

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C19-0009-SC-48-F  
APPLICATION BY LUMINANT MINING COMPANY LLC  
FOR RELEASE OF PHASE I RECLAMATION OBLIGATIONS FOR 301.38 ACRES  
PERMIT NO. 48C, THREE OAKS MINE, LEE AND BASTROP COUNTIES, TEXAS**

**ORDER APPROVING  
RELEASE OF PHASE I RECLAMATION OBLIGATIONS  
FOR 301.38 ACRES OF PERMIT NO. 48C**

Statement of the Case

Luminant Mining Company LLC (Luminant), 6555 Sierra Drive, Irving, Texas 75039 applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD and/or Staff), for Release of Phase I Reclamation Obligations for 301.38 acres within Permit No. 48C, Three Oaks Mine, Lee and Bastrop 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. 2019) (Act) and §§12.312-12.313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) (Regulations).

Luminant requests release from Phase I reclamation obligations for backfilling, regrading, and drainage control for 301.38 acres. Permit No. 48C currently authorizes surface and coal mining operations at Luminant's Three Oaks Mine, within its 15,809-acre permit area. No comments or requests for hearing were filed following public notice. The only parties to the proceeding are Luminant and the Commission's Surface Mining and Reclamation Division (SMRD and/or Staff). There remain no outstanding issues between the parties. Based on information provided by Luminant and the inspection of the area, Staff recommends release of Phase I reclamation obligations for 301.38 acres.

After consideration of the application and the Findings of Fact and Conclusions of Law, the Commission approves the release of reclamation obligations as recommended by Staff. Luminant does not request adjustment to the approved reclamation bond at this time and no new bond has been submitted. The parties have filed waivers of preparation and circulation of a proposal for decision. The Commission approves the release as requested and finds that

Luminant is eligible to reduce the amount of bond for the permit by 60% of the amount that is attributable to the subject acreage in future bond adjustments.

### **FINDINGS OF FACT**

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

1. By letter dated January 14, 2019, Luminant Mining Company LLC (Luminant) filed an application (Application) with the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD and/or Staff) for release of Phase I reclamation obligations for 301.38 acres, within Permit No. 48C, Three Oaks Mine, Lee and Bastrop Counties, Texas. The permit area encompasses approximately 15,809 acres. Luminant conducted mining operations on the proposed 301.38-acre release area from 2008 to 2016.
2. The Application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann Ch. 134 (Vernon Supp. 2019) (Act), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) (Regulations). The Application was properly certified in accordance with § 12.312(a)(3). No fee is required for this Application.
3. The currently accepted reclamation performance bond for all Luminant operations in Texas, including those conducted under Permit 48C, is in the form of a blanket collateral bond and trust agreement in the amount of \$975,000,000 accepted by Commission Order dated September 27, 2016 (Docket No. C16-0021-SC-00-E). Luminant does not request a reduction in the amount of the approved reclamation bond instrument in this application.
4. The Application was filed with the Hearings Division by letter dated January 18, 2019. By letter dated May 8, 2019, Staff declared the Application administratively complete and transferred it to the Hearings Division. By letter dated May 29, 2019, Staff filed its Technical Analysis (TA) and the Field Inspection Report (Inspection Report) dated

- February 21, 2019, recommending approval of the bond release application with no outstanding comments.
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. 78711; the offices of Lee County Clerk, 843 East Industry, Giddings, Texas 78942; and Bastrop County Clerk, 804 Pecan, Bastrop, Texas, 78602.
  6. Notice of application was published once a week for four consecutive weeks in the *Elgin Courier* circulated in Bastrop County on March 6, 13, 20, and 27, 2019, and the *Lexington Leader* circulated in Lee County on March 7, 14, 21, and 28, 2019. Both newspapers are papers of general circulation in the area of the proposed bond release requested areas in Bastrop and Lee Counties. The notice of application contains all information required by the Act and Regulations for notice of an application requesting bond release. 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 number of acres, permit number at the time of application and date approved, the amount of bond approved, 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 on the applicant, location and boundaries of the permit area, the Application's availability for inspection, and the address to which comments should be sent.
  7. Luminant sent notice by letter dated February 26, 2019, 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) of the Regulations. Luminant mailed notice to the County Judges/Commissioners' Courts of Lee and Bastrop Counties, the Brazos River Authority, the Texas General Land Office, the Natural Resources Conservation Service, the Environmental Protection Agency, the Texas Commission on Environmental Quality, the

