

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

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|---|---|
| Name of Department/Agency responding: | Department of Defense |
| Name and Title/Position of person responding: | Kathryn D. MacKinnon |
| Division/Office of person responding: | Center for Alternative Dispute Resolution |
| Contact information (phone/email): | 703-606-6601 mackinnk@osdgc.osd.mil |
| Date this report is being submitted: | March 16, 2015 |
| Name of ECR Forum Representative | Kathryn D. MacKinnon |

1. **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.]

The DoD Respondents' ADR policies, infrastructures, and trainings continue to be reinforced by their leadership, and these encourage and support the use of ECCR. The DoD Respondents emphasize collaboration and non-third-party-assisted problem-solving with stakeholders. Their efforts continue to be impacted by budget cuts in FY14.

See attached responses from the Air Force, Army, Navy and U.S. Army Corps of Engineers.

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.

Leadership of the DoD Respondents recognizes the benefits of, and therefore the need to invest in, non-third-party collaboration and in ECCR, and does not have a stated need for expensive and elaborate methods to document the same. Individual records of cases and of other ECCR-related activities are maintained and confirm leaderships' vision.

See attached responses from the Air Force, Army, Navy and U.S. Army Corps of Engineers.

- 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 attached responses from the Air Force, Army, Navy and U.S. Army Corps of Engineers.

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

See attached responses from the Air Force, Army, Navy and U.S. Army Corps of Engineers.

8. **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.

See attached responses from the Air Force, Army, Navy and U.S. Army Corps of Engineers.

| | 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 | 26 | 22 | — | — | 4 | 3 state-led 1 interagency | 17 | 22 | — | 24 | |
| Siting and construction | 30 | 1 | — | 29 | — | — | 4 | — | — | 30 | |
| Rulemaking | — | — | — | — | — | — | — | — | — | — | |
| License and permit issuance | 3 | 1 | 2 | — | — | — | 2 | 1 | 3 | — | |
| Compliance and enforcement action | 5 | 5 | — | — | — | — | — | — | — | 5 | |
| Implementation/monitoring agreements | 45 | — | — | — | 45 | — | — | 45 | — | — | |
| Other (specify): 5 CERCLA, 1 Water Rights | 6 | — | — | 3 | 3 | — | 1 | 1 | — | 6 | |
| TOTAL | 115 | 29 | 2 | 32 | 52 | | 24 | 69 | 3 | 65 | |
| | | (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 party assistance, and how the ECCR effort was funded

Summary of how the problem or conflict was addressed using ECCR, including details of 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 making forums and how the outcomes differed as a result of ECCR

Reflections on the lessons learned from the use of ECCR

See attached responses from the Air Force, Army, Navy and U.S. Army Corps of Engineers

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

See attached responses from the Air Force, Army, Navy and U.S. Army Corps of Engineers.

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.

Priorities and challenges vary-according to the mission of the DoD Component.

See attached responses from the Air Force, Army, Navy and U.S. Army Corps of Engineers.

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.*

DoD Respondents identify significant use of non-third party assisted environmental collaboration.

See attached responses from the Air Force, Army, Navy and U.S. Army Corps of Engineers.

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.

Though acknowledging the revised format continued from FY13, as agencies whose mission focus is not licensing, permitting or environmental regulation, the DoD Respondents again request a simplified report format.

See attached responses from the Air Force, Navy, Army and U.S. Army Corps of Engineers.

Please attach any additional information as warranted.

Report due date was extended for Department of Defense, to March 16, 2015.

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 |