

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

SURFACE MINING DOCKET NO. C13-0002-SC-46-F

**APPLICATION BY LUMINANT MINING COMPANY LLC FOR RELEASE
OF PHASE I AND PHASE II AND III RECLAMATION OBLIGATIONS FOR VARIOUS ACREAGES
WITHIN ITS SURFACE COAL MINING OPERATIONS FOR PERMIT NO. 46C,
OAK HILL MINE, RUSK COUNTY, TEXAS**

**ORDER APPROVING APPLICATION FOR RELEASE OF RECLAMATION OBLIGATIONS,
IN PART**

STATEMENT OF THE CASE

Luminant Mining Company LLC (Luminant), 1601 Bryan Street, Dallas, Texas, 75201 applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for various releases of reclamation obligations for an aggregate 929.1 acres within Permit No. 46C, Oak Hill Mine. The permit area contains approximately 26,014 acres. Luminant requests the following releases: Phase I for 133.5 acres, and Phase II and Phase III for 795.6 acres. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. ADMIN. CODE ANN. CH. 134 (Vernon 2012) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE ANN. CH. 12 (Regulations)(West 2012).

Permit No. 46C currently authorizes surface mining operations at Luminant's Oak Hill Mine located in Rusk County, Texas. Copies of the application were filed in required county and Commission offices and notices were mailed to landowners of the areas requested for release and to adjoining landowners. No written comments, protests, or requests for hearing were filed. The only parties to the proceeding are Luminant and the Commission's Surface Mining and Reclamation Division (SMRD or Staff). After the filing of additional information to address deficiencies in the application noted by Staff, Luminant filed no reply to the acreage recommended for release by Staff in its TA Addendum No. 1. In the initial Technical Analysis (TA), staff noted that Luminant had satisfactorily addressed the requirements of and recommended the Phase I release of reclamation liability on 133.5 acres (Parcels 1-3) and Phase II and III release on 101.3 acres (Parcel Nos. 5 and 10). In staff's Addendum No. 1 to staff's January 22, 2013 TA, dated February 4, 2014, Staff continued to recommend release of reclamation liability for the aforementioned five parcels as proposed. Staff recommended the Phase II and III release on Parcel Nos. 4,6,7,8 and 9. Because of acid drainage and an undocumented impoundment, Staff did not recommend release of Phase II and III release for Parcel Nos. 11 and 12, an aggregate of 157.6 acres.

With regard to Parcel Nos. 11 and 12 not approved for Phases II and III release, in this Order (Finding of Fact No. 15), Luminant may, in future, again request release of reclamation obligations, without prejudice, for these acreages.

Based on the record in this docket including the application and supplements, Staff's technical report, and addenda, its inspection report, and the Act and Regulations, the Commission finds that the application for release should be approved, as set out in the Findings of Fact and Conclusions of Law with the exception of Parcels 11 and 12.

FINDINGS OF FACT

1. By its request dated September 26, 2012, Luminant Mining Company LLC (Luminant) filed its application for release of an aggregate 929.1 acres (12 parcels) within the 26,014-acre permit area of Permit No. 46C, Oak Hill Mine, located in Rusk County, Texas. Luminant did not request a reduction in the amount of the approved reclamation bond. The parcels proposed for release ranged in size from 4.2 to 156.8 acres and are located in various places in the DI and DIII Mine Areas. No replacement bond instrument has been filed. The existing bond is in the amount of \$223,000,000.00 accepted by Commission Order dated December 4, 2012.
2. Luminant has supplied a certification that all reclamation activities associated with the acreage requested for release have been completed in accordance with the Act, the regulatory program, and the approved reclamation plan [§12.312(a)(3)]. 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 2012) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (West 2012) (Regulations).
3. By letter dated November 26, 2012, Luminant submitted proof of publication of notice and proof of mailed notification letters were provided by letter dated November 27, 2012. Staff declared the application administratively complete and filed the application with the Hearings Division (then, Office of General Counsel) by letter dated December 5, 2012. By letter dated January 22, 2013, Staff filed its Technical Analysis (TA) and inspection report. The TA indicated concerns by Staff regarding six parcels Nos. 4, 6, 7, 8, 9, and 11 (no data provided to demonstrate that ground cover on vegetated portions of the 13.8 acres of industrial/commercial [I/C] land use proposed for Phase II and III release of reclamation performance obligations is adequate to control erosion. The TA also indicated concerns with parcel No. 6 (undocumented I/C features), parcel No. 11 (undocumented I/C features, temporary impoundment [DI-SD-38], and acid drainage), and parcel No. 12 (acid drainage). Acid seeps in the vicinity of Parcel Nos. 11 and 12 exhibited pH values ranging from 2.31 to 2.93 s.u. The proximity of these acid seeps to the parcels and the local topography suggest the area of the parcels serves as a source area for the acidic water. On June 21, 2013, pursuant to Luminant's request, the application was suspended to allow further review of Rev. No. 120 and until the results of the vegetation survey were approved by staff.

