

Environmental Collaboration and Conflict Resolution

Twelfth Annual Report

March 2018

DRAFT



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

Recognizing the role of collaboration in conflict resolution and its history of collaborative approaches, both with and without third-party neutrals, to prevent or resolve environmental conflicts, the Department of Energy (Department or DOE) defines ECCR more expansively than the ECCR Memorandum. The Department 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 stated 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 2017, a total of 28 DOE sites and program offices completed the ECCR survey template. A total of 20 ECCR cases were reported. Five of the 20 reported ECCR cases involved third-party assistance and three are in progress. A total of 15 cases did not involve third parties. One was reported as completed.

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 the Department of Energy (Department or 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, the Department 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 the Department in Fiscal Year 2017 (FY 2017).

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 for this annual report. The Department 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. This report contains the information supplied by 17 respondents.

II. ECCR CAPACITY BUILDING PROGRESS MADE IN FY 2017

The DOE sites and program offices 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. On average, 15 participants join the monthly calls. A total of 118 site and program office representatives participated in the annual training conducted on May 3, 2017.

An example of continuing to build ECCR capacity is the approach that the Richland Operations Office (RL) uses to administer the Hanford Federal Facility Agreement and Consent Order, more commonly referred to as the Tri-Party Agreement (TPA). The TPA is an agreement among the

DOE, the U.S. Environmental Protection Agency (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 Resource Conservation and Recovery Act (RCRA) treatment, storage, and disposal unit regulations and corrective action provisions at the Hanford Site. When disputes arise under the TPA, RL project managers develop negotiation strategies that incorporate ECCR principles. RL Senior Management and environmental legal counsel strongly encourage projects to use collaborative negotiations for environmental conflict resolutions. Most issues are resolved informally and never rise to the dispute level. The issues are resolved collaboratively through monthly Project Manager meetings, quarterly milestone review meetings, and other meeting as necessary to address issues. Over the course of a year, hundreds of such meetings are held. In FY 2017, RL was involved with two official environmental disputes under the TPA. It is the intent of RL to continue to use the informal collaborative approach to resolve issues before it becomes necessary to enter into formal, third-party supported environmental conflict resolution.

Similarly, Brookhaven National Laboratory (BNL) is part of an Interagency Agreement Group, which is comprised of the EPA, the New York State Department of Environmental Conservation (DEC), and the DOE. Additional participants include Suffolk County. This group is an outgrowth of the original Interagency Agreement (IAG) that was signed by EPA, DEC, and DOE to govern the cleanup of BNL after it was listed as a Superfund Site. This group is given, and provides comments to, any document or study that is required by the IAG. In addition, the group is kept apprised of all future operations at BNL that may affect the environment.

Other offices find value in using a third-party neutral service to build ECCR capacities. The West Valley Demonstration Project (WVDP) and the New York State Energy Research and Development Authority (NYSERDA) entered into a tripartite agreement with a third-party neutral to retain the services of all necessary subject matter experts (SMEs), an Independent Scientific Panel (ISP), and a professional facilitator to coordinate the process of reaching interagency consensus on a final decision regarding the decommissioning and/or remediation of all remaining facilities at the Western New York Nuclear Service Center (Center). In addition, WVDP and NYSERDA jointly hosted multiple public meetings as part of the Phase 1 Study Process with a professional facilitator always present and the third-party neutral available when appropriate. These ECCR efforts are proving to be extremely useful conflict avoidance and conflict resolution tools.

The Environmental Management – Los Alamos Field Office (EM-LA) utilized the services of an outside facilitator in a critical and long-term conflict resolution process. Specifically, DOE participates in monthly meetings of the Los Alamos National Laboratory (LANL) Natural Resource Damages Assessment (NRDA) Trustee Council, which consists of the representatives from the State of New Mexico, several nearby Pueblos, and the Forest Service. DOE is one of the two co-lead Trustees (along with the State of New Mexico), and in that role contracts for a facilitator to assist in the important discussions amongst Trustees during the monthly meetings.

III. INVESTMENTS IN AND BENEFITS OF ECCR

The benefits of integrating ECCR into DOE site and program office projects include expanded and clearer communication that leads to smoother relationships with the regulators and the public.

