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**TEXAS NATURAL RESOURCES CODE
CHAPTER 134. TEXAS SURFACE COAL MINING AND RECLAMATION ACT**

SUBCHAPTER A. GENERAL PROVISIONS

134.001. SHORT TITLE.

This chapter may be cited as the Texas Surface coal Mining and Reclamation Act.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.002. FINDINGS AND DECLARATION OF POLICY.

The legislature finds and declares that:

- (1) the Congress of the United States has enacted the federal Act, which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the Department of the Interior over the regulation of surface coal mining and reclamation in the United States;
- (2) Section 101 of the federal Act contains the finding by Congress that because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to that Act should rest with the states;
- (3) Section 503 of the federal Act provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in that state by obtaining approval of a state program of regulation that demonstrates that the state is able to carry out the provisions and meet the purposes of that Act;

- (4) Section 503 of the federal Act further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in the state must have a state law that provides for the regulation of surface coal mining and reclamation operations in accordance with that Act; and
- (5) this state wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in the state under the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.003. PURPOSES.

It is the purpose of this chapter:

- (1) to prevent adverse effects to society and the environment from unregulated surface coal mining operations as defined by this chapter;
- (2) to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface coal mining operations;
- (3) to assure that surface coal mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources;
- (4) to assure that reclamation of all land on which surface coal mining takes place occurs as contemporaneously as practicable with the surface coal mining, recognizing that extracting coal by responsible mining operations is an essential and beneficial economic activity;
- (5) to assure that the coal supply essential to this state's energy requirements and to its economic and social well-being is provided and to strike a balance between environmental protection and agricultural productivity and this state's need for coal as an essential source of energy; and
- (6) to promote the reclamation of mined areas left without adequate reclamation before the enactment of the federal Act and that continue, in their unreclaimed condition, substantially to degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.004. DEFINITIONS.

In this chapter:

- (1) "Affected person" means a person having an interest that is or may be affected.
- (2) "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities. The term does not include upland areas that are generally overlaid by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, or windblown deposits.
- (3) "Applicant" means a person or other legal entity seeking a permit from the commission to conduct surface coal mining activities or underground mining activities under this chapter.
- (4) "Approximate original contour" means the surface configuration achieved by backfilling and grading the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land before mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated.
- (5) "Coal" means all forms of coal and includes lignite.
- (6) "Coal exploration operations" means the substantial disturbance of the surface or subsurface for or related to the purpose of determining the location, quantity, or quality of a coal deposit.
- (7) "Commission" means the Railroad Commission of Texas.
- (8) "Federal Act" means the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201 et seq.).
- (9) "Imminent danger to the health or safety of the public" means the existence of a condition or practice or a violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

- (10) "Operator" means a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive months in one location.
- (11) "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and other solid materials or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals that occur naturally in liquid or gaseous form.
- (12) "Permit" means a permit to conduct surface coal mining and reclamation operations or underground mining operations issued by the commission.
- (13) "Permit area" means the area of land indicated on the approved map submitted by the operator with the operator's application, which area of land must be covered by an operator's bond as required by Subchapter F and readily identifiable by appropriate markers on the site.
- (14) "Permit holder" means a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities under this chapter.
- (15) "Person" means an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.
- (16) "Prime farmland" means land that the commission determines meets the criteria prescribed by the secretary of agriculture and published in the Federal Register, including moisture availability, temperature regime, chemical balance, permeability without regard to annual mean soil temperatures, surface layer composition, susceptibility to flooding, and erosion characteristics, and that historically has been used for intensive agricultural purposes. Land has not historically been used for the production of cultivated crops if:
- (A) the land has been used as woodland or rangeland;
or
 - (B) the only cultivation has been disking to:
 - (i) establish or help maintain bermuda grass used as forage; or
 - (ii) plant oats or rye for quick cover, to be used as forage and not as a grain crop.

- (17) "Secretary of agriculture" means the secretary of the United States Department of Agriculture.
- (18) "Secretary of the interior" means the secretary of the United States Department of the Interior.
- (19) "Surface coal mining and reclamation operations" means surface coal mining operations and the activities necessary and incidental to the reclamation of those operations.
- (20) "Surface coal mining operations" means:
- (A) activities conducted on the surface of land in connection with a surface coal mine or subject to the requirements of Section 134.015 incidental to an underground coal mine, including excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; excluding the extraction of coal incidental to the extraction of other minerals where the coal does not exceed 16-2/3 percent of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to this chapter; and
 - (B) the areas on which those activities occur or where those activities disturb the natural land surface, areas adjacent to land the use of which is incidental to any of those activities, all land affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas on which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to those activities.

- (21) "Unwarranted failure to comply" means the failure of a permit holder to prevent the occurrence of any violation of the permit holder's permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of the permit holder's permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, § 25.01(a), eff. Sept. 1, 1997.

134.005. EXEMPTIONS.

- (a) This chapter does not apply to the extraction of coal:
- (1) by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner; or
 - (2) incidental to federal, state, or local government-financed highway or other construction under commission rules.
- (b) Subsection (a)(1) does not exempt the noncommercial production of coal by in situ distillation or retorting, leaching, or another chemical or physical process or preparation.
- (c) This chapter does not apply to surface coal mining and reclamation operations in existence before August 3, 1977.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, § 25.01(b), eff. Sept. 1, 1997.

134.006. WATER RIGHTS.

This chapter does not affect the right of a person under other law to enforce or protect the person's interest in water resources affected by a surface coal mining operation.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.007. CONFLICT OF INTEREST; OFFENSE.

(a) An employee of the commission commits an offense if the employee knowingly:

- (1) performs a function or duty under this chapter; and
- (2) has a direct or indirect financial interest in an underground or surface coal mining operation.

(b) An offense under this section is punishable by:

- (1) a fine of not more than \$2,500;
- (2) imprisonment for not more than one year; or
- (3) both the fine and the imprisonment.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.008. APPLICABILITY TO GOVERNMENTAL UNITS.

An agency, unit, or instrumentality of federal, state, or local government, including a publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to this chapter shall comply with this chapter.

Added by Acts 1997, 75th Leg., ch. 165, § 25.01(c), eff. Sept. 1, 1997.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

134.011. GENERAL AUTHORITY OF COMMISSION.

To accomplish the purposes of this chapter, the commission may:

- (1) adopt, amend, and enforce rules pertaining to surface coal mining and reclamation operations consistent with the general intent and purposes of this chapter;
- (2) issue permits under this chapter;
- (3) conduct hearings under this chapter and Chapter 2001, Government Code;
- (4) issue orders requiring an operator to take actions necessary to comply with this chapter or rules adopted under this chapter;
- (5) issue orders modifying previous orders;

- (6) issue a final order revoking the permit of an operator who has not complied with a commission order to take action required by this chapter or rules adopted under this chapter;
- (7) order the immediate cessation of all or part of an ongoing surface coal mining operation if the commission finds that the operation or part of the operation creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and take other action or make changes in a permit that are reasonably necessary to avoid or alleviate those conditions;
- (8) hire employees, adopt standards for employment, and hire or authorize the hiring of outside contractors to assist in carrying out this chapter;
- (9) enter and inspect, in person or by its agents, a surface mining operation that is subject to this chapter to assure compliance with this chapter;
- (10) conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise;
- (11) prepare and require permit holders to prepare reports;
- (12) accept, receive, and administer grants, gifts, loans, or other money made available from any source for the purposes of this chapter;
- (13) take the steps necessary for this state to participate to the fullest extent practicable in the abandoned land program provided by Title IV of the federal Act;
- (14) take the actions necessary to establish exclusive jurisdiction over surface coal mining and reclamation in Texas under the provisions of the federal Act, including, if the federal agency disapproves Texas' program as submitted, making recommendations for remedial legislation to clarify, alter, or amend the program to meet the terms of the federal Act;
- (15) contract with state boards and agencies that have pertinent expertise to obtain the professional and technical services necessary to carry out this chapter;
- (16) establish a process, to avoid duplication, for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations;

- (17) enter into cooperative agreements with the secretary of the interior for the regulation of surface coal mining operations on federal land in accordance with the federal Act; and
- (18) perform any other duty or act required by or provided for in this chapter.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.012. JURISDICTION OF COMMISSION OVER SURFACE COAL, IRON ORE, AND IRON ORE GRAVEL MINING AND RECLAMATION OPERATIONS.

- (a) The commission has exclusive jurisdiction over:
 - (1) surface coal mining and reclamation operations in this state; and
 - (2) iron ore and iron ore gravel mining and reclamation operations in this state.
- (b) This chapter governs iron ore and iron ore gravel mining and reclamation operations to the extent it can be made applicable.
- (c) The jurisdiction conferred by Subsection (a)(2) does not extend to:
 - (1) a mining or reclamation activity in progress on or before September 1, 1985; or
 - (2) a mining operation or reclamation activity that is conducted solely on real property owned in fee simple by the person authorizing the operation or reclamation activity and that is confined to a single, contiguous tract of land, if:
 - (A) the activity is conducted in an area not larger than 20 acres;
 - (B) the depth of the mining operation is restricted to 30 inches or less; and
 - (C) the fee simple owner receives surface damages.
- (d) This chapter does not authorize the commission to adjudicate property title or property rights disputes.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.013. RULEMAKING AND PERMITTING.

- (a) The commission shall adopt rules pertaining to surface coal mining and reclamation operations required by this chapter.
- (b) The process of making and amending rules and issuing permits is subject to Chapter 2001, Government Code.
- (c) A rule or an amended rule adopted or a permit issued by the commission may have different terms for particular conditions, types of coal being extracted, particular areas of the state, or other relevant or necessary conditions if the action taken is consistent with the general intent and purposes of this chapter.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.014. COAL EXPLORATION OPERATIONS.

- (a) A person who conducts coal exploration operations that substantially disturb the natural land surface shall comply with commission rules adopted to govern those operations. The rules shall require that before conducting the exploration, a person file with the commission notice of intent to explore and include with the notice:
 - (1) a description of the exploration area and the period of proposed exploration; and
 - (2) provisions for reclaiming, in accordance with the performance standards in Sections 134.091 through 134.109, the land disturbed in exploration, including provisions for reclamation of excavations, roads, and drill holes and for removal of necessary facilities and equipment.
- (b) A person who conducts coal exploration operations that substantially disturb the natural land surface in violation of this section or a rule adopted under this section is subject to Sections 134.174 through 134.181.
- (c) An operator may not remove more than 250 tons of coal under an exploration permit without the specific written approval of the commission.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, § 25.01(d), eff. Sept. 1, 1997.

134.015. SURFACE EFFECTS OF UNDERGROUND MINING.

- (a) The commission shall adopt rules applicable to the surface effects of underground mining that are consistent with the federal Act and regulations adopted under that Act by the secretary of the interior.
- (b) This chapter applies to the regulation of the surface effects of underground mining operations as established by Section 516 of the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.016. DEVELOPMENT OF PROCESS FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING.

The commission shall develop a process for designating areas unsuitable for surface coal mining. The process shall include:

- (1) reviewing surface coal mining land;
- (2) developing a data base and an inventory system that will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations;
- (3) developing, by rule, a method or methods for implementing land use planning decisions about surface coal mining operations; and
- (4) developing, by rule, proper notice, provisions, and opportunities for public participation, including a public hearing, before the commission makes a designation or redesignation under Section 134.020.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.017. PETITION FOR DESIGNATION.

