

FY 2014 TEMPLATE
Environmental Collaboration and Conflict Resolution (ECCR)¹
Policy Report to OMB-CEQ

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

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

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

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

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

Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from policy and regulatory disputes to administrative adjudicatory disputes, civil judicial disputes, intra- and interagency disputes, and disputes with non-Federal persons and entities.

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

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

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

This annual report format below is provided for the seventh year of reporting in accordance with the memo for activities in FY 2014.

The report deadline is February 15, 2015.

We understand that collecting this information may be challenging; however, the departments and agencies are requested to collect this data to the best of their abilities. The 2014 report, along with previous reports, will establish a useful baseline for your department or agency, and collect some information that can be aggregated across agencies. Departments should submit a single report that includes ECCR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2014 ECCR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, prior year synthesis reports are available at <http://www.ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>

FY 14 ECCR Report Template

Name of Department/Agency responding:	U.S. Environmental Protection Agency
Name and Title/Position of person responding:	Richard Kuhlman Director
Division/Office of person responding:	Conflict Prevention and Resolution Center
Contact information (phone/email):	202.564.0696 kuhlman.richard@epa.gov
Date this report is being submitted:	February 17, 2015
Name of ECR Forum Representative	Richard Kuhlman

1. **ECCR Capacity Building Progress:** Describe steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2014, including progress made since FY 2013. Include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases. To the extent your organization wishes to report on any efforts to provide institutional support for non-assisted collaboration efforts include it here. If no steps were taken, please indicate why not.

[Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the OMB-CEQ ECCR Policy Memo, including but not restricted to any efforts to a) integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECCR; c) invest in support, programs, or trainings; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

The U.S. Environmental Protection Agency (EPA) has been engaging in and providing significant programmatic/institutional support for ECCR for decades. As a result, the agency has one of the more advanced ECCR programs in the executive branch. The EPA continued to provide high levels of programmatic/institutional capacity for ECCR during FY 2014 in each of the four areas identified in the OMB/CEQ ECCR policy memorandum, Attachment C, Section a, for departments and agencies with existing ECCR programs. Much of this work also provides support for non-assisted collaboration.

Integrate ECCR Objectives into Agency Mission Statements, Government Performance and Results Act Goals, and Strategic Planning

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

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

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

EPA’s Strategic Plan – The EPA’s ECCR program supports all five goals in the EPA’s 2014-2018 Strategic Plan: 1) addressing climate change and improving air quality; 2) protecting America’s waters; 3) cleaning up communities and advancing sustainable development; 4) ensuring the safety of chemicals and preventing pollution; and 5) protecting human health and the environment by enforcing laws and assuring compliance. In the EPA Administrator’s message at the front of the Strategic Plan, she explicitly recognizes the importance of the agency’s role in promoting dialogue and engagement on environmental issues, stating, “we will convene broad-based dialogue and engagement at the national, regional, and local levels to foster innovation and collaboration.” ECCR is an important way to encourage and facilitate this dialogue and engagement. As in previous years, the agency used ECCR in activities supporting each of the five Strategic Plan goals in FY 2014. The breadth of the EPA’s support for ECCR across the full range of the agency’s business is reflected in our response to question 3, in which we report 184 ECCR cases for FY 2014, covering all ECCR application contexts and decision-making forums. The number of FY 2014 ECCR cases reflects a 10% increase since FY 2013.

ECCR Strategy - During FY 2014, the EPA’s Conflict Prevention and Resolution Center (CPRC) continued implementing its second strategic plan (2011- 2015) with its

renewed commitment to bringing people together to solve their environmental problems. The CPRC approaches this commitment in two ways. First, we respond to client requests for help with facilitation, mediation, conflict coaching, or advice. Second, we work to build the EPA's conflict prevention and resolution capacity. In the coming years we will maintain a strategic focus on using good practice, demonstrating results, building knowledge and skills, and cultivating opportunity for the use of ECCR and collaborative problem solving at the EPA. The strategy contains measurable performance objectives and describes the anticipated approach to reaching these objectives. In FY 2014, as in previous years, the CPRC developed and implemented an annual operating plan with specific action items and dedicated personnel and funding to further the objectives of the ECCR strategy. Also in FY 2014, we began planning for development of our next strategic plan, which will cover the period from 2016 to 2020.

Assure that the Agency's Infrastructure Supports ECCR

The EPA provides a high degree of support for ECCR through the agency's infrastructure. The CPRC is headed by the EPA's Dispute Resolution Specialist, who is appointed pursuant to the Administrative Dispute Resolution Act of 1996 (ADR Act of 1996). The CPRC provides policy support and access to neutral third party services for ECCR as well as alternative dispute resolution (ADR) used in other contexts.

EPA's ADR Policy - The agency's ADR policy (65 FR 81858, December 2000), which states the EPA's strong support for the use of ECCR and other forms of ADR to deal with disputes and potential conflicts, contains many themes in common with the OMB/CEQ ECCR policy memorandum. In particular, it articulates the following expected benefits from ADR/ECCR:

- Faster resolution of issues;
- More creative, satisfying and enduring solutions;
- Reduced transaction costs;
- Fostering a culture of respect and trust among the EPA, its stakeholders, and its employees;
- Improved working relationships;
- Increased likelihood of compliance with environmental laws and regulations;
- Broader stakeholder support for agency programs; and
- Better environmental outcomes.

The EPA's ADR policy is intended to meet the following objectives, similar to those in the OMB/CEQ ECCR policy memorandum:

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

Based on the ADR policy, the EPA adopts a broad perspective on what qualifies as ECCR -- any technique to address environmental issues that involves a neutral third party, whether or not the participants' goal is to reach agreement. ADR/ECCR is used in many contexts at the EPA including adjudications, rulemaking, policy development, administrative and civil judicial enforcement actions, permit issuance, administration of contracts and grants, stakeholder involvement, negotiations, and litigation.

Senior Leadership Support for ECCR Use - Senior EPA leadership continues to provide encouragement and support for the use of ECCR, as it has for more than three decades. In FY 2014, the EPA's Deputy Administrator, Assistant Administrators, and Regional Administrators engaged in and supported the use of ECCR in high-profile matters, including the following cases and projects:

- Bristol Bay Watershed Assessment
- Cape Cod Commission 208 Water Quality Planning Process
- CERCLA 108b
- GE/Housatonic River
- New England Climate Leaders Summit
- Solid Waste Management Program (Region 4)
- Southeastern New England Coastal Watershed Restoration Program
- Sumas Mountain/Swift Creek
- Trash Free Waters
- Tribal/Idaho DEQ Fish Consumption Survey Collaboration
- WIPP Panel Closure Redesign Rulemaking, and
- Vieques Federal Facilities Dialogue.

ECCR Outreach, Education, Training, and Career Development - As in previous years the agency emphasized outreach, education, training, and career development activities to promote the increased use of ECCR in FY 2014. Our ECCR outreach, education, training, and career development activities included the following:

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

- In FY 2014, the CPRC provided a total estimated 1474 training hours to more than 325 EPA employees. We provide details below.
- In FY 2014, the CPRC conducted five training events of more than two hours for a total of 134 people. These included Conflict Coaching, Interest-Based Negotiations (IBN), Dealing with Difficult People, and Negotiation Tactics and Counter Tactics. Audiences for the above negotiation trainings included agency headquarters and regional ADR and conflict resolution staff, Region 4 Environmental Justice staff, EPA Superfund Remedial Project Managers, and Office of the Chief Financial Officer's Office of Financial Management staff. In addition to negotiation training, which has been offered for many years, the CPRC debuted a new training on Dealing with Difficult People. As in years past, the CPRC relied on regional staff, particularly from Region 4, to help develop, hone, and deliver training.

- In addition to these training events, the CPRC conducted several shorter training events. These included 60-90 minute modules, brown bags, and webinars. The CPRC delivered Beyond Notice and Comment (a one-hour module within the EPA's Action Development Process training), Alternative Dispute Resolution with the Environmental Appeals Board (a one-hour brown bag with EAB judges for OGC attorneys), and Facilitating Online Meetings (a 90-minute webinar introduction to considerations and practices for online meeting planning and facilitation).
- The CPRC has begun to create and use training modules that can be used in series or as stand-alone webinars. The CPRC delivered four modules including Negotiating Based on Interests, Separating the People from the Problem, Neutralizing Your Own Reactions, and Communication Skills for Conflict Management as a conflict management training series for the EPA Office of Inspector General, for a total of 59 attendees, which individuals could attend in-person or remotely. The CPRC has also begun to blend together webinars and in-person delivery to maximize the benefit of in-person delivery time and offer flexibility to learners, as evidenced in plans for the FY 2015 delivery of a tailored web and in-person training series for the Region 4 Water Enforcement Division.
- The CPRC sponsored an exhibit, provided handouts, and gave a presentation on ECCR at the 2013 National Association of Remedial Project Managers Conference.
- The CPRC conducted regular bi-weekly ten-minute presentations on collaboration and ECCR for new hires.
- The CPRC continued to implement an ECCR outreach and marketing strategy for the agency, including identification of target audiences and working with representatives from those audiences to improve communications and service delivery to on-the-ground staff.
- The Office of Water's Immediate Office used the Conflict Prevention and Resolution Services (CPRS) Contract to obtain contractor support to facilitate the 2014 Urban Waters Federal Partnership National Training Workshop. The workshop aimed to be responsive to the needs expressed by partnership locations and member agencies across the partnership, throughout the planning process. Its goals were to provide an opportunity for participants to learn about new opportunities and resources to accelerate work on the ground; chart the course for the future, informed by experience and learning of others; and strengthen our engagement of underserved communities as an integral part of the work. Post-conference materials will be shared on the Federal Partnership website (urbanwaters.gov) to facilitate continued collaboration and peer sharing across the partnership.

