

Environmental Conflict Resolution

Fifth Annual Report

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U.S. Department of Energy

EXECUTIVE SUMMARY

The November 28, 2005, Memorandum on Environmental Conflict Resolution (ECR Memorandum) issued by the Chairman of the Council on Environmental Quality (CEQ) and the Director of the Office of Management and Budget (OMB) defines ECR as “third-party assisted conflict resolution and collaborative problem solving.”

The Department of Energy (DOE or the Department) 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. Though different, this definition is not inconsistent with the spirit of the Administration’s ECR Memorandum, 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 Fiscal Year 2010 (FY 10), 14 DOE sites and program offices reported a total of 100 ECR cases. Six of these cases involved third-party assistance and all were completed. Of the 94 ECR cases that did not involve third parties, 57 were completed and 37 are in progress.

I. INTRODUCTION

A. Background

On November 28, 2005, the Chairman of the CEQ and the Director of the OMB issued the ECR Memorandum. This joint policy memorandum directed Federal agencies to increase the effective use of, and their institutional capacity for, ECR and collaborative problem solving.

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

Consistent with the ECR Memorandum’s recognition of the value of all types of collaborative dispute resolution, DOE defines ECR as the use of any collaborative process to prevent or resolve environmental conflicts, including but not limited to those processes involving the use of third-party neutrals.

To assure comparability of its data with the OMB/CEQ definition of ECR, the Department tracks both those ECR cases in which third-party assistance was used, and those in which third-party assistance was not used. This report presents ECR case data in both categories and describes several of the third-party and non third-party dispute resolution processes successfully used in the Department, in the FY 10 reporting year.

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

B. Report Methodology

To provide guidance to Federal agencies implementing the ECR Memorandum, a staff-level interagency ECR Steering Committee consisting of representatives from various agencies was formed. This committee, with assistance from the U.S. Institute for Environmental Conflict Resolution, developed a report template and questionnaire to be used by agencies for this fifth annual report. DOE used the questionnaire developed by the ECR Steering Committee with modifications to accommodate gathering the data necessary to report separately cases that used third-party assistance and cases that did not (see Attachment).

This DOE questionnaire 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 14 respondents.

II. CAPACITY DEVELOPMENT AND PROGRESS MADE

DOE sites and program offices availed themselves of training opportunities during the reporting year. They also continued the institutionalized collaborative relationships previously formed with regulators and community members.

A. Training

Personnel from several sites and program offices participated in Department-based ECR training programs. The Department's Office of Conflict Prevention and Resolution hosted ECR 101: Introduction to Managing Environmental Conflict on September 22-23, 2010. Twenty-three people participated in the training, which was provided by the U.S. Institute for Environmental Conflict Resolution.

The Department's annual Joint DOE/DOE Contractor Environmental Attorneys' Training Workshop held on October 19 through 20, 2010, drew 52 attendees and 10 tele-video participants and featured training on Native American Tribal issues, natural resource damage assessments, and consulting with state historic preservation officers and tribes pursuant to several cultural resource protection laws. It also included information on ECR, environmental justice updates, and the U.S. Environmental Protection Agency's

experience with institutionalizing ECR in Federal agencies. The Workshop was sponsored by the DOE Field and DOE Contractor Environmental Attorneys, the Office of the Assistant General Counsel for the Environment, the Office of Conflict Prevention and Resolution, and the Office of Environmental Policy and Assistance.

In collaboration with the Workplace Conflict Management Section of the Interagency Alternative Dispute Resolution Workgroup, DOE hosted seven lunchtime programs for its personnel. The 90-minute sessions each drew between 20 – 40 participants and included topics such as cultural expectations in the workplace, bullying, and the dynamics of e-mail conflict in the office.

Two DOE staff members participated in the May 25 through 28, 2010 conference held in Tucson, Arizona, entitled ECR 2010: Environmental Collaboration and Conflict Resolution - Evolving to Meet New Opportunities.

The *You Are Our Negotiator: Hanford Site Negotiation Primer* prepared by the Richland Operations Office continues to be available to DOE sites and Federal agencies.

B. Office of General Counsel and Office of Conflict Prevention and Resolution Support of Field ECR Efforts

The DOE Office of the General Counsel organizes a monthly conference call with DOE environmental attorneys to review cases and, as appropriate, to discuss the potential use of ECR. On average, twenty environmental attorneys participate in these monthly calls.

ECR support is also provided to DOE sites and DOE program offices by DOE's Office of Conflict Prevention and Resolution. This office assists in determining if a dispute may benefit from the use of a third-party neutral and in identifying and engaging appropriate individuals.

C. Collaborative Relationships

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

Brookhaven National Laboratory (New York): Brookhaven National Laboratory relies on communication and interaction with its community members and regulators to assure environmental concerns are identified early in the planning process. Collaborating with groups such as the Brookhaven Executive Roundtable, the Citizens Advisory Council (a non-Federal Advisory Committee Act group), and the Interagency Group, which consists of EPA and state regulatory groups, generally results in consensus decisions.

Oak Ridge Reservation (Tennessee): The dispute resolution protocols established under the Oak Ridge Reservation Federal Facility Agreement (ORRFFA) are used to manage informal as well as formal disputes. In addition, the Oak Ridge Operations office established forums such as the Site Specific Advisory Board and the Environmental Program Council comprised of DOE, the U.S. Environmental Protection Agency (EPA), and the Tennessee Department of Environment and Conservation (TDEC) to serve, among other things, as a means to work through issues as they arise.

Richland Operations Office (State of Washington): The collaboration formed among DOE, the State of Washington, and the EPA, and implemented in the Hanford Tri-Party Agreement (TPA) rests on specific provisions for addressing disputes in a defined, structured manner with time constraints in order to effectively drive decisions and avoid unnecessary delays. The TPA contains over 1,500 separate enforceable and unenforceable commitments controlling the cleanup or compliance requirements for over 2,000 individual waste sites in a 40-year time frame. Issues related to the TPA are resolved collaboratively through monthly Project Manager meetings, quarterly milestone review meetings and other meetings as necessary; hundreds of such meetings are held over the course of a year. Richland uses this informal collaborative approach to resolve issues before it becomes necessary to enter into formal, third-party supported ECR.

III. CHALLENGES TO EFFECTIVE ECR USE

The ECR survey listed 17 possible challenges or barriers to effective ECR use and allowed respondents to list additional challenges or barriers. These potential obstacles addressed issues relating to lack of staff expertise, funding, incentives, and access to qualified mediators and facilitators. Topics concerning the reluctance of parties to become involved and the perception that ECR is time- and resource-intensive were also covered.

Only one of the 14 respondents identified issues as major challenges or barriers. The identified major issues were:

- “limited or no funds for facilitators and mediators” and
- “lack of travel costs for federal agency staff.”

“Limited or no funds for facilitators and mediators” and “uncertainty about the net benefits of ECR” were cited by four of the seven respondents who identified minor challenges or barriers.

The following issues were considered minor by three of the seven respondents:

- Lack of staff expertise to participate in ECR;
- Lack of staff availability to engage in ECR;
- Reluctance of other non-federal parties to participate; and
- Uncertainty about whether to engage in ECR.

IV. ECR CASES IN FY 10

For the reporting year, DOE collected ECR data on cases in which a third party assisted conflict resolution and those collaborative processes in which a third party was not used. Six of the 14 respondents reported ECR cases; three of the six reported ECR cases using third-party assistance.

A. ECR Case Summary

Table 1, ECR Cases Involving Third-Party Assistance, depicts the number and type of ECR cases in which third-party assistance was used; Table 2, ECR Cases Involving Collaboration, depicts the information for ECR cases in which collaboration without the use of third-party assistance was used.

The total number of reported ECR cases in FY 10 was 100; six of the cases used third-party assistance and the remainder used collaborative processes without the assistance of a third-party neutral. This difference in the approach to ECR is reflective of the relationships, communication channels, and collaborative decisionmaking processes that the Department has had in place for many years with regulators and community members; section II.B describes examples of these collaborations.

All six cases in which third-party assistance was used were completed; 57 of the 94 remaining collaborative ECR cases (60 percent) were completed. A case is considered completed when involvement in a particular matter ended during FY 10. 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 10 and did not end in that year.

Sponsorship of a case indicates that DOE contributed financial or in-kind resources (e.g., a staff mediator's time) to provide for resolution of that case. Based on the reported allocation of ECR case sponsorship, DOE sponsored all the cases in which a third party was used and 91 percent of the ECR cases in which a third party was not used. Sponsorship of a case indicates that DOE contributed financial or in-kind resources (e.g., a staff mediator's time) to provide for resolution of that case. It should be noted that more than one sponsor is possible for a given case.

Table 1: ECR Cases Involving Third-Party Assistance

| | Cases or projects in progress ¹ | Completed cases or projects ² | Total FY 2010 ECR Cases ³ | Decision making forum that was addressing the issues when ECR was initiated: * | | | | Of the total FY 2010 ECR cases indicate how many your site/program: | |
|--|--|--|--------------------------------------|--|--|----------------------|-----------------|---|--|
| | | | | Federal agency decision ⁴ | Administrative proceedings /appeals ⁵ | Judicial proceedings | Other (specify) | Sponsored ⁶ | Participated in but did not sponsor ⁷ |
| <i>Context for ECR Applications:</i> | | | | | | | | | |
| Policy development | | 1 | 1 | 1 | | | | 1 | |
| Planning | | | | | | | | | |
| Siting and construction | | | | | | | | | |
| Rulemaking | | | | | | | | | |
| License and permit issuance | | | | | | | | | |
| Compliance and enforcement action | | 1 | 1 | 1 | | | | 1 | |
| Implementation/monitoring agreements | | 3 | 3 | | 2 | 1 | | 3 | |
| Other: Not specified Hanford Natural Resource Trustees Council | | 1 | 1 | 1 | | | | 1 | |
| Total | | 6 | 6 | 3 | 2 | 1 | | 6 | |

1 A “case in progress” is an ECR case in which neutral third-party involvement began prior to or during FY 10 and did not end during FY0.

2 A “completed case” means that neutral third-party involvement in a particular matter ended during FY 10. The end of neutral third-party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, all issues are resolved, or that agreement has been reached.

3 “Cases in progress” and “completed cases” add up to “Total FY 2010 ECR Cases”.

4 “Federal agency decision” refers to a document containing the resolution of an environmental conflict.

5 “Administrative proceedings/appeals” includes, but is not limited to, ECR proceedings under environmental compliance agreements among DOE, EPA, and States.

6 “Sponsored” means that an agency is contributing financial or in-kind resources (e.g., a staff mediator’s time) to provide the neutral third party involvement for that ECR case. More than one sponsor is possible for a given ECR case.

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

Table 2: ECR Cases Involving Collaboration

| | Cases or projects in progress ¹ | Completed Cases or projects ² | Total FY 2010 ECR Cases ³ | Decision making forum that was addressing the issues when ECR was initiated:* | | | | Of the total FY 2010 ECR cases indicate how many your site/program: | |
|---|--|--|--------------------------------------|---|--|----------------------|-----------------|---|--|
| | | | | Federal agency decision ⁴ | Administrative proceedings /appeals ⁵ | Judicial proceedings | Other (specify) | Sponsored ⁶ | Participated in but did not sponsor ⁷ |
| <i>Context for ECR Applications:</i> | | | | | | | | | |
| Policy development | | 1 | 1 | 1 | | | | 1 | |
| Planning | 5 | | 5 | 2 | | | 3 | 3 | 1 |
| Siting and construction | | | | | | | | | |
| Rulemaking | | | | | | | | | |
| License and permit issuance | 17 | 20 | 37 | 37 | | | | 37 | |
| Compliance and enforcement action | 3 | 10 | 13 | 9 | 1 | 1 | 2 | 9 | |
| Implementation/monitoring agreements | 2 | 1 | 3 | | 2 | 1 | | 1 | 2 |
| Other: Tri-Party Agreement change negotiations, discussions, modifications submitted/approved | 10 | 25 | 35 | 22 | | | 13 | 35 | |
| Total | 37 | 57 | 94 | 71 | 3 | 2 | 18 | 86* | 7*3* |

* Due to inconsistent information provided by respondents regarding the sponsorship of four cases, these columns do not total 94 cases.

1 A “case in progress” is an ECR case in which the collaboration/negotiation/dispute resolution began prior to or during FY 10 and did not end during FY0.

2 A “completed case” means that involvement in a particular matter ended during FY 10. This does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, all issues are resolved, or that agreement has been reached.

3 “Cases in progress” and “completed cases” add up to “Total FY 2010 ECR Cases.”

4 “Federal agency decision” refers to a document containing the resolution of an environmental conflict.

5 “Administrative proceedings/appeals” includes, but is not limited to, environmental resolution proceedings under environmental compliance agreements among DOE, EPA, and States.

6 “Sponsored” means that an agency is contributing financial or in-kind resources (e.g., a staff mediator’s time) to provide the collaboration/negotiation/dispute resolution for that case. More than one sponsor is possible for a given ECR case.

7 “Participated, but did not sponsor” means that an agency did not provide resources for the collaboration/negotiation/dispute resolution for a given ECR case, but was either a party to the case or participated in some other significant way (e.g., as a technical expert advising the parties).

B. ECR Use Areas

Six respondents selected, from an established list, the areas in which they use environmental conflict resolution and several of them added areas to the list. The areas and the number of respondents for each area are as follows.

| | |
|---|---|
| Groundwater Issues: | 5 |
| Conflicts in Environmental Cleanup Decisions: | 5 |
| Environmental Cleanup Decisionmaking: | 5 |
| Relationships with Regulators: | 4 |
| Multi-issue and Multi-party Environmental Disputes: | 4 |
| Hazardous Waste Facility Permit Modifications: | 4 |
| Public Engagement Activities: | 4 |
| NEPA: | 3 |
| NPDES Permit: | 1 |
| Title V Air Permitting Program: | 1 |
| Hanford Natural Resources Trustee Council: | 1 |

Four respondents indicated they used ECR in public engagement activities. One DOE site uses the services of a facilitator in monthly meetings with a local citizens task force to aid implementation of a 10-year decisionmaking process regarding certain facilities. Two sites engage members of their communities in site remedial action decisions, and another does so to plan future year budgets related to regulatory commitments.

C. ECR Metrics

Sites track performance to measure the outcomes of ECR. Performance metrics may be qualitative, such as successfully resolving the conflict at the lowest reasonable level, conducting problem resolution in a respectful manner, removing longstanding impediments, or achieving resolution in a reasonable time frame.

The outcomes of ECR are also measured quantitatively through compliance with milestones and commitments and the avoidance of potential fines or penalties from litigation or enforcement actions.

For example, the Office of River Protection prepares monthly status reports on milestones associated with the treatment of tank wastes. The reports, which are shared with regulators and interested stakeholders, identify successes, issues, and concerns and their cost and schedule impacts. The Savannah River Site uses the Integrated Planning, Accountability and Budgeting System and the Site Tracking, Analysis and Reporting System to track its progress on completion of regulatory milestones.

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 use of a neutral third party. Most sites rely on several forms of ECR to resolve environmental conflicts but, more importantly, to avoid the escalation of issues into conflicts. 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 as well as the examples described in section II.B of this report.

Oak Ridge Reservation (Tennessee): The Oak Ridge Reservation worked with the Oak Ridge Reservation Natural Resources Trustee Council to resolve, after almost 20 years, a liability issue concerning sediment contamination in the Tennessee River. The Council is comprised of DOE, the TDEC, the Fish and Wildlife Service (FWS) of the U.S. Department of the Interior, and the Tennessee Valley Authority.

Richland Operations Office (State of Washington): The Hanford Natural Resource Trustee Council (NRTC) is a collaborative working group chartered to address natural resources impacted by Hanford Site releases of hazardous substances. The NRTC is comprised of DOE, the FWS, the Nez Perce Tribe, the State of Oregon, the Confederated Tribes of the Umatilla, The Washington State Department of Ecology (Ecology), State of Washington Department of Fish and Wildlife, the Yakama Nation and U.S. EPA. In addition, the National Oceanic and Atmospheric Administration participated in NRTC meetings, but is not a member. In FY 10, the NRTC used collaboration and consensus processes to begin development of an injury-assessment plan for potentially injured natural resources. The plan defines a holistic, site-wide approach for injury assessment related to releases from the Hanford Site. The plan also identifies those areas where Hanford releases have come to be located or might be located in the foreseeable future, and the location of resources that might have been injured or could potentially be injured by contact with these releases or by actions associated with the remediation of the releases.

