

AN ACT

relating to the mining and reclamation of certain land previously affected by surface coal mining operations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 134.004, Natural Resources Code, is amended by adding Subdivision (15-a) to read as follows:

(15-a) "Previously mined land" means land that:

(A) was affected by surface coal mining operations occurring before August 3, 1977; and

(B) has not been reclaimed in accordance with this chapter.

SECTION 2. Section 134.069, Natural Resources Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsections (a) and (b), the commission may not deny an applicant's permit application based on a previous violation by the applicant that occurred in connection with a surface coal mining operation conducted on previously mined land if the violation resulted from an event or condition that was not contemplated in the permit for the surface coal mining operation.

SECTION 3. Subsection (a), Section 134.092, Natural Resources Code, is amended to read as follows:

(a) Performance standards for surface coal mining and reclamation operations shall require an operator:

(1) to conduct surface coal mining operations to

1 maximize the use and conservation of the solid fuel resource being
2 recovered so that re-affecting the land in the future through
3 surface coal mining can be minimized;

4 (2) to restore the land affected to a condition
5 capable of supporting the uses that it could support before mining
6 or reasonably likely higher or better uses if:

7 (A) the uses do not present an actual or probable
8 hazard to public health or safety or pose an actual or probable
9 threat of water diminution or pollution; and

10 (B) the permit applicant's declared proposed
11 land use following reclamation:

12 (i) is not considered impractical or
13 unreasonable;

14 (ii) is not inconsistent with applicable
15 land use policies and plans;

16 (iii) does not involve unreasonable delay
17 in implementation; and

18 (iv) does not violate federal, state, or
19 local law;

20 (3) except as provided by Sections 134.093(b),
21 134.094(b), and 134.107, to backfill, compact where advisable to
22 ensure stability or to prevent leaching of toxic materials, and
23 grade to restore the approximate original contour of the land with
24 all highwalls, spoil piles, and depressions eliminated, unless
25 small depressions are needed to retain moisture to assist
26 revegetation or as otherwise authorized under this chapter;

27 (4) to stabilize and protect the surface areas,

1 including spoil piles affected by the surface coal mining and
2 reclamation operation, for effective control of erosion and
3 attendant air and water pollution;

4 (5) to remove the topsoil from the land in a separate
5 layer and replace it on the backfill area or, if the topsoil is not
6 used immediately, to segregate it in a separate pile from other
7 spoil;

8 (6) to restore the topsoil or the best available
9 subsoil that is best able to support vegetation;

10 (7) for prime farmland to be mined and reclaimed, at a
11 minimum:

12 (A) to segregate the A horizon of the natural
13 soil, unless it can be shown that other available soil materials
14 will create a final soil having a greater productive capacity, and,
15 if this material is not used immediately, to stockpile it
16 separately from other spoil and provide needed protection from wind
17 and water erosion or contamination by other acid or toxic
18 materials;

19 (B) to segregate the B horizon of the natural
20 soil, underlying C horizons or other strata, or a combination of
21 those horizons or other strata that are shown to be texturally and
22 chemically suitable for plant growth and that can be shown to be
23 equally or more favorable for plant growth than the B horizon, in
24 sufficient quantities to create in the regraded final soil a root
25 zone of a depth and quality comparable to that which existed in the
26 natural soil and, if this material is not used immediately, to
27 stockpile it separately from other spoil and provide needed

1 protection from wind and water erosion or contamination by other
2 acid or toxic material;

3 (C) to replace and regrade the root zone material
4 described by Subdivision (7)(B) with proper compaction and uniform
5 depth over the regraded spoil material; and

6 (D) to redistribute and grade uniformly the
7 surface soil horizon described by Subdivision (7)(A);

8 (8) to create a permanent impoundment of water on a
9 mining site as part of a reclamation activity if:

10 (A) the approved mining and reclamation plan and
11 permit authorize impoundment; and

12 (B) it is adequately demonstrated that:

13 (i) the size of the impoundment is adequate
14 for its intended purposes;

15 (ii) the impoundment dam construction will
16 be designed to achieve necessary stability with an adequate margin
17 of safety compatible with that of structures constructed under the
18 Watershed Protection and Flood Prevention Act (16 U.S.C. Section
19 1001 et seq.);

20 (iii) the quality of impounded water will
21 be permanently suitable for its intended use;

22 (iv) discharges from the impoundment will
23 not degrade the water quality in the receiving stream below water
24 quality standards established under applicable federal and state
25 law;

26 (v) the water level will be reasonably
27 stable;

(vi) final grading will provide adequate safety and access for proposed water users; and

(vii) the impoundment will not reduce the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(9) to conduct any augering operation associated with surface mining so as to maximize recoverability of coal reserves remaining after the operation and reclamation are complete and to seal the auger holes with an impervious and noncombustible material to prevent drainage unless the commission determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety;

(10) to minimize disturbances to the prevailing hydrologic balance at the mine site in associated offsite areas and to the quality and quantity of water in surface-water systems and groundwater systems both during and after surface coal mining operations and during reclamation by:

(A) avoiding acid or other toxic mine drainage by measures including:

(i) preventing water from contacting or removing water from contact with toxic-producing deposits;

(ii) treating drainage to reduce toxic content that adversely affects downstream water when the drainage is released to a watercourse; or

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other

1 toxic drainage from entering surface water and groundwater;

2 (B) conducting surface coal mining operations
3 to:

