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RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Wayne Christian
Commissioner Christi Craddick
Commissioner Ryan Sitton

FROM: Haley Cochran, Attorney *HLC/kmm*
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: November 12, 2019

SUBJECT: Proposed amendments to 16 Tex. Admin. Code Chapter 12, Subchapter R, relating to Abandoned Mine Lands

Attached is Staff's recommendation to adopt amendments to 16 Tex. Admin. Code Chapter 12, Subchapter R, relating to the Texas Abandoned Mine Land Reclamation Program. These amendments are necessary to align Commission rules with amendments to federal statutes and corresponding regulations adopted by the Office of Surface Mining Reclamation and Enforcement (OSM).

On August 6, 2019, the Commission approved the publication of the proposed amendments in the Texas Register for a 30-day comment period, which ended on September 23, 2019. The Commission did not receive any public comments on the proposal.

Staff recommends that the Commission adopt the amendments without changes to the proposed text published in the August 23, 2019 issue of the Texas Register (44 TexReg 4422).

cc: Wei Wang, Executive Director
Alex Schoch, Interim Director – Surface Mining and Reclamation Division

1 The Railroad Commission of Texas adopts amendments to 16 TAC §§12.801 - 12.809, §12.811,
2 §12.812, §12.814 - 12.816, and §§12.818 - 12.823, relating to Definitions; Texas Abandoned Mine
3 Reclamation Fund; Eligible Coal Lands and Water; Reclamation Objectives and Priorities; Utilities and
4 Other Facilities; Limited Liability; Contractor Responsibility; Eligible Noncoal Lands and Water;
5 Reclamation Priorities for Noncoal Program; Land Acquisition Authority - Noncoal; Lien Requirements;
6 Entry and Consent to Reclaim; Appraisals; Liens; Entry for Emergency Reclamation; Land Eligible for
7 Acquisition; Procedures for Acquisition; Acceptance of Gifts of Land; Management of Acquired Land;
8 and Disposition of Reclaimed Lands, without changes from the proposed text as published in the August
9 23, 2019, issue of the *Texas Register* (44 TexReg 4422). Generally, the amendments align Commission
10 rules with amendments to federal statutes and corresponding regulations adopted by the Office of Surface
11 Mining Reclamation and Enforcement (OSMRE).

12 The Commission received no comments on the proposed amendments.

13 Non-substantive changes are adopted in the following sections: §§12.801, 12.802, 12.806,
14 12.807, 12.809, 12.811, 12.812, 12.814, 12.816, 12.818, 12.820, 12.821, and 12.822. The changes in
15 these sections capitalize "Commission," correct rule citations and cross-references, define terms used
16 throughout the subchapter, and clarify existing language.

17 Amendments to §12.803 align the section with 30 Code of Federal Regulations (CFR) §874.12,
18 which allows prior balance replacement funds to be used in cases where the forfeited bond is insufficient
19 to pay the total cost of reclamation. The amendments to §12.803 also include non-substantive corrections.

20 Amendments to §12.804 update the section to incorporate changes made in 2006 to Section 403
21 of the Surface Mining Control and Reclamation Act ("SMCRA" or the "Federal Act") (30 U.S.C. §1233).
22 Those changes, and the corresponding amendments to federal regulations found in 30 CFR §874.13,
23 revised expenditure priorities and clarified how reclamation programs should address Priority 3
24 reclamation objectives. The amendments also update the reference to OSMRE's "Final Guidelines for
25 Reclamation Programs and Projects."

26 Amendments to §12.805 align the section with 30 CFR §874.14, which was amended in 2009 to
27 change the title of the section from "Utilities and Other Facilities" to "Water Supply Restoration." The
28 changes to 30 CFR §874.14 also added a definition of "water supply restoration project," which has been
29 incorporated in the amendments to subsection (a) of §12.805. The amendments to §12.805 also include
30 non-substantive updates.

31 Amendments to §12.808 incorporate changes made to 30 CFR §875.14 in 2009. If eligible coal
32 problems are found or occur after certification, the amendments require the Commission to submit to
33 OSMRE a plan that describes the approach and funds that will be used to address those problems in a
34 timely manner rather than addressing the problem with state share funds no later than the next grant cycle,

1 which was the former requirement. The amendments to §12.808 also include non-substantive updates and
2 clarifications.

3 Amendments to §12.815 reflect the language of 30 CFR §882.12, which requires the appraisal of
4 the private land to be reclaimed to state not only the estimated fair market value of the land as adversely
5 affected by past mining, but also the estimated fair market value of the property as reclaimed. The
6 amendments to §12.815 also include non-substantive updates and clarifications.

