

# Environmental Collaboration and Conflict Resolution

Seventeenth Annual Report

2023

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 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 2022, a total of 15 DOE site and program offices responded to the ECCR survey request. Four sites reported five ECCR cases; two cases do not involve 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 2022 (FY 2022).

### **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. The FY 2022 survey template remained substantively unchanged from the template used in FY 2021.

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 13 site and program offices.

## **II. ECCR CAPACITY BUILDING AND INVESTMENT PROGRESS MADE IN FY 2022**

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.

The DOE site 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, 10 participants join the monthly calls. A total of 93 site and program office representatives participated in the annual training conducted on October 19, 2022.

In FY 2022, a total of 15 DOE site and program offices responded to the ECCR survey request. Two sites (Environmental Management [EM] – Richland and Headquarters (GC) reported three ECCR cases that have involved or will involve third-party neutrals. Two sites – EM - Nevada Program) and Chicago – Fermi Lab reported ECCR cases those cases did not involve third-party assistance (see case summary in Section III). In addition, the Brookhaven Site provided information about their ongoing ECCR programs and cases, as detailed below.

## **ECCR Cases with Third Party Neutrals**

### ***Richland Operations Office and Office of River Protection – Hanford Site.***

#### **Hanford Tank Waste Mediation**

Since June 2020, DOE, the State of Washington, and EPA have been engaged in mediated negotiations to identify a mutually agreeable path forward for the Hanford tank waste treatment mission, including the construction and operation of the Waste Treatment Plant.

#### **Hanford Natural Resource Damages Joint Contractor**

On behalf of the Hanford Natural Resource Damages (NRD) Trustee Council, DOE is preparing to fund a joint Trustee Council contractor. The contractor will be required to have extensive NRD experience. The Council is preparing a consensus Statement of Work. The contractor is intended to assist all trustees in making well informed, consensus decisions. DOE continues to fund a Legal Work Group. Each trustee is represented by an attorney, and the attorneys work the U.S. Department of Justice in addressing legal barriers identified by technical trustees that require resolution to complete the injury assessment.

### ***DOE Headquarters – Offices of Legacy Management, General Counsel and the Department of Justice***

#### **West Lake Landfill Mediation, Bridgeton, Missouri**

The United States (Department of Energy and Department of Justice and the Environmental Protection Agency) are participating in mediation sessions, facilitated by retired judge Richard Dana, with other potentially responsible parties in connection with the cleanup of the West Lake Landfill in Bridgeton, Missouri under the Comprehensive Environmental Response, Compensation, and Liability Act. The principal issue covered by the mediation is the allocation of cleanup costs for the partial excavation of the Landfill, in accordance with EPA's Record of Decision. In FY 2022 progress was made toward the resolution of the outstanding issue.

### **III. ECCR CASES IN FY 2022**

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 2022 two DOE offices reported cases handled without the use of a third-party neutral; the Argonne Site Office, Fermi Site Office, Ames Site Office, Consolidated Service Center, Chicago location, which reported on a case involving the cooperation with the state for obtaining a permit and the Environmental Management (EM) Nevada, which reported on a case involving the Nevada National Security Site (NNSS) requirements for waste characterization.

#### ***Chicago Location Case –***

Cooperating/coordinating with the State allowed for a streamlined process for obtaining a permit. A new permit was needed as the maintenance was a major modification, requiring a permit. No ECCR funding, only environmental personnel was involved. The Lab worked with the state regulator, which assisted in preparing the new permit, and the maintenance was allowed to occur.

#### ***EM-NV Case –***

Between 2013 and 2018, 33 packages (10 shipments) of classified Weapons Related Material (WRM) were transferred from the Y-12 National Security Complex (Y-12) to the NNSS for disposal. The shipments were non-compliant with NNSS requirements for waste characterization, as self-identified by Y-12. In June 2020, the Nevada Division of Environmental Protection (NDEP) issued DOE a Finding of Alleged Violation (FOAV) indicating this waste violated solid waste permit requirements. While DOE disputed this conclusion, DOE entered into mediation discussions with NDEP to resolve the FOAV. Beginning in July 2020, DOE engaged in extensive collaborative conversations with NDEP to reach a resolution to the FOAV. While the negotiations did not utilize a neutral third-party moderator, discussions were intentionally structured to promote collaborative problem solving and maximize conflict avoidance/resolution. On June 22, 2021, a final Settlement Agreement resolving all outstanding regulatory actions was signed by the NDEP Administrator, National Nuclear Security Administration/Nevada Field Office (NNSA/NFO) Field Manager, and EM Nevada Program Manager. In FY 2022, the SA continues to be a driver for significant collaboration and facilitated dialogue as EM continued significant work to fulfill the obligations of the Agreement, to include the coordination to reissue revision to mixed low-level waste Permit NEV HW0101 and solid waste permit SW-532. Settlement actions under the agreement are expected to continue through FY 2024.

Per the policy memo, ECCR, “encompasses a range of assisted collaboration, negotiation, and facilitated dialogue processes and applications,” and further that, “there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal agencies may pursue” to promote ECCR best practices. In this case, the DOE EM Nevada Program, in

partnership with NNSA/NFO, considered and implemented techniques to conduct sensitive negotiations with NDEP, which included:

- Informed Commitment – key managers were present and engaged in the negotiations;
- Balanced Representation – multiple DOE program offices, State of Nevada agencies, and DOE contractor representatives were present and active in the process;
- Group Autonomy – participants were encouraged to and did participate in the collaborative conversations;
- Informed Process – participants brought multiple concepts and proposals to be vetted during the negotiations, many of which were adopted into the final Settlement Agreement;
- Accountability – it was overtly stated during the conversations that, while the organizations involved may have differing operational priorities and prerogatives, all shared a common goal to act in the best interest of the citizens of Nevada and the Nation;
- Timeliness – regular meetings were held with agendas set beforehand and actions tracked throughout;
- Implementation – the collaborative conversations ultimately led to a mutually beneficial Settlement Agreement that establishes nearly a dozen unique commitments made by DOE to resolve the FOAV.

Matters involving DOE radioactive waste management have a propensity to lead to heightened attention from and potential conflict with regulators, stakeholders, and the public. By utilizing a collaborative approach that implicitly adopted key principles of ECCR, DOE was able to bring about a mutually beneficial resolution for all parties. In addition, the continued resolution of SA action items is a benefit to all parties.

The collaborative conversations and approaches utilized by DOE to resolve a sensitive matter with a state regulatory agency could be a best practice for conflict avoidance/resolution in the future.

***Brookhaven National Laboratory (BNL).*** To address conflict resolution BNL utilizes several groups designed to keep local government entities, Federal and state environmental regulators, and the public apprised of ongoing and planned activities at BNL including environmental cleanups. These groups include: the Brookhaven Executive Roundtable (local government representatives), the Interagency Group (EPA, New York State Department of Environmental Conservation, Suffolk County, and DOE), and the Citizen’s Advisory Council (local community representatives and environmental groups). By use of these groups and receipt of their feedback, Brookhaven Site Office is able to avoid environmental conflicts.

#### **IV. PRIORITY USES OF ECCR**

The Department’s sites and program offices reported the use of third-party and non-third-party ECCR collaboration with regulators and stakeholders in the following areas in FY 2022:

- Collaborative discussion with stakeholders (both Federal and non-Federal);
- Multi-issue and multi-party environmental disputes;

- Natural resource protection; and
- Site permits.

**Attachment A**

**Department of Energy FY 2022 ECCR Survey**