

ECR Personnel - In FY 2009, the Agency had eight FTEs in the CPRC and an additional two and a half FTEs 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. 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.

The Office of Administrative Law Judges continued to provide judges to serve as mediators in administrative enforcement cases when requested by parties. EPA's Environmental Appeals Board (EAB) developed and implemented a new pilot program to provide EAB judges as mediators during FY 2009 as well.

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 remained strong throughout FY 2009. As in previous years, a full-time senior attorney-mediator manages the Regional ADR Program. Approximately ten other regional staff from a variety of program areas and professional backgrounds provide support to the ADR 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. As has been the case since the Program's inception, one member of the team, an experienced mediator, serves as a kind of co-advisor to the program manager. The group also includes a contracts specialist from the Superfund branch who handles our ECR contracting issues and paperwork. At the highest levels of management, Region 1 leaders are aware of the services provided, frequently direct parties (both inside and outside of the Agency) to the Regional ADR program, and are generally receptive to the use of ECR when it is proposed for projects within their areas. ECR training sessions and seminars are publicized and endorsed by management. Workload permitting, staff with ECR skills are supported in their participation on the ADR team.
- Region 6 (Dallas) remains fully committed to the use of ECR tools as mechanisms for collaborative problem solving. The Region continues its policy of offering mediation in administrative enforcement actions. It promotes innovative approaches to environmental problem solving and has included this as well as other collaborative efforts in the Region's 300 Day Plan, though the majority of its efforts are through unassisted principled negotiation.
- Region 9's (San Francisco) ADR specialist advises regional staff and management on ECR resources and techniques. In FY 2009, the Regional Facilitator consulted on problem solving processes for two Superfund sites: Palos Verdes Shelf and Anaconda (Yerington). She also incorporated conflict resolution principles (e.g., having participants identify and explore individual and common interests, work together in small groups to identify a range of options and reach agreement by consensus) in designing and facilitating meetings with internal and external groups.

Contracting for External ECR Services - In February 2009, the CPRC completed full and open competition to award its seventh Conflict Prevention and Resolution Services Contract, with a ceiling of \$55,000,000 over five years. This contract replaces the previous contract, which expired in August 2009. 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 2009, EPA used more than \$4.4 million in ECR services (e.g., neutral third parties for ECR cases, ECR training) on more than 89 active task orders under the expired and new Conflict Prevention and Resolution Services Contracts.

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

Resolution - In July 2009, EPA and USIECR signed an Interagency Agreement (IA) to continue providing cooperative support for conflict prevention and resolution assistance. This IA follows a six-year EPA-USIECR IA that expires in spring 2010. The IA 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 2009, EPA utilized more than \$60,000 of services for a total of five active projects through the expiring IA.

Interagency Partnerships - EPA continued to strengthen its partnership with other federal agency ECR programs during FY 2009. EPA and USIECR also continued work under their interagency agreement on a range of projects, including the Coeur d'Alene Lake Management Plan case. Through USIECR, a neutral team worked with EPA and the Bureau of Land Management to complete a situation assessment of issues related to air quality analyses in Region 8, and ongoing work with Regions 6, 9, and 10, is currently underway.

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

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2009 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 whether or not the participants are seeking agreement.

	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2009 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:					Of the total FY 2009 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	7	17	8	_____	_____	9	Interagency collaborative problem-solving/coordination, etc.	17	_____
Planning	4	8	12	5	_____	_____	7	Interorganizational Coordination	11	1

¹ A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2009 and did not end during FY 2009.

² A “completed case” means that neutral third party involvement in a particular matter ended during FY 2009. 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 FY2009 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	6	3	9	6	—	—	3	Miscellaneous	9	0
Rulemaking	3	1	4	1	—	2	1	State Standards	2	2
License and permit issuance	2	7	9	3	4	—	2	State Activities	9	0
Compliance and enforcement action	47	80	127	22	85	20	0		113	14
Implementation/monitoring agreements	4	5	9	6	—	—	3	State Activities	9	—
Other (specify): Voluntary Program, Environmental Justice, etc.	10	14	24	8	—	—	16	Voluntary Program, etc.	23	1
TOTAL	86	125	211	59	89	22	41		193	18
	(the sum should equal Total FY 2009 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2009 ECR Cases)					(the sum should equal Total FY 2009 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 2009 ECR Cases ⁸	Decision making forum that was addressing the issues when ECR was initiated:					Of the total FY 2009 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	0	2	1	_____	_____	1	State Standards	2	_____
Planning	_____	_____	0	_____	_____	_____	_____		_____	_____
Siting and construction	2	2	4	3	_____	_____	1	Federal/State Construction Project	4	_____
Rulemaking	2	1	3	_____	_____	2	1	State Standards	1	2
License and permit issuance	1	2	3	2	1	_____	_____		3	_____
Compliance and enforcement action	33	77	110	7	85	18	_____		98	12
Implementation/monitoring agreements	3	2	5	3	_____	_____	2	Interorganizational Dispute,	5	_____

⁶ A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2009 and did not end during FY 2009.

