

ALASKA
REGULATORY PERFORMANCE AGREEMENT

Between

The Alaska Department of Natural Resources
Division of Mining Land and Water

And

The Office of Surface Mining Reclamation and Enforcement
Denver Field Division

Evaluation Year 2012
(July 1, 2011 to June 30, 2012)

April 2011

Table of Contents

I. BACKGROUND

II. PROGRAM EVALUATION GOALS

III. PROGRAM EVALUATION COMPONENTS

A. Oversight Review Topics

B. Oversight Inspections

C. Data and Information Exchange

D. Problem Resolution

IV. PUBLIC COMMENT AND OUTREACH

V. TECHNICAL AND PROGRAMMATIC ASSISTANCE

VI. SIGNATURES

I. BACKGROUND

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) encourages States to assume the primary responsibility for regulating mining activities (primacy). The Secretary of the Interior approved the Alaska program on May 2, 1983, giving them exclusive jurisdiction over the regulation of surface coal mining and reclamation operations. The Alaska Department of Natural Resources (DNR) Division of Mining Land and Water (DMLW) administers the permanent regulatory program. DMLW's office is located in Anchorage, Alaska. As provided by SMCRA, following program approval, the Office of Surface Mining (OSM) is responsible for overseeing the State's administration of its approved program. The Denver Field Division (DFD), under the Western Region (WR), carries out this responsibility.

The WR-DFD and DMLW jointly prepared this agreement for the evaluation of Title V implementation of the Surface Mining Control and Reclamation Act in Alaska for evaluation year 2012 which runs from July 1, 2011 to June 30, 2012

II. PROGRAM EVALUATION GOALS

To measure the State's success in meeting the environmental protection goals of SMCRA, OSM and DMLW have developed this Regulatory Performance Agreement. The Agreement focuses on measuring the on-the-ground success of the approved program and identifying the need for financial, technical, and other program assistance. OSM Directive REG -8, *Oversight of State and Tribal Regulatory Programs*, updated January 31, 2011, forms the basis for this Agreement.

OSM is also committed to providing DMLW with technical assistance to resolve complex site-specific issues. The oversight review and technical assistance efforts may blend in many instances where DMLW and OSM need to work together to resolve any program issues. It is the intent of OSM to encourage state involvement in the oversight evaluation process by identifying specific goals for success and collaborating to assist the state in meeting those goals. This Agreement provides flexibility for this process during the development of specific work plans and subsequent evaluation reports.

Since the oversight review and technical assistance processes are continuous and not limited to one year, this Agreement contains the basic framework of oversight/technical assistance activities in Alaska until it is amended or terminated. Both parties may amend this Agreement at any time to include additional review topics or technical assistance requests during any evaluation period. This arrangement will also provide the necessary flexibility to include unforeseen program problems as review topics at any time. Issues identified in the topical reviews or technical assistance requests that warrant further consideration may be included in this Agreement. Any evaluation topic or technical assistance request not completed during the evaluation period will move into the subsequent period for conclusion. Workload demands and staffing limitations of either party may affect the completion of the actions in this Agreement. The Agreement in no way supersedes or relieves DMLW or OSM of any responsibilities under previous cooperative agreements, MOU's, working agreements, the OSM approved State Program, or SMCRA.

III. PROGRAM EVALUATION COMPONENTS

OSM's WR-DFD and the Alaska Department of Natural Resources' DMLW formed an Evaluation Team (the Team) to conduct annual evaluations of Alaska's Coal Regulatory Program to determine how effective DMLW is in ensuring that coal mine reclamation is successful in preventing offsite impacts and providing service to its customers, and make recommendations for improving the administration, implementation, and maintenance of the Program. The Team structure is comprised of one core member each from the WR and DMLW. Additional ad hoc members are added to the Team based upon the program areas being reviewed and the technical expertise needed. The Team cooperatively solicits public participation, selects and conducts joint inspections and evaluation topics, and reports, discusses, and tracks off-site impacts. This evaluation method fosters a shared commitment to the implementation of SMCRA.

A. OVERSIGHT REVIEW TOPICS

Each agency will assign at least one staff member to jointly lead the evaluation of select oversight review topics. The team leaders will determine the need for other staff as part of the evaluation design process. They will establish the period for the evaluation and the completion schedule for the detailed evaluation report.

1. **National Measurement Elements.** These elements will be used to evaluate the success of every regulatory program, across the nation.
 - a) **Off-site Impacts** - OSM will continue to use DMLW inspection data and observations from oversight inspections to evaluate offsite impacts associated with permitted and bond forfeiture sites.

Off-site impacts are anything resulting from surface coal mining and reclamation activity or operations that cause negative effects on resources (people, land, water or structures). Off-site impacts will be reported in the oversight report. An opportunity exists where the State and OSM may agree to jointly collect information on off-site impacts. The source for collecting off-site impact information has been State inspections, OSM oversight inspections, mine site visits, citizen complaints, and special focus topic evaluations.

