

CHRISTI CRADDICK, CHAIRMAN
RYAN SITTON, COMMISSIONER
WAYNE CHRISTIAN, COMMISSIONER



ALEXANDER C. SCHOCH, GENERAL COUNSEL

RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Christi Craddick
Commissioner Ryan Sitton
Commissioner Wayne Christian

FROM: Haley Cochran, Attorney
Office of General Counsel *HC*

THROUGH: Alexander C. Schoch, General Counsel

DATE: October 13, 2020

SUBJECT: Proposed Amendments to 16 TAC Chapter 12,
relating to Coal Mining Regulations

October 20, 2020		
Approved	Denied	Abstain
<i>DS</i> <i>U</i>		
<i>DS</i> <i>WC</i>		
<i>DS</i> <i>RS</i>		

DS
CF

Attached is Staff's recommendation to amend 16 Texas Administrative Code Chapter 12. The amendments are proposed to better organize and clarify certain procedures, conform Commission rules to federal regulations and guidance such as the United States Department of Agriculture (USDA) Technical Release 60, update references to statutes or editions of external documents, and make other nonsubstantive clarifying amendments. The federal Office of Surface Mining Reclamation and Enforcement reviewed and approved the proposed amendments on September 8th and will review the amendments again prior to formal adoption.

Staff requests the Commission's approval to publish the proposed amendments in the *Texas Register* for public comment. If approved at conference on October 20th, the proposal should appear in the November 6th issue of the *Texas Register*. The proposal and an online comment form would also be made available on the Commission's website by October 21st, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Wei Wang, Executive Director
Brent Elliott, Director, Surface Mining and Reclamation Division



1 The Railroad Commission of Texas (Commission) proposes to amend, in Subchapter A, General, Division 1,
2 General, §§12.3 and 12.4, relating to Definitions; and Petitions to Initiate Rulemaking.

3 In Subchapter G, Surface Coal Mining and Reclamation Operations, Permits, and Coal Exploration Procedures
4 Systems, Division 1, General Requirements for Permit and Exploration Procedure Systems under Regulatory
5 Programs, the Commission proposes to amend §12.100, relating to Responsibilities.

6 In Subchapter G, Division 2, General Requirements for Permits and Permit Applications, the Commission
7 proposes to amend §12.106 and §12.108, relating to Permit Application Filing Deadlines; and Permit Fees.

8 In Subchapter G, Division 4, Surface Mining Permit Applications--Minimum Requirements for Legal,
9 Financial, Compliance, and Related Information[~~Part I~~], the Commission proposes a change in the Division title
10 and amendments to §12.121, relating to Identification of Other Licenses and Permits.

11 In Subchapter G, Division 5, Surface Mining Permit Applications--Minimum Requirements for Information on
12 Environmental Resources, the Commission proposes amendments to §12.126 and §12.137, relating to Description
13 of Hydrology and Geology: General Requirements; and Cross Sections, Maps, and Plans.

14 In Subchapter G, Division 6, Surface Mining Permit Applications--Minimum Requirements for Reclamation
15 and Operation Plan, the Commission proposes amendments to §12.142, §12.146, §12.148, and §12.154, relating to
16 Operation Plan: Maps and Plans; Reclamation Plan: Protection of Hydrologic Balance; Reclamation Plan: Ponds,
17 Impoundments, Banks, Dams, and Embankments; and Road Systems and Support Facilities.

18 In Subchapter G, Division 7, Underground [~~Surface~~] Mining Permit Applications--Minimum Requirements for
19 Legal, Financial, Compliance, and Related Information[~~Part II~~], the Commission proposes changes to the Division
20 title and amendments to §12.161, relating to Identification of Other Licenses and Permits.

21 In Subchapter G, Division 8, Underground Mining Permit Applications--Minimum Requirements for
22 Information on Environmental Resources, the Commission proposes amendments to §12.172 and §12.183, relating
23 to Description of Hydrology and Geology: General Requirements; and Cross Sections, Maps, and Plans.

24 In Subchapter G, Division 9, Underground Mining Permit Applications--Minimum Requirements for
25 Reclamation and Operation Plan, the Commission proposes amendments to §12.188, §12.190, §12.197, and
26 §12.198, relating to Reclamation Plan: Protection of Hydrologic Balance; Reclamation Plan: Ponds,
27 Impoundments, Banks, Dams, and Embankments; Operation Plan: Maps and Plans; and Road Systems and Support
28 Facilities.

29 In Subchapter G, Division 11, Review, Public Participation, and Approval of Permit Applications and Permit
30 Terms and Conditions, the Commission proposes amendments to §12.207, §12.211, and §12.215, relating to Public
31 Notices of Filing of Permit Applications; Public Hearing on Application; and Review of Permit Applications.

32 In Subchapter G, Division 13, Permit Reviews, Revisions, and Renewals, and Transfers, Sale, and Assignment
33 of Rights Granted Under Permits, the Commission proposes amendments to §12.225, relating to Commission
34 Review of Outstanding Permits.

35 In Subchapter K, Permanent Program Performance Standards, Division 2, Permanent Program Performance
36 Standards--Surface Mining Activities, the Commission proposes amendments to §12.341, §12.344, §12.347,
37 §12.363, §12.366, §12.368, §12.369, §12.373, §12.376, §12.382, §12.398, §12.399, and §12.401, relating to
38 Hydrologic Balance: Diversions; Hydrologic Balance: Siltation Structures; Hydrologic Balance: Permanent and
39 Temporary Impoundments; Disposal of Excess Spoil: General Requirements; Disposal of Excess Spoil: Durable

1 Rock Fills; Coal Processing Waste Banks: General Requirements; Coal Processing Waste Banks: Site Inspection;
2 Coal Processing Waste: Burned Waste Utilization; Coal Mine Waste: Dams and Embankments: General
3 Requirements; Pipelines; Cessation of Operations: Permanent; Postmining Land Use; and Primary Roads.

4 In Subchapter K, Division 3, Permanent Program Performance Standards--Underground Mining Activities, the
5 Commission proposes amendments to §12.511, §12.514, §12.517, §12.531, §12.534, §12.535, §12.536, §12.540,
6 §12.543, §12.549, §12.567, §12.568, and §12.570, relating to Hydrologic Balance: Diversions; Hydrologic
7 Balance: Siltation Structures; Hydrologic Balance: Permanent and Temporary Impoundments; Disposal of
8 Underground Development Waste and Excess Spoil: General Requirements; Disposal of Underground
9 Development Waste and Excess Spoil: Durable Rock Fills; Coal Mine Waste Banks: General Requirements; Coal
10 Mine Waste Banks: Site Inspection; Coal Mine Waste: Burned-Waste Utilization; Coal Mine Waste: Dams and
11 Embankments: General Requirements; Pipelines; Cessation of Operations: Permanent; Postmining Land Use; and
12 Primary Roads.

13 In Subchapter L, Permanent Program Inspection and Enforcement Procedures, Division 1, Commission
14 Inspection and Enforcement, the Commission proposes amendments to §12.676, relating to Alternative
15 Enforcement, and in Division 2, Enforcement, the Commission proposes amendments to §12.679, relating to
16 Suspension or Revocation of Permits.

17 The Commission proposes the amendments in order to better organize and clarify certain procedures, conform
18 Commission rules to federal regulations and guidance such as the United States Department of Agriculture (USDA)
19 Technical Release 60, update references to statutes or editions of external documents, update references to
20 professional engineers and professional geoscientists, and make other nonsubstantive clarifying amendments such
21 as making rules gender neutral and correcting internal cross-references.

22 Proposed amendments to §§12.100, 12.108, 12.121, 12.146, 12.161, 12.188, 12.225, 12.398, and 12.567 result
23 from Commission staff recommendations to update, reorganize, or clarify certain procedures. The proposed
24 amendments in §12.100 correspond to other proposed amendments in §§12.398 and 12.567 to require operators to
25 notify the Commission of the intent to permanently cease and abandon operations. In §12.108, the proposed
26 amendments state that the annual fee for each acre of land within a permit area covered by a reclamation bond on
27 December 31st of a year will be based on the number of bonded acres of land identified by the applicant on the map
28 included in the permit and approved by the Commission. The amendments will require that, by December 31st of
29 any given year, the permit bond map is updated to incorporate any releases of reclamation acreage that were
30 approved during that year. On December 31st of each year, Commission staff will use the approved bond map on
31 file to calculate the fee. In §§12.121 and 12.161, the proposed amendments add the permit expiration date to list of
32 information required to be submitted with an application to conduct the proposed surface mining activities. In
33 §§12.146 and 12.188, proposed amendments reorganize certain requirements for ease of reading and to assist
34 Commission staff in checking that the requirements have been met; the proposed amendments in new
35 subsection(d)(6) in both rules are made to ensure consistency with the corresponding federal rule.

36 Proposed amendments to §§12.344, 12.347, 12.376, 12.514, 12.517, and 12.543 update references to the United
37 State Department of Agriculture's Technical Release 60 which was revised in 2005. Previously, the rules
38 referenced the 1985 edition of Technical Release 60. In the 2005 version, several terms have been updated and
39 those terms are proposed to be updated in the Commission's rules as well. For example, these proposed

1 amendments replace the term "emergency spillways" with "auxiliary spillways" and change references to "Class B
2 or C" criteria to "significant or high hazard class."

3 Certain amendments are proposed to update the terms "registered professional engineer" and "professional
4 geologist" to "professional engineer" and "professional geoscientist," respectively. The updates ensure consistency
5 with terms used by professional licensing boards. These amendments are proposed in the definitions of those terms
6 in §12.3(132) and (133) with conforming amendments proposed in §§12.137, 12.142, 12.148, 12.154, 12.183,
7 12.190, 12.197, 12.198, 12.341, 12.363, 12.366, 12.368, 12.369, 12.373, 12.399, 12.401, 12.511, 12.531, 12.534,
8 12.535, 12.536, 12.540, 12.568, and 12.570.

9 Finally, other proposed nonsubstantive clarifying amendments to §§12.3(89), 12.4, 12.106, 12.126, 12.172,
10 12.207, 12.211, 12.215, 12.382, 12.549, 12.676, and 12.679 correct internal cross-references or references to
11 statutes or editions of external documents, ensure consistency with state statutes, make rule wording gender neutral,
12 or make grammatical corrections. For example, proposed amendments in §12.4 remove outdated requirements for
13 petitions for rulemaking, which required that the Commission respond to a petition within 90 days of receipt. The
14 proposed changes reference the Texas Administrative Procedure Act and the Commission's corresponding rule of
15 practice and procedure, which require a response within 60 days of receipt. Proposed amendments in §12.106
16 change the required permit renewal application date to 120 days before the expiration of the permit to match the
17 timeline in Texas Natural Resources Code §134.078.

18 Brent Elliott, Director, Surface Mining and Reclamation Division, has determined that during each year of the
19 first five years the proposed amendments would be in effect, the fiscal effect on state government as a result of
20 enforcing the proposed amendments would be zero. There are no fiscal impacts on local governments.

21 Mr. Elliott has determined that during each year of the first five years the proposed amendments would be in
22 effect the fiscal impact on those required to comply with the proposed amendments would be minimal postage
23 costs associated with the new notice requirement in §§12.398 and 12.567.

24 Mr. Elliott has determined that the public benefit resulting from the proposed amendments is consistency with
25 governing state statutes and federal rules, use of correct references, and updated rule language.

26 In accordance with Texas Government Code §2006.002, the Commission has determined that there will be no
27 adverse economic effects on rural communities or small or micro-businesses resulting from the proposed
28 amendments. The Commission notes there are no small businesses or micro-businesses, as those terms are defined
29 in Texas Government Code §2006.001, holding coal mining permits from the Commission. Therefore, the
30 Commission has not prepared the economic impact statement or regulatory flexibility analysis required under
31 §2006.002(c).

