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 RYAN SITTON, *COMMISSIONER*
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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

THROUGH: Alexander C. Schoch
 General Counsel

DATE: December 1, 2020

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

^{DS}
CF

December 8, 2020		
Approved	Denied	Abstain
^{DS}  ^{DS}  ^{DS} 		

Attached is Staff's recommendation to adopt amendments to 16 Tex. Admin. Code Chapter 12. The amendments better organize and clarify certain procedures, conform Commission rules to federal regulations and guidance, and update references to statutes or editions of external documents.

On October 20, 2020, the Commission approved the publication of the proposed amendments in the Texas Register for public comment. The comment period ended on November 23, 2020 and no comments were received on the proposal. The federal Office of Surface Mining Reclamation and Enforcement reviewed and approved the amendments on December 1, 2020.

Staff recommends that the Commission adopt the amendments without changes to the proposed text published in the November 6, 2020 issue of the Texas Register (45 TexReg 7826).

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

Railroad Commission of Texas
16 TAC Chapter 12--Surface Mining and Reclamation Division

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

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

8 In Subchapter G, Division 2, General Requirements for Permits and Permit Applications, the
9 Commission adopts amendments to §12.106 and §12.108, relating to Permit Application Filing
10 Deadlines; and Permit Fees.

11 In Subchapter G, Division 4, Surface Mining Permit Applications--Minimum Requirements for
12 Legal, Financial, Compliance, and Related Information, the Commission adopts a change in the Division
13 title and amendments to §12.121, relating to Identification of Other Licenses and Permits.

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

18 In Subchapter G, Division 6, Surface Mining Permit Applications--Minimum Requirements for
19 Reclamation and Operation Plan, the Commission adopts amendments to §§12.142, 12.146, 12.148, and
20 12.154, relating to Operation Plan: Maps and Plans; Reclamation Plan: Protection of Hydrologic Balance;
21 Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments; and Road Systems and
22 Support Facilities.

23 In Subchapter G, Division 7, Underground Mining Permit Applications--Minimum Requirements
24 for Legal, Financial, Compliance, and Related Information, the Commission adopts changes to the
25 Division title and amendments to §12.161, relating to Identification of Other Licenses and Permits.

26 In Subchapter G, Division 8, Underground Mining Permit Applications--Minimum Requirements
27 for Information on Environmental Resources, the Commission adopts amendments to §12.172 and
28 §12.183, relating to Description of Hydrology and Geology: General Requirements; and Cross Sections,
29 Maps, and Plans.

30 In Subchapter G, Division 9, Underground Mining Permit Applications--Minimum Requirements
31 for Reclamation and Operation Plan, the Commission adopts amendments to §§12.188, 12.190, 12.197,
32 and 12.198, relating to Reclamation Plan: Protection of Hydrologic Balance; Reclamation Plan: Ponds,
33 Impoundments, Banks, Dams, and Embankments; Operation Plan: Maps and Plans; and Road Systems
34 and Support Facilities.

1 In Subchapter G, Division 11, Review, Public Participation, and Approval of Permit Applications
2 and Permit Terms and Conditions, the Commission adopts amendments to §§12.207, 12.211, and 12.215,
3 relating to Public Notices of Filing of Permit Applications; Public Hearing on Application; and Review of
4 Permit Applications.

5 In Subchapter G, Division 13, Permit Reviews, Revisions, and Renewals, and Transfers, Sale, and
6 Assignment of Rights Granted Under Permits, the Commission adopts amendments to §12.225, relating
7 to Commission Review of Outstanding Permits.

8 In Subchapter K, Permanent Program Performance Standards, Division 2, Permanent Program
9 Performance Standards--Surface Mining Activities, the Commission adopts amendments to §§12.341,
10 12.344, 12.347, 12.363, 12.366, 12.368, 12.369, 12.373, 12.376, 12.382, 12.398, 12.399, and 12.401,
11 relating to Hydrologic Balance: Diversions; Hydrologic Balance: Siltation Structures; Hydrologic
12 Balance: Permanent and Temporary Impoundments; Disposal of Excess Spoil: General Requirements;
13 Disposal of Excess Spoil: Durable Rock Fills; Coal Processing Waste Banks: General Requirements; Coal
14 Processing Waste Banks: Site Inspection; Coal Processing Waste: Burned Waste Utilization; Coal Mine
15 Waste: Dams and Embankments: General Requirements; Pipelines; Cessation of Operations: Permanent;
16 Postmining Land Use; and Primary Roads.

17 In Subchapter K, Division 3, Permanent Program Performance Standards--Underground Mining
18 Activities, the Commission adopts amendments to §§12.511, 12.514, 12.517, 12.531, 12.534, 12.535,
19 12.536, 12.540, 12.543, 12.549, 12.567, 12.568, and 12.570, relating to Hydrologic Balance: Diversions;
20 Hydrologic Balance: Siltation Structures; Hydrologic Balance: Permanent and Temporary Impoundments;
21 Disposal of Underground Development Waste and Excess Spoil: General Requirements; Disposal of
22 Underground Development Waste and Excess Spoil: Durable Rock Fills; Coal Mine Waste Banks:
23 General Requirements; Coal Mine Waste Banks: Site Inspection; Coal Mine Waste: Burned-Waste
24 Utilization; Coal Mine Waste: Dams and Embankments: General Requirements; Pipelines; Cessation of
25 Operations: Permanent; Postmining Land Use; and Primary Roads.

26 In Subchapter L, Permanent Program Inspection and Enforcement Procedures, Division 1,
27 Commission Inspection and Enforcement, the Commission adopts amendments to §12.676, relating to
28 Alternative Enforcement, and in Division 2, Enforcement, the Commission adopts amendments to
29 §12.679, relating to Suspension or Revocation of Permits.

30 The Commission adopts the rules without changes to the proposed text as published in the
31 November 6, 2020, issue of the Texas Register (45 TexReg 7826).

