

TITLE 16. ECONOMIC REGULATION
PART 1. RAILROAD COMMISSION OF TEXAS
CHAPTER 11. SURFACE MINING AND RECLAMATION DIVISION
SUBCHAPTER A. RULES OF PRACTICE AND PROCEDURE

§11.1. Practice and Procedure. Proceedings before the Surface Mining and Reclamation Division of the Railroad Commission of Texas shall comply with Chapter 1 of this title (relating to Practice and Procedure).

The provisions of this §11.1 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective December 24, 2001, 26 TexReg 10498.

SUBCHAPTER B. SPECIAL EXCEPTIONS TO THE RULES OF PRACTICE AND PROCEDURE--URANIUM MINING

DIVISION 1. DEFINITIONS AND GENERAL RULES

§11.12. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Party--As defined in the Administrative Procedure and Texas Register Act and used in the commission's general rules of practice and procedure and the Surface Mining and Reclamation Division's special rules of practice and procedure, does not mean "party to the administrative proceedings" as defined in the Texas Uranium Surface Mining and Reclamation Act, Texas Natural Resources Code, Chapter 131 et seq.

(2) Party to the administrative proceedings--Any person who has participated in a public hearing or filed a valid petition or timely objection pursuant to any provision of this Act.

(3) Person affected--Any person who is a resident of a county or any county adjacent or contiguous to the county in which a mining operation is or is proposed to be located, including any person who is doing business or owns lands in the county or adjacent or contiguous county and any local government, and who demonstrates that he has suffered or will suffer actual injury or economic damage.

The provisions of this §11.12 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1980, 5 TexReg 4175.

DIVISION 2. PARTIES

§11.21. Who May Appear.

(a) Any person or agency interested in a petition to declare lands unsuitable for surface mining or petition for adoption of rules may appear formally before the commission.

(b) In all regularly docketed cases, a person affected in a permit application proceeding and any other person or agency interested in a proceeding to designate lands as unsuitable for surface mining activities, or to have such a designation terminated or petition for adoption of rules, may be permitted to appear in support of or in opposition to all or part of the remedy sought in the particular proceeding by filing notice of intent to participate at least five days in advance of the hearing date, and may present any relevant and proper testimony and evidence bearing upon the issues involved in the particular proceeding.

The provisions of this §11.21 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1980, 5 TexReg 4175.

DIVISION 3. NOTICE AND HEARING

§11.31. Public Notice. At the time of submission of an application for a surface mining permit, renewal, or transfer of an existing permit, or for release of all or part of a performance bond or deposit, the applicant shall publish notice of the ownership, location, and boundaries of the permit area sufficient so that the proposed operation or area covered by the bond to be reduced or released is readily locatable by local residents, and the location where the application is available for public inspection, which shall be with the county clerk(s) at the county courthouse(s) of the county(ies) where the surface mining operation(s) subject to the application are located. Such notice shall be placed in the local newspaper of greatest general circulation in the locality of the land affected at least once a week for four consecutive weeks. In addition, the commission shall contact various local governmental bodies, planning agencies, sewage and water treatment authorities, or water companies having jurisdiction over or in the locality in which the proposed surface mining will take place and the owners of record of all surface areas, within 500 feet of any part of the permit area, including any persons residing on the property of the permit area, notifying them of the applicant's intention to surface mine a particularly described tract of land and indicating the applicant's permit number, if any, and where a copy of the proposed mining and reclamation plan may be inspected.

The provisions of this §11.31 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.33. Comments and Objections. Any person affected or any federal, state, or local governmental agency or authority shall have the right to file written objections to the application for a surface mining permit or for the renewal, revision, or transfer of such a permit, or for release of all or part of the performance bond on deposit with the commission within 30 days after the last

publication of the notice referred to in §11.31 of this title (relating to Public Notice). Such comments shall be made a part of the record and one copy shall be furnished to the operator.

The provisions of this §11.33 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.34. Public Hearing. Within 45 days after the last publication of the notice referred to in §11. 31 of this title (relating to Public Notice), the commission shall determine considering any objections which have been filed, if the application is of significance sufficient to warrant a public hearing. Notice of the date, time, nature of the hearing, location of such public hearing, a statement of the legal authority and jurisdiction under which the hearing is to be held, a reference to the particular sections of the statutes and rules involved and a short and plain statement of the matters asserted, shall be published by the commission in the newspaper of greatest general circulation in the locality at least once a week for three consecutive weeks prior to the scheduled hearing date, which date shall be set within 30 days after determination that a public hearing is warranted. The same notice shall also be mailed to the applicant or petitioner, and to all persons who have expressed by written notification to the commission an interest in the pending permit application, revision, renewal, transfer, petition for designation of lands unsuitable for surface mining, or application for release or reduction of a performance bond and to any other person who, in the opinion of the commission, should be notified.

The provisions of this §11.34 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.37. Revised Notice. In case the commission determines that a material error is made in the notice of an application for a permit or notice of a public hearing, or that a material change is made in an application after notice has been issued, the commission shall cause revised notice to be issued. If the material change or error affecting the content of the notice does not come to the attention of the commission in sufficient time to make the correction in each of the newspaper publications, the commission shall reschedule the hearing and/or appropriately readjust the time limitation schedules provided in this section. If the change or error requiring the revised notice is that of an applicant for a permit or an amendment the expense thereof shall be borne by that person; and, if the change or error is made by the agency, the agency will bear the expense.

The provisions of this §11.37 adopted to be effective March 24, 1976, 1 TexReg 502.

DIVISION 4. DECISIONS OF COMMISSION

§11.52. Decision without Public Hearing. If there has been no public hearing held pursuant to §11.34 of this

title (relating to Public Hearing), except in the instance of an application to revise a permit, the commission shall notify the applicant and any objectors within 45 days after the last publication of the notice required in §11.31 of this title (relating to Public Notice) whether the application has been approved or disapproved.

The provisions of this §11.52 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1980, 5 TexReg 4175.

§11.53. Temporary Orders Prior to Notice and Hearing.

(a) The commission may issue temporary orders relating to a surface mining operation without notice and hearing, or with the notice and hearing as the commission considers practical under the circumstances, when necessary to enable action to be taken more expeditiously than is otherwise provided by the Act to effectuate the policy and purposes of the Act.

(b) If the commission issues a temporary order under this authority without a hearing, and if the subject matter of the order is such as to require a public hearing under the Act, §131.163, the order shall set a time and place for a public hearing to be held. The hearing shall be held as soon after the temporary order is issued as is practical.

(c) At the hearing, the commission shall affirm, modify, or set aside the temporary order. If the nature of the commission's action requires, further proceedings shall be conducted as appropriate under provisions of the Administrative Procedure and Texas Register Act, as amended (Texas Civil Statutes, Article 6252-13a).

(d) The requirements of the Act, §131.159 and §131.160, concerning the time for notice, newspaper notice, and method of giving a person notice do not apply to the hearing, but general notice of the hearing shall be given that the commission considers practical under the circumstances.

The provisions of this §11.53 adopted to be effective October 31, 1980, 5 TexReg 4175.

SUBCHAPTER C. SUBSTANTIVE RULES-- URANIUM EXPLORATION AND SURFACE MINING

DIVISION 1. INTRODUCTION

§11.71. Purpose and Authority. In order to prevent the adverse effects to society and the environment resulting from unregulated surface mining operations; to ensure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances are protected from such unregulated exploration and surface mining operations; to ensure that surface mining operations are not conducted where reclamation as required by the Texas Railroad Commission is not possible; to ensure that exploration and surface mining operations are so conducted as to prevent unreasonable

degradation to land and water resources; to ensure that exploration reclamation and reclamation of all surface-mined lands is accomplished as contemporaneously as practicable with the exploration and surface mining operation, recognizing that the extraction of minerals by responsible mining operations is an essential and beneficial economic activity, these sections are promulgated pursuant to the directive and authority of the Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, et seq. (the "Act"), and any amendment to it.

The provisions of this §11.71 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1980, 5 TexReg 4175; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.72. Applicability.

(a) No person shall conduct any uranium exploration activity or surface mining operation without having first obtained a uranium exploration permit or surface mining permit issued by the commission pursuant to this subchapter and the Act.

(b) The provisions of this chapter shall not apply to:

(1) surface mining operations conducted on public lands regulated by the General Land Office of Texas; provided that such affected lands are reclaimed in a manner consistent with the provisions of this chapter; and

(2) any land where the overburden has been removed and a mineral has been produced prior to June 21, 1975.

The provisions of this §11.72 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1890, 5 TexReg 4175; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.73. Uranium Exploration Forms. Forms required to be filed at the Commission for conducting uranium exploration shall be those prescribed by the Commission as listed in Table 1 of this section. All Commission forms listed in Table 1 for uranium exploration and required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information.

Table 1. Surface Mining and Reclamation Division Forms for Uranium Exploration

Form Number	Form Title	Creation or Last Revision Date	Rule Number (16 TAC § __) or Other Authority
SMRD-3U	Application to Conduct Uranium Exploration Activities by Drilling	Rev. 10/10	§11.132; §11.133
SMRD-5U	Application to Transfer a Uranium Exploration Permit	10/10	§11.135
SMRD-38U	Cased Exploration Well Completion Report	10/10	§11.139
SMRD-39U	Borehole Plugging Report	10/10	§11.139

The provisions of this §11.73 adopted to be effective November 1, 2010, 35 TexReg 9724.

§11.74. Information Subject to Public Review.

(a) All information filed by an applicant or permittee is considered essential for public review unless the provisions of subsection (b) of this section apply.

