

**FY 2013 TEMPLATE**  
**Environmental Collaboration and Conflict Resolution (ECCR)<sup>1</sup>**  
**Policy Report to OMB-CEQ**

On September 7, 2012, the Director of the Office of Management and Budget (OMB), and the Chairman of the President's Council on Environmental Quality (CEQ) issued a revised policy memorandum on environmental collaboration and conflict resolution (ECCR). This joint memo builds on, reinforces, and replaces the memo on ECR issued in 2005.

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year in implementing the ECCR policy direction to increase the effective use and institutional capacity for ECCR.

ECCR is defined in Section 2 of the 2012 memorandum as:

*“ . . . third-party assisted collaborative problem solving and conflict resolution in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and water and land management.*

*The term Environmental Collaboration and Conflict Resolution encompasses a range of assisted collaboration, negotiation, and facilitated dialogue processes and applications. These processes directly engage affected interests and Federal department and agency decision makers in collaborative problem solving and conflict resolution.*

*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 policy and regulatory disputes to administrative adjudicatory disputes, civil judicial disputes, intra- and interagency disputes, and disputes with non-Federal persons and entities.*

*Environmental Collaboration and Conflict Resolution can be applied during policy development or planning in the context of a rulemaking, administrative decision making, enforcement, or litigation with appropriate attention to the particular requirements of those processes. These contexts typically involve situations where a Federal department or agency has ultimate responsibility for decision making and there may be disagreement or conflict among Federal, Tribal, State and local governments and agencies, public interest organizations, citizens groups, and business and industry groups.*

*Although Environmental Collaboration and Conflict Resolution refers specifically to collaborative and conflict resolution processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal agencies may pursue with non-Federal entities to plan, manage, and implement department and agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving are presented in Attachment B. The Basic Principles provide guidance that applies to both Environmental Collaboration and Conflict Resolution and unassisted collaborative problem solving and conflict resolution. This policy recognizes the importance and value of the appropriate use of all forms collaborative problem solving and conflict resolution.”*

---

<sup>1</sup> The term ‘ECCR’ includes third-party neutral assistance in environmental collaboration and environmental conflict resolution

This annual report format below is provided for the seventh year of reporting in accordance with the memo for activities in FY 2013.

The report deadline is March 3, 2014.

We understand that collecting this information may be challenging; however, the departments and agencies are requested to collect this data to the best of their abilities. The 2013 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 ECCR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2013 ECCR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, prior year synthesis reports are available at <http://www.ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>

## FY 13 ECCR Report Template

Name of Department/Agency responding:	U.S. Environmental Protection Agency
Name and Title/Position of person responding:	Richard Kuhlman Director
Division/Office of person responding:	Conflict Prevention and Resolution Center
Contact information (phone/email):	202.564.0696 <a href="mailto:kuhlman.richard@epa.gov">kuhlman.richard@epa.gov</a>
Date this report is being submitted:	March 3, 2014
Name of ECR Forum Representative	Richard Kuhlman

1. **ECCR Capacity Building Progress:** Describe steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2013, including progress made since FY 2012. Include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases. To the extent your organization wishes to report on any efforts to provide institutional support for non-assisted collaboration efforts include it here. If no steps were taken, please indicate why not.

[Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the OMB-CEQ ECCR Policy Memo, including but not restricted to any efforts to a) integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECCR; c) invest in support, programs, or trainings; 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 ECCR for decades. As a result, the agency has one of the more advanced ECCR programs in the executive branch. EPA continued to provide high levels of programmatic/institutional capacity for ECCR during FY 2013 in each of the four areas identified in the OMB/CEQ ECCR policy memorandum, Attachment C, Section a, for departments and agencies with existing ECCR programs. Much of this work also provides support for non-assisted collaboration.

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

**EPA Themes** – In September 2013, EPA Administrator Gina McCarthy issued a memorandum entitled “EPA Themes – Meeting the Challenge Ahead.” In the memorandum, she articulates a set of seven themes:

- Making a Visible Difference in Communities Across the Country
- Addressing Climate Change and Improving Air Quality
- Taking Action on Toxics and Chemical Safety
- Protecting Water: A Precious, Limited Resource
- Launching a New Era of State, Tribal and Local Partnerships
- Embracing EPA as a High Performing Organization, and
- Working Toward a Sustainable Future

ECCR is an important tool in furthering EPA’s work in each of these areas and the agency uses ECCR, as appropriate, in related matters.

**EPA’s Strategic Plan** - EPA’s ECCR 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 the 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.” ECCR is an important way to promote and facilitate this communication. As in previous years, the agency used ECCR in activities supporting each of the five Strategic Plan goals in FY 2013. The breadth of EPA’s support for ECCR across the full range of the agency’s business is reflected in our response to question 3, in which we report 166 ECCR cases for FY 2013, covering all ECCR application contexts and decision-making forums.

**ECCR Strategy** - During FY 2013, EPA’s Conflict Prevention and Resolution Center (CPRC) continued implementing its second strategic plan (2011- 2015) with its renewed commitment to bringing people together to solve their environmental problems. The CPRC approaches this commitment in two ways. First, we respond to client requests for help with facilitation, mediation, conflict coaching, or advice. Second, we work to build

EPA's conflict prevention and resolution capacity. In the coming years we will maintain a strategic focus on using good practice, demonstrating results, building knowledge and skills, and cultivating opportunity for the use of ECCR and collaborative problem solving at EPA. The strategy contains measurable performance objectives and describes the anticipated approach to reaching these objectives. In FY 2013, as in previous years, the CPRC developed and implemented an annual operating plan with specific action items and dedicated personnel and funding to further the objectives of the ECCR strategy.

### **Assure that the Agency's Infrastructure Supports ECCR**

EPA provides a high degree of support for ECCR 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 ECCR 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 ECCR and other forms of ADR to deal with disputes and potential conflicts, contains many themes in common with the OMB/CEQ ECCR policy memorandum. In particular, it articulates the following expected benefits from ADR/ECCR:

- 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 regulations;
- 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 ECCR policy memorandum:

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

Based on the ADR policy, EPA adopts a broad perspective on what qualifies as ECCR - any technique to address environmental issues that involves a neutral third party, whether or not the participants' goal is to reach agreement. ADR/ECCR is used in many contexts at EPA including adjudications, rulemaking, policy development,

administrative and civil judicial enforcement actions, permit issuance, administration of contracts and grants, stakeholder involvement, negotiations, and litigation.

**Senior Leadership Support for ECCR Use** - Senior EPA leadership continues to provide encouragement and support for the use of ECCR, as it has for more than three decades. In FY 2013, EPA's Deputy Administrator, Assistant Administrators, and Regional Administrators engaged in and supported the use of ECCR in high-profile matters, including the following cases and projects:

- Bristol Bay Watershed Assessment
- Cape Cod Commission 208 Water Quality Planning Process
- CERCLA 108b
- GE/Housatonic River
- Idaho Fish Consumption Tribal WQS
- New England Climate Leaders Summit
- New England Green Chemistry Challenge
- Southern New England Coastal Watershed Restoration Partnership, and
- Vieques Federal Facilities Dialogue.

**ECCR 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 ECCR in FY 2013. Our ECCR outreach, education, training, and career development activities included the following:

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

- In FY 2013, the CPRC conducted six training events of more than two hours for a total of 148 people. These included Negotiations, Interest-Based Negotiations (IBN) and Advanced Interest Based Negotiations. Audiences for the above negotiation trainings included Region 4 Water and Environmental Justice staff, Office of General Counsel staff, EPA Superfund Remedial Project Managers, and Region 10 Federal Facilities Enforcement staff. In addition to negotiation training, the CPRC debuted a new training on Environmental Collaboration and Conflict Resolution Foundations – an introduction to ECCR for EPA staff and managers – in Region 8. As in years past, the CPRC relied on regional staff, particularly from Regions 4 and 8, to help develop, hone, and deliver training.
- In addition to these training events, the CPRC conducted several shorter training events. These included 60-90 minute brown bags and webinars. The CPRC delivered Lessons from Hollywood (intro to negotiation concepts using film clips) to in-classroom audiences, including the Office of Wetlands, Oceans, and Watersheds; the EPA Environmental Science Center at Ft. Meade; the Office of General Counsel; and EPA Region 9, and via webinar on EPA Conflict Resolution Day. In addition, the CPRC provided training on Confidentiality for Federal Neutrals in partnership with the Interagency Working Group on ADR via webinar to all interested federal

neutrals.

- The CPRC completed its training strategy in fall 2012. The strategy makes recommendations around four main topics: audience selection, content selection, materials development, and resource priorities. The CPRC has begun to implement these recommendations, including responding to the needs assessment data with the development of a course and training materials focusing on dealing with difficult people, which was expected to debut in fall 2013 but was postponed due to the government shutdown. Other items being implemented include the creation of a catalog of existing training materials by audience, topic, etc. to reduce materials development time, and the “modularization” of training to respond to the shift from longer, formal in-classroom training scenarios with longer lead/preparation times to shorter, in-person and web-based training with greater use of existing “off the shelf” materials from the CPRC catalog. Finally, the CPRC partnered with EPA’s Office of Solid Waste and Emergency Response to consider options for implementing and supporting social learning models for one target audience group (EPA Superfund Community Involvement Coordinators).
- The CPRC sponsored EPA Conflict Resolution Day events in October 2012. This day of presentations coincided with International Conflict Resolution Day and the Interagency ADR Working Group’s weeklong schedule of events. Headquarters activities during the week included expert speakers on IBN, conflict resolution concepts, and confidentiality under the ADR Act of 1996, collaborating with communities about disaster preparedness, dealing with emotions in conflict, and an ECCR exhibit staffed by EPA ECCR experts. Several EPA regional offices also hosted presentations. Two of these presentations were broadcast via webinar to EPA staff across the country.
- The CPRC funded 40-hour mediator training for three EPA Region 5 attorneys. After completing the training, the attorneys have been included in the Region 5 Office of Regional Counsel (ORC) informal “mediator pool” and may be asked to serve as neutral third parties in ECCR cases.
- The CPRC sponsored an exhibit, provided handouts, and gave a presentation on ECCR at the 2012 National Association of Remedial Project Managers Conference.
- The CPRC sponsored an exhibit, provided handouts, and offered information on ECCR services at the 2013 Community Involvement Training Conference in Boston. In addition, the CPRC provided support for online streaming of sessions and implementation of online collaboration tools to enhance remote participation.
- The CPRC provided one training presentation on collaboration, ECCR, and public involvement at the agency’s regularly scheduled training on the EPA Regulation Development Process.
- The CPRC conducted regular bi-weekly ten-minute presentations on collaboration and ECCR for new hires.
- The CPRC continued to implement an ECCR outreach and marketing strategy for the agency, including identification of target audiences and working with representatives from those audiences to improve

communications and service delivery to on-the-ground staff.