- (a) An affected person is entitled:
 - (1) before an application is filed under Section 134.052, to petition the commission to designate an area unsuitable for surface coal mining operations; or
 - (2) to petition the commission to terminate a designation.
- (b) The petition shall contain:
 - (1) allegations of facts; and
 - (2) supporting evidence that would tend to establish the allegations.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.018. HEARING ON DESIGNATION.

- (a) Not later than 10 months after the date the commission receives the petition, the commission shall hold a public hearing under Chapter 2001, Government Code, in the locality of the affected area.
- (b) After a person has filed a petition under Section 134.017 and before the hearing required by Subsection (a), any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations.
- (c) A hearing is not required if all petitioners stipulate agreement before the requested hearing and withdraw their requests.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.019. COMMISSION STATEMENT.

Before designating a land area unsuitable for surface coal mining operations, the commission shall prepare a detailed statement on:

- (1) the potential coal resources of the area;
- (2) the demand for coal resources; and
- (3) the impact of the designation on the environment, the economy, and the supply of coal.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.020. DESIGNATION OF AREA AS UNSUITABLE FOR SURFACE COAL MINING.

- <a) On petition under Section 134.017, the commission shall designate an area unsuitable for all or certain types of surface coal mining operations if the commission determines that reclamation under this chapter is not technologically and economically feasible.
- (b) On petition under Section 134.017, the commission may designate a surface area unsuitable for certain types of surface coal mining operations if those operations will:
 - (1) be incompatible with existing state or local land use plans or programs;
 - (2) affect fragile or historic land in which the operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems;

- (3) affect renewable resource lands, including aquifers and aquifer recharge areas, in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or
 - (4) affect natural hazard land, including areas subject to frequent flooding and areas of unstable geology, in which the operations could substantially endanger life and property.
- (c) Sections 134.016 through 134.019 and this section do not apply to land:
- (1) for which substantial legal and financial commitments in a surface coal mining operation or proposed operation were in existence before January 4, 1977;
 - (2) on which surface coal mining operations were being conducted on August 3, 1977; or
 - (3) on which surface coal mining operations are being conducted under a permit issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.021. INTEGRATION WITH LAND USE PLANNING AND REGULATION PROCESSES.

Determinations of the unsuitability of land for surface coal mining under Sections 134.016 through 134.020 shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state, and local levels.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.022. PROHIBITION ON SURFACE COAL MINING IN CERTAIN AREAS.

- (a) Surface coal mining operations may not be permitted:
- (1) that will adversely affect a publicly owned park or place included in the National Register of Historic Sites unless approved jointly by the commission and the federal, state, or local agency with jurisdiction over the park or historic site;
 - (2) within 100 feet of the outside right-of-way line of a public road, except:
 - (A) where a mine access road or haulage road joins the right-of-way line; or

- (B) as provided by Subsection (b);
 - (3) within 300 feet of an occupied dwelling, unless the owner of the dwelling waives the prohibition;
 - (4) within 300 feet of a public, school, church, community, or institutional building;
 - (5) within 300 feet of a public park; or
 - (6) within 100 feet of a cemetery.
- (b) The commission may permit a public road to be relocated or the area affected by surface coal mining operations to lie within 100 feet of the outside right-of-way line of the public road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by the relocation will be protected.
- (c) This section is subject to rights existing on August 3, 1977, and does not affect surface coal mining operations that existed on August 3, 1977.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, § 25.01(e), eff. Sept. 1, 1997.

134.023. COOPERATIVE AGREEMENTS WITH FEDERAL GOVERNMENT.

The commission may enter into cooperative agreements with the federal government under the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.024. EXPERIMENTAL PRACTICES.

- (a) The commission, with approval by the secretary of agriculture, may authorize experimental departures, in individual cases, from the environmental protection performance standards of this chapter to:
- (1) encourage advances in mining and reclamation practices; and
 - (2) allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities.
- (b) The commission may authorize departures if:
- (1) the experimental practices are potentially at least as environmentally protective, during and after mining operations, as those required by this chapter;

- (2) the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and
- (3) the experimental practices do not reduce the protection afforded public health and safety below that provided by adopted standards.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.025. CERTIFICATION OF BLASTERS.

The commission shall adopt rules requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or the use of explosives in surface coal mining operations.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.026. MONITORING, REPORTING, AND INSPECTIONS.

- (a) The commission shall:
 - (1) require monitoring and reporting;
 - (2) inspect surface coal mining and reclamation operations;
 - (3) require the maintenance of signs and markers; and
 - (4) take other actions necessary to:
 - (A) administer, enforce, or evaluate the administration of this chapter; or
 - (B) meet the state program requirements of the federal Act.
- (b) For purposes of this section, the commission or its authorized representative:
 - (1) without advance notice and on presentation of appropriate credentials, has the right to enter:
 - (A) a surface coal mining and reclamation operation; or
 - (B) premises on which records required to be maintained are located; and

- (2) at reasonable times and without delay, may have access to and copy records required under this chapter or rules adopted under this chapter or inspect any monitoring equipment or method of operation required under this chapter or rules adopted under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.027. MONITORING OF OPERATIONS THAT AFFECT AQUIFERS.

For surface coal mining and reclamation operations that remove or disturb strata that serve as aquifers that significantly ensure the hydrologic balance of water use on or off the mining site, the commission shall specify:

- (1) monitoring sites to record:
 - (A) the quantity and quality of surface drainage above and below the mine site and in the potential zone of influence;
 - (B) the level and amount and to take samples of groundwater and aquifers potentially affected by the mining and directly below the lowermost, deepest coal seam to be mined; and
 - (C) precipitation; and
- (2) records of well logs and borehole data to be maintained.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.028. INSPECTION PROCEDURE.

Inspections by the commission shall:

- (1) occur irregularly, averaging not fewer than one partial inspection each month and one complete inspection each calendar quarter for the surface coal mining and reclamation operation covered by each permit;
- (2) occur without prior notice to the permit holder or the permit holder's agents or employees except for necessary on-site meetings with the permit holder; and
- (3) include filing inspection reports adequate to enforce the requirements of, and to carry out, this chapter.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.029. PROCEDURE ON DETECTION OF VIOLATION.

On detection of a violation of this chapter, an inspector, in writing, shall:

- (1) promptly inform the operator; and
- (2) report the violation to the commission.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.030. RULES REGARDING MONITORING, REPORTING, AND INSPECTIONS.

The commission shall adopt rules for:

- (1) informing an operator of a violation detected by an inspector; and
- (2) making public all inspection and monitoring reports and other records and reports required to be kept under this chapter and rules adopted under this chapter and not confidential under Section 134.031.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.031. CONFIDENTIALITY.

- (a) Information pertaining to coal seams, test borings, core samplings, or soil samples required by Section 134.052 shall be made available to an affected person. However, information that pertains only to the analysis of the chemical and physical properties of the coal, except information regarding mineral or chemical content that is potentially toxic in the environment, is confidential and is not a public record.
- (b) Information submitted to the commission concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, may not be disclosed by a member, agent, or employee of the commission.

- (c) Information submitted to the commission under Section 134.041 concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, may not be disclosed by a member, agent, or employee of the commission. However, information required by another section that must, by the terms of the other section, be on public file or available to an affected person and information about the chemical and physical properties of the coal that relate to mineral or elemental contents that are potentially toxic in the environment is not confidential.
- (d) Information submitted to the commission under Section 134.014 as confidential concerning trade secrets or privileged commercial or financial information that relates to the competitive rights of the person intending to explore the described area is not available for public examination.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.032. DETERMINATION REGARDING PRIME FARMLAND.

The commission may determine that land is not prime farmland because of its soil type or slope.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

SUBCHAPTER C. PLANS

134.041. RECLAMATION PLAN.

A reclamation plan submitted as part of a permit application shall include, in sufficient detail to demonstrate that reclamation required by this chapter can be accomplished, a statement that:

- (1) identifies land subject to the surface coal mining operation over the estimated life of the operation and the size, sequence, and timing of any subareas for which it is anticipated that individual permits for surface coal mining will be sought;
- (2) describes the condition of the land to be covered by the permit before any mining, including:
 - (A) the uses existing at the time of the application and, if the land has a history of mining, the uses that preceded any mining;

- (B) the capability of the land before any mining to support a variety of uses, considering soil and foundation characteristics, topography, vegetative cover, and, if applicable, a soil survey prepared under Section 134.052(a)(16);
- (C) the productivity of the land before mining, including appropriate classification as prime farmland; and
 - (D) if the land is classified as prime farmland, the average yield of food, fiber, forage, or wood products obtained from the land under high levels of management;
- (3) describes the proposed use of the land after reclamation, including:
 - (A) a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of those uses to existing land uses; and
 - (B) the comments of state and local governments or agencies of state or local government that must approve or authorize the proposed use of the land after reclamation;
- (4) describes in detail how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve that use;
- (5) specifies the engineering techniques proposed to be used in mining and reclamation and describes the major equipment;
- (6) includes a plan for the control of surface water drainage and water accumulation;
- (7) includes, if appropriate, a plan for backfilling, soil stabilization and compacting, grading, and appropriate revegetation;
- (8) includes a plan for soil reconstruction, replacement, and stabilization under the performance standards in Section 134.092(a)(7) for land identified as prime farmland under Section 134.052(a)(16);
- (9) estimates the cost for each acre of the reclamation, including a statement as to how the permit holder plans to comply with each requirement in Sections 134.091 through 134.109;

- (10) describes the consideration given to maximizing the use and conservation of the solid fuel resource being recovered so that re-affecting the land in the future can be minimized;
- (11) provides an estimated timetable for accomplishing each major step in the reclamation plan;
- (12) describes the consideration given to making the surface mining and reclamation operations consistent with surface owner plans and applicable land use plans and programs;
- (13) identifies the steps to be taken to comply with applicable air and water quality laws, rules, and regulations and any applicable health and safety standards;
- (14) describes the consideration given to developing the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions;
- (15) contains the results of test borings the applicant has made at the permit area or other equivalent information in a form satisfactory to the commission, including:
 - (A) the location of subsurface water; and
 - (B) an analysis of the chemical properties of the coal and overburden that can be expected to adversely affect the environment;
- (16) identifies:
 - (A) any land contiguous to the area to be covered by the permit, or any interest or option on an interest in the contiguous land, held by the applicant; and
 - (B) any pending bid by the applicant on an interest in the contiguous land; and
- (17) describes in detail the measures to be taken during the mining and reclamation process to assure the protection of:
 - (A) the quality of surface-water systems and groundwater systems, both on and off the mine site, from adverse effects of the mining and reclamation process;
 - (B) the rights of present users to surface-water systems and groundwater systems, both on and off the mine site; and

- (C) the quantity of surface-water systems and groundwater systems, both on and off the mine site, from adverse effects of the mining and reclamation process, or to provide alternative sources of water where the protection of quantity cannot be assured.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.042. BLASTING PLAN.

An applicant for a surface coal mining and reclamation permit shall submit to the commission as part of its application a blasting plan that outlines the procedures and standards by which the operator will comply with Section 134.092(a)(15).

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

SUBCHAPTER D. SURFACE COAL MINING PERMITS

134.051. PERMIT REQUIRED FOR OPERATION.

A person may not conduct a surface coal mining operation in this state without first obtaining a permit for that operation from the commission under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.052. CONTENTS OF PERMIT APPLICATION.