7 Amendments to §12.819 align the requirements for acquisition of coal refuse disposal sites with
8 the requirements found in 30 CFR §879.11 such that acquisition of coal refuse disposal sites is
9 permissible if approved in advance by OSMRE. The amendments to §12.819 also include non-substantive
10 updates and clarifications.

11 Amendments to §12.823 incorporate a requirement from 30 CFR §879.15 that all moneys
12 received from the disposal of reclaimed land shall be returned to OSMRE. The amendments to §12.823
13 also include non-substantive updates.

14 The Commission adopts the amendments under Texas Natural Resources Code, §134.013, which
15 authorizes the Commission to promulgate rules pertaining to surface coal mining operations, and Texas
16 Natural Resources Code §134.141, which allows the Commission to take any action necessary to ensure
17 Texas' participation to the fullest extent practicable in the abandoned mine reclamation fund established
18 by the federal act. Section 134.141 also authorizes the Commission to adopt rules that (1) establish
19 priorities that meet the terms of the federal act for the expenditure of money in the fund; (2) designate the
20 land and water eligible for reclamation or abatement expenditures; (3) submit reclamation plans, annual
21 projects, and applications to the appropriate authorities under that Act; and (4) administer money received
22 for abandoned mine reclamation or related purposes.

23 Statutory authority: Texas Natural Resources Code, §134.013 and §134.141.

24 Cross-reference to statute: Texas Natural Resources Code, Chapter 134.

25
26 §12.801. Definitions.

27 The following words and terms, when used in this subchapter (relating to the Texas Abandoned
28 Mine Land Reclamation Program), shall have the following meanings unless the context clearly indicates
29 otherwise:

30 (1) Abandoned Mine Reclamation Fund or Fund--A special fund established by the
31 United States Treasury for the purpose of accumulating revenues designated for reclamation of
32 abandoned mine lands and other activities authorized by Title IV of the Federal Act.

33 (2) Director--The Director of the Office of Surface Mining Reclamation and
34 Enforcement, or the Director's representative.

1 (3) [(2)] Eligible lands and water--Land and water eligible for reclamation or drainage
2 abatement expenditures which were mined for coal or which were affected by such mining, wastebanks,
3 coal processing, or other coal mining processes and left or abandoned in either an unreclaimed or
4 inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing
5 reclamation responsibility. Lands and water damaged by coal mining operations after August 3, 1977, and
6 on or before November 5, 1990, may also be eligible for reclamation if they meet the requirements
7 specified in §12.803 of this title (relating to Eligible Coal Lands and Water). Following certification of
8 the completion of all known coal problems, eligible lands and water for noncoal reclamation purposes
9 shall be those sites that meet the ~~[eligibility]~~ requirements specified in §§12.808, 12.809, ~~and~~ 12.810,
10 and 12.811 of this title (relating to Eligible Noncoal Lands and Water; Reclamation Priorities for Noncoal
11 Program; Exclusion of Certain Noncoal Reclamation Sites; and Land Acquisition Authority - Noncoal,
12 respectively [~~Prior to Certification and to Eligible Lands and Water Subsequent to Certification~~]). For
13 additional eligibility requirements for water projects, see §12.805 of this title (relating to Water Supply
14 Restoration [~~Utilities and Other Facilities~~]), and for lands affected by remining operations, see Section
15 404 of the Federal Act.

16 (4) [(3)] Emergency--A sudden danger or impairment that presents a high probability of
17 substantial physical harm to the health, safety or general welfare of people before the danger can be
18 abated under normal program operation procedures.

19 (5) [(4)] Extreme danger--A condition that could reasonably be expected to cause
20 substantial physical harm to persons, property, or the environment and to which persons or improvements
21 on real property are currently exposed.

22 (6) [(5)] Left or abandoned in either an unreclaimed or inadequately reclaimed condition--
23 -Lands and water:

24 (A) which were mined or which were affected by such mining, wastebanks,
25 processing or other mining processes prior to August 3, 1977, or between August 3, 1977 and November
26 5, 1990, as authorized pursuant to Section 402(g)(4) of the Federal Act, and on which all mining has
27 ceased;

28 (B) which continue in their present condition[;] to substantially degrade the
29 quality of the environment, prevent or damage the beneficial use of the land or water resources, or
30 endanger the health or safety of the public; and

31 (C) for which there is no continuing reclamation responsibility under state or
32 federal laws, except as provided in Sections 402(g)(4) and 403(b)(2) of the Federal Act.

