

Environmental Conflict Resolution

Seventh Annual Report

March 2013



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 to 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 seventh 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 the process involves the use of third-party neutrals. Though different, this definition is consistent with the spirit of the ECR Memorandum, which acknowledged the value of all types of dispute resolution and collaborative problem solving.

DOE 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 2012 (FY 2012), 15 DOE sites and program offices reported a total of 62 ECR cases. Two of these cases involved third-party assistance; both are in progress. Of the 60 ECR cases that did not involve third parties, 44 were completed and 16 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 CEQ/OMB 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 FY 2012.

This report constitutes the Department's seventh 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 seventh 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. This report contains the information supplied by 15 respondents.

II. CAPACITY DEVELOPMENT AND PROGRESS MADE IN FY 2012

DOE sites and program offices availed themselves of training opportunities during FY 2012. 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 was held on October 2 and 3, 2012, as an interactive webinar drawing 45 participants. Training in ECR was provided by the U.S. Institute for ECR; a session titled "Introduction to the U.N. Declaration on the Rights of Indigenous Peoples" contributed to training on tribal issues. Additional webinar training topics were environmental justice,

Federal appropriations laws, asset revitalization, and updates on the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). 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.

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. Each monthly call usually drew 15-30 environmental attorneys as participants.

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 whether a dispute may benefit from the use of a third-party neutral, and, if so, in identifying and engaging appropriate individuals.

III. ECR CASES IN FY 2012

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. Summary of ECR Cases

Table 1, *ECR Cases with Third-Party Involvement in FY 2012*, 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 2012*, depicts the information for ECR cases in which third-party assistance was not used.

The total number of reported ECR cases in FY 2012 was 62; 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 established and effective relationships, communication channels, and collaborative decision-making processes that the Department has had in place for many years. These relationships, channels, and processes enable effective conflict resolution and prevention. 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.

As of the end of FY 2012, the two cases in which third-party involvement was used remained in progress; 16 of the 60 ECR cases without third-party involvement were in progress whereas 44 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 2012. 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 2012

<i>Context for ECR Applications:</i>	Cases or projects in progress ¹	Completed cases or projects ²	Total FY 2012 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				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	1		1	1				1	
Siting and construction									
Rulemaking									
License and permit issuance									
Compliance and enforcement action									
Implementation/monitoring agreements									
Other									
Total	2		2	2				1	1

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

2 A “completed case” means that neutral third-party involvement in a particular matter ended during FY 2012. The end of neutral third-party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, all issues are resolved, or that agreement has been reached.

3 “Cases in progress” and “completed cases” add up to “Total FY 2012 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 2012

<i>Context for ECR Applications:</i>	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2012 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				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	8	39	47	47				45	2
Siting and construction									
Rulemaking									
License and permit issuance (Forum not indicated for one case)	3		3	1	1		1 (not specified)	2	1
Compliance and enforcement action	1		1		1			1	
Implementation/monitoring agreements	3	5	8	8				8	
Other:									
Total	16	44	60	56	3		1	56	4

1 A “case in progress” is an ECR case in which the collaboration/negotiation/dispute resolution began prior to or during FY 2012 and did not end during FY 2012.

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

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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 priority areas for ECR use, which they had reported in previous years, and whether they used or increased their use of ECR in those areas in FY 2012. They were also asked to report on additional priority areas identified in FY 2012. The following tables depict priority uses involving third-party neutrals.

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

Submitted Priority Areas of ECR with Third-Party Involvement during FY 2012	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
NPDES Permit	1
Public Engagement Activities	2
Relationships with Regulators	2
Title V Air Permitting Program	1

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

Submitted Priority Areas of ECR with Increased Third-Party Involvement during FY 2012	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

The following table lists the additional priority areas for which respondents used a third-party neutral in the reporting year.

Submitted Additional Priority Areas of ECR with Third-Party Involvement during FY 2012	Number of Instances (from two Respondents)
Construction/Title V Air Permitting Program	1
Savannah River/Harbor Discharger Group	1
Stationary Reciprocating Internal Combustion Engine (RICE)	1
South Carolina Governor's Nuclear Advisory Council	1

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.

The outcomes of ECR continue to be measured quantitatively through compliance with milestones and commitments, and the avoidance of potential fines or penalties from litigation or enforcement actions. Quantifying the cost of formally resolving an issue that never arose due to collaborative conflict resolution or the use of a third-party neutral would be difficult.

The DOE survey results indicated that DOE sites do not specifically track ECR use and cost savings but they are fully aware of the value of ECR.

