



**OFFICE OF SURFACE MINING-UTAH
DIVISION OF OIL, GAS AND MINING
PERFORMANCE AGREEMENT**



Between

**The Utah Division of Oil,
Gas and Mining**

And

**The Office of Surface Mining Reclamation and Enforcement
Denver Field Division**

Evaluation Year 2009

December 2008

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Introduction

The Office of Surface Mining Reclamation and Enforcement (OSM), Western Region (WR), and the State of Utah, Division of Oil, Gas and Mining (DOGGM), jointly prepared this agreement for the evaluation of Title V implementation of the Surface Mining Control and Reclamation Act in Utah in evaluation year 2009 (EY 2009, July 1, 2008, through June 30, 2009). The Team includes representatives of the Division and OSM's Denver Field Division (DFD). The Team will hold four meetings on a quarterly basis during the evaluation year.

This agreement establishes the basic elements to be evaluated in Utah, and evaluations will be directed and conducted by the OSM-Utah Team in accordance with the framework created by OSM Directive REG-8, "Oversight of State Regulatory Programs" (dated September 28, 2000, and revised December 21, 2007). OSM Directive REG-8 serves as guidance for the selection of evaluation topics. The specific topics that have been chosen for review are those that are important to citizens, operators, WR, and DOGGM. The chosen topics fall into one or both of the following categories: environmental protection and customer service. For the environmental protection topics, the Team will evaluate whether DOGGM assures that off-site mine impacts are prevented and mine site reclamation is successful. For the customer service topics, the Team will evaluate the timeliness, accuracy, completeness, and appropriateness of DOGGM's assistance to stakeholders.

This agreement, as mutually agreed upon by the OSM-Utah evaluation Team and Team Coaches, will become effective the 1st day of July, 2008 and will remain in effect until revised.

Part A - Performance Measures and Oversight Topics

1. Performance Measures

OSM Directive REG-8 (July 28, 1999) prescribed a methodology for conducting evaluations of State regulatory programs and a format for annually reporting on the evaluations consistent with this methodology and format. The methodology and format was revised in part via OSM Directive REG-8-1 dated September 28, 2000, and later revised by OSM's current Directive REG-8 dated December 21, 2006. The Team subscribes to the following procedures for annually evaluating and reporting off-site impacts and reclamation success in Utah during the evaluation year.

a. Off-site Impacts

An off-site impact is anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on resources (people, land, water, and structures). The Utah program must regulate or control the mining or reclamation activity or result of the activity causing the off-site impact. In addition, the impact on the resource must be substantiated as being related to a mining and reclamation activity and must be outside the area authorized by the permit for conducting mining and reclamation activities.

When an operator causes an off-site impact and DOGM takes an enforcement action, the off-site impact will be considered to be mitigated when the operator has abated the violation and DOGM has terminated the enforcement action. In order for OSM to verify that an impact has been mitigated, a representative of OSM may accompany the DOGM inspector on any follow-up inspection for enforcement actions citing off-site impacts. If OSM accompanies DOGM on the follow-up inspection, it will be present for only the portion of the inspection that pertains to the enforcement action. OSM will not conduct oversight of the entire operation and will merely observe DOGM's determination of whether or not the impact has been mitigated as directed in the enforcement action issued by DOGM. The type and degree of impact will be derived from DOGM's notice of violation, inspection report, and documentation of the assessment of any civil penalty.

Sources of information for identifying off-site impacts include DOGM complete and partial inspections, enforcement actions, and civil penalty assessment data; OSM and DOGM joint, complete inspections; Team evaluations identified in Part A, section 2 of this document; citizen complaints filed with DOGM or OSM (alleged impacts must be substantiated); bond release inspections; and information from other local, State, and Federal agencies or private interest groups. OSM receives monthly compliance reports from DOGM concerning inspection and enforcement activities. In addition, DOGM maintains a "violation tracking form" that is utilized by the Team for evaluating notices of violation and conducting analyses to identify and determine potential off-site impacts. Off-site impact determinations are reached by consensus vote of the Team.

b. Reclamation Success

In table 5 of the year-end evaluation report, "Annual State Mining and Reclamation Results," 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.

Because operators do not always apply for bond releases as reclamation is completed and qualifies for bond release, tracking of bond releases and bonded acreage alone are not accurate measures of the success of the Utah program.

The Team annually prepares a table entitled "Reclamation Status of all Areas Disturbed Under the Utah Permanent Regulatory Program" that will be attached to Appendix 2 of the OSM Annual Evaluation Summary Report. 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, seeded, and the cumulative totals for these reclamation status categories for all years. DOGM will include all mines permitted under the Utah permanent regulatory program including active and inactive mines, and mines where DOGM has forfeited performance bonds.

DOGM will compile the table data from the individual mine annual reports. DOGM will review this information for accuracy and submit it to OSM by August 15, 2009. DOGM will provide the final Reclamation Status table to OSM in electronic format for inclusion in the EY 2009 annual evaluation summary report.