32 The proposed amendments also will not affect a local economy; therefore, the Commission has not prepared a
33 local employment impact statement pursuant to Texas Government Code §2001.022.

34 During the first five years that the rules would be in effect, the proposed amendments would not: create or
35 eliminate a government program; create or eliminate any employee positions; require an increase or decrease in
36 future legislative appropriations; create a new regulation; expand, limit, or repeal an existing regulation; increase or
37 decrease the number of individuals subject to the rule's applicability; or affect the state's economy. As described
38 above, the Commission proposes the amendments to better organize and clarify certain procedures, conform
39 Commission rules to federal regulations and guidance, update references, and make other nonsubstantive clarifying

1 amendments.

2 Lastly, the Commission has determined that the proposed rule does not meet the statutory definition of a major
3 environmental rule as set forth in Texas Government Code §2001.0225; therefore, a regulatory analysis pursuant to
4 that section is not required.

5 Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad
6 Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.texas.gov/general-](http://www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings)
7 [counsel/rules/comment-form-for-proposed-rulemakings](http://www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings); or by electronic mail to rulescoordinator@rrc.texas.gov.
8 The Commission will accept comments until 5:00 p.m. on Monday, November 23, 2020. The Commission finds
9 that this comment period is reasonable because the proposal and an online comment form will be available on the
10 Commission's website more than two weeks prior to Texas Register publication of the proposal, giving interested
11 persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested
12 persons to submit comments no later than the deadline. The Commission cannot guarantee that comments
13 submitted after the deadline will be considered. For further information, call Mr. Elliott at (512)305-8840. The
14 status of pending Commission rulemakings is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

15 The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013,
16 which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

17 Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

18 Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013

19

20 **SUBCHAPTER A. GENERAL.**

21 **DIVISION 1. GENERAL.**

22 §12.3. Definitions.

23 The following words and terms, when used in this Chapter (relating to Coal Mining Regulations), shall have
24 the following meanings unless the context clearly indicates otherwise:

25 (1) - (88) (No change.)

26 (89) Imminent danger to the health and safety of the public--The existence of any condition or practice, or
27 any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation,
28 which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons
29 outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of
30 death or serious injury before abatement exists if a rational person, subjected to the same condition or practices
31 giving rise to the peril, would not expose that person [~~himself~~] to the danger during the time necessary for
32 abatement.

33 (90) - (121) (No change.)

34 (122) Permit area--The area of land and water indicated on the map submitted by the operator with the [~~his~~]
35 application, as approved by the Commission, which area shall be covered by the operator's bond as required by
36 §§134.121 - 134.127 of the Act and shall be readily identifiable by appropriate markers on the site. This area shall
37 include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation
38 operations during the term of the permit.

39 (123) - (131) (No change.)

1 (132) Professional engineer--A person who is duly licensed by the Texas Board of Professional Engineers
2 and Land Surveyors to engage in the practice of engineering in this state.

3 (133) Professional geoscientist--A person who is duly licensed by the Texas Board of Professional
4 Geoscientists to engage in the practice of geoscience in this state.

5 (134) [(132)] Professional specialist--A person whose training, experience, and professional certification or
6 licensing are acceptable to the Commission for the limited purpose of performing certain specified duties under this
7 chapter.

8 (135) [(133)] Prohibited financial interest--Any direct or indirect financial interest in any coal mining
9 operation.

10 (136) [(134)] Property to be mined--Both the surface estates and mineral estates within the permit area and
11 the area covered by underground workings.

12 (137) [(135)] Public building--Any structure that is owned or leased, and principally used by a
13 governmental agency for public business or meetings.

14 (138) [(136)] Publicly-owned park--A public park that is owned by a federal, state or local governmental
15 entity.

16 (139) [(137)] Public office--A facility under the direction and control of a governmental entity which is
17 open to public access on a regular basis during reasonable business hours.

18 (140) [(138)] Public park--An area or portion of an area dedicated or designated by any federal, state, or
19 local agency primarily for public recreational use, whether or not such use is limited to certain times or days,
20 including any land leased, reserved, or held open to the public because of that use.

21 (141) [(139)] Public road--Any thoroughfare open to the public for passage of vehicles.

22 (142) [(140)] Qualified jurisdiction--A state or federal mining regulatory authority that has a blaster
23 certification program approved by the U.S. Department of the Interior, Office of Surface Mining Reclamation and
24 Enforcement, in accordance with the Federal Act.

25 (143) [(141)] Qualified laboratory--A designated public agency, private firm, institution, or analytical
26 laboratory that can provide the required determination of probable hydrologic consequences or statement of results
27 of test borings or core samplings or other services as specified at §12.236 and §12.240 of this title (relating to
28 Program Services, and Data Requirements), and that meets the standards of §12.241 of this title (relating to
29 Qualified Laboratories).

30 (144) [(142)] Rangeland--Land on which the natural potential (climax) plant cover is principally native
31 grasses, forbs, and shrubs valuable for forage. This land includes natural grass lands and savannahs, such as
32 prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by
33 regulating the intensity of grazing and season of use.

34 (145) [(143)] Recharge capacity--The ability of the soils and underlying materials to allow precipitation
35 and runoff to infiltrate and reach the zone of saturation.

36 (146) [(144)] Reciprocity--The conditional recognition by the Commission of a blaster certificate issued by
37 another qualified jurisdiction.

38 (147) [(145)] Reclamation--Those actions taken to restore mined land as required by this chapter to a
39 postmining land use approved by the Commission.

1 (148) [(146)] Recurrence interval--The interval of time in which a precipitation event is expected to occur
2 once, on the average. For example, the 10-year, 24-hour precipitation event would be that 24-hour precipitation
3 event expected to occur on the average once in 10 years.

4 (149) [(147)] Reference area--A land unit maintained under appropriate management for the purpose of
5 measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop
6 production methods approved by the Commission. Reference areas must be representative of geology, soil, slope,
7 and vegetation in the permit area.

8 (150) [(148)] Regional Director--A Regional Director of the Office or a Regional Director's representative.

9 ~~[(149) Registered professional engineer--A person who is duly licensed by the Texas State Board of~~
10 ~~Registration for Professional Engineers to engage in the practice of engineering in this state.]~~

11 (151) [(150)] Remining--Surface coal mining and reclamation operations that affect previously mined
12 areas.

13 (152) [(151)] Renewable resource lands--Aquifers and areas for the recharge of aquifers and other
14 underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands. With
15 respect to Subchapter F of this chapter (relating to Lands Unsuitable for Mining), geographic areas which
16 contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to
17 include aquifers and aquifer recharge areas.

18 (153) [(152)] Replacement of water supply--With respect to protected water supplies contaminated,
19 diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent
20 basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water-delivery
21 system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for
22 premining water supplies.

23 (A) Upon agreement by the permittee and the water-supply owner, the obligation to pay such operation
24 and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the
25 increased annual operation and maintenance costs for a period agreed to by the permittee and the water-supply
26 owner.

27 (B) If the affected water supply was not needed for the land use in existence at the time of loss,
28 contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement
29 requirements may be satisfied by demonstrating that a suitable alternative water source is available and could
30 feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water-
31 supply owner.

32 (154) [(153)] Road--A surface right-of-way for purposes of travel by land vehicles used in surface coal
33 mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way,
34 including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term
35 includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal
36 mining and reclamation operations or coal exploration, including use by coal-hauling vehicles to and from transfer,
37 processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining
38 area or within spoil or coal mine waste disposal areas.

39 (155) [(154)] Safety factor--The ratio of the available shear strength to the developed shear stress, or the

1 ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted
2 engineering practices.

3 (156) [~~(155)~~] Secretary--The Secretary of the U.S. Department of the Interior, or the Secretary's
4 representative.

5 (157) [~~(156)~~] Sedimentation pond--A primary sediment control structure designed, constructed and
6 maintained in accordance with §12.344 or §12.514 of this title (relating to Hydrologic Balance: Siltation
7 Structures) and including but not limited to a barrier, dam, or excavated depression which slows down water runoff
8 to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures,
9 such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity,
10 reduce runoff volume or trap sediment to the extent that such secondary sedimentation structures drain to a
11 sedimentation pond.

12 (158) [~~(157)~~] Significant forest cover--An existing plant community consisting predominantly of trees and
13 other woody vegetation.

14 (159) [~~(158)~~] Significant, imminent environmental harm to land, air or water resources--Determined in the
15 following context:

16 (A) An environmental harm is an adverse impact on land, air, or water resources, which resources
17 include, but are not limited to, plant and animal life.

18 (B) An environmental harm is imminent, if a condition, practice, or violation exists which:

19 (i) is causing such harm; or

20 (ii) may reasonably be expected to cause such harm at any time before the end of the reasonable
21 abatement time that would be set under §134.162 of the Act.

22 (C) An environmental harm is significant if that harm is appreciable and not immediately reparable.

23 (160) [~~(159)~~] Significant recreational, timber, economic, or other values incompatible with surface coal
24 mining operations--Those significant values which could be damaged by, and are not capable of existing together
25 with, surface coal mining operations because of the undesirable effects mining would have on those values, either
26 on the area included in the permit application or on other affected areas. Those values to be evaluated for their
27 significance include:

28 (A) recreation, including hiking, boating, camping, skiing or other related outdoor activities;

29 (B) timber management and silviculture;

30 (C) agriculture, aquaculture or production of other natural, processed or manufactured products which
31 enter commerce; and

32 (D) scenic, historic, archaeologic, esthetic, fish, wildlife, plants or cultural interests.

33 (161) [~~(160)~~] Siltation structure--A sedimentation pond, a series of sedimentation ponds, or other treatment
34 facility.

35 (162) [~~(161)~~] Slope--Average inclination of a surface, measured from the horizontal, generally expressed as
36 the ratio of a unit of horizontal distance to a given number of units of vertical distance (e.g., 5h:1v). It may also be
37 expressed as a percent or in degrees.

38 (163) [~~(162)~~] Soil horizons--Contrasting layers of soil parallel or nearly parallel to the land surface. Soil
39 horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons

1 are:

2 (A) A horizon. The uppermost mineral layer, often called the surface soil. It is the part of the soil in
3 which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

4 (B) E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E
5 horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has
6 measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an
7 underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a
8 combination of these properties;

9 (C) B horizon. The layer that typically is immediately beneath the E horizon and often called the
10 subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

11 (D) C horizon. The deepest layer of soil profile. It consists of loose material or weathered rock that is
12 relatively unaffected by biologic activity.

13 (164) [~~(163)~~] Soil survey--A field and other investigation, resulting in a map showing the geographic
14 distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such
15 soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

16 (165) [~~(164)~~] Spoil--Overburden that has been removed during surface coal mining operations.

17 (166) [~~(165)~~] Stabilize--To control movement of soil, spoil piles, or areas of disturbed earth by modifying
18 the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a
19 protective surface coating.

20 (167) [~~(166)~~] Steep slope--Any slope of more than 20 degrees or such lesser slope as may be designated by
21 the Commission after consideration of soil, climate, and other characteristics of a region or state.

22 (168) [~~(167)~~] Subirrigation--With respect to alluvial valley floors, the supplying of water to plants from
23 underneath or from a semi-saturated or saturated subsurface zone where water is available for use by vegetation.
24 Subirrigation may be identified by:

25 (A) diurnal fluctuation of the water table, due to the differences in nighttime and daytime
26 evapotranspiration rates;

27 (B) increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary
28 action;

29 (C) mottling of the soils in the root zones;

30 (D) existence of an important part of the root zone within the capillary fringe or water table of an
31 alluvial aquifer; or

32 (E) an increase in streamflow or a rise in ground-water levels, shortly after the first killing frost on the
33 valley floor.

34 (169) [~~(168)~~] Substantial legal and financial commitments in a surface coal mining operation--Significant
35 investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling,
36 preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing
37 mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring
38 the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not
39 sufficient to constitute substantial legal and financial commitments.

