

PERFORMANCE AGREEMENT

Evaluation Year 2001

Between

The Office of Surface Mining
Indianapolis Field Office

And

The Indiana Department of Natural Resources
Division of Reclamation

October 2000

(DRAFT)

Performance Agreement Between OSM and IDOR EY 2001

Part I. Purpose

Background: The purpose of this Performance Agreement is to establish a mutually acceptable scope of work for oversight of the approved program administered by Indiana, to provide programmatic and technical support and assistance to the State. The purpose of this effort is to assure that individual States are appropriately addressing SMCRA requirements as they develop and administer their laws, regulations and programs. On an ongoing basis, these processes allow timely identification and resolution of program issues and serve to keep the State programs in alignment with SMCRA requirements. These efforts also serve to identify areas where the Office of Surface Mining (OSM) needs to clarify its expectations of how SMCRA requirements are to be implemented by the States.

Objective: The objectives of this Performance Agreement are to foster mutual respect in carrying out the requirements of SMCRA, assure that oversight topics reflect OSM/State priorities, use on the ground results in protecting the environment and public health and safety, provide timely follow through on areas identified as needing program enhancements, encourage State self evaluation of program performance and provide for State review of oversight or sub-element reports.

Part II. Annual Evaluation Plans

Background: OSM's Directive REG-8 establishes the framework for carrying out our annual State program oversight. The directive provides flexibility to Field Offices in designing an annual oversight plan consisting of specific program reviews and areas for program/technical support or assistance to the State regulatory, abandoned mine lands and grants programs. REG-8 allows States the opportunity to be involved in developing and carrying out the plan and reporting on the results. Oversight topics reflect the highest priority review areas and/or assistance needs determined by the State and Field Office, and should be developed with significant input from other interests, including citizens, environmental representatives, interest groups and the coal industry. The annual agreement may be modified as issues are resolved, or new issues arise, or as work priorities change.

Part III. National Review Topics

Reg-8 requires that specific data be gathered during the evaluation year. This data, with the exception of reclamation success, will be gathered during complete inspections. It is anticipated that the Indianapolis Field Office (IFO) will conduct complete inspections on 50 inspectable units during EY2001. One primary focus of these inspections is to obtain an overall picture of on the ground impacts both within the permit boundaries as well as off-site impacts. These observations will be used as preventative efforts which will eventually lead to successful and timely reclamation.

The OSM Directive REG-8 also allows for the evaluation of optional topics. These topics will be discussed later in the document.

National review topics, for which information will gathered, are as follow:

A. Off-site Impacts.

The IFO will continue to evaluate and report on the effectiveness of the Division of Reclamation (DOR) in protecting the environment and the public from off-site impacts resulting from surface coal mining operations. For the purposes of oversight of the Indiana Program, the definition of off-site impact from OSM Directive Reg-8 will be used. This definition clarifies that data may be collected concerning impacts which may not be controlled or regulated by the State. While the data is gathered, it will not be reported as part of Table 4 of Reg-8, but may be reported in the annual report narrative.

Attached to this report is a work plan which describes the evaluation objective, methodology and output measures.

B. Reclamation Success.

The IFO will continue to evaluate and report on the effectiveness of the DOR in ensuring successful reclamation on lands affected by surface mining. Success will be determined by the number of acres that meet the phased bond released standards and have been released by the DOR. Information will be collected to measure program performance in the following areas:

- a. Land form/AOC,
- b. Land capability,
- c. Hydrologic reclamation, and
- d. Contemporaneous Reclamation.

OSM and DOR agree on the definition of approximate original contour (AOC). Both agencies agree that the measurement of success in maintaining AOC and replacement of required soil will

be measured by the number of acres released from phase I bond.

Soil and vegetative stability with respect to erosion and the establishment of vegetative cover consistent with the approved post mining land use will be measured by the number of acres released from phase II bond.

The attainment and establishment of a successful and appropriate vegetative cover, including restoration of productivity, will be measured by the number of acres that have been released from phase III bond release. The successful restoration of surface and ground water quality and quantity will be measured by the accounting of acres receiving phase III bond release.

The OSM Directive REG-8 defines Contemporaneous Reclamation to be the difference in time between lands being disturbed and when they achieve final phased bond release. Indiana currently does not have information available concerning affected acreage by year. Indiana does though, report annually bonded acres, which is a rough approximation of affected acreage. Indiana also reports acres of bond released each year. The data which Indiana reports in Table 5 will be used to make a general assessment of contemporaneous reclamation.

The attached work plan describes how evaluation of this area will be conducted.

C. Customer Service.

One of the most beneficial customer service events carried out by Indiana is the spearheading of the annual Indiana Society of Mining and Reclamation's annual Technology Transfer Session. This event is scheduled each year in December and is planned and attended by representatives from all interests. The IFO will monitor the States participation and success in bringing about a meaningful agenda and relevant training sessions. This event is governed through a multi-sector board which covers citizen, coal industry, related industries, the scientific community and academia. An evaluation report will be prepared by January 15, 2001.

Part IV. Selected Programmatic Review Topics for EY 2001

A. Certification of Haul Roads.

The interpretation of post constructed haul road certification has been a long standing issue in Indiana. Indiana indicated that it would visit this issue and consider alternatives during this EY. Once a policy or rule is developed, the DOR and IFO will meet to try and assure the sufficiency of the change prior to adopting as policy or the submittal as a formal program amendment.

B. Review of Outstanding State Program Amendments.

OSM has determined that one of its program priorities for EY 2001 will be a review of the individual State programs for any outstanding amendments. A survey will be conducted to determine what amendments or portion of amendments are outstanding. This review would include any amendments due in response to past 30 CFR Part 732 notifications, as well as any amendments required as a result of the program amendment approval process. Outstanding amendments will be categorized in the following order:

1. Critically important to ensure an effective State program
2. Moderately important to ensure effectiveness of the State program
3. No longer needed to ensure effectiveness of the State program

The IFO and the State will negotiate submission dates for each program amendment that is critically and moderately important. Once these dates are established and put into writing, they will be incorporated as part of this Performance Agreement.

The goal of this review is to provide the States with the opportunity to bring any out-of-date aspects of their program into compliance. In order to achieve this goal, the States will need to initiate the rule making necessary to address any outstanding 30 CFR Part 732 and required amendments and to ensure the approved State programs meet the requirements of the SMCRA. OSM will provide assistance as necessary to enable the State to achieve this goal.

C. Groundwater Monitoring.

A joint OSM/State evaluation was conducted during EY2000. This joint team made specific recommendations which if implemented would improve Indiana's groundwater monitoring program. The State has reviewed and will consider implementation of the team recommendations. It was agreed that Indiana will determine the steps to be taken to upgrade its program in the groundwater monitoring area and implement necessary strategies by July 31, 2001. The IFO will begin validating Indiana's actions in EY 2002.

D. Acid Mine Drainage (AMD) Data Collection.

During the EY 2000 period three AMD sites were identified that meet the criteria set out in OSM's National Hydrologic Initiative. During EY 2001, Indiana has agreed to collect annually the required data from all qualified AMD sites. The IFO will provide guidance to the IDOR to ensure the proper collection of AMD information.

E. Clean Streams Initiative.

The Indiana Regulatory Authority, the Indianapolis Field Office and a group of citizens, other Federal and State Agencies, academic interests, and other interested parties have established probably the most successful partnerships under the Appalachian Clean Streams Initiative. The Southwest Indiana group is known as the "Patoka South Fork Watershed Steering Committee" (PFSWSC). Beginning in August 1995, the group began to hold monthly meetings to enhance Awareness of the deteriorated condition of the West Fork of the Patoka River. The core group gave tours of the watershed and in early 1996 elected a President, Vice President and Secretary. The PFSWSC has grown significantly since that first election and now has standing committees organized around Clean Water, Oil and Gas, Wildlife, Finance and Public Relations. The group expanded and evolved to meet the needs of the community and is dedicated to a healthy watershed environment.

The South Fork Watershed is part of the Patoka River Watershed which stretches from Orange county Indiana through Dubois, Pike, and Gibson Counties before joining the Wabash River. The watershed covers over a half million acres in eight counties.

Underground coal mining began in the watershed in 1836. Beginning around 1920, surface mining began to replace deep mining. During the next 50 years, over 20,000 acres of Pike County was surface mined and left abandoned and unreclaimed, resulting in Acid Mine drainage (AMD). These conditions eradicated all fish in long stretches of the Patoka River and the entire length of the South Fork Tributary.

Today this watershed is considered to be the most impacted in the State. In addition to the mining, agricultural lands and oil and gas drilling have impaired water and soil quality. Thousands of acres of land within this watershed have been biologically degraded from acidic water, dissolved toxic metals, salt and oil contamination and severe sedimentation from erosion occurring from mined uplands.

The group has planned, implemented and carried out several major projects since its inception a few years ago and are beginning to turn around the fate of the South Fork of the Patoka River. A summary of the major projects is presented below:

Lick Creek Project:

The Lick Creek site is located just a few hundred feet from the main channel of Lick Creek and was mined for coal prior to 1967. The Project consisted of two lakes and a Wetland/beaver dammed lake. The second lake discharges approximately 75 gallons of acidic water into the

wetlands.

The Wetland Lake contains good quality water. The upper two lakes however do not. These lakes contain low pH, high acidity, low alkalinity and heavy metal concentrations. The water flowing into the wetlands from the upper lake and surface runoff from exposed acidic spoil is contaminating the Wetland. Because of the actions of the Group, in constructing an “aqueous “ anoxic limestone drain (a covered limestone dam located in the lower of the two lakes), and construction of alternate spillways into an oxidation basin have helped protect the 40 acre Wetland area and improve water quality downstream as well as eliminating acidic spoil and an acidic Lake.

The IFO will continue to support and participate with the citizens groups and government agencies to accomplish the return of the South Fork of the Patoka River to a useful stream.

Part V. Abandoned Mine Lands

At the request of Indiana, the IFO will check the satisfaction of landowners with the reclamation work done by Indiana, on both the emergency and non-emergency programs, and to help assess the landowner satisfaction survey currently used by the State. The State is beginning to revisit its survey and its measurement of landowner satisfaction and would like an independent evaluation. The evaluation would provide both IFO evaluation and assistance and evaluate both public participation and reclamation end results. A Work Plan to accomplish this is attached to this Performance Agreement.

This Plan may be modified in written at any time with the written agreement of both parties. This

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