

OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF RECLAMATION

****POLICY/PROCEDURE DIRECTIVE****

Regulatory 92-1

Subject: Reclamation in Lieu of Cash Payment for Civil Penalties

Effective: September 25, 1992

Purpose: The Division of Reclamation, by accepting reclamation performance to satisfy civil penalty claims, can assist in the accomplishment of significant reclamation benefits for the State of Ohio. An additional goal of the Division, while implementing an approved civil penalty assessment and collection program, is the reclamation of abandoned and forfeited mine lands which, in an unreclaimed state, degrade the environment.

RECLAMATION IN LIEU OF CASH PAYMENT FOR CIVIL PENALTIES

General:

The Ohio Division of Reclamation recognizes that, in some situations, performance of reclamation on certain abandoned mine land sites and forfeited mine lands may be acceptable as payment in kind, in lieu of cash payment, for civil penalties.

Procedure:

After the Division has assessed civil penalties on an operator, the Chief of the Division or his designee, may negotiate and settle the penalty amount in accordance with established settlement procedures. As an option to be considered, however, the Division encourages reclamation performance in lieu of cash payment in accordance with the following procedure:

- 1. The Division will consider reclamation performance for civil penalties following types of sites:**
 - 1. Sites which were mined and left unreclaimed or partially reclaimed, and for which there is no continuing reclamation responsibility;**

2. *Illegally mined sites for which the responsible party cannot be found or there is no reasonable expectation of reclamation by the responsible party or means to collect monies for reclamation;*
3. *Forfeitures; or*
4. *Maintenance work on any of the above sites.*

II. Selection of site for reclamation:

1. *The Remining Coordinator with the appropriate Division Personnel will prepare a list of site(s) which are in the vicinity of the operator and which satisfy one or more of the above criteria.*
2. *The list of eligible sites will include those for which reclamation costs meet or exceed the dollar amount of the civil penalty assessment(s).*
3. *The Remining Coordinator with the appropriate Division personnel will review the list of eligible sites with the operator, and arrive at a preliminary understanding of a mutually agreeable site.*

III. Operator's eligibility for reclamation agreement:

1. *Operator must have a history of complying with consent orders in a timely manner.*
2. *Operator must currently be in compliance with program requirements, i.e. must not have any NOV's which are in non-compliance, and*
3. *Operator must be considered current on reclamation requirements on all permit areas.*

IV. Valuation of reclamation:

1. *The Remining Coordinator, in conjunction with the appropriate Division personnel will establish and document an estimated*

dollar value for the site(s) chosen, which value will be based on average actual reclamation costs per acre, and which will include developing and defining the scope of work for the anticipated project.

- 2. The value of any proposed work cannot be less than the amount owed for civil penalties, but can exceed the amount owed.*
- 3. The Division will not credit against future penalties the value of reclamation work performed in excess of the civil penalties which are the subject of any agreement under this policy.*
- 4. An operator will not be permitted to perform partial reclamation of a site except on a case by case basis as approved by the Division. The Division may elect to allow total reclamation of a portion of a large area, however this is solely at the Division's discretion.*
- 5. If the operator would qualify under existing AML procedure for a direct negotiated contract entered into pursuant to this policy, the Division may consider doing so for any remaining unreclaimed portions of a site.*
- 6. When all reclamation is complete and acceptable under the agreement, and the required maintenance period has expired, the operator's penalties covered by the reclamation agreement will be deemed settled.*

V. Agreement to perform reclamation:

- 1. An agreement entered into under this policy for forfeiture reclamation must specify reclamation performance in compliance with the approved reclamation plan in the permit; for Phase II permits, the reclamation plan must conform to Ohio's approved regulatory standards. For all other areas, site specific reclamation standards developed by the Division should be written into the agreement.*
- 2. The agreement must define a timetable for reclamation performance, and should include a minimum one year maintenance period.*

3. ***A failure to execute the agreement within 30 days of final negotiation will void any commitment to enter into the agreement and result in the certification to the Attorney General of the full amount of all civil penalties owed as delinquent claims.***
4. ***A failure of the operator to meet the time schedule defined for reclamation, including the date established for commencement of operation, as well as a failure to meet the performance standards of the agreement, will result in the civil penalty amount becoming due and payable, which, if not paid within 30 days, will be certified for collection as delinquent.***
5. ***The agreement must incorporate an acceptable reclamation plan, including, at a minimum:***
 - a) ***a site specific description, including a map or drawing of the area or work limits;***
 - b) ***landowner's consent for reclamation, if necessary;***
 - c) ***an operator's plan defining erosion and sediment controls, if appropriate, existing highwall(s), grading limits and other pertinent features;***
 - d) ***a revegetation plan in conformance with Reclamation in Lieu of C.P.A. Program specifications; and***
 - e) ***a description of post mining land use; or***
 - f) ***forfeiture reclamation plan.***

VI. Inspection:

1. ***Inspection will occur on a basis in conformance with Reclamation in Lieu of C.P.A. Program Section inspection specifications, and will be performed by the appropriate Division personnel.***
2. ***Copies of inspection reports will be provided to the Remining coordinator, Regulatory, operator and if necessary, the attorney representing the Division in the matter at issue.***
3. ***Documentary photographs will be taken by inspection staff before, during and after completion of reclamation work.***

Page #5
PPD/Regulatory

***If you have any questions, please call John F. Husted, Remining
Coordinator at (614) 265-7072.***



Glen G. Kizer, Chief
Division of Reclamation

GGK/ljm/pmp