1 (170) [~~(169)~~] Substantially disturb--For purposes of coal exploration, to significantly impact land, air or
2 water resources by such activities as blasting; mechanical excavation; drilling or altering coal or water exploratory
3 holes or wells; removal of vegetation, topsoil, or overburden; construction of roads or other access routes;
4 placement of structures, excavated earth, or waste material on the natural surface of land; or by other such
5 activities; or to remove more than 250 tons of coal.

6 (171) [~~(170)~~] Successor in interest--Any person who succeeds to rights granted under a permit, by transfer,
7 assignment, or sale of those rights.

8 (172) [~~(171)~~] Surface coal mining and reclamation operations--Surface coal mining operations and all
9 activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal
10 mining operations.

11 (173) [~~(172)~~] Surface coal mining operations--Includes:

12 (A) activities conducted on the surface of lands in connection with a surface coal mine or, subject to
13 the requirements of §134.015 of the Act, surface operations and surface impacts incident to an underground coal
14 mine, the products of which enter or the operations of which directly or indirectly affect interstate commerce. Such
15 activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip,
16 auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ
17 distillation or retorting; leaching or other chemical or physical processing; the cleaning, concentrating, or other
18 processing or preparation of coal; and the loading of coal for interstate commerce at or near the mine-site.
19 Provided, however, that such activities do not include the extraction of coal incidental to the extraction of other
20 minerals, where coal does not exceed 16 2/3% of the tonnage of minerals removed annually from all sites operated
21 by a person on contiguous tracts of land for purposes of commercial use or sale, or coal exploration subject to
22 §134.014 and §134.031(d) of the Act; and provided further, that excavation for the purpose of obtaining coal
23 includes extraction of coal from coal refuse piles; and

24 (B) areas upon which the activities described in subparagraph (A) of this definition occur or where
25 such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is
26 incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of
27 existing roads to gain access to the site of those activities and for haulage and excavation, workings,
28 impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks,
29 culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other
30 areas upon which are site structures, facilities, or other property or material on the surface, resulting from or
31 incident to those activities.

32 (174) [~~(173)~~] Surface mining activities--Those surface coal mining and reclamation operations incident to
33 the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by
34 auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

35 (175) [~~(174)~~] Surface operations and impacts incident to an underground coal mine--All activities involved
36 in or related to underground coal mining which are either conducted on the surface of the land, produce changes in
37 the land surface or disturb the surface, air or water resources of the area, including all activities listed in
38 §134.004(19) of the Act and the definition of surface coal mining operations contained in this section.

39 (176) [~~(175)~~] Suspended solids or nonfilterable residue--Expressed as milligrams per liter, organic or

1 inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the
2 procedure outlined by the U.S. Environmental Protection Agency regulations for wastewater and analyses (40 CFR
3 136).

4 (177) [(476)] Temporary diversion--A diversion of a stream or overland flow which is used during coal
5 exploration or surface coal mining and reclamation operations and not approved by the Commission to remain after
6 reclamation as part of the approved postmining land use.

7 (178) [(477)] Temporary impoundment--An impoundment used during surface coal mining and
8 reclamation operations, but not approved by the Commission to remain as part of the approved postmining land
9 use.

10 (179) [(478)] Thick overburden--More than sufficient spoil and other waste materials available from the
11 entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and
12 other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness
13 of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface
14 configuration of the reclaimed area would not:

15 (A) closely resemble the surface configuration of the land prior to mining; or

16 (B) blend into and complement the drainage pattern of the surrounding terrain.

17 (180) [(479)] Thin overburden--Insufficient spoil and other waste materials available from the entire permit
18 area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials
19 occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials,
20 is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after
21 backfilling and grading the surface configuration of the reclaimed area would not:

22 (A) closely resemble the surface configuration of the land prior to mining; or

23 (B) blend into and complement the drainage pattern of the surrounding terrain.

24 (181) [(480)] Ton--2,000 pounds avoirdupois (0.90718 metric ton).

25 (182) [(481)] Topsoil--The A and E soil-horizon layers of the four master soil horizons.

26 (183) [(482)] Toxic-forming materials--Earth materials or wastes which, if acted upon by air, water,
27 weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water
28 that are detrimental to biota or uses of water.

29 (184) [(483)] Toxic mine drainage--Water that is discharged from active or abandoned mines or other areas
30 affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that
31 through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area
32 that might be exposed to it.

33 (185) [(484)] Transfer, assignment, or sale of rights--A change in ownership or other effective control over
34 the right to conduct surface coal mining operations under a permit issued by the Commission.

35 (186) [(485)] Unconsolidated streamlaid deposits holding streams--With respect to alluvial valley floors,
36 all flood plains and terraces located in the lower portions of topographic valleys which contain perennial or other
37 streams with channels that are greater than 3 feet in bankfull width and greater than 0.5 feet in bankfull depth.

38 (187) [(486)] Underground development waste--Waste rock mixtures of coal, shale, claystone, siltstone,
39 sandstone, limestone, or related materials that are excavated, moved, and disposed of during development and

1 preparation of areas incident to underground mining activities.

2 (188) [~~(187)~~] Underground mining activities--Includes:

3 (A) surface operations incident to underground extraction of coal or in situ processing, such as
4 construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing
5 areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas
6 utilized for the disposal and storage of waste, and areas on which materials incident to underground mining
7 operations are placed; and

8 (B) underground operations such as underground construction, operation, and reclamation of shafts,
9 adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

10 (189) [~~(188)~~] Undeveloped rangeland--For purposes of alluvial valley floors, lands where the use is not
11 specifically controlled and managed.

12 (190) [~~(189)~~] Unwarranted failure to comply--The failure of the permittee to prevent the occurrence of any
13 violation of the permit or any requirement of the Act, due to the indifference, lack of diligence, or lack of
14 reasonable care, or the failure to abate any violation of such permit or the Act, due to indifference, lack of
15 diligence, or lack of reasonable care.

16 (191) [~~(190)~~] Upland areas--With respect to alluvial valley floors, those geomorphic features located
17 outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces,
18 landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas
19 underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or
20 windblown material.

21 (192) [~~(191)~~] Valid existing rights--A set of circumstances under which a person may, subject to
22 Commission approval, conduct surface coal mining operations on lands where §134.022 of the Act and §12.71(a)
23 of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited) would otherwise
24 prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of
25 §12.71(a) of this title and §134.022 of the Act. A person seeking to exercise valid existing rights must comply with
26 all other pertinent requirements of the Act and this chapter.

27 (A) Property rights demonstration. Except as provided in subparagraph (C) of this paragraph, a person
28 claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other
29 document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining
30 operations intended. This right must exist at the time that the land came under the protection of §12.71(a) of this
31 title or §134.022 of the Act. Applicable state statutory or case law will govern interpretation of documents relied
32 upon to establish property rights. If no applicable state law exists, custom and generally accepted usage at the time
33 and place that the documents came into existence will govern their interpretation.

34 (B) Additional demonstrations. Except as provided in subparagraph (C) of this paragraph, a person
35 claiming valid existing rights must also demonstrate compliance with one of the following standards:

36 (i) Good faith/all permits standard. All permits and other authorizations required to conduct surface
37 coal mining operations have been obtained, or a good faith effort to obtain all necessary permits and authorizations
38 has been made, before the land came under the protection of §12.71(a) of this title or §134.022 of the Act. At a
39 minimum, an application must have been submitted for any permit required under Subchapter G of this chapter

1 (relating to Surface Coal Mining and Reclamation Operations, Permits, and Coal Exploration Procedure Systems);
2 or

3 (ii) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface
4 coal mining operation for which all permits and other authorizations required to conduct surface coal mining
5 operations have been obtained, or a good faith attempt to obtain all permits and authorizations has been made,
6 before the land came under the protection of §12.71(a) of this title or §134.022 of the Act. To meet this standard, a
7 person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the
8 viability of the operation as originally planned before the land came under the protection of §12.71(a) of this title or
9 §134.022 of the Act. Except for operations in existence before August 3, 1977, or for which a good faith effort to
10 obtain all necessary permits have been made before August 3, 1977, this standard does not apply to lands already
11 under the protection of §12.71(a) of this title or §134.022 of the Act when the Commission approved the permit for
12 the original operation or when the good faith effort to obtain all necessary permits for the original operation was
13 made. In evaluating whether a person meets this standard, the Commission may consider factors such as:

14 (I) the extent to which coal supply contracts or other legal and business commitments that
15 predate the time that the land came under the protection of §12.71(a) of this title or §134.022 of the Act depend
16 upon use of that land for surface coal mining operations;

17 (II) the extent to which plans used to obtain financing for the operation before the land came
18 under the protection of §12.71(a) of this title or §134.022 of the Act rely upon use of that land for surface coal
19 mining operations;

20 (III) the extent to which investments in the operation before the land came under the protection
21 of §12.71(a) of this title or §134.022 of the Act rely upon use of that land for surface coal mining operations; and

22 (IV) whether the land lies within the area identified on the life-of-mine map submitted under
23 §12.136(3) of this title (relating to Maps: General Requirements) or §12.182(3) of this title (relating to Maps:
24 General Requirements) before the land came under the protection of §12.71(a) of this title.

25 (C) Roads. A person who claims valid existing rights to use or construct a road across the surface of
26 lands protected by §12.71(a) of this title or §134.022 of the Act must demonstrate that one or more of the following
27 circumstances exist if the road is included within the definition of "surface coal mining operations" in this section:

28 (i) the road existed when the land upon which it is located came under the protection of §12.71(a)
29 of this title or §134.022 of the Act, and the person has a legal right to use the road for surface coal mining
30 operations;

31 (ii) a properly recorded right of way or easement for a road in that location existed when the land
32 came under the protection of §12.71(a) of this title or §134.022 of the Act, and, under the document creating the
33 right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road
34 across the right of way or easement for surface coal mining operations;

35 (iii) a valid permit for use or construction of a road in that location for surface coal mining
36 operations existed when the land came under the protection of §12.71(a) of this title or §134.022 of the Act; or

37 (iv) valid existing rights exist under subparagraphs (A) and (B) of this paragraph.

38 (193) [(192)] Valley fill--A fill structure consisting of any material other than coal waste and organic
39 material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater

1 than 20 degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater
2 than 10 degrees.

3 (194) [~~(193)~~] Violation--When used in the context of the permit application information or permit
4 eligibility requirements of the Act and this chapter:

5 (A) a failure to comply with an applicable provision of a Federal or state law or regulation pertaining to
6 air or water environmental protection, as evidenced by a written notification from a governmental entity to the
7 responsible person; or

8 (B) a noncompliance for which the Commission has provided one or more of the following types of
9 notice, or another state's regulatory authority has provided equivalent notice under corresponding provisions of that
10 state's regulatory program:

11 (i) a notice of violation under §12.678 of this title (relating to Notices of Violation);

12 (ii) a cessation order under §12.677 of this title (relating to Cessation Orders);

13 (iii) a final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under
14 Subchapter L of this chapter (relating to Permanent Program Inspection and Enforcement Procedures);

15 (iv) a bill or demand letter pertaining to delinquent reclamation fees owed under 30 CFR, Part 870;
16 or

17 (v) a notice of bond forfeiture under §12.314(d) of this title (relating to Forfeiture of Bonds) when:

18 (I) one or more violations upon which the forfeiture was based have not been abated or
19 corrected; or

20 (II) the amount forfeited and collected is insufficient for full reclamation under §12.314 of this
21 title, the Commission orders reimbursement for additional reclamation costs, and the person has not complied with
22 the reimbursement order.

23 (195) [~~(194)~~] Violation, failure, or refusal--With respect to §§12.696 - 12.699 of this title, a violation of or
24 a failure or refusal to comply with any order of the Commission including, but not limited to, a condition of a
25 permit, notice of violation, failure-to-abate cessation order, imminent harm cessation order, order to show cause
26 why a permit should not be suspended or revoked, and order in connection with a civil action for relief, except an
27 order incorporated in a decision issued under §134.175 of the Act.

28 (196) [~~(195)~~] Violation notice--Any written notification from a regulatory authority or other governmental
29 entity, as specified in the definition of "violation" in this section.

30 (197) [~~(196)~~] Water table--The upper surface of a zone of saturation, where the body of ground water is not
31 confined by an overlying impermeable zone.

32 (198) [~~(197)~~] Willful or willfully--With respect to §§12.696 - 12.699 of this title, an individual that
33 authorized, ordered, or carried out an act or omission that resulted in either a violation or the failure to abate or
34 correct a violation acted:

35 (A) intentionally, voluntarily, or consciously; and

36 (B) with intentional disregard or plain indifference to legal requirements.

37 (199) [~~(198)~~] Willful violation--An act or omission which violates the Act, state, or federal laws or
38 regulations, or any permit condition required by the Act or this chapter, committed by a person who intends the
39 result which actually occurs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

§12.4. Petitions to Initiate Rulemaking.

~~[(a) Any person may petition the Commission to initiate a proceeding for the issuance, amendment, or repeal of any regulation [under the Act]. The petition shall be submitted in accordance with §1.301 of this title, relating to Petition for Adoption of Rules, and the APA [to the Surface Mining and Reclamation Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711].~~

~~[(b) The petition shall be a concise statement of the facts, technical justification, and law which require issuance, amendment, or repeal of a regulation under the Act and shall indicate whether the petitioner desires a public hearing.]~~

~~[(c) Upon receipt of the petition, the Commission shall determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis. If a reasonable basis is shown, a notice shall be published in the Texas Register asking for public comments on the proposed change.]~~

~~[(d) Within 90 days from receipt of the petition, the Commission shall issue a written decision either granting or denying the petition.]~~

~~[(1) If the petition is granted, the Commission shall initiate a rulemaking proceeding in accordance with the APA.]~~

~~[(2) If the petition is denied, the Commission shall notify the petitioner in writing, setting forth the reasons for denial.]~~

SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS.
DIVISION 1. GENERAL REQUIREMENTS FOR PERMIT AND EXPLORATION PROCEDURE SYSTEMS UNDER REGULATORY PROGRAMS.

§12.100. Responsibilities.

(a) Persons seeking to engage in surface coal mining and reclamation operations must submit an application for and obtain a permit for those operations in accordance with this subchapter (relating to Surface Coal Mining and Reclamation Operations, Permits, and Coal Exploration Procedures Systems). Persons seeking to conduct coal exploration must first file the notice of intention or obtain approval of the Commission as required under §§12.109 - 12.115 of this title (relating to General Requirements for Coal Exploration). A permit and the obligations established therein (to include payment of annual fees associated with the permit as required in §12.108 of this title, relating to Permit Fees) shall continue until all surface coal mining and reclamation operations are completed, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

(b) A permittee will not be required to submit an application to renew a permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be completed. The permittee will provide written notification to the Director the Surface Mining and Reclamation Division of permanent cessation of mining operations as required under §12.398 and §12.567 of this title, both relating to

1 ~~Cessation of Operations: Permanent. [A permit and the obligations established therein (to include payment of~~
2 ~~annual fees associated with the permit as required in §12.108 of this title, relating to Permit Fees) shall continue~~
3 ~~until all surface coal mining and reclamation operations are completed, regardless of whether the authorization to~~
4 ~~conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.]~~

5 (c) [(b)] The Commission shall review each application for exploration approval and for a permit, approve or
6 disapprove each permit application or exploration application, and issue, condition, suspend, or revoke exploration
7 approval, permits, renewals, or revised permits under an approved regulatory program.

8 (d) [(e)] The applicant for a permit or revision of a permit shall have the burden of establishing that the
9 application is in compliance with all of the requirements of the Commission.

10
11 **SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND**
12 **COAL EXPLORATION PROCEDURES SYSTEMS.**

13 **DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS.**

14 §12.106. Permit Application Filing Deadlines.

15 (a) (No change.)

16 (b) Filing deadlines after initial implementation.

17 (1) (No change.)

18 (2) Renewal of valid permits. An application for renewal of a permit shall be filed with the Commission at
19 least 120 [180] days before the expiration of the permit involved.

20 (3) - (4) (No change.)

21
22 §12.108. Permit Fees.

23 (a) (No change.)

24 (b) Annual Fees. In addition to application fees required by this section, each permittee shall pay to the
25 Commission the following annual fees due and payable not later than March 15th of the year following the calendar
26 year for which these fees are applicable:

27 (1) a fee of \$12.85 for each acre of land within a permit area covered by a reclamation bond on December
28 31st of the year, based on the number of bonded acres of land identified by the applicant [as shown] on the map
29 included in the permit as required by §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans)
30 and approved by the Commission; and

31 (2) a fee of \$6,170 for each permit in effect on December 31st of the year.

32 (c) (No change.)

33
34 **DIVISION 4. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR**
35 **LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION[~~, PART I~~].**

36 §12.121. Identification of Other Licenses and Permits.

37 Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the
38 proposed surface mining activities. This list shall identify each license and permit by:

39 (1) type of permit or license;

(2) name and address of issuing authority;

(3) identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) if a decision has been made, the date of approval or disapproval by each issuing authority and permit expiration date.

DIVISION 5. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES.

§12.126. Description of Hydrology and Geology: General Requirements.

(a) - (c) (No change.)

(d) All water-quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the 23rd ~~15th~~ edition of the American Public Health Association's Standard Methods for the Examination of Water and Wastewater ~~[Standard Methods for the Examination of Water and Wastewater]~~, which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434.

§12.137. Cross Sections, Maps, and Plans.

(a) (No change.)

(b) Maps, plans, and cross sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified ~~[registered]~~ professional engineer or qualified professional geoscientist ~~[geologist]~~, with assistance from experts in related fields such as land surveying and landscape architecture and shall be updated as required by the Commission.

DIVISION 6. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN.

§12.142. Operation Plan: Maps and Plans.

Each application shall contain maps and plans of the proposed permit and adjacent areas as follows:

(1) - (2) (No change.)

(3) Except as provided in §12.148(a)(2) and (3) of this title, §12.153(a) of this title (relating to Disposal of Excess Spoil), §12.363(b) of this title (relating to Disposal of Excess Spoil: General Requirements), §12.366(b)(1) of this title (relating to Disposal of Excess Spoil: Durable Rock Fills), and §12.368(c) of this title (relating to Coal Processing Waste Banks: General Requirements), maps, plans, and cross-sections required under paragraph (2)(D), (E), (F), (J), and (K) of this section shall be prepared by, or under the direction of, and certified by a qualified ~~[registered]~~ professional engineer, or qualified professional geoscientist ~~[geologist]~~, with assistance from experts in related fields such as land surveying and landscape architecture.

(4) (No change.)

§12.146. Reclamation Plan: Protection of Hydrologic Balance.

(a) General requirements. The application shall include a hydrologic reclamation plan, with appropriate maps and descriptions, indicating how the relevant requirements of this chapter (relating to Coal Mining Regulations),

1 including §§12.339-12.341, 12.346, 12.348 and 12.349, and 12.350-12.354 of this title (relating to Hydrologic
2 Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to
3 Hydrologic Balance: Diversions, to Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil, to Hydrologic
4 Balance: Ground-Water Protection, to Hydrologic Balance: Surface-Water Protection, to Hydrologic Balance:
5 Surface and Ground-Water Monitoring, to Hydrologic Balance: Transfer of Wells, to Hydrologic Balance: Water
6 Rights and Replacement, to Hydrologic Balance: Discharge of Water Into an Underground Mine, and to
7 Hydrologic Balance: Postmine Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment
8 Facilities), will be met. The plan shall be specific to the local hydrologic conditions.

9 (1) The plan [~~H~~] shall contain the steps to be taken during mining and reclamation through bond release:

10 (A) to minimize disturbances to the hydrologic balance within the permit and adjacent areas;

11 (B) to prevent material damage outside the permit area;

12 (C) to meet applicable federal and state water-quality laws and regulations; and

13 (D) to protect the rights of present water users.

14 (2) The plan shall specifically address any potential adverse hydrologic consequences identified in the
15 PHC determination prepared under §§12.139-12.154 of this title (relating to Surface Mining Permit Applications--
16 Minimum Requirements for Reclamation and Operation Plan) and shall include preventive and remedial measures.
17 The plan shall identify the measures to be taken to:

18 (A) [~~1~~] protect the quality of surface- and ground-water systems, both within the proposed permit and
19 adjacent areas, from the adverse effects of the proposed surface mining activities, or to provide alternative sources
20 of water in accordance with §12.130 and §12.352 of this title (relating to Alternative Water Supply Information,
21 and to Hydrologic Balance: Water Rights and Replacement), where the protection of quality cannot be ensured;

22 (B) [~~2~~] protect or replace the rights of present users of surface and ground water;

23 (C) [~~3~~] protect the quantity of surface and ground water both within the proposed permit area and
24 adjacent area from adverse effects of the proposed surface mining activities, or to provide alternative sources of
25 water in accordance with §12.130 and §12.352 of this title (relating to Alternative Water Supply Information, and
26 to Hydrologic Balance: Water Rights and Replacement), where the protection of quantity cannot be ensured;

27 (D) [~~4~~] avoid acid or toxic drainage;

28 (E) [~~5~~] prevent, to the extent possible using the best technology currently available, additional
29 contributions of suspended solids to streamflow;

30 (F) [~~6~~] provide water-treatment facilities when needed;

31 (G) [~~7~~] control drainage; and

32 (H) [~~8~~] restore approximate premining recharge capacity.

33 (b) - (c) (No change.)

34 (d) Probable hydrologic consequences determination.

35 (1) - (2) (No change.)

36 (3) The PHC determination shall include findings on:

37 (A) whether adverse impacts may occur to the hydrologic balance;

38 (B) whether acid-forming [~~or toxic-forming~~] materials are present that could result in the
39 contamination of ground- or surface-water supplies;

1 (C) whether toxic-forming materials are present that could result in the contamination of ground- or
2 surface-water supplies;

3 (D) [~~(C)~~] whether the proposed operation may proximately result in contamination[, diminution, or
4 interruption] of an underground or surface source of water within the proposed permit or adjacent areas which is
5 used for domestic, agricultural, industrial, or other legitimate purpose; [~~and~~]

6 (E) whether the proposed operation may proximately result in diminution of an underground or surface
7 source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or
8 other legitimate purpose;

9 (F) whether the proposed operation may proximately result in interruption of an underground or
10 surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural,
11 industrial, or other legitimate purpose;

12 (G) [~~(D)~~] what impact the proposed operation will have on:

13 (i) sediment yield from the disturbed area;

14 (ii) acidity, total suspended and dissolved solids, and other important water-quality parameters of
15 local impact;

16 (iii) flooding or streamflow alteration;

17 (iv) ground- and surface-water availability; and

18 (v) other characteristics as required by the Commission.

19 (4) An application for a permit revision shall be reviewed by the Commission to determine whether a new
20 or updated PHC determination shall be required.

21 (5) If the PHC determination [~~of the probable hydrologic consequences (PHC)~~] required by this subsection
22 indicates adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-
23 forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water
24 supplies, then information supplemental to that required under §12.128 and §12.129 of this title (relating to
25 Ground-Water Information, and to Surface-Water Information) shall be provided to evaluate such probable
26 hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be
27 based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of
28 other water quality and quantity characteristics. Information shall be provided on water availability and alternative
29 water sources, including the suitability of alternative water sources for existing premining uses and approved
30 postmining land uses.

31 (6) If the PHC determination required by this subsection indicates that the proposed mining operation may
32 proximately result in contamination, diminution, or interruption of an underground or surface source of water
33 within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate
34 purpose, then the Commission may require that the applicant provide information supplemental to that required
35 under §12.130 (relating to Alternative Water Supply Information).

36 (e) Cumulative hydrologic impact assessment.

37 (1) The Commission shall provide a [an assessment of the] probable cumulative hydrologic impacts
38 assessment (CHIA) of the proposed operation and all anticipated mining upon surface- and ground-water systems
39 in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether

1 the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit
2 area. The Commission may allow the applicant to submit data and analyses relevant to the CHIA with the permit
3 application.

4 (2) An application for a permit revision shall be reviewed by the Commission to determine whether a new
5 or updated CHIA shall be required.

6
7 §12.148. Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments.

8 (a) General. Each application shall include a general plan for each proposed sedimentation pond, water
9 impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

10 (1) Each general plan shall:

11 (A) be prepared by or under the direction of, and certified by a qualified [~~registered~~] professional
12 engineer, or by a qualified professional geoscientist [~~geologist~~], with assistance from experts in related fields such
13 as land surveying and landscape architecture;

14 (B) - (E) (No change.)

15 (2) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine
16 Safety and Health Administration, 30 CFR 77.216(a), shall:

17 (A) be prepared by or under the direction of, and certified by a qualified [~~registered~~] professional
18 engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

19 (B) - (D) (No change.)

20 (3) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR
21 77.216(a) shall:

22 (A) be prepared by or under the direction of, and certified by a qualified [~~registered~~] professional
23 engineer;

24 (B) - (D) (No change.)

25 (b) - (d) (No change.)

26 (e) Coal processing waste dams and embankments. Coal mine waste dams and embankments shall be designed
27 to comply with the requirements of §§12.376-12.378 of this title (relating to Coal Mine Waste: Dams and
28 Embankments: General Requirements, to Coal Mine Waste: Dams and Embankments: Site Preparation, and to Coal
29 Mine Waste: Dams and Embankments: Design and Construction). Each plan shall comply with the requirements of
30 the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a
31 geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural
32 competence of the foundation which will support the proposed dam or embankment structure and the impounded
33 material. The geotechnical investigation shall be planned and supervised by a qualified professional [~~an~~] engineer
34 or qualified professional geoscientist [~~engineering geologist~~], according to the following:

35 (1) - (4) (No change.)

36 (f) (No change.)

37
38 §12.154. Road Systems and Support Facilities

39 (a) (No change.)

1 (b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the
2 direction of, and certified by a qualified [~~registered~~] professional engineer with experience in the design and
3 construction of roads as meeting the requirements of this chapter (relating to Coal Mining Regulations), current,
4 prudent engineering practices; and any design criteria established by the Commission.

5 (c) (No change.)
6

7 **DIVISION 7. UNDERGROUND [~~SURFACE~~] MINING PERMIT APPLICATIONS - MINIMUM**
8 **REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION [~~---~~**
9 **PART II].**

10 §12.161. Identification of Other Licenses and Permits.

11 Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the
12 proposed underground mining activities. This list shall identify each license and permit by:

13 (1) type of permit or license;

14 (2) name and address of issuing authority;

15 (3) identification numbers of applications for those permits or licenses or, if issued, the identification
16 numbers of the permits or licenses; and

17 (4) if a decision has been made, the date of approval or disapproval by each issuing authority and permit
18 expiration date.

19
20 **DIVISION 8. UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS**
21 **FOR INFORMATION ON ENVIRONMENTAL RESOURCES.**

22 §12.172. Description of Hydrology and Geology: General Requirements.

23 (a) - (c) (No change.)

24 (d) All water-quality analyses performed to meet the requirements of this chapter (relating to Coal Mining
25 Regulations) shall be conducted according to the methodology in the 23rd [~~15th~~] edition of the American Public
26 Health Association's Standard Methods for the Examination of Water and Wastewater, [~~"Standard Methods for the~~
27 ~~Examination of Water and Wastewater,"~~] which is incorporated by reference, or the methodology in 40 CFR Parts
28 136 and 434.

29
30 §12.183. Cross Sections, Maps, and Plans.

31 (a) (No change.)

32 (b) Maps, plans and cross sections included in a permit application and required by this shall be prepared by,
33 or under the direction of and certified by a qualified [~~registered~~] professional engineer or qualified professional
34 geoscientist [~~geologist~~], with assistance from experts in related fields such as land surveying and landscape
35 architecture and shall be updated as required by the Commission.
36

37 **DIVISION 9. UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS**
38 **FOR RECLAMATION AND OPERATION PLAN.**

39 §12.188. Reclamation Plan: Protection of Hydrologic Balance.

1 (a) General requirements. The application shall include a hydrologic reclamation plan, with appropriate maps
2 and descriptions, indicating how the relevant requirements of this chapter (relating to Coal Mining Regulations),
3 including §§12.509-12.511, 12.516, 12.518 and 12.519, and 12.520-12.524 of this title (relating to Hydrologic
4 Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to
5 Hydrologic Balance: Diversions, to Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil, to Hydrologic
6 Balance: Ground-Water Protection, to Hydrologic Balance: Surface-Water Protection, to Hydrologic Balance:
7 Surface and Ground-Water Monitoring, to Hydrologic Balance: Transfer of Wells, to Hydrologic Balance: Water
8 Rights and Replacement, to Hydrologic Balance: Discharge of Water Into an Underground Mine, and to
9 Hydrologic Balance: Postmine Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment
10 Facilities), will be met. The plan shall be specific to the local hydrologic conditions.

11 (1) The plan [~~H~~] shall contain the steps to be taken during mining and reclamation through bond release:
12 (A) to minimize disturbances to the hydrologic balance within the permit and adjacent areas;
13 (B) to prevent material damage outside the permit area;
14 (C) to meet applicable federal and state water-quality laws and regulations; and
15 (D) to protect the rights of present water users.

16 (2) The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC
17 determination prepared under §§12.185-12.198 of this title (relating to Underground Mining Permit Applications--
18 Minimum Requirements for Reclamation and Operation Plan) and shall include preventive and remedial measures.
19 The plan shall identify the measures to be taken to:

20 (A) [~~H~~] protect the quality of surface- and ground-water systems, both within the proposed permit
21 area and adjacent areas, from the adverse effects of the proposed underground mining activities, or to provide
22 alternative sources of water, in accordance with §12.176 and §12.521 of this title (relating to Alternative Water
23 Supply Information, and to Hydrologic Balance: Water Rights and Replacement), where the protection of quality
24 cannot be ensured;

25 (B) [~~H~~] protect or replace the rights of present users of surface and ground water;

26 (C) [~~H~~] protect the quantity of surface and ground water both within the proposed permit area and
27 adjacent area from adverse effects of the proposed underground mining activities, or to provide alternative sources
28 of water, in accordance with §12.176 and §12.521 of this title (relating to Alternative Water Supply Information,
29 and to Hydrologic Balance: Water Rights and Replacement), where the protection of quantity cannot be ensured;

30 (D) [~~H~~] avoid acid or toxic drainage;

31 (E) [~~H~~] prevent, to the extent possible using the best technology currently available, additional
32 contributions of sediment to streamflows;

33 (F) [~~H~~] provide water-treatment facilities when needed;

34 (G) [~~H~~] control drainage;

35 (H) [~~H~~] restore approximate premining recharge capacity; and

36 (I) [~~H~~] protect the quality of water by locating openings for mines in accordance with §12.518 of this
37 title (relating to Hydrologic Balance: Underground Mine Entry and Access Discharges).

38 (b) - (c) (No change.)

39 (d) Probable hydrologic consequences determination.

1 (1) - (2) (No change.)

2 (3) The PHC determination shall include findings on:

3 (A) whether adverse impacts may occur to the hydrologic balance;

4 (B) whether acid-forming [~~or toxic-forming~~] materials are present that could result in contamination of
5 surface- or ground-water supplies;

6 (C) whether toxic-forming materials are present that could result in contamination of surface- or
7 ground-water supplies;

8 (D) [(C)] whether the proposed operation may proximately result in contamination[, diminution, or
9 interruption] of an underground or surface source of water within the proposed permit or adjacent areas which is
10 used for domestic, agricultural, industrial, or other legitimate purpose; [and]

11 (E) whether the proposed operation may proximately result in diminution of an underground or surface
12 source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or
13 other legitimate purpose;

14 (F) whether the proposed operation may proximately result in interruption of an underground or
15 surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural,
16 industrial, or other legitimate purpose; and

17 (G) [(D)] what impact the proposed operation will have on:

18 (i) sediment yield from the disturbed area;

19 (ii) acidity, total suspended and dissolved solids, and other important water-quality parameters of
20 local impact;

21 (iii) flooding or streamflow alteration;

22 (iv) ground- and surface-water availability; and

23 (v) other characteristics as required by the Commission.

24 (4) An application for a permit revision shall be reviewed by the Commission to determine whether a new
25 or updated PHC determination shall be required.

26 (5) If the PHC determination [~~of the probable hydrologic consequences (PHC)~~] required by this subsection
27 indicates adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-
28 forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water
29 supplies, then information supplemental to that required under §12.174 and §12.175 of this title (relating to
30 Ground-Water Information, and to Surface-Water Information), shall be provided to evaluate such probable
31 hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be
32 based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of
33 other water quality and quantity characteristics. Information shall be provided on water availability and alternative
34 water sources, including the suitability of alternative water sources for existing premining uses and approved
35 postmining land uses.

36 (6) If the PHC determination required by this subsection indicates that the proposed mining operation may
37 proximately result in contamination, diminution, or interruption of an underground or surface source of water
38 within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate
39 purpose, then the Commission may require that the applicant provide information supplemental to that required

1 under §12.176 (relating to Alternative Water Supply Information).

2 (e) Cumulative hydrologic impact assessment.

3 (1) The Commission shall provide a ~~[an assessment of the]~~ probable cumulative hydrologic impacts
4 assessment (CHIA) of the proposed operation and all anticipated mining upon surface- and ground-water systems
5 in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether
6 the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit
7 area. The Commission may allow the applicant to submit data and analyses relevant to the CHIA with the permit
8 application.

9 (2) (No change.)

10 (f) (No change.)

11
12 §12.190. Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments.

13 (a) General. Each application shall include a general plan for each proposed sedimentation pond, water
14 impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

15 (1) Each general plan shall:

16 (A) be prepared by or under the direction of[;] and certified by[;] a qualified ~~[registered]~~ professional
17 engineer or by a qualified professional geoscientist ~~[geologist]~~ with assistance from experts in related fields such as
18 land surveying and landscape architecture;

19 (B) - (E) (No change.)

20 (2) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine
21 Safety and Health Administration, 30 CFR 77.216(a) shall:

22 (A) be prepared by or under the direction of[;] and certified by[;] a qualified ~~[registered]~~ professional
23 engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

24 (B) - (D) (No change.)

25 (3) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR
26 77.216(a) shall:

27 (A) be prepared by[;] or under the direction of[;] and certified by a qualified ~~[registered]~~ professional
28 engineer;

29 (B) (No change.)

30 (b) - (d) (No change.)

31 (e) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to
32 comply with the requirements of §12.543 and §12.544 of this title (relating to Coal Mine Waste: Dams and
33 Embankments: General Requirements, and to Coal Mine Waste: Dams and Embankments: Site Preparation). Each
34 plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and
35 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment
36 foundation area, to determine the structural competence of the foundation which will support the proposed dam or
37 embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised
38 by a qualified professional ~~[an]~~ engineer or qualified professional geoscientist ~~[engineering geologist]~~, according to
39 the following:

1 (1) - (4) (No change.)

2 (f) (No change.)

3

4 §12.197. Operation Plan: Maps and Plans.

5 Each application shall contain maps, plans, and cross sections of the proposed permit and adjacent areas as
6 follows:

7 (1) - (2) (No change.)

