

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C16-0007-SC-50-F
APPLICATION BY LUMINANT MINING COMPANY LLC
FOR PHASE I RELEASE OF RECLAMATION OBLIGATIONS
FOR 530.3 ACRES OF ITS SURFACE COAL MINING OPERATIONS
FOR PERMIT NO. 50, KOSSE MINE, LIMESTONE AND ROBERTSON
COUNTIES, TEXAS**

**ORDER APPROVING PHASE I RELEASE
OF RECLAMATION OBLIGATIONS FOR 530.3 ACRES**

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 Phase I release of reclamation obligations (backfilling, regrading, and drainage control) for parcels of land located within its Permit No. 50A, now renumbered as Permit No. 50B. The permit was last renewed by Order dated May 3, 2016. The 15,040-acre permit area is located along State Highway (SH) 7 approximately 6 miles east of the town of Kosse, Texas and approximately 12 miles west of Marquez, Texas. Luminant 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 2016) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE ANN. CH. 12 (ThomsonWest 2016) (Regulations).

Staff of the Surface Mining and Reclamation Division has reviewed the request for release of the acreage and filed its Technical Analysis and field inspection report. The only parties to the proceeding are Luminant 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 and required federal and state agencies. No comments were made following public notice and mailed notice, and no public hearing was requested.

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Based on the record in this docket including the application and Staff review, and the Act and Regulations, the examiner recommends that the application for Phase I release should be approved for all of the 530.3 requested acres, as set out in the Findings of Fact and Conclusions of Law. There remain no outstanding issues between the parties.

FINDINGS OF FACT

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

1. By letter dated October 19, 2015, Luminant Mining Company LLC (Luminant) filed its request for Phase I release of reclamation requirements (backfilling, regrading, and drainage control) for 530.3 acres, located within the 15,040-acre permit area of the Kosse Mine, Permit No. 50B, Limestone and Robertson Counties, Texas.
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 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. The application was supplemented by letter dated February 22, 2016 with proof of public notice. The application was declared administratively complete on April 28, 2016.
3. The approved bond map and reclamation cost estimate were approved in the Commission order issuing Permit No. 50B on May 3, 2016. Reclamation costs of \$176,165.220 were approved for the permit. Luminant currently bonds all of its operations in Texas with a blanket collateral bond. The reclamation costs were calculated on a hybrid worst case/area bonding method. The estimate, \$176,165,220.00 includes worst-case pit closure costs for the DI-Auxiliary worst-case pit, costs for mined areas, disturbed areas, ancillary areas, and facility reclamation costs. Luminant does not request any change to the bond instrument. An eligible bond reduction amount may be considered.

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4. The area proposed for release is detailed in the Staff Evaluation, Attachment I (Map) and Attachment III (Staff Inspection Report), Appendix I (Location Map) to Attachment III, and Appendix IV (General Photographs and Photograph Locations). The application, photographic evidence, and Staff Inspection Report and Evaluation provide support for release of Phase I 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 offices of the Limestone and Robertson County Clerks, Groesbeck and Franklin, Texas, respectively.
6. Publication of notice of application occurred once each week for four consecutive weeks in the *The Groesbeck Journal*, a newspaper of general circulation in Limestone County, Texas, on January 7, 14, 21, and 28, 2016 and in *The Bremond Press*, a newspaper generally circulated in Robertson and Limestone Counties on January 8, 15, 22, and 29, 2016. The newspapers are in the locality of the surface mining and reclamation operations. 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 Phase I reclamation obligations for backfilling, regrading, and drainage control. 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 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, the address to which comments should be sent, and 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 April 28, 2016. The Staff's evaluation document was filed with the Hearings Division by letter dated May 18, 2016. The Technical Evaluation and inspection report

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indicated that Luminant had met all requirements for Phase I release for the entire 530.3 acres identified in the application.

8. The area requested for release is made up of several parcels of land located in the southern portion of the permit area, with the southernmost parcels located in Robertson County and the others located in Limestone County. The approved postmining land uses are pastureland and developed water resources.
9. Luminant provided copies of letters of notification of the application for release to property owners, owners of leaseholds or other property interests, and adjoining property owners in accordance with §12.312(a)(2) of the Regulations. By letter dated February 22, 2016, Luminant submitted to the Commission copies of the letters to landowners and/or adjoining landowners, and lessees and holders of other property interests, and to the following: the Limestone County Judge/Commissioners Court, the Robertson County Judge/Commissioners Court, Robertson County Water Supply Corporation, Texas Department of Transportation in Waco, Texas, the Texas Commission on Environmental Quality, Natural Resources Conservation Service in Franklin and in Groesbeck, Texas, Texas State Soil and Water Conservation Board in Temple and in Dublin, Texas, the U.S. Army Corps of Engineers Ft. Worth District, and the Texas Department of Highways in Austin, Texas as required by §12.312(a)(2) of the “Coal Mining Regulations” and §134.129 of the Surface Coal Mining and Reclamation Act. 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.
10. 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).
11. SMRD’s Inspection and Enforcement Section mailed letters dated October 22, 2015 to Luminant, landowners, holders of other interests within the area requested for release, and the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office

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(OSM), notifying them of the date scheduled for inspection, November 17, 2015, and the opportunity to participate in the inspection in accordance with §12.312(a)(2). Staff sent a letter of notification of the application as required by the Act, §134.133 by certified mail to the Limestone and Robertson County Judges by letter dated April 28, 2016 (Attachment II to Staff's inspection report). The inspection occurred on the date scheduled. A Luminant representative was present at the pre-inspection meeting and the inspection. No others attended the inspection. The area was inspected with the use of a GPS device; the areas had not been marked in the field at the time, but were later marked (as determined in a January 2016 inspection). On the date of inspection the ground was saturated from rainfall. Some minor erosion was noted in the northernmost area requested for release, some of which had been repaired. Luminant undertook to repair the additional areas.

