



U.S. Environmental Protection Agency

Environmental Collaboration and Conflict Resolution FY 2020 Annual Report

Executive Summary

This report highlights the Environmental Protection Agency’s (EPA’s) key achievements in providing environmental collaboration and conflict resolution (ECCR) in fiscal year (FY) 2020 and the infrastructure that supports this work. In FY 2020, EPA’s Conflict Prevention and Resolution Center (CPRC) provided facilitators and mediators (either directly by CPRC staff or, more often, through its \$53 million Conflict Resolution Services (CPRS) contract) who helped the EPA address some of its most challenging cases, including the Diamond Alkali/Lower Passaic River Superfund Mediation, the GE-Pittsfield/Housatonic River Site, and Tijuana River Watershed Stakeholder Engagement. Overall, the EPA used ECCR in 106 cases and projects, and each region and most program offices utilized ECCR in their work. To efficiently support its large caseload, CPRC leveraged support from private sector neutral mediators, facilitators, and trainers through extensive use of its Conflict Prevention and Resolution Services (CPRS) contract. The EPA handled slightly fewer ECCR cases in FY 2020 but maintained its position as a leader among federal agencies in ECCR use. CPRC also built EPA’s capacity to perform ECCR; it trained over 154 staff and managers in seven training sessions during FY 2020. EPA staff and managers continued to report important benefits from using ECCR, including timely outcomes, more efficient processes, better decisions, avoidance of litigation, and a furtherance of EPA’s mission. ECCR continues to be an essential tool to help the Agency achieve its strategic goals, particularly to “collaborate more efficiently and effectively with other federal agencies, states, tribes, local governments, communities, and other partners and stakeholders to address existing pollution and prevent future problems.”¹

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¹ FY 2018-2022 EPA Strategic Plan, p. 7

Introduction

For decades, the EPA has sought input from the public, worked with stakeholders to reach common ground, and negotiated agreements on contentious issues as it strives to fulfill its core mission. Each action the EPA takes to serve the public is the product of dialogue with a diverse set of stakeholders. Sometimes that dialogue goes smoothly; other times, working together is challenging and conflicts arise. In those situations, a neutral facilitator or mediator who specializes in ECCR can help participants reach agreement. CPRC is the primary office that helps the EPA meet these challenges and overcome environmental conflicts.

CPRC does this by advising EPA staff and managers on how to work better with the public and increase the transparency of its work. CPRC also provides facilitators and mediators who help stakeholders have a voice in EPA's decisions, often resulting in more acceptable, cost-effective, and timely outcomes than traditional alternatives. Key to this work is the Conflict Prevention and Resolution Services contract, which is managed by CPRC. Through this contract, every office at EPA has timely access to professional neutral facilitators, mediators, and trainers who specialize in ECCR.

Neutral professionals also mediate cases before the Environmental Appeals Board and the Office of Administrative Law Judges, as well as for environmental civil rights complaints brought to the External Civil Rights Compliance Office. CPRC's work, together with efforts by the Environmental Appeals Board, the Office of Administrative Law Judges, and the External Civil Rights Compliance Office, has resulted in EPA using ECCR more frequently than any other federal agency. EPA continues to be a leader in federal government ECCR practice and expertise.

This annual report is required by the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ)² and is prepared by CPRC with input from its Regional ECCR Specialists. While it is important for cross-government understanding of the use of ECCR, this report is also a tool for EPA management, staff, and the public to understand EPA's use of ECCR and to enlighten readers about the variety of situations in which ECCR can be used to reduce conflict and to achieve better outcomes.

In FY 2020, the EPA continued to implement its "Back to Basics" strategic plan, focusing on its core mission of implementing environmental statutes. EPA's strategic plan includes the goal of increased cooperative federalism, *i.e.* working with states and tribes to help them implement environmental protections. ECCR helped to achieve this goal by improving communication with stakeholder groups and the public. Effective use of ECCR, led by CPRC, has supported achievement of EPA's priorities, saving costs and providing effective and efficient means to resolve disputes and engage stakeholders.

² Office of Management and Budget & Council on Environmental Quality (2012). *Memorandum on Environmental Collaboration and Conflict Resolution*. Washington, D.C.

http://www.udall.gov/documents/Institute/OMB_CEQ_Memorandum_2012.pdf.

Background

Alternative Dispute Resolution (ADR) is the use of a neutral third party to conduct “any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, mini-trials, arbitration, and use of ombuds, or any combination thereof.”³ All aspects of ADR are voluntary, including the decision to participate, selection of the neutral, and the content of any final agreement. ECCR is essentially environmental ADR, but it also includes proactive collaborative decision-making, with the aim of preventing future conflict. OMB and CEQ define ECCR 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.”⁴

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Several statutes direct or support the EPA’s work providing ECCR. These include: the **Administrative Dispute Resolution Act (1996)**, which encourages the use of ADR in agency actions, directs all federal agencies to appoint a Dispute Resolution Specialist and promulgate an agency ADR policy, and provides guidance on the issue of confidentiality during ADR processes; the **Negotiated Rulemaking Act (1996)**, which encourages the use of facilitated consensus in developing federal regulations; and the **Alternative Dispute Resolution Act (1998)**, which directs the federal courts to establish ADR provisions and processes. **EPA’s ADR policy (65 FR 81858)** affirms the Agency’s support for using ADR to address environmental conflicts, among others.



Photo: EPA

In addition to EPA, several federal agencies which implement environmental statutes and/or whose actions have significant environmental impacts also maintain ECCR services. In FY 2020, these agencies included the Department of the Interior (DOI), the Federal Energy Regulatory Commission (FERC), the U.S. Army Corps of Engineers (USACE), and several others. EPA has been and continues to serve as a government-wide model for effective use of ECCR. EPA has

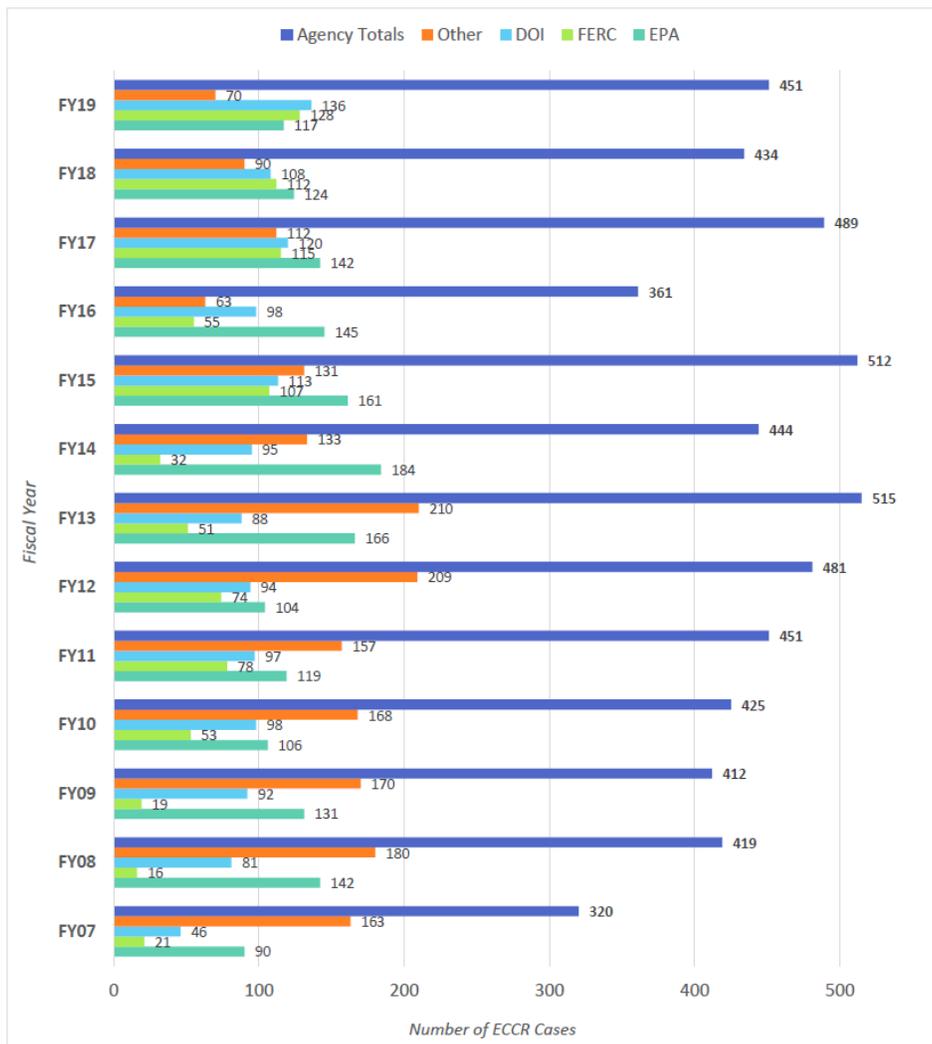
³ 5 U.S.C. § 571(3)

⁴ Office of Management and Budget and President's Council on Environmental Quality Memorandum On Environmental Conflict Resolution, https://www.udall.gov/documents/Institute/OMB_CEQ_Memorandum_2005.pdf

been a national leader in the practice, teaching, and evaluation of ECCR for close to two decades. For all but one of the past thirteen years of required reporting, EPA engaged in more ECCR cases than any other federal agency (see Figure 1).

Figure 1 shows a general increase in ECCR use (the number of active, i.e. completed and ongoing, ECCR cases) by federal agencies over the past 13 years. The data show a downward trend of ECCR use at EPA beginning after FY 2014. This trend continued into FY 2019 during which EPA engaged in 117 ECCR cases. Likely causes for this trend are discussed in the “Challenges” section.

Figure 1: ECCR Cases in the Federal Government - FY 2007 to FY 2019⁵



⁵ U.S. Institute for Environmental Conflict Resolution. *Environmental Collaboration and Conflict Resolution (ECCR) in the Federal Government: Synthesis of FY 2019 Reports*. Tuscon, AZ. The report is available online here: https://www.udall.gov/documents/ECRReports/2019/FY19%20ECCR%20Synthesis%20Report_Final.pdf

ECCR Infrastructure at EPA

CPRC provides most of EPA's ECCR services as well as ECCR training. Through FY 2020, CPRC also maintained a robust case evaluation program. Three additional offices also offer ECCR services consistent with the EPA's policy on conflict resolution⁶.

The Conflict Prevention and Resolution Center (CPRC), within the EPA's Office of General Counsel (OGC), is the office that leads EPA's ECCR program and provides most ECCR services at the EPA. It is led by the EPA's Dispute Resolution Specialist. CPRC supports the entire Agency by helping programs and regions across the agency collaborate, prevent, and resolve disputes. CPRC provides expert ECCR services, either directly by CPRC staff or, more often, through its \$51 million Conflict Resolution Services (CPRS) contract. The contract offers access to reliable and easy-to-use services from private sector experts in the ECCR field. CPRC's services help the Agency more effectively engage states, tribes, and local stakeholders to achieve better environmental outcomes. In addition to mediation and facilitation, CPRC staff and contracted ECCR experts provide training, coaching, and related services in support of ECCR. As described below, CPRC works with ECCR Specialists located in all ten EPA regions to help deliver services in support of regional programs.

The Office of Administrative Law Judges (OALJ) is an independent office in EPA's Office of Mission Support (OMS). In accordance with the Administrative Procedure Act, the administrative law judges (ALJs) conduct hearings and render decisions in enforcement and permit proceedings between the EPA and those regulated under environmental laws. The ALJs also may conduct hearings related to findings by EPA's External Civil Rights Compliance Office of a violation of one of the civil rights laws it enforces, including Title VI of the Civil Rights Act. All litigants before the ALJs are offered the opportunity to resolve cases through ECCR.

