Montana

REGULATORY PERFORMANCE AGREEMENT

Beginning
Evaluation Year 2013
(July 1, 2012 to June 30, 2013)

Between
Montana Department of Environmental Quality
Industrial and Energy Minerals Bureau

and

Office of Surface Mining
Casper Field Office

June 2012

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Montana
Regulatory Performance Agreement

I. BACKGROUND

In April 1980, the Secretary of the U. S. Department of the Interior approved Montana's permanent regulatory program under the provisions of the Federal Surface Mining Control and Reclamation Act (SMCRA). With that approval, the State of Montana assumed primary authority for regulating surface mining activities within the State. The Montana Department of Environmental Quality (MTDEQ) through the Industrial and Energy Minerals Bureau (IEMB) administers the permanent regulatory program. IEMB has two offices located in Helena and Billings, Montana. 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 Casper Field Office (CFO), under the Western Region (WR), carries out this responsibility.

II. OVERSIGHT EVALUATION GOALS

To measure the State's success in meeting the environmental protection goals of SMCRA, OSM and MTDEQ have cooperatively developed this Regulatory Performance Agreement. The Agreement focuses on measuring 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, dated January 31, 2011, forms the basis for this Agreement.

OSM is also committed to providing the MTDEQ technical assistance to resolve complex site-specific issues. The oversight review and technical assistance efforts may blend in many instances where the MTDEQ 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.

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 Montana for the period of July 1, 2012 to June 30, 2013, Evaluation Year 2013 (EY2013). 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 the MTDEQ or

OSM of any responsibilities under previous cooperative agreements, MOU's, working agreements, the OSM approved State Program, or SMCRA.

III. OVERSIGHT REVIEW PROCEDURES

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.

A. OVERSIGHT REVIEW TOPICS

1. National Measurement Elements

These elements will be used to evaluate the success of every regulatory program, across the nation:

Off-site Impacts - OSM will continue to use MTDEQ inspection data and observations from oversight inspections to evaluate off-site 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 oversight studies.

Reclamation Success – This will primarily be determined through evaluation of bond release information collected to measure performance in the areas of land form/approximate original contour, land capability, hydrologic reclamation, and contemporaneous reclamation. In addition, OSM will compare and evaluate the number of acres being mined to the number of acres being reclaimed pursuant to OSM Directive REG-8.

Customer Service - Each evaluation year, OSM is to monitor the MTDEQ's customer service. Areas that the evaluation will be focused on are bond releases and citizen complaints, although other areas of customer service will be considered. OSM and the MTDEQ will evaluate the MTDEQ's outreach and interaction with the public, adjacent land owners, current and potential operators, other State and Federal agencies, and other programs within MTDEQ.

2. National Priority Topics

During EY2013, no National Priority Topics were selected for oversight review.

3. **State-Specific Permitting/Inspection and Enforcement Reviews**
Other oversight activities that OSM may conduct in Montana may be subject to evaluation at the discretion of the CFO and MTDEQ. For EY2013, CFO and MTDEQ have chosen to evaluate the following topics:

Contemporaneous Reclamation - CFO will evaluate mining and reclamation plans of approved permits to determine compliance with contemporaneous reclamation requirements, as defined by the State program rules.

Maintenance of the Approved Program - In cooperation with OSM, the MTDEQ has developed program amendments that will resolve program deficiencies and satisfy any outstanding 30 CFR 732 notifications. MTDEQ has developed other program amendments, unrelated to program deficiencies or outstanding 30 CFR 732 notifications that will improve their overall program. OSM will process such amendments to ensure that the State's approved program is consistent with the Federal program.

Grants/Financial Administration - OSM and MTDEQ will evaluate the State's administration of the Federal grant and expenditure of Federal funds to ensure that the funds are used in an appropriate manner. An OSM Grant Specialist will conduct this review in conjunction with MTDEQ financial staff.

Special Study Topic(s) - During EY2013, OSM and MTDEQ will jointly conduct the following special study:

Use of Reclaimed Mine Lands (continued from EY 2012) – OSM and MTDEQ will identify the current uses of reclaimed mine lands that have received Phase II or Phase III bond release to determine the current uses of the reclaimed areas and if these uses are consistent with the approved post-mining land uses. The two agencies will evaluate available data submitted to MTDEQ by mine operators from the remaining active coal mine permits (five active permits were be evaluated in EY 2012; the remaining five active permits as well as three inactive permits will be evaluated in EY2013). The agencies will first determine the amounts of permitted acreage that have been disturbed, reclaimed and received at least Phase II bond release. The agencies will then determine the current uses of these areas: grazing land (incorporated into a grazing system and regularly grazed), pasture land (cropped or grazed regularly), cropland (crop or fallow annually), or idle reclamation (revegetated, but not managed as grazing land, pasture land or cropland).

For any reclaimed acres determined to be idle reclamation, a reason for why the idle acres are not incorporated into one of the other uses will be provided.

OSM and MTDEQ will review all Phase II bond release areas to determine how much acreage has reached the required 10-year responsibility period and is eligible for Phase III bond release. For the acres eligible for Phase III bond release, a determination will be made as to why a Phase III bond release application has not been submitted.

Mine Subsidence Monitoring – OSM and MTDEQ will evaluate and report on mine subsidence to determine compliance with subsidence control requirements, as defined by State program rules. OSM will also evaluate: 1) how subsidence is being monitored by MTDEQ, 2) permit requirements as they pertain to subsidence, and 3) the results of subsidence monitoring by MTDEQ.

B. OVERSIGHT INSPECTIONS

The purpose of 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 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. One third of those inspections will be complete oversight inspections. At the beginning of EY2013, Montana has a total of 13 inspectable units. During EY 2013, OSM will conduct a minimum of one complete oversight inspection and a minimum of two partial oversight inspections. After taking into consideration state input and any special study topics, OSM will select the sites to be inspected. OSM will coordinate with the states for scheduling of oversight inspections and provide the state with enough advance notice of the specific sites to allow for proper preparation for the inspections. Generally this advance notice will be not more than two weeks in length. At least 10% of total oversight inspections will be independent OSM inspections. During EY 2013, OSM will conduct a minimum of one independent inspection. Independent inspections may consist of partial or complete inspections. The state will be notified the previous work day, but no more than 24 hours in advance of the independent inspection and offered an opportunity to participate in the independent inspection.

Because of the limited number of inspectable units in Montana, 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.

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

Sample Inspections: CFO 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.

Bond Release Inspections: CFO will 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.

Special Study Inspections: CFO 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 CFO feels merit special attention or upon the State's request.

During EY 2013, CFO will conduct inspections of active mining sites to ensure that reclamation is being conducted according to the contemporaneous reclamation requirements of the approved reclamation plans.

Miscellaneous Inspections: In addition, the CFO may conduct inspections under the following conditions:

- Potential imminent danger to the public safety and/or imminent harm to the environment;
- Citizens' complaints are filed with the CFO;
- Bond releases on Federal lands; and,
- Partial inspections are needed to evaluate the effectiveness of the State program in protecting the environment and the public from off-site impacts.

C. DATA & INFORMATION EXCHANGE

CFO and the MTDEQ 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.

MTDEQ agrees to provide CFO the core program data that is required for completion of the annual oversight report. This includes the same mining and reclamation data submitted to MTDEQ by individual operators, as stated in ARM 17.24.1129, for independent evaluation by CFO. At a minimum, this data will include an annual map for the current year of the permit, and will be in such a format as to show the status of disturbance and reclamation. This data will include the number of acres disturbed by mining practices and the number of acres re-soiled and seeded. This information needs to be submitted to CFO in sufficient time for inclusion in the current oversight evaluation report.

Other information, such as planned internal reviews of the state, or GIS datasets may be required from data systems maintained by MTDEQ staff.

D. PROBLEM RESOLUTION

One main objective of OSM's oversight of State programs is to resolve identified problems as expeditiously as possible. CFO and the MTDEQ 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 MTDEQ and CFO on a case-by-case basis and appended to the Performance Agreement. CFO will report resolved problems and incremental improvements toward resolving problems, as well as any new issues, in the Annual Evaluation Report.

IV. PUBLIC OUTREACH

OSM and the MTDEQ are committed to interacting with citizen, environmental, and industry organizations on a continuing basis. CFO 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. CFO will post these documents on the OSM website to encourage public participation. In addition, CFO staff will be available to meet with individual citizens or organizations at any time during the evaluation year. The MTDEQ 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. CITIZEN COMPLAINTS

OSM is committed to the prompt and professional resolution of all citizen complaints. As part of OSM's evaluation of MTDEQ's customer service efforts, CFO will identify all citizen complaints received during the evaluation period as well as the outcome of all ten-day notices sent to the MTDEQ as a result of those complaints. The standards for this evaluation will be the notification requirements identified in the approved Montana coal program as well as the responsiveness of the MTDEQ to citizen concerns. CFO will process citizen complaints and ten-day notices using the procedures in OSM Directive INE-24, as amended, and INE-35.

VI. TECHNICAL 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. Now 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 offers software, hardware and several pieces of specialized equipment 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/.

VII. INNOVATIVE STATE ACTIONS

OSM will recognize innovative approaches related to managerial efficiency, problem resolution, environmental protection, or program implementation that represent "best practices" deserving recognition as a reporting element. Additionally, MTDEQ will identify and report to CFO, on an ongoing basis, any activities that in its judgment deserve recognition. Activities identified by either OSM or MTDEQ will be discussed in the Annual Evaluation Report.

VIII. OTHER REVIEWS

No additional reviews are planned for the Montana Regulatory Program. Should additional review topics be required, this document may be amended at any time by either party.

IX. SIGNATURES:

Signed in agreement by the parties this 20th day of June, 2012.

For the Montana Department of Environmental Quality

Edward Coleman, Chief
MTDEQ / Industrial and Energy Minerals Bureau

For the Office of Surface Mining

Jeffrey Fleischman, Director
OSM/Casper Field Office