

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

SMRD DOCKET NO. C15-0003-SC-47-F

**APPLICATION OF TEXAS WESTMORELAND COAL COMPANY FOR PHASE II
RELEASES OF RECLAMATION OBLIGATIONS, PERMIT NO. 47A, JEWETT E/F AREA
MINE, FREESTONE AND LEON COUNTIES, TEXAS**

**ORDER APPROVING RELEASE
OF PHASE II RECLAMATION OBLIGATIONS FOR 405.1 ACRES**

Statement of the Case

Texas Westmoreland Coal Company (TWCC), applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase II release of reclamation obligations for 405.1 acres in the aggregate within Permit No. 47A, Jewett E/F Area Mine, Freestone and Leon 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. 2014), and the "Coal Mining Regulations" Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2014).

The currently accepted reclamation performance bond for Permit No. 47A is a self-bond with third-party guarantee in the amount of \$18,500,000 accepted by the Commission on March 22, 2011 and a surety bond in the amount of \$18,000,000 accepted by the Commission by Order dated June 12, 2012, for total bonding in the amount of \$36,500,000.

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 and its inspection of the area, the Staff recommends the requested releases. The parties waived preparation and circulation of a proposal for decision.

The Commission approves the release of reclamation obligations as recommended by Staff. TWCC does not request adjustment to the approved reclamation bond at this time. No eligible bond reduction amount is applicable to the acreage in that it is currently bonded in an amount sufficient for the remaining Phase III release (soil preparation, revegetation, and maintenance).

FINDINGS OF FACT

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

1. By letter dated September 30, 2014, Texas Westmoreland Coal Company (TWCC) filed its application for Phase II release on 405.1 acres at the Jewett E/F Area Mine, Permit No. 47A located in portions of Freestone and Leon Counties. The permit area contains approximately 9,341 acres. The area proposed for Phase II release was granted Phase I release of reclamation liability by Commission Order dated May 22, 2014, Docket No. C14-0003-SC-47-F.
2. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134, (Vernon Supp. 2014), and the "Coal Mining Regulations" Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2014). No filing fee is required. The application was properly certified in accordance with § 12.312(a)(3).
3. TWCC does not request a reduction in the amount of the approved reclamation bond instruments. The currently accepted reclamation performance bond for Permit No. 47A is a self-bond with third-party guarantee in the amount of \$18,500,000 accepted by the Commission on March 22, 2011 and a surety bond in the amount of \$18,000,000 accepted by the Commission by Order dated June 12, 2012, for total bonding in the amount of \$36,500,000.
4. Publication occurred once each week for four consecutive weeks on November 19 and 26 December 3 and 10, 2014 in *Jewett Messenger* and on December 4, 11, 18 and 25, 2014 in the *Fairfield Recorder*. These publications are papers of general circulation in the area of the proposed 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. Copies of the application were filed for public review at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas and in the offices of the Leon and Freestone County Clerks.
5. 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 also mailed notice to the County Judges and Commissioners' Courts of Freestone and Leon Counties, the Environmental Protection Agency, the Texas Department of Transportation, the Texas Commission on Environmental Quality, local offices of the Natural Resources Conservation Service, Texas General Land Office, Donie Water Works, Concord-Robbins Water System, U.S. Army Corps of Engineers and the Brazos River Authority. The areas requested for release are not located within the territorial boundaries of any municipality.

6. By letter dated January 16, 2015, the Surface Mining and Reclamation Division filed documents with the Hearings Division and declared the application administratively complete. Staff's technical evaluation and inspection report were filed with the Hearings Division on March 31, 2015. Staff's initial technical evaluation did not recommend the release of Phase II reclamation obligations on the 405.1 acres. On April 15, 2015 TWCC filed Supplement No. 1, which included in part, missing topographic information on watershed map, four quarters of discharge water-quality data and data applicable to stream segments standards for permanent Pond RP-F1. On May 11, 2015, Staff filed an Addendum No. 1 to its TA. In Staff recommended Phase II release of Reclamation liability be granted on 405.1 acres proposed for Phase II release.
7. The Staff provided notification of the application by certified letter dated November 14, 2014 to the County Judge of Freestone and Leon Counties, the counties in which the acreage requested for release is located as required by § 134.133 of the Act; the date of notification is a least 31 days prior to the date of release as required by 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 date and time of Staff's field inspection by letters dated October 1, 2014 (approximately 28 landowners). 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 scheduled for October 22, 2014. The Division also sent notice to the applicant and to the Office of Surface Mining Reclamation and Enforcement (OSM) (Tulsa, Oklahoma office), however, no OSM representative attended. Approximately 14 persons and the Staff inspector attended a meeting prior to the inspection, including approximately seven landowners. No adverse comments or written objections were filed regarding the request for release. No requests for hearing were filed pursuant to § 12.313(d).
8. One Commission inspector and one TWCC conducted the inspection, and no landowners attended the inspection. The inspection occurred on October 22, 2014. The area proposed for release is detailed in Staff's Technical Evaluation and Field Inspection Report. Figures and photographs of the proposed release area in the Staff Inspection Report and Evaluation provide depictions of the areas included within the application

and the specific releases proposed. Photographs from the inspection are included in Appendix IV of the Inspection Report (Attachment III to Staff's TA) and provide support for the application and the inspection report.

9. The application included ownership and tract information for owners of interests in the areas proposed for release and adjacent lands. There are ten tracts with approximately 38 landowners within the areas requested for release of reclamation obligations and three adjacent tracts with 17 landowners. An affiliate (NRG Texas Power LLC) of TWCC's third-party guarantor, NRG Energy, Inc., has an interest in eight of the tracts within the areas requested for release.
10. The land use within the areas requested for release is pastureland (400.6 acres) and developed water resources (4.5 acres).
11. One permanent impoundment, Pond RP-F1 and one diversion (Wilkerson Springs Permanent Diversion) are located within the areas requested for release. No other structures are located within the areas requested for release. Pond RP-F1 was approved by staff's letter dated July 12, 2012, and the Wilkerson Springs Permanent Diversion was approved by staff's letter of December 21, 2009.
 - (a). No silt dams are present within the area proposed for Phase II bond release. (§12.344).
 - (b). No areas are recommended for Phase II release of reclamation liability has soils classified as prime farmland prior to mining. (§12.620-12.625).
14. The acreage requested for Phase II release of reclamation obligations has met applicable Phase II requirements and Phase II release is approved.
 - (a). The acreage approved for release from Phase II revegetation requirements has met requirements for establishing revegetation. Vegetation was planted and consisted of primarily Common and Coastal Bermudagrasses and a variety of trees including water oak, willow oak and bald cypress. The acreage proposed for Phase II release also has met ground cover requirements for pastureland. The land has been reclaimed and managed in accordance with the approved postmine land uses (§§12.147 and 12.399). The vegetation within the proposed release area is healthy and self-sustaining (§§12.390 - 12.395). This pastureland is contained within Land Management Unit (LMU) FN1-14P. The Extended Responsibility Period (ERP) was initiated on June 10, 2014 and

acknowledged by SMRD by letter dated July 9, 2014. Staff determined that the 2014 ground cover data for LMU FN-14P indicated the vegetation met the performance standards in accordance with §12.395(c)(2). The ground cover technical performance standard for this acreage is 94.6%; ground cover must be not less than 90% of the applicable success standards approved by the Commission for the permit. TWCC uses specific technical standards for various bunchgrasses, Switchgrass, Indiangrass, Kleingrass, and Old World bluestem. Vegetation has met the ground cover requirements contained in its permit for compliance with §12.395(a)(2) and (b)(1); data submitted by TWCC and review by Staff indicate that the vegetation in the areas approved for Phase II release met or exceeded 90% of the technical standards for ground cover. Estimated ground cover is 94%. No portions of the area proposed for Phase II release of reclamation obligations were classified as prime farmland for which additional requirements apply. The ground-cover data for the 401.5 acres was approved by SMRD on October 29, 2014.

- (b). TWCC address the requirements of §12.349: relating to *Hydrologic Balance: Surface water Protection* through the submission and evaluation of Surface water monitoring data. Pastor, Behling and Wheeler, LLC prepared the Surface hydrology evaluation.
- (c). The areas requested for Phase II release are not contributing excess suspended solids to runoff or streamflow outside the permit area in excess of water quality permit requirements or in concentrations that would adversely affect streamflow outside the permit area. Records of discharge data from permanent Pond RP-F1033 that receives runoff from the area requested for release show that discharges from this pond are compliant with TCEQ Texas Pollutant Discharge Elimination System permit requirements. In Supplement No. 1 TWCC included a revised watershed map with topography, four consecutive quarters of discharge data from permanent Pond RP-F1, and a comparison to applicable stream segment standards. Based on the supplemental information and analysis of the additional data provided by TWCC, staff found that the area proposed for Phase II release has had no deleterious effects on the surface water hydrologic balance of the 401.5 acres.
- (d). The data indicate that the ranges reported for pH, TSS (total suspended solids), total iron (Fe) and total manganese (Mn) are within the effluent limitations in the TCEQ TPDES (Texas Pollutant Discharge Elimination System) Permit No. 02653, of 6.0-9.0 s.u. (standard units), for pH, 35 mg/L –70 mg/L (allowable daily average/allowable daily maximum) for TSS, 3.0 – 6.0 mg/L (allowable daily average/allowable daily maximum) for total iron (Fe), and 1.0 –2.0 mg/L (allowable daily

average/allowable daily maximum) for manganese (Mn). Based on these results, the area requested for release is not contributing suspended solids to streamflow or runoff outside of the permit in excess of performance standards [§12.313(a)(2)].

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. Estimated costs are not based on a per-acre cost, except for soil preparation, revegetation, and maintenance, but are instead calculated based on the worst-case pit and reclamation of all temporary structures. In the most recently calculated bond estimate, the only costs attributable to the areas approved for release were the cost for soil preparation, revegetation, and maintenance attributable to the acreage. This amount is made up of the bond amounts attributable to 405.1 acres for soil preparation, revegetation and maintenance. These costs are retained for Phase III release should revegetation be required after failure. Therefore, there is no eligible bond reduction amount for the 405.1 acres.
16. TWCC has not requested an adjustment to the approved bond 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.
18. Open meeting notice has been posted for 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. A public hearing on the request has not been requested and is not warranted.
3. TWCC has complied with all applicable provisions of the Act and the Regulations for release of Phase II reclamation obligations for the areas proposed for release as set out in the Findings of Fact.
4. The Commission may approve the following release of reclamation obligation, Phase II release for 405.1 acres (not eligible for a bond reduction), as set out in the Findings of Fact.

5. No eligible bond reduction amount is applicable.

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 405.1 acres is approved;

IT IS FURTHER ORDERED that no eligible bond reduction amount is applicable;

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

IT IS FURTHER ORDERED that the current bond remains in effect according to its terms until 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 acreage is increased or decreased or where the cost of reclamation changes; and

IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is mailed. If a timely motion for rehearing is filed by any party of interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further Commission action. 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.

Texas Westmoreland Coal Company
Docket No. C15-0003-SC-47-F

SIGNED this 15th day of September, 2015.

RAILROAD COMMISSION OF TEXAS


CHAIRMAN DAVID PORTER


COMMISSIONER CHRISTI CRADDICK


COMMISSIONER RYAN SITTON

ATTEST:


Secretary, Railroad Commission of Texas

