

Environmental Collaboration and Conflict Resolution (ECCR) in the Federal Government Fiscal Year 2023 Agency Reporting Template

Background

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, and 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, 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.”

The 2012 memorandum requires annual reporting by Federal Departments and Agencies to OMB and CEQ on their use of Environmental Collaboration and Conflict Resolution and on the estimated cost savings and benefits realized through third-party assisted negotiation, mediation or other processes designed to help parties achieve agreement. The memo also encourages departments and agencies to work toward systematic collection of relevant information that can be useful in on-going information exchange across departments and agencies

The Udall Foundation's National Center for Environmental Conflict Resolution (National Center) has, since 2005, collected select ECCR data on behalf of Federal Departments and Agencies. *Beginning in FY 2021, the National Center is streamlining the data it collects to reduce the reporting burden on Federal Departments and Agencies and provide the most salient information on ECCR use. This updated reporting template is focused collection of ECCR case studies and data on capacity building, including ECCR training. Case numbers and context reporting are optional.*

Fiscal Year 2023 Data Collection

This annual reporting template is provided in accordance with the memo for activities in FY 2023.

The report deadline is Friday, January 26th, 2024.

Reports should be submitted to Steph Kavanaugh, NCECR Deputy Director, via e-mail at kavanaugh@udall.gov

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 a compilation of all FY 2023 ECCR reports submitted. You may be contacted for the purpose of clarifying information in your report.

For your reference, synthesis reports from past fiscal years are available at <https://www.udall.gov/OurPrograms/Institute/ECRReport.aspx>.

1. Agency Submission Information

Name of Department/Agency responding: Department of the Navy (DON), Office of General Counsel

Name and Title/Position of person responding: Detria Liles Hutchinson

Division/Office of person responding: DON Assistant General Counsel (ADR) and DON Deputy Dispute Resolution Specialist

Contact information (phone/email):
detria.j.lileshutchinson.civ@us.navy.mil

Date this report is being submitted: 19 January 2024

Name of ECCR Forum Representative: Robert Smith, Assistant Director (Environmental Litigation); Naval Litigation Office, Office of the General Counsel, Department of the Navy; E-mail: Robert.J.Smith2.civ@us.navy.mil

2. ECCR Capacity Building and Investment:

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 2023, including progress made since FY 2023.

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 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 focus on accountable performance and achievement.
 - ECCR programmatic FTEs
 - Dedicated ECCR budgets
 - Funds spent on contracts to support ECCR cases and programs
- a) Please refer to your agency's FY 2022 report to only include new, changed or actively ongoing ECCR investments or capacity building. **If none, leave this section blank.**

- b. Please describe the trainings given in your department/agency in FY 2023. Please include a list of the trainings, if possible. If known, please provide the course names and total number of people trained. Please refer to your agency’s FY 2022 report to include ONLY trainings given in FY 2023. **If none, leave this section blank.**

3. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably **completed** in FY 2023). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

Name/Identification of Problem/Conflict: <i>[Please add case “title” here]</i>
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.
Claims against the United States by the government of Guam for costs related to the cleanup of, response to, or the corrective action or closure associated with a release or threatened release of Hazardous Substances at, from or related to the former Ordot Dump on Guam.
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.
Following three mediation sessions the parties reached agreement resolving the amount of past costs (prior to August 10, 2022).

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 agreement resolved claims that comprised a significant part of the case.

Please share any reflections on the lessons learned from the use of ECCR.

Reached agreement on past costs and clarified the positions of the parties on future costs.

Other ECCR Notable Cases

Briefly describe any other notable ECCR cases in FY 2023. **(OPTIONAL)**

4. ECCR Case Number & Context Data (OPTIONAL)

Context for ECCR Applications:	Case Numbers
Policy development	_____
Planning	_____
Siting and construction	_____
Rulemaking	_____
License and permit issuance	_____
Compliance and enforcement action	_____
Implementation/monitoring agreements	_____
Other (specify): _____	_____
TOTAL # of CASES	_____

Report due Friday, January 27th, 2024. Submit report electronically to: kavanaugh@udall.gov

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Contact information (phone/email):
detria.j.lileshutchinson.civ@us.navy.mil

Date this report is being submitted: 19 January 2024

Name of ECCR Forum Representative: Richard L. Green, Assistant Director (Affirmative Environmental Restoration Claims); Department of the Navy -- Office of General Counsel Naval Litigation Office; E-mail: richard.l.green160.civ@us.navy.mil

2. ECCR Capacity Building and Investment:

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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 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:

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Name/Identification of Problem/Conflict: <i>[Please add case “title” here]</i>
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.
Former Hunters Point Naval Shipyard, San Francisco, California – False Claims Act, breach of contract, and potential affirmative CERCLA claim for reimbursement of response costs incurred in connection with the clean-up radionuclide waste. Defendant was a clean-up contractor for the Department of the Navy (DON). Mediation was pursued after the complaint was filed and during on-going discovery and pre-trial preparation. Mediator was former federal judge. Mediation was not funded by the DON. Mediation was conducted from 2022 to spring 2023 and addressed liability and damages issues. Mediation did not succeed. Following failure of mediation, United States filed a motion for leave to file a Second Amended Complaint that added an affirmative CERCLA claim as well as amendments to the previously pending False Claims Act and breach of contract claims.
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.

N/A

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.

Mediation did not succeed.

Please share any reflections on the lessons learned from the use of ECCR.

Clarified the positions of the parties and how far apart they are and helped focus further discovery efforts.

Other ECCR Notable Cases

Briefly describe any other notable ECCR cases in FY 2023. **(OPTIONAL)**

Although mediation for the former Hunters Point Naval Shipyard case did not succeed, in the past, the Department of the Navy, Naval Litigation Office (NLO) has been involved in mediations of other affirmative CERCLA and environmental cases that have succeeded. In other words, some succeed and some fail. NLO, as well as the Department of Justice, regularly reviews cases, both pre-litigation and following the filing of a complaint, to determine whether and when a case is ripe for mediation that may be beneficial. Courts typically expect or require the parties to engage in mediation or other ADR. Timing of mediation is an important factor, e.g. whether the parties have defined the issues and exchanged information sufficiently such that a third party neutral may be effective.

4. ECCR Case Number & Context Data (OPTIONAL)

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