

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

SMRD DOCKET NO. C16-0020-SC-48-F

**APPLICATION BY LUMINANT MINING COMPANY LLC
FOR PHASE I RELEASE OF RECLAMATION OBLIGATIONS
FOR 516.9 ACRES OF ITS SURFACE COAL MINING OPERATIONS
FOR PERMIT NO. 48C, THREE OAKS MINE, LEE AND BASTROP COUNTIES, TEXAS**

**ORDER APPROVING PHASE I RELEASE
OF RECLAMATION OBLIGATIONS FOR 516.9 ACRES**

Statement of the Case

Luminant Mining Company LLC (Luminant), 1601 Bryan Street, EP27-065H, Dallas, Texas 75201, applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase I release of reclamation obligations for 516.9 acres within Permit No. 48C, Three Oaks Mine, Lee and Bastrop 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).

In this docket, Luminant requests release from Phase I reclamation obligations for backfilling, regrading, and drainage control for 516.9 acres. Permit No. 48C currently authorizes surface coal mining operations at Luminant's Three Oaks Mine, within its 15,809-acre permit area. No comments or 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 information provided by Luminant and the inspection of the area, Staff recommends release of Phase I reclamation obligations for 516.9 acres.

After consideration of the application and the Findings of Fact and Conclusions of Law, the Commission approves the release of reclamation obligations as recommend by Staff. Luminant does not request adjustment to the approved reclamation bond at this time and no new bond has been submitted. The Commission determines an eligible bond reduction amount of \$3,220,493.76.

FINDINGS OF FACT

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

1. By letter dated July 18, 2016, Luminant Mining Company LLC (Luminant) filed its application (Application) with the Railroad Commission of Texas' (Commission) Surface Mining and Reclamation Division (SMRD and/or Staff) for a release of Phase I reclamation obligations for 516.9 acres within the Three Oaks Mine, Permit No. 48C, located in portions of Bastrop and Lee Counties, Texas. Permit No. 48C was most recently renewed by the Commission on October 14, 2014 (Docket No. C13-0018-SC-48-C). The permit area encompasses approximately 15,809 acres. Luminant conducted mining operations on the areas requested for release from 2005 to 2010.
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) (Regulations). No filing fee is required. The application was properly certified in accordance with §12.312(a)(3).
3. The approved bond map and reclamation cost estimate were approved administratively by letter dated February 24, 2016, in Revision 16. Reclamation costs of \$73,456,371 were approved for the permit. The currently accepted reclamation performance bond for all Luminant operations in Texas, including those conducted under Permit 48C, is in the form of a blanket collateral bond and trust agreement in the amount of \$975,000,000 accepted by Commission Order dated September 27, 2016 (Docket No. C16-0021-SC-00-E). Luminant does not request a reduction in the amount of the approved reclamation bond instrument in this application.
4. The 516.9 acres recommend for Phase I release are bonded at the mined rate of \$9,440.00 per acre [Finding of Fact No. 18, *infra*].
5. The Application was filed with the Hearings Division by letter dated July 20, 2016. Luminant supplemented the Application by letter dated July 25, 2016, to provide revised information regarding ownership of tracts adjacent to the requested release area in response to additional comments contained in a letter from the Administrative Law Judge (ALJ) approving the draft public notice on July 22, 2016. The Director, SMRD, declared the Application administratively

complete by letter dated October 3, 2016. Staff filed its Technical Analysis (TA) and Inspection Report by letter dated October 11, 2016, recommending Phase I release on the proposed acreage with no outstanding comments. On February 7, 2017, Staff, in response to requests from the ALJ by letter dated February 3, 2017, filed additional information related to a 0.80-acre parcel included in the Application. Staff's response, filed after corresponding with Luminant via email, clarified the applicable Phase I release standards related to the sub-acre parcel and provided an analysis of mining operations conducted under the approved permit and the completion of reclamation activities required for Phase I release in accordance with the Regulations [Finding of Fact Nos. 14, 17(d), and 17(e), *infra*].