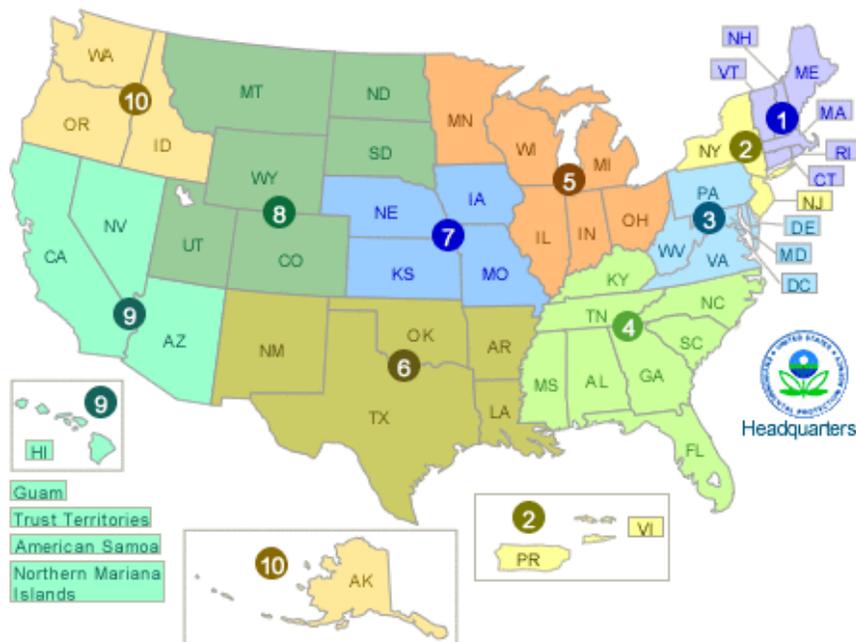
The Environmental Appeals Board (EAB), also located within the OMS, currently hears appeals of permitting decisions and administrative penalty decisions. In FY 2020, the EAB heard other significant matters, including petitions for reimbursement of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) cleanup costs and certain pesticide registration and cancellation proceedings. A wide range of stakeholders appeal to the Board, including companies, state and local governments, tribes, non-governmental organizations, citizens, and in the penalty cases, the EPA itself is the complainant. In FY 2020, the EAB offered parties the option to resolve disputes through ECCR with the assistance of a neutral mediator who is often an EAB Judge. The EAB's ECCR program has fostered negotiated settlements that speed up resolution of EAB cases and conserve government resources.

⁶ https://www.epa.gov/sites/production/files/2018-04/documents/epa_adr_policy.pdf

The External Civil Rights Compliance Office (ECRCO), within the OGC, enforces several civil rights laws, most notably Title VI of the Civil Rights Act of 1964, which prohibits discrimination by applicants for, and recipients of, federal financial assistance from EPA. In appropriate cases, ECRCO offers parties the opportunity to engage in formal mediation to resolve complaints. ECRCO provides information regarding mediation and other informal resolution options in its initial communications with parties.

In addition to the support for ECCR from these offices, the EPA has 20 skilled **ECCR Specialists** in its regional and program offices, who work with CPRC to provide ECCR services. One works as a fulltime ECCR Specialist and another has half of their FTE in this role, but most do this work as a collateral duty. Many are attorneys in the Offices of Regional Counsel, but others work in a variety of contexts, including public involvement, environmental justice, and enforcement. The ECCR Specialists have been trained in a variety of ECCR skills, including facilitation, mediation, negotiation, and/or conflict coaching. ECCR Specialists advance the use and understanding of ECCR at EPA by serving as liaisons for ECCR activities; supporting ECCR education and training; drawing on existing regional resources to resolve disputes; building and supporting communities of practice, which develop expert knowledge, skills, and capacity to facilitate and perform ECCR; tracking requests for assistance, ECCR cases and projects; and contributing to the development of this annual report to OMB and CEQ. On occasion, they also serve as mediators, facilitators, and conflict coaches. EPA's network of ECCR Specialists remained strong and active in FY 2020.

Figure 2: EPA Regions



FY 2020 ECCR Use at EPA

Since 1978, ECCR has helped the EPA to fulfill its mission to protect human health and the environment. Using ECCR allows the EPA, its stakeholders, and the citizens it serves to more effectively engage with each other and develop a common understanding of environmental issues, prevent conflict, reduce differences, and resolve disagreements. In short, ECCR helps the Agency make better decisions, work with stakeholders in a more effective manner, and attain sustainable environmental outcomes.

Overall Use of ECCR at EPA

The EPA's strategic plan focuses on delivering a cleaner and safer environment to the American people. The 2018-2022 EPA Strategic Plan has three primary goals:

1. **Core Mission**: Deliver real results to provide Americans with clean air, land, and water.
2. **Cooperative Federalism**: Rebalance the power between Washington and the states to create tangible environmental results for the American people.
3. **Rule of Law and Process**: Administer the law, as Congress intended, to refocus the Agency on its statutory obligations under the law.

ECCR helps the Agency to achieve all these goals. The following section describes how the EPA used ECCR to support these goals in FY 2020. In particular, EPA's ECCR program directly contributed to effective environmental protection by helping EPA programs and regions work with "... state partners ... from a foundation of transparency, collaboration—including public participation—and a spirit of shared accountability for the outcomes of this joint work. This foundation involves active platforms for public participation, including building the capacity of the most vulnerable community stakeholders to provide input." ⁷

1. Core Mission

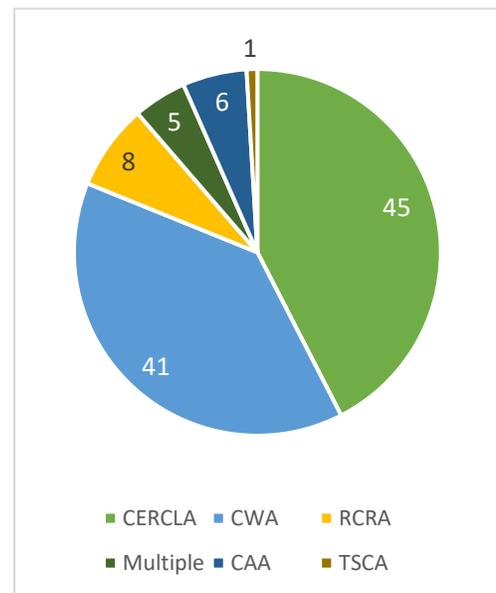
In FY 2020, the EPA used ECCR in all ten regions and most program offices for a broad range of applications. From mediating disputes over Superfund cleanups to facilitating rulemaking meetings; from gathering public input during complex and high-tension meetings to mediating enforcement disputes, facilitators provided by CPRC and others designed and led meetings, so EPA staff could focus on technical and substantive issues and keep projects moving forward.

⁷ FY 2018-2022 EPA Strategic Plan, p. 25

EPA used ECCR in FY 2020 in a broad range of circumstances nationwide.

- In FY 2020, EPA used ECCR in 106 cases. Every EPA region and nearly every program office had an ECCR case, which included matters involving Superfund cleanups, brownfields redevelopments, permit disputes, and policy development.
- Similar to past years, in FY 2020, EPA used ECCR most frequently to address issues under CERCLA (Superfund, in about 42% of cases) and the Clean Water Act (CWA, in approximately 38% of cases), as seen in Figure 3. Cases classified as “multiple” were predominantly facilitated processes involving communities with several environmental issues.

Figure 3: FY 2020 ECCR Cases by Statute



- In FY 2020, all offices with specific mandates to support ADR successfully supported mediations and other cases. CPRC handled 68 cases on behalf of client programs and regions, and the ECCR Specialists were responsible for nine cases. In addition, the ALJs mediated one case to resolution, and the EAB mediated one case as well. ECRCO referred one Civil Rights Title VI case to CPRC for mediation assistance. EPA was involved in six other matters in litigation, which were mediated with the assistance of the U.S. Department of Justice. Four additional cases were mediated through the U.S. District Court mediation program. Other federal agencies mediated or facilitated four cases to which EPA was a party. Twelve (12) other ECCR cases involving EPA were handled by a combination of means (for example, multiple parties paid for a neutrally facilitated or mediated process or another federal agency led the process).

EPA senior leaders continue to use ECCR to help the Agency achieve its mission. Senior leadership actively engaged in and strongly supported the use of ECCR in several high-profile cases in FY 2020, including:

- | | |
|--|--|
| • Colorado Smelter Superfund Site Facilitation | • System General Permit Modifications Mediations |
| • Defining Waters of the U.S. Facilitation | • Paducah Superfund Workshop Facilitation |
| • Diamond Alkali/Lower Passaic River Superfund Mediation | • Portland Harbor Southeast Superfund Facilitation |
| • GE Housatonic Citizens Coordinating Council Facilitation | • Tijuana River Watershed Stakeholder Engagement |
| • Massachusetts and New Hampshire Municipal Separate Storm Sewer | • Wells G&H Superfund Site Mediation |

EPA's Strategic Plan describes goals for the Agency's core mission work in four broad categories - Air, Water, Land, and Chemicals. This section describes how EPA used ECCR in each of these four areas in FY 2020.

Air - The air program at EPA continues to consistently use ECCR services, both for facilitating efforts to reduce air pollution in communities and for mediating cases in litigation. EPA used ECCR in six air cases in FY 2020. One of these cases involved truck idling, two cases addressed industrial facilities and fence-line communities, two were enforcement actions against manufacturers, and one dealt with asthma caused by indoor air pollution in Pacific Northwest tribal communities.

Water - Historically, EPA has used ECCR to resolve issues with water-related cases more than any other media, except land (i.e. Superfund and RCRA), and this continued to be the case in FY 2020. EPA has many different water programs. Contentious disputes often arise in the context of water permitting, planning, and enforcement actions. Of the 41 water-related ECCR cases that occurred in FY 2020, 27 arose in eight of EPA's 10 regions and 14 were programmatic or national in scope. These cases involved watershed or community water-resource planning (17 cases), compliance and enforcement issues (eight), storm and hazard mitigation planning (three), policy dialogue facilitation (five), permit issuance and appeals (two), voluntary programs (two), defensive litigation (two), siting and construction (one), and one instance of rulemaking.

Land - For decades, EPA's most frequent use of ECCR has been supporting Superfund cleanups. The large number of Superfund-related ECCR matters is primarily due to the legal requirement to involve communities in the development of cleanup remedies and the financial support available through Superfund. Superfund cleanups involve planning, community involvement, outreach about complicated scientific matters, and sometimes contentious negotiations and litigation. EPA most often uses ECCR to provide support to establish and facilitate community advisory groups (CAGs), to facilitate challenging public meetings, to provide conflict coaching so EPA staff involved in site cleanups can work more effectively with stakeholders, and to mediate disputes over responsibilities and terms of cleanups. The main policy contexts for the 45 Superfund ECCR cases in FY 2020 included: compliance and enforcement (30 cases), implementing agreements to clean up sites (six), general community involvement (five), planning for cleanups (three), and siting and construction (one). CPRC directly supports the Superfund Task Force's goals to engage partners and stakeholders while expediting cleanup and remediation.



EPA often uses ECCR to improve the functioning of community advisory groups (CAGs) at Superfund sites. For example, CPRC supported ongoing facilitation of the CAG at the Colorado Smelter Superfund Site in FY 2020. Colorado Smelter was a silver and lead smelter that operated in the town of Pueblo, Colorado from 1883 to 1908. The Colorado Smelter Superfund Site (Site) was listed on the National Priorities List in 2014 due to EPA's concern about high levels of arsenic and lead that had been identified in neighborhood soils. EPA is in the Remedial Investigation/Feasibility Study stage at the Site and has also completed soil cleanups in over 540 homes to date.

Last winter, the Site team had to move quickly to select and onboard a new facilitator for the Site's CAG. The new facilitator has solidified relationships and established trust with local officials, community members, and other stakeholders in Pueblo, despite starting work during a pandemic and not being able to meet in person. The facilitator's experience working with multicultural communities and facilitating virtual meetings has been critical to their success. This facilitation has allowed this CAG to be involved and engaged in Region 8's goal to investigate and cleanup approximately 800 homes.

The EPA also used ECCR in eight Resource Conservation and Recovery Act (RCRA) cases in FY 2020. These cases involved a broad range of topics including cleanup from hurricanes and other natural disasters, solid waste tracking and recycling, and implementation workshops with municipalities in Regions 1, 2, and 5. These cases involved compliance and enforcement actions (four cases), planning (three cases), and policy development (one).

Chemicals - In FY 2020, there was one ECCR case under the Toxic Substances Control Act (TSCA) (there were none involving the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)). While the EPA has not used ECCR extensively in cases related to these statutes, it has been a valuable tool when applied.

