

**WEST VIRGINIA
REGULATORY PERFORMANCE AGREEMENT
EVALUATION YEARS 2012 AND 2013**

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**West Virginia Department of Environmental Protection
Division of Mining and Reclamation**

and

**Office of Surface Mining Reclamation and Enforcement
Charleston Field Office**

**Final
June 17, 2011**

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BACKGROUND

On January 21, 1981, the Secretary of the U. S. Department of the Interior approved West Virginia's permanent regulatory program under the provisions of the Federal Surface Mining Control and Reclamation Act (SMCRA). With that approval, the State of West Virginia assumed primary authority for regulating surface mining activities within the State. The West Virginia Department of Environmental Protection (WVDEP) through the Division of Mining and Reclamation (DMR) administers the permanent regulatory program. DMR has three regional offices in Philippi, Logan, and Oak Hill, and a satellite office in Welch. As provided by SMCRA, following program approval, the Office of Surface Mining Reclamation and Enforcement (OSM) is responsible for overseeing the State's administration of its approved program. The Charleston Field Office (CHFO), under the Appalachian Regional Office, carries out this responsibility.

OVERVIEW

To measure the State's success in meeting the environmental protection goals of SMCRA, OSM and WVDEP have cooperatively developed this Regulatory Performance Agreement (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, was a consideration in forming the basis for this agreement. OSM is also committed to providing the WVDEP technical assistance to resolve complex site-specific or programmatic issues. The oversight review and technical assistance efforts may blend in many instances where WVDEP and OSM are working together to resolve program issues. This agreement provides flexibility for these processes to be intermingled during the development of specific work plans and subsequent evaluation reports.

In addition, this Agreement will consider any changes resulting from the Memorandum of Understanding (MOU) that was signed by the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (ACE), and the U.S. Department of Interior on June 11, 2009, and will be amended accordingly to account for those changes. Through the MOU, these agencies announced an interagency action plan designed to significantly reduce the harmful environmental consequences of Appalachian surface coal mining operations, while ensuring that future mining remains consistent with Federal law. Under the MOU, OSM announced a series of oversight improvement actions that are intended to strengthen how we evaluate the performance of State agencies in regulating coal mining and ensure that measures to correct any deficiencies are taken in a timely manner.

Since the oversight review and technical assistance processes are continuous and not limited to one year, this Agreement contains the basic framework for oversight/technical assistance activities in West Virginia for the periods of July 1, 2011, to June 30, 2012, Evaluation Year 2012 (EY 2012) and July 1, 2012, to June 30, 2013, Evaluation Year 2013 (EY 2013). Both parties may amend this Agreement at any time to include additional review topics or technical assistance requests during either 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 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 be moved into the subsequent period for conclusion. Workload demands and staffing limitations of either party may affect the completion of the actions in this Agreement.

OVERSIGHT INSPECTIONS

The *Oversight Inspection Agreement* described in this document at Appendix A will govern the selection of sites for oversight inspections.

OVERSIGHT REVIEW/TECHNICAL ASSISTANCE

Staff from both WVDEP and OSM will plan, implement, and document all oversight evaluations, including technical assistance initiatives. State participation will minimize misinterpretations and provide for continual feedback. Review teams will conduct evaluations throughout the evaluation year. They will provide draft detailed evaluation reports for topics included in the Annual Evaluation Report to WVDEP for final comment no later than June 30 of each evaluation period. This will enable the State to review the reports and provide final comments to the CHFO before the summaries appear in the Annual Evaluation Report.

Each agency will assign at least one staff member to jointly lead the evaluation of each selected review topic. 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.

Review teams will prepare detailed work plans, as described in Appendix B, for each evaluation and technical assistance initiative in this Agreement. As the agencies develop and approve the work plans, they will be maintained in the public review file at CHFO and on the CHFO webpage in accordance with OSM Directive INF-1. Team members will develop detailed work plans at appropriate times throughout each evaluation period. These evaluations may require more than one year to be completed.

The EY 2012 and EY 2013 oversight review topics and technical assistance initiatives have the following priorities. Priority one (1) topics will start and normally finish during the applicable year. Priority two (2) topics will start as staff becomes available after they finish Priority 1 topics. Topics not started or completed during the evaluation year may be deferred to the subsequent year. Both parties to this Agreement should re-evaluate any uncompleted oversight review topics no later than three months after the close of the review period. If necessary, priority rankings may then be adjusted and/or new review topics may be added.

Priority 1 Oversight Review Topics

The Priority 1 oversight review topics, including technical assistance initiatives, are:

Program Funding – OSM will monitor West Virginia's progress on securing additional funding for its permanent regulatory program.

Impoundment Breakthrough Potential – OSM will continue its review of the adequacy of the administration of WVDEP's requirements to minimize the potential for coal slurry impoundments to breakthrough into underground works.

Customer Service – Each evaluation year, OSM is to monitor WVDEP’s response to citizen complaints and requests for services and assistance. Areas to be evaluated include, but are not limited to, permitting actions, citizen complaints, bond releases, lands unsuitable petitions, administrative judicial review, and ownership and control determinations. For the next two oversight performance periods, the following program areas or combinations thereof will be jointly evaluated by OSM and WVDEP:

For EY 2012 – Public availability and adequacy of Article III/West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) quarterly water monitoring reports.

For EY 2013 – Public availability and adequacy of Emergency Warning Plans for impoundments within the State.

Incidental Boundary Revisions (IBR) – Prior to developing an action plan to address issues raised during a previous customer service review in EY 2010 regarding IBRs, the WVDEP and OSM have agreed to complete the processing of a program amendment to determine what issues may remain.

Stream Water Loss – OSM and WVDEP will conduct a follow up assessment of underground mining impacts on surface waters in the State. Stream loss is being considered in the technical assistance effort for the Underground Mine Monitoring Guidance development and may be subject to further oversight.

Hydrologic Health – OSM and WVDEP will conduct stream assessments below mining areas to determine if any changes in stream water quality are the result of mining. If trends are identified, review of State hydrologic protection procedures will be assessed.

Offsite Impacts – OSM will continue to use WVDEP inspection data and observations from random sample inspections to evaluate offsite impacts associated with permitted and bond forfeiture sites. In an effort to reduce offsite impacts, WVDEP will notify OSM of all significant events where off-site damages result or public interest results from unforeseen situations at a mine site. The investigation and subsequent report may be conducted as a joint review or independently by either agency.

Slurry Underground Injection Control (UIC) Study – OSM and WVDEP will follow-up on recommendations from the 2009 OSM/WVDEP evaluation of the underground injection of slurry in West Virginia and may consider the effects of sludge disposal within the State.

Flyrock, Blasting Related Damage, and Blaster Certification – OSM and WVDEP will follow up on the State’s efforts to implement recommendations included in the EY 2007/2008 oversight evaluations concerning flyrock and the State’s blasting damage claims procedures. This review will also evaluate the State’s implementation of its blaster certification program. The State made changes in its permanent regulatory program in attempt to address some of the issues raised in the EY 2007/2008 evaluations. This program amendment is pending OSM approval.

Staffing – OSM and WVDEP will evaluate the adequacy of State regulatory staffing and coordinate efforts to ensure that vacant positions are filled in a timely manner.

Water Treatment Inventories – OSM and WVDEP will continue to evaluate the accuracy of State inventories for both active and forfeited mine sites with regard to water treatment efforts and costs.

Oversight Inspections – OSM will conduct oversight inspections, as described in Appendix A, to ensure compliance with the approved State program.

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.

Maintenance of the Approved Program – OSM will provide continuing assistance to WVDEP to ensure that the State's approved program is consistent with the Federal Program.

Special Reclamation Program – OSM will work with WVDEP to ensure that field activities are counted and address inspection issues where appropriate.

Special Reclamation Fund – OSM will monitor the State's progress in eliminating the backlog of bond forfeiture reclamation sites, including water treatment, and actions by the Special Reclamation Advisory Council in addressing the continued financial adequacy of the Special Reclamation Fund and the Water Treatment Trust Fund.

Reclamation Success/Stream Mitigation – OSM and WVDEP will review operator and permitting efforts to avoid impacting stream channels.

Acid Mine Drainage – OSM and WVDEP will continue efforts to evaluate hydrologic balance issues related to Acid Mine Drainage (AMD) as follows:

- OSM will follow up on actions resulting from the AMD report regarding expansions of underground mining operations;
- OSM and WVDEP will review coal refuse disposal sites to determine whether AMD is being generated by those sites, and if so, why; and,
- OSM and WVDEP will evaluate efforts to prevent AMD generation by mixing and or capping toxic materials with alkaline materials.

