

Susquehanna River Basin Commission

a water management agency serving the Susquehanna River Watershed



Policy No. 2000-01
February 10, 2000

POLICY AND GUIDANCE STATEMENT FOR THE SETTLEMENT OF CIVIL PENALTIES/ENFORCEMENT ACTIONS

In settling cases in which the Commission could levy a civil penalty, the Commission shall first require the remediation of any environmental problems resulting from the noncompliance and shall coordinate the settlement with the affected signatory parties. Thereafter, the Commission shall be guided by the following principles:

1. The Commission shall continue its past policy of using settlements as the primary means of carrying out enforcement actions.
2. In completing settlement agreements, the Commission shall strive for consistency in cases with similar fact situations but, recognizing that each case is unique, the Commission shall be flexible in fashioning settlement terms.
3. All settlements shall be agreed to by the alleged violator, in writing, prior to the presentation of settlement terms to the Commission for final approval.
4. Where the term of non-compliance pre-dates January 1, 1993 and settlement amounts are calculated on the basis of consumptive use fees avoided by such non-compliance, settlement amounts shall, at a minimum, be equal to the amount of consumptive use fees otherwise payable for such usage since January 1, 1993.
5. All settlements shall state that the Commission reserves the right to reinstitute a civil penalty action against the alleged violator in the event the violator fails to carry out the terms of the settlement agreement.
6. Settlements may be based upon monetary payments or non-monetary actions, services or products of direct benefit to the public.
7. Except in cases involving an alternate payment schedule or non-monetary actions, a project docket incorporating a settlement shall not be presented to the Commission for review until the amount of the proposed settlement has been agreed to by the project applicant and paid to the Commission. Any amounts so paid shall be held in escrow pending approval of the docket by the Commission. Where the approved settlement amount is less than the amount proposed by Commission staff and tendered by the project applicant, the overpayment shall

be reimbursed to the project applicant. Where the approved settlement amount is greater than the amount proposed by Commission staff and tendered by the project applicant, the docket approval shall not be effective until payment is made to the Commission of the supplemental amount, which payment shall be made within 45 calendar days after receipt of the approved docket by the applicant. It shall also be a condition of such dockets that failure to tender the supplemental payment within the 45-day period shall render the settlement and docket approval null and void.

8. In deciding whether to settle a civil penalty case and determining the appropriate terms therefore, including, but not limited to, those related to the amount of any such penalty or the rate of interest applicable to settlement amounts, the Commission and its staff should be guided, but not bound, by the following primary and secondary considerations:

PRIMARY CONSIDERATIONS:

- Did the violation cause serious environmental or other public harm or was there the potential for serious harm?
- Has the violator realized a tangible financial benefit as a result of the violation? (If so, this should be recouped, along with any costs incurred by the Commission.)
- Were the alleged violator's actions willful or grossly negligent?
- What is the alleged violator's compliance history?

SECONDARY CONSIDERATIONS:

- Is there a particular need to deter such action by other potential violators?
- If the settlement involves something other than or in addition to a monetary payment, can a real and immediate environmental benefit be obtained?
- Is the violator a public or quasi-public entity such that taxpayers ultimately must pay the penalty or settlement amount?
- Does the violator have the ability to pay without incurring such serious effects as bankruptcy or plant closure resulting in the loss of employment?
- What types of settlements were reached or penalties levied in similar cases?
- Are there any unique factors that the Commission should consider?
- Would there be a heavy expenditure of time and resources to fully prosecute a civil penalties case with only a limited or uncertain prospect for success?