

WEST VIRGINIA OVERSIGHT INSPECTION AGREEMENT
Evaluation Year 2011

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OSM - CHARLES

BACKGROUND

During Evaluation Year 2011 (EY 2011), the Charleston Field Office (CHFO) intends to conduct 380 general oversight inspections to evaluate and assist the West Virginia Department of Environmental Protection (WVDEP) in the administration, implementation and maintenance of the approved West Virginia regulatory program. An additional 100 inspections or field visits may occur under other special oversight or technical assistance projects, including inspections to assess released permits located in toxic seams and also to evaluate diversion ditches around released impoundments. All inspections will be conducted in compliance with guidance provided by the Office of Surface Mining Reclamation and Enforcement (OSM) Directive REG-8 and other applicable OSM guidance.

Each party commits to participation as a cooperative effort intended to identify the strengths and weaknesses in the implementation of the approved program. All activities will be conducted in a spirit of partnership and each agency pledges its assistance and participation in all aspects of the inspections. OSM inspectors will continue to provide State inspectors the opportunity to accompany them during oversight inspections. However, OSM will conduct a limited number of unannounced inspections. Prior to conducting an oversight inspection, WVDEP will allow OSM to check out permit files for administrative review purposes. The permit file(s) may be checked out from the Regional Office or the Inspector Files for a period not to exceed three (3) days. OSM inspectors will rely on electronic permit applications, if available, and scanned documents of existing permit files to conduct unannounced inspections.

As EY 2011 progresses, OSM will continue to evaluate the effectiveness of this oversight inspection process. If necessary, the process may be modified to target other areas. Thus, the total number of inspections conducted may vary according to these modifications or to workload demands and staffing limitations. The terms of this agreement will not affect OSM's ability to conduct other types of inspections or to evaluate other performance standards when determined necessary by OSM to fulfill its responsibilities under the Surface Mining Control and Reclamation Act.

TYPE AND NUMBER OF INSPECTIONS

The following randomly selected oversight inspections will be conducted during Evaluation Year 2011:

- 150 Comprehensive Inspections - Stratified selection criteria.
- 200 Partial Inspections - Hydrologic balance, backfilling and grading, and blasting performance standards.
- 30 Phase II or Phase III Bond Release Inspections - Standards as necessary to evaluate the effectiveness of West Virginia's bond release program. Special emphasis will be placed on evaluating PMLU, particularly with regard to agricultural uses.

A total of 380 random oversight inspections will be conducted.

INSPECTION SELECTION AND PROCEDURES

CHFO will conduct comprehensive, partial, and bond release inspections to evaluate the general effectiveness of the State's administration of its approved surface mining regulatory program and to facilitate special studies of certain aspects of that program. Comprehensive inspections will be done randomly on the basis of stratified selection criteria. In addition to these evaluation parameters, partial inspections will include the evaluation of performance standards related to backfilling and grading, hydrologic balance, and blasting. During random sample inspections, special emphasis will be given to the following:

- Sedimentation and Stream Scouring – OSM will monitor sediment structures to ensure that they are functioning properly, and they are not producing a secondary impact by concentrating flows, thereby enlarging and scouring streambeds and banks.
- Topsoil/Topsoil Substitutes – OSM will monitor topsoil substitutes to ensure that their approval and use is in accordance with the approved program. Special emphasis will be given to topsoil handling and redistribution, especially with regard to sites that have an approved postmining land use of forestry and commercial forestry.
- Storm water runoff analyses (SWROA) – OSM will monitor mining operations to ensure that the features used to develop SWROA are being completed as part of the mining operation.
- Contemporaneous Reclamation – OSM will monitor mining and reclamation plans to ensure that active mining sites are being reclaimed in a contemporaneous manner.
- Erosion Protection Zone – OSM will monitor surface mining operations to ensure that valley fills with erosion protection zones are being constructed and reclaimed in accordance with the approved State program. Particular attention will be given to their functionality during and after storm events.
- Outcrop Barriers – OSM will monitor mine-sites to ensure, where required, that either natural outcrop barriers are left in place or that outcrop barriers are constructed and certified, as required.
- Sediment Structures- OSM will review the mine plan against field conditions to ensure any changes are appropriately considered in the structure sizing and certifications.
- Refuse Impoundments – OSM will select a sample of refuse impoundment permits for inspection. These inspections will be conducted by an OSM inspector and an engineer.
- Fill Construction- OSM will review fills carefully for underdrain formation, drainage control and volume and toe location according to the mine plan.

- Violations deferred to the State - OSM will monitor actions taken on violations that are deferred to the State on joint oversight inspections. An on-the-ground follow-up will be conducted when necessary to determine if remedial measures have been completed to abate the violation.
- Highwall Miner Operations – OSM will pay special attention on these sites to make sure that accurate spoil calculations are included in the permit and to make sure that all spoil near the operation is included in the permit area and used to eliminate the highwall to the maximum extent technically practical.
- Slurry Impoundments – OSM will conduct special inspections of slurry impoundments to assess the breakthrough potential of coal slurry into abandoned underground workings.
- Immediate Stream Protection Measures – Pursuant to OSM’s announcement of November 18, 2009, OSM will immediately begin implementing measures to provide for increased protection of streams within the State.
- Effective December 1, 2010, OSM will begin conducting approximate original contour spot checks of engineers backfilling and grading certifications.

All comprehensive, partial, and bond release oversight inspections will include an acid mine drainage evaluation. Any partial oversight inspection where a bond release has occurred since the time of sample selection will include a bond release evaluation.

Comprehensive Inspections (Inspection Code OC)

The selection criteria for the 150 randomly selected comprehensive inspections will be the following:

1. Permits which consist of at least 200 acres.
2. Haulroad permits are not eligible for selection.
3. Permits which have not had an OSM random inspection since July 1, 2009.

Each of these inspections will consist of a review of all performance standard categories and permit requirements that pertain to a particular mine site during the time an inspection is conducted. The inspections will be distributed equally throughout EY 2011, except for periods of heavy snow cover when no comprehensive inspections will be scheduled. Eliminating comprehensive inspections during these periods will assure that all on- the- ground conditions can be adequately reviewed during these inspections.

If a permit, which is part of a larger complex, is selected for inspection, each permit, which has not received a Phase III bond release, contained within the complex, will be inspected and a Mine Site Evaluation Report (MSER) will be prepared for each permit.

Partial Inspections - Hydrologic Balance/Backfilling and Grading /Blasting (Inspection Code OP)

Partial inspections will be conducted on 200 permits randomly selected from currently permitted sites and will be distributed equally throughout EY 2011. The criteria for the selections are:

1. Surface, underground, refuse disposal, tippie or preparation plant permits.
2. Haulroad permits are not eligible for selection.
3. Permit has not received a comprehensive or partial OSM random sample inspection.

The highest frequency of violations observed by OSM during previous oversight inspections involved the hydrologic balance, backfilling and grading, and blasting performance standards. For EY 2011, partial inspections will concentrate on these areas. Specifically, the hydrologic balance categories (B.1. - 11), the backfilling and grading categories (D.1. - 7), and the use of explosives categories (G.1. - 5) on the OSM MSER will be reviewed during these inspections. For those sites where excess spoil or coal refuse disposal occurs, MSER categories E.2. and F.1., respectively, will also be reviewed.

Bond Release Inspections (Inspection Code OBRxx)

OSM will conduct an evaluation of 30 randomly selected sites requesting a Phase II or Phase III release to ensure that mine sites are properly reclaimed and capable of supporting the postmining land use (PMLU). Special emphasis will be placed on evaluating the PMLU, particularly with regard to agricultural uses. These sites will be reviewed and the OSM inspection report will be provided to the State within 30 days of notification. The sites to be evaluated will be selected at various times throughout the evaluation period.

OSM will also compare all bond release notifications to those sites with known water quality issues. An inspection will be conducted on any site requesting a Phase I, II, or III bond release if it has been identified as having water quality issues.

All bond release evaluations will be coded OBRxx for the type of inspection on the MSER.

SIGNATURES:

Signed in agreement by the parties this 31 day of Jan, 2010

For the West Virginia Department
of Environmental Protection



Thomas Clarke, Director
Division of Mining and Reclamation

For the Office of Surface Mining
Reclamation and Enforcement



Roger W. Calhoun, Director
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