North Dakota

REGULATORY PERFORMANCE AGREEMENT

Beginning
Evaluation Year 2013
(July 1, 2012)

Between
North Dakota Public Service Commission
Reclamation Division

And

Office of Surface Mining
Casper Field Office

June 2012

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	(Cover Photo: North Dakota Capitol Building, Bismarck, ND)	

North Dakota
Regulatory Performance Agreement

I. BACKGROUND

In December 1980, the Secretary of the U. S. Department of the Interior approved North Dakota's permanent regulatory program under the provisions of the Federal Surface Mining Control and Reclamation Act (SMCRA). With that approval, the State of North Dakota assumed primary authority for regulating surface mining activities within the State. The North Dakota Public Service Commission, through the Reclamation Division, administers the permanent regulatory program. Public Service Commission offices are located in Bismarck, North Dakota. 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 the North Dakota Public Service Commission (NDPSC) have cooperatively 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,* dated January 31, 2011, forms the basis for this Agreement.

OSM is also committed to providing the NDPSC technical assistance to resolve complex site-specific issues. The oversight review and technical assistance efforts may blend in many instances where the NDPSC 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 North Dakota 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 completion. 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 NDPSC 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 NDPSC 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 regulated or prohibited 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.

   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 NDPSC's customer service. Areas to be evaluated are bond releases and citizen complaints. OSM will evaluate the NDPSC's outreach and

interaction with the public and adjacent land owners during bond release actions and citizen complaint resolution.

2. **National Priority Topics.** For EY2013, no National Priority Topics were selected for oversight review.

3. **State-Specific Permitting and Enforcement Reviews**
For EY2013, CFO and NDPSC 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 NDPSC has developed program amendments that will resolve program deficiencies and satisfy any outstanding 30 CFR 732 notifications. OSM will process such revisions to ensure that the State's approved program is consistent with the Federal program.

Grants/Financial Administration - OSM and NDPSC 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 NDPSC financial staff.

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

a. The EY2013 special study topic will review a portion of the state program. See below for details.

Policy Memoranda Review(s) – OSM will conduct a review of Policy Memoranda developed by the North Dakota Regulatory Program. The primary focus of this evaluation is to review all current Policy Memoranda to determine if any of the policies are inconsistent with the approved state regulatory program or contradict federal regulations as defined in the Surface Mining Control and Reclamation Act (SMCRA). The review for EY2013 will be:

a. Policy Memoranda Review – OSM will evaluate all Policy Memoranda developed for the North Dakota Regulatory Program. The Memoranda will be compared to laws and rules in the approved state regulatory program. The reasoning behind each Policy Memo will be explored and evaluated. The effect of each Policy Memo will also be evaluated to determine if any impose changes to the existing state

regulatory program that contradict SMCRA.

At the discretion of the CFO and NDPSC, other oversight activities may be conducted in North Dakota if deemed necessary.

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, North Dakota has a total of 25 inspectable units. During EY 2013, OSM will conduct a minimum of three complete oversight inspections and a minimum of four 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 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 North Dakota 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

CFO and the NDPSC 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.

NDPSC agrees to provide CFO the core program data that is required for completion of the annual oversight report. This includes same mining and reclamation data submitted to NDPSC by individual operators, as stated in NDCC38-14.1-27 (1) (c), for independent evaluation by CFO. At a minimum, this data will include an annual map for the current year for each mine, 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 NDPSC 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 NDPSC 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 NDPSC 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 NDPSC 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 NDPSC 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 citizens' complaints. As part of OSM's evaluation of NDPSC's customer service efforts, CFO will identify all citizens' complaints received during the evaluation period as well as the outcome of all ten day notices sent to the state as a result of those complaints. The standards for this evaluation will be the notification requirements identified in the approved North Dakota coal program as well as the responsiveness of the NDPSC to citizen's concerns. CFO will process citizen complaints using the procedures in OSM Directive INE-24, as amended.

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. 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/.

VII. OTHER REVIEWS

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

VIII. SIGNATURES:

Signed in agreement by the parties this 6th day of July 2012.

For the North Dakota Public Service Commission

Jim Deutsch, Director
Reclamation Division
North Dakota Public Service Commission

For the Office of Surface Mining

Jeffrey Fleischman, Director
OSM/Casper Field Office