

WAYNE CHRISTIAN, *CHAIRMAN*  
CHRISTI CRADDICK, *COMMISSIONER*  
RYAN SITTON, *COMMISSIONER*



ALEXANDER C. SCHOCH, *GENERAL COUNSEL*

# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

### MEMORANDUM

**TO:** Chairman Wayne Christian  
Commissioner Christi Craddick  
Commissioner Ryan Sitton

**FROM:** Haley Cochran, Attorney *HJC*  
Office of General Counsel

**THROUGH:** Alexander C. Schoch, General Counsel *ACS/km*

**DATE:** July 30, 2019

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

August 6, 2019		
Approved	Denied	Abstain
<i>CC</i> <i>RD</i>	<i>MS</i> <i>RD</i>	

Attached is Staff's recommendation to publish proposed 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).

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 August 6th, the proposal should appear in the August 23rd 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: Wei Wang, Executive Director  
Alex Schoch, Interim Director – Surface Mining and Reclamation Division

1           The Railroad Commission of Texas proposes amendments to 16 TAC §§12.801-12.809, §12.811, §12.812,  
2 §12.814, §12.815, §12.816, and §§12.818-12.823, relating to Definitions; Texas Abandoned Mine Reclamation Fund;  
3 Eligible Coal Lands and Water; Reclamation Objectives and Priorities; Utilities and Other Facilities; Limited Liability;  
4 Contractor Responsibility; Eligible Noncoal Lands and Water; Reclamation Priorities for Noncoal Program; Land  
5 Acquisition Authority - Noncoal; Lien Requirements; Entry and Consent to Reclaim; Appraisals; Liens; Entry for  
6 Emergency Reclamation; Land Eligible for Acquisition; Procedures for Acquisition; Acceptance of Gifts of Land;  
7 Management of Acquired Land; and Disposition of Reclaimed Lands. Generally, the amendments are proposed to align  
8 Commission rules with amendments to federal statutes and corresponding regulations adopted by the Office of Surface  
9 Mining Reclamation and Enforcement (OSMRE).

10           Non-substantive changes are proposed in the following sections: 12.801, 12.802, 12.806, 12.807, 12.809,  
11 12.811, 12.812, 12.814, 12.816, 12.818, 12.820, 12.821, and 12.822. The changes proposed in these sections are made  
12 to capitalize “Commission,” correct rule citations and cross-references, define terms used throughout the subchapter,  
13 and clarify existing language.

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

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

22           Proposed amendments to §12.805 align the section with 30 CFR §874.14, which was amended in 2009 to  
23 change the title of the section from “Utilities and Other Facilities” to “Water Supply Restoration.” The changes to 30  
24 CFR §874.14 also added a definition of “water supply restoration project,” which has been incorporated in the  
25 proposed amendments to subsection (a) of §12.805. The proposed amendments to §12.805 also include non-substantive  
26 updates.

27           Proposed amendments to §12.808 incorporates changes made to 30 CFR §875.14 in 2009. If eligible coal

1 problems are found or occur after certification, the proposed amendments require the Commission to submit to  
2 OSMRE a plan that describes the approach and funds that will be used to address those problems in a timely manner  
3 rather than addressing the problem with state share funds no later than the next grant cycle, which was the former  
4 requirement. The proposed amendments to §12.808 also include non-substantive updates and clarifications.

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

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

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

15 Alex Schoch, Interim Director, Surface Mining and Reclamation Division, has determined that for each year  
16 of the first five years the amendments as proposed will be in effect, there will be no fiscal impact on the Commission as  
17 a result of enforcing or administering the amendments. There will be no fiscal effect on local government.

18 Mr. Schoch has determined that for the first five years the proposed amendments are in effect, the primary  
19 public benefit will be compliance with applicable federal law.

20 Mr. Schoch has determined that for each year of the first five years that the amendments will be in effect, there  
21 will be no economic costs for persons required to comply as a result of adoption of the proposed amendments.

22 The Commission has determined that the proposed amendments will not have an adverse economic effect on  
23 rural communities, small businesses or micro businesses. As noted above, there is no anticipated additional cost for any  
24 person required to comply with the proposed amendments. Therefore, the Commission has not prepared the economic  
25 impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

26 The Commission has also determined that the proposed amendments will not affect a local economy.

27 Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government

1 Code §2001.022.

2 The Commission has determined that the amendments do not meet the statutory definition of a major  
3 environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted  
4 pursuant to that section is not required.

5 During the first five years that the rules would be in effect, the proposed amendments would not: create or  
6 eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future  
7 legislative appropriations; increase or decrease fees paid to the agency; create a new regulation; increase or decrease  
8 the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or effect the  
9 state's economy. The amendments are proposed to align Commission rules with governing federal statutes and  
10 regulations.

11 Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel,  
12 Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.texas.gov/general-](http://www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings)  
13 [counsel/rules/comment-form-for-proposed-rulemakings](http://www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings); or by electronic mail to [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov). The  
14 Commission will accept comments until 12:00 noon on Monday, September 23, 2019. The Commission finds that this  
15 comment period is reasonable because the proposal and an online comment form will be available on the Commission's  
16 website more than two weeks prior to Texas Register publication of the proposal, giving interested persons additional  
17 time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after  
18 the deadline will be considered. For further information, call the Abandoned Mine Lands department at (512) 305-  
19 8830. The status of Commission rulemakings in progress is available at [www.rrc.texas.gov/general-](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules)  
20 [counsel/rules/proposed-rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules).

21 The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes  
22 the Commission to promulgate rules pertaining to surface coal mining operations, and Texas Natural Resources Code  
23 §134.141, which allows the Commission to take any action necessary to ensure Texas' participation to the fullest  
24 extent practicable in the abandoned mine reclamation fund established by the federal act. Section 134.141 also  
25 authorizes the Commission to adopt rules that (1) establish priorities that meet the terms of the federal act for the  
26 expenditure of money in the fund; (2) designate the land and water eligible for reclamation or abatement expenditures;  
27 (3) submit reclamation plans, annual projects, and applications to the appropriate authorities under that Act; and (4)

1 administer money received for abandoned mine reclamation or related purposes.

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

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

4  
5 §12.800. Responsibilities. [No change.]

6 §12.801. Definitions.

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

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

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

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

27 (4) [(3)] Emergency--A sudden danger or impairment that presents a high probability of substantial

1 physical harm to the health, safety or general welfare of people before the danger can be abated under normal program  
2 operation procedures.

3 (5) [(4)] Extreme danger--A condition that could reasonably be expected to cause substantial physical  
4 harm to persons, property, or the environment and to which persons or improvements on real property are currently  
5 exposed.

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

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

11 (B) which continue in their present condition[5] to substantially degrade the quality of the  
12 environment, prevent or damage the beneficial use of the land or water resources, or endanger the health or safety of  
13 the public; and

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

16 (7) [(6)] OSMRE [OSM]--The Office of Surface Mining Reclamation and Enforcement.

17 (8) [(7)] Permanent facility--Any structure that is built, installed, or established to serve a particular  
18 purpose, or any manipulation or modification of the surface that is designed to remain after the reclamation activity is  
19 completed, such as a relocated stream channel or diversion ditch.

20 (9) [(8)] Project--A delineated area containing one or more abandoned mine land problems. A project  
21 may be a group of related reclamation activities with a common objective within a political subdivision of the state or  
22 within a logical, geographically defined area, such as a watershed, conservation district, or county planning area.

23 (10) [(9)] Reclamation activity--The reclamation, abatement, control, or prevention of adverse effects  
24 of past mining.

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

26 (12) [(10)] State reclamation program--A program established by the state in accordance with this  
27 chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and

1 annual applications for grants.

2 (13) ~~[(11)]~~ Texas Abandoned Mine Reclamation Fund or State Fund--A separate account established  
3 by the state for the purpose of accounting for moneys granted by the Director under an approved state reclamation  
4 program and other moneys authorized by these regulations ~~[Regulations]~~ to be deposited in the Fund.

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6 §12.802. Texas Abandoned Mine Reclamation Fund.

7 Revenue to the Fund shall include:

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

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

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

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

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

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18 §12.803. Eligible Coal Lands and Water.

