



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

December 21, 2010

Office of Surface Mining
Attn: Mr. Jeffrey Fleischman
P.O. Box 11018
Casper, WY 82602

RECEIVED
DEC 22 2010

BY:

RE: Wyoming Regulatory Performance Agreement

Dear Mr. Fleischman:

Please find enclosed one signed original of the Wyoming Regulatory Performance Agreement.

Yours truly,

Becky Kersius for:
Donald R. McKenzie
Administrator
Land Quality Division

DRM/bb

Enclosure

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FAX 777-6462

AIR QUALITY
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INDUSTRIAL SITING
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LAND QUALITY
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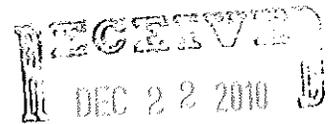
WATER QUALITY
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WYOMING

REGULATORY PERFORMANCE AGREEMENT

EVALUATION YEAR 2011



BY:

Wyoming Department of Environmental Quality

Land Quality Division

and

Office of Surface Mining

Reclamation and Enforcement

Casper Field Office

December 2010

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I. BACKGROUND

On November 26, 1980, the Secretary of the U. S. Department of the Interior approved Wyoming's permanent regulatory program under the provisions of the Federal Surface Mining Control and Reclamation Act (SMCRA). With that approval, the State of Wyoming assumed primary authority for regulating surface mining activities within the State. The Wyoming Department of Environmental Quality (WYDEQ), through its Land Quality Division (LQD), administers the permanent regulatory program. LQD has 3 district offices located in Cheyenne, Sheridan, and Lander, Wyoming. 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 Regional Office (WR), carries out this responsibility.

II. OVERVIEW

To measure the State's success in meeting the environmental protection goals of SMCRA, OSM and LQD have cooperatively developed this Regulatory Performance Agreement with input from various stakeholders. 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 Regulatory Programs*, dated December 21, 2006, forms the basis for this Agreement.

OSM is also committed to providing technical assistance to LQD in resolving complex site-specific issues. The oversight review and technical assistance efforts may blend in many instances where LQD and OSM are working together to resolve program issues.

Oversight review and technical assistance processes are continuous and not limited to one year. This Agreement contains the basic framework for oversight/technical assistance activities in Wyoming for the period of July 1, 2010, to June 30, 2011. Both parties may amend this Agreement at any time to include additional review topics or technical assistance requests during the evaluation period. This arrangement will also provide the necessary flexibility to include unforeseen program problems as review topics at any time. Issues identified in 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 completion of actions in this agreement. The Agreement in no way supersedes or relieves WYDEQ or OSM of any responsibilities under previous cooperative agreements, MOU's, working agreements, the OSM approved State Program, and SMCRA.

III. OVERSIGHT REVIEW PROCEDURES/TECHNICAL ASSISTANCE

Each agency will assign at least one staff member to jointly lead the evaluation of each

selected review topic. The team leaders will determine the need for other staff as part of the evaluation design process. They will establish the period for evaluation and the completion schedule for the detailed evaluation report.

A. Oversight Review Topics

The oversight review topics for EY 2011, including technical assistance initiatives, are described below:

Off-Site Impacts - OSM will continue to use LQD inspection data and observations from random sample 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.

Positive impacts resulting from mining and reclamation activities and operations should be reported as an achievement in the oversight report and not included in Table 4 to avoid any confusion or misunderstanding.

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.

Customer Service - Each evaluation year, OSM will monitor LQD's customer service. Areas to be evaluated are bond releases and citizen complaints. OSM and LQD will evaluate LQD's outreach and interaction with the public and adjacent land owners during bond release actions and citizen complaint resolution. The standards will be the notification requirements identified in the approved Wyoming coal program as well as the responsiveness of LQD to citizen's concerns.

Contemporaneous Reclamation - OSM will evaluate reclamation plans of approved permits to determine compliance with contemporaneous reclamation requirements. OSM will conduct inspections of active mining sites to ensure that reclamation is being conducted according to contemporaneous reclamation requirements of the approved reclamation plans.

Maintenance of the Approved Program - During the 2011 evaluation period, the LQD will complete submittal of all outstanding program deficiencies as identified at 30 CFR Part 950.16 (to include 8 issues identified in the 1-BZ package, 17 issues from the ownership and control package and the 5 additional issues identified from the 1-S package). The LQD will present these packages before the EQC as described in the corrective action plan (Appendix A). If these schedules are met, it would be possible for OSM to receive all the amendments for formal review

shortly after the end of the 2011 evaluation period. OSM and LQD will meet periodically to discuss the progress of these amendments.