33 (7) [(6)] OSMRE [~~OSM~~]-The Office of Surface Mining Reclamation and
34 Enforcement.

1 (8) [(7)] Permanent facility--Any structure that is built, installed, or established to
2 serve a particular purpose, or any manipulation or modification of the surface that is designed to remain
3 after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

4 (9) [(8)] Project--A delineated area containing one or more abandoned mine land
5 problems. A project may be a group of related reclamation activities with a common objective within a
6 political subdivision of the state or within a logical, geographically defined area, such as a watershed,
7 conservation district, or county planning area.

8 (10) [(9)] Reclamation activity--The reclamation, abatement, control, or
9 prevention of adverse effects of past mining.

10 (11) Secretary--The United States Secretary of the Interior.

11 (12) [(10)] State reclamation program--A program established by the state in
12 accordance with this chapter for reclamation of lands and water adversely affected by past mining,
13 including the reclamation plan and annual applications for grants.

14 (13) [(11)] Texas Abandoned Mine Reclamation Fund or State Fund--A separate
15 account established by the state for the purpose of accounting for moneys granted by the Director under
16 an approved state reclamation program and other moneys authorized by these regulations [~~Regulations~~] to
17 be deposited in the Fund.

18
19 §12.802. Texas Abandoned Mine Reclamation Fund.

20 Revenue to the Fund shall include:

21 (1) amounts granted to the state by OSMRE [~~the Office of Surface Mining~~] for the
22 purpose of conducting the Texas Abandoned Mine Reclamation Plan;

23 (2) moneys collected by the state from charges for uses of land acquired or reclaimed
24 with moneys from the Fund;

25 (3) moneys recovered by the state through the satisfaction of liens filed against privately
26 owned lands reclaimed with moneys from the Fund;

27 (4) moneys recovered by the state from the sale of lands acquired with moneys from the
28 Fund; and

29 (5) such other moneys as the state decides should be deposited in the Fund for use in
30 carrying out the Texas Abandoned Mine Reclamation Program.

31
32 §12.803. Eligible Coal Lands and Water.

33 (a) Coal mined lands and associated waters shall be eligible for reclamation activities if:

34 (1) they were mined for coal or affected by coal mining processes;

1 (2) they were mined prior to August 3, 1977, and left or abandoned in either an
2 unreclaimed or inadequately reclaimed condition;

3 (3) there is no continuing responsibility for reclamation by the operator, permittee, or
4 agent of the permittee under statutes of the state or federal government, or the state as a result of bond
5 forfeiture. Bond forfeiture shall render lands or water ineligible only if the amount forfeited is sufficient
6 to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay
7 the total cost of reclamation, additional moneys [~~may be sought~~] from the Texas Abandoned Mine Land
8 Fund or any prior balance replacement funds may be used.

9 (b) Notwithstanding subsection (a) of this section, coal lands and waters in the state damaged and
10 abandoned after August 3, 1977, by coal mining processes shall also be eligible for funding if the
11 Secretary finds in writing that:

12 (1) they were mined for coal or affected by coal mining processes; and

13 (2) the mining occurred and the site was left in either an unreclaimed or inadequately
14 reclaimed condition between August 4, 1977, and either:

15 (A) the date on which the Secretary approved the state regulatory program
16 pursuant to Section 503 of the Federal Act, and that any funds for reclamation or abatement that are
17 available pursuant to a bond or other form of financial guarantee or from any other source are not
18 sufficient to provide for adequate reclamation or abatement at the site; or

19 (B) November 5, 1990, and that the surety of the mining operator became
20 insolvent during such period, and that, as of November 5, 1990, funds immediately available from
21 proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient
22 to provide for adequate reclamation or abatement at the site; and

23 (3) the site qualifies as a priority 1 or 2 site pursuant to Section 403(a)(1) and (2) of the
24 Federal Act. Priority shall be given to those sites that are in the immediate vicinity of a residential area or
25 that have an adverse economic impact upon a community.

26 (c) The Commission [~~commission~~] may expend funds made available under paragraphs 402(g)(1)
27 and (5) of the Federal Act for reclamation and abatement of any site eligible under subsection (b) of this
28 section if the Commission [~~commission~~], with the concurrence of the Secretary, makes the findings
29 required in subsection (b) of this section and the Commission [~~commission~~] determines that the
30 reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and
31 water eligible pursuant to subsection (a) of this section that qualify as a priority 1 or 2 site under Section
32 403(a) of the Federal Act.

33 (d) With respect to lands eligible pursuant to subsection (b) or (c) of this section, moneys
34 available from sources outside the Abandoned Mine Reclamation Fund or that are ultimately recovered

1 from responsible parties shall either be used to offset the cost of the reclamation or transferred to the
2 Abandoned Mine Reclamation Fund if not required for further reclamation activities at the permitted site.

3 (e) If reclamation of a site covered by an interim or permanent program permit is carried out
4 under the Abandoned Mine Land Program, the permittee of the site shall reimburse the Abandoned Mine
5 Reclamation [Land] Fund for the cost of reclamation that is in excess of any bond forfeited to ensure
6 reclamation. Neither the Secretary nor the Commission [eommission] performing reclamation under
7 subsection (b) or (c) of this section shall be held liable for any violations of any performance standards or
8 reclamation requirements specified in Title V of the Federal Act nor shall a reclamation activity
9 undertaken on such lands or waters be held to any standards set forth in Title V of the Federal Act or
10 Subchapter K of the State Act.

11 (f) Surface coal mining operations on lands eligible for re-mining pursuant to Section 404 of the
12 Federal Act shall not affect the eligibility of such lands for reclamation activities after the release of the
13 bonds or deposits posted by any such operation as provided by §12.312 and §12.313 of this title (relating
14 to Procedure for Seeking Release of Performance Bond, and [tø] Criteria and Schedule for Release of
15 Performance Bond). If the bond or deposit for a surface coal mining operation on lands eligible for
16 re-mining is forfeited, funds available under this title may be used if the amount of such bond or deposit is
17 not sufficient to provide for adequate reclamation or abatement.

18
19 §12.804. Reclamation Objectives and Priorities.

20 (a) Reclamation projects should be accomplished in accordance with OSMRE's [OSM's] "Final
21 Guidelines for Reclamation Programs and Projects" (66 Federal Register 31250, June 11, 2001 [45
22 Federal Register 14810-14819, March 6, 1980]).

23 (b) Reclamation project expenditures shall reflect the priorities of Section 403(a) of the Federal
24 Act in the order stated: [projects shall reflect the priorities of Section 403(a) of the Federal Act.]

25 (1) Priority 1: The protection of public health, safety, and property from extreme danger
26 of adverse effects of coal mining practices, including the restoration of land and water resources and the
27 environment that:

28 (A) have been degraded by the adverse effects of coal mining practices; and

29 (B) are adjacent to a site that has been or will be addressed to protect the public
30 health, safety, and property from extreme danger of adverse effects of coal mining practices.

31 (2) Priority 2: The protection of public health and safety from adverse effects of coal
32 mining practices, including the restoration of land and water resources and the environment that:

33 (A) have been degraded by the adverse effects of coal mining practices; and

1 (B) are adjacent to a site that has been or will be addressed to protect the public
2 health and safety from adverse effects of coal mining practices.

3 (3) Priority 3: The restoration of land and water resources and the environment
4 previously degraded by adverse effects of coal mining practices, including measures for the conservation
5 and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation
6 resources, and agricultural productivity. Priority 3 land and water resources that are geographically
7 contiguous with existing or remediated Priority 1 or 2 problems will be considered adjacent under
8 paragraphs (1)(B) or (2)(B) of this subsection.

9 (c) Generally, projects lower than a Priority 2 should not be undertaken until all known higher
10 priority coal projects either have been accomplished, are in the process of being reclaimed, or have been
11 approved for funding by the Secretary, except in those instances where such lower priority projects may
12 be undertaken in conjunction with a Priority 1 or 2 site in accordance with OSMRE's OSM's "Final
13 Guidelines for Reclamation Programs and Projects."

14
15 §12.805. Water Supply Restoration [~~Utilities and Other Facilities~~].

16 (a) Water supply restoration projects are those that protect, repair, replace, construct, or enhance
17 facilities related to water supplies, including water distribution facilities and treatment plants that have
18 been adversely affected by coal mining practices. If the adverse effect on water supplies referred to in this
19 section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding
20 the criteria specified in §12.803 of this title (relating to Eligible Coal Lands and Water), if the
21 Commission [~~commission~~] finds in writing, as part of its eligibility opinion, that such adverse effects
22 [~~affects~~] are due predominately to effects of mining processes undertaken and abandoned prior to August
23 3, 1977.

24 (b) Enhancement of facilities or utilities under this section shall include upgrading necessary to
25 meet any local, state, or federal public health or safety requirement. Enhancement shall not include any
26 service area expansion of a utility or facility not necessary to address a specific abandoned mine land
27 problem.

28
29 §12.806. Limited Liability.

