

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

SMRD DOCKET NO. C14-0004-SC-48-F

**APPLICATION OF LUMINANT MINING COMPANY LLC FOR PHASE I AND PHASE I, II
AND III RELEASE OF RECLAMATION OBLIGATIONS, PERMIT NO. 48C, THREE
OAKS MINE,
BASTROP AND LEE COUNTIES, TEXAS**

**ORDER APPROVING RELEASE
OF PHASE I, II, AND III RECLAMATION OBLIGATIONS**

Statement of the Case

Luminant Mining Company LLC (Luminant) 1601 Bryan Street, Dallas, Texas 75201 initially applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase I (244.9 acres) and Phase I, II and III (17.3 acres) release of reclamation obligations for a total of 262.2 acres within the Three Oaks, B-Area, Mine located in Bastrop and Lee Counties, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon 2014), and “Coal Mining Regulations” Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE Ch. 12 (West 2014). Luminant subsequently submitted a supplement to remove 19.1 acres from the proposed Phase I release. The proposed Phase I release area (244.9) was revised to 225.8 acres, resulting in a total acreage proposed for release of 243.1 acres.

Permit No. 48C currently authorizes surface coal mining operations at Luminant’s Three Oaks Mine within its 15,809-acre permit area. Copies of the application were filed in required County and Commission offices and distributed to applicable agencies for review and comment. No requests for hearing were filed following public notice. The only parties to the proceeding are Luminant and the Commission’s Surface Mining and Reclamation Division (Staff). There remain no outstanding issues between the parties. Based on the information provided by the applicant and the inspection of the area, Staff recommends release of Phase I reclamation obligations for 225.8 acres and Phase I, II and III reclamation obligations for 17.3 acres. The parties have filed waivers of preparation and circulation of a proposal for decision.

The Commission approves the release of reclamation obligations as recommended by Staff. Luminant does not request adjustment to the approved reclamation bond at this time, and no new bond has been submitted. An eligible bond reduction amount of \$1,726,261.13 may be determined.

Findings of Fact

Based on the evidence in the record the following Findings of Fact are made:

1. By letter dated September 30, 2013, Luminant filed its application for Phase I and Phase I, II and III release on an aggregate of 262.2 acres. The proposed release area is located in Bastrop County, Texas, within the permit area of Permit No. 48C, Three Oak Mine. The Three Oaks Mine encompasses 15,809 acres in Bastrop and Lee Counties.
2. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon 2014) (Act), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (West 2014). No filing fee is required. The application was properly certified in accordance with §12.312(a)(3).
3. The Director of the Surface Mining and Reclamation Division declared the application administratively complete on December 18, 2013. Luminant submitted a supplement to remove 19.1 acres from the proposed Phase I release area due to redisturbance, by letter dated March 12, 2015. Staff's Technical Analysis (TA) was filed with the Hearings Division by memorandum dated April 9, 2015. Staff's TA recommended release from Phase I reclamation liability 225.8 acres and the Phase I, II and III reclamation liability for the 17.3 acres initially requested by Luminant.
4. Luminant does not request a reduction in the amount of the approved reclamation bond. The existing reclamation bond in the form of a blanket collateral bond in the amount of \$1,100,000,000 accepted by Order dated June 17, 2014.
5. The revised 225.8-acre area proposed for Phase I and 17.3-acre area proposed for Phase I, II and III release from reclamation liability is detailed in the Staff Evaluation, Attachment I (Map), Attachment III (Staff Inspection Report), and Appendix IV (Inspection Photographs and Inspection Photograph Locations). The maps and photographs provide support of the application and the inspection report.
6. The 243.1 acres recommended for release are bonded at the mined category rate of \$10,273 per acre.
7. The post-mine land use of the 225.8-acre area proposed for Phase I, release area is Pastureland. The post-mine land use of the 17.3-acre area proposed for Phase I, II and III is industrial/commercial.
8. By letters dated November 7, 2013, Luminant sent notice to owners of interests in the areas requested for release and adjacent lands.

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9. Notice of the application was published once a week for four consecutive weeks (November 13, 20, 27 and December 4, 2013) in the *Elgin Courier* and *Lexington Leader* (November 14, 21, 28 and December 5, 2013). The *Elgin Courier* and *Lexington Leader* are newspapers of general circulation in Bastrop and Lee County, which is the locality of the release area of the permitted mine. The notice of application contains all information required by the Act and Regulations for notice of application for bond release applications. Luminant submitted an affidavit of publication with clippings. The published notice is adequate notification of the request for release. The notice included the elements required by §134.129 of the Act and §12.312(a)(2) of the Regulations: the name of the permittee, the precise location of the land affected, the total number of acres, permit number at the time of application and date approved, the amount of bond filed, the type and appropriate dates reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notice contained information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection, and the address where comments should be sent. Luminant submitted proof of publication to the Commission by letter dated December 11, 2013.
10. Copies of the application were filed for public review at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas 78701, and in the office of the Lee County Clerk, 100 South Fannin, Cameron, Texas 75840 and Bastrop County Clerk, 804 Pecan Street, Bastrop, Texas 78602.
11. Luminant sent notification letters to local governmental bodies and other agencies and authorities as required by §12.312(a)(2). Notice was sent to the Lee and Bastrop County Judges and Commissioners Courts, Texas Department of Public Safety, Texas Commission on Environmental Quality (TCEQ), Natural Resources Conservation Service, Bastrop, U.S Army Corps of Engineers, City of Elgin, Alcoa, Inc., Lee County Clerk and Bastrop County Clerk. The areas requested for release are not located within the territorial boundaries of any municipality.
12. Staff mailed letters pursuant to §12.312(b) dated October 3, 2013, to the owners of the surface and leaseholders of the area requested for release and to the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM). The notification stated that a release had been requested and, pursuant to §12.312(b)(1), advised the recipients of the opportunity to participate in the on-site inspection scheduled for October 24, 2013. In addition, the Staff sent notice by certified mail to the Bastrop and Lee County Judges on May 1, 2014, as required by §134.133 of the Act.
13. No adverse comments or written objections were filed regarding the request for release. No requests for hearing or informal conference were filed pursuant to §12.313(d).
14. On October 24, 2013, Staff, accompanied by representatives of Luminant, conducted its inspection of the area requested for release. The field report supports release of the 225.8-acre area proposed for Phase I and the release of 17.3-acre area proposed for Phase I, II and III.

15. The area requested for Phase I release was mined from 2004-2007, and final grading of the area, including construction of diversion ditches, swales, erosion and sediment control features was accomplished between 2006-2008.
16. Based upon the application and Staff review in its Technical Evaluation Report, the acreages requested for release from Phase I reclamation obligations have met Phase I requirements for backfilling, regrading, and drainage control requirements as required by §12.313(a)(1) of the Regulations and may be approved for Phase I release.
17. The area requested for Phase I release have been backfilled and graded to approximate original contour, [§12.385(a)]. All highwalls and spoil piles were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable material was placed over the regraded spoil. No cut-and-fill terraces were constructed. Backfilled material has been placed to minimize erosion, to minimize water pollution both on and off the site, and to support the approved postmining land uses [§12.384(b)(2)]. Drainage patterns similar to premine drainage have been established. All area request for release meet Phase I release have been stabilized to control drainage and attendant potential erosion [§12.389]. Surfacewater from the reclaimed area flows through sedimentation ponds.
 - (a). The area requested for release contained soil-testing grids with data provided by Luminant on January 6, 2009 and March 24, 2010. By letters dated February 27, 2009 and June 2, 2010, Staff determined that the soil-testing data for all grids met the applicable physicochemical postmine soil performance standards for all grids within the proposed release area.
 - (b). There are no temporary and four permanent diversions located in the area proposed for Phase I release of reclamation liability. Diversions MFD 9AR, MFD 9BR, MFD 10AR and MFD 10BR. The four diversions were approved as permanent by staff on February 16, 2012. [§12.341]
 - (c). There are no permanent impoundments located in the area requested for Phase I release. [§12.347(b)]
 - (d). The area proposed for Phase I release contains one permanent Farm to Market Road (FM 696). The road area is comprised of 17.3 acres and has a postmine land use as Industrial/Commercial.
 - (e). Surface water runoff from the proposed Phase I release area will flow through Sediment ponds SP-1 and SP-2. [§12.344]