Once submitted, OSM will process the amendments to ensure that the State's program as amended is consistent with the Federal regulations and the requirements of SMCRA.

Financial Administration – An OSM Financial Specialist will conduct a review with LQD financial staff and will develop the topics for review as necessary.

Evaluation of the LQD-Fish and Wildlife Service Consultation Process – The evaluation will assess Wyoming's consultation process with the USFWS and ensure effective compliance with consultation requirements.

Special Review Topic –

- 1) **LQD's Process for Satisfying Provisions of the Clean Water Act (CWA).** As part of OSM's "Immediate Stream Protection Measures", OSM will evaluate Wyoming's process of coordinating issuance of the various permits and authorizations required under SMCRA and the CWA. The evaluation will ensure effective and coordinated compliance by the State and Federal agencies responsible for implementing provisions of the CWA.
- 2) **Design and Construction of Primary Roads.** OSM will evaluate the design, construction, and certification of primary roads with respect to drainage systems to determine compliance with the requirements of the Wyoming program. There are three general aspects that OSM will evaluate regarding Wyoming's implementation of its rules relating to the design, construction, and certification of primary road drainage systems. These are 1) permitting/design documentation, 2) evaluation of processes for design, construction and certification, and 3) field verification that mine operators are following the approved design, construction, and certification requirements.

The CFO and LQD will review five permits throughout the State during the evaluation period to determine:

- 1) If there is an agreement between the regulatory authority and OSM as to the requirements of the approved State program (i.e. Do OSM and LQD interpret the requirements of the program the same?),
- 2) The State's method to check the operator's compliance with Wyoming's rules and the approved permit,
- 3) If the State routinely uses these verification methods,
- 4) If there are sufficient cross-sections, maps and designs in the permit to properly evaluate compliance with the approved permit and rules, and
- 5) If the State processes for evaluating design, construction, and certification of primary road drainage systems is consistent with the approved State program.

OSM and LQD will verify the design, construction, and certification of primary road drainage systems for the selected permits by conducting field verification during oversight inspections.

B. Oversight Inspections

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. For EY 2011, OSM will conduct a minimum of 3 complete and 6 partial oversight inspections (based on 37 inspectable units) to ensure compliance with the approved State program. At least one of the oversight inspections will be an independent oversight inspection. Independent inspections may consist of partial or complete 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 program, reclamation success and identify any off-site impacts. Evaluation of the State's effectiveness will be accomplished during OSM's sample 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.

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 and to facilitate special studies of certain aspects of that program. Complete inspections will be done by selecting permits for review that have not been inspected by OSM in the past 2 years.

Bond Release Inspections - CFO will evaluate and report on the effectiveness of reclamation success during bond release, with special emphasis on final bond release.

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 performed in areas that CFO feels merit special attention or upon the State's request.

Miscellaneous Inspections - In addition, CFO may conduct inspections where:

- there is potential imminent danger to public safety and/or imminent harm to the environment;
- there are citizens' complaints filed with the CFO;
- there are bond releases on Federal lands; and,
- partial inspections are needed to evaluate the effectiveness of the State program in protecting the environment and public from negative off-site

impacts.

C. Data & Information Exchange

CFO and LQD agree that 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 & Enforcement Tracking System's inspectable units list, and to provide data to satisfy OSM's oversight reporting requirements.

LQD agrees to provide State data to CFO for completion of Government Performance and Review Act (GPRA) data requirements and Tables 2-11 of the Annual Evaluation Report. Formats for the annual report Tables are contained in OSM Oversight Directive REG-8. Additionally, LQD agrees to provide the CFO with other data used to evaluate contemporaneous reclamation (e.g. acres disturbed, soiled and seeded, etc.). LQD will provide the data to CFO as soon as practical after the close of the evaluation period.

The CFO and LQD will continue to participate in Data Collection and Reporting improvement efforts lead by LQD. This effort includes outreach and input from other stakeholders as well.

In addition to data collected from oversight inspections, LQD shall provide inspection reports to CFO adequately describing (1) general conditions of the lands under the permit and license; (2) manners in which operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements (Cooperative Agreement, Article VII: Inspections). OSM and LQD shall promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining plans and permits subject to this Agreement, and of all actions taken with respect to such violations (Cooperative Agreement, Article VIII: Enforcement). The information from State inspection reports and enforcement actions will be used in determining the existence of any possible off-site impacts and to complete the oversight evaluation report. Other information may be required from data systems maintained by LQD staff.