At the WVDP, the use of a third-party neutral as part of the Phase 1 Study process enabled WVDP and NYSERDA to utilize the talents of SMEs and an ISP to focus on the areas of technical disagreement between the parties and, thereby, facilitate reaching an interagency consensus on the future Phase 2 decisions (anticipated in 2022). A significant benefit of applying ECCR techniques is that they enable the WVDP to better anticipate, evaluate, and resolve environmental issues and potential disputes before they become a larger problem. The ECCR-driven process of negotiating and agreeing upon supporting documents also serves to memorialize progress made in achieving interagency consensus and reduce any backsliding by the parties.

The third-party neutral attends Quarterly Public Meetings that update stakeholders on all Phase 1 Studies, when appropriate, and serves as a conduit between stakeholders and the SMEs and ISP members. A professional facilitator leads the monthly Citizens Task Force meetings which are hosted by WVDP and NYSERDA in order to inform the local interest group of all ongoing activities and respond to any concerns. Finally, WVDP and NYSERDA executed a Consultation and Coordination Plan that guides the routine communications between the parties involving ongoing activities enabling more effective and consistent communication, aimed to resolve conflict as soon as possible.

The Southeastern Power Administration is a small Federal agency with the authority to market hydroelectric power and energy in the states of Alabama, Florida, Georgia, Illinois, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, from reservoir projects operated by the U.S. Army Corps of Engineers. Southeastern increased its strategic planning efforts to promote collaborations and negotiations with all stakeholders and business partners. These efforts have enabled Southeastern and its stakeholders to develop solutions in accordance with congressional intent and current conditions in the management of federal water resources projects. Frequent negotiations and continued participation in these stakeholder meetings are deemed positive and represent steps forward by Southeastern in its strategy to seek amiable conflict resolution.

Staff of the EM-LA believe that the monthly LANL NRDA Trustee Council meetings are essential in gathering necessary information for future discussion and decision-making as well as building a useful working relationship amongst the Trustees. The facilitator assists the Trustees by encouraging them to engage in candid discussions on the sensitive issue of potential damages to local natural resources in order to reach timely resolution on important issues and relevant studies. The work of the LANL NRDA Trustee Council is a multi-year process and is ongoing.

IV. ECCR CASES IN FY 2017

Respondents reported 5 ECCR cases in which third parties were involved and 15 ECCR cases in which they were not. Three cases involving third parties are in progress and include non-federal participants. Of the 15 cases not involving a third party 1 has been completed and the rest are in progress and include non-federal participants. Attachment B contains tables depicting the ECCR survey results.

V. ECCR CASE EXAMPLES USING A THIRD-PARTY

Conceptually, WVDP and NYSERDA agreed that retaining the services of a third-party neutral in order to facilitate reaching interagency consensus on several complex technical issues 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. Integral to the process was the agreement between WVDP and NYSERDA to split all associated costs 50/50 including the cost of a third-party neutral.

As designed, the third-party neutral retained and utilized the services of both SMEs and an ISP to assist with the overall goal toward facilitating interagency consensus. This process has thus far generated multiple technical reports that have been shared with Federal and state agencies as well as WVDP stakeholders. Additionally, the third-party neutral used the services of a professional facilitator to moderate all public meetings as part of the associated comprehensive public participation plan to ensure transparency with stakeholders.

With the benefit of a substantial number of jointly-financed technical reports on areas of historical disagreement between the parties and consistent public input throughout the process, the agencies aim to reach consensus on the Phase 2 decision in 2022. The anticipated outcome would avoid lengthy and expensive litigation between DOE and the State of New York on the final disposition of the remaining facilities.

Effective use of a third-party neutral has allowed WVDP and the State to keep the entire decision-making process on track, avoid work stoppages due to interagency disagreements, and overcome 30 years of entrenched disagreement and conflict. As a consequence, the project is on course to reach mutual and final decisions on the ultimate disposition of the Site in 2022.

At Hanford, on behalf of the Hanford Natural Resource Damages Trustee Council, DOE contracted a facilitator to assist planning and decision-making among trustees. The facilitator enabled consensus building among the trustees and lessened the possibility of litigation.

The Department of Justice (DOJ) engaged a mediator with assistance from DOE and the Forest Service in a CERCLA matter at the San Mateo Mine site in New Mexico (SM). The mediator acted as a neutral facilitator of collaborative discussions to enable the parties to reach a Consent Decree. The mining companies involved wanted reimbursement of some of their costs under an EPA Unilateral Administrative Order and contribution protection against any claims the United States may have against them, including protection from further litigation. The overall goal of this agreement is to prevent further time consuming and costly litigation.

DOJ also utilized a mediator at the 94 mines formerly operated by two affiliated subsidiaries of Freeport McMoRan, Inc. (FP) in a CERCLA matter in which DOE participated. The United States and the Navajo Nation reached a settlement with these mining

companies in sites in Arizona, New Mexico, and Utah by engaging in ECCR through mediation. The mining companies agreed to perform the cleanup of the uranium mine sites. The companies agreed to do this without admitting liability for the claims listed in EPA's original complaint.

The settling mining companies will hire and pay contractors to perform the cleanup work, but the work is subject to review by EPA and the Navajo Nation before moving forward. This will continue ongoing productive communication that allowed for a Consent Decree to be executed by the parties. As a result of the mediation, costly and time consuming litigation has been and will continue to be avoided.

VI. ECCR CASE EXAMPLES WITHOUT A THIRD-PARTY

Many ECCR cases are handled without the use of a third-party and instead use collaborative discussions to provide information to the public, elected officials, and regulatory bodies through formal and informal presentations. It also gives DOE the opportunity to brief those bodies, receive their comments and concerns, and address those comments and concerns throughout the decision-making process.

At the Savannah River Site Field Office (SRS), DOE participated in ECCR through the use of collaborative discussions with the South Carolina Department of Health and Environmental Control. Due to delays in the start date of the Salt Waste Processing Facility, both parties recognized that there would be challenges in making certain Federal Facility Agreement (FFA) milestones. Through the use of productive discussions a "Suspension Agreement" was executed and the FFA was modified to extend the milestones. Extending the milestones will allow work to continue as usual and without the disruption of expensive and time consuming litigation.

The Idaho Operations Office (DOE Idaho) entered into collaborative discussions with the State of Idaho regarding challenges in meeting an enforceable milestone for liquid tank waste treatment and shipment of treated transuranic waste from Idaho. A good working relationship between DOE and the State has enabled both Parties to reach acceptable interim solutions.

DOE Idaho also held collaborative discussions and problem solving with the Shoshone Bannock Tribes regarding a proposed project on the Idaho Site. The external project proponent, DOE, and the Tribes had several discussions to better understand each other's positions and work toward solutions.

The Office of Energy Efficiency and Renewable Energy/Golden Field Office applied ECCR principles to DOE's proposal to fund an offshore wind demonstration project off the mainland of Maine in state waters. To prevent potential environmental conflict with Indian Tribes, the office conducted a webinar for the five federally recognized Indian Tribes located in Maine and followed up with in-person meetings to discuss the proposed project details, studies to be conducted including archaeological studies, the National Historic Preservation Act, and the

National Environmental Policy Act process. The in-person meetings were successful in building relationships and improving communication between DOE and the tribal points of contact.

VII. PRIORITY USES OF ECCR

The Department's sites and program offices used third-party and non-third-party ECCR collaboration with regulators and stakeholders in the following areas in FY 2017:

- Site remediation, decontamination, and decommissioning under CERCLA and RCRA;
- Site permits;
- Collaborative discussion with stakeholders (both federal and non-federal)
- Cultural resource protection;
- Natural resource protection;
- Multi-issue and Multi-party Environmental Disputes; and
- Environmental siting (wind demonstration project)

VIII. COMMENTS AND SUGGESTIONS REGARDING REPORTING

No comments or suggestions were submitted regarding the ECCR reporting process. However, in terms of ECCR capacity buildings, one office was concerned with budgetary constraints restricting advanced training in ECCR methods.



Attachment A Modified Department of Energy ECCR Survey FY 2017 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 immediately following this survey. 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.”

The annual report format below is provided in accordance with the memorandum for activities in FY 2017.

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 2017 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 2017 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/FederalECCRPolicy/AnnualECCRReport.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

1: ECCR Capacity Building Progress:

1. Describe steps taken by your site/program to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2017, including progress made since FY 2016. 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.] ECCR matters not involving a third-party neutral should be reported under question 8.

Please type your response in the box below.

2: ECCR Investments and Benefits

- a.** Please describe any methods your site/program 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. ECCR matters not involving a third-party neutral should be reported under question 8.

- b.** Please report any (a) quantitative or qualitative investments your site/program captured during FY 2017; and (b) quantitative or qualitative results (benefits) you have captured during FY 2017. ECCR matters not involving a third-party neutral should be reported under question 8.

- c.** What difficulties have you encountered in generating cost and benefit information and how do you plan to address them? ECCR matters not involving a third-party neutral should be reported under question 8.

3: ECCR Use

3A. Describe the level of ECCR use within your site/program in FY 2017 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.

Context for ECCR Applications	TOTAL FY 2017 ECR CASES ²	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 ³	Sponsored ⁴	Federal only	Including non federal participants
Policy development									
Planning									
Siting and construction									
Rulemaking									
License and permit issuance									
Compliance and enforcement action									
Implementation/monitoring agreements									
Other (specify):									
TOTAL									
		(the sum of the Decision Making Forums should equal Total FY 2017 ECR Cases)							

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2017.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2017. 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 2017 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2017 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 2017 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

3: ECCR Use

3B. DOE’s internal policy with respect to Alternative Dispute Resolution at 74 Fed. Reg. 63458 (Oct. 24, 2008) defines environmental conflict more broadly than OMB/CEQ. DOE’s internal definition of ECCR would include all types of collaborative problem solving processes used to **prevent or resolve** environmental conflict, **regardless of whether a third party** is used in these processes. Please complete the table below for all cases or projects **NOT** reported in Table 3A which are within the DOE definition of ECCR.

Context for ECCR Applications	TOTAL FY 2017 ECCR CASES ⁵	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 ⁶	Sponsored ⁷	Federal only	Including non federal participants
Policy development									
Planning									
Siting and construction									
Rulemaking									
License and permit issuance									
Compliance and enforcement action									
Implementation/monitoring agreements									
Other (specify):									
TOTAL									
		(the sum of the Decision Making Forums should equal Total FY 2017 ECCR Cases)							

⁵ An “ECCR case” for purposes of this table is a case in which a collaborative problem solving process was active in a particular matter during FY 2017.

⁶ A “completed case” means that collaborative problem solving in a particular ECCR case ended during FY 2017. 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.

⁷ Sponsored - to be a sponsor of 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.

Note: If you subtract completed ECCR cases from Total FY 2017 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2017 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 2017 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

4A: ECCR Case Example: Third-Party Neutral

Using the template below, provide a description of an ECCR case in which a third-party neutral was used (preferably completed in FY 2017). 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
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
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
Reflections on the lessons learned from the use of ECCR

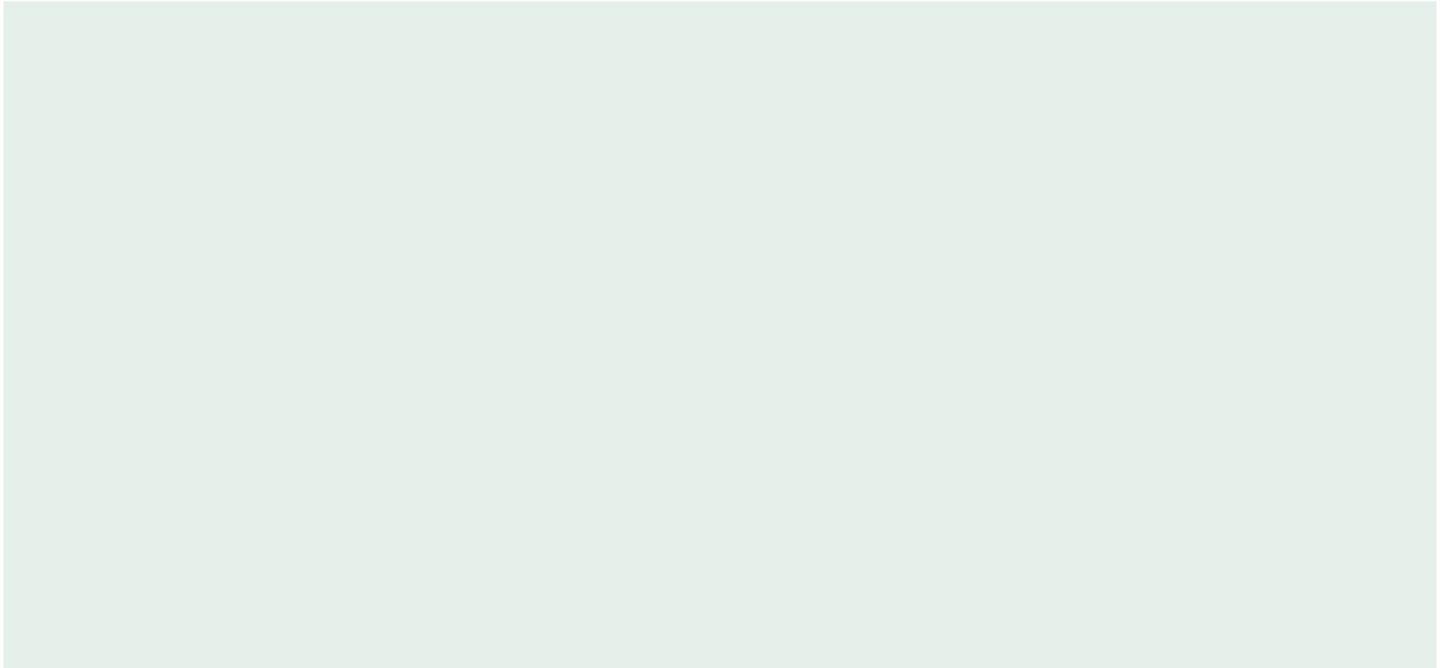
4B: ECCR Case Example: Collaborative Problem Solving

Using the template below, provide a description of an ECCR case in which collaborative problem solving was used (preferably completed in FY 2017). 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 collaborative problem solving process, and how the ECCR effort was funded
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
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
Reflections on the lessons learned from the use of ECCR

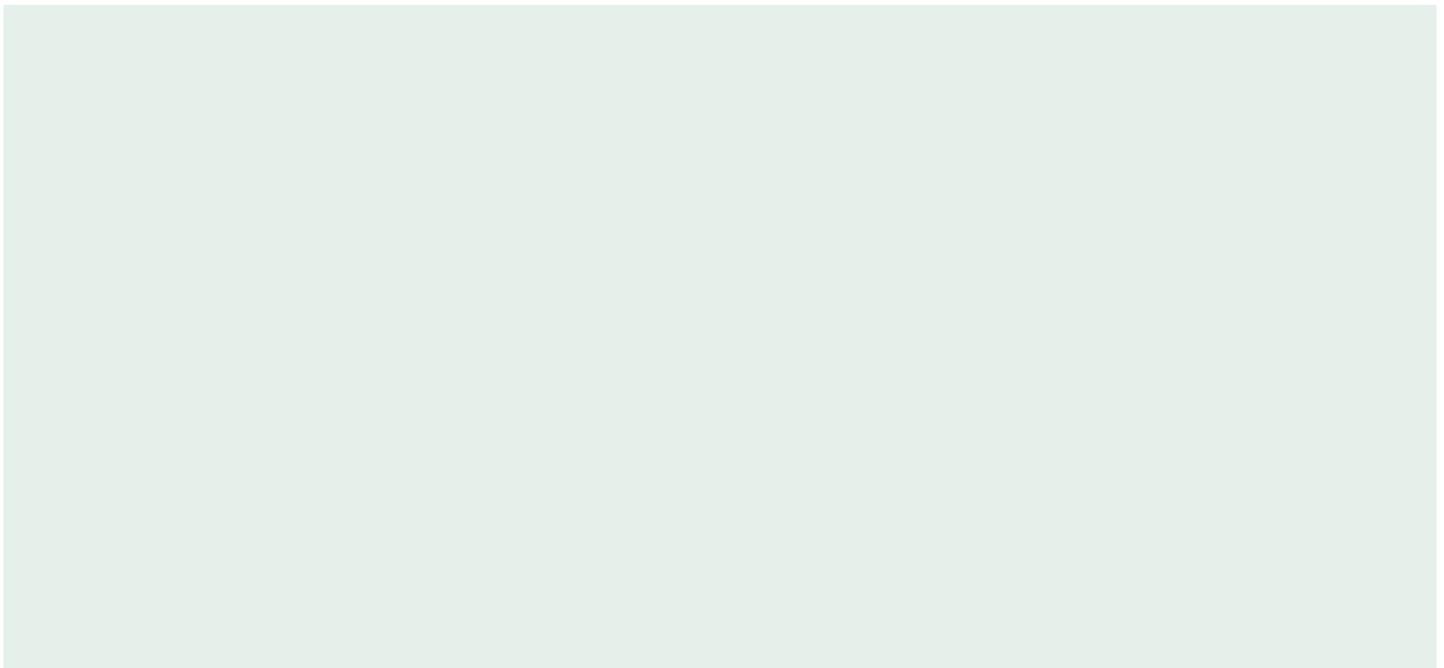
5A: Other ECCR Notable Cases: Third-Party Neutral

Briefly describe any other notable ECCR cases in which a third-party neutral was used in the past fiscal year. (Optional)



5B: Other ECCR Notable Cases: Collaborative Problem Solving

Briefly describe any other notable ECCR cases in which collaborative problem solving was used in the past fiscal year. (Optional)



6: Priority Uses of ECCR

Please describe your efforts to address priority or emerging areas of conflict and cross-cutting challenges either individually or in coordination with other sites/programs. 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. ECCR matters not involving a third-party neutral should be reported under question 8.

7: 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.

8: With respect to questions 1, 2, and 6 above, do you have anything to add regarding collaborative problem solving processes within DOE's definition of ECCR described in question 3B that did not involve the use of a third-party?

Support from the Office of Conflict Prevention and Resolution

9: Did you know that there was a DOE Office of Conflict Prevention and Resolution to provide you assistance?
 No Yes If yes, how did you learn about the office?

10: Have you had the opportunity to receive support from or use resources provided by the Office of Conflict Prevention and Resolution? If so, please describe. No Yes

11: What specific support can the Office of Conflict Prevention and Resolution provide for you during the coming year?

Please attach any additional information as warranted.

Report due December 15, 2017.

Submit report electronically to: Beverly.Whitehead@hq.doe.gov

Questions: Please call Beverly Whitehead (202) 586-6073 or Steve Miller (202) 586-2925

Attachment A. Basic Principles for Department of Energy Engagement in Environmental Conflict Resolution and Collaborative Problem Solving

Department and/or contractor personnel should:

Informed Commitment	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement, and 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, as appropriate, the 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 that decisions are implementable consistent with federal law and policy; commit to identify roles and responsibilities necessary to implement agreement; agree in advance on the consequences of a party being unable to provide necessary resources or to implement agreement; and take steps to obtain resources necessary to implement any agreement.

Attachment B Department of Energy 2018 ECCR Cases With and Without the Use of a Third Party

Table 1: ECCR Cases with a Third-Party

	Total FY 2017 ECCR Cases	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed	ECCR Cases or Projects sponsored	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	1 (WVDP ²)	1 (WVDP ²)				1 (WVDP ²) 1 (SM ³) 1 (FP ⁴)		1 (WVDP ²) 1 (SM ³) 1 (FP ⁴)	
Siting and construction									
Rulemaking									
License and permit issuance									
Compliance and enforcement action	1 (SM ³) 1 (FP ⁴)	1 (SM ³) 1 (FP ⁴)							
Implementation/monitoring agreements									
Other (specify): EM-LA – Natural Resources Damage Assessment(NRDA) Trustee Council EM-HF NRDA Trustee Council	1 (EM- LA ¹) 1(EM-HF ⁵)				1 collaborative discussions (EM- LA ¹) 1 Collaborative discussions (EM-HF ⁵)	1 (EM-LA ¹) 1 (EM-HF ⁵)		1 (EM-LA ¹) 1 (EM-HF ⁵)	
TOTAL	5	3			2		5	5	

¹ Environmental Management – Los Alamos Field Office

² West Valley Demonstration Project

³ San Mateo

⁴ Freeport

⁵ Environmental Management- Hanford Field Office

Table 2: ECCR Cases Without a Third Party

	Total FY 2017 ECCR Cases	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed	ECCR Cases or Projects sponsored	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	3(RL ²)								3 (RL ²)
Siting and construction	1 (Idaho ¹)				1 collaborative discussions (Idaho ¹)				1(Idaho ¹)
Rulemaking	3(RL ²)								3 (RL ²)
License and permit issuance									
Compliance and enforcement action	1 (Idaho ¹) 4(RL ²) 1 (SRS ⁴)				1 collaborative discussion (Idaho ¹) 1 (SRS ⁴)	1 (SRS ⁴)			1(Idaho ¹) 4 (RL ²)
Implementation/monitoring agreements									1 (SRS)
Other (specify): RL – Statements of Dispute under HFFACO between DOE and WA Dept Ecology -EM Nevada Program	2 (RL ²)				2 dispute statements (RL ²) 1 collaborative discussion (EM Nevada ³)				2(RL ²)
TOTAL	15				6	1			15

¹ Idaho Operations Center
² Richland Operations Office
³ Environmental Management Nevada Field Office
⁴ Savannah River Site