This document has been
Rescinded and is located
in our Archive files.

For Active files, visit
http://www.osmre.gov/directiv.htm

	U. S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: CAA-2 Transmittal Number: 485 Date: 11/15/88

Subject: Settlement Guidelines

Approval: **Title:** Deputy Director

1. Purpose. This directive establishes Office of Surface Mining Reclamation and Enforcement (OSMRE) guidelines regarding the settlement of debts incurred as a result of civil penalty fines or AML fees under the Surface Mining Control and Reclamation Act (SMCRA) of 1977.

2. Definitions. All definitions are found in the body of the Settlement Guidelines attached.

3. Policy and Procedures.

a. Concept. It is the mission of the OSMRE to formulate and execute policy and guidelines that promote compliance with SMCRA. Because of the varied offices that play a part in the collection process, there is a need to establish standardized guidelines for settlement of that debt.

b. Responsibilities.

(1) Assistant Director, Finance and Accounting, is responsible for the overall management and administration of settlement agreements with OSMRE.

(2) Chief, Division of Debt Management, is responsible for ensuring that all settlement agreements conform with the attached guidelines.

(3) Chief, Branch of Civil Penalty Collections, and Chief, Branch of AML Collections, are responsible for implementing, directing and administering the policies and procedures contained in the attached guidelines. Additionally, they provide advice and guidance to OSMRE employees and private collection agency contractors on the various aspects of payment agreements and compromises.

(4) The Office of the Solicitor is responsible for implementing, directing and administering the attached guidelines with respect to its Field Attorneys involved in settlements of delinquent debts. In addition, the Solicitor's office will provide legal guidance, as necessary, with regard to settlement agreements. The Solicitor's Office will also provide concurrence on all compromise offers.

4. Reporting Requirements. None.

SETTLEMENT GUIDELINES

I. INTRODUCTION

Title IV of Public Law 95-87, Surface Mining Control and Reclamation Act (SMCRA) of 1977, established a trust fund with the U.S. Treasury to be used for reclamation of lands mined before 1977 and left unreclaimed. The trust fund is primarily financed by a fee levied on each ton of coal produced for sale, transfer, or use. The Office of Surface Mining Reclamation and Enforcement (OSMRE) is charged with collecting these fees, and with auditing the reports filed to ensure that proper accounting of the fees is made. The Branch of Abandoned Mine Land (AML) Collections, within the Division of Debt Management, Directorate of Finance and Accounting, is directly responsible for this fee collection.

Title V of the Act provides for the assessment and collection of civil penalties imposed on operators who violate the provisions of the Act by improper mining practices. The Branch of Civil Penalty Collections, within the Divison of Debt Management, Directorate of Finance and Accounting, is directly responsible for the collection of these penalties.

There are numerous interested parties involved in the collection of the two types of debt described above; e.g., Division of Debt Management personnel, Office of the Solicitor, Department of Justice, Private Collection Contractors, etc. Because of the varied offices that play a part in the collection process, there is a need to establish standardized guidelines for settlement of debt. This directive provides these guidelines with respect to the following areas: (1) Early Settlement of Debt; (2) Compromise of Debt; and (3) Payment Agreements. These areas are discussed in detail in the remainder of this Directive.

II. DEFINITIONS:

Abandoned Mine Land (AML) Fee: The fee that each operator is required to pay on each ton of coal produced for sale, transfer, or use, including the products of in situ mining.

Civil Penalty Assessment: The amount assessed for a violation of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1201 *et seq*. An operator is first notified of a civil penalty assessment by service of a Notice of Proposed Assessment (NOPA).

Final Order: The stage at which a civil penalty assessment becomes due and payable and begins accrual of interest and administrative costs.

Claim (or Debt): The amount of AML fee due for any one mine in any one calendar quarter or the amount of civil penalty assessed on any one notice of violation or cessation order, exclusive of interest, additional penalty and any administrative costs accrued for the delinquent debt. Civil penalty claims do not accrue until a valid Final Order has been issued. AML fee claims do not accrue until 30 days after the end of the calendar quarter for which the fee is due.