(b) An applicant or permittee may identify as confidential specific information concerning mineral deposits, test borings, core samples, geophysical logs, trade secrets, or privileged commercial or financial information relating to the competitive rights of the applicant for or permittee of any exploration permit or surface mining permit. At the time the information is filed, the applicant or permittee shall identify all specific information claimed to be confidential and

shall set forth all facts and arguments in support of this claim. Information claimed to be confidential shall be submitted separately from the rest of the application in a clearly marked sealed envelope.

(1) The director shall review the specific information identified as confidential by the applicant or permittee and, within 10 business days from the date of filing, the director shall make a written determination as to whether the specific information is essential for public review. The director's determination is subject to appeal to the Commission within 10 business days of issuing such determination. If the director determines that the specific information is essential for public review, the director shall set forth all facts and reasoning in support of that determination. Ten business days following the issuance of that determination, the director shall place the specific information in the

public file, unless the applicant or permittee appeals the director's determination to the Commission.

(2) A member, employee, or agent of the Commission shall not disclose specific information that has been determined in paragraph (1) of this subsection to be confidential and not essential for public review.

The provisions of this §11.74 adopted to be effective November 1, 2010, 35 TexReg 9724.

DIVISION 2. DEFINITIONS

§11.81. Statutory Definitions. As used in this subchapter, the following words defined in the Act, §131.004, shall have the definitions therein set forth and as they may be hereafter severally amended. For convenience in reference, such definitions are as follows.

(1) Affected land or land affected—

(A) The area from which any materials are to be or have been displaced in a surface mining operation.

(B) The area on which any materials so displaced are to be or have been deposited.

(C) The haul roads and impoundment basins within the surface mining area.

(D) Other land whose natural state has been or will be disturbed as a result of the surface mining operations.

(2) Approximate original contour--That surface configuration achieved by backfilling and grading of the surface-mined area so that it resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and depressions eliminated, although the new contour may subsequently be at a moderately lower or higher elevation than existed prior to the surface mining operation.

(3) Commission--The Railroad Commission of Texas.

(4) Exploration activity--The disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a mineral deposit.

(5) Minerals--Uranium and uranium ore.

(6) Operator--The individual or entity, including any public or governmental agency, that is to engage or that is engaged in a surface mining operation, including any individual or entity whose permit has expired or been suspended or revoked.

(7) Overburden--All materials displaced in a mining operation which are not, or will not be, removed from the affected area.

(8) Party to the administrative proceedings--Any person who has participated in a public hearing or filed a valid petition or timely objection pursuant to any provision of the Act; a party to the administrative

proceedings may or may not be a party as defined in the APA.

(9) Permit area--All the area designated as such in the permit application and shall include all land affected by the surface mining operations during the term of the permit and may include any contiguous area that the operator proposes to surface mine after that time.

(10) Person--An individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.

(11) Reclamation--The process of restoring an area affected by a surface mining operation to its original or other substantially beneficial condition, considering past and possible future uses of the area and the surrounding topography.

(12) Surface mining--The mining of minerals by removing the overburden lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed and those aspects of underground mining having significant effects on the surface; provided, this definition shall not be construed to include in situ mining activities associated with the removal of uranium or uranium ore.

(13) Surface mining operation--Those activities conducted at or near the mining site and concomitant with the surface mining, including extraction, storage, processing, and shipping of minerals, and reclamation of the land affected.

(14) Surface mining permit--The written certification by the commission that the named operator may conduct the surface mining operations described in the certification during the term of the surface mining permit and in the manner established in the certification. A surface mining permit does not include:

(A) a discharge permit issued by the Commission pursuant to the Act; or

(B) an exploration permit issued by the Commission pursuant to this subchapter (relating to Substantive Rules-Uranium Exploration and Surface Mining).

(15) Topsoil--The unconsolidated mineral matter naturally present on the surface of the earth which has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and which is necessary for the growth and regeneration of vegetation on the surface of the earth.

(16) Toxic material--Any substance present in sufficient concentration or amount to cause injury or illness to plant, animal, or human life.

The provisions of this §11.81 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1980, 5 TexReg 4175; amended to

be effective March 29, 1982, 7 TexReg 1106; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.82. Regulatory Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Access roads--All roads located within the permit area and under the control of the operator of the surface mining operation.

(2) Act--The Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, et seq.

(3) Administrative Procedure Act; APA--Texas Government Code, Chapter 2001.

(4) Applicant--A person who is applying for a new permit or an amendment to or a renewal or transfer of a current permit.

(5) Contiguous area--Includes all areas touching upon the boundaries of the land affected by the surface mining operation which the operator proposes to surface mine notwithstanding areas separated by terrain features such as streams, roads, gas lines, and power transmission lines.

(6) Director--The director of the Surface Mining and Reclamation Division or the director's delegate.

(7) Division--The Surface Mining and Reclamation Division of the Commission or its director or employees.

(8) Drilling completion--The time at which total drilling depth has been reached and the exploration borehole has been logged.

(9) Examiner--The person appointed by the Commission to conduct hearings.

(10) Exploration borehole--An uncased hole created with a drill, auger, or other boring tool for exploring strata in search of uranium deposits.

(11) Exploration reclamation--The process of restoring an area affected by activities conducted under a uranium exploration permit to its original or other substantially beneficial condition.

(12) Highwall--The vertical or nearly vertical wall of exposed strata adjacent to the site of a mineral deposit which results from surface mining excavation.

(13) Permit--A surface mining permit, as defined in this section, or a uranium exploration permit, as defined in this section.

(14) Rules--The regulations promulgated by the commission pursuant to the authority of the Texas Uranium Exploration, Surface Mining, and Reclamation Act.

(15) Terracing--Grading where the steepest contour of the highwall shall not be at a greater angle from the horizontal than that set by the commission in approving a specific reclamation plan calling for

terracing with the table portion of the restored area flat and a flat terrace without depressions to hold water and with adequate provision for drainage, unless otherwise approved by the commission.

(16) Uranium exploration permit--The written certification by the Commission that the named entity may conduct the uranium exploration activities described in the certification during the term of the permit and in the manner and subject to the conditions established in the certification. A uranium exploration permit does not include:

(A) a uranium surface mining permit issued by the Commission pursuant to this chapter; or

(B) a permit issued by the Texas Commission on Environmental Quality pursuant to Texas Water Code, §27.011 and §27.0513.

(17) Usable quality water--Groundwater that is used or can be used for a beneficial purpose including, but not limited to, domestic, livestock, or irrigation uses.

(18) Well--Any excavation that is drilled, cored, bored, washed, fractured, driven, dug, jetted, or otherwise constructed for the intended use of locating, monitoring, dewatering, depressurizing, observing, diverting, or acquiring groundwater, or for conducting pumping or aquifer tests.

(19) Well completion--Activities undertaken as a part of well installation to render the well usable for its intended purpose. Well completion includes, at a minimum, the installation of casing; sealing the well annulus to the ground surface; and capping the well.

The provisions of this §11.82 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1980, 5 TexReg 4175; amended to be effective November 1, 2010, 35 TexReg 9724.

DIVISION 3. URANIUM SURFACE MINING PERMITS

§11.91. Term. Surface mining permits for uranium shall be for a term not to exceed 10 years.

The provisions of this §11.91 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1980, 5 TexReg 4175.

§11.92. Surface Mining Permit Application. A permit application may cover one or more surface mining operations which may or may not be contiguous. The application for noncontiguous operations may contain a consolidated reclamation plan covering each of the separate operations unless the nature of the operations varies to such an extent to require the delineation of distinctly separate reclamation plans. Three copies of the permit application shall be submitted to the commission.

The provisions of this §11.92 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be

effective October 31, 1980, 5 TexReg 4175; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.93. Elements of Surface Mining Permit Application. The permit application for surface uranium mining shall consist of the following elements.

(1) An initial application fee of \$400 shall be submitted in the form of cash or check and if check, it should be made payable to the Railroad Commission of Texas.

(2) If the applicant wishes, he may submit an estimate made by a qualified independent person of the cost of reclamation of the lands covered by the permit application and this estimate shall be used in determining the amount of bond required of the applicant. Registration as a professional engineer shall be prima facie evidence of qualification for making such estimate.

(3) The applicant shall include within 15 days following the last day of publication of notice of the application for a permit, an affidavit of publication in compliance with the requirements of §11.31 of this title (relating to Public Notice). Notice: The applicant is solely responsible for providing legally adequate notification of the application for a permit as provided in these sections.

(4) The applicant shall include a plan to reclaim all land disturbed by the surface mining operation pursuant to the requirements of §§11.151-11.154 of this title (relating to Surface Mining Reclamation Plan; Surface Mining Reclamation Standards; Alternative Methods; and Amendments).

(5) All other information required in the permit application form provided by the commission.

The provisions of this §11.93 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.94. Surface Mining Permit Application Approval.

(a) After approval but prior to issuance of the surface mining permit, the applicant shall pay \$10 per acre of the permit area, in addition to the initial \$400 application fee. This fee may be paid in annual installments apportioned over the term of the permit on the basis of the acreage to be disturbed during 12-month periods.

(b) When notifying applicant of approval of a permit application as provided in §11.51 of this title (relating to Decision after Public Hearing) and §11.52 of this title (relating to Decision without Public Hearing), the commission shall inform the applicant of the amount of approved application fee and the bond required for each surface mining operation covered by the permit.

