

EVALUATION YEAR 2002 PERFORMANCE AGREEMENT

KANSAS

I. *PURPOSE OF THIS AGREEMENT*

The purpose of this performance agreement between the Office of Surface Mining (OSM), Mid-Continent Region, Grants and Oversight Team (GOT) and the Kansas Department of Health and Environment (KDHE) Surface Mining Section (SMS) of the State of Kansas is to:

- A. Foster a shared commitment to the implementation of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) through SMS regulatory and abandoned mined lands programs.
- B. Work together to accomplish shared goals ensuring that both parties understand their responsibilities for achieving them.
- C. Provide for a continuous multi-year agreement. Since the goals and objectives of SMS and OSM are ongoing, the successful achievement may reach into future evaluation years.
- D. Identify specific topics for oversight and implementation in Evaluation Year (EY) 2002.

II. *TERMS OF THE AGREEMENT*

- A. The performance agreement will outline the annual evaluation plan and implementation items to be carried out for the year. These topics will be selected, and their scope specified by OSM/SMS management.
- B. OSM/SMS management will select individuals to serve on work teams for these topics. Each effort will lead to a final report summarizing findings and recommendations.
- C. Each participating employee will work in a cooperative, professional manner with all involved and maintain open lines of communication.

III. *SPECIFIC TOPICS FOR OVERSIGHT AND IMPLEMENTATION IN EVALUATION YEAR 2002*

Specific topics for oversight and implementation have been itemized for review in EY 2002.

A. *Tables*

Kansas will be responsible for compiling annual report Tables 2, 3, 4, 6, and 7 as identified in REG-8, July 28, 1999, and subsequent amendments. The completed tables should be submitted to OSM as needed for Oversight Evaluation Findings Reports. OSM will be responsible for Tables 1, 5, 8, and 9 as identified in REG-8, July 28, 1999, and subsequent amendments. Additional tables 10, 11 and 12, which are not required by REG – 8 will be completed by OSM.

B. *Customer Service and Public Outreach*

Scope of Topic: The Customer Service team is charged with designing methods for measuring the overall quality of customer service in the Title IV and V programs. To accomplish this task, OSM will review the Customer Service actions of one or more of the following items, if an action is initiated: (1) citizen complaints/inquiries, (2) permitting actions, (3) bond releases, (4) lands unsuitable petitions, (5) administrative and judicial reviews, and (6) the Applicant/Violator System (AVS) as they pertain to Customer Service and Public Outreach.

Personnel Assigned: The State of Kansas will assign at least one person to conduct the review of each program. Jeff Gillespie will represent OSM for the Title IV and V reviews. Data necessary to complete the reporting requirements will be gathered and maintained by SMS.

Methods to be Employed:

1. Review citizen complaints/inquiries files as they apply to Customer Service and Public Outreach.
2. Review inspection Title IV project files to verify appropriate AVS checks were conducted on AML contractors. The AVS will be reviewed.

Files, Data Sources to be Utilized: Citizen complaint/inquiries file, AVS, permit files, checklists, Secretary Orders, and other appropriate documents will be used to evaluate overall quality of customer service and public outreach.

Tasks to be Completed/Assignment/Schedule:

1. Review permitting actions on newly issued permits as they pertain to customer service and public outreach for the period October 1, 2001, to August 9, 2002. The review will be conducted jointly by SMS and OSM staff.
2. OSM and SMS staff will review inspection Title IV project files for documentation that appropriate AVS checks were conducted. The review will be completed by August 9, 2002.
3. Should reviewers have questions about the data being reviewed, team members will contact the appropriate personnel. This may include operators, landowners or other staff personnel.
4. Draft findings documents will be completed by SMS and OSM by August 16, 2002. The final reports will be completed by SMS and OSM by September 3, 2002.

C. *Off-Site Impacts - Active Mines*

Scope of Topic: The Off-Site Impact Team will use REG-8, July 28, 1999, to measure off-site impacts of coal mining under the Kansas regulatory program. The team will identify the inspection and verification process that will be used to measure off-site impacts.