30 The Commission [~~commission~~] shall not be liable under any provision of federal law for any
31 costs or damages as a result of action taken or omitted in the course of carrying out an approved
32 Commission [~~commission~~] abandoned mine reclamation plan. This section shall not preclude liability for
33 costs or damages as a result of gross negligence or intentional misconduct by the Commission

1 ~~[commission]~~. For purposes of this section, reckless, willful, or wanton misconduct shall constitute gross
2 negligence or intentional misconduct.

3
4 §12.807. Contractor Responsibility.

5 To receive abandoned mine land (AML) ~~[AML]~~ funds, every successful bidder for an AML
6 contract must be eligible under §12.215 of this title (relating to Review of Permit Applications) at the
7 time of contract award to receive a permit or conditional permit to conduct surface coal mining
8 operations. Bidder eligibility must be confirmed by OSMRE's ~~[OSM's]~~ automated Applicant/Violator
9 System for each contract to be awarded.

10
11 §12.808. Eligible Noncoal Lands and Water.

12 (a) Following certification by the Commission ~~[commission]~~ of the completion of all known coal
13 projects and the Director's concurrence in such certification, eligible noncoal lands, waters, and facilities
14 shall be those:

15 (1) which were mined or processed for minerals or which were affected by such mining
16 or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

17 (2) for which there is no continuing reclamation responsibility under state or other federal
18 laws.

19 (b) If eligible coal problems are found or occur after certification, the Commission ~~[commission]~~
20 shall submit to OSMRE a plan that describes the approach and funds that will be used to address those
21 problems in a timely manner ~~[address the coal problem utilizing state share funds no later than the next~~
22 ~~grant cycle, subject to the availability of funds distributed to the commission in that cycle].~~ Any ~~[The]~~
23 coal projects ~~[project]~~ shall be subject to the coal provisions specified in Sections 401 through 410 of the
24 Federal Act.

25
26 §12.809. Reclamation Priorities for Noncoal Program.

27 (a) This section applies to reclamation projects involving the restoration of lands and water
28 adversely affected by past mineral mining; projects involving the protection, repair, replacement,
29 construction, or enhancement of utilities (such as those relating to water supply, roads, and other such
30 facilities serving the public adversely affected by mineral mining and processing practices); and the
31 construction of public facilities in communities impacted by coal or other mineral mining and processing
32 practices.

1 (b) Following certification by the Commission [~~commission~~] of the completion of all known coal
2 projects, the projects and construction of public facilities identified in subsection (a) of this section shall
3 reflect the following priorities in the order stated:

4 (1) the protection of public health, safety, general welfare, and property from the extreme
5 danger of adverse effects of mineral mining and processing practices;

6 (2) the protection of public health, safety, and general welfare from the adverse effects of
7 mineral mining and processing practices; and

8 (3) the restoration of land and water resources and the environment previously degraded
9 by the adverse effects of mineral mining and processing practices.

10 (c) Enhancement of facilities or utilities shall include upgrading necessary to meet local, state, or
11 federal public health or safety requirements. Enhancement shall not include any service area expansion of
12 a utility or facility not necessary to address a specific abandoned mine land problem.

13 (d) Notwithstanding [~~the requirements specified in~~] subsection (a) of this section, if the governor
14 determines that there is a need for activities or construction of specific public facilities related to the coal
15 or minerals industry, and the governor or the Commission [~~commission~~] at the governor's request submits
16 a grant application as specified in [~~as required by~~] subsection (e) of this section and the Director concurs
17 with the application submitted under [~~as set forth in~~] subsection (e) of this section, the Director may grant
18 funds made available under Section [~~section~~] 402(g)(1) of the Federal Act, 30 U.S.C. 1232, to carry out
19 such activities or construction.

20 (e) To qualify for funding pursuant to the authority in subsection (d) of this section, the governor,
21 or the Commission [~~commission~~] at the governor's request, must submit a grant application that
22 specifically sets forth:

23 (1) the need or urgency for the activity or the construction of the public facility;

24 (2) the expected impact the project will have on the coal or minerals industry in the state;

25 (3) the availability of funding from other sources and, if other funding is provided, its
26 percentage of the total costs involved;

27 (4) documentation from other local, state, and federal agencies with oversight for such
28 utilities or facilities regarding what funding resources they have available and why this specific project is
29 not being fully funded by those agencies;

30 (5) the impact on the state, the public, and the minerals industry if the activity or facility
31 is not funded;

32 (6) the reason why this project should be selected before a priority project relating to the
33 protection of the public health and safety or the environment from the damages caused by past mining
34 activities; and

1 (7) an analysis and review of the procedures used by the Commission [~~commission~~] to
2 notify and involve the public in this funding request and a copy of all comments received and their
3 resolution by the Commission [~~commission~~].
4

5 §12.811. Land Acquisition Authority - Noncoal.

