

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

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

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

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

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

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

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

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

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

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

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

The report deadline is February 15, 2015.

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

FY 14 ECCR Report Template

Name of Department/Agency responding:	U.S. Air Force
Name and Title/Position of person responding:	Jennifer L. Miller, Deputy General Counsel
Division/Office of person responding:	Installations, Energy & Environment Division, Office of the General Counsel
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Date this report is being submitted:	January 14, 2015
Name of ECR Forum Representative	Patricia Collins

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

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

ECCR is encompassed within the overall Air Force ADR Program that was established through AF Policy Directives. AF Policy Directive 51-12 specifically references the use of ADR in environmental disputes, in addition to disputes in other subject matter areas. The resources of the Air Force ADR program are, and have been, available to support the use of ECCR and to train Air Force personnel in negotiation and communication skills within the context of ECCR.

The Air Force will continue education and training in interest based conflict resolution skills through, inter alia, the following initiatives:

- The Air Force Negotiation Center of Excellence, based at Air University in Montgomery Alabama, has successfully imbedded negotiation and conflict management skills into every level of commissioned officer and non-commissioned officer Professional Military Education (PME). Additionally research projects and ongoing electives continually refresh the training with scenario-based learning to realistically reflect circumstances which Air Force personnel will face in their duties.
- Training in ECCR has been institutionalized as a module at the yearly Negotiation and Dispute Resolution course given every year at the AF JAG School. (Budget and travel restrictions prevented offering this course in FY13 but it was conducted in FY14 and is also scheduled for FY15.)
- The Dispute Resolution Division of the General Counsel's Office is continually improving and expanding training in basic negotiation, communication, and ADR skills, and supporting delivery to an ever-widening audience within the Air Force.
- In FY14, the Installations, Energy & Environment Division (GCN), taught two separate two-day interest-based negotiation courses for the Air Force Civil Engineer Center in San Antonio. One course was designed for environmental professionals and the other was focused on real property issues. These classes were "hands-on" practicums using complex environmental cleanup and real property leasing scenarios, and approximately 80 people participated. The Air Force is exploring ways of expanding negotiation training to the Air Force engineering community more broadly in FY15, including leveraging the experience of individuals who have already received training and potentially involving the Negotiation Center of Excellence at Maxwell Air Force Base.

2. ECCR Investments and Benefits

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

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

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

Senior leadership has long recognized the value of ADR and its contribution to mission accomplishment through its creative problem-solving attributes as well as savings in cost and time. ADR is treated by the Air Force as “budget neutral” with a positive impact on mission accomplishment. Air Force leadership fully supports the need for up-front investment in training in the use of collaborative processes and conflict resolution.

ECCR is fully integrated into Air Force and costs are not separated. The real savings from ECCR is the ability to accomplish mission without dispute-caused interruption. Air Force environmental conflicts and disputes tend to be small in number covering a wide range of issues. The volume is not as high as for agencies with licensing and enforcement as their primary mission.

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

(See above.)

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

(See above.)

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

	Total FY 2014 ECCR Cases ²	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed ³	ECCR Cases or Projects sponsored ⁴	Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)			Federal only	Including non federal participants
<i>Context for ECCR Applications:</i>									
Policy development	_____	_____	_____	_____	_____	_____	_____	_____	_____
Planning	12	12	_____	_____	_____	12	12	_____	12
Siting and construction	30	1	_____	29	_____	4	_____	_____	30
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	1	_____	1	_____	_____	_____	_____	1	_____
Compliance and enforcement action	5	5	_____	_____	_____	_____	_____	_____	5
Implementation/monitoring agreements	_____	_____	_____	_____	_____	_____	_____	_____	_____
Other (specify): Water Rights	1	_____	_____	1	_____	_____	1	_____	1
TOTAL	49	18	1	30	_____	16	13	1	48
		(the sum of the Decision Making Forums should equal Total FY 2014 ECCR Cases)							

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

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

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

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

4. ECCR Case Example

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

Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECCR effort was funded
<p>Buckley Air Force Base in Colorado appealed sections of a National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges from a Municipal Separate Storm Sewer System (MS4) issued by EPA Region 8 in September 2013. Buckley had previously been regulated under a general permit and had provided public comments on the draft individual permit expressing concerns about the new requirements for post construction stormwater management for new development and redevelopment. The Air Force (AF) filed the appeal with EPA’s Environmental Appeals Board (EAB) in September 2013 and highlighted several issues in the petition. Many of the issues focused on the scope of the Clean Water Act standard of “maximum extent practicable” and on a perceived lack of flexibility.</p>
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
<p>Once the government shutdown ended in October 2013, the EAB invited EPA and AF to participate in a pilot ADR program where an EAB Judge acts as a neutral evaluator/mediator. Both EPA and AF agreed to the ADR process in November 2013. (See the EAB website for the sample agreement and processes: http://yosemite.epa.gov/oa/eab_web_docket.nsf/general+information/alternative+dispute+resolution%20(adr)?opendocument). Engineers and lawyers from Buckley and EPA Region 8 had previously met and discussed the disputed terms in the permit but the ADR process set a schedule of face-to-face meetings with the Judge and key engineering and legal participants from the installation, region and headquarters.</p>
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
<p>The final permit covering the disputed provisions was issued in December 2014 and this process would have taken much longer if the parties went through the entire briefing and argument calendar with the EAB and the EAB had issued a remand back to Region 8. The revised permit could have been subject to further appeals by AF and the finalization of the permit after public comment would likely have taken significantly more time.</p>

Instead, the permit is final and the agencies have clarified the terms of the permit to allow the site specific analysis critical to the Clean Water Act compliance.

Reflections on the lessons learned from the use of ECCR

The sessions with the Judge and Law Clerk were very productive. The parties set a rigorous schedule of several multi-day sessions and agreed to format and exchanged information on agency reasoning and interests driving the positions. The Judge's candid evaluation of each party's case and likely outcome before the EAB was helpful in moving the discussions away from positions and into substantive issues. The willingness of both agencies to try to understand the other's interests and mission mandates was critical to the successful outcome. EPA's willingness to consider the issues particular to a military installation with a runway and flying mission located in a developed area was very helpful in the overall process.

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

Unlike regulatory or licensing agencies, the Air Force does not have a large volume of cases and many of the cases span multiple years.

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.

Many of the ECCR cases reported continue to involve NEPA, CERCLA and land use. During FY14 the Air Force continued a renewed focus on government to government relationships with Tribes and sought to encourage better communication between installation commanders and Tribes.

(See answer below.)

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

Throughout FY14, the Air Force participated on 87 Restoration Advisory Boards (RABs), the great majority of which do not utilize third party neutrals. These advisory boards include community and regulator representatives and employ collaborative decision making processes for many cleanup issues.

The Air Force also serves as the Regional Environmental Coordinator for DOD in EPA Regions 2, 3 & 10 and in that role has chaired partnering sessions and participated in working groups with Federal and State partners to address installation, regulatory and environmental compliance matters in NY, NJ, WA & AK and other States as well as on working groups for the Chesapeake Bay and for Federal Climate Partners. The Air Force is also active in the Western Regional Partnership focused on collaboration between Federal, State and Tribal leadership in AZ, CA, NV, NM, and UT to develop solutions that protect natural resources while promoting sustainability, homeland security and military readiness. Air Force Regional Environmental Offices also hold frequent partnering meetings in States with Air Force installations in order to address planning and compliance issues.

The Air Force participates in numerous partnering and collaborative groups including the California Desert Renewable Energy and Conservation Plan effort working with Federal, State and local stakeholders to resolve potential conflicting land use in the Mojave Desert as well as on the Southeastern Region Partnership for Planning and Sustainability. The Air Force works with BLM on many issues including renewable energy development and energy transmission line siting.

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

Previous years comments remain applicable. We strongly urge that next year this is done through a more simplified report format for agencies whose mission focus is not licensing, permitting, or environmental enforcement.

Please attach any additional information as warranted.

Report due February 15, 2014.

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

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

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