

## FY 2010 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 fifth year of reporting in accordance with this memo for activities in FY 2010.

The report deadline is February 15, 2011.

We understand that collecting this information may be challenging; however, after compiling previous reports, the departments and agencies are requested to collect this data to the best of their abilities. The 2010 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 2010 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](http://www.ecr.gov).

Name of Department/Agency responding:	U.S. Environmental Protection Agency
Name and Title/Position of person responding:	Richard Kuhlman Director
Division/Office of person responding:	Conflict Prevention and Resolution Center
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Date this report is being submitted:	February 15, 2011

## Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2010, including progress made since 2009. 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 2010 in each of the four areas identified in the OMB/CEQ ECR policy memorandum.

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

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

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

the voices that must be part of our nation's dialogue on environmental issues." ECR is an important way to promote and facilitate this communication. As in previous years, the Agency used ECR in activities supporting each of the five Strategic Plan goals in FY 2010. 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 208 ECR cases for FY 2010 covering all ECR application contexts and decision-making forums.

**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 to 2010 and is explicitly linked to the Agency's Strategic Plan goals. In FY 2010, we also accelerated the process of developing a new ECR strategy for the period from FY 2011 to FY 2015 with an expanded scope of activities intended to support implementation of EPA's Strategic Plan. As part of the new strategy drafting process, the CPRC hosted a meeting of EPA stakeholders to jointly develop strategic directions that could be used as a guide or roadmap for EPA managers and staff, programs, offices, and regions planning and conducting ECR or collaborative problem solving (CPS) work. The group discussed the history of ECR and CPS at EPA, the internal and external environment that affects ECR's and CPS's use, and the strengths, weaknesses, threats, and opportunities that exist. The new ECR strategy will focus on the following strategic directions: 1) using good practice; 2) demonstrating results; 3) building EPA's ECR and CPS knowledge and skills; and 4) cultivating opportunity for ECR and CPS. In FY 2010, 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.

**Records Schedule for Confidential ADR Records** - EPA continues to advance the quality and professionalism of ADR/ECR program services in furtherance of the Agency's ADR Policy. In FY 2010, the CPRC developed a draft records schedule for approval by the National Archives and Records Administration (NARA) that will assist in managing the disposition of records generated or held by EPA neutral third parties that are protected from disclosure under the confidentiality provisions of the Administrative Dispute Resolution Act of 1996. We expect to receive approval from NARA in FY 2011.

**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 2010, EPA's Administrator, Assistant Administrators, and Regional Administrators engaged in and supported the expanded use of ECR in high-profile matters, including the following cases and projects:

- Oregon Fish Consumption,
- GE Housatonic,
- Chesapeake Bay Executive Order,
- Vermont NPDES Petition for Withdrawal,
- Parker Street Landfill communications assessment,
- New Bedford Harbor,
- Spruce Mine #1, and
- Region 4 Environmental Justice Town Hall Meeting.

**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 2010. Our ECR outreach, education, training, and career development activities included the following:

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

- Forty-five representatives from EPA participated in the May 2010 National ECR Conference in Tucson, AZ. EPA staff members traveled from Headquarters and nine of EPA's ten regional offices to attend the conference. Activities included a CPRC-sponsored EPA-only training and dialogue session the day before the ECR conference began, a CPRC-sponsored exhibit, conference training events, ECR technology demonstrations, and a multitude of ECR-related presentations. Nine EPA attendees made presentations at the conference, and the CPRC Director represented the Agency on one of the plenary panels. The CPRC also provided seven fee waiver scholarships to conference presenters who would not otherwise have been able to attend. Recipients included representatives from the Northern Arapaho Tribe, Confederated Tribes of the Umatilla Indian Reservation, and Navajo Nation, as well as a representative from the Oregon Department of Environmental Quality and a rancher working with the Northern Arapaho Tribe on hydraulic fracturing issues.
- The CPRC continued to implement an ECR outreach and marketing strategy for the Agency, including developing succinct case summaries on the results of ECR and completing the revamp of the CPRC's intranet site.
- The CPRC continued efforts to build internal EPA capacity, offering a total of 21 workshops on seven different topics related to negotiation and ECR. More than 520 EPA staff members and others participated in these sessions. Nine training sessions were conducted at EPA Headquarters and twelve were conducted either in EPA regional offices or at national conferences, where the audiences were primarily regional staff members. Participants included EPA staff members from the Agency's water, waste, air, chemical safety, and pollution prevention programs, EPA staff members from the Office of the Administrator, 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: "ADR in Enforcement," "Advanced Negotiations," "Power of Apology," "Crucial Conversations," "Interest Based Negotiation," and "Charettes - Redevelopment by Design." All of these courses were designed to build the capacity of EPA staff members to prevent or appropriately resolve disputes. Staff members in Regions 1, 2, 3, 4, 6, 7, 9 and 10 provided critical support for CPRC-sponsored training. The CPRC evaluated each of these offerings, as described below in question 5.
- The CPRC sponsored EPA Conflict Resolution Day events in October 2009. This day of presentations coincided with International Conflict Resolution Day. Headquarters activities during the week included expert speakers on interest-based negotiations (IBN), conflict resolution concepts, and crucial conversations, and an ECR exhibit staffed by EPA ECR experts. Several EPA regional offices also hosted presentations.
- The CPRC sponsored an exhibit, provided handouts, and gave a presentation on ECR at the 2010 National Association of Remedial Project Managers Conference.
- The CPRC sponsored an exhibit, provided handouts, and offered information

on ECR services at the 2010 On Scene Coordinators (OSCs) Training Conference.

- The CPRC provided four 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 2010 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 Office of Water (OW) considers ECR and other CPS approaches to be necessary ways to effectively and efficiently contribute toward meeting its goals. Training staff members to become more aware of potential disagreements/conflicts in real time, both internally and externally, and actions they can take to ameliorate them, is the most basic tool. OW has built capacity at this level in FY 2010 by offering the following trainings: the entire Wetlands Division received training in "Managing Conflict"; all in OW were offered the opportunity to take IBN training, and the Office of Wetlands, Oceans, and Watersheds contracted with a facilitator to enhance team building among their managers and to facilitate communication among the senior leadership team. A higher level of ECR programmatic capability is having personnel in-house with the ability to lead or support useful forms of ECR. In FY 2010 this programmatic capacity enabled OW to:
  - Work out an interagency agreement with the Federal Highway Administration. Among many other objectives, this agreement contains provisions for resolving conflict about controversial highway projects.
  - Provide facilitation support for the Urban Waters Initiative and to EPA Region 3.