12. The area requested for release was mined in 2009, and final grading was accomplished from 2009-2010. Routine monthly inspections of the reclamation work covering the proposed release area occurred from 2007 to the date of the inspection and have continued.
13. Based upon the application and Staff review, in its Technical Evaluation Report, the acreages requested for release from Phase I reclamation obligations have met Phase I requirements for backfilling, regrading, and drainage control requirements as required by §12.313(a)(1) of the Regulations and may be approved for Phase I release.
14. The area requested for Phase I release have been backfilled and graded to approximate original contour, [§12.385(a)]. Final grading occurred from 2010-2011, and vegetation was planted from 2010-2015. All highwalls and spoil piles were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable substitute material was placed over the regraded spoil. No cut-and-fill terraces were constructed. 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)]. Drainage patterns similar to premine drainage have been established. All areas requested for

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release meet Phase I release have been stabilized to control drainage and attendant potential erosion [(§12.389)]. The areas requested for release contain 127 full or partial 5.7-acre soil-testing grids (Table III.A.3-1), and soil data provided by Luminant on various dates in 2011, 2012, and 2014 as depicted on Plates III-A-3-1 (three pages) in the application reflect compliance with 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. All soil grids have received Commission approval as free of acid-forming and toxic-forming materials. Grid data for the acreage requested for release were approved by the Commission on various dates, ending on May 27, 2015.

15. Several structures are located within the areas requested for Phase I release. All structures and surrounding areas are stable.
 - (a). There are two permanent diversions located in the area proposed for Phase I release of reclamation liability, Heads Creek Diversion No. 3, Modification No. 1, approved October 10, 2008 (Photograph No. 24, Appendix IV to inspection report), and the D-127 Diversion No. 1, approved October 14, 2014 (Photograph No. 25, Appendix IV). [§12.341]
 - (b). There are three permanent impoundments and associated spillways located in the area requested for Phase I release [§12.347(b)], Permanent Impoundment D-131 and associated D-131 Spillway, approved August 11, 2011, and Permanent Impoundments D-127, and D-148, with associated spillways, D-127 Spillway and D-148 Spillway, respectively, approved October 14, 2014.
 - (c). The area proposed for Phase I release contains one permanent road, the Permanent DV Access Road No. 5 (Photo 32, Appendix IV) approved July 2, 2014. [§12.400(f)]

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- (d). No drop structures are located within the areas requested for release.
 - (e). Surface water from the reclaimed area flows through approved Sedimentation Pond D-6.
16. The area proposed for Phase I release does not contain any area approved for disposal of non-coal waste. [§12.375]
 17. There is no prime farmland located in the area proposed for Phase I release for which specific soil reconstruction standards would apply. [§12.624]
 18. The area requested for Phase I release has been marked in the field with permanent boundary markers to distinguish the area from active mining and reclamation. Clear identification of this area will assist future inspection of this area and adjacent areas.
 19. The notice of application for release stated that an eligible bond reduction amount may be determined. Luminant has not requested an adjustment to the accepted bond instrument at this time. The Staff has filed its estimate of eligible bond amount reduction, \$6,337,545.52 based upon a Phase I (60% reduction) of the costs of reclamation of the acreage requested, should the Commission approve the release requested. Acres mined comprise 527.8 acres, and acres disturbed comprise 2.5 acres. Based upon the cost for mined (180-foot) and disturbed acreages, the reclamation cost reduction is calculated as:
 $.60$ of the mined rate of \$18,163, that is, \$10,897.8, x 527.8 mined acres = \$5,751,858.84,
+ $.60$ of the disturbed rate, \$11,431, that is, \$6858.60 x 2.5 disturbed acres, = \$17,146.508, with a final subtotal of \$5,769,005.34. A 10% amount (\$576,900.53) is then added for administrative costs, for a final total amount of \$6,345,905.87 that may be considered eligible for reduction in estimated costs of reclamation.
 20. Luminant and Staff, the only parties to the proceeding, filed waivers of the preparation

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and circulation of a proposal for decision. The proposed order was circulated to the parties with opportunity for comment. Finally, the matter has been posted for Commission consideration.

21. The 530.3 acres have met requirements for release of Phase I reclamation requirements (60% of costs of reclamation for the areas).
22. Required public notice and notice of the open meeting to consider Luminant's request has been made. All other required notice has been made.

CONCLUSIONS OF LAW

Based upon the 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 applicable provisions of the Act and Regulations regarding notice for Commission jurisdiction to attach to allow consideration of the matter.
4. Luminant has met all requirements for Phase I release for 530.3 acres within the Kosse Mine as set out in the application and Staff review.
5. The Commission may approve a release of Phase I reclamation obligations for the 530.3 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.

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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 Commission approved Phase I release of reclamation obligations for the requested 530.3 acres as set out in the Findings of Fact and Conclusions of Law;

IT IS FURTHER ORDERED that \$6,345,905.87 is determined eligible for reduction in an estimate of the costs of reclamation (Finding of Fact No. 19);

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 all area released from reclamation obligations shall be clearly marked in the field with permanent boundary markers to distinguish these areas from active mining and reclamation areas;

IT IS FURTHER ORDERED that the Commission may vary the total amount of bond required from time to time as reclamation costs change; 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. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for

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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 the 9th day of August, 2016.

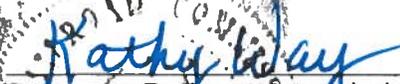
RAILROAD COMMISSION OF TEXAS


CHAIRMAN DAVID PORTER


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ATTEST


Secretary, Railroad Commission of Texas