- The Office of Water's Wetlands Division received IBN training and revised and expanded IBN training (with the cooperation of the U.S. Army Corps of Engineers Institute for Water Resources) as part of the regular Mitigation Banking Interagency Review Team training.
- During FY 2013, all Environmental Appeals Board judges and attorneys received the training necessary for conducting ADR, and have arranged for a more in-depth three-day training session in February 2014 to enhance their skills.

### ***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 Attachment C section (a)(2) of the ECCR policy memorandum. The major effort in FY 2013 was Region 2's first full-day in-house training to build facilitation capacity. A cross-divisional team trained approximately fifteen new facilitators on effective facilitation skills to create a Region 2 Facilitation Corps. Region 2 then offered a series of two-hour sessions over several months to the trainees so that they could practice the skills they learned during the full-day training. During the two-hour sessions, the trainees facilitated discussions on an actual Leadership Development Program project in Region 2. Approximately half of the trainees participated in the sessions and a number of them went on to facilitate brief focus group discussions on the Freedom of Information Act, permits and inspections, litigation, and enforcement case management. Region 2 also increased capacity for non-third-party assisted collaboration by piloting its first training on effective meetings, called "Seven Simple Steps to Get the Most Out of Your Meetings," which fifteen people attended. Region 2's approach for increasing the use of ECCR has been to increase awareness among enforcement attorneys about ECCR and thereby increase the use of ECCR. In FY 2013, however, due to furloughs, decreased resources, and staff availability, outreach and training for attorneys was not at the same level as in past years. This may, in part, account for a decline in ECCR enforcement cases this year.
- Region 3 (Philadelphia) has provided mediation and negotiation training to EPA employees to increase awareness, promote the use of ECCR, and enhance ECCR skills. One of Region 3's ECCR Specialists is a member of the Regional Training and Skills Development management workgroup. A product of this workgroup is a framework for identifying critical competencies, learning events, and target audiences to further the goal of leading a diverse and collaborative workforce. Chief among the competencies identified are managing conflict, teamwork, communication, and self-awareness. The ECCR Specialist has been teaming with the Regional Training Officer regarding the design, development, and presentation of learning events.

- Region 7's (Kansas City, KS) ECCR Specialist gave a key presentation at the November 2012 Environmental Protection in Indian Country Workshop in the Region 7 Regional Office. The speaking engagement was followed by a question and answer session and a "meet the mediator" informal discussion afterwards. The Regional ECCR specialist also provided overview presentations on ECCR topics to the Region 7 Community Connections Network and to regional management representatives throughout the year.
- Region 8 (Denver) staff are routinely offered training in IBN and related collaboration and conflict resolution skills. Consideration and use of ECCR in Region 8 has become an integrated part of the way the Region does business.
- Region 9's (San Francisco) Regional Facilitator presented training on "Effective Meetings and Effective Feedback."

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

During FY 2013 the CPRC also prepared for several activities to be implemented in FY 2013 and beyond. For example, we prepared for FY 2013 Conflict Resolution Day activities, including workshops on storytelling as a mediation/facilitation tool, facilitating online meetings, and topics on workplace conflict prevention.

**International ECCR Outreach** – EPA worked to develop international capacity and expertise in ECCR during FY 2013, including the following activities:

- The CPRC worked with EPA's Office of International and Tribal Affairs in designing its Public Participation Toolkit Website, and conducted a weeklong ECCR training in Rio de Janeiro for members of the Brazilian Ministry of the Environment and national bar association.
- Region 2 (New York) built capacity internationally this year by providing a two-day training in El Salvador for Central American environmental ministry officials and NGOs on stakeholder engagement, collaboration, and conflict prevention and resolution. The training was funded by the U.S. Agency for International Development and the State Department and it was developed and taught by Region 2 personnel, including the Region's International Affairs Program Manager, social media expert, and ECCR Specialist.

**Invest in Support of Programs**

Over the years, EPA has made considerable investments to support its ECCR program, a trend that continued in FY 2013:

**ECCR Personnel** - In FY 2013, the agency had eight FTEs in the CPRC and an additional three FTEs in the New England, Denver, Kansas City, and San Francisco regional offices devoted to ECCR. In addition, at least 25 other individuals support the

ECCR 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 ECCR activities. These regional ECCR staff members support ECCR education/training; draw on existing regional resources to resolve disputes; build expert knowledge, skills, and capacity; track requests for assistance/ECCR cases/projects; coordinate regularly with the CPRC; and contribute to the development of the ECCR annual report.

**Office of Administrative Law Judges** - The Office of Administrative Law Judges (OALJ) continued to make ADR a priority, offering neutral mediation services of a part-time, temporary, administrative law judge in nearly all environmental cases filed with the Office, albeit on a time-limited basis. Over the course of the year, the parties in a majority of EPA cases affirmatively accepted ADR services from OALJ. OALJ anticipates that, if and when another ALJ is hired on a permanent, full-time basis, the scope of the ADR program could be extended to offer a lengthier opportunity for parties to participate in ADR and further contribute to the successful and efficient resolution of enforcement actions.

**Environmental Appeals Board** – Since FY 2010, EPA’s Environmental Appeals Board (EAB) has offered parties the option of attempting to resolve disputes through ADR with the assistance of an EAB Judge acting as a neutral evaluator/mediator. EAB has found its ADR program to be highly effective and efficient in fostering negotiated settlements that speed up resolution of EAB cases and preserve Agency resources. To date, approximately 30% of parties in the cases filed with the EAB voluntarily have agreed to submit their disputes to the ADR program. Of those cases submitted to ADR, 78% have reached resolution. Two cases that went through the EAB’s ADR program at the end of FY 2012 reached final settlement agreements and were removed from the EAB’s docket in FY 2013. EAB was forced to suspend accepting new cases for ADR, however, for much of FY 2013 due to the lack of a fourth judge (necessary because the three-judge EAB decision panels are recused from a matter in ADR while the fourth judge conducts the confidential ADR process). In FY 2014, EAB will continue to offer parties the option to participate in, and attempt to resolve their disputes through, ADR.

**Office of Civil Rights** - The Office of Civil Rights (OCR) encourages the use of ADR and EPA’s nondiscrimination regulations also provide that OCR must attempt to resolve complaints informally whenever possible. In appropriate cases OCR will offer parties the opportunity to engage in ADR efforts, including ECCR. OCR includes language regarding informal resolution in all letters that are sent to all parties.

**Office of Water** - The Office of Water comprises four offices and the Immediate Office. The Immediate Office includes three staff groups and the Urban Waters Program. Given the diverse nature of the work of each of these entities, they differ in their approach and use of ECCR. Below are ways each OW organization used or built capacity for ECCR use during FY 2013:

- Office of Ground Water and Drinking Water (OGWDW) - During FY 2013 OGWDW continued to use its National Drinking Water Advisory Council

(Council) to support collaborative policy reviews and potential conflict resolution of issues for most of its actions. The Council, convened under the Federal Advisory Committee Act, is composed of a diverse set of stakeholder representatives of environmental groups, the drinking water industry, and public health and public interest groups. OGWDW sought out diverse views from the Council to ensure that the range of opinions was heard. When needed, the Council forms special subgroups to work on specific issues. For example, the Council was consulted on EPA's regulatory policies relative to the chemical perchlorate and the procedures for the Consumer Confidence Reports. In addition, the Council discussed with EPA policies and procedures for preventing contamination of the sources of drinking water.

- Office of Science and Technology (OST) - During FY 2013, OST continued to have a robust regulatory agenda involving the concurrent development of 15 regulations, including rules for Water Quality Criteria and the 304(m) plan. Unfortunately, the vast majority of these have been under some form of legal mandate (e.g., consent decrees, settlement agreements) and, as such, the opportunities for use of robust ECCR have been severely limited. Even so, OST supported the use of ECCR to explore technology innovation in the development of the Unconventional Oil and Gas Effluent Limitation Guideline.
- Office of Wetlands, Oceans, and Watersheds (OWOW) - In FY 2013, OWOW's Wetlands Division, in collaboration with the U.S. Army Corps of Engineers (USACE), undertook a major wetlands programmatic assessment. This situation assessment was conducted by the U.S. Institute for Environmental Conflict Resolution (USIECR), which wrote a report and provided several concrete actions along three broad categories: actions EPA can take internally; actions USACE can take internally; and actions on which both agencies can work together. The agencies will be working over the next year to prioritize the many recommendations and implement them. OWOW also continued to provide in-house dispute resolution support and coaching to the regions on controversial Clean Water Act (CWA) 404 permits for major infrastructure projects.

