

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

OSWER 9355.0-88

MEMORANDUM

SUBJECT: Process of Handling Appeals of Permanent Relocation
Claim Decisions

FROM: Michael B. Cook, Director
Office of Emergency and Remedial Response

TO: Superfund National Policy Managers, Regions 1 - 10

Purpose

This memorandum explains the process the U.S. Environmental Protection Agency (EPA) will use when a person or business being permanently relocated appeals a claim decision made by the U.S. Army Corps of Engineers (USACE) on behalf of EPA. This process does not change any legal rights or responsibilities of those being relocated.

Background

The USACE often serves as EPA's agent for permanent relocations at Superfund cleanups. In this capacity, USACE has the lead for working with residents and businesses in planning and implementing their relocations. USACE does this work under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. Section 4601) and its implementing regulations (49 CFR Part 24). Although USACE is committed to ensuring the prompt, fair and reasonable treatment of those being displaced, from time to time, someone being relocated may want to appeal a claim decision. USACE will explain in writing the right of appeal and the procedures for doing it to all affected individuals at the outset of a relocation discussion.

Implementation

The following steps explain the claim appeals process that EPA and USACE will use during permanent relocations. Both

organizations have worked closely together to develop it.

1. When either the USACE realty specialist (RS) or EPA remedial project manager (RPM) learns that someone is not satisfied with a relocation decision and is considering filing an appeal, that RS or RPM will inform his/her counterpart. They will then work together to understand the potential appellant's concerns and attempt to resolve them to the satisfaction of all parties.

2. If the matter cannot be resolved informally, the dissatisfied party may submit a written appeal of the decision to USACE. Upon receipt of an appeal, USACE will write to the appellant, 1) acknowledging receipt of the appeal, 2) explaining how long the appeal process takes and who has the final decision authority, and 3) providing USACE and EPA contact names and numbers for follow-up inquiries. USACE will immediately inform the EPA Region that an appeal has been received. The Region will relay this notification to the Director of the Office of Emergency and Remedial Response (OERR). This notification will include the name of the appellant and a description of the issues being contested.

3. USACE will use its internal process to review the merits of the appeal. If at any time during this review, USACE decides the appeal has merit and the original District decision should be overturned, that determination will be conveyed to the EPA Region. If the Region agrees with the determination to overturn the original District decision, the Region and the USACE will decide who will notify the appellant, in writing, that the appeal has been approved. If the Region does not agree with the determination to overturn the original District decision, USACE will transmit a report of its findings and determination to the EPA as described in paragraph 4.

4. If either of the following occurs, 1) USACE determines the original District decision should not be overturned, or 2) the Region does not agree with a USACE determination to overturn, then USACE will submit a report, containing its recommendation on the disposition of the appeal, to the Director of OERR. USACE should submit this report no later than 120 days from its receipt of the written appeal. In the report, USACE will summarize the basis for its recommendation. This will include:

- A) a description of the original relocation decision;
- B) copies of all of the relevant appellant's documentation;
- C) copies of USACE's internal reports; and
- D) an evaluation of the legal and/or technical merits of the appellant's case.

5. When an appeal report from USACE is received in OERR, it will be given a controlled correspondence number and assigned for coordination. The coordinator will immediately forward a copy to the Office of General Counsel (OGC) for review and comment.

While OGC is reviewing the appeal, the coordinator will conduct an assessment of the merits of the appeal. This will include working with appropriate OERR staff and the Region. The coordinator also will schedule a briefing with the OERR Director for a time shortly after the OGC comments are due.

6. OGC will have thirty (30) days from the time the report is forwarded by OERR to review the USACE report, conduct its legal analysis of the situation, and provide to the OERR coordinator its advice on granting or denying the appeal.

7. Within ten (10) days of being briefed on the situation, the Director of OERR will use the USACE report, along with the input provided by the coordinator, OGC, and others, as necessary, to make a final Agency determination on the appeal.

8. The Director will convey the determination to the appellant via certified mail, with copies of this letter to the Region, the USACE District RS, USACE Directorate of Real Estate and EPA OGC.

Conclusion

Our goal should be to conduct permanent relocations in an open, customer service oriented fashion. Such an approach will help to minimize the stress and disruption of those being relocated. In those instances where there is a disagreement, every effort should be made to resolve the concern as quickly and at the lowest level possible. When a formal appeal of a relocation decision is made, all of those who have responsibility, as outlined in this directive, should work diligently to bring it to a timely conclusion. If you have any questions about this directive, please contact Terri Johnson (703-603-8718) or Bruce Engelbert (703-603-8711).

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