

OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF RECLAMATION

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

(Revised) Legal 88-1

Subject: Settlement guidelines
Effective: October 10, 1991
Purpose: To establish standard procedure for settlements.

SETTLEMENT GUIDELINES

The Chief of the Division of Reclamation has the expressed authority under ORC section 1513.02 to determine violations of Chapter 1513 and to assess penalties for those violations. Implicit in the authority to assess is the authority to compromise claims and settle cases.

The Chief of the Division is presented routinely with the following types of situations in a settlement context involving violations and assessments. Internal procedural guidelines for each are set forth separately.

- I. A person or permittee wishes to settle on the basis of a final demand for payment issued by the Division:
 - a) The party wishing to compromise the Division's demand for payment must make a settlement offer to the Chief or his authorized representative.
 - b) Following the receipt of an offer, the Chief or his authorized representative consults with the Division's General Counsel.
 - c) The Chief or an authorized representative may negotiate on the basis of an offer received. Factors to be considered include the following:
 - 1) The nature of the underlying violation and the extent of environmental damage, if any.
 - 2) The financial status of the operator.
 - 3) The deterrent effect of the penalty.
 - d) As part of the settlement process, the Chief will require that the other party present documentation of ability to pay the claim, such as the most recent tax return, a financial statement prepared by an independent party within the past 12 months, or other such evidence.
 - e) As part of settlement negotiations, the Division may discuss the

possibility of settling on a higher compromise penalty amount, but giving the person benefit of payment on an installment plan. Installment plans should require payment in full and immediate certification of the balance to the Attorney General for collection should the operator fail to make timely payments; said breach will reflect on the record for future settlements.

- f) As part of the settlement, the Chief will require that the other party agree to give up all rights of appeal of the underlying violation and of the final demand for payment.
- g) The Chief, General Counsel, or someone authorized on their behalf shall, upon the Chief entering into any settlement agreement, notify Enforcement and Bonding of any settlement.

II. A person or permittee wishes to settle a final demand for payment, as in 1) above, which is delinquent and has been certified to the Claims Section of the Attorney General's office for collection:

- a) Unless expressly authorized by an assistant attorney general in the Claims Section, no person in the Division may negotiate delinquent claims with the debtor or with anyone on his behalf.
- b) The Chief of the Division must approve any settlements of delinquent claims negotiated on behalf of the Division by an assistant attorney general or by special counsel appointed by the Attorney General.
- c) If an assistant attorney general has expressly authorized direct negotiation with a debtor or debtor's representative, the Chief or the Division's General Counsel with the consent of the Chief, may negotiate and settle a delinquent claim. Upon settlement, the debtor or debtor's representative is referred to the Claims Section for payment and cancellation of the debt.

III. A person or permittee wishes to settle an appeal of an NOV or assessment before the Reclamation Board of Review (RBR) or before a court in the State of Ohio.

- a) In all appeals, administrative or judicial in nature, the Chief of the Division is represented by an assistant attorney general.
- b) The Chief refers any negotiation, offer, comment, or discussion to the counsel representing him in the particular case.
- c) The assistant attorney general will consult with the inspector and other potential witnesses as reasonable and as merited, and make a preliminary review of the facts. The assistant attorney general will then make a settlement recommendation to the Chief. The factors to be considered shall include:
 - 1) Existence of any mitigating factors meriting a lesser penalty or acceptance of settlement offer;
 - 2) Procedural and substantive strengths and weaknesses in presenting the case before the RBR or Court;

- 3) Deterrent and precedential effect.
- d) If ability to pay is a factor in the settlement negotiation, the assistant attorney general will act in accordance with I (d) and (e).
- e) After considering the advice of counsel and any other staff member, the Chief will make the final decision upon whether or not to accept a settlement.



Glen G. Kizer, Chief

GGK/LM/tp
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