

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

SURFACE MINING DOCKET NO. C14-0018-SC-52-F

**APPLICATION BY SAN MIGUEL ELECTRIC COOPERATIVE, INC.
FOR PHASE II RELEASE OF RECLAMATION OBLIGATIONS
FOR 274.5 ACRES OF ITS SURFACE COAL MINING OPERATIONS
FOR PERMIT NO. 52A, SAN MIGUEL C-AREA MINE, ATASCOSA COUNTY, TEXAS**

**ORDER APPROVING PHASE II RELEASE
OF RECLAMATION OBLIGATIONS FOR 274.5 ACRES**

STATEMENT OF THE CASE

San Miguel Electric Cooperative, Inc. (San Miguel), P.O. Box 280, Jourdanton, Texas 78026, has applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase II release of reclamation obligations for 274.5 acres for revegetation and the requirement that the areas are not contributing excess suspended solids to streamflow outside the permit area. Staff of the Surface Mining and Reclamation Division has reviewed the request for release of the acreage located within Permit No. 52A, San Miguel C-Area Mine. The permit area is located approximately 50 miles south of San Antonio, sixteen miles southeast of Jourdanton, Texas and six miles east of Christine on County Road 140. San Miguel does not currently request a reduction in the amount of the approved reclamation bond. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2016) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE ANN. CH. 12 (Thomson West 2016) (Regulations).

Permit No. 52, issued by Order dated April 28, 2008 (Docket C7-0008-SC-00-A) and renewed by Order dated April 9, 2012 (Docket C12-0007-SC-52-C) and renumbered as No. 52A, currently authorizes surface mining operations at San Miguel's C-Area Mine, located within Atascosa County, Texas. The permit area includes approximately 4,444-acres. The only parties to the proceeding are San Miguel and the Commission's Surface Mining and Reclamation Division (SMRD or Staff). Copies of the application were filed in the required county and Commission offices, and notices were mailed to landowners and adjoining landowners of the area requested for release. No comments were made following public notice and mailed notice,

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and no public hearing was requested.

Based on the record in this docket including the application and Staff review, the examiner recommends that the application for Phase II release should be approved for all 274.5 requested acres, having completed revegetation requirements (other than the extended responsibility period) and having been reclaimed in a manner that will ensure that the proposed Phase II release areas are not contributing suspended solids to stream-flow or runoff in excess of the requirements set by §134.092(a)(10) of the Act and Subchapter K of TEX. ADMIN. CODE Ch. 12 as set out in the Findings of Fact and Conclusions of Law. There remain no outstanding issues between the parties.

There is no eligible bond reduction amount; the current bond is calculated for the areas proposed for release by the worst-case bond method. The remaining reclamation costs, should revegetation fail, are for soil preparation, revegetation, and maintenance and may be released when the acreage is approved for Phase III release.

FINDINGS OF FACT

1. By letter dated June 19, 2014, San Miguel Electric Cooperative Inc. (San Miguel) filed its initial request for Phase II release of reclamation requirements (revegetation and the requirement that the areas not contribute suspended solids in excess of regulatory requirements) for 274.5 acres, located within the 4,444-acre permit area of the San Miguel C-Area Mine in Atascosa County, Texas, Permit No. 52A.
2. No filing fee is required. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. 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). The application was properly certified in accordance with §12.312(a)(3) of the Regulations.
3. The Permit No. 52A minimum bond amount is based on the worst-case pit method of

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reclamation cost calculation. By letter dated June 15, 2016, the Director, SMRD approved the most recent bond map update in Revision No. 5 to the permit. The current \$30,000,000 bond was accepted by Order dated March 22, 2011. The approved reclamation cost estimate is \$26,905,491. The reclamation cost estimate is based on the worst-case pit reclamation cost calculation method, which assumes that mining and reclamation operations are contemporaneous with the reclamation plan at all times. No reduction in the required bond amount is recommended for Phase II release based on the method of bonding (i.e., Staff's reclamation cost estimate does not change). In this application, San Miguel does not seek an adjustment to the currently held bond.

