

Oversight Inspections

Issues:

Concern has been expressed that OSM is not conducting enough oversight inspections, that the lack of independent inspections compromises the validity of oversight evaluation findings, that the type of inspections conducted is not optimal for program evaluation purposes, and that OSM does not have enough inspectors to properly evaluate the administration of the approved state programs. Additionally, there is concern that the citizen complaint process is too lengthy and that problems identified are not addressed timely.

Background:

Inspections are an integral part of OSM's oversight of how states are implementing and enforcing their approved regulatory programs. In 1982, OSM issued comprehensive guidance for oversight of state programs that included the use of oversight inspections of randomly selected sites under the theory that OSM could rely upon inspection findings to make valid inferences about state performance. In 1994, OSM revised [Directive REG-8, Oversight of State Regulatory Programs](#), to eliminate the requirement that inspection site selection rely upon random sampling. This change was intended to enhance the Field Office's ability to redirect available resources to problem sites and areas of concern.

OSM's current oversight strategy was established in the 1996 restructuring of Directive REG-8, which placed the primary focus of oversight on end results and the on-the-ground achievements of states in meeting SMCRA's environmental protection goals, including whether the public protection requirements and environmental protection standards of SMCRA are being met. Inspections are conducted on a range of sites – from those actively producing coal to forfeited bond sites awaiting reclamation. Field Offices have the discretion and flexibility to be proactive and to prioritize and selectively target OSM inspections toward current issues.

Specifically, Directive REG-8 Appendix 1, Section II.(A) contains the following discussion:

Inspections and/or site visits are an integral part of OSM's oversight activities. The evaluation plan/performance agreement should clearly describe what is expected to be accomplished through OSM inspections and/or site visits, so that both the state and OSM staff understand the purposes of the inspections/site visits. Inspections/site visits should be planned and designed to meet the overall objectives of the Field Office's oversight plan. Identifying the objectives of OSM oversight inspections and an inspection plan in the evaluation plan/performance agreement does not alter any of OSM's enforcement responsibilities under SMCRA or the Federal regulations.

While OSM is committed to working with states and other interested parties to seek consensus on oversight techniques and evaluations, the bureau will maintain its independence and objectivity in implementing its oversight duties under SMCRA. OSM's oversight role will not involve any duplication of the state's program implementation responsibilities. Oversight will not be process-driven. Instead, OSM oversight will focus on the on-the-ground/end-result success of the state program in achieving the purposes of the Act. Also, it will focus on identifying the need for and providing financial, technical, and other program assistance to states to strengthen their programs.

Issue Resolution:

1. Number of Oversight Inspections and the Number of Oversight Inspectors

Directive REG-8 does not specify the number of inspections to be conducted in each state. Concern has been expressed that OSM is not conducting enough oversight inspections and should have more inspectors in the field to properly evaluate the administration of the approved state programs. Further, it is maintained by some that additional inspections would likely identify more violations and the mere presence of more inspectors would encourage compliance.

The number of oversight inspections conducted and the number of active oversight inspectors have experienced a long-term decline. OSM conducted a high of 3,948 oversight inspections in the 1990s compared to 1,467 inspections in 2008, a 63% decline. Similarly, OSM employed as many as 107 active oversight inspectors in the 1990s compared to 42 in 2008, a 61% decline. The number of inspectors parallels the decrease in OSM full-time staff from 1,089 in 1990 to 525 in 2008, a 52% decline.

OSM is currently conducting around 1,400 oversight inspections per year, and the data indicate that there has been a significant decline in the number of inspections over the last several years. We believe more oversight inspections would result in more sites being evaluated, a better understanding of the state enforcement program, and a more effective oversight program.

Therefore, OSM will conduct more oversight inspections. Also, OSM will determine the number and type of oversight inspections to be conducted on a state-by-state basis. Conducting additional inspections may require additional resources. To accomplish this, OSM may need to redirect resources from other program activities, including, but not limited to, abandoned mine lands reclamation, training, technology transfer, technical assistance, and special oversight studies. OSM will revise Directive REG-8 to establish a methodology for determining the number and type of oversight inspections to be conducted on a state-by-state basis.