Texas State Soil and Water Conservation District, the Texas Department of Transportation, the Burleson-Lee Soil and Water Conservation District, the Taylor Soil and Water Conservation District, and the U.S. Army Corp of Engineers. The areas requested for release are not located within the territorial boundaries of any municipality that would be notified pursuant to §12.313(c) of the Regulations. Copies of the notification letters were filed with the Commission on May 6, 2019.

8. 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).
9. The Staff provided notification of the Application by certified letters dated February 25, 2019, to the County Judges of Lee and Bastrop Counties. Mailing of notification was provided at least 31 days prior to the date of consideration of the docket by the Commission in accordance with §134.133 of 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 Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM) by letters dated January 28, 2019, of the date and time of Staff's field inspection scheduled for February 7, 2019. 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. Staff provided copies of the letters sent pursuant to § 12.312(b) in Appendix II within Attachment III (Inspection Report) of the TA.
10. The inspection occurred on February 7, 2019. A Commission inspector, and a representative for each of two landowners attended the pre-inspection meeting. The Field Report indicates the representative for Luminant accompanied him during the inspection of the property. No landowners accompanied the inspector during the inspection of the property. A sign-in sheet of the meeting participants is included in Staff's TA, Appendix III. (The sign-in sheet, "Field Inspection Participants," lists the inspection date as "Thursday, February 4, 2019;" however, February 4, 2019 fell on a Monday. Additionally,

SMRD notification letters dated January 28, 2019, and Staff's TA indicate that the field inspection occurred on Thursday, February 7, 2019.)

12. The 15,809-acre permit area is located about five miles east of Elgin, Texas, and 11 miles west-southwest of Lexington, Texas. The permit area lies in an area bordered to the south by U.S. Highway 290 and to the north by the Williamson-Lee County Line. A general location map of the permit area, with those areas proposed for release distinguished, is found in Staff's TA, Appendix I.
13. The Application included ownership and tract information for owners of interests in the areas proposed for release and adjacent lands. There are 26 tracts within and 21 adjoining the area requested for Phase I release of reclamation obligations. A copy of a list identifying the tract owners within and adjoining the subject acreage is found in the Application, Section II.B, Landowners.
14. The subject acreage requested for release was mined or otherwise disturbed from 2008 to 2016, and final grading occurred from 2011 to 2017. Staff conducted routine monthly inspections of the proposed release area from 2008 to the present.
15. Based upon the Application and Staff's review, Phase I release of reclamation obligations have been met for 301.38 acres in accordance with Phase I requirements for backfilling, regrading and drainage control as required by §12.313(a)(1) of the Regulations.
  - a. The approved postmine land uses within the areas requested for release are pastureland (293.46 acres) and developed water resources (7.92 acres).
  - b. The soil-testing grids within the 301.38 acres proposed for Phase I release of reclamation obligations have met the soil suitability requirements. All soil grids located within the release area are represented by the 2010-2018 initial postmine soil monitoring reports. By letter dated June 7, 2018, the Commission notified Luminant that the data for all sampled areas do not indicate the presence of acid or toxic forming

materials in the top four feet of postmine soil. A copy of the approval letter is contained in Staff's TA within Appendix V.