⁷ A “completed case” means that neutral third party involvement in a particular matter ended during FY 2009. 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 FY2009 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).

								State Rule making		
Other (specify): Voluntary Program, etc.	3	1	4	3	—	—	1	Volunt ary Progra m	4	—
TOTAL	46	85	131	19	86	20	6		117	14
	(the sum should equal Total FY 2009 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2009 ECR Cases)					(the sum should equal Total FY 2009 ECR Cases)	

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 2009, 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 2008 can be found in the FY 2008 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
Interagency Disputes (2006)	X	<input type="checkbox"/>
National Environmental Policy Act (2006)	X	X
Superfund Program (2007)	X	<input type="checkbox"/>
Regulation Development (2007)	X	<input type="checkbox"/>
Wetlands Program (2008)	X	<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 2009	Check if using ECR	
Climate Change	X	
Environmental Justice	X	
_____	<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]**

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 2009 we pursued four 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 develop an evaluation process to assess the environmental and economic outcomes of ECR. All three of these activities were initiated prior to FY 2009 and updates on each are provided below. In addition, we describe a new fourth effort to evaluate ECR-related training sponsored by the Conflict Prevention and Resolution Center (CPRC).

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 2009, EPA initiated use of the third set of evaluation instruments developed through this collaboration, 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. We also initiated an effort to aggregate and analyze ECR case data collected since 2003. We expect to present the results of this analysis at the National ECR conference in May 2010 and in next year's ECR annual report.

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 alternative dispute resolution and 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. 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.

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 2009, we continued preparing to evaluate a set of Superfund ECR cases and continued the process of securing an Information Collection Request (ICR) from OMB, as required by the Paperwork Reduction Act. We expect to complete the ICR process and initiate the evaluation in FY 2010.

ECR-related Training Evaluation

To parallel the CPRC's training efforts described in question 1 above, we designed a training session evaluation approach in FY 2009. This approach measures both the satisfaction of participants with presentation and logistics and the participants' view about whether the training achieved the learning goals set out in the courses. Average scores for training session inputs, process, results, and learning outcomes all exceeded the CPRC's performance objectives. In FY 2010, we plan to continue the evaluation process for CPRC-sponsored training and begin developing additional tools to assess the impact of our training.

6. **Describe other significant efforts your agency has taken in FY 2009 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 are continuing to collaborate in ways other than the use of ECR as defined in the OMB/CEQ ECR policy memorandum in FY 2009. These examples are described below.

Office of Air and Radiation (OAR) - OAR has, in general, increased transparency through successful stakeholder involvement in its regulatory and voluntary programs. It is getting more parties involved, and earlier in the process. For instance, to develop recommendations regarding implementation of section 185 of the Clean Air Act, OAR selected a broad set of constituencies. Not only were they selected from members of the full Clean Air Act Advisory Committee, but from additional partners in regulated industry, state and local government, and the environmental and public health communities. Having these opinions included at the earliest stages of developing recommendations was extremely helpful in addressing this issue.

Office of Enforcement and Compliance Assurance (OECA) - EPA created the State Review Framework (SRF) process in 2004, in collaboration with the states, to provide consistency in the level of enforcement activities across states and in EPA oversight of state compliance and enforcement programs. It helps to provide a "level playing field" as states compete for business. Under the SRF, EPA evaluates authorized state enforcement and compliance programs on 12 criteria for effectiveness in monitoring, enforcement, and data management, and an optional thirteenth criterion that allows for discussion of other program tools, innovations, or results. After completing reviews of 50 states and four territories, OECA in FY 2009 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 constructing the evaluations were modified. OECA continues to work with ECOS and the states in implementing the SRF. Beginning in FY 2009, OECA is implementing the second round of reviews. This collaborative process took place without a neutral third party or a written agreement.

Further, OECA works with the states to implement the compliance monitoring strategy (CMS) for the Clean Water Act. OECA developed this CMS in FY 2005, working closely with the Association of State and Interstate Water Pollution Control Administrators, to provide guidance for states in implementing effective monitoring

programs while allowing states the flexibility they need to target resources where they are most needed in their individual states.