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

- Region 1's (Boston) culture of support for ECCR has remained strong throughout FY2013. As in previous years, the Regional ECCR 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 ECCR 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 Region 1's ECCR contracting issues and paperwork. At the highest levels of management, Regional leaders are aware of

the services provided, frequently direct parties (both inside and outside of the agency) to the ECCR program, and are generally receptive to the use of ECCR when it is proposed for projects within their areas. Because of the proliferation of collaborative approaches to environmental problem-solving, there has been a growing demand for facilitation services, which the Region is addressing, in part, with in-house resources. Workload permitting, staff with ECCR skills are supported in their participation on the ECCR team and in their efforts to develop and hone their skills.

- Region 3's (Philadelphia) capacity for ECCR is implicit in the Region's implementation of the agency's strategic plan, including the promotion of collaborative efforts to achieve environmental benefits. EPA Region 3 ECCR Specialists are available to consult within the Region with regard to environmental matters, serve as liaisons between Region 3 and the CPRC, and help identify and obtain third-party neutrals. In addition, the Regional Training Officer, ECCR Specialist, and others are designing and facilitating retreats and workshops, which, among other things, assist in conflict management in intra-agency relationships, as well as in inter-agency relationships and in enforcement contexts.
- Region 4's (Atlanta) Office of Environmental Accountability ADR team members disseminate information on the ECCR process and types of case support provided by the agency in such efforts (e.g., contracting/funding support, mediator services and training); provide training opportunities to the legal and regional staff; and provide support to Regional management and staff on ECCR activities, as well as to Headquarters' ECCR efforts. Region 4 has instituted a Regional ECCR team of three lawyers that meet to discuss ways to build, promote and support ADR in the Region, including training and case support. The team also connects with the Superfund, Environmental Justice, Civil Rights and other program offices concerning collaborative activities.
- Region 5 (Chicago) took the following steps to build programmatic/institutional capacity for ECCR in FY 2013: (1) drew on agency ECCR specialists in the CPRC; (2) assigned staff in the Region 5 ORC to support programs; (3) worked to build partnerships with other agencies via the Chicago Federal Executive Board shared neutral program.
- Region 6 (Dallas) has taken steps to expand ECCR use in all relevant areas but has focused its efforts in two substantive ways. First, the Region has increasingly supported ECCR in the context of community involvement via public hearings, listening sessions, public outreach, and specific party(ies)/person(s) outreach/involvement. This effort has enabled the Region to effectively communicate its goals and missions to the interested parties but also receive vital important feedback from the public as to issues and concerns. The Region believes this approach has provided both the public and the Region with a better understanding and a mutual respect for all involved. Second, the Region has also used the ECCR process in civil administrative enforcement activities. The Region believes that settling cases quickly through the OALJ mediation process results in a faster outcome and resources can then be re-directed to other cases or activities.

- Region 7 (Kansas City, KS) continues to encourage and support the use of ECCR in addressing a wide range of agency matters. The Region continued its commitment to its intentional uptick in ECCR usage in FY 2013, although financial constraints hampered some of these efforts. Nonetheless, Region 7 did continue to increase its utilization of its ECCR Specialist in St. Louis, MO, who assisted in a wide variety of activities in the eastern part of Region 7. Region-wide, the ECCR Specialist also provided training and Regional Facilitator functions for several high profile meetings at the behest of the Regional Administrator. These higher profile uses of ECCR help achieve greater internal awareness. The Region continued to maintain strong ties with the CPRC. In addition to its traditional ties, the ECCR Specialist acted as a backup ADR Counsel to EPA Headquarters on an advisory matter this year and hopes to maintain and take advantage of those opportunities for ADR Counsel services when they may arise. The Region will also continue to regularly participate in ADR opportunities offered by OALJ in contested administrative cases. The Region continues its general promotion of ECCR through LAN Bulletin Board notices, informational e-mails targeted at Regional managers, active engagement in Regional Facilitator roles, and building an increasing body of successful cases that "ground truth" the value of such processes.
- Region 9's (San Francisco) Superfund Office continued to provide funding under its Conflict Prevention and Resolution Services Contract just-in-time task order to promote ongoing facilitated meetings at the Motorola 52nd Street Superfund Site.
- Region 10 (Seattle) continued its efforts to increase the effective use of ECCR and to build institutional capacity by working with its programs, employees, and outside stakeholders to identify opportunities to use ECCR tools. The Region worked with its ECCR specialists as well as specialists from the CPRC to identify and evaluate ECCR cases and to identify specific ECCR processes to use for cases when the Region determined that the use of ECCR was appropriate. The Region continues to have a strong ECCR presence in Superfund and the Office of Water, and is developing a greater presence in other programs. The Region continued to invest its resources in ECCR processes tailored to address environmental justice and Tribal issues. The Region also emphasizes the use of ECCR tools in its decision-making such that its process becomes more transparent, and the Region and public become better informed about each other's needs and interests. The Region's ORC encourages the routine consideration of ECCR in both its administrative and judicial cases.

**Contracting for External ECCR Services** - In FY 2013, the CPRC continued providing ECCR services under its seventh Conflict Prevention and Resolution Services (CPRS) 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 2013, EPA used about \$4.8 million in ECCR services (e.g., neutral third parties for ECCR cases, ECCR training) on 85 active task orders under the CPRS Contract. We also began the rebid

process for an eighth CPRS contract, also with an expected duration of five years. We expect the contract to be awarded in the second quarter of FY 2014.

**Interagency Agreement with the U.S. Institute for Environmental Conflict Resolution** – EPA’s IA with USIECR continues to provide cooperative support for conflict prevention and resolution assistance. The IA supports the National Roster of Environmental Dispute Resolution Professionals and 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. For example, in FY 2013, the IA provided support for a program assessment of the CWA 404 Program. In FY 2013, EPA utilized about \$90,000 of services for a total of five active projects through the IA.

**Interagency Partnerships** - EPA continued to strengthen its partnership with other federal agency ECCR programs during FY 2013. Approximately 43% of EPA’s ECCR cases involved other federal agencies, including those in which the Department of Justice was representing EPA in a litigation context. EPA and USIECR also continued work under their IA on a range of projects, including two coastal regional workshops and the CWA 404 Program assessment.

### **Focus on Accountable Performance and Achievement**

EPA believes that it is very important to track the use and outcomes of ECCR and has been working toward that end with other federal and state partners since before the original OMB/CEQ ECCR policy memorandum was first issued in 2005. In FY 2013 we pursued three efforts addressing performance and accountability. First, we continued to collaborate with USIECR and others to evaluate the practice of ECCR. Second, we utilized multiple approaches to gauge the use of ECCR at EPA. Third, we continued to evaluate ECCR-related training sponsored by the CPRC. All three of these activities were initiated prior to FY 2013 and updates on each are provided below.

**Evaluating the Practice of ECCR** - 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 ECCR. In FY 2013, EPA began using the fourth set of OMB-approved evaluation instruments developed through this collaboration and continued to collect and analyze evaluation data and use the results to improve our program.

**Gauging the Use of ECCR** - EPA has three methods for gathering data about the use of ECCR throughout the agency. The first method is the CPRS contract, which allows us to quickly and regularly identify current ECCR cases where external service providers are serving as neutral third parties, and the nature of the cases. Our IA with USIECR provides similar utility for shared cases.

The second method for measuring ECCR use is a network of EPA Headquarters office and regional staff members who are designated to assist with the ECCR annual reporting process, some of whom also provide additional ECCR program services as needed by their respective organizational units. These individuals are able to confirm preliminary ECCR case lists generated by the CPRC and supplement such lists with additional ECCR cases.

The third source of information about ECCR use is the CPRC's request tracking system, in which CPRC staff members log requests received for ADR and ECCR services. While none of these three methods of tracking ECCR 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 ECCR use.

**ECCR-related Training Evaluation** - In parallel to the CPRC's training efforts described above, we continued to implement a training session evaluation approach in FY 2013. This approach measures both the satisfaction of participants with presentations and logistics and the participants' view about whether the training achieved the learning goals set out in the courses. We are using the results of the training session evaluation to make regular improvements in training delivery. In FY 2014, we plan to continue the evaluation process for CPRC-sponsored training greater than two hours in duration and begin developing additional tools to assess the impact of our training.

## 2. ECCR Investments and Benefits

- a) Please describe any methods your agency uses to identify the (a) investments made in ECCR, and (b) benefits realized when using ECCR.

Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc.

Examples of benefits may include cost savings, environmental and natural resource results, furtherance of agency mission, improved working relationship with stakeholders, litigation avoided, timely project progression, etc.

The U.S. Environmental Protection Agency (EPA) has historically captured investments made in ECCR as part of the annual reporting process prescribed by OMB and CEQ. This year, as in previous years, the Conflict Prevention and Resolution Center (CPRC) administered a qualitative survey to each EPA Headquarters program office and regional office. Included in the questionnaire was a question substantially similar to question #1 in the annual report template that focuses on each office's and region's efforts to build programmatic and institutional capacity for ECCR. Such efforts include investments made in ECCR.

As quantitative indicators of the level of investment in ECCR at EPA, we continue to identify 1) dedicated FTEs for personnel who provide ECCR services in the CPRC and for EPA staff members serving similar functions in the regions; 2) the dollar amount invoiced through the Conflict Prevention and Resolution Services (CPRS) Contract on an annual basis; 3) the number of active task orders under the CPRS Contract on an annual basis; and 4) the number of ECCR cases for which EPA is a sponsor or in which EPA is a participant on an annual basis. For the FY 2013 ECCR Annual Report, the CPRC has taken two additional steps to collect quantitative data on the investments made in individual ECCR cases and comparative data on likely comparison scenarios, and to generate qualitative data on the benefits of ECCR.

As described in EPA's previous ECCR annual reports to OMB and CEQ, the CPRC has been developing an evaluation methodology, the Systematic Evaluation of Environmental and Economic Results (SEEER), to estimate the costs and benefits of individual ECCR cases. It is also designed for application to samples or entire populations of ECCR cases, as CPRC resources allow. We are currently finalizing an Information Collection Request (ICR) to allow us to collect SEEER data from non-federal participants in EPA ECCR cases and expect to submit the ICR for OMB approval in FY 2014. In FY 2013, the CPRC adapted a portion of the SEEER methodology to collect quantitative data on the EPA staff time spent on individual ECCR cases and the duration of the ECCR process, as well as comparison data for a likely decision-making process scenario that would have occurred if ECCR had not been used. The CPRC administered a pilot survey with questions concerning staff time and case duration for ECCR cases and comparison scenarios (e.g., litigation, unassisted negotiation) to the EPA staff lead involved in all known litigation-related ECCR cases that concluded in FY 2011 and FY 2012 (n=118). The ECCR cases that were part of

the survey included those that were initiated in matters before EPA's Office of Administrative Law Judges, Environmental Appeals Board, and the Federal Courts. The results of the survey are summarized in part b, below.

To generate information about ECCR benefits in FY 2013, the CPRC included a new question in our annual qualitative survey to EPA offices and regions concerning their views of the benefits associated with ECCR cases that occurred in FY 2013. To minimize the burden on the responding offices and regions, we asked about collective benefits of the ECCR cases in which they participated, rather than individual case benefits. The results of the benefits question are summarized in part b, below.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2013; and (b) quantitative or qualitative results (benefits) you have captured during FY 2013.

The qualitative and quantitative information on EPA's investments in ECCR that the CPRC collected through its traditional ECCR annual reporting process is described in the response to question #1, above, under the section entitled "Invest in Support of Programs." The results of the CPRC's newest efforts to collect data about the investments in individual ECCR cases and benefits are described below.

The CPRC estimates that ECCR cases assessed through the pilot costs survey required less than 50% EPA staff lead hours per case for active periods compared to the decision making processes that would likely have been used otherwise (e.g., litigation, unassisted negotiation). More specifically, the CPRC estimates a median of 42 total work hours for the EPA staff lead participating in active periods of these ECCR processes and a median of 95 hours for the likely comparison decision making processes. While the CPRC has greater confidence that the medians better represent EPA staff lead hours devoted to active periods in these ECCR and likely comparison processes, the mean results also suggest that the time savings from using ECCR were positive – and could be as much as 73% for EPA staff leads. The estimated mean total work hours for EPA staff leads participating in active periods of these ECCR processes was 66 hours and the mean for the comparison processes was 242 hours.

The pilot survey results also suggest one-third less elapsed time to reach a decision using ECCR compared to decision making processes that would likely have been used otherwise. With respect to case duration, the CPRC estimates a median of 12 total weeks for the ECCR cases and a median of 18 weeks for the likely comparison decision making processes. While the CPRC has greater confidence that the medians better represent the respective durations of the ECCR processes and likely comparison processes, we can also report similar results for the means: the estimated mean duration was 18 weeks for the ECCR processes and 27 weeks for the comparison

processes.

These estimates and the methodology used to generate them are subject to a number of limitations. For example, the savings for EPA lead attorneys would also be seen in savings for other EPA staff and non-personnel EPA costs (e.g., travel for court sessions, contractor analyses), as well as savings for non-EPA participants, who are usually corporations represented by outside legal counsel, and to other federal agencies, especially the U.S. Department of Justice, where it represented EPA. The results also do not address costs for ECCR neutral third parties nor the benefits associated with decisions reached, including any EPA personnel time savings associated with implementing a decision. In addition, the results only apply to a subset of EPA ECCR cases for the years specified; they do not include “upstream” ECCR cases that arose in the context of a federal agency decision unrelated to active litigation. Most importantly, this is the CPRC’s first attempt to quantify time expenditures and duration for ECCR processes and likely comparison processes for a large population of cases; our methods will be refined in the future as we learn from this experience.

While acknowledging these and other important limitations, the results do suggest a noticeable net savings of EPA staff lead time and a shorter case duration by using ECCR compared to other decision making processes for the population of cases studied. This conclusion is bolstered by EPA staff lead responses to two qualitative questions included in the same questionnaire. The CPRC asked about the relative expense of ECCR and the likely comparison process. A clear majority of EPA staff leads indicated that the comparison process would have been either significantly or somewhat more expensive than ECCR. The CPRC also asked EPA staff leads whether ECCR was a good investment for EPA in their case. Their level of agreement with this statement was about 80%.

Key themes present in responses to the new question concerning the collective benefits of FY 2013 ECCR cases in each EPA office and region can be summarized as follows:

- Efficiency: Nearly all offices and regions stated that the use of ECCR resulted in more efficient processes. The reported efficiency has two primary dimensions:
  - Maintaining timely progress: Having a neutral third party responsible for providing structure and focus to negotiations and conversations helped keep the parties’ attention on the case and moved cases along more quickly.
  - Resource savings: This was most often cited in the context of ECCR used for enforcement cases – e.g., the early resolution of cases resulted in cost savings (compared to the expense of litigation), quicker case resolution (compared to the time required to litigate a case), and reduction of wasteful gamesmanship, posturing, and delays between counter-offers. Resource savings was also seen as a benefit with respect to upstream, more collaborative cases as well.

- Avoidance of litigation: While efficiency was cited as a reason to avoid litigation in enforcement matters, the uncertainty associated with litigation outcomes in some cases was also cited as a reason for using ECCR. Thus, the use of ECCR is considered beneficial in such situations.
- More productive conversations: In addition to efficiency gains, the use of ECCR produced more productive conversations in both enforcement and non-enforcement contexts. The use of a neutral third party resulted in better-designed processes; improved communication of all parties' interests, goals, and concerns; and more focused outcomes from conversations. Even in enforcement cases where the parties did not reach agreement, offices and regions reported that ECCR resulted in a better understanding of the issues and perhaps narrowed the range of disagreement.
- Better outcomes: Many offices and regions stated the use of ECCR resulted in better outcomes. These include:
  - Outcomes that have improved environmental conditions when compared to non-ECCR cases: These include direct environmental benefits from decisions reached and also indirect outcomes from settlements achieved (e.g., enforcement settlement proceeds will significantly increase the pace of remedy implementation).
  - More creative outcomes: In both enforcement and upstream non-litigation cases, the use of ECCR allowed for more creative outcomes than could have been achieved otherwise.
  - External ownership: Outside stakeholders are more likely to take ownership in EPA initiatives and programs.
- Improved relationships: Nearly all offices and regions stated that the use of ECCR resulted in improved working relationships among participants. These improved relationships were exhibited during the course of the ECCR process, and also enabled more productive conversations among stakeholders following the conclusion of the ECCR process.
- Capacity building: The use of ECCR professionals helped build the capacity of EPA and external participants to engage in collaborative processes. These capacity building measures enhanced the parties' abilities to identify common interests and develop mutually satisfactory policies or action plans. Moreover, capacity building activities enabled partnerships and workgroups to work together more effectively after neutral facilitation support ended.
- Reduced EPA stress levels: EPA offices and regions reported reduced stress levels among staff due to the support they received from neutral third parties, particularly with respect to difficult processes, complex issues, and challenging personalities.
- Furtherance of EPA's mission: Nearly all offices and regions reported that the use of ECCR helped further the agency's mission to protect human health and the environment.

- c) What difficulties have you encountered in generating cost and benefit information and how do you plan to address them?

As the largest user of ECCR in the executive branch, EPA sees the value of evaluating ECCR and has invested significantly in such efforts over many years. The CPRC's previous evaluation work and experience in compiling information for this year's ECCR annual report do, however, suggest a number of challenges in generating cost and benefit information.

The overarching challenge concerns resources. Collecting valid and reliable quantitative information on costs and benefits for the large population of EPA ECCR cases on an annual basis is a costly endeavor, drawing from resources that would otherwise be devoted to supporting the actual use of ECCR. This applies both to creating and administering assessment tools, as well as the burden imposed on EPA staff members to provide data on costs and benefits at the individual case level. Inadequate resources cause us to favor qualitative data collection at an organizational level and simpler quantitative indicators of costs. Faced with increasingly tight budgets, EPA will continue to allocate some resources to assessing the costs and benefits of ECCR, but the timeframes for implementing more rigorous evaluations will be elongated.

There are also several methodological challenges related to generating cost and benefit information, some perhaps particular to ECCR. One such challenge is establishing a fair basis of comparison at the individual case level. For example, should ECCR be compared to litigation, unassisted negotiation, or something else? This is a particular concern because ECCR often runs parallel to and is influenced by other decision making processes for the same matter. Another challenge related to the baseline issue, once a comparison scenario has been established, is the appropriate source of data for the costs and benefits of the alternative decision making process. For example, ECCR cases can be matched to non-ECCR cases, but a failure to match on important variables – such as those that influence parties' self-selection of ECCR -- can produce invalid results. A third methodological challenge is retrospective reporting on ECCR and comparison cases. It is cognitively complex for case participants to reliably provide estimates on time and resources spent after the fact, sometimes years later. A final methodological challenge is capturing the benefits, particularly environmental benefits for individual ECCR cases. Issues here concern how such benefits can be feasibly measured and the timing of data collection.

Our planned SEEER evaluation methodology will address many of these challenges. It tackles the baseline issues by using both a comparison to a matched case and to a scenario developed through consensus among the ECCR case participants. Our view is that multiple forms of comparison are important to address the weaknesses inherent in single types of comparison. SEEER addresses the issue of retrospective reporting by utilizing data collected from independent expert groups on the same questions we ask of case participants. This allows us to assess the reliability of data from differently

situated sets of experts. With respect to capturing environmental benefits, the SEEER methodology constructs a tailored set of environmental measures for each case based on background research and incorporates those measures for data collection from the ECCR case participants and independent expert groups.