2. Oversight Topics

The following oversight topics have been selected for EY 2009. The focus, measurements, and reasons for topic selection are provided to define the limits of review and to define the goal for which DOGM will have been deemed successful in its program implementation.

a. Prevention of Off-site Impacts

Mitigating for Coal Mining Water Depletions and the Upper Colorado River Endangered Fish Recovery Program

The team is evaluating this topic under the primary objective of OSM Directive REG-8 to determine whether the Utah program is successful in preventing offsite impacts to endangered species as a result of mining activities. Currently, Utah participates in the Upper Colorado River Endangered Fish Recovery Program (established in 1988 by the Secretary of the Interior, the Governors of Colorado, Wyoming, and Utah, and the Administrator of the Western Area Power Administration) as a way to offset water depletions, thereby preventing offsite impacts to endangered fish. The team chose this topic for evaluation because OGM desires to know if the other States that participate in the Recovery Program utilize an equally effective but less complicated method to calculate water depletions that Utah could adopt. The Team will evaluate the effectiveness of the Utah program's calculation method and determine what (if any) changes could be made to more effectively comply with the applicable requirements of Utah State Rule R645-301-358 regarding the protection of endangered species.

b. Reclamation Success

Water Replacement and Mitigation of Subsidence-related Material Damage to Land or Structures

The Team is evaluating this topic under the primary objective of OSM Directive REG-8 to determine whether the Utah program is successful in achieving timely restoration and repair or replacement of water supplies affected by mining and restoration of other resources impacted by mine subsidence. This evaluation topic emanated from comments the DOGM-OSM Evaluation Team received from the Emery County Public Lands Office in response to our public outreach letter suggesting that the Team review "mitigation of subsidence damage to springs (i.e. The Pines)," at SUFCO. As a result, this topic was chosen to assess situations where mine-related subsidence has resulted in material damage to a water resource and determine whether appropriate mitigation has been accomplished. This evaluation topic will evaluate the Utah program's effectiveness in having permittees replace any State-appropriated water supply that is contaminated, diminished or interrupted by mining activities according to the approved mining permit and lease conditions.

c. Customer Service

See Part B Below Concerning Internal OGM Review for Customer Service

3. Oversight/Bond Release Inspections and Mine Site Evaluations

OSM and DOGM together will jointly conduct oversight/bond release inspections and mine site evaluations as needed during EY 2009. The Team will select the mining operations to be inspected and evaluated from the list of permitted sites.

Part B - Utah Internal Reviews in Lieu of Team Oversight Evaluations

DOGM has developed and implemented a customer satisfaction survey to evaluate performance at the Program and Division level. In conjunction with the Utah Governor's Balanced Scorecard effort to measure and evaluate agency performance, DOGM developed the customer satisfaction survey based upon an Oregon model. The purpose of the survey was to evaluate the current level of customer satisfaction and to foster improved customer service in the future. The initial survey included the period of July 1 to September 30, 2008, and a subsequent survey is expected to commence in July 2009. The results of the survey will be included in the annual report.

Part C - Pending Utah Program Oversight Evaluations

None

Part D - Transfer of State Program Information

By August 15, 2009, DOGM will submit information and data for the Utah annual evaluation summary report as shown below; and for the OSM annual report to Congress.

By August 31, 2009, DOGM will submit a narrative describing public participation opportunities, major accomplishments, issues, and innovations that have occurred during the evaluation year.

DOGM will also submit the data for the following OSM Directive REG-8 report tables:

- Table 2, Inspectable Units;
- Table 3, State Permitting Activity;
- Table 5, Annual State Mining and Reclamation Results;
- Table 6, State Bond Forfeiture Activity;
- Table 9, State Inspection Activity;
- Table 10, Utah Enforcement Activity;
- Table 11, Lands Unsuitable Activity; and
- Table 12, Optional Table (Post-mining Land Use Acreage)

By October 6, 2009, OSM will provide DOGM with an electronic version of the final Utah annual evaluation summary report.

Part E - Public Participation


OSM Directive REG-8 requires the OSM field office directors to interact on a routine, periodic basis with State and local coal associations, citizens, environmental organizations, and other groups to actively seek out and determine their areas of concern and suggestions, as well as to provide timely information about OSM activities that may interest such groups. To further this interaction, the directive states that each field office shall develop and conduct an outreach program within the State to solicit comments from the public and interested parties regarding the oversight process, recommendations for additional review topics for the evaluation year, and suggestions for improvements of future annual evaluation reports. The directive encourages the Field Office Director to work with his or her State to develop such programs and to conduct such outreach jointly with the State whenever possible.

The Team acknowledges the benefits of jointly conducting outreach for the oversight process. For Public Participation in EY 2009, letters were mailed to all stakeholders including State and Federal agencies, environmental organizations, coal mine permittees, and consultants soliciting suggestions for oversight topics, ideas for improvements to our oversight evaluations, and comments on our annual evaluation summary report for Utah. No comments were received.

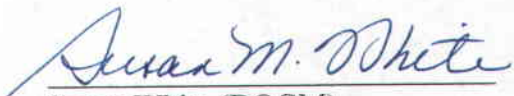
Part F - Signatures

Representing the Utah Division of Oil, Gas and Mining, 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 Performance Agreement. These parties may mutually decide at any time to nullify or modify this agreement.

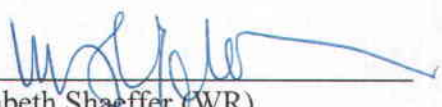
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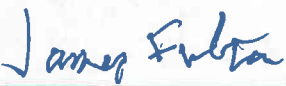


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