Finally, through its management of the National Environmental Justice Advisory Council, a federal advisory committee, OECA's Office of Environmental Justice coordinated discussions about several environmental issues, including the impacts of goods movement on air quality in communities, school siting guidelines, school air toxics monitoring, and the development of nationally consistent screening approaches for identifying environmental justice populations. Federal advisory committees reflect collaborative efforts by the Agency to anticipate and resolve environmental issues.

Office of 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 facilitation or mediation, they draw on principles important to ECR—airing of issues in a manner that allows participation by all affected interests and a reasoned response on every issue that is raised. In addition, OPPTS makes extensive use of federal advisory committees to address complex and contentious issues. It uses the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel to obtain independent peer review and advice on novel or controversial scientific issues and the Pesticide Program Dialogue Committee to explore a wide range of pesticide policies—both substantive and procedural—with a diverse group of stakeholders. Information about OPPTS's public participation process and advisory committees appears at <http://www.epa.gov/pesticides>. Information about the SAP and other public participation processes can be found at <http://www.epa.gov/scipoly>.

Region 1 (Boston) - As in recent years, a major portion of the Region 1 ADR Program's work continues to be 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. For example, in anticipation of a controversial wastewater permitting process, the Region assisted in setting up a series of workshops to engage, educate, and elicit input from the public. In another example, the Region co-hosted and provided facilitation support for an Energy Efficiency Workforce Forum, bringing together a range of stakeholders from the public, private and non-profit sectors to collaborate on viable strategies for expanding this category of green jobs in the Northeast. In a more technically oriented effort to promote cross-sector, interdisciplinary problem solving, the Region also hosted a two-day gathering of scientists from a range of disciplines to share data and ideas regarding biodiversity/landscape change and Lyme disease.

In the Superfund context as well, the Region has continued to actively engage in efforts to communicate with affected communities regarding site remediation. Most recently, the Region has taken steps to improve communications and public outreach relating to

the Parker Street Landfill Site in New Bedford, MA, a community that has been hit hard by a series of environmental problems. Region 1 staff met with residents and community leaders on numerous occasions to hear their concerns and provide information, including an extensive on-site listening session attended by the Acting Regional Administrator. In response to frustrations expressed, the Region has also agreed to work with the neighborhood, city, state and other stakeholders to reach consensus on a new framework for communications and community engagement. To assist with this effort, EPA agreed to fund a skilled third-party neutral. In addition, Region 1 has worked to provide independent technical support to the community through the use of a Technical Assistance Services for Communities Contract. The purpose here is to help community members better understand the hazardous waste issues, including helping to inform them about human health and environmental risks posed by the Site, so they can participate in the cleanup process more effectively.

Meanwhile, the GE-Housatonic Citizens Coordinating Council in Pittsfield, MA, continues to provide citizens with a forum in which to raise questions and concerns about the cleanup and to give the Region an opportunity to share information, learn more about citizens' concerns, and, to the extent possible, respond to those concerns. Other non-agreement-seeking processes continue to provide a vehicle for public involvement in connection with the Elizabeth Mine Site in Vermont, the Centredale Manor Site in Rhode Island, and the Massachusetts Military Reservation federal facility, and South Weymouth Restoration Advisory Board in Massachusetts.

Region 2 (New York) - Region 2 has been involved in a number of projects that involved facilitation where the participants were not seeking a written or unwritten agreement. One of the Region's ADR Specialists partnered with Region 1 to facilitate two meetings of scientists and policymakers on climate change in which the stakeholders were not seeking agreement. These meetings were on the topic of climate change adaptation. The first took place in Gloucester, MA, and involved approximately 100 participants from 12 federal agencies interested in beginning a conversation about how to better coordinate and serve state and local governments and the public on adaptation. The second meeting took place at the University of Massachusetts at Amherst and involved approximately 80 participants from all levels of government as well as academia. The participants sought to better understand the complex array of issues concerning climate adaptation data and begin to plan for providing better data to end-users in the face of much uncertainty about climate change impacts.

Region 2 also continued to assist the Town and Village of Ft. Edward, NY, in its revitalization efforts in the face of the Hudson River PCB Superfund site. There are approximately four meetings per year and, while some segments of the meetings are facilitated with the purpose of reaching agreement, other segments are facilitated with the purpose of brainstorming, visioning, and considering opportunities for grants and other funding.

Region 2 ADR specialists also participated in consultations with case teams to help regional staff determine what cases were appropriate for use of ECR. They also helped

advise case teams about how to effectively participate in ECR processes and serve as a liaison to neutrals on Region 2 cases.