The following specific details will apply for the topic:

1. The evaluation will include all permits that have not received a Phase III bond release. The evaluation will also include surety reclamation sites.
2. The definition of off-site includes not only those areas outside of the permit boundaries, but also those areas outside of the approved disturbance areas such as buffer zones, lands unsuitable, etc. For a more complete explanation of off-site impacts see Attachment.
3. The categories to be evaluated will include: hydrology, blasting, encroachment, and land stability.
4. All complete inspections, both State and Federal, and any partial inspection that included an assessment of off-site areas will be considered an observation. Citizen complaint investigations will be considered observations when impacts are verified.

Personnel Assigned: The State of Kansas Inspection Supervisor will manage the implementation of the project. Data necessary to complete the reporting requirements will be gathered by SMS inspection personnel. SMS engineering and other technical staff, along with the GOT technical staff, will provide consultation. Jeff Gillespie will represent OSM for field verification and consultation. KDHE grants staff will not be involved with the technical review for this section. OSM will prepare the draft and final reports.

Methods to be Employed:

1. Conduct complete and partial inspections utilizing inspection reports to capture the required data. Off-site impacts will be reviewed in the field during each inspection within the evaluation period.
2. Plan for joint complete and partial inspections. To review the adequacy of the implementation process, OSM will conduct all inspections with the State of Kansas. Since the inspectable units list is small, OSM will inspect all sites that have not received a Phase III or liability release from Kansas.
3. Conduct quality control to verify data from the field inspections including file reviews.
4. Determine if any off-site impacts have occurred and if so the degree of impact on the resources affected (See Table 4, REG-8, July 28, 1999). The degree of impact will be left to the best judgment of the inspector(s) conducting the inspection. In the case of joint inspections, the degree of impact will be based on consensus whenever possible between the State and the OSM inspectors on site, with State and OSM management having the final determination.

Files, Data Sources to be Used: Field reconnaissance for the selected permits, inspection reports, water monitoring reports, enforcement actions, citizens complaint actions, and permit application files.

Tasks to be Completed/Assigned Schedule:

1. Kansas will evaluate the subject topic from October 1, 2001, until August 2, 2002.
2. Kansas will supply OSM with the information necessary to complete the report narrative by August 9, 2002. OSM will complete a draft report by September 14, 2002. A final report will be completed by October 1, 2002.

Off-Site Impacts - Bond Forfeitures

Scope of Topic: The Off-Site Impact Team will use REG-8, July 28, 1999, to measure off-site impacts of bond forfeiture sites. The team will identify the inspection and verification process that will be used to measure off-site impacts.

The following specific details will apply for the topic:

1. The evaluation will include all permits where bond has been forfeited, forfeiture reclamation has not been completed, and liability has not been released.
2. The definition of off-site includes not only those areas outside of the permit boundaries, but also those areas outside of the approved disturbance areas such as buffer zones, lands unsuitable, etc. For a more complete explanation of off-site impacts see Attachment.
3. The categories to be evaluated will include: hydrology, blasting, encroachment, and land stability.
4. All inspections at forfeiture sites, both State and Federal that include an assessment of off-site areas will be considered an observation. Citizen complaint investigations will be considered observations when impacts are verified.

Personnel Assigned: The State of Kansas Inspection Supervisor will manage the implementation of the project and prepare the final report. Data necessary to complete the reporting requirements will be gathered by SMS inspection personnel. SMS engineering and other technical staff, along with the GOT technical staff, will provide consultation. Jeff Gillespie will represent OSM for field verification and consultation. KDHE grants staff will not be involved with the technical review for this section.

Methods to be Employed:

1. Conduct inspections utilizing inspection reports to capture the required data. Off-site impacts will be reviewed in the field during each inspection within the evaluation period.
2. Plan for joint inspections. To review the adequacy of the implementation process, OSM will conduct inspections with the State of Kansas on all forfeited sites.

3. Conduct quality control to verify data from the field inspections including file reviews.
4. Determine if any off-site impacts have occurred and if so the degree of impact on the resources affected (See Table 4, REG-8, July 28, 1999). The degree of impact will be left to the best judgment of the inspector(s) conducting the inspection. In the case of joint inspections, the degree will be based on consensus whenever possible between the State and the OSM inspectors on site, with State and OSM management having the final determination.

