

**OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

PROGRAM DIRECTIVE

Program Directive A-163
Issued December 1, 1991
Revised September 20, 2018

SUBJECT: Inspection Criteria: Statewide Settlement Agreements

**AFFECTED STANDARDS/
DIRECTIVES:** All Directives

PURPOSE: This directive provides policy and guidance for administering statewide settlement agreements.

BACKGROUND: Formal settlement agreements have been and remain part of Oregon OSHA's standard operating procedures. (See FIRM, Chapter 9.)

- Statewide agreements document employer recognition of specified hazards and the employer's obligation to abate those hazards at all workplaces under the employer's control in Oregon.
- The use of statewide Oregon OSHA settlement agreements allows efficient use of resources, to ensure early and uniform protection of workers.

Oregon OSHA has a policy of in-depth inspections for identified types of safety and health hazards.

- In "egregious cases," Oregon OSHA often performs lengthy inspections in which willful and flagrant violations of the Oregon Safe Employment Act are identified. In such cases, violation-by-violation penalties may be imposed.
- These cases require extensive use of staff resources. Every effort must be made to ensure statewide abatement to prevent waste of staff resources.
- With statewide agreements, abatement requirements are extended to all covered locations, and Oregon OSHA gains the administrative flexibility to deploy its inspection resources more efficiently.
- Statewide settlement agreements are appropriate when they are the product of a voluntary negotiation process, involving the mutual commitment of all parties.

ACTION: AUTHORITY TO NEGOTIATE STATEWIDE AGREEMENTS

The following guidelines apply:

- The enforcement manager and the appeals manager have the authority to negotiate statewide settlement agreements. The field office safety or health enforcement manager and the administrator of Oregon OSHA must agree with these settlements.
- The enforcement manager will obtain prior agreement from the Oregon OSHA administrator before initiating a statewide settlement agreement.

OREGON OSHA PARTICIPATION IN FEDERAL OSHA CORPORATE-WIDE SETTLEMENTS

Federal OSHA has established guidelines for administering corporate-wide settlement agreements. The following outlines Oregon OSHA's rights and responsibilities regarding participation in corporate-wide settlements negotiated by federal OSHA:

- Federal OSHA will notify Oregon OSHA whenever corporate-wide agreements are reached with an employer having facilities under Oregon's jurisdiction. The OSHA Region 10 administrator will give Oregon a copy of the agreement.
- Corporate-wide settlement agreements negotiated by federal OSHA are not binding on Oregon OSHA. Oregon OSHA may choose to disregard the federal agreement and continue to enforce state standards and regulations without regard to the federal settlement.
- If Oregon OSHA chooses to honor the federal settlement it will do so by adhering to the terms of federal OSHA's corporate-wide settlement agreements at the facilities under Oregon's jurisdiction or by Oregon's negotiating its own agreement with the employer, known as a "sub-agreement." Sub-agreements must be at least as effective as those negotiated by federal OSHA, and they must be submitted to the region 10 administrator.
- If Oregon chooses to participate in a federal corporate-wide settlement, it must follow monitoring procedures comparable to federal OSHA's for monitoring establishments within the state and must also provide federal OSHA the monitoring results for their evaluation purposes.

Administrative Content of Statewide Settlement Agreements

Settlement agreements have both administrative and technical provisions.

The technical provisions deal with specific hazards and citations. These provisions govern the specific abatement steps to be accomplished within a specified period of time.

In addition to these provisions, the following general administrative matters shall be addressed:

Abatement. Corporate settlement agreements often involve long-term and multi-stage abatements. Such abatements shall be governed by the FIRM Chapter 9, being explicitly outlined in the agreement.

Monitoring. Oregon OSHA's right of entry for monitoring must be explicitly recognized in every agreement. The enforcement manager must establish a monitoring schedule for each establishment affected by a statewide settlement. This schedule includes baseline monitoring, appropriate periodic monitoring during the life of the agreement, and a plan for post-agreement follow-up.

Enforceability. Each settlement agreement becomes a final order enforceable under ORS 654.078(3).

- These settlement agreements may require the employer to certify the truthfulness of any abatement reports submitted to Oregon OSHA; such certification may provide the basis for a referral for criminal prosecution for falsification under ORS 654.991(3) if evidence of such falsification can be established. (See FIRM, Chapter 9.)
- These settlement agreements will normally provide the terms for petitions for modification of abatement (PMAs) by the employer. In the absence of a PMA, the employer's failure to adhere to any agreed upon abatement step may be considered a failure to abate. (See FIRM, Chapter 9.)
- Settlement agreements must name individually all company locations covered by the agreement with their respective addresses.

Inspections. Oregon OSHA inspection scheduling must NOT be affected by these settlements for parts of the establishments or for hazards not explicitly included in the settlement agreements.

- For example, an agreement that addresses abatement of ergonomic hazards on specific production lines or specific areas of a plant will not preclude inspection of other safety and health hazards that are not included in the agreement.
- In cases where programmed or unprogrammed inspections are conducted at a facility covered by an agreement, a monitoring visit may be included to verify adherence to terms of the agreement.
 - All of the agreement's limitations on Oregon OSHA's ability to cite hazards covered in the agreement apply.
 - Such limitations will not affect Oregon OSHA's ability to cite other hazards.

Periodic Reports. Settlement agreements normally include specific requirements for submission of periodic reports to Oregon OSHA by the employer.

- Progress reports are required when abatement dates are beyond one year from the date of the opening conference, usually on a quarterly basis.
- Other specific reports linked to abatement steps (such as implementation of a training program, completion of an engineering study or

implementation of a medical management program) are normally required. The timing of such reports must be linked to a specific calendar date or to other appropriate times determined by the sequence of abatement steps.

- Each settlement agreement will specify that Salem central office will receive the reports. The employer may also be required to provide copies of reports to each affected field office, and to other affected parties such as unions and safety committees.

Roles and Responsibilities. The purpose of this section is to outline the major roles and responsibilities of Oregon OSHA central office and field offices with respect to company-wide settlement agreements.

Salem Central Office.

The enforcement manager has the following responsibilities:

Coordination. Salem central office will:

- Send copies of all signed settlement agreements to the affected field offices within one week of receipt.
- Keep copies of all company-wide settlement agreements, including agreements negotiated by federal OSHA and at the state level.
- Monitor Oregon OSHA's statewide agreement abatement reports. Salem central office will forward these reports to all affected field offices.
- Ensure that monitoring reports on federal OSHA agreements or Oregon OSHA sub-agreements are transmitted to the Region 10 administrator.

Contact. The central office is the point of contact for field offices regarding settlement agreements and abatement reports. A complete file of agreements is maintained at central and abatement reports are added to the current files.

Resolution. If it's necessary to resolve differences among field offices regarding the interpretation of the provisions of a settlement agreement, the matter must be referred to the enforcement manager.

Negotiation. Statewide settlement agreements are negotiated on Oregon OSHA's behalf by the administrator, enforcement manager, appeals manager, and field office enforcement managers.

Enforcement Manager. The enforcement manager has two major roles in the administration of company-wide settlement agreements. These are resource allocation and technical coordination of abatement requirements.

Resource Allocation. The enforcement manager is responsible for ensuring that adequate resources are allocated for the monitoring of these agreements:

- The enforcement manager will ensure that field office health and safety enforcement managers conduct required monitoring visits as required by the FIRM, Chapter 9, or as specified by each agreement, and within the guidelines provided in this instruction.
- The enforcement manager will ensure that work plans are adjusted to reflect monitoring requirements and that field office enforcement manager's performance standards reflect these monitoring requirements appropriately.

Technical Coordination. The purpose of technical coordination is to ensure that abatement action occurs consistently, that similar hazards are similarly abated. This requires that differences between different sites, due to local factors, are appropriately assessed.

The enforcement manager shall maintain regular communication with affected field office enforcement managers about the particulars of abatement.

Technical Disputes. Honest disagreements may arise between field offices regarding the adequacy of abatement measures. The enforcement manager is responsible for resolving such disputes.

Field Office Safety and Health Enforcement Managers. Field office safety and health enforcement managers are responsible for implementation of corporate settlement agreements within their area. They will:

Develop and implement local monitoring plans according to each agreement. Monitoring plans will include baseline, periodic, and follow-up monitoring.

Baseline Monitoring. Initial monitoring will establish the degree to which hazards covered by the agreement must be abated at each affected establishment.

- In the case of the inspected establishment that was the focus of the settlement, case file data will ordinarily provide adequate baseline information.
- The company itself shall normally be required by the settlement agreement to conduct initial or baseline monitoring, at each covered location, to gather information specified in the agreement, and provide results to Oregon OSHA.
- An onsite Oregon OSHA monitoring inspection of each covered establishment will often be part of the baseline monitoring process. This step may be omitted when recent inspection history provides adequate knowledge of conditions in the workplace or the field office manager determines that the baseline information the company provides is reliable and sufficient.

Periodic Monitoring. Periodic monitoring will be scheduled after baseline monitoring has occurred. In developing a monitoring plan, the

field office enforcement managers will consider the extent and severity of the cited problems in the workplace, the complexity of the abatement program, the length of the abatement period and the employer's previous history of abatement of cited violations.

- Each field office enforcement manager will review all reports submitted for facilities within their jurisdiction for adequacy, completeness, and accuracy.
- Monitoring visits to covered workplaces may be scheduled at any time during the life of the agreement. They must be scheduled at least annually. This is consistent with Oregon OSHA's obligation to monitor progress of all extended abatement agreements (as provided in the FIRM, Chapter 9).
- Monitoring visits must also be scheduled when reports indicate a possible lack of adequate abatement progress or complaints related to the agreement require investigation.

Follow-Up Monitoring. Follow-up monitoring is mandatory. It may, however, be combined with other programmed or un-programmed inspection visits. Follow-up inspection procedures described in Chapter 9 of the FIRM apply.

- Include an estimate of monitoring obligations with each year's work plan and modify such work plans during the year, as appropriate, to accommodate monitoring obligations within available resources.

NOTE: For reporting purposes, monitoring visits will be considered "inspections" and an Oregon OSHA-1 form will be completed, coded as a monitoring visit.

- Ensure that frequent communication with the central office occurs regarding issues related to corporate-wide settlement agreements.

Evaluation. These procedures shall be evaluated periodically. Specifically, "delegations of authority" shall be reviewed to ensure consistency with procedures and authorities involved in the handling of egregious cases within Oregon OSHA.

EFFECTIVE

DATE:

This directive is effective immediately and will remain in effect until canceled or superseded.

History: Issued 12-1-1991 Revised 10-21-1993, 3-19-2001, and 9-20-2018