Region 3 (Philadelphia) – Region 3 has defined four priority projects – Elizabeth River, Natural Infrastructure, Community Health, and Sustainability – in which facilitative and collaborative activities involving EPA, states, local communities, non-governmental organizations (NGOs), and other federal agencies have been included in the project plans. Examples of collaborative and facilitative activities for the Elizabeth River and Natural Infrastructure efforts are described below.

The following FY 2009 activities occurred in connection with the Elizabeth River Project:

- Brownfields -- First EPA collaborated with the Virginia Department of Environmental Quality's Brownfield department to identify and target certain municipalities to encourage them to submit Brownfield grant applications. Then EPA partnered with the identified municipalities to provide the necessary training and outreach to give them the skills required to submit a high quality grant application.
- Chesapeake Bay Total Maximum Daily Load (TMDL) -- The Elizabeth River Project (a very effective NGO dedicated to the restoration of the Elizabeth River) felt it was being shut out of the TMDL process for the Chesapeake Bay. A point of contact was identified for the Chesapeake TMDL. This conduit provides information to the Elizabeth River Project and forwards the Elizabeth River Project's concerns to the TMDL Team.

The following FY 2009 activities occurred in connection with the Natural Infrastructure project:

- Monocacy Project -- Region 3 has partnered with Frederick County, MD, with input from the Maryland Department of the Environment and Maryland Department of Natural Resources, to prepare a county-driven green infrastructure assessment. Once complete, the assessment will be used to develop a plan to make land use decisions. The assessment will also be used to strategically identify protection and restoration priorities in the county. We are also engaging the conservation community through the work of the National Park Service and the Natural Resource Conservation Service as a vehicle to reach out to the agricultural community.
- Pennsylvania Bituminous Coal / Abandoned Mine Lands (AML) Project -- Region 3 is working with the Pennsylvania Department of Environmental Protection, which has partnered with other Federal and state agencies and NGOs, to prioritize lands for AML restoration funding. We are leading the Pennsylvania Resource Lands Assessment through collaborative efforts with state agencies and NGOs to identify high value lands and resources. Once this assessment is complete, we will use it for prioritizing lands for restoration dollars and for applying for AML funding.

In addition, the following are several water-related collaboration projects in Region 3 not related to the four priority areas listed above:

- Potomac River Drinking Water Source Protection Partnership -- Region 3 is a partner in the Potomac River Drinking Water Source Protection Partnership, a collaboration of utility and government partners to improve drinking water quality in the Potomac.
- Source Water Collaborative -- Region 3 participates in the Source Water Collaborative, a national coalition of 23 organizations/agencies united to protect drinking water sources, through networking, resource development and practice development.
- Schuylkill Action Network and the Anacostia Watershed Toxics Alliance - Region 3 also continues to participate in the Schuylkill Action Network and the Anacostia Watershed Toxics Alliance, as reported for FY 2007 and FY 2008.
- Memorandum of Agreement with Perdue Farms -- In November 2008, Regions 3 and 4 and Perdue Farms Incorporated entered into an agreement to help independent contract poultry producers growing for Perdue protect our nation's waters. The parties signed a Memorandum of Agreement to implement the Perdue Clean Waters Environmental Initiative, an effort to provide training, assistance and environmental assessments for poultry producers. The initiative will help enhance the producers' compliance, as it relates to their poultry operations, with federal, state and local environmental regulations. Perdue poultry processing facilities will also each implement an Environmental Management System, a set of processes and practices designed to reduce environmental impacts and increase operating efficiency. In 2009, EPA and Perdue entered into a new agreement, covering both Regions 3 and 4, whereby Perdue will expand its program to all of its contract growers.

Region 4 (Atlanta) – Region 4 activities that help expand the scope and spirit of ECR, and represent other 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 has significantly expanded its environmental compliance assistance programs, such as the audit and self-disclosure program, to reduce potential human exposure to toxics and promote better environmental compliance in a non-adversarial setting.

Region 6 (Dallas) - Region 6 frequently uses conflict resolution techniques that do not utilize a neutral third party and strives constantly to improve or better manage environmental conflicts. Several examples are presented below.

Region 6 has disagreements with states regarding implementation of environmental programs, in which industry and environmental groups are also stakeholders. One such example is EPA's major concerns with Texas' air permitting programs. As part of our

efforts to resolve this matter, representatives from EPA met with a group called the Texas Industry Project (TIP). TIP is an industry coalition directly impacted by any decisions. In addition, Region 6 met with environmental groups on the same issues, laying out its concerns and having a dialogue on the issues. Senior Agency officials from EPA Headquarters joined Region 6 in these meetings as well as discussions with the State on possible avenues to resolve the matter.