- (a) A permit application must be submitted in a manner satisfactory to the commission and must contain:
 - (1) the name and address of:
 - (A) the applicant;
 - (B) each owner of record of the property to be mined;
 - (C) each holder of record of any leasehold interest in the property;
 - (D) the purchaser of record of the property under a real estate contract;

- (E) the operator if the operator is not the applicant;
 - (F) the principals, officers, and resident agent of a person described by Paragraph (A), (B), (C), (D), or (E) if the person is a business entity other than a sole proprietor; and
 - (G) the owners of record of the property adjoining the permit area;
- (2) a description of any:
- (A) current or previous surface coal mining permits held by the applicant; or
 - (B) other pending application by the applicant;
- (3) information about ownership and management of the applicant or operator required by commission rule;
- (4) a statement of whether the applicant or a subsidiary, affiliate, or other person controlled by or under common control with the applicant:
- (A) has held a federal or state mining permit that has been suspended or revoked in the five years preceding the date the application is submitted and, if so, a brief explanation of the facts involved; or
 - (B) has forfeited a mining bond or similar security deposited in lieu of bond and, if so, a brief explanation of the facts involved;
- (5) a copy of the notice required by Section 134.058;
- (6) a description of:
- (A) the type and method of the existing or proposed coal mining operation;
 - (B) the engineering techniques proposed or in use; and
 - (C) the equipment in use or proposed to be used;
- (7) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;
- (8) an accurate map or plan, to an appropriate scale, clearly showing:
- (A) the land to be affected as of the date of the application; and

- (B) the area of land in the permit area on which the applicant has the right to enter and begin surface mining operations;
- (9) the documents on which the applicant bases the applicant's right to enter and begin surface mining operations on the affected area;
- (10) a statement of whether the applicant's right to enter and begin surface mining operations on the affected area is the subject of pending court litigation;
- (11) the name of the watershed and location of the surface streams or tributaries into which surface and pit drainage will be discharged;
- (12) a determination of the probable hydrologic consequences of the mining and reclamation operation, if any, both on and off the mine site, with respect to the hydrologic regime and the quantity and quality of water in surface-water systems and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions;
- (13) sufficient data on the mine site and surrounding areas for the commission to assess the probable cumulative impacts of all anticipated mining in the area on the hydrology of the area, particularly on water availability;
- (14) when requested by the commission, the published climatological factors peculiar to the locality of the land to be affected, including:
 - (A) the average seasonal precipitation;
 - (B) the average direction and velocity of prevailing winds; and
 - (C) the seasonal temperature ranges;
- (15) a statement of the result of test borings or core samplings from the permit area, including:
 - (A) logs of the drill holes;
 - (B) the thickness of the coal seam found;
 - (C) an analysis of the chemical properties of the coal;
 - (D) the sulfur content of any coal seam;
 - (E) a chemical analysis of any potentially acid or toxic-forming sections of the overburden; and

- (F) a chemical analysis of the stratum lying immediately underneath the coal to be mined;
 - (16) for land in the permit application that a reconnaissance inspection suggests may be prime farmland, a soil survey made or obtained according to standards established by the secretary of agriculture to confirm the exact location of the land;
 - (17) a reclamation plan that complies with this chapter;
 - (18) if applicable, a schedule listing any notices of violations as provided by Section 134.068;
 - (19) a certificate satisfactory to the commission that the applicant has a public liability insurance policy as described by Section 134.053 in effect for the surface coal mining and reclamation operation for which the permit is sought, or evidence satisfactory to the commission that the applicant should be allowed to be self-insured; and
 - (20) other data and maps the commission requires by rule.
- (b) A determination under Subsection (a)(12) may not be required until the time that hydrologic information on the general area before mining is made available from an appropriate state agency, but the permit may not be approved until the information is available and has been incorporated into the application.
 - (c) The commission may waive Subsection (a)(15) for a particular application if the commission determines in writing that the information is unnecessary.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.053. LIABILITY INSURANCE POLICY.

- (a) The public liability insurance policy required by Section 134.052(a)(19) shall provide for personal injury and property damage protection in an amount adequate to compensate a person who is:
 - (1) damaged as a result of the surface coal mining and reclamation operations, including the use of explosives; and
 - (2) entitled to compensation under state law.
- (b) The policy shall be maintained in effect during the term of the permit and any renewal for the entire period in which reclamation operations are conducted.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.054. APPLICATION FEES.

- (a) An application for a surface mining permit or for renewal or revision of a surface mining permit must be accompanied by an application fee determined by the commission in accordance with a published fee schedule. The commission shall base the application fee as nearly as possible on the actual or anticipated cost of reviewing the application.
- (b) The application fee may not be less than:
 - (1) \$5,000 for an initial surface mining permit;
 - (2) \$3,000 for renewal of a surface mining permit; or
 - (3) \$500 for revision of a surface mining permit.
- (c) The initial application fee and the application fee for renewal of a surface mining permit may be paid in equal annual installments during the term of the permit.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.055. ANNUAL FEES.

- (a) In addition to the application fees required by Section 134.054, each permit holder shall pay to the commission the following annual fees:
 - (1) a fee for each acre of land in the permit area on which the permit holder actually conducted operations for removing coal during the year;
 - (2) a fee for each acre of land in the bonded permit area on December 31 of the year; and
 - (3) a fee for the permit if the permit was in effect on December 31 of the year.
- (b) A fee under Subsection (a) is due not later than March 15 of the year following the year for which the fee was imposed.
- (c) The commission shall determine the amount of each fee under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

Amended by:
Acts 2005, 79th Leg., Ch. 179, § 1, eff. September 1, 2005.

134.056. SMALL MINE EXEMPTION.

The commission shall designate a qualified public or private laboratory to prepare the determination of probable hydrologic consequences and statement of the results of test borings or core samplings required by Section 134.052 and shall pay the costs of preparing the determination and statement if:

- (1) a surface coal mining operator makes a request in writing; and
- (2) the commission finds that the probable total annual production at all locations of the surface coal mining operator will not exceed 300,000 tons.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1307, § 1, eff. Sept. 1, 1997.

134.057. PUBLIC INSPECTION OF APPLICATION.

- (a) An applicant for a surface coal mining and reclamation permit shall file a copy of the application for public inspection with the county clerk of the county in which the mining is proposed to occur. This subsection does not apply to information in the application pertaining to the coal seam itself.
- (b) Copies of any records, reports, inspection materials, or information obtained under this chapter by the commission shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and state area of mining so that they are conveniently available to residents in the areas of mining. This subsection does not apply to records, reports, inspection materials, or information that is confidential under Section 134.031.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.058. NOTICE BY APPLICANT.

At the time the applicant submits an application for a surface coal mining and reclamation permit or renewal of an existing permit, the applicant shall publish an advertisement in a newspaper of general circulation in the locality of the proposed surface coal mining operation at least once a week for four consecutive weeks that:

- (1) shows the ownership and describes the location and boundaries of the proposed site sufficiently so that the proposed operation can be readily located; and

- (2) states that the application is available for public inspection at the county courthouse of the county in which the property lies.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.059. NOTIFICATION BY COMMISSION.

- (a) The commission shall notify local governmental bodies, planning agencies, and sewage and water treatment authorities in the locality of a proposed surface coal mining operation that the operator intends to conduct a surface mining operation.
- (b) The notice shall indicate the application number and the county courthouse in which a copy of the proposed surface coal mining and reclamation plan can be inspected.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.060. COMMENTS.

- (a) During a period established by the commission, a local body, agency, authority, or company described by Section 134.059 may submit written comments on the effect of the proposed operation on the environment in the entity's area of responsibility.
- (b) The commission shall immediately send the comments to the applicant.
- (c) The comments shall be made available to the public at the same location as the mining application.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.061. WRITTEN OBJECTIONS.

- (a) Not later than the 30th day after the date of the last publication of notice under Section 134.058, an affected person or a federal, state, or local governmental agency or authority is entitled to file with the commission written objections to a proposed initial or revised application for a surface coal mining and reclamation operation permit.
- (b) The commission shall immediately send the objections to the applicant.
- (c) The objections shall be made available to the public.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.062. REQUEST FOR PUBLIC HEARING; NOTICE.

- (a) Not later than the 45th day after the date of the last publication of notice under Section 134.058, the applicant or an affected person may request a hearing on the application. The hearing shall be held not later than the 30th day after the date the commission receives the request.
- (b) The commission shall publish notice of the date, time, and location of the public hearing in a local newspaper of general circulation in the locality of the proposed surface coal mining operations at least once a week for three consecutive weeks before the scheduled hearing date.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.063. NOTICE OF APPROVAL OR DENIAL.

The commission shall notify the applicant and any objector that the permit application has been approved or denied:

- (1) within the time provided by Chapter 2001, Government Code, if a public hearing is held under Section 134.062; or
- (2) not later than the 45th day after the date of the last publication of notice of application if a public hearing is not held.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.064. PROCEDURE.

Chapter 2001, Government Code, applies to a permit application under this chapter. Notice of hearing and appeal is governed by that chapter, except as provided by Section 134.062.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.065. PERMIT APPROVAL OR DENIAL.

- (a) On the basis of a complete application for a surface coal mining and reclamation permit or a revision or renewal of a permit, as required by this chapter, the commission shall grant, require modification of, or deny a permit application.
- (b) The commission shall notify the applicant of its decision in writing within a reasonable time as set by the commission.

- (c) An applicant for a permit or a permit revision has the burden of establishing that the application complies with this chapter.
- (d) Not later than the 10th day after the date the commission grants a permit, the commission shall notify the county judge in the county in which the land to be affected is located that a permit has been issued and shall describe the location of the land.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.066. WRITTEN FINDINGS REQUIRED.

- (a) The commission may not approve an application for a permit or a permit revision unless it finds, in writing, using the information in the application or information otherwise available that will be documented in the approval and made available to the applicant, that:
 - (1) the application is accurate and complete and complies with this chapter;
 - (2) the applicant has demonstrated that the reclamation required by this chapter can be accomplished under the reclamation plan contained in the application;
 - (3) the commission has assessed the probable cumulative impact that all anticipated surface coal mining in the area will have on the hydrologic balance, and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;
 - (4) the area proposed to be mined is not included in an area:
 - (A) designated unsuitable for surface coal mining under this chapter; or
 - (B) under study for this designation in an administrative proceeding begun under this chapter;
 - (5) the proposed surface coal mining operation, if located west of the 100th meridian west longitude, will not:
 - (A) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding:
 - (i) undeveloped rangeland that is not significant to farming on the alluvial valley floors; and

- (ii) land on which the commission finds that the farming to be interrupted, discontinued, or precluded is of such small acreage as to have negligible impact on the farm's agricultural production; or
 - (B) materially damage the quantity or quality of water in surface or underground water systems that supply those valley floors; and
- (6) the applicant has submitted to the commission, if the ownership of the coal has been severed from the private surface estate:
- (A) the surface owner's written consent to the extraction of coal by surface mining methods; or
 - (B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods.
- (b) Subsection (a)(4)(B) does not apply to an area as to which an administrative proceeding has begun if the applicant demonstrates that, before January 1, 1977, the applicant made substantial legal and financial commitments in relation to the operation for which the applicant is applying for a permit.
- (c) Subsection (a)(5) does not apply to a surface coal mining operation that in the year preceding May 9, 1979:
- (1) produced coal in commercial quantities and was located in or adjacent to alluvial valley floors; or
 - (2) had obtained specific permit approval by the commission to conduct surface coal mining operations in the alluvial valley floors.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.067. DETERMINATION OF OWNERSHIP.