2. Cooperative Federalism

EPA's second strategic goal is cooperative federalism, under which EPA aims to promote shared accountability among the federal government, states, and tribes, and in consultation with local communities to provide environmental protection and to increase transparency and public participation. ECCR increases the likelihood of achieving these important outcomes. Engaging with stakeholders can be complex, time-consuming, and imbued with conflict. In these cases, using a skilled facilitator is an essential tool to help ensure that EPA's work with states and tribes is effective, provides meaningful

public involvement and results in timely, practical solutions. In FY 2020, 42% of EPA's ECCR cases involved facilitation of collaborative processes with states, tribes, communities, and other federal agencies, most often with CPRC support.

Enhance Shared Accountability - CPRC specializes in helping the EPA work with its state, tribal, and local partners to achieve shared governance, enhanced collaboration, and better environmental outcomes. In FY 2020 CPRC provided skilled facilitators who helped the Agency to support states and tribes as they advanced their environmental goals.

Cooperative Federalism accomplishments in FY 2020 supported by CPRC's work include:

- Implementing trans-boundary watershed management plans in Maine, Montana, and Idaho; and
- Collaborating with state agencies and local municipalities to understand and address the trans-boundary pollution problems of the Tijuana River Watershed.

Increase Transparency and Public Participation - As the Agency's experts in public participation and the main providers of contracted public participation support, CPRC staff routinely support all EPA programs and regions to increase transparency and public participation. In FY 2020, CPRC regularly advised on how to organize public participation processes that reduce conflicts. Expert facilitators and mediators accessed through CPRC's contract supported the creation and improved functioning of 12 Community Advisory Groups at Superfund sites and helped create forums for environmental justice communities to engage with the EPA throughout the country. CPRC also provided training to help EPA staff better plan, design and deliver meetings with improved public participation.

3. Rule of Law and Process

Through the mediation process, parties can identify more creative means to meet their interests and settle disputes than may be available through litigation. From negotiations at Superfund sites among potentially responsible parties, to access issues, CPRC used its alternative dispute resolution skills and approaches to help bring more than 29 seemingly intractable cases to satisfying resolutions in FY 2020. Through CPRC, and in collaboration with the Department of Justice, states, and tribes, EPA staff accessed ECCR professionals nationwide and helped bring parties back into environmental compliance consistent with EPA's strategic goal regarding the "Rule of Law and Process."

FY 2020 Case Highlight: Mediation Breaks Deadlock and Sparks Cleanup

CPRC collaborated with Region 1 staff to support a successful multi-party mediation at the General Electric (GE) Pittsfield Housatonic River Site. The Housatonic River and its floodplain are heavily contaminated with polychlorinated biphenyls (PCBs) originating from the GE Facility in Pittsfield, MA. PCBs are present in large quantities in river sediment and floodplain soil; estimates range from between 100,000 to nearly 600,000 pounds of PCBs. Without cleanup, it would take decades, if not hundreds of years, before PCB concentrations in fish would decrease to a level that would permit unlimited consumption.

A mediator, provided through CPRC’s contract, worked to resolve long-standing conflict surrounding the “Rest of the River” permit for the site. The complex and highly charged mediation, which included EPA, GE, the State Connecticut, the City of Pittsfield, and other organizations, concluded after two years with a settlement agreement in February 2020. The mediator improved communications between parties and offered new solutions, which satisfied the parties’ interests. The agreement that the parties achieved resolved multiple issues, including a disposal approach that removes the most contaminated soils and sediment. It also contains certain economic incentives for the city and adjacent municipalities, provided by GE, that demonstrate GE’s responsibility for the environmental impacts it caused. (See Appendix C.)

ECCR Training at EPA

“The negotiation training provided examples and hands-on practice of how to communicate more clearly with my colleagues, as well as how to negotiate more effectively with parties outside EPA.”

- EPA Interest-Based Negotiation Trainee

In FY 2020, CPRC increased EPA staff capacity to perform ECCR through its training. CPRC continued to lead the Agency’s ECCR outreach and training activities to strengthen EPA staff’s skills and promote the increased use of ECCR. CPRC also implemented its training strategy by upgrading training offerings. Further, CPRC adapted its in-person trainings into virtual trainings to better serve the Agency’s needs while most staff were teleworking during the pandemic. CPRC updated two core trainings, “Difficult Conversations” and “Bridging Cultural Divides”, for virtual presentations. CPRC delivered both trainings for their ECCR Specialists for the dual purposes of building skills and preparing the Specialists to offer these trainings in their regions.

In early 2020, CPRC provided two 1 1/2-day trainings for the Office of Pollution Prevention and a 1/2-day training for the Office of Land and Emergency Management, both on interest-based negotiation.

CPRC also delivered its 13th annual Conflict Resolution Day program in October 2019. CPRC holds events during the third week in October to increase EPA staff and managers' awareness of ECCR services at the EPA and improve their ECCR knowledge and skills. CPRC hosted an in-person session at EPA headquarters, also available remotely to all 10 regions, where staff provided an overview of CRPC's contract services and answered questions about the contract. In FY 2020, CPRC **trained more than 154 staff and managers in 36 hours** of ECCR training over the course of seven **sessions**.

"It was helpful to see real people talking about their experiences using techniques to take on difficult conversations. [The training] makes it more realistic and approachable and gives me more confidence to employ the techniques myself."

*- EPA Difficult Conversations
Trainee*

ECCR Evaluation at EPA

As part of its commitment to continuous improvement, CPRC evaluated two ECCR cases and a training during the 13th year of its evaluation program. EPA uses case evaluation data to provide feedback to EPA staff and practitioners on how to improve future services and build understanding of the benefits of ECCR. CPRC uses training evaluation data to improve the quality and effectiveness of the trainings it delivers for EPA employees. CPRC continues to evaluate its Contract Resolution Services contract by annually surveying the dozens of task order contracting officer representatives that use it. Their input helps CPRC improve the quality, efficiency, cost, and effectiveness of the contract's use. In FY 2020, CPRC began to assess the future of its evaluation program, and in FY 2021 it intends to continue to develop criteria that will guide the selection of cases, trainings, and contract activity to be evaluated, with a focus on collecting information that will provide the greatest benefit to EPA's ECCR program.

Benefits of Using ECCR

The following are the main benefits of ECCR use identified by EPA's program and regional offices:

EPA offices and regions reported that ECCR use **furthered the Agency's mission and strategic goals** to protect human health and the environment by helping them establish collaborative processes to resolve environmental problems. Such processes often facilitated creative solutions and strategies to solve problems that would otherwise be held up in litigation and enabled the Agency and its stakeholders to plan effectively for the future.

ECCR use resulted in **improved collaboration and working relationships** across a broad range of stakeholders as EPA enhanced cooperative federalism.

The use of ECCR made **processes more efficient**. When the Agency used a neutral third party, it provided structure and focus to negotiations and moved cases along more quickly. One result of more efficient processes was that the EPA could better meet required case and project deadlines. Offices also noted resource savings when ECCR was used for enforcement cases. Compared to litigation, ECCR provided an opportunity for early resolution of enforcement cases, which resulted in cost savings, reduction of wasteful gamesmanship, posturing, and delays between counteroffers. Offices that sought to **avoid litigation** found ECCR to be an efficient means of resolving disputes.

Some noted that ECCR produced **more productive conversations** in both enforcement and non-enforcement contexts. Involving neutral facilitators and mediators helped overcome language barriers, cultural differences, and challenges in communicating about risk. 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 often narrowed the range of disagreement, laying the groundwork for a speedy resolution.

Many offices and regions stated that ECCR resulted in **better outcomes**, some of which could not have been achieved without neutral third-party assistance. These included outcomes that have improved environmental conditions when compared to non-ECCR cases, more creative outcomes, and external stakeholder ownership in the EPA's initiatives, programs and agreements.

ECCR professionals helped the EPA and external stakeholders **build their capacity** to engage in collaborative processes. Capacity building activities such as coaching parties on how to manage conflict

Noted Benefits of ECCR

- *Furtheres EPA's mission and strategic goals*
 - *Improves relationships*
 - *Greater efficiency*
 - *Avoids litigation*
 - *More productive conversations*
 - *Better outcomes*
 - *Builds capacity*
-

and creating procedures to address conflict when it arises, enabled partnerships and workgroups to work together more effectively even after neutral facilitation support ended.

ECCR saved time and money compared to alternative decision-making processes

In 2015, CPRC conducted a census of lead attorneys in ECCR cases. CPRC continues to hear reports from ECCR users which affirm the results of the comprehensive 2015 study, which found:

- ECCR processes required 45% fewer weeks to reach a decision than litigation.
- ECCR processes required 30% fewer staff members than litigation.
- ECCR processes required 79% fewer lead attorney hours than litigation and 38% fewer lead attorney hours than settlement without third-party neutrals.

The above results suggest that ECCR in EPA's litigation-related cases can produce faster resolutions, reduce staffing workload, and provide direct cost savings compared to alternative decision-making processes such as proceeding with litigation or engaging in settlement without third-party neutrals. ECCR users in FY 2020 have confirmed these benefits when using ECCR in litigation.



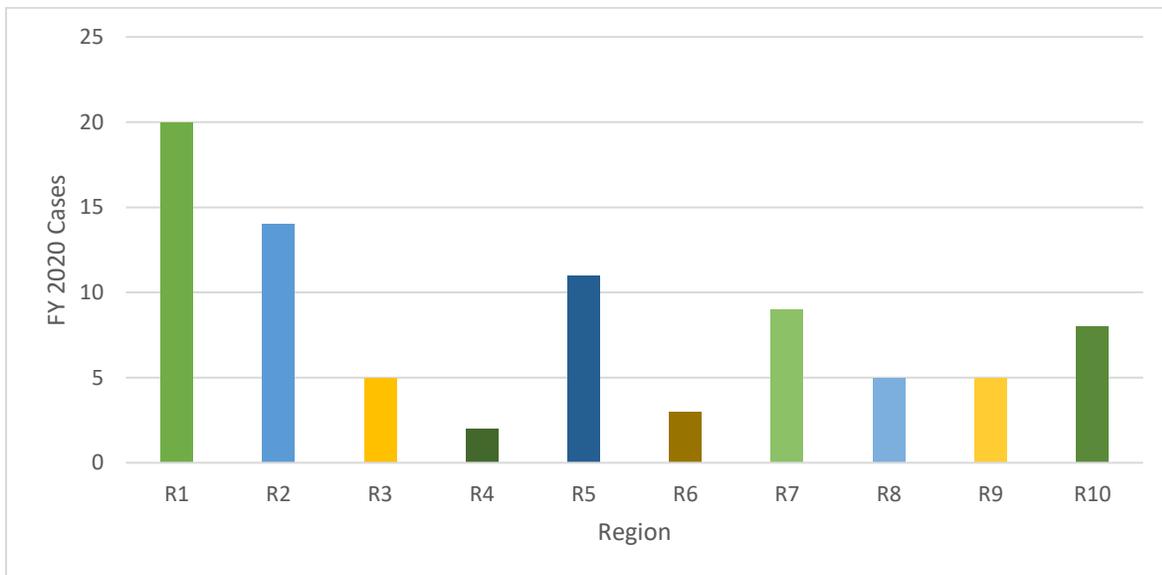
Photo: EPA

Challenges

As noted in Figure 1, the reduced use of ECCR at EPA began in FY 2015 and this has continued through FY 2020. Several challenges have led to this reduced use of ECCR at the EPA. Constrained agency appropriations have not kept pace with costs and that has reduced funding available for CPRC and the regional resources that support ECCR. The biggest challenge for ECCR use at the EPA in FY 2020 was adapting to COVID-19. As the pandemic began, most in-person meetings were put on hold, which delayed several mediation and facilitation projects. However, mediators, facilitators, and EPA staff were quick to adapt and soon provided these services on virtual platforms. Many facilitated processes continued or began in the summer of 2020.

Figure 4 illustrates the current level of ECCR use across the EPA regions.

Figure 4: FY 2020 ECCR Cases by Lead Region



Note: this chart does not include 24 ECCR cases that were national or programmatic in scope and were led by a program office.

