The Railroad Commission of Texas (Commission) adopts amendments to §12.108, relating to Permit Fees, with changes to the proposed text as published in the August 23, 2019, issue of the Texas Register (44 TexReg 4421).

The Commission received two comments on the amendments: one from North American Coal Corporation ("NACoal") and one from the Texas Mining and Reclamation Association ("TMRA"). NACoal commented that the regulatory program designed to oversee the coal mine sector should decrease proportionately to the industry it regulates. NACoal recognizes that some previously active mines are still subject to regulatory oversight but that most are in reclamation status, which, in NACoal’s opinion, requires significantly less oversight than an active mining operation. NACoal recommended that instead of increasing permit fees the Surface Mining and Reclamation Division (SMRD) should evaluate its regulatory program and decrease inefficiencies such that its budget can be decreased. Similarly, TMRA expressed concern about increased fees at a time when the coal mining industry is experiencing immense pressure. TMRA noted the importance of the Commission working together with industry to optimize the efficiency of the Commission’s resources. The Commission appreciates these comments.

The Commission agrees that efficient use of resources is a priority. The Commission also recognizes that the number of active mines is decreasing. Therefore, the Commission has determined it will maintain its current fee structure at this time. As discussed in the proposal preamble, the current fee structure, created by an agreement with industry in 2005, specifies that seven percent of annual fees are based on the number of permits, while 93 percent of annual fees are based on the number of bonded acres. Maintaining the current fee structure until a change is necessary through a future rulemaking will allow the Commission and the mining industry an opportunity to re-evaluate the fee structure to accommodate industry changes.

The Commission amends subsection (b) to remove proposed calendar years. The Commission does not adopt the proposed fee changes in paragraphs (b)(1) and (b)(2).

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

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


§12.108. Permit Fees.

(a) Application Fees. Each application for a surface coal mining and reclamation permit or renewal or revision of a permit shall be accompanied by a fee. The initial application fee and the
application fee for renewal of a permit may be paid in equal annual installments during the term of the
permit. The fee schedule is as follows:

(1) application for a permit: $5,000.
(2) application for revision of a permit: $500.
(3) application for renewal of a permit: $3,000.

(b) Annual Fees. In addition to application fees required by this section, each permittee shall pay
to the Commission the following annual fees [for calendar years 2017 and 2018] due and payable not later
than March 15th of the year following the calendar year for which these fees are applicable:

(1) a fee of $12.85 for each acre of land within a permit area covered by a reclamation
bond on December 31st of the year, as shown on the map required by §12.142(2)(C) of this chapter
(relating to Operation Plan: Maps and Plans); and

(2) a fee of $6,170 for each permit in effect on December 31st of the year.

(c) Fees paid to the Commission under this section shall be deposited in the state treasury and
credited to the general revenue fund.

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

Issued in Austin, Texas, on December 17, 2019.

Filed with the Office of the Secretary of State on December 17, 2019.

Wayne Christian, Chairman

Christi Craddick, Commissioner

Ryan Sitton, Commissioner

ATTEST:

Deputy Secretary of the Commission

Haley Cookran
Rules Attorney
Office of General Counsel
Railroad Commission of Texas