

Environmental Collaboration and Conflict Resolution

Fourteenth Annual Report

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DRAFT



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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 2019, a total of 24 DOE sites and program offices responded to the ECCR survey request. A total of 32 ECCR cases were reported. Four of the 32 reported ECCR cases involved third-party assistance.

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 2019 (FY 2019).

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 has been formed. This committee, with assistance from the U.S. Institute for Environmental Conflict Resolution, develops a survey template annually for agencies’ use. For FY 2019 reporting, the committee made some changes to the previously used questionnaire, including the following:

- Asking only for new or changed information for a number of areas, including capacity building (Question 1a), investments and benefits (Questions 2a & 2b), priority uses (Question 6), and difficulties in collection of data (Question 7)
- Asking for data on ECCR trainings given (Question 1b)
- Asking for an interagency case example, if available (Question 4A)
- Removing requests for information on methods used to identify investments and benefits (formerly Question 2a), and difficulties encountered in generating cost and benefit information (formerly Question 2c)

The DOE 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 21 respondents.

II. ECCR CAPACITY BUILDING PROGRESS MADE IN FY 2019

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 101 site and program office representatives participated in the annual training conducted on April 30, 2019.

II.1 Capacity Building Using Third-Party Neutral Assistance

West Valley Demonstration Project (WVDP). An example of continuing to build ECCR capacity through use of a third-party neutral is the WVDP. In 2010 the WVDP entered into a tripartite agreement with the New York State Energy Research and Development Authority (NYSERDA) and a third-party neutral in order to facilitate reaching an interagency consensus on the remaining facilities at the WVDP and the Western New York Nuclear Service Center. The Phase 1 Study process was completed in 2018. Integral to the Phase 1 Study process was the agreement between WVDP and NYSERDA to split all associated costs 50/50. WVDP and NYSERDA have now committed to making Phase 2 decisions by 2023 and the ECCR process has kept the parties on-track since the Phase 1 decision.

As part of the Phase 1 process, WVDP and NYSERDA jointly hosted multiple public meetings with a professional facilitator always present and the third-party neutral available when appropriate. The third-party neutral has retained and utilized the services of both Subject Matter Experts and an Independent Scientific Panel to assist with the overall goal toward facilitating interagency consensus. This process has generated multiple technical reports that have been shared with the Federal and state agencies as well as WVDP stakeholders. Additionally, the third-party neutral has utilized the services of a professional facilitator to moderate all public meetings as part of the associated comprehensive public participation plan. Effective use of ECCR techniques has allowed the parties to overcome 30 years of entrenched disagreement and conflict over the disposition of the WVDP and Center. The ECCR efforts are proving to be extremely useful conflict avoidance and conflict resolution tools.

Environmental Management – Los Alamos Field Office (EM-LA). The EM-LA also utilizes the services of an outside facilitator in a critical and long-term conflict resolution process. Specifically, DOE EM-LA participates in monthly meetings of the Los Alamos National Laboratory (LANL) Natural Resource Damages Assessment (NRDA) Trustee Council, which consists of representatives from the State of New Mexico, several nearby Pueblos, and the Forest Service. EM-LA 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.

West Lake Landfill. In FY 2019, DOE and several other potentially responsible parties including Cotter Corporation and Bridgeton Landfill entered into a mediation agreement to discuss a RD/RA consent decree between the United States and Cotter and Bridgeton and also covered the allocation of CERCLA (Comprehensive Environmental Response, Compensation, and Liability

Act) response costs for the cleanup of the radioactively—contaminated West Lake Landfill in Bridgeton, Missouri. The mediator, Richard Dana is a retired Colorado State court judge. The mediation is ongoing and the parties are hopeful that it will lead to a negotiated resolution. As a result of the ongoing mediation to date, the mediation has helped the parties so far to avoid time consuming and costly litigation.

Richland Operations Office – Hanford Site. On behalf of the Hanford NRD Trustee Council, DOE contracted a facilitator to assist planning and decision-making among trustees. DOE has also contracted an NRD consultant firm to assist with the completion of Hanford's NRD injury assessment. This year, DOE funded a Legal Work Group with all trustee attorneys to work with the U.S. Department of Justice in addressing legal barriers identified by technical trustees that require resolution to complete the injury assessment.