32 The Commission received no comments on the proposal.

33 The Commission adopts the amendments in order to better organize and clarify certain
34 procedures, conform Commission rules to federal regulations and guidance such as the United States

1 Department of Agriculture (USDA) Technical Release 60, update references to statutes or editions of
2 external documents, update references to professional engineers and professional geoscientists, and make
3 other nonsubstantive clarifying amendments such as making rules gender neutral and correcting internal
4 cross-references.

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

20 Amendments to §§12.344, 12.347, 12.376, 12.514, 12.517, and 12.543 update references to the
21 United State Department of Agriculture's Technical Release 60 which was revised in 2005. Previously,
22 the rules referenced the 1985 edition of Technical Release 60. In the 2005 version, several terms have
23 been updated and those terms are updated in the Commission's rules as well. For example, these
24 amendments replace the term "emergency spillways" with "auxiliary spillways" and change references to
25 "Class B or C" criteria to "significant or high hazard class."

26 Certain amendments update the terms "registered professional engineer" and "professional
27 geologist" to "professional engineer" and "professional geoscientist," respectively. The updates ensure
28 consistency with terms used by professional licensing boards. These amendments are adopted in the
29 definitions of those terms in §12.3(132) and (133) with conforming amendments adopted in §§12.137,
30 12.142, 12.148, 12.154, 12.183, 12.190, 12.197, 12.198, 12.341, 12.363, 12.366, 12.368, 12.369, 12.373,
31 12.399, 12.401, 12.511, 12.531, 12.534, 12.535, 12.536, 12.540, 12.568, and 12.570.

32 Finally, other nonsubstantive clarifying amendments to §§12.3(89), 12.4, 12.106, 12.126, 12.172,
33 12.207, 12.211, 12.215, 12.382, 12.549, 12.676, and 12.679 correct internal cross-references or references
34 to statutes or editions of external documents, ensure consistency with state statutes, make rule wording

1 gender neutral, or make grammatical corrections. For example, amendments in §12.4 remove outdated
2 requirements for petitions for rulemaking, which required that the Commission respond to a petition
3 within 90 days of receipt. The adopted changes reference the Texas Administrative Procedure Act and the
4 Commission's corresponding rule of practice and procedure, which require a response within 60 days of
5 receipt. Amendments in §12.106 change the required permit renewal application date to 120 days before
6 the expiration of the permit to match the timeline in Texas Natural Resources Code §134.078.

7 The Commission adopts the amendments under Texas Natural Resources Code §134.011 and
8 §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining
9 operations.

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

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

12 **SUBCHAPTER A. GENERAL**

13 **DIVISION 1. GENERAL**

14 §12.3. Definitions.

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

17 (1) - (88) (No change.)

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

25 (90) - (121) (No change.)

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

31 (123) - (131) (No change.)

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

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

3 (134) [(132)] Professional specialist--A person whose training, experience, and
4 professional certification or licensing are acceptable to the Commission for the limited purpose of
5 performing certain specified duties under this chapter.

6 (135) [(133)] Prohibited financial interest--Any direct or indirect financial interest in any
7 coal mining operation.

8 (136) [(134)] Property to be mined--Both the surface estates and mineral estates within
9 the permit area and the area covered by underground workings.

10 (137) [(135)] Public building--Any structure that is owned or leased, and principally used
11 by a governmental agency for public business or meetings.

12 (138) [(136)] Publicly-owned park--A public park that is owned by a federal, state or
13 local governmental entity.

14 (139) [(137)] Public office--A facility under the direction and control of a governmental
15 entity which is open to public access on a regular basis during reasonable business hours.

16 (140) [(138)] Public park--An area or portion of an area dedicated or designated by any
17 federal, state, or local agency primarily for public recreational use, whether or not such use is limited to
18 certain times or days, including any land leased, reserved, or held open to the public because of that use.

19 (141) [(139)] Public road--Any thoroughfare open to the public for passage of vehicles.

20 (142) [(140)] Qualified jurisdiction--A state or federal mining regulatory authority that
21 has a blaster certification program approved by the U.S. Department of the Interior, Office of Surface
22 Mining Reclamation and Enforcement, in accordance with the Federal Act.

23 (143) [(141)] Qualified laboratory--A designated public agency, private firm, institution,
24 or analytical laboratory that can provide the required determination of probable hydrologic consequences
25 or statement of results of test borings or core samplings or other services as specified at §12.236 and
26 §12.240 of this title (relating to Program Services, and Data Requirements), and that meets the standards
27 of §12.241 of this title (relating to Qualified Laboratories).

28 (144) [(142)] Rangeland--Land on which the natural potential (climax) plant cover is
29 principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grass lands
30 and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control,
31 management is primarily achieved by regulating the intensity of grazing and season of use.

32 (145) [(143)] Recharge capacity--The ability of the soils and underlying materials to
33 allow precipitation and runoff to infiltrate and reach the zone of saturation.

1 (146) ~~[(144)]~~ Reciprocity--The conditional recognition by the Commission of a blaster
2 certificate issued by another qualified jurisdiction.

3 (147) ~~[(145)]~~ Reclamation--Those actions taken to restore mined land as required by this
4 chapter to a postmining land use approved by the Commission.

5 (148) ~~[(146)]~~ Recurrence interval--The interval of time in which a precipitation event is
6 expected to occur once, on the average. For example, the 10-year, 24-hour precipitation event would be
7 that 24-hour precipitation event expected to occur on the average once in 10 years.

8 (149) ~~[(147)]~~ Reference area--A land unit maintained under appropriate management for
9 the purpose of measuring vegetation ground cover, productivity and plant species diversity that are
10 produced naturally or by crop production methods approved by the Commission. Reference areas must be
11 representative of geology, soil, slope, and vegetation in the permit area.

12 (150) ~~[(148)]~~ Regional Director--A Regional Director of the Office or a Regional
13 Director's representative.