8 (3) except as provided in §§12.190(a)(2) and (3), 12.193(a), 12.531(b), 12.534(b)(1), and 12.535(c) of this
9 title (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments, to Underground
10 Development Waste/Return of Coal Processing Waste to Underground Workings, to Disposal of Underground
11 Development Waste and Excess Spoil: General Requirements, to Disposal of Underground Development Waste
12 and Excess Spoil: Durable Rock Fills, and to Coal Mine Waste Banks: General Requirements), maps, plans, and
13 cross-sections required under paragraph (2)(D)-(F), (J), and (K) of this subsection shall be prepared by, or under the
14 direction of, and certified by a qualified [~~registered~~] professional engineer, or qualified professional geoscientist
15 [~~geologist~~], with assistance from experts in related fields such as land surveying and landscape architecture; and

16 (4) (No change.)

17

18 §12.198. Road Systems and Support Facilities.

19 (a) (No change.)

20 (b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the
21 direction of, and certified by a qualified [~~registered~~] professional engineer as meeting the requirements of this
22 chapter (relating to Coal Mining Regulations); current, prudent engineering practices; and any design criteria
23 established by the Commission.

24 (c) (No change.)

25

26 **DIVISION 11. REVIEW, PUBLIC PARTICIPATION, AND APPROVAL OF PERMIT APPLICATIONS**
27 **AND PERMIT TERMS AND CONDITIONS.**

28 §12.207. Public Notices of Filing of Permit Applications.

29 (a) An applicant for a permit shall place an advertisement in a local newspaper of general circulation in the
30 locality of the proposed surface coal mining and reclamation operations at least once a week for four consecutive
31 weeks. The applicant shall place the advertisement in the newspaper at the same time the complete permit
32 application is filed with the Commission. The advertisement shall contain, at a minimum, the following
33 information:

34 (1) - (2) (No change.)

35 (3) the location where a copy of the application is available for public inspection under subsection (d)(1)
36 [~~(e)~~] of this section;

37 (4) - (5) (No change.)

38 (b) - (d) (No change.)

39

1 §12.211. Public Hearing on Application.

2 (a) - (b) (No change.)

3 (c) Any person having a valid legal interest or an interest which is or may be adversely affected by any
4 Commission action taken or proposed on any application or existing permit, may request informal consideration or
5 disposition of the matter in accordance with §§2001.051, 2001.052, 2001.056, 2001.057, 2001.059, [~~2001.056-~~
6 ~~2001.060~~] and 2001.141 of the APA [~~(relating to Opportunity for Hearing and Participation: Notice of Hearing, to~~
7 ~~Contents of Notice, to Informal Disposition of Contested Case, to Continuances, to Hearing Conducted by State~~
8 ~~Office of Administrative Hearings, to Transcript, to Record, and to Form of Decision: Findings of Fact and~~
9 ~~Conclusions of Law)~~].

10
11 §12.215. Review of Permit Applications.

12 (a) - (f) (No change.)

13 (g) After an application is approved, but before the permit is issued, the Commission shall review and consider
14 any new compliance information submitted pursuant to §12.116(a)(2) [~~§12.116(a)(3)~~] of this title under the criteria
15 of subsection (e)(1) of this section. If the applicant fails or refuses to respond as required by the Commission to
16 provide new compliance information, or the new compliance information shows that the applicant, anyone who
17 owns or controls the applicant, or the operator is in violation, the Commission shall deny the permit.

18 (h) - (i) (No change.)

19 (j) Based on reviews of the applicant's and any operator's organizational structure and ownership or control
20 relationships provided in the application as required under subsections (h) and (i) of this section, the Commission
21 shall determine whether an applicant is eligible for a permit under §134.068 and §134.069 of the Act (relating to
22 Schedule of Notices of Violations, and to Effect of Past or Present Violation).

23 (1) - (2) (No change.)

24 (3) After approval of the permit under §12.216 of this title (relating to Criteria for Permit Approval or
25 Denial), the Commission shall not issue the permit until the information updates and certification requirements of
26 §12.116(a)(2) or §12.156(a)(2) [~~§12.116(a)(3) or §12.156(a)(3)~~] of this title are met. After the applicant completes
27 this requirement, the Commission shall again request a compliance history report from AVS to determine if there
28 are any unabated or uncorrected violations which affect permit eligibility under paragraphs (1) and (2) of this
29 subsection. The Commission shall request this report no more than five business days before permit issuance under
30 §12.218 and §12.219 of this title (relating to Permit Approval or Denial Actions, and Permit Terms).

31 (4) (No change.)

32 (k) - (l) (No change.)

33
34 **DIVISION 13. PERMIT REVIEWS, REVISIONS, AND RENEWALS, AND TRANSFERS, SALE, AND**
35 **ASSIGNMENT OF RIGHTS GRANTED UNDER PERMITS.**

36 §12.225. Commission Review of Outstanding Permits.

37 (a) - (f) (No change.)

38 (g) Suspension and rescission. If the Commission elects to rescind an improvidently issued permit, it shall
39 serve on the permittee a written notice of the proposed suspension and rescission which includes the reasons for the

1 findings of the Commission under subsection (e) of this section and states that:

2 (1) after a specified period of time not to exceed 60 days, the permit will automatically become suspended,
3 and not to exceed 60 days thereafter rescinded, unless within those periods the permittee submits proof, and the
4 Commission finds that:

5 (A) the finding of the Commission under subsection (e) of this section was erroneous;

6 (B) the permittee or operator has abated the violation on which the finding was based, or paid the
7 penalty or fee, to the satisfaction of the responsible agency;

8 (C) the violation, penalty, or fee is the subject of a good-faith appeal, or of an abatement plan or
9 payment schedule with which the permittee or operator is complying to the satisfaction of the responsible agency;

10 or

11 (D) since the finding was made, the permittee has severed any ownership or control link with the
12 person responsible for~~[-and does not continue to be responsible for,]~~ the violation, penalty, or fee and the permittee
13 is no longer responsible for the violation, penalty, or fee.

14 (2) (No change.)

15

16 **SUBCHAPTER K. PERMANENT PROGRAM PERFORMANCE STANDARDS.**

17 **DIVISION 2. PERMANENT PROGRAM PERFORMANCE STANDARDS--SURFACE MINING**

18 **ACTIVITIES.**

19 §12.341. Hydrologic Balance: Diversions.

20 (a) (No change.)

21 (b) Diversions of Perennial and Intermittent Streams.

22 (1) - (3) (No change.)

23 (4) The design and construction of all stream channel diversions of perennial and intermittent streams shall
24 be certified by a qualified [~~registered~~] professional engineer as meeting the performance standards of this part and
25 any design criteria set by the Commission.

26 (c) (No change.)

27

28 §12.344. Hydrologic Balance: Siltation Structures.

29 (a) (No change.)

30 (b) General requirements.

31 (1) - (2) (No change.)

32 (3) Siltation structures for an area shall be constructed before beginning any surface mining activities in
33 that area, and upon construction shall be certified by a qualified [~~registered~~] professional engineer to be constructed
34 as designed and as approved in the reclamation plan.

35 (4) - (6) (No change.)

36 (c) Sedimentation ponds.

37 (1) (No change.)

38 (2) A sedimentation pond shall include either a combination of principal and auxiliary [~~emergency~~]
39 spillways or single spillway configured as specified in §12.347(a)(9) of this title (relating to Hydrologic Balance:

1 Permanent and Temporary Impoundments).

2 (d) - (e) (No change.)

3

4 §12.347. Hydrologic Balance: Permanent and Temporary Impoundments.

5 (a) General Requirements. The requirements of this subsection apply to both temporary and permanent
6 impoundments.

7 (1) Impoundments meeting the significant or high hazard class [~~Class B or C~~] criteria of dams in the U.S.
8 Department of Agriculture (USDA), Natural Resources Conservation Service Technical Release No. 60 (210-VI-
9 TR60, July 2005 [~~Oct. 1985~~]), Earth Dams and Reservoirs, shall comply with the table of Minimum Auxiliary
10 [~~Emergency~~] Spillway Hydrologic Criteria [~~table~~] in Technical Release No. 60 (TR-60), which is incorporated by
11 reference, [~~TR-60~~] and the requirements of this section. [~~Technical Release No. 60 is hereby incorporated by~~
12 ~~reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal~~
13 ~~Road, Springfield, Virginia 22161, Order No. PB 87 157509/AS~~]. Copies may be obtained on the USDA website
14 [~~can be inspected at the Commission's Surface Mining and Reclamation Division Office at 1701 N. Congress~~
15 ~~Avenue, Austin, Texas~~].

16 (2) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the
17 requirements of 30 CFR 77.216 and of this section.

18 (3) The design of impoundments shall be certified in accordance with §12.148(a) of this title (relating to
19 Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments) as designed to meet the requirements
20 of this part using current, prudent, engineering practices and any design criteria established by the Commission.
21 The qualified[~~, registered~~] professional engineer shall be experienced in the design and construction of
22 impoundments.

23 (4) Stability.

24 (A) An impoundment meeting the significant or high hazard class [~~Class B or C~~] criteria for dams in
25 TR-60, or the size or other criteria of 30 CFR 77.216(a), shall have a minimum static factor of 1.5 for a normal pool
26 with steady-state seepage saturation conditions, and a seismic safety factor of at least 1.2.

27 (B) (No change.)

28 (5) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in
29 storage volume. Impoundments meeting the significant or high hazard class [~~Class B or C~~] criteria for dams in TR-
30 60 shall comply with the freeboard hydrograph criteria in the Minimum Auxiliary [~~Emergency~~] Spillway
31 Hydrologic Criteria table in TR-60.

32 (6) Foundations.

33 (A) Foundations and abutments for an impounding structure shall be stable during all phases of
34 construction and operation and shall be designed based on adequate and accurate information on the foundation
35 conditions. For an impoundment meeting the significant or high hazard class [~~Class B or C~~] criteria for dams in
36 TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary
37 laboratory testing of foundation material, shall be performed to determine the design requirements for foundation
38 stability.

39 (B) (No change.)

1 (7) - (8) (No change.)

2 (9) An impoundment shall include either a combination of principal and auxiliary [~~emergency~~] spillways or
3 a single spillway configured as specified in subparagraph (A) of this paragraph, designed and constructed to safely
4 pass the applicable design precipitation event specified in subparagraph (B) of this paragraph.

5 (A) (No change.)

6 (B) Except as specified in subsection (c)(2) of this section, the required design precipitation event
7 for an impoundment meeting the spillway requirements of this paragraph is:

8 (i) for an impoundment meeting the significant or high hazard class [~~Class B or C~~] criteria for
9 dams in TR-60, the auxiliary [~~emergency~~] spillway hydrograph criteria in the Minimum Emergency Spillway
10 Hydrologic Criteria table in TR-60, or greater event as specified by the Commission;

11 (ii) - (iii) (No change.)

12 (10) (No change.)

13 (11) A qualified [~~registered~~] professional engineer or other qualified professional specialist under the
14 direction of a professional engineer, shall inspect each impoundment as provided in subparagraph (A) of this
15 paragraph. The professional engineer or specialist shall be experienced in the construction of impoundments.

16 (A) (No change.)

17 (B) The qualified [~~registered~~] professional engineer shall promptly after each inspection required in
18 subparagraph (A) of this paragraph, provide the Commission a certified report that the impoundment has been
19 constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report
20 shall include discussion of any appearance of instability, structural weakness or other hazard condition, depth and
21 elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and
22 instrumentation, and any other aspects of the structure affecting stability.

23 (C) (No change.)

24 (12) Impoundments meeting the NRCS significant or high hazard class [~~Class B or C~~] criteria for dams in
25 TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3.
26 Impoundments not meeting the NRCS significant or high hazard class [~~Class B or C~~] criteria for dams in TR-60, or
27 subject to 30 CFR 77.216, shall be examined at least quarterly. A qualified person designated by the operator shall
28 examine impoundments for the appearance of structural weakness and other hazardous conditions.

