

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

SMRD DOCKET No. C16-0006-SC-32-F.A

APPLICATION OF TEXAS WESTMORELAND COAL COMPANY FOR PHASE I RELEASE OF RECLAMATION OBLIGATIONS FOR 325.6 ACRES WITHIN PERMIT NO. 32G, JEWETT MINE, LEON, LIMESTONE AND FREESTONE COUNTIES, TEXAS

**ORDER APPROVING PHASE I RELEASE
OF RECLAMATION OBLIGATIONS**

Statement of the Case

Texas Westmoreland Coal Company (TWCC), applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase I and II releases of reclamation obligations for 325.6 acres and 171.7 acres, respectively, within Permit No. 32G, Jewett Mine, Leon, Limestone, and Freestone Counties, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2016), and "Coal Mining Regulations" Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2016). After supplementation of the application and review by the administrative law judge, the acreage requested for Phase II release, was split into a separate docket for processing separately so that TWCC could further supplement that portion of the application due to the need for additional information regarding areas that had eroded. The Phase I release portion is the instant docket, C16-0006-SC-32-F.A; the Phase II portion will be processed as Docket No. C16-0006-SC-32-F.B.

In this docket, TWCC requests the following releases: Phase I reclamation obligations for backfilling, regrading, and drainage control for 325.6 acres. No comments or requests for hearing were filed following public notice. The only parties to the proceeding are TWCC and the Commission's Surface Mining and Reclamation Division (Staff). There remain no outstanding issues between the parties. Based on information provided by TWCC, as supplemented, and its inspection of the area, the Staff has included a recommendation for Phase I release of the 325.6 acres.

TWCC does not request adjustment to the approved reclamation bonds. No eligible bond reduction amount may be determined because the acreage is bonded for costs for soil preparation, revegetation, and maintenance only in the worst-case bond estimate for this mine, amounts eligible for release at Phase III release.

FINDINGS OF FACT

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

1. By letter dated October 7, 2015, Texas Westmoreland Coal Company (TWCC) filed its application for Phase I and II releases of reclamation obligations for 325.6 acres and 171.7 acres, respectively, within Permit No. 32G Jewett Mine, made up of 21,585 acres located Leon, Limestone, and Freestone Counties, Texas. The location of the areas requested for release is Freestone County. TWCC conducted mining operations on the acreage for release of reclamation liability from 1992-2004. Information remains outstanding on the areas requested for Phase II release; this portion will be processed as a separate docket, C16-0006-SC-32-F.B (Finding of Fact No.10).
2. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, TEX. ADMIN. CODE ANN. CH. 134 (Vernon Supp. 2016) (Act), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2016). No filing fee is required. The application was properly certified in accordance with §12.312(a)(3).
3. The currently accepted reclamation performance bonds for Permit No. 32G are three surety bonds, a surety bond issued by Arch Insurance Company, No. SU1125305, in the amount of \$22,219,000, a surety bond, No. SU48309, issued by Aspen American Insurance Company in the amount of \$26,281,000, and a surety bond in the amount of \$13,500,000 by Liberty Mutual Insurance Company. These bonds total \$62 million. TWCC does not request a reduction in the amount of the approved reclamation bond instruments
4. The application was supplemented by letter dated January 22, 2016 to provide a revised draft notice of application and was further supplemented with proof of publication of notice with affidavits and clippings by letter dated March 24, 2016.
5. Copies of the application were filed for public review at the main office of the Railroad Commission of Texas at 1701 North Congress Avenue, William B. Travis Building, Austin, Texas and in the offices of the Leon, Limestone, and Freestone County Clerks.
6. Publication of notice occurred once each week for four consecutive weeks in *The Groesbeck Journal* (Limestone County) February 11, 18, 25, and March 3, 2016. Publication also occurred in the *Fairfield*

Recorder (Freestone County) and in the *Jewett Messenger* (Leon County) February 11, 18, 25, and March 3, 2016. In addition, notice was published in *The Jewett Messenger* February 10, 17, 25, and March 2, 2016. The three newspapers are newspapers of general circulation in the vicinity of the operations. The notice of application contains all information required by the Act and Regulations for notice of application for bond release applications. TWCC submitted affidavits of publication with clippings. The published notice is adequate notification of the request for release. The notice includes 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 contains information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection and address to which comments should be sent.

7. Staff declared the application administratively complete March 31, 2016. No adverse comments or written objections were filed following public notice regarding the request for release. No requests for hearing were filed pursuant to §12.313(d).
8. By letters dated February 2, 2016 TWCC sent notice to owners of interests in the areas requested for release and adjacent lands and to local governmental bodies, planning agencies, sewage and water treatment authorities and water companies in the locality as required by §12.312(a)(2). TWCC mailed notice to the County Judges and Commissioners' Courts of Freestone, Leon, and Limestone Counties, the Environmental Protection Agency, the Texas Commission on Environmental Quality, the Texas Department of Transportation, the Texas State Soil and Water Conservation Board, local offices of the Natural Resources Conservation Service in Centerville, Groesbeck, and Fairfield, Texas, Texas General Land Office, Donie Water Works, Concord-Robbins Water System, the Brazos River Authority, and the U.S. Army Corps of Engineers. The areas requested for release are not located within the territorial boundaries of any municipality.
9. The Staff provided notification of the application by certified letters dated January 27, 2016 to the County Judges of Leon, Limestone, and Freestone Counties; these dates are at least 31 days prior to the date of consideration of the docket by the Commission in accordance with §134.133 of the Act. Pursuant to §12.312(b) of the Regulations, Staff notified owners of interests in lands and lessees of the application for

release and the Office of Surface Mining Reclamation and Enforcement by letters dated October 16, 2015 of the date and time of Staff's field inspection scheduled for October 27, 2015. The notification stated that a release had been requested and, pursuant to §12.312(b)(1), advised them of the opportunity to participate in the on-site inspection. Staff submitted copies of the letters to the Hearings Division; these letters submitted to the Hearings Division notifying of the inspection date did not include a copy of a letter to one landowner, John Rick McConn; an owner of an interest in coal with several other owners of Tract No. 306; however, a letter of notification was sent to him by TWCC notifying him of the release application. No comment was received. No OSM representative attended the pre-inspection meeting or inspection. Four TWCC representatives attended the pre-inspection meeting, and two of them accompanied the two Staff inspectors on the inspection itself.

10. The Staff's field inspection and evaluation reports were filed by letter dated September 9, 2016. The Staff inspection report contained photographs depicting erosion in certain areas requested for release. Staff's TA dated September 9, 2016 indicated that the areas with erosion issues that were inspected October 27, 2015 were re-inspected on July 27 and 28, 2016 and stated that only minor erosion remained in some areas that would not prevent the areas from qualifying for Phase II release. Photographs taken and included with the July 27-28, 2016 report, however, did not contain sufficient references or mapping to be able to compare the areas photographed to those areas appearing in the October 27, 2015 inspection. The administrative law judge permitted the docket to be split into two dockets to allow the Phase I release request to continue to be processed and to allow additional time for supplementation of the request for Phase II release in a separate docket.
11. The areas proposed for release are detailed in Staff's Technical Analysis (TA) and Field Inspection Report (Attachment III to Staff's TA) filed with the Hearings Division.
12. Figures and photographs of the proposed release areas and structures in the Staff Inspection Report and Evaluation, as amended, provide depictions of the areas included in the application and the specific releases proposed. Analysis included in the inspection report and photographs from the inspection are included in Appendix IV of the Inspection Report and provide support for the application for Phase I release.
13. The ownership and tract information for owners of interests in the areas proposed for release indicate that

there are approximately 29 tracts within the areas requested for release, most with multiple owners. NRG Texas Power LLC own the surface and coal interests on 17 tracts, a surface interest on one tract and a coal interest on one tract. TWCC owns the surface and/or coal interests on 10 tracts within the release area. Approximately 69 persons own various interests in the tracts and in adjoining tracts. The postmine land use for the 325.6 acres requested for Phase I release is pastureland.

14. The 325.6 acres requested for Phase I release are depicted on Attachment 1 to Staff's analysis. There are two separate areas proposed for Phase I release, an area in the northernmost portion of the northern third of the permit area, and a southernmost portion in the northern third of the permit area. Photographs 1-20 contained in Appendix IV to Attachment III (inspection report) reflect the northernmost portion, and Photographs 21-37 of Appendix IV to Attachment III reflect the southernmost area proposed for Phase I release. The area requested for Phase I release has met Phase I requirements for backfilling, regrading and drainage control as required by §12.313(a)(1) of the Regulations.

(a). The lands requested for Phase I release are stable. Some areas of erosion were observed that were repaired or under repair. Backfilling, regrading, and drainage control have been accomplished on these areas and vegetation appears healthy. Vegetation has stabilized all areas requested for Phase I release, including the areas around the approved permanent DS-E11 drop structure. The E-3 Diversion is also located in this area according to Staff review; no photograph of this structure was identified. There are no permanent ponds or roads located within these areas requested for Phase I release.

(b). Final grading occurred between 1992 and 2004. All highwalls were eliminated, and the areas were regraded to approximate original contour. Suitable materials have been placed over regraded spoil so that all acid-forming and toxic-forming materials were placed to a depth greater than four feet. No cut-and-fill terraces have been constructed (§12.385).

(c). Subsoil and topsoil replacement has been approved for the areas requested for release. Postmine soil testing was completed on the areas requested for release. A soil grid map was included as Exhibit 142-S in the application. Table 2.0 of the application, Section 3, page 2, includes the grid numbers, sample dates, and approval dates for soil testing. The soil data reflect that the top four

feet of reclaimed soils are free of acid-forming and toxic-forming materials. Commission approval letters are included in Section 5 of the application. No prime farmland, for which specific reclamation requirements apply, is located within the areas requested for release.

- (d). Surface water runoff from all areas proposed for Phase I release of reclamation obligations flows through temporary Sedimentation Ponds 026 and 030. There are no final discharge structures located within the Phase I area. (§12.344)
 - (e). No areas are approved for the disposal of non-coal waste within the area proposed for Phase I bond release (§12.375).
15. The reclamation cost estimate for the currently accepted bond is based on the “worst-case” pit method of calculation that assumes that reclamation is contemporaneous. For this method, estimated costs are generally not based on a per-acre cost. The cost estimate is based on the worst-case pit and reclamation of all temporary structures. Soil preparation, revegetation, and maintenance costs, however, are retained on a per-acre basis should revegetation fail and have to be repeated. The only costs attributable to the areas requested for release that are applicable for inclusion in a calculation of eligible bond reduction are the costs for soil preparation, revegetation, and maintenance attributable to the area requested for Phase III release, not requested in this application. No eligible bond reduction amount is applicable.
16. TWCC has not requested an adjustment to the approved bonds at this time. No replacement bond instrument has been filed.
17. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas for aid in inspection.
18. Notice of application, notice of inspection, and open meeting notice have been accomplished.

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. TWCC 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 the following release of reclamation obligations: Phase I release of reclamation obligations for 325.6 acres.
5. The areas approved for release of Phase III reclamation obligations not are eligible for a bond reduction amount at this time.

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 reclamation obligations for 325.6 acres is hereby approved;

IT IS FURTHER ORDERED that the request for release of the remaining 171.7 acres requested for Phase II release may be considered in a separate docket;

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 bonds remain in effect according to their terms until replacement bonding is approved by the Commission;

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 25 days after a party is notified of the Commission's Order. 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. As authorized by 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 January 24, 2017.

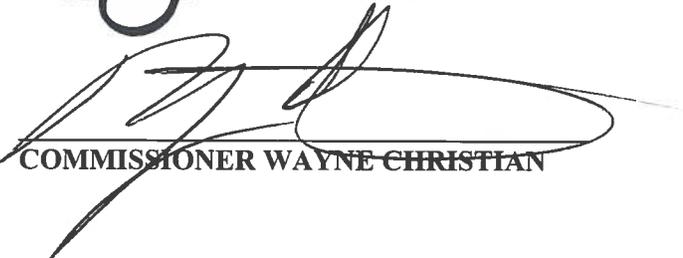
RAILROAD COMMISSION OF TEXAS



CHAIRMAN CHRISTI CRADDICK



COMMISSIONER RYAN SITTON



COMMISSIONER WAYNE CHRISTIAN

ATTEST:



Secretary, Railroad Commission of Texas