6 The requirements specified in §§12.813, 12.814, and 12.818 - 12.823 of this title (relating to
7 Written Consent for Entry; Entry and Consent to Reclaim; Entry for Emergency Reclamation; Land
8 Eligible for Acquisition; Procedures for Acquisition; Acceptance of Gifts of Land; Management of
9 Acquired Land; and Disposition of Reclaimed Lands, respectively) shall apply to the Commission's
10 [~~commission's~~] noncoal program except that, for purposes of this section, the references to coal shall not
11 apply. In lieu of the term coal, the word noncoal should be used.
12

13 §12.812. Lien Requirements.

14 The lien requirements in §§12.815 - 12.817 of this title (relating to Appraisals; Liens; and
15 Satisfaction of Liens, respectively), shall apply to the Commission's [~~commission's~~] noncoal reclamation
16 program under §12.808 of this title (relating to Eligible Noncoal Lands and Water), except that for
17 purposes of this section, references made to coal shall not apply. In lieu of the term coal, the word
18 noncoal should be used.
19

20 §12.814. Entry and Consent to Reclaim.

21 (a) The Commission [~~commission~~], its agents, employees, or contractors may enter [~~upon~~] land to
22 perform reclamation activities or conduct studies or exploratory work to determine the existence of the
23 adverse effects of past coal mining if consent from the owner is obtained pursuant to §12.813 of this title
24 (relating to Written Consent for Entry).

25 (b) The Commission [~~commission~~] shall be entitled to enter any property to conduct studies or
26 exploratory work to determine:

27 (1) the existence of adverse effects of past coal mining practices; and

28 (2) the feasibility of restoration, reclamation, abatement, control, or prevention of those
29 adverse effects.

30 (c) The Commission [~~commission~~] shall be entitled to enter property adversely affected by past
31 coal mining practices or other property necessary to have access to that property to perform the activities
32 necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects if the Commission
33 [~~commission~~]:

34 (1) makes a finding of fact that:

1 (A) land or water resources have been adversely affected by past coal mining
2 practices;

3 (B) the adverse effects are at a stage at which action to restore, reclaim, abate,
4 control, or prevent the adverse effects of past coal mining practices should be taken to protect the public
5 interest; and

6 (C) the owners of the land or water resources where entry must be made to
7 restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices either are not
8 known or readily available or will not permit this state or a political subdivision to enter the property to
9 restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices; and

10 (2) gives written notice of intent to enter at least 30 days prior to entering the property:

11 (A) to the owner, if known, by certified mail, return receipt requested. A copy of
12 the findings required under paragraph (1) shall be included with the notice; or

13 (B) if the owner is not known, or if the current mailing address of the owner is
14 not known, notice shall be posted in one or more places on the property to be entered where the notice is
15 readily visible to the public and advertised once in a newspaper of general circulation in the locality in
16 which the land is located. The notice posted on the property and advertised in the newspaper shall include
17 a statement of where the findings required under paragraph (1) of this subsection may be inspected or
18 obtained.

19

20 §12.815. Appraisals.

21 (a) A notarized appraisal of the fair market value of private land to be reclaimed shall be obtained
22 from an independent professional appraiser except [~~with exceptions~~] as noted in subsection (d) of this
23 section. Such appraisal shall meet the quality of appraisal practices found in the [~~handbook on~~] Uniform
24 Appraisal Standards for Federal Land Acquisitions [~~(Interagency Land Acquisition Conference, 1973)~~].
25 The appraisal shall be obtained before any reclamation activities are started, unless the work must start
26 without delay to abate an emergency. The appraisal shall state the estimated fair market value of the land
27 as adversely affected by past mining and the estimated fair market value of the property as reclaimed.

28 Where an emergency exists the appraisal shall be completed at the earliest practical time and before
29 related nonemergency work is commenced. [~~The appraisal shall state the fair market value of the land as~~
30 ~~adversely affected by past mining.~~]

31 (b) An appraisal of the fair market value of all land reclaimed shall be obtained after all
32 reclamation activities have been completed. The appraisal shall comply [~~be obtained in accordance~~] with
33 subsection (a) of this section and shall state the market value of the land reclaimed.

1 (c) The landowner shall receive a statement of the increase in market value, an itemized statement
2 of reclamation expenses, and notices that a lien will or will not be filed against the property.

