

FY 2019 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.”

This annual reporting template is provided in accordance with the memo for activities in FY 2019.

¹ The term ‘ECCR’ includes third-party neutral assistance in environmental collaboration and environmental conflict resolution

The report deadline is February 22, 2020.

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 FY 2019 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 2019 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:

<https://udall.gov/OurPrograms/Institute/ECRReport.aspx>

FY 19 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: | February 14, 2020 |
| Name of ECCR Forum Representative | Patricia Collins |

1. ECCR Capacity Building Progress

- a) Describe any **NEW, CHANGED, or ACTIVELY ONGOING** steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2019, including progress made since FY 2018. Please also include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases, including any efforts to provide institutional support for non-assisted collaboration efforts. Please refer to your agency's FY2018 report to only include new, changed or actively ongoing ECCR capacity building progress. **If none, leave this section blank.**

(Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the [OMB-CEQ ECCR Policy Memo](#) for additional guidance on what to include here. Examples include but are not restricted to efforts to

- integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning;
- assure that your agency's infrastructure supports ECCR;
- 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

(Cont.) The Air Force continued 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 also conducted Negotiation and Dispute Resolution Workshops at Maxwell AFB. 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 week-long Negotiation and Appropriate Dispute Resolution Course (NADRC) conducted annually at the AF JAG School at Maxwell AFB, AL.

- b) Please describe the trainings given in your department/agency in FY 19. Please include a list of the trainings if possible. If known, provide the course names and if possible, the total number of people trained. Please refer to your agency's FY 2019 report to include only trainings given in FY 2019. **If none, leave this section blank.**

See above.

2. ECCR Investments and Benefits

- a) Please describe any **NEW or CHANGED or INNOVATIVE** investments made in ECCR in FY2019. Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc.

Please refer to your agency's FY2018 report to only include new, changed, or innovative investments made in ECCR. **If none, leave this section blank.**

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 describe any **NEW or CHANGED or INNOVATIVE** benefits realized when using ECCR.

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.

Please refer to your agency’s previous report to only include new or innovative methodology to identify ECCR investments and benefits. **If none, leave this section blank.**

See above.

3. ECCR Use

Describe the level of ECCR use within your department/agency in FY 2019 by completing the three tables 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 2019 ECCR Cases ² | Decision making forum that was addressing the issues when ECCR was initiated: | | | |
|---|---|--|---|-------------------------|--------------------|
| | | Federal agency decision | Administrative proceedings /appeals | Judicial proceedings | Other (specify) |
| <i>Context for ECCR Applications:</i> | | | | | |
| Policy development | _____ | _____ | _____ | _____ | _____ |
| Planning | 6 | 6 | _____ | _____ | _____ |
| Siting and construction | 2 | 2 | _____ | _____ | _____ |
| Rulemaking | _____ | _____ | _____ | _____ | _____ |
| License and permit issuance | _____ | _____ | _____ | _____ | _____ |
| Compliance and enforcement action | _____ | _____ | _____ | _____ | _____ |
| Implementation/monitoring agreements | _____ | _____ | _____ | _____ | _____ |
| Other (specify): Litigation | 1 | _____ | _____ | 1 | _____ |
| TOTAL | 9 | 8 | _____ | 1 | _____ |
| | | (the sum of the Decision Making Forums should equal Total FY 2019 ECCR Cases) | | | |

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2019.

| <i>Context for ECCR Applications:</i> | Interagency ECCR Cases and Projects | |
|---------------------------------------|--|--|
| | Other Federal Agencies Only | Including non federal participants (includes states, Tribes, and non governmental) |
| Policy development | _____ | _____ |
| Planning | _____ | _____ |
| Siting and construction | _____ | _____ |
| Rulemaking | _____ | _____ |
| License and permit issuance | _____ | _____ |
| Compliance and enforcement action | _____ | _____ |
| Implementation/monitoring agreements | _____ | _____ |
| Other (specify): _____ | _____ | _____ |
| TOTAL | _____ | _____ |

| <i>Context for ECCR Applications:</i> | ECCR Cases or projects completed³ | ECCR Cases or Projects sponsored⁴ |
|---------------------------------------|---|---|
| Policy development | _____ | _____ |
| Planning | 6 | 6 |
| Siting and construction | 2 | 2 |
| Rulemaking | _____ | _____ |
| License and permit issuance | _____ | _____ |
| Compliance and enforcement action | _____ | _____ |
| Implementation/monitoring agreements | _____ | _____ |
| Other (specify): Litigation | 1 | _____ |
| TOTAL | 9 | 8 |

³ A "completed case" means that neutral third party involvement in a particular ECCR case ended during FY 2019. 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 2019 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2019 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 2019 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 2019). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

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.

Between the early 1900s through 1942, cattle dipping vats were built and operated on land in Florida that was owned by Consolidated Naval Stores Co. (Consolidated), a corporate predecessor to BKF Capital Group, Inc. (BKF). These cattle dipping vats were filled with arsenic and other pesticides to eradicate the Texas fever tick. Every two weeks, cattle infected by the tick were dipped in the arsenic solution. As a result of this activity, arsenic and other pesticides were released into the environment, contaminating the surrounding soil and groundwater. The land where the vats are located was acquired by the United States from Consolidated in 1942 and now comprises Avon Park Air Force Range. To date, the Air Force has incurred over \$4.2 million in responding to contamination of Avon Park AFR property caused by the cattle dipping vats. As a corporate successor to the landowner, BKF was a potentially responsible party liable to pay a share of the Air Force's cleanup costs under CERCLA § 107.

