

**RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL
HEARINGS DIVISION**

**SMRD DOCKET NO. C12-0019-SC-33-B
APPLICATION OF THE SABINE MINING COMPANY FOR REVISION NO. 1
SURFACE MINING PERMIT NO. 33H, SOUTH HALLSVILLE NO. 1 MINE
HARRISON COUNTY, TEXAS**

ORDER OF APPROVAL OF APPLICATION FOR REVISION

STATEMENT OF THE CASE

The Sabine Mining Company (SMC), 6501 Farm Road 968 West, Hallsville, Texas 75650, applied to the Railroad Commission of Texas (Commission) for approval of a revision to its surface coal mining and reclamation Permit No. 33H. The permit area contains approximately 44,401 acres, and is located in Harrison County.

The application was filed pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2014) and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADM. CODE CH. 12 (West 2014).

The revision application proposes to revise the approved reclamation plan to design and construct a sludge lagoon and to revise the postmine land uses on certain tracts within the South Hallsville No. 1 Mine to include postmine industrial land use for a carbon wastewater clarification lagoon, termed a sludge lagoon in the application, for Cabot Norit Americas' activated carbon manufacturing plant. After notice of application was published and mailed to the appropriate persons and agencies, no hearing was requested. The parties to the proceeding are the Surface Mining and Reclamation Division (Staff) and the applicant. No issues are

outstanding between the parties.

As set out in the Findings of Fact, and after review and supplementation of the application to address deficiencies noted by the Staff, the application is complete and all technical deficiencies have been addressed. Based upon the application and subsequent supplemental documents, Staff's Technical Analysis document, and other information filed by the parties, the Commission hereby approves the application for revision.

FINDINGS OF FACT

Based upon the evidence in the record, the Commission makes the following Findings of Fact:

1. By letter received by the Commission on January 17, 2012, The Sabine Mining Company (Sabine), 6501 Farm Road 968 West, Hallsville, Texas 75650, submitted its application for Revision No. 1 for the South Hallsville No. 1 Mine, Permit No. 33H, located in Harrison County, Texas to the Railroad Commission of Texas (Commission). The mine is located approximately five miles south of Hallsville, Texas. Sabine's Permit No. 33H was approved on December 13, 2011. Sabine proposes to revise approved reclamation plans in order to design and construct a carbon wastewater clarification lagoon, termed a sludge lagoon in the application, for Cabot Norit Americas, Inc.'s ("Norit") activated carbon manufacturing facility. The area is intended as a permanent structure and disposal area. All proposed activities are designed to be located on property owned by Norit. The application for revision requests to revise the postmine land use for certain acreage to postmine industrial/commercial (I/C) land use for the sludge lagoon. The Surface Mining and Reclamation Division (Staff)

determined the application to be a significant revision by letter dated January 20, 2012, and Sabine filed an application form and draft public notice on January 31, 2012. The application was determined administratively complete on February 8, 2012. Sabine also submitted the required application fee in the amount of \$500.00.

2. The application was made up of one volume and two one-volume supplements. Sabine filed its Supplement 1 to the application by letter dated January 7, 2013 in response to Staff-noted deficiencies sent to Sabine on June 8, 2012. Staff noted seven remaining deficiencies on January 25, 2013. Sabine sent Supplement 2 to the Commission by letter dated February 19, 2013. Staff's Technical Analysis (TA) was filed March 29, 2013 with the Hearings Division. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2014) (Act) and the "Coal Mining Regulations," 16 TEX. ADMIN. CODE CH. 12 (West 2014).
3. Regulation §12.207(a) requires that publication of notice be made in a newspaper of general circulation in the locality of the surface mining and reclamation operations once each week for four consecutive weeks and allows comments and requests for hearing in response to such notice. Sabine completed this publication of notice as required. Sabine arranged for publication of notice of application once each week for four consecutive weeks in a newspaper of general circulation in the locality of the surface mining and reclamation operations in the *Marshall News Messenger*, in Harrison County on April 18 and 25, 2014 and on May 2 and May 9, 2014. The time to request a hearing on the application for revision expired June 23, 2014. No request for hearing was filed. The notice of application contains all information required by §134.058 of the Act and §12.207 of the

Regulations. Sabine provided an original affidavit of publication with clippings. The notices contained all required information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection, and the address to which comments should be addressed. The public notices included all required information specified for public notice. The supplements were filed prior to the first date of publication. Sabine filed copies of the application for public review in the offices of the Harrison County Clerk in Marshall, Texas, and with the Commission's offices in Austin and Tyler, Texas, as required by §12.123 of the Regulations.

