

Environmental Conflict Resolution

Sixth Annual Report

March 2012



U.S. Department of Energy

EXECUTIVE SUMMARY

The November 28, 2005 Memorandum on Environmental Conflict Resolution (ECR Memorandum) issued by the Chairman of the Council on Environmental Quality (CEQ) and the Director of the Office of Management and Budget (OMB) defines environmental conflict resolution (ECR) as “third-party assisted conflict resolution and collaborative problem solving.” At the request of CEQ pursuant section 4(g) of the ECR Memorandum and CEQ’s annual questionnaire and request for information, the Department of Energy (DOE or the Department) is submitting this sixth annual report on our progress in the use of ECR and other collaborative problem solving approaches.

Differing from the definition of ECR in the ECR Memorandum, the Department defines ECR as the use of any collaborative process to prevent or resolve environmental conflicts, whether or not those processes involve the use of third-party neutrals. Though different, this definition is not inconsistent with the spirit of the ECR Memorandum, which acknowledged the value of all types of dispute resolution and collaborative problem solving.

DOE has used collaborative approaches, both with and without third-party neutrals, to prevent or resolve environmental conflicts prior to the issuance of the ECR Memorandum and continues to use these approaches. Facilitators and third-party neutrals are used in ECR processes as the situation warrants.

In Fiscal Year 2011 (FY 2011), 16 DOE sites and program offices reported a total of 75 ECR cases. Two of these cases involved third-party assistance; one was completed, while the other is in progress. Of the 73 ECR cases that did not involve third parties, 56 were completed and 17 are in progress.

I. INTRODUCTION

A. Background

On November 28, 2005, the Chairman of the CEQ and the Director of the OMB issued the ECR Memorandum. This joint policy memorandum directed Federal agencies to increase the effective use of, and their institutional capacity for, ECR and collaborative problem solving.

Section 2 of the ECR Memorandum defines ECR as “third-party assisted conflict resolution and collaborative problem solving,” but acknowledges the value of a variety of collaborative partnerships and arrangements used by Federal agencies to implement their programs and missions. The policy espoused in the ECR Memorandum “recognizes the importance and value of the appropriate use of all types of alternative dispute resolution and collaborative problem solving.”

Consistent with the ECR Memorandum’s recognition of the value of all types of collaborative dispute resolution, DOE defines ECR as the use of any collaborative

process to prevent or resolve environmental conflicts, including, but not limited to, those processes involving the use of third-party neutrals.

To assure comparability of its data with the OMB/CEQ definition of ECR, the Department tracks both those ECR cases in which third-party assistance was used, and those in which third-party assistance was not used. This report presents ECR case data in both categories and describes third-party and non-third-party dispute resolution processes used by the Department in the FY 2011 reporting year.

This report constitutes the Department's sixth annual progress report to CEQ and OMB, as requested by section 4(g) of the ECR Memorandum. In accordance with guidance provided by CEQ and OMB, this report includes information on DOE progress in implementing the ECR Memorandum.

B. Report Methodology

To provide guidance to Federal agencies implementing the ECR Memorandum, a staff-level interagency ECR Steering Committee consisting of representatives from various agencies was formed. This committee, with assistance from the U.S. Institute for Environmental Conflict Resolution, developed a report template and questionnaire to be used by agencies for this sixth annual report. DOE used the questionnaire developed by the ECR Steering Committee with modifications to accommodate gathering the data necessary to report separately cases that used third-party assistance and cases that did not. The DOE-modified questionnaire is provided as Attachment A.

This DOE questionnaire was distributed to points of contact from various programs and site offices throughout the DOE complex. The structure of this report follows the format of the DOE survey and contains the information supplied by 16 respondents.

II. CAPACITY DEVELOPMENT AND PROGRESS MADE IN FY 2011

DOE sites and program offices availed themselves of training opportunities during the reporting year. They also continued the established and effective collaborative relationships previously formed with regulators and community members. Examples of these collaborative relationships are presented in Section IV.

A. Training

Personnel from many sites and program offices participated in Department-based ECR training programs.

The Department's annual Joint DOE/DOE Contractor Environmental Attorneys' Training Workshop was held on October 18 and 19, 2011, and drew 82 attendees and 14 teleconference participants. The workshop featured training on: ECR, provided by the U.S. Institute for ECR; Native American Tribal Cultural Issues; Environmental Justice; the National Environmental Policy Act (NEPA), and other issues. Updates on

environmental media topics included natural resource damage assessments, radionuclide regulation, consent order commitments, and Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*. The workshop was sponsored by the DOE Field and DOE Contractor Environmental Attorneys, the Office of the Assistant General Counsel for the Environment, the Office of Conflict Prevention and Resolution, and the Office of Sustainability Support.

The “*You Are Our Negotiator: Hanford Site Negotiation Primer*,” prepared for the Richland Operations Office (Richland) by William Lincoln, is used by Richland to gain training on environmental conflict prevention, management, and resolution. Mr. Lincoln has also performed collaborative negotiation training for Richland on avoiding unnecessary conflict in negotiations, and on how to conduct discussions with state and federal agency regulators, citizens, and interest groups. With Mr. Lincoln's permission, Richland has shared the Primer with other Federal agencies, and the Primer has been utilized by DOE management and staff personnel over the past eight years to prepare for collaboration efforts including the negotiation of permits, consent orders, decrees, and Federal Facility Agreement (FFA) changes. Mr. Lincoln has been asked to prepare a more portable, pocket-size version of the Primer. The full Primer is available at http://www.hanford.gov/files.cfm/Negotiation_Primer.pdf. See Section IV.B. for a discussion of the successful use of the Primer in preventing environmental conflicts in FY 2011.

B. Office of the General Counsel and Office of Conflict Prevention and Resolution Support of ECR Efforts

The DOE Office of the General Counsel organizes a monthly conference call with DOE environmental attorneys to review cases and, as appropriate, discuss the potential use of ECR. On average, 30 environmental attorneys participated in these monthly calls during FY 2011.

ECR support is also provided to DOE sites and DOE program offices by DOE's Office of Conflict Prevention and Resolution. This office assists in determining if a dispute may benefit from the use of a third-party neutral and in identifying and engaging appropriate individuals.

III. ECR CASES IN FY 2011

For the reporting year, DOE collected ECR data on cases both in which a third party assisted conflict resolution and where no third party was used.

A. ECR Case Summary

Table 1, *ECR Cases With Third-Party Involvement in FY 2011*, depicts the number and type of ECR cases in which third-party assistance was used; Table 2, *ECR Cases Without Third-Party Involvement in FY 2011*, depicts the information for ECR cases in which third-party assistance was not used.

The total number of reported ECR cases in FY 2011 was 75; two of the cases used third-party assistance and the remainder used collaborative processes without the assistance of a third-party neutral. The larger number of DOE cases without third-party involvement is reflective of the relationships, communication channels, and collaborative decision-making processes that the Department has had in place for many years. Section IV.B. describes examples of these collaborations without third-party assistance. Examples of collaborations with third-party involvement can be found in Section IV.A.

In FY 2011, one of the two cases in which third-party involvement was used was completed, and 56 of the 73 ECR cases without third-party involvement were completed. A case involving third-party assistance is considered completed for the purposes of this report only when third-party involvement in a particular matter ended during FY 2011. This does not necessarily mean that the parties concluded their collaboration. A case without third-party involvement ends only after all collaboration, negotiation, or dispute resolution is completed. Consequently, cases without third-party involvement may be recorded as “in progress” longer than cases with third-party involvement, but does not mean that non-third-party ECR is less effective.

Table 1: ECR Cases With Third-Party Involvement in FY 2011

<i>Context for ECR Applications:</i>	Cases or projects in progress ¹	Completed cases or projects ²	Total FY 2011 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Number of cases sponsored or participated in for each type of case:	
				Federal agency decision ⁴	Administrative proceedings /appeals ⁵	Judicial proceedings	Other (specify)	Sponsored ⁶	Participated in but did not sponsor ⁷
Policy development		1	1				1 (meeting with regulators)		1
Planning	1		1	1				1	
Siting and construction									
Rulemaking									
License and permit issuance									
Compliance and enforcement action									
Implementation/monitoring agreements									
Other									
Total	1	1	2	1			1	1	1

1 A “case in progress” is an ECR case in which neutral third-party involvement began prior to or during FY 2011 and did not end during FY 2011.

2 A “completed case” means that neutral third-party involvement in a particular matter ended during FY 2011. The end of neutral third-party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, all issues are resolved, or that agreement has been reached

3 “Cases in progress” and “completed cases” add up to “Total FY 2011 ECR Cases.”

4 “Federal agency decision” refers to a document containing the resolution of an environmental conflict.

5 “Administrative proceedings/appeals” includes, but is not limited to, environmental resolution proceedings under environmental compliance agreements among DOE, EPA, and States.