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

17 (151) ~~[(150)]~~ Remining--Surface coal mining and reclamation operations that affect
18 previously mined areas.

19 (152) ~~[(151)]~~ Renewable resource lands--Aquifers and areas for the recharge of aquifers
20 and other underground waters, areas for agricultural or silvicultural production of food and fiber, and
21 grazing lands. With respect to Subchapter F of this chapter (relating to Lands Unsuitable for Mining),
22 geographic areas which contribute significantly to the long-range productivity of water supply or of food
23 or fiber products, such lands to include aquifers and aquifer recharge areas.

24 (153) ~~[(152)]~~ Replacement of water supply--With respect to protected water supplies
25 contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a
26 temporary and permanent basis equivalent to premining quantity and quality. Replacement includes
27 provision of an equivalent water-delivery system and payment of operation and maintenance costs in
28 excess of customary and reasonable delivery costs for premining water supplies.

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

33 (B) If the affected water supply was not needed for the land use in existence at
34 the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining

1 land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water
2 source is available and could feasibly be developed. If the latter approach is selected, written concurrence
3 must be obtained from the water-supply owner.

4 (154) [~~(153)~~] Road--A surface right-of-way for purposes of travel by land vehicles used
5 in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area
6 within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures,
7 ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved,
8 or maintained for use in surface coal mining and reclamation operations or coal exploration, including use
9 by coal-hauling vehicles to and from transfer, processing, or storage areas. The term does not include
10 ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal
11 areas.

12 (155) [~~(154)~~] Safety factor--The ratio of the available shear strength to the developed
13 shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as
14 determined by accepted engineering practices.

15 (156) [~~(155)~~] Secretary--The Secretary of the U.S. Department of the Interior, or the
16 Secretary's representative.

17 (157) [~~(156)~~] Sedimentation pond--A primary sediment control structure designed,
18 constructed and maintained in accordance with §12.344 or §12.514 of this title (relating to Hydrologic
19 Balance: Siltation Structures) and including but not limited to a barrier, dam, or excavated depression
20 which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include
21 secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts
22 and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment to the
23 extent that such secondary sedimentation structures drain to a sedimentation pond.

24 (158) [~~(157)~~] Significant forest cover--An existing plant community consisting
25 predominantly of trees and other woody vegetation.

26 (159) [~~(158)~~] Significant, imminent environmental harm to land, air or water resources--
27 Determined in the following context:

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

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

32 (i) is causing such harm; or

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

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

3 (160) [(159)] Significant recreational, timber, economic, or other values incompatible
4 with surface coal mining operations--Those significant values which could be damaged by, and are not
5 capable of existing together with, surface coal mining operations because of the undesirable effects
6 mining would have on those values, either on the area included in the permit application or on other
7 affected areas. Those values to be evaluated for their significance include:

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

10 (B) timber management and silviculture;

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

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

15 (161) [(160)] Siltation structure--A sedimentation pond, a series of sedimentation ponds,
16 or other treatment facility.

17 (162) [(161)] Slope--Average inclination of a surface, measured from the horizontal,
18 generally expressed as the ratio of a unit of horizontal distance to a given number of units of vertical
19 distance (e.g., 5h:1v). It may also be expressed as a percent or in degrees.

20 (163) [(162)] Soil horizons--Contrasting layers of soil parallel or nearly parallel to the
21 land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The
22 four master soil horizons are:

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

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

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

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

3 (164) [~~(163)~~] Soil survey--A field and other investigation, resulting in a map showing the
4 geographic distribution of different kinds of soils and an accompanying report that describes, classifies,
5 and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil
6 Survey.

7 (165) [~~(164)~~] Spoil--Overburden that has been removed during surface coal mining
8 operations.

9 (166) [~~(165)~~] Stabilize--To control movement of soil, spoil piles, or areas of disturbed
10 earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties,
11 such as by providing a protective surface coating.

12 (167) [~~(166)~~] Steep slope--Any slope of more than 20 degrees or such lesser slope as may
13 be designated by the Commission after consideration of soil, climate, and other characteristics of a region
14 or state.

15 (168) [~~(167)~~] Subirrigation--With respect to alluvial valley floors, the supplying of water
16 to plants from underneath or from a semi-saturated or saturated subsurface zone where water is available
17 for use by vegetation. Subirrigation may be identified by:

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

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

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

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

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

27 (169) [~~(168)~~] Substantial legal and financial commitments in a surface coal mining
28 operation--Significant investments that have been made on the basis of a long-term coal contract in power
29 plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive
30 activities. An example would be an existing mine, not actually producing coal, but in a substantial stage
31 of development prior to production. Costs of acquiring the coal in place or the right to mine it without an
32 existing mine, as described in the above example, alone are not sufficient to constitute substantial legal
33 and financial commitments.

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

8 (172) [~~171~~] Surface coal mining and reclamation operations--Surface coal mining
9 operations and all activities necessary or incidental to the reclamation of such operations. This term
10 includes the term surface coal 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
13 mine or, subject to the requirements of §134.015 of the Act, surface operations and surface impacts
14 incident to an underground coal mine, the products of which enter or the operations of which directly or
15 indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal,
16 including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and
17 area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical
18 or physical processing; the cleaning, concentrating, or other processing or preparation of coal; and the
19 loading of coal for interstate commerce at or near the mine-site. Provided, however, that such activities do
20 not include the extraction of coal incidental to the extraction of other minerals, where coal does not
21 exceed 16 2/3% of the tonnage of minerals removed annually from all sites operated by a person on
22 contiguous tracts of land for purposes of commercial use or sale, or coal exploration subject to §134.014
23 and §134.031(d) of the Act; and provided further, that excavation for the purpose of obtaining coal
24 includes extraction of coal from coal refuse piles; and

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

33 (174) [~~173~~] Surface mining activities--Those surface coal mining and reclamation
34 operations incident to the extraction of coal from the earth by removing the materials over a coal seam,

1 before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its
2 original geologic location.