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2013 by completing the table below. [Please refer to the definition of ECCR from the OMB-CEQ memo as presented on page one of this template. An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process. In order not to double count processes, please select one category per case for decision making forums and for ECCR applications.

	Total FY 2013 ECCR Cases <sup>2</sup>	Decision making forum that was addressing the issues when ECCR was initiated:					ECCR Cases or projects completed <sup>3</sup>	ECCR Cases or Projects sponsored <sup>4</sup>	Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)				Federal only	Including non federal participants
<i>Context for ECCR Applications:</i>										
Policy development	8	6	0	0	2	misc.	4	7	2	2
Planning	33	10	0	2	21	Interagency collaboration, collaborative planning, stakeholder meeting	15	29	4	14
Siting and construction	12	9	1	0	2	misc.	5	12	0	8
Rulemaking	8	4	0	2	2	misc.	1	6	1	3
License and permit issuance	9	7	0	1	1	State standards	3	7	1	4

<sup>2</sup> An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2013.

<sup>3</sup> A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2013. 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>4</sup> Sponsored - to be a sponsor of an ECCR 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 ECCR case.

Note: If you subtract completed ECCR cases from Total FY 2013 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2013 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2013 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

Compliance and enforcement action	69	13	35	18	3	Shared EPA-State or Tribal Decision	42	56	2	19	
Implementation/monitoring agreements	5	5	0	0	0		1	4	0	2	
Other (specify): e.g., voluntary programs, stakeholder action, multi-context climate initiative, retrospective review	22	4	1	2	15	Voluntary program, stakeholder meeting	7	20	0	9	
<b>TOTAL</b>	<b>166</b>	<b>58</b>	<b>37</b>	<b>25</b>	<b>46</b>		<b>78</b>	<b>141</b>	<b>10</b>	<b>61</b>	
		(the sum of the Decision Making Forums should equal <b>Total FY 2013 ECCR Cases</b> )									

#### 4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably completed in FY 2013). 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 ECCR effort was funded

This mediation arose out of the ongoing cleanup of the New Bedford Harbor Superfund Site, a polychlorinated biphenyl (PCB)-contaminated harbor abutting four Massachusetts towns, including the busy commercial port of New Bedford. The Site has a long, complex history of community involvement, remedial decision-making, and enforcement activities. In addition, the Site was the subject of one of the New England Region’s earliest uses of ECCR to address a public dispute regarding a Superfund cleanup. After controversial remedial decisions landed EPA and the City of New Bedford in federal court, the neutral-assisted New Bedford Harbor Forum was established in 1993 to build consensus among stakeholders on a way forward.

On the enforcement front, in 1991 and 1992, EPA entered into cash-out settlements with the AVX Corporation and other defendants after nine years of litigation that resulted in payment of approximately \$100 million, plus interest. In a 1992 Consent Decree, the United States, the Commonwealth of Massachusetts, and AVX resolved certain claims of the Governments under the Superfund statute, in exchange for AVX’s payments, plus interest, of \$59 million for response costs and \$7 million for natural resource damages. While AVX’s Superfund liability was resolved, the 1992 Consent Decree included an Unknown Conditions Reopener and a Cost Reopener.

In performing the cleanup of PCB-contaminated sediment in New Bedford Harbor starting in about 2004, EPA exhausted settlement funds recovered from AVX and other settling parties, and began receiving annual funding at a typical rate of approximately \$15 million from the Superfund for the Site cleanup. A primary issue in the dispute that led to the mediated negotiations was whether the conditions giving rise to the claims against AVX, as set forth in the Cost Reopener and the Unknown Conditions Reopener, had occurred.

Settlement efforts between the Governments and AVX resulted in impasse, and litigation seemed likely. EPA issued a Unilateral Administrative Order (UAO) to AVX, on April 18, 2012, to take over the performance of remedial work; but, in a last effort at a negotiated resolution, EPA included a delayed effective date and proposed mediation. By agreement of AVX and the State, the Regional ECCR Specialist facilitated a mediator selection process that generated a hint of hopefulness and resulted in the engagement of mediator Linda Singer. Somewhat to their astonishment, the parties reached an agreement in principle within a few months, which was memorialized in a proposed Supplemental Consent Decree (Supplemental CD) lodged with the U.S. District Court on October 10, 2012.

On September 19, 2013, after oral argument, Judge Young of the Massachusetts Federal District Court approved the Supplemental CD between the US and Massachusetts, as plaintiffs, and AVX Corporation, as defendant. Under the Supplemental CD, AVX will pay \$366.25 million plus interest for the Harbor cleanup. The payment will mean that the cleanup, which under the “typical” \$15 million in annual Superfund funding would otherwise have taken 40 years, will be mostly completed in about 5-7 years. This is the largest single-site cash-out settlement in the history of the Superfund program.

The mediator fees were shared equally between the United States and AVX with the United States’ share being funded through a DOJ contract and through EPA’s Conflict Prevention and Resolution Services Contract.

Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used

The ECCR process began with the facilitated mediator selection, during which the parties freshly considered the obstacles to settlement; developed a narrowed list of candidates; conducted joint interviews, during which they educated themselves and each other about how a neutral might help them move beyond impasse; and reached a firm consensus on a preferred candidate. This initial agreement generated momentum and a faint whiff of optimism as the mediation got underway.

Beginning in her interview, even before she was engaged as the mediator, Linda Singer started to build trust with the parties through her non-judgmental directness, quick grasp of the legal issues and personal dynamics, and sense of humor. The mediation embodied many of the principles of engagement outlined in the OMB/CEQ policy memorandum on ECCR. Consistent with the principle of openness, the parties entered into a confidentiality agreement that limits what can be said about how the other principles may have been incorporated. Still, it can be said that the thoughtful and deliberate way in which the parties jointly interviewed mediators, identified a mutually acceptable neutral, negotiated the terms of the process, and engaged in good faith in the mediation, embodies the combined principles of informed commitment and group autonomy. In addition, implicit in this ECCR process was the parties' recognition that any resulting agreement would be subject to the statutory requirements regarding public comment and court approval. The principle of accountability was therefore built into the confidential process. Finally, with respect to timeliness, the ECCR process was concluded in less than a year and facilitated the dramatic acceleration of the harbor cleanup in contrast to the many years it would have taken to achieve an outcome through litigation in a complex case of this nature.

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 ECCR

The most extraordinary outcome of this case is the way in which it facilitates a dramatic acceleration of the harbor cleanup. As noted above, the recovered sum will mean that the cleanup, which would otherwise have taken 40 years under the "typical" scenario of \$15 million in annual Superfund funding, will be mostly completed in about 5-7 years. This is the largest single-site cash-out settlement in the history of the Superfund program.

Equally dramatic, though perhaps less unique where large, complex, intensively-lawyered cases are involved, this mediated resolution avoided the very substantial costs of the anticipated litigation including EPA and DOJ staff time, delay, and—even with the agency's strong case—uncertainty of outcome.

Reflections on the lessons learned from the use of ECCR

The case team believes that the ECCR process benefitted from the carrot-and-stick backdrop of the UAO issued with a delayed effective date and an invitation to mediate.

In addition, the parties' engagement in the mediator selection process not only generated an early investment in the process but also helped identify an excellent mediator who was a good fit for the case.

The mediation was also a reminder that, when a case is stalled and parties have different negotiating approaches, it is often impossible for them to accurately gauge the degree of each other's flexibility and, accordingly, the potential for discovering a viable settlement option.

Finally, the mediation provided a related reminder about cases with a very long history: when the right mix of visible and invisible circumstances align, years of paralysis characterized by irreconcilable

negotiating positions will sometimes melt away in an unexpected moment's time—and a skilled neutral can help uncover those moments before they disappear.

**5. Other ECCR Notable Cases:** Briefly describe any other notable ECCR cases in the past fiscal year. (Optional)

The U.S. Environmental Protection Agency (EPA) appreciates the opportunity to briefly highlight other notable ECCR cases that occurred in FY 2013. EPA's Headquarters and regional offices submitted the following descriptions of FY 2013 ECCR cases:

**Office of Civil Rights (OCR)** - OCR strongly supports the use of ADR to address disputes and potential conflicts. Consistent with this policy and the EPA's regulations implementing Title VI of the Civil Rights Act of 1964, OCR encourages the use of informal resolution techniques, including ECCR, to resolve Title VI complaints when appropriate. On Friday, February 1, 2013, the San Joaquin Valley Unified Air Pollution Control District and Greenaction for Health and Environmental Justice signed a settlement agreement resolving all issues related to the Avenal Title VI Complaint (EPA File # 11R-09-R9). These parties reached their agreement through an ECCR process, with the assistance of a mediator provided by EPA. EPA was not a party to this agreement.

**Office of Air and Radiation (OAR)** - OAR used ECCR in work with the Environmental Council of the States (ECOS) to design the electronic reporting program for air emissions regulations. OAR's Office of Air Quality Planning and Standards collaborated with ECOS to establish a facilitated Integrated Project Team (IPT) to gather data requirements and ideas from state and local air pollution control agencies on the data flow process associated with submitting information electronically to EPA. The IPT was used in the development of the data flow using the Compliance and Emissions Reporting Data Interface (CEDRI) that is a component of EPA's Central Data Exchange. CEDRI is the application developed to allow sources to submit various reports required under 40CFR Parts 60 and 63. The IPT consisted of representatives from six state air agencies and one local air agency. Meetings were conducted every two weeks over a four-month period and were facilitated by an independent third party. The meetings focused on gathering requirements and ideas from the IPT in the areas of data flow, data resubmissions, data requirements, and data access. At the conclusion of the meetings, the independent third party developed a final report that presented the consensus findings of the IPT for each of the four areas discussed by the IPT. These consensus findings were used by EPA to guide the

development of CEDRI. Input received from the IPT is one principal reason the resultant design of CEDRI has been well received by stakeholders.

