

Environmental Collaboration and Conflict Resolution (ECCR) in the Federal Government Fiscal Year 2022 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 2022 Data Collection

This annual reporting template is provided in accordance with the memo for activities in FY 2022.

1. Agency Submission Information

Name of Department/Agency responding:	Department of the Air Force
Name and Title/Position of person responding:	Patricia Collins, Associate General Counsel
Division/Office of person responding:	Installations, Energy & Environment, Office of the General Counsel
Contact information (phone/email):	patricia.collins@us.af.mil
Date this report is being submitted:	March 15, 2023
Name of ECCR Forum Representative: Patricia Collins	

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 2022, including progress made since FY 2021.

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.**

See prior year submission.

- b. Please describe the trainings given in your department/agency in FY 2022. 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 2021 report to include **ONLY** trainings given in FY 2022. **If none, leave this section blank.**

See prior year submission.

3. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably **completed** in FY 2022). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

Name/Identification of Problem/Conflict: *Idaho Waste Systems v. USAF et. al.*

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.

Idaho Waste Systems (IWS) brought an environmental suit against the Air Force and two other parties in May 2018 for allegedly contaminating its landfill with hexavalent chromium when a contractor improperly disposed of construction debris at the site. After engaging in discovery, the parties participated in a settlement conference in Jul 21, but were ultimately unsuccessful in trying to settle the case, primarily because of how far apart the parties were on the perceived value of IWS's claims. In early 2022, a month before the case was scheduled to begin trial, the parties entered into court-mandated mediation, which was funded through a 25% split in costs per party. The parties conducted formal mediation in Feb 22.

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.

Through the use of ECCR, the parties were able to work with a mediator to resolve their remaining disagreements. The biggest disagreement going into mediation was the total pool of money that plaintiff could potentially earn if it won on the merits at trial. Plaintiff believed it was entitled to \$150,000 in past damages, while the Air Force believed plaintiff was entitled to approximately \$32,000. Recognizing this disparity and focusing on damages rather than strictly liability, the mediator worked closely with three of the parties to identify a settlement amount that would allow the parties to end the litigation. Throughout the mediation, the mediator worked to ensure all parties worked with accurate information in order to best determine how close or far the parties were from reaching an agreement. The use of a mediator greatly reduced the face-to-face interaction between the parties, which in turn reduced the overall tensions/emotions during negotiations and allowed the parties to work objectively towards a common outcome.

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 key benefit of resolving the case through mediation was the ability to efficiently resolve this litigation without a prolonged trial. If the parties were unsuccessful at the 2022 mediation session, the case likely would have proceeded to trial, increasing the overall litigation costs associated with the case and the possibility of prolonged appellate processes that could have prevented the conclusion of this litigation. Thus, ECCR resulted in a significant time and cost savings for the federal government.

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

The case demonstrates that court-imposed mediation can be value added. Being directed to engage in a good-faith settlement discussion allowed the parties to put past disagreements aside and work to find a settlement value that could satisfy all parties. It also highlights the importance of interagency dispute resolution during the ECCR process. In this instance, DOJ and Air Force disagreed over the appropriate settlement value of the case. DOJ, as the lead agency for litigation, elected to accept IWS's settlement proposal. Air Force continued to provide support to the DOJ and was able to benefit from the terms incorporated into the final consent decree. Despite differing views on valuation, both agencies worked together through the use of ECCR to receive a beneficial outcome for the federal government.