The provisions of this §11.94 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be

effective October 31, 1980, 5 TexReg 4175; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.95. Surface Mining Bonding, Insurance, and Payment of Fees. After receipt of notification of approval as provided in §11.94 of this title (relating to Surface Mining Permit Application Approval), applicant shall submit to the commission within 180 days following notification of approval:

(1) a certificate of insurance on a form provided by the commission and executed by an insurance company authorized to conduct business in the State of Texas covering all surface mining operations authorized by said permit showing protection of the following types in the amounts indicated:

(A) bodily injury, \$500,000 per person, \$1.5 million per accident;

(B) property damage, \$1 million per accident; which includes but is not limited to damage resulting from the use of explosives;

(2) cash or check, made payable to the Railroad Commission of Texas, in the amount set forth in the notice of approval to cover the approved application fee or the first annual installment thereon; and

(3) unless the commission accepts the bond of the operator itself, as provided in §§11.201-11.206 of this title (relating to Amount of Bond; Personal Bond; Duration of Liability; Form of Bond or Collateral; Changes in Coverage; and Release or Reduction of Bonds), a performance bond (or other substitute collateral) covering the surface mining operation or the first increment thereof, on a form to be provided by the commission (payable to the Railroad Commission of Texas) and conditioned on full and faithful performance of all requirements of the Act and the permit for which the application was filed; provided, however, that if the bond (or other substitute collateral) is provided in increments, it shall cover that area of land within the permit area on which the first increment of surface mining and reclamation operations will be conducted. The applicant shall give the commission 30 days notice before undertaking each additional increment of surface mining operations and shall include with such notice an appropriate performance bond for such increment.

The provisions of this §11.95 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.96. Surface Mining Permit Issuance. The applicant shall have the right to proceed with activities covered by the application immediately upon submitting the certificates, bond (or other substitute collateral), approved application fee required in §11.95 of this title (relating to Surface Mining Bonding, Insurance, and

Payment of Fees), and the commission has issued a written permit for such activities. The commission will issue a written permit within 30 days after the certificates, bonds (or other substitute collateral), and approved application fee required in §11.95 of this title have been received by the commission.

The provisions of this §11.96 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.97. Surface Mining Permit Renewal.

(a) Any valid surface mining permit issued pursuant to these rules shall carry with it the right of successive renewal on expiration with respect to areas within the boundaries of the existing permit. The holder of such permit may apply for renewal not later than 90 days prior to the expiration of the permit and such renewal shall be issued on the written finding by the commission that:

(1) the terms and conditions of the existing permit are being satisfactorily met;

(2) the performance bond or other substitute collateral required under the terms of these rules continue in full force and effect and unimpaired for the requested renewal;

(3) the operator has provided any additional or revised information required by the commission; and

(4) notice under §11.31 of this title (relating to Public Notice) has been provided with respect to the application for renewal.

(b) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards, including application fees, applicable to new applications under these rules.

(c) Any surface mining permit renewal shall be for a term not to exceed the period of the original permit established by these rules.

(d) In the event a renewal application which satisfies the requirements of this section has not been acted upon by the commission on the date of expiration of the prior permit, the operator may continue the surface mining operations pursuant to the conditions of the prior permit until such time as the commission acts upon the renewal application.

The provisions of this §11.97 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.98. Surface Mining Permit Transfer.

(a) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to these rules shall be made without the written approval of the commission. Any person desiring to succeed to the

interests of a permittee hereunder must file an application on a form prescribed by the commission setting out the following information.

(1) Information relating to ownership and other mining activities of the applicant.

(2) Proof that the public liability insurance requirement of §11.95(1) of this title (relating to Surface Mining Bonding, Insurance, and Payment of Fees) will be fulfilled.

(3) Proof that the performance bond or other substitute collateral required in §11.95(3) of this title will be furnished.

(4) The statement of the applicant that the applicant will faithfully carry out all of the requirements of the reclamation plan approved in the permit.

(5) An affidavit of publication of notice from the newspaper of the greatest general circulation in the locality of the land affected.

(b) The application for transfer shall be approved, subsequent to notice and opportunity for public hearing, if any is required under §§11.91-11.100 of this title (relating to Term; Surface Mining Permit Application; Elements of Surface Mining Permit Application; Surface Mining Permit Application Approval; Surface Mining Bonding, Insurance, and Payment of Fees; Surface Mining Permit Issuance; Surface Mining Permit Renewal; Surface Mining Permit Transfer; Surface Mining Permit Approval; and Surface Mining Permit Denial), on the written finding by the commission that the following requirements have been met.

(1) The terms and conditions of the existing permit are being satisfactorily met.

(2) The performance bond or substitute collateral required under the terms of these sections will continue in full force and effect.

(3) The transferee has provided any additional or revised information required by the commission.

(4) Notice under §11.31 of this title (relating to Public Notice) has been provided with respect to the application for transfer.

(c) The application for transfer shall be denied if the transferee has had any permit issued hereunder revoked, or any bond posted to comply with the rules forfeited, and if the conditions causing the bond to be forfeited have not been corrected to the satisfaction of the commission.

The provisions of this §11.98 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.99. Surface Mining Permit Approval. The surface mining permit shall be granted if it is established that the application complies with the requirements of this chapter and all applicable federal and state laws. The

commission may approve a surface mining permit conditioned upon the approval of all other state permits or licenses that may be required.

The provisions of this §11.99 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.100. Surface Mining Permit Denial. The commission shall deny a uranium surface mining permit if:

(1) The commission finds that the reclamation as required by these sections cannot be accomplished by means of the proposed reclamation plan.

(2) Any part of the proposed operation lies within an area designated as unsuitable for surface mining as designated by §§11.161-11.167 of this title (relating to Designation of Lands Unsuitable for Surface Mining); provided, however, the application may be amended to exclude such designated areas.

(3) The commission is advised by the Texas Commission on Environmental Quality that the proposed mining operation will cause pollution of any water of the state, or that the proposed mining operation will cause pollution of the ambient air of the state, in violation of the laws of this state.

(4) The applicant has had any other permit issued under the Act revoked, or any bond posted to comply with these sections forfeited, and the conditions causing the permit to be revoked or the bond to be forfeited have not been corrected to the satisfaction of the commission.

(5) The commission determines that the proposed operation will endanger the health and safety of the public.

(6) The commission determines that the proposed operation will adversely affect any public highway or road. A surface mining operation will be presumed not to adversely affect a public highway or road if the governmental authority responsible for the location and/or maintenance of the highway or road has no objection to the surface mining operation.

(7) The operator is unable to produce the bonds or otherwise meet the requirements of §§11.201-11.206 of this title (relating to Performance Bonds).

The provisions of this §11.100 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1980, 5 TexReg 4175; amended to be effective November 1, 2010, 35 TexReg 9724.

DIVISION 4. TERMINATION, SUSPENSION, REVISION, AND CORRECTION OF PERMITS

§11.111. Basis of Revocation and Suspension. A permit does not become a vested right in the holder. Following an inspection, the permit may be revoked or suspended by the commission for good cause, in accordance with the provisions of §11.113 of this title (relating to

Revocation or Suspension without Consent), for one or more of the following grounds.

(1) Any condition or practices exist, or that permittee is in violation of any requirement of the rules or the Act or any permit condition required by the Act, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources.

(2) Any permittee is in violation of any requirement of its permit, the rules, or the Act, although such violation does not create an imminent danger to the health or safety of the public, or cause or can be reasonably expected to cause significant imminent harm to land, air, or water resources.

(3) A pattern of violations of any requirements of the rules, Act, or any permit conditions required by the Act exists or has existed, and if the commission also finds that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of the Act or any permit conditions, or that such violations are willfully caused by the permittee.

The provisions of this §11.111 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.112. Termination or Suspension with Consent. If the holder of a permit no longer desires to operate the surface mining operation or is agreeable to a suspension of his authority to do so for a specified period of time, he should file a written waiver or consent to the suspension of his authority in the central office of the commission; if he so requests, the central office of the commission will prepare and send him a written waiver or consent to execute. The commission shall then enter an order terminating the permit or suspending the authority to operate the surface mining operation for a specified period. A copy of the order shall be sent by mail to the holder of the permit.

The provisions of this §11.112 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.113. Revocation or Suspension without Consent. Whenever on the basis of any inspection, the commission or its authorized agent or representative determines or has reason to believe that any of the elements contained in §11.111 of this title (relating to Basis of Revocation and Suspension), the commission shall:

(1) when the elements of §11.111(1) of this title exist, immediately order a cessation of surface mining operations on the portion relevant to the condition, practice, or violation. The cessation order shall fix a time and place for a hearing to be held before the commission which shall be as soon after the order is

issued as is practicable but in no event later than 10 days. Such general notice of the hearing shall be given as in the judgment of the commission is practicable under the circumstances. No more than 24 hours after commencement of such hearing, and without adjournment of the hearing, the commission shall affirm, modify, or set aside the order;

(2) when the elements of §11.111(2) of this title exist, issue a notice to the permittee or his agent fixing a reasonable time but not more than 30 days for the abatement of the violation. If on expiration of the period of time as originally fixed or subsequently extended, for good cause shown, and on the written finding of the commission, the commission finds that the violation has not been abated, and after a hearing, if one is requested in writing by the operator within 15 days following the time period required to abate the violation, it may order a cessation of surface mining operations on the portion relevant to the violation. The cessation order shall remain in effect until the commission determines that the violation has been abated or until modified, vacated, or terminated by the commission pursuant to the following paragraph (3) of this section;

(3) when the elements of §11.111(3) of this title exist, issue an order to the permittee to show cause as to why the permit should not be suspended or revoked. The order shall fix a time and place for a hearing to be held in accordance with the notice requirements of §§11.91-11.100 of this title (relating to Term; Surface Mining Permit Application; Elements of Surface Mining Permit Application; Surface Mining Permit Application Approval; Surface Mining Bonding, Insurance, and Payment of Fees; Surface Mining Permit Issuance; Surface Mining Permit Renewal; Surface Mining Permit Transfer; Surface Mining Permit Approval; and Surface Mining Permit Denial). On the permittee's failure to show cause as to why the permit should not be suspended or revoked, the commission shall suspend or revoke the permit.

The provisions of this §11.113 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.114. Revision on Motion or with Consent. On the initiative of a holder of a permit or upon request of the commission the permit holder may file an application to revise the permit.

(1) A document shall be prepared setting forth the revisions desired. The holder of a permit shall use the form of an application for a permit and indicate thereon the changes requested. The manner of preparation of the application for a revision of a permit and the information submitted shall conform to the requirements of §11.92 of this title (relating to Surface Mining Permit Application) and §11.93 of this title

(relating to Elements of Surface Mining Permit Application).

(2) Within five days after receiving the application for revision, the commission shall determine whether or not the application for revision proposes a substantial change in the intended use of the land or significant alteration in the reclamation plan.

(3) Any application for revision of a permit which proposes a substantial change in the intended future use of the land or significant alteration in the reclamation plan shall comply with the notice and hearing requirements set out in §§11.31-11.37 of this title (relating to Notice and Hearing) and shall be approved or disapproved by the commission within 60 days of the date the commission determines whether or not the application is of significance sufficient to warrant a public hearing.

(4) Any extensions to the area covered by a permit, other than incidental boundary revisions, shall be made by application for another permit.

(5) Determinations by the commission of a revision of a permit shall be made in conformity with §11.51 of this title (relating to Decision after Public Hearing) and §11.52 of this title (relating to Decision without Public Hearing) and the procedure established for notification of disapproval of an application for a revision and method of appeal of the decision provided for in §11.52 of this title.

The provisions of this §11.114 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1980, 5 TexReg 4175; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.115. Corrections. In any of the following situations, the commission may make a correction to a permit or order by reissuing the permit or order without the necessity of observing the formal revision procedure described in §11.114 of this title (relating to Revision on Motion or with Consent):

- (1) to correct a clerical or typographical error;
- (2) to describe more accurately the location of the authorized surface mining operation;
- (3) to describe more accurately the nature, type, and method of the surface mining operation;
- (4) to describe more accurately any provision in a permit or order, but without changing the substance of any such provision;

The provisions of this §11.115 adopted to be effective March 24, 1976, 1 TexReg 502.

DIVISION 5. URANIUM EXPLORATION PERMITS AND PERMIT FEES

§11.131. Uranium Exploration Permit: General Provisions.

(a) A person may not conduct any uranium exploration activity unless the person holds an exploration permit issued by the division.

(b) An exploration permit alone does not constitute a right to conduct uranium exploration activity. Inclusion of land within a permit boundary does not constitute authority to conduct uranium exploration activity. Permit boundaries may overlap.

(c) An exploration permit constitutes authority from the Commission to conduct uranium exploration activities in those areas covered by the permit for which the permittee has the right of entry for such activities.

(d) An exploration permit governs all disturbance of the surface and subsurface associated with determining the location, quantity, or quality of uranium deposits.

(e) A uranium exploration permit shall contain provisions to govern:

(1) locating, drilling, plugging, and abandoning exploration boreholes;

(2) casing exploration boreholes for use in the exploration process;

(3) using cased exploration wells for rig supply purposes; and

(4) plugging and abandoning cased exploration wells.

(f) Except as provided in §11.140 of this title (relating to Commission and Groundwater Conservation District Jurisdiction), a cased exploration well subject to an exploration permit is exempt from regulation by another agency, government entity, or political subdivision if the well is used for exploration or rig supply purposes.

(g) A uranium exploration permit shall be valid for a period of 12 months from the date of issuance and may be renewed pursuant to §11.134 of this title (relating to Uranium Exploration Permit Renewal).

(h) Upon completion of all exploration activity, each permittee shall renew its uranium exploration permit for an additional permit term or terms until the permittee:

(1) properly plugs all exploration boreholes and cased exploration wells and files with the division a plugging affidavit as required by §11.139 of this title (relating to Uranium Exploration Drill Site Plugging and Reporting Requirements); and

(2) with respect to all cased exploration wells that are not plugged, either:

(A) registers all such wells with the Texas Commission on Environmental Quality; or

(B) includes all such wells in an area permit issued by the Texas Commission on Environmental Quality under Texas Water Code, Chapter 27.

The provisions of this §11.131 adopted to be effective November 1, 2010, 35 TexReg 9724.

§11.132. Application to Conduct Uranium Exploration Activity.

(a) Each applicant shall apply for a uranium exploration permit by filing with the division a completed Form SMRD-3U (Application to Conduct Uranium Exploration Activities by Drilling) and paying the Commission the applicable fee or fees as required by §11.136 of this title (relating to Uranium Exploration Permit Fees).

(b) The application shall contain the following information necessary for the division to provide notice pursuant to §11.137 of this title (relating to Commission Notice of Uranium Exploration Permit Application, Issuance, and Denial):

(1) the name, mailing and street addresses, and telephone number of the applicant;

(2) the name, mailing and street addresses, and telephone number of the applicant's authorized representative that will be responsible for conducting the exploration activity;

(3) the name of each county in which the exploration activity is proposed, along with the contact information by name, address, and telephone number, for each of the following:

(A) each groundwater conservation district within the area in which the exploration activity will occur;

(B) the mayor and health authority of each municipality within 10 miles in all directions of the boundary of the area in which the exploration activity will occur;

(C) the county judge and health authority of each county in which the exploration activity will occur; and

(D) each member of the Texas legislature who represents the area in which the exploration activity will occur;

(4) the names and addresses of all landowners of record of the surface of the exploration permit area, indexed to the land tracts identified on the map required in paragraph (6) of this subsection;

(5) the names and addresses of all mineral estate owners for which the applicant has obtained the right of entry to conduct exploration activities, indexed to the land tracts identified on the map required in paragraph (6) of this subsection;

(6) a USGS topographic map or maps (scale 1:24,000), in both paper and digital formats, showing the proposed exploration area, with the following information shown:

(A) the exploration area boundary and acreage stated to the nearest acre;

(B) the boundary of each land tract within the exploration permit area, with the tracts that the

applicant has obtained the right to enter to conduct exploration activities identified; and

(C) the location of all private or public water wells that can be identified in the public record that are:

(i) within the proposed permit boundary; and

(ii) outside of but within 150 feet of the proposed permit boundary; and

(7) the following information:

(A) a description of the geology and hydrogeology for the proposed permit area that includes cross-sections and maps;

(B) an explanation of the exploration drilling method, including the depth of subsurface penetration and the estimated size of the surface disturbance;

(C) a description of the physical method for marking each borehole location for inspection;

(D) a description of the proposed plugging and well construction methods, which shall conform to the requirements of §11.138 of this title (relating to Uranium Exploration Drill Site Operating and Reclamation Requirements);

(E) a description of the proposed methods for disposing of cuttings produced by the drilling activity and preventing surface runoff from entering mud pits; and

(F) a description of the proposed procedures for leveling any disturbance caused by the drilling activity to conform to the requirements of §11.138 of this title.

(c) The application shall be signed by the authorized representative identified in subsection (b)(2) of this section, dated, and certified, attesting to the veracity of the statements and representations in the application.

The provisions of this §11.132 adopted to be effective November 1, 2010, 35 TexReg 9724.

§11.133. Uranium Exploration Permit Revision.

(a) A permittee may revise a uranium exploration permit by filing with the division a completed Form SMRD-3U (Application to Conduct Uranium Exploration Activities by Drilling) no later than 30 days prior to the proposed revision implementation date and paying the Commission the fee required by §11.136 of this title (relating to Uranium Exploration Permit Fees).

(b) The uranium exploration permit revision application shall be signed by an authorized representative, dated, and certified, and shall contain all applicable information required by §11.132 of this title (relating to Application to Conduct Uranium Exploration Activity).

(c) The permittee shall describe in the revision application any changes proposed to the exploration activity or reclamation.

(d) A uranium exploration permit revision shall not have the effect of extending the initial uranium exploration permit beyond its original one-year term.

The provisions of this §11.133 adopted to be effective November 1, 2010, 35 TexReg 9724.

§11.134. Uranium Exploration Permit Renewal.

(a) A permittee shall apply for a permit renewal by filing with the division a completed Form SMRD-3U (Application to Conduct Uranium Exploration Activities by Drilling) at least 30 days prior to the expiration of the permit term and paying the Commission the applicable fee or fees as required by §11.136 of this title (relating to Uranium Exploration Permit Fees). In the renewal application, the permittee shall describe all revisions that are proposed for the exploration activity or reclamation. The director shall issue the renewal permit based on the written findings by the director that:

(1) the permittee is meeting the terms and conditions of the existing permit; and

(2) the permittee has provided any additional or revised information required by the director.

(b) A permittee shall file an application for renewal of its uranium exploration permit if the permittee has not met the requirements of §11.131(h) of this title (relating to Uranium Exploration Permit: General Provisions).

The provisions of this §11.134 adopted to be effective November 1, 2010, 35 TexReg 9724.

§11.135. Uranium Exploration Permit Transfer.