**Office of Water (OW)** – OW reported three notable ECCR cases in FY 2013, including the use of neutral third party assistance in the Office of Groundwater and Drinking Water’s (OGWDW’s) Executive Order (EO) 13563 Retrospective Review of the Consumer Confidence Rule, the Urban Waters Program, and OW Immediate Office’s Water Quality Trading Meeting. Each of these ECCR efforts is described below:

OGWDW worked with a third party facilitator for the agency's outreach to support the EO 13563 Retrospective Review of the Consumer Confidence Rule (CCR). Third-party facilitation was tailored to be sensitive of key stakeholder groups with divergent issues and was structured to utilize venues such as webinar and public meeting sessions to provide the opportunity for exchanges of information and ensure the inclusion of all concerned interests. Most public comments received by EPA were surrounding electronic delivery of the CCR. Based on the EPA’s analyses and input provided by stakeholders throughout the CCR Rule Retrospective Review, EPA released an interpretive memorandum called “Safe Drinking Water Act – Consumer Confidence Report Rule Delivery Options” along with an attachment entitled “Consumer Confidence Report Electronic Delivery Options and Considerations.” The memorandum outlines a framework for electronic delivery as an opportunity for long-term burden reduction for community water systems and primacy agencies while maintaining the integrity of the CCR and promoting greater transparency of drinking water information to all consumers receiving water from community water systems. A cost estimate analysis found that community water systems may find the greatest cost savings in the fewest years by providing a URL that links directly to the CCR included on customers’ water bill statements.

The Conflict Prevention and Resolution Services (CPRS) Contract was used to obtain contractor support to facilitate the environmental justice breakout sessions and related discussions held at the October 2012 Urban Waters National Training Workshop. Environmental justice was a topic identified by participants as a desired subject to discuss as a breakout session, through peer sharing and facilitated discussion. Workshop evaluations received from participants indicated the opportunities to discuss environmental justice were highly valued and a highlight of the workshop. As a result of this positive feedback, a follow-up action OW identified was to incorporate the topic of how to advance environmental justice in guidance provided to Federal Partnership locations ('how to' handbook of best practices in building a successful Federal Partnership). The contracted facilitator will be supporting the development of this guidance document. In addition to the workshop, activities related to ECCR have included four Urban Waters Team retreats, interviews with all 10 EPA

regions, and an OW directors' meeting to facilitate the development of the Urban Waters strategic plan that spans the next five years. Lastly, the CPRS contract was utilized by Regions 6 and 9 in FY 2013 for ECCR support on regional urban waters projects. Support activities include facilitation of multi-day Federal Partnership location stakeholder meetings, held for the Los Angeles River Federal Partnership location (Region 9) and Middle Rio Grande Federal Partnership location (Albuquerque, New Mexico; Region 6).

Water quality trading is not a conflict resolution tool, but is very much seen by OW as a compliance tool that allows regulated point sources under the Clean Water Act to more readily meet their end of pipe effluent limits. Program and institutional capacity for water quality trading advances OW's ability to move EPA's state partners closer to establishing numeric, water quality based "standards" -- especially for nutrient pollution -- in which the regulated community is more able to meet new end-of-pipe limits. The Water Quality Trading Meeting was a facilitated stakeholder meeting that, by design, included stakeholders (e.g., environmentalists, state regulators, point source regulated entities, and non-regulated entities) who do not always agree with one another. The facilitated discussion allowed strong disagreements to be expressed at the meeting in a way that increased each stakeholder's understanding of other perspectives and enabled constructive dialogue.

**Region 2 (New York)** – Region 2 highlighted a Part 22 administrative enforcement case under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) involving the Daifuki Trading Corp. According to the case attorney, the Office of Administrative Law Judges (OALJ) neutral assigned to the case did an excellent job of helping the parties reach agreement on all the issues in dispute. The respondent in this matter lacked knowledge of the body of case law on FIFRA and sought to apply Korean law in the case. The OALJ neutral engaged the parties in four lengthy calls and played the role of "educator" to the respondent, who ultimately understood the need to apply FIFRA law to the case. The parties were then able to achieve a good settlement based on ability to pay considerations, including review of tax returns and consultation with an EPA contractor.

**Region 3 (Philadelphia)** - One example of a successful, creative use of ECCR within Region III was the Holcim/St. Lawrence Cement Company ("Holcim"), matter. Holcim was a federal judicial proceeding initiated by the United States against owners/operators of a cement manufacturing facility ("Facility") in Maryland based upon violations of the Clean Air Act (CAA). Key parties included EPA, the U.S. Department of Justice, and the current and former owners/operators of the Facility. The parties participated in a court-supervised ECCR process, with a resultant settlement that provided not only that the plant owners/operators pay a substantial civil penalty (\$700,000), but also provided for

valuable injunctive relief requiring owners/operators to achieve compliance with the CAA. Through the use of ECCR, the parties agreed to a settlement that allowed the plant owners/operators to choose to implement one of three options (with approximate values of \$20 million or \$85 million, depending on the option selected) in order to achieve CAA compliance at the Facility. The use of a third party neutral enabled the parties to explore various compliance options included in the settlement. The option approach was instrumental to the settlement, appealing to all parties by providing for CAA compliance and providing the defendants with flexibility to implement an option best suited to their business and operational needs. One of the options provided for in the settlement had the added benefits of providing environmental protections to EPA not otherwise obtainable through the judicial action, as well as enabling owners/operators to improve Facility production rates.

**Region 7 (Kansas City, KS)** - The most important and all-encompassing project in ECCR for Region 7 has been its involvement in the five-party Total Maximum Daily Load (TMDL) Collaborative Adaptive Management (CAM) process initiated on the Hinkson Creek watershed in and around Columbia, MO. A TMDL water case that began its journey in litigation, the Hinkson Creek CAM process has been a great success story nearly two years after litigation was filed (and later withdrawn) by three parties regarding disagreements with the Missouri Department of Natural Resources (MODNR), and Region 7. The key parties are EPA, the MODNR, the City of Columbia, Boone County, MO, and the University of Missouri. In place of litigation, the five parties agreed to adopt an open and transparent CAM strategy for the long-term health of the Hinkson Creek watershed. As a part of Region 7's contribution to the effort, the Regional ECCR Specialist was tapped to lead the process design and implementation efforts by serving as the facilitator and process designer throughout this expected multi-year collaborative. This unique and innovative multi-party approach also includes the public and community through a variety of mechanisms, including a Stakeholder Team, an Action Team and a Science Team.

As the facilitator of the CAM process, the Regional ECCR Specialist has played a variety of roles, including that of lead facilitator of the Stakeholder Team, a process designer, a trainer, and a mediator at various times and in different situations. The group has been very successful, accomplishing a variety of substantive tasks after a year of education and awareness-building on the watershed. The groups meet independently and together every month, and the community's conduit to the CAM, the Stakeholder Team, has convened 20 times in meeting rooms and at the Creek as they approach their two year anniversary of achievements. Region 7, the State of Missouri and the three parties see great value in this CAM process as it moves ahead to new substantive challenges and opportunities in FY 2014. Although the CAM "process" itself has not concluded, it moves from phase to phase, each with its particular substantive milestones and outcomes. The "tie that binds" is the Region 7 ECCR Specialist using a variety of

ECCR tools to move the process and achieve unprecedented collaboration with the parties, stakeholders, and community.

**Region 8 (Denver)** – The use of ECCR was instrumental in achieving environmental results that have been a long time coming for the cleanup at the Pennsylvania Mine on Peru Creek. In FY 2013, stakeholders participating in the Snake River Watershed Taskforce reached consensus on a path forward to address contamination at the Pennsylvania Mine. The facilitation services provided under CPRS Contract were instrumental in getting to the point where the stakeholders are today. The stakeholder group is large and diverse, and it took considerable effort and time to find a mutually agreeable solution. Ultimately, these efforts led to a multi-agency partnership and cleanup plan. Facilitation services are still being utilized to discuss ongoing work at the mine (as this is a multiyear project) as well as other watershed business.

**Region 9 (San Francisco)** - This year, Region 9 had two defensive litigation cases that involved the use of ECCR. In both cases environmental groups challenged Agency actions under the CAA. Both cases went to the 9th Circuit Court of Appeals, and in both cases, the Court appointed a neutral mediator who was instrumental in resolving the matter and enabling the parties to avoid costly and time-consuming litigation. In one case, the mediation is ongoing, although agreement in principle has been reached on all critical issues. In the other case, mediation is complete, and full agreement on all critical issues was reached.

**Region 10 (Seattle)** - The Coeur d'Alene Community Involvement project was a multi-task activity that was primarily focused on stakeholder participation activities within the Lower Basin Bunker Hill Mining and Metallurgical Superfund Site (Site). The Site is one of the largest National Priority List sites in the nation. It includes three operable units -- the Populated Areas of the Bunker Hill Site, the Non-Populated Areas Site, and the larger Coeur d'Alene Basin. For environmental studies and remedy implementation purposes, EPA is focusing first on the Upper Basin, where primary sources of contamination exist, and then on the Lower Basin, where large quantities of contaminated materials have come to be located. EPA issued an Interim Record of Decision for the Upper Basin in 2012. Evaluation and selection of remedial action was of great interest to the local stakeholders as well as controversial.

