

FY 2015 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 2015.

The report deadline is February 15, 2016.

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 2015 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 2015 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 15 ECCR Report Template

Name of Department/Agency responding:	U.S. Nuclear Regulatory Commission
Name and Title/Position of person responding:	Joan Olmstead, Attorney Ian Irvin, Attorney
Division/Office of person responding:	Office of General Counsel, Reactor and Rulemaking Division
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Date this report is being submitted:	February 18, 2016
Name of ECR Forum Representative	Joan Olmstead

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 2015, 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 Nuclear Regulatory Commission (NRC) usually uses third-party neutrals for Alternative Dispute Resolution in labor and enforcement cases. However, the NRC did create mechanisms to support various NRC activities involving environmental, cultural, and historical resources during FY 2014. One of the contracts allows NRC program offices to hire external facilitators to support specific licensing and rulemaking activities. The other contract funds a liaison position at the Advisory Counsel of Historic Preservation (ACHP) to assist with NRC actions involving historical and cultural resources.

The Nuclear Regulatory Commission typically uses NRC employees to facilitate NRC public meetings. The NRC uses employees to act as facilitators because of the technical nature of NRC's regulatory programs. The NRC facilitators staff public meetings and workshops involving NRC licensing, policy development, and rulemaking activities.

Currently, the NRC has approximately 24 staff members that assist staff in NRC public outreach programs, including public meetings involving environmental issues. The program uses outside contractors to teach internal NRC facilitators and other NRC employees general public meeting and facilitation skills. The objective of this program is to make NRC meetings more effective by developing a skilled cadre of facilitators throughout the NRC.

The NRC is developing a Tribal Policy Statement establishing principles ensuring NRC's effective government-to-government interactions with American Indian and Alaska Native Tribes and would encourage and facilitate Tribal involvement in the areas over which the Commission has jurisdiction.

The Commission approved the publication of the proposed Tribal Policy Statement for public comment. On December 1, 2014 (79 Fed. Reg. 71136), the NRC solicited comments on proposed "NRC Tribal Policy Statement" (ADAMS Accession No. ML14279A180). The public comment period was originally scheduled to close on March 31, 2015. The NRC extended the public comment period on this document until May 31, 2015, to allow more time for comment submission. The staff is currently reviewing the public comments and plans to submit a final version of the "NRC Tribal Policy Statement" for Commission approval during FY 2016.

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 currently 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 2015; and (b) quantitative or qualitative results (benefits) you have captured during FY 2015.

N/A

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

The NRC currently does not identify the investments made in ECCR and benefits realized when using ECCR. The NRC does not plan to identify investments or benefits in FY 2016.



11. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2015 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 2015 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	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____	_____	_____	_____	_____
Compliance and enforcement action	_____	_____	_____	_____	_____	_____	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL	0	0	0	0	0	0	0	0	0
		(the sum of the Decision Making Forums should equal Total FY 2015 ECCR Cases)							

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2015.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2015. 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 2015 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2015 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 2015 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 2015). 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
The NRC does not have an ECCR case example for FY 15.
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
N/A
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
N/A
Reflections on the lessons learned from the use of ECCR

N/A

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

While not, strictly speaking, an ECCR case, the NRC held a series of facilitated public meetings on proposed revisions to 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste." The meetings were held near operating low-level waste disposal facilities during the public comment period on the NRC's proposed rule. This rulemaking, which began in 2009, was initiated to address changes in the types of uranium-bearing waste being disposed at low-level waste disposal facilities since Part 61 was first promulgated in the early 1980s. The purpose of this rulemaking is to specify a requirement for a site-specific analysis and associated technical requirements for unique waste streams including, but not limited to, the disposal of significant quantities of depleted uranium:

In addition, the NRC held facilitated public meetings near nuclear power reactors that are beginning the decommissioning process.

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 continues to actively engage the public in licensing, rulemaking, and policy matters to accomplish many of the objectives of ECCR.

In FY 2015, the NRC continued to have two contract mechanisms to support various NRC ECCR related activities. One of the contracts involves funding a liaison from the Advisory Counsel of Historic Preservation (ACHP) to work on NRC NHPA activities. The other contract 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 continues to expand and enhance its engagement with the public through early and continuing interaction with the stakeholders concerned about a particular facility or rulemaking. 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; industry organizations; and other federal agencies. The NRC uses a variety of public outreach techniques guided by a third party facilitator or NRC staff member.

Examples of this public outreach program include the use of facilitators for public meetings to gather information for specific licensing and rulemaking activities. The NRC also attended national and regional meetings for outreach activities engaging with Tribes and other federal agencies during the development of the NRC's proposed Tribal Policy Statement and revision of the NRC's Tribal Protocol Manual.

The NRC's NEPA documents under development involve cooperating agencies. On applications for new reactor licenses and early site permits, the NRC works with the U.S. Army Corps of Engineers as a cooperating agency because these licensing actions often require permits from the Corps. The NRC has a Memorandum of Understanding (MOU) with the Bureau of Land Management (BLM) for interacting on In-situ Uranium Recovery (ISR) licensing actions. In addition, the NRC cooperated with the Department of Energy for the NEPA review for a medical isotope production facility.

In 2015, the NRC completed an environmental assessment for the proposed Prairie Island Independent Spent Fuel Storage Installation (ISFSI) license renewal, which was developed under an MOU with the Prairie Island Indian Community.

In FY 2015, 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 ISR facility license applications. During FY 15, these licensing actions have involved 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 an invaluable forum for the NRC and stakeholders to share information and exchange views on important issues before the agency. The topics covered at the RIC vary every

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 2015 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 continued its in-house facilitator program and continued its use of NRC staff facilitators in public meetings.

During FY 2015, NRC staff received training on topics related to ECRR: tribal consultation and National Historic Preservation Act issues. The NRC has continued its use of the expanded public outreach program, both for conducting its NEPA environmental reviews for NRC license applications as well as for rulemaking activities that involve environmental issues.

As stated above, the NRC has continued to use cooperating agency agreements and MOUs with the Army Corps, BLM, and the Department of Energy.

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.

The NRC continues to appreciate having questions that facilitate reporting of other types of 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, 2016.

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