On March 27, 2013, in response to Staff's Technical Report, Luminant indicated that it accepted Staff's findings regarding Depression DI-SD-38 located in Parcel No. 11. Staff's initial TA did not recommend release of Phase II and III reclamation liability for Parcel Nos. 4, 6, 7, 8, 9, and 11 because Luminant had not submitted ground-cover data to demonstrate that vegetation within the portions of these parcels reclaimed to the postmine I/C land use (an aggregate 13.8 acres) was adequate to control erosion, as required at §12.395(b)(4). In addition, there were an additional 8.6 acres of undocumented I/C land in Parcel Nos. 6 and 11 for which ground-cover data were required. These 22.4 (13.8 + 8.6) acres contain roads and facilities associated with oil and gas production. In its March 27, 2013, response to Staff's initial TA, Luminant acknowledged the need for ground-cover data in I/C areas and indicated that it would submit a postmine land-use revision to reclassify the 8.6 acres containing undocumented oil/gas features as postmine I/C land. The postmine land use was properly classified with the May 24, 2013, approval of Permit No. 46C (Plates 147 1 and 2, Postmine Land Use). Luminant then submitted (by letter dated July 22, 2013) ground-cover data collected on June 25-26, 2013, for the aforementioned 22.4 acres of postmine I/C land. The Staff found by letter dated October 23, 2013, that data submitted by Luminant indicated that ground cover within these I/C areas was adequate to control erosion.

4. Staff filed its Addendum No. 1 to the Technical Report by letter dated February 4, 2014. In Addendum No. 1, Staff recommended releases requested for 10 parcels, but did not recommend release of reclamation obligations for Parcels 11 and 12. By email dated February 12, 2018, Luminant indicated that it would not be filing any additional documents in response to Staff's Addendum No. 1.
5. Information presented by Staff and/or Luminant include land ownership information and related information, public notice information, previous release information, status of structures contained within the areas requested for release, sampling history, information regarding groundwater chemistry data, ground cover and productivity data, postmining land use, surface water monitoring data, appropriate mapping of the areas proposed for release, soil monitoring grid maps, monitor well location maps and data, permanent structures maps, and land use maps. The areas requested for release contains two impoundments¹, four access roads², three diversions³, six small depressions⁴, and eight drop structures⁵, approved as permanent structures. Luminant's original application list four permanent diversions in the areas proposed for release. However staff noted that one of the permanent diversions was not located within the areas proposed for release in this docket. Additionally, Luminant proposed in Permit No. 46B, Revision No. 114, submitted by letter dated September 11, 2012, that seven depression features remain as permanent structures. The Commission approved six features as small depressions by letter dated December 11, 2012. The seventh feature, a proposed Small Depression DI SD 38 located in Parcel No. 11, originally proposed in the requested release area was denied because Inspection and Enforcement (I&E) Staff determined, as described in a September 25 and 27, 2012, inspection report, that it holds water year-round. Staff considered this feature to be an undocumented impoundment. Luminant indicated by letter dated March 27, 2013 that it accepts Staff's findings regarding this structure.
6. Notice of application was published once each week for four consecutive weeks in the *Henderson Daily News*, a newspaper of general circulation in Rusk County, Texas in the locality of the surface mining and reclamation operations on October 26, November 2, 9, and 16, 2012. The notice of application contains all information required by §134.129 of the Act and §12.312(a) of the Regulations for notice of application for release of reclamation obligations. The notice contains a statement that the applicant does not seek a reduction in the approved bond, but that an eligible bond reduction amount may be determined. Luminant submitted an affidavit of publication with news clippings by letter dated November 26, 2012. The published notice is adequate notification of the request for release. The notice included the name of the permittee, the location of the land affected, the number of acres, permit number at the time of application and date approved, the amount of approved bond, the type and appropriate dates reclamation was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notices contained information concerning the applicant, location and boundaries of the permit area, the application's availability for inspection, the address to which comments should be sent, and a map showing sufficient notice of the boundaries of the areas requested for release.
7. Copies of the application were filed for public review in the offices of the Rusk County Clerk in Henderson, Texas and in the offices of the Railroad Commission of Texas in Austin and Tyler, Texas.