4. Regulation §12.207(b) provides that the Commission send written notification of the application and Subsection (c) of this rule provides that the Commission shall send written notification of the application to certain required State, Federal and local entities. On April 17, 2014, the Commission mailed notice of application to the appropriate divisions of the Texas Commission on Environmental Quality (TCEQ), Texas Historical Commission, Bureau of Economic Geology, Texas State Soil and Water Conservation Board, Texas Parks and Wildlife Department, General Land Office, Natural Resources Conservation Service, U.S. Fish and Wildlife Ecological Service, U.S. Army Corps of Engineers, and the federal Office of Surface Mining Reclamation and Enforcement (OSM). The Commission mailed notice to the Harrison County Judge on the same date.

5. Since the beginning of the Commission's surface mining jurisdiction, the Commission's practice, although not required by the Act or Regulations, has been for the Hearings Division to also mail notice of application for significant applications to all persons identified by the applicant as owners of interests within the entire permit area and adjacent to the permit area. The Commission considered on

its merits a request filed by Sabine that notice be mailed to a limited number of landowners based on the localized impact the application should have.

6. By interim order dated March 25, 2014, the Commission by interim order determined that the notice requested by Sabine was appropriate for this application for which publication of notice was also accomplished as required by §134.081 of the Act and §12.207 of the Regulations.
7. On April 17, 2014, the Commission mailed notice of application to those persons owning interests in tracts within or adjacent to the proposed postmine land use boundaries and to persons with interests in tracts located within 1,000 feet of the proposed land use boundaries.
8. The application has met the requirements set out in §12.107 for format and content. Form SMRD-1C was filed, and it contains all applicable information required by §§12.116-12.154 [§12.107(a)]. In the application, as supplemented, the information is current, presented clearly and concisely, and is supported by appropriate references [§12.107(b)]. Technical data has been submitted as required [§12.107(c) and (e)], and the data were prepared by or under the direction of professionals in the subjects analyzed [§12.107(d)]. A responsible official of the applicant verified the application, as supplemented, under oath that the information is true and correct to the best of the official's information and belief [§12.107(g)]. The application was filed at least 180 days prior to the projected commencement of operations as set out in §12.106(b)(3) of the Regulations.
9. Sabine proposes revisions to the permit relating to Regulation §§12.117 (right-of-entry), 12.121

(identification of other licenses and permits), 12.127(b)(2) (details of drill hole logging) and 12.127(3)(chemical analyses for AFM-TFM), 12.134 (use of overburden materials), 12.145(b)(3) (reclamation of soils), and (4) (soil suitability), 12.147 (postmining land uses), 12.148 (ponds, impoundments, and embankments). 12.145 (reclamation plan: general requirements), 12.146 (hydrologic balance for reclamation), 12.147 (postmine land uses), and §12.148 of the Regulations. No changes are proposed to the other sections of the approved permit, which will continue in effect as they may have been revised by order or administratively.

10. Ownership information, tract numbers, names, and addresses for the owner of five tracts have been updated in Table 117-2. In the application, Sabine described and identified documents to demonstrate a legal right to enter and begin surface mining and reclamation operations on these tracts subject to the application in accordance with §12.117. SMC provided a revised Table 117-2, which contains updated information regarding five tracts, 137-010, 1446-001, 1446-003, 1446-004, and 1446-005 that are owned by Cabot Norit Americas, Inc. The proposed postmine land use of industrial will be located on these five tracts. The tracts have been mined and are currently in the process of reclamation. Appendix 117-5.1 contains a letter from Norit indicating its preference for industrial land use for the five tracts. The information contained in the application meets the requirements of §12.117.
11. Section 121 of the application includes a copy of Norit's Texas Commission on Environmental Quality (TCEQ) permit to discharge wastes, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000703000 re-issued August 5, 2011. The application includes sufficient

information for compliance with descriptions of permits and registrations required by §12.121.