Conclusion

In FY 2020, EPA remained a lead federal agency in the provision of ECCR services and continued to offer easy access to high quality ECCR services to help it achieve its mission and strategic goals. CPRC supported EPA's program and regional offices in their use of ECCR as an important tool to carry out effective work. As described above, ECCR was used in every EPA region and most programs to assist with cases across all media in EPA (land, water, air, and chemicals). ECCR allows the EPA to effectively and efficiently get input from, prevent and resolve disputes with, and serve the American public.



Photo: EPA

Appendixes

Appendix A - OMB & CEQ Questionnaire

In collaboration with the U.S. Institute for Environmental Conflict Resolution (the Agency which collects and summarizes these reports for OMB and CEQ), EPA continued to produce a reformatted ECCR Annual Report. EPA did this to make the report more understandable and useful for the reader. Below are the summarized questions from the OMB and CEQ questionnaire and references to where the corresponding answers can be found in this report (in *italics*).

1. ECCR Capacity Building Progress:

- a. Describe any **NEW, CHANGED, or ACTIVELY ONGOING** steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2020, including progress made since FY 2018. Please also include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases, including any efforts to provide institutional support for non-assisted collaboration efforts. Please refer to your agency's FY2018 report to only include new, changed or actively ongoing ECCR capacity building progress. If none, leave this section blank.

- b. Please describe the trainings given in your department/agency in FY 19. Please include a list of the trainings if possible. If known, provide the course names and if possible, the total number of people trained. Please refer to your agency's FY2020 report to include only trainings given in F 2020. If none, leave this section blank.

- *FY 2020 ECCR Use at EPA "ECCR Training at EPA" - pages 12-13*
- *Regional and Program Office ECCR Capacity - pages 24-49*
- *Appendix G - Examples of Non-Third Party Assisted Cases - pages 24-49*

2. ECCR Investments and Benefits

- a. Please describe any **NEW or CHANGED or INNOVATIVE** investments made in ECCR in FY2020. Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc.

Please refer to your agency's FY2019 report to only include new, changed, or innovative investments made in ECCR. If none, leave this section blank.

- b. Please describe any **NEW or CHANGED or INNOVATIVE** benefits realized when using ECCR.

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.

Please refer to your agency's previous report to only include new or innovative methodology to identify ECCR investments and benefits. If none, leave this section blank.

- *Investments: ECCR Infrastructure at EPA - pages 5-6*
- *Benefits: Benefits of Using ECCR - pages 14-15; Appendix E - Program Office and Regional Descriptions of ECCR Benefits - pages 24-29*

3. OMB/CEQ Question 3 - ECCR Use:

Describe the level of ECCR use within your department/agency in FY 2020 by completing the three tables below.

- *Appendix B Table of ECCR Cases in FY 2020 - page 21*

4. ECCR Case Example:

- *FY 2020 ECCR Use at EPA - page 12*

5. Other ECCR Notable Cases:

Briefly describe any other notable ECCR cases in the past fiscal year. (Optional)

- *Appendix F - Additional Notable ECCR Cases - pages 24-49*

6. Priority Uses of ECCR:

Please describe your agency's **NEW or CHANGED** 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. Please refer to your agency's FY2018 report to only include new or increased priority uses. If none, leave this section blank.

- *FY 2020 ECCR Use at EPA - pages 7-12*

7. Non-Third-Party-assisted Collaboration Processes:

Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2020 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. If none, leave this section blank.

- *Appendix G - Examples of Non-Third Party Assisted Cases - pages 24-49*

8. Comments and Suggestions re: Reporting:

Please comment on any **NEW or CHANGED** difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future. Please reference your agency's FY2018 report to identify new/increased difficulties. If none, leave this section blank.

- *Appendix H - Comments and Suggestions for OMB and CEQ on Reporting - page 50*

Appendix B - Summary of ECCR Cases in FY 2020

An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process.

Table 1: Purpose and decision-making forum for EPA ECCR cases in FY 2020

Purpose	Decision making forum addressing the issue when ECCR was initiated:				Total FY 2020 ECCR Cases
	Federal Agency Decision	Administrative Proceeding/ Appeal	Judicial Proceeding	Other (Specify)	
Policy Development	1	0	0	2	EPA internal policy dialogue, interagency policy dialogue, stakeholder input 3
Planning	2	0	0	27	Support of tribal, state, regional, municipal dialogue & decision-making, voluntary stakeholder action 29
Siting and Construction	2	0	0	0	2
Rulemaking	1	0	0	0	1
Permit Issuance	2	1	1	2	6
Compliance and Enforcement Action	5	2	13	28	Assessment of multi-agency enforcement program 48
Implementation/ Monitoring Agreements	6	0	1	4	Stakeholder Dialogue regarding access agreements. 11
Other	0	1	2	3	Stakeholder collaboration, process improvements, situation assessment, stakeholder input, voluntary programs 6
Total	19	4	17	66	106

Table 2. EPA ECCR cases by purpose and completion year

Purpose	ECCR cases or projects completed in FY 2020	ECCR cases or projects continuing in FY 2020	Total FY 2020 ECCR Cases
Policy Development	2	1	3
Planning	7	22	29
Siting and Construction	0	2	2
Rulemaking	1	0	1
Permit Issuance	3	3	6
Compliance and Enforcement Action	13	35	48
Implementation/ Monitoring Agreements	0	11	11
Other	3	3	6
Total	29	77	106

Table 3. EPA case and project sponsorship

Purpose	ECCR Cases or Projects sponsored	ECCR cases or projects in which EPA participated, but provided no funds or in-kind services.	Total FY 2020 ECCR Cases
Policy Development	3	0	3
Planning	29	0	29
Siting and Construction	2	0	2
Rulemaking	1	0	1
Permit Issuance	4	2	6
Compliance and Enforcement Action	35	13	48
Implementation/ Monitoring Agreements	7	4	11
Other	4	2	6
Total	85	21	106

Table 4. Interagency participation in ECCR cases and projects

Purpose	Interagency ECCR Cases and Projects			Total FY 2020 ECCR Cases
	Federal Only	Including federal and non-federal participants	Including no other participants (EPA- only led)	
Policy Development	0	1	2	3
Planning	1	13	15	29
Siting and Construction	0	1	1	2
Rulemaking	0	1	0	1
Permit Issuance	0	1	5	6
Compliance and Enforcement Action	5	10	33	48
Implementation/ Monitoring Agreements	1	8	2	11
Other	0	3	3	6
Grand Total	7	38	61	106

Appendix C – Region and Program Office Responses

Region 1 (Boston, MA)

ECCR Capacity

Support for ECCR remains strong

- ECCR Program focused on providing mediation and facilitation support to the Region, including consultation, convening, contract support, and, as appropriate, direct in-house neutral services.
- ECCR Program has been managed by a full-time senior attorney-mediator since 1995. Approximately ten other regional staff from a variety of program areas and professional backgrounds provide support to the Program on a collateral duty basis by agreement of their managers. Most are trained mediators and facilitators with varying degrees of experience who serve as in-house neutrals when they are needed and available. The group also includes a contract specialist from the Superfund branch.
- Regional leaders are aware of the services that the ECCR Program provides and frequently direct parties (both inside and outside of the Agency) to the Program. Management is receptive to the use of ADR when it is proposed for projects within their areas. The proliferation of collaborative approaches to environmental problem-solving has increased the demand for facilitation services which the Region has addressed, in part, with in-house resources.

ECCR Program offered training sessions to build capacity for ECCR

- Region 1 expects to lose some valued ECCR team members to retirement soon. The ECCR Program addressed the need to expand membership and increase the team's diversity through training sessions designed to cultivate interest in involvement with the Regional ECCR team.
- Region 1 ECCR Specialists presented a session to the Office of Regional Counsel (ORC) on the creative use of mediation as an advocacy tool. Presenters shared first-hand accounts from their peers to provide examples of ADR approaches. ECCR Specialists presented a session to the Region's summer legal interns on the ECCR national and regional programs in EPA. Several experienced regional attorneys participated in the dynamic virtual presentation.
- Region 1 hosted two ECCR brownbag lunches, featuring both a guest mediator/conflict resolution professor and an ECCR Specialist who taught graphic facilitation.
- To support the Region, the ECCR Program conducted a brief segment on "Pandemic Listening Tips" at a virtual all-hands meeting.

ECCR Benefits

Neutrals helped parties make productive use of their time

- Court-sponsored mediation in the Grimmel Clean Water Act enforcement case as well as the Massachusetts and New Hampshire MS4 (municipal separate storm sewer system) Permit Appeal helped to resolve contentious litigation more efficiently, in terms of both time and resources expended.
- The use of an independent mediator in the Wells G & H, Operable Unit 4, Superfund case helped multiple parties navigate complex Special Notice negotiations towards an agreement.

Facilitators helped to improve communication between EPA and its stakeholders

- In the GE-Housatonic Citizens Coordinating Council case and several federal facility cleanups, facilitators helped maintain a line of communication between citizens, parties performing cleanups, EPA and its state partners in overseeing the cleanups.
- In the Charles River Residual Designation Authority Stakeholder Engagement facilitation, the facilitator helped the EPA design and implement various mechanisms. These included webinars and focus groups that enhanced both the stakeholders' understanding of a complex decision process and the Agency's understanding of potential impacts to stakeholders of various options under consideration.

In-house and outside facilitators conducted dialogues to address sustainability issues

- Examples from this year included dialogues on vulnerable coastal areas and other watersheds, including Southeastern New England Program, the Mystic River Watershed Partnership, and the Long Island Sound Study facilitation.

Assisted with negotiations and dialogues involving tribal matters

- Continued to participate in and support the St. John River cross-boundary mediation.
- Continued facilitated discussions with the Town of Charlestown and the Narragansett Indian Tribe regarding planning for the Tribe's housing development.

Additional Notable Cases

Wells G&H Superfund Site

Background:

The Wells G&H Superfund Site in Woburn, Massachusetts, featured in the movie "A Civil Action," is a vast tract of land that was contaminated by surrounding industrial operations. Among the many resulting problems were the community's severely polluted water wells. One portion of the cleanup, Operable Unit 4, addressed 13 acres of contaminated groundwater, soil, wetland sediments, and non-aqueous phase liquid. This Operable Unit presented daunting negotiation challenges, including:

- Many of the defendant companies were dissolved, defunct, bankrupt, or otherwise difficult to track down;
- Defendants could not agree on the basic settlement strategy;
- Defendant subgroups had competing interests; and
- There was limited documentation and witness evidence.

To overcome these challenges and assist the defendants in coalescing as a group, EPA funded a mediator during an initial period. As negotiations progressed, the government and the defendants co-funded the mediator's continued role.

Outcome:

The mediator was instrumental in allocating shares within the fractious and reluctant group. He facilitated their commitment to the final allocation, which was pivotal in securing the performing parties' agreement to complete the work. The mediator was also an effective intermediary between the government and the defendants, which eased settlement. Ultimately EPA was able to negotiate a settlement with three defendants performing the \$19.1 million remedy and 13 others paying into a trust to help finance the work.

MA and NH MS4 General Permits Modifications

Background:

In 2016, EPA issued a final National Pollution Discharge Elimination System (NPDES) general permit pursuant to the Clean Water Act, for discharges of stormwater from small municipal separate storm sewer systems in Massachusetts (the MA MS4 Permit). Nine months later, EPA issued a similar municipal stormwater permit for New Hampshire (the NH MS4 Permit). Multiple petitions for review were filed by a range of stakeholder advocacy groups and the City of Lowell, all of which were consolidated in the U.S. Court of Appeals for the D.C. Circuit. The Court assigned the consolidated case to ADR with two co-mediators.

Outcome:

One mediator, a volunteer, was a retired commercial litigation attorney with no prior environmental or administrative law experience, who could speak to the regulated entities in a relatable manner but had difficulty relating to the government and environmental advocacy parties. The other was head of the D.C. Circuit's mediation program and, while he had no experience with NPDES permitting practice, he brought rich administrative law experience and the Court's gravitas. Over an 18-month period, the mediators and parties had several in-person meetings and numerous conference calls. Some parties maintained that the permits were not stringent enough and others insisted that they were too stringent. Ultimately, the mediators helped the parties reach draft settlement agreements and proposed permit modifications that

became the basis of the final resolution. The EPA staff involved in this case would recommend the D.C. Circuit Mediation program again if the pair of mediators would include one mediator from the mediation program and another with environmental law experience.