¹ DIII-24RW, DI-63R

² DI-154 Access Road, DI-154 Extension, DI-6A Access Road No. 2, and DIII-RD-1

³ DI-154, DIII-21R Channel Armoring, and DI-27 North

⁴ DIII-SD-1, DIII-SD-2, DIII-SD-3, DIII-SD-4, DIII-SD-5, and DIII-SD-6

⁵ DIII-21R A, DIII-21R B, DIII-21R, DI-40A, DI-63R A, DI-63R B, DI-63R C, and DI-60 R Pond Inlet

8. Luminant or an affiliated company owns all of the 72 tracts within the areas requested for release. In addition to Luminant or an affiliated company, adjoining tracts are owned by approximately 6 other persons or entities. There are numerous leaseholders of tracts within and adjacent to the areas requested for release. In its application, Luminant specifically requests Phase I release of reclamation liability on 133.5 acres and Phase II and III release on 795.6 acres. Luminant has provided information showing the dates of previous releases applicable to the areas requested for Phase II and III release in Table I-2 of the application:

Acres	Approved Release	Docket No.	Final Order Date
795.6	Phase I	C6-0020-SC-46-F	12/05/2006
Total	795.6		

9. By letter dated November 26, 2012, Luminant provided copies of letters of notification of the application for release to the Rusk County Judge/Commissioners Court, the Texas Commission on Environmental Quality (TCEQ), the Natural Resource Conservation Service, the City of Henderson, New Prospect Water Supply Corporation (two locations), Rusk County Electric Co-op, Southwestern Bell Telephone Company, Texas Department of Transportation, Department of Highways, Crims Chapel Water Supply Corporation (WSC), Eastex Telephone Cooperative, Inc., and Atmos Energy Corporation, to property owners, owners of leaseholds or other property interests, and adjoining property owners in accordance with §12.312(a)(2). The areas at issue are not located within any municipality's boundaries that would be notified pursuant to §12.313(c) of the Regulations; however, the City of Henderson was notified.
10. The Surface Mining and Reclamation Division mailed letters dated October 2, 2012 to the owners of the areas requested for release (Luminant, TXDOT, and Crims Chapel WSC), to lessees, and to the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM), notifying them of the date for inspection and the opportunity to participate in the inspection scheduled for October 15, 2012. The Staff sent notice by certified mail of the application to the Rusk County Judge by letter dated October 29, 2012 as required by the Act, §134.133. Four representatives of the applicant and two staff inspectors attended the inspection. A representative of Rusk County was present for the bond release inspection but since Rusk County was not owner-of-interest he did not accompany the inspection groups on the field inspection. Two inspection groups were formed; each group inspected a particular portion of the areas requested for release.
11. No persons filed written comments, written objections, or requests for hearing regarding the request for release.
12. Mining operations were conducted on the 133.5 acres requested for Phase I release of reclamation obligations between 2003 and 2005 and various reclamation activities were conducted from 2003 through 2006 and as necessary for maintaining the areas. Monthly inspections have occurred since mining operations began. Representatives of the Commission's Tyler office conducted the inspection of the areas requested for release as required by §12.312(b)(1) of the Regulations on the date scheduled. Staff's inspection report, Attachment III, to Staff's letter dated December 17, 2012, in Appendix IV contains approximately 65 general photographs and 33 photographs of structures within the areas requested for release taken at the inspection. The photographs contain each type of structure contained within the release areas as well as the types of reclaimed land uses. Inspection staff determined that all of the structures within the areas proposed for Phase III release are structurally intact.

13. Postmine land uses proposed by Luminant for the areas requested for release include the following acreages by phase of release requested for the following land uses as set out on page IV.A.5-1 of the application:

Release	Pastureland	Fish and Wildlife Habitat	Developed Water Resources	Forestry	Industrial/Commercial	Total Acres
Phase I	0	34.8	0	97.0	1.7	133.5
Phase II, III	104.6	314.4	3.8	359.0	13.8	795.6
Total	104.6	349.2	3.8	456.0	15.5	929.1

Staff noted in its initial TA of January 22, 2013, that the postmine land uses, and therefore the land-use distributions, in areas Luminant proposed for Phase II and III release did not match those shown on Plates 147-1 and 147-2, *Postmine Land Use Map*, approved in Revision No. 96 by letter dated July 18, 2012, due to the presence of oil/gas-well pads, roads, and adjacent disturbed areas not classified as postmine I/C land use cover (three areas so categorized). Staff estimated that these three areas containing oil and gas facilities and not approved as postmine I/C land use covered an aggregate 9.4 acres in Parcel Nos. 6 and 11 [shown on Attachment I, Figures 1 and 2 (initial TA)].

Luminant submitted a postmine land-use revision (Permit No. 46B, Revision No. 120 submitted by letter dated December 20, 2012) to properly classify these features as postmine I/C land. However, Revision No. 120 was withdrawn by Luminant on May 29, 2013, so as not to conflict with the information approved in Permit No. 46C by Order dated May 24, 2013. Plates 147-1 and 2 approved by the May 29, 2013 Order have since been eclipsed by Plates 147-1 and 2 in Permit No. 46C, Revision No. 13, approved by Staff's letter dated January 3, 2014.

Luminant reclassified all but 0.8 acre of the above-referenced undocumented I/C areas as I/C postmine land use on Plates 147-1 and 2 in Permit No. 46C approved by Order dated May 24, 2013 (unchanged with approval of Revision No. 13). On Figures 1 and 2 to its initial TA, Staff showed the three areas thought to be undocumented I/C land, one area within Parcel No. 6 (the large oil/gas-well pad shown in the second-most northern parcel on Plate 1-1, Sheet 1 in the initial application) and two areas within Parcel No. 11 (large parcel on the right side of Plate 1-1, Sheet 2 in Luminant's initial application). Aerial imagery indicated that the middle of the three pads in Parcel No. 11 should be expanded (to the east) to reflect disturbance by the oil/gas operator. Luminant chose not to expand this pad, as reflected in its configuration on Plate 1-1, Sheet 2. The postmine land use in this disturbed area remains forestry. It does appear that Luminant replanted this area in trees (furrows visible on aerial imagery) and intends to restore the land to its intended postmine forestry land use. So the actual extent of undocumented I/C land in Parcel Nos. 6 and 11 for which ground-cover data were required (vegetated portions) covered an aggregate 8.6 acres (9.4 acres minus 0.8 acre).

Staffs presented the postmine land uses after the approval of Revision No. 13 and Luminant's acknowledgement that Parcel Nos.11 and 12 would not be recommended for release from Phase II and III reclamation liability is:

Release	Pastureland	Fish and Wildlife Habitat	Developed Water Resources	Forestry	Industrial/ Commercial	Total Acres
Phase I	0	35.2	0	96.2	2.1	133.5
Phase II, III	104.6	243.5	1.9	273.0	15.0	638.0
Total	104.6	278.7	1.9	369.2	17.1	771.5

Postmine land use is not considered for Phase I release; the Phase I acreages above are provided for informational purposes only.

14. Based upon the application and Staff review, Phase I requirements for backfilling, regrading, and drainage control as required by §12.313(a)(1) of the Regulations have been met for 133.5 acres I Parcel Nos. 1,2, and 3 requested for Phase I release.
- (a). The areas approved for Phase I release have met Phase I requirements for stability with no active erosion evident.
 - (b). The areas approved for Phase I release have been regraded to approximate original contour, all highwalls have been eliminated, suitable topsoil -and subsoil-substitute material have been placed over regraded spoil, as required for Phase I release.
 - (c). All Phase I requirements for covering acid-forming and/or toxic-forming materials (AFM/TFM) and combustible materials (CBM) have been met for the areas requested for Phase I release.
 - (1). These approved areas were leveled, regraded, and planted as required according to the approved permit. Appropriate methods were used in reclamation operations in compliance with the permit and Regulations for replacement of the top four feet with non-toxic, non-acid-forming and non-combustible materials. All areas requested for Phase I release have been covered by a minimum of four feet of suitable soil material. Luminant has covered all exposed coal seams remaining after mining and all acid-forming, toxic-forming, and combustible materials (AFM/TFM and CBM) with a minimum of four feet of the best available non-AFM/TFM and non-CBM. Luminant provided a list of applicable soil-testing grids and dates of sampling in its application. SMRD submitted initial soil sample results to the Commission from 1998 through 2009. By letter dated July 6, 2009, SMRD determined that the soil-testing data, for all grids submitted through that date meet the applicable physicochemical postmine soil performance standards. The SMRD has found (most recently by letter dated July 6, 2012) that data submitted to date meets the applicable physicochemical postmine soil performance standards. This finding did not extend to areas covered by temporary or undocumented structures and areas impacted by acid drainage.

- (d). The areas approved for Phase I release meet drainage control requirements. The areas are consistent with approximate original contour and drain to approved Sedimentation Ponds DIII-5 and DIII-6. Discharges from these impoundments and ponds are subject to the TCEQ Texas Pollutant Discharge Elimination System (TPDES) Permit No. 2644.
 - (e). No cut-and-fill terraces have been constructed for which other requirements apply (§12.385).
 - (f). The areas requested for Phase I release contains no prime farmland for which specific soil reconstruction requirements apply.
15. Based upon the application and Staff review, the following Phase II reclamation obligations have been met for the acreage approved in this Order for Phase II and III release: the establishment of revegetation, and the requirement that discharges from the area not contribute suspended solids to streamflow or runoff outside the permit area in excess of the requirements of the Act and Regulations [§12.313(a)(2)]. Phase II and III release is not approved for Parcel Nos. 11 and 12 that has been impacted by acidic conditions.
- (a). No rills or gullies requiring stabilization were found during the inspection within the Phase II requested areas.
 - (b). Permanent revegetation has been established on the regraded areas in accordance with the approved reclamation plan for fish and wildlife habitat, forestry, pastureland, cropland, developed water resources, and industrial/commercial land use. The areas requested for Phase II release are planted with approved species; photographs contained in Staff's inspection report show that vegetation is well established, however, Staff's initial TA did not recommend release of Phase II and III reclamation liability for Parcel Nos. 4, 6, 7, 8, 9, and 11 because Luminant had not submitted ground-cover data to demonstrate that vegetation within the portions of these parcels reclaimed to the postmine I/C land use (an aggregate 13.8 acres) was adequate to control erosion, as required under §12.395(b)(4). In addition, there were an additional 8.6 acres of undocumented I/C land in Parcel Nos. 6 and 11 for which ground-cover data were required. These 22.4 (13.8 + 8.6) acres contain roads and facilities associated with oil and gas production. Luminant's response to Staff's initial TA, acknowledged the need for ground-cover data in I/C areas and indicated that it would submit a postmine land-use revision to reclassify the 8.6 acres containing undocumented oil/gas features as postmine I/C land. The postmine land use was properly classified with the May 24, 2013, approval of Permit No. 46C. Luminant then submitted (by letter dated July 22, 2013) ground-cover data collected on June 25-26, 2013, for the aforementioned 22.4 acres of postmine I/C land. The Director found by letter dated October 23, 2013, that these data indicated that ground cover within these I/C areas was adequate to control erosion. For land reclaimed as pastureland, common and coastal bermudagrass were planted. For fish and wildlife habitat, Luminant planted a variety of trees including loblolly pine, oaks, and sweetgum. Vegetation species in forestry land is dominated by loblolly pines. Vegetated areas surrounding developed water resources are comprised of common Bermuda and native grasses. Vegetated areas surrounding and industrial/commercial land use is sufficient to control erosion.

- (c). All drainage from disturbed areas was routed to approved sedimentation ponds. All other drainage was controlled in accordance with requirements of the Regulations and the permit.
 - (d). No permanent silt dams, for which sound maintenance provisions must be made, are located within the areas requested for Phase II release [§12.313(a)(2)].
 - (e). During the fourth year of the extended responsibility period (ERP), in areas placed into the ERP, a random 10% of all grids within the extended responsibility area (ERA) are to be resampled and analyzed according to the methodology used in the initial minesoil-monitoring program. Luminant's application did not indicate that such data had been provided for the aggregate 795.6 acres proposed for Phase III release. All 795.6 acres are in the May 11, 2006, ERA. Luminant submitted these data by letter dated July 9, 2010. The Commission found by letter dated December 13, 2010 (copy in Section VI of the application) that Luminant had satisfied this requirement of the approved soil-testing plan.
16. Areas approved for Phase II and III release in this Order were released from Phase I obligations by Commission Order dated December 5, 2006. Areas approved in this Order for Phase III release have met Phase III requirements for ground cover, stem count, and productivity, as applicable, and vegetation is sufficient for the postmine land uses.
- (a). Areas approved in this Order for Phase III release have met ground cover and stem-count requirements for fish and wildlife habitat land use [subparagraph (1)] and forestry land uses [subparagraph (2)], ground cover and productivity standards for land reclaimed to pastureland [subparagraph (3)], and ground cover sufficient to control erosion for industrial/commercial land use [subparagraph (4)] in accordance with §12.395 of the Regulations). Sampling of ground cover and stem count for fish and wildlife and forestry postmine land uses and for ground cover and productivity for pastureland was consistent with the Commission guidance document, *Procedures and Standards for Determining Revegetation Success on Surface Mined Lands in Texas*. Ground cover and productivity for prime farmland used as cropland meet the requirements of §12.395 and §12.625.
 - (1). Luminant submitted ground cover and stem-count data by letter dated April 1, 2011 from surveys conducted in 2010 that the Commission approved by letter dated September 16, 2011. The data applied to fish and wildlife habitat land management units (LMUs) DI-2006H and DIII-2006H. The extended responsibility period (ERP) for these areas (a minimum of five years for areas receiving more than 26 inches of average annual precipitation) began on May 11, 2006. In accordance with §12.395(c)(2) for fish and wildlife habitat, ground cover and stem-count must equal or exceed the applicable success standard during the growing season of the last year of the ERP. The approved standard requires that ground cover or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard with a 90% statistical confidence interval. Staff review indicates that the LMUs have met the ground cover and stem count requirements for Year 2010 based on the survey submitted for growing season 2010, the last year of the ERP as required. The data were submitted by letter dated April 1, 2011 and were approved by the Director by letter dated April 1, 2011 in accordance with §12.395(a)(2). These areas have successfully met the five-year ERP. The vegetation on these areas is

sufficient for the postmine land use.

- (2). Luminant also submitted ground cover and stem count data for 2010 for forestry LMUs DI-2006F and DIII-2006F by letter dated April 1, 2011. These areas were accepted into the ERP in May 11, 2006 and have met the applicable five-year ERP. The ground cover is not less than that to achieve the postmine land use. From all of the information submitted, eighty percent of the vegetation in the fish and wildlife and forestry areas has been in place for 60% of the extended responsibility period (ERP). All trees were healthy and had been in place for at least two growing seasons. The standard for minimum stocking was met for the lands reclaimed to forestry for the last year of the ERP as required. Ground cover and stem count were approved for these areas in accordance with §12.395(b)(3) and §12.395(c)(2) by the Director's letter dated September 16, 2011.
 - (3). Luminant submitted ground cover and productivity data for pastureland LMU DI-2006 accepted into the ERP on May 11, 2006 for growing seasons 2008 and 2010 and for pastureland LMU DIII-2006 for growing seasons 2010 and 2011 accepted into the ERP on May 11, 2006. Data were submitted by letter dated August 28, 2009 for both LMUs and submitted revised data by letter dated January 6, 2010. As described in SMRD's June 14, 2010 letter, the 2008 ground-cover data set for pastureland LMU DIII 2006 was invalid because Luminant did not sample approximately 15 acres within this LMU. By letter dated December 20, 2011, Luminant submitted groundcover and productivity data for LMU DIII-2006 collected in growing season 2011 to replace the 2008 data. By letters dated June 14, 2010 (LMU DI-2006) and April 25, 2012 (LMU DIII-2006), the Commission determined that the data met the requirements for ground cover and productivity for land reclaimed to pastureland in accordance with §12.395(b)(1) and §12.395(c)(2) of the Regulations. Ground cover and productivity data were determined to meet the requirements for successful revegetation, that is, for any two years of the ERP other than the first year in accordance with §12.395(c)(2) of the Regulations. These areas have met the five-year ERP.
 - (4). Areas surrounding the postmine land uses of developed water resources and industrial/commercial are sufficiently vegetated to control erosion and are sufficient for the postmine land uses.
17. All soil fertility data required for pastureland have been submitted and approved.
 18. All areas proposed for Phase III release have been reclaimed to a condition so that they are capable of sustaining the postmine land use, with the exception of Parcel Nos. 11 and 12.

19. Inspection of the areas requested for Phase III release indicate that all structures are approved as permanent and are stable and structurally intact. No rehabilitation of any structure is needed. The areas surrounding all structures requested for Phase III release are well vegetated. All boreholes within the release areas have been plugged with the exception of one monitoring well, DIII-5-OB2-R-03, still used for long-term groundwater monitoring. Well DIII-5-OB2-R-03 will remain in place so that groundwater can continue to be monitored for future bond reductions in the vicinity of the well.
20. The following two permanent impoundments are located within areas requested for Phase II and III release: DI-63R, and DIII-24RW. DI-63R was approved prior to the date of August 9, 2001 after which four quarters of water quality sampling data were required to be submitted to establish suitability of ponds for their intended postmine land use. At the time that these ponds were approved as permanent, however, sampling indicated appropriate water quality for the intended land use. Four quarters of water quality sampling data were submitted for Pond DIII-24RW: data for March 28, 2002, May 28, 2002, September 12, 2002, and December 4, 2002. The available data indicates that the pond's water quality meets the quality for its intended postmine land use.
21. Surface waters have been protected by operations conducted to protect surface waters in accordance with §12.313(a)(2) and (3) for the areas requested for Phase II and III release, respectively, from contributing excess suspended solids to streamflow or runoff outside the permit area in excess of the requirements of §134.092(a)(10) of the Act, the water quality permit, and stream segment standards with the exception of Parcel Nos. 11 and 12.
 - (a). Staff examined Luminant's analysis of surface water information and discharge data from final discharge ponds as well as water quality from stream monitoring stations that receive runoff from the areas requested for release. Parcel Nos. 4, 5 and 8 drain to an un-named tributary which then flows into Mill Creek within the Permit No. 46C boundary. Parcel Nos. 6 and 7 drain to an un-named tributary just north of the previously mentioned tributary which also drains into Mill Creek. Parcel No. 9 drains partially into Mill creek and partially into Dry Creek. Parcel Nos. 10, 11 and 12 flow into Dry Creek, which discharges to Mill Creek, then flows into Lake Cherokee, thence to the Cherokee Bayou, and finally to the Sabine River. Paired watershed monitoring data for an undisturbed watershed (Boggy Creek) and for a disturbed watershed (Dry Creek) were compared to determine any indication of long-term impact to the streams.
 - (1). The watersheds of Permanent Impoundments DI-63-R and DIII-24RW, and of Sedimentation Ponds DI-27, DI-40, DI-41, DIII-6, and DIII-7 receive discharges from the areas proposed for Phase II and III release. Staff examined data for discharges from Texas Pollutant Discharge Elimination System (TPDES) Permit No. 2644 outfalls applicable to the ponds for varying periods of record and frequency of sampling for pH, total suspended solids (TSS), total iron (Fe), total manganese (Mn), selenium (Se), and total settleable matter (TSM). Quarterly long-term discharge data is summarized in Staff's technical analysis. Discharge records reflect sampling data showing compliance with discharge requirements for pH, 6 to 9 standard units (s.u.); total iron (Fe), 3.0 mg/l limitation for daily average and 6.0 mg/l for daily maximum values; selenium, 0.036 mg/l; manganese (Mn), 1.0 mg/l daily average, and 2.0 mg/l daily maximum; total settleable matter, 0.5 mg/l; and total suspended solids (TSS), 35 mg/l for daily average limitation and 70 mg/l for daily maximum limitation. The data

demonstrate that the water quality of the ponds does not have a negative impact on the proposed release areas since effluent limitations have not been exceeded since 2004. However, low pH levels (2.95 s.u.) in permanent Ponds DI-61R and DI-62R were reported in the inspection reports of April 25-26 and May 23, 2012. Ponds DI-61R and DI-62R are directly adjacent to and northwest of Parcel No.11. Parcel No. 11 could be the source of the acidic runoff due to acid seeps located in or near the ponds as noted in the Groundwater Monitoring Section of this document.

- (2). Staff reviewed long-term quarterly stream monitoring data at stations representing paired watershed monitoring (the undisturbed Boggy Creek watershed compared to the disturbed Dry Creek watershed) and monitoring data from the USGS Monitoring Station No. 08020960 (upstream of disturbances) and No. 08020980 (downstream of the permit boundary). Based upon comparisons of annual averages of these data to maximum annual averages for Stream Segment 0505 of the Sabine River, the comparisons indicate that all values meet stream segment standards or, in the case of pH, are reflective of baseline conditions. The data reflect that values for TDS, as the indicator parameter, are sufficiently in accordance with predictions set out in the cumulative hydrologic impact assessment that predicted minimal impacts on receiving streams. Staff determined that effects on the volume or rate of flow in area watersheds have been insignificant. Staff found that the proposed release areas from Phase II and II reclamation obligations will not affect the surface-water quantity (volume or rate of flow in area watersheds) or surface-water quality as described in the approved permit. Based on the data provided in the application for release and on Staff's evaluation of the information with respect to the approved PHC determination and its CHIA, Luminant has met the requirements of §12.349 for Phase II and Phase III release of reclamation obligations with the exception of Parcel Nos. 11 and 12 as previously noted in the individual final discharge pond monitoring evaluation as well as the ground-water monitoring evaluation due to the location of acid seeps.
- (b). Groundwater monitoring has been conducted throughout the periods of mining and reclamation. Luminant maintained quarterly monitoring records. The application, as supplemented, and Staff review show that the groundwater within and adjacent to the areas now requested for Phase III release has been protected [§12.313(a)(3) and §12.348]. General chemistry data and water levels for 9 monitoring wells made up of overburden, underburden, and spoils wells are contained in Tables III.A.9-1 through III.A.9-9 of the application. These spoil-well data indicate that water levels in the spoil-monitoring wells have risen in response to resaturation and have stabilized. The reestablishment of approximate original contour and vegetation has helped to ensure that the infiltration capacity (recharge) approaches that of premine conditions. Water quality has followed trends expected from the PHC and CHIA for the mine. The TDS (total dissolved solids) concentrations in water from the five spoil monitoring wells in the proposed release area have generally decreased over the period of record. Spoil monitoring wells contain the most saline values for monitored areas within the mine. The TDS concentrations for water in spoil monitoring well DIII-5-OB2-R-03 rose from 62 mg/L in 2008 to a high of 1,868 mg/L in 2012. Sulfate concentrations decreased from 1,050 mg/L in 2003 to 1 mg/L in 2007 and subsequently rose to a high of 1,100 mg/L in 2012. The pH values for spoil well DIII-5-OB2-R-03 have remained relatively steady over time, with an average of 3.16 from 2003 to 2012. Long-term quarterly monitoring of the overburden and

underburden systems in areas adjacent to the proposed release area indicates no discernible impacts to water level and water quality in adjacent areas. At least four acid seeps exist in the vicinity of Parcel Nos. 11 and 12 that exhibit pH values ranging from 2.31 to 2.93 s.u. The seep draining into DI-63R Pond (westernmost of the four acid seeps) suggests a shift of pH from low to high due to precipitation of iron in the area. The proximity of these acid seeps to the parcels and the local topography suggest that the area of the parcels serves as a source area for the acidic water. The seep areas are continuing to enlarge, and it is Staff's opinion that Phase III release of these parcels would not be prudent at this time, pending completion of the ongoing investigation of these seep issues and remediation activities that may be necessary. During the ERP the spoil-aquifer water quantity (as represented by water levels) and the water quality (represented by TDS concentrations) have generally stabilized. Localized effects to underburden and overburden water quantity have been only temporary. Otherwise, the ground-water systems adjacent to the proposed release area have not been impacted by deterioration in water quality or quantity as a result of the mining or reclamation activities. With respect to ground-water systems and with the exception of Parcel Nos. 11 and 12, Luminant has complied with the requirements of the Regulations for the subject 795.6 acres proposed for Phase III release. Phase III release for Parcel Nos. 11 and 12 at this time is premature due to the adjacent acid seeps.

20. The notice of application for release did not include an amount of eligible bond reduction requested, but stated that an eligible bond reduction amount may be determined. Luminant does not request an adjustment to the approved bond at this time. The eligible bond reduction amount considers acreage at the rates indicated in the table contained in this Finding of Fact for mined acreage and acreage otherwise disturbed. The eligible bond reduction amount is calculated after consideration of Staff's Evaluation Report as amended (that recommended an eligible bond reduction amount of \$1,819,479.75. By Order dated April 23, 2013, Docket No. C12-0005-SC-46-F, Finding of Fact 20, the Commission approved an alternative bond reduction calculation. As in that docket, the examiner's review and calculation is based on using approved figures for costs per acre for mined acreage (\$10,164/acre), disturbed acreage (\$5,343/acre, and an amount for soil preparation, revegetation, and maintenance, \$541), contained in the renewal/revision application approved May 24, 2013, and Phase I released acreage applying a 60% factor allowed by §12.313(a)(1). Administrative costs of 10% have also been added. Based on the releases approved in this Order, the resulting eligible bond reduction amount is \$3,762,803.66. Staff used \$581 per acre as an estimate of the amount that should remain after Phase I release; however, Regulation §12.313(a)(2) indicates that the amount for soil preparation, revegetation, and maintenance in a bond release proceeding may be used for Phase II released areas rather than Phase I. Although it may be appropriate to retain only the amount for soil preparation, revegetation, and maintenance in calculating an estimate of reclamation costs required in a bond acceptance proceeding in which a worst-case bond method is used, §12.313(a)(2) addresses its use in a bond release proceeding as applicable for Phase II released areas, not Phase I released areas. The Commission approves \$3,762,803.66 as the eligible bond reduction amount. The Commission, if it desires, may conduct a rulemaking proceeding to determine if it is appropriate to retain only an amount for soil preparation, revegetation, and maintenance for Phase I areas in a bond release proceeding, rather than the 40% retention specified in §12.313(a)(1). The Commission approves the eligible bond reduction amount as follows:

Eligible Bond Reduction Calculation Based on §§112.313(a)(1) and (2)

Phase Requested	Acreage	Rate	Bonded \$ Per Acre	Eligible Reduction (\$)
Phase I	133.5	Mined (not worst-case)	\$6,121.20 ¹	\$817,180.20
Phase II and III	638.0	Phase I	\$4,080.80 ²	\$2,603,550.40
Phase II and III	157.6	Phase I	\$4,080.80 ²	\$0.00 ³
Subtotal				\$3,420,730.60
Admin. Costs (10%)				\$342,073.06
Total	929.1			\$3,762,803.66

¹ Equals 60% of the \$10,202/acre bonding rate for mined areas (excluding worst-case pits and associated areas)

² Equals 40% of the \$10,202/acre bonding rate for mined areas (excluding worst-case pits and associated areas)

³ Parcel Nos. 10 and 11 for which release is not recommended

21. The Regulations at §12.310(b) require that the Commission shall not release an existing performance bond until the permittee has submitted and the Commission has approved an acceptable replacement performance bond. Luminant must submit an acceptable replacement performance bond prior to any adjustment of the approved bond instrument.
18. The areas requested for release have been clearly marked in the field with permanent boundary markers to distinguish the areas from active mining and reclamation areas. The areas not approved for release shall remain marked to reflect the bonded status. Identification of these areas assists future inspection of adjacent areas by field office staff; the markers shall be maintained.
19. Luminant and the 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. The matter has been posted for Commission consideration.

CONCLUSIONS OF LAW

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 jurisdiction to attach to allow the Commission to consider this matter.
4. It is not in accordance with §12.313(a)(2) of the Regulations to retain only costs for soil preparation, revegetation, and maintenance for Phase I released areas in a bond release proceeding unless a change in rules is approved.
5. The Commission may approve a release of reclamation obligations for the acreages requested in accordance with the Findings of Fact as set out in this Order.
6. The Commission determines an eligible bond reduction amount of \$3,762,803.66.

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 the following releases of reclamation obligations are approved: Phase I release (only) of 133.5 acres and Phase II and III release of 638.0 acres;

IT IS FURTHER ORDERED that the Commission denies without prejudice Phase II and III release of 157.6 acres encompassing Parcel Nos. 11 and 12;

IT IS FURTHER ORDERED that the Commission determines an eligible bond reduction amount of \$3,762,803.66;

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 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 costs of reclamation change; 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 AT AUSTIN, TEXAS, on September 16, 2014.

RAILROAD COMMISSION OF TEXAS

Christi Craddick

CHAIRMAN CHRISTI CRADDICK

David Porter

COMMISSIONER DAVID PORTER

Barry T. Smitherman

COMMISSIONER BARRY T. SMITHERMAN

ATTEST:

Kathleen Wiley

Secretary, Railroad Commission of Texas