EPA began to refine its understanding of contamination within the Lower Basin as it was completing its feasibility study for the Upper Basin. In an effort to develop stakeholder interest and understanding of EPA's efforts on the Lower Basin, EPA initiated the Coeur d'Alene Community Involvement project. This facilitated project was intended to increase stakeholder involvement in the Lower Basin. One of the tasks undertaken as part of the project was the Lower Basin

Idea Forum. The Idea Forum was an effort to engage local stakeholders during the development of pilot projects for the local Basin. The facilitator conducted two separate meetings as part of this effort. The purpose of both meetings was to inform the public about regulatory process for developing pilot projects and to solicit public input for potential pilot studies. The meetings were well attended and representatives of a wide range of private, local government, business, and environmental stakeholders participated. EPA received 49 ideas for potential pilot projects after the meetings were conducted. Of these, EPA selected two projects to develop and implement. The Region considers this a successful use of ECCR. The neutral third party was particularly helpful in informing the stakeholders about the Region's needs, limiting stakeholders' expectations to what was possible within the regulatory framework, and developing stakeholder interest in the pilot project effort.

## 6. Priority Uses of ECCR:

Please describe your agency's efforts to address priority or emerging areas of conflict and cross-cutting challenges either individually or in coordination with other agencies. For example, consider the following areas: NEPA, ESA, CERCLA, energy development, energy transmission, CWA 404 permitting, tribal consultation, environmental justice, management of ocean resources, infrastructure development, National Historic Preservation Act, other priority areas.

The U.S. Environmental Protection Agency (EPA) has used ECCR in all its environmental program areas for many years. This outcome has been achieved by relying on EPA offices and regions to identify a need for the use of ECCR in particular cases, rather than by specifying priority areas for the use of ECCR as a matter of policy. Since ECCR is widely used to support the agency's public health and environmental mission, it is unsurprising that ECCR makes a contribution in most of the priority areas of interest to OMB and CEQ. The following examples illustrate the use of ECCR in OMB/CEQ priority areas in FY 2013:

- Approximately 25% of ECCR cases at EPA addressed matters related to CERCLA. This is the largest percentage by statute of ECCR use at EPA.
- EPA was involved in at least two ECCR cases addressing ESA issues, including an interagency dialogue on pesticides involving the agency, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the U.S. Department of Agriculture.
- There were two NEPA-related ECCR cases, both reported by EPA's Region 8 office.
- ECCR cases involving the CWA 404 Program were diverse. They included matters addressing coal mining in Appalachia, state assumption

of the CWA 404 Program, and enforcement cases.

- EPA also sponsored or participated in a number of ECCR cases with an emphasis on tribal relations or environmental justice. Tribal ECCR cases included Superfund water quality matters in Region 10. Regions 6, 8, and 9 made active use of ECCR for several dialogues and public meetings with a focus on environmental justice issues.
- Through its interagency agreement with the U.S. Institute for Environmental Conflict Resolution, EPA co-sponsored the National Ocean Policy Northeast Regional Planning Body and the National Ocean Policy Mid-Atlantic Regional Planning Body. Both dialogues involved a large number of other federal agencies.

**7. Non-Third-Party-assisted Collaboration Processes:** Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2013 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not include a third-party neutral. *Examples may include interagency MOUs, enhanced public engagement, and structural committees with the capacity to resolve disputes, etc.*

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 2013 in ways other than the use of ECCR as defined in the OMB/CEQ ECR policy memorandum. These examples are described below:

**Office of Civil Rights (OCR)** - OCR enhanced its public engagement by promoting transparency with the release of two draft policy papers via its website for public comment. OCR initially posted these documents on its website and sent notification of the posting to stakeholders who previously had expressed an interest in agency activities. In April 2013, EPA published these documents in the Federal Register with a 30-day comment period in an effort to further expand the potential audience who may see these documents. In addition, EPA hosted two outreach sessions via teleconference with interested stakeholders concerning the draft policies.

**Office of Air and Radiation (OAR)** - OAR has enhanced transparency through successful stakeholder involvement -- getting more parties involved earlier in the process. This is particularly a priority in tribal and environmental justice programs. For example, as a result of increasing diversity of Clean Air Act Advisory Committee membership in FY 2012, OAR has seen a corresponding increase in consideration of these priorities in FY 2013. By including these and other partners at the early stages of recommendations development, OAR can avoid conflict in later stages.

**Office of Chemical Safety and Pollution Prevention (OCSPP)** – Annually, over 10,000 regulatory decisions are made by OCSPP's Pesticide Program, many of which have a profound impact on farmers, vector control organizations and pesticide users; farmworkers; environmental/public interest groups; pesticide industry and trade associations, including manufacturers and distributors; food processors; public health institutions; academia; state representatives; and consumers. Thus, it is essential for EPA to continue to have an effective and timely mechanism for the public to engage in meaningful dialogue and to provide advice and recommendations regarding pesticide regulatory, policy and program implementation issues.

Since 1995, the Pesticide Program Dialogue Committee (PPDC), a representative Federal Advisory Committee, has served as a productive forum for a broad range of stakeholders from across the country to meet periodically to discuss pesticide regulatory, policy, and program implementation issues, and to provide policy advice and recommendations to EPA. Often, the Pesticide Program brings regulatory and policy development issues to this forum in a conceptual form so that the agency can benefit from the early thinking and expertise of these stakeholders, who typically have divergent views. This forum has provided opportunities for environmental collaboration in addressing many issues, including pollinator protection, integrated pest management, pesticide spray drift, web-distributed labeling, endangered species, etc. Since FY 2012, the PPDC has established workgroups to bring together stakeholders to address pollinator protection and integrated pest management issues.

**Office of Enforcement and Compliance Assurance (OECA)** – OECA highlighted a number of interagency collaboration efforts that were active in FY 2013:

EPA is an original member of the Border Interagency Executive Council, a forum developed in 2010 for interagency coordination on matters relating to import safety. Other members on the Council include: Animal and Plant Health Inspection Service; Bureau of Alcohol, Tobacco, Firearms and Explosives; Consumer Product Safety Commission; Customs and Border Protection; Food and Drug Administration; Food Safety and Inspection Service; Immigration and Customs Enforcement; National Highway Traffic Safety Administration; and the National Marine Fisheries Service. The Council works on several issues including interagency border protocols and information sharing solutions, like the Automated Commercial Environment and the International Trade Data System.

EPA and the Coast Guard cooperate in the enforcement of the North American Emissions Control Area, which limits emissions from ocean-going ships, and will improve air quality as much or more than the groundbreaking regulation of locomotives. The relationship is broadly governed by a Memorandum of Understanding (MOU) that EPA and the Coast Guard entered into on June 27, 2011. The EPA and Coast Guard have engaged in numerous cooperative ventures under the MOU, including joint boardings of vessels for training and program development purposes, cooperation on development of a program to sample ship plumes from an aircraft, and development of a protocol for referral of violations to EPA discovered by the Coast Guard.

Implementation of the Clean Water Act Section 404 Enforcement and Coordination Strategy (Strategy) continued in FY 2013. The Strategy outlines enhanced coordination procedures between EPA and the U.S. Army Corps of Engineers (USACE), including meetings, conference calls, joint field visits and the handling of case referral packages. In FY 2013, EPA Headquarters met with its counterparts at USACE Headquarters to

discuss processing after-the-fact permits and the regions continued to coordinate with the USACE Districts on case referrals and case development. These coordination efforts help EPA and the USACE more effectively implement Section 404 enforcement program policies on a national basis and to handle individual cases in a timely manner.

OECA Federal Facilities Enforcement Office (FFEO) is currently renegotiating an MOU between the Department of the Navy, the U.S. Maritime Administration, the Occupational Safety and Health Administration, and EPA, to address issues related to the scrapping of federally owned vessels. FFEO also continues to work closely with various tribal entities under EPA's Policy on Consultation and Coordination with Indian Tribes to address alleged violations at Bureau of Indian Education Schools and Bureau of Indian Affairs water systems serving those schools.

**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. Also, OSWER's Office of Resource Conservation and Recovery (ORCR) was able to resolve a long-standing complaint from commercial sectors to clarify the application of Resource Conservation and Recovery Act (RCRA) hazardous waste regulations to pharmaceutical wastes at retail stores. By working with a number of large retailer stakeholders, ORCR was able to provide retailers with clear guidance to help ensure the safe and responsible disposal of RCRA-listed pharmaceutical residues.

In addition, OSWER has developed the Community Engagement Initiative (CEI) to enhance OSWER's 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. Progress and results will be assessed regularly and changes to plans and schedules will be posted on OSWER's website. OSWER programs are building upon the accomplishments, tools and strategies contained in the 2011 and 2012 Progress Reports, and are keeping community engagement principles and best practices at the forefront of their thinking and project planning. For example, OSWER is currently evaluating the effectiveness of its work in two critical areas discussed in the report – technical assistance and delivery of information. With this information, OSWER will look to improve and integrate community engagement. It will be assessed regularly and any changes to plans or schedules will be posted on OSWER's website. More information regarding the CEI can be found at:  
<http://www.epa.gov/oswer/engagementinitiative/>

**Office of Water (OW)** – OW reported on several collaborative initiatives that occurred in several of its organizations during FY 2013. They are described below:

OW's Office of Ground Water and Drinking Water (OGWDW) convened a meeting of the National Drinking Water Advisory Council to discuss specific issues including regulating the contaminant perchlorate and reviewing policy and procedures for the Consumer Confidence Reports and the prevention of contamination in sources of drinking water. OGWDW also hosted a public meeting and webinar on Wednesday, May 15, 2013, entitled, "Update on EPA Drinking Water Method Development for Contaminant Candidate List Contaminants." This stakeholder meeting provided an early opportunity for public input on the development of analytical testing procedures for unregulated contaminants in drinking water that are, or are being considered for inclusion, on the Contaminant Candidate List (CCL). Technical experts from EPA's Technical Support Center and ORD described methods currently in development for many CCL contaminants, with an expectation that several of these methods will support future cycles of the Unregulated Contaminant Monitoring Rule program. OGWDW held this meeting in response to stakeholder interest in current EPA method development activities and to provide a public forum to openly discuss the method development of other organizations (e.g., public water systems, laboratories, research organizations).

