



ADR Accomplishments Report





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

ADR ACCOMPLISHMENTS REPORT

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EXECUTIVE SUMMARY

The United States Environmental Protection Agency has a rich history of using alternative dispute resolution (ADR) techniques ranging from traditional mediation to innovative processes aimed at enhancing stakeholder involvement in Agency decision making. A recent statute and Presidential directive provided the impetus for an examination of the Agency's existing ADR programs and planning how ADR will be used in the future. As a result of this effort, several organizational and programmatic improvements in the Agency's approach to ADR were implemented. This report was adapted from a report submitted to the Department of Justice on November 19, 1999, and examines ADR activities at EPA, with a focus on fiscal year 1999 initiatives and accomplishments. Highlights include:

- Implementation of the Administrative Dispute Resolution Act of 1996

The Administrative Dispute Resolution Act (ADRA) governs the use of consensus and agreement-based dispute resolution mechanisms by federal agencies. The ADRA contains several requirements that relate to the administration of an agency's ADR program. In fulfillment of these statutory requirements, EPA has: (1) chaired one of the sections of the Interagency Alternative Dispute Resolution Working Group established by the Attorney General and participated actively in three other sections; (2) appointed a senior official to serve as the dispute resolution specialist for the Agency; (3) designed a central office for ADR program management and development; (4) expanded the network of Regional staff with ADR responsibilities; and (5) initiated a process to develop a final Agency-wide policy on the appropriate use of ADR at EPA.

- Introduction of New ADR Programs

EPA has focused its ADR program development efforts on issues that also constitute major priorities for the Agency. A major new ADR initiative is the workplace dispute mediation program to be launched in January 2000. In addition, several new initiatives support the Agency's environmental objectives. For example, the Agency has been exploring ways to use ADR techniques in addressing environmental justice and matters arising under Title VI of the Civil Rights Act of 1964. The Agency's emphasis on cleanup and redevelopment of urban waste sites is supported through the Brownfields facilitation pilot projects. In addition, EPA is pursuing opportunities to demonstrate the use of ADR techniques in the area of environmental permitting.

- Improvements in Existing ADR Programs

EPA's existing ADR programs have contributed to the Agency's status as a leader in the use of ADR in the federal sector. In addition, these programs established the foundation for new and expanded ADR programs and initiatives. EPA's mature ADR programs are each different in terms of operations and purpose, but all have embraced the value and utility of neutral services to advance the Agency's objectives. Existing ADR programs include: (1) a variety of stakeholder involvement programs that make use of third-party neutrals; (2) an active enforcement ADR program; (3) innovative Regional approaches towards ADR; and (4) a high volume mediation program offered by EPA's Administrative Law Judges.

- Establishment of Partnerships with Other Federal Agencies

EPA has been privileged to partner with several other federal agencies in joint efforts to enhance the utility and effectiveness of ADR throughout the federal sector. The Agency has both served as a mentor and received the benefit of expertise from other agencies as all federal agencies look at ways to develop their ADR programs. EPA has also entered into interagency agreements with the U.S. Institute for Environmental Conflict Resolution (Institute) in order to: (1) broaden access to ADR practitioners for environmental disputes; and (2) take advantage of the Institute's expertise in designing specialized trainings for targeted groups.

The activities and programs documented in this report are a credit to EPA's willingness to use innovative tools such as ADR to achieve the Agency's broader programmatic and organizational objectives. These innovations provide a foundation for a more complete assessment of how use of third-party neutrals may improve Agency decision making and prevent and resolve conflicts.

I. Introduction

Alternative Dispute Resolution (ADR) includes a wide variety of processes in which third-party neutrals assist parties in the prevention and resolution of disputes. As practiced at the United States Environmental Protection Agency (EPA), ADR is more than simply an alternative to traditional litigation. It is a tool for better negotiation as well as a means of enhancing the quality of Agency decision making. Applications of ADR at EPA reflect the breadth of the alternative dispute resolution field, both in terms of the variety of ADR techniques utilized and the types of disputes or potential disputes that are addressed. ADR work is occurring across programs and Regions and includes techniques such as mediation, facilitation, convening, early neutral evaluation, consensus processes, cooperative problem solving, interest-based negotiation, and use of ombudsmen. (These techniques are described in the glossary of terms in the side boxes). ADR is being used to advance EPA's programmatic and administrative objectives, with applications in areas such as administrative adjudications, enforcement, formal and informal complaint procedures, policy development, stakeholder involvement, public participation, and workplace disputes.

This report examines ADR activities that have been used at EPA, with a focus on recent initiatives and accomplishments. Section II discusses the Agency's implementation of the Administrative Dispute Resolution Act, the principal statutory authority on federal sector use of ADR. That section also discusses activities undertaken at EPA in response to a Presidential directive on ADR issued in May 1998. Section III of this report highlights new ADR programs or activities that have been initiated at EPA over the past year. Section IV outlines the Agency's more mature ADR programs and provides examples of how those programs continue to develop and advance EPA's environmental objectives. Section V presents a series of exciting and relatively new partnerships between EPA and other federal agencies designed to enhance the utility and effectiveness of ADR throughout the federal sector.

Glossary of Selected ADR Terms

The ADR techniques listed here are those that are most frequently used at EPA and referred to in this report. The list is not intended to be exhaustive of all possible ADR applications.

•**Mediation:** Mediation is a confidential, informal process in which the disputing parties use a neutral third party to assist them in trying to work out a mutually acceptable solution to a problem.

•**Facilitation:** Facilitation is a voluntary, informal, and flexible process of communication guided by a third-party neutral. Facilitation can be used for meeting management purposes, or as a technique to engage parties in a productive discussion about a problem or challenge. By itself, facilitation may or may not result in resolution of any issues in controversy.

•**Convening:** Convening is a process used to identify issues, interests, and sometimes parties to a dispute or potential dispute. The goal of a convening is to assess the potential for use of ADR techniques in seeking resolution of a problem and to recommend a process that would best help address the issues at hand.

•**Early Neutral Evaluation:** Early neutral evaluation allows the parties to a dispute to receive an informal neutral evaluation of the strength of each party's position in a matter in controversy. The evaluation is nonbinding, but may be useful in promoting settlement.

Glossary (cont'd)

- **Consensus Processes:** A consensus process is any method by which all affected parties (stakeholders) are brought together at an early stage for the purpose of developing a solution to a present or anticipated problem. Consensus processes that qualify as ADR involve a third-party neutral in a facilitation or mediation role. The term “consensus process” as used at EPA typically refers to a mechanism for policy or regulatory development.
- **Cooperative Problem Solving:** Cooperative problem solving involves a decision by parties facing a disagreement or potential disagreement to collaborate on a solution rather than insist on competition and compromise. Cooperative problem solving assisted by neutrals from within or outside of the Agency has been useful in addressing internal problems and challenges.
- **Interest-based Process:** An interest-based process seeks to generate creative solutions to problems between parties in an ongoing relationship. It makes extensive use of brainstorming and identification of creative solutions to address the interests of the participants.
- **Ombudsmen or Ombuds:** An ombudsman (or ombud) is an Agency official who is authorized to accept complaints and look into whether something can be done to address a particular concern. Ombuds do not have authority to change decisions, but they try to facilitate responsive solutions to problems raised in complaints. There are currently ombud functions in three programs at EPA (pesticides, hazardous waste, and small business).

II. Accomplishments in Implementing the Administrative Dispute Resolution Act of 1996 and in Fulfilling the President’s Memorandum on ADR (May 1, 1998)

The Administrative Dispute Resolution Act (ADRA), 5 U.S.C. § 571 - 584, governs the use of consensus and agreement-based dispute resolution mechanisms by federal agencies. The Administrative Dispute Resolution Act of 1996 permanently reauthorized the ADRA, thereby confirming that alternative dispute resolution (ADR) techniques are legitimate processes that should be used by federal agencies in appropriate circumstances.

The ADRA contains several requirements that relate to the administration of an agency’s ADR program, including appointment of a senior official to serve as the agency’s dispute resolution specialist and development of a policy to address the use of ADR within an agency. In addition, the ADRA authorizes the President to establish an interagency committee to facilitate ADR use within the executive branch.

By Presidential Memorandum issued May 1, 1998, President Clinton established an interagency committee as contemplated by the ADRA. In the course of establishing this committee, the President also instructed agencies to take steps to “(1) promote greater use of mediation, arbitration, early neutral evaluation, agency ombuds, and other alternative dispute resolution techniques, and (2) promote greater use of negotiated rulemaking.”

The following subsections describe the specific actions that EPA has taken to fulfill the requirements of the ADRA and the Presidential Memorandum.

A. Participation in the Interagency Alternative Dispute Resolution Working Group

The President’s Memorandum of May 1, 1998, established an Interagency Alternative Dispute Resolution Working Group (IADRWG) to be convened by the Attorney General and consisting of representatives of the heads of federal departments and agencies. The mission of the working group is to coordinate, promote, and facilitate the effective use of dispute resolution

processes within Federal agencies. The IADRWG is organized into five subject matter sections that address the use of dispute resolution processes in: (1) civil enforcement; (2) claims against the government; (3) contracts/procurement; (4) workplace disputes; and (5) small agencies. The substantive work of the IADRWG has occurred through the section activities, in which participating agencies have shared expertise and worked to expand the capacity of the federal sector to either initiate or enhance specific types of ADR programs.

EPA has taken a leadership role in the IADRWG. The Agency's Senior Counsel for ADR chairs the Civil Enforcement Section, which includes 24 federal agencies that are either initiating or enhancing ADR programs to support their enforcement activities. EPA's ADR staff within the Office of Enforcement and Compliance Assurance have taken the lead in designing a year's worth of programs for the Civil Enforcement Section, covering topics such as dispute systems design, training, funding issues, evaluation, ethics, and confidentiality. EPA staff are also engaged in mentoring activities for other agencies that are initiating ADR programs in the civil enforcement context. More information about EPA's mentoring role is described in section V.B. of this report. In addition to leading the Civil Enforcement Section, EPA has been active in the claims, contracts, and workplace sections of the IADRWG. Through this participation, EPA has benefitted from the expertise of other agencies with mature ADR programs in those areas.

As the IADRWG enters its second year of existence, the Attorney General has announced the creation of an ADR Advisory Council, to be comprised of senior government officials responsible for ADR programs at their agencies. The Attorney General extended an invitation to EPA to serve on the Council. The Council will address policy issues that may arise during the implementation of federal ADR programs. The Attorney General's invitation recognizes EPA's status as a major contributor to the advancement of ADR in the federal sector.

B. Designation of a Senior Counsel for Alternative Dispute Resolution

In October 1998, Administrator Browner appointed a Senior Counsel for Alternative Dispute Resolution. This appointment fulfills the ADRA requirement to designate a senior official as the Agency's Dispute Resolution Specialist. In addition, Administrator Browner used the occasion to reiterate the Agency's commitment to the use of ADR in resolving existing disputes and preventing future conflict. The Administrator noted that the use of ADR within the Agency is consistent with and supportive of the Agency's reinvention goals.

C. Establishment of the Conflict Prevention and Resolution Center

Another significant step forward in the evolution of EPA's ADR program will occur with the establishment of a new Conflict Prevention and Resolution Center (CPRC). Based upon numerous interviews with officials throughout EPA, there is enthusiastic support for the formation of such a Center. The Center will be located within the Office of General Counsel. Establishment of the CPRC will provide oversight and compliance with the ADRA and encourage greater integration of dispute resolution techniques into EPA activities.

The CPRC's specific mission will be to fulfill obligations under the Administrative Dispute Resolution Act of 1996, the Alternative Dispute Resolution Act of 1998 and other relevant laws and policy directives aimed at ensuring effective use of ADR in and by the Federal government. To this

end, the main functions of the CPRC will be to assist Agency offices in identifying “appropriate” uses of neutral third parties; make neutral services more readily available; design ADR processes; and provide ADR awareness training. Consistent with the ADRA, the Center’s functions also will include: coordinating the development and implementation of Agency policy, guidance and regulations addressing the use of ADR; assisting in the development and effective coordination among ADR programs in offices throughout the Agency; consulting on ADR case selection and management; supporting outreach on ADR; recordkeeping to ascertain the benefits of ADR; and coordinating EPA participation in ADR activities outside of the Agency. The consolidation of these functions has benefits for the Agency, such as the availability of a team of professionals dedicated to this specialized area and more efficient tracking of EPA’s use of ADR techniques.

Moreover, establishment of the CPRC will serve a number of internal and external customers in the provision of additional opportunities to consider the application of ADR techniques to achieve EPA objectives. For example, the CPRC may provide mediation services for conflicts within the Agency’s workplace. (See Section III.A. of this report for more detail on the workplace ADR program). In addition, a set of pilot projects is being developed to test the use of ADR in meeting EPA’s environmental justice and civil rights objectives. (See Section III. B. of this report). Other objectives for expanded use of ADR include facilitated consultations with stakeholders and third parties, early intervention in conflicts involving the regulated community, contractors, and others seeking to do business with EPA.

D. Expansion of Regional ADR Network

In addition to organizational developments in the ADR program at Headquarters, EPA is finding that an expansion of the Regional ADR staff is having a dramatic impact on the Agency’s overall capacity to manage ADR programs and deliver ADR services. What started in 1990 as a network of Regional enforcement staff has become a working body of Regional ADR Specialists. Further, many Regions have expanded the number of staff with ADR responsibilities within and beyond the enforcement program. In Regions 1, 8, 9, and 10, there are designated individuals who have been authorized to devote 50-100% of their time to ADR-related activities. Two individuals work in Regional enforcement programs, and three others are providing facilitation services in support of other Agency activities. Additional staff in all ten Regions have ADR responsibilities on a collateral duty basis. Among the roles they serve are: consulting with case teams and outside parties about the appropriateness of ADR in particular circumstances; assisting in ADR process design; facilitating selection of acceptable mediators; and providing direct convening, mediation and facilitation services. Increasingly, this network of in-house ADR consultants collaborates across the Regions to broaden the influence of ADR successes and to assist each other in convening new cases. There appears to be a direct correlation between the availability of ADR-skilled staff to perform these functions and the level of ADR activity within a given Region.

E. Development/Issuance of an Agency-wide ADR Policy

Work has begun to develop a policy addressing the use of ADR at EPA, development of new ADR programs, enhancement of existing ADR programs, and ADR training for Agency staff and managers. This effort will satisfy the requirement of the ADRA that all federal agencies adopt a policy that “addresses the use of alternative means of dispute resolution and case management.” The ADRA requires, as part of the process of drafting an ADR policy, that agencies examine the use of

ADR in connection with: (1) formal and informal adjudications; (2) rulemakings; (3) enforcement actions; (4) issuance and revocation of licenses or permits; (5) contract administration; (6) litigation brought by or against the agency; and (7) “other agency actions.” While EPA has existing policies that address components of these subject areas (e.g., enforcement, procurement), the Agency still has a need for a more comprehensive policy that will address the use of ADR across the Agency’s programs and Regions.

EPA has initiated a two-step process to meet the Agency’s policy needs: (1) issuance of a cross-program interim policy that highlights EPA’s ADR experience and expresses a strong commitment to ADR; and (2) formation of a work group to draft and issue a final Agency-wide policy for appropriate use of ADR within the Agency. It is also anticipated that program-specific guidances will be developed that are consistent with the final Agency-wide policy.

It is anticipated that the interim policy will be completed and published in the Federal Register in the next few months. The more comprehensive policy, incorporating several component parts, is expected to be complete by the end of the year 2000.

F. New Neutral Services Contract

In February 1999, the Agency awarded a new neutral services contract to Marasco Newton Group, Ltd. The neutral services contract is a vehicle for Agency program offices and Regions to access neutral services for dispute resolution activities such as: convening, conflict or issues assessment, facilitation, mediation, and other services to assist EPA stakeholder involvement activities. Dispute resolution services under the contract may be helpful to Agency personnel engaged in: regulation and policy development, permit issuance, compliance and enforcement actions, EPA workplace and labor disputes, contracts and grants disputes, and voluntary programs such as Project XL and Community-Based Environmental Protection (CBEP). The current projects on the contract are evidence of the broad range of available neutral services. Ongoing projects include use of ADR professionals for policy dialogues, enforcement cases, training design and delivery, and facilitation of public meetings. In an innovative approach, the contract includes “just-in-time” delivery orders which make neutral services for a particular category of disputes available on an expedited basis. Many of the specific ADR activities highlighted throughout this report involved the use of neutrals accessed through the Agency’s neutral services contract vehicle.

The Marasco-Newton contract is a five-year task order contract with a total ceiling of \$ 41,000,000. Although the Marasco Newton contract has been in effect for less than one year, 44 projects with a value of \$4.4 million have already been initiated. A previous neutral services contract averaged approximately 40 new projects each year at a value of \$3-4 million. Projects under the neutral services contract have been funded on an ad hoc basis from program technical support budgets across the Agency. Dependency on program dollars for neutral services ensures that EPA’s program offices are vested in a particular project, although this type of funding mechanism also gives rise to “orphan” projects, *i.e.*, potential projects with merit but no readily available source of funding. The various ADR programs at the Agency continue to look for creative ways to overcome this funding gap.

III. Accomplishments in New Uses for Alternative Dispute Resolution Techniques at EPA

In kicking off the IADRWG in September 1998, the Attorney General urged all federal agencies to put in place at least one new ADR program within a year. EPA has risen to this challenge and within the last year, has introduced ADR techniques in several new areas of Agency practice and administration. The following subsections highlight new ADR initiatives.

A. Headquarters Workplace Dispute Mediation Program

In January 2000, EPA will begin offering mediation as one way to resolve workplace grievances and discrimination complaints at Headquarters. Mediation is a confidential, informal process for bringing disputing parties together with a neutral third party to see if they can work out their own mutually acceptable solution to a problem. The experience of other federal agencies with workplace mediation programs demonstrates that 60% to 70% of discrimination complaints and workplace grievances that are mediated are resolved. This not only saves valuable human and financial resources, but also leads to better employee working relationships and morale. Employees give up no rights by trying mediation. If an acceptable agreement is not reached, the employee still is able to file a formal complaint or grievance. Employees are able to have union, legal, or other representation of their choice during mediation.

The mediation program was designed in 1999 by a team composed of employees and union representatives from Headquarters. This team used the workplace mediation program experience of six federal agencies as a benchmark, and incorporated those agencies' successes in program organization and implementation into the proposed EPA mediation program. EPA expects staff and managers to use the program with confidence.

The first year of implementation will be a pilot period, during which mediation will be offered only for issues that are the subject of discrimination complaints or subject to either the Agency's negotiated grievance or administrative grievance procedures. Expansion of the program to cover additional kinds of disputes will depend on what is learned during the pilot phase. Initially, the mediators will come from the Federal Shared Neutrals Program, which provides, at no direct cost to EPA, federal mediators from other agencies. The team also recommended that EPA develop its own internal corps of collateral duty mediators. This recommendation is based on the finding of other agencies that employees trained in conflict resolution naturally transfer their skills to their regular job situations, thereby producing an incidental positive benefit for the workplace.

During the first year, ADR staff is expected to: (1) conduct considerable promotion outreach to Headquarters staff; (2) train a corps of EPA mediators, union representatives and conflict resolution coordinators; and (3) oversee 30 to 40 mediations. While the pilot program focuses on disputes at Headquarters, all EPA Regions are preparing to offer mediation for discrimination complaints beginning in January 2000, in accordance with recently revised Equal Employment Opportunity Commission regulations. Headquarters staff will work with the Office of Civil Rights to support the Regions' mediation efforts and to share lessons from Headquarters experiences.

B. Use of ADR Techniques to Support EPA's Environmental Justice and Title VI Programs

The Senior Counsel for Alternative Dispute Resolution, the Office of Civil Rights (OCR), and the Office of Environmental Justice (OEJ) have been working together to explore ways to use ADR techniques in addressing environmental justice and matters arising under Title VI of the Civil Rights Act of 1964. The goal of this collaboration is to design and test the effectiveness of ADR techniques in responding to and resolving conflicts that arise between the Agency and outside stakeholders or amongst outside stakeholders (e.g., state authorities and communities) on matters relating to environmental justice.

OCR receives formal administrative complaints alleging discrimination by a recipient of EPA's financial assistance. A regulatory program administered by OCR governs the processing of such complaints. OEJ frequently receives informal complaints or allegations of environmental injustice relating to EPA's direct programs and activities. OEJ does not currently offer a process for addressing informal environmental justice complaints. Despite differences in the procedural approaches at OCR and OEJ, there are similarities in the disputes that underlie the complaints received by these two offices. Thus, recent work has focused on designing pilot programs that can be used to test the use of ADR in these types of disputes generally. An example of a recent accomplishment in the Title VI area is described below.

Resolution of Title VI Complaints: Pilot Program

Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination based on race, color, or national origin under the programs or activities of recipients of federal financial assistance. Individuals or organizations who believe that an EPA financial assistance recipient has acted in a discriminatory fashion may file a Title VI complaint with EPA. If the complaint meets the criteria for accepting a complaint for investigation provided in EPA's Title VI implementing regulations, EPA's Office of Civil Rights (OCR) must conduct an investigation and make a determination of whether the recipient is in compliance with EPA's Title VI regulations. This can take months or years to complete.

Consequently, the Agency is now faced with a growing backlog of Title VI administrative complaints. Currently, OCR has over 40 complaints either accepted for investigation or pending an acceptance decision. EPA's regulations state that OCR shall attempt to resolve Title VI complaints informally whenever possible, and for at least some of these cases, ADR may be appropriate. EPA wants to encourage informal, non-adversarial approaches to dealing with Title VI problems wherever possible.

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Title VI Pilot Program (cont'd)

Two examples from this past year illustrate the application of ADR techniques to pending Title VI complaints. In one case, a community organization in Connecticut charged the Connecticut Department of Environmental Protection with improperly siting and permitting a landfill. EPA Region 1 provided a mediator who assisted the community organization, the State, and the developer of an urban renewal project to reach an agreement that the negotiating parties felt was a fair way to proceed. In the second case, EPA Region 9 hired a neutral third party to do an initial objective assessment of a complaint made by a community association in California against the California Department of Toxic Substance Control. The third party was also asked to determine the willingness of the parties to participate in an initial meeting to discuss the possibility of using a mediated process for resolving the controversy. The neutral's report provided the Region and the involved parties with a better understanding of the situation and each others' concerns and interests. Even though there was no agreement to attempt to resolve the complaint through mediation or any other facilitated problem-solving process, the Region found the effort worthwhile.

OCR is actively working with the Regions to identify additional opportunities to use ADR for Title VI complaint resolution. The Office has established and funded a task order under the Agency's Neutral Services Contract that will provide resources to support the use of ADR in approximately three more Title VI complaints over the coming year.

C. Use of ADR Techniques in Permitting Programs

One of the areas that EPA has targeted as a potential new forum for application of ADR techniques is permitting. The ADRA specifically requires that an agency examine alternative means of resolving disputes in connection with issuing and revoking permits. In addition, EPA is committed to continued development and use of meaningful public participation processes during environmental permitting. The use of collaborative processes to enhance public participation opportunities during permitting activities may assist the Agency in meeting some of its objectives for the next generation of environmental permitting. Work in this area to date has focused on the role of public participation, and in particular, examining ways to improve participation by communities during the permit process. An example of this work in the context of a rulemaking that will trigger air permitting activities is highlighted below.

Tier 2 Permitting Implementation Project

The Office of Air and Radiation (OAR) and ADR staff are cooperating on a project that employs an ADR technique in preparing for future permitting activities associated with the Tier 2 Motor Vehicle Emission Standards and Gasoline Sulfur Control Requirements rule (Tier 2). Tier 2 is a major regulatory program designed to reduce significantly emissions from cars and trucks nationwide. One component of this regulatory program is new standards for the sulfur content of gasoline. Many refineries will need to make operational changes or capital investments in new technology in order to meet the new gasoline sulfur standards. Consequently, such changes may trigger permitting obligations for the refineries under the Clean Air Act.

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Tier 2 Permitting Implementation Project (cont'd)

EPA engaged dispute resolution professionals to conduct a convening in an effort to engage a broad spectrum of stakeholders as the Agency considers what policies will govern refinery permitting under Tier 2. The dispute resolution professionals have been tasked to conduct interviews with stakeholders to explore with them their perceptions and views of issues associated with Tier 2 permitting. During Phase I of the project, completed in September 1999, the contractors contacted representatives from selected EPA offices, states, industry, environmental groups, and environmental justice organizations. Phase II of the project will consist of more focused interviews to assess the potential for a collaborative process among stakeholders and to identify what services community groups in particular need to effectively participate in a potential future permit process.

The goal of this project is to assist EPA in understanding and ultimately meeting the challenges of implementing the portion of the Tier 2 rule that applies to refineries. EPA is anticipating the potential for a concentrated period of permitting activities at refineries nationwide and wants to ensure that these activities will be a success, such that the health and environmental benefits associated with low-sulfur gasoline can be realized in a timely fashion. The Agency hopes that stakeholder involvement in the development of Tier 2 permitting policy and planning for future permitting activities will yield better results for the refineries, the permitting authorities and surrounding communities.

D. ADR Use in Brownfields Pilots

A program of the Office of Site Remediation Enforcement (OSRE) within the Office of Enforcement and Compliance Assurance (OECA) has employed an ADR technique called facilitation at several Brownfields sites as part of a pilot project over the past year. Brownfields are abandoned, idled, or under-used industrial or commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. The purpose of the facilitation pilot is to increase and enhance community involvement in the decision making process for Brownfield site assessment projects.

Facilitation is a voluntary, informal, and flexible process of communication guided by a professional neutral. Facilitators can identify stakeholders and issues, clarify roles and responsibilities, draft procedural guidelines and agendas, and document decisions. The Agency has found that using neutrals in a facilitation role has provided a better understanding of stakeholder needs and concerns and opened up a forum for proposing solutions.

Region 8 Brownfields Pilot Project

At the initiation of a Regional project manager, key stakeholders engaged in a series of facilitated collaborative problem solving meetings in order to discuss alternative clean-up strategies and potential future land uses at a Brownfields site in Region 8. The Region employed a team of facilitators to identify the stakeholders and facilitate the meetings. Although each party to the process came in with their own interests, they agreed to explore ways to address the interests of other parties. A key role of the facilitators was to keep the parties talking and focused on the potential gains of a collaborative solution. In the end, a new vision for redevelopment of the site emerged, along with agreements for implementation of that vision. Each party's contribution to the final solution was critical to the overall success of the remediation and redevelopment plan.

Region 3 Brownfields Pilot Project

A Brownfields facilitation pilot project in Region 3 is taking place in a rural setting. The facilitators have helped a community steering committee undertake a visioning process for the future of a Brownfields site. This visioning culminated in a proposal developed by the committee that offers a great deal of promise for the future of the community. The facilitated planning work also paid significant dividends in terms of overall public participation. The first public meeting regarding this site not only generated a great deal of local interest but also served as an opportunity for cooperation among local, state, and federal government entities.

The Brownfields facilitation pilot consists of projects at ten specific Brownfields sites representing a diverse range of redevelopment projects and communities across the country. A dispute resolution professional has been engaged to work with the parties and public at each site as a facilitator. For most projects, the facilitation work is limited to 120 hours. Each project has approached the facilitation process in a unique way so as to best address the dynamics of the particular site. While each of the projects are at a different stage, EPA is already finding that lessons from these pilots may be applicable to the Agency's approach to community involvement in the Brownfields program generally. Three examples of the Brownfields facilitation pilots are described in the boxes on these two pages.

Region 9 Brownfields Pilot Project

A facilitation pilot was initiated in Region 9 when the Brownfields project manager approached Regional and Headquarters ADR staff seeking assistance in the handling of a difficult situation at a Brownfields project site. One landowner appeared to be creating an intractable obstacle to remediation and redevelopment efforts. The services of a professional facilitator helped clarify options and reestablished communications between participants at this site. Ultimately, the difficulties presented by the landowner were overcome and a redevelopment plan was generated in which the jurisdiction of the Brownfields project was shifted and doubled in area. After EPA's funding hours for the facilitator were consumed, the parties independently agreed to cover the costs of continued facilitation services -- a true measure of success for this facilitation pilot.

IV. Accomplishments in Existing ADR Programs

A. Recent Highlights of Existing ADR Programs at EPA

EPA has a rich history of using ADR techniques for conflict resolution among Headquarters offices and in all ten Regions. This section of the report contains highlights of EPA's mature ADR programs, presented in five categories. While each program is different in terms of its operations and purpose, all have embraced the value and utility of neutral services to advance EPA's environmental objectives. First, over fifteen years ago, EPA began experimenting with regulatory negotiation and other consensus-building techniques for developing better regulations that can be implemented in a less adversarial setting. That work provided a foundation for several other Agency programs devoted to stakeholder involvement. Second, an enforcement ADR program has been in existence for more than ten years to promote and facilitate the consideration and appropriate use of ADR techniques in all Agency enforcement actions. Third, each of the Regions has supported a variety of ADR activities, including applications in enforcement, workplace disputes, and public involvement. Fourth, EPA's Administrative Law Judges (ALJs) recently initiated a program to offer in-house ADR to parties in cases pending an administrative hearing. Fifth, contracts and procurement officials have incorporated ADR usage into a standard policy in EPA's acquisition management program.

The successes of these programs over time have contributed to EPA's status as a leader in the use of ADR in the federal sector. The existing programs have also established a foundation for new uses of ADR to achieve the Agency's programmatic and administrative goals. Many Agency personnel have had exposure to ADR through one or more of these programs. The resulting wealth of expertise makes the Agency particularly well-positioned to address new challenges.

The following program summaries and highlights focus on ADR practices at the Agency that have been in existence for longer than one year.

1. Stakeholder Involvement Activities

EPA has taken steps over several years to increase the opportunities for and quality of stakeholder involvement. Three existing programs are worthy of particular note for incorporating ADR techniques as tools to enhance stakeholder involvement. The Office of Cooperative Environmental Management within the Office of the Administrator works with stakeholders through federal advisory committees. The Consensus and Dispute Resolution Program within the Office of Policy and Reinvention has used neutral facilitators in regulatory negotiation and policy dialogue activities. The Community Involvement Program within the Office of Solid Waste and Emergency Response manages a program that uses ADR professionals to assist public participation in EPA decisions regarding remedial activities at Superfund sites. Each of these stakeholder involvement programs is described below.

a. Office of Cooperative Environmental Management

The mission of the Office of Cooperative Environmental Management (OCEM) is to provide EPA with expert and timely stakeholder advice as national and international environmental policy is

developed and implemented. OCEM utilizes ADR techniques such as convening and facilitation in fulfillment of its mission. One of OCEM's principal functions is the oversight of federal advisory committees under the Federal Advisory Committee Act (FACA). Through advisory committee work and other efforts, OCEM supports EPA's efforts to create links among decision makers from diverse disciplines and to make use of technical and policy experts in addressing key environmental issues.

b. Consensus and Dispute Resolution Program

The Consensus and Dispute Resolution Program provided leadership in the stakeholder involvement arena by introducing the use of negotiation and other consensus-building techniques in

Convening Supports Policy Dialogue

The convening of the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC) is one recent example of where neutrals were used to enhance stakeholder involvement in a policy dialogue on an issue of importance to EPA. Dispute resolution professionals were hired to conduct a convening assessment to identify major stakeholder interests and to assist all of the major stakeholder interests in sorting through a number of issues regarding the formation of the proposed EDSTAC. The dispute resolution professionals engaged in an extensive consultation with representatives of affected interests through telephone and in-person interviews, numerous conference calls, and facilitated discussions with approximately 100 people. Ultimately, the professionals made recommendations regarding the make-up of the EDSTAC and initial goals for the committee. The result of the convening effort was a broad-based membership for EDSTAC, consisting of EPA, other federal agencies, state agencies, various sectors of industry, water providers, worker protection organizations, national environmental groups, environmental justice groups, public health groups, and research scientists. The diverse interests represented on the EDSTAC were part of an effort to ensure that all major stakeholder groups had their views and interests balanced against the views and interests of others as the committee adopted a consensus approach to policy development.

the rulemaking context. Since 1983, the Consensus and Dispute Resolution Program has run seventeen regulatory negotiations and several policy dialogues between the Agency and stakeholders. In addition, the Consensus and Dispute Resolution Program provides consultation services to program offices on the design and implementation of policy dialogues, consensus-building meetings, and other intensive stakeholder involvement processes. Neutral facilitators have been employed in several of these projects. As a result of the efforts of the Consensus and Dispute Resolution Program, informal and formal stakeholder involvement in the Agency's rulemaking activities is virtually standard practice throughout the Agency. Active stakeholder engagement in the development of Agency rules and policy has yielded tangible results such as fewer and more moderate public comments and speedier implementation of regulatory requirements.

c. Community Involvement Program

The Community Involvement Program within the Office of Solid Waste and Emergency Response (OSWER) manages the use of dispute resolution professionals to assist the participation of the affected public in Agency decisions relating to Superfund remedial activities. A variety of initiatives are currently supported by the Community Involvement Program, including the availability of facilitation or mediation services on a "just-in-time" basis to address specific site

problems or general concerns about the Superfund program. In addition, the Program has sponsored training courses in each Region to enhance the ability of EPA staff to build partnerships and collaborate constructively with people who live and work near Superfund sites. Finally, a network of ombudsmen, including the National Hazardous Waste Ombudsman and ten Regional Superfund Ombudsmen (who serve on a collateral duty basis), has been established to provide timely assistance to people who are not satisfied with a particular action or activity under the Superfund program. The ombudsmen do not have authority to change decisions, but they will work with the parties to see if a mutually acceptable resolution can be reached.

2. Enforcement

EPA's Office of Enforcement and Compliance Assurance (OECA) manages an enforcement ADR program that supports and encourages the use of ADR in Agency civil enforcement and compliance activities. Since 1987, EPA has had a policy on the use of ADR techniques in enforcement actions. The staff of the OECA ADR program has worked to make the consideration of ADR standard practice in enforcement cases. The OECA ADR program includes staff at both Headquarters and in the Regions who provide dispute resolution services, training, assistance in evaluating civil actions for appropriate ADR use, assistance in selecting ADR professionals, preparation of procurement documents, and reporting on OECA ADR activities.

The OECA ADR program uses ADR techniques to enhance the settlement of civil actions under a broad range of authorities, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act (TSCA), the Clean Water Act (CWA) and the Clean Air Act (CAA). Civil actions are assisted primarily through the use of convening and mediation neutrals, although other ADR processes including factfinding and arbitration have also been used. EPA utilizes ADR professionals to support efforts of private parties to resolve Superfund site allocation disputes and to facilitate public participation in site remedy and policy decisions. In addition, EPA includes ADR processes in the dispute resolution provisions of administrative and judicial settlement documents.

Multimedia Civil Penalty Settlement

One success story of note from the OECA ADR program involved a mediated settlement of a multimedia civil penalty case brought against a large pharmaceutical manufacturing facility located in Region 1. The case involved alleged regulatory violations of RCRA, the Clean Water Act, and the Emergency Planning & Community Right-to-Know Act. The parties to the case were facing potentially lengthy litigation when they agreed to consider ADR. The parties ultimately engaged in a blended ADR process, including a neutral evaluation phase and a mediation phase. The parties reached a settlement, which was ultimately formalized in a consent decree, under which the respondent company agreed to pay a substantial penalty in addition to undertaking two projects to address chemical waste management at a university and in high schools. By resolving their dispute in mediation, both sides saved time and money that would otherwise have been devoted to litigation. In addition, the positive experience of working together to resolve this dispute is likely to improve the relations of the parties in the future. Finally, the mediated approach made it easier to deliver a benefit to the broader community than would have been possible through a litigated resolution.

Over the last few years, the OECA ADR program has witnessed a significant increase in the number of ADR activities initiated. In the early years the program initiated a handful of new ADR cases each year, but in fiscal year 1997, approximately 30 new cases began. In fiscal year 1998, approximately 40 cases were initiated. Historically, most enforcement ADR activity was in the

ADR Yields Settlement in Hotly Contested Penalty Case

Another OECA ADR program success story yielded a settlement of alleged RCRA violations in a case that appeared to be headed for litigation. A Region 6 manufacturing facility and EPA became engaged in an intense disagreement regarding whether a particular treatment and disposal process constituted a violation of hazardous waste regulations. Further, the parties were very far apart during preliminary discussions regarding a potential penalty amount. The company proposed that the parties enter into mediation to attempt to resolve the outstanding issues. After a one day mediation with an outside professional mediator, it appeared that there would be no settlement of the case. A day or two later, however, the company called the mediator with a settlement offer and asked for his assistance in brokering an agreement. Ultimately, the parties agreed on a penalty amount, a payment schedule, environmental monitoring, and a change in the company's treatment and disposal practices.

Superfund context, and this area continues to be a focus of the OECA ADR program. More recently, however, the OECA ADR program has seen creative uses of ADR techniques in settling non-Superfund disputes. The potential for ADR use outside of the Superfund program is tremendous and will

be a growth area for the OECA ADR program in the near future. For example, half of the enforcement ADR cases initiated in fiscal year 1998 were non-Superfund cases, up from about 20% non-Superfund in fiscal year 1997.

3. Regional Activities

The Regions are responsible for many innovations in the use of ADR at EPA and demonstrate that ADR has a broad spectrum of applications. The Regional ADR programs vary widely in form, however, a few themes emerge as nationally consistent trends. First, ADR use in the Regions is more established in Superfund than in any other program. Second, ADR awareness is on the rise as the Regions, with Headquarters support, are finding new and more targeted ways to educate regional staff about this set of tools. Third, the Regions are developing useful new models by mixing and matching ADR techniques to meet the needs of particular circumstances. Each of these points is discussed briefly below.

a. Prevalent Use of ADR in Superfund

The process of integrating the use of ADR into regional practice began in the Superfund program in the early 90's. With funding and contracting assistance from Headquarters, this evolution has now progressed to the point where the consideration of ADR is virtually standard operating procedure in some Regions. In addition to mediated enforcement negotiations, the Regions are employing neutral facilitators, neutral allocators, ombuds, and partnering consultants to more effectively involve communities and other stakeholders in remedy decisions.

Community Facilitation in Superfund Dispute

In a case from Region 1, community dissatisfaction with the traditional Superfund process prompted EPA to use ADR techniques to create new mechanisms to involve the community and other voices. These efforts yielded solutions acceptable to all parties. For more than 70 years, a manufactured gas plant dumped large amounts of waste into adjacent wetlands and a canal, seriously contaminating groundwater and posing an unacceptable risk to wildlife. EPA's original cleanup plan for the site was met with strenuous community opposition for being too expensive and intrusive. After months of controversy, a site Coordinating Council was created as a way to begin a mediated process that would ensure meaningful involvement of all parties, including companies potentially responsible for the cleanup, state and federal regulatory agencies, and local interests. Outside dispute resolution professionals were hired to facilitate Council activities. Ultimately, the Council reached consensus on a recommendation for an alternative site cleanup plan that met local and regulatory needs -- all at a cost of about one-tenth the original proposal. EPA's final remedy decision adopted the Council's recommendation.

b. Regional ADR Training: The Targeted Approach

The Regions are collaborating with Headquarters, Regional training staff, Federal Executive Board Neutral Sharing Programs, and professional organizations such as local bar associations and the Society of Professionals in Dispute Resolution, to provide Regional staff with multi-faceted ADR training opportunities. Regional staff have been working with outside professionals to develop training programs with relevance to particular EPA audiences. Examples of recent training initiatives from some Regions include:

- ADR case presentations/discussions to promote awareness of new applications of ADR in specific contexts (tribal issues, community controversy, access disputes, regulatory penalty mediation, etc.)
- training (provided by Regional trainers) on the use of interest-based problem solving as a technique for organizational success and a method for improving collaborative decision making;
- intensive mediation and facilitation programs for those who are more directly involved in regional ADR activities; and
- the inclusion of mediation and collaborative decision-making components in broader trainings such as the negotiation training offered to Regional wetlands staff which significantly incorporated ADR principles and role plays.

c. Development of New ADR Models

The Regions have found that one of the most attractive features of ADR in the environmental context is its adaptability to the infinitely varied requirements of particular circumstances and parties. In designing appropriate processes on a case-by-case basis, certain templates are emerging which have relevance to whole categories of situations faced by the Regions.

An example is what might be called the “mediative facilitation,” that is, the use of a facilitator who is also a skilled mediator. This phenomenon has sprung up independently on both coasts in response to situations where parties are apprehensive about the idea of mediation, but anxious to have help managing their meetings. By providing a facilitator who is also an experienced mediator, the Regions have maximized the possibility that the group will receive the fullest benefit of ADR. Other hybrids involving a mix of facilitative and evaluative components have also been devised to advance settlement negotiations in unusual circumstances.

Using ADR to Consult with Stakeholders

A recent example of Regional creativity in addressing program needs through use of ADR techniques occurred in Region 3, where the contracts office worked with the Regional ADR specialist and a representative of the Water Protection Division to quickly assemble a team of mediator/facilitators for a Source Water Protection Program Roundtable conference. The roundtable brought together many stakeholders involved in the problem of protecting drinking water sources. Led by the professional neutrals, the stakeholders participated in a consultative process, the results of which ultimately fed into the development of policy and guidance on this subject.

Federal, State, Local Agencies Use ADR to Reach Agreement on Air Program

One successful application of mediative facilitation in Region 9 involved the negotiation of guidelines governing the development of operating permit conditions that satisfy the “periodic monitoring” requirements of Title V of the Clean Air Act. A Region 9 employee, serving as an in-house neutral, facilitated an agreement between EPA, the California Air Resources Board, and local air quality districts. The process began with a series of interviews to synthesize the interests, issues, and ideas from each participant. Following this initial step, the parties held a series of meetings during which the facilitator helped representatives of the various regulatory authorities come to a consensus-based agreement on the framework and criteria for a set of guidelines. During the meetings, the facilitator helped move the parties away from mere reiteration of their positions and towards an objective review of the problem and identification of common interests. The result was a jointly crafted set of recommendations that satisfied all of the participants and will provide a basis for avoiding future disputes on Title V permit conditions pertaining to periodic monitoring.

ADR Assists Labor-Management Relations in Region 9

The Regions have also found ways to incorporate ADR use as a means of addressing organizational challenges. For example, in designing a Labor Management Partnership Council (LMPC) for Region 9, union and management representatives agreed to use the interest-based process as one of the methods for addressing issues. They also agreed that the services of a neutral facilitator would be helpful. The facilitator, who is currently a Region 9 employee, has delivered training to the LMPC on the use of an interest-based process for conducting Council business and assists members in moving through a wide variety of issues that are before the LMPC. The interest-based model differs from traditional party-to-party negotiation in that it enhances the opportunities for the participants to develop creative solutions that address all stakeholder interests and does not presume that interests must be compromised in order to resolve a problem.

4. ALJ Program

Beginning in fiscal year 1997, the Office of Administrative Law Judges (OALJ) developed an ADR program as an alternative method for concluding administrative enforcement cases pending before OALJ. In the initial year of the ADR program, the Judges applied ADR in about 50 test cases. This test proved so successful that OALJ sharply expanded its use of ADR in fiscal years 1998 and 1999. ADR techniques were used in over 150 cases in each of the last two years. Current policy is to offer the use of ADR in virtually all of the cases that come under the jurisdiction of OALJ.

The form of ADR that OALJ uses is mediation, generally facilitative, and sometimes evaluative. One of OALJ's ten Judges serves as the neutral. If the ADR process does not produce a settlement, the case is transferred to another Judge to preside over litigation which culminates in a decision from the Presiding Judge. There is no communication about the case between the neutral Judge and the Judge who presides over the litigation; the ADR proceedings are held in confidence by the neutral Judge.

OALJ offers ADR in cases under a variety of environmental statutes, including the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the Emergency Planning and Community Right-to-Know Act. Most cases coming before OALJ are governed by EPA's Consolidated Rules of Practice in 40 C.F.R. Part 22. Section 18 of these regulations were recently amended to facilitate the use of ADR.

ADR Use by EPA's Administrative Law Judges

A recent case from the OALJ program illustrates several recurrent themes. This case involved a governmental Respondent. EPA and local inspections of Respondent's facilities led to EPA's issuance of several complaints alleging numerous violations of the Resource Conservation and Recovery Act, demanding civil penalties approaching a million dollars, and the implementation of extensive corrective measures.

Judge Stephen McGuire served as the neutral and worked entirely through teleconferences. When the ADR began, the positions of the parties seemed unbridgeably far apart, with little common ground. Judge McGuire started by focusing the parties' attention on possible points of agreement that could be extracted from this limited common ground. To keep the discussions moving, Judge McGuire scheduled weekly teleconferences and regularly assigned the parties preparatory work to be done for the next week's teleconference.

Agreement on minor points arising out of the parties' limited common ground was eventually achieved. This achievement created a sense of joint purpose between the parties. According to the later testimony of the parties themselves, imbued by this sense of joint purpose they each stopped focusing on advocating their own position, and started to concentrate on understanding the goals of the other side and addressing its concerns. Here the parties were aided by periodic evaluations by the Judge McGuire of the merits of their respective positions.

After almost half a year of teleconferencing, the parties agreed to settlements concluding all the enforcement cases. The civil penalties that were agreed to totaled less than a hundred thousand dollars, but Respondent agreed to implement corrective measures that would improve significantly its hazardous waste handling and storage practices. Respondent came to view adoption of these corrective measures as representing very much its own self interest. Thus the ADR process both saved the parties the time and expense of a litigated hearing, and also produced an end result that each side saw as answering its basic concerns.

OALJ tested the use of ADR in fiscal year 1997 in the hope that it would speed OALJ's processing of cases. Administrative litigation is usually a lengthy procedure. Each of the normal steps leading to the Presiding Judge's decision – making motions, filing briefs, convening a hearing, examining and cross examining witnesses – takes time and effort. By contrast, a mediation process in which the parties are encouraged to exchange views informally and then try to develop a compromise resolution that answers some of the basic interests of both parties, is generally much faster and less resource intensive.

As the OALJ mediation program has gained maturity, a second benefit has appeared, i.e., the ability to implement creative resolutions, such as those involving environmentally beneficial projects undertaken by the respondent. In a case that is litigated, usually the only sanction that a Judge can impose is a civil penalty. Furthermore, that civil penalty goes into the federal treasury and is not earmarked for environmental purposes. Through mediation, however, the parties might agree to a reduced civil penalty if the respondent implements a project that benefits the environment and is beyond what is required by environmental law. Such projects are known officially as Supplemental Environmental Projects (SEPs). Typically, a respondent spends significantly more money on a SEP than the reduction it receives in the civil penalty. Thus, the mediation process opens up opportunities to craft resolutions with tangible environmental benefits.

The ready availability of ADR through the efforts and procedures of OALJ enhances the visibility of ADR both within EPA and the regulated community. In addition, OALJ's ADR program contributes to the efficiency of EPA's administrative enforcement practice and provides an incentive for seeking enhanced environmental benefit in administrative enforcement cases.

