

# WYOMING

## REGULATORY PERFORMANCE AGREEMENT

### EVALUATION YEAR 2012

Wyoming Department of Environmental Quality

Land Quality Division

and

Office of Surface Mining

Reclamation and Enforcement

Casper Field Office

April 2011

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# Wyoming Regulatory Performance Agreement

## 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. OVERSIGHT EVALUATION GOALS

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 January 31, 2011, 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. 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 for oversight/technical assistance activities in Wyoming for the period of July 1, 2011 to June 30, 2012, but will remain in effect until amended or terminated. Both parties may mutually agree to 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**

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 2012, are described below:

##### **1. National Measurement Elements**

**a) 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 of the annual report to avoid any confusion or misunderstanding.

**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.

**c) 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.

##### **2. National Priority Review Topics – None**

### 3. State-Specific Permitting and Enforcement Reviews

a) **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.

b) **Maintenance of the Approved Program** – During the 2012 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.

c) **Shrub Establishment** - OSM will evaluate Wyoming mine permits regarding the establishment of shrubs in reclamation 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 shrub establishment. These are 1) permitting requirements / documentation, 2) Wyoming's process for evaluation of permittee's compliance / success of shrub establishment, and 3) field verification that mine operators are following the approved reclamation plan and shrub establishment success.

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 information in the permit to properly evaluate compliance with the approved permit and rules, and
- 5) If the State processes for evaluating shrub establishment success is consistent with the approved State program.

OSM and LQD will verify shrub establishment success by conducting field verification

during site visits or oversight inspections.

**d) Evaluation of the LQD-Fish and Wildlife Service Consultation Process** – This evaluation was initiated in EY2011. The evaluation will assess Wyoming's consultation process with the USFWS and ensure effective compliance with consultation requirements. The review for this topic is not yet complete. If the evaluation is not fully addressed in EY2011, it will be carried forward into EY2012.

**e) Data Verification and Validation** - Historically, LQD and CFO have worked together to collect statistical data used in reporting on programmatic success. This effort has experienced difficulty in database accuracy and annual report consistency from the operators. In 2009, LQD and DEQ developed a new reporting format for its annual reports from the operators. However, this effort has stalled due to a contractor problem. In light of the additional data requirements of the new Reg-8 format for Annual Reports, concerns from stakeholders (NMA, WMA), and recent data collection difficulties; the CFO and LQD will review and evaluate the LQD data base information collected from the permittee annual reports. Data collection, source, verification, storage and retrieval practices will be reviewed and evaluated for accuracy and completeness. All current annual reports will be reviewed, and if necessary, past annual reports. This effort will allow for LQD and CFO to have a shared and accurate database for statistical reporting. Further information about data exchange is found in Part C of this agreement.

## **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 EY2012, Wyoming has a total of 37 inspectable units. During EY 2012, OSM will conduct a minimum of 3 complete oversight inspection and a minimum of 6 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 2012, OSM will conduct a minimum of 1 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 Wyoming, 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 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.

**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 core data to CFO for completion of reclamation status data requirements and Tables 2-15 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 in time to satisfy OSM's oversight

reporting requirements.

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 also 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.

#### **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. CITIZEN COMPLAINTS

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

#### VI. TECHNICAL ASSISTANCE

If the LQD has need of technical assistance regarding implementation of its reclamation program, the CFO will coordinate OSM resources to address the issue in question.

#### VII. 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.

#### VIII. OTHER REVIEWS

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

**Design and Construction of Primary Roads** - Based on the review and evaluation of this subject during the 2011 evaluation year, the CFO has determined that there may be an issue with the documentation of primary road designs in approved permits. A final determination will be made before the end of EY2011, and if necessary, a corrective action plan will be added to this performance agreement.

#### IX. SIGNATURES:

Signed in agreement by the parties this 8 day of July 2011

For the Wyoming Department  
of Environmental Quality

  
\_\_\_\_\_  
John Corra, Director  
WYDEQ

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 (September 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 June 2011.

### **Package 1-BZ**

EQC Hearing Date: January 14, 2011

Submission to Governor: January 17, 2011

Submission to Sec. of State: April 11, 2011

Submission to OSM: April 2011

### **Ownership and Control Package**

EQC Hearing Date: June 6, 2011

Submission to Governor: June 2011

Submission to Sec. of State: September 2011

Submission to OSM: September 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.