

New Mexico
OVERSIGHT EVALUATION WORKPLAN

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



Between
New Mexico Mining and Minerals Division
and
Office of Surface Mining Reclamation and Enforcement
Program Support Division
Field Operations Branch

July 14, 2012

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(Cover Photo: Rock Check Dams at Ancho Mine, Raton, NM.)

I. BACKGROUND

In February, 1980, the Secretary of the U. S. Department of the Interior approved New Mexico's permanent regulatory program under the provisions of the Federal Surface Mining Control and Reclamation Act (SMCRA). With that approval, the State of New Mexico assumed primary authority for regulating surface mining activities within the State. The New Mexico Mining and Minerals Division (MMD), through the Energy, Minerals, and Natural Resources Department, administers the permanent regulatory program. Mining and Minerals Division offices are located in Santa Fe, New Mexico. As provided by SMCRA, following program approval, the Office of Surface Mining Reclamation and Enforcement (OSM) is responsible for overseeing the State's administration of its approved program. The Field Operations Branch (FOB), 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 MMD have cooperatively developed this Program Evaluation Workplan for Evaluation Year (EY) 2013 which covers the period July 1, 2012, through June 30, 2013. The Workplan 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, dated January 31, 2011, forms the basis for this Workplan.

OSM is also committed to providing the MMD technical assistance to resolve complex site-specific issues. The oversight review and technical assistance efforts may blend in many instances where the MMD 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 Workplan provides flexibility for this process during the development of specific review elements and subsequent evaluation reports.

Since the oversight review and technical assistance processes are continuous and not limited to one year, this Workplan contains the basic framework of oversight/technical assistance activities in New Mexico until it is amended or terminated. Both parties may amend this Workplan 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 Workplan. 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 Workplan. The Workplan in no way supersedes or relieves MMD or OSM of any responsibilities under previous cooperative agreements, Memorandum of Understanding, working agreements, the OSM approved State Program, or SMCRA.

III. OVERSIGHT EVALUATION COMPONENTS

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.

- a. **Off-site Impacts** – OSM will continue to use MMD 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 activities 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.

- b. **Reclamation Success** – OSM will evaluate reclamation success primarily 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.

- c. **Customer Service** – OSM will monitor MMD's customer service. Areas to be evaluated are bond releases and citizen complaints. FOB and MMD will evaluate MMD's outreach and interaction with the public and land owners adjacent to the mine operations during bond release actions and citizen complaint resolution. The standards will be the notifications requirements identified in the approved New Mexico coal program as well as the responsiveness of MMD to citizen's concerns. FOB will process citizen complaints using the procedures in OSM Directive INE-24, as amended.

- 2. **National Priority Topics.** To date, no EY 2013, National Priority Topics have been selected for oversight review.

3. State-Specific Permitting and Enforcement Reviews

Other oversight activities that OSM may conduct in New Mexico may be subject to evaluation at the discretion of the FOB and MMD. For EY 2013, FOB and MMD have chosen to evaluate the following special study topics:

- a. **San Juan Ash Disposal Evaluation Summaries** – OSM and MMD will summarize their findings on the permit requirements analysis for ash disposal and monitoring of ash disposal sites, as well as provide their on-the-ground compliance requirement review of inspection reports. These summaries will focus on evaluating the groundwater monitoring program at the mine, the monitoring of the ongoing ash disposal studies by the US Geological Survey and the University of New Mexico, and the examination of site-specific data collected from those sites, as well as any reports that are required to be submitted to MMD.
- b. **Permitting Process Review for the El Segundo Revision** – OSM will review and report on MMD’s permitting process for a permit revision at El Segundo Mine. The specifics of this review and report will focus on the following elements:
 - Public Participation
 - Review Process – Apparent Completeness Review (APR) that includes the technical review, as well as the deficiency elements. These are discipline specific and regulation specific
 - Coordination with other agencies
 - Findings

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, identifying any off-site impacts, and achieving reclamation success. Evaluation of the State's effectiveness in implementing its inspection and enforcement program and identifying any off-site impacts 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 reviews of approximate original contour, 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 25 percent of the total number of inspectable units. One-third of those inspections will be complete oversight inspections. At the beginning of EY 2013, New Mexico has a total of nine 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 state 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 not be more than two weeks in length. At least 10 percent 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 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 New Mexico 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.

C. DATA & INFORMATION EXCHANGE

FOB and MMD 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.

MMD agrees to provide FOB the core program data that is required for completion of the annual oversight report. This includes the same mining and reclamation data submitted to MMD by individual operators, as stated in 19.8.5.507 NMAC, for independent evaluation by FOB. All of this core program data which covers a calendar year is submitted by the operators to MMD no later than March 1. MMD then reviews the data prior to submitting it to OSM no later than June 1. 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. MMD also agrees to provide copies of each mines annual report to FOB following MMD's review.

D. PROBLEM RESOLUTION

One main objective of OSM's oversight of state programs is to resolve identified problems as expeditiously as possible. FOB and MMD will focus resources on resolving any problems that are identified during the oversight review. Issues identified may be resolved through informal discussions and/or 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 MMD and FOB on a case-by-case basis and appended to the Evaluation Workplan. FOB 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 MMD are committed to interacting with citizen, environmental, and industry organizations on a continuing basis. FOB 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. FOB will post the annual evaluation reports and performance agreements on the OSM website to encourage public participation. OSM will also discuss any other citizen outreach efforts undertaken by MMD in the annual reports. These outreach efforts

could pertain to such things as permitting actions, bond releases, lands unsuitable petitions, administrative and judicial reviews, and Applicant Violator System (AVS) determinations.

V. CITIZEN COMPLAINTS

OSM and MMD will evaluate the timeliness, accuracy, completeness and appropriateness of actions taken by MMD in response to citizen complaints.

VI. INNOVATIVE STATE ACTIONS

MMD's coal records imaging program contract was completed in 2012. This program was designed to preserve the integrity, availability, and searchability of the records. MMD continues to work with the Energy, Minerals and Natural Resources Departments Information Technology Division for development of the search engine.