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A BILL TO BE ENTITLED
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 maximize the use and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining can be minimized;

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

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

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

(i) is not considered impractical or unreasonable;

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

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

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

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

(4) to stabilize and protect the surface areas, including spoil piles affected by the surface coal mining and reclamation operation, for effective control of erosion and attendant air and water pollution;

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

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

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

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

(B) to segregate the B horizon of the natural soil, underlying C horizons or other strata, or a combination of those horizons or other strata that are shown to be texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of a depth and quality comparable to that which existed in the natural soil and, if this material is not used immediately, to stockpile it separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

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

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

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

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

(B) it is adequately demonstrated that:

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

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

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

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

(v) the water level will be reasonably 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 toxic drainage from entering surface water and groundwater;

(B) conducting surface coal mining operations to:

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

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

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

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

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

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

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

(H) performing other actions the commission prescribes;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations:

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

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

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

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

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

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

(16) to ensure that reclamation efforts proceed in an environmentally sound manner and as contemporaneously as 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 compliance with that subdivision, if the land is previously mined land [~~subsection~~];

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

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

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

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

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

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

Sec. 134.104. RESPONSIBILITY FOR REVEGETATION: AREA OF LOW PRECIPITATION. Notwithstanding Section 134.092(a)(20), in areas or regions of the state where the annual average precipitation is 26 inches or less, an operator's assumption of responsibility and liability extends for:

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

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

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

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

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

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

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