EPA Region 6 participated in a listening session hosted by the City of New Orleans on July 9, 2009, in the City Council Chambers. Over 70 participants attended and voiced numerous environmental and health concerns. Region 6 senior managers participated in the session and provided information responsive to concerns.

Region 6 representatives attended a meeting hosted by Southwest Network for Economic and Environmental Justice and Multicultural Alliance for Safe Environment to discuss environmental concerns regarding uranium mining in New Mexico. Invitees included the New Mexico Environmental Department, New Mexico Mining and Minerals, EPA Region 9, Agency for Toxic Substances and Disease Registry, representatives from Laguna/Acoma Coalition for a Safe Environment, Southwest Research and Information Center, Red Water Pond representatives, Post 71 Workers, and representatives from Bluewater Valley Downstream Alliance.

Region 6 participated in a meeting between the Louisiana Environmental Justice Coalition and Calumet Lubricants Refinery. The meeting focused on building trust, mutual understanding of concerns and communications. Agreement was reached to hold a series of meetings to continue this dialogue. Calumet offered to host a tour of its facility for the community at a future date--the community was receptive to this offer. The meeting was facilitated and the facilitator did a very good job of keeping the meeting on track.

Region 7 (Kansas City, KS) – Region 7 has adopted the practice of using pre-filing negotiations in all administrative enforcement actions seeking a monetary penalty. The parties settled many of such actions initiated by Region 7 in FY 2009 in the pre-filing stage.

Region 10 (Seattle) - Region 10 frequently utilizes the administrative dispute resolution process established for Comprehensive Environmental Response, Compensation, and Liability Act respondents to dispute certain decisions by EPA regarding administrative orders on consent and judicial consent decrees. The process first involves an informal dispute resolution process with the staff or first line supervisory level, and includes written statements describing the disputed issues and the parties' positions. The process may become more formal at the respondent's request, in which case written statements and supporting documentation are required. The final dispute decision maker is either a unit manager or the Director of the Office of Environmental Cleanup and the agreements reached in the formal or informal processes are committed to writing. Region 10 also provides an opportunity for pre-filing negotiations in numerous administrative enforcement actions, with the parties

resolving the matters either by not filing a case, if appropriate, or by filing a Consent Agreement. The Region also emphasizes community outreach efforts to inform and/or engage stakeholders in its decision-making processes.

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 2009 was the Agency's continued support for ECR cases. The total of 211 ECR cases reported for FY 2009 compares to 206 cases reported for FY 2008, which represents a 3% increase in cases. In FY 2009, EPA sponsored 91% of all its ECR cases and all Headquarters media offices and regions supported and/or participated in ECR cases. The Agency's FY 2009 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.

ECR and Climate Change - As indicated in question 4, the Agency has adopted climate change as one of its priority areas for the use of ECR beginning in FY 2009. The Conflict Prevention and Resolution Center (CPRC) formed an ad hoc working group to share ideas and resources regarding climate change and ECR. The working group, which also includes staff from Region 1 and Region 2, meets on a monthly basis to discuss potential opportunities for ECR and strategies for promoting further use on climate change issues. Working group members have been able to identify and pursue numerous opportunities. Climate change related ECR cases in FY 2009 included the NEWMOA Greenhouse Gas Reduction Forum, the NROC Climate Change Conference, UMASS Amherst Climate Change/Water Monitoring meeting, and the Energy Efficiency Workforce Forum.

During the past year, there has been a marked increase in the demand for neutral assistance to facilitate climate change-related discussions among a range of stakeholders. To build our capacity in that area, Region 1 and Region 2 have collaborated, combining in-house ECR resources on several projects.

In addition, Region 2 represents its Office of Regional Counsel (ORC) in the monthly national EPA climate change sublead calls as a liaison to CPRC and Regional ADR Specialists to build capacity for ECR by identifying potential collaborative climate change opportunities. Region 2 also included ECR in its new Climate Change Workgroup Charter mission statement by establishing, as a Regional goal, an emphasis on collaboration and stakeholder engagement. In furtherance of this goal, ORC has provided process assistance to the Workgroup to ensure that ECR is used, when appropriate, as the Regional efforts on climate change move forward.

In addition to these notable achievements in ECR cases and the priority use of ECR in climate change issues, we highlight several important accomplishments below related to the Agency's use of ECR in FY 2009:

Office of Air and Radiation (OAR) - OAR leadership incorporated ECR strategies as it utilized the Clean Air Act Advisory Committee (CAAAC) to finalize the National Air Program Vision and Guiding Principles report in 2009. The report, which included a consensus opinion to EPA from diverse stakeholder groups, will provide guidance to EPA and its partners in the National Air Program for years to come.

Historically the CAAAC has not used a facilitated process when developing recommendations to the Agency. However, due to the time constraints of the project and the varied interests of the organizations participating in developing the Vision and Guiding Principles Report, OAR leadership felt that the use of ECR in this project would not only help move the project towards success, but could lead to higher visibility surrounding the usefulness of ECR in general. Members of the workgroup, from all sides, were highly complimentary as to how smoothly the process went, specifically naming the facilitation as the reason for the success. The final report exceeded the expectations of the participants because the consensus it achieved, and because of the quality of the recommendations included in the report.

Office of Solid Waste and Emergency Response (OSWER) - Since 2006, the Office of Solid Waste and Emergency Response (Office of Resource Conservation and Recovery) has used the services of the Conflict Prevention and Resolution Services Contract to develop a set of practices for electronic recyclers – the Certification Program for Electronic Recyclers. After several years of development, EPA and stakeholders are in the process of using the facilitator to agree on a final certification process. Throughout this effort, the ECR contractor has been useful in helping to reach consensus on a variety of issues among a large, diverse group of stakeholders.

The Office of Resource Conservation and Recovery has also used the services of the contract to facilitate a Memorandum of Understanding with stakeholders to establish the National Vehicle Mercury Switch Recovery Program. Removing mercury switches from end-of-year autos reduces mercury air emissions from steel making furnaces.

In addition, OSWER worked with federal, state and local partners to develop a school chemical cleanout (SC3) program to promote K-12 school chemical management programs that remove outdated, unknown, or excessive amounts of dangerous or inappropriate chemicals. In 2009 a neutral third party was engaged to help broaden the SC3's program partnership base and solicit ideas from partners on how to better coordinate partner school efforts.

Office of Enforcement and Compliance Assurance (OECA) - OECA promotes the use of ECR as part of the National Environmental Policy Review Act (NEPA) review process for FY 2009. Specifically, OECA increased funding for a specific task order for NEPA activities under the agency-wide Conflict Prevention and Resolution

Services Contract. Through this task order, OECA was able to fund three regional projects addressing a wide range of NEPA issues (energy development in the Rocky Mountain West, water resources development in the Mississippi Delta, and military build-up in Guam), and is expecting several more projects will be funded in FY 2010.

OECA also began work in FY 2009 on an interagency effort with the Departments of Interior and Agriculture to resolve long-standing disagreements on how to analyze and address impacts to air quality in the NEPA review process for energy developments. OECA initiated this process and, with the help of the U.S. Institute for Environmental Conflict Resolution and the CPRC, is optimistic that an agreement will be reached in FY 2010 among the agencies.

OECA leads and participates in facilitated policy dialogues around issues relevant to its mission. During FY 2009, OECA concluded a project initiated in FY 2008, in which OECA engaged a neutral third party to conduct a situation assessment to assess the potential for engaging the private sector in a dialogue about the linkages between environmental justice, green business, and sustainability. Drawing on the expertise provided under the Conflict Prevention and Resolution Services Contract, the assessment sought to foster partnerships with other agency programs addressing aspects of this issue.

Further, through the administration and management of the EPA Collaborative Problem-Solving Cooperative Agreement Grant Program, OECA's 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 dispute resolution. These projects are also designed to produce measurable results in communities in support of the Agency's Strategic Plan.

Region 7 (Kansas City, KS) - Region 7 management encourages and supports the use of ECR in addressing violations of environmental laws. The Region regularly participates in ADR opportunities offered by EPA's Office of Administrative Law Judges (OALJ) in contested administrative actions. Six cases utilized ADR through OALJ in FY 2009. In addition, Region 7 is engaged in ECR with regard to the Metropolitan Sewer District of St. Louis case, the only filed combined sewer overflow/sanitary sewer overflow judicial case in the country. This is a major case - the estimated cost of injunctive relief in the case is estimated to be \$4 - 6 billion. Region 7 management was instrumental in encouraging the U.S. Department of Justice to participate in ECR in an attempt to resolve this matter prior to active litigation.

Region 10 (Seattle) - In FY 2009, Region 10 endeavored to increase the effective use of ECR and building institutional capacity for collaborative problem solving by working with our programs and individuals to identify opportunities to use ECR. The Region used its ADR specialists to help identify and evaluate ECR cases. In addition, Regional staff held meetings at the Region with CPRC staff to talk about ongoing and

the merits of potential regional ECR cases. Based on these discussions some of the potential cases are now using ECR tools. Region 10 also had a meeting for environmental justice community leaders and has had a number of requests for assistance from different communities around the Region since then. The Region has continued to build upon its success using ECR within the Superfund program and now also has some ECR success stories from the Office of Water. When appropriate, Region 10 emphasizes ECR tools that increase transparency of and stakeholder participation in our decision-making processes. The Region 10 ORC also supports ECR both for administrative and judicial cases, and assists and liaises with the CPRC in non-enforcement matters. Regional staff work closely with CPRC and the other regions and seek their advice and assistance frequently in order to support the use of ECR in the Region. The Region's ORC intends to improve its effective use of ECR by incorporating consideration and use of collaborative approaches to conflict resolution in individual performance plans.

8. ECR Case Example

- a. **Using the template below, provide a description of an ECR case (preferably completed in FY 2009). 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>Coeur d’Alene Lake in Idaho is a thriving center of a regional economy that includes northern Idaho and eastern Washington. The Coeur d’Alene Tribe occupies a reservation located at the southern end of the lake but has identified a significantly larger area around the lake as its aboriginal lands. The city of Coeur d’Alene sits adjacent to the lake, and there has been a significant investment in lakeside homes, resorts, and recreation.</p>
<p>From one perspective the conflict addressed through this project had roots in 19th century mining, processing, and smelting activities in the Coeur d’Alene River Basin, known as the Silver Valley. The upper and middle portions of the basin were a major mining region, and mining activities caused up to 83 million tons of heavy metals contaminated sediments to be conveyed down tributary streams and rivers into Lake Coeur d’Alene. A portion of the sediment continued downstream, but much of it, 75 million metric tons, remains on the lake bottom. In 1983 the U.S. Environmental Protection Agency (EPA) listed the Bunker Hill Mining and Metallurgical Complex on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund). EPA initially focused its cleanup efforts on a 21 square mile area divided into two operable units. In 1998, EPA announced it would use its remedial authorities, by performing a remedial investigation and feasibility study, in a third operable unit, or OU-3. The Lake was physically located within OU-3 but there was strong state and local opposition to identifying it as a Superfund site due in part to concerns about “stigma.” In 2002 EPA took the approach of leaving the lake out of the Selected Remedy for OU-3, concluding that a lake management plan (LMP) created outside CERCLA would be acceptable. The agency left open the possibility of further action under CERCLA if an effective plan was not established and implemented.</p>
<p>Largely in response to CERCLA activity, management of the lake to protect water quality became a focus of efforts by the State, Tribe, and other stakeholders in the mid-90s, and an initial version of a LMP emerged. This plan did not provide adequate funding and proved ineffective. At the same time a legal dispute over lake jurisdiction reached the U.S. Supreme Court, and in 2001 the Court ruled that the Tribe had jurisdiction over the southern one-third of the lake. This outcome profoundly changed tribal, state, and local relations and contributed to ongoing disagreements about how to manage the lake. The State and Tribe were unable to reach agreement on a second LMP in 2004 that reflected shared jurisdiction despite making some progress.</p>
<p>The lack of an effective LMP increasingly became a concern to EPA Region 10 and to the downstream State of Washington, in light of its obligations under CERCLA and the continued presence of contaminated mining sediments on the lake bottom. In 2006, EPA Region 10’s</p>

Acting Regional Administrator with the support of the Office of Environmental Cleanup and the Office of Water and Watersheds approached the State and the Tribe about seeking formal mediation support from the Conflict Prevention and Resolution Center (CPRC) and the U.S. Institute for Environmental Conflict Resolution (USIECR). EPA served as a convener with the State and Tribe on this effort and all the parties committed to provide some financial support for the effort. All the parties plus the USIECR agreed to support the external assessment of prospects for using ECR to support development of an acceptable LMP. USIECR then facilitated the selection process for the mediator, which involved the State, the Tribe, and EPA Region 10. CPRC provided funds for this effort throughout both phases.