Regional Outreach, Education, Training, and Career Development Activities

- Region 3 (Philadelphia) has provided mediation, negotiation, collaboration, conflict management/resolution and facilitation training to EPA employees to increase awareness, promote the use of ECCR, and enhance ECCR skills.

One of Region 3's Conflict Resolution Specialists (CR Specialist) is a member of the Regional Training and Skills Development management workgroup. A product of this workgroup is a framework for identifying critical competencies, learning events and target audiences to further the goal of leading a diverse and collaborative workforce. Chief among the competencies identified are managing conflict, teamwork, communication and self-awareness. The CR Specialist has been teaming with the Regional Training Officer (RTO) regarding the design, development and presentation of learning events. In addition, the RTO, CR Specialist and others are designing and facilitating retreats and workshops which, among other things, assists in conflict management in intra-agency relationships as well as in inter-agency relationships and in enforcement contexts. In April 2014, the CR Specialist was selected to serve as the Office of Regional Counsel's Continuing Legal Education and Training Program Coordinator. In this role, the CR Specialist seeks to provide increased practical training in negotiation and conflict management/resolution.

- Region 4 (Atlanta) supported or sponsored topical trainings, including "Mediation and ADR" (April 2014) and "Community Engagement in Civil Regulatory Enforcement Cases" (September 2014).
- Region 7's (Kansas City, KS) ECCR Specialist gave the keynote luncheon presentation at the Missouri Brownfields Conference in Jefferson City, Missouri on June 24, 2014. The speaking engagement was followed by a question and answer session and informal discussion afterwards between the ECCR Specialist and the attendees. Inter-regional initiatives begun last year by Regions 7 and 4 expanded in FY 2014 to include active coordination and educational calls with Regions 2 and 3. The "2347" group continues to supplement small group discussions and training exchange in concert with the CPRC and support cross-agency efforts.
- Region 8 (Denver) builds program and institutional capacity by offering high quality comprehensive training open to all program offices. This reporting year the region worked with an internationally recognized provider of ECCR training programs and services to design and present a 24-hour intensive ECCR training program. This well-attended course attracted high level staff and management from throughout the region for three days of immersion in how to identify and use ECCR processes and tools most effectively. More than 50% of classroom time was devoted to hands-on practice using real environmental case situations. This kind of comprehensive training encourages Region 8 staff and management to routinely consider and make use of ECCR in a wide variety of situations.
- Region 9's (San Francisco) hosted and co-led a training created by the CPRC on Negotiating Strategies. The Regional Facilitator attended training on online collaborative tools, and on the LEAN process for increasing effectiveness of group processes, and attended two coaching workshops. The Regional Facilitator incorporated a range of conflict prevention and resolution and collaborative communication techniques in many of the internal office retreats and strategic planning meetings she facilitated to

enhance awareness of and experience with these techniques.

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

During FY 2014 the CPRC planned for FY 2015 training activities, including a tailored training series for the Region 4 Water Enforcement Division to be delivered in fall 2015 and the October 2014 Conflict Resolution Day training sessions on Negotiation, Dealing with Difficult People, and Negotiation Tactics and Counter-Tactics.

International ECCR Outreach – The EPA worked to develop international capacity and expertise in ECCR (and similar activities) during FY 2014, including the following activities:

- In cooperation with the Government of Chile and building on previous public participation trainings with Chile and Peru, the EPA facilitated a regional workshop in January 2014 that focused on public participation, conflict resolution, social media and working with indigenous communities. Workshop participants have continued their collaboration through an informal network and the EPA plans to facilitate another regional workshop in 2015.
- In FY 2012-14, the EPA implemented a public participation small grant program in CAFTA-DR countries (El Salvador, Guatemala, Nicaragua, Honduras, Costa Rica, and Dominican Republic), under the interagency agreement with the Department of State: “Increasing Public Participation, Outreach, and Access to Environmental Information in the CAFTA-DR countries.” The main focus of the program was to engage civil society in environmental decision-making processes and the enforcement of environmental laws. This was accomplished through six small grants, which were awarded to: four NGOs in Central America, a U.S. university, and a U.S.-based NGO. The grantees focused their efforts on a variety of environmental issues, including: environmental education, solid waste management, and wastewater management. Although the grants have closed, all the projects are still active. NGO representatives from the small grant program are expected to attend the regional public participation workshop—Chile, 2015-- to share best practices.
- Region 2 (New York) built capacity internationally in FY 2014 by providing a two-day training in El Salvador for Central American environmental ministry officials and NGOs on stakeholder engagement, collaboration, and conflict prevention and resolution. The training was funded by the U.S. Agency for International Development and the U.S. Department of State and it was developed and taught by Region 2 personnel, including the Region’s International Affairs Program Manager, social media expert, and ECCR Specialist.

Invest in Support of Programs

Over the years, the EPA has made considerable investments to support its ECCR program, a trend that continued in FY 2014:

ECCR Personnel - In FY 2014, the agency had seven and half FTEs in the CPRC. In late spring and early summer 2014, two long-time CPRC staff members left the EPA. The CPRC initiated a search for new staff members later that year after it was granted hiring authority to replace the departed staff members. The agency had an additional four FTEs in the New England, Denver, Kansas City, and San Francisco regional offices devoted to ECCR. In addition, at least 25 other individuals support the ECCR program as part of their job responsibilities or on a collateral duty basis. For example, each EPA regional office has at least one staff member who serves as a liaison for ECCR activities. These regional ECCR staff members support ECCR education/training; draw on existing regional resources to resolve disputes; build expert knowledge, skills, and capacity; track requests for assistance/ECCR cases/projects; coordinate regularly with the CPRC; and contribute to the development of the ECCR annual report.

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

Environmental Appeals Board – Since FY 2010, the EPA’s Environmental Appeals Board (EAB) has offered parties the option of attempting to resolve disputes through ADR with the assistance of an EAB Judge acting as a neutral evaluator/mediator. EAB has found its ADR program to be highly effective and efficient in fostering negotiated settlements that speed up resolution of EAB cases and preserve agency resources. To date, approximately 80% of the matters submitted to ADR have reached resolution. In FY 2014 parties in two matters reached a final settlement agreement and the matters will likely be removed from the EAB’s docket in FY 2015. In FY 2015, EAB will continue, where appropriate, to offer parties the option to participate in, and attempt to resolve their disputes through, ADR.

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

During the past four years, stakeholders have voiced concerns regarding complainants' ability to participate in the EPA's Title VI complaint process. In response to these concerns, OCR drafted and shared for public comment a policy paper entitled "Issue Paper on the Role of Complainants and Recipients in the Civil Rights Complaints and Resolution Process." The purpose of this paper is to promote greater participation by complainants and recipients in the civil rights complaint and resolution process, including Title VI complaints, by clarifying existing practices and identifying opportunities for greater participation within that framework. For instance, the EPA wants to encourage both recipients and complainants to participate in ADR.

One way that OCR worked in FY 2014 to further understanding and possible use of ADR by complainants and recipients was to publish "Frequently Asked Questions about the Use of Alternative Dispute Resolution in Resolving Title VI Complaints" on its web site. The document is available at: <http://www.epa.gov/civilrights/faq-adrt6.htm>.