Review of OSM Funded Models/Data (e.g. Trend Stations, Watershed Characterization Modeling System, etc.) – OSM and WVDEP will review the State's use of models and data to determine the use and benefit of such models and data in managing the State's administration of its approved program.

Impoundment Certification and Other Required Monitoring/Testing Documentation – OSM and WVDEP will continue to evaluate the appropriateness of documentation that is required to be collected/submitted by permittees, such as compaction data for impoundment embankments and coal refuse disposal areas.

Third Party Reclamation Responsibility – OSM and WVDEP will continue to evaluate the reclamation of existing bond forfeiture sites by third parties to ensure that monitoring procedures are fully developed and reclamation is completed.

Review of Conditions at Reclaimed/Capped/Non-Impounding Mine Safety and Health Administration (MSHA)-Size Coal Slurry Impoundments - OSM and WVDEP will review conditions at reclaimed/capped/non-impounding coal slurry impoundments to determine if any surface instability or other post reclamation conditions exist that pose a threat to the long-term integrity of the structures. OSM will seek MSHA involvement in this project.

Special Use Approvals – WVDEP utilizes a State approval form (MR-12) to leave structures such as ponds, impoundments, roads, etc., on a mine site after bond release if requested by the landowner. OSM and WVDEP will review the adequacy and safety of some of these structures to determine that they have not become environmental or safety risks after bond release.

Hydrologic Reclamation Success – OSM and WVDEP will evaluate water monitoring data to determine if the hydrologic reclamation plan was successful. To the extent possible, water monitoring data will be used to measure changes in the hydrologic regime.

Show Cause Procedures – OSM and WVDEP will evaluate the State's implementation of its show cause procedures. This study will attempt to determine the effectiveness of the State's show cause efforts in abating patterns of violations. The team will assess the remedial measures required by the State and steps taken by operators to ensure that the violations which make up such patterns are permanently abated and do not reoccur. In addition to the State's show cause procedures, other alternative enforcement actions provided for under the approved State program may be evaluated to assess their effectiveness in accomplishing similar objectives.

Water Quality Violations – OSM will review a sample of permits where WVDEP has identified water quality exceedences under the State's National Pollutant Discharge Elimination System (NPDES) Program and determine what, if any, measures are taken under the State's surface mining permit to address those exceedences. Through this study, OSM and WVDEP will compare self-reported exceedences to any State issued enforcement actions for water quality violations and determine how self-reported exceedences are addressed under the approved State program. In other words, the team will attempt to determine if the operator did anything on-the-ground under the WVSCMRA permit to permanently abate the self-reported exceedences or the WVSCMRA related water quality violations. This may include changing the design or enlarging the capacity of a sediment control structure; requiring more frequent sediment removal; performing more contemporaneous reclamation; installing a more effective water treatment system; providing for temporary vegetative cover; revising the toxic handling plan; etc. This study will not include an OSM review as to the adequacy of the NPDES permitting requirements or the NPDES enforcement actions, except as necessary to understand their relationship to actions in the SMCRA permit.

Expired Permits – OSM and WVDEP will review conditions under which the WVDEP allows mining under expired permits.

Technical Assistance

Storm Water Run-Off Analysis (SWROA) – In follow-up to past evaluations, OSM will continue to work with WVDEP to achieve improvements in the SWORA process and its implementation.

Remote Sensing– OSM will continue its mine site evaluation projects using remote sensing techniques and drones.

Alternative Enforcement Action – OSM and WVDEP will work together to identify and pursue potential candidates with permit revocations.

Interagency Coordination – OSM will assist WVDEP where possible in facilitating meetings to establish a standard practice to ensure that the approval/administration of State Article 3 permits will be coordinated with reviews and authorizations required under the Clean Water Act(CWA). OSM will work closely with the WVDEP, ACE and EPA to coordinate these permitting processes and ensure effective and coordinated compliance with provisions of both SMCRA and the CWA.

Underground Mine Monitoring – OSM will assist WVDEP in developing a hydrologic monitoring guidance manual for underground mining operations and conducting subsequent training and workshops. This guidance manual will be developed to promote consistency and efficiency in the preparation and review of the hydrologic portions of WVSCMRA, NPDES and UIC permits applications. The utilization of data from surface and ground water monitoring sites will enable permit reviewers to assess pre-mining hydrologic conditions, determine probable hydrologic consequences of proposed mining on hydrologic systems, assess potential stream loss, evaluate water supply loss/contamination, estimate postmining mine pool elevations and breakout potential, and prepare a cumulative hydrologic impact assessment of the proposed mining operation.

Trend Station Analysis – OSM will work closely with WVDEP in analyzing and developing trend station data for various types of mining and reclamation activities within various State watersheds.

Underground Mine Pool Monitoring – OSM will continue to work with WVDEP and other Federal agencies to evaluate the extent and likely impact of underground mine pools. Ongoing projects include:

- **North Branch of the Potomac River Mine Pool Study** – At the request of the Maryland Bureau of Mines, OSM is attempting to characterize the existing hydrologic conditions and potential future trends associated with mine pools with the potential to impact the North Branch of the Potomac from its headwaters to the town of Gorman. West Virginia mines may be relevant to this study and WVDEP is a cooperating partner in the study. OSM will coordinate with and provide information to WVDEP.
- **Fairmont Mine Pool Monitoring** – Since the late 1990's, OSM has conducted monitoring of the water held in mine voids created by extensive underground mining in the Fairmont, West Virginia area. During the term of this agreement, OSM will continue quarterly monitoring of water levels at 12 locations in ten mines within the

pool. In addition, automatic water level recordings will be conducted at one-hour intervals at three sites. The data collected through the monitoring will be provided to WVDEP and Consolidation Coal Company.

- **Mine Pool Chemistry Pilot Project** – OSM, in cooperation with WVDEP, will conduct a pilot scale study of recharge water quality effects on mine-pool chemistry. The objective is to determine if recharge water quality can be used to estimate whether a mine-pool is likely to be alkaline or acidic. Aquifers overlying Pittsburgh and Upper Freeport seam underground mines and corresponding mine-pools will be studied. If recharge water is shown to be a useful predictor, the study may be expanded to other coalbeds. A second phase pilot study will examine how to interpret Acid Base Accounting data for mine-pool water quality. The study, “Monitoring of Pittsburgh Seam Mine Water and Hydrogeology in Northern West Virginia” (Project HRC-5), was completed in June 2008.

Endangered Species Act Protocols – OSM will continue to provide technical assistance to WVDEP and the Fish and Wildlife Service on species specific protocols.

Revegetation – OSM will continue to provide advice and technical assistance to WVDEP in the adoption and implementation of the State’s revegetation success standards and its ground cover and productivity measurement techniques.

Priority 2 Oversight Review Topics

The following identifies Priority 2 oversight review topics. These topics will be reviewed for potential initiation as time allows after Priority 1 evaluations are completed.

Fill Foundation Investigations – OSM and WVDEP will review permit applications and conduct necessary field reviews to ensure that sufficient foundation investigations, as well as laboratory analyses, are being conducted to determine design requirements for foundation stability, including the consideration of underground mine workings on fill stability.

Sedimentation Control Effectiveness – OSM and WVDEP will evaluate the effectiveness of standards for determining storage volume and the methods used for estimating sediment production and, if applicable, to ensure that such structures have sufficient capacity in the event of blackwater spills.

Underground Injection Other than Coal Slurry – OSM and WVDEP will conduct a review of permits that inject water and other non-coal slurry materials into underground mines. The review will focus on provisions of the regulations that allow these injections and assess their hydrologic impacts.

Temporary Cessation – OSM and WVDEP will evaluate mine sites in temporary cessation to determine compliance with the approved program, including the consistency and validity of temporary cessation approvals, the adequacy of the reclamation bonds, and the resources needed to manage these sites.

Applicant Violator System – OSM and WVDEP will evaluate how the State considers violators in permitting decisions

Alternative Enforcement Action – OSM and WVDEP will conduct a review to consider how compliance with alternative enforcement is achieved. OSM will work with the State in identifying potential alternative enforcement candidates

Incidental Coal Removal – OSM and WVDEP will conduct an evaluation of incidental coal removal/constructions permits to ensure compliance with the approved program.

Inventory of Large Impoundments – OSM and WVDEP will update the State inventory of historical and active MSHA-size impoundments.

Cumulative Hydrologic Impact Assessment (CHIA) Procedures – OSM and WVDEP will review previous CHIA studies and litigation to determine adequacy of the State's CHIA process.

Experimental Practices – OSM and WVDEP will conduct a review of past Experimental Practices approved in the State to determine their status and if they met their stated purposes.

Customer Service – OSM and WVDEP will review the technical completeness of the Article III Permit Application that is available for public review.

Notice of Violations – OSM and WVDEP will evaluate the length of time it takes to abate violations involving consent agreements.

Reclamation Success (Topsoil) – OSM and WVDEP will evaluate topsoil substitute data to determine if it is the best available in the area to support the vegetation and achieve the approved postmining land use.

Reclamation Success (Postmining Land Use) – OSM and WVDEP will evaluate reclaimed mountaintop removal or steep slope mining operations with AOC variances to determine how much of the reclaimed acreage is being actively managed for the intended postmining land use before, during, and after bond release.

Bond Forfeiture Reclamation, Including Water Treatment – OSM and WVDEP will conduct a follow-up review to determine if the agreed to changes regarding tree planting have been implemented. The review will also evaluate water treatment at bond forfeited sites and obtain information on the associated treatment costs.

Surface Water Monitoring – OSM and WVDEP will evaluate baseline and water monitoring points to determine if the number and locations of surface water monitoring sites are adequate, that the quarterly water monitoring results are being recorded and filed properly, and baseline and water monitoring data is being utilized by the inspector in assessing changes in the hydrologic regime.

Applicability of New Requirements – OSM and WVDEP will evaluate the State’s application of new program requirements to new and existing surface mining reclamation operations at the time of mid-term review, permit approval, permit amendment, significant permit revision, or permit renewal.

Conflict of Interest – OSM and WVDEP will review the conflict of interest procedures and statement filings for the various WVDEP mining boards, including any assigned staff.

WORK PLANS

Team members will complete Detailed Oversight Work Plans, as described in Appendix B, for each Priority 1 oversight or technical assistance topic identified above before it is initiated. Teams are encouraged to schedule work plan completion dates dictated by the work effort rather than by the evaluation year. Review teams will develop detailed work plans for Priority 2 topics after the Priority 1 topics are finished. Both parties will approve the detailed work plans. CHFO will maintain the approved work plans in the public review file and on the CHFO webpage, as mentioned above.

PROBLEM RESOLUTION

One of the main objectives of OSM’s oversight of State programs is to resolve identified problems as expeditiously as possible. CHFO and WVDEP will focus resources on resolving any problems that are identified during the oversight reviews. Issues identified will be resolved through action plans. An action plan will be developed by CHFO in accordance with OSM Directive REG-23 that includes a detailed schedule of measures to be taken by CHFO to resolve any regulatory program problem that may be identified during oversight of the State’s regulatory program. The regulatory program problem may relate to the State’s failure to properly implement or administer its approved permanent regulatory program or to adopt any required program amendment. However, selected issues that do not result in regulatory program problems may require modified procedures to ensure program enhancements and prompt resolution. These procedures will be developed jointly by WVDEP and CHFO on a case-by-case basis. CHFO will report actions plans, resolved problems, program enhancements, and incremental improvements toward resolving problems, as well as any new issues, in the Annual Evaluation Report.

INFORMATION EXCHANGE

CHFO and WVDEP 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 & Enforcement Tracking System’s inspectable units list, and to provide data to satisfy OSM’s oversight reporting requirements. The CHFO staff has been granted access to WVDEP’s Environmental Resources Information System (ERIS) through OSM’s Wide Area Network. ERIS provides OSM office locations in West Virginia direct access to State permitting, bonding, inspection, and enforcement information. The use of this system has eliminated much of the document exchanges which were necessary in the past. In addition, CHFO has been granted access to State electronic permitting documents and data rights to download information from ERIS on an as needed basis.

Other information may be required from data systems maintained by WVDEP staff, but not incorporated into ERIS. Detailed Oversight Work Plans for each individual oversight review topic will identify this data and the method to provide it.

In order for the CHFO to comply with the Government Performance and Results Act (GPRA), the CHFO reports data on: (1) the number of active sites free of off-site impacts; (2) the number of acres released by Phase III release of Performance Bonds; and (3) the number of acres released by Phase I & II release of Performance Bonds. To obtain this data, the CHFO relies on data from ERIS. To assist the CHFO in verification of data, specifically data obtained from ERIS, for GPRA purposes the DMR has established: (1) data entry procedures to ensure data is properly and accurately entered by skilled/trained staff and (2) standard data security and integrity protocols and procedures to ensure that computer malfunctions, natural disasters or other actions that may occur do not affect collected data.