II.2 Capacity Building Without Third-Party Neutral Assistance

Brookhaven National Laboratory (BNL). BNL is part of an Interagency Agreement Group (IAG), which is comprised of the EPA, New York State Department of Environmental Conservation (DEC), Suffolk County, and the DOE. 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. The IAG is given, and provides comments for, any document or study that is required by the Interagency Agreement, and the group is kept apprised of all future operations at BNL that may affect the environment. BNL also responds to inquiries of the Citizen's Advisory Board (comprised of local community representatives and environmental groups) and the Brookhaven Executive Roundtable (comprised of local government representatives). BNL did not report any ECCR cases for FY 2019.

Richland Operations Office (RL). An example of continuing to build ECCR capacity through collaborative problem solving without the use of third-party neutral is the approach that the RL uses to administer the Hanford Federal Facility Agreement and Consent Order, or Tri-Party Agreement (TPA). The TPA is an agreement among 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 Office of Chief Counsel strongly encourage project personnel 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 meetings as necessary to address issues. Over the course of a year, hundreds of such meetings are held. 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.

Savannah River Site Operations Office (SRS). SR also utilizes a more informal process in negotiations with its regulator, the South Carolina Department of Health and Environmental Control (SCDHEC) regarding the terms of its National Pollutant Discharge Elimination System (NPDES) permit. SRS and SCDHEC have entered into an agreement that identifies potential disputes in advance, provides a methodology for communication, and sets forth a concurrence process before a dispute or alternative dispute resolution was initiated.

In December 2017, SRS representatives had their first formal discussion meeting with SCDHEC permit writers regarding several SRS discharges/outfalls. Since that first meeting, several discussion meetings have occurred. SRS is currently collecting more sampling data in response to a SCDHEC request. The current projection is that the SRS NPDES permit renewal should be completed by December 2020. SRS identified 12 ECCR cases not involving a third-party neutral for FY 2019. These represent the number of new conditions identified in 2019 that have been approved by SCDHEC for elevation to “events” status.

Southeastern Power Administration (SEPA). SEPA 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 (COE). SEPA continues to participate twice annually in Alliance meetings that consists of SEPA’s Administrator, SEPA Core Team Managers, other SEPA staff, and various stakeholders. The Alliance is a partnership formed in 1991 among SEPA’s stakeholders which includes customers, the U.S. COE, and SEPA. These Alliance meetings provide an opportunity for participants to discuss hydropower operations, to discuss and coordinate critical water issues and other current and long-term issues affecting all partners, and to plan future strategies. They also attend quarterly Southeastern Federal Power Customer (SeFPC) meetings. These meetings provide an opportunity for Southeastern and its customers and stakeholders to discuss operational and industry issues of mutual interest and concern.

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 regulators and the public.

As explained in previous WVDP ECCR reports, 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. The anticipated outcome of this multi-year Phase 1 Study process is mutual and timely decision by WVDP and NYSERDA on Phase 2 of the decommissioning of the remaining facilities at the WVDP and Center. Additionally, the ECCR process includes a comprehensive public participation process in order to insure transparency with stakeholders. Effective use of ECCR techniques has allowed the parties to overcome 30 years of entrenched disagreement and conflict over the disposition of the WVDP and Center, and the project is on course to reach mutual and final decisions on the ultimate disposition of the site in 2023 (i.e., the Phase 2 decision).

Staff of the EM-LA continue to believe that retaining the services of a neutral facilitator for monthly LANL NRDA Trustee Council meetings improves the overall relationship between DOE and the Trustees (State of NM and several nearby Pueblos) and avoids wasteful distractions to the NRDA process. The investment is clearly an overall value-added to the success of the NRDA process.

The Environmental Management Nevada program (EM-NV) successfully uses regular meetings with environmental regulators and a site-specific advisory board and committees to engage stakeholders in the early stages of decision-making processes. The EM Nevada Program has extended membership on the site-specific advisory board to include a Native American liaison. Stakeholders participate in studies and working groups to collaborate on groundwater issues; endangered, protected, and regulated species; climate change; and other environmental issues. These activities foster open communication between EM-NV and its stakeholders to ultimately avoid environmental conflicts. Increased collaboration is being planned for future endeavors.

