



Utah

Regulatory Performance Agreement

for

Evaluation Year 2020
(July 1, 2019 to June 30, 2020)

Between

The Utah Division of Oil, Gas and Mining

and

The Office of Surface Mining Reclamation and Enforcement
Denver Field Branch

July 2019

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I. BACKGROUND

In January of 1981, the Secretary of the U.S. Department of the Interior approved Utah's permanent regulatory program under the provisions of the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA). Upon approval, the State of Utah assumed primary authority for regulating surface coal mining activities within the State. The Utah Division of Oil, Gas and Mining (DOGM or the Division) administers the coal regulatory program. DOGM offices are located in Salt Lake City and Price, Utah. As provided by SMCRA, following program approval, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is responsible for overseeing the State's administration of its approved program. The Denver Field Branch (DFB), located in the OSMRE Western Region, carries out this responsibility.

II. PROGRAM EVALUATION GOALS

To measure the State's success in meeting the environmental protection goals of SMCRA, OSMRE and DOGM have cooperatively developed this Regulatory Performance Agreement (the 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.

OSMRE is also committed to providing DOGM with technical assistance to resolve complex site-specific issues. The oversight review and technical assistance efforts may blend in many instances where DOGM and OSMRE need to work together to resolve any program issues. It is OSMRE's intent 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.

Because 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 Utah until it is amended or terminated. Either party may amend this Agreement during the evaluation period to include additional review topics or technical assistance requests by obtaining written concurrence from the other party. This arrangement will also provide the necessary flexibility to include unforeseen programmatic problems as review topics at any time. Issues identified in the topic 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. This Agreement in no way supersedes or relieves DOGM or OSMRE of any responsibilities established under previous

cooperative agreements, MOUs, working agreements, Utah’s approved State program, SMCRA, or SMCRA’s Federal implementing regulations.

III. PROGRAM EVALUATION COMPONENTS

DFB and DOGM formed an Evaluation Team (the Team) to conduct annual evaluations of Utah’s coal regulatory program. The Team evaluates DOGM’s effectiveness in implementing its approved program, which includes its ability to ensure successful coal mining reclamation and prevent off-site impacts. The Team makes recommendations for improving the administration, implementation, and maintenance of the approved State program. This evaluation method fosters a shared commitment to the implementation of SMCRA and preserves the ability to collaborate as members of this Team, which is essential for a complete and successful program review.

Each agency will assign at least one staff member to jointly lead the Team. The Team leaders will determine the need for the participation of other staff as part of the evaluation design process.

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** – OSMRE will continue to use DOGM inspection data and observations from oversight 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) where those impacts are intended to be minimized or prevented by SMCRA or the applicable State program. Off-site impacts will be reported in the oversight report. An opportunity exists where the State and OSMRE may agree to jointly collect information on off-site impacts. The sources for collecting off-site impact information have been DOGM inspections, OSMRE oversight inspections, mine site visits, and topic-specific 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. OSMRE will report the number of acres being mined to the number of acres being reclaimed pursuant to OSMRE Directive REG-8.

The Team annually prepares a table entitled “Reclamation Status of all Areas Disturbed under the Utah Permanent Regulatory Program” that will be attached to the OSMRE Annual Evaluation Report. The table will document for each mine: (1) the acres receiving Phase I, II, and III bond release; (2) the acres disturbed, backfilled, graded, topsoiled and seeded; and (3) the cumulative totals for these reclamation status categories for all years. DOGM will include all mines permitted under the Utah program including active and inactive mines, and mines where DOGM has forfeited performance bonds. With respect to the forfeiture sites, DOGM will indicate the initial bond forfeiture amount, funds expended during the year, cumulative fund expenditures, and remaining funds.

DOGM will compile the table data from the individual mine annual reports, review this information for accuracy, and submit it to OSMRE. DOGM will provide the final Reclamation Status Table to OSMRE in electronic format for inclusion in the Evaluation Year 2020 (EY 2020) Annual Evaluation Report.

2. Maintenance of the Approved Program

In cooperation with OSMRE, DOGM has developed program amendments that will resolve program deficiencies and satisfy any outstanding 30 C.F.R. Part 732 notifications. DOGM has developed other program amendments, unrelated to program deficiencies or outstanding 30 C.F.R. Part 732 notifications that will improve their overall program. OSMRE will process such amendments to ensure that the State’s program is consistent with the Federal program.

3. Grant Financial Administration

OSMRE and DOGM may evaluate the State’s administration of its Federal grant and expenditure of Federal funds to ensure that the funds are being appropriately used in accordance with financial guidelines and generally accepted accounting practices. A programmatic review of Utah’s Fiscal Year 2018 Administration and Enforcement grant closeout summary will be conducted as part of OSMRE’s ongoing grant monitoring and oversight of the Utah program during EY 2020. OSMRE’s oversight of the approved State program is integral to verifying that DOGM is appropriately using Federal grant funds to meet specified program

goals such as permitting, inspection, and enforcement.

4. Topic-Specific Evaluations

Other oversight activities that OSMRE may conduct in a State or on Tribal lands, such as 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, States, and Tribes. No National Priority Review topics have been identified for EY 2020. Due to unfilled staff vacancies and workload constraints, DFB and DOGM chose to forgo conducting topic-specific evaluations during the EY 2020 evaluation period.

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, ensuring reclamation success, and to identify any off-site impacts. Evaluation of the State's effectiveness will be accomplished during OSMRE'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 approximate original contour, land capability, hydrologic reclamation, and contemporaneous reclamation.

To ensure compliance with the approved State program, OSMRE will conduct a minimum number of inspections equal to 25 percent of the total number of inspectable units (IUs). One third of those inspections will be complete oversight inspections. At the beginning of EY 2020, Utah had a total of 29 IUs. During EY 2020, OSMRE will conduct a minimum of three complete oversight inspections and a minimum of five partial oversight inspections. OSMRE and DOGM will jointly select seven of the eight sites to be inspected. OSMRE will coordinate with DOGM 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 given more than two weeks prior to the inspection date.

Per OSMRE Directive REG-8 (2019), independent oversight inspections are permitted when OSMRE determines that such inspections are necessary and appropriate. 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. OSMRE may conduct independent inspections without providing the State an opportunity to participate only when it is determined that such inspections

are necessary. When the State does not accompany OSMRE on an inspection, OSMRE will notify the State of the results prior to completing the inspection report. During EY 2020, the number of oversight inspections will include one independent oversight inspection to be conducted by DFB.

Bond release inspections may be used to evaluate and report on the effectiveness of reclamation success, with special emphasis on final bond release. Oversight bond release inspections can be counted toward achieving the targeted number of IUs to be inspected.

Data collection and analysis will be completed by June 30, 2020, with results available by July 31, 2020.

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

1. Oversight Inspections

OSMRE-DFB will conduct complete and partial inspections to evaluate the general effectiveness of the State's administration of its approved program. Complete inspections shall generally be done by selecting permits for review that have not been inspected by OSMRE in the previous two years. When the funds are available, inspectors may use aerial oversight inspections to evaluate operations.

2. Bond Release Inspections

OSMRE-DFB will evaluate and report on the effectiveness of reclamation success during bond release, with special emphasis on final bond release.

3. Focused Inspections

OSMRE-DFB 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, focused inspections will be performed in areas that, according to DFB, warrant special attention or upon the State's request.

4. Miscellaneous Inspections

In addition, DFB may conduct inspections in accordance with 30 C.F.R. §§ 842.11 and 842.12 with appropriate prior notification to DOGM.

C. DATA AND INFORMATION EXCHANGE

OSMRE-DFB and DOGM agree that the exchange of information is critical to the oversight process. State information is needed by OSMRE to complete day-to-day oversight activities, to maintain an IU list, and to provide data to satisfy OSMRE's oversight reporting requirements.

DOGM agrees to provide OSMRE-DFB the core program information and data that are required for completion of the Annual Evaluation Report and for the OSMRE 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 DOGM staff.

D. PROBLEM RESOLUTION

One main objective of OSMRE's oversight of State programs is to resolve identified problems as expeditiously as possible. OSMRE-DFB and DOGM 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 incomplete Action Plans, will be developed jointly by DOGM and DFB on a case-by-case basis and appended to the Performance Agreement. DFB will report resolved problems and incremental improvements toward resolving problems, as well as any new issues, in the EY 2020 Annual Evaluation Report.

IV. PUBLIC COMMENT AND OUTREACH

OSMRE and DOGM are committed to interacting with citizen, environmental, and industry organizations on a continuing basis. DOGM maintains a mailing list of organizations and individuals who have previously participated in regulatory activities. These groups and individuals will be offered the opportunity 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. DFB and DOGM will post these documents on their respective websites to encourage public participation. In addition, DFB staff will be available to meet with individual citizens or organizations at any time during the Evaluation Year. DOGM will be invited to participate in these meetings and a record of the meetings will be placed in OSMRE's public review file. OSMRE 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

OSMRE is committed to prompt and professional resolution of all citizen complaints. As part of OSMRE's evaluation of DOGM's customer service efforts, DFB will identify all citizen complaints received during the evaluation period as well as the outcome of all ten-day notices sent to DOGM as a result of those complaints. The standards for this evaluation will be the notification requirements identified in the approved Utah program as well as the responsiveness of DOGM to citizen concerns. DFB will process citizen complaints and ten-day notices using the procedures in OSMRE Directive INE-24, as amended, and INE-35.

VI. TECHNICAL OR PROGRAMMATIC ASSISTANCE

OSMRE 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. New 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 OSMRE offices in the disciplines of geology, hydrology, remote sensing, GIS, GPS, and engineering design and software. TIPS also provides access to software, hardware, and several pieces of specialized equipment that are available for use by State personnel. For further information about this equipment, contact a local OSMRE TIPS representative at <http://www.tips.osmre.gov/>. A summary of the courses taken and the assistance provided will be documented in the Annual Evaluation Report for EY 2020.

VII. MAJOR ACCOMPLISHMENTS AND INNOVATIVE STATE ACTIONS

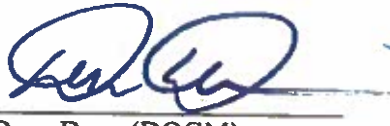
OSMRE will recognize innovative approaches related to managerial efficiency, problem resolution, environmental protection, or program implementation that represent "best practices" deserving recognition as a reporting element. Additionally, DOGM will

identify and report to DFB, on an ongoing basis, any activities that in its judgment deserve recognition. Activities identified by either OSMRE or DOGM will be discussed in the EY 2020 Annual Evaluation Report.

VIII. SIGNATURES

Representing the Utah Department of Natural Resources, Division of Oil, Gas and Mining, and the Office of Surface Mining Reclamation and Enforcement, Denver Field Branch, the following parties agree to the purpose, goals, and anticipated actions proposed in this Regulatory Performance Agreement. These parties may mutually decide to modify this agreement at any time.

Team Coaches:



Dana Dean (DOGM)



Howard Strand (OSMRE-DFB)