C.1 ECR with Third-Party Involvement

West Valley Demonstration Project Site (WVDP) (New York) – Although the WVDP does not have a formal tracking mechanism to account for the specific benefits of using the services of a third-party neutral in its negotiations with the New York State Energy Research and Development Authority (NYSERDA) regarding decommissioning and/or long-term stewardship activities, it observed that the extremely comprehensive ECR process is ongoing and has saved considerable time and money. These savings resulted from a cooperative working relationship facilitated by the third-party neutral. Although the WVDP does not have a formal tracking mechanism to account for the specific benefits of using the services of a third-party neutral in its negotiations with the New York State Energy Research and Development Authority (NYSERDA) regarding decommissioning and/or long-term stewardship activities, we do know that prior to introducing a third party neutral to assist the parties in finding solutions, DOE and NYSEDA had been engaged in an over twenty-five year dispute over issues of responsibility and cost. The ability to make the necessary decisions to effectively move the Project forward was being impacted. Once these issues were resolved, DOE and NYSEDA were able to work more cooperatively and the Project advanced considerably. In the meantime, Phase 1 activities have been ongoing.

C.2 ECR without Third-Party Involvement

Richland Operations Office (RL)(Washington) – Generally, the outcomes of ECR and collaborative problem solving conducted at the RL are measured qualitatively in terms of the overall success of the conflict resolution or problem solving (e.g., conflict or problem resolution is successfully conducted at the lowest reasonable level, the conflict or problem resolution was conducted respectfully and openly, and 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.

The submittal and review/approval of permit modifications and changes to the Hanford Federal Facility Agreement and Consent Order, or Tri-Party Agreement (TPA), forms and documents are tracked by RL and its contractors. This tracking information is reviewed regularly to ensure acceptable progress in implementing the TPA is occurring. The status also is reviewed at meetings with the regulating agencies. The RL Environmental Management Division and Project staff monitors the use and outcome of ECR. Staff members participate in meetings and discussions to resolve conflicts and solve problems. The goal in all these activities is to resolve conflicts and solve problems as quickly as possible in order to allow work to proceed and minimize impacts to cost and schedule. Application of ECR in FY 2012 was crucial in modifying and maintaining compliance with environmental permits, the TPA, and other environmental and natural resource processes and documents.

Savannah River Site (SRS)(South Carolina) –The SRS tracks the positive outcomes of its ECR activities through the following metrics:

- Maintaining cooperative and collaborative working relationships with environmental regulatory agencies,
- Avoiding schedule delays (and associated costs) in start of construction or operation of facilities due to delays in receiving regulatory permits/approvals, and
- Avoiding potential fines or penalties from litigation or enforcement actions.

Outcomes are measured by tracking progress on completion of regulatory milestones through the Integrated Planning, Accountability and Budgeting System (IPABS) and the Environmental Management Quarterly Environmental Scorecard and the SRS Site Tracking, Analysis, & Reporting (STAR) system.

IV. DEMONSTRATIONS OF ECR USE AND VALUE

Environmental conflict prevention and environmental conflict resolution take 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 2012 responses of how environmental conflicts were avoided or resolved, site personnel also conveyed the benefits that accrued from their ECR efforts.

One site, the National Energy Technology Laboratory (NETL) recognized the value of ECR should its use become necessary. NETL identified staff members to serve as specialists in two key areas – tribal and regulatory relations – with the potential for conflict. The Tribal Liaison is involved in all negotiations between DOE and Indian tribes. Similarly, the Regulatory Specialist serves to notify and assist other staff members when there are changes or issues regarding environmental laws such as the Endangered Species Act or the National Historic Preservation Act, or topics such as wetlands and floodplain protection.

Similarly, although Sandia National Laboratories/New Mexico maintains a strong collaborative relationship with its regulators and has not needed the services of a third-party neutral, it recognizes the potential for that need. Accordingly, the laboratory maintains contact with ECR resources through the DOE monthly environmental attorneys' conference calls and the annual training to keep up-to-date on agency-wide capacity for the provision/availability of third-party neutrals.

A. ECR and Third-Party Neutrals

Examples of the use of third-party neutrals within the DOE complex during FY 2012 are as follows:

Savannah River Site (South Carolina) – By joining a third-party facilitated consortium of wastewater discharges into the lower Savannah River, SRS was able to work with regulators in suggesting pollutant reduction levels to its NPDES Total Maximum Daily Loads (TMDL) limit on dissolved oxygen in the river. These suggested levels, presently under review by regulators, can reduce SRS's operating burdens while still protecting the water quality of the lower Savannah River.