RL was involved in multiple environmental disputes or negotiations under the TPA during FY 2019. In the past, DOE has been able to resolve most issues collaboratively through monthly Project Manager meetings, quarterly milestone review meetings and other meetings as necessary to address issues. In FY 2019 RL was able to successfully resolve 15 disputes in this manner. Of these 15 disputes, four resulted in changes to TPA Appendices, three resulted in extensions to existing TPA milestone due dates, two resulted in the deletion of TPA milestones, and overall there were 27 new TPA milestones created. It is the intent of RL to continue to use the informal collaborative approach to resolve issues before it becomes necessary to utilize formal, third-party supported environmental conflict resolution.

SEPA utilizes its strategic planning efforts to promote continued negotiations with all stakeholders and business partners. These efforts have enabled SEPA and its stakeholders to carry forward 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 SEPA in its strategy to seek amiable conflict resolution.

IV. ECCR CASES IN FY 2019

Respondents reported four ECCR cases in which third parties were involved and 28 ECCR cases in which they were not. One ECCR case involving a third-party neutral was reported by EM-LA as a case involving the Natural Resources Damages Assessment Trustee Council. For the EM-LA case, the facilitator insures that the process keeps moving forward without unnecessary distractions to the NRDA process. The second ECCR case involves the West Lake Landfill and an agreement to discuss a RD/RA consent decree. The third ECCR case involves Hanford where a facilitator was used for decision-making. The other ECCR case involving a third-party neutral was reported by the WVMP as a planning category case. The WVDP staff and NYSERDA agree that retaining the services of a third party neutral in order to facilitate reaching interagency consensus on several complex technical issues and controversial facilities holds the greatest potential for a mutual and timely decommissioning decisions. The third-party neutral has

retained and utilized the services of both Subject Matter Experts and an Independent Scientific Panel to assist with the overall goal toward facilitating interagency consensus.

Of the 28 cases not involving a third-party neutral, 15 were reported by RL (11 compliance cases and 4 planning cases). Twelve cases were reported by SRS, these cases arise out of new conditions in the Watershed Management Plan approved by the SCDHEC. One additional case was reported for either Ames, Argonne, or Fermi National Laboratory (site not identified in single survey response received for all three Laboratories). Attachment B contains tables summarizing the ECCR survey results.

IV.A. ECCR CASE EXAMPLE USING THIRD-PARTY NEUTRAL ASSISTANCE

EM-LA reported using a third-party neutral facilitator for meetings between DOE and the Trustees of the NRDA. EM--LA finds that the use of a facilitator in monthly meetings improves the overall relationship between DOE and the Trustees. The meetings with the Trustee Council are essential in gathering necessary information for future discussion and decision-making as well as building a useful working relationship amongst the Trustees. The EM-LA NRDA Trustee Council is an extremely important organization where candid discussions are necessary and encouraged regarding the sensitive issue of potential injury to local natural resources. The facilitator greatly assists the Trustees to engage in discussions during the monthly Trustee Council meeting in order to reach timely resolution on important and sensitive issues as well as ongoing studies.

IV.B. ECCR CASE EXAMPLES WITHOUT THIRD-PARTY NEUTRAL ASSISTANCE

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. This collaborative process 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. For FY 2019, three DOE offices reported cases handled without the use of a third-party neutral; these offices were: RL, SRS, and either Ames, Argonne, or Fermi National Laboratory (site not identified in single survey response received for all three Laboratories). See Attachment B, Table 2 for additional information. Several examples of the FY 2019 reported cases follow.

In FY 2019 either Ames, Argonne, or Fermi National Laboratory used an ECCR-type process to engage local government officials by attending Community Round Table meetings as well as Home Owners Association meetings before a NEPA scoping process was initiated regarding the building of new powerlines. This outreach was used to gauge how much public interest was present for the building of the powerlines outside of DOE land near homes and along the road of a forest preserve. By presenting the plans for the project, the Lab was able to answer questions and address concerns so that it was determined that a categorical exclusion was appropriate as the outreach revealed little public concern. Thus, DOE saved hundreds of thousands of dollars that otherwise would have been spent on an EA.

The RL reported fifteen cases as part of its work under the Tri-Party Agreement (see Section II above). Four of the cases were related to planning issues, and 11 were related to compliance and enforcement actions.

SRS stated it had 12 ECCR cases addressed without the use of third-party neutral assistance. SRS considered cases with new conditions in the Watershed Management Plan approved as “events” by SCDHEC to be cases.

