

## **FY 2013 Environmental Collaboration and Conflict Resolution (ECCR)<sup>1</sup> 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 report format below is provided for the seventh year of reporting in accordance with the memo for activities in FY 2013.

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

The report deadline is March 3, 2014.

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 2013 report, along with previous reports, will establish a useful baseline for your department or agency, and collect some information that can be aggregated across agencies. 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 2013 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

<http://www.ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>

## FY 13 ECCR Report Template

Name of Department/Agency responding:	<b>Department of the Navy</b>
Name and Title/Position of person responding:	<b>Robert Manley, Assistant General Counsel (ADR)</b>
Division/Office of person responding:	<b>Office of the General Counsel / ADR Program Office</b>
Contact information (phone/email):	<b>(202) 685-6987; <a href="mailto:robert.manley@navy.mil">robert.manley@navy.mil</a></b>
Date this report is being submitted:	<b>21 February 2013</b>
Name of ECR Forum Representative	<b>Robert Manley</b>

1. **ECCR Capacity Building Progress:** Describe steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2013, including progress made since FY 2012. Include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases. To the extent your organization wishes to report on any efforts to provide institutional support for non-assisted collaboration efforts include it here. If no steps were taken, please indicate why not.

[Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the OMB-CEQ ECCR Policy Memo, including but not restricted to any efforts to a) integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECCR; c) 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.]

The Department of the Navy (DON) has had a strong Alternative Dispute Resolution (ADR) Program Office for several years. Staffed with two attorneys and a program analyst, it handles a wide variety of ADR issues facing the DON, including environmental matters. The DON ADR Program Office works with appropriate DON commands responsible for environmental issues. Training materials and external links to ECR courses are published on the web at <http://www.adr.navy.mil/content/sect106consult.aspx> and <http://ecr.gov/Training/Training.aspx>.

The DON has demonstrated a long standing capacity for ECR in the area of installation restoration. The DON currently participates in 47 facilitated partnering teams that oversee the restoration efforts at 1,260 active environmental restoration sites. Within these teams, representatives from the DON, EPA, state governments, local officials, and sometimes various other groups use collaborative methods to craft creative and cost effective restoration processes designed to address as many interests as possible.

**2. ECCR Investments and Benefits**

- a) Please describe any methods your agency uses to identify the (a) investments made in ECCR, and (b) benefits realized when using ECCR.

Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc.

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.

As the Systematic Evaluation of Environment and Economic Results (SEEER) project at EPA and DOI demonstrates, it is possible to collect and analyze data pertaining to the use of ECR. However, the analysis under the SEEER Project has a significant expense of about \$10K to \$20K per case. The DON has not adopted such a system at this time.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2013; and (b) quantitative or qualitative results (benefits) you have captured during FY 2013.

See 2(a) response.

- c) What difficulties have you encountered in generating cost and benefit information and how do you plan to address them?

See 2(a) response.

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2013 by completing the table 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 2013 ECCR Cases	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed	ECCR Cases or Projects sponsored <sup>2</sup>	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	—	—	—	—	—	—	—	—	—
Siting and construction	—	—	—	—	—	—	—	—	—
Rulemaking	—	—	—	—	—	—	—	—	—
License and permit issuance	—	—	—	—	—	—	—	—	—
Compliance and enforcement action	—	—	—	—	—	—	—	—	—
Implementation/monitoring agreements	47	—	—	—	47 <sup>3</sup>	—	47	—	—
Other (specify): _____	—	—	—	—	—	—	—	—	—
<b>TOTAL</b>	<b>47</b>	<b>(the sum of the Decision Making Forums should equal Total FY 2013 ECCR Cases)</b>				<b>47</b>	<b>47</b>	—	—

<sup>2</sup> The DON has 47 facilitated partnering teams, organized in a three-tier structure, which address installation restoration issues. Collectively, the teams work with 1,260 active environmental restoration sites.

<sup>3</sup> These 47 facilitated partnering teams collaborate to implement environmental restoration regulations. The third-party partnering team facilitators are sponsored by DON.

4. **ECCR Notable Cases:** Briefly describe notable ECCR cases in the past fiscal year. (Optional)

**Contaminated Sediment Removal Completed by the Partnering Team at the Norfolk Naval Shipyard St. Juliens Creek Annex, Norfolk, Virginia, as reported by the Virginia Department of Environmental Quality (DEQ)**

“As part of the Federal Facilities Restoration Program the US Navy recently completed the removal of contaminated sediment from St. Juliens Creek, a major tributary to the Southern Branch of the Elizabeth River. The sediments were removed from an outfall adjacent to Site 2 on St. Juliens Creek Annex – an annex to the Norfolk Naval Shipyard situated at the confluence of St. Juliens Creek and the Elizabeth River. Site 2 – an inlet which collects 50% of stormwater runoff from the base – is the location of a former disposal area, and has been undergoing multiple phases of remediation since May 2012. The remedial action for Site 2 consists of:

- Cover installation over waste, soil and inlet sediment (complete)
- Re-routing of the base stormwater system including construction of an enhanced stormwater detention basin (complete)
- Construction of mitigation wetlands to offset the permanent loss of wetlands at Site 2 (complete)
- Excavation of St. Juliens Creek sediment (complete)
- Implementation of enhanced reductive dechlorination by injecting emulsified vegetable oil into the contaminated shallow groundwater aquifer followed by monitored natural attenuation and additional injections if necessary (initiated)
- Land use controls to prohibit groundwater use (complete)
- Contingency implementation of a permeable reactive barrier to protect St. Juliens Creek surface water (contingent)

While the Federal Facilities Restoration Program in DEQ’s Central Office is the lead on this project, multiple DEQ programs in both Central Office and Tidewater Regional Office were involved in the review and approval of the remedial action implemented at this site. The final phase of the

remedial action – injection of EVO into shallow groundwater – is expected to be completed in January 2014.”<sup>4</sup>

The St. Juliens Creek Annex partnering team<sup>5</sup> has been recognized with two DON awards:

- “Chief of Naval Operations Environmental Award for Environmental Restoration – Installation” for FY12
- Secretary of the Navy Environmental Award for “Environmental Restoration – Installation” for FY12.”<sup>6</sup>

5. **Comments and Suggestions re: Reporting:** Please comment on any difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future.

The DON ADR Program Office incorporated the 2013 survey questions into an online database, and worked with the Assistant General Counsel (Energy, Installations and Environment) to solicit world-wide responses from throughout the DON.

***Please attach any additional information as warranted.***

Report due March 3, 2014.

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<sup>4</sup><http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/RemediationProgram/FederalFacilitiesRestorationProgram.aspx>

<sup>5</sup> [http://adr.navy.mil/docs/Env\\_Partnering%20in\\_VA.pdf](http://adr.navy.mil/docs/Env_Partnering%20in_VA.pdf), “For information on the partnering process utilized by VDEQ’s FFR Program” web link at <http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/RemediationProgram/FederalFacilitiesRestorationProgram.aspx>

<sup>6</sup><http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/RemediationProgram/FederalFacilitiesRestorationProgram.aspx>



Submit report electronically to: [ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

**Basic Principles for Agency Engagement in  
Environmental Conflict Resolution and Collaborative Problem Solving**

<b>Informed Commitment</b>	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
<b>Balanced, Voluntary Representation</b>	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
<b>Group Autonomy</b>	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
<b>Informed Process</b>	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
<b>Accountability</b>	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
<b>Openness</b>	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
<b>Timeliness</b>	Ensure timely decisions and outcomes
<b>Implementation</b>	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