### ***Regional Outreach, Education, Training, and Career Development Activities***

- Region 2 (New York) supported "staff outreach, education, and training," and built "expert knowledge, skills, and capacity," consistent with Section 5(a)(2) of the ECR policy memorandum. For example, the Office of Regional Counsel (ORC) hosted a training program on joint fact-finding in cases involving complex technical and scientific information. One of the ORC's ADR Specialists served on a National Enforcement Training Institute webinar panel to train staff members on basic mediation skills and trained regional employees on World Cafe facilitation. The ORC continues to be very involved in building capacity for ECR in the context of climate change. One of the ORC's ADR Specialists organized and spoke on a panel at the ECR 2010 conference titled "Dealing with Uncertainty in a Changing Climate: How to make Resilient Decisions," and presented two national webinars and four internal training sessions on integrating ECR into climate change adaptation planning. He also continues to serve as an EPA advisor to the Kheel Center on the Resolution of Environmental Interest Disputes.

- Region 3's (Philadelphia) Collaboration Network team engaged in a variety of activities, among other things, to increase awareness and develop skill levels to implement collaborative decision-making throughout the Region. Such activities included a number of collaboration training workshops for EPA management, specialized project leaders, and other EPA personnel in various programs (Water Division, Hazardous Sites Cleanup Division, ORC, the Environmental Assessment and Innovation Division, and the Office of Enforcement, Compliance and Environmental Justice), other federal agencies, and at national conferences. In addition, collaboration trainers have been mentoring project and team leaders and facilitating meetings. Finally, the Collaboration Network meets regularly to plan additional collaboration activities, identify opportunities to implement collaborative processes, define annual strategic plans, and to implement action items to achieve its goals.
- Region 4's (Atlanta) Office of Environmental Accountability (OEA) in the ORC sponsored a training entitled "Introduction to Alternative Dispute Resolution for new Attorneys" in December 2009. The focus of the training 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.
- Region 5's (Chicago) co-ADR Specialists in the ORC presented a Continuing Legal Education program titled "Working Effectively in Mediation with mediators, clients, opponents and outsiders" in September 2010.
- Region 9 (San Francisco) hosted training on facilitating hostile meetings.

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

During FY 2010 the CPRC also prepared for several activities to be implemented in FY 2011 and beyond, including:

- Completion of an Agency-wide ECR/CPS training strategy,
- Additional use of online training, including completing the development of four-module IBN course for Superfund OSCs to be delivered in FY2011, and
- FY 2011 Conflict Resolution Day activities, including workshops on IBN and dealing with anger.

**International ECR Outreach** - EPA worked to develop international capacity and expertise in ECR during FY 2010, meeting with visitors from several African countries, India, Portugal, and Romania. CPRC staff members explained EPA's public involvement and ECR programs, addressed questions, and explored the potential application of public involvement and ECR processes in these countries.

**Invest in Support of Programs**

Over the years, EPA has made considerable investments to support its ECR program, a trend that continued in FY 2010:

**ECR Personnel** - In FY 2010, the Agency had seven and a half FTEs in the CPRC (including a temporary reduction of a half FTE due to a staff member's temporary assignment to another program) 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.

**Office of Administrative Law Judges** - The Office of Administrative Law Judges (OALJ) offers ADR to all parties in all EPA cases that get assigned to the Administrative Law Judges (ALJs). In some instances, cases from other agencies are referred to our office under interagency agreements and sometimes include requests for ADR. If all parties opt for ADR, a neutral ALJ is assigned to facilitate or mediate settlement negotiations. The parties are given an initial period of two months to reach settlement. If the parties show progress, the ADR period can be extended for up to two months, for a total period of four months. After four months, if the parties have not reached a settlement, the case is assigned to another ALJ for litigation. The OALJ is constantly reviewing the utility and success of its ADR program in order to make improvements that benefit the parties and enhance the likelihood of a swift resolution.

**Environmental Appeals Board** – The Environmental Appeals Board (EAB) has launched a pilot ADR program. The EAB's pilot program offers parties the option of participating in ADR with the assistance of an EAB Judge acting as a neutral evaluator/mediator. The primary purpose of the pilot program is to provide a neutral, confidential forum for the settlement of cases before the Board.

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

- Region 1's (Boston) culture of support for ECR has remained strong throughout FY2010. As in previous years, the Regional ECR program is managed by a full-time senior attorney-mediator. Approximately ten other Regional staff members from a variety of program areas and professional backgrounds provide support to the ECR program on a collateral basis by agreement of their managers. Most of them are trained mediators and facilitators with varying degrees of experience who serve as in-house neutral third parties when they are needed and available. The group also includes a contracts specialist from the Superfund branch who handles our ECR contracting issues and paperwork. At the highest levels of management, Regional leaders are aware of the services we provide, frequently direct parties (both inside and outside of the Agency) to the Regional ECR 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 members with ECR skills are supported in their participation on the ECR team.
- Region 4's OEA undertook an office-wide survey of use of mediation, facilitation,

and other forms of 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.

- Region 5 (Chicago) has taken the following steps to build programmatic/institutional capacity for ECR in FY 2010: (1) sought expertise from Regional and Headquarters ECR staff members; (2) assigned staff members (in the ORC) to support programs; and (3) worked to build partnerships with other agencies (via the Chicago Federal Executive Board (FEB) shared neutrals program). One Regional ADR Specialist member mediated a dispute for the FEB in February 2010.
- Region 6 (Dallas) remains fully committed to the use of ECR tools as mechanisms for CPS. 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. The Region has focused on making changes to the way it does things with the current level of resources. We have tried to utilize our limited ECR resources to service issues where conflict is more likely to emerge. We have prioritized our use of ECR for situations where we have multi-party issues, generally at the community level, where the issues are complex and views are deeply held. For example, the Region is planning to meet with concerned citizens, elected officials, local industry representatives, and other concerned parties in the Corpus Christi area to resolve current issues, foster communication to avert future issues, and build relationships between all parties.
- Region 7's (Kansas City) management encourages and supports the use of ECR in addressing violations of environmental laws. The Region regularly participates in the ADR opportunities offered by EPA's OALJ in contested administrative cases. The Region has built institutional/programmatic ECR capacity in FY 2010 through its ORC ADR Specialist's participation in monthly workgroup calls, and participation in the biennial ECR conference. The Region frequently promotes ECR and the services provided by the CPRC through LAN Bulletin Board notices, informational e-mails targeted at Regional managers, community involvement coordinators, and staff members, and through the offering of ECR training.
- Region 10 (Seattle) continued its efforts to increase the effective use of ECR and to build institutional capacity by working closely with our programs, employees and outside stakeholders to identify opportunities to use ECR. The Region worked with its ECR staff to help identify and evaluate potential ECR cases, and we had Regional discussions to determine which cases merited possible referral. We also met with Tribes and environmental justice community groups and received requests from them regarding permitting, enforcement, and other matters. We have a strong presence in the Superfund program and in the Office of Water and have now worked with the air program as well. When appropriate, we emphasize the ECR tools in our decision making that will result in increased transparency with stakeholders and the public. We also continue to support ECR in the ORC in both our administrative and judicial cases, and we serve as a liaison with the CPRC in non-enforcement matters. We focus on accountability by participating in reviews, national calls, and meetings with the CPRC and the other regions. We also work closely with the CPRC and the other regions, frequently seeking their advice and

assistance in helping us support the use of ECR in the Region.

