

FY 2018 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 in accordance with the memo for activities in FY 2018.

The report deadline is April 12, 2019.

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 2018 report, along with previous reports, will establish a useful baseline for your department or agency. 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 2018 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 18 ECCR Report Template

Name of Department/Agency responding:	U.S. Air Force
Name and Title/Position of person responding:	Patricia Collins, Associate General Counsel
Division/Office of person responding:	Installations, Energy & Environment, Office of the General Counsel
Contact information (phone/email):	patricia.r.collins6.civ@mail.mil
Date this report is being submitted:	March 22, 2019
Name of ECR Forum Representative	Patricia Collins

- 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 2018, 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 is encompassed within the overall Air Force Negotiation & Dispute Resolution program. AF Policy Directive 51-12 makes negotiation a critical leadership skill, and sets the expectation that AF leaders will use negotiation and dispute resolution techniques to preclude, manage, or resolve conflict. The Policy Directive's implementing instruction requires AF programs, including those resolving environmental disputes, to, where appropriate, use negotiation and dispute resolution processes. The resources of the AF NDR program are, and have been, available to support the use of ECCR and train AF personnel in

negotiation and communication skills within the context of ECCR.

The Air Force will continue education and training in negotiation and interest-based conflict resolution skills through, inter alia, the following initiatives:

-The Air Force Negotiation Center (AFNC), based at Air University in Montgomery, Alabama, has successfully imbedded negotiation and conflict management skills into every level of commissioned officer and noncommissioned officer Professional Military Education (PME). AFNC is working on imbedding these skills in Civilian Development Education. Additionally, a pilot program is underway to develop negotiation skills at separate organizational units with the goal of negotiation becoming an individual and enterprise-wide corporate capability.

-Training in ECCR has been institutionalized as a module at the Negotiation and Appropriate Dispute Resolution Course (NADRC) conducted annually at the AF JAG School at Maxwell AFB, AL.

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.

Senior leadership has long recognized the value of ADR and its contribution to mission accomplishment through its creative problem-solving attributes as well as savings in cost and time. ADR is treated by the Air Force as “budget neutral” with a positive impact on mission accomplishment. Air Force leadership fully supports the need for up-front investment in training in the use of collaborative processes and conflict resolution.

ECCR is fully integrated into Air Force budgeting and costs are not separated. The real savings from ECCR is the ability to accomplish mission without dispute-caused interruption. Air Force environmental conflicts and disputes tend to be small in number covering a wide range of issues. The volume is not as high as for agencies with licensing and enforcement as their primary mission.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2018; and (b) quantitative or qualitative results (benefits) you have captured during FY 2018.

(See above.)

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

(See above.)

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2018 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 2018 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	__5__	__5__	___	___	___	___	__5__	___	__5__
Siting and construction	__3__	___	___	__3__	___	___	__3__	___	__3__
Rulemaking	___	___	___	___	___	___	___	___	___
License and permit issuance	___	___	___	___	___	___	___	___	___
Compliance and enforcement action	__2__	___	__2__	___	___	__2__	___	___	__2__
Implementation/monitoring agreements	___	___	___	___	___	___	___	___	___
Other (specify): _____	___	___	___	___	___	___	___	___	___
TOTAL	__10__	__5__	__2__	__3__	___	__2__	__8__	___	__10__
		(the sum of the Decision Making Forums should equal Total FY 2018 ECCR Cases)							

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2018.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2018. 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 2018 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2018 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 2018 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 2018). 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>In 2018, Nellis Air Force Base (NAFB), Nevada, received a notice of violation from the Clark County Department of Air Quality (CCAQ) for operating diesel-powered mobile light carts without a permit. The Air Force uses the light carts to provide illumination for aircraft maintenance personnel operating in black-out conditions in deployed forward operating areas. Additionally, the carts are used around NAFB during training exercises by airfield repair technicians preparing to deploy. The carts use diesel engines to power large light fixtures, and generate some air emissions of concern to CCAQ when operated locally. However, because the carts are frequently deployed throughout the world, the Air Force was strongly opposed to listing the carts on NAFB's Clean Air Act permit. Besides financial penalties, the Air Force was concerned about potential future operational limitations if light carts throughout the U.S. were required to seek local permitting approval. On the other hand, CCAQ had a strong interest in monitoring air emissions, as it represents a county in non-attainment for several air pollutants. After four months of failed negotiations, the parties were prepared to litigate the issue. However, the Air Force proposed and CCAQ agreed to stay the litigation and seek an advisory opinion from the U.S. Environmental Protection Agency (EPA), Region IX, Office of Air Quality. The parties agreed to stay the litigation pending EPA's review of the issue.</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>Because EPA both authorizes CCAQ's air quality program, and can act in an enforcement capacity against the Air Force, the parties felt EPA was in a unique position to consider the interests and arguments of both sides. Moreover, EPA had reliable expertise on the Clean Air Act and agreed to provide a staff-level review at no cost to the parties. The parties agreed to a joint statement of facts and provided informal briefs on their respective legal and regulatory positions. Additionally, with some caveats, the parties agreed they would be bound by the advisory opinion to the extent practicable. In turn, EPA staff provided an advisory opinion that guided both parties to a successful resolution of the issue. The EPA advised the Air Force that the light carts did not require a permit because of the unique military nature of the carts and CCAQ did not have to expend additional resources to regulate the light carts.</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>The parties willingness to use a third party in the form of an EPA staff review saved the time and expense of a litigated state-level hearing. Additionally, the Air Force reduced its risk of an unfavorable local court ruling which could have had national implications. Likewise, CCAQ was able to redirect its limited enforcement resources to other areas where it had clearly delegated authority.</p>

Reflections on the lessons learned from the use of ECCR

EPA's technical expertise and recognition of interests of both sides of the issue was essential to allowing the Air Force to maintain maximum operational flexibility, while providing valuable guidance and prioritization to CCAQ.

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

Unlike regulatory or licensing agencies, the Air Force does not have a large volume of cases and many of the cases span multiple years.

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.

Many of the ECCR cases reported continue to involve CERCLA and land use.
(See answer below.)

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2018 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.*

Throughout FY18, Air Force participated on 80 Restoration Advisory Boards, the great majority of which do not utilize third party neutrals. These advisory boards include community and regulator representatives and employ collaborative decision making processes for many cleanup issues.

Air Force has Regional Environmental Coordinators for all EPA Regions and serves as DOD lead in EPA Regions 2, 6 & 10. Air Force has chaired partnering sessions and participated in working groups with Federal and State partners to address installation, regulatory and environmental compliance matters in AL, GA, FL, NC, SC, NY, NJ, WA, OR, ID, AK, OK, NM, CA & TX and other States as well as on working groups for the Chesapeake Bay, for Federal Climate Partners, and for implementation of the E.O. on Sustainability. Air Force is also active in the Western Regional Partnership focused on collaboration between Federal, State and Tribal leadership in AZ, CA, NV, NM, and UT to develop solutions that protect natural resources while promoting sustainability, homeland security and military readiness. Air Force Regional Environmental Offices also hold frequent partnering meetings in States with Air Force installations in order to address planning and compliance issues. The Air Force participates in the Western States Water Council's Federal Agency Support Team addressing drought, climate change, water availability and energy issues, as well as in the CA/NV Drought Monitor Groups.

Air Force participates in numerous partnering and collaborative groups including the California Desert Renewable Energy and Conservation Plan effort working with Federal, State and local stakeholders to resolve potential conflicting land use in the Mojave Desert as well as on the Southeastern Region Partnership for Planning and Sustainability. Air Force works with BLM on many issues including renewable energy development and energy transmission line siting.

Some examples include: 1) Working with EPA in FL to provide compliance assistance through installation training sessions and setting up a federal facilities compliance assistance forum; 2) Collaborate with CA state and local agencies on EPA Region 9 Clean Air Technology Initiative accelerating development and use of low and zero emission technologies to improve air quality and public health; 3) Throughout the country, conducted three, well received, Regional Restoration Summits with EPA & State regulators to reinvigorate collaboration and partnering and enhance communication.

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.

Previous years comments remain applicable. We strongly urge that next year this is done through a more simplified report format for agencies whose mission focus is not licensing, permitting, or environmental enforcement.

Please attach any additional information as warranted.

Report due April 12, 2019 (changed from February 22, 2019).
Submit report electronically to: owen@udall.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