



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman David Porter
Commissioner Christi Craddick
Commissioner Ryan Sitton

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

THROUGH: Lindil C. Fowler, General Counsel *LF*

DATE: August 18, 2015

SUBJECT: Proposed amendments to 16 Tex. Admin. Code §
12.108, Relating to Permit Fees; SMRD Docket
Number 1-15.

August 25, 2015		
Approved	Denied	Abstain
<i>HC</i> <i>RF</i> <i>CS</i>	<i>LF</i> <i>CC</i> <i>RS</i>	

Attached is Staff's recommendation to publish proposed amendments to 16 Tex. Admin. Code §12.108, relating to Permit Fees. These rule amendments are necessary to implement provisions of House Bill 1 (84th Legislature, Regular Session, 2015) and, specifically, Article VI, Railroad Commission Rider 5, which requires the amounts appropriated from general revenue for state fiscal years 2016 and 2017 to cover the cost of permitting and inspecting coal mining facilities. As a result, staff proposes to adjust annual fees for FY 2016/2017 such that the current annual mined acreage fee of \$84 per acre would be eliminated; the current annual bonded acreage fee of \$12 would be increased to \$13.05 per bonded acre; and the current annual permit fee of \$6,540 would be increased to \$6,600 per permit. Staff has collaborated with the Texas Mining and Reclamation Association throughout this process to determine the formula used to calculate these fee amounts.

Staff requests the Commission's approval to publish these proposed amendments in the Texas Register for a 30-day comment period. If approved at conference on August 25th, the proposal should appear in the September 11th issue of the Texas Register. This proposal and an online comment form would also be made available on the Commission's website the day after conference, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: John E. Caudle, Division Director – Surface Mining and Reclamation Division
Milton Rister, Executive Director
Wei Wang, Chief Financial Officer

1 The Railroad Commission of Texas (Commission) proposes to amend §12.108, relating to Permit
2 Fees, to implement provisions of House Bill 1, 84th Texas Legislature (Regular Session, 2015), and,
3 specifically, Article VI, Railroad Commission Rider 5, which requires the amounts appropriated from
4 general revenue for state fiscal years 2016 and 2017 to cover the cost of permitting and inspecting coal
5 mining operations. This requirement is contingent upon the Commission assessing fees sufficient to
6 generate, during the 2016-2017 biennium, revenue to cover the general revenue appropriations.

7 The Commission proposes to amend the fees set forth in subsection (b) by amending the calendar
8 years to 2015 and 2016. The Commission proposes to delete paragraph (1) to eliminate the annual fee
9 for each acre of land within a permit area on which coal or lignite was actually removed during a
10 calendar year, which is currently \$84 per acre. The Commission proposes to renumber paragraph (2) as
11 paragraph (1) and increase the annual fee for each acre of land within a permit area covered by a
12 reclamation bond on December 31st of each year, as shown on the map required at §12.142(2)(C) of this
13 chapter (relating to Operation Plan: Maps and Plans), from the current \$12 to \$13.05. Finally, the
14 Commission proposes to renumber paragraph (3) as paragraph (2) and increase the annual fee for each
15 permit in effect on December 31st of a year to \$6,600 from the current amount of \$6,540. The
16 Commission anticipates that annual fees in these new amounts will result in revenue of \$2,826,150 in
17 each year of the 2016-2017 biennium.

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

22 The Commission's coal mining regulatory program is partially funded with a 50 percent cost
23 reimbursement grant from the United States Department of the Interior, Office of Surface Mining
24 Reclamation and Enforcement. The appropriated state share of the cost for implementing this regulatory

1 program, \$2,703,364 in FY 2016 and \$2,537,089 in FY 2017, is funded from fees paid by the regulated
2 coal mining industry. Based on an anticipated shortfall of federal share funding, the Commission
3 proposes an increased estimated annual state share of \$2,826,150 for each year of the biennium.

4 Fees for the Commission's surface coal mining regulatory program come from two general
5 categories: application fees and annual fees. The application fees are specified in §12.108(a) and the
6 Commission does not propose to revise these fees in this rulemaking. Annual fee collection is based on a
7 formula and schedule agreed to by the coal mining industry and the Commission in 2005. Every two
8 years since 2005 the Commission has adjusted the surface mining fees based on this predetermined
9 formula. This fee schedule adjustment gradually increases fees based on bonded acreage for each permit
10 as of December 31 of each year and correspondingly decreases the portion of the fee derived from mined
11 acreage. The mined acreage fee, currently specified in subsection (b)(1), is now proposed to be
12 eliminated in this fifth and final adjustment to the fee schedule pursuant to the 2005 agreement. The
13 Commission may adjust the annual fees in future rulemakings if additional funding is needed due to
14 changes in: federal funding, legislative appropriations, the number of permits, the amount of funds
15 received from application fees, the amount of bonded acreage, or other relevant factors.

16 The total amount of annual fees required to fund the regulatory program was determined by
17 subtracting the total amount of application fees estimated to be collected in each fiscal year from the
18 estimated annual state share cost for FY 2016 and FY 2017 (\$2,826,150). Mr. Caudle estimates that the
19 Commission will collect application fees annually in the amount of \$90,000 in both FY 2016 and FY
20 2017. The remainder in state share expense is then allocated for collection from annual fees. In
21 accordance with the agreement with industry, the total remaining amount of annual fees required is
22 allocated at seven percent for annual permit fees and 93 percent from bonded acreage fees. The proposed
23 annual fee rates are then determined based on the estimated permit status and bonded acres on December
24 31, 2015.

1 The 93 percent to be collected through the bonded acreage fee (\$2,543,600) was divided by
2 195,000 acres, the cumulative acres the Commission estimates will be under bond on December 31,
3 2015, to derive the \$13.05 per bonded acre fee proposed in renumbered subsection (b)(1). The remaining
4 seven percent to be collected from annual permit fees (\$191,450) was divided by 29, the estimated
5 number of permits on December 31, 2015, to derive the \$6,600 individual permit annual fee proposed in
6 renumbered subsection (b)(2).

7 Mr. Caudle has determined that during each year of the first five years the proposed amendments
8 would be in effect there will be an increase in the economic cost to the mining industry of approximately
9 \$44,490. This is based on: (1) a comparison of the revenue that would be generated under the current \$84
10 annual mined acreage fee (based on 3000 acres mined each year) to the revenue that would be generated
11 under the proposed amendment that would eliminate this mined acreage fee; (2) a comparison of the
12 revenue that would be generated under the current annual fee of \$12 per bonded acre to the revenue that
13 would be generated under the proposed increase to \$13.05 per bonded acre; and (3) a comparison of the
14 revenue generated under the current annual fee of \$6,540 per permit to the revenue that would be
15 generated under the proposed increased amount of \$6,600 for each of the 29 permits in existence.

16 Mr. Caudle has determined that the public benefit resulting from the new fee structure for coal
17 mining activities is the alignment of fees paid by the coal mining industry with the costs incurred by the
18 Commission, as required by House Bill 1.

19 In accordance with Texas Government Code §2006.002, Mr. Caudle has determined that there
20 will be no adverse economic effects on small businesses or micro-businesses resulting from the proposed
21 amendments because there are no small businesses or micro-businesses, as those terms are defined in
22 Texas Government Code §2006.001, holding coal mining permits from the Commission; therefore, the
23 Commission has not prepared the economic impact statement or regulatory flexibility analysis required
24 under §2006.002(c).

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

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

6 Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel,
7 Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
8 www.rrc.state.tx.us/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to
9 rulescoordinator@rrc.state.tx.us. Comments should refer to Docket No. SMRD 1-15. The Commission
10 will accept comments until 12:00 p.m. (noon) on Monday, October 12, 2015, which is 31 days after
11 publication in the *Texas Register*. The Commission has determined this is a reasonable opportunity for
12 interested persons to submit data, views, or arguments, as required by Texas Government Code,
13 §2001.029, for two reasons. First, the proposal and an online comment form will be available on the
14 Commission's website no later than the day after the open meeting at which the Commission approves
15 publication of the proposal, giving interested persons additional time to review and analyze the proposal
16 and to draft and submit comments. Second, the proposed fee structure continues to be based on a
17 predetermined formula and schedule agreed to by the coal mining industry and the Commission in 2005
18 for a 10-year period, phasing in fee increases based on bonded acreage and phasing out the portion of the
19 fee derived from mined acreage. The adjustment proposed in this rulemaking is the fifth and final
20 adjustment to this fee schedule under the agreement with industry.

21 The Commission encourages all interested persons to submit comments on the proposal no later
22 than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be
23 considered. For further information, call Mr. Caudle at (512) 463-6901. The status of pending
24 Commission rulemakings is available at www.rrc.state.tx.us/legal/rules/proposed-rules.

1 The Commission proposes the amendment under Texas Natural Resources Code, §134.013,
2 which authorizes the Commission to promulgate rules pertaining to surface coal mining operations and
3 §134.055, which authorizes the Commission to collect annual fees.

4 Statutory authority: Texas Natural Resources Code, §§134.013 and 134.055.

5 Cross-reference to statute: Texas Natural Resources Code, §§134.013 and 134.055.

6
7 §12.108. Permit Fees.

8 (a) (No change.)

9 (b) Annual Fees. In addition to application fees required by this section, each permittee shall pay
10 to the Commission the following annual fees for calendar years 2015 [~~2013~~] and 2016 [~~2014~~] due and
11 payable not later than March 15th of the year following the calendar year for which these fees are
12 applicable:

13 ~~[(1) a fee in the amount of \$84 for each acre of land within the permit area on which coal~~
14 ~~or lignite was actually removed during the calendar year;]~~

15 (1) [(2)] a fee of \$13.05 [~~\$12~~] for each acre of land within a permit area covered by a
16 reclamation bond on December 31st of the year, as shown on the map required by §12.142(2)(C) of this
17 chapter (relating to Operation Plan: Maps and Plans); and

18 (2) [(3)] a fee of \$6,600 [~~\$6,540~~] for each permit in effect on December 31st of the year.

19 (c) (No change.)

20 This agency hereby certifies that the proposal has been reviewed by legal counsel and found to
21 be a valid exercise of the agency's legal authority.

22 Issued in Austin, Texas, on August 25, 2015.

23 Filed with the Office of the Secretary of State on August 25, 2015.



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