Files, Data Sources to be Used: Field reconnaissance for the selected permits, inspection reports, water monitoring reports, enforcement actions, citizen complaint actions, and permit application files.

Tasks to be Completed/Assigned Schedule:

1. Kansas will evaluate the subject topic from October 1, 2001, until August 2, 2002.
2. Kansas will supply OSM with the information necessary to complete the report narrative by August 9, 2002.
3. OSM will complete a draft report by September 13, 2002. OSM will complete the final report by October 1, 2002.

E. *Successful Reclamation*

Scope of Topic: A team consisting of State and OSM personnel will evaluate the effectiveness of the Kansas program in ensuring successful reclamation on lands affected by surface coal mining operations. All OSM and Kansas personnel involved in this review will work through consensus wherever possible.

Personnel Assigned: The State of Kansas will assign inspection staff as necessary. Jeff Gillespie will represent OSM.

Methods to be Employed:

1. OSM will attempt to conduct joint bond release inspections on a minimum of 50 percent of the bond release requests. The State will continue to notify OSM of pending bond release inspections.
2. Bond releases approved by the State after October 1, 2001, will be used as

part of the population of bond releases available for review. OSM will verify the State's findings using the ground inspection process at bond release sites.

3. Bond releases will be conducted in accordance with the approved Kansas regulations. Each release will determine and document the following:

Phase I Approximate Original Contour is to be achieved and includes:

- a. Drainage compatible with the surrounding areas.
- b. Slopes adequate for the post-mining land use that blends well with the surrounding topography.

Phase II

- a. Soil and subsoil replacement that complies with the Kansas regulations.
- b. Vegetation stability that complies with Kansas's regulations, prior to Phase II release.

Phase III

- a. Establish the post-mining land use per the approved reclamation plan.
- b. Successful revegetation will be in accordance with the established revegetation guidelines.
- c. Surface water quantity and quality will be reestablished in accordance with the approved reclamation plan and permits.

F. Contemporaneous Reclamation

Kansas strongly disagrees with OSM's proposed methods for determining successful contemporaneous reclamation. The State believes that OSM's methods contains requirements and call for determinations that have no basis in the approved Kansas program.

The State will determine successful contemporaneous reclamation by using:

1. The time and distance requirements established in the approved permit and/or the Kansas regulations. Absent a detailed reclamation plan in the approved permit, the Kansas regulations establish the following:

(a) Backfilling and grading will be completed within 180 days following coal removal.

(b) Unless specified in the approved permit, there will not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge.

(c) Topsoil and subsoil replacement shall occur within 120 days following the completion of rough backfilling and grading.

(d) Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final soil preparation.

(f) Data collection on productivity must be initiated within ten years following replacement of prime farmland soils.

2. Kansas will review all complete inspection reports on active coal removal operations during the 2002 evaluation year. The review will focus on compliance determinations, as defined above. The SMS records will be reviewed to determine if productivity measurements have been initiated within ten years of soil replacement.
3. The State will review all enforcement actions issued on active coal removal sites for noncompliance with time and/or distance requirements.

Files, Data Sources to be Used: Data will be gathered through the use of complete inspections and reports, bond release inspections and reports, Kansas Secretary Orders, and State/OSM files.

Tasks to be Completed/Assignment/Schedule:

1. OSM will write a findings document on Successful Reclamation. The draft report will be completed by September 13, 2002. The report will only include data applicable to the 2002 evaluation year.
2. Kansas will gather and incorporate the bond release data into the applicable section of Table 5. This task is to be completed by September 6, 2002.
3. OSM will evaluate and gather data on Successful Reclamation as outlined in REG-8, July 28, 1999. This will involve the review of various permit

documents located in the State office. The final findings report will be completed by September 27, 2002. OSM will incorporate the data into the applicable portion of Table 5 as depicted in REG-8. The table will be completed by October 1, 2002.

G. *Assistance (Technical Transfer)*

Technical assistance and transfer will be handled by OSM on an as-needed basis. The OSM contact person is John W. Coleman. Murray Balk will be the contact person for the State.

