

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

SURFACE MINING DOCKET NO. C18-0016-SC-55-F

**APPLICATION BY THE SABINE MINING COMPANY
FOR PHASE I RELEASE OF RECLAMATION OBLIGATIONS FOR 397.7 ACRES
PERMIT NO. 55A, RUSK MINE
RUSK, HARRISON, AND PANOLA COUNTIES, TEXAS**

**ORDER APPROVING PHASE I RELEASE
OF RECLAMATION OBLIGATIONS FOR 397.7 ACRES**

STATEMENT OF THE CASE

The Sabine Mining Company (Sabine), 6501 FM 968 West, Hallsville, Texas 75650-7413, has applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase I release of reclamation obligations for 397.7 acres. The requested release area is located within Permit No. 55A, Rusk Mine. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2018) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ann. 12 (Thomson West 2018) (Regulations).

Permit No. 55, issued by Order dated July 26, 2011 (Docket C9-0021-SC-00-A) and renewed by Order dated August 21, 2018 (Docket C16-0012-SC-55-C) and renumbered as No. 55A, currently authorizes surface mining operations at Sabine's Rusk Mine. The permit area includes approximately 19,691.2 acres and is located approximately three miles north of Tatum, Texas. The only parties to the proceeding are Sabine and the Commission's Surface Mining and Reclamation Division (SMRD or Staff). Public and other required notices were provided. No comments or request for hearing were filed. There remain no outstanding issues between the parties. Although Sabine

initially requested Phase I release for 413.7 acres, Sabine subsequently supplemented its application to exclude certain areas, and now seeks Phase I release for 397.7 acres. Based on the information provided by the applicant, Staff analyses, and the inspection of the area, Staff recommends release of reclamation obligations 397.7 acres requested in the application. Staff has calculated an eligible bond reduction amount of \$6,711,927.22. The parties have filed waivers of preparation and circulation of a proposal for decision.

Based on the record in this docket including the application and Staff review, the Administrative Law Judge recommends the application for Phase I release should be approved for all 397.7 requested acres, and the eligible bond reduction amount of \$6,711,927.22 should be determined, as set out in the Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. By letter dated August 3, 2018, The Sabine Mining Company (Sabine) filed its initial request for Phase I release of reclamation requirements (backfilling, regrading, and drainage control) for 413.7 acres, located within the 19,691.2-acre permit area of the Sabine Rusk Mine in Rusk, Panola, and Harrison County, Texas, Permit No. 55A. Subsequently, in response to issues noted in Staff's inspection, Sabine filed a supplement dated November 15, 2018, reducing the proposed release area to 397.7 to exclude areas containing a stockpile and certain temporary structures.
2. No filing fee is required. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2018) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2018) (Regulations). The application was properly certified in accordance with §12.312(a)(3) of the Regulations.

3. The area proposed for release is detailed in the Technical Analysis, Attachment I and Appendix I (Location Map), Attachment III (Staff Inspection Report), and Appendix IV to Attachment III (Photographs and Photograph Location Map.) The application, photographic evidence, Staff Inspection Report and Evaluation provide support for release of Phase I reclamation obligations.
4. 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 Rusk, Panola, and Harrison County Clerks, located in Henderson, Carthage, and Marshall, Texas, respectively.
5. Publication of notice of application occurred once each week for four consecutive weeks in *The Henderson News*, a newspaper of general circulation in Rusk County, *The Marshall News Messenger*, a newspaper of general circulation in in Harrison County, and *The Panola Watchman*, a newspaper of general circulation in Panola County. The newspapers are in the locality of the surface mining and reclamation operations. The publications in the newspapers occurred on September 5, 12, 19, and 26, 2018. 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, and the address to which comments should be sent. The notice included a map providing sufficient notice of the boundaries of the area requested for release.

6. The Director, SMRD, determined the application to be administratively complete by letter dated October 19, 2018. Staff's evaluation document, which included the Technical Analysis (TA) and Inspection Report, was filed with the Hearings Division on December 11, 2018. The TA and Inspection Report indicated that Sabine had met all requirements for Phase I release of the 397.7 acres identified in the supplemented application.
7. The area of the permit requested for release is comprised of four parcels of land within the V-area of the Rusk Mine. The permit area is located approximately three miles north of Tatum, Texas in Rusk, Harrison, and Panola Counties. The 397.7 acre proposed release area is in Rusk and Panola Counties. The approved postmining land uses for the proposed release area are fish and wildlife habitat and pastureland.
8. Sabine 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 October 11, 2018, Sabine submitted to the Commission copies of the letters to landowners and/or adjoining landowners, and holders of other property interests, and the following: the Harrison, Rusk, and Panola County Judges, the Texas Parks and Wildlife Department, the Texas Commission on Environmental Quality, the Texas Department of Transportation, the Texas General Land Office, the Natural Resource Conservation Service office in Paris, Texas, the Sabine River

Authority, the United States Army Corps of Engineers Fort Worth District Office, the Environmental Protection Agency, the United States Fish and Wildlife Service, the Southwestern Electric Power Company (SWEPCO), the Panola Harrison Water Supply, and the Crystal Farms Water Supply Corporation, as required by §12.312(a)(2) of the "Coal Mining Regulations" and §134.129 of the Surface Coal Mining and Reclamation Act and as indicated in the application. The area requested for release is not located within the territorial boundaries of any other municipality that would be notified pursuant to §12.313(c) of the Regulations.

9. 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).
10. SMRD's Inspection and Enforcement Section mailed letters dated August 13, 2018 to Sabine, landowners, and holders of other interests within the area requested for release, notifying them of the date scheduled for inspection, August 28, 2018, and the opportunity to participate in the inspection in accordance with §12.312(a)(2). Although notice was sent to the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM), the notice contained a typographical error, indicating the incorrect inspection date. OSM did not seek clarification of the date or indicate an intent to appear. Notice to OSM of an inspection, although customary, is not required by the Act or Regulations. Staff sent an original notice by certified mail of the application to the Rusk, Harrison, and Panola County Judges by letters dated August 24, 2018 (Attachment II to Staff's Inspection Report) as required by the Act, §134.133. The inspection occurred on August 28, 2018 as scheduled. One SMRD inspector and one Sabine representative was present for the inspection. Neither OSM nor any landowners attended.

11. The area requested for release was disturbed by mining operations from 2012 to 2015, and final grading was accomplished between 2013 and 2017. Routine monthly inspections of the reclamation work covering the proposed release area occurred from 2014 to the date of the inspection and have continued.
12. Based upon the application and Staff's TA, 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.
13. The area requested for Phase I release has 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 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 Phase I release have been stabilized to control drainage and attendant potential erosion. [§12.389].
 - (a). The proposed release area encompasses all or a portion of 80 soil sampling grids. Sabine submitted data for these grids from 2017 to 2018. Upon review, Staff found by letters dated September 19, 2017 and July 6, 2018 that the data met the parameters of the approved soil testing plan and the state suitability criteria in that the measured pH for more than 90 percent of the reported values ranged between 5.0 and 8.4, and that the area is covered by a minimum of four feet of suitable material and do not indicate the presence of acid- and/or toxic-forming materials. [§12.386].

- (b). There are no temporary or permanent diversions located in the area proposed for Phase I release of reclamation liability. [§12.341].
 - (c). There are no temporary or permanent impoundments located in the area requested for Phase I release. [§12.347(b)]. No sediment ponds are located within the area requested for release.
 - (d). The area proposed for Phase I release contains no permanent roads. [§12.400(f)].
 - (e). Surface water runoff from the proposed Phase I release area will flow into the V1, V5, and V6 Sedimentation ponds. [§12.344].
14. The area proposed for Phase I release does not contain any area approved for disposal of non-coal waste. [§12.375].
 15. There is no prime farmland located in the area proposed for Phase I release for which specific soil reconstruction standards would apply. [§12.624].
 16. The area requested for Phase I release has been marked in the field with white PVC pipe. Clear identification of this area will assist future inspection of this area and adjacent areas by field office staff.
 17. Sabine 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. Finally, the matter has been posted for Commission consideration.
 18. The 397.7 acres meet the requirements for Phase I release of reclamation obligations, which include backfilling, regrading, and drainage control.
 19. The Commission approved the most recent bond-map revision and reclamation cost estimate with the last permit renewal order on August 21, 2018. The approved reclamation cost estimate is \$63,609,893.00. The subject acreage is bonded at a

mined rate of \$25,571.00 per acre. All acres proposed for release are eligible for release of bond in the amount of \$15,342.60 (60% of the bonded rate for Phase I release) per acre according to calculations by SMRD. If the application is approved by the Commission, as proposed, Sabine would be eligible to reduce its performance bond obligations by \$6,711,927.22 (\$15,342.60 per acre on 397.7 acres, plus a 10% administrative fee of \$610,175.20), as shown in the following table:

Bond Reduction as Proposed

Phase Requested	Area Acres	Disturbance Category	Bonded Per Acre	Eligible Reduction Per Acre	Eligible Reduction
Phase I	397.7	Mined	\$25,571.00	\$15,342.60 (60% of Bonded Rate)	\$6,101,752.02
Subtotal					\$6,101,752.02
Admin. Costs (10%)					\$610,175.20
Total					\$6,711,927.22

Sabine and Staff agree to this computation and to the bond reduction amount of \$6,711,927.22. Permit No. 55 is currently bonded by the self-bonds with third-party guarantees that were accepted by Commission Orders dated July 27, 2011 (\$35,000,000), May 8, 2012 (\$5,000,000) and June 19, 2018 (\$25,000,000); therefore, the aggregate bond amount is \$65,000,000. No change to the current bond instrument is requested in this docket and no replacement bond instrument has been filed.

CONCLUSIONS OF LAW

1. Proper notice was provided for this request for release of reclamation obligations.
2. No public hearing was requested, and none is warranted.
3. Sabine has complied with all applicable provisions of the Act and Regulations

regarding notice for jurisdiction to attach to allow the Commission to consider this matter.

4. Sabine has met all requirements for Phase I release for 397.7 acres within the Rusk Mine.
5. The Commission may approve a release of Phase I reclamation obligations for the 397.7 acres as set out in the above Findings of Fact and Conclusions of Law.
6. The Commission may determine an eligible bond reduction amount of \$6,711,927.22.
7. Pursuant to the Commission's authority for inspection and evaluation of release applications, the Commission may order that Sabine continue to effectively mark 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 Phase I release of reclamation obligations is approved for 397.7 acres as set out in the Findings of Fact and Conclusions of Law;

IT IS FURTHER ORDERED that the Commission approves a bond reduction amount of \$6,711,927.22;

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 areas 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

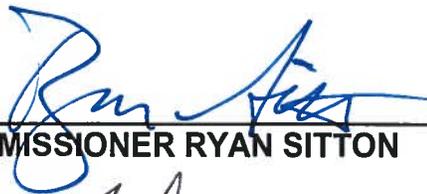
IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 25 days after the Commission's Order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code §2001.142, by agreement under Tex. Gov't Code §2001.147, or by written Commission Order issued pursuant to Tex. Gov't Code §2001.146(e). If a timely motion for rehearing is filed by any party at 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 is 100 days from the date the Commission Order is signed.

SIGNED this 5th day of February 2019.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN CHRISTI CRADDICK



COMMISSIONER RYAN SITTON



COMMISSIONER WAYNE CHRISTIAN

ATTEST:



Secretary, Railroad Commission of Texas

