

# Environmental Collaboration and Conflict Resolution

Eighth Annual Report

April 2014

DRAFT



U.S. Department of Energy

## **EXECUTIVE SUMMARY**

The September 7, 2012 Memorandum on Environmental Collaboration and Conflict Resolution (ECCR Memorandum) issued by the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) supersedes an OMB/CEQ joint memorandum issued in November 28, 2005, on Environmental Conflict Resolution and broadens the efforts called for under the 2005 memorandum by explicitly encouraging appropriate and effective upfront environmental collaboration to minimize or prevent conflict. The ECCR Memorandum defines ECCR as “third-party assisted collaborative problem solving and conflict resolution in the context of environmental, public lands, or natural resources issues or conflicts.”

Recognizing the role of collaboration in conflict resolution and its history of collaborative approaches, both with and without third-party neutrals, to prevent or resolve environmental conflicts, the Department of Energy (Department or DOE) defines ECCR more expansively than the ECCR Memorandum. The Department defines ECCR as the use of any collaborative process to prevent or resolve environmental conflicts, whether or not the process involves the use of third-party neutrals. This definition is consistent with the spirit of the ECCR Memorandum, which stated the following:

The challenge of implementing Federal policies and programs can often be met with collaborative, constructive, and timely approaches to identify and address affected interests, consider alternatives, and reach solutions before different positions or opinions result in conflict. Collaborative efforts involving the public and policy and program coordination within and across multiple levels of government are important for addressing these challenges.

Thus, this annual report, prepared pursuant to section 4(g) of the ECCR Memorandum, presents information on the Department’s use of third-parties and other collaborative problem solving approaches in 2013.

In Fiscal Year 2013 (FY 2013), 18 DOE sites and program offices reported a total of 40 ECCR cases. Two of these cases involved third-party assistance; both are in progress. Of the 38 ECCR cases that did not involve third parties, nine were completed.

## **I. INTRODUCTION**

### **A. Background**

On September 7, 2012, the Chairman of the Council on Environmental Quality (CEQ) and the Director of the Office of Management and Budget (OMB) issued the Memorandum on Environmental Collaboration and Conflict Resolution (ECCR Memorandum). Section 2 of the ECCR Memorandum defines ECCR as “third-party assisted collaborative problem solving and conflict resolution in the context of environmental, public lands, or natural resources issues or conflicts.”

Due to its long history of using a variety of collaborative problem solving methods the Department of Energy (Department or DOE) defines ECCR more broadly 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.

However, to assure comparability of its data with the CEQ/OMB definition of ECCR, the Department tracks those ECCR cases in which third-party assistance was used, and those in which third-party assistance was not used. This report, required by section 4(g) of the ECCR Memorandum, presents ECCR case data in both categories and describes third-party and non-third-party dispute resolution processes used by the Department in Fiscal Year 2013.

## **B. Report Methodology**

To provide guidance to Federal agencies implementing the ECCR Memorandum, a staff-level interagency ECCR 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 survey template for agency use for this annual report. The Department modified the template to accommodate gathering the data necessary to report separately those DOE cases that used third-party assistance and those that did not. The DOE-modified template is provided as Attachment A.

The DOE template was distributed to points of contact from various programs and site offices throughout the DOE complex. This report contains the information supplied by 18 respondents.

## **II. ECCR CAPACITY BUILDING PROGRESS MADE IN FY 2013**

The Department's sites and programs continued their commitment to the value of ECCR in completing their missions through effective working relationships with their Federal and state regulatory colleagues and community partners. The West Valley Demonstration Project (WVDP) in New York continued its use of third-party neutrals and a professional facilitator in its interactions with the New York State Energy Research and Development Authority (NYSERDA) and the public to remediate the Project site.

The National Energy Technology Laboratory (NETL) recognized that adequate training in working with Native American Indian Tribes would be a particularly important conflict resolution investment for NETL's Environmental Compliance Division. NETL therefor designated a specific Tribal Liaison to focus on this issue for its responsibilities under Section 106 of the National Historic Preservation Act.

The Pantex site in Texas ensured that ECCR-experienced staff members were retained as part of its environmental programs in recognition of their value. These staff routinely interacted with regulatory points-of-contact and stakeholders to maintain effective working relationships established through efforts spanning more than a decade.

Similarly, the Strategic Petroleum Reserve Project Management Office maintained the processes and programs it uses to facilitate internal discussions and collaboration to resolve issues as early as possible in the operation of its locations.

The DOE sites maintain and enhance their awareness of ECCR methods and opportunities through monthly environmental attorneys' conference calls and the annual joint DOE/DOE contractor environmental attorneys training. Twenty-five site and program representatives participated in the training conducted in April 2013.

### **III. INVESTMENTS IN AND BENEFITS OF ECCR**

Formal mechanisms are not used by the Department's programs and sites for tracking their investments in and benefits of their use of ECCR. However, the WVDP acknowledged that the use of a third-party neutral to help parties focus on areas of technical disagreements between them facilitated reaching an interagency consensus on future remediation efforts.