Examples of Non-Third Party Assisted Cases

Region 1 continues to recognize the necessity of fostering and sustaining collaborative approaches with key stakeholders and partners to address New England's most significant environmental issues. At all levels of the organization, Region 1 employees have embraced these approaches to produce creative solutions, better outcomes, and the promise of long-term gains.

E-Enterprise/EPA's Lean Management System - Region 1 continues to be significantly engaged in the E-Enterprise for the Environment initiative. This initiative's aim is to modernize the business of environmental protection through collaboration with the Environmental Council of the States and EPA's state and tribal partners. With the active support of Region 1's Deputy Regional Administrator, who was on the E-Enterprise Executive Leadership Council, the Region helped establish the E-Enterprise Regional Coordinators (EERC) network which links all ten regions. Region 1 also developed its own state and tribal regional network, the "New England E-Enterprise State/Tribal Network." In FY 2020 EPA shared its continuous improvement efforts, which were implemented throughout the Agency, with its state partners through the EERC. The Region delivered trainings to some of its state partners and shared its visual management tools with states and tribes.

Long-term Collaborations - Region 1 participated in several constructive collaborations in FY 2020. Many have been ongoing for multiple years, generally without neutral assistance. These include two major coastal watershed consortiums, the Long Island Sound Study and the Southeastern New England Program, as well as the Ocean Acidification Network, the New England Federal Partners, the Northeast Regional Ocean Council, and the Greater Boston Federal Executive Board Neutral Sharing Committee.

Region 2 (New York, NY)

ECCR Capacity

Support for ECCR remains strong

- Region 2 has one experienced ECCR Specialist and an ECCR Network, now in its third year, which has 30 members representing every division within Region 2.
- Over the past 10-15 years, ECCR-trained staff have exposed much of the Region to ECCR through meeting facilitation and training opportunities. This exposure has helped to change the culture

in Region 2 to one that effectively uses collaborative skills and processes. This growing support for ECCR led to the formation of the Region 2 Facilitator Network, a group of trained facilitators. As an added benefit, the individuals in the facilitator network utilize their facilitation knowledge and skills in their non-ECCR work.

Region and ECCR Specialists delivered multiple trainings

- The Region sponsored a region-wide ECCR training on the topics of Unconscious Bias and Communication and Culture.
- The Region offered a one-on-one Myers Briggs Type Indicator course to participants in the Mentoring Program and those interested in team building.
- Region 2's ECCR Specialist delivered a presentation at the 2019 RISE Conference at the University at Albany on November 19, 2019 on the topic of post-disaster collaboration on resilience between EPA, universities and communities.

ECCR Benefits

The use of ECCR neutrals saved resources and brought clarity to existing issues

- Staff and managers have reported both resource-related and programmatic benefits.
- Engaging third-party neutrals in the Region saved staff time. Mediators in enforcement cases provided focus and organization to negotiations, which reduced wasteful gamesmanship and posturing and delays between counteroffers.
- Enforcement cases that use ADR are less likely to result in costly trials and hearings, mediation in Region 2 reduced discovery time and costs. In cases that did not settle, participants reported that ECCR helped to clarify the issues during mediation.

Use of ECCR Facilitators in non-litigation matters resulted in significant benefits

- Use of facilitators for non-litigation matters that arise *before* a clear conflict emerges improved working relationships with stakeholders, led to more productive conversations, improved designed processes, and resulted in effective and efficient agendas that led to better outcomes.
- Those who used facilitated processes reported better *environmental* results and capacity within established groups (i.e. partnerships and workgroups) for more productive conversations after facilitation ended.
- The growth in the use of ECCR pre-conflict matters led to the adoption of ECCR strategies in non-neutral contexts by individuals who have experienced ECCR. For example, during FY 2020, facilitation techniques were used by non-neutral participants running meetings related to disaster preparedness and response efforts.

Additional Notable Cases

Seagrass Restoration: New Science and Best Practices Workshop

Background:

One of Region 2's experienced facilitators assisted a collaborative group of stakeholders in a workshop in New Jersey on seagrass restoration. Seagrasses, which have been in decline in New Jersey over the past half-century, are key components of the benthic (bottom-dwelling) environment; they remove nutrients from the water, provide habitat for economically and ecologically important fish and shellfish species, and protect coastal properties. The workshop occurred on March 9, 2020 at Ocean County College in Toms River, New Jersey and brought together seagrass restoration practitioners, researchers, and resource managers from the Barnegat Bay Partnership, U.S. Department of Agriculture (USDA), U.S. Army Corps of Engineers, New Jersey Department of Environmental Protection, Stockton University, The State University of New York-Stonybrook, the Hudson River Foundation, the Nature Conservancy, and EPA, among others. The goals of the workshop were to: (1) establish a Seagrass Restoration Community of Practice with an initial focus on the mid-Atlantic region; and (2) reach consensus on the important topics to be included in a practitioners' guide that would describe considerations for the siting of restoration projects and the state of knowledge on restoration techniques, with an emphasis on New Jersey and, as appropriate, the larger mid-Atlantic region.

Outcome:

By the conclusion of the facilitated workshop, the parties had created an outline of a practitioners' guide to seagrass restoration, which the Barnegat Bay Partnership is now drafting, and the parties agreed to establish a Seagrass Community of Practice for continued engagement. The facilitator's workshop design was key to its success. The participants focused on a wide array of seagrass topics. The meeting began with a facilitated group discussion to generate ideas for the different chapters of the guide, and then the facilitator used multi-voting to help the group make final decisions on how the guide would be organized. This vote was followed by a facilitated World Café session to get people working in small groups on each of the chapters, cataloging points to cover and case studies to reference in the guide. The workshop ended with report outs from each of the groups to ensure that nothing was missed, and to solicit volunteers for the process of writing the guide.

Examples of Non-Third Party Assisted Cases

In FY 2020 Region 2 initiated an informal collaborative initiative, the New York State Smart Growth/Brownfields COVID Resiliency Working Group, along with the New York Department of State and the Federal Emergency Management Agency, with support from other Federal agencies including Health and Human Services and U.S. Department of Agriculture. This informal initiative arose from a recognition that the SARS Covid-19 pandemic disproportionately impacts low-income communities. These communities generally have limited pathways to address

critical needs like health care, housing, physical activity, economic opportunity, and affordable fresh and nutritious food. Reduced access to these critical services and amenities is associated with poorer health outcomes and mental health issues. The pandemic has not only exposed these underlying disparities but has also worsened them. With COVID, the worlds of public health and natural disaster management have converged. Collaboration among partners will be critical for success given the widespread and varied impacts of the COVID-19 pandemic. Increased collaboration among the partners will help to ensure coordination of assistance, maximize federal investments, minimize duplication of efforts, and target assistance effectively.

The partners' initiative builds on their history of successful collaboration to support recovery using programs such as brownfields, smart growth, mitigation, and community planning. The partners' collaboration will help them to leverage these and other programs to better address impacts, prepare for future pandemics, and recover resiliently. Among the goals of the initiative are capacity building for local food production and distribution, economic redevelopment of brownfield sites, mitigation of COVID-related impacts to low-income, disenfranchised communities, and related job development and training in the communities. This informal collaboration began to take shape in FY 2020, and the partners have decided to add an internal facilitator to the effort in FY 2021.

Region 3 (Philadelphia, PA)

ECCR Capacity

Support for ECCR remains strong

- Capacity for ECCR is implicit in Region 3's strategic planning implementation, which includes the promotion of collaborative efforts to achieve environmental benefits.
 - Region 3 uses facilitators, conveners, mediators, and judicial magistrates in a variety of cases, in addition to applying ECCR in administrative law settings.
- In FY 2020, Region 3 had three ECCR Specialists, all within the Region's Office of Regional Counsel, as well as an additional ECCR contact in Region 3's Superfund and Emergency Management Division. All ECCR Specialists in Region 3 perform their work as collateral duty.
- ECCR Specialists consulted with Region 3 employees about ECCR and provided support using a collaborative approach; they also served as liaisons between Region 3 and EPA's Conflict Prevention Resolution Center (CPRC) to identify and obtain third-party neutrals upon request.
- ECCR training
- Region 3 provided ECCR training, in coordination with CPRC, to managers and staff to help enhance awareness of the benefits of ECCR and to build ECCR-related skills.
- One of Region 3's ECCR Specialists teamed with the Regional Training Officer (RTO) to identify critical competencies, learning events and target audiences to further the goal of leading a

diverse and collaborative workforce. The competencies identified were bridging cultural divides, managing conflict, improved negotiation skills, teamwork, communication, and self-awareness. The learning events were presented virtually.

ECCR Benefits

- In FY 2020, the primary benefits of using ECCR in Region 3 for administrative and judicial litigation matters were the avoidance of litigation and related time and transaction costs.
- For matters that involved third-party neutral facilitation, additional benefits included enhanced relationships between EPA and stakeholders with significant improvements in the communication of interests, concerns, and desired goals of the participants.
- Additional benefits included positive environmental results and cost savings realized by using Region 3 employees trained as facilitators.

Additional Notable Cases

Hidden Lane Charrette

Background:

This matter involved a Superfund site that includes a property on the location of an old construction debris landfill. A portion of the property previously contained wetlands. The landfill had been capped and remained vacant. The goal of the charrette process, which is an intensive planning session, was to obtain consensus among interested groups and parties as to potential sale or reuse of the property. EPA issued a Record of Decision for the site to provide for the installation of a waterline to address groundwater contamination concerns. The property owner previously entered into a Consent Decree with EPA pursuant to which the property owner was required to sell the property, with a portion of the sale proceeds to be paid to EPA and the Commonwealth of Virginia as reimbursement for response costs incurred at the Site.

The interested parties had specific views about the sale and potential reuse of the property, including interests in keeping the property undeveloped or limiting development and/or providing for public use and trails on the property. These parties included the property owner, EPA, the State of Virginia, county property developers, a national historic scenic trail organization, local nature groups, and neighboring property owners.

Outcome:

A third-party neutral conducted a stakeholder analysis, which helped identify the parties' interests pertaining to the sale or reuse of the property. The third-party neutral facilitated an initial visioning session with EPA, Virginia, stakeholder groups and interested parties to help identify potential reuses of the property. The process successful promoted communication and

the sharing of ideas among disparate groups and parties. The final report provided a framework for the reuse of the Site and as of the beginning of FY 2021, the current owner is in discussions with multiple parties to put the property into reuse.

Examples of Non-Third Party Assisted Cases

In FY 2020, Region 3 sought opportunities to engage in facilitative and collaborative activities involving EPA, states, tribes, local communities, non-governmental organizations (NGOs), and other federal agencies where appropriate within the Region. Region 3 also sought opportunities to minimize potential disputes with responsible parties in matters, when possible, through negotiation.

- EPA Region 3 Tribal Environmental Summit - In November 2019, EPA Region 3 convened a summit with the seven federally recognized tribes within the region to begin communication and coordination about what EPA does and to learn the environmental interests of the tribes. Representatives from each Region 3 division participated in the Summit and presented briefly on their respective divisional programmatic work. EPA described grant opportunities, resources, trainings, and set future collaboration dates. Additionally, each of the seven tribes had an opportunity to present their interests and environmental goals to EPA. The Virginia Department of Environmental Quality also participated as much of the regulatory environmental work has been delegated to the Commonwealth of Virginia. The second day of the Summit included an open house where over 20 academic, local, state and federal agencies displayed booths and information kiosks for tribal participants to peruse and network.
- Finalization of the Region 3 Consultation Policy - The Region 3 Consultation Policy (Policy) was finalized during FY 2020 after many months of development. The Policy details how the Region will enact the 2013 Agency wide policy on Consultation and Coordination with Indian Tribes. The Policy assigns roles and responsibilities to regional management and staff for executing consultation with tribes. It details the four phases of consultation and spells out the actions needed to be taken by various personnel throughout the Region during each phase. The Policy will promote consistent consultation processes and create a better experience for the Region's tribal partners. The tribes were offered an opportunity to consult on the Policy but none accepted the offer. Region 3 management and staff now have a clearly written useable guidance in the Policy to assist the Agency with its responsibility of consulting with federally recognized tribes.
- Brownfields and Redevelopment - Region 3 engaged in collaborative meetings involving Brownfields redevelopment, where the Region brought together parties, such as property owners, state authorities, EPA regulators, and community stakeholders, to help navigate the process of redeveloping a site.