6. Copies of the Application were filed for public review, in compliance with notice requirements, at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas, and in the offices of the Lee and Bastrop County Clerks in Giddings and Bastrop, Texas, respectively.
7. Notice of application was published once a week for four consecutive weeks in the *Elgin Courier* circulated in Bastrop County on August 3, 10, 17 and 24, 2016, and in the *Lexington Leader* circulated in Lee County on August 4, 11, 18 and 25, 2016. The two newspapers are papers of general circulation in the area of the proposed bond release request area, Bastrop and Lee Counties. The notice of application contains all information required by the Act and Regulations for notice of application for bond release applications. 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 number of acres, permit number at the time of application and date approved, the amount of bond approved, 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 on the applicant, location and boundaries of the permit area, the Application's availability for inspection, and the address to which comments should be sent. Luminant submitted proof of publication to the Commission by letter dated September 26, 2016.
8. Luminant sent notice by letter dated August 1, 2016, 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) of the Regulations. Luminant mailed notice to the County Judges/Commissioners' Courts of Lee and Bastrop Counties, the City of Elgin, the Natural Resources Conservation Service's local office in Bastrop, the Texas Commission on Environmental Quality, the Texas Department of Transportation, the Texas Department of Public Safety's local office in Elgin, the U.S. Army Corps of Engineers' District Office in Fort Worth, the Texas General Land Office, Aqua Water Supply Corporation, the Texas Soil and Water Conservation Board's headquarters in Temple and district office in Wharton, and to several lessees. The areas requested for release are not located within the territorial boundaries of any municipality that would be notified pursuant to §12.313(c) of the Regulations. Copies of the notification letters were filed with the Commission on September 27, 2016.

9. No adverse comments or written objections were filed regarding the request for release pursuant to the notification. No requests for hearing or informal conference were filed pursuant to §12.313(d).
10. The Staff provided notification of the Application by certified letters dated July 27, 2016, to the County Judges of Lee and Bastrop Counties. Mailing of notification was provided 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, Tulsa Field Office (OSM) by letters dated July 22, 2016, of the date and time of Staff's field inspection scheduled for August 11, 2016. 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 provided copies of the letters in Appendix II within Attachment III (Inspection Report) of the TA, filed with the Hearings Division on October 11, 2016.
11. The inspection occurred on August 15, 2016. No landowners or leaseholders contacted Luminant or the Commission prior to inspection to inquire about the scheduled date referenced in Staff's notification letter dated July 22, 2016. No OSM representative or landowners were present for the originally scheduled pre-inspection meeting, rescheduled pre-inspection meeting

or attended the field inspection. Two Commission inspectors and three mine personnel attended the pre-inspection meeting and field inspection.

12. The 15,809-acre permit area is located about five miles east of Elgin, Texas, and 11 miles west-southwest of Lexington, Texas. The permit area lies in an area bordered to the south by U.S. Highway 290 and to the north by the Williamson-Lee County Line. A general location map of the permit area, with those areas proposed for release distinguished, is found in Appendix I of Staff's Inspection Report.
13. The Application included ownership and tract information for owners of interests in the areas proposed for release and adjacent lands. There are 39 tracts within the areas requested for Phase I release of reclamation obligations, of which Sandow Power Company LLC owns 37. There are 18 adjacent tracts with five landowners. There are four leaseholders.
14. The 516.9 acres proposed for release are detailed in Staff's Technical Analysis (TA) and Inspection Report (Attachment III to Staff's TA) filed with the Hearings Division. There are three separate areas proposed for Phase I release as depicted on Figures 1-3 in Attachment I to Staff's TA. An area near the northwestern permit boundary in the northernmost portion of the southern third of the permit area consists of two separate parcels is depicted on Figure 1 (Area B). A second area near the latitudinal center of the permit area near the northwestern permit boundary is depicted on Figure 2 (Area A). A third area, depicted on Figure 3, lies in the northern fourth of the permit area and consists of 0.8 acres, 0.78 of which has been designated as prime farmland within Tract 357 (Area PF) (Docket No. C13-0018-SC-48-C at Finding of Fact No. 33). Photographs of all three areas were taken during the field inspection and are included in Appendix IV of the Inspection Report as follows: Area B, Photos 1-25; Area A, Photos 26-52; and Area PF, Photos 53-54. The photographic evidence, along with Staff's analysis provided in the TA, Inspection Report and letter regarding Area PF [Finding of Fact No. 5, *supra*], support Phase I release for all acres requested.
15. The currently approved postmine land uses in Areas A and B are pastureland (474.76 acres) and developed water resources (41.36 acres). The approved postmine land use in Area PF is cropland (0.8 acres) as required under §12.201(d)(1) of the Regulations.

16. The acreage requested for release was mined or otherwise disturbed from 2005-2010, final grading occurred from 2006-2009, and vegetation was planted from 2006-2012. Staff conducted routine monthly inspections of the proposed release area from 2005 to the present.
17. The 516.9 acres requested for Phase I release have met Phase I requirements for backfilling, regrading and drainage control as required by §12.313(a)(1) of the Regulations.
 - (a). The areas requested for Phase I release are stable with no major erosion evident. During the inspection, Staff observed erosion in two areas that had been sufficiently repaired to preclude any issues that would prevent approval of Phase I release. Repaired erosion observed in Area B is depicted on Photo 21 (Appendix IV to Inspection Report). In Area A, near Pond A-3, repaired erosion is shown in Photos 32 and 33 (Appendix IV).
 - (b). Final grading occurred in the areas requested for release between 2005 and 2010. The areas have been backfilled and graded to approximate original contour [§12.385(a)]. 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)]. Photographs taken during Staff's field inspection of the areas depict vegetation planted in all requested areas. All highwalls were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable substitute material was placed over the regraded spoil so that all acid-forming and toxic-forming materials were placed to a depth greater than four feet [§12.386)]. No cut-and-fill terraces were constructed. All areas requested for Phase I release have been stabilized to control drainage and attendant potential erosion [§12.389].
 - (c). Luminant submitted initial soil testing data from the areas requested for release within two years of backfilling and grading, in accordance with the approved minesoil monitoring program in Permit No. 48C. In total, data was submitted for 136 full or partial 5.7-acre soil grids in two increments of 0-12 inches and 12-48 inches. Testing was completed for soil sampling requirements for pH, acid-base accounting, texture, and cation exchange capacity, and for plant available nutrients in the top 12 inches of

reclaimed soil. A random 10% of the grids were also analyzed for boron, cadmium, and selenium.

- (d). Subsoil and topsoil replacement has been approved for Areas A and B. The 0.78 acres of prime farmland soils in Area PF have been reclaimed according to the prime farmland reconstruction plan submitted in accordance with §12.201 of the Regulations and approved in the most recent renewal of the permit [Docket No. C13-0018-SC-48-C at Finding of Fact No. 48(j)]. Luminant submitted initial postmine soil testing reports (IPSTR) for data collected yearly from 2009-2013. Collectively, the reports are representative of all soil grids within the requested release areas. Initial data for the 52 soil grids within Area B was provided in each of the yearly reports. Data pertaining to the 82 soil grids comprising Area A was presented in all reports, save 2010. Data for the two soil grids encompassing Area PF were presented in the 2012 IPSTR. Staff determined data from all soil grids within the requested release areas do not indicate the presence of acid-forming and toxic-forming materials in the top four feet of postmine soil and meet the applicable physicochemical postmine soil performance standards. Staff's conclusions are stated in approval letters dated June 2, 2010 (2009 IPSTR); December 22, 2010 (2010 IPSTR); February 23, 2012 (2011 IPSTR); June 27, 2013 (2012 IPSTR); and March 13, 2014 (2013 IPSTR) (Appendix V to Inspection Report). The location of all soil grids within the requested release area are depicted in Plate III.A.3-1 of the Application. Individual dates data was submitted and subsequently approved for each grid is provided in Table III.A.3-1 of the Application.
- (e). Surface water runoff from Area B and Area A flows into final discharge temporary sedimentation Ponds SP-1, SP-2 and SP-6 [§12.344]. Area PF is located in a freshwater area outside of surface water control; therefore, any overland flow is not routed through any siltation structure prior to leaving the permit area in accordance with the approved permit [§12.344(e)].
- (f). There are nine permanent impoundments within the 516.9 acres proposed for release. In Area B, Ponds B-3, B-4, Pond B-5 and modifications thereto, were approved by Staff as permanent impoundments in 2011 and 2012. Within Area A, Ponds A-2, A-3, A-4, A-

5 A-6, RPC-1, and modifications thereto, were approved by Staff between 2010 and 2016. Copies of Staff's approval letters and accompanying memoranda for all impoundments were provided by Luminant in Section IV.A of the Application. All impoundments were found to be structurally intact and stable during Staff's field inspection. The permanent impoundments in Area B are depicted in Photos 7, 10 and 15 (Appendix IV to Inspection Report); those located in Area A are depicted in Photos 26-29, 32, 36, 42, 43, 45 and 51 (Appendix IV). There are no permanent impoundments located in Area PF.

- (g). There are seven permanent diversions located within the areas proposed for Phase I release. Reclamations Drainageways B-3 and B-4 in Area B are associated with permanent Ponds B-3 and B-4, respectively. These were approved by Staff as permanent structures by letter dated January 13, 2011. Within Area A, Reclamation Drainageways A-2 and A-5 are associated with Ponds A-2 and A-5, respectively. The A-6 Outlet is a permanent diversion associated with Ponds A-6 and A-3. Diversion DD-7, part of the Willow Creek relocation, traverses the length of Area A near its southernmost border. The diversion extends beyond the area's proposed release boundaries while flowing through Pond A-3, Pond RPC-1 and the RPC-1 Spillway prior to terminating at a box culvert associated with Sedimentation Pond SP-1. The structures were approved by Staff as permanent diversions from March 2011 – October 2014. Copies of Staff's approval letters and accompanying memoranda for these diversions were provided by Luminant in Section IV.A of the Application. Also in Area A, Miscellaneous Flow Diversion MFD-5R is located near the northwestern boarder of Area A and is associated with Permanent Pond A-2. Staff approved MFD-5R as a permanent structure by letter dated May 17, 2012 (Appendix V to Inspection Report). All structures were found to be structurally intact and stable during Staff's field inspection. The permanent diversions in Area B are depicted in Photos 9 and 10 (Appendix IV to Inspection Report); those located in Area A are depicted in Photos 35, 39, 43, 44 and 46 (Appendix IV). There are no permanent diversions located in Area PF.
- (h). There are three inlets and spillways within the areas proposed for release. Area B contains the B-5 Pond Inlet that was approved by Staff as a permanent structure

associated with Pond B-5 in 2012. Within Area A, the A-3 Pond Inlet and RPC-1 Spillway, associated with Ponds A-3 and RPC-1, were approved by Staff as permanent structures in 2013 and 2016, respectively. Copies of Staff's approval letters and accompanying memoranda for the inlet and spillways were provided by Luminant in Section IV.A of the Application. All inlets and spillways were found to be structurally intact and stable during Staff's field inspection. The permanent inlet in Area B is depicted in Photo 8 (Appendix IV to Inspection Report). The inlet and spillway located in Area A are depicted in Photos 28 and 34 (Appendix IV), respectively. There are no inlets or spillways located in Area PF. There are no drop structures located within 516.9 acres proposed for release.

- (i). A series of rock check dams were observed just north of Pond RPC-1 in Area A during Staff's field inspection, as depicted in Photos 32 and 33 (Appendix IV to Inspection Report). Rock check dams are temporary sediment control features that must be removed prior to Phase III release of reclamation liability or as soon as the area is sufficiently stabilized, but do not preclude Phase I release.
 - (j). No areas are approved for the disposal of non-coal waste within the area proposed for Phase I bond release [§12.375].
 - (k). There are no permanent roads located within the areas requested for Phase I release [§§12.406, 12.413, and 12.421].
 - (l). There are no facilities in the proposed release area [§12.403].
18. The notice of application for release stated that an eligible bond reduction amount may be determined. The areas requested for release are bonded at the mined rate, \$9,440 per acre. They are eligible for a 60% reduction as Phase I released lands. The amount is calculated as follows: 516.9 acres x \$9,440 per acre x .60, totaling a reduction amount of \$2,927,721.60, plus a 10% increase for administrative costs (\$292,772.16) for a total of \$3,220,493.76 as an eligible bond reduction amount.

19. Luminant has not requested an adjustment to the approved bond at this time. No replacement bond instrument has been filed.
20. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas for aid in inspection.
21. Luminant and Staff, the only parties to the proceeding, filed waivers of the preparation and circulation of a proposal for decision. The proposed order was circulated to the parties with opportunity for comment.
22. Open meeting notice has been posted for Commission consideration of this application.

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. No public hearing was requested, and none is warranted.
3. Luminant has complied with all applicable provisions of the Act and the Regulations regarding notice for Commission jurisdiction to attach to allow consideration of the matter.
4. Luminant has complied with all applicable provisions of the Act and the Regulations for release of Phase I reclamation obligations for the areas proposed for release as set out in the Findings of Fact.
5. The Commission may approve a release of Phase I reclamation obligations for the 516.9 acres as set out in the above Findings of Fact and Conclusions of Law.
6. Pursuant to the Commission's authority for inspection and evaluation of release applications, the Commission may order that Luminant continue marking the area approved for release so that Staff mapping and tracking will be efficient.

7. An eligible bond reduction amount of \$3,220,493.76 for use in reclamation cost estimates 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 a release of Phase I reclamation obligations for 516.9 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 in accordance with its terms until a replacement bond is approved by the Commission;

IT IS FURTHER ORDERED the Commission approves an eligible bond reduction amount of \$3,220,493.76;

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 this 28th day of February, 2017.

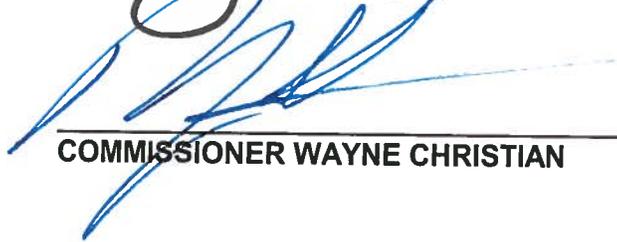
RAILROAD COMMISSION OF TEXAS



CHAIRMAN CHRISTI CRADDICK



COMMISSIONER RYAN SITTON



COMMISSIONER WAYNE CHRISTIAN

ATTEST:



Secretary, Railroad Commission of Texas