(a) A permittee may request the transfer of its uranium exploration permit by filing with the division a completed Form SMRD-5U (Application to Transfer a Uranium Exploration Permit) and paying the Commission the applicable fee or fees as required by §11.136 of this title (relating to Uranium Exploration Permit Fees). The current permittee shall identify the prospective permittee in accordance with §11.132 of this title (relating to Application to Conduct Uranium Exploration Activity).

(b) The current permittee shall include with the permit transfer application a plugging report that meets the requirements of §11.139 of this title (relating to Uranium Exploration Drill Site Plugging and Reporting Requirements) demonstrating that the permittee has completed all plugging and reclamation requirements. Any changes proposed to the permit other than the transfer of the permit to a new permittee shall be made by application for a new permit pursuant to §11.132 of this title.

The provisions of this §11.135 adopted to be effective November 1, 2010, 35 TexReg 9724.

§11.136. Uranium Exploration Permit Fees.

(a) Initial uranium exploration permit fee. Each applicant for a uranium exploration permit shall pay to the Commission a uranium exploration permit fee consisting of:

(1) a permit-application filing fee of \$5,500, to be submitted with the application; and

(2) an amount equal to \$45 for each exploration borehole drilled during each month of the approved 12-month permit term, non-refundable, and payable as described in subsection (e) of this section.

(b) Uranium exploration permit revision fee. Each applicant for a uranium exploration permit revision shall pay to the Commission a non-refundable permit amendment fee of \$500.

(c) Uranium exploration permit renewal fee. Each applicant for renewal of a uranium exploration permit shall pay to the Commission a fee consisting of:

(1) a permit-application filing fee of \$5,500, to be submitted with the renewal application; and

(2) an amount equal to \$45 for each exploration borehole drilled during each remaining month of the approved 12-month permit term, non-refundable, and payable as described in subsection (e) of this section.

(d) Uranium exploration permit transfer fee. Each applicant for the transfer of a uranium exploration permit pursuant to §11.135 of this title (relating to Uranium Exploration Permit Transfer) shall pay to the Commission a non-refundable permit transfer application fee of \$500.

(e) Schedule. Payment of the per-hole exploration borehole fee required in subsection (a) of this section shall be submitted to the Commission with the monthly borehole plugging reports (Form SMRD-39U, Borehole Plugging Report, and Form SMRD-38U, Cased Exploration Well Completion Report) filed pursuant to §11.139 of this title (relating to Uranium Exploration Drill Site Plugging and Reporting Requirements).

(f) Refunds. If a new or renewal application for uranium exploration is not approved, the Commission will refund \$4,500 of the permit-application filing fee, without interest, to the applicant.

The provisions of this §11.136 adopted to be effective February 2, 2011, 36 TexReg 411.

§11.137. Commission Notice of Uranium Exploration Permit Application, Issuance, and Denial.

(a) The division shall provide concurrent written notice to the entities listed in subsection (b) of this section of:

(1) the division's receipt of an initial application for an exploration permit and the director's issuance or denial of an exploration permit;

(2) the division's receipt of an application for a permit revision that adds acreage to or removes acreage from the permit area or makes a material change in the permit boundaries and the director's issuance or denial of a permit revision;

(3) the division's receipt of an application for an exploration permit renewal and the director's issuance or denial of an exploration permit renewal; and

(4) the division's receipt of an application for an exploration permit transfer and the director's issuance or denial of an exploration permit transfer.

(b) The division shall give the notice required by subsection (a) of this section to the following:

(1) each groundwater conservation district within the area in which the exploration activity will occur or is occurring;

(2) the mayor and health authority of each municipality within 10 miles of the boundary of the area in which the exploration activity will occur or is occurring;

(3) the county judge and health authority of each county in which the exploration activity will occur or is occurring; and

(4) each member of the Texas Legislature who represents the area in which the exploration activity will occur or is occurring.

(c) In the written notice of receipt of an initial application for an exploration permit, the division shall include:

(1) the name, address, and telephone number of the applicant;

(2) the name, address, and telephone number of the applicant's authorized representative that will be responsible for conducting the exploration activity; and

(3) information describing or showing the exploration area boundary covered by the application for an exploration permit.

(d) In the written notice of the issuance or denial of an exploration permit, permit revision (if required to be provided by subsection (a) of this section), permit renewal, or permit transfer, the division shall include information on where a copy of the approval or denial document may be obtained.

The provisions of this §11.137 adopted to be effective November 1, 2010, 35 TexReg 9724.

§11.138. Uranium Exploration Drill Site Operating and Reclamation Requirements.

(a) No permittee may drill an exploration borehole within 150 horizontal feet of an existing water well without the written consent of the well owner.

(b) Each permittee shall:

- (1) segregate topsoil from subsoil and salvage it while digging a mud pit;
- (2) protect livestock from open mud pits; and
- (3) prevent surface-water runoff from entering open mud pits.

(c) Each permittee shall ensure that reclamation of the drill site occurs as contemporaneously as practicable with the drilling activity. When drilling activities are complete, the permittee shall:

- (1) allow the mud pit to dry and then backfill with native subsoil followed by topsoil, to the extent that topsoil was originally present;
- (2) properly dispose of trash and other debris brought to or generated at the drill site by the permittee; and
- (3) return the disturbed area to approximate original contour and appropriately revegetate.

(d) Each permittee shall notify the division prior to any of the following to allow scheduling of inspections:

- (1) when drilling operations will initially commence or recommence;
- (2) when drilling will cease for greater than 30 days; and
- (3) when cessation of drilling and plugging will be completed for the permit term.

The provisions of this §11.138 adopted to be effective November 1, 2010, 35 TexReg 9724.

§11.139. Uranium Exploration Drill Site Plugging and Reporting Requirements.

(a) Each permittee shall plug each exploration borehole within three business days of drilling completion unless otherwise approved in the permit. The permittee shall maintain records of borehole logging, cementing dates, and rig logs and make them available for inspection by the division.

(b) Each permittee shall plug each exploration borehole in accordance with the following requirements.

(1) Each borehole shall be plugged with Type-I neat cement from total depth to three feet below ground surface unless the director approves an alternative plugging method that meets the requirements of subsection (d) of this section.

(2) Downhole plugs shall be emplaced using tremie tubing or drill string pipe. The remainder of the hole between the top of the plug and the ground surface shall be filled with non-toxic drill cuttings or soil.

(3) To ensure that the proper plug depth is achieved, each borehole shall be checked for settling within two business days after initial plugging. If the depth to the top of the plug is not at the required distance from the surface, additional cement or alternative plugging material, if approved, shall be added to bring the plug to the required depth.

(c) Each permittee shall physically mark each plugged borehole using the specific borehole marking method described in the approved permit, and shall ensure the markings remain in place until the borehole is inspected by the division. A permittee may use a section of poly rope, a piece of polyvinyl chloride (PVC) pipe, or a similar device to mark the location of the borehole.

(d) A permittee may request in writing to use an alternative plugging method or materials and shall demonstrate that the alternative methods or materials will provide at least the same level of groundwater protection as Type-I neat cement to protect and prevent communication with all formations bearing fresh water and usable quality water.

(e) No later than the last day of each month, each permittee shall file a completed Form SMRD-39U (Borehole Plugging Report) with the division showing the plugging information for each borehole plugged the previous month.

(f) Within 48 hours of drilling completion, each permittee shall install and cement casing for each exploration borehole that is to be used as a cased exploration well. Cased exploration wells shall be completed in accordance with the standards set forth in the regulations of the Texas Department of Licensing and Regulation at 16 TAC §76.1000 (relating to Technical Requirements--Locations and Standards of Completion for Wells).

(g) No later than the last day of each month, each permittee shall file with the division a completed Form SMRD-38U (Cased Exploration Well Completion Report) showing the completion information for each exploration well cased the previous month.

(h) Each permittee shall plug boreholes or install casing in boreholes during the permit term.

The provisions of this §11.139 adopted to be effective November 1, 2010, 35 TexReg 9724.

§11.140. Commission and Groundwater Conservation District Jurisdiction.

(a) The Commission has jurisdiction over uranium exploration boreholes and cased exploration wells completed under an exploration permit until:

(1) exploration boreholes and cased exploration wells are properly plugged in accordance with §11.138 of this title (relating to Uranium Exploration Drill Site Operating and Reclamation Requirements); or

(2) cased exploration wells are either:

(A) registered with the Texas Commission on Environmental Quality; or

(B) included in an area permit issued by the Texas Commission on Environmental Quality under Texas Water Code, Chapter 27.

(b) Each permittee shall register each cased exploration well with the Texas Commission on Environmental Quality pursuant to the requirements in 30 TAC §331.221 (relating to Registration of Wells).

(c) A well described in §11.131(f) of this title (relating to Uranium Exploration Permit: General Provisions) is subject to a groundwater conservation district's rules regarding registration of wells if:

(1) the well is located in the groundwater conservation district and is used for monitoring purposes; and

(2) the cumulative amount of water produced from the wells located inside the area subject to and completed under the exploration permit issued exceed 40 acre-feet in one permit year.

(d) A well described in §11.131(f) of this title is subject to a groundwater conservation district's rules regarding registration, production, and reporting of wells if:

(1) the well is located in the groundwater conservation district and is used for rig supply purposes; and

(2) the cumulative amount of water produced from the wells located inside the area subject to and completed under the exploration permit issued exceed 40 acre-feet in one permit year.

(e) Each month, each permittee that has installed a cased exploration well described in §11.131(f) of this title and located in a groundwater conservation district shall report to the division and the district the total amount of water produced from each well described in §11.131(f) of this title located inside the area subject to the exploration permit. No later than the last day of each month, the permittee shall file a groundwater production report containing the following information for the previous month:

(1) well identification to correspond with information provided under §11.139(g) of this title (relating to Uranium Exploration Drill Site Operating and Reclamation Requirements); and

(2) water produced reported in gallons and acre-feet. The monthly report shall include the monthly production data and cumulative data for the permit year. Once a well begins production, monthly reports will be required even if production temporarily ceases, until the end of the permit year.

The provisions of this §11.140 adopted to be effective November 1, 2010, 35 TexReg 9724.

§11.141. Groundwater Quality and Well Information.

(a) At least 15 days prior to commencement of drilling, a permittee whose permit authorizes exploration in a groundwater conservation district shall obtain groundwater samples for analysis in accordance with this subsection. Within 90 days of receiving the laboratory analysis data, the permittee shall provide to

the district pre-exploration groundwater quality information as follows:

(1) from each existing well located in a groundwater conservation district that is tested by the permittee before exploration; and

(2) from the following wells, as applicable:

(A) if there are fewer than 10 existing wells located inside the approved exploration area, from each well located inside the approved exploration area; or

(B) if there are at least 10 existing wells located inside the approved exploration area, from 10 existing wells that are distributed as evenly as possible throughout that area.

(b) Within 90 days of receiving the laboratory analysis data, a permittee whose permit authorizes exploration in a groundwater conservation district shall provide to the district groundwater quality information obtained during exploration within the district as follows:

(1) from each existing well that the permittee tests during exploration; and

(2) from each cased exploration well completed under the exploration permit.

(c) Each permittee shall conform the groundwater quality information required under subsections (a) and (b) of this section to the requirements of §11.142 of this title (relating to Groundwater Analysis and Reporting).

(d) Each permittee whose permit authorizes exploration in a groundwater conservation district shall file with the division the groundwater quality information required under subsections (a) and (b) of this section at the same time the information is provided to the district.

(e) Each exploration permittee that installs cased exploration wells inside a groundwater conservation district shall provide to the district, within 60 days of the installation, the following information:

(1) the permittee's name, address, and telephone number; and

(2) the following information for each cased exploration well in the district:

(A) well completion information;

(B) well logs, except any information determined by the director to be confidential pursuant to §11.74 of this title (relating to Information Subject to Public Review);

(C) the location of the well, including a legal description and the acreage of the property where the well is located;

(D) verification that the well will be used for an industrial purpose; and

(E) the type and capacity of the pump used in the well.

The provisions of this §11.141 adopted to be effective November 1, 2010, 35 TexReg 9724.

§11.142. Groundwater Analysis and Reporting.

(a) Each exploration permittee shall perform groundwater quality testing required under §11.141(a) and (b) of this title (relating to Groundwater Quality and Well Information) for the parameters listed in Table 1. Each permittee shall ensure that analyses are

conducted in accordance with protocols set forth in *Standard Methods for Examination of Water and Wastewater*, 2005, 21st edition; *Methods for Chemical Analysis of Water and Wastes*, 1979 (EPA-600/4-79-020); and *Test Methods: Technical Additions to Methods for Chemical Analysis of Water and Wastes*, 1982 (EPA-600/4-82-055).

Table 1. Groundwater Monitoring Parameters

Major Constituents	Minor Constituents	Trace Constituents	Radionuclides	Additional Parameters
Bicarbonate (HCO ₃)	Boron (B)	Arsenic (As)	Radium 226	pH (field and lab)
Calcium (Ca)	Carbonate (CO ₃)	Selenium (Se)	Gross Alpha	Temperature (field and lab)
Chloride (Cl)	Fluoride (F)	Vanadium (V)	Gross Beta	Total alkalinity
Magnesium (Mg)	Iron (Fe) (Total and Dissolved)		Uranium (U)	Total Dissolved Solids (TDS)
Molybdenum (Mo)	Manganese (Mn) (total and dissolved)			Specific conductance
Sodium (Na)	Nitrate (NO ₃) or Nitrate as (N)			
Sulfate (SO ₄)	Potassium (K)			

(b) In addition to reporting the analytical results as required by §11.141 of this title, each permittee shall report to the division and to the groundwater conservation district the following information:

(1) a water level from each cased exploration well completed under the exploration permit and from existing wells identified in §11.141 of this title, if the permittee determines it is possible to obtain a water level without pulling the pump or risking damage to the well; and

(2) analysis sheets from the laboratory containing:

- (A) name, address, and telephone number of the analytical laboratory;
- (B) date of sample collection;
- (C) date of sample receipt by the laboratory;
- (D) date of laboratory analysis/report;
- (E) laboratory sample identification;
- (F) name and signature of laboratory personnel responsible for the analysis; and
- (G) the analysis results.

The provisions of this §11.142 adopted to be effective November 1, 2010, 35 TexReg 9724.

DIVISION 6. URANIUM SURFACE MINING RECLAMATION

§11.151. Surface Mining Reclamation Plan. A reclamation plan, which is an essential element of the surface mining permit application, shall be developed in a manner consistent with local, physical, environmental, and climatological conditions and

current mining and reclamation technologies and shall include where applicable the following information:

(1) the identification of the entire area to be mined and affected over the estimated life of the mining operation;

(2) the condition of the land to be covered by the permit prior to any mining, including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses, if reasonably ascertainable, which immediately preceded any mining; and

(B) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, and vegetative cover;

(3) the capacity of the land to support its anticipated use following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses:

(A) included in this discussion shall be the uses to which similar land in the vicinity, which is not being mined is being put; and

(B) uses, if any, to which similar land which has been similarly mined is being utilized;

(4) a description of how the proposed postmining land condition is to be achieved and the necessary support activities that may be needed to achieve the condition, including an estimate of the cost per acre of the reclamation;

(5) the steps taken to comply with applicable air and water quality and water rights laws and regulations and any applicable health and safety

standards, including copies of any pertinent permit applications;

(6) a general timetable that the operator estimates will be necessary for accomplishing the major events contained in the reclamation plan.

The provisions of this §11.151 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.152. Surface Mining Reclamation Standards. The operator of all surface mining and reclamation operations not otherwise exempted or excluded shall as a minimum:

(1) conduct surface mining operations in a manner consistent with prudent mining practice, so as to maximize the utilization and conservation of the resource being recovered so that re-affecting the land in the future through surface mining can be minimized;

(2) restore the land affected to the same or a substantially beneficial condition considering the present and past uses of the land, so long as condition does not present any actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution, and the operator's declared anticipated land use following reclamation is not deemed to be impractical or unreasonable, to involve unreasonable delay in implementation, or to be violative of federal, state, or local law; provided that a variety of postmining land conditions which differ from the land condition immediately preceding the surface mining operation, including but not limited to stock ponds, fishing or recreational lakes, school or park sites, industrial, commercial, or residential sites, or open space uses, may be approved by the commission if the proposed condition is determined to be substantially beneficial and complies with the provisions of this division (relating to Uranium Surface Mining Reclamation);

(3) reduce all highwalls, spoil piles, and banks to a slope sufficient to control erosion effectively and sufficient to sustain vegetation, where required, consistent with the anticipated subsequent use of the affected land;

(4) stabilize and protect all surface areas affected by the mining and reclamation operation effectively to control erosion and attendant air and water pollution;

(5) remove the topsoil, if any, from the land in a separate layer, replace it on the backfill area; or, if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plants or other means so that the topsoil is preserved from wind and water erosion, remains free of any contamination by toxic material,

and is in a usable condition for sustaining vegetation when restored during reclamation; except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation and if other strata can be shown to be as suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner such other strata which is best able to support vegetation; provided that the requirements of this paragraph shall not apply if a mixing of strata can be shown to be equally suitable for revegetation requirements;

(6) replace the topsoil or the best available subsoil, if any, on top of the land to be reclaimed;

(7) fill any auger holes with an impervious material in order to prevent drainage;

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

(A) avoiding mine drainage by such measures as, but not limited to:

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

(ii) treating drainage to reduce toxic content; or

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep toxic drainage from entering ground and surface waters;

(B) conducting surface mining operations so as to prevent unreasonable additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions; and

(C) consistent with good water conservation practices, removing such temporary or large siltation structures from drainways after disturbed areas are revegetated and stabilized;

(9) stabilize any waste piles;

(10) refrain from surface mining in proximity to active and abandoned underground mines where such mining would cause breakthroughs or would endanger the health or safety of miners;

(11) with respect to the use of impoundments for the disposal of mine wastes, processing wastes, or other liquid or solid wastes, incorporate current engineering practices for the design and construction of water retention facilities which, at a minimum, shall be compatible with the requirements of Texas Water Code, §12.052, and applicable federal laws, ensure that leachate will not pollute surface or groundwater, and locate impoundments so as not to endanger public health and safety should failure occur;

(12) insure that all debris, toxic materials, or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent

contamination of ground or surface waters or combustion;

(13) insure that any explosives are used only in accordance with existing state and federal law and regulations promulgated by the commission;

(14) insure that all reclamation efforts proceed as contemporaneously as practicable with the surface mining operation;

(15) insure that construction, maintenance, and postmining conditions of access roads into and across the site of operations will minimize erosion and siltation, pollution of air and water, damage to fish or wildlife or their habitat, or public or private property; provided that the commission may permit the retention after mining of certain access roads if compatible with the approved reclamation plan;

(16) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to such channel where such construction would seriously alter the normal flow of water;

