



U.S. Department of Justice

Environment and Natural Resource Division

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ENVIRONMENT AND NATURAL RESOURCES DIVISION

DIRECTIVE No. 2016-11

Title: Global Settlement Policy

Authority: This directive is issued pursuant to the authority vested in me as Assistant Attorney General (AAG) of the Environment and Natural Resources Division (ENRD).

- 28 C.F.R. § 0.65
- U.S.A.M. § 5-11.115

Purpose: The purpose of this directive is to update the Global Settlement Policy, which describes the conditions that must be met before approving a settlement that addresses or compromises both civil claims and criminal charges. This directive adds the requirement that global settlement be initiated by the Defendant only. It also clarifies that agency concurrence is required to the extent that other agencies have authority to do so. Other issues to be considered when deciding whether a global settlement is appropriate in a given case and criteria by which the AAG will assess requests for approval of such settlements are largely unchanged.

Relationship to Other Directives: ENRD Directive No. 2016-11 entitled "Global Settlement Policy" shall replace and supersede ENRD Directive No. 99-20, also entitled "Global Settlement Policy."

Effective Date: This directive shall become effective upon approval.

Action:

I. CONDITIONS FOR GLOBAL SETTLEMENT

The United States Attorneys' Manual § 5-11.115 provides that the approval of the AAG of ENRD is required for any "global settlement" that addresses or compromises both civil claims and

criminal charges.^a This directive identifies issues to be considered when deciding whether a global settlement is appropriate in a given case and sets forth criteria by which the AAG will assess requests for approval of such settlements as proposed by the U.S. Attorney's Office or from within ENRD.

The Division and many United States Attorney's Offices have parallel proceedings policies that provide civil and criminal attorneys with flexibility, within legal, ethical and prudential constraints, to share information, to consult on legal issues, to conduct investigations jointly, and to pursue parallel proceedings. Such coordinated efforts may obtain both civil and criminal remedies, through adjudication or settlement, and such global settlements may be desirable, subject to the appropriate policies.

Defense counsel may ask in settlement negotiations in either a civil or criminal case for a global settlement in which the defendant receives releases from both civil and criminal liability. These requests, when made late in the negotiation process and when the government has pursued the case civilly or criminally, but not both, pose particular concern. Experience has demonstrated that these eleventh-hour global resolutions can be problematic because there is insufficient time to marshal all the information needed to address the terms of the resolution fully and to obtain needed agency authorization for civil resolutions, thus putting the government at risk in the negotiations. For these reasons, last-minute global settlements where there has not been an ongoing parallel proceeding are disfavored.

Defense attorneys sometimes seek to negotiate civil resolutions with criminal prosecutors, including waivers of any further civil liability; similarly, defense attorneys sometimes seek to resolve criminal matters, including waivers of criminal liability, with civil government attorneys. The government is put at risk when its criminal prosecutors agree to civil terms with which they may not be familiar or may not fully understand, and vice versa. This policy seeks, in part, to ensure that the interests of the people of the United States are represented in each case in which there may be a global settlement by a government attorney with the appropriate training and expertise.

^a The U.S. Attorneys' Manual states:

Without the express approval of the Assistant Attorney General, Environment and Natural Resources Division, in any criminal case arising under the statutes identified in USAM 5-11.101 no plea agreement will be negotiated which compromises the right of the United States to any civil or administrative remedies under those statutes. Efforts by defendants to effect such results may arise in the context of so-called "global settlement" offers.

U.S.A.M. § 5-11.115. "Global settlements" under this provision differ from the term as used elsewhere in the Manual to identify multi-district criminal plea agreements. *See* U.S.A.M. § 9-27-641.

Each global settlement proposal must be evaluated on its own merits, and the AAG's approval will depend on an assessment of all the circumstances. Generally, approval of such settlements requires that the following important conditions have been met:

1. Global settlement negotiations may only be initiated at the request of the Defendant to avoid the appearance that one type of case may be used to gain leverage in the other.
2. Criminal plea agreements must be handled by criminal attorneys and civil settlements by civil attorneys. The criminal plea agreements and civil settlements should generally be negotiated separately. Each resolution – criminal and civil – should be negotiated by attorneys who have the appropriate (civil or criminal) training and who are working within the appropriate unit of ENRD or a U.S. Attorney's Office.
3. Each part of the settlement must separately satisfy the appropriate criminal and civil criteria. The criminal plea agreement must satisfy the criteria set out in the Principles of Federal Prosecution (U.S.A.M. § 9-27.000), the Principles of Federal Prosecution of Business Organizations (U.S.A.M. § 9-28.000), and in other Department of Justice policies for consideration of a plea agreement. The civil settlement must satisfy the policies of the Justice Department, and in addition should to the same extent as other civil settlements conform to the policies of affected client agencies.
4. With respect to a civil settlement, each agency or department with authority to concur in a civil settlement must do so. Each agency or department with primary responsibility for an environmental or natural resource claim that is proposed to be settled, and each agency or department which is otherwise authorized to concur in the proposed civil settlement, must concur before a global settlement may be entered. Furthermore, each such agency or department may have its own requirements for approval of civil settlements that apply.
5. There should be separate documents memorializing the criminal plea agreement and the civil settlement. The criminal plea agreement and the civil settlement should be set out in separate documents. Criminal releases should be made only in the criminal plea agreement documents, and civil releases only in the civil documents.
6. A defendant may not trade civil relief in exchange for a reduction in criminal penalty. As noted in 3, above, the criminal plea agreement must satisfy the appropriate Department criteria.

Early consultation on any proposal for a possible global settlement is urged. Requests for approval of a global settlement must be accompanied by a memorandum describing the settlement and the reasons why it should be approved. Requests should be submitted, at the latest, three weeks in advance of the date by which the settlement must be finalized.

The memorandum should, at a minimum, address the above criteria. With respect to criterion 6, above, the memorandum should include a description of the context in which the negotiations were carried out sufficient to demonstrate that there is no trading between civil and criminal penalties.

Questions on the procedures to be followed for a global settlement, including any of the criteria set forth above, should be directed to either the Chief of the Environmental Crimes Section (ECS) or the Chief of the Environmental Enforcement Section (EES) of ENRD.

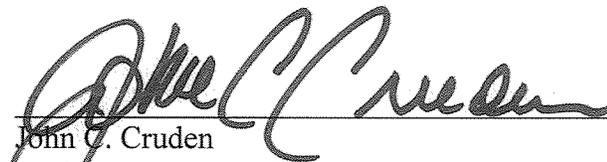
II. REVOCATION OF DIRECTIVE NO. 1999-20

ENRD Directive No. 1999-20 is hereby revoked and replaced by this directive.

Consultation and Distribution:

This directive was developed in consultation with Chiefs of all ENRD Sections and all ENRD Deputy Assistant Attorneys General. I hereby direct that this directive be distributed by LPS to all ENRD Sections; that Section managers inform attorneys and other employees, as appropriate, of this new directive; and that the Executive Office make a copy of the original of this directive available to all Division attorneys and other employees via user-friendly software technology such that it is indexed, searchable and accessible (e.g., PDF format).

This directive relates only to internal procedures and management of ENRD. It does not create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, officers, or any other person.



John C. Cruden
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Environment and Natural Resources Division

Date: December 20, 2016