18. The area proposed for Phase I release does not contain any area approved for disposal of non-coal waste. [§12.375]
19. There is no prime farmland located in the area proposed for Phase I release for which specific soil reconstruction standards would apply. [§12.624].
20. All acreage requested for release from Phase I reclamation obligations (225.8 acres) has been graded to meet the approved postmine land use and has met Phase I requirements for §12.385 (General Grading Requirements), backfilling, regrading, and drainage control as required by §12.312(a)(1) of the Regulations and may be approved for Phase I release.
 - (1) The areas requested for Phase I release are stable with no active erosion evident.
 - (2) Mining operations occurred in the 243.1 acres requested for Phase I, release from 2004 to 2007. Final grading of the proposed area was accomplished from 2006 to 2008 and is in accordance with the approved permit. The area has been regraded to its approximate original contour, all highwalls have been eliminated, suitable topsoil and subsoil material has been placed over regraded soil, and no cut-and-fill terraces have been constructed. [§12.385].
21. The area proposed for Phase II release (17.3 acres) has a postmine land use of Industrial/Commercial and a vegetative productivity evaluation is not required. The ground – cover performance standard for I/C is that it be adequate to control erosion and is composed of mostly Coastal and Common bermudagrasses and asphalt surfacing. The area proposed for Phase II release is not contributing suspended solids to stream flow outside the permitted area in excess of regulatory limits. Thus, the 17.3-acre area requested for Phase II release of reclamation obligation has met Phase II revegetation requirements [§12.395] and the requirement that the area not contribute suspended solids to stream flow outside the permit area in excess of the requirements set by the Act §134.092(a)(10) and 16 TEX. ADMIN. CODE Ch. 12, Subchapter K.
 - (1) No rills or gullies were observed during the inspection of the areas proposed for release. [§12.389]
 - (2) The 17.3 acres proposed for Phase II release have a postmine land use of industrial/commercial. The land has been reclaimed to and managed in accordance with the approved post-mine land uses. [§§12.147 and 12.399]
 - (3) No portions of the area proposed for Phase II release of reclamation liability has soils classified as prime farmland prior to mining. (§§12.620-.625)
 - (4) Drainage from the area proposed for Phase II release flows into the Pond SP-2. No silt dams are present within the area proposed for Phase II release of reclamation liability.

The proposed release area has been stabilized with vegetation and road surfacing to reduce the potential for contributing suspended solids to stream flow. [§12.340]

- (5) There are no permanent impoundments located in the vicinity or with the area proposed for Phase II release of reclamation obligations.
22. The 17.3 acres proposed for Phase III release have a postmine land use of industrial/commercial, for which an extended responsibility period is not required. [§12.395]. Ground cover data Luminant provided to staff by letter dated June 7, 2013, containing ground-cover data collected during the 2013 growing season demonstrated that the vegetated areas of the 17.3-acres to be released is adequate to control erosion. [§12.395(b)(4)].
 23. No portions of the areas proposed for Phase III release of reclamation liability were reclaimed as prime farmland. (§§12.201 and 12.620-12.625)
 24. The ground-water hydrologic balance has been protected as required by §12.348 and the re-established postmine ground-water system is adequate for the proposed industrial/commercial use of the 17.3-acre area requested for release.
 - (1) In addressing the requirements of §12.348, Luminant has submitted ground-water monitoring data for the overburden, spoil and underburden wells adjacent to the area proposed for Phase II release.
 - (2) Ground-water monitoring for the area proposed for Phase III release (17.3 acres) area was not specifically described. The water level could not be measured in the spoil monitoring well adjacent to the area proposed for Phase III release (well SPW-1). The well is approximately 1,400 ft. to the east of the proposed release area is dry, indicating that resaturation has not occurred to date. This is not unusual, in that the Calvert Bluff overburden in the Three Oaks Mine area is more clayey than the mined areas in the Sandow Mine further to the northeast. No boreholes or monitoring wells exist within the proposed Phase II release area. Luminant provided monitoring data for one slightly downgradient overburden long-term groundwater monitoring (LTGM) well, K2254P1, approximately 4,800 ft. south of the proposed Phase III release area. Luminant also provided monitoring data for three underburden wells located either upgradient or lateral to the proposed release area. Long-term ground-water monitoring records have been reviewed by Staff on a quarterly basis. Based on the evaluation of the overburden groundwater monitoring data for the area, staff recommended approval of Phase-II release for the proposed 17.3 acres.
 - (3) No significant increasing or decreasing trend in TDS concentration is discernible in overburden monitoring well K2254P1. The well showed decreasing pH over the period of record and merited further observation but does not preclude the release of the 17.3 acres of I/C land constituting a portion of the rerouted FM 696. From the available data, Staff notes no ground-water quality or quantity problems that would preclude approval of

Phase III release.

25. Luminant has conducted surface mining activities in accordance with §12.313(a)(2) and §12.349 to protect surface-water quality and quantity for the acreage proposed for Phase II and III release.
- (1) The 17.3 -acre parcel proposed for Phase II and III release is located in the B Mine area and drains to an unnamed tributary of Big Sandy Creek, which flows to Big Sandy Creek, then into the Colorado River above La Grange (TCEQ Stream Segment No. 14.34) by East Yegua Creek.
 - (2) During the period of record, runoff from the proposed bond release area was controlled by Pond SP-2 (Outfall 002). Pond discharges at the Three Oaks Mine are currently monitored under the Texas Pollutant Discharge Elimination System (TPDES) Permit No. 4348. Luminant indicated that the pond is located in an active mine area and has been monitored under alternative effluent limits due to precipitation, as described in 40 CFR 434. The long-term monitoring data from the discharge pond SP-2 (November 2004 to August 2013) indicate that wastewater discharges do not exceed TPDES water quality effluent standards and are within the limitations established by TPDES Permit No. 4348 for pH, total and iron (Fe).
 - (3) Data was submitted by Luminant to demonstrate that pH concentration (8.2 average) in Pond SP-2 is within the effluent limitations of TPDES Permit No. 4348 (6.0-9.0 s.u.). Total dissolved concentrations (TDS) have a wide range of values from 90.0 mg/L to 1,859.0 mg/L.
 - (4) Luminant submitted monitoring data for Long-term stream-monitoring (LTSM) stations for a period record from September 30, 2003 through May 22, 2013. Long-term stream-monitoring (LTSM) UBS monitors undisturbed runoff and is located on Big Sandy Creek outside the permit boundary and upstream of the Pond SP-2 outfall. LTSM Station LBS monitors disturbed runoff and is located south of the mine area on Big Sandy Creek.
 - (5) The data submitted by Luminant demonstrated that with the exception of TSS, the pH levels and concentrations for total Fe and Mn at LTSM Station LBS are similar or better the pH levels and total Fe and Mn concentrations at LTSM Station UBS.

- (6) Luminant's application did not provide a watershed map the depicted the locations of the LTSM stations and an evaluation and comparison of the long-term surface water data (quality and quantity) to baseline information, State and federal effluent standards and PHC determination as described in Advisory Notice AD-BO-312. Also, the annual average flow-weighted TDS concentration as reported at LTSM Station LBS (downstream) is higher than the stream segment criteria of 500 mg/L. However, Phase III release from reclamation obligations for the proposed 17.3 acres is recommended by staff because the parcel consists of 0.5% of the total watershed of LTSM LBS (3,146) and is located within the right-of-way of public road FM 696.
26. The 243.1-acre area for which bond release (225.8 acres at Phase I and 17.3 acres at Phase I, II and III) is requested in this application is bonded at a rate of \$10,273.00 per acre, for a total of \$1,569,328.30. Factoring in administrative costs of 10%, the eligible bond reduction amount, based upon the Findings of Fact contained in this Order and Staff calculations, is \$1,726,261.13 (\$1,569,328.30 + \$156,932.83). No reduction of the \$1,100,000,000 bond approved by Order dated June 17, 2014 is requested in this application and no replacement bond instrument has been filed.
27. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas.

Conclusions of Law

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

1. Proper notice was provided for this request for release of reclamation obligations.
2. A public hearing on the request is not warranted.
3. Luminant has complied with all applicable provisions of the Act and the Regulations for release of reclamation obligations for the areas requested for release as set out in the Findings of Fact.
4. The Commission may approve a release of reclamation obligations for Phase I for 225.8-acre area and Phase I, II and III for 17.3-acre area requested, as set out in the Findings of Fact.
5. An eligible bond reduction amount for use in reclamation cost estimates of \$1,726,261.13 may be determined.

IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS that the above Findings of Fact and Conclusions of Law are adopted;

IT IS FURTHER ORDERED that a release of Phase I for 225.8 acres and Phase I, II, and III reclamation obligations for 17.3 acres is hereby approved;

IT IS FURTHER ORDERED that all areas released from reclamation obligations shall remain clearly marked in the field with permanent boundary markers maintained to distinguish these areas at all corners and angle points from active mining and reclamation areas in accordance with this ORDER;

IT IS FURTHER ORDERED that the current bond remains in effect according to its terms until the Commission approves a replacement bond;

IT IS FURTHER ORDERED that, as a result of the Phase I for 225.8 acres and Phase I, II, and III release of 17.3 acres, the Commission approves an eligible bond reduction amount of \$1,726,261.13;

IT IS FURTHER ORDERED that the Commission may vary the total amount of bond required from time to time as affected land acreage is increased or decreased or where the cost of reclamation changes; and

IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is mailed. If a timely motion for rehearing is filed by any party of interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

SIGNED this 14th day of July, 2015.

RAILROAD COMMISSION OF TEXAS



DAVID PORTER
CHAIRMAN



CHRISTI CRADDICK
COMMISSIONER



RYAN SITTON
COMMISSIONER

ATTEST

SECRETARY