Pantex personnel attributed the continued good working relationship with its regulators, the Texas Commission on Environmental Quality and the U.S. Environmental Protection Agency, and progress in decision making made in 2013 to the earlier involvement of a third-party in FY 2001 and a commitment to ECCR.

#### **A. ECCR Metrics**

Tracking the use and outcomes of ECCR with third-party involvement or ECCR without third-party involvement can be done both qualitatively and quantitatively. In general and for a number of reasons, the Department's programs and sites have no formal mechanisms for tracking their cost savings related to ECCR. However, the Department believes the use of collaborative problem solving without third-party involvement can avoid the following possibilities from arising:

- Costly delays in implementing needed environmental protection measures;
- Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts; and
- Unnecessarily lengthy project and resource planning processes.

In the future, the Department intends to interact with other agencies to determine how to implement cost analysis, in order to qualitatively and quantitatively measure cost savings, and to determine how such metrics can be applied to all ECCR cases.

### **IV. ECCR CASES IN FY 2013**

Respondents reported two ECCR cases in which third parties were involved and 38 ECCR cases in which they were not. Both of the cases involving third parties are in progress. Twelve of the 38 ECCR cases were in a planning context and 18 of the 38 cases involved Federal participants only. Attachment B contains tables depicting the ECCR survey results.

### **V. ECCR CASE EXAMPLE USING A THIRD-PARTY**

In order to proceed with important decontamination and decommissioning work at the WVDP and Western New York Nuclear Service Center (Center), WVDP and NYSERDA embarked upon a joint decision making process for decommissioning and/or long-term stewardship at the

Center. In early 2010, the parties agreed upon Phase 1 to remove a number of highly-contaminated facilities by 2020 at a cost of approximately \$1 billion. Fundamental to the future success of this approach was the agreement between WVDP and NYSERDA to embark upon a specifically tailored ECCR process, involving the services of a third-party neutral, in order to facilitate reaching an interagency consensus on the remaining facilities to be addressed under Phase 2.

Throughout Fiscal Year 2013, this ECCR process (i.e., commonly called the "Phase 1 Study process") has continued with great success. Integral to the Phase 1 Study process was an agreement between WVDP and NYSERDA to split associated costs 50/50. A third-party neutral implements the Phase 1 Study process, which includes a comprehensive public participation component and the retention of Subject Matter Experts and an Independent Scientific Panel to help facilitate interagency consensus on future Phase 2 decisions. Thus far, three working groups have been established in various technical areas. WVDP and NYSERDA have committed to making Phase 2 decisions by 2020 and the ECCR process has kept the parties on-track since the 2010 decision.

Conceptually, WVDP and NYSERDA agreed that the services of a third-party neutral to facilitate reaching interagency consensus on several complex and controversial facilities held the greatest potential for a mutual and timely decision on Phase 2 of the decommissioning of the remaining facilities at the Center. As designed, the third-party neutral has retained and utilized the services of both Subject Matter Experts and an Independent Scientific Panel to assist the overall effort toward facilitating interagency consensus.

Additionally, the third-party neutral has utilized the services of a professional facilitator to moderate all public meetings as part of the associated comprehensive public participation plan. For instance, at the specific request of the public, WVDP and NYSERDA hosted a Climate Change Workshop with several recognized experts providing insight on the future impacts of climate change to Western New York.

The anticipated outcome of this multi-year Phase 1 Study process is mutual and timely decision making by WVDP and NYSERDA on Phase 2 of the decommissioning of the remaining facilities at the Center thereby avoiding lengthy and expensive litigation on the final disposition of the remaining facilities.

The ECCR process is keeping the entire project on-track and helping to avoid any work stoppages due to Phase 2 disagreements. Effective use of ECCR techniques allowed the WVDP to overcome almost 30 years of long-held positions and conflict. As a consequence, the project is on course to reach mutual and final decisions on the ultimate disposition of the Site in 2020.

Finally in a recent matter, ABB Inc. has sued the United States under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for cost recovery concerning the cleanup of a radioactively-contaminated site in Windsor, Connecticut. In 2013, the parties filed a joint motion to stay the litigation until June 2, 2014 so they could engage a mediator. In late 2013, the parties were engaged in seeking to hire the mediator (finally hired in

late January 2014). Additional details on this mediation will be provided in the Department of Energy's 2014 annual report.

## **VI. ECCR CASE EXAMPLE WITHOUT A THIRD-PARTY**

The Carlsbad Field Office submitted a permit modification request to the New Mexico Environment Department (NMED) to propose changes to the design and operation of the Waste Isolation Pilot Project (WIPP) underground facility that would enhance the efficiency of facility operations. The changes were proposed in order to 1) implement an alternative panel closure design that would increase worker safety and reduce costs and impacts to facility operations; 2) change the proposed location of two waste panels to a geotechnically more advantageous location; and 3), provide for enhancements to the volatile organic compound (VOC) monitoring program based on prior operating experience to make the program more efficient, improve the reliability of the data, and provide more program flexibility. Prior to submittal to the NMED, pre-submittal meetings were held with project stakeholders to review, discuss, and gather input on the proposed modification package. This pre-submittal process is a part of ongoing WIPP permitting activities funded as part of operations under the Management and Operating contract for the WIPP project.

Meetings with the stakeholders and the NMED were held during the preparation of and after the submittal of this permit modification to address concerns associated with the proposed changes. As a result, stakeholder comments were evaluated and incorporated as appropriate into the final permit modification submittal to the regulatory agency.

The key beneficial outcome of collaboratively engaging in the pre-submittal meetings was the elimination of obstacles and issues that may have been contentious with the regulator and stakeholders if not afforded an opportunity to discuss the proposed changes before submittal of the permit modification request. The pre-submittal meetings allowed the project to more quickly move forward through the permit modification process.

Informally and collaboratively discussing the technical issues with the regulators and the stakeholders early in the process and formally in the administrative process resulted in three positive achievements:

1. A permit modification containing numerous and complex issues that moved smoothly through the regulatory process.
2. Putting into effect changes that result in a permit and process that is significantly less complex and significantly less costly.
3. Fostering good will and partnership with the regulators and stakeholders that will yield a positive working environment for future permit modifications.

The Oak Ridge Office of Environmental Management and the NNSA Production Office, Y-12 Branch jointly appealed an NPDES permit issued by the State of Tennessee's Department of Environment and Conservation (TDEC) for point source discharges into the East Fork of Poplar Creek. The NPDES permit currently contains a 5 year schedule of remedial actions which are already identified in the Oak Ridge Federal Facility Agreement (FFA), a CERCLA cleanup plan

which covers a time period significantly longer than five years. The parties have been working constructively and collaboratively to both:

- Reach consensus on a cleanup strategy for Poplar Creek; and
- Agree upon the appropriate legal framework for the execution of the cleanup.

Through numerous meetings, workshops and conversations, significant progress has been made. The parties have agreed to the construction of a Water Treatment Facility that should manage the majority of mercury contamination currently leaving the Y12 site. The parties have agreed in the FFA to a schedule for the planning and construction of the Water Treatment Facility, with a host of follow-on actions to test the efficacy of the design and implementation. The parties have also agreed that CERCLA is the appropriate legal regime for all contemplated remedial actions addressing legacy discharges. This progress is in large part attributable to the application of ECCR-like principles to the negotiations and discussions.

## **VII. OTHER NOTABLE ECCR CASES WITH AND WITHOUT THIRD-PARTY USE**

The Los Alamos National Laboratory continued to participate in monthly meetings of the Los Alamos Natural Resources Trustee Council, which consists of the representatives from the State of New Mexico, several nearby Pueblos, and the Forest Service. DOE is one of the two co-lead Trustees and, in that role, contracts for a facilitator to assist the discussions of the trustees during the meetings.

The Idaho Operations Office (DOE Idaho) benefited in FY 2013 through ECCR-based problem solving on a range of issues. Although third-party neutrals were not involved in these issues, reliance on the benefits of collaboration resulted in expeditiously resolving potential conflicts.

Historic properties proposed for possible demolition were considered significant by the State Historic Preservation Office (SHPO). After several meetings between DOE Idaho, the SHPO and a representative from the Advisory Council for Historic Preservation, a preliminary agreement was reached that included mitigative actions to preserve the history of the properties.

Frequent discussions with the State of Idaho regulatory agency resulted in the mutually satisfactory renegotiation and extension of a significant environmental milestone established in a Resource Conservation and Recovery Act consent order due to delays in startup of a new waste treatment facility. Milestones aligned with the consent order were also appropriately modified through the same process. Similarly, DOE Idaho and the Idaho National Laboratory (INL) contractor worked collaboratively with Idaho air quality regulators to define a path forward to upgrade or replace reciprocating internal combustion engines supporting nuclear operations to meet the new Maximum Available Control Technology for Reciprocating Internal Combustion Engines regulation.

State and Federal agencies, community working groups, and DOE Idaho collaborated on developing recommendations for conservation measures – regionally and locally – to protect sage grouse habitat and populations. The recommendations are included in a Bureau of Land Management environmental impact statement to update its plans for managing sage grouse on public lands.

DOE Idaho and U.S. Fish and Wildlife Service (FWS) collaborated to establish the INL Site-wide Migratory Bird Treaty Act Special Purpose Permit that allows DOE to relocate or destroy a limited number of active migratory bird nests if certain criteria are met. The permit accommodates the mission needs of four INL site contractors while minimizing impacts to migratory birds and meeting FWS requirements for protecting them.

The Oak Ridge Environmental Management office continued to progress on implementation of ETTP Historic Preservation Agreement, an excellent example of the principles of ECCR at work in resolving a complex set of issues, and a deeply divided group of stakeholders, over the eventual interpretation of the K-25 facility and surrounding lands.

## **VII. PRIORITY USES OF ECCR**

The Department's sites and program offices used non-third-party ECCR collaboration in the following areas in FY 2013:

- Site remediation, decontamination, and decommissioning;
- Cultural and natural resource protection;
- Hazardous waste facility permit modification and implementation;
- NEPA; and
- National Pollutant Discharge Elimination System and Clean Air Act permit modifications.

## **VIII. COMMENTS AND SUGGESTIONS REGARDING REPORTING**

No comments or suggestions were submitted.

## **IX. CONCLUSION**

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

**Attachment A**

**Modified Department of Energy ECCR Survey**



## FY 2013 Environmental Collaboration and Conflict Resolution (ECCR)<sup>1</sup> Policy Report to OMB-CEQ

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

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

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

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

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

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

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

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

This annual report format below is provided for the seventh year of reporting in accordance with the memo for activities in FY 2013.

We understand that collecting this information may be challenging; however, the departments and agencies are requested to collect this data to the best of their abilities. The 2013 report, along with previous reports, will establish a useful baseline for your department or agency, and collect some information that can be aggregated across agencies. Departments should submit a single report that includes ECCR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2013 ECCR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, prior year synthesis reports are available at <http://www.ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>.

**Site/Program name:**

**Name and Title/Position of person responding:**

**Office of person responding:**

**E-mail address:**

**Phone number:**

**Date report is being submitted:**

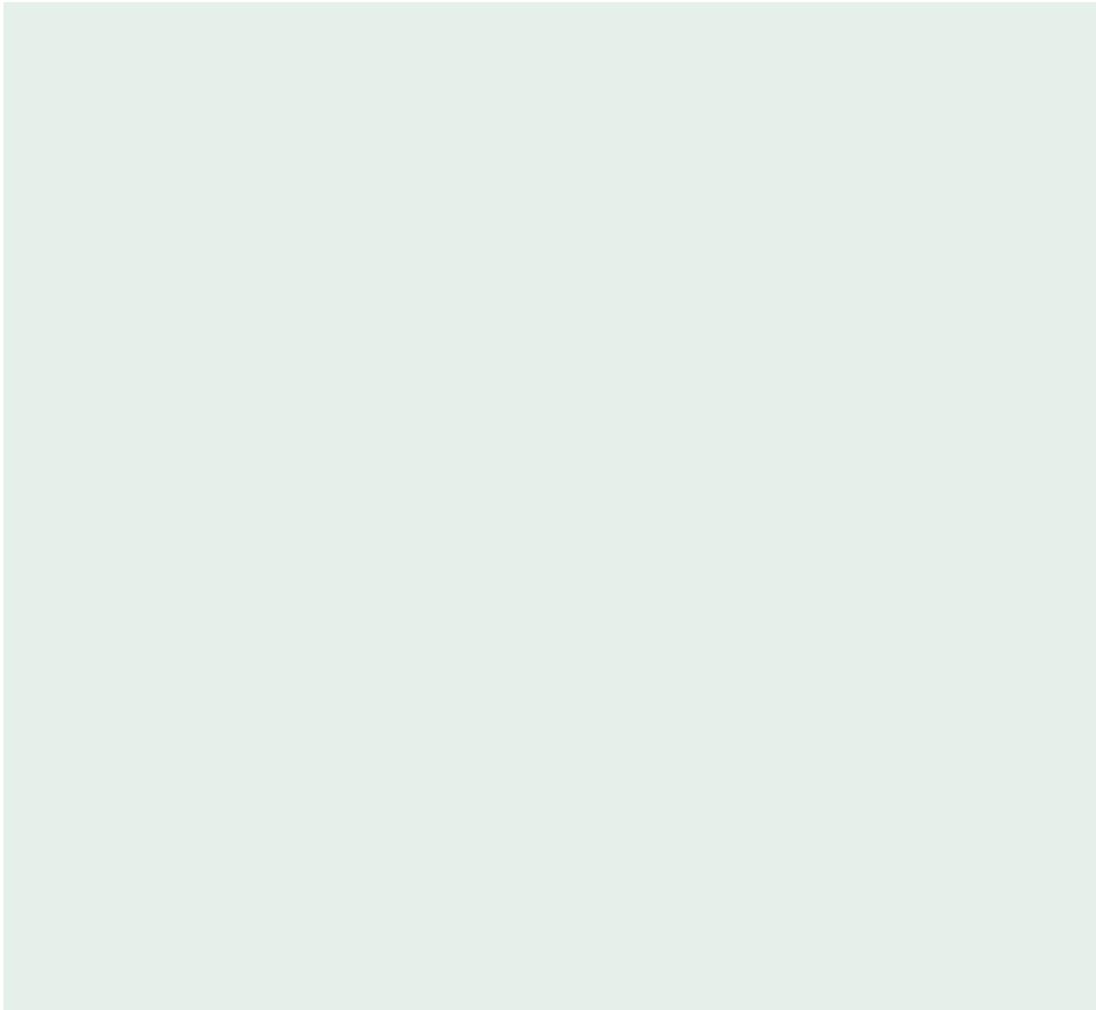
<sup>1</sup> The term 'ECCR' includes third-party neutral assistance in environmental collaboration and environmental conflict resolution

**1: ECCR Capacity Building Progress:**

1. Describe steps taken by your site/program to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2013, including progress made since FY 2012. Include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases. To the extent your organization wishes to report on any efforts to provide institutional support for non-assisted collaboration efforts include it here. If no steps were taken, please indicate why not.

[[Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the OMB-CEQ ECCR Policy Memo, including but not restricted to any efforts to a) integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECCR; c) invest in support, programs, or trainings; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.] ECCR matters not involving a third-party neutral should be reported under question 8.

Please type your response in the box below.

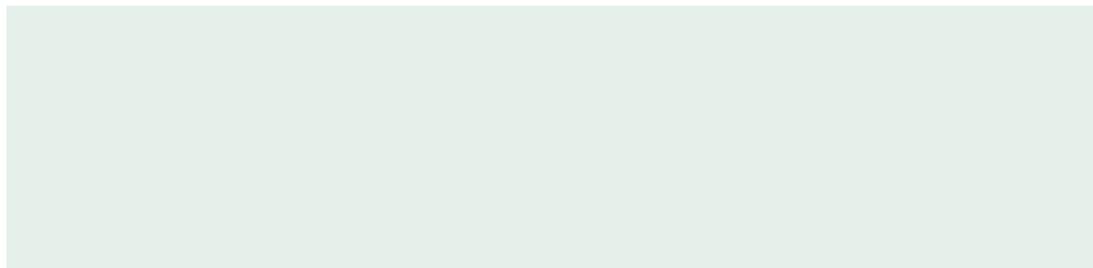


## 2: ECCR Investments and Benefits

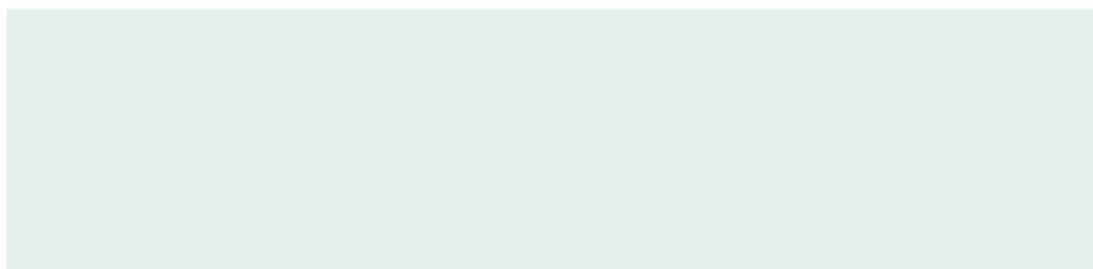
- a. Please describe any methods your site/program uses to identify the (a) investments made in ECCR, and (b) benefits realized when using ECCR.

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

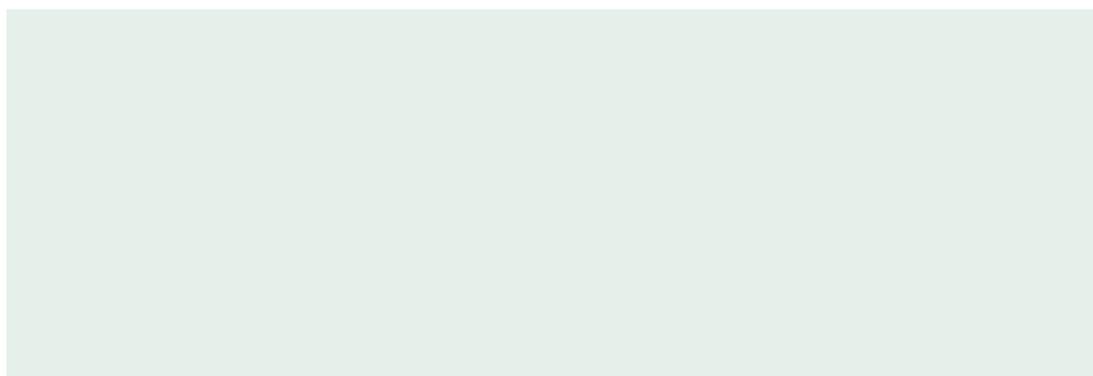
Examples of benefits may include cost savings, environmental and natural resource results, furtherance of agency mission, improved working relationship with stakeholders, litigation avoided, timely project progression, etc. ECCR matters not involving a third-party neutral should be reported under question 8.



- b. Please report any (a) quantitative or qualitative investments your site/program captured during FY 2013; and (b) quantitative or qualitative results (benefits) you have captured during FY 2013. ECCR matters not involving a third-party neutral should be reported under question 8.



- c. What difficulties have you encountered in generating cost and benefit information and how do you plan to address them? ECCR matters not involving a third-party neutral should be reported under question 8.



### 3: ECCR Use

3A. Describe the level of ECCR use within your site/program in FY 2013 by completing the table below. [Please refer to the definition of ECCR from the OMB-CEQ memo as presented on page one of this template. An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process. In order not to double count processes, please select one category per case for decision making forums and for ECCR applications.

Context for ECCR Applications	TOTAL FY 2013 ECR CASES <sup>2</sup>	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or Projects		Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)	Completed <sup>3</sup>	Sponsored <sup>4</sup>	Federal Only	Including non federal participants
Policy development	0								
Planning	0								
Siting and construction	0								
Rulemaking	0								
License and permit issuance	0								
Compliance and enforcement action	0								
Implementation/monitoring agreements	0								
Other (specify):	0								
<b>TOTAL</b>	0	0	0	0	0	0	0	0	0
		(the sum of the Decision Making Forums should equal Total FY 2013 ECR Cases)							

<sup>2</sup> An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2013.

<sup>3</sup> A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2013. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

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

Note: If you subtract completed ECCR cases from Total FY 2013 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2013 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2013 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

### 3: ECCR Use

3B. DOE's internal policy with respect to Alternative Dispute Resolution at 74 Fed. Reg. 63458 (Oct. 24, 2008) defines environmental conflict more broadly than OMB/CEQ. DOE's internal definition of ECCR would include all types of collaborative problem solving processes used to **prevent or resolve** environmental conflict, **regardless of whether a third party** is used in these processes. Please complete the table below for all cases or projects **NOT** reported in Table 3A which are within the DOE definition of ECCR.

Context for ECCR Applications	TOTAL FY 2013 ECR CASES <sup>5</sup>	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or Projects		Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)	Completed <sup>6</sup>	Sponsored <sup>7</sup>	Federal Only	Including non federal participants
Policy development	0								
Planning	0								
Siting and construction	0								
Rulemaking	0								
License and permit issuance	0								
Compliance and enforcement action	0								
Implementation/monitoring agreements	0								
Other (specify):	0								
<b>TOTAL</b>	0	0	0	0	0	0	0	0	0
		<b>(the sum of the Decision Making Forums should equal Total FY 2013 ECR Cases)</b>							

<sup>5</sup> An "ECCR case" for purposes of this table is a case in which a collaborative problem solving process was active in a particular matter during FY 2013.

<sup>6</sup> A "completed case" means that collaborative problem solving in a particular ECCR case ended during FY 2013. The end of the collaborative problem solving process does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

<sup>7</sup> Sponsored - to be a sponsor of an ECCR case means that an agency is contributing financial or in-kind resources to support the collaborative problem solving process for that case. More than one sponsor is possible for a given ECCR case.

Note: If you subtract completed ECCR cases from Total FY 2013 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2013 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2013 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

#### 4A: ECCR Case Example

Using the template below, provide a description of an ECCR case in which a third-party neutral was used (preferably completed in FY 2013). Please limit the length to no more than 2 pages.

<b>Name/Identification of Problem/Conflict</b>
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECCR effort was funded
Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used
Identify the key beneficial outcomes of this case, including references to likely alternative decision making forums and how the outcomes differed as a result of ECCR
Reflections on the lessons learned from the use of ECCR

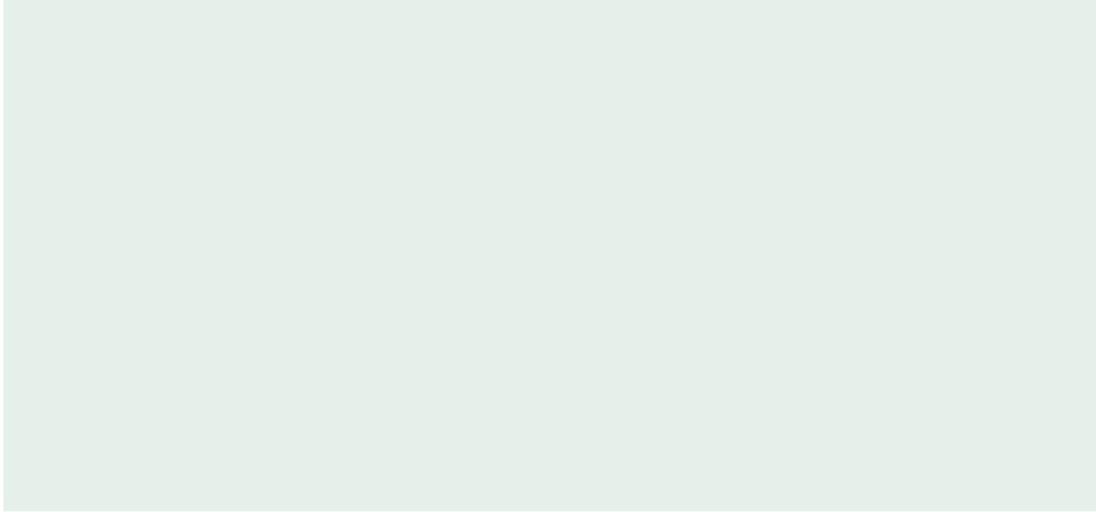
#### 4B: ECCR Case Example

Using the template below, provide a description of an ECCR case in which collaborative problem solving was used (preferably completed in FY 2013). Please limit the length to no more than 2 pages.

<b>Name/Identification of Problem/Conflict</b>
Overview of problem/conflict and timeline, including reference to the nature and timing of the collaborative problem solving process, and how the ECCR effort was funded
Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used
Identify the key beneficial outcomes of this case, including references to likely alternative decision making forums and how the outcomes differed as a result of ECCR
Reflections on the lessons learned from the use of ECCR

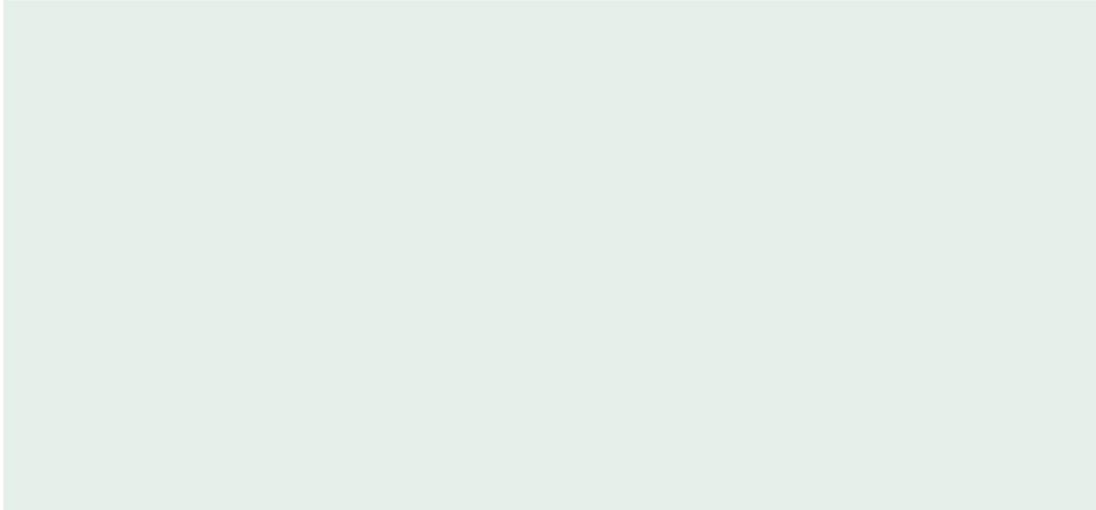
**5A: Other ECCR Notable Cases**

Briefly describe any other notable ECCR cases in which a third-party neutral was used in the past fiscal year. (Optional)



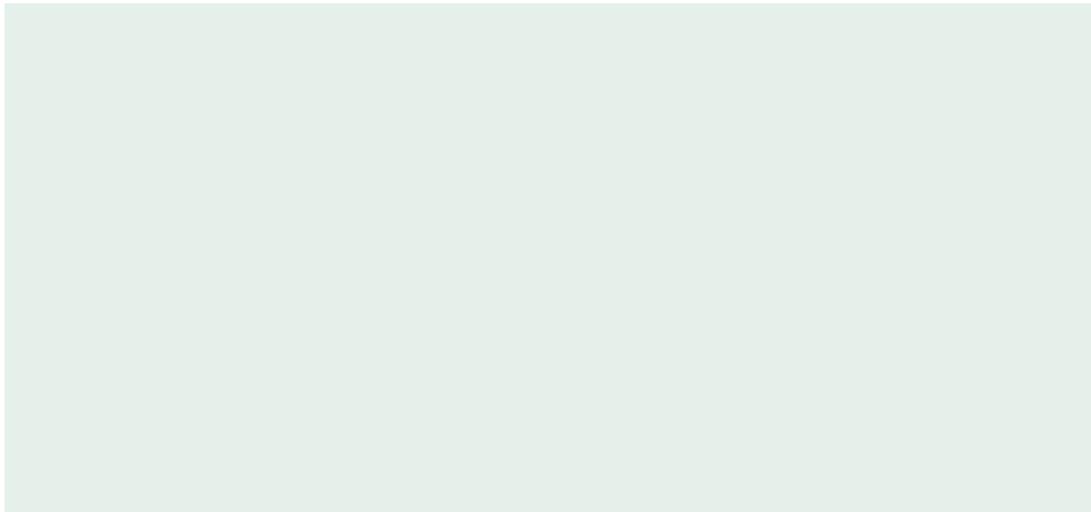
**5B: Other ECCR Notable Cases**

Briefly describe any other notable ECCR cases in which collaborative problem solving was used in the past fiscal year. (Optional)



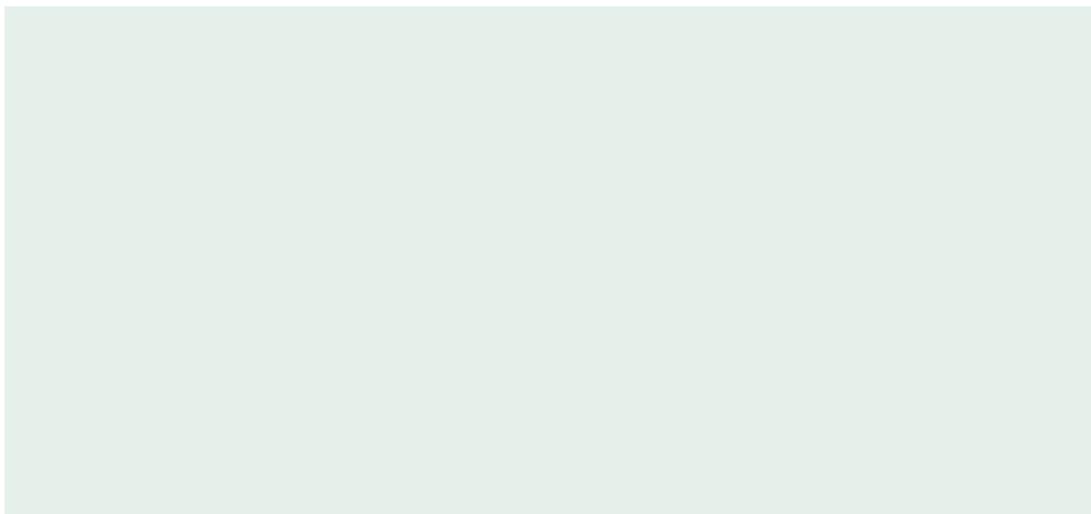
## **6: Priority Uses of ECCR**

Please describe your agency's efforts to address priority or emerging areas of conflict and cross-cutting challenges either individually or in coordination with other agencies. For example, consider the following areas: NEPA, ESA, CERCLA, energy development, energy transmission, CWA 404 permitting, tribal consultation, environmental justice, management of ocean resources, infrastructure development, National Historic Preservation Act, other priority areas. ECCR matters not involving a third-party neutral should be reported under question 8.



## **7: Comments and Suggestions re: Reporting**

Please comment on any difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future.



**8:** With respect to questions 1, 2, and 6 above, do you have anything to add regarding collaborative problem solving processes within DOE's definition of ECCR described in question 3B that did not involve the use of a third-party?

**Support from the Office of Conflict Prevention and Resolution**

**9:** Did you know that there was a DOE Office of Conflict Prevention and Resolution to provide you assistance?

No  Yes If yes, how did you learn about the office?

**10:** Have you had the opportunity to receive support from or use resources provided by the Office of Conflict Prevention and Resolution? If so, please describe.  No  Yes

**11:** What specific support can the Office of Conflict Prevention and Resolution provide for you during the coming year?

**Please attach any additional information as warranted.**

**Report due February 3, 2014.**

**Submit report electronically to: [Beverly.Whitehead@hq.doe.gov](mailto:Beverly.Whitehead@hq.doe.gov)**

**Questions: Please call Beverly Whitehead (202) 586-6073 or Steve Miller (202) 586-2925**

**Attachment A. Basic Principles for Department of Energy  
Engagement in Environmental Conflict Resolution  
and Collaborative Problem Solving**

**Department and/or contractor personnel should:**

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

**Attachment B**

**Department of Energy ECCR Cases With and Without the Use of a Third-Party**

**Table 1: ECCR with a Third Party**

	Total FY 2013 ECCR Cases	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed	ECCR Cases or Projects sponsored	Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)			Federal only	Including non federal participants
<i>Context for ECCR Applications:</i>									
Policy development									
Planning	1	1					1		1
Siting and construction									
Rulemaking									
License and permit issuance									
Compliance and enforcement action									
Implementation/monitoring agreements									
Other (specify): Natural Resources Damage Assessment	1				1				
<b>TOTAL</b>	<b>2</b>	<b>1</b>			<b>1</b>		<b>1</b>		<b>1</b>

**Table 2: ECCR Without a Third Party**

	Total FY 2013 ECCR Cases	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed	ECCR Cases or Projects sponsored	Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify) <sup>1</sup>			Federal only	Including non federal participants
<i>Context for ECCR Applications:</i>									
Policy development	2	1			1				1
Planning	12				12	12		12	
Siting and construction	1	1				1		1	
Rulemaking									
License and permit issuance	6	1	2		3	3	2	1	3
Compliance and enforcement action	5		1		4	4		2	2
Implementation/monitoring agreements	12	5			7	2		2	
Other (specify):									
<b>TOTAL</b>	<b>38</b>	<b>8</b>	<b>3</b>		<b>27</b>	<b>22</b>	<b>2</b>	<b>18</b>	<b>6</b>

<sup>1</sup> Other decision making forums that were addressing the issues when ECCR was initiated included:

1. Voluntary pre-submittal meetings in conjunction with the Hazardous Waste Facility Permit modification process;
2. Cultural Resource Programmatic Agreement; and
3. Public meetings.