West Valley Demonstration Project (New York) – In order to proceed with important decontamination and decommissioning work at the WVDP and Western New York Nuclear Service Center (Center), WVDP and NYSERDA embarked upon a joint decisionmaking process for decommissioning and/or long-term stewardship at the Center. Fundamental to the future success of this approach was the agreement between WVDP and NYSERDA that the services of a third party neutral to facilitate interagency consensus on several complex and controversial facilities held the greatest potential for a mutual and timely decision on the decommissioning of the remaining facilities addressed in Phase 2.

WVDP dedicated considerable time and resources throughout FY 2012 to complete and implement the agreements and guidance necessary to govern a multi-year ECR effort to facilitate interagency consensus building on several complex and controversial projects.

This projected 6-8 year project is a fundamental part of WVDP's future planning and budget. Several WVDP staff members are dedicated to developing and managing this comprehensive effort. WVDP and NYSERDA have also agreed upon and implemented a substantial public participation plan as part of the overall ECR process. Most importantly, WVDP and NYSERDA entered into a "tripartite agreement" with a third party neutral to retain the services of all necessary subject matter experts (SMEs), an Independent Scientific Panel (ISP) and a professional facilitator to coordinate the entire process with all costs to be divided equally (50/50) between WVDP and NYSERDA. This Phase 1 Study process was well underway at the end of FY 2012 with numerous SMEs, Working Groups and the ISP fully engaged. In addition, WVDP and NYSERDA have jointly hosted multiple public meetings as part of the Phase 1 Study Process with the professional facilitator and third party neutral present. The Phase 1 Study (P1S) process continues with monthly CTF meetings and Quaterly Public Meetings. The P1S process will likley run for the next several more years prior to DOE and NYSERDA making Phase 2 decisions.

As a consequence of the effective use of ECR and the ongoing Phase 2 Study process to facilitate interagency consensus, WVDP is well-positioned to anticipate, evaluate and resolve environmental issues before they become a larger problem. Additionally, a regular Regulatory Roundtable process has been established whereby all Federal and State regulators meet at the WVDP for a full day at least twice a year to discuss all ongoing activities. This process has been very effective in avoiding unexpected and unnecessary conflict.

B. ECR Without Third-Party Neutrals

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

Idaho Operations Office (Idaho) – The Idaho Operations Office uses processes described in regulatory agreements, including consent orders, that prescribe dispute resolution processes. Collaborative discussions and negotiations occur routinely with State of Idaho regulatory agencies.

National Nuclear Security Administration-Lawrence Livermore National Laboratory (California) – At the Lawrence Livermore National Laboratory, environmental compliance issues that arise are related to the CERCLA process and are addressed informally through the CERLCA Remedial Project Managers meetings. Issues that are not resolved informally are addressed through the formal CERCLA conflict resolution process.

National Nuclear Security Administration-Sandia National Laboratories (New Mexico) – For FY 2012 Sandia reported that it was able to work directly with its regulators to achieve resolution of permitting and compliance activities.

Pantex (Texas) – Pantex retained its ECR-experienced staff when the Environmental Restoration Program was transferred to the DOE Long Term Stewardship program because of its previous very positive history with ECR. The site's ECR-experienced staff members routinely interact with regulators and stakeholders to maintain effective working relationships.

Richland Operations Office (Washington) – Environmental conflict avoidance and resolution continued to be a key element in RL's management of its interface with external environmental regulatory agencies and interest groups in FY 2012. RL places a high priority on working collaboratively to avoid conflict and minimize the number of conflicts that need to be resolved through a more formal environmental conflict resolution process.

The Hanford Tri-Party Agreement (TPA) establishes the agreement for how the Hanford site will achieve compliance with the remedial action provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the treatment, storage, and disposal unit regulations and corrective action requirements of the Resource Conservation and Recovery Act (RCRA). The TPA contains specific provisions for addressing disputes in a defined, structured manner with associated time constraints in order to effectively drive decisions and avoid unnecessary delay.

When disputes arise under the TPA, RL project managers develop negotiation strategies that incorporate the principles of ECR. Some form of collaborative negotiation is used to resolve each issue, including the use of facilitators or mediators as appropriate. The parties to the dispute have worked respectfully and collaboratively over the years to resolve issues and continue with the important cleanup work. This continued to be the situation in FY 2012.