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

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

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

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

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

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

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

6 (A) the date on which the Secretary approved the state regulatory program pursuant to Section  
7 503 of the Federal Act, and that any funds for reclamation or abatement that are available pursuant to a bond or other  
8 form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or  
9 abatement at the site; or

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

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

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

23 (d) With respect to lands eligible pursuant to subsection (b) or (c) of this section, moneys available from  
24 sources outside the Abandoned Mine Reclamation Fund or that are ultimately recovered from responsible parties shall  
25 either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Fund if not  
26 required for further reclamation activities at the permitted site.

27 (e) If reclamation of a site covered by an interim or permanent program permit is carried out under the

1 Abandoned Mine Land Program, the permittee of the site shall reimburse the Abandoned Mine Reclamation [~~Land~~  
2 Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor  
3 the Commission [~~commission~~] performing reclamation under subsection (b) or (c) of this section shall be held liable  
4 for any violations of any performance standards or reclamation requirements specified in Title V of the Federal Act nor  
5 shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Title V of the  
6 Federal Act or Subchapter K of the State Act.

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

13

14 §12.804. Reclamation Objectives and Priorities.

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

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

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

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

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

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

27 (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 health and  
2 safety from adverse effects of coal mining practices.

3                   (3) Priority 3: The restoration of land and water resources and the environment previously degraded by  
4 adverse effects of coal mining practices, including measures for the conservation and development of soil, water  
5 (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. Priority 3  
6 land and water resources that are geographically contiguous with existing or remediated Priority 1 or 2 problems will  
7 be considered adjacent under paragraphs (1)(B) or (2)(B) of this subsection. [Generally, projects lower than a priority 2  
8 should not be undertaken until all known higher priority coal projects either have been accomplished, are in the process  
9 of being reclaimed, or have been approved for funding by the Secretary, except in those instances where such lower-  
10 priority projects may be undertaken in conjunction with a priority 1 or 2 site in accordance with OSM's "Final  
11 Guidelines for Reclamation Programs and Projects."]

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

16  
17 §12.805. Water Supply Restoration [Utilities and Other Facilities].

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

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

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§12.806. Limited Liability.

The Commission [~~eommission~~] shall not be liable under any provision of federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved Commission [~~eommission~~] abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the Commission [~~eommission~~]. For purposes of this section, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

§12.807. Contractor Responsibility.

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

§12.808. Eligible Noncoal Lands and Water.

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

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

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

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

§12.809. Reclamation Priorities for Noncoal Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12  
13 §12.810. Exclusion of Certain Noncoal Reclamation Sites. [No change.]

14 §12.811. Land Acquisition Authority - Noncoal.

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

20  
21 §12.812. Lien Requirements.

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

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27 §12.813. Written Consent for Entry. [No change.]

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§12.814. Entry and Consent to Reclaim.

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

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

- (1) the existence of adverse effects of past coal mining practices; and
- (2) the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

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

(1) makes a finding of fact that:

- (A) land or water resources have been adversely affected by past coal mining practices;
- (B) the adverse effects are at a stage at which action to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices should be taken to protect the public interest; and
- (C) the owners of the land or water resources where entry must be made to restore, reclaim,

abate, control, or prevent the adverse effects of past coal mining practices either are not known or readily available or will not permit this state or a political subdivision to enter the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices; and

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

- (A) to the owner, if known, by certified mail, return receipt requested. A copy of the findings required under paragraph (1) shall be included with the notice; or
- (B) if the owner is not known, or if the current mailing address of the owner is not known,

notice shall be posted in one or more places on the property to be entered where the notice is readily visible to the

1 public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice  
2 posted on the property and advertised in the newspaper shall include a statement of where the findings required under  
3 paragraph (1) of this subsection may be inspected or obtained.

4  
5 §12.815. Appraisals.

6 (a) A notarized appraisal of the fair market value of private land to be reclaimed shall be obtained from an  
7 independent professional appraiser except [~~with exceptions~~] as noted in subsection (d) of this section. Such appraisal  
8 shall meet the quality of appraisal practices found in the [~~handbook on~~] Uniform Appraisal Standards for Federal Land  
9 Acquisitions [~~(Interagency Land Acquisition Conference, 1973)~~]. The appraisal shall be obtained before any  
10 reclamation activities are started, unless the work must start without delay to abate an emergency. The appraisal shall  
11 state the estimated fair market value of the land as adversely affected by past mining and the estimated fair market  
12 value of the property as reclaimed. Where an emergency exists the appraisal shall be completed at the earliest practical  
13 time and before related nonemergency work is commenced. [~~The appraisal shall state the fair market value of the land~~  
14 ~~as adversely affected by past mining.~~]

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

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

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

22  
23 §12.816. Liens.

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

26 (1) shall itemize the money spent; and

27 (2) may file a statement of the money spent with the clerk of the county in which the land lies, together

1 with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation,  
2 abatement, control, or prevention of the adverse effects of past mining practices if the money spent will result in a  
3 significant increase in property value. However, prior to the time of the actual filing of a lien, the landowner shall be  
4 notified of the amount of the proposed lien and shall be allowed a reasonable time to repay that amount instead of  
5 allowing the lien to be filed against the property involved.

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

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

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

16 (e) The Commission [~~eommission~~] may waive the lien if:

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

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

23

24 §12.817. Satisfaction of Liens. [No change.]

25

26 §12.818. Entry for Emergency Reclamation.

27 (a) The Commission [~~eommission~~] may enter land where an emergency exists and other land necessary to have

1 access to that land to:

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

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

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

6

7 §12.819. Land Eligible for Acquisition.

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

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

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

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

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

15 (i) serve recreational and historical purposes;

16 (ii) serve conservation and reclamation purposes; or

17 (iii) provide open space benefits; and

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

23 (b) OSMRE shall approve [~~OSM approves~~] the acquisition by purchase or condemnation in advance. The

24 Commission [~~commission~~] shall acquire only such interests in land under this subchapter as are necessary for the  
25 reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights,  
26 or associated water rights may be acquired if:

27 (1) such interests are necessary for the reclamation work planned or for the postreclamation use of the

1 land; and

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

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

8

9 §12.820. Procedures for Acquisition.

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

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

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

18 (d) The Commission [~~eommission~~], when acquiring land under this title, shall comply with the Uniform  
19 Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., and 41 CFR Part  
20 114-50.

21

22 §12.821. Acceptance of Gifts of Land.

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

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

- 1 (1) a statement of the interest which is being offered;
- 2 (2) a legal description of the land and a description of any improvements on it;
- 3 (3) a description of any limitations on the title or conditions as to the use or disposition of the land
- 4 existing or to be imposed by the donor;
- 5 (4) a statement that:
- 6 (A) the donor is the record owner of the interest being offered;
- 7 (B) the interest offered is free and clear of all encumbrances except as clearly stated in the
- 8 offer;
- 9 (C) there are no adverse claims against the interest offered;
- 10 (D) there are no unredeemed tax deeds outstanding against the interest offered; and
- 11 (E) there is no continuing responsibility by the operator under state or federal statutory law for
- 12 reclamation; and
- 13 (5) an itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a
- 14 lien on the interest offered.

15 (c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed

16 shall state that the conveyance is made "as a gift under the Texas Surface Coal Mining and Reclamation Act." Title to

17 donated land shall be in the name of the State of Texas.

18

19 §12.822. Management of Acquired Land.

20 Land acquired under this subchapter [~~title~~] may be used for any lawful purpose that is consistent with the

21 necessary reclamation activities. Procedures for collection of user charges or the waiver of such charges by the

22 Commission [~~commission~~] shall provide that all user fees collected shall be deposited in the Texas Abandoned Mine

23 Reclamation Fund.

24

25 §12.823. Disposition of Reclaimed Lands.

26 (a) If land acquired under §12.819 of this title (relating to Land Eligible for Acquisition) is considered suitable

27 for industrial, commercial, residential, or recreational development, this state may sell the land by public sale under a

1 system of competitive bidding at not less than fair market value and under any rules adopted to ensure that the land is  
2 put to proper use consistent with local plans, if any, as determined by the Commission [~~eommission~~].

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

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

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

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

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

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

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on August 6, 2019.

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