



RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

ADVISORY ID:
AD-BO-306(e)

REVISION NO.:]

ADVISORY NOTICE

EFFECTIVE DATE:
Feb. 07, 2018

SUBJECT: Actions of third-party operators which are beyond the control of the permittee [§12.306(e)]

APPROVAL

TITLE: Director

I. PURPOSE

The purpose of this Advisory Notice AD-BO-306(e) is to address how the Railroad Commission of Texas, Surface Mining and Reclamation Division (SMRD) will review and consider industrial/commercial (I/C) areas that are exempt from revegetation-success demonstrations due to actions of third-party operators beyond the control of the permittee [16 Tex. Admin. Code § 12.306(e)]. This Advisory Notice will also describe how to: (1) classify areas that are subject to the actions of third-party operations beyond the control of the permittee as I/C-Exempt; (2) account for such areas in the reclamation cost estimate and on the bond map; and (3) attain release of reclamation liability for such areas.

II. REGULATION REFERENCES

Texas Surface Coal Mining and Reclamation Act., Tex. Nat. Res. Code Ch. 134. The applicable rules are in the Texas Coal Mining Regulations at 16 Tex. Admin. Code §§ 12.142(2)(C), 12.145(b)(2), 12.301(b), 12.304(a), 12.306(a), and 12.306(e).

Rule §12.142(2)(C): A surface mining permit application shall contain a map or plat and shall show "each area of land for which a performance bond or other equivalent guarantee will be posted under Subchapter J of this chapter (relating to Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations)".

Rule §12.145(b)(2): A surface mining permit application shall contain a plan for reclamation and shall include "a detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Subchapter J of this chapter (relating to Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations), with supporting calculations for the estimates."

Rule §12.301(b): "The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations."

Rule §12.304(a): "The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the Commission."

Rule §12.306(a): "Liability under the performance bond(s) shall continue until all reclamation, restoration and abatement work required of persons who conduct surface coal mining and reclamation operations ... has been completed."

Rule §12.306(e): "Actions of third parties which are beyond the control of the operator and for which the operator is not responsible under the permit need not be covered by the bond."

Rule §12.383: "Reclamation efforts, including, but not limited to, backfilling, grading, topsoil replacement and revegetation, of all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations."

III. I/C-EXEMPT POSTMINING LAND-USE CLASSIFICATION CRITERIA

The following criteria will be considered by SMRD in determining whether to identify any area within the permitted area as I/C-Exempt:

- a. Neither the permittee nor any of its affiliates, representatives or associated owners have any:
 1. interest in or responsibility for the third-party activities related to the proposed IC-Exempt area, or
 2. legal right to control or direct the third-party activities in the proposed IC-Exempt area.
- b. Third-party surface activities occurred after the following milestones were reached:
 1. Completion of rough backfilling and grading;
 2. Completion of placement of a minimum of four feet of native topsoil/subsoil or approved topsoil/subsoil-substitute material; and
 3. Demonstration of minesoil suitability via submittal of initial soil-testing data.

Additional supporting information and justification will be required for applications that include proposed I/C-exempt areas where reclamation was contemporaneous, in accordance with the approved reclamation timetable and §12.383, but third-party surface disturbance occurred prior to achieving the foregoing three performance standards.

- c. The impacted area is used exclusively by the third party and not used to access areas disturbed by mining-related activities.

This exemption provision only applies to actual implementation of third-party features of an approved alternative postmining industrial/commercial (I/C) land use outside the scope of the reclamation plan.¹ Such features may include but are not necessarily limited to: oil and gas well pads, storage facilities, gathering and boosting stations, roads used exclusively to access third-party features, and areas immediately adjacent to those features disturbed in the implementation of the I/C land use.

IV. PERMIT DOCUMENTATION: POSTMINING LAND-USE PLAN AND BOND MAP

Areas proposed for IC-Exempt status must be described in a revision application that includes, at a minimum, the following information to meet the postmining alternative land-use (§12.399), bond map [§12.142(2)(C)] and reclamation cost estimate [§12.145(b)(2)] requirements:

1. Name of third-party operator and person or entity granting rights to the third-party (such as owner or lessor) and a description as to why the third-party action is beyond the control of the operator;
2. A description and location (by tract number) of the third-party features;
3. Areal extent of disturbance or other activities clearly distinguished on a postmining land-use map for the proposed IC-Exempt;
4. A description of the operator's ability or lack thereof to access the proposed IC-Exempt area for erosion repair;
5. A revised bond map with proposed IC-Exempt areas clearly identified; and
6. A revised reclamation cost estimate accounting for the removal of reclamation costs for the proposed IC-Exempt acreage [§§12.145(b)(2) and 12.304(a)].

V. PERFORMANCE STANDARDS FOR BOND-RELEASE UNDER SECTION 12.306(e)

16 Tex. Admin. Code §12.301(b) requires that the bond provided by the permittee cover all land within the permit area upon which mining-related activities will occur. § 12.306(e) provides that “[a]ctions of third parties which are beyond the control of the operator and for which the operator is not responsible under the permit need not be covered by the bond.”²

A permittee would not generally be required to retain the reclamation liability for completion of an alternative postmining land-use plan as a condition of release of a performance bond.¹ Rule §12.306(e) does not require the permittee to augment the bond or to re-bond land because of these third-party actions, and reclamation costs for these areas are not included when determining the amount of the bond required (§12.304(a)).

The permittee is responsible only for restoring the land to a condition capable of supporting the proposed postmining land use; that is, those reclamation actions specified in the reclamation plan.³ However, revegetation under the original postmining land use is no longer applicable to this alternative postmining (I/C-Exempt) land use.⁴

The following information must be provided in an application for Phase III release of reclamation liability for IC-Exempt areas:

1. A map showing all I/C-Exempt areas proposed for release;
2. Date(s) of Commission approval of the alternative I/C-Exempt postmining land-use classification; and
3. A statement that I/C-Exempt areas were affected by a third party beyond the control of the permittee and are no longer required to be bonded under §12.306(e).

Release of these areas should be requested along with adjacent land so as not to constitute a scattered, intermittent, or checkerboard pattern described at 30 C.F.R. §800.13(b).

VI. LITERATURE CITED

- ¹ “30 CFR Part 906, Colorado Regulatory Program, Final Rule, Approval of Amendment,” Federal Register Volume 59, Issue 233 (December 6, 1994), pp. 29984 - 29989.
- ² See also “30 CFR Parts 800, 801, 805, 806, 807, 808, and 809, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations; Final Rule,” Federal Register Volume 48, Issue 139 (July 19, 1983), pp. 32932 - 32964.
- ³ “30 CFR Parts 800, 801, 805, 806, 807, and 808, Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Performance Bonding (Subchapter J), Final Rules,” Federal Register Volume 45, Issue 153 (August 6, 1980), pp. 52306 - 52324.
- ⁴ Riggs, Sandra B. and Marshall S. Peace. Regulation of Oil and Gas Operations When They Occur on a SMCRA Permit Site. 16 *E. Min. L. Inst.* Ch. 9 (1997).