With regard to grant management, all grant information and correspondence must come through the Casper Field Office before going to the designated OSM Grant Specialist in the Western Regional Offices.

Both CFO and LQD agree to cooperatively develop adequate information and assurances to ensure proper evaluations for measuring and reporting results of bond releases.

D. Problem Resolution

One main objective of OSM's oversight of State programs is to resolve identified problems as expeditiously as possible. CFO and LQD will focus resources on resolving any problems that are identified during oversight review. Issues identified may be resolved through corrective action plans. However, selected issues may require modified procedures to ensure prompt resolution. These procedures will be developed jointly by LQD and CFO on a case-by-case

basis. CFO will report resolved problems and incremental improvements toward resolving problems, as well as any new issues, in the Annual Evaluation Report.

E. Completion of the Wyoming Coal Working Agreement

The Coal Working Agreement describes coordination of coal permitting, leasing, and bond release between Wyoming and Federal agencies, including OSM, BLM, USFS, and the USFWS. A revised draft working agreement was completed in 2007 and the CFO will work with OSM-WR to finalize the draft.

IV. PUBLIC OUTREACH

OSM and LQD 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. In addition, CFO staff will be available to meet with individual citizens or organizations at any time during the evaluation year. LQD 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. INNOVATIVE STATE ACTIONS

REG-8 has added recognition for innovative approaches related to managerial efficiency, problem resolution, environmental protection, and program implementation as a reporting element. Additionally, LQD will identify and report to CFO, on an ongoing basis, any activities that in its judgment deserve recognition. Activities identified by either OSM or LQD will be discussed in the Annual Evaluation Report.

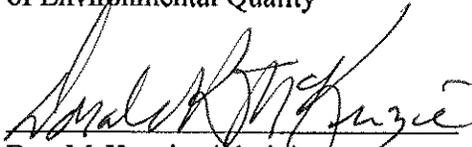
VI. CITIZEN COMPLAINTS

CFO will process citizen complaints using the procedures in OSM Directive INE-24, as amended.

VII. SIGNATURES:

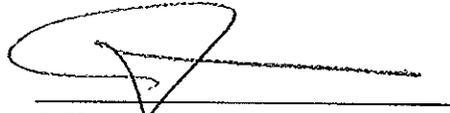
Signed in agreement by the parties this 16th day of DECEMBER 2010

For the Wyoming Department
of Environmental Quality



Don McKenzie, Administrator
WYDEQ /Land Quality Division

For the Office of Surface
Mining



Jeffrey Fleischman, Director
OSM/Casper Field Office

Appendix A

Corrective Action Plan Wyoming Program Amendment Deficiencies

Goal: With the implementation of this plan for Wyoming, all outstanding Title V program deficiencies (as identified by OSM in 30 CFR Part 732 letters and 30 CFR Part 950.16 required amendments) will be addressed by the State and submitted to OSM for formal review shortly after the end of the 2011 oversight evaluation period (August 2011).

Approach: Wyoming has grouped the outstanding program deficiencies into several logical amendment packages. These amendment packages have been initiated into the State rulemaking process to the point that they are now ready for presentation to the State Environmental Quality Council (EQC) for final review and approval. Once through the EQC the new rules will be submitted to the Governor and Secretary of State for signing into law. After the State has completed its rules process, each package will be submitted to OSM (within 75 days) for review, public comment and final approval.

The CFO will assist the Land Quality Division by attending all EQC hearings that contain OSM business.

Timeframes: The LQD will submit the outstanding amendment packages to the EQC before the end of January 2011.

Package 1-BZ

EQC Hearing Date: January 14, 2011
Submission to Governor: January 17, 2011
Submission to Sec. of State: April 2011
Submission to OSM: April 2011

Ownership and Control Package

EQC Hearing Date: May 15, 2011
Submission to Governor: May 2011
Submission to Sec. of State: August 2011
Submission to OSM: August 2011

Resolution: If the LQD cannot fulfill the timeframes identified above, OSM and the LQD will reevaluate the status of the pending amendment packages and work cooperatively to develop a new timeline. The OSM, Casper Field Office and the LQD will continue to hold periodic progress meetings until these amendments are finalized.