5. Contracts and Procurement

EPA's efforts to pursue the use of alternative dispute resolution techniques in the contracts and procurement operations of the Agency are led by the Office of Acquisition Management (OAM), in coordination with the Office of General Counsel. OAM has issued a formal written policy governing the use of ADR techniques in connection with Agency-level protests, protests filed with the General Accounting Office, and disputes filed in accordance with the Contract Disputes Act. OAM has further pledged to advance the use of ADR techniques in all areas of EPA's contracting nationwide. During 1999, OAM staff, along with attorneys from the Office of General Counsel developed an alternative dispute resolution awareness training course to be incorporated into the contracting officer course curriculum. OAM has an objective to begin delivery of the course to all Agency contracting officers during fiscal year 2000.

V. Partnerships with Other Federal Agencies

A. Interagency Agreements with the U.S. Institute for Environmental Conflict Resolution

The U.S. Institute for Environmental Conflict Resolution (Institute) is a newly-created federal agency that operates under the Morris K. Udall Foundation located in Tucson, Arizona. The Institute's role is to assist in the resolution of environmental conflicts that involve a federal agency or interest. The Institute has specialized expertise with ADR techniques used in the environmental arena and maintains a network of programs and dispute resolution practitioners nationwide that can be employed for conflict resolution projects. EPA supports the Institute's role and plans to work closely with the Institute as a federal sector partner. Currently, the Agency is engaged in three initiatives with the Institute through interagency agreements. These initiatives are described in the sections that follow.

1. Development of the Environmental ADR Neutrals Roster

Over the past few years, EPA has been exploring mechanisms to broaden access to ADR practitioners for environmental disputes. The Agency is especially interested in increasing its capacity to utilize well-qualified practitioners in localized disputes. Through an interagency agreement, the Agency has engaged the Institute to help develop a roster of Environmental Dispute Resolution and Consensus Building Professionals. The roster will include practitioners with experience as neutrals on environmental issues. It will serve as a resource for the Institute in making referrals and sub-contracting with practitioners on federal projects and as a resource for federal agencies when seeking to contract with a practitioner.

The Institute developed criteria for inclusion on the roster and designed the function of the roster database with input from a workgroup including EPA personnel. The Institute will administer the roster, including the review of applications from professionals who desire to be included in the roster. The initial application period for inclusion on the roster ran through the fall of 1999. EPA should be able to gain access to the roster early in calendar year 2000.

2. EJ/Title VI Stakeholders Training Initiative

Controversies involving environmental justice (EJ) and discrimination complaints under Title VI of the Civil Rights Act of 1964 (Title VI) can arise at any stage of a federal action. Experience has shown that the use of collaborative problem solving as early as possible is effective in resolving other kinds of disputes. ADR is an important, but as yet largely unexplored, tool for bringing about constructive resolution of EJ and Title VI matters. As discussed above in Section III.B. of this report, application of ADR in Title VI and EJ contexts is a priority for the Agency's ADR program and initial efforts are underway to address this need. In order to build capacity for ADR use in these disputes, the Senior Counsel for ADR in cooperation with EPA's Office of Environmental Justice, Office of Civil Rights, and representatives from selected EPA Regions will work with the Institute to develop a training module to introduce a broad spectrum of stakeholders to ADR techniques and their potential use in the EJ/Title VI context.

This project has been funded through an interagency agreement with the Institute, and will include delivery of a culturally sensitive training course for a diverse group of stakeholders. After

delivery of the training, the Institute and EPA will jointly review the findings, the lessons learned and will evaluate the training to measure the increased awareness of the participants of the application of ADR techniques to EJ and Title VI disputes. The Institute and EPA will jointly develop and contribute to a presentation of this information to EPA staff with responsibility for EJ and Title VI issues.

3. ADR Specialists Consulting and Convening Training

EPA's regulatory responsibilities require that staff level enforcement personnel negotiate with regulated industry in an effort to resolve civil enforcement actions where appropriate to avoid the delay and expense of litigation. A negotiation resource of increasing importance to EPA enforcement and compliance negotiations is the use of ADR techniques. While EPA often makes use of third-party neutrals to serve as mediators and/or facilitators, complex negotiations involving large numbers of parties, highly technical issues, and/or intergovernmental disputes require in-house expertise to help initiate and sustain an ADR process. EPA's Enforcement ADR Specialists provide consultation to EPA negotiators regarding the nature of an ADR process. In addition, the Specialists may need to engage external parties. The Institute is developing an advanced training program for EPA Enforcement ADR Specialists that will focus on consulting and convening skills that can be applied both within EPA and with external parties.

B. EPA Mentoring Activities

Through the activities of the Interagency Alternative Dispute Resolution Working Group (IADRWG), EPA has had several opportunities to serve as a mentor to and receive mentoring from other federal agencies. The Civil Enforcement Section of the IADRWG established consultation teams that served as consultants to federal agencies working on establishing and developing civil enforcement ADR programs. The multi-agency teams were led by EPA and provided services to several individual agencies. EPA was also the recipient of advice regarding the development of ADR programs in areas other than civil enforcement. Specifically, EPA has benefitted from the expertise of other agencies with mature workplace ADR programs. The mentoring relationships that EPA has been involved in have strengthened EPA's relationships with other ADR practitioners in the federal sector, and have enriched the Agency's own ADR work.

C. EPA Participation in Federal Shared Neutrals Program

The Federal Shared Neutrals program is a service through which federal agencies can obtain low cost, high quality mediators from other participating agencies. The mediators in the program provide mediation services throughout the federal government on a collateral duty basis. EPA participates in this program by both supplying EPA employees who serve as mediators and by using the services of mediators from other agencies to resolve disputes at EPA. The Federal Shared Neutrals Program exists not just in Washington, D.C., but in localities across the country where there is a federal presence. Region 10 participates in a federal shared neutrals program in the Seattle area that was honored earlier this year by the Office of Personnel Management.

VI. Conclusion

EPA's ADR program has achieved significant successes both recently and over the course of its history. The call to action by the President and the Attorney General in 1998 provided a special impetus for organizational and programmatic improvements in the Agency's approach to ADR. During the last year and one half in particular, several new or expanded ADR programs have been launched. These programs will bring ADR techniques to some of EPA's priority areas, such as resolution of workplace complaints and grievances, problem-solving in the areas of Title VI and environmental justice, and new methods of ensuring meaningful public participation in permitting and site redevelopment processes. Meanwhile, EPA's more established ADR programs continue to demonstrate success through the use of collaborative processes in a variety of contexts. Finally, EPA has begun to take advantage of partnerships with other federal agencies as an efficient means of expanding capacity for ADR applications throughout the federal sector. All of these activities are a credit to the Agency's willingness to use innovative tools such as ADR to achieve the Agency's broader programmatic and organizational objectives. The lessons learned thus far in EPA's ADR experience provide a foundation for a more complete assessment of how use of third party neutrals may improve Agency decision making and prevent and resolve conflict.