4 (i) prevent, to the extent possible using
5 the best technology currently available, additional contributions
6 of suspended solids to streamflow or runoff outside the permit
7 area; and

8 (ii) prevent those contributions from
9 exceeding requirements set by applicable state or federal law;

10 (C) constructing any siltation structures under
11 Paragraph (B) before beginning surface coal mining operations;

12 (D) cleaning out and removing temporary or large
13 settling ponds or other siltation structures from drainways after
14 disturbed areas are revegetated and stabilized and depositing the
15 silt and debris at a site and in a manner approved by the
16 commission;

17 (E) restoring the recharge capacity of the mined
18 area to approximate premining conditions;

19 (F) avoiding channel deepening or enlargement in
20 operations requiring the discharge of water from a mine;

21 (G) preserving throughout the mining and
22 reclamation process the essential hydrologic functions of alluvial
23 valley floors in the arid and semiarid areas of the country; and

24 (H) performing other actions the commission
25 prescribes;

26 (11) with respect to surface disposal of mine wastes,
27 tailings, coal processing wastes, and other wastes in areas other

1 than the mine workings or excavations:

2 (A) to stabilize the waste piles in designated
3 areas through construction in compacted layers including the use of
4 incombustible and impervious materials, if necessary; and

5 (B) to assure that the final contour of the waste
6 pile will be compatible with natural surroundings and that the site
7 can and will be stabilized and revegetated according to this
8 chapter;

9 (12) to refrain from surface coal mining within 500
10 feet of an active or abandoned underground mine to prevent a
11 breakthrough and to protect the health or safety of miners;

12 (13) to design, locate, construct, operate, maintain,
13 enlarge, modify, and remove or abandon, in accordance with the
14 standards developed under commission rule, existing and new coal
15 mine waste piles used temporarily or permanently as dams or
16 embankments;

17 (14) to ensure that debris, acid-forming materials,
18 toxic materials, or materials constituting a fire hazard are
19 treated, buried and compacted, or otherwise disposed of in a manner
20 designed to prevent contamination of surface water or groundwater
21 and that contingency plans are developed to prevent sustained
22 combustion;

23 (15) to ensure that explosives are used in accordance
24 with state and federal law, including commission rules;

25 (16) to ensure that reclamation efforts proceed in an
26 environmentally sound manner and as contemporaneously as
27 practicable with the surface coal mining operations;

(17) to ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent:

(A) erosion and siltation;

(B) water pollution; and

(C) damage to:

(i) fish or wildlife or their habitat; or

(ii) public or private property;

(18) to refrain from constructing roads or other access ways up a stream bed or drainage channel or so near the channel as to seriously alter the normal flow of water;

(19) to establish on regraded areas and other affected land a diverse, effective, and permanent vegetative cover:

(A) of the seasonal variety native to the area of land to be affected;

(B) capable of self-regeneration and plant succession; and

(C) at least equal in extent of cover to the natural vegetation of the area;

(20) to assume responsibility for successful revegetation as required by Subdivision (19) for:

(A) five years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with that subdivision, if the land is not previously mined land; or

(B) two years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure

1 compliance with that subdivision, if the land is previously mined
2 land [~~subsection~~];

3 (21) to protect off-site areas from slides or damage
4 occurring during the surface coal mining and reclamation operations
5 and to refrain from depositing spoil material or locating any part
6 of the operations or waste accumulations outside the permit area;

7 (22) to place the excess spoil material resulting from
8 surface coal mining and reclamation activities in accordance with
9 Section 134.106;

10 (23) to meet other standards necessary to achieve
11 reclamation in accordance with the purposes of this chapter,
12 considering the physical, climatological, and other
13 characteristics of the site;

14 (24) to the extent possible, using the best technology
15 currently available, to minimize disturbance and adverse impacts of
16 the operation on fish, wildlife, and related environmental values
17 and to enhance those resources where practicable; and

18 (25) to provide an undisturbed natural barrier
19 beginning at the elevation of the lowest coal seam to be mined and
20 extending from the outslope for the distance the commission
21 determines shall be retained in place as a barrier to slides and
22 erosion.

23 SECTION 4. Section 134.104, Natural Resources Code, is
24 amended to read as follows:

25 Sec. 134.104. RESPONSIBILITY FOR REVEGETATION: AREA OF LOW
26 PRECIPITATION. Notwithstanding Section 134.092(a)(20), in areas
27 or regions of the state where the annual average precipitation is 26

1 inches or less, an operator's assumption of responsibility and
2 liability extends for:

3 (1) 10 years after the last year of augmented seeding,
4 fertilizing, irrigation, or other work, if the land is not
5 previously mined land; or

6 (2) five years after the last year of augmented
7 seeding, fertilizing, irrigation, or other work, if the land is
8 previously mined land.

9 SECTION 5. Subsection (a), Section 134.105, Natural
10 Resources Code, is amended to read as follows:

11 (a) The applicable [~~five-year or 10-year~~] period of
12 responsibility for revegetation begins on the date of initial
13 planting for long-term intensive agricultural postmining land use
14 if the commission approves a long-term intensive agricultural
15 postmining land use.

16 SECTION 6. Subsection (c), Section 134.069, Natural
17 Resources Code, as added by this Act, applies to a permit
18 application that is filed with the Railroad Commission of Texas on
19 or after the effective date of this Act or that is pending as of the
20 effective date of this Act.

21 SECTION 7. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1295 passed the Senate on April 21, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1295 passed the House on May 20, 2011, by the following vote: Yeas 149, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor