

Environmental Conflict Resolution

Third Annual Report

January 2009



U.S. Department of Energy

EXECUTIVE SUMMARY

The Department of Energy (DOE or the Department) defines environmental conflict resolution (ECR) as the use of any collaborative process to prevent or resolve environmental conflicts, including but not limited to those processes involving the use of third-party neutrals. This definition is consistent with that provided in the Administration's 2005 Memorandum on Environmental Conflict Resolution which acknowledged the value of all types of dispute resolution and collaborative problem solving.

Collaborative approaches to avoiding or resolving environmental conflicts have been used by DOE sites prior to the issuance of the ECR memorandum and continue to be used. Facilitators and third-party neutrals are used in ECR processes as the situation warrants.

In FY 2008, sites reported 136 ECR cases. Of that number, 92 were completed and the remaining 44 are in progress. The most frequently cited areas in which ECR was used were groundwater issues, conflicts in environmental cleanup decisions, and relationships with regulators.

I. INTRODUCTION

A. Background

On November 28, 2005, the Chairman of the Council on Environmental Quality (CEQ) and the Director of the Office of Management and Budget (OMB) issued the Memorandum on Environmental Conflict Resolution (ECR Memorandum). This joint policy memorandum directed Federal agencies to increase the effective use of, and their institutional capacity for, ECR and collaborative problem solving.

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

Consistent with the Memorandum's recognition of the value of all types of collaborative dispute resolution, DOE defines ECR as the use of any collaborative process to prevent or resolve environmental conflicts, including but not limited to those processes involving the use of third-party neutrals. This report reflects that ECR definition and describes several of the third-party and non-third party dispute resolution processes successfully used in the Department.

The report constitutes the Department's third annual progress report to CEQ and OMB, as directed by section 4(g) of the ECR Memorandum. In accordance with guidance provided by CEQ and OMB, this report includes FY 2008 information on DOE progress in implementing the ECR Memorandum.

B. Report Methodology

To provide guidance to Federal agencies implementing the ECR Memorandum, a staff-level interagency ECR Steering Committee consisting of representatives from various agencies was formed. This committee, with assistance from the U.S. Institute for Environmental Conflict Resolution, developed a report template and questionnaire to be used by agencies for this third annual report. DOE used the questionnaire developed by the ECR Steering Committee, with minor modifications. (See Attachment).

This DOE report survey was distributed to points of contact from various programs and site offices throughout the DOE complex. The structure of this report follows the format of the DOE survey and contains the information supplied by 15 respondents.

II. CAPACITY DEVELOPMENT AND PROGRESS MADE

During the reporting year, DOE sites availed themselves of training opportunities. They also continued the institutionalized collaborative relationships formed with regulators and community members.

A. Training

Personnel from several sites participated in ECR training at the September 26, 2008 Environmental Attorneys' Training Workshop. ECR DOE specific case studies were provided by several sites. These case studies were then presented during the workshop for general discussion and identification of best practices. Although most of the participants were attorneys from around the DOE complex, all program offices with potential ECR issues were invited to participate or attend. For example, in addition to providing one of the case studies for the workshop, the Richland Operations Office made this training available to the Administrator of the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement or TPA) and ECR support staff.

The Richland Operations Office continues to promote and distribute the booklet, "You Are Our Negotiator." The booklet provides information on collaborative negotiation. The booklet is available to the public via meetings and the Hanford website.

B. Collaborative Relationships

The Department has a long-standing commitment to collaborative conflict resolution. The following are site-specific examples in which DOE has advanced conflict resolution through the establishment of collaborative relationships:

Pantex (Texas): In 2001, the Pantex Plant developed a Core Team to address environmental cleanup issues. This team is comprised of representatives from DOE, the site management and operating contractor, the Texas Commission on Environmental Quality, and the U.S. Environmental Protection Agency (EPA), Region 6. Collaborative relationships training was provided to the team members so they could function effectively in the Core Team, and ground rules for decision-making and interaction were established as the first order of business. Core Team meetings are professionally facilitated. The Core Team worked to develop a conceptual site model for the Pantex Plant and achieved consensus on the remedial investigations and feasibility studies (RI/FSs) from 2001 to 2005. Using the understanding gained from the RI/FSs, the team maintained momentum by reaching a consensus on the human health and ecological risk assessments from 2005 to 2007, a Corrective Measure Study/Feasibility Study in 2007, and most recently the Interagency Agreement/Proposed Plan/Record of Decision in 2008.

West Valley Demonstration Project (New York): In 1998, the West Valley Demonstration Project and the New York State Energy Research and Development Authority established a Citizen Task Force to provide public input on decommissioning Project and State facilities. The Citizen Task Force held 10 meetings in 2008 and has played a role in helping to resolve environmental issues at the site.

Sandia (New Mexico): Sandia National Laboratories has also expressly adopted alternative dispute resolution in many of the Resource Conservation and Recovery Act (RCRA) permits in order to promote collaborative relationships at the site. Matters are routinely negotiated informally with regulators at the local, state, or Federal level. In FY 2008, members of the public were included in a collaborative process with the New Mexico Environment Department for review and negotiation of a RCRA Post Closure Care Operating Permit.

C. Field Counsel Calls

The DOE Office of the General Counsel also organizes a monthly conference call with DOE environmental attorneys to review cases and, as appropriate, to discuss the potential use of ECR. ECR support also is provided to DOE sites and DOE program offices by DOE's Office of Conflict Prevention and Resolution. This office assists in determining if a dispute may benefit from the use of a third-party neutral and in identifying and engaging appropriate individuals.

III. CHALLENGES TO EFFECTIVE ECR USE

The ECR survey listed 10 possible challenges or barriers to effective ECR use. These potential obstacles addressed issues relating to lack of staff expertise, funding, and access to qualified mediators and facilitators. Topics concerning the reluctance of parties to become involved, and the perception that ECR was time- and resource-intensive were also covered.

Only three of the fifteen respondents identified issues as major challenges/barriers. Two of the three respondents identified limited or lacking funds for facilitators and mediators as their prime issue of concern; the other respondent cited lack of travel costs for federal parties as the major challenge/barrier.

Seven of the respondents listed lack of staff expertise to participate in ECR as a minor challenge/barrier; five cited as minor the perceived time- and resource-intensive nature of ECR. Limited or no funding for facilitators and mediators, and lack of travel costs for federal staff and non-federal parties were each cited as minor by four respondents.

The reluctance of non-federal parties to participate and uncertainty about the net benefits of ECR were each cited by four respondents as minor challenges/barriers. Three respondents listed as minor the reluctance of federal parties to participate and two cited minor concerns with the lack of access to qualified mediators and facilitators.

The remaining respondents indicated that the posed topics were not challenges or barriers or that the topic was not applicable to them. The two respondents with the highest reported ECR cases, 74 and 41 respectively, did not cite any listed challenge/barrier as major.

IV. ECR CASES IN FY 08

A. ECR Case Summary

The fifteen respondents reported a total of 136 ECR cases in FY 08. Of the total, 92 have been completed and 44 are in progress.

A case is considered completed when involvement in a particular matter ended during FY 08. This does not necessarily mean that the parties concluded their collaboration, negotiation, or dispute resolution process; that all issues are resolved; or that agreement has been reached. A case is still in progress if the collaboration, negotiation, or dispute resolution began prior to or during FY 08 and did not end in that year.

Table 3-1, ECR Cases Summary Table, depicts the distribution of completed and in progress cases for which ECR can be applied. Almost one-third of the completed cases involved siting and construction issues.

Another third of the completed cases, reported in Table 3-1 as “Other,” were related to suggested modifications of the Hanford TPA. The largest number of cases in progress, 12, also stems from requested modifications to the TPA.

Based on the reported allocation of ECR case sponsorship, approximately 76% of the ECR cases were sponsored by the Department. Sponsorship of a case indicates that DOE contributed financial or in-kind resources (e.g., a staff mediator’s time) to provide the neutral third-party’s services for that case. It should be noted that more than one sponsor is possible for a given case.

In the cases in which DOE participated but did not sponsor, the Department was a party to the case or contributed in some significant way such as providing expert technical advice.

Table 3-1: ECR Cases Summary Table

	Cases or projects in progress	Completed Cases or projects	Total FY 2008 ECR Cases	Decision making forum that was addressing the issues when ECR was initiated: *					Of the total FY 2008 ECR cases indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)		Sponsored	Participated in but did not sponsor
<i>Context for ECR Applications:</i>										
Policy development	2		2	1		1			2	
Planning	9	4	13	10			2		7	6
Siting and construction	3	30	33	1			32		33	
Rulemaking		1	1		1					1
License and permit issuance	6	10	16	1	4		6		9	2
Compliance and enforcement action	4	10	14	1	8	1			6	8
Implementation/monitoring agreements	8	6	14	2	10		1		4	10
Other (specify):	12	31	43		1	1		40	43	
Total			136						104*	27*

* Due to inconsistent information provided by respondents relating to sponsorship, these columns do not total 136 cases.

B. ECR Use Areas

Eleven respondents selected, from an established list, the areas in which they use environmental conflict resolution. The areas and the number of respondents are as follows:

Groundwater Issues:	9
Conflicts in Environmental Cleanup Decisions:	9
Relationships with Regulators:	8
Multi-issue and Multi-party Environmental Disputes:	7
Hazardous Waste Facility Permit Modifications:	7
NEPA:	6
Public Engagement Activities:	6

The types of public engagement activities listed by respondents included: scoping for a court ordered environmental impact statement (EIS); voluntarily seeking public and tribal review and input into an EIS; and conducting community advisory board and other public information meetings.

C. ECR Metrics

Only a few sites reported that they track the outcomes of ECR. One site reported that although there is no formal process, an evaluation is done on a case-by-case manner and is frequently done qualitatively. As pointed out by that respondent, it is often not possible to quantitatively measure such outcomes because the ECR often relates to future decision-making.

Another site responded that it tracks the success of ECR by the feedback from its stakeholders. A site with a case that is still in progress does plan to track its performance but has not yet established a methodology.

One site tracks regulatory enforcement actions (and any associated fines and penalties) and project delays avoided or resolved as a result of conflict resolution practices.

Another site monitors the use and outcome of ECRs occurring under its agreement with state regulators and the EPA.

V. DEMONSTRATIONS OF ECR USE AND VALUE

Environmental conflict avoidance and environmental conflict resolution takes many forms at DOE sites. The process may take the form of collaboration, expanded public participation, or incorporation of a neutral party. Most sites, as demonstrated by the experiences of the Portsmouth/Paducah Project Office, rely on several forms to address potentially vexing environmental issues. In their descriptions of how environmental conflicts were avoided or resolved, site personnel also conveyed the benefits that accrued from their ECR efforts.

A. ECR Through Collaboration

Examples of collaborative decision making within the DOE complex include the following:

Portsmouth (Ohio)/Paducah (Kentucky): Collaborative decision making is used at both the Paducah and Portsmouth sites. At these sites, DOE conducts regular meetings with regulators at staff and senior levels to address and resolve issues and regular stakeholder/public meetings. DOE, the State of Ohio and EPA have used collaborative decision-making and planning to establish a conceptual regulatory framework for the upcoming decontamination and decommissioning at the Portsmouth site. Similarly, the Paducah site has been utilizing a facilitator to facilitate Federal Facilities Agreement Managers meetings. These meetings are held periodically throughout the year and attended by representatives of DOE, EPA and the Commonwealth of Kentucky.

Waste Isolation Pilot Project (New Mexico): Collaborative decision making has also been advanced in connection with negotiations with state and federal regulators and the public on the proposed modifications to a Waste Isolation Pilot Project (WIPP) permit. Prior to preparing DOE's final permit modifications, DOE sought and evaluated stakeholder comments and incorporated those comments into the final permit modification application. The key beneficial outcome of these negotiations was the elimination of obstacles and issues that otherwise may have been contentious with the regulator and stakeholders, if not afforded an opportunity to discuss the proposed changes before submittal of the permit modification request. Thus, a permit modification involving complex issues was successfully obtained through the regulatory process.

West Valley Demonstration Project (New York): In November 2006, DOE established a Core Team with the EPA, the Nuclear Regulatory Commission, the New York State Energy Research and Development Authority, and New York State's Departments of Health and Environmental Conservation to resolve issues at the West Valley Demonstration Project. The Core Team, with the assistance of a professional facilitator, focused upon technical issues surrounding a draft Environmental Impact Statement (EIS) for the site. As a result of the Core Team efforts and collaborative decision making, issues that previously impeded issuance of the draft EIS for two decades have now been resolved

B. ECR and Expanded Public Participation

Examples of the use of ECR and expanded public participation within the DOE complex include the following:

Nevada Site Office (Nevada): The National Nuclear Security Administration/Nevada Site Office (NNSA/NSO) has successfully used regular meetings with environmental regulators and citizen boards and committees designed to engage stakeholders in the early stages of decision-making processes. These activities have fostered open communication between NNSA/NSO and its stakeholders to ultimately avoid environmental conflicts.

Oakland Site Office (California): Prior to beginning preparation of a court-ordered EIS for the Energy Technology Engineering Center (ETEC), the Oakland Project Office contracted with a public participation expert who interviewed approximately 80 stakeholders (including members of the public). The objective was to determine what their perspectives were of the situation, as well as identify what DOE could do differently in the future. This outreach helped open doors to a dialogue with the ETEC stakeholders.

C. ECR and Third-party Neutrals

Examples of the use of ECR and the use of third-party neutrals within the DOE complex include the following:

Paducah Gaseous Diffusion Plant (Kentucky): A third-party neutral was used to assist in the settlement of a Paducah site National Pollutant Discharge Elimination System (NPDES) permit appeal. The ECR process lasted almost a year with several periodic meetings. The parties articulated their respective interests and then worked on alternatives that would address those interests. As a result of the timing of the commencement of the Paducah ECR case, DOE (and the other parties to the administrative case) avoided significant expenditures for discovery and the costs of preparing for, and participating in, a hearing on the merits. The resolution of disputed effluent limits and monitoring requirements resulted in substantive costs savings to DOE and improved programmatic efficiencies. Additionally, the ECR process resulted in the Department's establishing credibility with both the Commonwealth of Kentucky and the environmental group involved in the case and facilitating better working relationships with them. Further, ECR allowed the parties to resolve their environmental issues without the uncertainty associated with litigating those issues.

West Valley Demonstration Project (New York): In December 2006, the Department was sued by the State of New York over the West Valley Development Project. In mid-2007, the Department retained the services of a professional mediator to assist the parties in resolving legal disputes of two decades' duration.

D. Benefits of ECR

Eight of the nine respondents that had used environmental conflict avoidance or environmental conflict resolution processes in FY 08 reported that a goal or outcome was avoidance of protracted and costly environmental litigation. Six of the nine reported that the use of these processes would avoid lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives. Six respondents also cited as their reason for using ECR methods their desire to minimize hostility among stakeholders.

The goals of avoiding unnecessary project delays and costly delays in implementing environmental protection measures were selected by five respondents as one of their reasons for implementing an ECR method.

VI. CONCLUSION

Given the Department's history of collaboration with stakeholders which began long before the ECR Memorandum was issued, the sites have experienced very few barriers or challenges to the use of ECR. Accordingly, consistent with its definition of ECR, DOE sites use collaborative decision-making processes and third-party neutrals and facilitators in order to resolve or prevent environmental disputes.

ATTACHMENT:

Department of Energy FY 2008 ECR Survey Form

FY 2008 ECR Policy Report to OMB-CEQ

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy memorandum directs agencies to increase the effective use of and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying endnote.¹

For purposes of this questionnaire, the **Department of Energy (DOE) defines ECR as the use of any collaborative process to prevent or resolve environmental conflicts, including but not limited to those processes involving the use of third party neutrals.**

The joint memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the third year of reporting in accordance with this memorandum for activities in FY 2008. DOE's report is due to OMB and CEQ by January 15, 2008. In order for the Office of Conflict Prevention and Resolution to meet this due date, your responses to the questions below are due by October 20, 2008. Your responses will be used in the development of DOE's final report.

Thank you for your assistance.

Name of Office responding:

Name and Title/Position of person responding:

Division/Office of person responding:

E:mail Address:

Phone number:

Date of report submittal:

Report Due October 20, 2008

*Submit report electronically to Beverly Whitehead at
Beverly.Whitehead@hq.doe.gov*

Questions: Please call Beverly Whitehead (202) 586-6073

****The electronic report will adjust spacing to accommodate your comments.**

Section 1: Capacity and Progress

1. Describe the steps (e.g., training, mediation, facilitation) taken by your site/program to build programmatic/institutional capacity for ECR in 2008, including progress made since 2007. If no steps were taken, please indicate why not.

Section 2: Challenges

2. Indicate the extent to which each of the items below present challenges or barriers that your site/program has encountered in advancing the appropriate and effective use of ECR.

	Extent of challenge/barrier			
	Major	Minor	Not a challenge /barrier	N/A
	<i>Place an X in <u>only</u> one cell per row</i>			
a) Lack of staff expertise to participate in ECR				
b) Limited or no funds for facilitators and mediators				
c) Lack of travel costs for your own or other federal agency staff				
d) Lack of travel costs for non-federal parties				
e) Reluctance of federal decision makers to support or participate				
f) Reluctance of other federal agencies to participate list agency names if possible):				
g) Reluctance of other non-federal parties to participate (list party names if possible):				
h) Lack of access to qualified mediators and facilitators				
i) Perception of time and resource intensive nature of ECR				
j) Uncertainty about the net benefits of ECR				
k) Other(s) (please specify):				
l) No barriers (please explain):				

Section 3: ECR Use

3. Describe the level of ECR use at your site/program in FY 2008 by completing the table below. Please refer to the DOE definition of ECR on page 1 of this form. An ECR “case or project” is an instance where a collaborative process is used in preventing or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.

	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2008 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2008 ECR cases indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)	Sponsored ⁴	Participated in but did not sponsor ⁵
Context for ECR Applications:									
Policy development									
Planning									
Siting and construction									
Rulemaking									
License and permit issuance									
Compliance and enforcement action									
Implementation/monitoring agreements									
Other (specify):									
TOTAL									
	(the sum should equal Total FY 2008 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2008 ECR Cases)				(the sum should equal Total FY 2008 ECR Cases)	

¹ A “case in progress” is an ECR case in which the collaboration/negotiation/dispute resolution began prior to or during FY 2008 and did not end during FY 2008.

² A “completed case” means that involvement in a particular matter ended during FY 2008. This 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.

³ “Cases in progress” and “completed cases” add up to “Total FY2008 ECR Cases.”

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

⁵ Participated, but did not sponsor - an agency did not provide resources for the neutral third party's services for a given ECR case, but was either a party to the case or participated in some other significant way (e.g., as a technical expert advising the parties).

4. Indicate if your site/program is using ECR in any of the priority areas listed in DOE's FY 2007 ECR Report. Please also list any additional priority areas identified by your site/program during FY 2007, and indicate if ECR is being used in any of these areas.

List of priority areas identified in DOE's FY 07 ECR Report	Check if using ECR	Check if use has increased since FY 06
Groundwater Issues		
Multi-issue and Multi-party Environmental Disputes		
Conflicts in Environmental Cleanup Decision Making		
Relationships with Regulators		
Hazardous Waste Facility Permit Modifications		
NEPA		
Public Engagement Activities (Please explain)		
List additional priority areas identified by your site/program in FY 08	Check if using ECR	

5. Describe the processes your site/program uses to track the positive outcomes of ECR as demonstrated through increased performance, cost savings, or costs avoided.

Section 4: Demonstration of ECR Use and Value

6. Briefly describe your site's/program's most notable achievements or advances in using ECR in this past year. Please include the benefits that accrued to your site/program from the use of ECR.

7. ECR Case Example

- a. Using the five white sections of the template below, provide a description of an ECR case (preferably one completed in FY 2008). Please limit the length to no more than 2 pages.

Insert name or identification of problem or conflict.

Overview of problem/conflict and timeline, including reference to the timing of the collaboration, negotiation, or dispute resolution process.

Summary of how the problem or conflict was addressed using ECR, including details of how the principles for engagement in ECR were used.

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 ECR

Reflections on the lessons learned from the use of ECR

- b. Considering the ECR case described above, indicate if it represents an example of where ECR was or is being used to avoid or minimize the occurrence of the following:

	Check <u>all</u> that apply	Check if	
		Not Applicable	Don't Know
Protracted and costly environmental litigation.			
Unnecessarily lengthy project and resource planning processes.			
Costly delays in implementing needed environmental protection measures.			
Foregone public and private investments when decisions are not timely or are appealed.			
Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives.			
Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.			

**Section 5: Support from Office of Conflict Prevention and Resolution
(formerly known as Office of Dispute Resolution).**

8. Did you know there was an Office of Conflict Prevention and Resolution to provide you assistance?

No _____

Yes _____ If yes, how did you learn about the office?

9. Have you received support from or used resources provided by the Office of Conflict Prevention and Resolution?

10. What type of support can the Office of Conflict Prevention and Resolution provide for you?

Please attach any additional information as warranted.

Report Due October 20, 2008

Submit report electronically to: Beverly.Whitehead@hq.doe.gov

Questions: Please call Beverly Whitehead (202) 586-6073

Basic Principles for Department of Energy Engagement in Environmental Conflict Resolution and Collaborative Problem Solving

Department and/or contractor personnel should:

Informed Commitment	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement, and 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, as appropriate, the 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 that decisions are implementable consistent with federal law and policy. Parties also should commit to identify roles and responsibilities necessary to implement agreement; should agree in advance on the consequences of a party being unable to provide necessary resources or to implement agreement; and should take steps to obtain resources necessary to implement any agreement.

ⁱ ECR is defined in Section 2 of the memorandum as: “third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term “ECR” encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A (of the OMB/CEQ ECR Policy Memo) and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.” *Please refer to the bolded text on page 1 for the DOE definition of ECR used in this report.*