



**UTAH REGULATORY  
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 2012  
(July 1, 2011 to June 30, 2012)**

**April 2011**

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## **I. BACKGROUND**

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) encourages States to assume the primary responsibility for regulating mining activities (primacy). The Secretary of the Interior approved the Utah program on January 21, 1981, giving them exclusive jurisdiction over the regulation of surface coal mining and reclamation operations. The Utah Division of Oil, Gas and Mining (DOGGM) administers the permanent regulatory program. DOGM's offices are located in Salt Lake City, Utah. 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.

The WR-DFD and DOGM jointly prepared this agreement for the evaluation of Title V implementation of the Surface Mining Control and Reclamation Act in Utah in evaluation year 2012 (EY 2012, July 1, 2011, through June 30, 2012).

## **II. PROGRAM EVALUATION GOALS**

To measure the State's success in meeting the environmental protection goals of SMCRA, OSM and DOGM 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 Directive REG -8, *Oversight of State and Tribal Regulatory Programs*, dated January 31, 2011, forms the basis for this Agreement.

OSM 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 OSM need to 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 Utah 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 DOGM 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 WR-DFD and the Utah Department of Natural Resources' DOGM formed an Evaluation Team (the Team) to conduct annual evaluations of Utah's Coal Regulatory Program to determine how effective DOGM is in ensuring that coal mine reclamation is successful in preventing offsite impacts and providing service to its customers, and make recommendations for improving the administration, implementation, and maintenance of the Program. The Team structure is comprised of three to four core members each from the WR and DOGM. The Team will at least hold four meetings on a quarterly basis during the evaluation year, or more if required on an as needed basis. The Team cooperatively solicits public participation, selects and conducts joint inspections and evaluation topics, and reports, discusses, and tracks off-site impacts. This evaluation method fosters a shared commitment to the implementation of SMCRA.

#### A. OVERSIGHT REVIEW TOPICS

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.

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 DOGM 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, citizen complaints, and special focus topic evaluations.

- 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. 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 1 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 (3) the cumulative totals for these reclamation status categories for all years. DOGM will identify all mines permitted under the Utah permanent regulatory program including active and inactive mines, and mines where DOGM has forfeited performance bonds. DOGM will provide the final Reclamation Status table to OSM in electronic format for inclusion in the EY 2012 annual evaluation summary report.

c) **Customer Service** – Each evaluation year, OSM is to monitor the effectiveness of customer service provided by DOGM. Areas to be evaluated are DOGM’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 DOGM will evaluate one or more state activities to determine timeliness, accuracy, completeness and appropriateness of DOGM’s action. In addition, the review may address DOGM’s analysis of customer satisfaction. DOGM has developed an internal annual customer satisfaction survey to evaluate performance at the Division and Program level and to foster improved customer service in the future. A synopsis of the results of the survey will be included in the write-up for the annual evaluation summary report.

2. **National Priority Topics.** During EY 2012, no National Priority Topics were selected for oversight review.

3. **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 EY 2012, DFD and DOGM have chosen to evaluate the following topics:

a) **Focused Utah Permitting Review** – OSM will conduct an independent evaluation of DOGM’s technical analysis findings for a yet to be determined portion of the approved Coal Hollow Project (a new surface coal mine located near Alton, Utah) permit to determine compliance with State program rules.

b) **Special Focus Topics.** During EY 2012, OSM and DOGM will jointly conduct the following special studies:

1. Prevention of Off-site Impacts – “Effluent Water Discharge Monitoring and Mitigation.”

2. Reclamation Success – “Protection of Threatened and Endangered Species.”
3. Customer Service – “Applicant/Violator System Maintenance and Determinations.”

## **B. OVERSIGHT INSPECTIONS**

The purpose of the 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 Sample 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 (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. At the beginning of EY 2012, Utah has a total of 36 inspectable units. During EY 2012, OSM will conduct a minimum of three complete oversight inspections and six partial oversight inspections. After taking into consideration state input and any special focus topic evaluations, 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 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. OSM may conduct independent inspections without providing the state an opportunity to participate only when it is determined that such inspections are necessary.

Because of the limited number of inspectable units in Utah, 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 will 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, 2012, with results available by July 31, 2012.

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

1. **Sample Inspections:** DFD 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. 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 inspections where:
  - a) there is potential imminent danger to the public safety and/or imminent harm to the environment;
  - b) there are citizens' complaints filed with the DFD;
  - c) there are bond releases on Federal lands; and,
  - d) partial inspections (as needed to evaluate the effectiveness of the State program in protecting the environment and public from negative off-site impacts).

### C. DATA AND INFORMATION EXCHANGE

DFD and the DOGM 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.

DOGM agrees to provide DFD the core program information and data that is required for completion of the Utah 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 DOGM 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 the 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 uncompleted Action Plans, will be developed jointly by the DOGM 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 the 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/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. DOGM 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. 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 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 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 modify this agreement.


### TEAM MEMBERS:

  
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Christine Belka (WR)

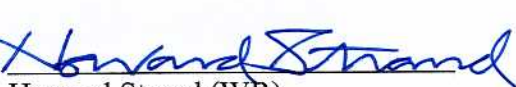
  
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### TEAM COACHES:

  
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