**Contracting for External ECR Services** - In FY 2010, the CPRC continued providing ECR services under its seventh Conflict Prevention and Resolution Services Contract, which has a ceiling of \$55,000,000 over five years. The contract provides all EPA program offices, regional and field offices, and laboratories with comprehensive access to neutral third parties and related services all over the country, with most services being initiated within two weeks of a request. In FY 2010, EPA used more than \$5.2 million in ECR services (e.g., neutral third parties for ECR cases, ECR training) on more than 93 active task orders under the Conflict Prevention and Resolution Services Contract. This represents an increase of \$600,000 and four active task orders over what we reported in FY 2009.

**Interagency Agreement with the U.S. Institute for Environmental Conflict Resolution** – EPA’s interagency agreement with the U.S. Institute for Environmental Conflict Resolution (USIECR) continues to provide cooperative support for conflict prevention and resolution assistance. The interagency agreement supports the National Roster of Environmental Dispute Resolution Professionals, training courses, and the National ECR Conference. It also provides access to neutral mediation and facilitation services for cases and matters in which EPA and USIECR have a shared interest, such as those involving the National Environmental Policy Act and intergovernmental conflicts. In FY 2010, EPA utilized more than \$150,000 of services for a total of four active projects through the interagency agreement.

**Interagency Partnerships** - EPA continued to strengthen its partnership with other federal agency ECR programs during FY 2010. EPA and USIECR also continued work under their interagency agreement on a range of projects, including the EPA-Department of Interior-U.S. Department of Agriculture memorandum of agreement on air quality issues and a dialogue between EPA, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service on issues related to pesticides programs and implementation of the Endangered Species Act. EPA also participated actively as a member of the ECR and Technology Steering Committee, a group of federal agency and private sector representatives engaged in dialogue about how to incorporate a range of technology tools into the practice of ECR and more effectively achieve the “Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving.”

### **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
	<b>Check <u>only</u> one</b>		
a) Lack of staff expertise to participate in ECR	<input type="checkbox"/>	<input type="checkbox"/>	X
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"/>	X	<input type="checkbox"/>
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 2010 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR “case or project” is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

Note: The first table presents ECR case information using the U.S. Environmental Protection Agency’s definition of ECR, based on its ADR policy, which includes situations in which participants are using a neutral third party whether or not the participants are seeking agreement.

	Cases or projects in progress <sup>1</sup>	Completed Cases or projects <sup>2</sup>	Total FY 2010 ECR Cases <sup>3</sup>	Decision making forum that was addressing the issues when ECR was initiated:					Of the total FY 2010 ECR cases indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)	Sponsored <sup>4</sup>	Participated in but did not sponsor <sup>5</sup>	
<i>Context for ECR Applications:</i>										
Policy development	12	6	18	13	0	0	5	problem solving, voluntary program, dialogue	16	2
Planning	5	15	20	12	0	0	8	dialogue	20	0
Siting and construction	14	5	19	19	0	0	0		19	0
Rulemaking	8	4	12	7	0	2	3	state standards/rul	10	2

<sup>1</sup> A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2010 and did not end during FY 2010.

<sup>2</sup> A “completed case” means that neutral third party involvement in a particular matter ended during FY 2010. 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.

<sup>3</sup> “Cases in progress” and “completed cases” add up to “Total FY2010 ECR Cases”.

<sup>4</sup> 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.

<sup>5</sup> 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).

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License and permit issuance	2	5	7	5	2	0	0		7	0
Compliance and enforcement action	29	72	101	17	64	18	2	proble m solving	87	14
Implementation/monitoring agreements	3	1	4	4	0	0	0		4	0
Other (specify): voluntary program, environmental justice, multiple, etc.	21	6	27	4	0	1	22	volunta ry progra m, dialogu e, proble m solving , state standa rds,	26	1
<b>TOTAL</b>	<b>94</b>	<b>114</b>	<b>208</b>	<b>81</b>	<b>66</b>	<b>21</b>	<b>40</b>		<b>189</b>	<b>19</b>
	(the sum should equal <b>Total FY 2010 ECR Cases</b> )			(the sum of the Decision Making Forums should equal <b>Total FY 2010 ECR Cases</b> )					(the sum should equal <b>Total FY 2010 ECR Cases</b> )	

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

	Cases or projects in progress <sup>6</sup>	Completed Cases or projects <sup>7</sup>	Total FY 2010 ECR Cases <sup>8</sup>	Decision making forum that was addressing the issues when ECR was initiated:					Of the total FY 2010 ECR cases indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)	Sponsored <sup>9</sup>	Participated in but did not sponsor <sup>10</sup>	
<i>Context for ECR Applications:</i>										
Policy development	5	1	6	5	0	0	1	voluntary program	5	1
Planning	1	2	3	1	0	0	2	dialogue	3	0
Siting and construction	2	1	3	3	0	0	0		3	0
Rulemaking	3	0	3	0	0	2	1	state standards	1	2
License and permit issuance	0	2	2	1	1	0	0		2	0
Compliance and enforcement action	17	66	83	3	64	16	0		70	13
Implementation/monitoring agreements	1	1	2	2	0	0	0		2	0
Other (specify): voluntary program	3	1	4	0	0	1	3	voluntary program	3	1
<b>TOTAL</b>	<b>32</b>	<b>74</b>	<b>106</b>	<b>15</b>	<b>65</b>	<b>19</b>	<b>7</b>		<b>89</b>	<b>17</b>
	(the sum should equal Total FY 2010 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2010 ECR Cases)					(the sum should equal Total FY 2010 ECR Cases)	

<sup>6</sup> A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2010 and did not end during FY 2010.

<sup>7</sup> A “completed case” means that neutral third party involvement in a particular matter ended during FY 2010. 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.

<sup>8</sup> “Cases in progress” and “completed cases” add up to “Total FY2010 ECR Cases”.

<sup>9</sup> 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.

<sup>10</sup> 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).

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 2010, 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 2009 can be found in the FY 2009 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	X
National Environmental Policy Act (2006)*	X	X
Superfund Program (2007)*	X	X
Regulation Development (2007)*	X	X
Wetlands Program (2008)	X	<input type="checkbox"/>
Climate Change (2009)	X	X
Environmental Justice (2009)	X	X
External Civil Rights (2010)	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2010	Check if using ECR	
_____	<input type="checkbox"/>	

Please use an additional sheet if needed.

\* Beginning in FY 2011, these EPA priority areas for ECR are now part of the base ECR program and will no longer be tracked separately.

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

The U.S. Environmental Protection Agency (EPA) believes that it is very important to track the use and outcomes of ECR and has been working toward that end with other federal and state partners since before the OMB/CEQ ECR policy memorandum was issued. In FY 2010 we pursued three efforts addressing performance and accountability. First, we continued to collaborate with the U.S. Institute for Environmental Conflict Resolution (USIECR) and others to evaluate the practice of ECR. Second, we utilized multiple approaches to gauge the use of ECR at EPA. Third, we continued to evaluate ECR-related training sponsored by the Conflict Prevention and Resolution Center (CPRC). All three of these activities were initiated prior to FY 2010 and updates on each are provided below.

### **Evaluating the Practice of ECR**

For many years we have collaborated with USIECR, and other federal and state agencies in the development and use of common evaluation instruments to assess the practice of ECR. In FY 2010, EPA continued use of the third set of evaluation instruments developed through this collaboration, continued to collect and analyze 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 conducted an aggregate analysis of EPA ECR cases evaluated since 2003 to assess the relationships between various aspects of the ECR process and case outcomes. In particular we were interested in whether ECR process inputs such as the nature of parties' involvement, how they addressed substantive issues, the role of the neutral third party, and the policy context may have an impact on the substantive outcomes (e.g., durability of agreements, parties' increased understanding), procedural outcomes (e.g., extent to which parties would recommend the ECR process), and

relationship outcomes (e.g., changes in trust, changes in cooperation). We presented our preliminary results at the 2010 National ECR Conference in Tucson, AZ. Our early findings included the following:

- Identifying key differences among the parties on issues, seeking solutions to common needs, and having quality information seem to be particularly important ECR process inputs based on the number of relationships they have with case outcomes. Seeking solutions to common needs also appears to be an important enabling variable for other ECR process inputs.
- The neutral third party contributions evaluated have a limited direct relationship to case outcomes, but may have an indirect relationship through interaction with other process inputs.
- There are differences in ECR case outcomes related to whether the case arose from a pending federal agency decision, an administrative proceeding, or a judicial proceeding and whether the case is classified as upstream (pre-decision) or downstream (post-decision). For example, downstream and litigation-related ECR cases are less likely to have improved relationships among the parties relative to upstream or federal agency decision ECR cases.
- Some ECR case outcomes (i.e., whether an agreement is reached, the durability of agreement, and the extent to which parties would recommend the process) vary with ECR process inputs or case characteristics that we have not identified and are not currently evaluating.

In FY 2011, we expect to further refine our analysis and submit an article for publication in a peer-reviewed journal.

In addition, the EPA ECR case aggregate results are being used to inform the Agency's contribution to the upcoming revision of the interagency ECR evaluation instruments, planned for FY 2011. In August 2010, following consultations with neutral third party practitioners and past ECR case participants about the study results, EPA offered a revised draft questionnaire for agreement-seeking ECR cases. The revised instrument would eliminate unnecessary questions, address validity issues with existing questions, and introduce new questions that are intended to better capture the contributions of neutral third parties (e.g., through pre-negotiation assessments and sidebar discussions) and other previously unexplored process inputs that may have an impact on case outcomes.

EPA also believes that it would greatly benefit ECR practice to develop a robust evaluation instrument for ECR cases in which the participants' goal emphasizes improving an agency's environmental decision through neutral third party facilitated public input or dialogue, while not seeking to reach an agreement. The use of such ECR techniques is very common at EPA and other agencies. In FY 2010, EPA proposed a logic model and questionnaire to further the dialogue about creating such an evaluation instrument. The Agency looks forward to engaging with USIECR and other participants in the collaborative ECR evaluation project to strengthen our methodology for both agreement-seeking and facilitated decision improvement cases in FY 2011.

### **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 members 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.

### **ECR-related Training Evaluation**

In parallel to the CPRC's training efforts described in question 1 above, we continued to implement a training session evaluation approach in FY 2010. 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 2011, 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 2010 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not fit within the Policy Memo's definition of ECR as presented on the first page of this template.

The U.S. Environmental Protection Agency (EPA) has a long history of working collaboratively with its stakeholders to further the Agency's human health and environmental mission. For disputes, the use of unassisted negotiation is very common and successful. Best efforts are made to resolve environmental conflicts without litigation, whether those conflicts arise with states, tribes, public interest groups or facilities. EPA Headquarters and regional offices have provided examples of how we continued to collaborate in FY 2010 in ways other than the use of ECR as defined in the OMB/CEQ ECR policy memorandum. These examples are described below.

**Office of Air and Radiation (OAR)** - OAR in general increased transparency through successful stakeholder involvement in our regulatory and voluntary programs. We have had success with addressing environmental conflict by asking diverse parties to chair and participate in our workgroups that were not facilitated, such as we did in 2010 for our report on the implementation of Best Available Control Technology for greenhouse gas permitting. The chairs were selected from both the industry and environmental sectors to lead a balanced process.

**Office of Chemical Safety and Pollution Prevention (OCSPP)** - OCSPP 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, OCSPP 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 (SAP) 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 OCSPP'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>.

**Office of Enforcement and Compliance Assurance (OECA)** - OECA's Office of Environmental Justice (OEJ), through its management of the National Environmental Justice Advisory Council, a federal advisory committee, coordinates discussions about several environmental issues, including the impacts of goods movement on air quality in communities, 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 provide advice for resolving environmental issues.