- c. The area has been re-graded to its approximate original contour; highwalls have been eliminated; suitable topsoil has been placed over regraded spoil; no cut-and-fill terraces have been constructed, and; drainage control has been accomplished in accordance with the approved reclamation plan. Surface water runoff from the proposed Phase I release area flows into Sedimentation Ponds SP-1, SP-2, and SP-6.
  - d. There are three diversions (A-2 Reclamation Drainageway Modification No. 1, A-8 Permanent Diversion, and DD-7 Permanent Diversion), two permanent impoundments (A-1 Permanent Impoundment Re-Analysis and A-8 Permanent Impoundment) and three permanent drop structures (A-2 Reclamation Drainage Drop Structure, A-1 Spillway and A-8 Inlet) located within the proposed Phase I release area.
  - e. No areas are approved for the disposal of non-coal waste within the area proposed for Phase I bond release [§12.375].
16. Pursuant to §12.313(a)(1), the Commission may release 60% of the bond or collateral attributable to the subject 301.38 acres upon a determination that reclamation has been successfully completed in accordance with the terms of the approved permit and the requirements of the Act and the Regulations. As a result of being granted Phase I release, Luminant is eligible to reduce the bond amount for Permit No. 48C. In its TA, Staff calculated an eligible bond reduction amount based on the most recently approved reclamation cost estimate for the permit that totals \$94,187,442 (Revision No. 37; approved administratively on February 28, 2019). Reclamation costs approved in Revision No. 37 totaled \$94,187,442. The amount of the eligible bond reduction specified in Staff's TA is \$2,543,273.49; however, as stated in the TA, the specified reduction amount is only an estimate provided for illustration purposes. Luminant does not request an adjustment

to the approved bond in the Application (Finding of Fact No. 3, *supra*); therefore, any eligible reduction amount based on the current reclamation cost estimate would be superseded once the costs for reclamation are calculated at a future date when Luminant requests a reduction of the bond. Additionally, since the Commission is not required under the Act or the Regulations to determine an eligible bond reduction amount when approving an application for release, this Order states Luminant is eligible to reduce the amount of bond by 60% that is attributable to the 301.38 acres granted Phase I release, but does not specify the amount of the reduction.

17. The area requested for release was marked in the field with white PVC poles at the corners and along the proposed boundaries. (Photographs of marked area are contained in Staff's TA within Appendix IV).
18. 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.
19. Open meeting notice has been posted for Commission consideration of this application in accordance with Tex. Gov't Code Ann. CH. 551 (Vernon Supp. 2019).

### **CONCLUSIONS OF LAW**

Based on the above Findings of Fact, the following Conclusions of Law are made:

1. Proper notice of Luminant's Application and proper notice of consideration by the Commission has been provided.
2. No public hearing was requested, and none is warranted.

3. Luminant has complied with all applicable provisions of the Act and the Regulations regarding notice for Commission jurisdiction to allow consideration of the matter.
4. Luminant has complied with all applicable provisions of the Act and the Regulations for the acreage requested for release as set out in the Findings of Fact.
5. The Commission may approve a release of Phase I reclamation obligations for the 301.38 acres as set out in the above Findings of Fact and Conclusions of Law.
6. Pursuant to the Commission's authority for inspections 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.
7. Luminant is eligible to reduce the amount of bond for Permit No. 48C by 60% of the amount that is attributable to the subject 301.38 acres in future bond adjustments.

**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 I reclamation obligations for 301.38 acres is hereby approved;

**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 in accordance with its terms until a replacement bond is approved by the Commission;

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**IT IS FURTHER ORDERED** Luminant is eligible to reduce the amount of bond for the permit by the amount that is attributable to the 301.38 acres granted Phase I release in this Order;

**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

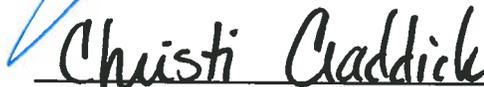
**IT IS FURTHER ORDERED** by the Commission that this order shall not be final and effective until 25 days after the Commission's Order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code §2001.142, by agreement under Tex. Gov't Code §2001.147, or by written 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** on September 11, 2019.

**RAILROAD COMMISSION OF TEXAS**



**CHAIRMAN WAYNE CHRISTIAN**



**COMMISSIONER CHRISTI CRADDICK**



**COMMISSIONER RYAN SITTON**

**ATTEST:**



**Deputy Secretary, Railroad Commission of Texas**