6 “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.

7 “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).

Table 2: ECR Cases Without Third-Party Involvement in FY 2011

<i>Context for ECR Applications:</i>	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2011 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Number of cases sponsored or participated in for each type of case:	
				Federal agency decision ⁴	Administrative proceedings /appeals ⁵	Judicial proceedings	Other (specify)	Sponsored ⁶	Participated in but did not sponsor ⁷
Policy development	1		1		1				1
Planning	9	46	55	51	2		2 (meeting with regulators)	2	53
Siting and construction									
Rulemaking									
License and permit issuance (Forum not indicated for one case)	2	2	4		1		2 (meeting with regulators)	2	2
Compliance and enforcement action	2	2	4		2	1	1 (meeting with regulators)	1	2
Implementation/monitoring agreements	3	5	8	8					8
Other:		1	1	1					
Total	17	56	73	60	6	1	5	5	66

1 A “case in progress” is an ECR case in which the collaboration/negotiation/dispute resolution began prior to or during FY 2011 and did not end during FY 2011.

2 A “completed case” means that involvement in a particular matter ended during FY 2011. This does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, all issues are resolved, or that agreement has been reached.

3 “Cases in progress” and “completed cases” add up to “Total FY 2011 ECR Cases.”

4 “Federal agency decision” refers to a document containing the resolution of an environmental conflict.

5 “Administrative proceedings/appeals” includes, but is not limited to, environmental resolution proceedings under environmental compliance agreements among DOE, EPA, and States.

6 “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 collaboration/negotiation/dispute resolution for that case. More than one sponsor is possible for a given ECR case.

7 “Participated, but did not sponsor” – an agency did not provide resources for the collaboration/negotiation/dispute resolution 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).

B. ECR Use Priority Areas

Respondents were asked to submit the priority areas reported in previous years for which they used ECR during FY 2011 and whether that use had increased in the reporting year. They were further asked to identify those uses for which they involved a third-party neutral and those for which they relied on collaborative problem solving without the use of a third party.

B.1 Third-Party Involvement ECR

Following are the submitted areas and the number of respondents for the two cases involving third-party neutrals:

Submitted Areas of ECR - With Third-Party Involvement	Number of Instances (from two Respondents)
Conflicts in Environmental Cleanup Decisions	2
Environmental Cleanup Decisionmaking	1
Groundwater Issues	2
Hazardous Waste Facility Permit Modifications	2
Multi-issue and Multi-party Environmental Disputes	2
NEPA	1
National Pollutant Discharge Elimination System (NPDES) Permit	1
Public Engagement Activities	2
Relationships with Regulators	2

The following list depicts the areas and number of respondents who indicated that their use of a third-party neutral increased in the reporting year:

Areas of ECR with Increased Third-Party Involvement during FY 2011	Number of Instances (from two Respondents)
Conflicts in Environmental Cleanup Decisions	1
Groundwater Issues	1

Hazardous Waste Facility Permit Modifications	1
Multi-issue and Multi-party Environmental Disputes	1
Public Engagement Activities	1
Relationships with Regulators	2

One site noted that a new area for its use of a third-party neutral was Title V air permitting under the Clean Air Act.

B.2 ECR Without Third-Party Involvement

The submitted areas and the number of respondents for the areas in which ECR without third-party neutrals were used are as follows:

Submitted Areas of ECR - Without Third-Party Involvement	Number of Instances (from 5 Respondents)¹
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Cleanup Decisions	1
Conflicts in Environmental Cleanup Decisions	3
Environmental Cleanup Decisionmaking	3
Groundwater Issues	5
Hanford Natural Resources Trustee Council	1
Hazardous Waste Facility Permit Modifications	3
Multi-issue and Multi-party Environmental Disputes	4
NEPA	3
Public Engagement Activities	3
Relationships with Regulators	5

None of these respondents indicated that use of ECR in these areas increased in the reporting year.

¹ Seven sites reported collaborative ECR cases, but only five responded to the survey question regarding ECR in priority areas.

C. ECR Metrics

Tracking the use and outcomes of ECR with third-party involvement or ECR without third-party involvement can be done both qualitatively and quantitatively. Positive qualitative outcomes that have been reported are resolutions of long-standing disputes, which increased project performance and strengthened the relationship among facility operators, regulators, and the public. Another positive outcome is that construction and facility operations are not delayed due to misunderstandings or disagreements regarding required permits or approvals.

The outcomes of ECR are also measured quantitatively through compliance with milestones and commitments, and the avoidance of potential fines or penalties from litigation or enforcement actions. It should be noted, however, that to quantify the cost of formally resolving an issue that never arose would be difficult.

In general and for a number of reasons, the DOE survey results indicated that DOE sites do not specifically track ECR use and cost savings. The following are reports from several of the sites, which include suggested factors that could be used for such measurements at their sites.

C.1 Third-Party Involvement ECR

Savannah River Site (SRS) (South Carolina) – Through monthly status reports in FY 2011, SRS tracked the progress of a third-party-facilitated consortium in achieving a resolution of an NPDES Total Maximum Daily Loads (TMDL) limit on dissolved oxygen in the Savannah River. These reports summarized the options being evaluated and SRS' potential Biochemical Oxygen Demand allocation under each option. These options would determine whether or not SRS would need to modify operations or upgrade existing wastewater treatment facilities, which could also affect associated costs. The resulting technical document and stakeholder agreement proposed wasteload allocations for each stakeholder, which would indicate a minimal effect on SRS, if the regulatory agencies eventually incorporate the agreement.

West Valley Demonstration Project Site (WVDP) (New York) – DOE's FY 2011 operations at WVDP did not utilize any formal tracking mechanism to account for the specific benefits of utilizing ECR. However, some of the factors that WVDP will use to evaluate the third-party neutral over the next year include: whether the neutral facilitated a transparent public process; whether there was effective public participation; whether the neutral facilitated interagency consensus; and whether there was overall improved project performance.

C.2 ECR Without Third-Party Involvement

Energy Efficiency and Renewable Energy (EERE) (Nationwide) – In FY 2011, EERE could measure progress on the use and outcome of ECR with regard to Tribal Collaborative Preferences by observing an expedited communication process and a

demonstrated and improved understanding of expectations, needs, and outcomes from all parties concerned. In the future, EERE will continue to work towards improving communication and understanding among all parties involved in matters affecting tribes, and will continue to track ECR progress on these matters.

Highway 160 Site, Tuba City (Arizona) – In FY 2011, DOE Office of Environmental Management could measure progress on the use and outcome of ECR at the Highway 160 Tuba City uranium mill tailings cleanup project by reaching an agreement on the cleanup criteria, meeting cleanup goals, achieving cleanup schedules, completing the work under budget, and receiving positive feedback on the completion report from the principal stakeholder, the Navajo Nation.

Idaho National Laboratory (INL) (Idaho) – In FY 2011, INL could measure the use and results of ECR by the lack of litigation against DOE. In that year, there was no litigation against DOE as a result of the use of successful ECR techniques to prevent environmental conflicts.

National Nuclear Security Administration (NNSA)-Nevada (Nevada) – In FY 2011, NNSA-Nevada could measure the use and results of ECR by the length of time an environmental issue remained unresolved, whether the resolution was the result of a consensus-built process between the regulatee and the regulator, and whether resolved issues reoccurred, which would demonstrate that the issue was not fully addressed or that there was a lack of transparency.

National Nuclear Security Administration-Sandia (New Mexico) – In FY 2011, NNSA-Sandia did not have a formal tracking mechanism for the use of ECR without third-party involvement. Factors supporting the professional judgment of NNSA-Sandia officials that ECR was beneficial to the government included: reduced staff preparation time for ECR versus the amount of staff time needed if litigation resulted (e.g., staff time to obtain regulatory approval for hazardous waste permit conditions); reduced need for outside counsel; improved relationships with regulators and the public; the number of issues that would have to be litigated at an administrative hearing; cost savings from not litigating environmental issues; and improved end results based on mutual understanding of issues resulting from the use of ECR.

Richland Operations Office (Washington) – In FY 2011, Richland tracked the submittal and review/approval of permit modifications and Tri-Party Agreement change forms and documents. This information is reviewed regularly to ensure acceptable progress is occurring; status reports are also reviewed at meetings with the regulating agencies. The Richland Environmental Management Division and Project staff monitor the use and outcome of ECR.

The outcomes of collaborative ECR are measured qualitatively in terms of the overall success of the conflict resolution or problem solving (e.g., the conflict or problem resolution was successfully conducted at the lowest reasonable level, the conflict or problem resolution was conducted respectfully and openly, and the resolution was

achieved in a reasonable time frame). Another measure is that commitments and milestones stay on schedule due to collaborative negotiations and discussions. A significant measure is that successful conflict or problem resolution avoids potential regulatory action.

Santa Susana Field Laboratory/Energy Technology Engineering Center (ETEC) (California) – In FY 2011, ETEC could qualitatively measure progress on the use of ECR by the change in number and nature of public comments received as the cleanup progressed. Factors that could be considered also included a decline in the number of accusations against DOE, an increase in the number of positive comments about DOE’s work, and the improved tenor of public meetings.

Savannah River Site (South Carolina) – In FY 2011, SRS tracked progress in applying ECR without third-party involvement by the completion of regulatory milestones through the Integrated Planning, Accountability, and Budgeting System, the Environmental Management Quarterly Environmental Scorecard, and the SRS Site Tracking, Analysis, & Reporting system.

In FY 2011, positive outcomes in completing regulatory milestones were also tracked by SRS through monitoring maintenance of cooperative and collaborative working relationships with environmental regulatory agencies; avoiding schedule delays and associated costs of starting construction or operation of facilities due to delays in receiving regulatory permits/approvals; and avoiding potential fines or penalties from litigation or enforcement actions. See Section IV.A. for additional details.

IV. DEMONSTRATIONS OF ECR USE AND VALUE

Environmental conflict prevention and environmental conflict resolution takes many forms at DOE sites. The process may take the form of the use of a third-party neutral, collaboration without third-party neutrals, or public participation. Most sites rely on several forms of ECR to resolve environmental conflicts, or, more importantly, to avoid the escalation of issues into conflicts. In their FY 2011 responses of how environmental conflicts were avoided or resolved, site personnel also conveyed the benefits that accrued from their ECR efforts.

A. ECR and Third-party Neutrals

Examples of the use of third-party neutrals within the DOE complex during FY 2011 are as follows:

West Valley Demonstration Project (New York) – In FY 2011, negotiations of long-standing disputes occurred between DOE, as the operator of the WVDP, and the New York State Energy Research and Development Authority (NYSERDA), as the owner of the Western New York Service Center where WVDP is located. A third-party neutral facilitated Quarterly Public Meetings, updated the stakeholders on current site studies, and served as a conduit between stakeholders and the Subject Matter Experts (SMEs) and

Independent Scientific Panel (ISP). Routinely, the third-party neutral made the SMEs and ISP members directly available to the public in order to answer questions and provide progress reports.

WVDP has experienced and continues to experience considerable success over the last few years by using tailored ECR techniques to resolve long-standing disputes between DOE and NYSERDA under their cooperative agreement for the implementation of WVDP and to facilitate future cleanup work. Resolving these disputes has increased project performance, resulting in substantial cost savings. Both DOE and NYSERDA expect to continue to use the third-party neutral over the next six to eight years.

Savannah River Site (South Carolina) – SRS joined the stakeholder group formed in response to EPA’s issuance of a TMDL regarding waste load allocations of oxygen-demanding substances in the Savannah River. The stakeholder group includes many parties who discharge into the river, but who vary in their respective contributions of oxygen-demanding substances; several members had already made reductions or installed new equipment (not including SRS) and wanted to assure that their efforts were fully acknowledged.

In FY 2011, the stakeholder group enlisted the help of a private consultant to aid in discussions and negotiations among the stakeholders. The third-party consultant worked individually with stakeholders to understand their limitations and interests. Using this information, in FY 2011, the consultant formulated a Biochemical Oxygen Demand (BOD) reduction plan to which 99 percent of the stakeholders agreed. The key beneficial outcomes were the elimination of lengthy negotiations with state regulators and EPA (and avoidance of possible litigation), and avoidance of a rigorous reduction in SRS’s BOD limit. The stakeholder agreement proposed waste load allocations for each stakeholder, which indicates a minimal effect on SRS (if the regulatory agencies eventually incorporate the agreement).

B. ECR Without Third-Party Neutrals

Examples of the use and value of ECR without third-party neutrals within the DOE complex include the following:

Energy Efficiency and Renewable Energy (DOE Headquarters) – The Office of Project Management and Evaluation within EERE updated its research on the collaborative preferences of Tribal Nations with Federal agencies. The study identifies Tribal Nations that have partnerships with EERE, and documents Tribal Collaborative Preferences regarding how the parties should communicate in order to reduce conflicts and misunderstandings. In FY 2011, EERE worked towards implementing the findings of the study into its projects, so as to prevent or reduce environmental conflicts by improving tribal perceptions of EERE’s ability to address Tribal Collaborative Preferences.

Highway 160 Site, Tuba City (Arizona) – In 2009 and 2011, DOE was successful in defending litigation brought against the United States by a former uranium milling site

operator and the Navajo Nation. The litigation concerned whether a prior not to include particular alleged radioactively-contaminated properties in Tuba City, Arizona for cleanup under the Uranium Mill Tailings Remedial Action Program was now subject to judicial review. DOE staff worked cooperatively with the Department of Justice on this litigation. Though the issue of the cleanup of these properties was not resolved by this litigation, the issue of the cleanup of at least one of the properties (the Highway 160 site) was resolved previously through the successful and creative use of ECR techniques by DOE staff. These efforts, which included ongoing cooperative relationships among DOE, other Federal agencies, and Congressional staff, led to the passage of necessary legislation, followed by the initiation of cleanup-related work.

The bottom line is that ECR can be more effective in solving real-world environmental issues in less time than even successful litigation. Work at the Highway 160 site was successfully completed in FY 2011 (see also the metrics discussion in Section III.C.2., above), and environmental conflicts were prevented by DOE's cooperative working relationships with the Navajo Nation, on whose reservation the work was performed.

Idaho National Laboratory (Idaho) – The dispute resolution clauses in agreements such as the FFA and Consent Order allow INL and State of Idaho personnel to engage in formal dispute resolution and to escalate issues, as needed, to ensure the highest-level policy concerns are appropriately vetted. Collaboration to prevent environmental conflicts from arising or to resolve those that do surface takes the form of bi-monthly meetings with the INL Citizens Advisory Board; quarterly meetings with personnel from the Idaho Department of Environmental Quality (DEQ) on the Resource Conservation and Recovery Act (RCRA); and periodic, executive-level meetings of senior managers from DEQ, EPA, and the INL.

INL has also had a policy of self disclosure all non-conforming environmental compliances to the State of Idaho since the mid-90s. This practice of self disclosure contributes to the good working relationship between INL and the State. The State of Idaho maintains its discretion to take appropriate enforcement action when warranted, however, the State of Idaho receives INL's self disclosure on many occasions without issuing a Notice of Violation (NOV) or a Warning Letter. When the State does issue a NOV or a Warning Letter, INL acts in good faith to resolve the issue as efficiently as possible. In the last year, INL's good faith efforts have led to reduced penalties as well as issuance of a Warning Letter as opposed to a NOV.

Specifically, in FY 2011, DEQ issued a NOV or a Warning Letter for two events. First, the State of Idaho issued a NOV for incident involving the fire extinguisher going through the super compactor. Initially, the State issued an NOV with 9 violations. After negotiations, the State and DOE entered into a Consent Order under which violations 2-9 were consolidated into one violation and the penalty was reduced by 40% due to DOE's good faith efforts. Second, the State of Idaho issued a Warning Letter as opposed to a NOV for Bechtel BWXT Idaho's failure to keep records, DOE's failure to develop and implement a Waste Analysis plan for D007 waste, Battelle Energy Alliance (BEA)'s accumulation of waste for more than 90 days without a permit or having interim status,

and BEA's failure to do biweekly inspections. DEQ resolved the issue after INL provided copies of inspection forms that it revised to incorporate error-prevention measures.

National Energy Technology Laboratory (Pennsylvania, Oregon, West Virginia) – The National Energy Technology Laboratory uses its International Organization for Standardization (ISO) 14001:2004-certified environmental management system to ensure collaboration among three of its sites to ensure early identification and resolution of environmental issues.

National Nuclear Security Administration-Nevada (Nevada) – NNSA-Nevada engages environmental regulators, citizen boards and committees, and the general public in the early stages of decision-making processes to foster open communication with its stakeholders. The ultimate objective of these relationships is avoiding environmental conflicts. An example of this relationship was the array of successful public information meetings conducted during FY 2011 for the development of the Nevada NNSA Draft Site Wide Environmental Impact Statement.

National Nuclear Security Administration-Sandia (New Mexico and California) – In FY 2011, a strong prior working relationship with state regulators meant that site personnel knew whom to reach directly to discuss Endangered Species Act implications of a proposed missile launch and to receive information that allowed the launch to occur on schedule, while minimizing impact on wildlife.

In FY 2011, NNSA-Sandia has also been involved with its regulator in negotiations over the terms of a hazardous waste permit, which resulted in the resolution of several smaller issues. While a public hearing will still be necessary, it will be more streamlined and cost-effective than it would have without the negotiation process.

Richland Operations Office (Washington) – Environmental conflict avoidance and resolution has been and continues to be a key element in Richland's management of its interface with external environmental regulatory agencies and interest groups. Richland places a high priority on working collaboratively to avoid conflict and minimize the number of conflicts needing to be resolved through a more formal environmental conflict resolution process. However, given the complexities of the Hanford Cleanup Project and various environmental regulations, some differences of opinion requiring conflict resolution are unavoidable. In FY 2011, Richland continued to utilize environmental conflict avoidance and resolution practices across all of its programs and projects.

Most issues are resolved informally and never rise to the dispute level. These issues are resolved collaboratively through monthly project manager meetings, quarterly milestone review meetings, and other meetings held as necessary to address issues. Over the course of a year, hundreds of such meetings are held. It is the intent of Richland to continue to use the informal collaborative approach to resolve issues before it becomes necessary to enter into formal, third-party supported environmental conflict resolution.

Richland routinely uses the strategies and techniques described in the "You Are Our Negotiator – Hanford Site Negotiation Primer," in an attempt to prevent or resolve environmental conflicts, whether negotiating conditions, permits, or regulatory compliance issues. In FY 2011, Richland used the principles outlined in the Primer to negotiate conditions in a new Hanford Site RCRA permit, which the Department of Ecology expects to issue in draft in early May 2012. So far, by using these principles, Richland has resolved over 20 issues, some of which likely would have ended up in litigation.

Santa Susana Field Laboratory/Energy Technology Engineering Center (California) – DOE staff worked with the State of California to resolve, after many years, the path forward on the cleanup of Area IV of the Santa Susana Field Laboratory, including ETEC. Litigation was avoided, an administrative consent order was executed, and the time for cleanup was expedited. The public was given the opportunity to comment on the draft Consent Order and will have other opportunities to comment on the cleanup plans in the future. The Consent Order was executed in December 2010, and work continued in implementing its requirements throughout FY 2011.

Savannah River Site (South Carolina) – In FY 2011, SRS routinely exercised "pre-dispute resolution" initiatives in working collaboratively with its regulators to maintain environmental compliance and expedite remediation activities. Integrated resource planning for the closure of liquid waste tanks at SRS was facilitated by an agreement to share, and update as needed, lists of relevant documents and interactions with EPA and the South Carolina Department of Health and Environmental Control (SCDHEC). All three parties joined forces to establish an Integrated Project Team to develop a cohesive strategy for the closure of the site's D-Area. The Team will identify all the issues associated with the closure and integrate all of the planned activities into a holistic approach for optimal use of site resources.

In addition, SRS and SCDHEC negotiated extensively and successfully in permitting related to the site's Salt Waste Processing Facility and its F-Tank Farm General Closure Plan.

Paducah Gaseous Diffusion Plant (Kentucky) – In FY 2011, EPA initiated a formal dispute under the Paducah FFA for the Burial Ground Operable Unit (BGOU) Feasibility Study. The dispute centered on whether certain buried wastes at the BGOU should be identified as principal threat waste. In February 2012, the parties entered into a resolution agreement for resolution of the formal dispute. The parties followed the FFA process and did not use a third party to assist in resolution.

National Energy Technology Laboratory (NETL) (Oregon, Pennsylvania, West Virginia) – In FY 2011, NETL worked with the Wyoming Department of Environmental Quality (WDEQ) for many years to remediate groundwater at two legacy sites. NETL has engaged surface rights owners and neighbors. The surface restoration goals are dependent on future use, which is defined by the surface owners. Early involvement by the surface owners has helped to eliminate future conflicts.

In FY 2011, NETL also engaged in a voluntary remediation program with the Oregon Department of Environmental Quality (ODEQ) concerning groundwater remediation at the Albany site. In a proactive role, NETL continues to characterize the site and to develop remediation alternatives. The discussion of proposed actions with the ODEQ along with periodic reporting of groundwater data ensures that local authorities are intimately aware of the status of the NETL Albany site. This directly benefits local residents in that they know they can direct questions to the local authorities rather than NETL resulting in a more trusting relationship with all parties involved.

C. ECR and Public Participation

In addition to collaboration with regulators, DOE sites work closely with interested stakeholders to resolve environmental issues before they become full-fledged conflicts. For example, many of the sites conduct frequent meetings with the public regarding the environmental impacts of site activities. They also publish Annual Site Environmental Reports that provide the public with a summary of environmental monitoring information, where applicable. Site specific examples follow for FY 2011:

National Energy Technology Laboratory (Pennsylvania, Oregon, West Virginia) - In FY 2011, to eliminate conflicts regarding the future use of legacy sites undergoing groundwater remediation, NETL is engaging surface-rights owners and their neighbors early in the process of establishing surface restoration goals.

Richland Operations Office (Washington) - The Hanford Advisory Board (HAB) is an independent, non-partisan, and broadly-representative group that reflects a mix of diverse interests that are affected by Hanford site cleanup issues. The primary mission of the HAB is to provide informed recommendations and advice to DOE, EPA, and the State of Washington Department of Ecology on selected major policy issues related to the cleanup of the Hanford site. In FY 2011, the HAB was consulted on numerous cleanup matters and frequently offered straight-forward recommendations and advice to the agencies that represents a consensus from the various interest groups.

Santa Susana Field Laboratory/ Energy Technology Engineering Center (California) – In FY 2011, there have been frequent public meetings during each stage of the site characterization. Facilitating this effort has been the use of the Geographic Information System in which information requested by the public is displayed either on a large screen in real time at the meeting or remotely on the web for participants away from the meeting site.

D. Benefits of ECR

In addition to the benefits described above, respondents indicated that they benefited from the use third-party neutrals or collaborative problem solving without the use of third parties by avoiding or minimizing the occurrence of the following unfortunate possibilities.

D.1 Third-Party Involvement in ECR

Based on the questionnaire responses of the two sites using ECR with third-party involvement, the following list includes the unfortunate possibilities ameliorated by the use of ECR , as well as the number of respondents citing each possibility as a basis for third-party involvement.

Areas Reported as Benefitting from Third-Party Involvement, or Cited as the Basis for Third-Party Involvement	Number of Instances (from 2 Respondents)
Costly delays in implementing needed environmental protection measures	1
Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts	1
Foregone public and private investments when decisions are not timely or are appealed	1
Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives	1
Unnecessarily lengthy project and resource planning processes	1
Protracted and costly environmental litigation	2

D.2. ECR Without Third-Party Involvement

A site that uses collaborative problem solving without third-party involvement reported in the completed questionnaire that it relies on that method to avoid the following possibilities from arising:

- Costly delays in implementing needed environmental protection measures;
- Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts; and
- Unnecessarily lengthy project and resource planning processes.

V. CHALLENGES TO EFFECTIVE USE OF THIRD PARTIES IN ECR

DOE surveyed ECR participants regarding the challenges to the use of third-party neutrals, and received results from 14 respondents. The ECR survey listed 17 possible

challenges or barriers to effective use of third parties during FY 2011, and allowed respondents to list additional challenges or barriers. These potential obstacles addressed issues relating to lack of staff expertise, funding, incentives, and access to qualified mediators and facilitators. Topics concerning the reluctance of parties to become involved and the perception that the use of third-party neutrals is time- and resource-intensive were also covered. As depicted in Table 3, very few of the respondents regarded the challenges as major obstacles to use of third parties in ECR.

Table 3: Extent of Challenges to the Use of Third-Party Neutrals in FY 2011

Challenge/Barrier	Number of Respondents Per Challenge/Barrier		
	Major Challenge/Barrier	Minor Challenge/Barrier	Not a Challenge/Barrier
a) Lack of staff expertise to participate in ECR		5	9
b) Lack of staff availability to engage in ECR		5	9
c) Lack of party capacity to engage in ECR		4	10
d) Limited or no funds for facilitators and mediators	3	4	7
e) Lack of travel costs for your own or other federal agency staff	3	2	9
f) Lack of travel costs for non-federal parties	1	1	12
g) Reluctance of federal decision makers to support or participate		2	12
h) Reluctance of other federal agencies to participate		3	11
i) Reluctance of other non-federal parties to participate		4	10
j) Contracting barriers/inefficiencies	1	2	11
k) Lack of resources for staff capacity building	1	3	10
l) Lack of personnel incentives	1	3	10
m) Lack of budget incentives	2	2	10
n) Lack of access to qualified mediators and facilitators		2	12
o) Perception of time and resource intensive nature of ECR		4	10
p) Uncertainty about whether to engage in ECR		2	12
q) Uncertainty about the net benefits of ECR		3	11

VI. CONCLUSION

The Department of Energy sites and program offices encounter very few barriers or challenges to the use of ECR primarily because of the Department's experience with stakeholder and regulator collaboration, which began long before the ECR Memorandum was issued. This extensive experience and the nature of the developed relationships with stakeholders and regulators generally contribute to resolving environmental concerns before they become deep-seated and expensive conflicts.