DAVID PORTER, CHAIRMAN
CHRISTI CRADDICK, COMMISSIONER
RYAN SITTON, COMMISSIONER

ALEXANDER C. SCHOCH, *GENERAL COUNSEL*

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

THROUGH: Alexander C. Schoch, General Counsel

DATE: November 29, 2016

SUBJECT: Proposed Amendment of 16 TAC §12.309, relating to Terms and Conditions of Bond; Docket Number: SMRD 1-16.

December 6, 2016		
Approved	**Denied**	**Abstain**

Attached is Staff's recommendation to publish amendments to 16 Tex. Admin. Code §12.309, relating to Terms and Conditions of Bond. The amendments are proposed to remove the prohibition on applicants who have been subject to bankruptcy proceedings and wish to self-bond. This prohibition conflicts with the Federal Bankruptcy Code (11 U.S.C. §525), which bars a governmental unit from denying, revoking, suspending, or refusing a permit, license, or similar grant solely because the applicant is or was a debtor in bankruptcy.

Staff requests the Commission's approval to publish the proposed amendments in the *Texas Register* for a 30-day comment period. If approved at conference on December 6th, the proposal should appear in the December 23, 2016 issue of the *Texas Register*. The 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: Kimberly Corley, Executive Director
Denny Kingsley, Director – Surface Mining and Reclamation Division
Wei Wang, Chief Financial Officer

1 The Railroad Commission of Texas (Commission) proposes to amend §12.309, relating to Terms
2 and Conditions of the Bond, concerning the requirements to qualify for self-bonding. The Commission
3 proposes to amend subsection (j)(2)(B) to remove the restriction on self-bonding for an applicant who
4 has been subject to a bankruptcy proceeding in the five years prior to the application. The Commission
5 proposes the amendment because the current wording conflicts with the federal Bankruptcy Code (11
6 U.S.C. §525(a)) and United States Supreme Court case law interpreting that statute.
7 Denny Kingsley, Director, Surface Mining and Reclamation Division, has determined that for
8 each year of the first five years the proposed amendment will be in effect, there will be no fiscal impact
9 on state or local governments as a result of the proposed amendment.
10 Mr. Kingsley has determined that for each year of the first five years the proposed amendment
11 will be in effect there will be neither an increase nor decrease in the economic cost to the mining industry
12 as a result of this amendment. The amendment merely conforms the Commission's rule with the federal
13 Bankruptcy Code.
14 Mr. Kingsley has also determined that for each year of the first five years the amendment will be
15 in effect, the primary public benefit will be consistency with applicable federal statutes.
16 In accordance with Texas Government Code, §2006.002, the Commission has determined that
17 there will be no adverse economic effects on small businesses or micro-businesses resulting from the
18 proposed amendments; therefore, the Commission has not prepared the economic impact statement or
19 regulatory flexibility analysis required under §2006.002(c).
20 The Commission has determined that the proposed amendment will not affect a local economy;
21 therefore, the Commission has not prepared a local employment impact statement pursuant to Texas
22 Government Code, §2002.022.
23 The Commission has determined that the proposed rule does not meet the statutory definition of
24 a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory

analysis pursuant to that section is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. Comments should refer to Docket No. SMRD 1-16. The Commission will accept comments until 12:00 p.m. (noon) on Monday, January 23, 2017, which is 31 days after publication in the *Texas Register*. The Commission has determined this is a reasonable opportunity for interested persons to submit data, views, or arguments, as required by Texas Government Code, §2001.029, because the proposal and an online comment form will be available on the Commission's website no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons additional time to review and analyze the proposal and to draft and submit comments.

The Commission encourages all interested persons to submit comments on the proposal no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Kingsley at (512) 305-8840. The status of pending Commission rulemakings is available at www.rrc.texas.gov/legal/rules/proposed-rules.

The Commission proposes the amendment under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

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

§12.309. Terms and Conditions of the Bond.

(a) - (i) (No change.)

(j) Self-bonding.

(1) (No change.)

(2) Requirements for a business and governmental entities. The Commission may accept a self bond from an applicant that is a business or governmental entity if all of the following conditions are met by the applicant:

(A) (No change.)

(B) the applicant has been in continuous operation for a period of not less than 5 years immediately preceding the date of application [~~and has not been subject to bankruptcy proceedings during that time~~].

(i) - (ii) (No change.)

(C) - (D) (No change.)

(3) - (7) (No change.)

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

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

Issued in Austin, Texas, on December 6, 2016.

Filed with the Office of the Secretary of State on December 6, 2016.

Haley Cochran

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