If the ownership of the coal has been severed from the private surface estate by a conveyance that does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.068. SCHEDULE OF NOTICES OF VIOLATIONS.

- (a) The applicant shall file with the application a schedule listing any notices of violations of this chapter, the federal Act, a federal regulation or federal or state program adopted under the federal Act, or another law, rule, or regulation of the United States, this state, or a department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with a surface coal mining operation during the three years before the application date.
- (b) The schedule must indicate the final resolution of any notice of violation.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, § 25.01(f), eff. Sept. 1, 1997.

134.069. EFFECT OF PAST OR PRESENT VIOLATION.

- (a) If the schedule under Section 134.068 or other information available to the commission indicates that a surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or another law referred to in Section 134.068, the commission may not issue a permit until the applicant submits proof that the violation has been corrected or is being corrected to the satisfaction of the commission, department, or agency with jurisdiction over the violation.
- (b) The commission may not issue a permit to an applicant if it finds, after opportunity for hearing, that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter or another law referred to in Section 134.068 that, by their nature and duration and the resulting irreparable damage to the environment, indicate an intent not to comply with this chapter or another law referred to in that section.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, § 25.01(f), eff. Sept. 1, 1997.

134.070. PERMIT FOR MINING ON PRIME FARMLAND.

- (a) After consulting with the secretary of agriculture and under regulations issued under the federal Act by the secretary of the interior with the concurrence of the secretary of agriculture, the commission shall grant a permit to mine on prime farmland if:
 - (1) the area proposed to be mined contains prime farmland;
 - (2) the commission makes the findings required by Section 134.066 for the application under consideration; and
 - (3) the commission in addition finds in writing that:
 - (A) the operator has the technological capability to restore the mined area within a reasonable time to a level of yield equal to or higher than that of nonmined prime farmland in the surrounding area under equivalent levels of management; and
 - (B) the applicant can meet the soil reconstruction standards of the federal Act.

(b) This section does not apply to:

- (1) a permit issued before August 3, 1977;
- (2) a revision or renewal of a permit issued before August 3, 1977; or
- (3) an existing surface mining operation for which a permit was issued before August 3, 1977.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.071. TERM.

- (a) A permit is issued for a term not to exceed five years.
- (b) The commission may grant a permit for a specified longer term if:
 - (1) an applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment or the opening of the operation; and
 - (2) the application for the specified longer term is complete.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.072. TERMINATION ON FAILURE TO BEGIN OPERATIONS.

- (a) A permit terminates if the permit holder has not begun the surface coal mining operation covered by the permit on or before the third anniversary of the date on which the period for which the permit is issued begins.
- (b) The commission may grant reasonable extensions of time on a showing that the extensions are necessary because of:
 - (1) litigation that precludes the beginning of operations or threatens substantial economic loss to the permit holder; or
 - (2) conditions beyond the control and without the fault or negligence of the permit holder.
- (c) With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, a permit holder is considered to have begun surface mining operations at the time the construction of the facility is initiated.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.073. SUCCESSOR IN INTEREST.

A successor in interest to a permit holder may continue the surface coal mining and reclamation plan of the original permit holder until the successor's application is granted or denied if the successor:

- (1) applies for a new permit not later than the 30th day after the date the person succeeds to the interest; and
- (2) is able to obtain the same bond coverage as the original permit holder.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.074. RIGHT TO RENEWAL.

A permit issued under this chapter carries with it the right of successive renewal on expiration for areas within the boundaries of the existing permit.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.075. APPLICATION FOR AND ISSUANCE OF RENEWAL.

- (a) A permit holder may apply for renewal.
- (b) After the public notice requirements of Sections 134.058 through 134.062 have been met, the commission shall renew the permit unless the opponents of renewal establish and the commission makes written findings that:
 - (1) the terms of the existing permit are not being satisfactorily met;
 - (2) the present surface coal mining and reclamation operation does not comply with the environmental protection standards of this chapter;
 - (3) the requested renewal substantially jeopardizes the operator's continuing responsibility for existing permit areas;
 - (4) the operator has not provided evidence that the performance bond in effect for the operation and any additional bond the commission may require under Section 134.121 will continue in effect for the renewal requested in the application; or
 - (5) additional revised or updated information required by the commission has not been provided.
- (c) Before renewing a permit, the commission shall notify the appropriate public authorities.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.076. EXTENSION OF PERMIT AREA.

- (a) Except for incidental boundary revisions, an extension of the permit area must be made by application for another permit.
- (b) If an application for renewal of an existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the permit, the part of the application that addresses new land areas must meet all standards applicable to a new application under this chapter.
- (c) Notwithstanding Subsection (b), if the surface coal mining operations authorized by the existing permit are not subject to the standards contained in Section 134.066(a)(5), the part of the application for renewal that addresses new land areas previously identified in the reclamation plan submitted under Section 134.041 is not subject to those standards.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.077. TERM OF RENEWAL PERMIT.

A permit renewal is for a term not to exceed the term of the original permit established by this chapter.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.078. TIME LIMIT FOR RENEWAL APPLICATION.

Application for permit renewal must be made not later than the 120th day before the date the existing permit expires.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.079. APPLICATION FOR PERMIT REVISION.

During the term of a permit, the permit holder may submit to the commission an application for a permit revision, together with a revised reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.080. APPROVAL OR DISAPPROVAL OF PERMIT REVISION.

- (a) The commission may not approve an application for a permit revision unless the commission finds that reclamation as required by this chapter can be accomplished under the revised reclamation plan.
- (b) The commission shall approve or disapprove the revision not later than the 90th day after the date the permit holder submits the application to the commission.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.081. GUIDELINES FOR REVISION.

- (a) The commission shall establish guidelines for determining the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, apply.
- (b) A revision that proposes significant alterations in the reclamation plan is subject at a minimum to notice and hearing requirements.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.082. COMMISSION REQUIREMENT OF PERMIT REVISION OR MODIFICATION.

- (a) The commission, within a time prescribed by rule, shall review outstanding permits and may require reasonable revision or modification of a permit during the term of the permit.
- (b) A revision or modification must be supported by a written finding and is subject to the notice and hearing requirements of Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.083. TRANSFER OF PERMIT.

A person may not transfer, assign, or sell the rights granted under a permit issued under this chapter without the written approval of the commission.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.084. SUSPENSION OR RESCISSION OF IMPROVIDENTLY ISSUED PERMIT.

- (a) The commission may suspend or rescind an improvidently issued permit under rules adopted by the commission.
- (b) A rule adopted by the commission under this section must be consistent with and not less effective than a regulation adopted under the federal Act.
- (c) Except as provided by Subsection (d), Chapter 2001, Government Code, does not apply to an action by the commission under this section to suspend or rescind an improvidently issued permit.
- (d) A permit holder who is given notice of suspension or rescission of an improvidently issued permit under this section may file an appeal for administrative review of the notice as provided by commission rules. The review is governed by Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 165, § 25.01(g), eff. Sept. 1, 1997.

SUBCHAPTER E. PERFORMANCE STANDARDS

134.091. OPERATIONS REQUIRED TO MEET PERFORMANCE STANDARDS.

A permit issued under this chapter to conduct surface coal mining operations shall require that the operations meet the applicable performance standards of this chapter.

Added by Acts 1995, 74th Leg., ch. 76, § 12.02(a), eff. Sept. 1, 1995.

134.092. PERFORMANCE STANDARDS.

- (a) Performance standards for surface coal mining and reclamation operations shall require an operator:
 - (1) to conduct surface coal mining operations to maximize the use and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining can be minimized;
 - (2) to restore the land affected to a condition capable of supporting the uses that it could support before mining or reasonably likely higher or better uses if:
 - (A) the uses do not present an actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution; and
 - (B) the permit applicant's declared proposed land use following reclamation:
 - (i) is not considered impractical or unreasonable;
 - (ii) is not inconsistent with applicable land use policies and plans;
 - (iii) does not involve unreasonable delay in implementation; and
 - (iv) does not violate federal, state, or local law;

- (3) except as provided by Sections 134.093(b), 134.094(b), and 134.107, to backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed to retain moisture to assist revegetation or as otherwise authorized under this chapter;
- (4) to stabilize and protect the surface areas, including spoil piles affected by the surface coal mining and reclamation operation, for effective control of erosion and attendant air and water pollution;
- (5) to remove the topsoil from the land in a separate layer and replace it on the backfill area or, if the topsoil is not used immediately, to segregate it in a separate pile from other spoil;
- (6) to restore the topsoil or the best available subsoil that is best able to support vegetation;
- (7) for prime farmland to be mined and reclaimed, at a minimum:
 - (A) to segregate the A horizon of the natural soil, unless it can be shown that other available soil materials will create a final soil having a greater productive capacity, and, if this material is not used immediately, to stockpile it separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic materials;
 - (B) to segregate the B horizon of the natural soil, underlying C horizons or other strata, or a combination of those horizons or other strata that are shown to be texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of a depth and quality comparable to that which existed in the natural soil and, if this material is not used immediately, to stockpile it separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;
 - (C) to replace and regrade the root zone material described by Subdivision (7)(B) with proper compaction and uniform depth over the regraded spoil material; and

- (D) to redistribute and grade uniformly the surface soil horizon described by Subdivision (7)(A);
- (8) to create a permanent impoundment of water on a mining site as part of a reclamation activity if:
 - (A) the approved mining and reclamation plan and permit authorize impoundment; and
 - (B) it is adequately demonstrated that:
 - (i) the size of the impoundment is adequate for its intended purposes;
 - (ii) the impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the Watershed Protection and Flood Prevention Act (16 U.S.C. Section 1001 et seq.);
 - (iii) the quality of impounded water will be permanently suitable for its intended use;
 - (iv) discharges from the impoundment will not degrade the water quality in the receiving stream below water quality standards established under applicable federal and state law;
 - (v) the water level will be reasonably stable;
 - (vi) final grading will provide adequate safety and access for proposed water users; and
 - (vii) the impoundment will not reduce the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;
- (9) to conduct any augering operation associated with surface mining so as to maximize recoverability of coal reserves remaining after the operation and reclamation are complete and to seal the auger holes with an impervious and noncombustible material to prevent drainage unless the commission determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety;

- (10) to minimize disturbances to the prevailing hydrologic balance at the mine site in associated offsite areas and to the quality and quantity of water in surface-water systems and groundwater systems both during and after surface coal mining operations and during reclamation by:
 - (A) avoiding acid or other toxic mine drainage by measures including:
 - (i) preventing water from contacting or removing water from contact with toxic-producing deposits;
 - (ii) treating drainage to reduce toxic content that adversely affects downstream water when the drainage is released to a watercourse; or
 - (iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering surface water and groundwater;
 - (B) conducting surface coal mining operations to:
 - (i) prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area; and
 - (ii) prevent those contributions from exceeding requirements set by applicable state or federal law;
 - (C) constructing any siltation structures under Paragraph (B) before beginning surface coal mining operations;
 - (D) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the commission;
 - (E) restoring the recharge capacity of the mined area to approximate premining conditions;
 - (F) avoiding channel deepening or enlargement in operations requiring the discharge of water from a mine;
 - (G) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial