

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C16-0017-SC-54-F
APPLICATION BY LUMINANT MINING COMPANY LLC
FOR PHASE I RELEASE OF RECLAMATION OBLIGATIONS
FOR 87 ACRES OF ITS SURFACE COAL MINING OPERATIONS
FOR PERMIT NO. 54A, TURLINGTON MINE, FREESTONE
COUNTY, TEXAS**

**ORDER APPROVING PHASE I RELEASE
OF RECLAMATION OBLIGATIONS FOR 87 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. 54A. The permit was last renewed by Order dated April 8, 2015. The permit area, consisting of approximately 10,397 acres, is located approximately seven miles east-northeast of Fairfield, Texas, adjacent to the existing Big Brown Mine, Permit 3F and shares a common boundary to the north. 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.

Surface Mining Docket No. C16-0017-SC-54-F

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 the 87 acres requested, 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 June 20, 2016, Luminant Mining Company LLC (Luminant) filed its request for Phase I release of reclamation requirements (backfilling, regrading, and drainage control) for 87 acres, located within the 10,397-acre permit area of the Turlington Mine, Permit No. 54A, Freestone County, 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 June 24, 2016 with a revised draft notice of application. By letter dated September 6, 2016, Luminant filed proof of public notice and notice to required landowners, agencies, and others with ownership interests within or adjacent to the lands proposed for release. The application was declared administratively complete on September 12, 2016.
3. The most recent bond update was approved by letter dated March 28, 2016 in Revision 11 to the permit. Reclamation costs of \$41,931,578 were approved for the permit. Luminant currently bonds all of its operations in Texas with a blanket collateral bond with indemnity agreement. Luminant does not request any change to the bond instrument. An eligible bond reduction amount may be considered.

Surface Mining Docket No. C16-0017-SC-54-F

4. The area proposed for release is detailed in the Staff Technical Analysis (TA) and inspection report (Attachment III to TA) filed September 19, 2016. The permit area and areas proposed for release are depicted on Attachment I (Map) to the TA and are detailed in Attachment III (Staff Inspection Report), and depicted in Appendix I (Location Map) to Attachment III, and Appendix IV to Attachment III (Photograph Location Map and General Photographs). 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 Freestone County Clerk, Fairfield, Texas.
6. Publication of notice of application occurred once each week for four consecutive weeks in the *The Fairfield Recorder*, a newspaper of general circulation in Freestone County, Texas, on July 21 and 28, 2016 and on August 4 and 11, 2016 and in *The Freestone County Times*, a newspaper generally circulated in Freestone County on July 20 and 27, and on August 3 and 10, 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.

Surface Mining Docket No. C16-0017-SC-54-F

7. The Director, SMRD, determined the application to be administratively complete by letter dated September 12, 2016. The Staff's evaluation document was filed with the Hearings Division by letter dated September 19, 2016. The Technical Evaluation and inspection report indicated that Luminant had met all requirements for Phase I release for the entire 87 acres identified in the application.
8. The area requested for release is made up of one contiguous area that includes five parcels owned by Luminant Big Brown Mining Company LLC. The approved postmining land use is pastureland. No permanent structures are located within the areas proposed for release.
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 (Luminant Big Brown Mining Company LLC and F. E. Hill Co. LLP) in accordance with §12.312(a)(2) of the Regulations. By letter dated September 6, 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 Freestone County Judge/Commissioners Court, Texas Department of Transportation in Bryan, Texas, the State of Texas Department of Highways in Austin, Texas, the Texas Commission on Environmental Quality, Natural Resources Conservation Service in Fairfield, Texas, Texas State Soil and Water Conservation Board in Temple and in Mount Pleasant, Texas, the U.S. Army Corps of Engineers Ft. Worth District, Navarro County Electric Cooperative, Inc., Navasota Valley Electric Cooperative, Inc., Ward Prairie Water Supply, and to Windstream in Fairfield, 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

Surface Mining Docket No. C16-0017-SC-54-F

pursuant to §12.313(d).

11. SMRD's Inspection and Enforcement Section mailed letters dated June 23, 2016 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 (OSM), notifying them of the date scheduled for inspection, July 20, 2016, and the opportunity to participate in the inspection in accordance with §12.312(a)(2) (Appendix II to inspection report). Staff sent a letter of notification of the application as required by the Act, §134.133 by certified mail to the Freestone Judge by letter dated April 28, 2016 (Attachment II to Staff's inspection report). The inspection occurred on the date scheduled. Three Luminant representatives were present at the pre-inspection meeting and the inspection with the Staff inspector. No others attended the inspection. The boundary markers were checked with the use of a GPS device; the areas had been visibly marked in the field. On the date of inspection the ground was dry. Some minor erosion that had been repaired was noted in the northernmost area requested for release and in the far western portion of the release area. An additional area of erosion in a small drainageway was found in the far western portion of the release area (Photographs 8-9; this area was repaired within a few days of the inspection.
12. The area requested for release was mined from 2010-2011, and final grading was accomplished from 2010 – 2014. Routine monthly inspections of the reclamation work covering the proposed release area from 2010 to the present.
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)]. All highwalls and spoil piles were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable topsoil substitute material

Surface Mining Docket No. C16-0017-SC-54-F

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 Phase I release have been stabilized to control drainage and attendant potential erosion [§12.389]. The areas requested for release contain 18 full or partial 5.7-acre soil-testing grids (Table III.A.3-1 and Plate III.A.3-1), and soil data provided by Luminant by letter dated October 30, 2014, supplemented by letter dated February 13, 2015 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. These 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 by letter dated March 18, 2015. Vegetation was planted on the area requested for release from 2012-2013.

15. Surface water from the reclaimed area flows into final discharge ponds D-1 and D-2 (Plate III.B.3-1).
16. The area proposed for Phase I release does not contain any areas 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. Continued 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

Surface Mining Docket No. C16-0017-SC-54-F

at this time. The Staff has filed its estimate of eligible bond amount reduction, \$975,106.44 based upon a Phase I (60% reduction) of the costs of reclamation of the acreage requested, should the Commission approve the release requested. All 87 acres were mined. Based upon the cost for mined acreage, \$16,982 per acre, the eligible bond reduction amount per acre is \$10,189.20 per acre. The amount for the 87 acres is 886,460.40. A 10% amount (\$88,646.04) is then added for administrative costs, for a final total of \$975,106.44 as an eligible bond reduction amount.

20. Luminant and Staff, the only parties to the proceeding, filed waivers of the preparation and circulation of a proposal for decision. The proposed order was circulated to the parties with opportunity for comment.
21. The 87-acre area has met requirements for release of Phase I reclamation requirements.
22. Required public notice and notice of the open meeting to consider Luminant's request have 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 87 acres within the Turlington

Surface Mining Docket No. C16-0017-SC-54-F

Mine as set out in the application and Staff review.

5. The Commission may approve a release of Phase I reclamation obligations for the 87 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.

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 approves Phase I release of reclamation obligations for the requested 87 acres as set out in the Findings of Fact and Conclusions of Law;

IT IS FURTHER ORDERED that \$975,106.44 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

Surface Mining Docket No. C16-0017-SC-54-F

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 IN AUSTIN, TEXAS, on the 25^h day of October, 2016.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN DAVID PORTER



COMMISSIONER CHRISTI CRADDICK



COMMISSIONER RYAN SITTON

ATTEST;



Secretary, Railroad Commission of Texas