(17) establish on all affected lands, where required in the approved reclamation plan, a diverse vegetative cover native to the affected land where vegetation existed prior to mining and capable of self-regeneration and plant succession equal in extent of cover to the natural vegetation of the area; except that introduced species may be used in the revegetation process where desirable or necessary to achieve the approved reclamation plan;

(18) assume responsibility for successful revegetation for a period of four years beyond the first year in which the vegetation has been successfully established as evidenced by the land being used as anticipated in the reclamation plan;

(19) with respect to permanent impoundments of water as a part of the approved reclamation plan, ensure that:

(A) the size of the impoundment and the availability of water are adequate for its intended purpose;

(B) the impoundment dam construction will meet the requirements of Texas Water Code, §12.052, and applicable federal laws;

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and the discharges from the impoundment will not degrade the water quality in the receiving stream;

(D) final grading will provide adequate safety and access for anticipated water users; and

(E) such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(20) unless the operator has made appropriate arrangements with the persons affected (as used in this

paragraph only, "persons affected" means those persons or government agencies which own or reside on or are responsible for the administration of the places listed in this paragraph), either not create a cut:

(A) within 100 feet of any oil and gas well unless such well has been properly plugged; or

(B) within 150 feet of the outside line of the right of way of any public highway or from the boundary of any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wildlife and scenic areas, state park, state wildlife refuge, state forest, recorded Texas landmark, state historic site, state archaeological landmark, city or county park, public road, public building, cemetery, school, church, or existing dwelling outside the permit area;

(21) provide, when the surface mining operation is permitted to be located within 150 feet of the outside line of the right of way of any public highway or from the boundary of any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wildlife and scenic areas, state park, state wildlife refuge, state forest, recorded Texas historic landmark, state historic site, state archaeological landmark, city or county park, public road, public building, cemetery, school, church, or existing dwelling outside the permit area a screen of natural vegetation between the surface mining operation and the areas described in this paragraph;

(22) provide, prior to creating a cut for a surface mining operation, a drainage system adequate to prevent storm water runoff from coming into contact with the surface mining operation in quantities which would cause significant degradation of area surface and groundwaters;

(23) provide that runoff water from areas disturbed by mining activities be impounded, drained, diverted, or treated prior to discharge, to reduce soil erosion, damage to unmined lands, or the pollution of streams and other waters. These objectives shall be accomplished as follows:

(A) Runoff from any uranium pad and all water pumped from an ore zone shall be retained in a holding pond located in the mine site area and may not be discharged unless such discharge will not adversely affect the receiving waters.

(B) After completion of ore removal, rainfall runoff from the overburden shall be drained into the cut or otherwise controlled until erosion control is established. Techniques that the operator may utilize to accomplish the requirements of this paragraph include, but are not limited to:

- (i) grading of the overburden;
- (ii) reliance upon the existence of natural drainage in the area; and
- (iii) the construction of ditches, dams, or berms.

(C) If a permanent water impoundment results from surface mining operations, it banks from the top down to 10 feet below the mean water level shall be established as a slope of not greater than one foot vertical to four feet horizontal.

(24) provide that toxic-forming materials present in spoil ridges or in the exposed face of a mined ore deposit be covered with nontoxic materials. Final cuts or other depressed areas no longer in use in mining operations which accumulate toxic material are prohibited;

(25) unless otherwise specified by the commission, planting shall be done when the season, local weather conditions, and soil conditions are suitable for seed germination and plant survival;

(26) revegetation shall be considered successful as required under §131.102(b)(18) of the Act when it is:

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

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

(27) provide that slopes of overburden piles be shaped to minimize runoff and to provide a surface to be seeded;

(28) in implementing the standards enumerated in this section, the following guidelines will apply:

(A) The applicant's declared anticipated land use following reclamation will be considered unacceptable to the commission unless such land following reclamation will be returned to the same condition as it enjoyed prior to mining or to a condition determined by the commission to be substantially beneficial. In determining whether the anticipated postmining land use is substantially beneficial, the commission may consider, although not exclusively, practicable uses to which the land may be put; the past and present market value of the land; its productivity, past and present; its support of habitat for wildlife, past and present; and its provision for recreational utility, past and present.

(B) Except where the land will be inundated by a permanent water impoundment or unless the value and/or usefulness of the land will be reasonably comparable to or enhanced by an alternative procedure, the operator will restore the surface of the land to its approximate original contour and where necessary compact its overburden and topsoil to prevent erosion.

(29) with respect to pipelines transmitting crude oil, liquid petroleum, natural gas, toxic, or flammable substances:

(A) identify and describe pipelines located in the permit area and within 100 feet thereof in the application for a surface mining permit;

(B) visibly mark the location of pipelines at 200-foot intervals throughout the permit area;

(C) insure a minimum of six feet of compacted material between the pipeline and any haul road or access road within the permit area which crosses over it;

(D) not create a cut within 100 feet or one times the depth of the cut (whichever is greater) of any pipeline;

(E) conduct blasting operations in accordance with state and federal laws; but, in no case shall blasting be conducted within 200 feet of a pipeline;

(F) comply with the requirements of Texas Natural Resources Code, Chapter 117; Texas Utilities Code, Chapter 121; Commission pipeline safety rules in Chapter 8 of this title; federal pipeline safety requirements in 49 USC §§60101, *et seq.*; and federal pipeline safety rules in 49 CFR Part 191, Transportation of Natural and Other Gas by Pipeline: Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; and

(G) at the discretion of the commission, variances to subparagraphs (B), (C), (D), and (E) of this paragraph may be granted by the commission. Variances to subparagraphs (C), (D), and (E) of this paragraph will be granted if in the opinion of the commission the structural integrity of the pipeline will be maintained and if agreed to by the owner of the pipeline.

The provisions of this §11.152 adopted to be effective March 24, 1976, 1 TexReg 502, amended to be effective January 20, 1978, 3 TexReg 128; amended to be effective March 15, 1978, 3 TexReg 745; amended to be effective October 31, 1980, 5 TexReg 4175; amended to be effective December 5, 1980, 5 TexReg 4728; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.153. Alternative Methods. A method of reclamation other than that provided in §11.151 of this title (relating to Surface Mining Reclamation Plan) and §11.152 of this title (relating to Surface Mining Reclamation Standards) may be approved by the commission after public hearing, if the commission determines that any method of reclamation required by this section is not practicable and that such alternative method will

provide for the affected land to be restored to a substantially beneficial condition.

The provisions of this §11.153 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1980, 5 TexReg 4175; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.154. Amendments. The operator may revise or amend the approved reclamation plan at any time in accordance with the requirements of §11.114 of this title (relating to Revision on Motion or with Consent).

The provisions of this §11.154 adopted to be effective March 24, 1976, 1 TexReg 502.

DIVISION 7. DESIGNATION OF LANDS UNSUITABLE FOR SURFACE MINING

§11.161. Procedure for Petition. Any person wishing to have an area designated as unsuitable for surface mining operations or to have such designation terminated shall file four copies of a petition with the commission. Such petition shall contain the following.

(1) A map, which shall be a topographical map of a scale no smaller than one inch equal to 500 feet showing the location of the area on which the petition is filed.

(2) A statement disclosing all property or other interests in the land covered by the petition or in any other lands within five miles which are owned or held, directly or indirectly, by the petitioner or any member of his family.

(3) A listing of local governmental bodies, planning agencies, sewage and water treatment authorities, or water companies having jurisdiction over or in the locality of the proposed designation and people residing within the boundaries of the proposed designation.

(4) If the petition is for the purpose of designating an area unsuitable for surface mining, a statement setting forth the types of surface mining that will cause the adverse impact and how the surface mining methods will cause an adverse impact.

(5) A statement setting forth, in detail, all facts on which the petition is based.

(6) Documentary or other evidence in support of the facts alleged in the petition.

(7) If the petition is for the purpose of terminating an unsuitable designation, a detailed statement setting forth:

(A) the potential ore or other resources of the area;

(B) the demand for such resources; and

(C) the impact of a designation of the land unsuitable for surface mining on the environment, the economy, and the supply of the minerals identified in this section.

The provisions of this §11.161 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1980, 5 TexReg 4175.

§11.162. Determination of Petition Validity. Within 30 days following the date of receipt by the commission of the petition to declare lands unsuitable for surface mining or to modify or terminate the designation, the commission shall determine the completeness and validity of the petition and notify the petitioner of the results of such determination. If the petition is found to be complete and valid, it shall be kept on file by the commission and made available for public inspection. If the petition is rejected, the notice of rejection shall set forth each of the reasons for rejection. The determination to accept or reject the petition shall be published in the Texas Register.

The provisions of this §11.162 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.163. Hearing on Petition. Upon application for a surface mining permit covering an area for which a complete and valid petition to declare lands unsuitable for surface mining has been filed, the commission shall hold a hearing to consider the petition, in accordance with the notice requirements of §11.34 of this title (relating to Public Hearing), and in addition to such notice shall give notice to those persons and entities required to be submitted by the petitioner in §11.161(2) and (3) of this title (relating to Procedure for Petition).

The provisions of this §11.163 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.164. Petitions Not Received. No petition shall be accepted which covers lands for which notice of the filing of an application for a surface mining permit has been published pursuant to §11.31 of this title (relating to Public Notice).

The provisions of this §11.164 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.165. Elements of Unsuitability. When an application is made to conduct a surface mining operation, the commission shall immediately cause the areas proposed to be included within the proposed permit to be surveyed prior to the issuance of a permit. Following the survey and/or hearing where one is warranted, the area may be designated unsuitable for all or certain types of surface mining if:

(1) the commission determines that reclamation pursuant to the requirements of the Act is not feasible;

(2) such operations will result in significant damage to important areas of historic, cultural, or archaeological value or to important natural systems;

(3) such operations will affect renewable resource lands resulting in a substantial loss or reduction of long-range productivity of water supply or food or fiber products, such lands to include aquifers and aquifer recharge areas;

(4) such operations are located in areas subject to frequent flooding or areas of unstable geology and may reasonably be expected to endanger life and property;

(5) such operations will adversely affect any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wild and scenic area, state park, state wildlife refuge, state forest, recorded Texas historic landmark, state historic site, state archaeological landmark or city or county park (a surface mining operation will be presumed to not adversely affect any of the areas listed in this paragraph if the agency or governmental body responsible for such area has no objection to the proposed surface mining operation);

(6) where such operations would endanger any public road, public building, cemetery, school, church, or similar structure or existing dwelling outside the permit area (a surface mining operation will be presumed to not adversely affect any of the preceding if the person or governmental body which owns or is responsible for the administration or maintenance of the above has no objection to the surface mining operation); or

(7) areas subject to frequent flooding or areas located within recharge zones of aquifers which provide drinking water to the public may be unsuitable for conventional surface mining operations and any operations proposed for those areas will be critically evaluated by the commission.

The provisions of this §11.165 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.166. Notice of Existing Unsuitable Designation. Within 10 days following receipt of an application for a surface mining permit covering an area on which a designation of unsuitability for surface mining has been made by the commission, the commission shall provide to the applicant a copy of such determination. Applicant may thereafter amend the application to eliminate any land covered by the designation.

The provisions of this §11.166 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.167. Notice of Petition Determination. Following a determination by the commission that lands are unsuitable for surface mining operations, such determination along with a general description of the location of the land(s) shall be published in the Texas

Register. The publication shall also state that a more precise delineation of the land's location may be found in the central office of the commission.

The provisions of this §11.167 adopted to be effective March 24, 1976, 1 TexReg 502.

DIVISION 8. MINE CLOSING AND RELEASE

§11.181. Surface Mine Closing. Any incremental part of a mining operation for which a separate bond has been submitted will be considered as closed for the purposes of this division at such time as the operator demonstrates to the commission that:

(1) all the requirements of Division 6 of this subchapter (relating to Uranium Surface Mining Reclamation) have been met; and

(2) vegetative cover, where required, has sustained itself for a period of four years.

The provisions of this §11.181 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective October 31, 1980, 5 TexReg 4175; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.182. Surface Mine Release. Upon the fulfillment of the requirements set forth in §11.181 of this title (relating to Surface Mine Closing), the operator will be released from further responsibility for activities and reports required by these sections. The operator will be notified in writing by the commission upon such release, which notification shall be a prerequisite to final release of bond under §§11.201-11.206 of this title (relating to Amount of Bond; Personal Bond; Duration of Liability; Form of Bond or Collateral; Changes in Coverage; and Release or Reduction of Bonds).

The provisions of this §11.182 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective November 1, 2010, 35 TexReg 9724.

DIVISION 9. REPORTS AND REPORTING

§11.191. Annual Report. Unless this requirement is modified or waived by the commission, within 90 days after the conclusion of each calendar year, each operator conducting surface mining operations under one or more approved surface mining permits shall file an operations and progress report with the commission on a form prescribed and furnished by the commission.

The provisions of this §11.191 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.192. Contents of Annual Report. The report shall include the following elements.

(1) Identification of the operator of the mine or mines covered by the report and the permit number(s) under which the surface mining activities were carried out.

(2) A summary of the amount of acreage disturbed, the amount of coal and/or uranium

underlying such acreage and the amount of coal and/or uranium actually recovered from such acreage under each mining permit during the last 12-month period.

(3) A description of the amount and type of reclamation carried out in the last 12-month period for each mine covered by a permit.

(4) An estimate of the acreage and location of the land which will be affected in the ensuing 12-month period.

(5) A map or maps, which shall be no smaller than a topographical map on a scale of one inch equal to 500 feet showing the location of acreage disturbed by mining during the past year, the location of reclamation carried out during the past year, and the location of acreage which will be affected by mining operations in the ensuing year.

The provisions of this §11.192 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.193. Maintenance of Records. The permit holder shall maintain records which shall be available in the commission at all reasonable times showing, on a monthly basis:

- (1) the number and location of mined acres;
- (2) the number and location of acres under reclamation;
- (3) the number and location of acres upon which reclamation has been completed; and
- (4) the results or readings, taken on a monthly basis, from any monitoring equipment installed pursuant to orders of the commission or any other state agency.

The provisions of this §11.193 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.194. Release from Reporting Requirement. Surface mining operations conducted at any individual mine shall be reported in the annual report until such time as the mine is closed pursuant to the provisions of §§11.181-11.182 of this title (relating to Surface Mine Closing, and Surface Mine Release).

The provisions of this §11.194 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective November 1, 2010, 35 TexReg 9724.

DIVISION 10. PERFORMANCE BONDS

§11.201. Amount of Bond. The amount of the bond required for each bonded area shall depend on the reclamation requirements of the approved permit and shall be determined by the commission on the basis of two estimates, one of which may be submitted by the permit applicant and the other prepared by the commission provided that only the commission's estimate need be submitted if applicant waives his right to submit an estimate. The amount of the bond shall be determined by the commission and shall be sufficient to

assure the completion of the reclamation plan if the work had to be performed by a third party in the event of forfeiture.

The provisions of this §11.201 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective September 30, 1991, 16 TexReg 5136.

§11.202. Personal Bond.

(a) The commission may accept the bond of the operator itself, without separate surety, when the operator demonstrates to the satisfaction of the commission the existence of a suitable agent to receive service of process and history of financial solvency and continuous operation sufficient to self-insure or bond such amount.

(b) The commission will be satisfied of the applicant's financial solvency and may accept the applicant's bond without separate surety if at the time of the consideration of the application and during each of the five years prior to the application, the applicant has owned net assets in excess of liabilities, as those terms are defined by generally accepted accounting principles, located in Texas and subject to process, in an amount at least twice the amount of the bond furnished, or in the opinion of the commission, commensurate criteria.

The provisions of this §11.202 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.203. Duration of Liability. Liability under the bond shall be for the duration of surface mining and reclamation operations and for a period coincident with the operator's responsibility pursuant to §§11.181-11.182 of this title (relating to Surface Mine Closing, and Surface Mine Release).

The provisions of this §11.203 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective November 1, 2010, 35 TexReg 9724.

§11.204. Form of Bond or Collateral. The bond shall be executed by the operator and a corporate surety licensed to do business in the State of Texas, except that the operator may elect to deposit cash or negotiable securities acceptable to the commission, or an assignment of a savings account in a Texas bank on an assignment form prescribed by the commission. The cash deposit or market value of such substitute collateral shall be equal to or greater than the amount of the bond required for the bonded area. Cash or other substitute collateral shall be deposited on the same terms as the terms on which surety bonds may be deposited.

The provisions of this §11.204 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.205. Changes in Coverage. The amount of the bond or deposit required and the terms of acceptance of the applicant's bond or substitute collateral may be increased or decreased from time to time to reflect changes in the cost of future reclamation of land mined or to be mined. The amount of the bond or substitute collateral may be reduced only in accordance with the provisions of the following §11.206 of this title (relating to Release or Reduction of Bonds) and such bond or deposit shall be increased or decreased when actual acreage affected by mining is ascertained.

The provisions of this §11.205 adopted to be effective March 24, 1976, 1 TexReg 502.

§11.206. Release or Reduction of Bonds.

(a) At any time an operator may file an application with the commission for the release of all or part of the performance bond or deposit. Such application shall be on a form prescribed by the commission and shall contain the following:

(1) the type and approximate date of reclamation work performed;

(2) a description of the results achieved as they relate to the operator's reclamation plan;

(3) a copy of the notice published in accordance with §11.31 of this title (relating to Public Notice) containing:

(A) the name of the operator;

(B) the permit number and the date approved;

(C) identification of the location and boundaries of the land affected;

(D) the amount of the bond filed and the portion sought to be released; and

(E) where the bond release application has been placed for public inspection.

(b) Within 45 days following receipt of the notification and request, the commission shall conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution and the estimated cost of abating such pollution.

(c) The commission may release in whole or in part said bond or deposit if it is satisfied that reclamation covered by the bond or deposit or a portion thereof has been accomplished as required by the approved reclamation plan according to the following schedule.

(1) When the operator completes any required backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of up to 75% of the bond or substitute collateral for the applicable permit area; provided, however, that the amount of the unreleased portion of

the bond or substitute collateral shall not be less than the amount necessary to assure completion of the reclamation work by a third party in the event of forfeiture.

(2) When the operator has successfully completed the remaining reclamation activities, but not before the expiration of the period specified for operator responsibility in §§11.181-11.182 of this title (relating to Surface Mine Closing and Surface Mine Release), the release of the remaining portion of the bond or substitute collateral; provided, however, that no bond shall be fully released until all reclamation requirements of the approved reclamation plan are fully met.

(d) If the commission disapproves the application for release of the bond or portion thereof, it shall notify the operator, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release.

(e) Where the commission determines that the application is of significance sufficient to warrant a public hearing, the commission shall hold a public hearing as provided for in §11.34 of this title (relating to Public Hearing).

The provisions of this §11.206 adopted to be effective March 24, 1976, 1 TexReg 502; amended to be effective November 1, 2010, 35 TexReg 9724.