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)

Phase I of this project was an assessment was conducted by J. Michael Harty of Harty Conflict Consulting & Mediation. This phase involved extensive interviews and concluded with a written report, options, and recommendations to all assessment participants in January 2007. The State, Tribe, and EPA agreed to pursue mediated negotiations toward a LMP based on the recommended approach, and this second phase began in April 2007 with Harty as mediator. The basic approach was to reach agreement on a draft LMP using a consultation and input process, and then to build broad support for funding by effectively “marketing” the draft to key constituencies with opportunities for modifications if needed to ensure support. The negotiation structure included explicit requirements for the State to consult with local jurisdictions, as well as specific opportunities for reporting to and gathering feedback from other stakeholders such as local businesses as the draft LMP was developed. The possibility of EPA using its CERCLA regulatory authorities in the event that a LMP was not adopted, and effectively implemented served as a clear, mutual alternative that was unlikely to meet key interests.

This project reflects a nuanced approach to the principles for engagement, in particular the timing and expression of certain principles. EPA made an informed commitment to the process at the outset, participating in Phase I at the Regional Administrator level and establishing clear participation and reporting for Phase II. The assessment process in Phase I provided an opportunity for balanced, voluntary participation of key interests in shaping understanding of sources of past conflict, options, and recommendations. As noted below in “lessons learned” the principle of balanced, voluntary representation was weighed against other factors and led to a tiered-approach to inclusion that was deemed critical for achieving agreement on a draft LMP. This tiered approach reflected differences in direct authority over lake water quality and management, and relied on extensive consultation as well as opportunities for direct discussions with the Tribe, State, and EPA. Some local jurisdiction representatives expressed consistent dissatisfaction with this interpretation of inclusion. Despite this dissatisfaction, there was strong support for the LMP within the business community. This was the direct result of the Tribe, State, and EPA providing regular communications with stakeholders.

Group autonomy, informed process, accountability, and openness influenced decision making about process design and implementation in Phase II. EPA participated actively in direct discussions with the Tribe and State but process decisions were made as a group, with the mediator working on behalf of the process. A history of disagreement over technical information indicated there should be a high priority on bridging differences among the Tribe,

State, and EPA, in order to speak consistently with other stakeholders. Sharing data with other stakeholders was an important step to overcome historic distrust. The Tribe, EPA, and State consistently addressed their differences within the negotiation framework, demonstrating their accountability in the negotiation process.

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 most concrete outcome from this project is agreement on a LMP between the State and Tribe. In 2009, the focus continued on getting the LMP adopted by both the State and the Tribe. EPA participated actively in the negotiations and supported, but did not sign, that agreement due to its regulatory role. Regular communications with involved stakeholders, such as the business community and conservationists, throughout the process proved invaluable in securing support for the joint adoption of the LMP by the State and the Tribe. More importantly, a slightly revised version of that LMP received sufficient support from local jurisdictions and other stakeholders to prompt initial funding by the Idaho Legislature and the Coeur d'Alene Tribal Council in 2009 for the implementation of the LMP. The Governor of the State of Idaho and the Tribal Chairman jointly transmitted the adopted LMP to EPA, reflecting the success of the ECR effort. EPA does not need to approve the LMP, but was pleased to express support for this successful joint effort by the Tribe and the State to protect and restore their lake.

This is a significant step beyond the unfunded plan from a decade earlier, and reflects increased acceptance of shared jurisdiction over the lake. In 2009, the State and the Tribe continued their joint water quality monitoring efforts of Coeur d'Alene Lake for the second year in a row. EPA reviewed and approved the joint Monitoring Plan and Quality Assurance Project Plan, and will continue providing laboratory support for the analysis of water quality samples. A less concrete but significant outcome was establishment of effective working relationships to support lake management among the State, Tribe, and EPA. It is difficult to reliably predict outcomes absent this ECR effort, but there was a distinct possibility of EPA asserting federal jurisdiction under CERCLA, possibly as a result of legal action by a third party. This step likely may have caused complications in federal, state, local, and tribal relations, and disruptions in valuable regional economic activity centered on Coeur d'Alene Lake.

Reflections on the lessons learned from the use of ECR

This project offers an interesting lesson in the need to carefully analyze the role of inclusiveness and balance it against other factors in developing a process design. In particular, the assessment suggested that agreement on a LMP was more likely to be achieved if the negotiation of a draft LMP were limited to the State, the Tribe, and EPA. While "balanced, voluntary representation" is a useful principle for ECR, complex disputes such as that over Lake Coeur d'Alene may require a willingness to balance inclusion with other factors in developing recommendations for a process design that is most likely to lead to a sustainable outcome. In this case, some local jurisdictions were dissatisfied about the mediation structure, but eventually were able to negotiate provisions for future lake management that have contributed to overall LMP support.

- 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.	X	<input type="checkbox"/>	<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 the U.S. Environmental Protection Agency. 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 2010 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.

Please attach any additional information as warranted.

Report due January 15, 2010.

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