Customer Service in Montana (EY2011)

In order to evaluate effectiveness of customer service provided by the Montana Department of Environmental Quality (MDEQ) Industrial and Energy Minerals Bureau (IEMB), OSM has chosen to monitor the States' interagency coordination with agencies administering the Clean Water Act. Activities were evaluated to ensure the best protocols and procedures are in place for coordinating issuance of the various permits and authorizations required under SMCRA and the Clean Water Act by the appropriate State and Federal agencies.

OSM held an interagency coordination meeting with MDEQ Bureaus, Montana Fish Wildlife and Parks, and US Army Corps of Engineers on October 14, 2010. The following is a copy of the Meeting Notes from the October 14, 2010 meeting:

MEETING NOTES OF OSM WESTERN REGION INTERAGENCY COORDINATION MEETING WITH MONTANA/FEDERAL SMCRA AND CWA REGULATORY AGENCIES

October 14, 2010

Montana Department of Environmental Quality (DEQ), Interagency Coordination Meeting, Helena, MT, DEQ Offices

DEQ

Ed Coleman, Bureau Chief, Industrial and Energy Minerals Bureau
Chris Yde, Supervisor of the Coal and Uranium Program
Melissa Mitchem, Montana Pollutant Discharge Elimination System Coordinator for the Coal and Uranium Program
Judy Hanson, Division Administrator, Permitting and Compliance Division
Jenny Chambers, Bureau Chief, Water Protection Bureau
Tom Reid, Environmental Specialist for the Water Protection Bureau

Montana Fish Wildlife and Parks

Beau Downing, Stream Protection Act Coordinator

US Army Corps of Engineers

Shannon Johnson, Regulatory Project Manager, Billings, MT
William James, Regional Coal Expert, Nashville, TN

Office of Surface Mining

Jeff Fleishman, Field Office Director, Casper, WY

Alan Boehms, Permitting Coordinator, Casper, WY
Henry Austin, Physical Scientist, Denver, CO

Meeting Purpose:

To ensure the best protocols and procedures are in place for coordinating issuance of the various permits and authorizations required under SMCRA and the Clean Water Act by the appropriate State and Federal agencies. These meetings will be considered part of the State oversight evaluation for the 2011 Evaluation Year.

Discussion Topics:

-Introductions
Jeff discussed the meeting purpose. Jeff and Ed welcomed participants and began introductions. Participants briefly stated why they were attending, and-or their agency responsibilities.

OSM's Stream Protection Rulemaking efforts (OSM leads discussion)
Jeff discussed the OSM rulemaking efforts. Several commented and asked questions.

EPA, USACE, DOI June 11, 2009 MOU (OSM brief overview to ensure all parties are aware of the MOU)
Jeff provided copies of the MOU and led the discussion. William and Henry also discussed the deliverables from the MOU and what has been completed in Appalachian States. We discussed the OSM Tennessee "flow chart" and "standard operating procedures" depicting enhanced Interagency Coordination in TN; and the idea this Sec. 404 permitting template may be used in other Appalachian states.

EPA and USACE Sec. 404 permitting handbook development (OSM & Agency updates)
William indicated that the handbook development has been delayed due to other state program coordination responsibilities in Appalachia.

EPA and USACE stream structure and function MOU development (OSM & Agency updates)
We briefly discussed the July 30, 2010 MOU; and the MOU's implications for requiring more in-depth aquatic communities' baseline identification protocols for streams, identifying material damage thresholds for water quality, and operational monitoring and mitigation approvals based on material damage criteria.

OSM's oversight role of the State Program (OSM leads discussion)

Jeff led this discussion. Several commented on their respective roles in state program permit review and approvals both under SMCRA and the Clean Water Act.

Permitting Process: How many SMCRA permits have CWA Sec. 404 Permits in your State?
MT has 6 active, coal producing mines; and 15 approved SMCRA permits. Shannon and Melissa reported there are no active Nationwide Permit 21 approvals on the coal producing mines and no Individual Permit approvals from the Corps. Shannon and Melissa agreed to compare tracking lists for inactive Nationwide Permit 21 approvals. We discussed the 5 year permit approval terms for Nationwide Permit 21 permits.

Discussion of the permitting process from initial receipt of a permit application under SMCRA (State & Agency discussions)
Chris and Ed led a discussion of DEQ SMCRA permitting coordination using the new Otter Creek Lease Notice of Intent (NOI) as a recent example; and several others also discussed their permit coordination processes. MT has good Intra-DEQ coordination processes with their Bureaus, and has a history of implementing pre-permitting application stakeholder outreach and meetings in the field with federal agencies, local governmental agencies, and surface and mineral landowners, as necessary for SMCRA permit coordination.

Open discussion on Interagency Coordination of the CWA Sec. 404 permitting process; and evaluate if we can improve or streamline the process.
William and Shannon offered themselves as contacts for Corps coordination; and DEQ participants made suggestions to enhance interagency coordination among their respective DEQ Bureaus, other state agencies, the Corps, and OSM.

Jenny discussed the interagency MOU that was signed by DEQ, FWP, DNRC, FHWA, USFWS, EPA, and Army Corps for a process team titled Integrated Transportation and Ecological Enhancements for Montana (ITEEM). The initial main process for this project was a way to streamline transportation permitting, however it allows for better coordination and a way to complement mitigation impacts for terrestrial and aquatic environment for other permitting projects. This process team allows the group to discuss and work together on other projects; and if coal permitting questions and interaction were necessary all of these players would come together. It will assist with coal permitting planning and future efforts and will be something worth exploring on larger scale projects for instance, as interagency CWA coordination proceeds with Otter Creek.

Jeff and Alan offered themselves as contacts for the Corps on the applicable actions for the Absaloka Mine, and to provide assistance to the Montana DEQ. Henry indicated participants are

free to contact him regarding any questions for the OSM Interagency Coordination Team including questions on the meeting handout materials.

Action Items

DEQ will provide Jeff and the Corps participants with copies of the existing Montana MOU for Interagency Coordination.

Shannon and Melissa will compare their tracking lists for inactive Nationwide Permit 21 approvals on SMCRA coal mines in MT. There may be a need to update the Montana MOU to accurately reflect current coordination procedures and agency contacts.

Wrap Up

Participants agreed this was a helpful meeting for our Bureaus; and Jeff & Ed may plan to meet in the future as necessary regarding CWA Sec. 404 Interagency Coordination, OSM stream protection measures rulemaking, and/or other issues identified that benefit from Interagency Coordination meetings.

Summary – Customer Service

It is the opinion of the CFO that the MT-DEQ properly conducts the SMCRA/CWA coordination processes with their Bureaus; and MT-DEQ has a history of implementing pre-permitting application stakeholder outreach and meetings in the field with Federal agencies, local governmental agencies, and surface and mineral landowners, as necessary for SMCRA permit coordination.