

## Measures of State Regulatory Program Success

### Issue:

[Directive REG-8, Oversight of State Regulatory Programs](#), requires that OSM consider three elements when evaluating the extent to which a state regulatory program has achieved the purposes and objectives of SMCRA. Those elements are off-site impacts (the number and degree of off-site impacts and the number and percentage of inspectable units that are free of off-site impacts), reclamation success (the number of acres for which bond has been released), and customer service. However, questions have been raised about how the data needed to conduct this evaluation is collected and reported. In addition, concerns have been expressed about the evaluation of off-site impact data and whether the existing measures are the optimal method of evaluating the effectiveness of state regulatory programs and documenting their accomplishments.

### Issue Resolution:

#### Off-Site Impacts

OSM will place greater emphasis on determining the causes of all off-site impacts. OSM and the states will then use that information to identify and initiate appropriate corrective measures to reduce the incidence of off-site impacts in the future.

#### Reclamation Success

Under Directive REG-8, reclamation success is evaluated in terms of the number of acres of mined land for which the various phases of bond release have been achieved. However, there is no legal requirement that permittees apply for bond release in a timely manner. Some permittees apply for release in a timely manner, and others do not. This is particularly true for Phases II and III.

To address this problem, OSM is considering rulemaking to improve the timeliness with which permittees apply for bond release. Options include the following:

- Revise 30 CFR 780.18(b) and 784.13(b) to include application for bond release as the final step in the reclamation schedule approved as part of the mining permit.
- Revise 30 CFR 800.40 to authorize the regulatory authority to initiate bond release in lieu of the permittee. The regulatory authority could either bill the permittee for the associated costs (e.g., advertisement, engineering, completion of forms) or retain a portion of the bond amount to cover those costs.
- Establish an annual fee based on acres bonded under a permit.
- Consider shifting the administrative costs associated with conducting regulatory inspections on areas that are eligible for bond release to the permittee if the permittee does not apply for bond release in a timely manner.

To improve data quality, OSM is considering rulemaking to require that each permittee submit an annual status report in electronic form to the regulatory authority. The report would include a map, data, and narrative including, at a minimum, annual and cumulative data for:

- the permit area;
- the bonded area;
- the disturbed area;
- backfilled and graded areas;
- areas where topsoil has been replaced;
- areas that have been planted;
- areas with Phase I bond release;
- areas with Phase II bond release; and
- areas with Phase III bond release.

Adoption of this requirement would resolve the problem of having to use bonded acreage as a surrogate for disturbed acreage in those states that do not now collect annual data on the status of permitted acreage.

#### New Measures

OSM invites comment on whether Directive REG-8 should be revised to include additional measures to evaluate the effectiveness of state regulatory programs.

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