- Federal Facilities - Region 3 has formal Federal Facility Agreements (FFA) in place for most of its sites within its Federal Facilities program. These FFAs govern how and what the Region coordinates with Federal Facilities with regard to EPA's oversight responsibilities at listed Superfund Sites. EPA also used a memorandum of agreement at one of these sites to help outline formal coordination and negotiation between the federal and state agencies and the private developer.

Region 4 (Atlanta, GA)

ECCR Capacity

Team of ECCR Specialists supports Region 4

- In FY 2020 the Region 4 ECCR Specialists team continued to build a cadre of EPA employees to broaden the availability of ECCR services throughout the Region. The team endeavors to serve as the regional environmental collaborative and conflict resolution group that develops both communication and problem-solving skills within the Region and amongst its external stakeholders.
- In FY 2020, the Region 4 ECCR Specialists team included two attorneys in the Region 4 Office of the Regional Counsel and the Region 4 ADR lead in the Office of the Regional Administrator.
- The ECCR Specialists team provided information and training on ECCR processes and available support, including contracting support, ADR services and relevant training.

ECCR Benefits

- ECCR processes benefitted Region 4 by producing better outcomes in cases and reducing litigation costs. The Region used technical facilitation for a Superfund remediation case at a federal facility in FY 2020. While this project is ongoing, it demonstrated that ADR processes are helpful in fostering an integrated interagency approach to problem solving and promoting cooperative federalism.
- EPA applied ECCR to community outreach activities, and this helped facilitate a better understanding of the issues and concerns of all the participants.

Additional Notable Cases

The Department of Energy's Paducah Gaseous Diffusion Plant (PGDP) Superfund Site

Background:

The Department of Energy's PGDP, the Commonwealth of Kentucky, and EPA Region 4 used ADR to improve communication and address several issues at the PGDP site. They first participated in an initial facilitated ADR orientation session in January 2020. During this session, the parties considered how conflict prevention and resolution could be used to enhance progress for the restoration of the PGDP. Participants broke into separate groups organized by levels of responsibility and discussed what was working well at the site and identified challenges.

Outcome:

In August 2020, the agencies participated in a facilitated technical webinar to discuss implementation issues associated with the area of contamination policy as it applies at the PGDP. Participants noted that this webinar helped to keep open dialog amongst the parties. EPA and the other parties plan to have several meetings in FY 2021 to address cleanup at this site.

Region 5 (Chicago, IL)

ECCR Capacity

- In FY 2020, Region 5 had two designated ECCR specialists, both within the Office of Regional Counsel, with additional support from an investigator in the Office of Regional Counsel and an individual in the Water Division. Each ECCR Specialist's role is assigned as collateral duty.

ECCR Training

- In FY 2020, the ECCR Specialists presented several training programs (sometimes in collaboration with CRPC staff) to provide ADR training to regional staff to enhance understanding and build skills in conflict resolution. The trainings included:
 - Interest-Based Negotiation Training for Region 5 staff, in Chicago, IL.
 - Interest-Based Negotiation Training for National On Scene Coordinators Academy in Chicago, IL.
 - Difficult Conversations for Region 5 On Scene Coordinators Annual Training in Angola, IN.
 - Difficult Conversations for Region 5 Staff (virtual training).

Additional Services

- In addition to formal training, the ECCR Specialists consulted with regional employees about the role of a neutral in enforcement cases and provided information about the services offered by CPRC.
- One of the Region 5 Specialists worked with the Federal Executive Board (FEB) to provide training and mentorship to new mediators through the Shared Neutrals as Partners (SNAP)

Program. Region 5 has four staff members that actively participate in the cadre of SNAP mediators and have been consistently recognized by the SNAP coordinator for their substantial contributions to the program among the participating federal agencies in the Chicago area.

Additional Notable Cases

Bautsch-Gray Mine Superfund Site

Background:

The Bautsch-Gray Mine Superfund Site is located in Jo Daviess County, Illinois, and includes the Gray and Bautsch properties, where mining and milling activity occurred from the 1940s to 1970s. Tailings from the mine property have continued to erode and move toward residential properties, wetlands and fisheries, contaminating soil, groundwater and surface water. Waste piles contained elevated levels of lead, arsenic and other heavy metals; and soil samples from around the site and a nearby residential property contained elevated levels of lead. In September 2012, the U.S. EPA listed the Bautsch Gray Mine site on the National Priorities List. On August 9, 2018, U.S. DOJ filed a federal court complaint against three defendants and in February 2019, amended the complaint to include a fourth defendant. The complaint alleges that the four defendants are liable for past or current releases of hazardous waste contamination.

Outcome:

In February 2020 and May 2020, EPA and DOJ were directed to participate in two days of mediation before a federal Judge Magistrate. The goal was to reach an ability to pay (ATP) cash out settlement with the defendants. The mediation resulted in two ATP consent decrees, both almost finalized at the end of FY 2020. The magistrate skillfully facilitated negotiation and settlement between the key parties by providing direction, encouragement, and finding creative ways to reach a mutually satisfying solution.

Examples of Non-Third Party Assisted Cases

On March 13, 2020, former President Trump declared the Covid-19 pandemic a national emergency. This resulted in stay-at-home orders and guidance being issued by state and local authorities across the country, including authorities with jurisdictions in large geographical areas of Region 5. Region 5 recognized the need for enhanced public outreach in virtual formats and took action to improve the ability of the public to comment on proposed cleanup plans. Specifically, Region 5 held multiple remote public meetings, including:

A virtual public meeting to outline the Region's plan to clean up the contaminated soil at the former Antique Chrome Shop in Indianapolis and to sample indoor air at nearby residences. The public had the opportunity to ask EPA staff questions during the meeting.

A virtual public meeting to outline the Region's proposed plan to address groundwater contamination and hazardous gases in the soil of the Pike and Mulberry Streets PCE Plume Superfund Site in Indiana. The public had the opportunity to ask EPA staff questions during the meeting, and a video presentation explaining the plan was posted online.

In-person availability sessions to speak with residents about the residential soil cleanup at the DePue/New Jersey Zinc/Mobil Chemical Corp. Superfund Site in Illinois. The sessions were held outdoors, and EPA staff followed CDC guidance related to the Covid-19 pandemic. Residents also had the option to participate in the sessions via phone.

In addition, Region 5 posted video and slide presentations to its website to enhance the public's ability to comment on proposed agency action for several sites. Region 5 announced that it sought public comment on a proposed cleanup plan for the New Carlisle Landfill Superfund Site in Ohio, the NIPSCO Bailly Generating Facility in Chesterton, Indiana, and the Keystone Corridor Superfund Site in Indianapolis, Indiana. The Region posted a slide presentation explaining each of these plans on its website.

Region 6 (Dallas, TX)

ECCR Capacity

- In FY 2020, Region 6 had two ECCR Specialists, an attorney in Region 6's Office of Regional Counsel and a Senior Community Involvement Coordinator (CIC) in the Office of Public Affairs/Outreach Community Involvement. They performed their roles as ECCR Specialists as collateral duty.
- ECCR and/or ADR was routinely offered as part of the enforcement program, in both administrative and judicial cases. When administrative cases are not resolved after the pre-hearing exchange, the Office of Administrative Law Judges (ALJ) offers ADR. When ADR was accepted, an ALJ acted as a neutral mediator. Federal Court judges generally required the use of third-party neutrals in an attempt to resolve judicial matters. Region 6 makes use of these services as needed; however, informal negotiation has typically resolved matters without the need for a third-party neutral. While most years see the use of at least one mediation led by an ALJ, there were none in FY 2020. Region 6 expects to commence mediation in a judicial enforcement matter in early FY 2021.

ECCR Benefits

- ECCR supports the Agency's mission, it improves working relationships with stakeholders, and it helps to move projects toward completion. When serving as facilitators, third party neutrals for Region 6 helped enrich public discussions about complex environmental issues.

- Public meetings related to emergency preparedness presented unique challenges, and the presence of a third-party neutral helped to provide an organized and objectively designed forum. Facilitators also helped participants maintain focus on the objectives of meetings by managing Q&A sessions and helping parties move toward resolution.

Additional Notable Cases

Lane Plating Works, Inc. Site

Background:

The Lane Plating Works, Inc. Site is a former electroplating facility in Dallas County, Texas. The site was in operation for more than 90 years but shut down in 2016 after investigations uncovered multiple violations of environmental laws, and the company filed for bankruptcy. Large volumes of liquid plating wastes were left at the site following closure. In November 2016, EPA removed 188,000 lbs. of waste material from the Site and disposed of the remaining solid and liquid hazardous wastes. The site was added to the National Priority List in May 2018. The Site is in a section of the city (south Dallas) that has low trust in government at all levels due to historical pollution and low economic growth. Community meetings have been contentious, and conflicting concerns were raised by community groups and the City of Dallas. Stakeholders include EPA, the community surrounding Lane Plating, the Lane Plating Community Advisory Group (CAG), the City of Dallas, and state and local environmental groups.

Outcome:

The Facilitator assisted with forming the Site CAG, in addition to planning community meetings and assisting with outreach to help build trust and confidence between the local community and EPA. The project is ongoing and further facilitation and outreach for the community is needed.

Region 7 (Lenexa, KS)

ECCR Capacity

Broad regional ECCR coverage

- In FY 2020, ECCR duties in Region 7 have been primarily sustained by two regional employees on a collateral-duty basis; one is in the Communities Section of the Office of Intergovernmental Affairs and the other is an Attorney-Adviser within the Office of Regional Counsel. This dual assignment brings a diverse skillset to Region 7's ECCR activities and helps ensure broad regional coverage and internal communication. These two employees contribute to monthly ECCR Specialist calls and share information about CPRC with regional management.

- Region 7 has continued general promotion of ECCR throughout the region. Additionally, in FY 2020, Region 7 created a SharePoint page that is available to regional staff as a central resource for ECCR information.

Regional support for ECCR

- The region has continued to encourage and support the use of ECCR to address an array of agency matters. For example, Region 7 partnered with CPRC in FY 2019-2020 to obtain expert, on-the-ground advice and coaching in preparation for sensitive meetings with local government stakeholders related to a potential ethylene oxide risk.
- Region 7 also encouraged Agency participation in mediated negotiation and alternative dispute resolution opportunities offered during judicial litigation and contested administrative enforcement cases before EPA's Office of Administrative Law Judges.

ECCR Benefits

- ECCR generated substantial benefits in Region 7 during FY 2020. Chiefly, the Region realized better environmental and natural resource results, improved working relationships with community stakeholders, and fulfilled the Agency's core enforcement functions. The Region advanced EPA's mission to protect human health and the environment through third-party facilitation of two judicial enforcement cases.
- The Region used a collaborative adaptive management (CAM) process to improve Hinkson Creek from an impaired status and continued to have effective stakeholder coordination, action, and recommendations. Similarly, the Piper Creek/Town Branch CAM continued to achieve its goals, as the city of Bolivar evaluated the impairment and worked collaboratively with the state to review the associated water quality standards and the total maximum daily load.
- A third-party facilitator helped advance community engagement with landowners in multiple Superfund sites along the Big River watershed in the Southeast Missouri Lead District.
- The Region benefitted from ECCR coaching by CPRC to support regional engagement in challenging community conversations on the emerging contaminant ethylene oxide. Coaching helped regional staff to deliver effective risk communication at two different localities.
- Third-party mediation enabled EPA to fulfill its essential enforcement mission, avoid prolonged litigation, and recover an uncollected federal debt in a case that EPA worked on with the Department of Justice (DOJ).

Additional Notable Cases

Stabl, Inc.

Background:

Region 7 successfully employed a third-party mediator to recover \$880,000 of long-standing debt owed to the federal government from a prior enforcement action. The United States and the State of Nebraska obtained a judgment of almost \$2.3 million against Stabl, Inc. in January 2014 for significant Clean Water Act violations at its cattle rendering facility in Lexington, Nebraska. Despite achieving this outcome through hard-fought litigation, the defendant never paid any portion of the judgment to the U.S. Treasury. To enforce payment of the civil penalty judgment, the U.S. filed a complaint in 2016 under the Federal Debt Collection Procedure Act against Stabl, Inc., its parent holding company, and its owners and sole shareholder. The allegations focused on several multi-million-dollar wire transfers from the corporate defendant to the owners' personal bank accounts shortly after receiving a penalty demand from the U.S.