Both CHFO and WVDEP agree to cooperatively develop adequate information and assurances to ensure proper evaluations for measuring and reporting the results of bond releases. Both parties will develop these from guidelines provided in REG-8, Appendix 1.

EXCHANGE OF DOCUMENTS

While access to ERIS has eliminated the need for many of the documents exchanged in the past, certain documents still must be routinely exchanged. Both parties will exchange the documents identified in Appendix C, Exchange of Documents, as specified or as they are finished. WVDEP will provide all registered ERIS users access to the system.

ANNUAL EVALUATION REPORT TABLES

WVDEP agrees to provide State data to CHFO to complete Table 2, Inspectable Units; Table 3, Special Categories of Mining; Table 4, State Permitting Activity; Table 6, Surface Coal Mining and Reclamation Activity; Table 7, State Bond Forfeiture Activity; and Table 11, State Enforcement Activity. Formats for the Tables and the historical trends are contained in OSM Oversight Directive REG-8. WVDEP will provide the data to CHFO from ERIS at the end of each evaluation period.

Table 1, Coal Production; Table 5, Off-Site Impacts; Table 8, West Virginia Staffing; Table 9, Funds Granted to West Virginia by OSM; Table 10, State Inspection Activity; and Table 12, Lands Unsuitable Activity will be prepared by CHFO using data from ERIS and other State data. Table 1 will be completed using OSM fee compliance data. Table 5 will be completed with data from WVDEP's ERIS, civil penalty, and bond forfeiture databases. A detailed description of the method used to develop the data for Table 5 can be found in the regulatory program Detailed Oversight Work Plan for Off-Site Damage. Table 13, OSM Oversight Activity, will be prepared by OSM using the OSM Inspection and Enforcement System, and Table 14, Status of Action Plans, will be completed by OSM based on oversight reports and actions plans that will be developed by OSM in cooperation with WVDEP.

PUBLIC OUTREACH

OSM and WVDEP are committed to interacting with citizen, environmental, and industry organizations on a continuing basis. CHFO and WVDEP staffs are available to meet with individual citizens or organizations at any time during the evaluation year. Both agencies encourage groups to request and schedule meetings related to specific oversight issues. WVDEP will be invited to participate in these meetings and a record of the meetings will be placed in OSM's public review file.

In addition, CHFO maintains a mailing list of organizations and individuals who have previously participated in regulatory activities. These groups and individuals are 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. A notice of availability of the Annual Evaluation Report will be provided to each individual and organization on the mailing list upon finalization of the report.

The Annual Evaluation Report, detailed reports for each completed oversight topic, and this biannual Performance Agreement, along with meeting minutes, etc., will be posted on the CHFO website upon completion to further encourage public participation. Other opportunities for public outreach will be pursued throughout the evaluation year, as appropriate.

INNOVATIVE STATE ACTIONS

REG-8 provides for recognition of innovative approaches related to managerial efficiency, problem resolution, environmental protection, and program implementation. To identify these accomplishments, each Detailed Oversight Work Plan will incorporate provisions to highlight activities that would qualify as innovative approaches. Additionally, WVDEP will identify and report to CHFO, on an ongoing basis, any activities that in its judgment deserve special recognition. Activities identified by either OSM or WVDEP will be discussed in the Annual Evaluation Report.

CITIZEN COMPLAINTS

CHFO will process citizen complaints using the procedures set forth in OSM Directive INE-24, as amended.

SIGNATURES

Signed in agreement by both parties this 29th day of June, 2011.

For the West Virginia Department
of Environmental Protection

For the Office of Surface Mining
Reclamation and Enforcement



Thomas L. Clarke, Director
Division of Mining and Reclamation



Roger W. Calhoun, Director
Charleston Field Office

APPENDIX A

OVERSIGHT INSPECTION AGREEMENT

WEST VIRGINIA OVERSIGHT INSPECTION AGREEMENT Evaluation Year 2012

BACKGROUND

During Evaluation Year 2012 (EY 2012), 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. CHFO plans to conduct an on-the-ground review of an undetermined number of prospect approvals to evaluate environmental conditions. Additional inspections or field visits may occur under other special oversight or technical assistance projects. 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 2012 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 OSMs 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 EY 2012:

- 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 postmining land use (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.
- SWROA Evaluation – OSM will conduct inspections as soon as possible on sites where precipitation exceeds certain pre-set levels.
- 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.
- Stream Protection Measures – Pursuant to OSM’s announcement of November 18, 2009, OSM will continue implementing measures to provide for increased protection of streams within the State.
- OSM will conduct 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, 2010.

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 2012.

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 2012. 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. Permits which consist of less than 200 acres.

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 2012, 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 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 29th day of June, 2011

For the West Virginia Department
of Environmental Protection

For the Office of Surface Mining
Reclamation and Enforcement



Thomas L. Clarke, Director
Division of Mining and Reclamation



Roger W. Calhoun, Director
Charleston Field Office

APPENDIX B

DETAILED OVERSIGHT WORK PLANS

Individual detailed oversight work plans will be prepared using the following format. Each work plan will be maintained in a public review file at CHFO upon execution.

**WEST VIRGINIA REGULATORY PROGRAM
Oversight Work Plan
Evaluation Year**

TOPIC:

EVALUATION TEAM: WVDEP:

OSM:

PURPOSE OF THE REVIEW:

STATUTORY/REGULATORY AUTHORITY:

POPULATION SIZE:

SAMPLE SIZE:

REVIEW METHODOLOGY (DESCRIBE REVIEW APPROACH, PROCEDURES, PLANS, ETC.):

ON-THE-GROUND IMPACTS/RESULTS:

PUBLIC OUTREACH:

OTHER ASSISTANCE NEEDED:

EVALUATION FORM(S) TO BE PREPARED TO CONDUCT REVIEW:

DATA NEEDED FROM WVDEP (DATA FILES AND SPECIFIC FIELD NAMES, FILE ACCESS, PERMIT ACCESS, GIS DATA, ETC.):

ESTIMATED HOURS:	WVDEP	OSM
WORKPLAN DEVELOPMENT		
REVIEW		
REPORT PREPARATION		

DETAILED TIMEFRAMES AND MILESTONES OF THE REVIEW:

PROJECTED COMPLETION DATE:

CONCURRENCES:

Thomas L. Clarke, Director
Division of Mining and Reclamation
West Virginia Department of
Environmental Protection

DATE

Roger W. Calhoun, Director
Charleston Field Office
Office of Surface Mining
Reclamation and Enforcement

DATE

APPENDIX C

EXCHANGE OF DOCUMENTS

WVDEP Notifications to CHFO

WVDEP will provide the following documents to CHFO:

- Provide a list of existing permits continuing to be allowed to end dump
- Administrative/Judicial Review Decisions;
- Notification of Bond Release Applications Upon Receipt;
- Bond Forfeiture Land and Water Quality Reclamation Reports;
- AMD Inventory of Active and Forfeited Sites;
- Notification of Lands Unsuitable for Mining Petitions;
- Listing of Show Cause Actions;
- Policy and Procedural Documents (All directives, policy memoranda, handbooks, etc.);
- Proposed Legislation/Regulations as they are developed;
- Final Legislation/Regulations;
- State Court Decisions Pertaining to the Approved Program;
- WVDEP's monthly newsletter *in-depth*;
- Reports of the Special Reclamation Fund Advisory Council;
- Reports of the Permitting Quality Control Panel;
- Quarterly Off-Site Impact reports;
- Bond Release Application Issued Report;
- Information related to GPRA and REG 8 reporting; and
- Notification of all significant events where off-site damages result or public interest result from unforeseen situations at a mine site.

CHFO Notifications to WVDEP

CHFO will provide the following documents to WVDEP:

- Annual Evaluation Report - The draft West Virginia Annual Evaluation

Report will be prepared and forwarded to the State for review and comment within 30 days of the close of each annual evaluation period. The State will have a minimum of 15 days to provide comments to CHFO;

- Copies of individual oversight evaluation studies that are summarized in the Annual Evaluation Report as they are completed;
- Federal Court Decisions Relating to Challenges to Federal Law or Regulations;
- Federal Inspection Reports;
- Federal Enforcement Actions;
- Federal Statutory or Regulatory Revisions;
- IBLA Decisions;
- Policy Documents, including all directives, policy memoranda, handbooks, etc.;
- Technical Assistance Reports as they are completed;
- *Federal Register* Notices regarding West Virginia program amendment decisions and changes in Federal Rules; and
- Notification and copies of draft or final documents resulting from the MOU.