The Office of Wetlands, Oceans, and Watersheds (OWOW) interagency agreement (IA) with the Federal Highway Administration (FHWA) is in the process of being transferred to the Water Permits Division in the Office of Wastewater Management. FHWA has indicated that it will renew the IA with a focus on collaborating on stormwater and green infrastructure/low impact development. OWOW's Wetlands Division began important collaborative work with EPA's Office of Federal Activities on a major initiative supported by the Presidential Memo (PM) on Infrastructure Permitting. The PM and subsequent interagency work has directed federal agencies to work on National Environmental Policy Act and Clean Water Act Section 404 Program synchronization. This work will continue in FY 2014.

The OW Immediate Office worked with the U.S. Department of Agriculture (USDA) to update a 2006 Agreement to cooperate on water quality trading issues. In addition to strengthening interagency cooperation, the new agreement commits the agencies to a co-hosted workshop by 2015, and seeks to create "decision support tools" for parties thinking about creating a trading program. USDA plans to provide funds of \$50,000 to EPA through an IA.

OW is collaborating with the USDA and Texas A&M University to develop and improve water quality models. These will be used to estimate environmental

contaminants, such as nitrogen and phosphorous, in surface water. These tools will also be used to predict the impacts of various environmental decisions on water quality. This collaboration is done through an IA with USDA and involves staff at EPA and USDA, and Texas A&M University undergraduate and graduate students and post-doctoral staff. This group works together and makes technical decisions on how to create or improve simulations (models) that represent events that occur in the environment.

**Region 1 (Boston)** - Recognizing that shrinking resources requires new approaches in how Region 1 does its work, the Region is placing increased importance on fostering and sustaining collaborative approaches with key stakeholders and partners to address the most significant environmental issues that New England faces. For example, with its federal partners at the U.S. Department of Housing and Urban Development (HUD), the Federal Emergency Management Agency (FEMA), and USDA, the Region is working collaboratively to help communities become more livable and sustainable through the Sustainable Communities Partnership. In addition, the Region is taking advantage of the extraordinary resources and talent in New England's academic community, by forging new relationships with colleges and universities. The first Region 1/ Harvard Law School Green Infrastructure Pilot was launched this fall to examine inadvertent obstacles to Green Infrastructure in community codes, standards, and culture.

Recognizing the power of networks, Region 1 developed and continues to support the New England Sustainability Directors Network, a group of leading community sustainability directors who are learning from EPA and each other how to advance sustainability in local communities. In addition, major national initiatives have made significant progress as a result of Region 1's emphasis on teamwork with its state partners. For example, the Region was a key supporter of the recent successful collaboration between the Environmental Council of the States (ECOS) and EPA on E-Enterprise for the Environment, furthering EPA Administrator McCarthy's theme to encourage "A New Era of State, Local, Tribal and International Partnerships," which includes actions in FY 2014 to launch the ECOS/EPA E-Enterprise Leadership Council and prioritize implementation projects as cornerstone priorities for EPA and state agencies.

Finally, many of the collaborative efforts listed in Region 1's FY 2013 neutral-assisted case cases involved discrete facilitated events, but the ongoing collaborative effort is proceeding without ongoing facilitation assistance. For example, the one-day Climate Leaders Summit was planned and conducted with the assistance of a facilitation team; the multi-pronged efforts that are flowing from it have not thus far been facilitated. Specific events that grow out of this follow-up may well be facilitated.

**Region 2 (New York)** - In the wake of Hurricane Sandy, Region 2 made environmental collaboration with other government agencies and non-government stakeholders a hallmark of its recovery efforts. Region 2 participated (along with other federal agencies) in the New York and New Jersey Joint Field Offices that were established pursuant to the National Disaster Recovery Framework. These Field Offices had five support functions: (1) community planning and capacity building; (2) economic recovery; (3) health and social services; (4) infrastructure systems; and (5) natural and cultural resources. Region 2 served on the support function workgroups along with FEMA, the U.S. Department of Commerce, the U.S. Department of Health and Human Services, HUD, USACE, and the U.S. Department of the Interior (DOI). As part of the work of the community planning and capacity building support function, Region 2 helped develop a white paper on smart growth, equitable development, and sustainability with FEMA and state, and local governments. Region 2 is now carrying out the recommendations in the white paper by spearheading a collaborative effort on Long Island with FEMA, New York, Nassau and Suffolk Counties, and local governments to ensure that redevelopment takes place in a sustainable and equitable manner. There are a number of components to this collaborative effort including training for planners on a scenario planning tool, community engagement on health impact assessments, and a summit to foster redevelopment on Long Island along mass transit nodes and away from vulnerable areas. Other white papers emerged from the Joint Field Office collaboration, including one on brownfields and renewable energy, which is now being used by New York. Region 2 also participates in USACE's North Atlantic Coast Comprehensive Study which emerged after Hurricane Sandy. Apart from Sandy-related efforts, Region 2 continued its work in FY 2013 in other collaborative partnerships, such as the Sustainability Partnership with HUD and the U.S. Department of Transportation and the National Estuary Programs.

**Region 3 (Philadelphia)** - Region 3 seeks to engage in facilitative and collaborative activities involving EPA, states, local communities, non-governmental organizations, and other federal agencies where appropriate within the Region. Region 3 also seeks opportunities to minimize potential disputes with responsible parties in matters, when possible, through negotiation. By way of example, various programs within Region 3 will issue "Show Cause" letters to responsible parties, intended to apprise such parties of statutory violations and penalty assessments and provide an opportunity for the parties to negotiate a resolution of the matter without the need of litigation.

**Region 4 (Atlanta)** – Region 4 drafted a partnership agreement with the Federal Transit Administration (FTA) during FY 2013 to further environmental stewardship within agency programs and initiatives, increase awareness of agency processes and programs, and optimize the use of agency resources through collaborative efforts between the two agencies. In addition to the partnership agreement with FTA, are the memorandums of agreement that Region 4 routinely enters into with Region 4 state and local agencies, universities, and non-profit organizations to increase collaboration and

more effectively integrate programs that lead to improved results and better messaging, and initiate sustainable projects that positively impact environmental issues.

**Region 5 (Chicago)** - Region 5 is preparing to issue a proposed response action for approximately 21 miles of floodplain along a river in Michigan (part of the Tittabawassee River, Saginaw River & Bay Superfund Site). As part of its preparation, Region 5 is using enhanced public engagement techniques such as special project materials (Community Involvement Plan Addendum and plain language documents discussing clean up options and tradeoffs), small group and one-on-one meetings, and up-to-date website information to accomplish three goals: understand community values about the current state of the floodplain and desires for future conditions and uses; obtain feedback on the possible trade-offs that come with the cleanup options; and identify what other information may be needed by the community.

**Region 7 (Kansas City, KS)** - Region 7 continued its practice of using pre-filing negotiations in all administrative enforcement actions seeking a monetary penalty. Many actions continue to be settled in the pre-filing stage.

The established presence of an ECCR Specialist and continued high profile projects associated with ECCR in Region 7 are building an understanding of the spectrum of processes available to every division and branch in the Region. As in FY2012, all divisions have participated this past year in some form of ECCR process or training with the St. Louis Field Office-based ECCR Specialist. Some utilized services in a more third party neutral context, but many interactions were consultative, coaching, and advisory in nature. In FY2013, the process design consultative work has again increased, paving the way for further growth in the years ahead.

In FY2013, the ECCR Specialist has utilized his position in the Office of Regional Counsel to work on small teams where program staff, public affairs staff, and environmental justice staff can collaborate from start to finish on a project or case. This approach is not only efficient but a great way to cross-train and embed a variety of collaboration concepts outside the traditional lines of "mediation" or "conflict resolution" venues. It has particularly been helpful in upstream processes where the environment for collaboration and strong public service can be established. This four-person team format is now being applied in numerous situations. The Office of Public Affairs and the Enforcement Coordination Office are also utilizing training and interactions with the ECCR Specialist to further enhance and improve their own efforts amidst a challenging budget environment.

**Region 9 (San Francisco)** – The Region 9 Regional Facilitator facilitated numerous meetings including internal strategic planning sessions for several Regional offices (including the Tribal Water Office, Air Toxics Office, Water Division, Enforcement

Division, Environmental Justice Office, Tribal Program Office, Superfund Division), interagency strategic work groups (including the Black Carbon Forum, Regional Tribal Operations Council, Edwards Air Force Base regulators group, Navajo Uranium Stakeholders Conference), consulted with regional staff on managing meetings for several working groups (including the Pacific Ports Clean Air Collaborative Working Group, Reactive Nitrogen Workshop, Federal Regional Council Border Committee), and provided training on Effective Meetings to the Annual Tribal Council.

**Region 10 (Seattle)** – Region 10 entered into an MOU with DOI’s Bureau of Land Management (BLM) for the Conda Mine Superfund Site in southeast Idaho. The MOU is intended to improve coordination of the EPA's and BLM's oversight of a remedial investigation and feasibility study at the Site. The Region is also developing a protocol for managing issues related to the National Historic Preservation Act during the implementation of remedial action of the Upper Basin portion of Site. The Site covers a large geographic area that has the potential to impact historic properties and cultural resources. EPA is developing the protocol with input from the Coeur d'Alene Tribe Historic Preservation Officer and the Idaho State Historic Preservation Officer.

8. **Comments and Suggestions re: Reporting:** 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.

The U.S. Environmental Protection Agency noted specific challenges related to collecting cost and benefit information on ECCR in our response to question #2. Otherwise, collecting these data posed little difficulty. We appreciate OMB/CEQ's collaborative spirit in developing the new ECCR annual report template for FY 2013, which addresses many of the issues with past templates and will provide a sound basis for future reporting.

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

Report due March 3, 2014.

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

**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