3 (175) [~~(174)~~] Surface operations and impacts incident to an underground coal mine--All
4 activities involved in or related to underground coal mining which are either conducted on the surface of
5 the land, produce changes in the land surface or disturb the surface, air or water resources of the area,
6 including all activities listed in §134.004(19) of the Act and the definition of surface coal mining
7 operations contained in this section.

8 (176) [~~(175)~~] Suspended solids or nonfilterable residue--Expressed as milligrams per
9 liter, organic or inorganic materials carried or held in suspension in water which are retained by a
10 standard glass fiber filter in the procedure outlined by the U.S. Environmental Protection Agency
11 regulations for wastewater and analyses (40 CFR 136).

12 (177) [~~(176)~~] Temporary diversion--A diversion of a stream or overland flow which is
13 used during coal exploration or surface coal mining and reclamation operations and not approved by the
14 Commission to remain after reclamation as part of the approved postmining land use.

15 (178) [~~(177)~~] Temporary impoundment--An impoundment used during surface coal
16 mining and reclamation operations, but not approved by the Commission to remain as part of the
17 approved postmining land use.

18 (179) [~~(178)~~] Thick overburden--More than sufficient spoil and other waste materials
19 available from the entire permit area to restore the disturbed area to its approximate original contour.
20 More than sufficient spoil and other waste materials occur where the overburden thickness times the swell
21 factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that
22 after backfilling and grading the surface configuration of the reclaimed area would not:

- 23 (A) closely resemble the surface configuration of the land prior to mining; or
24 (B) blend into and complement the drainage pattern of the surrounding terrain.

25 (180) [~~(179)~~] Thin overburden--Insufficient spoil and other waste materials available
26 from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient
27 spoil and other waste materials occur where the overburden thickness times the swell factor, plus the
28 thickness of other available waste materials, is less than the combined thickness of the overburden and
29 coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the
30 reclaimed area would not:

- 31 (A) closely resemble the surface configuration of the land prior to mining; or
32 (B) blend into and complement the drainage pattern of the surrounding terrain.

33 (181) [~~(180)~~] Ton--2,000 pounds avoirdupois (0.90718 metric ton).

34 (182) [~~(181)~~] Topsoil--The A and E soil-horizon layers of the four master soil horizons.

1 (183) [~~(182)~~] Toxic-forming materials--Earth materials or wastes which, if acted upon by
2 air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions
3 in soils or water that are detrimental to biota or uses of water.

4 (184) [~~(183)~~] Toxic mine drainage--Water that is discharged from active or abandoned
5 mines or other areas affected by coal exploration or surface coal mining and reclamation operations,
6 which contains a substance that through chemical action or physical effects is likely to kill, injure, or
7 impair biota commonly present in the area that might be exposed to it.

8 (185) [~~(184)~~] Transfer, assignment, or sale of rights--A change in ownership or other
9 effective control over the right to conduct surface coal mining operations under a permit issued by the
10 Commission.

11 (186) [~~(185)~~] Unconsolidated streamlaid deposits holding streams--With respect to
12 alluvial valley floors, all flood plains and terraces located in the lower portions of topographic valleys
13 which contain perennial or other streams with channels that are greater than 3 feet in bankfull width and
14 greater than 0.5 feet in bankfull depth.

15 (187) [~~(186)~~] Underground development waste--Waste rock mixtures of coal, shale,
16 claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of
17 during development and preparation of areas incident to underground mining activities.

18 (188) [~~(187)~~] Underground mining activities--Includes:

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

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

27 (189) [~~(188)~~] Undeveloped rangeland--For purposes of alluvial valley floors, lands where
28 the use is not specifically controlled and managed.

29 (190) [~~(189)~~] Unwarranted failure to comply--The failure of the permittee to prevent the
30 occurrence of any violation of the permit or any requirement of the Act, due to the indifference, lack of
31 diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act, due to
32 indifference, lack of diligence, or lack of reasonable care.

33 (191) [~~(190)~~] Upland areas--With respect to alluvial valley floors, those geomorphic
34 features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans,

1 pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as
2 well as highland areas underlain by bedrock and covered by residual weathered material or debris
3 deposited by sheetwash, rillwash, or windblown material.

4 (192) [~~(191)~~] Valid existing rights--A set of circumstances under which a person may,
5 subject to Commission approval, conduct surface coal mining operations on lands where §134.022 of the
6 Act and §12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or
7 Limited) would otherwise prohibit such operations. Possession of valid existing rights only confers an
8 exception from the prohibitions of §12.71(a) of this title and §134.022 of the Act. A person seeking to
9 exercise valid existing rights must comply with all other pertinent requirements of the Act and this
10 chapter.

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

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

22 (i) Good faith/all permits standard. All permits and other authorizations
23 required to conduct surface coal mining operations have been obtained, or a good faith effort to obtain all
24 necessary permits and authorizations has been made, before the land came under the protection of
25 §12.71(a) of this title or §134.022 of the Act. At a minimum, an application must have been submitted for
26 any permit required under Subchapter G of this chapter (relating to Surface Coal Mining and Reclamation
27 Operations, Permits, and Coal Exploration Procedure Systems); or

28 (ii) Needed for and adjacent standard. The land is needed for and
29 immediately adjacent to a surface coal mining operation for which all permits and other authorizations
30 required to conduct surface coal mining operations have been obtained, or a good faith attempt to obtain
31 all permits and authorizations has been made, before the land came under the protection of §12.71(a) of
32 this title or §134.022 of the Act. To meet this standard, a person must demonstrate that prohibiting
33 expansion of the operation onto that land would unfairly impact the viability of the operation as originally
34 planned before the land came under the protection of §12.71(a) of this title or §134.022 of the Act. Except

1 for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary
2 permits have been made before August 3, 1977, this standard does not apply to lands already under the
3 protection of §12.71(a) of this title or §134.022 of the Act when the Commission approved the permit for
4 the original operation or when the good faith effort to obtain all necessary permits for the original
5 operation was made. In evaluating whether a person meets this standard, the Commission may consider
6 factors such as:

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

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

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

16 (IV) whether the land lies within the area identified on the life-
17 of-mine map submitted under §12.136(3) of this title (relating to Maps: General Requirements) or
18 §12.182(3) of this title (relating to Maps: General Requirements) before the land came under the
19 protection of §12.71(a) of this title.