Settlement: The resolution of a debt either through payment in full, a payment agreement, a compromise agreement, or termination of the debt.

b. A modification of the civil penalty assessment during an administrative review hearing, before the Office of Hearings and Appeals (OHA), including the Interior Board of Land Appeals (IBLA).

c. A consolidation for settlement purposes of all of an operator's outstanding debts, to include those that have yet to go to final order. (In this instance, the Solicitor must still obtain the proper OSMRE concurrences before settlement becomes final.)

d. Filing of a proof of claim for all of an operator's outstanding debts in the event the operator has filed bankruptcy.

With the exception of the four instances listed above, the Solicitor's Office should not be involved in the settlement of a debt before the Final Order stage.

IV. COMPROMISE OF DEBT:

Compromise of a debt is defined as an agreement with the debtor to accept less than the full amount of a final claim. As a general rule, OSMRE desires full payment of all debts. However, it may be in the Government's best interest to accept less than the full amount as final resolution. Compromise settlements, however, must follow the guidelines described below to protect the interests of OSMRE and to ensure consistent and fair treatment of operators.

a. Compromise Authority: OSMRE, specifically the Division of Debt Management within the Finance and Accounting Directorate, has the authority to recommend compromise of any debt but must receive Solicitor concurrence, regardless of debt amount. The Solicitor has the authority to compromise any claim referred to that office, not exceeding $20,000. The compromise of debts over $20,000 requires approval from the Solicitor's Office and the Department of Justice. All compromises recommended by the Solicitor's office and the Department of Justice require OSMRE approval. Compromises for debts equal to or in excess of $20,000 require the specific approval of the Deputy Director, OSMRE. The Private Collection Agencies contracted by OSMRE may also enter into a compromise settlement, following the guidelines below, but must receive approval from the OSMRE, the Solicitor's office, and, where necessary, the Department of Justice.

In all situations, no more than $1,000 of the amount of delinquent AML fees may be compromised. The amount of compromise greater than $1,000 may only consist of penalties, interest, or administrative fees.

b. Abatement of Violations: Only those cases in which abatement has been performed or is scheduled to be performed through an approved abatement plan, or performance has been ruled not feasible, will be considered for compromise.

e. Prior Attempts to Compromise: Research, to be coordinated by the Division of Debt Management, will be conducted to ensure that the debtor is not making a compromise offer that has been previously considered and rejected by any part of the OSMRE or its private collection agents. This will reduce the ability of the operators to "shop" for the best deal. Except when new relevant information is discovered, or with the specific approval of the Chief, Division of Debt Management, an offer to compromise will not be accepted on terms that were previously submitted and denied.

f. Relationship to AVS: In all instances of compromise, unless the compromise is reached on the basis of litigation potential or otherwise granted express exception by the Deputy Director, OSMRE, the compromised amount will remain on the Applicant/Violator System (AVS). Should the operator ever wish to obtain a mining permit, payment of the unpaid balance must be accomplished.

All compromise agreements, with the exception of compromises based on litigation potential, should contain the following language:

"In consideration of this agreement, OSMRE agrees to accept the lesser amount of $ from to absolve , personally, for the past due reclamation fee/civil penalty debt described in paragraph ; HOWEVER, THE ENTIRE UNPAID BALANCE OF THE AMOUNT OF $ INDEBTEDNESS TO OSMRE, AS SPECIFIED IN PARAGRAPH , PLUS APPLICABLE INTEREST, REMAINS DUE IN THE EVENT THAT OR ANY PERSON OR ENTITY IN AN OWNERSHIP AND CONTROL RELATIONSHIP WITH APPLIES FOR FUTURE MINING PERMITS.

It is also advisable to have the operator initial next to the above paragraph as further proof of his understanding of this liability.

Sample compromise settlement agreements are shown in Exhibits 2 and 3. (Note: These are samples only. Settlement agreements may deviate from these samples to meet the specific needs of each case.)

g. System Coding: Compromise actions must be coded properly to the AML and/or CMIS systems. Coding for CMIS is accomplished by the Division of Debt Management. Coding sheets for the AML system must be properly completed by the organization, either Division of Debt Management personnel or the field solicitors, to reflect the terms of the compromise settlement and to ensure that the compromised amount remains on the AVS, if applicable.

V. INSTALLMENT AGREEMENTS:

An installment agreement is defined as payment of a debt over a specified period of time. As a general rule, OSMRE desires full payment of all debts in one lump sum. However, as with compromise of a debt, it may be in the Government's best interest to accept payments over time as settlement of the debt. Payment Agreement settlements, however, must follow the guidelines described below to protect the interests of OSMRE and to ensure consistent and fair treatment of operators:

determining the financial ability of the operator. The guidelines outlined in Part IV c (1) of this document should be consulted, as well as the factors shown in Exhibit 1.

(2) Litigation Potential: As with a compromise settlement, if this is the reason for consideration of the installment agreement offer, the litigation potential of the case, to include the following, must be analyzed:

- Strength of the debtor's position versus that of the Government's;
- The availabilty of witnesses or documentary evidence;
- The possibility of Government liability for costs and attorney's fees should the Government not prevail; and
- Other pragmatic considerations of litigation.

The Solicitor's Office must be consulted when considering litigation potential as a reason for an installment agreement.

(3) Cost Exceeds Recovery: A claim may be considered for an installment agreement if the cost of collecting the claim does not justify the enforced collection of the full amount in lump sum. The cost of collecting may be a substantial factor in the settlement of small claims. It normally will not carry great weight in the settlement of large claims.

d. Compliance with SMCRA: The extent to which the enforcement policies of SMCRA will be affected by the installment agreement must be analyzed. Generally, OSMRE does not wish to enter into an installment with operators who are actively engaged in mining activities. Operators must comply with the rules and regulations of SMCRA in order to obtain mining permits. Failure to comply with SMCRA through non-payment of civil penalties or AML fees should result in a judgment and seizure of assets or property. However, if it is determined that the installment agreement settlement would enable an otherwise compliant operator (one who has abated all violations) to stay in business, provide needed employment in the area, prevent bankruptcy, or otherwise protect the Government's claim, an installment agreement may be approved.

For those operators who have delinquent debts and require new permits, all outstanding debts must be paid, or be a condition of the permit, before a new permit can be issued by either the State or Federal authority. OSMRE prefers that these payments be made in lump sum. However, if it is determined that the installment agreement is necessary to prevent an otherwise compliant operator (one who has abated all civil penalty violations) from going out of business and/or will provide necessary employment to an area, the installment plan may be approved. In such situations, the permit will be conditioned upon the operator's compliance with the installment agreement and the language of the agreement must contain the following:

g. Relationship to AVS: All debts that are covered under installment agreements will remain in the Applicant/Violator System. If an operator with an installment agreement applies for a permit, the initial result of an AVS check will be "deny." At that point, the case should be turned over to the the Division of Debt Management, AML Collection Branch, for resolution. The AML Collection Branch will then determine if the operator is meeting the terms of the agreement. If the operator is in compliance, the permit will be issued based on the condition that the operator continue to meet the terms of the installment agreement. If the operator is not in compliance, the permit will continue to be denied and further collection action will be pursued.

(6) Names of owners and Chief Executive Officer (CEO)

(a) CEO - same information is required as for Sole Proprietor and/or Individual A(1)-(10)

(7) List of subsidiaries, branches, offices, outlets

(8) Annual sales volume

(9) Listing of principal assets

(10) Listing of principal liabilities

(11) Listing of current lines of credit

(12) Listing of judgments, Federal liens, suits, and/or contract disputes

(13) Tax delinquencies

(14) Government loans and contracts

C. Partnership:

(1) Name, current address, and Employer's I.D.

(2) Principal product or service

(3) Type of organization (limited or general)

(4) Date the partnership was formed

(5) Present legal status of the partnership

EXHIBIT 2

The United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE) and , have agreed to resolve a dispute between them regarding payment of past due reclamation fees owed by _____, and assessed under 30 U.S.C. 1232, and, therefore, have agreed to enter into the following stipulations and agreements:

1. conducted mining operations in (City/County) State and failed to pay reclamation fees (hereinafter referred to as "fees") for coal mined from a mine designated by Mine Safety and Health Administration (MSHA) identification number for calendar quarters of 19 , on tons of coal, and owes fees of $ on said production.

2. With the addition of statutorily required interest, penalties, and administrative costs, the indebtedness of to OSMRE as of Date for MSHA No. is $.

3. In consideration of this agreement, agrees to pay one lump sum payment of $.

4. In consideration of this agreement, OSMRE agrees to accept the lesser amount of $ from to absolve for the past due reclamation fees described in paragraph one (1); HOWEVER, THE ENTIRE UNPAID BALANCE OF THE AMOUNT OF $ INDEBTEDNESS TO

Date

Staff Attorney,
Office of the Field Solicitor
Representative of the Office
of Surface Mining

Date

(Operator)

Date

(Attorney for Operator)

Subscribed and sworn to before me this day of , 1988.

Notary Public

My commission expires:

REMAINS DUE IN THE EVENT THAT OR ANY PERSON OR ENTITY IN AN OWNERSHIP AND CONTROL RELATIONSHIP WITH APPLIES FOR FUTURE MINING PERMITS.

5. Payment shall be made by certified check, cashier's check, or money order drawn to the order of "Office of Surface Mining" and mailed to:

U.S. Department of the Interior
Office of Surface Mining
Reclamation and Enforcement
Civil Penalty Collections
P.O. Box 360292M
Pittsburgh, PA 15251

Payments shall be deemed made when received. The Debtor shall write the following information on all certified checks, cashier's checks, or money orders: (Citation Number(s) .

6. It is agreed that payments for the civil penalties of this contract extend only to the notice(s) of violation indicated in paragraph two of this agreement. This payment plan does not cover any other civil penalties not specified, nor any Abandoned Mine Land fees that may be due and owing the United States. This payment plan also does not prevent the United States Department of the Interior from taking action to obtain abatement of any violations under SMCRA that may not be terminated.

EXHIBIT 4

INSTALLMENT AGREEMENT

, (hereinafter referred to as "Company") and the Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior (hereinafter referred to as "OSMRE"), hereby enter into the following stipulations and agreements:

1. Company has failed to pay reclamation fees (hereinafter referred to as "fees") totalling $ for coal produced at its mine(s) designated by MSHA No.(s). during the as of , administrative costs, penalties, and interest due on these delinquent fees total $_____.

2. Company agrees to pay the total outstanding indebtedness of $, plus interest accruing on the delinquent fees at the rate provided by law during the term of this agreement.

3. Company agrees to make equal monthly payments of $ each, beginning on or before , and on or before the last day of each and every succeeding month, plus a final payment on or before , equal to the unpaid balance and any interest thereon. Each payment shall be applied to the oldest calendar quarter for which fees are owed at the time of the payment. Within each quarter, payments shall be applied in the following order: accrued penalties, administrative costs, accrued interest, and principal.

8. It is agreed that payments for the reclamation fees of this contract extend only to the reclamation fees indicated in paragraph two of this agreement. This payment plan does not cover any other reclamation fees not specified, nor any civil penalties that may be due and owing the United States. This payment plan also does not prevent the United States Department of the Interior from taking action to obtain abatement of any violations under SMCRA that may not be terminated.

9.. The failure of OSMRE at any time to require performance of any requirement herein shall not affect OSMRE's right to require full performance thereof at any time thereafter. The waiver by OSMRE of any default shall not constitute a waiver of any subsequent default, and the exercise or non-exercise of any remedy by OSMRE shall not bar the exercise of any other remedy that may be available to OSMRE.

(Date) FOR THE COMPANY

TITLE

(Date) FOR OSMRE

TITLE

4. Payments:

Company agrees to pay the total outstanding indebtedness of $, plus interest accruing on the delinquent debt at the rate provided by law during the term of this agreement. Company agrees to make equal monthly payments of $ each, beginning on or before , and on or before the last day of each and every succeeding month, plus a final payment on or before , equal to the unpaid balance and any interest thereon. Payments shall be applied in the following order: accrued penalties, administrative costs, accrued interest, and principal.

Payments shall be made by certified check, cashier's check, or money order drawn to the order of "Office of Surface Mining" and mailed to the address below:

U.S. Department of the Interior
Office of Surface Mining
Reclamation and Enforcement
Civil Penalty Collections
P.O. Box 360292M
Pittsburgh, PA 15251

The Company shall write the following information on all checks, money orders, or cashier's checks: (citation number(s)

5. Default:

Time is of the essence in the payment of the sums due OSMRE. Upon failure to comply with any of the terms of this agreement, including each due date

8. Waiver of Default:

The failure of OSMRE at any time to require performance of any requirement herein shall not affect OSMRE's right to require full performance thereof at any time thereafter. The waiver by OSMRE of any default shall not constitute a waiver of any subsequent default, and the exercise or non-exercise of any remedy by OSMRE shall not bar the exercise of any other remedy that may be available to OSMRE.

(Date) FOR THE COMPANY

TITLE

(Date) FOR OSMRE

TITLE