In 2015, Air Force referred this matter to DOJ for cost recovery against BKF. DOJ reached out to BKF to discuss settlement in May 2015. Over the next three years, the parties engaged sporadically in settlement discussions, exchanging briefs and cost documentation, without much progress. In March 2018, US proposed that the parties engage in mediation, but no agreement to mediate was ever reached. Consequently, US filed suit in July 2018, in the U.S. District Court for the Southern and Middle Districts of Florida, where the Vats are located. In October 2018, the parties agreed to submit the disputed issues to a mediator, as required by the District Court local rules. The parties chose Harold Himmelman at the offices of Beveridge & Diamond PC in Washington, D.C., to serve as the mediator. The mediator's fees were split 50/50 between the parties.

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.

The mediation process was as follows:

1 October 2018 – Parties provided the mediator a Joint Appendix of what they considered the key documents, including prior exchanges between the parties concerning the dispute.

15 October 2018 – Parties exchanged and provide to the mediator written Mediation Statements summarizing what they considered to be the critical factual, legal, and remedial issues that would play out if the case were not to settle and proceed through motions practice and possible trial. Each party was free to provide a separate confidential submission to the mediator at the same time.

22 October 2018 – Mediator met with government lawyers in his office on a private, confidential basis to discuss the case. The principal purposes of this session was to discuss candidly and constructively what the government appreciates are its risks, hurdles, and concerns if litigation were to continue and to hear thoughtful initial ideas about how to approach reaching a settlement.

24 October 2018 – Mediator conferred with counsel for BKF on the same basis as the private meeting with the government.

13 November 2018 – Mediator conducted a joint session with all counsel and parties present during which each side presented a summary of their view of the case and responded to the mediator's questions. After the joint session, the mediator held a series of private sessions with each side separately to assist them in trying to find a mutually acceptable solution.

After several rounds of discussions with the mediator, the parties agreed upon a settlement of the Air Force claims in the amount of \$725,000.00.

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.

The mediation helped both parties better understand each other's position. The alternative to settlement was a lengthy litigation schedule and a costly trial seeking contribution under a strict liability hazardous waste statute in a situation where the defendant might be viewed favorably due to its lack of fault and perhaps limited ability to pay. Conversely, the US had incurred substantial cleanup costs and similarly had not been the landowner during the time of contamination.

Reflections on the lessons learned from the use of ECCR.

One of the major hurdles to settlement was BKF's questioning whether it should be liable for activities that occurred decades earlier, before BKF acquired any interest in Consolidated. To overcome this hurdle, the mediator had a number of confidential discussions with BKF's president. The mediator's neutral assessment, and explanation of hazardous waste cleanup liability of landowners / successor corporations and of the government's claim, helped to persuade BKF of its liability exposure.

5. Other ECCR Notable Cases

Briefly describe any other notable ECCR cases in the past fiscal year. **(OPTIONAL)**

See above.

6. Priority Uses of ECCR

Please describe your agency's **NEW or CHANGED** 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. Please refer to your agency's FY2018 report to only include new or increased priority uses. **If none, leave this section blank.**

Priority uses of ECCR continue to be CERCLA cases and land use initiatives.
(See answer below.)

7. Non-Third-Party-assisted Collaboration Processes (Optional)

Briefly describe other **significant** uses of environmental collaboration that your agency has undertaken in FY 2019 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.* **If none, leave this section blank.**

Throughout FY19, 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 (RECs) 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, DOD, regulatory and environmental compliance matters in AL, GA, FL, MI, MD, NC, SC, NY, NJ, PA WA, OR, ID, AK, OK, NM, CA & TX and other States. Working with the EPA regional offices, RECs are spearheading "Ask-the-Inspector" workshops, "Compliance Assistance Visits" and Federal Facilities Workshops to develop mutual understandings between Airman and Regulators thereby reducing environmental compliance issues. Air Force is active on working groups for Chesapeake Bay, TX Commander's Council, TX Military Commission, Federal Climate Partners, and for E.O. on Sustainability implementation. 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.

(Cont.) 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; the Southeastern Region Partnership for Planning and Sustainability to develop mutually beneficial solutions to problems associated with prescribed fire, natural resource conservation, sustainable development, sentinel landscapes, and threatened and endangered species protection in the six state region. Air Force works with BLM on many issues including renewable energy development and energy transmission line siting.

Examples include: 1) 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; 2) Throughout the country, conducted three, well received, Regional Restoration Summits with EPA & State regulators to reinvigorate environmental restoration collaboration by partnering and enhancing communication.

8. Comments and Suggestions on Reporting

Please comment on any **NEW or CHANGED** difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future. Please reference your agency's FY2018 report to identify new/increased difficulties. **If none, leave this section blank.**

See previous submissions.

Please attach any additional information as warranted.

Report due February 21, 2020.

Submit report electronically to: kavanaugh@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 |