

Enhance Oversight and Corrective Actions

Issue:

OSM [Directive REG-8, Oversight of State Regulatory Programs](#), does not fully address the fundamental purposes of oversight. Directive REG-8 establishes guidance on procedures for planning and conducting annual oversight evaluations; however, it does not provide guidance and procedures for OSM actions when on-the-ground problems or programmatic issues are encountered during the oversight evaluation or how OSM should address complex issues and instances where problems are not being resolved by the state in a timely manner.

Other than the relatively severe options of ordering amendments to state programs or substituting Federal enforcement of state programs, OSM has few mechanisms to induce states to timely correct programmatic issues identified in OSM's oversight of state regulatory programs.

Issue Resolution:

Directive REG-8 establishes the policies and procedures that govern our oversight of the implementation of state regulatory programs. The Directive focuses on fostering a cooperative approach by OSM and the states in achieving the goals of SMCRA, procedures for planning and conducting annual evaluations, and OSM providing financial, technical, and other program assistance to states to strengthen their programs. The Directive does not provide guidance on actions that should be taken by OSM when states are not adequately implementing the approved state programs.

OSM intends to revise Directive REG-8 to underscore the fundamental purpose of oversight: to ensure that states are effectively implementing, administering, maintaining, and enforcing approved state regulatory programs. In revising the Directive, OSM intends to maintain, to the extent possible, the focus on the on-the-ground end-results of the state in achieving the purposes of the SMCRA, the cooperative approach between states and OSM in resolving problems, and OSM's assistance to states in strengthening the states' implementation of state programs.

Intensity of Oversight Activities

In 1996, OSM revised the oversight policies and procedures in Directive REG-8 to focus oversight on evaluating on-the-ground/end-result conditions and abandoned the earlier process-driven oversight evaluation model. Current oversight policy and procedures concentrate on establishing annual Performance Agreements to plan the annual evaluations and providing technical assistance to the states. The policy and procedures in Directive REG-8 do not contain guidance on actions that OSM should take when OSM identifies significant issues or deficiencies in a state's permitting, enforcement, or other regulatory activities.

OSM intends to revise Directive REG-8 to specify actions that OSM will take when it identifies issues of significant scope and complexity or when a state fails to take timely action on a problem.

Mechanisms to Effect Timely Corrective Action by States

OSM clearly has authority under SMCRA to effect correction of the administration of state programs when a state regulatory authority fails to effectively or adequately administer or enforce its program. OSM's regulations provide three processes for OSM to correct problems and issues:

- (1) Under the Ten-Day Notice (TDN) process, OSM can require correction of violations at individual surface coal mining operations;
- (2) Under the program amendment provisions at 30 CFR 732.17(e)(2) and (3), OSM may require that a state amend its regulatory program if conditions or events change the implementation, administration, or enforcement of the state program or if conditions or events indicate that the approved state program no longer meets the requirements of SMCRA or the Federal regulations (e.g., a state's interpretation of state program requirements is inconsistent with Federal requirements); and
- (3) Under the "733 process" at 30 CFR Part 733, which focuses on correcting deficiencies in the implementation, administration, or enforcement of state programs, OSM may institute proceedings to substitute Federal enforcement of state programs or, in extreme cases, withdraw approval of state programs and promulgate a Federal program for the state.

The TDN process applies only to operation-specific problems. Mechanisms for correction of programmatic issues are the state program amendment process or the 733 process, but they are much lengthier processes.

Other than the relatively severe option of substituting Federal enforcement of state programs, OSM has few mechanisms to induce states to timely correct programmatic issues identified in OSM's oversight of state regulatory programs.

OSM will reinstate policy and procedures, previously contained in rescinded [Directive REG-23, Development and Implementation of Action Plans](#), for development and implementation of process-oriented action plans to address programmatic issues encountered during oversight of a state program.

OSM also is considering new policy guidance for placing a condition on state regulatory program grants to require correction of issues if a state is not timely addressing and remedying problems identified during oversight.

OSM is seeking suggestions for other mechanisms that OSM can employ to ensure that states correct problems in a timely fashion.

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