H. *AML On-the-Ground Reclamation*

Scope Of Topic: A team will evaluate the States effectiveness in achieving on-the-ground reclamation in a cost effective manner that provides for long-term success.

Personnel Assigned: Jeff Gillespie will work with the Kansas staff to identify methods and perform evaluations.

Methods to be Employed:

1. A team of OSM and State personnel will perform site visits on a minimum of 50 percent of active reclamation project sites to determine conformance with project goals, the environmental assessment and Federally mandated environmental statutes. Consideration will also be given to conformance with contract schedules, compliance with plans and specifications, reasons for contract changes, and project inspection diaries. These will be reviewed in terms of their impact on the efficiency and cost effectiveness of administering reclamation projects.
2. A team of OSM and State personnel will perform post-project site visits on up to 50 percent of reclamation projects completed and not released to land owner. Among other things, evaluations will determine: (a) if projects have met stated goals, (b) if reclamation practices have resulted in stable site conditions without unnecessary environmental consequences, (c) the frequency of and reasons for unanticipated maintenance, (d) adequacy of state maintenance monitoring, and (e) adequacy of maintenance practices.
3. Information from field evaluations will also be used by the OSM/SMS team to evaluate the adequacy of the States post-project review and maintenance practices. Recommendations will be made to address any

systemic problems observed in the field. A report should identify: whether any observed problems are site specific or systemic, if problems are a function of design, contract administration, post-construction monitoring or other outside factors. Recommendations for resolution will focus on programmatic improvements that will avoid similar occurrences on future projects.

Files, Data Sources To Be Used: Field inspections, contract documents, environmental assessments and other project documents.

Tasks to Be Completed/Assignment/Schedule:

1. Field evaluations will be completed by the team by August 2, 2002.
2. OSM will draft a findings report by August 9, 2002.
3. The final report will be completed by September 4, 2002.

I. ***AML Information/Accomplishment Tracking***

Scope of Topic: An assigned work group will evaluate the State's effectiveness in maintaining its part of the Abandoned Mine Land Inventory System (AMLIS) and other management system(s) as needed to supply informational needs of the AML program. The team will decide items to track.

Personnel Assigned: Kansas will perform data entry and maintenance of tracking systems. Kansas will provide a minimum of one staff person to assist in the preparation of a final report. Jeff Gillespie will represent OSM.

Methods to be Employed:

1. Kansas will maintain its part in the AMLIS including project completion data in accordance with Directive AML-1 and other data management systems as needed to supply informational needs of the AML program. Kansas will provide AMLIS accomplishments data to OSM for the Annual Report.
2. The AML team will evaluate the maintenance of AMLIS data. Interim steps and criteria for measuring the program performance and a final report will be developed by the team.

Files, Data Sources to be Used: Data sources to be utilized include the AMLIS, State AML project database and AML project authorizations to proceed.

Tasks to be Completed/Assignment/Schedule:

1. Kansas will provide accomplishments data to OSM for the Annual Report by September 13, 2002.
2. OSM and Kansas will review a sample of AMLIS data in the field by August 2, 2002, and OSM will spot check data in the Office throughout the year.
3. OSM will prepare a draft report by August 9, 2002.
4. OSM will prepare a final report by September 4, 2002.

J. *Emergency Program*

Scope Of Topic: A team will evaluate the State's effectiveness in timely reviewing and addressing AML emergency complaints in compliance with the emergency guidelines outlined in OSM Directive GMT-10 and the approved emergency program.

Personnel Assigned: Jeff Gillespie will work with the Kansas staff to identify methods and perform evaluations.

Methods to be Employed: OSM will review data supplied by Kansas in investigation reports and final reports. A sample of declared emergency sites will be evaluated by an OSM/SMS team to determine if emergency declarations were appropriate and if abatement efforts were appropriate.

Files, Data Sources To Be Used: Field inspections, emergency project files and the emergency project tracking system will be used to evaluate success.

Tasks to Be Completed/Assignment/Schedule:

1. The team will complete field evaluations by July 31, 2002.
2. A draft findings document will be completed by OSM no later than August 30, 2002.
3. The final report will be completed no later than September 27, 2002.

K *I&E Data Collection and Reporting*

Based on the OSM/SMS Inspection and Enforcement (I&E) Data Team Report, the Management Council and OSM's Director have recommended that the following data collection be initiated and identified in the Performance Agreement:

(1) Enforcement Data

The number and type of State NOV's and CO's and the number of violations associated with each action.

(2) Inspection Data Where State is RA

The number of State inspections conducted by type (complete, partial) and the status of each unit inspected (active, inactive, abandoned, exploration over 250 tons).

(3) Lands Unsuitable Petitions

The number received, rejected, pending, or approved.

All data for EY2002 will be submitted to OSM by October 1, 2002.

L. *Program Amendments*

OSM will review Kansas's timely submittal of program amendments in response to 30 CFR 732 and 30 CFR 884 letters, if issued. This included the following: Regulatory Reform I - - 30 CFR part 732 letter 12/17/85 and Valid Existing Rights (VER) - - 30 CFR part 732 letter 8/23/00.

An informal submission containing regulations changes was submitted to OSM on October 4, 2001. This submission will be reviewed and corrections will be returned to the SMS by February 1, 2002.

The SMS has also submitted a formal program amendment on October 9, 2001 to OSM on their Revegetation Guidelines. This will be reviewed and comments will be submitted to the SMS by either the second or third quarter.

IV. SIGNATURES

The following parties consent to this agreement:

Ronald F. Hammerschmidt, Director
Division of Environment
Department of Health and Environment
State of Kansas

Date

John W. Coleman
Grants and Oversight Team Leader
Mid-Continent Regional Coordinating Center
Office of Surface Mining

Date

ATTACHMENT OFF-SITE IMPACTS

Definition of Off-Site Impact: *For purposes of this Performance Agreement, an off-site impact is defined as anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on resources (people, land, water, structures). The applicable State program must regulate or control the mining or reclamation activity or result of the activity causing an off-site impact. In addition, the impact on the reclamation activity or result of the activity causing an off-site impact. In addition, the impact on the resource must be substantiated as being related to a mining and reclamation activity and must be outside the area authorized by the permit for conducting mining and reclamation activities.*

For example, a blasting operation that exceeds the State program's limits for vibration or air blast at a structure outside the permit area would be reported as an off-site impact where impacts to a resource (people, land, water, structure) can be substantiated. A violation may exist that does not result in an off-site impact if damage to the resource cannot be substantiated. A second example is a discharge from a mine site that does not meet the State program effluent limits that enters a receiving stream with a water quality that is worse than the discharge. There may be no negative impact on the stream, but the discharge may be a violation. No off-site impact would be reported. A third example is where a buffer zone within a permit area is disturbed in violation of the State program. In this case, an off-site impact would be recorded. A final example applies to the State programs that allow permitted land to be bonded at a later date, but prior to disturbance. If a mining operation causes a disturbance in the non-bonded portion of the permit area, an off-site impact would be recorded.

Although the great majority of off-site impacts will be events that constitute violations of the regulatory program and may be cited as such, there may be exceptions to this general rule. For example, a breached diversion ditch may have caused sediment to leave the permit area, causing an off-site impact. However, a violation may not have been cited because the violation may have been corrected during or prior to the inspection. This example should be identified as an off-site impact even though no violation was cited. Other examples may exist where off-site impacts caused by a regulated activity are documented, but a violation was not cited.

Impacts Not regulated by the State Program: There are many impacts from mining and reclamation that are not regulated or controlled by SMCRA or State Programs. There are also impacts that occur outside the permit even though a mine is in compliance with State program provisions. One example is a sediment control structure that meets all design standards. A rainfall event that exceeds the design standard causes a failure of the structure. The damage is repaired in a timely manner. In this example, an off-site impact occurs but is not regulated by the program because all program requirements were met. Therefore, under the definition of off-site impacts contained in this directive, the impact would not be recorded. Another example maybe nuisance impacts such as those related to blasting or dust. Blasting operations may be in full compliance with the program although local residents are impacted from noise or vibrations. Dust from coal stockpiles or spoil piles may annoy local residents, but dust may not be regulated by the State program.