29 (13) (No change.)

30 (b) (No change.)

31 (c) Temporary Impoundments.

32 (1) (No change.)

33 (2) In lieu of meeting the requirements of subsection (a)(9)(A) of this section, the Commission may
34 approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event
35 when it is demonstrated by the operator and certified by a qualified [~~registered~~] professional engineer that the
36 impoundment will safely control the design precipitation event, the water from which shall be safely removed in
37 accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would
38 not be expected to cause loss of life or serious property damage, except where:

39 (A) impoundments meeting the NRCS significant or high hazard class [~~Class B or C~~] criteria for dams

1 in TR-60, or the size or other criteria of 30 CFR 77.216(a), shall be designed to control the precipitation of the
2 probable maximum precipitation of a 6-hour event, or greater event as specified by the Commission; and

3 (B) (No change.)
4

5 §12.363. Disposal of Excess Spoil: General Requirements.

6 (a) (No change.)

7 (b) The fill shall be designed using recognized professional standards, certified by a qualified [~~registered~~]
8 professional engineer, and approved by the Commission.

9 (c) - (i) (No change.)

10 (j) The fill shall be inspected for stability by a qualified [~~registered~~] professional engineer, or other qualified
11 professional specialist under the direction of the professional engineer, experienced in the construction of earth and
12 rockfill embankments, at least quarterly throughout construction and during the following critical construction
13 periods:

14 (1) - (5) (No change.)

15 (k) The qualified [~~registered~~] professional engineer shall provide to the Commission a certified report, within 2
16 weeks after each inspection, that the fill has been constructed as specified in the design approved by the
17 Commission. The certified report on the drainage system and protective filters shall include color photographs
18 taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system
19 is constructed in phases, each phase shall be certified separately. A copy of the report shall be retained at the
20 minesite.

21 (l) - (q) (No change.)
22

23 §12.366. Disposal of Excess Spoil: Durable Rock Fills.

24 (a) In lieu of the requirements of §§12.364 and 12.365 of this title (relating to Disposal of Excess Spoil: Valley
25 Fills, and to Disposal of Excess Spoil: Head-of-Hollow Fills), the Commission may approve alternate methods for
26 disposal of hard rock spoil, including fill placement of dumping in a single lift, on a site specific basis, provided the
27 services of a qualified [~~registered~~] professional engineer experienced in the design and construction of earth and
28 rockfill embankments are utilized and provided the requirements of this section and §12.363 of this title (relating to
29 Disposal of Excess Spoil: General Requirements) are met. For this section, "hard rock spoil" shall be defined as
30 rockfill consisting of at least 80% by volume of sandstone, limestone, or other rocks that do not slake in water.
31 Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests
32 in accordance with guidelines and criteria established by the Commission.

33 (b) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the
34 fill.

35 (1) (No change.)

36 (2) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a
37 controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such
38 materials shall comprise no more than 20% of the fill volume as determined by tests performed by a qualified
39 professional [~~registered~~] engineer and approved by the Commission.

1 (c) Requirements for design of earth and rockfill embankments shall include the following:

2 (1) stability analyses shall be made by the qualified [~~registered~~] professional engineer. Parameters used in
3 the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings,
4 and laboratory tests; and

5 (2) (No change.)

6 (d) - (h) (No change.)

7
8 §12.368. Coal Processing Waste Banks: General Requirements.

9 (a) - (b) (No change.)

10 (c) The disposal facility shall be designed using current, prudent engineering practices and shall meet any
11 design criteria established by the Commission. A qualified [~~registered~~] professional engineer, experienced in the
12 design of similar earth and waste structures, shall certify the design of the disposal facility.

13
14 §12.369. Coal Processing Waste Banks: Site Inspection.

15 (a) All coal processing waste banks shall be inspected by a qualified [~~registered~~] professional engineer, or other
16 qualified professional specialist under the direction of the professional engineer. The professional engineer or
17 specialist shall be experienced in the construction of similar earth and waste structures.

18 (1) - (3) (No change.)

19 (4) The qualified [~~registered~~] professional engineer shall provide a certified report to the Commission
20 promptly after each inspection that the refuse pile has been constructed and maintained as designed and in
21 accordance with the approved plan and this chapter (relating to Coal Mining Regulations). The report shall include
22 any appearance of instability, structural weakness, and other hazardous conditions.

23 (5) - (6) (No change.)

24 (b) (No change.)

25
26 §12.373. Coal Processing Waste: Burned Waste Utilization.

27 Before any burned coal processing waste, other materials, or refuse is removed from a disposal area, approval
28 shall be obtained from the Commission. A plan for the method of removal, with maps and appropriate drawings to
29 illustrate the proposed sequence of the operation and method of compliance with §§12.330-12.372, this section, and
30 §§12.374-12.403 of this title (relating to Permanent Program Performance Standards--Surface Mining Activities),
31 shall be submitted to the Commission. Consideration shall be given in the plan to potential hazards, which may be
32 created by removal, to persons working or living in the vicinity of the structure. The plan shall be certified by a
33 qualified [~~registered~~] professional engineer.

34
35 §12.376. Coal Mine Waste: Dams and Embankments: General Requirements.

36 (a) - (c) (No change.)

37 (d) If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets
38 the criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), the combination of principal and
39 auxiliary [~~emergency~~] spillways shall be able to safely pass the probable maximum precipitation of a 6-hour

1 precipitation event, or greater event as specified by the Commission.

2
3 §12.382. Pipelines.

4 With respect to pipelines transmitting crude oil, liquid petroleum, natural gas, toxic or flammable substances:

5 (1) - (5) (No change.)

6 (6) comply with [~~rules and regulations pursuant to TEXAS REVISED CIVIL STATUTES ANNOTATED,~~
7 ~~ARTICLE 6053-1;~~] Railroad Commission of Texas[;] Pipeline Safety Rules (16 Texas Administrative Code
8 Chapter 8 and [~~§§7.70 et seq.~~];] 49 CFR 191, 192, and 199; and

9 (7) (No change.)

10
11 §12.398. Cessation of Operations: Permanent.

12 (a) - (b) (No change.)

13 (c) Persons who conduct surface mining activities shall submit to the Commission a written notice of intent to
14 permanently cease and abandon mining operations as soon as the intent is finalized.

15
16 §12.399. Postmining Land Use.

17 (a) - (b) (No change.)

18 (c) Alternative land uses. Prior to the release of lands from the permit area in accordance with §12.313 of this
19 title (relating to Criteria and Schedule for Release of Performance Bond), the permit area shall be restored, in a
20 timely manner, either to conditions capable of supporting the uses they were capable of supporting before any
21 mining, or to conditions capable of supporting approved alternative land uses. Alternative land uses may be
22 approved by the Commission after consultation with the landowner or the land management agency having
23 jurisdiction over the lands, if the following criteria are met:

24 (1) - (4) (No change.)

25 (5) plans for the postmining land use are designed under the general supervision of qualified [~~registered~~]
26 professional engineer, who will ensure that the plans conform to applicable accepted standards for adequate land
27 stability, drainage, vegetative cover, and aesthetic design appropriate for the postmining use of the site;

28 (6) - (9) (No change.)

29
30 §12.401. Primary Roads.

31 Primary roads shall meet the requirements of §12.400 of this title (relating to Roads: General) and the
32 additional requirements of this section.

33 (1) Certification. The construction or reconstruction of primary roads shall be certified in a report to the
34 Commission by a qualified [~~registered~~] professional engineer. The report shall indicate that the primary road has
35 been constructed or reconstructed as designed and in accordance with the approved plan.

36 (2) - (5) (No change.)

37
38 **DIVISION 3. PERMANENT PROGRAM PERFORMANCE STANDARDS--UNDERGROUND MINING**
39 **ACTIVITIES.**

1 §12.511. Hydrologic Balance: Diversions.

2 (a) (No change.)

3 (b) Diversions of Perennial and Intermittent Streams.

4 (1) - (3) (No change.)

5 (4) The design and construction of all stream channel diversions of perennial and intermittent streams shall
6 be certified by a qualified [~~registered~~] professional engineer as meeting the performance standards of §§12.500-
7 12.572 of this title (relating to Permanent Program Performance Standards--Underground Mining Activities) and
8 any design criteria set by the Commission.

9 (c) (No change.)

10
11 §12.514. Hydrologic Balance: Siltation Structures.

12 (a) (No change.)

13 (b) General requirements.

14 (1) - (2) (No change.)

15 (3) Siltation structures for an area shall be constructed before beginning any underground mining activities
16 in that area, and upon construction shall be certified by a qualified [~~registered~~] professional engineer to be
17 constructed as designed and as approved in the reclamation plan.

18 (4) - (6) (No change.)

19 (c) Sedimentation ponds.

20 (1) (No change.)

21 (2) A sedimentation pond shall include either a combination of principal and auxiliary [~~emergency~~]
22 spillways or single spillway configured as specified in §12.517(a)(9) of this title (relating to Hydrologic Balance:
23 Permanent and Temporary Impoundments).

24 (d) - (e) (No change.)

25
26 §12.517. Hydrologic Balance: Permanent and Temporary Impoundments.

27 (a) General Requirements. The requirements of this subsection apply to both temporary and permanent
28 impoundments.

29 (1) Impoundments meeting the significant or high hazard class [~~Class B or C~~] criteria of dams in the U.S.
30 Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, July
31 2005 [~~Oct. 1985~~]), Earth Dams and Reservoirs, shall comply with the table of Minimum Auxiliary [~~Emergency~~]
32 Spillway Hydrologic Criteria [~~table~~] in Technical Release No. 60 (TR-60), which is incorporated by reference,
33 [~~TR-60~~] and the requirements of this section. [~~The Technical Release No. 60 is hereby incorporated by reference.~~
34 ~~Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road,~~
35 ~~Springfield, Virginia 22161, Order No. PB 87-157509/AS]. Copies may be obtained on the USDA website [~~can be~~
36 ~~inspected at the Commission's Surface Mining and Reclamation Division Office at 1701 North Congress Avenue,~~
37 ~~Austin, Texas~~].~~

38 (2) (No change.)

39 (3) The design of impoundments shall be certified in accordance with §12.190(a) of this title (relating to

1 Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments) as designed to meet the requirements
2 of this part using current, prudent, engineering practices and any design criteria established by the Commission.
3 The qualified~~[,registered]~~ professional engineer shall be experienced in the design and construction of
4 impoundments.

5 (4) Stability.

6 (A) An impoundment meeting the significant or high hazard class [~~Class B or C~~] criteria for dams in
7 TR-60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static factor of 1.5 for a normal pool
8 with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

9 (B) (No change.)

10 (5) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in
11 storage volume. Impoundments meeting the significant or high hazard class [~~Class B or C~~] criteria for dams in TR-
12 60 shall comply with the freeboard hydrograph criteria in the Minimum Auxiliary [~~Emergency~~] Spillway
13 Hydrologic Criteria table in TR-60.

14 (6) Foundations.

15 (A) Foundations and abutments for an impounding structure shall be stable during all phases of
16 construction and operation and shall be designed based on adequate and accurate information on the foundation
17 conditions. For an impoundment meeting the significant or high hazard class [~~Class B or C~~] criteria for dams in
18 TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary
19 laboratory testing of foundation material, shall be performed to determine the design requirements for foundation
20 stability.

21 (B) (No change.)

22 (7) - (8) (No change.)

23 (9) An impoundment shall include either a combination of principal and auxiliary [~~emergency~~] spillways or
24 a single spillway configured as specified in subparagraph (A) of this paragraph, designed and constructed to safely
25 pass the applicable design precipitation event specified in subparagraph (B) of this paragraph.

26 (A) (No change.)

27 (B) Except as specified in subsection (c)(2) of this section, the required design precipitation event for
28 an impoundment meeting the spillway requirements of this paragraph is:

29 (i) for an impoundment meeting the significant or high hazard class [~~Class B or C~~] criteria for
30 dams in TR-60, the auxiliary [~~emergency~~] spillway hydrograph criteria in the Minimum Emergency Spillway
31 Hydrologic Criteria table in TR-60, or greater event as specified by the Commission;

32 (ii) - (iii) (No change.)

33 (10) (No change.)

34 (11) A qualified [~~registered~~] professional engineer or other qualified professional specialist under the
35 direction of a professional engineer, shall inspect each impoundment as provided in subparagraph (A) of this
36 paragraph. The professional engineer or specialist shall be experienced in the construction of impoundments.

37 (A) (No change.)

38 (B) The qualified [~~registered~~] professional engineer shall promptly after each inspection required in
39 subparagraph (A) of this paragraph provide the Commission a certified report that the impoundment has been

1 constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report
2 shall include discussion of any appearance of instability, structural weakness or other hazard condition, depth and
3 elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and
4 instrumentation, and any other aspects of the structure affecting stability.

5 (C) (No change.)

6 (12) Impoundments meeting the NRCS significant or high hazard class [~~Class B or C~~] criteria for dams in
7 TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3.
8 Impoundments not meeting the NRCS Class B or C criteria for dams in TR-60, or subject to 30 CFR 77.216, shall
9 be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the
10 appearance of structural weakness and other hazardous conditions.

11 (13) (No change.)

12 (b) (No change.)

13 (c) Temporary Impoundments.

14 (1) (No change.)

15 (2) In lieu of meeting the requirements of subsection (a)(9)(A) of this section, the Commission may
16 approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event
17 when it is demonstrated by the operator and certified by a qualified [~~registered~~] professional engineer that the
18 impoundment will safely control the design precipitation event, the water from which shall be safely removed in
19 accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would
20 not be expected to cause loss of life or serious property damage, except where:

21 (A) impoundments meeting the NRCS significant or high hazard class [~~Class B or C~~] criteria for dams
22 in TR-60, or the size or other criteria of 30 CFR 77.216(a), shall be designed to control the precipitation of the
23 probable maximum precipitation of a 6-hour event, or greater event as specified by the Commission; and

24 (B) impoundments not included in subparagraph (A) of this paragraph shall be designed to control the
25 precipitation of the 100-year, 6-hour event, or greater event as specified by the Commission.

26
27 §12.531. Disposal of Underground Development Waste and Excess Spoil: General Requirements.

28 (a) (No change.)

29 (b) The fill shall be designed using recognized professional standards, certified by a qualified [~~registered~~]
30 professional engineer, and approved by the Commission.

31 (c) - (i) (No change.)

32 (j) The fill shall be inspected for stability by a qualified [~~registered~~] professional engineer experienced in the
33 construction of earth and rockfill embankments at least quarterly throughout construction, and during the following
34 critical construction periods:

35 (1) - (5) (No change.)

36 (k) The qualified [~~registered~~] professional engineer shall provide to the Commission a certified report, within
37 two weeks after each inspection that the fill has been constructed as specified in the design approved by the
38 Commission. The certified report on the drainage system and protective filters shall include color photographs
39 taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system

1 is constructed in phases, each phase shall be certified separately. A copy of the report shall be retained at the
2 minesite.

3 (l) - (q) (No change.)
4

5 §12.534. Disposal of Underground Development Waste and Excess Spoil: Durable Rock Fills.

6 (a) In lieu of the requirements of §12.532 and §12.533 of this title (relating to Disposal of Underground
7 Development Waste and Excess Spoil: Valley Fills, and to Disposal of Underground Development Waste and
8 Excess Spoil: Head-of-Hollow Fills), the Commission may approve alternate methods for disposal of hard rock
9 spoil, including fill placement by dumping in a single lift, on a site-specific basis, provided the services of a
10 qualified [~~registered~~] professional engineer experienced in the design and construction of earth and rockfill
11 embankments are utilized, and provided the requirements of this section and §12.531 of this title (relating to
12 Disposal of Underground Development Waste and Excess Spoil: General Requirements) are met. For this section,
13 hard rock spoil shall be defined as rockfill consisting of at least 80% by volume of sandstone, limestone, or other
14 rocks that do not slake in water. Resistance of the hard rock waste or spoil to slaking shall be determined by using
15 the slake index and slake durability tests in accordance with guidelines and criteria established by the Commission.

16 (b) Waste or spoil is to be transported and placed in a specified and controlled manner which will ensure
17 stability of the fill.

18 (1) (No change.)

19 (2) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock waste spoil
20 in a controlled manner to limit, on a unit basis, concentrations of noncemented clay shale and clay in the fill. Such
21 materials will comprise no more than 20% of the fill volume as determined by tests performed by a qualified
22 professional [~~registered~~] engineer and approved by the Commission.

23 (c) Requirements for design of earth and rockfill embankments shall include the following:

24 (1) stability analyses shall be made by the qualified [~~registered~~] professional engineer. Parameters used in
25 the stability analyses shall be based on adequate field reconnaissance, subsurface investigations including borings,
26 and laboratory tests; and

27 (2) (No change.)

28 (d) - (h) (No change.)
29

30 §12.535. Coal Mine Waste Banks: General Requirements.

31 (a) - (b) (No change.)

32 (c) The disposal facility shall be designed using current, prudent engineering practices and shall meet any
33 design criteria established by the Commission. A qualified [~~registered~~] professional engineer experienced in the
34 design of similar earth and waste structures shall certify the design of the disposal facility.
35

36 §12.536. Coal Mine Waste Banks: Site Inspection.

37 (a) All coal mine waste banks shall be inspected, on behalf of the person conducting underground mining
38 activities, by a qualified professional [~~registered~~] engineer or other person approved by the Commission.

39 (1) - (4) (No change.)

1 (b) (No change.)

2
3 §12.540. Coal Mine Waste: Burned-Waste Utilization.

4 Before any burned coal mine waste or other materials or refuse is removed from a disposal area, approval shall
5 be obtained from the Commission. A plan for the method of removal, with maps and appropriate drawings to
6 illustrate the proposed sequence of the operation and methods of compliance with §§12.500-12.539, this section,
7 and §§12.541-12.572 of this title (relating to Permanent Program Performance Standards--Underground Mining
8 Activities), shall be submitted to the Commission. Consideration shall be given in the plan to potential hazards,
9 which may be created by removal, to persons working or living in the vicinity of the structure. The plan shall be
10 certified by a qualified [registered] professional engineer.

11
12 §12.543. Coal Mine Waste: Dams and Embankments: General Requirements.

13 (a) - (c) (No change.)

14 (d) If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets
15 the criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), the combination of principal and
16 auxiliary [emergency] spillways shall be able to safely pass the probable maximum precipitation of a 6-hour
17 precipitation event, or greater event as specified by the Commission.

18
19 §12.549. Pipelines.

20 With respect to pipelines transmitting crude oil, liquid petroleum, natural gas, toxic or flammable substances:

21 (1) - (5) (No change.)

22 (6) comply with [~~rules and regulations pursuant to TEXAS REVISED CIVIL STATUTES ANNOTATED,~~
23 ~~ARTICLE 6053-1;~~] Railroad Commission of Texas[;] Pipeline Safety Rules (16 Texas Administrative Code
24 Chapter 8 and [~~§§7.70 et seq.~~];] 49 CFR 191, 192, and 199; and

25 (7) (No change.)

26
27 §12.567. Cessation of Operations: Permanent.

28 (a) - (b) (No change.)

29 (c) Persons who conduct underground mining activities shall submit to the Commission a written notice of
30 intent to permanently cease and abandon mining operations as soon as the intent is finalized.

31
32 §12.568. Postmining Land Use.

33 (a) - (b) (No change.)

34 (c) Prior to the release of lands from the permit area in accordance with §12.313 of this title (relating to Criteria
35 and Schedule for Release of Performance Bond), the permit area shall be restored in a timely manner, either to
36 conditions capable of supporting the uses they were capable of supporting before any mining or to conditions
37 capable of supporting approved alternative land uses. Alternative land uses may be approved by the Commission
38 after consultation with the landowner or the land management agency having jurisdiction over the lands, if the
39 following criteria are met:

1 (1) - (4) (No change.)

2 (5) plans for the postmining land use shall have been designed under the general supervision of a qualified
3 ~~[registered]~~ professional engineer, or other appropriate professional, who will ensure that the plans conform to
4 applicable accepted standards for adequate land stability, drainage, vegetative cover, and aesthetic design
5 appropriate for the postmining use of the site;

6 (6) - (9) (No change.)

7
8 §12.570. Primary Roads.

9 Primary roads shall meet the requirements of §12.569 of this title (relating to Roads: General) and the
10 additional requirements of this section.

11 (1) Certification. The construction or reconstruction of primary roads shall be certified in a report to the
12 Commission by a qualified ~~[registered]~~ professional engineer with experience in the design and construction of
13 roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in
14 accordance with the approved plan.

15 (2) - (5) (No change.)

16
17 **SUBCHAPTER L. PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES.**
18 **DIVISION 1. COMMISSION INSPECTION AND ENFORCEMENT.**

19 §12.676. Alternative Enforcement.

20 (a) - (b) (No change.)

21 (c) Civil actions for relief.

22 (1) Under §134.173 of the Act, the Commission may request the Texas Attorney General to institute a civil
23 action for relief whenever the permittee or an agent of the permittee:

24 (A) fails or refuses to comply with or violates ~~[or fail or refuse to comply with]~~ any order or decision
25 issued ~~[issues]~~ by the Commission under the Act or regulatory program;

26 (B) - (F) (No change.)

27 (2) - (4) (No change.)

28
29 **DIVISION 2. ENFORCEMENT.**

30 §12.679. Suspension or Revocation of Permits.

31 (a) Pattern of violations.

32 (1) Except as provided in subsection (b) of this section, the Director of the Surface Mining and
33 Reclamation Division shall issue an order to a permittee requiring the permittee ~~[him]~~ to show cause why the ~~[his]~~
34 permit and right to mine under the Act should not be suspended or revoked[;] if the Director of the Surface Mining
35 and Reclamation Division ~~[he]~~ determines that a pattern of violations of any requirements of the Act, this chapter
36 (relating to Coal Mining Regulations), or any permit condition required by the Act exists or has existed, and that
37 the violations were caused by the permittee willfully or through unwarranted failure to comply with those
38 requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the
39 permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate

1 sabotage.

2 (2) The Director of the Surface Mining and Reclamation Division may determine that a pattern of
3 violations exists or has existed, based on two or more inspections of the permit area within any 12-month period,
4 after considering the circumstances, including:

5 (A) (No change.)

6 (B) the number of violations, cited on more than one occasion, of different requirements of the Act,
7 this chapter [~~(relating to Coal Mining Regulations)~~], the applicable program, or the permit; and

8 (C) (No change.)

9 (3) The Director of the Surface Mining and Reclamation Division shall determine that a pattern of
10 violations exists, if the Director [~~he~~] finds that there were violations of the same or related requirements of the Act,
11 this chapter [~~(relating to Coal Mining Regulations)~~], or the permit during three or more inspections of the permit
12 area within any 12-month period.

13 (b) Discretion of the Division Director. The Director of the Surface Mining and Reclamation Division may
14 decline to issue a show cause order, or may vacate an outstanding show cause order, if the Director of the Surface
15 Mining and Reclamation Division [~~he~~] finds that, taking into account exceptional factors present in the particular
16 case, it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for this finding
17 shall be fully explained and documented in the records of the case;

18 (c) - (f) (No change.)

19 The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's
20 legal authority to adopt.

21 Issued in Austin, Texas, on October 20th, 2020.

22 Filed with the Office of the Secretary of State on October 20th, 2020.

Haley Cochran

Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas