

Environmental Collaboration and Conflict Resolution

Eighteenth Annual Report

2024

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 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 2023 (FY 2023), a total of 7 submissions from DOE sites, program offices, a staff office, and the Department of Justice (DOJ) responded to the ECCR survey request. Four sites reported seven ECCR cases; three cases did 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 2023 (FY 2023).

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 2023 survey template remained substantively unchanged from the template used in FY 2022.

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 DOE sites, program offices, a staff office, and by the Department of Justice (DOJ) to the ECCR survey request.

II. ECCR CAPACITY BUILDING AND INVESTMENT PROGRESS MADE IN FY 2023

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 166 site and program office representatives participated in the annual training conducted on September 27, 2023. The Udall Foundation also offers a training on tribal engagement.

In FY 2023, there were a total of 7 submissions from DOE sites, program offices, a staff office, and the DOJ, which responded to the ECCR survey request. One site (Richland Operations Office and Office of River Protection – Hanford Site) and General Counsel and DOJ) reported four cases that involve third-party neutrals. Three sites (National Nuclear Security Administration (NNSA) Sandia Field Office (SFO), Environmental Management [EM] – Richland, and Brookhaven Site Office (BHSO)), reported three cases that did not involve third-party neutrals.

III. ECCR CASES WITH THIRD PARTY NEUTRALS FY 2023

Richland Operations Office and Office of River Protection – Hanford Site

Hanford Tank Waste Mediation

DOE, the State of Washington (State), and the U.S. Environmental Protection Agency (EPA) continued mediated “holistic 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 (WTP).

Hanford Natural Resource Damages Joint Contractor

On behalf of the Hanford Natural Resource Damages (NRD) Trustee Council, Hanford has funded a joint Trustee Council contractor. The contractor has extensive NRD experience. The contractor is intended to assist all trustees in making well informed, consensus decisions. Hanford continues to fund a Legal Work Group. Each trustee is represented by an attorney, and the attorneys work with 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 the General Counsel and the Department of Justice

West Lake Landfill Mediation, Bridgeton, Missouri

The United States (DOE, DOJ, and EPA) 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 (CERCLA). 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 2023 negotiations continued towards the resolution of the outstanding issue.

Latty Avenue Mediation, Hazelwood, Missouri

The United States (DOE, DOJ, EPA, and Army Corps of Engineers) are participating in mediation sessions, facilitated by retired judge Robbie Barr, with other potentially responsible parties in connection with the cleanup of Latty Avenue in Hazelwood, Missouri under CERCLA. The principal issue covered by the mediation is the allocation of cleanup costs. In FY 2023 negotiations continued and progress was made toward the resolution of the outstanding issue.

IV. ECCR CASES WITHOUT THIRD PARTY NEUTRALS FY 2023

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 2023, three sites reported cases handled without the use of a third-party neutral – National Nuclear Security Administration (NNSA) Sandia Field Office (SFO), Environmental Management [EM] Richland, and Brookhaven Site Office (BHSO).

NNSA, SFO Case –

In 2019, NNSA/SFO learned of off-site unarmed missile debris located on bordering Pueblo of Isleta (POI) land, that had been discovered by a tribal contractor surveying pueblo land relevant to Department of Defense (DOD) WWII munitions per the Native American Lands Environmental Mitigation Program (NALEMP). This debris was dubbed “mystery munition” as it was not consistent with DOD activities subject to the NALEMP. Visual inspection suggested the munitions debris was because of SNL testing on behalf of the DOD in the late 1980s. While this debris was removed and impacted land mitigated in 2021, subsequent discovery of 3 additional debris areas in approximately 2022 prompted additional action.

NNSA/SFO and its contractor engaged in collaborative discussions to assess the Pueblos desires for removal and mitigation and the best course to proceed. Year end 2023 funds (\$350,000) to facilitate removal of the munition/missile debris, as well as additional survey activity. Through our collaboration, a lack of historical information regarding testing led to the missile encroachment identification. Both NNSA/SFO and SNL initiated document research and mapping from known launch locations to identify areas where additional encroachment may be located. NNSA/SFO also initiated extensive collaboration by monthly conference calls with Isleta legal counsel and environmental personnel to discuss and agree upon removal protocols, address permit/access needs and identify processes in the event of future munitions debris discoveries.

A site reconnaissance for the three missiles discovered on the Pueblo was completed on August 8, 2023, a Senior Unexploded Ordnance Supervisor, an Unexploded Ordnance Safety Officer, a project scientist (also performing as Site Safety and Health Officer) and a POI representative. Two missiles were confirmed to be Stinger missiles, while the third was thought to be the remnants of a Redeye missile. On September 6 and 7, 2023, mitigation and/or removal was completed. Two “fuze” components (devices that detonate a munition’s explosive material) of the Stinger missiles were discovered during the site reconnaissance, which necessitated onsite explosive demolition as the best course of action, several battery components were also discovered and required disposal with an environmental waste company. The remainder of the material discovered at the sites was classified as non-hazardous and recycled/disposed of as trash.

Through collaboration, a Field Implementation Plan was completed in January of 2024, to support needed surveys, and yearly funding to perform this environmental survey/mitigation effort has been requested for 2025 and the next 6 years.

Per the September 7, 2012, Memorandum on Environmental Collaboration and Conflict Resolution (ECCR Memorandum) issued by the Office of Management and Budget and the Council on Environmental Quality, ECCR “encompasses a range of assisted collaboration, negotiation, and facilitated dialogue processes and applications.” It includes “a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal agencies may pursue” to promote ECCR best practices. In this case, the NNSA/SFO partnered with the Pueblo and SNL to develop and solidify cooperative relationships for ongoing and future activities, which included:

- Commitment – key managers have been engaged to support and facilitate relationship building and develop credibility by ensuring timely engagement and action, as well as exploring funding opportunities.
- Collaborative Conversations – participants were encouraged to and do actively participate in regular conference calls or meetings.
- Accountability –while clarifying federal limitations on use of federal funds and mission priorities, federal and SNL individuals all parties have identified and engaged in the common goal of engaging to ensure the Pueblos interests are addressed and environmental investigation is completed.
- Credibility – monthly meetings were scheduled and are ongoing to address new or outstanding issues.
- Timely Implementation – the collaborative conversations resulted in expedient debris removal and mitigation, as well a future process planning.

Collaborative conversations and approaches used by NNSA/SFO to address sensitive impacts to Pueblo land is a best practice to reduce or avoid conflict – especially given the Pueblo’s negative perception regarding DOD mitigation activities. NNSA/SFO has built on this relationship and engaged the Pueblo as an “enhanced collaborating” entity in SFO Site-wide Environmental Impact Statement process.

Richland Operations Office and Office of River Protection – Hanford Site. Hanford uses a collaborative approach to administer the Hanford Federal Facility Agreement and Consent Order, or Tri-Party Agreement (TPA). The TPA is an agreement among DOE, EPA, and the State of Washington Department of Ecology for achieving compliance with the 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, Hanford project managers develop negotiation strategies that incorporate ECCR principles. Hanford Senior Management and Office of Chief Counsel encourage project managers, supporting personnel to use collaborative negotiations for environmental conflict resolutions. Most issues are resolved informally and never rise to the formal dispute level because informal resolution precludes a project manager from invoking TPA dispute resolution procedures. The issues are resolved collaboratively through monthly Project Manager meetings, quarterly milestone review meetings, Interagency Management Integration Team meetings, and other meetings. Over the course of a year, hundreds of such meetings are held. Hanford intends to continue to use the informal collaborative approach to resolve issues before it becomes necessary to enter formal TPA dispute resolution procedures, or third-party supported environmental conflict resolution.

Brookhaven National Laboratory (BNL). Brookhaven Site Office (BHSO) continues to use the Brookhaven Executive Roundtable (local government representatives), the Interagency Group (EPA, New York State Department of Environmental Conservation, Suffolk County, and DOE) established under CERCLA for remediation of BNL, and the Citizens Advisory Council (local community representatives and environmental groups), to keep local government entities, federal and state environmental regulators, and the public apprised of ongoing and planned activities at BNL including environmental cleanup. Use of these groups and response to their feedback allows Brookhaven Site Office to address environmental concerns without resort to litigation.

V. 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 2023:

- Collaborative discussion with stakeholders (both Federal and non-Federal);
- Allocation of CERCLA Cleanup Costs;
- Other multi-issue and multi-party environmental disputes; and
- Natural resource protection.

Table 1: ECCR Cases with a Third Party

	Total FY 2023 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 ¹	
		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									
Siting and construction	1 (RLH ²)	1 (RLH)					1 (RLH)		1 (RLH)
Rulemaking									
License and permit issuance									
Compliance and enforcement action	1 (WLLF ³) 1 (LA ⁴)	1 (WLLF) 1 (LA)					1 (WLLF) 1 (LA)		1 (WLLF) 1 (LA)
Implementation/monitoring agreements									
Other (specify): RLH – Richland Handford Natural Resource Damages Joint Contractor	1 (RLH)	1 (RLH)					1 (RLH)	1 (RLH)	
TOTAL	4	4					4	1	3

¹ Interagency ECCR cases are categorized as other Federal agency only or including non-Federal participants (e.g., states, Tribes, and non-governmental orgs.)

² Richland - Handford

³ West Lake Landfill

⁴ Latty Avenue

Table 2: ECCR without a Third Party

	Total FY 2023 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	
		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	1 (NNSA-SFO ⁵) 1 (BNL ⁶)				1 (NNSA-SFO) 1 (BNL)	1 (NNSA-SFO)	1 (NNSA-SFO) 1 (BNL)		1 (NNSA-SFO) 1 (BNL)
Siting and construction									
Rulemaking									
License and permit issuance									
Compliance and enforcement action									
Implementation/monitoring agreements	1 (RLH)	1 (RLH)					1 (RLH)		1 (RLH)
Other (specify):									
TOTAL	3	1			2	1	3		3

⁵ National Nuclear Security Administration – Sandia Field Office

⁶ Brookhaven National Laboratory

Table 3: FY2023 Reporting and Status of Reported Third-Party Neutral Use

DOE RESPONDENT	Cases Reported	Cases w/o 3rd Party	Cases w/3rd Party
Brookhaven National Laboratory	1	1	0
DOE Headquarters Office of General Counsel and the Department of Justice	2	0	2
NNSA Production Office	0	0	0
NNSA Sandia Field Office	1	1	0
Richland Operations Office	3	1	2
Southwestern Power Administration	0	0	0
Western Area Power Administration	0	0	0
Totals for sites reporting:	7	3	4