3 (d) Appraisals for privately owned land described in [~~which fall under~~] §12.816 of this title
4 (relating to Liens) may be obtained from either an independent or staff professional appraiser.

5
6 §12.816. Liens.

7 (a) Not later than six months after the date any projects to reclaim privately owned land are
8 completed, the Commission [~~commission~~]:

9 (1) shall itemize the money spent; and

10 (2) may file a statement of the money spent with the clerk of the county in which the land
11 lies, together with a notarized appraisal by an independent appraiser of the value of the land before the
12 restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices
13 if the money spent will result in a significant increase in property value. However, prior to the time of the
14 actual filing of a lien, the landowner shall be notified of the amount of the proposed lien and shall be
15 allowed a reasonable time to repay that amount instead of allowing the lien to be filed against the property
16 involved.

17 (b) The statement shall be a lien on the land second only to a property tax lien. The amount of the
18 lien shall not exceed the amount determined by either of two appraisals, as provided under §12.815 of this
19 title (relating to Appraisals), to be the increase in the market value of the land as a result of the
20 restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

21 (c) A lien shall not be filed under this section against the property of a person who did not
22 consent to, participate in, or exercise control over the mining operation that necessitated the reclamation
23 performed under this chapter.

24 (d) Not later than the 60th day after the date the lien is filed, an affected landowner may petition
25 the Commission [~~commission~~] for a hearing on the amount of the lien. The hearing and any appeal shall
26 be conducted pursuant to Chapter 2001, Government Code.

27 (e) The Commission [~~commission~~] may waive the lien if:

28 (1) the cost of filing it, including indirect costs, exceeds the increase in fair market value
29 as a result of reclamation activities; or

30 (2) the reclamation work performed on private land primarily benefits health, safety, and
31 environmental values of the grantee's community or area in which the land is located, or if reclamation is
32 necessitated by an unforeseen occurrence and the work performed to restore the land will not result in a
33 significant increase in the market value of the land as it existed immediately before the occurrence.

34

1 §12.818. Entry for Emergency Reclamation.

2 (a) The Commission [~~commission~~] may enter land where an emergency exists and other land
3 necessary to have access to that land to:

4 (1) restore, reclaim, abate, control, or prevent the adverse effects of coal mining
5 practices; and

6 (2) perform activities necessary or expedient to protect the public health, safety, or
7 general welfare.

8 (b) Entry under this section shall be considered an exercise of the police power and not an act of
9 condemnation of property or trespass.

10

11 §12.819. Land Eligible for Acquisition.

12 (a) This state may acquire by purchase, donation, or condemnation land that is adversely affected
13 by past coal mining practices if:

14 (1) it is in the public interest; and

15 (2) the Commission [~~commission~~] determines and makes written findings that:

16 (A) acquiring the land is necessary for successful reclamation;

17 (B) the acquired land, after restoration, reclamation, abatement, control, or
18 prevention of the adverse effects of past coal mining practices, will:

19 (i) serve recreational and historical purposes;

20 (ii) serve conservation and reclamation purposes; or

21 (iii) provide open space benefits; and

22 (C) permanent facilities such as a treatment plant or a relocated stream channel
23 will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the
24 adverse effects of past coal mining practices [~~or acquisition of coal refuse disposal sites and the coal
25 refuse on those sites will serve the purposes of this subchapter,~~] or public ownership is desirable to meet
26 emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

27 (b) OSMRE shall approve [~~OSM approves~~] the acquisition by purchase or condemnation in
28 advance. The Commission [~~commission~~] shall acquire only such interests in land under this subchapter as
29 are necessary for the reclamation work planned or the postreclamation use of the land. Interests in
30 improvements on the land, mineral rights, or associated water rights may be acquired if:

31 (1) such interests are necessary for the reclamation work planned or for the
32 postreclamation use of the land; and

33 (2) adequate written assurances cannot be obtained from the owner of the severed interest
34 that future use will not be in conflict with the reclamation to be accomplished.

1 (c) If approved in advance by OSMRE, this state may also acquire coal refuse disposal sites,
2 including the coal refuse, with moneys from the Texas Abandoned Mine Reclamation Fund and with prior
3 balance replacement funds and certified in lieu funds. Before the approval of the acquisition, the
4 Commission shall make a written finding that the acquisition is necessary for successful reclamation and
5 will serve the purposes of the reclamation program.

6
7 §12.820. Procedures for Acquisition.

8 (a) An appraisal of the fair market value of all land or interest in land to be acquired shall be
9 obtained by the Commission [~~commission~~]. The appraisal shall state the fair market value of the land as
10 adversely affected by past mining.

11 (b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for
12 land or interests in land acquired shall reflect the fair market value of the land or interests in land as
13 adversely affected by past mining.

14 (c) When necessary, land or interests in land may be acquired by condemnation. Condemnation
15 procedures shall not be started until all reasonable efforts have been made to purchase the land or interests
16 in lands from a willing seller.

17 (d) The Commission [~~commission~~], when acquiring land under this title, shall comply with the
18 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et
19 seq., and 41 CFR Part 114-50.

20
21 §12.821. Acceptance of Gifts of Land.

22 (a) The Commission [~~commission~~] under an approved reclamation plan may accept donations of
23 title to land or interests in land if the land proposed for donation meets the requirements set out in
24 §12.819 of this title (relating to Land Eligible for Acquisition).

25 (b) Offers to make a gift of land or interest in land to the Commission [~~commission~~] shall be in
26 writing and shall include:

- 27 (1) a statement of the interest which is being offered;
- 28 (2) a legal description of the land and a description of any improvements on it;
- 29 (3) a description of any limitations on the title or conditions as to the use or
30 disposition of the land existing or to be imposed by the donor;
- 31 (4) a statement that:
- 32 (A) the donor is the record owner of the interest being offered;
- 33 (B) the interest offered is free and clear of all encumbrances except as
34 clearly stated in the offer;

1 (C) there are no adverse claims against the interest offered;
2 (D) there are no unredeemed tax deeds outstanding against the interest
3 offered; and

4 (E) there is no continuing responsibility by the operator under state or
5 federal statutory law for reclamation; and

6 (5) an itemization of any unpaid taxes or assessments levied, assessed or due
7 which could operate as a lien on the interest offered.

8 (c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded.
9 The deed shall state that the conveyance is made "as a gift under the Texas Surface Coal Mining and
10 Reclamation Act." Title to donated land shall be in the name of the State of Texas.

11
12 §12.822. Management of Acquired Land.

13 Land acquired under this subchapter [title] may be used for any lawful purpose that is consistent
14 with the necessary reclamation activities. Procedures for collection of user charges or the waiver of such
15 charges by the Commission [~~commission~~] shall provide that all user fees collected shall be deposited in
16 the Texas Abandoned Mine Reclamation Fund.

17
18 §12.823. Disposition of Reclaimed Lands.

19 (a) If land acquired under §12.819 of this title (relating to Land Eligible for Acquisition) is
20 considered suitable for industrial, commercial, residential, or recreational development, this state may sell
21 the land by public sale under a system of competitive bidding at not less than fair market value and under
22 any rules adopted to ensure that the land is put to proper use consistent with local plans, if any, as
23 determined by the Commission [~~commission~~].

24 (b) The land may be sold only when authorized by the Secretary of the Interior if federal money
25 was involved in the acquisition of the land to be sold.

26 (c) The Commission [~~commission~~] may transfer administrative responsibility for land acquired
27 under this subchapter (relating to Texas Abandoned Mine Land Reclamation Program) to any agency or
28 political subdivision of the state with or without cost to that agency. The agreement, including
29 amendments, under which a transfer is made shall specify:

30 (1) the purposes for which the land may be used consistent with the authorization under
31 which the land was acquired; and

32 (2) that the administrative responsibility for the land shall revert to the Commission
33 [~~commission~~] if, at any time in the future, the land is not used for the purposes specified.

1 (d) The Commission [~~commission~~], after appropriate public notice and on request, shall hold a
2 public hearing in the county or counties in which land acquired under §12.819 of this title [~~(relating to~~
3 ~~Land Eligible for Acquisition)~~] is located. Prior to the disposition of any land acquired under this
4 subchapter, the Commission [~~commission~~] shall publish a notice of the proposed land disposition.

5 (e) The hearing shall be held at a time that gives residents and local governments maximum
6 opportunity to participate in the decision about the use or disposition of the land after restoration,
7 reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

8 (f) All moneys received from disposal of land under this title shall be returned to OSMRE
9 pursuant to 30 CFR §879.15 [~~deposited in the Texas Abandoned Mine Reclamation Fund~~].

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

Issued in Austin, Texas, on November 19, 2019.

Filed with the Office of the Secretary of State on November 19, 2019.



Wayne Christian, Chairman



Christi Craddick, Commissioner



Ryan Sitton, Commissioner



ATTEST



Secretary of the Commission

Deputy



Haley Cochran

Rules Attorney

Office of General Counsel

Railroad Commission of Texas