V. 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 2019:

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

VI. COMMENTS AND SUGGESTIONS REGARDING REPORTING

The NNSA Pantex Plant provided the following comment regarding reporting: Establishing a good working relationship with State and Federal regulatory agencies and building frequent and effective communication into the program is possible and sustainable with less effort during the life-cycle of an environmental cleanup project and long-term stewardship program. Pantex Plant required a neutral, third-party to initiate the effort, but the trust established through past ECCR efforts became a necessary and desired part of the program that endures today.

All survey respondents that provided responses to the questionnaire indicated that they knew of the DOE Office of Conflict Prevention and Resolution's availability to provide assistance. While none of these respondents indicated that they had the opportunity to receive support from or use the resources provided by the Office of Conflict Prevention and Resolution in FY 2019, several respondents indicated that their staff continue to attend environmental conflict resolution training and the Environmental Attorney training.

Attachment A

Modified Department of Energy FY 2019 ECCR Survey

Attachment B

Department of Energy FY 2019 ECCR Cases With and Without the Use of a Third-Party

Table 1: ECCR Cases with a Third Party

	Total FY 2019 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 ³	
		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	2 (WVDP ¹) (RL ⁵)	1 (WVDP)	1 (RL)				2 (WVDP) (RL)		2 (WVDP) (RL)
Siting and construction									
Rulemaking									
License and permit issuance									
Compliance and enforcement action	1 (WLLF ⁴)		1(WLLF)						1
Implementation/monitoring agreements									
Other (specify): EM-LA – Natural Resources Damage Assessment Trustee Council	1 (EM- LA ²)				1				1 (EM-LA)
TOTAL	4	1	2		1		2		4

¹ West Valley Demonstration Project

² Environmental Management – Los Alamos Field Office

³ Interagency ECCR cases are categorized as other federal agency only or including non-federal participants (e.g., states, Tribes, and non-governmental organizations).

⁴ West Lake Landfill

⁵ Richland Operations Office - Hanford Site

Table 2: ECCR without a Third Party

	Total FY 2019 ECCR Cases	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed ⁴	ECCR Cases or Projects sponsored ⁴	Interagency ECCR Cases and Projects ⁴	
		Federal agency decision	Administrati ve proceeding s/appeals	Judicial proceedings	Other (specify)			Federal only	Including non- federal participants
<i>Context for ECCR Applications:</i>									
Policy development									
Planning	4				4 (RL) ²				
Siting and construction	1	1 (Ames,ANL Fermi)				1 (Ames,ANL Fermi)			1 (Ames,ANL Fermi)
Rulemaking									
License and permit issuance									
Compliance and enforcement action	11				11 (RL)				
Implementation/monitoring agreements									
Other (specify):	12				12 (SRS) ³				
TOTAL⁶	28	1			27	1			1

¹ Single case was for either Ames National Laboratory, Argonne National Laboratory, or Fermi National Laboratory

² Richland Operations Office - Hanford Site

³ Savannah River Site Operations

⁴ Reporting on cases completed, sponsored, and federal only versus including non-federal participants was incomplete.

Table 3: FY 2019 Reporting Labs and Status of Reported Third Party Neutral Use

DOE RESPONDENT	Cases Reported	Cases w/o 3rd Party	Use of 3rd party?
Ames, Argonne, and Fermi National Laboratories (3)	0	1	no
Brookhaven National Laboratory	0	0	no
Environmental Management-Los Alamos	1	0	yes
Environmental Management-Nevada Program	0	0	no
Environmental Management - West Valley Demonstration Project	1	0	yes
Lawrence Berkeley National Laboratory	0	0	no
National Energy Technology Laboratory	0	0	no
NNSA Livermore Field Office - Lawrence Livermore National Laboratory	0	0	unknown
NNSA Nevada Field Office	0	0	no
NNSA Production Office (NPO)	0	0	no
NNSA Pantex Plant	0	0	unknown
NNSA Sandia Field Office	0	0	no
Office of Energy Efficiency and Renewable Energy-Golden Field Office	0	0	unknown
Office of Legacy Management ¹	1	0	no
Richland Operations Office - Hanford Site	1	15	yes
Savannah River Site Operations	0	12	no
Southeastern Power Administration	0	0	unknown
Southwestern Power Administration	0	0	no
Strategic Petroleum Reserve	0	0	no
Thomas Jefferson National Accelerator Facility	0	0	no
Western Area Power Administration	0	0	no
Totals for 23 sites reporting	4	28	

¹ Legacy Management is only providing technical support