Although OEJ has not undertaken efforts to build programmatic capacity for the use of traditional ECR, it has created, funded, and continued to foster programs that support collaborative problem-solving among external stakeholders:

- Through work assignments under the Technical Assistance Support to Communities Contract and task orders under the Conflict Prevention and Resolution Services Contract, OEJ provides educational and technical assistance to support communities affected by environmental challenges. This support includes facilitated dialogue for a wide range of communities receiving assistance under a variety of EPA grant programs.
- Through the Environmental Justice Small Grants Program, OEJ supports and empowers communities working on solutions to local environmental and public health issues. The grant program assists recipients in building collaborative partnerships to help them understand and address environmental and public health issues in their communities. Successful collaborative partnerships involve not only well-designed strategic plans to build, maintain and sustain the partnerships, but also to work towards addressing the local environmental and public health issues. More information is available at <http://www.epa.gov/environmentaljustice/grants/ej-smgrants.html>.
- Through the State Environmental Justice Cooperative Agreement (SEJCA) program, OEJ supports state projects that utilize collaborative problem solving to address environmental and public health issues, such as childhood lead poisoning and exposure to air pollution. The purpose of this new program is to promote environmental justice in state government activities and to advance strategies that result in improvements in public health and the environment. The projects supported through SEJCA are designed to build broad, results-oriented partnerships that work to improve environmental and public health in communities disproportionately exposed to environmental harms and risks. These projects are designed to be replicable in other communities facing similar challenges. More information is available at <http://www.epa.gov/environmentaljustice/grants/ej-sejca-grants.html>.
- Through its administration of the Environmental Justice Showcase Communities Project, OEJ provides funding to EPA regional offices in support of efforts that bring together governmental and non-governmental organizations and pools their collective resources and expertise on the best ways to achieve real results in communities. The successes and lessons learned in these demonstration projects will be used to help guide the design and implementation of future environmental justice projects and will help EPA increase its ability to address local environmental challenges in more effective, efficient, and sustainable ways. More information is available at <http://www.epa.gov/environmentaljustice/grants/ej-showcase.html>.
- Through the administration and management of the EPA Collaborative Problem-Solving Cooperative Agreement Grant Program in its final year, OEJ worked to build technical knowledge and skills among staff members to better

understand how communities and other stakeholders can work collaboratively to address environmental justice concerns, including the use of dispute resolution.

OECA's Office of Compliance (OC) is preparing a proposed rule that is utilizing 21st Century technologies to improve management and performance of the National Pollutant Discharge Elimination System (NPDES) program, by requiring electronic reporting of NPDES information from regulated facilities. This will reduce the burden for facilities to report to regulatory agencies and for states to report to EPA. Not only will the proposed rule identify what essential NPDES site-specific information that EPA and states need to receive from permitted facilities, but it will also identify information that NPDES-authorized states need to submit to EPA. States have expressed significant concerns over this aspect of the proposed rule. OC worked with the Environmental Council of States and Association of State and Interstate Water Pollution Control Administrators to minimize these concerns by assembling a representative group of states to consult with regarding various aspects and implementation of the proposed rule, and to identify and discuss issues of particular concern. Discussions with this group helped identify issues important to the states, provided a forum to discuss those issues, and provided EPA with information and feedback to consider as the proposed rule is developed. OC will continue working with this group of states throughout the rulemaking process.

**Office of Solid Waste and Emergency Response (OSWER)** – OSWER's Office of Superfund Remediation and Technology Innovation typically utilizes its regional community involvement coordinators to work with local communities to help resolve site related cleanup issues. In addition, OSWER's Office of Federal Facilities Restoration and Reuse may utilize dispute resolution provisions in Federal Facility Agreements associated with federal facility Superfund sites. Further, OSWER has developed the Community Engagement Initiative (CEI) to enhance OSWER and regional offices' engagement with local communities and stakeholders to help them meaningfully participate in government decisions on land cleanup, emergency preparedness and response, and the management of hazardous substances and waste. A CEI draft Implementation Plan was released in May 2010 and lays out specific actions and activities that EPA will undertake to achieve the goals and objectives of the CEI Action Plan. It is a working document that presents guiding principles, goals, and objectives for the Initiative, and outlines roles and schedules. Progress and results will be assessed regularly and any changes to plans or schedules will be posted on OSWER's website.

**Office of Water (OW)** - OW continued to use a number of different non-ECR mechanisms to further collaboration. We continued to informally solicit input from the full range of stakeholders on actions we are considering as well as those we are working on. We also held face-to-face meetings with stakeholders, state representatives, tribes, and others as much as possible, and in accordance with Agency policy. We continued to use the notice and comment process to formally resolve numerous issues. For example, OW used these techniques to help draft the general

permit for the application of certain pesticides.

OW also effectively used collaboration and coordination of an EPA-OW Transportation Work Plan with the Federal Highway Administration (FHWA). Through an interagency agreement OW has also continued to make progress in providing clear, open, and ongoing communication about controversial issues that affect FHWA, such as a proposed Clean Water Act (CWA) rulemaking that addresses permitting and Waters of the US, and in project-specific cases affecting the NEPA and CWA Section 404 programs. Establishment of a cross-OW Transportation Team has led to enhanced collaboration on a number of wide-ranging issues, including: climate change adaptation, multi-sector asset management, earlier engagement of environmental stakeholders in transportation planning, and a coordinated research agenda.

**Region 1 (Boston)** - As in recent years, a major portion of the Region 1 ECR 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.

One example from FY 2010's activities was the launch of the New England Green Chemistry Challenge, a multi-sector partnership aimed at promoting the awareness and application of green chemistry principles across the Region. Working with its partners from all of the new England state governments, industry, healthcare, all levels of academia, and the non-profit sector, and with significant support from EPA's Office of Research and Development, the Region has played a leadership role in convening six strategic focus groups. In coordination with each other, each group will develop its own action plan and measures of success.

EPA's National Asset Management Conference, hosted by Region 1, in May 2010, is another example of people coming together to consider how best to bring their collective ideas and resources to bear on a big-picture challenge that does not fall neatly within an EPA program's area of responsibility. Again, the Region worked closely with EPA Headquarters to plan and conduct an event aimed at advancing an ongoing conversation. In this case, the initial discussions were cross-regional but mostly internal to EPA, in anticipation of a broader discussion and joint efforts among a range of stakeholders

In the Superfund context as well, the Region has continued to actively engage in efforts to communicate with affected communities regarding site remediation and, where appropriate, redevelopment. At the Parker Street Landfill Site, based in part on feedback from a neutral assessment, the Region has gone to great lengths to enhance its coordination with other agencies, particularly with respect to disseminating site information, scheduling activities, and conducting public events. At another site with a long history of community controversy and facilitated public involvement, the Region is looking at introducing an additional collaborative tool. Specifically, with support from EPA's Conflict Prevention and Resolution Center, the Regional case team for the

GE-Housatonic Site in Pittsfield, MA, initiated an assessment of whether and how a charette might enhance the community's input into future remedial and redevelopment decisions relating to the site.

**Region 2 (New York)** - Region 2 has enhanced its use of facilitation over the past year for circumstances in which participants are not seeking a written or unwritten agreement. One of the Region's ADR Specialists assisted with facilitation at a variety of meetings and workshops on the subjects of adaptation, urban pesticides, environmental justice, and estuaries. In one important example of inter-regional collaboration, an ADR Specialist co-facilitated a two day bi-coastal video-conference on water resilience with ADR Specialists in EPA Regions 9 and 3. In addition, our ADR Specialists worked with program staff members and others to assist them in the design and planning of meetings and workshops, and counseled them about the opportunities that facilitation can provide. Region 2 also used a facilitator this year for its senior management retreat.

Region 2 also continued to assist the Town and Village of Ft. Edward, NY, in their 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.

The ADR Specialists also participated in consultations with case teams to help Regional staff members 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 neutral third parties on Region 2 cases.

**Region 3 (Philadelphia)** – Region 3 continues facilitative and collaborative activities involving EPA, states, local communities, non-governmental organizations, and other federal agencies in connection with Priority Projects being implemented in this Region. Examples of collaborative and facilitative activities for the Natural Infrastructure Regional Priority Project and Partnership for Community Health are described below.

The following FY 2009 activities occurred in connection with the Natural Infrastructure Regional Priority Project:

- **Monocacy Project** – Region 3 worked with other federal and state agencies and partnered with Frederick County in developing a county-driven Natural Infrastructure Assessment. The Assessment, once complete, will be part of the County's comprehensive plan and will guide land use decisions. This project is part of the Chesapeake Bay Strategy in response to the Chesapeake Bay Executive Order.
- **Abandoned Mine Land /Pennsylvania Bituminous Coal Project** – Region 3 continued working with Pennsylvania, federal agencies, and local partners in preparing a state-wide Natural Infrastructure Assessment. The Assessment will

be used, among other things, to inform strategic restoration projects that are in proximity to abandoned mine lands and acid mine drainage areas.

- West Virginia State-Wide Natural Infrastructure Assessment – Region 3 continued working with the State of West Virginia in preparing a State-wide Natural Infrastructure Assessment. Some of this collaborative work is being funded through the EPA Headquarters' Healthy Watersheds Initiative
- National Green Infrastructure Community of Practice - The National Green Infrastructure Community of Practice (GI CoP) is a collaborative network of organizations and agencies that are actively involved in promoting and/or implementing the green infrastructure approach to strategic conservation. The Region 3 Office of Environmental Information and Analysis continues to be a leader in the GI CoP and is continuing to grow the Mid-Atlantic Community of Practice.
- Highlands Action Program (HAP) - The HAP continued progress with 17 ongoing projects on acid mine reclamation, stream restoration, water quality improvements, natural infrastructure protection and enhancement, environmental education and outreach, land conservation, and water trails. In addition, a Request for Proposal for the \$1.8 million Potomac Highlands Grant program was issued and a recommendation was made for a grantee to administer the program.

The following FY 2010 activities occurred in connection with the Partnership for Community Health:

- Collaborative problem-solving activities include working with 30 environmental health and environmental justice groups in the Washington, DC, area to address community health concerns.
- Region 3 also is working with more than 10 state and private groups in the Washington, DC, area (working through the Environmental Justice Showcase effort) to address community health concerns.

**Region 4 (Atlanta)** – Region 4 activities or efforts that might not meet the definition of ECR, but would still represent useful efforts to better manage and defuse environmental issues include: case negotiations to resolve matters; training 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 has tried to minimize conflict by making process changes. For example, we have been very successful utilizing expedited settlement

agreements in our Spill Prevention, Control, and Countermeasure; brine; and underground storage tanks enforcement programs, and more recently, the risk management plan enforcement program under the Clean Air Act. Under these programs small enforcement actions can be resolved quickly and easily, without protracted litigation, resulting in decreased transaction costs for both EPA and the regulated community.

Region 6 has also tried to foster a cultural shift in which issues and problems are addressed before outright conflict ensues. This cultural change also helps ensure that we have better communication with the individuals and entities with which we interact, better relationships with our partners, and improved effectiveness with the scarce resources at our disposal.

**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. Many of these action initiated by Region 7 in FY 2010 were settled in the pre-filing stage.

**Region 10 (Seattle)** - Region 10 continues to utilize the administrative dispute resolution process established for CERCLA respondents who question particular EPA decisions regarding Administrative Orders on Consent and Judicial Consent Decrees. The process initially involves an informal dispute resolution process with the staff or first line supervisor and requires written statements and supporting documentation. If the matter has not been resolved, the final dispute decision maker is a unit manager or the Director of the Office of Environmental Cleanup. Agreements or decisions in the formal or informal processes are memorialized in a written document. The Region also provides an opportunity for pre-filing negotiations in most administrative enforcement actions, with the parties resolving the matter by not filing a case, if appropriate, or by filing a Consent Agreement. In addition, the Region encourages community outreach efforts to inform or engage stakeholders in our decision making process.

## 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 2010 was the Agency's continued support for ECR cases and related services. The total of 208 ECR cases reported for FY 2010 compares to 211 cases reported for FY 2009. In FY 2010, EPA sponsored 91% of its ECR cases and all Headquarters media offices and regions supported and/or participated in ECR cases. The Agency's FY 2010 ECR cases arose in all policy contexts for ECR applications and in all decision-making forums. EPA also increased the use of ECR in six of its seven previously identified priority substantive program areas for ECR compared to the level of use during the fiscal year when they were first identified as Agency priorities.

Our ECR case numbers, however, tell only part of the story. As indicated in the response to question 1 above, the Agency's extramural expenditures on ECR cases and related services, as measured by dollars spent through the Conflict Prevention and Resolution Services Contract – EPA's primary mission contact for ECR -- increased in FY 2010 by \$600,000 (or 13%) over the FY 2009 expenditure level. 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 External Civil Rights** - At the request of EPA's Office of Civil Rights (OCR) and Senior Counsel for External Civil Rights, the Conflict Prevention and Resolution Center (CPRC) established a task order under the Conflict Prevention and Resolution Services Contract to provide ECR services to assist in the informal resolution of complaints filed under Title VI of the Civil Rights Act of 1964. Title VI complaints allege discriminatory acts on the part of a recipient of EPA funding, such as a state environmental agency or municipal government. The task order offers rapid access to mediators who can work with complainants and recipients in a confidential forum to assess the situation, propose process options for addressing the issues, and help the parties reach agreement where possible. Successful use of ECR to resolve a complaint must also result in the complainant formally withdrawing the complaint.

EPA's contractor identified a group of candidate mediators who are well qualified to assist in the resolution of Title VI complaints and the Agency provided training to them on the Title VI program. The mediator candidates will be made available to complainants and recipients who choose to try ECR for their consideration. The decision to participate in ECR is voluntary and any mediator must be acceptable to the parties. OCR and the CPRC, together with appropriate staff members in EPA regions, have also begun the process of selecting the first Title VI complaints for possible ECR. The CPRC is continuing to advise OCR on the effective use of ECR as the Agency works to address a backlog of Title VI complaints.

**ECR and Climate Change** - The Agency adopted climate change as one of its priority areas for the use of ECR in FY 2009. The CPRC formed an ad hoc working group to share ideas and resources regarding climate change and ECR. In FY 2010, the working group, which also includes staff members from Region 1 and Region 2, continued to meet on a regular 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 a number of opportunities. Climate change related ECR cases in FY 2010 included the Boston Climate Action Workshops, a facilitated dialogue on climate change and green development in Summerville, MA, and the Northeast Forum on Climate and Waste.

In addition, a Region 2 ADR Specialist continues to represent Office of Regional Counsel in the monthly national EPA climate change sublead calls as a liaison to the CPRC and regional ADR Specialists in order to build capacity for ECR by identifying potential collaborative climate change opportunities. Region 2 has also carried forward the commitment to ECR established in its Regional Climate Change Workgroup Charter mission statement by establishing a Stakeholder Engagement Team, led by one of our ADR Specialists, to enhance the Region's collaborative efforts with all our stakeholders.

Beyond these notable achievements in the number and scope of ECR cases, the development of a program to address Title VI compliance through ECR, 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 2010:

**Office of Air and Radiation (OAR)** - In FY 2010, OAR once again integrated ECR to increase the performance of its Clean Air Act Advisory Committee (CAAAC). After FY 2009's successful ECR efforts that resulted in a highly praised Vision and Goal report, OAR asked a CAAAC workgroup to continue using a facilitated process to provide the office advice on implementation of Voluntary, Partnership and Community-based programs. This effort not only required a balanced input from the different constituencies on the CAAAC, but also required participation and input from all of OAR's program offices. Since there were members on this workgroup who had participated in FY 2009's ECR effort through the CAAAC, the process went very smoothly and the quality of the recommendations that were received were touted by members of the CAAAC and by OAR's senior leadership. The final report can be reviewed online at [http://www.epa.gov/air/caaac/pdfs/CAAAC\\_PartnershipReport.pdf](http://www.epa.gov/air/caaac/pdfs/CAAAC_PartnershipReport.pdf). As OAR moves forward in requesting important advice from its advisory committee, we are utilizing ECR strategies more frequently. We believe ECR strategies assist in getting timely high quality advice and that offering the services of a neutral third party facilitator allows OAR to participate actively and fairly in the discussions.

**Office of Solid Waste and Emergency Response (OSWER)** - Since 2006, OSWER and its Office of Resource Conservation and Recovery (ORCR) have used ECR services. In FY 2010, these efforts include developing and completing a certification

program for electronic equipment recyclers, developing an MOU and implementing a national vehicle mercury switch recovery program, facilitating stakeholder participation in a green products roundtable, planning and convening a stakeholder meeting regarding EPA's regulatory efforts concerning CERCLA 108(b) issues, establishing a stakeholder dialogue on sustainable financing of municipal solid waste recycling programs, and using an Agency ECR expert in support of ORCR efforts to foster voluntary efforts to increase the recycling of construction and demolition waste materials.

**Office of Enforcement and Compliance Assurance (OECA)** - OECA's Office of Federal Activities (OFA) continues to promote the use of ECR as part of the NEPA review process in FY 2010. OFA increased funding for a specific task order for NEPA activities under the agency-wide Conflict Prevention and Resolutions Services Contract. Through this Task Order, we were able to fund three regional projects addressing a wide range of NEPA issues (water resources development in the Mississippi Delta and the Rocky Mountain West, and health-impact assessments for environmental justice communities in the Ports of Los Angeles and Long Beach), and are expecting several more projects to be funded in FY 2011. OFA also continued work in FY 2010 on an inter-agency 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. OFA initiated this process, with the help of the U.S. Institute for Environmental Conflict Resolution and the CPRC.

## 8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2010). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECR effort was funded
<p>In January, 2006 the United States Environmental Protection Agency’s (EPA’s) Office of Solid Waste – now the Office of Resource Conservation and Recovery (ORCR) – began supporting a multi-stakeholder effort focusing on the possible development of voluntary environmental management standards for electronics recyclers. Stakeholders had been discussing the idea for a couple of years – in particular at meetings in May and October 2005 – and ORCR had offered to convene a meeting to discuss the feasibility and desirability of such an undertaking.</p> <p>ORCR used SRA International, Inc. (SRA) and its subcontractor John Lingelbach for convening and facilitation services through the EPA’s Conflict Prevention and Resolution Services Contract. ORCR knew that the project involved controversial issues, so it was looking for a facilitator with strong conflict resolution credentials and a solid record of neutrality. Once convened by the facilitator, the large multi-stakeholder group decided to proceed with developing a voluntary set of best management practices (BMPs) for use in credible certification programs for electronic recyclers. ORCR agreed to continue providing the facilitator’s services and participating as a stakeholder. However, ORCR’s representatives made clear that they did not intend to incorporate any product the group developed into formal Federal policy or regulation at the conclusion of the process. Rather, the Agency’s preference was that the group find a nongovernmental entity to “house” the set of BMPs and any related guidance, and that these be used on a voluntary basis through credible third-party certification programs.</p> <p>Representatives of the electronics recycling industry, states, original equipment manufacturers, electronics refurbishers, the environmental and environmental justice communities, and ORCR spent the next two and a half years developing a document entitled “Responsible Recycling (R2) Practices For Use In Accredited Certification Programs For Electronics Recyclers.” They accomplished this work through a small number of in-person meetings and extensive communication through facilitator-led conference calls and email exchanges. One of the facilitator’s most important contributions to this process was a straw proposal document that gradually evolved from a list of optional topics for discussion into a refined final draft document. This final draft of the R2 Practices, dated October 30, 2008, garnered support from a significant majority of the stakeholder representatives who participated in its development.</p> <p>The stakeholder group then proceeded to work with the American National Standards Institute (ANSI) and American Society for Quality (ASQ) National Accreditation Board (ANAB) to develop an accreditation rule for the R2 Practices, thereby enabling certification bodies to certify electronics recyclers that adopt the R2 Practices. The accreditation process has been completed, and over 30 electronics recycling facilities have been certified as adopting the R2 Practices.</p>

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

Throughout the process, all meetings were open to the public, all potentially interested parties could actively participate in the deliberations, and the group made efforts to balance the interests represented at the table. ORCR and other stakeholders were adamant that the process be based on principles of consensus-based decision making and, as a group, demonstrated their autonomy concerning both the substantive and procedural aspects of the ECR process.

During the first two meetings held in the first half of 2006, more than 100 stakeholders deliberated about the scope, design, and desired outcomes of a potential dialogue. Some wanted to proceed with a formal ANSI-accredited standards development process to produce an American National Standard. They argued that such a standard would have substantial credibility in the marketplace. Other stakeholders, however, were adamant that the group proceed through its own less-formal, non-ANSI accredited, process and that it develop a set of widely applicable BMPs that could be used in credible certification programs.

With the assistance of the facilitator, the group reached a compromise regarding the outcome it would pursue:

“[The purpose of our effort is] to develop through a multi-stakeholder process a consensus-based set of BMPs for the electronic recycling industry that can be incorporated by reference or otherwise captured by existing certification programs that utilize credible third-party auditors. In order to demonstrate conformity with these BMPs, recycling facilities must be certified by a credible third-party auditor.”

Following these early meetings and initial agreement on the desired outcome of the process, the large stakeholder group decided that a smaller group should continue working by conference call and report back regularly to the larger group. All of the small group meetings were open to anyone who chose to participate.

As the small group’s discussions proceeded over the next number of months, participants became increasingly eager to resolve how the group would make final decisions. The group was challenged in several ways. Despite many years of negotiations, and in the absence of an existing decision making entity, the stakeholders had been unable to establish a formal decision-making process with a voting framework and procedures. Further, the stakeholders were unlikely to reach agreement on such a set of process protocols as part of this ECR process. They did, however, know one another’s perspectives on the key issues, and could extrapolate the number of votes they would need to “win” on each issue.

Because no stakeholder had an incentive to continue participating in a process that was not going to produce the set of standards they wanted, the small group ultimately concurred with an option proposed by the facilitator: an informal consensus-based decision-making process. They agreed that:

1. The process would be consensus-based, with the facilitator responsible for its openness and fairness, and informal voting would be utilized as helpful to gain an understanding of where participants stood on various issues;
2. Any stakeholder group could stop participating at any time; and
3. The value/utility of any final document would be determined by the level of support it received from participating stakeholders.

This approach to procedural groundrules was somewhat unique and illustrates how an ECR process can be adapted to the needs of the participants.

The group made very significant progress developing what came to be referred to informally as the R2 (Responsible Recycling) Practices. Informal straw voting was only utilized a handful of times, suggesting that the majority of proposals were supported or acceptable to the vast majority of parties. The only issues the group was unable to address to everyone’s satisfaction were those few identified going into the process

as potentially intractable: the use of prison labor (for example, in breaking down electronic waste that contains hazardous materials), disposal of certain materials in municipal landfills or incinerators, and the conditions under which certain materials could be exported. The environmental and environmental justice parties participated through most of the process, but formally withdrew when proposals on these topics would not be satisfactory enough for them to support.

All participants other than the environmental and environmental justice representatives saw the development process through to its conclusion and accepted the October 30, 2008, draft of the R2 Practices as the final draft. They agreed to review the document in approximately two years to determine if it is working as intended under “real world” conditions.

Following a large group meeting held in September 2008 and finalization of the document, the small group considered issues relating to implementation and marketing. At this time, ANAB approached the small group about getting the R2 Practices approved by ANAB for accredited certification programs. This implementation scheme was to involve ANAB developing and adopting an accreditation rule for the R2 Practices that sets forth the conditions and procedures under which certification bodies can certify electronics recyclers.

Beginning in winter 2009, ANAB convened a group of experts to develop the accreditation rule. Some of the small group participants served on this group. ANAB Accreditation Rule 34 was adopted on October 30, 2009 (reissued May 17, 2010). To date, over 30 electronics recycling facilities have been accredited to R2 recycling practices.

#### 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

This project resulted in the first widely used certification program for electronics recycling. It addresses environmental issues, data security, and worker safety in a way that acknowledges the need for tracking, transportation, and management controls throughout the recycling chain. In the absence of this certification program, there would be uncertainty and difficulty in recognizing those facilities that are using good practice. Through this ECR process, there is now an auditable accreditation process for those who want to participate, and a simple way to differentiate among recyclers and refurbishers who follow industry- and government-supported recommendations for good practice.

Although the environmental and environmental justice participants did not support the final document, the large group acknowledged that these participants contributed much to strengthen the document through their participation. After the environmental and EJ participants left the negotiations, they went on to create their own electronics waste recycling standards. These standards are also acknowledged by EPA, and EPA believes that having both standards available further strengthens the field and is a positive development for electronics waste recycling in general.

#### Reflections on the lessons learned from the use of ECR

The process involved some difficult discussions, but there appeared to be no other method for accomplishing what this group of sometimes adversaries was able to produce through ECR. Several factors were particularly important in this case. First, a capable neutral third party was available to guide the process and made critical contributions in formulating the goals of their dialogue, by proposing an informal consensus decision making process, and by developing a straw draft document that eventually formed the basis for crafting an agreement. Second, the stakeholder participants had the ability to revisit the groundrules for making decisions during the process, allowing them to overcome an earlier impasse on this issue. Finally, the views of all participants were actively solicited and used to inform the final product, even if some stakeholders later chose to leave the process; this suggests the value of good-faith dialogue even

when full agreement is not possible.

- 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 <i>if</i>	
		Not Applicable	Don't Know
Protracted and costly environmental litigation;	<input type="checkbox"/>	X	<input type="checkbox"/>
Unnecessarily lengthy project and resource planning processes;	<input type="checkbox"/>	X	<input type="checkbox"/>
Costly delays in implementing needed environmental protection measures;	<input type="checkbox"/>	X	<input type="checkbox"/>
Foregone public and private investments when decisions are not timely or are appealed;	<input type="checkbox"/>	X	<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 (EPA). This ECR annual report template has provided a reasonable data collection instrument for the past several ECR annual reports and the Agency has benefited from collecting, analyzing, and reporting information about its ECR program. Now that OMB and CEQ and the Federal ECR community have five years' experience with the ECR annual report process, we should consider undertaking a five-year retrospective analysis to identify trends in the effective use of ECR and collaborative problem solving. EPA would also welcome dialogue at a future meeting of the ECR quarterly forum on the strengths and weaknesses of the existing template as a tool for achieving the objectives of the ECR policy memorandum. We believe certain questions in the existing template remain very important, such as those dealing with the annual ECR case numbers and the case example. Others may warrant a review to assess their ongoing utility. The proposed five-year retrospective analysis would also help inform the development of future ECR annual report templates.

***Please attach any additional information as warranted.***

Report due February 15, 2011.

Submit report electronically to: [ECRReports@omb.eop.gov](mailto: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**

<b>Informed Commitment</b>	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
<b>Balanced, Voluntary Representation</b>	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
<b>Group Autonomy</b>	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
<b>Informed Process</b>	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
<b>Accountability</b>	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
<b>Openness</b>	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
<b>Timeliness</b>	Ensure timely decisions and outcomes
<b>Implementation</b>	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