Richland Operations Office (State of Washington): Ecology and the Richland Operations Office (Richland) successfully negotiated and reached an agreement on adjustments in work scope and milestones consistent with a shift of resources to the river corridor and other higher priority Hanford Site cleanup tasks. This agreement replaced existing milestones and established a comprehensive approach for managing several types of Hanford Site wastes. Representatives from Ecology and Richland, as well as Richland contractors, met routinely and presented their respective goals and positions in order to gain a mutual understanding of each other's perspectives. Ideas from all parties for each of the milestones were openly deliberated, pros and cons were weighed, and the

impacts on other milestones were identified. The negotiation team streamlined and reworded the milestones to minimize opportunities for misunderstanding.

Santa Susana Field Laboratory/Energy Technology Engineering Center (California): DOE staff worked with the State of California to resolve, after many years, the path forward on the cleanup of Area IV of the Santa Susana Field Laboratory, including the Energy Technology Engineering Center. Litigation was avoided, an administrative consent order was executed, and the time for cleanup was expedited. The public was given the opportunity to comment on the draft Consent Order and will have other opportunities to comment on the cleanup plans in the future.

Savannah River Site (South Carolina): After a small building was demolished without an approved license, the Savannah River Site (SRS) and the State of South Carolina cooperatively developed a plan to ensure that SRS employees were informed of demolition licensing requirements. Although a second unlicensed demolition occurred, the State waived a penalty and fine because it understood the site had prudently initiated efforts toward improvement after the first incident and the State recognized there had not been a reasonable time period to fully implement the changes when the second incident occurred.

Tuba City (Arizona): In 2009 and 2011, DOE was successful in defending litigation brought against the United States concerning whether a decision years ago not to include particular alleged radioactively-contaminated properties in Tuba City, Arizona for cleanup under the Uranium Mill Tailings Remedial Action Program was now subject to judicial review. DOE staff worked cooperatively with the Department of Justice on this litigation. Though the issue of the cleanup of these properties was not resolved by this litigation, the issue of the cleanup of at least one of the properties (the Highway 160 site) was resolved previously through the successful and creative use of ECR techniques by DOE staff. These efforts, which included ongoing cooperative relationships among DOE, other federal agencies, and Congressional staff, led to the passage of the necessary legislation, followed by the initiation of cleanup-related work. The bottom line is that ECR can be more effective in solving real world environmental issues in less time than even successful litigation can.

B. ECR and Expanded Public Participation

In addition to collaboration with regulators, DOE sites work closely with interested stakeholders to resolve environmental issues before they become full-fledged conflicts. The following are several examples of this public participation.

Carlsbad Field Office (New Mexico): Renewal of the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant was significantly expedited through ongoing meetings with the New Mexico Environment Department and interested stakeholders prior to submitting the license renewal request. The meetings provided all parties with an opportunity to raise concerns related to the proposed license renewal which could then be addressed in the renewal application. As a result, fewer issues were raised in the public hearing process on the renewal application.

Oak Ridge Reservation (Tennessee): The Oak Ridge Site Specific Advisory Board was a party to the collaborative effort of the Oak Ridge Reservation, the State of Tennessee, and EPA to develop the Reservation's FY11 budget request. The board is a federally-appointed citizens' panel that provides independent advice and recommendations to the DOE on its Environmental Management Program in Oak Ridge. It is composed of up to 20 members, chosen to reflect the diversity of gender, race, occupation, views, and interests of persons living near the DOE Oak Ridge Reservation. Members are appointed by DOE and serve on a voluntary basis, without compensation. Non-voting student participants also serve on the board to represent the viewpoints and concerns of area youth.

Richland Operations Office (State of Washington): The Hanford Advisory Board is an independent and non-partisan group that is broadly representative of the diverse interests affected by cleanup of the Hanford site. The Board is consulted on numerous cleanup issues and provides informed recommendations and advice to DOE, EPA, and Ecology.

Richland Operations Office (State of Washington): The parties to the Hanford TPA (DOE, the State of Washington, and EPA) agreed that improvements were needed for remediation of the Hanford Central Plateau and signed an Agreement in Principle (AIP) to create an integrated strategy for its cleanup. As part of the AIP, DOE developed a Central Plateau Cleanup Completion Strategy (Strategy) that led to negotiations among the TPA parties and proposed changes to the TPA.

DOE and the regulatory agencies participated in numerous discussions on the Strategy with Tribal Nations, the State of Oregon, the Hanford Advisory Board, and stakeholders. The agencies considered comments received during these discussions and factored them into their negotiations with DOE. This resulted in a proposed change package with greater focus on deep vadose zone cleanup and plans for more operable units than initially outlined in DOE's Strategy. The agencies then distributed the proposed change package for public comment. The agencies jointly addressed and incorporated public comments into a final change package that was approved in October 2010. The benefit of this approach is that the final change package was agreeable to all parties and reflected public input.

West Valley Demonstration Project (New York): Successful experiences with ECR as tailored to specific circumstances over the years led the West Valley Demonstration Project (WVDP) to incorporate ECR techniques into its ongoing decisionmaking processes. In FY 10, WVDP personnel worked with State and local stakeholders to design a 10-year decisionmaking process that includes a significant public involvement component.

This process will incorporate additional scientific studies, the use of subject matter experts, an independent scientific panel, and a professional facilitator.

C. ECR and Third Party Neutrals

Examples of the use of ECR and the use of third-party neutrals within the DOE complex during the reporting year are as follows:

Richland Operations Office (State of Washington): A third-party neutral was used to assure that the monthly meetings of the NRTC (*see* the discussion in section V.A. *above*), as well as its special meetings and conferences, were conducted efficiently and openly to assure participation by all attendees.

The DOE Office of Environmental Management, DOE Richland Operations Office and the DOE Office of Technology and Innovation, along with Pacific Northwest National Laboratory, used the services of an independent third party to conduct the Hanford Site Deep Vadose Zone Technical Forum. The July 2010 forum focused on identifying and organizing the critical challenges associated with characterization, modeling, remediating and monitoring the deep vadose zone in Hanford's Central Plateau.

West Valley Demonstration Project (New York): Since 1980 the State of New York and DOE tried, but repeatedly failed, to reach an agreement on fundamental issues of responsibility, cost allocation, and liability for the overall cleanup of the West Valley Demonstration Project (WVDP) site. In December 2006, the State of New York brought an action against DOE for cost recovery, damages and declaratory relief regarding past and ongoing cleanup activities at the site.

Over a three-year period, a professional mediator familiar with similar legal issues helped DOE and the State break the logjams that had developed over three decades of disputes and negotiate the terms of a Consent Decree. Prior to the initial joint meeting of the parties, each party provided the mediator with a comprehensive background package and oral presentation that enabled the mediator to fully understand the longstanding issues and conflicts.

Per the request of the State, the Consent Decree was made available for public comment and was the subject of briefings to various interest groups within the region. At the conclusion of the public comment period, the parties drafted a formal motion, including responses to public comment, requesting that the Court approve the Consent Decree, which it did on August 17, 2010.

D. Benefits of ECR

In addition to the benefits described above, several respondents indicated that they used ECR to avoid or minimize the occurrence of unfortunate possibilities. The possibilities and the number of respondents citing them as a basis for using ECR are as follows.

| | |
|---|---|
| Protracted and costly environmental litigation: | 5 |
| Unnecessarily lengthy project and resource planning processes: | 4 |
| Costly delays in implementing needed environmental protection measures: | 3 |

| | |
|--|---|
| Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives: | 3 |
| Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts: | 3 |
| Foregone public and private investments when decisions are not timely or are appealed: | 1 |

VI. CONCLUSION

The Department of Energy sites and program offices encounter very few barriers or challenges to the use of ECR primarily because of the Department's experience with stakeholder and regulator collaboration, which began long before the ECR Memorandum was issued. This long experience and the nature of the developed relationships with stakeholders and regulators generally contribute to resolving environmental concerns before they become deep-seated conflicts.