

FY 13 ECCR Report Template

Name of Department/Agency responding:	Department of the Navy
Name and Title/Position of person responding:	Robert Manley, Assistant General Counsel (ADR)
Division/Office of person responding:	Office of the General Counsel / ADR Program Office
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Date this report is being submitted:	20 February 2015
Name of ECR Forum Representative	Robert Manley

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 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.]

The Department of the Navy (DON) has had a strong Alternative Dispute Resolution (ADR) Program Office for several years. Staffed with two attorneys and a program analyst, it handles a wide variety of ADR issues facing the DON, including environmental matters. The DON ADR Program Office works with appropriate DON commands responsible for environmental issues. Training materials and external links to ECR courses are published on the web at <http://www.adr.navy.mil/content/sect106consult.aspx> and <http://ecr.gov/Training/Training.aspx>.

The DON has demonstrated a long standing capacity for ECR in the area of installation restoration. The DON currently participates in 45 facilitated partnering teams that oversee the restoration efforts at 986 active environmental restoration sites. Within these teams, representatives from the DON, EPA, state governments, local officials, and sometimes various other groups use collaborative methods to craft creative and cost effective restoration processes designed to address as many interests as possible.

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.

As the Systematic Evaluation of Environment and Economic Results (SEEER) project at EPA and DOI demonstrates, it is possible to collect and analyze data pertaining to the use of ECR. However, the analysis under the SEEER Project has a significant expense of about \$10K to \$20K per case. The DON has not adopted such a system at this time.

- 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 2(a) response.

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

See 2(a) response.

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	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed	ECCR Cases or Projects sponsored ²	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	—	—	—	—	—	—	—	—	—
License and permit issuance	—	—	—	—	—	—	—	—	—
Compliance and enforcement action	—	—	—	—	—	—	—	—	—
Implementation/monitoring agreements	45	—	—	—	45 ³	—	45	—	—
Other (specify): _____	—	—	—	—	—	—	—	—	—
TOTAL	45	—	—	—	45	—	45	—	—
(the sum of the Decision Making Forums should equal Total FY 2014 ECCR Cases)									

² The DON has 45 facilitated partnering teams, organized in a three-tier structure, which address installation restoration issues. Collectively, the teams work with 986 active environmental restoration sites.

³ These 45 facilitated partnering teams collaborate to implement environmental restoration regulations. The third-party partnering team facilitators are sponsored by DON.

4. ECCR Notable Cases: Briefly describe notable ECCR cases in the past fiscal year.
(Optional)

Naval Weapons Industrial Reserve Plant (NWIRP) Bethpage, NY

In FY 2014, the DON, in collaboration with the U.S. Department of Justice, invested resources in an ongoing mediation between a defense contractor, Northrop Grumman (NG), and the U.S., concerning mutual claims to recover cleanup costs and contribution of response action work in the vicinity of the former Naval Weapons Industrial Reserve Plant (NWIRP) Bethpage, NY. This investment included the frequent involvement and travel of four (not including DOJ) attorneys and a remedial project manager, as well as the funding of various consultants.

The mediation is ongoing, and therefore the ultimate results are not apparent; however a by-product of the mediation is better communication and perhaps collaboration on controversies that concern third-parties who have interest in or have been impacted by groundwater contamination.

The parties have been in settlement discussions since early 2009. There has been peripheral litigation involving NG, but not the DON, but which has nevertheless distracted from the mediation. The parties first had difficulty agreeing on a mediator. Once that was resolved, severe trust issues impacted document exchange and commencement of substantive discussions. The parties have finally reached the stage of discussing settlement numbers. The parties have widely divergent views of the case and therefore are very far apart on settlement. Litigation is still quite possible. Mediation was first offered by the DON to NG in Nov. 2010.

The DON made ex parte technical and legal presentations to the mediator in April and May 2013, respectively. The first substantive discussion of legal and factual arguments between the parties occurred in Dec. 2013. Funding of the mediator was split between NG and the DOJ. The DON funded supporting consultants, personnel, travel, and litigation support.

The parties entered into a standard DOJ confidentiality agreement and engaged a evaluative neutral mediator who had a good reputation and previous experience in DoD and CERCLA matters. The only innovative approach to date was to hold a separate session between the parties to explore areas of cooperation external to or only tangential to cost recovery discussions. That session was helpful in building some trust between the parties in mediation, as well as to provide a platform to improve the quality of dialogue between the technical representatives of each party in their handling of matters with regulatory agencies and the community.

Naval Air Station Jacksonville, Florida (Environmental Restoration Partnering Team)

"NAS Jacksonville developed an innovative prioritization protocol for evaluating vapor intrusion (VI) into industrial workspaces in lieu of a more traditional site-wide, building-by-building investigation method. The approach reduced the number of buildings investigated from 167 to 12 at a potential cost savings ranging from \$30,000 to \$60,000 per building. The use of portable chemical identification system, gas chromatography/mass spectrometry units enabled the field team to identify VI source areas beneath the building slabs in real time, minimizing disruption and reducing cost associated with planning, sampling, analyzing, and reporting on the order of \$10,000 to \$20,000. In total, use of these innovative technologies saved approximately \$250,000 on the VI assessment at Operable Unit Three compared to using traditional building-by-building VI sampling and investigation methods. The NAS Jacksonville team's success is the result of numerous effective partnerships including a project to implement an innovative high-resolution sampling strategy and a fate and transport modeling study to evaluate the impacts of contamination stored in low permeability layers and the effects of "back-diffusion" on long-term groundwater quality sponsored by the Environmental Security Technology Certification Program. Long-duration passive samplers enabled the NAS Jacksonville Environmental Restoration Partnering Team to perform a comparative study for future applicability. Long-duration sampling reduces uncertainties associated with temporal variability and can simplify deployment of samplers."⁴

5. **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.

The DON ADR Program Office incorporated the 2014 survey questions into an online database, and worked with the Assistant General Counsel (Energy, Installations and Environment) to solicit world-wide responses from throughout the DON.

⁴ <http://greenfleet.dodlive.mil/currents-magazine/currents-magazine-2014/currents-summer-2014/>

Please attach any additional information as warranted.

Report due February 15, 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