- b) **Reclamation Success** - OSM will compare and evaluate the number of acres being mined to the number of acres being reclaimed pursuant to OSM Directive REG-8. The Team annually prepares a table entitled "Reclamation Status of all Areas Disturbed Under the Alaska Permanent Regulatory Program" that will be attached as Appendix A of the OSM Annual Evaluation Summary Report. The table will document for each mine (1) the acres receiving phase I, II, and III bond release and (2) the acres disturbed, backfilled, graded, topsoiled and seeded, and (3) the cumulative totals for these reclamation status categories for all years. DMLW will identify all mines permitted under the Alaska permanent

regulatory program including active and inactive mines, and mines where DMLW has forfeited performance bonds. DMLW will provide the final Reclamation Status table to OSM in electronic format for inclusion in the EY 2012 annual evaluation summary report.

c) **Customer Service** - Each evaluation year, OSM is to monitor the effectiveness of customer service provided by DMLW. Areas to be evaluated are DMLW's responses to complaints, requests for inspections, and requests for assistance and services by permittees as well as the public or other agencies. OSM and DMLW will evaluate one or more state activities to determine timeliness, accuracy, completeness and appropriateness of DMLW's action. In addition, the review may address DMLW's analysis of customer satisfaction.

2. **National Priority Topics.** During EY 2012, no National Priority Topics were selected for oversight review.

3. **Targeted Review Topics.** Other oversight activities that OSM may conduct in a state or on tribal lands, including national priority reviews and focused state/tribe specific permitting and enforcement reviews may be subject to evaluation at the discretion of the individual Field Offices and states and tribes. For EY 2012, DFD and DMLW have chosen to evaluate the following topics:

a) **Permitting Review** – During evaluation year 2011, DMLW anticipates receiving additional applications from companies to start exploration in conjunction with underground coal gasification (UCG) projects.. During 2012, OSM will conduct an evaluation of DMLW's review and decision making process regarding one yet to be received UCG application.

b) **Special Focus Topics** – During EY 2012, OSM and DMLW will jointly conduct the following special studies:

1. Prevention of Off-site Impacts – To be determined
2. Reclamation Success – To be determined
3. Customer Service – To be determined

B. OVERSIGHT INSPECTIONS

The purpose of the inspections and field site evaluations, as specified in OSM Directive REG-8, will be to evaluate the State's effectiveness in implementing its Inspection and Enforcement program, reclamation success and identify any off-site impacts. Evaluation of the State's effectiveness will be accomplished during OSM's oversight inspections and other mine site visits, as well as, reviewing inspection reports and enforcement actions. Reclamation success will be evaluated based on field and permit review of approximate original contour (AOC), land capability, hydrologic reclamation, and contemporaneous reclamation.

To ensure compliance with the approved State program, OSM will conduct a minimum number of inspections equal to twenty five percent of the total number of inspectable units. At the beginning of EY 2012, Alaska has a total of 5 active inspectable units (for the purpose of oversight inspections, each mining area will be considered a single inspectable unit). During EY 2012, OSM will conduct a minimum of one complete oversight inspection and one partial oversight inspection. After taking into consideration state input and any special focus topic evaluations, OSM will select the sites to be inspected. OSM will coordinate with the State for scheduling the oversight inspections and provide the State with enough advance notice of the specific sites to allow for proper preparation for the inspections.

At least one of the oversight inspections (10% of the number of inspections conducted) will be an independent OSM inspection. Independent inspections may consist of partial or complete inspections. OSM will pick the inspection locations and dates and will give the State 24 hours notice of an independent inspection, as specified by REG-8.

Because of the limited number of inspectable units in Alaska, all partial inspections will be focused inspections to allow OSM to direct its oversight activities to assess the State's effectiveness in administering specific parts of its program, areas of public concern, or areas where there may be a high level of activity.

Bond release inspections will be used to evaluate and report on the effectiveness of reclamation success, with special emphasis on final bond release. Less than 25 percent of the targeted number of inspectable units to be inspected may consist of bond release inspections.

Data collection and analysis will be completed by June 30, 2012, with results available by July 31, 2012.

The following summarizes the types of inspections that will be conducted during the evaluation period:

- 1. Sample Inspections:** DFD will conduct complete, partial, and bond release inspections to evaluate the general effectiveness of the State's administration of its approved surface mining regulatory program. Complete inspections shall generally be done by selecting permits for review that have not been inspected by OSM in the previous 2 years. When the funds are available, inspectors may use aerial oversight inspections to evaluate operations
- 2. Bond Release Inspections:** DFD will evaluate and report on the effectiveness of reclamation success during bond release, with special emphasis on final bond release. Less than 25 percent of the targeted number of inspectable units to be inspected may consist of bond release inspections.