12. Norit will hold the water quality permit and will construct the sludge lagoon in accordance with the TPDES permit. Under normal operation, the lagoon will not discharge. The sludge is classified as a Class II non-hazardous waste. Staff indicates that due to the topography, the lagoon will have only a small contributing watershed and will have no discharge to nearby watercourses under normal operation. The sludge lagoon area is intended as a permanent structure and disposal area. An existing sludge lagoon is also located in the general vicinity. All proposed activities are designed to be located on property owned by Norit. Norit submitted Attachment A showing the location of the outfall through which any discharges would flow by pipeline. Should discharges occur, they must meet the requirements of the TCEQ water quality permit. The sludge lagoon's design and operation will be regulated by the TCEQ. Similar to oil/gas drilling pads, separate non-mining regulations apply to the operation of the lagoon. The land on which the lagoon will be located is owned by Norit, and Norit will operate the lagoon. The land on which the sludge lagoon lies will be deed-recorded for the type of use of the property.

13. Sabine supplemented Section 12.127 of the permit with (1) Exhibit 3M, Overburden Core Locations, showing the locations of the cores used to characterize overburden, approved TSRAs and proposed SSHA No. 1; and (2) lithologic and geophysical logs for overburden Cores E, J, 2007, 2010, and 2019. According to Staff analysis, the data is complementary to that provided previously in the approved permit.

14. Sabine also proposes to use unoxidized overburden to reclaim to top four feet of soils beneath the polyethylene liner of the proposed lagoon footprint as Special Spoil Handling Area No. 1. Sabine provided a revised Exhibit 5, *Premining Soils* in Supplement 1 to the application for revision. The exhibit delineates Natural Resources Conservation Service soil-map units based on the soil survey for Harrison County, approved topsoil-replacement areas, approved subsoil-replacement areas, the proposed Special Spoil Handling Area No. 1 (SSHA No. 1), and the approved Permit No. 33H disturbance boundary. Sabine also provided in Supplement No. 1 a revised Exhibit 5A, revised from the application for revision, that depicts the postmine soil-sampling grid system, approved topsoil-replacement areas, approved subsoil-replacement areas, proposed SSHA No. 1, the native soil baseline area No. 1 for the South Hallsville area (SBA No. 1), and SBA No. 2 for the South Marshall area, and the approved disturbance boundary for the permit. These were filed and are acceptable as maps to depict proposed SSHA No. 1 that was previously approved for topsoil substitution as a part of approved topsoil substitute replacement areas (TSRA) Nos. 4 and 12 [§12.134(a)]. Sabine now requests that the portion of these replacement areas on which the footprint of the lagoon lies be approved as a special spoil handling area with the topsoil and subsoil to a depth of four feet reclaimed with unoxidized overburden handled by the dragline.
15. Prime farmland soils existed on certain tracts located within the proposed SSHA No. 1 prior to mining (Exhibits 5, 5B and 5C, Supplement 1). A negative prime farmland determination was made on these tracts when TSRAs Nos. 4 and 12 were approved. The requirements of §12.138 have been met.
16. Sabine included in the application, as supplemented, revised information that is sufficient to meet the

requirements of §12.145(b)(3) for information for reclamation of soils following mining and for §12.145(b)(4), suitability of reclaimed soils. Sabine's reclamation plan includes replacement of topsoil in certain areas and topsoil substitution in other areas. The permit identifies many numbered areas where the topsoil and subsoil to a minimum depth of four feet has been replaced with selected suitable oxidized overburden. In this application, Sabine proposes that unoxidized overburden materials be used to replace the topsoil and subsoil to a depth of four feet in a 29.2-acre area corresponding to the footprint of the lined sludge lagoon. In Supplement 1 as revised in Supplement 2 Sabine provided Appendix 145-SSHA 1, replacing initially submitted Appendix 145-TSRA-21, containing information sufficient to demonstrate that the unoxidized overburden uncovered by the dragline proposed for use to reclaim the top four feet beneath the lined sludge lagoon (unoxidized overburden between the Tan and Brown lignite seams) is suitable for such use. This appendix includes a narrative, tables, and figures that support the use of the unoxidized overburden for this area.

- (a). Table SSHA 1-1 is included that details the acreage and proportionate extent of native soils in SSHA No. 1. The quality of the native topsoil and subsoil is described in Table SSHA 1-2. Table SSHA 1-3 provides data for selected parameters for the unoxidized overburden, and Table SSHA 1-4 provides data for selected parameters for zones likely to have been included in dragline-handled unoxidized overburden. Table SSHA-1-5 provides weighted means for the selected parameters for the dragline-handled unoxidized overburden, and Table SSHA 1-6 includes the unoxidized overburden quality. A comparison is made between the native topsoil and subsoil and the unoxidized overburden in Table SSHA 1-7, with Attachment 1, (Native Soil Weighted Mean Thickness [four tables: pH, acid-base accounting (ABA), sand, and

clay]. The spoil handling plan is depicted on Figure 2, *SSHA No. 1 Spoil Handling Plan*, showing that the highwall (Final Highwall Reclaim), on the east side of the lagoon footprint is reclaimed with oxidized overburden, and the west side of the lagoon footprint is reclaimed with dragline cast oxidized overburden (Dragline Cast Overburden), along with the doublewide pit end to the south of the lagoon footprint (Doublewide Pit End) reclaimed also with the material closest to the top of the Tan Seam (Figure 1, Supplement 1) and deeper interburden material. The top four feet of these three areas, the Final Highwall Reclaim, the Dragline Cast Overburden, and the Doublewide Pit End (approved TSRA Nos. 4 and 12) are covered with a minimum of four feet of non-toxic and non-acid-forming oxidized overburden materials, limed as specified by soil tests. The oxidized overburden does not include interburden layers below the Brown lignite seam and partings (Figure 1, Supplement 1) that are unsuitable. The footprint of the lagoon is not reclaimed with oxidized overburden; rather, beneath the footprint is a mixture of reduced (unoxidized) overburden materials handled by the dragline that Sabine indicates is non-acid-forming and non-toxic-forming.

- (b). Regulation §12.335(e)(1) addresses the quality of overburden materials that can be used as a substitute or supplement to topsoil and specifies that the resulting soil medium must be equal to or more suitable for sustaining vegetation than is the available topsoil and that the substitute material is the best available to support revegetation. In that the top four feet of the surface in the footprint of the lagoon will not be used for revegetation in the proposed industrial/commercial land use, requirements for the quality of soils and for revegetation of the area beneath the footprint of the lagoon and nutrients and soil amendments are

inapplicable. The area beneath the lagoon will be protected from any potential effect on surface or groundwater by the polyethylene liner. The lagoon will operate pursuant to regulation by the TCEQ. As the area will not be used as a growth medium, the evaluation of the subsoil medium as sufficient for root development is also inapplicable. Sabine did remove the topsoil as required and store or redistribute it with mixed oxidized overburden for use in TSRAs (§§12.336 and 12.337). Even though the issue of suitability for revegetation is not pertinent as to the use of the area beneath the footprint of the lagoon, Sabine did include a comparison between the native topsoil and subsoil and the dragline-handled unoxidized overburden to be placed in the approximately 29.2 acre footprint of the lagoon (the SSHA No. 1), in Table SSHA 1-7, with Attachment 1, (Native Soil Weighted Mean Thickness [four tables: pH, acid-base accounting (ABA), sand, and clay], providing some evidence that the dragline-handled unoxidized overburden is similar in chemical quality to the native topsoil and subsoil, will have better physical properties based on the sand and clay values resulting in a more balanced particle size providing increased moisture and nutrient storage and availability, and is the best available material to reclaim the top four feet of the industrial land use area beneath the footprint of the lagoon in that oxidized topsoil and subsoil materials that have been stockpiled will be more useful for areas intended for revegetation.

- (i). Comparisons made by Sabine between the areally weighted means for native topsoil and the unoxidized overburden for pH, ABA, clay, and sand are (Table SSHA 1-7, Supplement 1) set out in the table below:

Parameter	Native Topsoil	Unoxidized Overburden (dragline-handled)
pH	5.7	7.4
ABA*	2	21
clay	10%	25%
sand	63%	16%

*Tons of calcium carbonate per 1,000 tons; weighted mean rounded to whole number

For pH, the unoxidized overburden handled by the dragline has a more favorable value than the native topsoil. The ABA value for the unoxidized overburden is more favorable than the native topsoil. The areally weighted mean clay content of the unoxidized overburden is somewhat higher than the native topsoil, 25% versus 10%, respectively; however, both values for the unoxidized overburden and the topsoil meet the Commission guideline that they be $\leq 40\%$. The areally weighted mean sand content for the native topsoil is much higher than the oxidized overburden, 63% versus 25%, respectively; however, both meet the Commission guideline that they be $\leq 80\%$.

- (ii). Comparisons included by Sabine between the areally weighted means for native subsoil and unoxidized overburden for pH, ABA, clay, and sand (Table SSHA 1-7, Supplement 1) are set out in the table below:

Parameter	Native Subsoil	Unoxidized Overburden (dragline-handled)
pH	4.7	7.4
ABA*	-1	21
clay	33%	25%
sand	43%	16%

*Tons of calcium carbonate per 1,000 tons; weighted mean rounded to whole number

For pH, the unoxidized overburden handled by the dragline has a more favorable value than the native subsoil. The ABA value for the unoxidized overburden is more favorable than the native subsoil. The areally weighted mean for clay content of the unoxidized overburden is somewhat less than the native subsoil, 25% versus 33%, respectively. Both values for the unoxidized overburden and the topsoil meet the Commission guideline of $\leq 40\%$. The sand content for the native subsoil is higher than the oxidized overburden, 43% versus 16%, respectively; however, both meet the Commission guideline that they be $\leq 80\%$.

- (iii). Frequency distributions for pH and ABA over the 29.2-acre area for native topsoil, native subsoil, and unoxidized overburden handled by the dragline (Table SSHA 1-7, Supplement 1) reflect that the unoxidized overburden has a more suitable pH and ABA than the native topsoil and subsoil across the 29.2 acre area.

- (iv). The unoxidized overburden may be considered as the best available material to reclaim the topsoil and subsoil depths beneath the lagoon footprint in that using other material such as stockpiled topsoil substitute material would reduce both the availability of the topsoil and substitute material that would not really be needed beneath the footprint of the lagoon in industrial land use and because it could reduce the potential size of the lagoon.

- (v). Staff did not specifically express agreement or disagreement with the comparison set out by Sabine in the application, as supplemented, but based its recommendation for approval of the application, as supplemented, on the inapplicability of the quality of the soil beneath the lagoon footprint. All other areas within the proposed industrial land use (approximately 155.7 acres) have been covered with a minimum of four feet of oxidized overburden that is non-acid-forming and non-toxic-forming.
17. Sabine includes a revised proposed postmine land use plan for the permit area to include the proposed lagoon and adjacent lands as industrial land use. The postmine land use plan map for the proposed disturbed acreage has been certified by a Texas registered professional engineer and will result in the following changes to the percentages of land use, as rounded: approved forestry, 58.64% to proposed forestry, 58.24%; approved grazingland 26.39% to 26.02%, and approved industrial/commercial land use, 2.39% to 3.16 %. No other land use percentages are proposed to change for pastureland, 8.72%, developed water resources, 2.67%, or fish and wildlife habitat, 1.18% (Application, Section 147, Postmine Land Use Map, Exhibit 15, and Table 147-6, *Postmine Land-Use by Area Mined (1984-2013)*, and TA, Section 12.147. The use proposed is an alternative land uses from the premine use of the affected tracts. The adjacent land uses are grazingland and forestry. Norit owns the tracts on which the lagoon lies and the adjacent lands within the industrial land use (Tracts 1037-010, 1446-001, 1446-003, 1446-004, and 1446-005), and Norit will operate the lagoon pursuant to a permit issued by the TCEQ. The lagoon will be lined with a polyethylene liner. The land on which the sludge lagoon lies will be deed-recorded for the type of use of the property. Under normal operation no discharges will occur. Discharges are subject to an existing water quality permit. No occupied

dwellings are located within the proposed land use change area. No public roads are located within the proposed land use change area. Three occupied dwellings (just to the northeast of the land use change area) and the county road and state highway are located within 1,000 feet of the lagoon elevation at full pool. Cave Springs Road and State Highway 43 are located just outside the proposed land use change area at the southern and southeastern edges. The owners of the land on which the dwellings are located and Harrison County and the Texas Department of Transportation were mailed notice, and no comments or objections were filed. Sabine provided a copy of an agreement between Sabine and Norit supporting the land use (Appendix 117-7, Supplement 1). The use is compatible with surrounding land uses that include an existing sludge lagoon. The postmine land use plan is feasible, reflects an achievable higher land use and is compatible with adjacent land uses in the general area. The proposed use reflects the landowner's preference. There are no state or local land use plans or programs or agency approval or authorizations required for the proposed postmine land uses, other than the Commission's approval. Norit has a required wastewater discharge permit from the TCEQ, Permit No. 703000. The proposed plan will present no actual or probable hazard to public health or safety, water-flow diminution or pollution, or unreasonable delays. The information provided meets the requirements of §12.147 and §12.399 of the Regulations.

18. Exhibits 12 and 12A are revised to include new postmine topography and slope categories associated with the construction of the sludge lagoon.
19. Sabine does not propose changes to the permit boundaries. No changes are proposed to approximate original contour. No changes are proposed that would affect the Cumulative Hydrologic Impact

Assessment.

20. Required public liability insurance has been demonstrated as approved by the Commission by letter dated April 17, 2014 and its enclosure officially noticed. Sabine submitted proof of insurance through submittal of certificates of insurance for the permit effective from February 1, 2014 through February 1, 2015 by Greenwich Insurance Company (general liability policy) and Illinois Union Insurance Company (premises pollution liability policy) in the amounts required by §12.311 of the Regulations.
21. No other changes to the approved permit document are proposed. Findings made by the Commission, unless otherwise previously revised, remain effective. No changes are proposed to the approved permit provisions that are set out in Attachment I to this Order.
22. The currently accepted bonds for Permit No. 33H total \$75,000,000 and are made up of a self-bond by Sabine with a third-party guarantee by third-party guarantor, Southwestern Electric Power Company (SWEPCO), and an additional self-bond by Sabine with a third-party guarantee by SWEPCO. Costs for reclamation of the area proposed for revision were included in the most recent reclamation cost estimate approved by the Commission, \$62,673,713, approved July 13, 2012, and no changes are proposed that would increase the estimate. The current bonds remain sufficient.
23. Information contained in the approved permit and the portions of the application that propose revision to approved operations meet the requirements of §134.066 of the Act and §12.216 of the Regulations.

- (a). The application, as supplemented, along with retention of the approved permit provisions contained in this Order (Appendix I, adopted December 13, 2011) are accurate and complete and all requirements of the Act and Regulations have been met for approval of the application.

- (b). The operations, as required by the Act and Regulations, along with the retention of the approved and the adoption of the proposed revised and new permit provisions contained in this Order can be feasibly accomplished under the operations and reclamation plans with the permit provisions contained in Appendix I to this Order, adopted by Commission Order dated December 13, 2011.

- (c). The Commission Staff made an assessment of the cumulative hydrologic impacts of the area of the permit as included in the CHIA completed for the Martin Lake Liberty Mine, Permit No. 58. This CHIA included an examination of all anticipate impacts to surface water and groundwater systems that could result from existing and proposed operations within several mines located within the Sabine River Basin, including the South Hallsville No. 1 Mine. The operations proposed are designed to prevent damage to the hydrologic balance outside the mine plan area. Long-term effects on surface waters and groundwater are predicted to be insignificant or not material.

- (d). The permit area is not within an area designated as unsuitable for surface coal mining operations or within an area under study for designation as unsuitable. The permit area is not

on any lands subject to the prohibitions and limitations of §12.71, except as otherwise approved. No surface coal mining operations will be conducted within the boundaries of any National Forest; within 300 feet, measured horizontally, of any prohibited occupied dwelling, public building, school, church, community or institutional building, or public park; within 100 feet, measured horizontally, of a cemetery; within 100 feet of the outside right-of-way line of a public road except where access haulage roads join such right-of-way, or as otherwise approved by the Commission.

- (e). Proposed operations will not adversely affect any places included in or eligible for listing in the National Register of Historic Places.
- (f). Documentation required for claimed right-of-entry for proposed operations has been provided as required.
- (g). Information from Staff, via the Applicant/Violator System (AVS) (operated by the Office of Surface Mining Reclamation and Enforcement) shows that there are no pending violations that remain uncorrected or that are being corrected to the satisfaction of the agency that issued the violation. Additionally, the AVS report shows no past due fees for reclamation. Surface Mining and Reclamation Division Staff has conducted a review of the permit history of violations contained in the application, as supplemented, AVS report available to Staff, and its files. Relying on the information supplied by the applicant pursuant to §12.116(e), the AVS report, and other available compliance information and its reviews of the applicant's and

any operator's organizational structure and ownership or control relationships, Staff has determined that the applicant is eligible for approval of the requested revised permit under §§12.215(h – j) and §§134.068 and 134.069 of the Act.

- (h). Sabine has provided proof that all required application and reclamation fees have been paid. Prior to issuance of a new or revised permit, a permittee must provide evidence of current payment of franchise taxes. The Sabine Mining Company is a foreign corporation (Nevada) and is required to file such taxes in accordance with 34 TEX. ADMIN. CODE §3.584(c)(1) and TAX CODE §§171.001 and 171.251 (Vernon Supp. 2014). Official notice has been taken of the current certificate of account status from the Comptroller of Public Accounts exhibits payment of franchise taxes by indicating an active status for the company.
- (i). The applicant does not control and has not controlled mining operations with a demonstrated pattern of willful violations of the Act of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act.
- (j). Mining and reclamation operations will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the permit area.
- (k). No changes are proposed to the status of lands containing prime farmland soils pursuant to §12.201. The permit area is located east of the 100th Meridian West Longitude and contains

no alluvial valley floors; therefore, the requirements of §12.202 are not applicable.

- (l). The postmining land uses are in accordance with the requirements of §12.399.
- (m). All specific approvals required under Subchapter K of the Regulations have been made.
- (n). The proposed changes will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. §1531, *et seq.*).
- (o). Because SMC does not propose postmine cropland use, the requirements for §12.390(d) are not applicable.

CONCLUSIONS OF LAW

Based on the above Findings of Fact the following Conclusions of Law are made:

1. The application for revision of Permit No. 33H, as supplemented, meets all applicable requirements for approval as set out in the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2014) (Act), the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE (CH. 12) (West Group 2014) (Regulations), the Administrative Procedure Act, TEX. GOV'T CODE, CH. 2001 (Vernon Supp. 2014) (APA), and "Practice and Procedure," Tex. R.R.

Comm'n, 16 TEX. ADMIN. CODE §1.1 *et seq.* (West Group 2014).

2. Proper public notice of application and notice of application to Texas and federal agencies was made as required for the revision application by the Act and Regulations. Mailed notice as ordered by the Commission has been made. No request for hearing was filed. No public hearing is required pursuant to the Act, Regulations, APA, or "Practice and Procedure."
3. The Commission may determine that because the proposed land use, ownership of the property, regulation by TCEQ, deed recordation of the use of the property, and inapplicability of revegetation beneath the footprint of the lagoon, the requirements of §12.145(b)(4) and 12.335(e)(1) have been met. The Commission may approve the application for revision, as supplemented.
4. No additional bond is required.

THEREFORE IT IS ORDERED that the Findings of Fact and Conclusions of Law found herein are hereby adopted;

IT IS FURTHER ORDERED that the application for revision, as supplemented, meets all applicable requirements for approval;

IT IS FURTHER ORDERED that the revision application, as supplemented, is hereby approved; and

The Sabine Mining Company
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IT IS FURTHER ORDERED that no additional bond is required.

SIGNED AT AUSTIN, TEXAS, this 12th day of August, 2014.

RAILROAD COMMISSION OF TEXAS

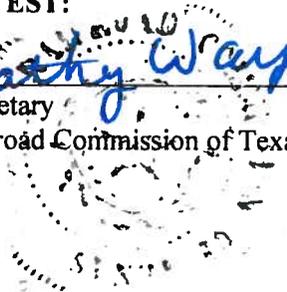

CHAIRMAN BARRY SMITHERMAN


COMMISSIONER DAVID PORTER


COMMISSIONER CHRISTI CRADDICK

ATTEST:


Secretary
Railroad Commission of Texas



APPENDIX I PERMIT PROVISIONS

1. No disturbance is authorized on the following non right-of-entry tracts until SMC demonstrates to the Commission its right to enter and provides documentation of its consultation with affected landowners concerning its proposed postmine land-use plans, and upon review by the Surface Mining and Reclamation Division, the Director finds the information satisfactory and authorizes surface mining and reclamation operations to proceed on Tract Nos. 1126-002, 1391-016.2, 1391-018.1, 1391-024.2, and 1447-003.

2. Oil and gas wells shall not be disturbed by surface mining and reclamation activities until documentation of right-of-entry to mineral-estate leasehold interests has been documented, submitted to the Commission and written approval to impact these sites is obtained from the Commission or SMRD Director. Oil and gas pipelines shall not be disturbed by surface mining and reclamation activities until submittal of information sufficient to comply with §§12.382 and 12.402 and documentation of approval or accommodation agreement with the pipeline owner have been filed with the Commission and approval obtained from the SMRD Director. If a change in the mine plan is necessary, Sabine will request appropriate revisions to the mine plan that will be reviewed by the Director in accordance with the requirements of §12.225. Sabine must visibly mark pipelines within 100 feet of the nearest point to mining-related construction activities as measured from the centerline of the pipeline nearest to mining-related construction activities every 25 feet in both directions for a total distance of 100 feet, or if any pipeline is located within 50 feet of the nearest point to mining-related construction activities, Sabine must visibly mark pipelines within 50 feet of the nearest point to mining-related construction activities as measured from the centerline of the pipeline nearest to mining-related construction activities every 10 feet in both directions for a total distance of 100 feet.

3. The operator must avoid disturbance of any cultural resource site within the permit area identified during or subsequent to baseline cultural resource surveys for which eligibility for nomination to the National Register of Historic Places has not been determined. Copies of all correspondence (including attachments) between The Sabine Mining Company and the Texas Historical Commission shall be provided concurrently to the Commission.

4. With the exception of Rosborough Springs Road and Reba Lane, no new public road closures, relocations, or crossings other than at-grade crossings are authorized until adequate documentation of approval of the designated road authority has been submitted to the Commission and written approval from the Commission or SMRD Director has been obtained.

5. Only mobile equipment shall be used for selective handling of oxidized overburden.

6. No operations shall be conducted within 300 feet of an occupied dwelling unless the operator files a written waiver meeting the requirements of §12.72(b) from the owner showing that the owner knowingly waived the right that operations not be conducted within 300 feet of an occupied dwelling or establishes valid existing rights pursuant to §12.72(c).