

Environmental Collaboration and Conflict Resolution (ECCR) in the Federal Government Fiscal Year 2021 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 2021 Data Collection

This annual reporting template is provided in accordance with the memo for activities in FY 2021.

The report deadline is Friday, January 28th, 2022.

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 2021 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 Dispute Resolution Specialist

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

Date this report is being submitted: 25 January 2022

Name of ECCR Forum Representative:

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 2021, including progress made since FY 2020.

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 2020 report to only include new, changed or actively ongoing ECCR investments or capacity building. **If none, leave this section blank.**

Considering whether to involve a third party neutral is a question that typically arises in most, if not all, cases at some point, often in coordination with DOJ.

- b. Please describe the trainings given in your department/agency in FY 2021. 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 2020 report to include **ONLY** trainings given in FY 2020. **If none, leave this section blank.**

DON Naval Litigation Office environmental litigation trial attorneys have attended ECCR trainings given by The Udall Foundation's National Center for Environmental Conflict Resolution although not during FY21 (largely due to the Covid-19 pandemic).

3. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably **completed** in FY 2021). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

Name/Identification of Problem/Conflict: *[Please add case "title" here]*

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 DON, in cooperation with the DOJ, was engaged in mediation concerning the cleanup of environmental contamination in the vicinity of the former Naval Weapons Industrial Reserve Plant (NWIRP) Bethpage, New York and the equitable allocation of response costs between the parties (U.S./DON and Northrop Grumman (NG)). A third-party evaluative neutral was involved starting in FY2011. Funding of the mediator was split between NG and the DOJ. DON is not privy to the funding amounts expended by the parties on the mediator. The DON funded supporting DON consultants and DON personnel, travel, and litigation support. DON did not separately track mediation-related costs.

During FY21, the parties recognized that the mediation effort had failed but continued to pursue settlement negotiations directly through counsel without any further involvement of the third-party neutral.

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.

Generally, the parties engaged in discussion/debate of the technical/legal issues, with ongoing feedback from the mediator. Other than this, we cannot divulge the details of the privileged discussions and process.

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 mediation for Bethpage described above failed.

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

Other ECCR Notable Cases

Briefly describe any other notable ECCR cases in FY 2021. (OPTIONAL)

Starting in FY2016, the DON, in cooperation with the DOJ, engaged in a “global mediation” concerning the cleanup of environmental contamination associated with a site at Naval Weapons Station (NWS) Seal Beach, California designated “Site 70,” as well as concerning the cleanup of environmental contamination at several Air Force sites. There is only one potentially responsible party (PRP) for NWS Seal Beach Site 70: The Boeing Co. (Boeing) on the basis of the past activities of its predecessor. Boeing is not currently a government contractor at the site. This mediation was termed “global mediation” because it is an effort by DOJ, the DON, and the Air Force to resolve issues that may have certain similarities at multiple Government Owned/Contractor Operated sites. This mediation included written exchanges of positions on certain legal issues and efforts by the third-party neutral (the mediator) to meet with parties individually. These cases are all pre-litigation. No complaint has yet been filed in any of them.

In FY21, the parties acknowledged that the global mediation effort had failed and decided to pursue different courses of action without any further involvement of the mediator.

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 28, 2022. Submit report electronically to: kavanaugh@udall.gov