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

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

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

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

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

3 (193) [~~(192)~~] Valley fill--A fill structure consisting of any material other than coal waste
4 and organic material that is placed in a valley where side slopes of the existing valley measured at the
5 steepest point are greater than 20 degrees or the average slope of the profile of the valley from the toe of
6 the fill to the top of the fill is greater than 10 degrees.

7 (194) [~~(193)~~] Violation--When used in the context of the permit application information
8 or permit eligibility requirements of the Act and this chapter:

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

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

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

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

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

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

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

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

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

31 (195) [~~(194)~~] Violation, failure, or refusal--With respect to §§12.696 - 12.699 of this title,
32 a violation of or a failure or refusal to comply with any order of the Commission including, but not
33 limited to, a condition of a permit, notice of violation, failure-to-abate cessation order, imminent harm
34 cessation order, order to show cause why a permit should not be suspended or revoked, and order in

1 connection with a civil action for relief, except an order incorporated in a decision issued under §134.175
2 of the Act.

3 (196) ~~[(195)]~~ Violation notice--Any written notification from a regulatory authority or
4 other governmental entity, as specified in the definition of "violation" in this section.

5 (197) ~~[(196)]~~ Water table--The upper surface of a zone of saturation, where the body of
6 ground water is not confined by an overlying impermeable zone.

7 (198) ~~[(197)]~~ Willful or willfully--With respect to §§12.696 - 12.699 of this title, an
8 individual that authorized, ordered, or carried out an act or omission that resulted in either a violation or
9 the failure to abate or correct a violation acted:

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

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

12 (199) ~~[(198)]~~ Willful violation--An act or omission which violates the Act, state, or
13 federal laws or regulations, or any permit condition required by the Act or this chapter, committed by a
14 person who intends the result which actually occurs.

15

16 §12.4. Petitions to Initiate Rulemaking.

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

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

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

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

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

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

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**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 Cessation of Operations: Permanent. ~~[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.]~~

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

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

DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

§12.106. Permit Application Filing Deadlines.

(a) (No change.)

1 (b) Filing deadlines after initial implementation.

2 (1) (No change.)

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

5 (3) - (4) (No change.)

6
7 §12.108. Permit Fees.

8 (a) (No change.)

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

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

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

17 (c) (No change.)

18
19 **DIVISION 4. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS**
20 **FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION**[~~,PART I~~]

21 §12.121. Identification of Other Licenses and Permits.

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

24 (1) type of permit or license;

25 (2) name and address of issuing authority;

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

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

30
31 **DIVISION 5. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS**
32 **FOR INFORMATION ON ENVIRONMENTAL RESOURCES**

33 §12.126. Description of Hydrology and Geology: General Requirements.

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

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

6
7 §12.137.Cross Sections, Maps, and Plans.

8 (a) (No change.)

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

13
14 **DIVISION 6. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS**
15 **FOR RECLAMATION AND OPERATION PLAN**

16 §12.142.Operation Plan: Maps and Plans.

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

19 (1) - (2) (No change.)

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

28 (4) (No change.)

29
30 §12.146. Reclamation Plan: Protection of Hydrologic Balance.

31 (a) General requirements. The application shall include a hydrologic reclamation plan, with
32 appropriate maps and descriptions, indicating how the relevant requirements of this chapter (relating to
33 Coal Mining Regulations), including §§12.339-12.341, 12.346, 12.348 and 12.349, and 12.350-12.354 of
34 this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality

1 Standards and Effluent Limitations, to Hydrologic Balance: Diversions, to Hydrologic Balance: Acid-
2 Forming and Toxic-Forming Spoil, to Hydrologic Balance: Ground-Water Protection, to Hydrologic
3 Balance: Surface-Water Protection, to Hydrologic Balance: Surface and Ground-Water Monitoring, to
4 Hydrologic Balance: Transfer of Wells, to Hydrologic Balance: Water Rights and Replacement, to
5 Hydrologic Balance: Discharge of Water Into an Underground Mine, and to Hydrologic Balance:
6 Postmine Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities),
7 will be met. The plan shall be specific to the local hydrologic conditions.

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

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

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

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

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

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

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

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

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

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

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

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

34 (G) [~~N~~] control drainage; and

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

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

3 (d) Probable hydrologic consequences determination.

4 (1) - (2) (No change.)

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

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

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

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

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

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

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

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

22 (i) sediment yield from the disturbed area;

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

25 (iii) flooding or streamflow alteration;

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

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

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

30 (5) If the PHC determination [~~of the probable hydrologic consequences (PHC)~~] required
31 by this subsection indicates adverse impacts on or off the proposed permit area may occur to the
32 hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the
33 contamination of ground-water or surface-water supplies, then information supplemental to that required
34 under §12.128 and §12.129 of this title (relating to Ground-Water Information, and to Surface-Water

1 Information) shall be provided to evaluate such probable hydrologic consequences and to plan remedial
2 and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests,
3 hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality and
4 quantity characteristics. Information shall be provided on water availability and alternative water sources,
5 including the suitability of alternative water sources for existing premining uses and approved postmining
6 land uses.

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

13 (e) Cumulative hydrologic impact assessment.

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

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

22
23 §12.148. Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments.

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

27 (1) Each general plan shall:

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

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

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

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

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

5 (3) Each detailed design plan for a structure that does not meet the size or other criteria of
6 30 CFR 77.216(a) shall:

7 (A) be prepared by or under the direction of, and certified by a qualified
8 ~~registered~~ professional engineer;

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

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

11 (e) Coal processing waste dams and embankments. Coal mine waste dams and embankments
12 shall be designed to comply with the requirements of §§12.376 - 12.378 of this title (relating to Coal
13 Mine Waste: Dams and Embankments: General Requirements, to Coal Mine Waste: Dams and
14 Embankments: Site Preparation, and to Coal Mine Waste: Dams and Embankments: Design and
15 Construction). Each plan shall comply with the requirements of the Mine Safety and Health
16 Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical
17 investigation of the proposed dam or embankment foundation area, to determine the structural
18 competence of the foundation which will support the proposed dam or embankment structure and the
19 impounded material. The geotechnical investigation shall be planned and supervised by a qualified
20 professional ~~an~~ engineer or qualified professional geoscientist ~~engineering geologist~~, according to the
21 following:

22 (1) - (4) (No change.)

23 (f) (No change.)

24
25 §12.154. Road Systems and Support Facilities.

26 (a) (No change.)

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

32 (c) (No change.)

33

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

4 §12.161. Identification of Other Licenses and Permits.

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

7 (1) type of permit or license;

8 (2) name and address of issuing authority;

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

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

13

14 **DIVISION 8. UNDERGROUND MINING PERMIT APPLICATIONS--MINIMUM**
15 **REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES**

16 §12.172. Description of Hydrology and Geology: General Requirements.

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

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

23

24 §12.183. Cross Sections, Maps, and Plans.

25 (a) (No change.)

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

30

31 **DIVISION 9. UNDERGROUND MINING PERMIT APPLICATIONS--MINIMUM**
32 **REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN**

33 §12.188. Reclamation Plan: Protection of Hydrologic Balance.

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

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

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

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

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

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

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

23 (A) ~~[(4)]~~ protect the quality of surface- and ground-water systems, both within
24 the proposed permit area and adjacent areas, from the adverse effects of the proposed underground mining
25 activities, or to provide alternative sources of water, in accordance with §12.176 and §12.521 of this title
26 (relating to Alternative Water Supply Information, and to Hydrologic Balance: Water Rights and
27 Replacement), where the protection of quality cannot be ensured;

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

30 (C) ~~[(3)]~~ protect the quantity of surface and ground water both within the
31 proposed permit area and adjacent area from adverse effects of the proposed underground mining
32 activities, or to provide alternative sources of water, in accordance with §12.176 and §12.521 of this title
33 (relating to Alternative Water Supply Information, and to Hydrologic Balance: Water Rights and
34 Replacement), where the protection of quantity cannot be ensured;

1 (D) [~~4~~] avoid acid or toxic drainage;
2 (E) [~~5~~] prevent, to the extent possible using the best technology currently
3 available, additional contributions of sediment to streamflows;
4 (F) [~~6~~] provide water-treatment facilities when needed;
5 (G) [~~7~~] control drainage;
6 (H) [~~8~~] restore approximate premining recharge capacity; and
7 (I) [~~9~~] protect the quality of water by locating openings for mines in accordance
8 with §12.518 of this title (relating to Hydrologic Balance: Underground Mine Entry and Access
9 Discharges).

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

11 (d) Probable hydrologic consequences determination.

12 (1) - (2) (No change.)

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

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

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

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

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

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

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

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

30 (i) sediment yield from the disturbed area;

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

33 (iii) flooding or streamflow alteration;

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

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

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

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

15 (6) If the PHC determination required by this subsection indicates that the proposed
16 mining operation may proximately result in contamination, diminution, or interruption of an underground
17 or surface source of water within the proposed permit or adjacent areas which is used for domestic,
18 agricultural, industrial or other legitimate purpose, then the Commission may require that the applicant
19 provide information supplemental to that required under §12.176 (relating to Alternative Water Supply
20 Information).

21 (e) Cumulative hydrologic impact assessment.

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

28 (2) (No change.)

29 (f) (No change.)

30
31 §12.190. Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments.

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

1 (1) Each general plan shall:

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

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

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

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

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

12 (3) Each detailed design plan for a structure that does not meet the size or other criteria of
13 30 CFR 77.216(a) shall:

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

16 (B) (No change.)

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

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

28 (1) - (4) (No change.)

29 (f) (No change.)

30
31 §12.197.Operation Plan: Maps and Plans.

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

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

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

10 (4) (No change.)

11
12 §12.198. Road Systems and Support Facilities.

13 (a) (No change.)

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

18 (c) (No change.)

19
20 **DIVISION 11. REVIEW, PUBLIC PARTICIPATION, AND APPROVAL OF PERMIT**
21 **APPLICATIONS AND PERMIT TERMS AND CONDITIONS**

22 §12.207. Public Notices of Filing of Permit Applications.

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

28 (1) - (2) (No change.)

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

31 (4) - (5) (No change.)

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

33
34 §12.211. Public Hearing on Application.

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

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

9

10 §12.215. Review of Permit Applications.

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

12 (g) After an application is approved, but before the permit is issued, the Commission shall review
13 and consider any new compliance information submitted pursuant to §12.116(a)(2) [~~§12.116(a)(3)~~] of this
14 title under the criteria of subsection (e)(1) of this section. If the applicant fails or refuses to respond as
15 required by the Commission to provide new compliance information, or the new compliance information
16 shows that the applicant, anyone who owns or controls the applicant, or the operator is in violation, the
17 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
20 or control relationships provided in the application as required under subsections (h) and (i) of this
21 section, the Commission shall determine whether an applicant is eligible for a permit under §134.068 and
22 §134.069 of the Act (relating to Schedule of Notices of Violations, and to Effect of Past or Present
23 Violation).

24 (1) - (2) (No change.)

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

33 (4) (No change.)

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

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

§12.225. Commission Review of Outstanding Permits.

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

(g) Suspension and rescission. If the Commission elects to rescind an improvidently issued permit, it shall serve on the permittee a written notice of the proposed suspension and rescission which includes the reasons for the findings of the Commission under subsection (e) of this section and states that:

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

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

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

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

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

(2) (No change.)

SUBCHAPTER K. PERMANENT PROGRAM PERFORMANCE STANDARDS

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

§12.341. Hydrologic Balance: Diversions.

(a) (No change.)

(b) Diversions of Perennial and Intermittent Streams.

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

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

1 (c) (No change.)

2
3 §12.344. Hydrologic Balance: Siltation Structures.

4 (a) (No change.)

5 (b) General requirements.

6 (1) - (2) (No change.)

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

10 (4) - (6) (No change.)

11 (c) Sedimentation ponds.

12 (1) (No change.)

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

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

17
18 §12.347. Hydrologic Balance: Permanent and Temporary Impoundments.

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

21 (1) Impoundments meeting the significant or high hazard class [~~Class B or C~~] criteria of
22 dams in the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service Technical
23 Release No. 60 (210-VI-TR60, July 2005 [~~Oct. 1985~~]), Earth Dams and Reservoirs, shall comply with
24 the table of Minimum Auxiliary [~~Emergency~~] Spillway Hydrologic Criteria [~~table~~] in Technical Release
25 No. 60 (TR-60), which is incorporated by reference. [~~TR-60~~] and the requirements of this section.
26 [~~Technical Release No. 60 is hereby incorporated by reference. Copies may be obtained from the National~~
27 ~~Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB~~
28 ~~87-157509/AS.~~] Copies may be obtained on the USDA website [~~can be inspected at the Commission's~~
29 ~~Surface Mining and Reclamation Division Office at 1701 N. Congress Avenue, Austin, Texas~~].

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

32 (3) The design of impoundments shall be certified in accordance with §12.148(a) of this
33 title (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments) as designed
34 to meet the requirements of this part using current, prudent, engineering practices and any design criteria

1 established by the Commission. The qualified~~[, registered]~~ professional engineer shall be experienced in
2 the design and construction of impoundments.

3 (4) Stability.

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

8 (B) (No change.)

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

13 (6) Foundations.

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

20 (B) (No change.)

21 (7) - (8) (No change.)

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

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

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

34 (10) (No change.)

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

5 (A) (No change.)

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

13 (C) (No change.)

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

20 (13) (No change.)

21 (b) (No change.)

22 (c) Temporary Impoundments.

23 (1) (No change.)

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

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

1 (B) (No change.)

2

3 §12.363. Disposal of Excess Spoil: General Requirements.

4 (a) (No change.)

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

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

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

12 (1) - (5) (No change.)

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

19 (l) - (q) (No change.)

20

21 §12.366. Disposal of Excess Spoil: Durable Rock Fills.

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

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

34 (1) (No change.)

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

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

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

9 (2) (No change.)

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

11
12 §12.368. Coal Processing Waste Banks: General Requirements.

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

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

18
19 §12.369. Coal Processing Waste Banks: Site Inspection.

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

24 (1) - (3) (No change.)

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

30 (5) - (6) (No change.)

31 (b) (No change.)

32
33 §12.373. Coal Processing Waste: Burned Waste Utilization.

1 Before any burned coal processing waste, other materials, or refuse is removed from a disposal
2 area, approval shall be obtained from the Commission. A plan for the method of removal, with maps and
3 appropriate drawings to illustrate the proposed sequence of the operation and method of compliance with
4 §§12.330 - 12.372, this section, and §§12.374 - 12.403 of this title (relating to Permanent Program
5 Performance Standards--Surface Mining Activities), shall be submitted to the Commission. Consideration
6 shall be given in the plan to potential hazards, which may be created by removal, to persons working or
7 living in the vicinity of the structure. The plan shall be certified by a qualified [~~registered~~] professional
8 engineer.

9

10 §12.376. Coal Mine Waste: Dams and Embankments: General Requirements.

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

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

16

17 §12.382. Pipelines.

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

20 (1) - (5) (No change.)

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

24 (7) (No change.)

25

26 §12.398. Cessation of Operations: Permanent.

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

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

30

31 §12.399. Postmining Land Use.

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

33 (c) Alternative land uses. Prior to the release of lands from the permit area in accordance with
34 §12.313 of this title (relating to Criteria and Schedule for Release of Performance Bond), the permit area

1 shall be restored, in a timely manner, either to conditions capable of supporting the uses they were
2 capable of supporting before any mining, or to conditions capable of supporting approved alternative land
3 uses. Alternative land uses may be approved by the Commission after consultation with the landowner or
4 the land management agency having jurisdiction over the lands, if the following criteria are met:

5 (1) - (4) (No change.)

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

10 (6) - (9) (No change.)

11

12 §12.401. Primary Roads.

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

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

19 (2) - (5) (No change.)

20

21 **DIVISION 3. PERMANENT PROGRAM PERFORMANCE STANDARDS--UNDERGROUND**
22 **MINING ACTIVITIES**

23 §12.511. Hydrologic Balance: Diversions.

24 (a) (No change.)

25 (b) Diversions of Perennial and Intermittent Streams.

26 (1) - (3) (No change.)

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

31 (c) (No change.)

32

33 §12.514. Hydrologic Balance: Siltation Structures.

34 (a) (No change.)

1 (b) General requirements.

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

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

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

7 (c) Sedimentation ponds.

8 (1) (No change.)

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

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

13
14 §12.517. Hydrologic Balance: Permanent and Temporary Impoundments.

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

17 (1) Impoundments meeting the significant or high hazard class [~~Class B or C~~] criteria of
18 dams in the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service Technical
19 Release No. 60 (210-VI-TR60, July 2005 [~~Oct. 1985~~]), Earth Dams and Reservoirs, shall comply with the
20 table of Minimum Auxiliary [~~Emergency~~] Spillway Hydrologic Criteria [~~table~~] in Technical Release No.
21 60 (TR-60), which is incorporated by reference. [~~TR-60~~] and the requirements of this section. [~~The~~
22 ~~Technical Release No. 60 is hereby incorporated by reference. Copies may be obtained from the National~~
23 ~~Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB~~
24 ~~87-157509/AS.~~] Copies may be obtained on the USDA website [~~can be inspected at the Commission's~~
25 ~~Surface Mining and Reclamation Division Office at 1701 North Congress Avenue, Austin, Texas~~].

26 (2) (No change.)

27 (3) The design of impoundments shall be certified in accordance with §12.190(a) of this title
28 (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments) as designed to
29 meet the requirements of this part using current, prudent, engineering practices and any design criteria
30 established by the Commission. The qualified[~~, registered~~] professional engineer shall be experienced in
31 the design and construction of impoundments.

32 (4) Stability.

33 (A) An impoundment meeting the significant or high hazard class [~~Class B or C~~] criteria
34 for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static factor of

1 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at
2 least 1.2.

3 (B) (No change.)

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

8 (6) Foundations.

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

15 (B) (No change.)

16 (7) - (8) (No change.)

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

21 (A) (No change.)

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

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

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

29 (10) (No change.)

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

34 (A) (No change.)

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

8 (C) (No change.)

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

15 (13) (No change.)

16 (b) (No change.)

17 (c) Temporary Impoundments.

18 (1) (No change.)

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

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

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

33
34 §12.531. Disposal of Underground Development Waste and Excess Spoil: General Requirements.

1 (a) (No change.)

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

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

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

8 (1) - (5) (No change.)

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

15 (l) - (q) (No change.)

16

17 §12.534. Disposal of Underground Development Waste and Excess Spoil: Durable Rock Fills.

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

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

31 (1) (No change.)

32 (2) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard
33 rock waste spoil in a controlled manner to limit, on a unit basis, concentrations of noncemented clay shale

1 and clay in the fill. Such materials will comprise no more than 20% of the fill volume as determined by
2 tests performed by a qualified professional [~~registered~~] engineer and approved by the Commission.

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

4 (1) stability analyses shall be made by the qualified [~~registered~~] professional engineer.

5 Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface
6 investigations including borings, and laboratory tests; and

7 (2) (No change.)

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

9

10 §12.535. Coal Mine Waste Banks: General Requirements.

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

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

16

17 §12.536. Coal Mine Waste Banks: Site Inspection.

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

21 (1) - (4) (No change.)

22 (b) (No change.)

23

24 §12.540. Coal Mine Waste: Burned-Waste Utilization.

25 Before any burned coal mine waste or other materials or refuse is removed from a disposal area,
26 approval shall be obtained from the Commission. A plan for the method of removal, with maps and
27 appropriate drawings to illustrate the proposed sequence of the operation and methods of compliance with
28 §§12.500 - 12.539, this section, and §§12.541 - 12.572 of this title (relating to Permanent Program
29 Performance Standards--Underground Mining Activities), shall be submitted to the Commission.
30 Consideration shall be given in the plan to potential hazards, which may be created by removal, to
31 persons working or living in the vicinity of the structure. The plan shall be certified by a qualified
32 [~~registered~~] professional engineer.

33

34 §12.543. Coal Mine Waste: Dams and Embankments: General Requirements.

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

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

6

7 §12.549. Pipelines.

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

10 (1) - (5) (No change.)

11 (6) comply with [~~rules and regulations pursuant to TEXAS REVISED CIVIL~~
12 ~~STATUTES ANNOTATED, ARTICLE 6053-1;~~] Railroad Commission of Texas[~~;~~] Pipeline Safety Rules
13 (16 Texas Administrative Code, Chapter 8) and [~~§§7.70 et seq.~~]; 49 CFR 191, 192, and 199; and

14 (7) (No change.)

15

16 §12.567. Cessation of Operations: Permanent.

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

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

20

21 §12.568. Postmining Land Use.

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

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

29 (1) - (4) (No change.)

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

34 (6) - (9) (No change.)

1
2 §12.570. Primary Roads.

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

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

9 (2) - (5) (No change.)

10

11 **SUBCHAPTER L. PERMANENT PROGRAM INSPECTION AND ENFORCEMENT**
12 **PROCEDURES**

13 **DIVISION 1. COMMISSION INSPECTION AND ENFORCEMENT**

14 §12.676. Alternative Enforcement.

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

16 (c) Civil actions for relief.

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

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

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

22 (2) - (4) (No change.)

23

24 **DIVISION 2. ENFORCEMENT**

25 §12.679. Suspension or Revocation of Permits.

26 (a) Pattern of violations.

27 (1) Except as provided in subsection (b) of this section, the Director of the Surface
28 Mining and Reclamation Division shall issue an order to a permittee requiring the permittee [~~him~~] to
29 show cause why the [~~his~~] permit and right to mine under the Act should not be suspended or revoked[;]
30 if the Director of the Surface Mining and Reclamation Division [~~he~~] determines that a pattern of
31 violations of any requirements of the Act, this chapter (relating to Coal Mining Regulations), or any
32 permit condition required by the Act exists or has existed, and that the violations were caused by the
33 permittee willfully or through unwarranted failure to comply with those requirements or conditions.

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1 Violations by any person conducting surface coal mining operations on behalf of the permittee shall be
2 attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

3 (2) The Director of the Surface Mining and Reclamation Division may determine that a
4 pattern of violations exists or has existed, based on two or more inspections of the permit area within any
5 12-month period, after considering the circumstances, including:

6 (A) (No change.)

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

10 (C) (No change.)

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

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

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

22
23 This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and
24 found to be a valid exercise of the agency's legal authority.

25 Issued in Austin, Texas, on December 8, 2020.

26 Filed with the Office of the Secretary of State on _____, 2020.

DocuSigned by:
Christi Craddick
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Christi Craddick, Chairman

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Wayne Christian, Commissioner

Railroad Commission of Texas
16 TAC Chapter 12--Surface Mining and Reclamation Division

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