Office of Water - The Office of Water is comprised of four offices and the Immediate Office. The Immediate Office includes three staffs and the Urban Waters Program. Given the diverse nature of the work of each of these entities, they differ in their approach to and use of ECCR. Below are ways different organizational units within OW used or built capacity for ECCR use during FY 2014:

- Office of Ground Water and Drinking Water (OGWDW) - During FY 2014 OGWDW used ECCR in two different areas: Potential revisions to the Lead and Copper Rule (LCR), and the Source Water Collaborative (SWC). OGWDW used a third party neutral facilitator to help with the development of the LCR Long-term Revisions in several ways: 1) The National Drinking Water Advisory Council's (NDWAC) Working Group on Lead and Copper used this facilitator in their deliberations on potential revisions to the LCR at four public meetings; 2) the facilitator was also instrumental in helping OGWDW educate the NDWAC working group members on technical issues via webinar format; and 3) OGWDW also used a neutral third party to engage the internal EPA LCR workgroup members in the planning process, which significantly improved working relations. OGWDW's Source Water Protection (SWP) Program partners in the 26-member SWC. The SWP Program uses the CPRS Contract to provide SWC meeting preparation and facilitation, development of materials to promote member communication about source water protection, development of effective partnerships and collaborative SWP actions and training in source water topics.
- Office of Wetlands, Oceans, and Watersheds (OWOW) - In FY 2014, OWOW's Wetlands Division used ECCR in two different areas. It invested in support, trainings, and programs implementing a national wetland just-in-time task order under the CPRS Contract to provide ECCR services. The task order is managed by EPA Headquarters and is made available to all regions and other programs, such as CWA 404 enforcement, for rapid access to neutral mediation and facilitation services. The Wetlands Division envisions a robust use of this vehicle in FY 2015. It also implemented the U.S. Army Corps of Engineers (USACE)-EPA Program Assessment recommendations

developed through a previous ECCR process and it has nearly completed implementing recommendations from USIECR for internal steps the Wetlands National Program can take to increase collaboration and cooperation in the wetlands program nationally. These steps included: 1) implementation of the first-ever "hybrid" national meeting (including on-line and in-person components); 2) completion of an EPA national wetlands roster; and 3) changes in routine meetings and communications with the regions. In FY 2015, the Wetlands Division will actively seek opportunities to engage directly with the USACE on co-learning, especially in regard to implementing the new Clean Water Act Jurisdictional rule.

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

- Region 1's (Boston) culture of support for ECCR has remained strong throughout FY 2014. As in previous years, the Regional ECCR Program is managed by a full-time senior attorney-mediator. Approximately ten other regional staff from a variety of program areas and professional backgrounds provide support to the ECCR Program on a collateral basis by agreement of their managers. Most of them are trained mediators and facilitators with varying degrees of experience who serve as in-house neutrals when they are needed and available. The group also includes a contracts specialist from the Superfund branch who handles the region's ECCR contracting issues and paperwork. At the highest levels of management, regional leaders are aware of the services we provide, frequently direct parties (both inside and outside of the agency) to the Regional ECCR Program, and are generally receptive to the use of ECCR when it is proposed for projects within their areas. Because of the proliferation of collaborative approaches to environmental problem-solving, there has been a growing demand for facilitation services, which the region is addressing, in part, with in-house resources. Workload permitting, staff with ECCR skills are supported in their participation on the ECCR team and in their efforts to develop and hone their skills.
- Region 2 (New York) built on the facilitation training it conducted last year by empowering some members of its newly trained Facilitation Corps to lead facilitations in the region. In order to support these new facilitators, the ECCR Specialist provided training for them on how to run effective breakout sessions. The ECCR Specialist also provided training on ECCR for the dispute resolution community in the region at the Association for Conflict Resolution of Greater New York's Monthly Roundtable. In turn, the ECCR Specialist attends the Monthly Roundtable meetings to learn strategies from other ADR experts that could be applied within Region 2 and thereby build capacity. In addition to the Region 2 cases included in the response to question #3, the region also used ECCR in more informal settings, for example, by integrating a facilitated discussion into a training program on sustainability and using facilitation skills in an internal brainstorm to respond to EPA Headquarters' questions about community engagement at Superfund sites. Region 2's approach has been to increase awareness among legal and program office staff about ECCR to

increase acceptance about using facilitators and mediators.

- Region 3's (Philadelphia) capacity for ECCR is implicit in the Region 3 EPA strategic planning implementation. All of those areas include the promotion of collaborative efforts to achieve environmental benefits. EPA Region 3 ECCR Specialists are available to consult within the region with regard to environmental matters, serve as liaisons between Region 3 and the CPRC, and help identify and obtain third-party neutrals.
- Region 4's (Atlanta) Office of Environmental Accountability (Office of Regional Counsel) ADR team members disseminate information on the ECCR process and types of case support provided by the agency in such efforts (e.g., contracting/funding support, mediator services and training); provide training opportunities to the legal and regional staff; and provide support to regional programs, management and staff on ECCR activities, as well as to EPA Headquarters' ECCR efforts. Region 4 has instituted a regional ECCR team of three lawyers who meet to discuss ways to build, promote and support ADR in the region, including training and case support. The team also connects with the Superfund, Environmental Justice, Civil Rights and other program offices concerning collaborative activities.
- Region 5 (Chicago) took the following steps to build programmatic/institutional capacity for ECCR in FY 2014: 1) it drew on agency conflict resolution specialists (in the CPRC); 2) it assigned staff (in the Region 5 Office of Regional Counsel) to support programs; and 3) it worked to build partnerships with other agencies (via the Chicago Federal Executive Board shared neutral program).
- Region 7 (Kansas City, KS) continues to encourage and support the use of ECCR in addressing a wide range of agency matters. The region rebounded from a financially hampered FY 2013 with a general increase in ECCR usage in FY 2014. Region 7 did continue to increase its utilization of the ECCR Specialist in St. Louis, MO, to assist in a wide variety of activities on the eastern side of Region 7. Region-wide, the ECCR Specialist also provided training and Regional Facilitator and Mediator functions for several high profile meetings at the behest of the Regional Administrator and EPA Headquarters. These higher profile uses of ECCR help achieve greater internal awareness due to the numbers of external participants and staff needed to assist with each event. As a result, many were able to get firsthand contact with ECCR. The region expanded its strong ties with the CPRC and piloted some strong initiatives to promote region-to-region ECCR opportunities. In addition to traditional ties in the national team of specialists, the ECCR Specialist for Region 7 formally became Assistant ADR Counsel for a portion of an FTE to the Alternative Dispute Resolution Law Office in EPA Headquarters. The region will continue its general promotion of ECCR through LAN Bulletin Board notices, informational e-mails targeted at regional managers, active engagement in Regional Facilitator roles, and building an increasing body of successful cases that "ground truth" the value of such processes.

Contracting for External ECCR Services - In FY 2014, the CPRC continued providing ECCR services under its sixth Conflict Prevention and Resolution Services

(CPRS) Contract, which had a ceiling of \$55,000,000 over five years, and was closed in August 2014. In June 2014, the EPA awarded and began providing services under the seventh CPRS Contract, which has a ceiling of \$51,000,000 over five years. The contract continues to provide all EPA program offices, regional and field offices, and laboratories with comprehensive access to neutral third parties and related services all over the country, with most services being initiated within two weeks of a request. In FY 2014, the EPA used about \$6.7 million in ECCR and related services (e.g., neutral third parties for ECCR cases, ECCR training) under the now expired and new CPRS contracts, which is a record level of expenditure since the EPA began its annual reporting pursuant to the OMB/CEQ ECCR policy memorandum. In FY 2014, the work occurred on 88 active task orders, which includes 28 task orders that were closed out under the sixth CPRS Contract and had follow-on work resumed through similar task orders under the seventh CPRS Contract. It is additionally worth noting that contract transition years, such as FY 2014, require an increased level of effort on the part of the CPRC's contracting staff to close out work under the earlier contract, complete the award process for the new contract, and manage the transition for continuing ECCR work.

EPA Internal Facilitators and Mediators – For the FY 2014 ECCR Annual Report, EPA Headquarters Offices and Regions were asked to provide information about the extent to which they have staff members with facilitation and mediation background. From the information offered by five Headquarters Offices and seven Regions, there are at least 158 agency employees who identify as facilitators, mediators, or both. While their experience varies considerably and not all are currently practicing, many have had formal training and some have experience working on ECCR matters.

Interagency Agreement with the U.S. Institute for Environmental Conflict Resolution – The EPA's interagency agreement (IA) with USIECR continues to provide cooperative support for conflict prevention and resolution assistance. The IA supports the National Roster of Environmental Dispute Resolution Professionals and provides access to neutral mediation and facilitation services for cases and matters in which the EPA and USIECR have a shared interest, such as those involving the National Environmental Policy Act and intergovernmental conflicts. For example, in FY 2014, the IA provided support for a program assessment of the CWA 404 Program. In FY 2014, the EPA utilized about \$12,000 of services for two projects through the IA.

Interagency Partnerships – The EPA continued to strengthen its partnerships with other federal agency ECCR programs during FY 2014. Approximately 42% of the EPA's ECCR cases involved other federal agencies, including those in which the Department of Justice was representing the EPA in a litigation context. The EPA and USIECR also continued work under their IA, including the CWA 404 Program assessment.

Focus on Accountable Performance and Achievement

The EPA believes that it is very important to track the use and outcomes of ECCR and has been working toward that end with other federal and state partners since before the original OMB/CEQ ECCR policy memorandum was first issued in 2005. In FY 2014 we pursued three efforts addressing performance and accountability. First, we continued to collaborate with USIECR and others to evaluate the practice of ECCR. Second, we utilized multiple approaches to gauge the use of ECCR at the EPA. Third, we continued to evaluate ECCR-related training sponsored by the CPRC. All three of these activities were initiated prior to FY 2014 and updates on each are provided below.

Evaluating the Practice of ECCR - For many years we have collaborated with USIECR, and other federal and state agencies in the development and use of common evaluation instruments to assess the practice of ECCR. In FY 2014, the EPA continued using the fourth set of OMB-approved evaluation instruments developed through this collaboration and continued to collect and analyze evaluation data and use the results to improve our program.

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

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

The third source of information about ECCR use is the CPRC's request tracking system, in which CPRC staff members log requests received for ADR and ECCR services. While none of these three methods of tracking ECCR use is sufficient by itself, and each presents unique data quality challenges, together they provide the EPA with the information it needs to track and understand trends in ECCR use.

ECCR-related Training Evaluation - In parallel to the CPRC's training efforts described above, we continued to implement a training session evaluation approach in FY 2014. This approach measures both the satisfaction of participants with presentations and logistics and the participants' views about whether the training achieved the learning goals set out in the courses. We are using the results of the

training session evaluation to make regular improvements in training delivery. In FY 2015 we plan to continue the evaluation process for CPRC-sponsored training and begin developing additional tools to assess the impact of our training.

2. ECCR Investments and Benefits

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

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

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

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

As quantitative indicators of the level of investment in ECCR at EPA, we continue to identify 1) dedicated FTEs for personnel who provide ECCR services in the CPRC and for EPA staff members serving similar functions in the regions; 2) the dollar amount invoiced through the Conflict Prevention and Resolution Services (CPRS) Contract on an annual basis; 3) the number of active task orders under the CPRS Contract on an annual basis; and 4) the number of ECCR cases for which EPA is a sponsor or in which EPA is a participant on an annual basis (see the responses to questions #1 and #3). For the FY 2014 ECCR Annual Report, as in FY 2013, the CPRC collected quantitative data on the investments made in individual ECCR cases and comparative data on likely comparison scenarios, and to generate qualitative data on the benefits of ECCR.

As described in EPA's previous ECCR annual reports to OMB and CEQ, the CPRC has been developing an evaluation methodology, the Systematic Evaluation of Environmental and Economic Results (SEEER), to estimate the costs and benefits of individual ECCR cases. It is also designed for application to samples or entire populations of ECCR cases, as CPRC resources allow. We are currently finalizing an Information Collection Request (ICR) to allow us and other interested agencies to collect SEEER data from non-federal participants in ECCR cases and expect to submit the ICR for OMB approval in FY 2015.

In FY 2013, the CPRC first adapted a portion of the SEEER methodology to collect quantitative data on the EPA staff time spent on individual ECCR cases and the duration of the ECCR process, as well as comparison data for a likely decision-making process scenario that would have occurred if ECCR had not been used. The pilot

survey results described in the FY 2013 ECCR Annual Report showed that litigation-related ECCR cases concluding in FY 2011 and FY 2012 compared favorably to likely alternative decision-making processes.

For the FY 2014 ECCR Annual Report, the CPRC administered a similar survey with questions concerning staff time and case duration for ECCR cases and comparison scenarios (e.g., litigation, unassisted negotiation) to the EPA staff lead involved in all known litigation-related ECCR cases that concluded in FY 2013 (N=34). The ECCR cases that were part of the survey included those that were initiated in matters before EPA's Office of Administrative Law Judges, Environmental Appeals Board, and the Federal Courts. The survey of FY 2013 cases included revisions designed to improve survey respondents' understanding of the questionnaire and its purpose, and increase the likelihood that they would provide responses to questions concerning estimated time and costs. A more complete dataset with fewer missing values for the FY 2013 cases suggests that these revisions were successful in achieving their purpose. The results of the survey are summarized in part b, below.

To generate information about ECCR benefits in FY 2014, the CPRC again included a question first used in our FY 2013 ECCR Annual Report qualitative survey to EPA offices and regions concerning their views of the benefits associated with ECCR cases that occurred in FY 2014. To minimize the burden on the responding offices and regions, we asked about collective benefits of the ECCR cases in which they participated, rather than individual case benefits. The results of the benefits question are summarized in part b, below.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2014; and (b) quantitative or qualitative results (benefits) you have captured during FY 2014.

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

Investments in ECCR Cases: Comparing ECCR to Alternative Decision Making Processes

The CPRC estimates that FY 2013 ECCR cases assessed through the costs survey required less than 50% EPA staff lead hours per case for active periods compared to the decision making processes that would likely have been used otherwise (e.g., litigation, unassisted negotiation). More specifically, the CPRC estimates a median of 40 total work hours for the EPA staff lead participating in active periods of these

ECCR processes and a median of 88 hours for the likely comparison decision making processes. While the CPRC has greater confidence that the medians better represent EPA staff lead hours devoted to active periods in these ECCR and likely comparison processes, the mean results also suggest that the time savings from using ECCR were positive – and could be as much as 91% for EPA staff leads. The estimated mean total work hours for EPA staff leads participating in active periods of these ECCR processes was 60 hours and the mean for the comparison processes was 562 hours. All of these results are similar to those we reported for the FY 2011 and FY 2012 ECCR cases in the FY 2013 ECCR Annual Report.

The survey results also suggest one third less elapsed time to reach a decision using ECCR for the FY 2013 cases compared to decision making processes that would likely have been used otherwise. With respect to case duration, the CPRC estimates a median of 16 total weeks for the ECCR cases and a median of 24 weeks for the likely comparison decision making processes. While the CPRC has greater confidence that the medians better represent the respective durations of the ECCR processes and likely comparison processes, we can also report similar results for the means: the estimated mean duration was 16 weeks for the ECCR processes and 41 weeks for the comparison processes. All of these results are similar to those we reported for the FY 2011 and FY 2012 ECCR cases in the FY 2013 ECCR Annual Report.

These estimates and the methodology used to generate them are subject to a number of limitations. For example, the savings for EPA lead attorneys would also be seen in savings for other EPA staff and non-personnel EPA costs (e.g., travel for court sessions, contractor analyses), as well as savings for non-EPA participants, who are usually corporations represented by outside legal counsel, and to other federal agencies, especially the U.S. Department of Justice, where it represented EPA. The results also do not address costs for ECCR neutral third parties nor the benefits associated with decisions reached, including any EPA personnel time savings associated with implementing a decision. In addition, the results presented here only apply to a subset of EPA ECCR cases for FY 2013; they do not include “upstream” ECCR cases that arose, for example, in the context of a federal agency decision unrelated to active litigation. Most importantly, this is only the CPRC’s second attempt to quantify time expenditures and duration for ECCR processes and likely comparison processes for a large population of cases; our methods will be refined in the future as we learn from this experience.

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

ECCR was a good investment for EPA in their case. Their level of agreement with this statement was about 87%.

Benefits of ECCR: Key Themes

Key themes present in responses to the question concerning the collective benefits of FY 2014 ECCR cases in each EPA office and region can be summarized as follows:

- **Efficiency:** Nearly all offices and regions stated that the use of ECCR resulted in more efficient processes. The reported efficiency has two primary dimensions:
 - **Maintaining timely progress:** Having a neutral third party responsible for providing structure and focus to negotiations and conversations helped keep the parties' attention on the case and moved cases along more quickly. One particular result is that the agency can better meet required case or project deadlines.
 - **Resource savings:** This was most often cited in the context of ECCR used for enforcement cases – e.g., the early resolution of cases resulted in cost savings (compared to the expense of litigation), quicker case resolution (compared to the time required to litigate a case), and reduction of wasteful gamesmanship, posturing, and delays between counter-offers. Resource savings was also seen as a benefit with respect to upstream, more collaborative cases as well.
- **Avoidance of litigation:** While efficiency was cited as a reason to avoid litigation in enforcement matters, the uncertainty associated with litigation outcomes in some cases was also cited as a reason for using ECCR. Thus, the use of ECCR is considered beneficial in such situations.
- **More productive conversations:** In addition to efficiency gains, the use of ECCR produced more productive conversations in both enforcement and non-enforcement contexts. The use of a neutral third party resulted in better-designed processes; improved communication of all parties' interests, goals, and concerns; more efficient use of time; and more focused outcomes from conversations. Involving neutral facilitators and mediators can also help 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 perhaps narrowed the range of disagreement.
- **Better outcomes:** Many offices and regions stated the use of ECCR resulted in better outcomes, some of which could not have been achieved without neutral third party assistance. These include:
 - **Outcomes that have improved environmental conditions when compared to non-ECCR cases:** These include direct environmental benefits from decisions reached and also indirect outcomes from settlements achieved (e.g., enforcement settlement proceeds will significantly increase the pace of remedy implementation).
 - **More creative outcomes:** In both enforcement and upstream non-litigation cases, the use of ECCR allowed for more creative outcomes

and thoughtful decisions than could have been achieved otherwise.

- External ownership: Outside stakeholders are more likely to take ownership in EPA initiatives and programs.
- Improved relationships: Nearly all offices and regions stated that the use of ECCR resulted in enhanced collaboration and improved working relationships among participants, and, in particular relationships between the agency and its broad range of stakeholders. These improved relationships were exhibited during the course of the ECCR process, and also enabled more productive conversations among stakeholders following the conclusion of the ECCR process.
- Capacity building: The use of ECCR professionals helped build the capacity of EPA and external participants to engage in collaborative processes. These capacity building measures enhanced the parties' abilities to identify common interests and develop mutually satisfactory policies or action plans. Moreover, capacity building activities enabled partnerships and workgroups to work together more effectively after neutral facilitation support ended.
- Reduced EPA stress levels: EPA offices and regions reported reduced stress levels among staff due to the support they received from neutral third parties, particularly with respect to difficult processes, complex issues, and challenging personalities.
- Furtherance of EPA's mission: Nearly all offices and regions reported that the use of ECCR helped further the agency's mission to protect human health and the environment.

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

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

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

There are also several methodological challenges related to generating cost and benefit

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

Our planned SEEER evaluation methodology will make progress in addressing many of these challenges. It tackles the baseline issues by using both a comparison to a matched case and to a scenario developed through consensus among the ECCR case participants. Our view is that multiple forms of comparison are important to address the weaknesses inherent in single types of comparison. SEEER addresses the issue of retrospective reporting by utilizing data collected from independent expert groups on the same questions we ask of case participants. This allows us to assess the reliability of data from differently situated sets of experts. With respect to capturing environmental benefits, the SEEER methodology constructs a tailored set of environmental measures for each case based on background research and incorporates those measures for data collection from the ECCR case participants and independent expert groups.

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2014 by completing the table below. [Please refer to the definition of ECCR from the OMB-CEQ memo as presented on page one of this template. An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process. In order not to double count processes, please select one category per case for decision making forums and for ECCR applications.

	Total FY 2014 ECCR Cases ²	Decision making forum that was addressing the issues when ECCR was initiated:					ECCR Cases or projects completed ³	ECCR Cases or Projects sponsored ⁴	Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)				Federal only	Including non federal participants
<i>Context for ECCR Applications:</i>										
Policy development	9	5	0	0	4	misc.	3	7	2	3
Planning	50	10	0	3	37	voluntarily program, regional coordination, program implementation, misc.	27	48	4	17
Siting and construction	10	9	0	0	1	Interagency coordination	5	10	0	5
Rulemaking	16	11	0	3	2	misc.	8	13	1	5
License and permit issuance	7	5	2	0	0		4	7	2	4

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2014.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2014. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

⁴ Sponsored - to be a sponsor of an ECCR case means that an agency is contributing financial or in-kind resources (e.g., a staff mediator's time) to provide the neutral third party's services for that case. More than one sponsor is possible for a given ECCR case.

Note: If you subtract completed ECCR cases from Total FY 2014 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2014 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2014 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

Compliance and enforcement action	62	15	25	18	4	shared EPA/oth er govern ment decision	34	47	3	18	
Implementation/monitoring agreements	10	9	0	0	1	voluntar y program	5	9	0	4	
Other (specify): voluntary program, misc.	20	3	0	2	15	voluntar y program , misc.	13	17	0	10	
TOTAL	184	67	27	26	64		99	158	12	66	
		(the sum of the Decision Making Forums should equal Total FY 2014 ECCR Cases)									

4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably completed in FY 2014). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECCR effort was funded
<p>The west slope of Sumas Mountain, in the Cascade foothills of Whatcom County, Washington is drained by Swift Creek. Swift Creek flows into the Sumas River and on into Canada. A mile-long landslide in steep, forested terrain has been eroding into Swift Creek since it was activated in the late 1930s, and is now estimated to release up to 150,000 cubic yards of sediment a year. For decades, the County regularly dredged Swift Creek and built berms of the dredged material to minimize flooding. People collected the dredge spoils by the truckload, using the material for driveways, rural roads and fill. Nearer the creek, periodic flooding left the sediment on roads, piled against bridge abutments, and spread out on floodplains and pasturelands. In 2005 concerns were raised that Swift Creek sediments might contain asbestos. This was confirmed by the U.S. Environmental Protection Agency (EPA) in 2006. Areas of concentrated asbestos, like mineral deposits, naturally occur throughout the country, but this situation was unusual. Indeed, the creek was delivering asbestos hazards to peoples' pastures, yards, doorsteps, and basements.</p> <p>The human exposure pathway for asbestos is inhalation. The end of summer is relatively dry, giving ample opportunity for the asbestos to become airborne. Kids would bring dirt bikes to ride the berms; others rode horses or four-wheelers on the elevated "trail." Local farmers and farm laborers worked the ground where flooding had occurred.</p> <p>Confirmation of the risks from the asbestos in dredged material immediately changed how the sediment, the slide and the dredged material could be managed. Asbestos control laws and safety measures had to be considered. An entirely different set of regulations, laws and practices became applicable. Managing the sediment became exponentially more costly and complex. Under this new regulatory regime, Whatcom County learned that if they moved material that naturally contained asbestos, they were potentially liable under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the State Model Toxic Control Act (MTCA). The County stopped on-the-ground efforts to control the sediments, including dredging, believing the risk to County taxpayers was too great, should they be found liable for moving hazardous materials. County leaders were angered that they could be liable. Ironically, the EPA and the State recognized that dredging could be the most effective short-term solution. But the EPA cannot engage in flood control work, even though floods would mean wider distribution of uncontrolled asbestos. At an impasse, none of the three parties was willing or able to do necessary work to control the sediment.</p> <p>The ECCR activities over the history of this case illustrate a flexible and case-specific approach to providing mediators with different skill sets in both concurrent and sequential mediation services as the parties encountered different barriers, a kind of relay team approach. In 2005, the EPA brought a mediator (Betsy Daniels, Triangle Associates) into the site response discussions to conduct a situation assessment. Her assessment determined that local agencies or residents were</p>

not likely to help develop a solution until either 1) the federal agencies took full responsibility or 2) the County, State and federal agencies determined who was in charge of which activities. Many residents felt the federal agencies alone should be responsible for the cleanup. This gave the various governmental parties some incentive to work together to further define roles and limits of their legal authorities and budgets.

Additional flooding revealed the extent of the problem, increasing pressure to seek a more permanent cleanup approach. In 2008, the EPA initiated a mediation process with just the local, state and federal agencies using Martha Bean to help the governmental parties develop a plan to reach agreement on inter-agency relationships and action. In 2011, at the suggestion of Ms. Bean, a mediator/attorney with special expertise in federal and state environmental law (Jay Manning) joined the mediation team.

The majority of the mediation and facilitation work was funded through the EPA's Conflict Prevention and Resolution Center (CPRC). In addition, during a pause in task order under the CPRC's federal contract, one mediator was paid by Whatcom County for four months. This shared the expense of using a mediator among the parties and demonstrated a commitment to continue in spite of contractual delays.

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

Over the course of six years (2008 – 2014), the mediators worked to build three agreements among the parties, including the Administrator of EPA Region 10, the Director of the Washington State Department of Ecology and the Executive of Whatcom County. Each agreement was the foundation for the next, and defined which entity would take action, and under what conditions. The agreements also provided a framework for technical studies. Each study helped untangle possible approaches for addressing the engineering, environmental quality and public health issues. Throughout, limited dredging occurred to keep 'life-line' infrastructure open and to provide some defense against a catastrophic slide or flood.

The Mediators were directly responsible for:

- Designing and being stewards of the process to conduct studies and reach agreement.
- Keeping parties on task with the process.
- Incorporating concerns and ideas of all parties into agreements and periodic updates to the plan for on-the-ground construction.
- Keeping agencies accountable for the deliverables promised to one another in the agreements, and working to see that what was provided moved the process forward.
- Normalizing the difficult and unique aspects of the site and the understandable conflict that inevitably arose. By normalizing the conflict, mediators created an environment for focusing on generating options, and on the best settlement alternative for each party. This replaced a history of assigning blame and threatening legal action.
- Coaching parties on how each could best communicate and negotiate with the others, and how they could transmit, frame, and discuss information and perspectives to have greatest

effect on the negotiations.

Throughout the project, the CPRC, EPA Region 10 and Whatcom County engaged mediators with skills, knowledge and experience relevant to the barriers encountered at key points during the negotiating process. Ms. Bean worked with agency representatives to clearly define the problem, assist in negotiating technical and procedural aspects of the project, build a way for parties to continue their collaborative work with the interests of the others in mind, and actively look for funding and regulatory opportunities. This is all reflected in the first Joint Agency Agreement (JAA) signed on August 31, 2009. She shepherded a re-affirmation and expansion of the first JAA when the executives of each of the organizations changed. This second agreement also identified the attributes of a successful outcome. With agreement from all parties, Mr. Manning, a mediator/attorney with extensive expertise in this complex regulatory setting, joined the team to address barriers regarding legal authority and drafting of legal documents. The final JAA, signed in March 2014, was a result of the partnership between the parties and the teamwork of the mediators.

Shuttle diplomacy and caucus-building were central to the mediators' strategic approach. Each had strong relationships with different caucuses. This allowed the two mediators to have a broad and deep knowledge about plausible options and outstanding concerns. As trust built, they were able to share these insights with the entire negotiating group.

One mediator used images and graphic facilitation during the negotiations to clarify concepts, to allow parties to shift and re-focus their discussions, and to illustrate options for resolving the problem. The mediators also worked extensively on technical aspects of the agreements, matching the plans for on-the-ground work with desired results, available resources, and the regulatory assurances needed from and for each agency.

By some measures the final agreement was a long time coming. However, the complexity of the issues and the unusual nature of the problem pointed to the value of a negotiated agreement. Parties recognized that a legal remedy would take a long time, cost a great deal of money, and likely yield answers for only a small part of the problem. Parties would still need to find a collaborative resolution.

The CPRC provided consistent counsel, funding and encouragement over the lengthy period of negotiations, enabling the negotiations to continue in the face of discouraging delays and impasses.

Identify the key beneficial outcomes of this case, including references to likely alternative decision making forums and how the outcomes differed as a result of ECCR

All parties had been waiting for key assurances to be in place before moving forward. The final JAA enabled the County to resume dredging with appropriate controls in the fall of 2014. This was significant. The dredging relieved the risk of imminent flooding and releases of asbestos. The ECCR process tackled and helped solve the regulatory maze that made inaction a rational, if undesirable, response. In addition to action by the County, the final agreement included a commitment by the EPA to conduct 'removal actions' within the limits of CERCLA, to address sediments that had already been moved by the County. The County would enter into a consent decree with the State to resolve their liability under MTCA. The State agreed to seek funds for design and construction of agreed on measures to control and

contain the sediment. The County agreed to be responsible for ongoing maintenance. All committed to work jointly to establish and fund a third-party trust to hold property, oversee and conduct construction activities, do operations and maintenance, and bear the liability for the project.

Reflections on the lessons learned from the use of ECCR

Key parties had profound differences in approach; ‘corporate’ culture; legal, personnel and funding constraints; and degree of willingness to take risks to solve a problem imposed not by people, but by geology and topography. Even so, none of the parties had a rancorous style or intent. None came to the table in bad faith, ready to sabotage the interests of the other. Using ECCR enabled parties to discover and use the honest intent at the core of strongly held positions. Trust was built and a unique but fitting outcome was reached.

Using a mediator duo at crucial junctures was central to the success of the work. Employing mediators with strong expertise and experience in different aspects of the work allowed each to provide positive, firm, and relevant guidance to the parties.

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

The U.S. Environmental Protection Agency (EPA) appreciates the opportunity to briefly highlight other notable ECCR cases that occurred in FY 2014. The EPA’s Headquarters and regional offices submitted the following descriptions of FY 2014 ECCR cases:

Office of Air and Radiation (OAR) – OAR’s Office of Air Quality Planning and Standards (OAQPS) is responsible for implementing stationary source air quality programs that regulate air pollution as required by the Clean Air Act. OAQPS is committed to ensuring communities disproportionately impacted by environmental harms and risks are able to meaningfully participate in the regulatory and permitting process. To help fulfill this goal, OAQPS’ Community and Tribal Programs Group (CTPG) supports outreach to members of the environmental justice (EJ) community who may not have the necessary knowledge and skills to fully and effectively participate in OAQPS’ rulemakings, permitting and other regulatory programs.

Through the Conflict Prevention and Resolution Services (CPRS) Contract, CTPG obtained the services of a third party facilitator to help plan, organize and deliver training in several EPA regions. The facilitator’s assistance is crucial in helping to provide a safe and effective environment for communities to discuss their EJ concerns. These sessions have provided an opportunity for participants

to better understand the Clean Air Act and the benefits of early and meaningful involvement in the rulemaking and permitting processes. By working with the facilitator on these training opportunities, key stakeholders, including federal, state, and local agencies, and tribal and EJ leaders have been able to come together to discuss and address important issues facing their specific communities and interests. These trainings have been well attended and have led to requests for additional training sessions in other parts of the country. OAQPS plans to continue to assistance environmentally stressed communities as they participate in the regulatory process.

Office of Enforcement and Compliance Assurance (OECA) - The most significant benefit of using ECCR associated with several OECA cases relates to timely project progression. For example, OECA had been in negotiations with CFMOTO Powersports off and on for a few years. Once OECA filed a complaint in April 2013 and was offered ECCR in May 2013, the settlement discussions moved very quickly as the parties were aware of the specific and limited timeframe in which the ECCR process was available prior to proceeding to full litigation. Thus, OECA also avoided litigation costs that it would have incurred had it not used ECCR. OECA hopes to repeat the success (full agreement on all issues reached in 2014) of this case, including taking full advantage of the ECCR process, in future cases, furthering the agency's mission with regard to enforcement.

Office of Water (OW) – The Water Resources and Climate Change Work Group facilitated meeting was critically needed to drive answers to key questions from a range of participants that had never met face-to-face over the previous two years. Under the President's Climate Action Plan, the purpose of this meeting included developing options and recommendations for key actions to improve adaptation of water resources to a changing climate. Participants included the National Oceanic and Atmospheric Administration, Department of Energy, Environmental Protection Agency, U.S. Geological Survey, Bureau of Reclamation, Forest Service, Natural Resources Conservation Service, U.S. Army Corps of Engineers, and Federal Emergency Management Agency. Key outcomes from this two-day facilitated meeting included establishing a common understanding of the issues and identifying action items needed to address policy issues. Prior to this facilitated meeting, the work group members understandably had tended to represent only their own agency's priorities. The meeting allowed conflicting priorities within the group membership to be addressed.

Region 1 (Boston) - On November 8, 2013, Region 1 convened an invitational Climate Leaders Summit ("the Summit") at Johnson and Wales University in Providence, RI. The 140 attendees from government agencies, businesses, and regional and non-profit organizations spent the day discussing how the attendees, the regional climate leaders, could launch collaborative actions to achieve a more climate-resilient New England. A number of major collaborative efforts, which

one year later continue to evolve to meet the needs of local communities, were indeed initiated as a result of the event. The Summit benefitted from the use of neutral third parties at different stages and for different purposes including: to facilitate a pre-Summit series of stakeholder input discussions; to help design the summit format and agenda; to conduct a coordinated series of afternoon break-out group discussions that comprised an essential element of the Summit agenda; to record and synthesize ideas presented throughout the day; to design and facilitate a keypad polling segment to stimulate participants' thinking and gather information; to facilitate a final plenary aimed at eliciting commitments to act; and to provide ongoing consultation regarding long-term meeting follow-up.

Region 2 (New York) – Within months after Hurricane Sandy, the EPA, FEMA, New York Department of State, Suffolk County, Nassau County, and the Metropolitan Transit Authority formed the Long Island Smart Growth Resiliency Partnership. The goal of the Partnership was to help Long Island rebuild in a way that fosters economically, environmentally, and socially sustainable development in low risk areas away from flood zones and along transit corridors in Nassau and Suffolk Counties. While the partners had a common vision, their respective institutional interests and missions were quite different. As a result, they were having difficulty moving forward in a manner that would achieve their common vision, and so they sought assistance from a neutral facilitator. Through the CPRS Contract, the EPA helped them select a facilitator who could help harmonize their different institutional interests. The facilitator worked with the partners for about six months and, thanks to his assistance, the partners were able to plan and execute a conference, titled "Accepting the Tide: A Roundtable on Integrating Resilience and Smart Growth on a Post-Sandy Long Island." The conference was a great success, attended by roughly 100 people from diverse stakeholder groups. The partnership also decided to train communities on skills for outreach and stakeholder engagement, Community Viz (a participatory scenario planning tool for decision-making on smart growth), and the EPA's National Stormwater Calculator. Members of the partnership have reported significant benefits in having had a facilitator on-board for six months. They indicated that the facilitator helped by getting the individual partners to learn to work outside their usual areas of responsibility. They also reported that the facilitator helped them address some difficult interpersonal conflict that emerged and successfully navigated a sensitive political dynamic between two Long Island counties with County Executives from different political parties.

Region 3 (Philadelphia) – ECCR was helpful in the U.S. v. Chromatex, et al. matter. Pursuant to a judgment that had been entered by a federal district court in 1991, the EPA sought payment of significant site response costs from a number of defendants, including a general partnership and individual partners (owners of the Site) and a corporate operator of the Site. The individual partners in turn filed separate CERCLA contribution and common law fraud claims against a number of other parties associated with the ownership and/or operation of the Site. The

matter was extremely litigious, had lasted for several years, and involved a number of complicated issues relating to, among other things, CERCLA law, corporate successorship, fraud, and ability to pay. A magistrate was assigned in an effort to help the parties reach a settlement of the various claims asserted in this matter. The magistrate was instrumental in getting the parties in the same room and to realistically devise a plan to settle the matter. The ultimate result reflected a significant compromise that would likely not have occurred without the services of a neutral third party.

Region 4 (Atlanta) - Region 4 is using a cross-program approach, including a Superfund component, to address environmental issues in the Collegeville, Fairmont, Harriman Park and North Birmingham communities (known collectively as “Northern Birmingham”) of Birmingham, AL. Under this approach, the EPA is currently evaluating environmental impacts to northern Birmingham’s residential sections. The Superfund component of the EPA’s actions has involved residential soil sample collections, the results of which were mailed to property owners and tenants. Of the nearly 1,100 properties sampled, lab analysis has found that approximately 400 contain concentrations of various contaminants at levels above the EPA’s Removal Management Levels. Northern Birmingham faces many economic, environmental and social challenges. To support northern Birmingham’s efforts to plan for its future, the EPA sponsored the formation of the Northern Birmingham Community Coalition (NBCC). It includes neighborhood representatives as well as business, faith, and community leaders and government agencies. The NBCC is working to forge a shared vision and action plan to create positive community change. Neutral facilitation, capacity building, and technical analysis services were provided for the NBCC between Spring 2013 and Fall 2014. The purposes of these services were to support the NBCC with coalition formation and the development of strategies and partnerships to help improve access to comprehensive wellness amenities and health care services, neighborhood-oriented retail, job opportunities, healthy, safe and affordable housing, and a clean environment. Key results included identification of strategies, action items, and resource partners to support commercial revitalization and health access; building relationships between NBCC members and potential resource partners who have capacity to address key revitalization priorities; and expansion and strengthening of the NBCC’s membership base and ability to work effectively across neighborhoods and other traditional dividing lines.

Region 6 (Dallas) – The East Baton Rouge Parish/City of Baton Rouge case involved the proper implementation of East Baton Rouge’s (city) municipal separate storm sewer system (MS4). Region 6 wanted to make sure that shortcomings in the MS4 Management Plan were corrected. The city did not believe that the regulations required it to report in the manner in which Region 6 was requiring. Further, the city did not believe Region 6 had the right to require the purchase of new equipment to comply with the MS4 regulations. After

numerous attempts, both parties could not come to agreement as to the size and value of the case, or the actual requirements of the regulations. An Administrative Law Judge, serving as a neutral third party, helped narrow the areas of dispute and allowed the parties to set out their positions. The process kept the parties communicating. The judge's involvement was positive and ultimately helped the parties agree to settle the matter. The case is in process of final settlement, including a supplemental environmental project.

Region 7 (Kansas City, KS) - The Hinkson Creek Total Maximum Daily Load Collaborative Adaptive Management Process (CAM) proceeded into its third year, with the Regional ECCR Specialist performing a variety of ECCR services on behalf of this effort, including mediation, stakeholder committee lead facilitation, CAM process design responsibilities, and coordination with other CAM Teams answering to the Stakeholder Committee. The CAM process, which uses Appreciative Inquiry and Adaptive Management principles within a collective three-level process, is the first hybrid process blend of its kind in the nation. This year's activity also included coordination and teaming with local governments on a year two anniversary celebration of the CAM effort and "on the ground" successes and collaborations. The Regional Administrator and Director of the Missouri Department of Natural Resources were on hand to speak at the event alongside local partners. The unique and nationally notable process was publicly acknowledged to the attendees and media present.

6. Priority Uses of ECCR:

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

The U.S. Environmental Protection Agency (EPA) has used ECCR in all its environmental program areas for many years. This outcome has been achieved by relying on EPA offices and regions to identify a need for the use of ECCR in particular cases, rather than by specifying priority areas for the use of ECCR as a matter of policy. Since ECCR is widely used to support the agency's public health and environmental mission, it is unsurprising that ECCR makes a contribution in most of the priority areas of interest to OMB and CEQ. The following examples illustrate the use of ECCR in OMB/CEQ priority areas in FY 2014:

- Approximately 28% of ECCR cases at the EPA addressed matters related to CERCLA. This is the largest percentage by statute of ECCR use at EPA.
- The EPA was involved in at least two ECCR cases addressing ESA issues, including an interagency dialogue on pesticides involving the agency, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the U.S. Department of Agriculture.
- There was one NEPA-related ECCR case; it was reported by the EPA's Region 1 office.
- ECCR cases involving the CWA 404 Program were diverse. They included matters addressing coal mining in Appalachia, state assumption of the CWA 404 Program, and an enforcement case.
- The EPA also sponsored or participated in a number of ECCR cases with an emphasis on tribal relations or environmental justice. Tribal ECCR cases included general relationship building, and Superfund and water quality matters in Regions 1, 6, 9, and 10. Regions 1, 2, 4, 6, and 9 made active use of ECCR for several dialogues and public meetings with a focus on environmental justice issues.

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2014 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not include a third-party neutral. *Examples may include interagency MOUs, enhanced public engagement, and structural committees with the capacity to resolve disputes, etc.*

The U.S. Environmental Protection Agency (EPA) has a long history of working collaboratively with its stakeholders to further the agency's human health and environmental mission. For disputes, the use of unassisted negotiation is very common and successful. Best efforts are made to resolve environmental conflicts without litigation, whether those conflicts arise with states, tribes, public interest groups, or facilities. EPA Headquarters and regional offices have provided examples of how we continued to collaborate in FY 2014 in ways other than the use of ECCR as defined in the OMB/CEQ ECCR policy memorandum. These examples are described below:

Office of Enforcement and Compliance Assurance (OECA) – EPA is an original member of the Border Interagency Executive Council (BIEC), a forum developed in 2010 for interagency coordination on matters relating to import safety. In February 2014, the President formalized the BIEC through Executive Order 13659, entitled “Streamlining The Export/Import Process For America's Businesses.” The BIEC is chaired by the Department of Homeland Security; in addition to the EPA, other members include the Animal and Plant Health Inspection Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Consumer Product Safety Commission, Customs and Border Protection, the Food and Drug Administration, the Food Safety and Inspection Service, Immigration and Customs Enforcement, the National Highway Traffic Safety Administration, and the National Marine Fisheries Service. The BIEC is charged with developing policies and processes to enhance coordination across customs, transport security, health and safety, sanitary, conservation, trade, and phytosanitary agencies with border management authorities and responsibilities to measurably improve supply chain processes and improve identification of illicit shipments.

Office of International and Tribal Affairs (OITA) - As a follow up to the U.S.-Brazil Joint Initiative on Urban Sustainability initiative (<http://www.epa.gov/jius/>), one of OITA's objectives has been to promote environmental risk reduction in underserved communities, such as Rio de Janeiro's favelas, by demonstrating collaborative problem solving approaches. To that end, OITA has established a partnership with the Reciclação Project -- a community-based recycling project in the Rio City community of Prazeres to reduce environmental risk by collecting and selling recyclable materials and reinvesting the profits in community environment and development efforts. In FY 2014, the EPA exchanged letters with Reciclação on potential areas of cooperation and participated in the July 2014 Reciclação working group meetings in Rio de Janeiro to advance the EPA's work plan for providing technical assistance to the initiative. The EPA and the working group also discussed U.S. environmental justice communities

that might be able to partner to share successful practices with the Reciclação Project.

Office of Research and Development (ORD) – The EPA has broad authority to cooperate with federal and non-federal parties to encourage, coordinate, and accelerate environmental research under several statutes including Section 103 of the Clean Air Act, Section 104 of the Clean Water Act, and Section 8001 of the Solid Waste Disposal Act. ORD has a number of tools at its disposal to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not include a neutral third party. An example is where the EPA reached an agreement with the National Academies’ National Research Council (NRC) to provide independent expert input on the science underlying the development of Integrated Risk Information System (IRIS) chemical assessments. Through this agreement the NRC will participate in IRIS Bimonthly Public Science Meetings. This initiative is in response to recommendations made in the NRC May 2014 report, “Review of EPA’s IRIS Process,” on expanding the breadth of perspectives available to the agency. This addition of experts to IRIS public science meetings will ensure an independent and diverse range of scientific perspectives are represented at these meetings, and also reflects the EPA’s commitment to scientific rigor and integrity.

Office of Water (OW) – OW reported on several collaborative initiatives that occurred in several of its organizations during FY 2014. They are described below:

The Office of Wetlands, Oceans, and Watersheds renewed the interagency agreement with the Department of Transportation (DOT) in FY 2014. The agreement provides for a liaison in the Office of Water to work directly with DOT to provide better communication, collaboration, and early dispute resolution on a number of efforts. The agreement has moved to the Office of Wastewater Management in recognition of OW’s and the Federal Highway Administration’s emphasis on stormwater and non-point source efforts, such as green infrastructure for wet weather.

In FY 2014, the Office of Waste Water Management spearheaded the formation of the Animal Agriculture Discussion Group (AADG). The AADG is an informal forum for the EPA and key livestock stakeholders to discuss issues of mutual interest related to water quality protection. Its objective is to build greater understanding and working dialogue between animal agricultural producers and OW, and related EPA offices to more effectively facilitate the adoption of best management practices by livestock and poultry producers that help protect water quality. To achieve this objective, the EPA is working with industry on several joint efforts, including training and the EPA’s participation as judges in sector-based recognition programs. The EPA is also using the AADG as a forum for identifying and promoting promising nutrient recovery technologies. In FY 2014, the AADG met three times, with the most recent meeting in Chicago having the largest attendance and producer participation. The overall membership has grown to 70, including 15 trade group representatives, 14 producers,

two academics, seven state officials, three U.S. Department of Agriculture (USDA) employees and 30 EPA employees. The discussions have been positive and honest, identifying both areas of common interest and disagreement, and enabled each side to have a better understanding of the other's perspectives and interests. The discussions have helped create an atmosphere where parties can work together to protect water quality. By the end of FY 2015, the group plans to complete several deliverables, including training modules targeted at both EPA/state employees and producers and education materials targeted at the public on beneficial uses of manure.

The OW Immediate Office collaborated and used ECCR-related techniques that resulted in the signing of an interagency agreement with USDA in 2014 to better coordinate shared outcomes on the issue of water quality trading under the Clean Water Act.

The Office of Science and Technology (OST) has undertaken a LEAN effort with EPA Region 10 to improve the water quality standards review and approval/disapproval process. The LEAN effort included nearly a full week of face-to-face facilitated dialogues. The "facilitators" were EPA employees which may or may not have met the technical definition of a "neutral/third party."

OST is in continual engagement with internal and external stakeholders. Those interactions are almost always based on the core principles of ECCR (e.g., collaboration, shared visioning) which are "self-facilitated." For example OST and ORD and the U.S. Department of Energy (DOE) have developed a joint workplan to pursue shared interests and collaborative actions to support addressing water-energy nexus issues. In a sense, this is a self-facilitated collaborative problem solving effort. Interestingly, when the question of the value of a memorandum of understanding (MOU) between the agencies arose, the group agreed nearly unanimously that the process of developing and signing an MOU would not add appreciable value to the partnership. In fact, the group agreed that it would more likely impede and distract from the current progress and action. So, the group ventures on with collaborative actions based on a common vision.

Region 1 (Boston) - Recognizing that shrinking resources require new approaches in how the EPA does its work, Region 1 continues to place increasing importance on fostering and sustaining collaborative approaches with key stakeholders and partners to address New England's most significant environmental issues. For example, continuing its work in cooperation with the Department of Housing and Urban Development (HUD), DOT, the Federal Emergency Management Agency (FEMA), and USDA through the Sustainable Communities Partnership, the EPA has been able to leverage substantial government resources to help New England communities become more livable and sustainable. Much of this work with communities is through collaborative problem-solving and working to find creative solutions to complex problems through

negotiation and compromise.

In addition, Region 1 is in the second year of a pilot with Harvard Law School aimed at finding solutions to the lack of green infrastructure standards and certification programs. This pilot has blossomed into a focused effort with Harvard Business School to tackle complex stormwater financing options as well as with the Harvard Design School that is sponsoring a program to develop infrastructure standards.

Region 1 is also significantly engaged in the fast-growing E-Enterprise for the Environment initiative, aimed at bringing the environmental protection enterprise into the 21st century. The Regional Administrator represents the regional perspective on the E-Enterprise Executive Leadership Council and the region's emphasis on collaborating with our state partners has been the cornerstone of this effort.

Finally, many of the Region 1 neutral-assisted collaborative efforts in FY 2014 involved discrete facilitated events, but ongoing collaborative efforts are proceeding without ongoing facilitation assistance. For example, the Regional team working on the Southeastern New England Coastal Watershed Restoration Program is engaged in an on-going multi-faceted collaboration with the EPA's many partners. The neutral-facilitated work group meetings represent only a small part of this collaboration. The same can be said of the many collaborative efforts to support community-based climate adaption that have grown out of the New England Climate Leaders Summit and the subsequent Antioch conference on local solutions.

Region 2 (New York) - Region 2 continued its post-Hurricane Sandy recovery partnerships in FY 2014, as the work shifted from the joint field offices under the National Disaster Recovery Framework (NDRF) to the multi-agency Regional Infrastructure Resilience Group and associated Technical Coordination Teams. The teams include, among others, the EPA, DOE, DOT, HUD, FEMA, New Jersey, New York State, Connecticut, New York City, the U.S. Army Corps of Engineers, U.S. Department of the Interior, the National Oceanic and Atmospheric Administration, and the Port Authority of NY and NJ. Each Technical Coordination Team is working on a different project area in an unprecedented collaboration among federal, state, and local governments to build resilience. Examples of the project areas include: coastal flood management (including medical facilities), water supply, the cities of Hoboken/Jersey City/Weehawken, hospital row in New York City, wastewater treatment, and Jamaica Bay. Another outgrowth of the NDRF joint field office work is Region 2's collaboration with federal and non-federal partners in the Long Island Smart Growth Resiliency Partnership, which has both non-facilitated and facilitated elements.

Region 2 also continues to collaborate with other federal agencies in the Mid-Atlantic Federal Climate Partnership and began leading an effort with the Department of Health

and Human Services to forge an environmental justice federal partnership in the region. In addition, Region 2 used informal facilitation to draft its Climate Change Adaptation Plan. Region 2's Climate Change Workgroup is co-chaired by the Region's ECCR Specialist. As a result, the Climate Change Adaptation Plan was created with extensive collaboration among the region's divisions, relying on the ECCR Specialist to use facilitation skills and strategies to foster brainstorming of options, criteria for option selection, and other facilitation processes.

Region 6 (Dallas) - The most common example of using environmental collaboration during FY 2014 to manage and resolve issues or conflicts which did not include a neutral third party is the use of Administrative Orders on Consent (AOCs), particularly with Indian tribes. When a compliance issue arises on Indian lands, the region makes every attempt to engage the tribe to discuss resolution, solutions, collaboration, federal funding, oversight, partnership, etc. The region's practice is, when possible, to try to work together in arriving at a mutual agreement to prevent non-compliance in the future. This agreement is then memorialized in a written AOC.

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

The established presence and continued high profile projects associated with ECCR in Region 7 are building an inherent understanding of the spectrum of processes available to every division and branch in the region. As in FY 2012 and FY 2013, all divisions have participated this past year in some form of ECCR process or training with the St. Louis Field Office-based ECCR Specialist. Most interactions were consultative, coaching, and advisory in nature. In FY 2014, the process design consultative work has again increased from FY 2013, paving the way for further growth in the years ahead.

In FY 2014, the ECCR Specialist has utilized his position in the Office of Regional Counsel to work on small teams where program staff, public affairs staff, and environmental justice staff can collaborate from start to finish on a project or case. This approach is not only efficient but a great way to cross-train and embed a variety of ECCR concepts outside the traditional lines of "mediation" or "conflict resolution" venues. It has particularly been helpful in upstream processes where the environment for collaboration and strong public service can be established. This four-person team format is now being applied in numerous situations. It was featured in a national EPA webinar on environmental justice in August 2014.

8. **Comments and Suggestions re: Reporting:** Please comment on any difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future.

The U.S. Environmental Protection Agency noted specific challenges related to collecting cost and benefit information on ECCR in our response to question #2. Otherwise, collecting these data posed little difficulty. We appreciate OMB/CEQ's collaborative spirit in developing the new ECCR annual report template for FY 2013, which was reused for FY 2014 and addresses many of the issues with past templates and will provide a sound basis for future reporting.

Please attach any additional information as warranted.

Report due February 15, 2014.

Submit report electronically to: ECRReports@omb.eop.gov

**Basic Principles for Agency Engagement in
Environmental Conflict Resolution and Collaborative Problem Solving**

Informed Commitment	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives
Balanced, Voluntary Representation	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
Group Autonomy	Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties
Informed Process	Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants
Accountability	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
Openness	Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings
Timeliness	Ensure timely decisions and outcomes
Implementation	Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement