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ALEXANDER C. SCHOCH, GENERAL COUNSEL

RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Christi Craddick
Commissioner Wayne Christian
Commissioner Jim Wright

FROM: Olivia Alland, Attorney
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel
Natalie Dubiel, Assistant General Counsel *nm*

DATE: June 17, 2025

SUBJECT: Item 547: Proposed Amendments to 16 TAC §
12.108, relating to Permit Fees

June 17, 2025		
Approved	Denied	Abstain
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Attached is Staff's recommendation to propose amendments to 16 Texas Administrative Code § 12.108, relating to Permit Fees. The amendments are proposed to implement provisions of Senate Bill 1, 89th Texas Legislature (Regular Session, 2025), and, specifically, Article VI, Railroad Commission Rider 5, which requires the amounts appropriated from general revenue for state fiscal years 2026 and 2027 to cover the cost of permitting and inspecting coal mining operations.

The proposed amendments to Section 12.108 revise the annual fee structure by replacing the current flat rate of \$12.85 per bonded acre with a two-tiered rate: \$12.85 per acre for land that has met Phase I reclamation requirements and \$29.80 per acre for land that has not. The existing annual per-permit fee of \$6,170 remains unchanged.

Staff requests the Commission's approval to publish the proposed amendments in the *Texas Register* for public comment. If approved at conference on June 17th, the proposal should appear in the July 4th issue of the *Texas Register*. The proposal and an online comment form would also be made available on the Commission's website, giving interested persons more time to review and submit comments to the Commission.

cc: Wei Wang, Executive Director
Joseph Parks, Director, Surface Mining and Reclamation Division
Adam Krabbenhoft, Assistant Director, Surface Mining and Reclamation Division
Natalie Dubiel, Assistant General Counsel, Office of General Counsel

1 The Railroad Commission of Texas (Commission) proposes amendments to §12.108, relating to
2 Permit Fees. The Commission proposes the amendments to implement provisions of Senate Bill 1, 89th
3 Texas Legislature (Regular Session, 2025), and, specifically, Article VI, Railroad Commission Rider 5,
4 which requires the amounts appropriated from general revenue for state fiscal years (FY) 2026 and 2027
5 to cover the cost of permitting and inspecting coal mining operations. The Rider is contingent upon the
6 Commission assessing fees during the 2026-2027 biennium sufficient to generate revenue to cover the
7 general revenue appropriations. The Commission proposes to amend the annual fees required by coal
8 mining permittees in subsection (b) as explained in the following paragraphs.

9 The Texas State Legislature appropriated the applicable funds in Senate Bill 1 based on fees
10 collected as set forth in Rider 5, including fees appropriated for both the coal mining program and a
11 separate, existing program for uranium exploration permitting. The uranium program cost is subtracted
12 from the total annual appropriation to determine the cost of the coal regulatory program. The
13 Commission's coal mining regulatory program is partially funded with a 50 percent cost reimbursement
14 grant from the United States Department of the Interior, Office of Surface Mining Reclamation and
15 Enforcement. The remaining 50 percent is funded by the fees collected in §12.108.

16 Joseph Parks, Director, Surface Mining and Reclamation Division, has determined that the
17 appropriated state share of the cost for implementing the coal and uranium regulatory programs of
18 \$4,263,161 in FY 2026 and \$5,267,042 in FY 2027 are the costs that must be funded through fees paid by
19 the regulated coal mining and uranium industries, resulting in an average annual state share cost of
20 \$4,765,102 for the 2026-2027 biennium.

21 Fees for the Commission's surface coal mining regulatory program come from two general
22 categories: application fees and annual fees. The application fees are specified in §12.108(a), and the
23 Commission does not propose to revise those fees in this rulemaking. The annual fees are specified in
24 §12.108(b) and are currently based on the bonded acreage for each permit as of December 31 of each year
25 and a fee for each permit in effect as of December 31 of each year.

1 The total amount of annual fees required to fund the coal regulatory program was determined by
2 subtracting the total amount of application fees estimated to be collected in each fiscal year for the two
3 regulatory programs (coal and uranium) from the average annual state share cost for both FY 2026 and
4 FY 2027, \$4,765,102. Mr. Parks estimates that the Commission will collect coal program application fees
5 annually in the amount of \$43,000 and uranium exploration program application fees in the amount of
6 \$72,000 in both FY 2026 and FY 2027. The remainder in state share expense, \$4,650,102, is then
7 allocated for collection from the coal mining program annual fees.

8 The Commission proposes splitting the annual fee for each acre of land within a permit area
9 covered by a reclamation bond on December 31st of each year, currently at \$12.85, into two fees. First,
10 the Commission proposes a fee to remain at the current amount of \$12.85 for the bonded acres of land
11 that have met the Phase I reclamation release requirements of §12.313(a)(1) of this title (relating to
12 Criteria and Schedule for Release of Performance Bond) based on the number of bonded acres of land
13 identified by the applicant as meeting the requirements of §12.313(a)(1), as shown on the map required by
14 §12.142(2)(C) of this title (relating to Operation Plan: Maps and Plans) and approved by the Commission.

15 Second, the Commission proposes a higher fee of \$29.80 for the bonded acres of land that have
16 not met the Phase I reclamation release requirements of §12.313(a)(1) based on the number of bonded
17 acres of land identified by the applicant as not meeting the requirements of §12.313(a)(1), as shown on
18 the map required by §12.142(2)(C) and approved by the Commission. The Commission proposes no
19 change to the fee of \$6,170 for each permit in effect as of December 31st of the year. The Commission
20 anticipates that annual fees in these amounts will result in revenue of \$4,650,102 for the coal regulatory
21 program in each year of the 2026-2027 biennium, as explained below.

22 The Commission proposes that the fee for the bonded acres of land that have met the Phase I
23 reclamation requirements of §12.313(a)(1) based on the number of bonded acres of land identified by the
24 applicant as meeting the requirements of §12.313(a)(1), as shown on the map required by §12.142(2)(C),
25 remain at the current amount of \$12.85 per acre. Thus, the total amount of revenue expected to be
26 collected from the bonded acres of land that have met the Phase I reclamation requirements is \$427,507,

1 calculated by multiplying \$12.85 (current fee per acre, which based on the proposed amendments will
2 apply only to bonded acres that have met Phase I reclamation requirements) by the estimated number of
3 acres that will have met the Phase I reclamation requirements (33,269 acres). The Commission also
4 proposes that the individual annual permit fee in proposed subsection (b)(3) remain at the current amount
5 of \$6,170 per permit. Thus, the total amount of revenue expected to be collected from the individual
6 annual permit fee is \$154,250, calculated by multiplying \$6,170 (current annual permit fee) by the
7 estimated number of permits on December 31, 2025 (25 permits). As a result, the proposed annual fee for
8 acres of land that have not met the Phase I reclamation release requirements of §12.313(a)(1) based on the
9 number of bonded acres of land identified by the applicant as not meeting the requirements of
10 §12.313(a)(1), as shown on the map required by §12.142(2)(C), must generate revenue of approximately
11 \$4,068,345 to collect the total amount of appropriations required to be covered by the coal program
12 annual fees (\$4,650,102 (-) \$427,507 (-) \$154,250). Therefore, the proposed annual fee for acres of land
13 that have not met the Phase I reclamation release requirements is \$29.80 per acre, calculated by dividing
14 \$4,068,345 by the estimated number of acres that will not have met the Phase I reclamation requirements
15 (136,560 acres).

16 The Commission may adjust the annual fees in future rulemakings if additional funding is needed
17 due to changes in federal funding, legislative appropriations, the number of permits, the amount of funds
18 received from application fees, the bonded acreage, or other relevant factors. The Commission finds that
19 amending the annual fees in subsection (b) will allow it to continue to fund its coal mining program, and
20 splitting the annual fees proposed in subsection (b)(1)-(2) incentivizes the coal mining industry to achieve
21 Phase I release for its bonded acreage.

22 Mr. Parks has determined that during each year of the first five years the proposed amendments
23 would be in effect, there will be no additional cost to state government as a result of enforcing and
24 administering the amendments as proposed. There is also no fiscal effect on local government. The
25 Commission anticipates additional revenue from annual fees due to the proposed amendments as
26 described earlier in this preamble and described in more detail below.

1 Mr. Parks has determined that for each year of the first five years that the proposed amendments
2 will be in effect, the primary public benefit resulting from the new fee structure for coal mining activities
3 is the alignment of fees paid by the coal mining industry with the costs incurred by the Commission, as
4 established in Senate Bill 1.

5 Mr. Parks has determined that for each year of the first five years the proposed amendments are in
6 effect, there will be an increase in the economic cost to the coal mining industry of approximately
7 \$2,314,692. This number is based on a comparison of (1) the revenue that would be generated under the
8 current annual fees in existing §12.108, and (2) the revenue that would be generated under the proposed
9 amendments in this rulemaking. More specifically, the Commission compared (1) the revenue that would
10 be generated under the existing fee of \$12.85 per bonded acre and the existing annual fee of \$6,170 per
11 permit, and (2) the revenue that would be generated under the proposed increase of \$29.80 per bonded
12 acre that has not met Phase I reclamation requirements, the proposed fee of \$12.85 per bonded acre that
13 has met Phase I reclamation requirements, and the existing annual fee of \$6,170 permit for an anticipated
14 25 remaining permits.

15 In accordance with Texas Government Code, §2006.002, the Commission has determined there
16 will be no adverse economic effect on rural communities, small businesses or micro-businesses resulting
17 from the proposed amendments because there are no rural communities, small businesses or micro-
18 businesses, as those terms are defined in Texas Government Code §2006.001, holding coal mining
19 permits from the Commission. Therefore, the Commission has not prepared the economic impact
20 statement or regulatory flexibility analysis required under §2006.002(c).

21 The Commission has also determined that the proposed amendments will not affect a local
22 economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to
23 Texas Government Code §2001.022.

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

1 During the first five years that the amendments would be in effect, the proposed amendments
2 would not: create or eliminate a government program; create new employee positions or eliminate any
3 existing employee positions; increase or decrease future legislative appropriations to the agency; create a
4 new regulation, as annual fees are currently required under the rule; expand, limit, or repeal an existing
5 regulation; increase or decrease the number of individuals subject to the rule's applicability; or affect the
6 state's economy. The proposed amendments would require an increase in fees paid to the agency as
7 described above.

8 The Commission reviewed the proposed amendments and found that they are neither identified in
9 Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(4), nor would they affect any action
10 or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(3).
11 Therefore, the proposed amendments are not subject to the Texas Coastal Management Program.

12 Comments on the proposed amendments may be submitted to Rules Coordinator, Office of
13 General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
14 www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail
15 to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Monday,
16 August 4, 2025. The Commission finds that this comment period is reasonable because the proposal and
17 an online comment form will be available on the Commission's website prior to Texas Register
18 publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit
19 comments. The Commission cannot guarantee that comments submitted after the deadline will be
20 considered. For further information, call Adam Krabbenhoft, Assistant Director, Surface Mining and
21 Reclamation Division, at (512) 305-8830. The status of Commission rulemakings in progress is available
22 at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

23 The Commission proposes the amendments under Texas Natural Resources Code §134.011,
24 §134.013, and §134.055, which authorize the Commission to promulgate rules pertaining to surface coal
25 mining operations.

26 Statutory Authority: Texas Natural Resources Code §134.011, §134.013 and §134.055.

1 Cross-reference to statute: Texas Natural Resources Code §134.011, §134.013 and §134.055.
2 §12.108. Permit Fees.

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

7 (1) application for a permit: \$5,000.

8 (2) application for revision of a permit: \$500.

9 (3) application for renewal of a permit: \$3,000.

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

13 (1) a fee of \$12.85 for each acre of land within a permit area covered by a reclamation
14 bond that has met the requirements of §12.313(a)(1) of this chapter (relating to Criteria and Schedule for
15 Release of Performance Bond) on December 31st of the year, based on the number of bonded acres of
16 land identified by the applicant as meeting the requirements of §12.313(a)(1) on the map included in the
17 permit as required by §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans) and
18 approved by the Commission;

19 (2) a fee of \$29.80 for each acre of land within a permit area covered by a reclamation
20 bond that has not met the requirements of §12.313(a)(1) of this chapter on December 31st of the year,
21 based on the number of acres of land identified by the applicant as not meeting the requirements of
22 §12.313(a)(1) on the map included in the permit as required by §12.142(2)(C) of this chapter and
23 approved by the Commission; and

24 (3) [~~2~~] a fee of \$6,170 for each permit in effect on December 31st of the year.

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

Railroad Commission of Texas
16 TAC Chapter 12--Coal Mining Regulations

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

3 Issued in Austin, Texas on June 17, 2025.

4 Filed with the Office of the Secretary of State on June 17, 2025.

DocuSigned by:

Natalie Dubiel

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Natalie Dubiel
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas