

Environmental Collaboration and
Conflict Resolution
Fiscal Year 2014

Ninth Annual Report
DRAFT
April 2015



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 on November 28, 2005 on Environmental Conflict Resolution and broadens the efforts called for under that 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.”

The Department of Energy (DOE) more broadly 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 states 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 the reporting year.

In Fiscal Year 2014 (FY 2014), 22 DOE sites and program offices reported a total of 30 ECCR cases. Four of these cases involved third-party assistance; three of those are in progress. Of the 26 ECCR cases that did not involve third parties, ten were reported as completed. DOE sites and programs have reported at a 92% rate.

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, Department of Energy (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, DOE 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 DOE in Fiscal Year 2014 (FY 2014).

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. DOE 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

II. ECCR CAPACITY-BUILDING PROGRESS MADE IN FY 2014

The Department's sites and programs continued their commitment to ECCR principles by completing their missions through effective working relationships with their Federal and state regulatory colleagues and community partners. Several increased their commitment to ECCR in the reporting year.

The Southwestern Power Administration (SWPA) integrated defined conflict or dispute resolution language into its Cultural Resource Programmatic Agreement(s) related to the general maintenance and operation of SWPA's systems and facilities. SWPA also integrated conflict or dispute resolution language into its Programmatic Agreement regarding the proposed Plains and Eastern Clean Line Transmission Project, which involves working with tribes and other third parties. This language includes the use of third-party advice, specifically through the Advisory Council for Historic Preservation, on dispute resolution. If any objection to the project is made by a party to the Programmatic Agreement the conflict resolution language will be used in order to promote unbiased conflict resolution and open lines of communication between parties.

In addition, SWPA integrated conflict or dispute resolution language into its Public Involvement Plan for the Environmental Impact Statement regarding the Plains and Eastern Clean Line Transmission Project. This language includes the possibility of using a third-party facilitator in public hearings and meetings which may involve conflicts in National Environmental Policy Act processes or other controversial issues.

Several DOE offices participated in conflict resolution along with the Department of Justice (DOJ), the Army Corps of Engineers, and ABB, Inc. concerning the settlement of a CERCLA lawsuit pertaining to the cleanup of a contaminated site in Windsor, Connecticut.

DOE Office of Environmental Management (EM) is cooperatively participating on Natural Resource Damage Trustee Councils at Hanford, Los Alamos, and Oak Ridge. At Hanford and Los Alamos, DOE covers both the participation costs of non-federal trustees and expenses for retaining a facilitator. EM views the work as a way to avoid unnecessary costs and delays, to incorporate the preferences of all trustees, to reduce duplicative activities, and to develop trust among trustees. As part of that effort, EM has used facilitators at Hanford and Los Alamos to resolve its NRD responsibilities collaboratively. The hiring of facilitators has been especially useful given the high number of participants on the Trustee Councils. In the case of Hanford, a new facilitator was recently retained by DOE on behalf of the Council.

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. Approximately 60 sites and program representatives participated in the training conducted in May 2014.

III. INVESTMENTS IN AND BENEFITS OF ECCR

The DOE/National Nuclear Security Administration (NNSA) Pantex Plant reported that less effort might be required during the life-cycle of an environmental cleanup project and long-term stewardship program due to an established good working relationship with state and Federal regulatory agencies and the inclusion of frequent and effective communication into its programs. The Pantex Plant used a neutral third-party to initiate the effort several years ago. The trust established through that past ECCR effort became a necessary and desired part of the program that endures today without needing the present services of a third-party neutral.

The West Valley Demonstration Project (WVDP) credits the use of a neutral third-party and other ECCR techniques with facilitating interagency consensus, though it does not have a formal tracking mechanism to account for the specific benefits of using ECCR. This enables WVDP to better anticipate, evaluate and resolve environmental issues and potential disputes before they become a larger problem.

Use of regular meetings with environmental regulators and of citizen boards and committees designed to engage stakeholders in the early stages of decision-making processes were reported as very successful for the NNSA/Nevada Field Office (NFO). Stakeholders participate in studies and working groups to collaborate on groundwater, endangered, protected and regulated species, climate change, and other environmental issues. These activities foster open communication between NNSA/NFO and its stakeholders to ultimately avoid environmental conflicts.

DOE also credits ECCR with cost-savings, improved working relationships with stakeholders, and the ultimate resolution of litigation in matters related to ABB, Inc. in Windsor, Connecticut. DOE collaborated with the Army Corps of Engineers as well as DOJ, which ultimately hired a mediator at the recommendation of DOE, to assist in resolving this litigation.

Oak Ridge reports that it has benefited from using ECCR principles in pursuing solutions to complex environmental problems. Oak Ridge reports that incorporating ECCR principles during the implementation of the Memorandum of Agreement (MOA) executed for the historical interpretation of the East Tennessee Technology Park as required by the National Historic Preservation Act has realized dramatic and substantial benefits. Thus, the implementation is progressing with open and continuous communication with all the stakeholders, allowing for frank discussion and honest debate over the challenges faced by the initial MOA's conditions. Budget requests and receipts for the project have presented significant challenges to project implementation, and Oak Ridge's incorporation of ECCR principles in communicating these challenges to our stakeholders has facilitated progress in decision-making.

IV. ECCR CASES IN FY 2014

Respondents reported four ECCR cases in which third parties were involved and 26 ECCR cases in which they were not. Three of the cases involving third parties are in progress; sixteen of the cases not involving a third party are in progress. The bulk of the reported cases were related to

compliance and enforcement actions (thirteen) or implementation/monitoring agreements (six). Attachment B contains tables depicting the ECCR survey results.

V. ECCR CASE EXAMPLES USING A THIRD PARTY

A. WVDP and NYSERDA

The use of a third-party neutral in FY 2014 contributed to progress being made as personnel from the WVDP and the New York State Energy Research and Development Authority (NYSERDA) proceeded with important decontamination and decommissioning work and long-term stewardship planning at the WVDP and Western New York Nuclear Service Center (Center). In early 2010, the parties agreed to remove a number of highly contaminated facilities by 2020 at a cost of approximately \$1 billion as Phase 1.

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. Fundamental to the future success of this approach was the agreement between WVDP and NYSERDA to incorporate a specifically tailored ECCR process, commonly referred to as the Phase 1 Study process, and equally share all associated costs.

The 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. The third-party neutral used the services of a professional facilitator to moderate all public meetings held as part of the public participation component. Thus far, three working groups have been established in various technical areas and have produced various reports for the Federal and state agencies and WVDP stakeholders. 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 Phase 1 decision.

The anticipated outcome of the 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 WVDP to work with NYSERDA to overcome almost 30 years of disagreement. As a consequence, the project is on course to reach mutual and final decisions on the ultimate disposition of the site in 2020.

B. ABB, Inc.

ABB, Inc. sued the United States for cost recovery concerning the cleanup of a contaminated waste site in Windsor, Connecticut. This matter dragged on for several years, and earlier negotiations to avoid litigation were unsuccessful. Per the suggestion of DOE and others, the DOJ selected a mediator to help resolve the dispute, with DOJ and ABB sharing the financial costs and DOE contributing staff time.

DOE's ECCR point of contact, in conjunction with the DOE-suggested mediator, were able to talk with both sides, highlighting the desirability of avoiding further litigation and litigation risk, in order to help them push past positioning and rhetoric to achieve a successful agreement. The matter was resolved sooner than would have occurred if ECCR was not used, and the ECCR process saved time and money while restoring good stakeholder relationships. Such a result would not have been possible without ECCR and DOE's assistance in the process.

C. EM Hanford Facilitator

Facilitators were hired by DOE on behalf of the NRD trustee councils at Hanford. NRD facilitators lead/guide discussions during trustee council meetings, record meeting minutes, and follow-up with council members outside meetings to prepare meeting agendas and ensure the timely completion of agreed-upon outputs.

At Hanford, a new facilitator was recently hired. She was recommended by one of the non-federal trustees. Consideration and the ultimate hiring of the recommended contractor may have helped DOE's credibility as an impartial agent looking to resolve the case in a cooperative manner. Prior relationships with other trustees helped the new facilitator to quickly gain the early confidence of some of the trustees. The facilitator's excellent work product has helped to crystallize trustees' confidence in her abilities.

It is hoped that the facilitator will help to expedite the completion of both short and long-term outputs.

VI. ECCR CASE EXAMPLE WITHOUT A THIRD PARTY

The US Environmental Protection Agency (EPA) sent an official letter to the Director of the Washington Closure Hanford (WCH) Environmental, Safety, Health & Quality Assurance (ESH&QA) alleging violations of the Clean Air Act (CAA) National Emission Standards for Hazardous Air Pollutants for Asbestos due to demolition work performed in January 2010. The EPA's Notice of Intent to File Administrative Complaint alleged that WCH demolished a sanitary water tower at the Hanford Facility without providing proper EPA notification, and that WCH had not properly removed the potential Regulated Asbestos-Containing Material from the water tower prior to demolition.

On December 20, 2013, DOE sent a letter to EPA providing a response to the Notice of Intent. On April 2, 2014, EPA, DOE-Richland (DOE-RL), and WCH signed a Consent Agreement and

Final Order (CAFO) to resolve alleged violations of federal asbestos handling regulations associated with demolition work at the Hanford Site dating back to 2007. EPA found that DOE-RL/WCH failed to remove more than 100,000 square feet of asbestos prior to demolishing buildings and structures as required by federal law, failed to provide complete and accurate notifications to EPA or local air agency (Benton Clean Air Agency) while demolition projects were underway, and that some waste was not properly contained in leak-tight containers. A stipulated penalty of \$110,000 was initially assessed. This penalty was later reduced to \$44,000 which DOE-RL/WCH paid on April 10, 2014.

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

The Los Alamos National Laboratory continued in FY 2014 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 United States Forest Service. DOE is one of the two 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 2014 through ECCR-based problem solving. Based on a history of collaborative decision-making, DOE Idaho and its state regulator were able to come to prompt agreements regarding the terms of its Resource Conservation and Recovery Act (RCRA) permit.

Due to the ongoing collaboration of parties to the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement or TPA), the Richland Operations Office reported that no official environmental disputes arose under the TPA in FY 2014 despite the wide range of issues covered by the TPA.

The TPA is an agreement among DOE, EPA and the State of Washington Department of Ecology for achieving compliance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) remedial action provisions and with the RCRA treatment, storage, and disposal unit regulations and corrective action provisions. It defines and ranks CERCLA and RCRA cleanup commitments, establishes responsibilities, provides a basis for budgeting, and reflects a concerted goal of achieving full regulatory compliance and remediation with enforceable milestones in an aggressive manner. The TPA also contains specific provisions for addressing disputes in a defined, structured manner with time constraints to drive decisions and avoid unnecessary delay.

Most issues are resolved informally and never rise to the dispute level, due to the use of ECCR methods. Issues are resolved collaboratively through monthly project manager meetings, quarterly milestone review meetings, and other meetings as necessary to address concerns. Over the course of a year, hundreds of such meetings are held.

VII. PRIORITY USES OF ECCR

DOE's sites and program offices used third-party and non-third-party ECCR collaboration in the following areas in FY 2014:

- Site remediation, decontamination, and decommissioning under CERCLA and RCRA;
- Cultural resource protection;
- Relations with regulators and stakeholders;
- Hazardous waste facility permit modification and implementation; and
- National Pollutant Discharge Elimination System permitted Total Maximum Daily Load limit modifications.

VIII. COMMENTS AND SUGGESTIONS REGARDING REPORTING

No comments or suggestions were submitted.

Attachment B

Modified Department of Energy ECCR Survey



FY 2014 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."

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

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>.

Site/Program name:

Name and Title/Position of person responding:

Office of person responding:

E-mail address:

Phone number:

Date report is being submitted:

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

Attachment B
Department of Energy ECCR Cases With and Without the Use of a Third-Party¹

Total FY 2014 ECCR Cases	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 ²	Sponsored ³	Federal only	Including non Federal participants
Context for ECCR Applications:								
Policy development								
Planning	1	1 WVDP				1 WVDP		1 WVDP
Siting and construction								
Rulemaking								
License and permit issuance								
Compliance and enforcement action	2	1 NR		1 EM (Unspecified)	1 NR		1 NR	1 EM
Implementation/monitoring agreements								
Other (specify): Natural Resources Damage Assessment (LANL)	1			1 LANL (Unspecified)		1 LANL		1 LANL
TOTAL	4	2		2	1	2	1	3

Table 1: ECCR with a Third Party

¹ Any discrepancies are due to inconsistent reporting data.

² Completed - a “completed case” means that collaborative problem solving in a particular ECCR case ended during FY 2014. 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.

³ Sponsored - to be a sponsor of a 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.

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.

Table 2: ECCR Without a Third Party

	Total FY 2014 ECCR Cases	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 ⁴	Sponsored ⁵	Federal only	Including non federal participants
<i>Context for ECCR Applications:</i>									
Policy development	1	1 Sandia					1 Sandia		1 Sandia
Planning	2	1 SWPA			1 Richland	1 Richland		1 Richland	
Siting and construction									
Rulemaking									
License and permit issuance	5		1 Sandia 2 Oak Ridge		1 Idaho (Negotiations) 1 Richland	1 Idaho 1 Richland	1 Idaho 1 Sandia		1 Idaho 1 Richland 1 Sandia 2 Oak Ridge
Compliance and enforcement action	11	2 Sandia	2 Oak Ridge	1 EM	2 Idaho (Negotiations) 3 Richland 1 LM (Navajo)	2 Idaho 3 Richland 1 Sandia	1 EM 2 Idaho 1 LM 2 Sandia	1 EM 1 LM 2 Richland	2 Idaho 1 Richland 2 Sandia 2 Oak Ridge
Implementation/monitoring agreements	6				1 Sandia 4 SWPA	1 Richland (TPA)	1 Richland	1 Richland 1 Sandia	
Other (specify): Recovery of Operations	1	1 CBFO							1 CBFO
TOTAL	26	5	5	6	10	10	11	5	16

⁴ Completed - 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.

⁵ 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.

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.