4. The area proposed for release is depicted in the Staff Technical Analysis (TA), Attachment I and on Appendix I (Location Map), Attachment III (Staff Inspection Report). Photographs and Photograph Location Map are set out in Appendix IV to Attachment III. The application, photographic evidence, and Staff Inspection Report and Evaluation provide support for release of Phase II reclamation obligations.
5. 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 office of the Atascosa County Clerk, Jourdanon, Texas.
6. Publication of notice of application occurred once each week for four consecutive weeks in the *Pleasanton Express*, a newspaper of general circulation in Atascosa County, Texas. The newspaper is in the locality of the surface mining and reclamation operations. The publications in the newspaper occurred on October 14, 21, and 28, 2015 and on November 4, 2015. The notice of application contains all information required by §134.129 of the Act and §12.312(a)(2) of the Regulations for notice of application for release of Phase II reclamation obligations. The notice is adequate notification of the request for release. The notice included the name of the permittee, the location of the land affected, the approximate number of acres, permit number at the time of application

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and date approved, the amount of approved bond, 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 to which comments should be sent. The notice included a map with sufficient notice of the boundaries of the area requested for release.

7. The Director, SMRD, determined the application to be administratively complete by letter dated December 8, 2015.
8. The Staff's TA and inspection report were filed with the Hearings Division by letter dated January 22, 2016. The TA and inspection report indicated that the application did not contain sedimentation pond data for Sedimentation Ponds 29C, 37C, and 38C that capture runoff from the areas requested for release and an evaluation of the data in comparison to effluent limitations. San Miguel supplemented the application by letter dated July 11, 2016, with an analysis of surface water data from the three ponds receiving runoff from the areas requested for release.
9. The area of the permit requested for Phase II release is located in the C Mine Area, and is comprised of a single parcel of land made up of Tracts 2-3 owned by Harrison Interests Ltd. and leased by San Miguel. The approved postmining land use is pastureland.
10. San Miguel provided copies of letters of notification of the application for release dated October 14, 2015 to property owners, owners of leaseholds or other property interests, and adjoining property owners in accordance with §12.312(a)(2) of the Regulations. The letters were received by the Hearings Division on October 19, 2015. Letters dated October 14, 2015 were also sent to the following: the Atascosa County Judge, Atascosa County Clerk, Nueces River Authority, Natural Resources Conservation Service in Tilden, Texas, Natural Resources Conservation Service in Pleasanton, Texas, South Texas Electric Cooperative, Evergreen Underwater Conservation District, Texas General

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Land Office, Environmental Protection Agency, Texas Commission on Environmental Quality, Atascosa County Soil and Water Conservation District in Pleasanton, Texas, and to the U.S. Army Corps of Engineers, Fort Worth District, as required by §12.312(a)(2) of the “Coal Mining Regulations” and §134.129 of the Surface Coal Mining and Reclamation Act and as indicated in the application. The area requested for release is not located within the territorial boundaries of any other municipality that would be notified pursuant to §12.313(c) of the Regulations.

11. 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). Some delays occurred in processing this application due to a delay in San Miguel beginning publication of notice and due to non-receipt or misplacement of its copy of the Technical Analysis.
12. SMRD’s Inspection and Enforcement Section mailed letters dated July 1, 2014 to San Miguel, landowner Harrison Interests, Ltd., holders of other interests within the area requested for release, and the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM), notifying them of the date scheduled for inspection, July 22, 2014, and the opportunity to participate in the inspection in accordance with §12.312(a)(2) (Appendix II to Attachment III, Inspection Report). The Staff sent an original notice by certified mail of the application to the Atascosa County Judge by letter dated October 20, 2015 (Attachment II to Staff TA) as required by the Act, §134.133.
13. The area requested for release was mined in 2009, and final grading was accomplished from 2009-2010. A mix of bunchgrasses was planted from 2009-2011, including Switchgrass, Green Spangletop, Plains Bristlegrass, Blue Grama, Sideoats Grama, Little Bluestem, and Curley Mesquite. The C-1 LMU area is also the extended responsibility area that began on November 19, 2012 (Exhibit 4, release application). Routine monthly inspections of the reclamation work covering the proposed release area occurred from 2009 to the date of the inspection and have continued. No structures are located within

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the areas requested for release.

14. The area requested for release was approved for Phase I release of reclamation requirements for backfilling, regrading, and drainage control by Commission Order dated September 10, 2013. Based upon the application and Staff review in its TA, the acreages requested for release from Phase II reclamation obligations have met Phase II requirements for revegetation and the requirement that the lands are not contributing suspended solids to streamflow outside the permit area in excess of regulatory requirements.
15. All exposed surface areas have been stabilized to control erosion; any eroded areas which occurred during mining and reclamation were stabilized pursuant to §12.389, Coal Mining Regulations. Vegetation was planted in accordance with the approved reclamation plan.
16. All acreage requested for release from Phase II reclamation obligations has met Phase II revegetation requirements.
 - (a). Revegetation has been established on all areas requested and approved for release in this Order in accordance with §12.395 of the Regulations.
 - (i). The areas proposed for Phase II release have the postmine land use pastureland and were planted with the grasses listing in Finding of Fact No. 13.
 - (ii). The extended responsibility period has been initiated (November 19, 2012, Finding of Fact No. 13). San Miguel conducted an evaluation of the vegetation in 2012 that included groundcover data for the pastureland LMU C-1 covering the acreage requested for release and reported the groundcover data to the Commission by letter dated April 29, 2013. By letter dated January 3, 2014, Staff administratively approved the vegetative groundcover within the LMU, determining that it exceeded 90% of the approved groundcover standard in accordance with §12.395 of the Regulations during the 2012 growing season. The land has been reclaimed to the approved postmine land use as required by

