

# **PERFORMANCE AGREEMENT**

Between

The Office of Surface Mining  
Indianapolis Area Office

And

The Indiana Department of Natural Resources  
Division of Reclamation

July 1, 2006 – June 30, 2007

June 19, 2006

**Performance Agreement**

**Between**  
**The Office of Surface Mining**  
**and**  
**The Indiana Department of Natural Resources**  
**Division of Reclamation**  
**EY 2007**

**Part I. Purpose**

**Background:** The purpose of this Performance Agreement is to establish a mutually acceptable scope of work for oversight of specific elements of the approved surface coal mining and reclamation, and abandoned mine lands programs administered by the Indiana Department of Natural Resources.

Further, this agreement provides the mechanism for programmatic and technical support and assistance to the State. The focus of the agreements between the Office of Surface mining (OSM) and primacy states is to assure that SMCRA requirements are addressed in the development and administration of state laws, regulations and programs. The ongoing oversight process allows timely identification and resolution of program issues, serves to keep the state programs aligned with SMCRA requirements, and serves to identify areas where OSM needs to clarify its implementation expectations.

**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 provides a flexible framework for developing and carrying out annual state program evaluations. It provides the flexibility to design an annual oversight plan, which includes oversight topics that reflect the highest priority review areas, assistance needs which are developed with significant input from other interests, including citizens, environmental representatives, interest groups and the coal industry. The directive

encourages the States to be involved in developing and carrying out the plan and reporting on the results. The annual agreement may be modified as issues are resolved, new issues arise, or as work priorities change. Work plans for each oversight topic review to be conducted will be drafted and mutually agreed upon prior to beginning the review.

### **Part III. National Review Topics**

Reg-8 requires the gathering of specific data during the evaluation year. This data, with the exception of reclamation success, will be gathered during complete inspections. The Indianapolis Area Office (IAO) anticipates conducting reviews of approximately fifty inspectable units during EY 2007. The primary focus of these inspections is to obtain an overall picture of the impacts of surface coal mining and reclamation operations, both within the permit boundaries as well as off-site. The focus of these inspections is early identification of trends and prevention of problems. With early identification and prevention, successful and timely reclamation should follow.

#### **National review topics**

##### **A. Off-site Impacts.**

The IAO 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. The State and OSM have agreed to use the definition of off-site impact in OSM Directive Reg-8. This definition allows gathering data for events not controlled or regulated by the State. This data will be gathered but will not be reported as part of Table 4 of the Indiana Annual Oversight Report. The data may, however, be discussed in the oversight report narrative.

Additional information describing the evaluation objective, methodology and output measures will be included in a specific work plan that addresses this topic.

##### **B. Reclamation Success.**

The IAO will continue to evaluate and report on the effectiveness of the DoR in ensuring successful reclamation on lands affected by surface mining. The number of acres meeting phased bond release standards, and released by the state, will determine success in each category listed below:

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

The number of acres released from phase I bond will measure AOC and replacement of required soil.

The number of acres released from phase II bond will measure soil and vegetative stability with respect to erosion and the establishment of vegetative cover consistent with the approved post mining land use.

The number of acres that have been released from phase III bond release will measure the attainment and establishment of a successful and appropriate vegetative cover, including restoration of productivity. 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 as the difference in time between lands being disturbed and final phased bond release. Indiana now gathers information concerning affected acres. Because of this change in the State Program, contemporaneous reclamation will now be measured using affected acres rather than bonded acres. Indiana also collects and maintains data concerning the number of acres released from bond each year. A general picture of how successfully reclamation is staying current with mining (contemporaneous reclamation) will be made by comparing the acres affected to acres released from phase III bond liability during the five year period November 1, 2001 through October 31, 2006. Violation information regarding contemporaneous reclamation collected during the IAO complete mine site evaluations during the EY will also be used.

### **C. Customer Service.**

In EY 2007 the IAO will evaluate the effectiveness of customer service provided by the State relative to public participation in one aspect of the States permanent program process. A mutually agreed upon topic will be chosen and a work plan setting forth the scope and methodology of this evaluation will be developed prior to initiation of the review.

### **Other Review Topics**

The IAO will evaluate how the State handles “in-lieu-of-forfeiture” reclamation projects. This study was requested by, and developed in conjunction with the Regional Director of the Mid-Continent Region. The study will be conducted in each state in the Mid-Continent Region, with the purpose being that the topic will be consistently reviewed by OSM in all the states. A work plan setting forth the scope and methodology of the evaluation will be developed prior to initiation of the review. The Regional Director has requested a summary draft report addressing findings of all the studies conducted in each state be forwarded to him

by October 1, 2006. A draft copy of the topical report for Indiana will be forwarded to the State for review and comment by August 11, 2006. OSM will finalize the report by August 31, 2006.

#### **Part IV. Abandoned Mine Lands**

##### **Specific Topics for Enhancement and Performance Reviews**

Mutually agreed upon topics will be chosen and a work plan setting forth the scope and methodology of each evaluation will be developed prior to initiation of any reviews.

##### **A. OSM-IAO Obligations**

The IAO shall:

1. Perform its oversight function (Enhancement and Performance Review activities) in cooperation with the AML Branch in a fair and open manner.
2. Clearly communicate with the AML Branch about the program as needed, while striving to reduce the impact on the AML staff as much as possible.
3. Recognize excellence in the Branch's performance and report it in all performance related documentation.
4. Notify the AML Branch immediately if any issue arises which could reflect negatively on performance.
5. Serve as the Branch's primary source for technical assistance and Federal policy information relating to SMCRA implementation, and respond to all requests in an accurate and timely manner.
6. Trust the AML Branch in fulfilling its responsibilities, and respect its authority as IAO strives to fulfill its support and oversight role.

##### **B. Indiana DoR-AML Branch Obligations**

The AML Branch shall:

1. Freely communicate with the IAO concerning any issues relating to performance as they arise so that they can be resolved in a timely manner.
2. Cooperate with the IAO in its Enhancement and Performance Review activities (within the limits of practicability) as mutually agreed.

3. Provide program data in accordance with OSM Directive AML-22, and other information needed by any joint work team, or for OSM program monitoring.

**Part V. Modification of this Agreement**

This agreement may be modified at any time by mutual agreement of the involved parties. Modifications shall be in writing and shall be signed by both parties.

**Part VI. Other**

The DoR will provide all information required by OSM Directive REG-8 by July 15, 2007. In addition, the DoR shall also provide information regarding State inspection, enforcement and Lands Unsuitable activities as required by tables 10-12 by July 15, 2007. (The tables are currently the same as in EY 2006. The IAO will advise the DoR of changes, if any, as soon as possible from the time of receipt).

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Name                      Date  
Andrew R. Gilmore, Chief  
Alton Field Division

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Name                      Date  
Bruce A. Stevens, Director  
Division of Reclamation