Colorado

REGULATORY PERFORMANCE AGREEMENT

Beginning

EVALUATION YEAR 2013
(July 1, 2012 to June 30, 2013)

Between

The Colorado Division of Reclamation, Mining and Safety

And

The Office of Surface Mining Reclamation and Enforcement
Denver Field Division

July 2, 2012

Table of Contents

I. BACKGROUND……..…1

II. PROGRAM EVALUATION GOALS……..1

III. PROGRAM EVALUATION COMPONENTS……..……..2

A. OVERSIGHT REVIEW TOPICS……...2
B. OVERSIGHT INSPECTIONS……...4
C. DATA AND INFORMATION EXCHANGE……....5
D. PROBLEM RESOLUTION……....6

IV. PUBLIC COMMENT AND OUTREACH……..……6

V. TECHNICAL OR PROGRAMMATIC ASSISTANCE……..6

VI. SIGNATURES……...…7

I. BACKGROUND

In December, 1980, the Secretary of the U. S. Department of the Interior approved Colorado's permanent regulatory program under the provisions of the Federal Surface Mining Control and Reclamation Act (SMCRA). With that approval, the State of Colorado assumed primary authority for regulating surface mining activities within the State. The Colorado Division of Reclamation, Mining and Safety (DRMS) administers the permanent regulatory program. DRMS offices are located in Denver, Grand Junction, and Durango, Colorado. 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 Denver Field Division (DFD), under the Western Region (WR), carries out this responsibility.

II. PROGRAM EVALUATION GOALS

To measure the State's success in meeting the environmental protection goals of SMCRA, OSM and DRMS 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 is also committed to providing DRMS technical assistance to resolve complex site-specific issues. The oversight review and technical assistance efforts may blend in many instances where DRMS and OSM 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 Colorado 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 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 DRMS or OSM of any responsibilities under previous cooperative agreements, MOU's, working agreements, the OSM approved State Program, or SMCRA.

III. PROGRAM EVALUATION COMPONENTS

OSM's DFD and DRMS formed an Evaluation Team (the Team) to conduct annual evaluations of Colorado's Coal Regulatory Program. The Team evaluates how effective DRMS is in ensuring successful coal mining reclamation, preventing offsite impacts, and providing service to its customers. The Team makes recommendations for improving the administration, implementation, and maintenance of the Program. This evaluation method fosters a shared commitment to the implementation of SMCRA and the preservation of this Team is essential for a complete and successful program review.

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 DRMS 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 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, and special focus topic evaluations.

b. **Reclamation Success –** In Table 6 of the year-end oversight report, "Surface Coal Mining and Reclamation Activity," the Team annually reports the acreage of phase I, II, and III bond releases and the acreage bonded at the beginning and end of the evaluation period. OSM will report the number of acres being mined to the number of acres being reclaimed pursuant to OSM Directive REG-8.

   The Team annually prepares a table entitled "Reclamation Status of all Areas Disturbed under the Colorado Permanent Regulatory Program" that will be attached to the OSM Annual Evaluation Summary Report as Appendix A. The table will document for each mine (1) the acres receiving

phase I, II, and III bond release and (2) the acres disturbed, backfilled, graded, topsoiled and seeded, and (3) the cumulative totals for these reclamation status categories for all years. DRMS will include all mines permitted under the Colorado permanent regulatory program including active and inactive mines, and mines where DRMS has forfeited performance bonds. With respect to the forfeiture sites, DRMS will indicate the initial bond forfeiture amount, funds expended during the year, cumulative fund expenditures, and remaining funds.

DRMS will compile the table data from the individual mine annual reports, review this information for accuracy, and submit it to OSM. DRMS will provide the final Reclamation Status table to OSM in electronic format for inclusion in the EY 2013 annual evaluation summary report.

c. **Customer Service** - Each evaluation year, OSM is to monitor the effectiveness of customer service provided by DRMS. Areas to be evaluated are DRMS's responses to complaints, requests for inspections, and requests for assistance and services by permittees as well as the public or other agencies. OSM and DRMS will evaluate one or more state activities to determine timeliness, accuracy, completeness and appropriateness of DRMS's action. In addition, the review may address DRMS's analysis of customer satisfaction.

2. Targeted Review Topics

Other oversight activities that OSM may conduct in a state or on tribal lands, including national priority reviews and focused state/tribe specific permitting and enforcement reviews may be subject to evaluation at the discretion of the individual Field Offices and states and tribes. For EY2013, DFD and DRMS have chosen to evaluate the following topic:

a. Special Focus Topics – During EY2013, OSM and DRMS will jointly conduct the following special studies:

1. Prevention of off-site impacts – Design, Construction, and Maintenance of Sediment Ponds

2. Reclamation Success – Stream Channel and Drainage Reconstruction

3. Customer Service –Coordination with Colorado's State Historic Preservation Officer

B. OVERSIGHT INSPECTIONS

The purpose of inspections and field site evaluations 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, Colorado has a total of 40 inspectable units. During EY 2013, OSM will conduct a minimum of four complete oversight inspections and a minimum of six partial oversight inspections. OSM and DRMS will jointly 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 at least two weeks prior to the inspection date.

At least one of the oversight inspections (10% of the number of inspections conducted) will be an independent OSM 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. Colorado remains concerned regarding the need and authority for such independent federal inspections.

Because of the limited number of inspectable units in Colorado, 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 may 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.

Data collection and analysis will be completed by June 30, 2013, with results available by July 31, 2013.

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

1. Oversight Inspections

DFD will conduct complete and partial 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.

2. Bond Release Inspections

DFD will evaluate and report on the effectiveness of reclamation success during bond release, 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.

3. Special Focus Inspections

DFD 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 DFD feels merit special attention or upon the State's request.

4. Miscellaneous Inspections

In addition, DFD may conduct additional inspections in accordance with 30 CFR 842.11 and 842.12 with appropriate prior notification to DRMS.

C. DATA AND INFORMATION EXCHANGE

DFD and DRMS 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.

DRMS agrees to provide DFD the core program data that is required for completion of the annual evaluation summary report and for the OSM annual report to Congress.

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

D. PROBLEM RESOLUTION

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

IV. PUBLIC COMMENT AND OUTREACH

OSM and DRMS are committed to interacting with citizen, environmental, and industry organizations on a continuing basis. DFD 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. DFD will post these documents on the OSM website to encourage public participation. In addition, DFD staff will be available to meet with individual citizens or organizations at any time during the evaluation year. DRMS 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. TECHNICAL OR PROGRAMMATIC 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 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/.

VI. SIGNATURES:

Representing the Colorado Department of Natural Resources, Division of Reclamation Mining and Safety, and the Office of Surface Mining Reclamation and Enforcement, Denver Field Division, the following parties agree to the purpose, goals, and anticipated actions proposed in this Attachment to the Oversight Agreement. These parties may mutually decide at any time to modify this agreement.

TEAM COACHES:

Kenneth Walker (WR)

David Berry (DRMS)