

FY 2013 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.”

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

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:	U.S. Nuclear Regulatory Commission
Name and Title/Position of person responding:	Joan W. Olmstead, Attorney
Division/Office of person responding:	Office of General Counsel
Contact information (phone/email):	(301) 415-2859
Date this report is being submitted:	3/3/2013
Name of ECR Forum Representative	Joan W. Olmstead

- 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 Nuclear Regulatory Commission (NRC) generally does not use neutral facilitators or Alternative Dispute Resolution processes to resolve environmental conflicts; instead, the Commission typically uses NRC employees to facilitate at NRC public meetings. The NRC usually uses NRC employees to act as facilitators because of the technical nature of NRC's regulatory program. The NRC facilitators support public meetings and workshops involving NRC licensing, policy development and rulemaking activities.

The NRC currently has approximately 24 staff members that assist staff in NRC public outreach programs, including the convening and facilitation of environmental conflict resolution processes and public meetings. The program uses outside contractors to teach internal NRC facilitators and other NRC employees general public meeting and facilitation skills. The objective of this program is to make NRC meetings more effective by developing a skilled cadre of facilitators throughout the NRC.

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.

The NRC currently does not identify the investments made in ECCR and benefits realized when using ECCR.

- 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.

N/A

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

The NRC currently does not identify the investments made in ECCR and benefits realized when using ECCR. The NRC does not plan to identify investments or benefits in FY 2014.

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.

Context for ECCR Applications:	Total FY 2013 ECCR Cases ²	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed ³	ECCR Cases or Projects sponsored ⁴	Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)			Federal only	Including non-federal participants.
Policy development									
Planning									
Siting and construction									
Rulemaking	1	1				1			1
License and permit issuance	1		1			1			
Compliance and enforcement action									
Implementation/monitoring agreements									
Other (specify): _____									
TOTAL	2	1	1	0	0	0	2	0	1

(the sum of the Decision Making Forums should equal Total FY 2013 ECCR Cases)

² An "ECCR case" is a case in which a third-party neutral was active in a particular matter during FY 2013.

³ A "completed case" means that neutral third party involvement in a particular ECCR case ended during FY 2013. 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 2013 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2013 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 2013 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 2013). Please limit the length to no more than 2 pages.

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

The NRC used a combination of a neutral third party and NRC staff facilitators in development of the Generic Environmental Impact Statement for the Waste Confidence Rulemaking. WCD used third-party facilitators to conduct environmental scoping meetings for the Waste Confidence Generic Environmental Impact Statement (GEIS) in November and December of 2012. Beginning in January of 2013, WCD relied on a staff facilitator to conduct monthly status-update teleconferences during which interested individuals and group representatives were able to ask questions about NRC's Waste

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

There were numerous public meetings held for scoping and receiving comments on the draft Generic Environmental Impact Statement and proposed rulemaking language for Waste Confidence. Waste Confidence involves an analysis of the environmental impacts and safety evaluation of extended storage of spent nuclear reactor fuel on reactor sites. The topic is highly controversial. The numerous public meetings and use of facilitators helped provide an open meeting process to solicit public comments from numerous stakeholders. Over 33,000 public comment submissions were received and recorded over

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

We will not be able to conduct that analysis until we complete the rulemaking process.

Reflections on the lessons learned from the use of ECCR

N/A

5. Other ECCR Notable Cases: Briefly describe any other notable ECCR cases in the past fiscal year. (Optional)

In a contested licensing proceeding concerning the application to renew the operating license for the Seabrook power reactor, the parties to the litigation before the Atomic Safety and Licensing Board resolved an environmental contention in an unassisted negotiation.

6. Priority Uses of ECCR:

Please describe your agency's 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.

As noted in the NRC 2012 report, the NRC staff continues to use an expanded public outreach program in the areas of new reactor licensing and renewal of existing reactor licenses to accomplish many of the objectives of ECCR. This year NRC has also used expanded public outreach as part of the Waste Confidence decision and rulemaking, addressing the issue of extended storage of spent fuel.

The NRC's experience is that a number of factors contribute to disputes regarding NRC licensing actions such as the licensing of commercial nuclear power reactors. These factors include the competing values and interests of key external stakeholders, disagreements about the agency's priorities, a perception that the public does not have a sufficient voice in the licensing process, and challenges in clearly presenting information about the NRC's licensing process and the technical issues involved. The NRC's expanded public outreach program attempts to address these "conflict engagement" issues through early and continuing interaction with the stakeholders concerned about

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2013 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.*

The NRC has continued its use of NRC staff facilitators in public meetings.

The NRC has continued its training of NRC project managers and attorneys in ECCR techniques as identified in the response to Question 1, above.

The NRC has continued its use of the expanded public outreach program, both for conducting its NEPA environmental reviews for NRC license applications as well as for rulemaking activities that involve environmental issues.

The NRC has continued to use cooperating agency agreements – most frequently with Army Corps of Engineers and the Bureau of Land Management – to assist in the preparation of NEPA environmental review documents for various license applications. Also, the NRC has continued to develop informal consulting relationships with state, local and tribal governments, and other federal agencies during the development and review of NEPA documents.

8. **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.

We continue to appreciate having questions that facilitate reporting of other types of significant agency efforts to "anticipate, prevent, better manage, or resolve environmental issues and conflicts" that may not fit squarely under the definition "ECCR."

Note: We are having trouble formatting the response in this text block.

Please attach any additional information as warranted.

Report due March 3, 2014.

Submit report electronically to: ECRRReports@omb.eop.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