Following suit under the Fair Debt Collection Practices Act, the parties entered mediation with a magistrate judge in the United States District Court for the District of Nebraska. The magistrate felt strongly about the utility of the mediation process and the benefits of settling this matter before trial. He was closely engaged and detail-oriented, listened intently to the government's considerations and spent considerable time working with the defendant. The neutral's stature as a judge and his personal commitment to the process moved the parties toward resolution.

Outcome:

As a result of mediation, Stabl, Inc. agreed to pay \$880,000 to the U.S. in settlement of its \$1.1 million liability. A Satisfaction of Judgment and corresponding Stipulation of Settlement and Judgement were filed on February 19, 2020, resolving the defendants' liability to the U.S. Mediation of this matter produced obvious value for the federal government, evidenced not only by the favorable financial terms of the parties' settlement, but also avoidance of the time and administrative cost of protracted litigation in federal court. As important, however, was EPA's demonstration that it will follow through on its essential enforcement function regardless of roadblocks and recalcitrance.

Examples of Non-Third Party Assisted Cases

- Beginning in FY 2019 and continuing into FY 2020, Region 7 engaged CPRC's specialized expertise to advise and coach regional staff and managers through a challenging risk communication scenario. The personalized coaching from CPRC enabled the Region to engage and strategize with local elected leadership on community outreach activities related to ethylene oxide, an emerging contaminant.
- The Region continued its practice of using pre-filing negotiations in most administrative enforcement actions seeking a monetary penalty. As a result, many actions were successfully resolved prior to the filing of an administrative or judicial complaint, minimizing Agency resources required to ensure environmental compliance.

Region 8 (Denver, CO)

ECCR Capacity

Supported easy access to ECCR services

- Region 8 continued to use ECCR consistently. The Region dedicated part of one staff person's time to serve as coordinator and point of contact for ECCR processes in the Region.
- Staff and managers had quick and easy access to information about ECCR on their desktops using a tab on the 8Net, the region's intranet homepage. Resources outlined on the 8Net include a definition of what ECCR is, steps to take in assessing a variety of situations to determine if ECCR might be beneficial, and contact information for support.
- A new ECCR Specialist joined in June 2020. She is an Attorney Advisor in the Office of Regional Counsel and performs her ECCR Specialist role as collateral duty.

ECCR Benefits

- The Region primarily used ECCR for facilitation of stakeholder involvement processes. Region 8 conducted monthly Community Advisory Group (CAG) meetings on the Colorado Smelter and Lincoln Park Superfund sites using a third-party neutral facilitator.
- Both sites are in the remedial investigation/feasibility phase of long-term remedial action and have highly engaged community members who monitor cleanup activities closely. Using a facilitator allowed these communities to understand the Superfund process more thoroughly and obtain information they wanted about the sites quickly and easily.
- The ECCR facilitation support, which improved the process of working with these communities, allowed agency staff to more efficiently focus their time and attention on implementing cleanup efforts at these sites.

Additional Notable Cases

Colorado Smelter Superfund Site

Background:

The Colorado Smelter Superfund Site was a silver and lead smelter that operated in the town of Pueblo, Colorado from 1883 to 1908. The Site was listed on the National Priorities List in 2014 due to EPA's concern about high levels of arsenic and lead that had been identified in neighborhood soils. EPA is in the Remedial Investigation/Feasibility Study stage at the Site and has also completed soil cleanups in over 540 homes to date. Last winter, the Site team had to quickly onboard a new facilitator to work with the Site's Community Advisory Group (CAG). The team collaborated with the CAG to identify, select, and onboard a new facilitator.

Outcome:

The new facilitator solidified relationships and established trust with local officials, community members, and other stakeholders in Pueblo, despite starting the work in the midst of a pandemic and not being able to meet in person. The facilitator's experience working with multicultural communities and facilitating virtual meetings was critical to the CAG's continued engagement in the Region's ongoing investigation and cleanup of approximately 800 homes.

Region 9 (San Francisco, CA)

ECCR Capacity

Culture of support for ECCR

- The Region has one ECCR Specialist in the Office of Regional Counsel who functions in a collateral-duty capacity to provide counseling, identify resources, and facilitate the development and implementation of training as requested.
- There are several other individuals in Region 9 who engage in ECCR as collateral duty. These individuals include a member of the National ECCR Specialists Workgroup, who serves as a point of contact for ECCR matters in the Region, and 12 members of the Regional Facilitation Cadre who serve upon request as meeting and process facilitators.
- Many Regional staff have participated in facilitated meetings and workshops and/or have taken ECCR training. This exposure has helped to foster a culture in Region 9 that increasingly uses collaborative skills.
- The Regional Facilitator Cadre is a group of approximately 12 staff members from various program offices who are trained facilitators. The ECCR Specialists continued to manage the Facilitator Cadre through FY 2020. EPA staff can request facilitation services through the Regional intranet site. In FY2020, facilitators from the Cadre served as facilitators for several internal EPA meetings.

ECCR Benefits

- Region 9 noted several benefits of ECCR including: time and cost savings compared to litigation; advancing the Agency's mission; improved working relationship with stakeholders; setting parties' expectations to be more realistic; more creative and sustainable problem-solving; and more flexible and durable agreements. Sometimes participating in ECCR has helped the parties get court approval to extend litigation deadlines, which gives parties additional time to resolve differences and settle rather than proceeding to litigation.
- Region 9 had one matter involving a neutral facilitator that involved numerous parties – several federal agencies, several state agencies, and private parties. The neutral facilitator kept

meetings running smoothly and kept the parties informed and engaged in a collaborative process.

Additional Notable Cases

Kettleman Hills

Background:

Region 9 used the CPRC contract to obtain the services of a neutral facilitator for public meetings associated with the Agency's decision to issue a Toxic Substances Control Act permit for the Kettleman Hills facility in California, and to provide information and receive public comment on the proposed permit.

Outcome:

The facilitated meetings allowed EPA to complete its public comment process, and EPA is now continuing with the remaining steps in the permit process. The neutral was helpful in keeping meetings running smoothly and allowing EPA to focus on its role as provider and receiver of information.

Examples of Non-Third Party Assisted Cases

Region 9 continued to recognize the necessity of fostering collaborative approaches with key stakeholders and partners to address the region's most significant environmental issues. At all levels of the organization, Region 9 employees have embraced collaborations with stakeholders because they produce creative solutions, better outcomes, and promise long term gains.

Region 9 staff and managers coordinated with other first responders and local officials to counter environmental hazards associated with the aftermath of extensive wildfires throughout the State of California. At all levels, Region 9 employees have embraced collaboration with emergency responders; state, tribal and local government officials; community members; and other stakeholders to facilitate improved responses, creative solutions and better outcomes.

Region 10 (Seattle, WA)

ECCR Capacity

- Region 10 has two active ECCR Specialists, one in the Regional Counsel's Office and one in the Portland satellite office. ECCR was regularly employed in Region 10, typically with CPRC's

support. ECCR services were provided to several offices and programs and employed in both formal and informal contexts.

- Regional staff regularly considered using ECCR in a variety of situations, including facilitation of meeting with stakeholders, enforcement, legal negotiations, and community involvement. Staff frequently reached out to CPRC for support when determining whether ECCR was appropriate for a variety of situations, either directly or through Region 10's ECCR Specialists.

ECCR Benefits

- All ECCR cases provided significant benefits, including an increase in meaningful stakeholder participation. Staff described ECCR as a tremendous resource for Region 10 to use to advance EPA's mission.
- The Region improved its facilitation and coordination efforts by efficiently using ECCR, which allowed stakeholders to engage more meaningfully in multiple cases. Other reported benefits included increased cost savings; increased efficiency; avoidance of conflicts; and improved relationships.

Office of Mission Support (OMS)

ECCR Capacity

- The Environmental Appeals Board (EAB) within OMS uses ECCR in its administration of cases. The EAB is the final EPA decision maker on administrative appeals under all major environmental statutes that EPA administers. The EAB's caseload consists primarily of appeals from permit decisions and civil penalty decisions, as well as petitions for reimbursement of costs incurred in complying with cleanup orders issued under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).
- The Board offers an [ADR Program](#) to assist parties in resolving disputes before the Board. The Board's ADR Program offers parties the option of participating in ADR with the assistance of one of the Board's Judges acting as a neutral evaluator/mediator. The ADR Program has been successful in assisting the parties in achieving a fast resolution of issues, with satisfying and enduring solutions.
- OMS had only one instance where ECCR was used in FY 2020. It still considers ECCR to be an important tool to mitigate environmental disputes and conflicts.

ECCR Benefits

- Under the umbrella of ECCR, the EAB encourages parties to engage in alternative methods of resolving disputes before the Board. To achieve that, the EAB has an ADR program. Resolving

conflict through the use of ADR has many benefits, including faster resolution of issues and more creative, satisfying, and enduring solutions.

- The use of ADR has fostered a culture of respect and trust among EPA and its stakeholders. It has also increased compliance with environmental laws and regulations and garnered broader stakeholder support for Agency programs. The EAB's ADR program is voluntary. In most cases, the Board offers parties the option of participating in ADR with the assistance of an EAB Judge acting as a neutral evaluator and/or mediator. The primary purpose of the ADR program is to provide a neutral, confidential option for the settlement of cases that come before the Board.

Additional Notable Cases

In re Veolia ES Technical Solutions LLC

Background:

In the case *In re Veolia ES Technical Solutions LLC*, the American Bottom Conservancy (“Conservancy”) petitioned the Environmental Appeals Board for review of a Title V permit (“2019 Permit”) issued by EPA Region 5 to Veolia ES Technical Solutions, L.L.C. under the Clean Air Act. The 2019 Permit authorizes Veolia to operate its Sauget, Illinois hazardous waste incinerator.

The Conservancy filed a Petition for Review with the Board challenging, as clearly erroneous, the Region’s decisions not to require a multi-metals monitoring program and to revise the feed stream analysis requirements to allow for the designation of “non-suspect” waste. Veolia filed a motion to intervene, which the Board granted. Shortly after the Petition was filed, the Conservancy, the Region, and Veolia requested that the matter be stayed in order to allow the parties to participate in the Board’s ADR program.

Outcome:

The parties began discussions in ADR, but based on information that came to light early in the process, it was determined that the case was not appropriate to continue in ADR. The Board returned the appeal to the active docket and lifted the stay.

While the issue was eventually decided outside of the ADR process, using ADR helped foster a more comprehensive and collaborative discussion among the parties, which led to the conclusion of the case.

Office of Research and Development (ORD)

ECCR Capacity

- EPA's ability to protect human health and the environment depends upon the integrity of the science on which it relies. The EPA Scientific Integrity (SI) Policy provides a vision and a roadmap for scientific integrity at the Agency. The SI Policy applies to all EPA employees and, therefore, involves all environmental statutes under which the Agency performs its duties. Since 2017, all new EPA hires must take a mandatory online training course on scientific integrity during their first six months on the job. The SI training conducted for all EPA staff includes topics that are related to ECCR principles, including information on the process for resolving allegations of a loss of scientific integrity. As of the end of FY 2020, the training for managers had been conducted in most EPA offices, programs and regions.
- The SI Program is led by the SI Official, who chairs a cross-Agency Scientific Integrity Committee. The Program helps to implement the Scientific Integrity Policy. The Program also addresses allegations of a loss of scientific integrity and has used ECCR to obtain timely and cost-effective resolution of disagreements involving scientific integrity issues. There were no cases in FY 2020, yet the process has proven to be successful with Stakeholders who have agreed to participate. The SI program will utilize ECCR in the future as appropriate.

ECCR Benefits

- ORD has noted several benefits of using ECCR, especially in resolving SI issues. These include efficiently resolving issues to protect the integrity of the Agency's science; using a process that the stakeholders trust; achieving a timely resolution; and resolving the issue at a reasonable cost.
- In FY 2019, EPA's SI Program used a neutral party to initiate dialogues on scientific integrity, to learn about EPA leaders' understanding of and perspective on the SI Policy, and to obtain their recommendations for policy implementation and new initiatives related to scientific integrity. The SI Program incorporated the project's resulting recommendations into the FY 2020 work plan. Effective use of ECCR also helped maintain the trust between EPA staff and the public in the quality and integrity of the Agency's science.

Additional Notable Cases

Kingsbury Bay and Grassy Point

Background:

In 2017, ORD, Region 5 and the EPA Great Lakes National Program Office conducted a health impact assessment (HIA) at two project sites along the St. Louis River, Kingsbury Bay and Grassy Point in Duluth, Minnesota. The objective of the HIA was to inform the Minnesota Department of Natural Resources (DNR) and the City of Duluth government about the design and implementation of these habitat restoration and park improvement projects.

The project goals were to assist the community in exploring alternatives for habitat loss mitigation actions and engage stakeholders in defining a long-term vision and sustainable strategic plan. A neutral third party conducted the workshops and interactions. Conflict arose because Minnesota DNR's remediation and restoration plans were not aligned with the City of Duluth's park master plans.

Outcome:

Conflict resolution was carried out using the HIA to provide design recommendations to both the state and city. The agreed-upon resolution designed by both parties helped to mitigate and improve health outcomes for the community. While the project ended in FY 2020, the HIA improved inclusion and broadened the range of outcomes considered to include equity. It also identified the need for longitudinal studies. The State of Minnesota DNR Habitat Coordinator noted that "Through the HIA...EPA's assessments resulted in recommendations that were integrated into the Project design. We feel that the HIA process and products were a valuable addition to this Project's development..."

Office of Environmental Compliance and Assurance (OECA)

ECCR Capacity

OECA's Federal Facilities Enforcement Office's (FFEO) does not have a formal ECCR program, but it has provided financial support to regional ADR efforts. In FY 2020, FFEO provided \$14,000 in contract funds for Region 4's ADR effort with the Department of Energy's (DOE) Paducah Gaseous Diffusion Plant, a Superfund site in Kentucky (described below in Appendix F).

Additional Notable Cases

Navistar

Background:

OECA's Office of Civil Enforcement employed mediation in the pending enforcement litigation against Navistar, Inc. ("Navistar"), which has been ongoing since 2015. Navistar, a truck and engine manufacturer, is alleged to have violated Section 203 of the Clean Air Act in 2010 by selling or introducing into commerce 7,749 engines not covered by an EPA-issued certificate of conformity. The United States prevailed on a motion for partial summary judgment on liability in 2017. In FY2020, Navistar agreed to engage in mediation.

Outcome:

The mediator has helped the parties address obstacles to productive negotiation by providing feedback and perspective to each party. The parties did not reach an agreement in FY2020, but they have made progress that likely would not have been possible without mediation.

Paducah Gaseous Diffusion Plant

OECA's FFEO expects that the efforts regarding Region 4's ADR at Paducah Gaseous Diffusion Plant will benefit the federal facilities program by reaching agreement on wide-ranging environmental questions to better protect human health and the environment. The Paducah ADR is intended to address project-specific Applicable or Relevant and Appropriate Requirements under CERCLA and important administrative issues like EPA's Area of Contamination Policy and CERCLA's Off-Site rule that may affect project implementation. The effort is also intended to prevent further disputes, which will save future FTE and financial resources that would have been expended on the disputes.

Examples of Non-Third Party Assisted Cases

OECA's FFEO is involved in the Department of Energy (DOE)/EPA/States Dialogue (DOE Dialogue). The purpose of the DOE Dialogue is to facilitate ongoing working relationships among senior leaders involved in the cleanup of DOE Environmental Management sites. The group focuses on three workgroups: environmental indicators, waste disposition, and dispute resolution. The DOE Dialogue builds relationships among DOE, EPA, and states, and contributes to a shared knowledge base, which supports cohesive work toward the shared goal of cleaning up the nuclear weapons complex.

Office of International and Tribal Affairs (OITA)

ECCR Capacity

- The Office of International and Tribal Affairs leads EPA's international and tribal engagements, working across EPA's programs and regions to develop and implement policy and programs that protect U.S. public health and the environment.
- OITA works with other federal agencies, international organizations, and individual countries to address bilateral, regional, and global environmental challenges and to advance U.S. foreign policy objectives.
- Honoring the government-to-government relationship and respecting tribal treaty rights, OITA guides the Agency-wide effort to strengthen public health and environmental protection in Indian country, with a special emphasis on helping tribes administer their own environmental programs. While OITA does not have a dedicated ECCR staff member, OITA uses environmental collaboration in its many interactions with tribal nations and foreign governments.

Additional Notable Cases

National Tribal Caucus

Background:

In November 2019, OITA had a very successful facilitated meeting with the National Tribal Caucus (NTC). The NTC is a group of 20 elected tribal leaders and tribal environmental staff that provide advice and feedback to the EPA on its implementation of environmental programs in Indian country. OITA's American Indian Environmental Office (AIEO) adheres to a meeting schedule with the NTC to receive their feedback on ongoing issues. In November 2019 AIEO management and staff met with the NTC in Bainbridge Island, Washington, for an annual meeting in Indian country. To improve dialogue with the NTC and ensure we met our established objectives for the agenda, EPA used a neutral third-party facilitator. Items on the agenda included feedback from the NTC on EPA's Strategic Plan, National Program Guidance, and the National Tribal Operations Committee Charter, among others.

Outcome:

The facilitator ensured that discussions were productive, and that consideration was given to all voiced opinions. The meeting stayed on time and the parties were able to cover all topics identified on the agenda. EPA received feedback from the NTC on the topics identified above and used it to improve implementation of its programs. The NTC received updates on specific topics they had requested, including an update on the Pebble Mine project in the Bristol Bay Watershed and EPA's implementation of environmental programs in Indian country.

Examples of Non-Third Party Assisted Cases

- Tribal Consultation Policy - The EPA's Policy on Consultation and Coordination with Indian Tribes is based on a federal government to tribal government relationship. The Agency defines its consultation as a process of meaningful communication and coordination between the EPA and tribal officials prior to the EPA taking actions or implementing decisions that may affect tribes. EPA programs and regions conducted 119 tribal consultations in FY 2020. Under its Consultation Policy, the EPA identifies actions and/or decisions that may affect tribal interests. Tribal government officials are given an opportunity to provide input directly to the EPA prior to an EPA final decision. This consultation leads to more informed and implementable decisions by EPA.
- EPA-Tribal Environmental Plans (ETEPs): ETEPs are planning documents developed collaboratively between the EPA and individual tribal governments. ETEPs define intermediate and long-range tribal environmental program priorities and inform funding decisions by linking ETEP goals to annual financial assistance agreement work plans. The ETEPs and resulting grant work plans also provide a mechanism for measuring tribal progress in meeting tribally defined

program development goals, consistent with EPA administered programs. As of September 30, 2020 -- in part through General Assistance Program funding - 492 tribes (96% of those receiving funding) had an ETEP in place with their respective EPA regional office. ETEPs represent a shared understanding and commitment of intermediate and long-term environmental priorities and the associated roles and responsibilities of the EPA and the Tribe.

- Local Environmental Observers (LEO): LEO networks are an observation tool that recognizes a broad spectrum of local knowledge, traditional ecological knowledge, and scientific knowledge to facilitate the sharing of information on changes in the arctic environment. In FY 2020, through the Arctic Council Arctic Contaminants Action Program and in support of the Icelandic Chairmanship of the Arctic Council, OITA continued to work with Region 10 and the Alaska Native Tribal Health Consortium to expand the use of the LEO network and to further develop tools to strengthen observer engagement. The Swedish EPA, Finnish Ministry of Environment, Norwegian EPA, Aleut International Association, and Saami Council are key partners involved in the Phase 3 activities of the Circumpolar LEO project to expand the LEO Network across the circumpolar Arctic. The information gathered through LEO Observations has strengthened cross-sector, interdisciplinary communication and has connected remote communities with international experts, scientists, government officials, and academics who provide technical consultation and assistance, or even use this data as part of agency decision-making. Monthly webinars have fostered long-term dialogue on a range of issues and in FY 2020 focused on engaging and mobilizing youth, developing LEO technology, connecting LEO Hubs and activities across the Arctic in Alaska, Finland, Sweden, and Norway. The Circumpolar LEO project continued to operate in a neutral space, where actors from across sectors and disciplines, representing multiple knowledge bases, can collaborate and cooperate to address changes to the Arctic environment.
- Public Participation: In FY 2020, OITA provided capacity building and support on public participation to the following international partners:
 - EPA assisted four CAFTA-DR countries (El Salvador, Guatemala, Dominican Republic and Costa Rica) to complete the “Citizen’s Guides to Environmental Permitting” to educate the public on the environmental permitting process and their right to be involved in the environmental review, monitoring, and enforcement of projects.
 - EPA facilitated a stakeholders’ meeting with Panama as part of the process to develop the country’s first National Public Participation in the Environmental Impact Assessment Process Guidelines. The Guide is modeled after the regional guidelines developed for CAFTA-DR countries, which was developed through the use of public sessions to discuss the Guide and validate its importance of increasing participation. Panama’s Guide is expected to be completed in early 2021.
- The technical assistance described above has provided EPA’s international partners with improved tools to engage their stakeholders in environmental decision-making.

Appendix D - Comments and Suggestions for OMB and CEQ on Reporting

In their questionnaire, OMB and CEQ requested comments on any difficulties encountered in collecting data and if so, how the agency overcame them. As is common in the field of alternative dispute resolution, EPA noted specific challenges related to collecting cost and particularly benefit information on ECCR. Otherwise, collecting data posed little difficulty as EPA has a history of tracking ECCR. EPA has a history of properly evaluating cases and producing quality reports.

Appendix E – Abbreviations

AIEO - EPA's American Indian Environmental Office

ADR - Alternative Dispute Resolution

ALJ - Administrative Law Judge

ATP - ability to pay

CAA - Clean Air Act

CAFTA-DR - Dominican Republic-Central America Free Trade Agreement

CAG - Community Advisory Group

CAM - collaborative adaptive management

CEQ - Council on Environmental Quality

CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act, also known as "Superfund"

CPRC - EPA's Conflict Prevention and Resolution Center

CPRS - Conflict Prevention and Resolution Services contract

CWA - Clean Water Act

DEP - Department of Environmental Protection

DNR - Department of Natural Resources

DOE - U.S. Department of Energy

DOI - U.S. Department of the Interior

DOJ - U.S. Department of Justice

EAB – EPA's Environmental Appeals Board

ECCR - Environmental Collaboration and Conflict Resolution

ECRCO - EPA's External Civil Rights Compliance Office

EERC - E-Enterprise Regional Coordinators

EJ - environmental justice

EPA - U.S. Environmental Protection Agency

ETEP - EPA-Tribal Environmental Plan

FEB - Federal Executive Board

FERC - U.S. Federal Energy Regulatory Commission

FFEO - Federal Facilities Enforcement Office

FIFRA - Federal Insecticide, Fungicide, and Rodenticide Act

FTE - full-time employee

FY - fiscal year

GE – General Electric

HIA - Health Impact Assessment

JIT - Just-In-Time, a type of task order on CPRC's contract designed to provide quick service

LEO - local environmental observer

MOU - memorandum of understanding

MS4 - municipal separate storm sewer system

NEPA - National Environmental Policy Act

NGO - non-governmental organization

NPDES - National Pollution Discharge Elimination System

NTC - National Tribal Caucus

OALJ - EPA's Office of Administrative Law Judges

OAR - EPA's Office of Air and Radiation

OECA - EPA's Office of Enforcement and Compliance Assurance

OITA - EPA's Office of International and Tribal Affairs

OMB - Office of Management and Budget

OMS - EPA's Office of Mission Support

ORC - Office of Regional Counsel, within each EPA region

ORD - EPA's Office of Research and Development

OW - EPA's Office of Water

PCB – polychlorinated biphenyl

PGDP - Paducah Gaseous Diffusion Plant

RCRA - Resource Conservation and Recovery Act

RTO - Regional Training Officer

SI - Scientific Integrity

SNAP - Shared Neutrals as Partners

SWP – Southwest Properties, a part of the Wells G&H Superfund Site

TSCA - Toxic Substances Control Act

USACE - U.S. Army Corps of Engineers

USDA - U.S. Department of Agriculture