Savannah River Site (South Carolina) – The "pre-dispute resolution" initiatives at the SRS in FY 2012 emphasized maintaining environmental compliance and avoiding the need for third-party ECR. Through decision forums with regulators from the South Carolina Department of Health and Environmental Control (SCDHEC) and the U.S. Environmental Protection Agency (EPA), SRS was able to conform to deadlines in its Federal Facility Agreement. The forums featured monthly routine meetings with the regulators to assess progress and refine expectations related to the deadlines.

Strategic Petroleum Reserve Project Management Office – In FY 2012, the Strategic Petroleum Reserve Project Management Office used the NEPA process and its environmental management system (EMS) to address environmental concerns.

Waste Isolation Pilot Project (WIPP)(New Mexico) – The WIPP management continued to use collaborative problem solving in building relationships with regulators and in dealing with hazardous waste facility permit modifications and implementation.

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 2012:

Brookhaven Site Office (New York) – Brookhaven Site Office participation in several groups is designed to facilitate communication with regulators, elected officials, special interest groups and concerned citizens and keep them apprised of environmental issues at Brookhaven National Laboratory. Among these groups are the Interagency Agreement group which consists of the EPA and state and local regulators, the Citizens Advisory Board comprised of interested citizens and interest groups, and the Brookhaven Executive Roundtable whose membership includes local elected officials and representatives of local government. The free exchange of information and early resolution of disputes afforded by these groups has been effective in minimizing if not actually eliminating environmental disputes.

National Energy Technology Laboratory (NETL) (Oregon, Pennsylvania, West Virginia) – NETL uses the public participation features of NEPA – particularly the law’s scoping process – to ensure that differing opinions on projected DOE actions are raised. The scoping process allows early identification of the public’s concerns so they can be addressed throughout the NEPA process. Later opportunities for public comment are also crucial parts of DOE’s decisionmaking.

National Nuclear Security Administration -Nevada Site Office (Nevada) – The National Nuclear Security Administration-Nevada Site Office (NNSA/NSO) worked together in a collaborative effort with the Consolidated Group of Tribes and Organizations in the development of the Nevada National Security Site Draft Site Wide Environmental Impact Statement and with the Nevada Site Specific Advisory Board to address priorities of the Office of Environmental Management in its work performed in Nevada. Use of regular meetings with environmental regulators and the use of citizen boards and committees designed to engage stakeholders in the early stages of decision-making processes have been very successful for NNSA/NSO. These activities foster open communication between NNSA/NSO and its stakeholders to ultimately avoid environmental conflicts.

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 certain major policy issues related to the cleanup of the Hanford site. In FY 2012, the HAB was consulted on numerous cleanup matters and frequently offered straight-forward recommendations and advice to the agencies, representing a consensus from the various interest groups.

West Valley Demonstration Project (New York) – In FY 2012, the WVDP hosted a monthly Citizens Task Force meeting to inform the local interest group of ongoing activities and respond to any concerns of the group. The WVDP also holds a Quarterly Public meeting aimed at informing the broader general public of ongoing activities as well as to notify the community of updates to the Phase 1 Study process.

D. Benefits of ECR

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

D.1 ECR with Third-Party Involvement

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 two 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 its 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 15 respondents. The survey listed 17 possible challenges or barriers to effective use of third parties during FY 2012, and allowed respondents to list additional challenges or barriers. The potential challenges or barriers addressed issues relating to lack of staff expertise, funding, incentives, and access to qualified mediators and facilitators. Other challenges listed as reasons for the reluctance of parties to use third-party neutrals in the resolution of an environmental conflict include the perception that the use of third-party neutrals is time- and resource-intensive. 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 2012

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		3	12
b) Lack of staff availability to engage in ECR		3	12
c) Lack of party capacity to engage in ECR		2	13
d) Limited or no funds for facilitators and mediators	2	4	9
e) Lack of travel costs for your own or other federal agency staff	3		12
f) Lack of travel costs for non-federal parties		2	13
g) Reluctance of federal decision makers to support or participate			15
h) Reluctance of other federal agencies to participate		1	14
i) Reluctance of other non-federal parties to participate	1	1	13
j) Contracting barriers/inefficiencies		1	14
k) Lack of resources for staff capacity building		2	13
l) Lack of personnel incentives		3	12
m) Lack of budget incentives	1	2	12
n) Lack of access to qualified mediators and facilitators			15
o) Perception of time and resource intensive nature of ECR		2	13
p) Uncertainty about whether to engage in ECR		1	14
q) Uncertainty about the net benefits of ECR		1	14

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.