2. How OSM Conducts an Inspection - Joint vs. Independent

Under 30 CFR 842.11(a)(1), OSM must conduct joint inspections with the state regulatory authorities where practical and where the state so requests. OSM currently conducts both joint and independent inspections. There are two schools of thought as to which type of inspection has the most value for oversight purposes. One school holds that OSM should conduct more independent inspections because they provide a more accurate assessment of whether the state is adequately enforcing its approved program. In addition, operators are less likely to have prior notice of an inspection. The other school advocates joint inspections because they provide OSM the best opportunity to work with the state to identify and resolve issues and improve the accuracy of inspections.

OSM finds value in both types of inspections. However, the current ratio (81% joint and 19% independent after notification to the state) may be out of balance. In addition, in the interest of improving the credibility of oversight evaluation findings, we believe that OSM should have the flexibility to conduct some inspections on a completely independent basis without prior notification to the state. Therefore, we will take the measures necessary to articulate OSM's authority to conduct independent oversight inspections without prior notification to the state.

3. How OSM Selects Sites for Inspection - Random vs. Focused

Directive REG-8 does not specify how sites should be selected for oversight inspections. OSM Field Offices currently use both random and focused site selection techniques.

Once again, there are two schools of thought as to which method results in the most valid oversight findings. One school holds that completely random site selection will result in the most reliable picture of overall state performance. On the other hand, focused or targeted inspections provide the most effective use of available resources by allowing inspectors to concentrate on sites that are most likely to have problems and to conduct comprehensive studies of sites with particular characteristics (e.g., excess spoil fills, refuse piles, acid- or toxic-forming materials, specific postmining land uses). Thus, focused inspections may offer the best opportunity to achieve improvements in environmental protection and state program performance.

OSM believes that focused oversight inspections most efficiently apply resources by targeting perceived problem areas or sites with greater potential for violations. However, using a combination of both randomly selected sites and targeted sites may ensure a more balanced assessment of the state's performance.

OSM will revise Directive REG-8 to clarify that both random and focused methods of selecting sites to be inspected are acceptable, and to encourage use of a combination of both techniques when conducting oversight inspections.

4. How OSM Selects the Type of Inspection - Complete vs. Partial

Directive REG-8 does not specify whether oversight inspections should be complete or partial inspections. Each Field Office determines what type of oversight inspection will be conducted based upon resources and other factors, such as the purpose of the inspection.

Most Field Offices conduct both complete (also referred to as comprehensive) and partial inspections. In 2008, 49% of oversight inspections were complete inspections, and 51% were partial inspections. A complete inspection includes all aspects of the mining operation, while a partial inspection only includes certain aspects of the mining operation, which can be a specific practice or a specific area. Clearly, a complete inspection is more thorough and comprehensive; however, it also takes considerably more time. Conducting only complete inspections would reduce the number of sites that OSM could inspect.

Conducting a minimum number of complete oversight inspections in each state would improve consistency among OSM Field Offices and also may increase the identification of programmatic problems, especially in states where only partial inspections are being conducted. Therefore, OSM will revise Directive REG-8 to establish a methodology for determining the minimum number of complete oversight inspections to be conducted annually in each state.

5. Citizen Complaint Process

Concern has been expressed that the process for citizens to request a Federal inspection of an operation is too lengthy, and that identified problems are not addressed timely. Some assert that citizen complaints are no longer brought to the attention of OSM because “nothing ever happens,” and that citizens are using other mechanisms for addressing their issues, such as lawsuits. Others believe that citizen complaints have decreased because enforcement and oversight have been effective over time.

Data indicate that there has been a decline in the number of citizen complaints received each year by OSM. Specifically, citizen complaints received by OSM have declined by about 90% from more than 200 in the mid-1990s to 23 in 2008.

Currently, when a citizen requests OSM to conduct a Federal inspection, OSM is required to notify the state of the possible violation and allow the state ten days to respond before conducting a Federal inspection. In some cases requiring technical investigations, resolution of the citizen complaint can take months or even years to complete because of the complex legal or technical nature of the complaint. The appeal process also may result in lengthy delays in resolution of a citizen complaint. OSM recognizes that improvements should be made to the current policy and procedures if possible to improve the response time.

OSM will seek comments on how to improve the citizen complaint process. OSM also will reinstate and revise rescinded [Directive INE-35, Ten-Day Notices](#), to define the circumstances under which a state could request OSM to extend the time for the state to respond to a Ten-Day Notice, the maximum time allowed for extensions, and an elevated level of approval for further extensions.

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