

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>U.S. Nuclear Regulatory Commission</u>
Name and Title/Position of person responding:	<u>Joan Olmstead, Attorney</u>
Division/Office of person responding:	<u>Office of General Counsel, Reactor and Rulemaking Division</u>
Contact information (phone/email):	<u>(301) 415-2859, Joan.Olmstead@nrc.gov</u>
Date this report is being submitted:	<u>2/25/15</u>
Name of ECR Forum Representative	<u>Joan Olmstead</u>

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.]

In FY 2014 the NRC created two mechanisms to hire third-party neutrals to support NRC activities involving environmental, cultural and historic resources. One of the contracts includes funding a liaison from the Advisory Counsel of Historic Preservation (ACHP) to work on NRC actions involving historic and cultural resources. The other contract allows NRC program offices hire external facilitators to support specific licensing and rulemaking activities.

Because of the technical nature of the NRC's regulatory program, the NRC uses NRC employees to act as facilitators. The NRC uses employee-facilitators for public meetings and workshops involving licensing, policy development, and rulemaking activities.

The NRC currently has over twenty staff members who are trained to assist staff in NRC public outreach programs. The NRC's employee-facilitators complete a training program that relies on outside contractors to teach general public meeting and facilitation skills. The purpose of the training program is to develop a skilled cadre of facilitators throughout the NRC to facilitate public meetings and workshops.

In FY 2014, the NRC staff presented a proposed Tribal Policy Statement to the Commission. The proposed Tribal Policy Statement establishes principles to be followed by the NRC to ensure effective government-to-government interactions with American Indian and Alaska Native Tribes, and to encourage and facilitate Tribal involvement in the areas over which the Commission has jurisdiction.

With Commission approval, the NRC published the proposed Tribal Policy Statement for public comment on December 1, 2014 (79 FR 71136). The public comment period was originally scheduled to close on March 31, 2015. The NRC has extended the public comment period on this document until May 31, 2015, to allow more time for comment submission.

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.

The NRC does not identify the investments made in ECCR and benefits realized when using ECCR.

- 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.

N/A

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

The NRC does not identify investments made in ECCR and benefits realized when using ECCR. The NRC does not plan to identify investments or benefits in FY 2015.

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	—	—	—	—	—	—	—	—	—
Siting and construction	—	—	—	—	—	—	—	—	—
Rulemaking	1	1	—	—	1	1	—	—	1
License and permit issuance	—	—	—	—	—	0	—	—	0
Compliance and enforcement action	—	—	—	—	—	—	—	—	—
Implementation/monitoring agreements	—	—	—	—	—	—	—	—	—
Other (specify): _____	—	—	—	—	—	—	—	—	—
TOTAL	1	1	0	0	1	1	0	0	1
(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
<p>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>
<p>The NRC used a combination of a third-party and NRC staff facilitators in development of the Generic Environmental Impact Statement for the Continued Storage (formerly known as the Waste Confidence) Rulemaking. The NRC used third-party facilitators to conduct public meetings to receive comments on the Proposed Continued Storage of Spent Nuclear Fuel Rule and Draft Generic Environmental Impact Statement in October, November and December of 2013 and in January 2014. The NRC issued the Final Rule for the Continued Storage of Spent Nuclear Fuel and GEIS on September 19, 2014.</p>
<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>
<p>NRC held numerous public meetings to receive comments on the draft Generic Environmental Impact Statement (GEIS) and proposed rulemaking language for the Continued Storage of Spent Nuclear Fuel. The NRC's Continued Storage of Spent Nuclear Fuel rulemaking involved an analysis of the environmental impacts and safety of extended storage of spent nuclear reactor fuel on reactor sites. The topic was, and still is, highly controversial. The numerous public meetings and the use of facilitators helped provide an open meeting process to solicit public comments from numerous stakeholders. Over 35,000 public comments were received. Innovative techniques were used to ensure that individuals who could not attend a meeting in person could participate. These techniques included using web-casts and teleconference lines.</p> <p>The NRC issued the final Continued Storage of Spent Nuclear Fuel rule and GEIS in September 2014. In October 2014, several states, environmental groups, and a Native American Community sued the NRC on the final rule and the GEIS. The new lawsuits, consolidated into <i>New York v. NRC</i>, were filed in the U.S. Court of Appeals for the D.C. Circuit.</p>
<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>
<p>We have not completed an analysis of the Continued Storage of Spent Nuclear Fuel rulemaking process.</p>

Reflections on the lessons learned from the use of ECCR

We have not completed an analysis of the Continued Storage of Spent Nuclear Fuel rulemaking process.

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

The NRC used third-party neutrals to facilitate the negotiation of Programmatic Agreements to address NHPA Section 106 responsibilities for two in-situ uranium recovery license applications. Both license applications were the subject of litigation before NRC Atomic and Safety and Licensing Boards. In each case, the NRC found use of third party neutrals to facilitate Programmatic Agreement negotiations helpful. However, the Programmatic Agreements did not resolve or avoid litigation. Both applications resulted in hearings before NRC Atomic Safety and Licensing Boards.

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.

The NRC staff continues to actively engage the public on licensing, rulemaking, and policy matters to accomplish many of the objectives of ECCR. As noted above, the NRC conducted extensive public outreach activities as part of the Continued Storage of Spent Nuclear Fuel rulemaking, addressing the issue of extended storage of spent fuel, due to the high controversial nature of the topic.

Also as noted above, in FY 2014 the NRC entered into a contract with the Advisory Counsel on Historic Preservation (ACHP) to fund a liaison position at ACHP to work on NRC NHPA activities. The NRC also established a contract that allows NRC program offices to hire external facilitators to support specific program actions that can include public meetings or non-public meetings between government entities.

The NRC's experience is that a number of factors contribute to disputes regarding NRC licensing and rulemaking activities. These factors include the competing values and interests of key external stakeholders, disagreements about the agency's priorities, a perception that the public does not have a sufficient voice in NRC processes, and challenges in clearly presenting information about the NRC's processes and the technical issues involved. The NRC's public outreach program attempts to address these "conflict engagement" issues through early and continuing interaction with the stakeholders concerned about a particular licensing or rulemaking activity. These stakeholders include local, state, and tribal governments; advocacy groups, both national and local; community organizations, such as Chambers of Commerce; the licensee or license applicant; nuclear industry organizations; and other federal agencies. We use a variety of public outreach techniques, guided by a trained NRC employee-facilitator, or, a third-party facilitator.

The NRC's public outreach program includes the use of facilitators for public meetings to gather information for NEPA documents for specific licensing and rulemaking activities. During the development of the NRC's proposed Tribal Policy Statement and revision of the NRC's Tribal Protocol Manual, for example, the NRC attended national and regional meetings to engage with Tribes and other Federal agencies.

Additionally, several NRC environmental impact statements under development also involve cooperating agencies. Most of these cooperating agency agreements were developed under a Memorandum of Understanding (MOU) with the U.S. Army Corps of Engineers, because applicants for NRC licensing actions may also require permits from the Corps, particularly where the application to the NRC is for construction of a new facility. Other on-going or recently completed environmental reviews involved MOUs with other federal departments and agencies (e.g., the Department of Energy and the Bureau of Land Management) and, in one case, a Tribe.

In FY 2014, the NRC consulted with Tribal representatives, State Historic Preservation Officers (SHPOs), licensee or license applicants, and other federal agencies to address National Historic Preservation Act issues related to facility license applications. In prior years, particularly involving in-situ uranium recovery (ISR) facility license applications, the development of NHPA Memorandum of Agreements (MOAs) and Programmatic Agreements have included participation of the NRC, the licensee or license applicant, the SHPO, representatives of tribal governments and occasionally the Advisory Council on Historic Preservation. These licensing actions have used third-party neutrals and unassisted negotiations to address potential adverse effects to historic properties for specific license applications.

As another example of public outreach activities, NRC hosts the annual Regulatory Information Conference (RIC), which offers a forum for the NRC and stakeholders to share and exchange information. The topics covered at the RIC vary from year-to-year and can include environmental issues.

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.*

The NRC continues to use NRC staff facilitators in public meetings.

The NRC continues to training NRC project managers and attorneys in ECCR techniques.

The NRC's public outreach programs continue to engage the public on environmental reviews for NRC license applications as well as for rulemaking activities that involve environmental issues.

The NRC continues to use cooperating agency agreements – most frequently with Army Corps of Engineers, the Bureau of Land Management, and the Department of Energy – to assist in the preparation of NEPA environmental review documents for various license applications. Also, the NRC has continued to develop informal consulting relationships with state, local and tribal governments, and other federal agencies during the development and review of NEPA documents.

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.

We continue to appreciate having questions that allow the NRC to report significant agency efforts to "anticipate, prevent, better manage, or resolve environmental issues and conflicts" that may not fit squarely under the definition "ECCR."

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