- 3. Special Focus Inspections:** DFD will conduct inspections that pertain to certain aspects of the State's approved program. Inspections will be done to assess the State's effectiveness in administering specific parts of its program. Provided the availability of resources, special study inspections will continue to be done in the future in areas that DFD feels merit special attention or upon the State's request.
- 4. Miscellaneous Inspections:** In addition, DFD may conduct inspections where:
 - a) there is potential imminent danger to the public safety and/or imminent harm to the environment;
 - b) there are citizens' complaints filed with the DFD;
 - c) there are bond releases on Federal lands; and,
 - d) partial inspections (as needed to evaluate the effectiveness of the State program in protecting the environment and public from negative off-site impacts).

C. DATA AND INFORMATION EXCHANGE

DFD and the DMLW agree that the exchange of information is critical to the oversight process. State information is needed by OSM to complete day-to-day oversight activities, to maintain the nationwide Inspection and Enforcement Tracking System's inspectable units list, and to provide data to satisfy OSM's oversight reporting requirements.

DMLW agrees to provide DFD the core program information and data that is required for completion of the Alaska annual evaluation summary report and for the OSM annual report to Congress.

DFD may request other information such as planned internal systems reviews, GIS datasets or other related information or other reports maintained by DMLW.

D. PROBLEM RESOLUTION

One main objective of OSM's oversight of State programs is to resolve identified problems as expeditiously as possible. DFD and the DMLW will focus resources on resolving any problems that are identified during the oversight review. Issues identified may be resolved through action plans. However, selected issues may require modified procedures to ensure prompt resolution. Methods for resolving regulatory program problems and other issues identified in previous evaluations, including uncompleted Action Plans, will be developed jointly by the DMLW and DFD on a case-by-case basis and appended to the Performance Agreement. DFD will report resolved problems and incremental improvements toward resolving

problems, as well as any new issues, in the Annual Evaluation Report.

IV. PUBLIC COMMENT AND OUTREACH

OSM and the DMLW are committed to interacting with citizen, environmental, and industry organizations on a continuing basis. DMLW maintains a mailing list of organizations and individuals who have previously participated in regulatory activities. These groups/individuals will be requested to provide input into oversight activities throughout the evaluation year and are encouraged to provide suggestions for improvement of future annual evaluation reports and performance agreements. DFD will post these documents on the OSM website to encourage public participation. In addition, DFD staff will attempt to meet with individual citizens or organizations during the evaluation year. DMLW will be invited to participate in these meetings and a record of the meetings will be placed in OSM's public review file. OSM encourages groups to request and schedule meetings related to specific issues. Other opportunities for public outreach will be pursued throughout the evaluation year, as appropriate.

V. TECHNICAL OR PROGRAMMATIC ASSISTANCE

OSM is dedicated to providing technical or programmatic assistance to the state in its attempt to promote the benefits of SMCRA. The National Technical Training Program (NTTP) and Technical Innovation and Professional Services (TIPS) provide a series of training courses that are available to state personnel. These courses provide a means to interact with other state and federal personnel, who both teach and learn from each other. New employees are given the opportunity to quickly advance their skill sets, while seasoned veterans are encouraged to teach and pass along their experience and knowledge.

The TIPS program offers technical assistance to coal producing States, Tribes and other OSM offices in the disciplines of Geology, Hydrology, Remote Sensing, GIS, GPS, Engineering design and software. TIPS also has software, hardware, and several pieces of specialized equipment that are available for use by state personnel. For further information about this equipment, locate and contact a local OSM TIPS representative at <http://www.tips.osmre.gov/>.

VI. SIGNATURES

Representing the Alaska Division of Mining Land and Water, and the Office of Surface Mining Reclamation and Enforcement, Denver Field Division, the following parties agree to the purpose, goals, and anticipated actions proposed in this Performance Agreement. These parties may mutually decide at any time to modify this agreement.

TEAM COACHES:

Kenneth Walker, Chief
Denver Field Division
Office of Surface Mining Reclamation and Enforcement

Date

Rick Fredericksen, Chief
Division of Mining Land and Water
Alaska Department of Natural Resources

Date

TEAM MEMBERS:

Glenn Waugh
Denver Field Division
Office of Surface Mining Reclamation and Enforcement

Date

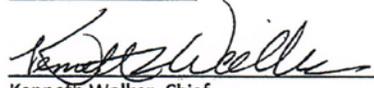
Russell Kirkham, Manger
Coal Regulatory Program
Alaska Division of Mining Land and Water
Alaska Department of Natural Resources

Date

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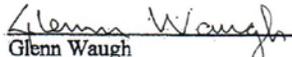

Kenneth Walker, Chief
Denver Field Division
Office of Surface Mining Reclamation and Enforcement

5/4/11
Date

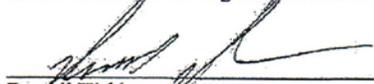

Rick Fredericksen, Chief Mining Section
Division of Mining Land and Water
Alaska Department of Natural Resources

5-2-11
Date

TEAM MEMBERS:


Glenn Waugh
Denver Field Division
Office of Surface Mining Reclamation and Enforcement

5-4-11
Date


Russell Kirkham, Manager
Coal Regulatory Program
Alaska Division of Mining Land and Water
Alaska Department of Natural Resources

2 May 11
Date