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§12.147 and §12.399. Based upon the Staff inspection and photographs in the record, the vegetation is healthy and self-sustaining.

- (iii) There is no prime farmland within the areas requested for release for which production to equivalent yields as non-mined land would apply.
- (b). San Miguel has met the Phase II requirement that the areas not contribute suspended solids to streamflow outside the permit area in excess of the requirements set by TEX. NAT. RES. CODE ANN. §134.092(a)(10) and Subchapter K of 16 TEX. ADMIN. CODE Ch. 12.
- (i). Drainage from the Phase II release area flows through sedimentation ponds 29C, 37C, and 38C and eventually to Metate Creek that flows into the Atascosa and Nueces Rivers. Discharge from the sedimentation ponds must meet the effluent discharge limitations for pH, total suspended solids (TSS), iron (Fe), and manganese (Mn) contained in TCEQ Texas Pollutant Discharge Elimination System (TPDES) Permit No. 02043. Final discharge pond water quality records for the sedimentation ponds were provided by San Miguel in its supplement dated July 11, 2016 (Table 1). These records of water discharges for the ponds were from July 2009-May 16, 2016. Based on this information and Staff review, the averages for pH, TSS, Fe, and Mn meet the effluent limitations of the TPDES Permit No. 02043. All average values are below the following effluent requirements for pH [6.0-9.0 standard units (s.u.)], TSS [based on allowable daily average (35 mg/L) and allowable daily maximum (70 mg/L)], iron (Fe) based on 3.0 mg/L (allowable daily average) and 6.0 mg/L (allowable daily maximum), and manganese (Mn), 1.0 mg/L (allowable daily average) and 2.0 mg/L (allowable daily maximum).
 - (ii) No permanent impoundments are located within the areas requested for release for which water quality would be required to be sufficient for the postmine land use. No silt dams to be retained as permanent impoundments are present within the area proposed for Phase II release for which plans for future maintenance would be required.

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17. Based upon the application, as supplemented, and Staff review, sufficient evidence has been submitted to show that all requirements have been met for Phase II release of the requested 274.5 acres.
18. There is no eligible bond reduction amount for the acreage approved for release of Phase II reclamation requirements. Bonded areas within Permit No. 52A are bonded based upon the "worst-case" bond method. This method estimates reclamation costs of reclaiming the worst-case pit and reclamation of structures, and assumes that all other disturbed areas are reclaimed contemporaneously, so that there is no eligible bond reduction amount until Phase III release is approved; at that time, the remaining reclamation costs for the bonded acreage will be soil preparation, revegetation, and maintenance costs, retained until Phase III release is approved.

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. San Miguel has complied with all applicable provision of the Act and the Regulations for Phase II release of reclamation obligations for 274.5 acres as set out in the Findings of Fact. .
4. The Commission may approve a release of Phase II reclamation obligations for 274.5 acres.

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 II reclamation obligations for the requested 274.5 acres is hereby approved;

IT IS FURTHER ORDERED that the 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;

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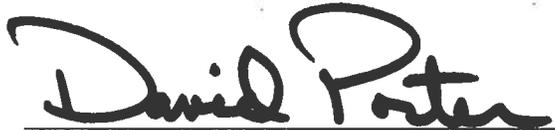
IT IS FURTHER ORDERED that the current bond remains in effect according to its terms until a replacement bond is approved by the Commission;

IT IS FURTHER ORDERED that the Commission may vary the total amount of bond required from time to time as affected land acreages are 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 IN AUSTIN, TEXAS on this 15th day of November, 2016.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN DAVID PORTER

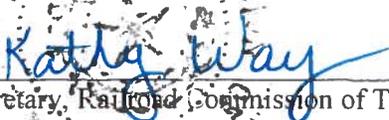


COMMISSIONER CHRISTI CRADDICK



COMMISSIONER RYAN SITTON

ATTEST:



Secretary, Railroad Commission of Texas

