

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

SMRD DOCKET NO. C12-0027-SC-05-F

APPLICATION OF LUMINANT MINING COMPANY LLC (LUMINANT) FOR PHASE II AND PHASE III RELEASE OF RECLAMATION OBLIGATIONS, PERMIT NO. 5G, MONTICELLO THERMO MINE, HOPKINS COUNTY, TEXAS

**ORDER APPROVING PHASE II AND III RELEASE
OF RECLAMATION OBLIGATIONS**

STATEMENT OF THE CASE

Luminant Mining Company, LLC (Luminant), 1601 Bryan Street, EP28-015C, Dallas, Texas, 75201 applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase II and Phase III release of reclamation obligation for 201.5 acres of Permit No. 5G, Monticello - Thermo Mine, Hopkins County, Texas.

The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2012) and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (West 2012).

Copies of the application were filed in required county and Commission offices. 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 (Staff). The parties have filed waivers of the preparation and circulation of a proposal for decision. There remain no outstanding issues between the parties as to the Phase II and/or Phase III releases. Based on the information provided by the applicant and its inspection of the area, the Staff recommends a release of both Phase II and Phase III reclamation obligations for the establishment of vegetation, sediment control, groundwater protection, and completion of the

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extended responsibility period (ERP). Although Luminant is eligible for a bond reduction, Luminant does not request adjustment to the accepted bond instrument at this time, and no new bond has been submitted.

FINDINGS OF FACT

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

1. By letter dated April 30, 2012, Luminant Mining Company LLC (Luminant) filed its application for a Phase II release of reclamation obligations (revegetation and sediment control) and a Phase III release of reclamation obligations (completion of the five-year extended responsibility period and surface water and groundwater protection) for a single parcel of land covering 201.5 acres. The parcel is located in Hopkins County, Texas, within the permit area of Permit No. 5G, Monticello Thermo Mine. The application was modified by email dated May 3, 2012 to correct the list of agencies in Section II.C, page II.C-1 of the application. The mine encompasses 4,506 acres.
2. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2012) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (West 2012). No filing fee is required. The application was properly certified in accordance with §12.312(a)(3) of the Regulations.

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3. Although the acreage is eligible for a bond reduction, Luminant does not request an adjustment in the amount of the approved reclamation bond. The existing reclamation performance bond for the entire permit area, a self-bond with third-party guarantor, accepted by Order dated February 28, 2012, is \$43,000,000.
4. The areas proposed for release are detailed in the Staff Inspection Report, Attachments I and III, and Appendix IV and V. Appendix IV depicts the area requested for release and the locations of photographs taken during the Staff inspection. Appendix V depicts the area requested for release and the locations of photographs taken during the Staff inspection permanent structures. The application, photographic evidence, Staff Inspection Report and Technical Evaluation provide support for release of Phase II and Phase III reclamation obligations.
5. The permit area is located approximately three miles southeast of Sulphur Springs, Texas. The 201.5-acre area proposed for Phase II and Phase III release is comprised of a single parcel of land disturbed by mining from 1998 to 2003. The approved postmining land uses are as follows: pastureland (55.2 acres), forestry (76.2 acres), fish and wildlife habitat (61.5 acres), and developed water resources (8.6 acres).
6. The application included ownership and tract information for owners of interests in

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the areas proposed for release and adjacent lands. By letters dated August 9, 2012, Luminant sent notice to owners of interests in the areas requested for release and adjacent lands. By letter dated September 10, 2012, Luminant supplemented the application to provide proof of required publication of notice [12.312(a)(2), Regulations] and copies of notification letters.

7. SMRD, determined the application to be administratively complete by memorandum dated September 20, 2012. The Staff's evaluation document was filed with the Hearings Division by letter dated December 4, 2012.

8. Notice of the application was published once each week for four consecutive weeks in the *Sulphur Springs News-Telegram*, a newspaper of general circulation in Hopkins County, Texas, in the locality of the surface mining and reclamation operations beginning August 12, 19, 26 and September 2, 2012. The notice of application contains all information required by the Act and Regulations for notice of application for bond release applications. Luminant submitted an affidavit of publication with clippings. The published notice is adequate notification of the request for release. The notice included the elements required by §134.129 of the Act and §12.312(a)(2) of the Regulations: the name of the permittee, the location of the land affected, the total number of acres, permit number 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

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to the approved reclamation plan. The notice included 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.

9. 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; at the Commission's field office located at 2202 Old Henderson Highway, Tyler, Texas 75702, and in the office of the Hopkins County Clerk, Sulphur Springs, Texas.
10. SMRD sent notification letters to local governmental bodies, and other agencies and authorities as required by § 12.312(a)(2), Regulations. Notice was sent to the Hopkins County Judge and Commissioners Court, Texas Department of Highways and Public Transportation, State department of Highways, Natural Resources Conservation Service, U.S. Army Corps of Engineers, Texas Commission on Environmental Quality, General Telephone Company, ONCOR Electric Delivery Company LLC, Verizon, Southwestern Bell Telephone Company, and Martin Springs Water Supply Co. The areas requested for release are not located within the territorial boundaries of any municipality.
11. Pursuant to § 12.312(b), the Commission mailed letters dated May 17, 2012, to the owners of the surface of the tracts requested for release (Luminant), to leaseholders and/or owners of easements on the tracts requested for release, Bowie Cass Electric

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Coop, Inc., City of Mount Pleasant, Tri-Special Utility District, Texas Commission on Environmental Quality, South Franklin Water Supply Corp., Franklin County Judge/County Commissioner's Court, Natural Resources Conservation Service, Mount Pleasant, Texas, Titus County Judge/ County Commissioner's Court, Wood County Electric Coop Inc., Texas Department of Highways & Public Transportation, U.S. Army Corps of Engineers, Verison of the Southwest, Southwestern Bell Telephone Company, Luminant, Texas Department of Transportation, Oncor Electric Delivery Company LLC, Verison, Marin Springs Water Supply Co., Magellan Pipeline Co., and the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM). The notification stated that a release had been requested and, pursuant to § 12.312(b)(1), Regulations, advised them of the opportunity to participate in the on-site inspection scheduled for May 30, 2012. In addition, the Commission sent notice by certified mail to the County Judge of Hopkins County on August 14, 2012, as required by § 134.133 of the Act.

12. Tyler field office staff conducted its inspection of the areas requested for release accompanied by one representative of Luminant. The Tyler Field Office filed its inspection report dated November 6, 2012 with the Austin office. The field report received by the Commission provides support for release of Phase II and Phase III reclamation obligations.

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13. No adverse comments or written objections were filed regarding the request for release. No requests for hearing or informal conference were filed pursuant to § 12.313(d), Regulations.
14. The Commission previously approved Phase I release of backfilling, regrading, and drainage control requirements required by § 12.312(a)(1) of the Regulations for the 201.5 acres requested for release by Order dated November 6, 2007. *See* Docket No. C7-0022-SC-05-F.
15. The following is a list of all permanent structures as set forth in § 12.354, and located within the proposed Phase III release area, including their approval dates as permanent structures by the Commission:
- E-07 Permanent Impoundment – approved permanent December 12, 2003
 - E-07 Pond Inlet – approved permanent December 12, 2003
 - E-06 Diversion – approved permanent July 9, 2004
 - E-06A Diversion – approved permanent July 9, 2004
 - E-06 Diversion Permanent Access Road – approved permanent July 9, 2004
 - D-4 Drop Structure – approved permanent July 10, 2001

All of these structures are structurally intact and the surrounding areas well vegetated.

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17. There are two small depressions located within the proposed Phase III release area; TH-SD-23 and TH-SD-27 have been previously approved by staff as permanent structures. The depressions and their surrounding areas are stable and well vegetated.

18. The 201.5 acres requested for Phase II release have met the Phase II revegetation requirements §12.313(a)(2) and the requirement that the areas not contribute suspended solids to streamflow outside the permit area in excess of the requirements set by the Act §134.092(a)(10) and Subchapter K of 16 TEX. ADMIN. CODE CH. 12.
 - (a). Luminant has conducted surface mining activities in accordance with §12.349 to protect surface water quality and quantity. Disturbed drainage in the areas requested for release has been routed to an approved sediment pond prior to release from the permit. Drainage from the proposed Phase II release area flows to Sediment Pond B-17. The area requested for Phase II release of reclamation obligations has been stabilized to reduce the potential for contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by § 134.092(a)(10) of the Act and Subchapter K of the regulations. Data from B-17 shows that discharges have not exceeded the Texas Pollutant Discharge Elimination System (TPDES) water quality effluent standards (TPDES Permit No. 04122), or standards outlined in 40 CFR Chapter 434.

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(b). Revegetation has been established on the areas requested for release in accordance with §12.395 for the four land uses within the 201.5-acre area. The Director, in a letter from the Commission dated January 19, 2006, previously found that the initial postmine soil monitoring data for the areas did not indicate the presence of acid-forming or toxic-forming materials in the top four feet of reclaimed soils.

(i). Permanent vegetation was planted from 2004 through 2006. The area proposed for Phase II and Phase III release consists of postmine land uses of fish and wildlife habitat, forestry, pastureland, and developed water resources. Based upon the inspection conducted, Staff has determined that the land has been reclaimed to the approved postmine land uses as required by §12.147 and §12.399, Regulations.

(ii). Fish and wildlife areas, forestry areas, pastureland, and areas surrounding developed water resources proposed for release from Phase II and Phase III reclamation liability are planted in a variety of species as required by §12.390, Regulations. Fish and wildlife land use areas (61.5 acres) were planted with green ash, loblolly pine, sweet gum, various perennial grass species, and various oaks. Forestry areas (76.2 acres) were dominated with loblolly pine. Pastureland areas (55.2 acres) were planted with Coastal and common Bermuda grasses. The areas with a postmining

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use of developed water resources (8.6 acres) that were not covered with water were planted with common Bermuda, various hardwoods, and native grasses, and are sufficient to control erosion.

19. Luminant reported baseline data from two monitoring stations located within the permit area, and summarized the history of the paired-watershed long-term quarterly sampling on disturbed and undisturbed monitoring stations. Monitoring station HSW-T1 was initially placed on a tributary of Rock Creek, but was relocated upstream due to encroaching mining operations. The new monitoring station, PBW-T1, was approved by the Commission on April 18, 2007. Stream monitoring station HSW-T2 is located on a tributary of Rock Creek and has been used to continuously monitor hydrologic data from areas that have been impacted by mining and reclamation activities.
 - (a.) Both the disturbed and undisturbed area monitoring stations were monitored for total dissolved solids (TDS), total suspended solids (TSS), total and dissolved iron (Fe), total and dissolved manganese (Mn), settleable solids (TSM), and pH.

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- (b.) The runoff from the watershed disturbed by mining and subsequently reclaimed exhibits a lower flow-weighted average TDS concentration of 137 mg/L when compared to the undisturbed watersheds which have average TDS concentrations of 191 and 208 mg/L, respectively. The average pH values were the same for the LTSM Stations HSW-T2 (disturbed station) and PBW-T1 (undisturbed station) with an average value of 7.0 s.u. LTSM Station HSW-T1 (undisturbed station) had a slightly lower average pH value of 6.7 s.u when compared to the other two LTSM stations. All discharge from the Monticello-Thermo Mine ultimately flows to the Sulphur River, TCEQ Stream Segment No. 0303. Based on these data, the flow-weighted TDS concentration for the disturbed watershed for HSW-T2 is within the stream-segment limitation (annual average) of 600 mg/L and is less than the undisturbed watersheds for HSW-T1 and PBW-T1. The pH data for HSW-T2 is also within the pH stream-segment limitation of a range of 6.0-8.5 s.u.
- (c.) Luminant has complied with the requirements of §12.348 for the 201.5-acre area proposed for Phase II and III release from reclamation obligations.

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20. Luminant has successfully completed all surface coal mining and reclamation activities for the acres requested for Phase III release (201.5 acres).

(a.) Luminant submitted ground cover and tree and shrub stocking (stem-count) data for the 61.5 acres reclaimed as fish and wildlife. This acreage was placed into a land management units (LMU) designated as 06-E-H. This LMU was accepted into the Extended Responsibility Period (ERP) on October 2, 2006. By letter dated February 16, 2012, Luminant submitted 2011 ground cover and stem-count data for the acreage, and by letter dated April 11, 2012, SMRD Staff indicated that the revegetation was successful and in accordance with §12.395(a)(2) and §12.395(b)(3)(A)-(C).

(b) Luminant submitted ground cover and productivity data for the 55.2 acres reclaimed to pastureland. This acreage was placed into two (2) LMUs designated as 06-E-P and 06-E-PNG. These LMUs were accepted into the ERP on October 2, 2006. By letter dated June 12, 2009, and May 10, 2011, Luminant submitted ground-cover and productivity data for LMU's 06-E-P and 06-E-PNG, respectively. By letter dated September 2, 2009, and July 20, 2011, SMRD determined the revegetation in LMU's 06-E-P and 06-e-PNG met or exceeded 90% of the approved success standards during the 2008 and 2010 growing season. By letter dated February 5, 2010, Luminant submitted 2009 ground cover data for

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LMUs 06-E-P and 06-E-PNG, and by letter dated March 16, 2010, SMRD Staff indicated that the ground cover data met or exceeded the requirements of §12.395(c)(2).

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- (c.) Luminant submitted ground cover and stem-count data for the 76.2 acres reclaimed to forestry. This acreage was placed in LMU 06-E-F, and was accepted into the ERP on October 2, 2006. By letter dated February 16, 2012, Luminant submitted 2011 ground cover data for LMU 06-E-F, and by letter dated April 11, 2012, SMRD Staff indicated that the ground cover data and stem count data met or exceeded the requirements of §12.395(c)(2).

 - (d.) Of the 201.5 acres proposed for Phase II and Phase III release, 8.6 acres have a postmining land use of developed water resources, for which the performance standard is that ground cover must be adequate to control erosion. The ground cover in these areas that is not covered with water is comprised of common Bermuda and native grasses, and is adequate to control erosion, and therefore met or exceeded the requirements of §12.389(a) and §12.347(a)(7-8).

 - (e.) No portion of the area proposed for Phase II release of reclamation liability have soils classified as prime farmland prior to mining.
21. No wells are located within the proposed Phase III release area.

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22. Groundwater has been protected in accordance with §12.348. Since 1992 Luminant has submitted quarterly groundwater monitoring data from overburden, underburden and spoil aquifers in the Monticello - Thermo Mine as measures in the approved long-term groundwater monitoring (LTGM) wells. Luminant also provided trend analysis for all applicable LTGM wells.
- (a.) The premine overburden aquifers (shallow systems to a depth of approximately 100 feet) have been destroyed. Those aquifers, however, constituted only minor aquifers. The underburden aquifers are confined by clays ranging from 20 – 30 feet in thickness.
- (b.) The spoil wells in the vicinity have been in place since mid-1990, have been declining for most of their periods of record. Such an apparent water-level decline is unusual in spoil monitoring wells in Texas mines; however, unlike these wells, most spoil monitoring wells at Texas mines do not have periods of record in excess of 20 years. These wells do show that resaturation has occurred and, although Staff is unable to determine the likely cause of this water-level declining trend, Staff does not believe that it represents a problem that is inconsistent with the approved groundwater probable hydrologic consequences PHC determination for the mine. Spoil monitoring well B-35-R-91, installed in 1991, appears to have achieved a maximum resaturation level in 2003 and is now

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static. Luminant has plugged applicable boreholes in accordance with the requirements of the Commission.

- (c.) Long-term quarterly monitoring of the overburden aquifer units was obtained through LTGM wells TLT-1-OB-93 and TLT-1-OB-98, which are the wells located nearest to the proposed areas of Phase III release. In LTGM well TLT-1-OB-93, the water level has declined from the premine level of approximately 545 ft amsl but is slowly recovering, appearing to have attained a new static level at about 530 ft amsl. As spoil saturation has occurred, the total dissolved solids (TDS) concentration in this well rose somewhat from a premining concentration of about 125 mg/L to a high of about 250 mg/L in 2005 and 2006. TDS concentration has declined since that time and is currently less than 200 mg/L. This temporary rise appears to be primarily the result of changes in chloride concentration, as sulfate appears to not have varied appreciably. For overburden LTGM well TLT-4-OB-98, water level dropped precipitously in late 2003 from the premining level of about 512 ft amsl to about 474 ft amsl and has remained at this re-established static level since that time. TDS concentration, except for a short-term spike in mid-2005, has remained at about 220 mg/L. The observed changes follow the trends expected from the approved PHC determination.

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- (d.) Staff notes a trend in the underburden LTGM well B-34-UB-93, which is located near the center of the approved permit area. The potentiometric surface exhibited only moderate fluctuation prior to 2002, during which water level ranged from 361 to 421 ft amsl, with a median elevation of about 412 ft amsl and standard deviation of 8.2 ft. Since 2002, water level has been more erratic, ranging from 361 to 464 ft amsl, with a median elevation of 399 ft amsl and a standard deviation of 25.5 ft. A more robust statistical comparison of the two sample populations could be performed; however, this simple test shows that the variation in the data appears to have approximately tripled in the post-2002 period as compared to the pre-2002 period. The underlying cause of this change is not clear, although it has been postulated that the observed trends are the result of proximate, rapidly moving mining activities affecting the hydrostatic pressure in the overlying strata, but this change does not seem to have affected the overriding trend of the sample data, as the trend-line slope is nearly linear. TDS concentrations over the same period have increased from approximately 425 mg/L to about 860 mg/L. Premine underburden water-quality samples obtained in 1985 and 1986 in former baseline monitoring well C-23-UB-85 yielded an average TDS concentration of about 940 mg/L and a potentiometric surface elevation of about 430 ft amsl. It appears that these potentiometric surface changes and TDS concentration increases represented in the period of record for LTGM well B-34-UB-93 demonstrate a return to premine underburden water level and chemistry

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following changes induced by localized hydrostatic release that occurred during removal of overburden. During the extended responsibility period the spoils-aquifer water quantity (as represented by water levels) and the water quality (represented by TDS concentrations) have generally stabilized. Localized mining-related effects to overburden water quantity have been temporary and are recovering to premine levels. Water quality or quantity in the overburden groundwater systems adjacent to the proposed release area have not been materially impacted as a result of the mining or reclamation activities. With respect to groundwater systems, Luminant has complied with the requirements of the Regulations for the subject 201.5 acres proposed for Phase III release from reclamation obligations. Staff notes no groundwater concerns in the areas proposed for Phase-III release that would preclude final release.

23. The 201.5 acres are recommended for Phase II and III release.
24. The areas approved for release of Phase II and III reclamation obligations are eligible for an adjustment to the required amount for the bond. The notice of application for release did not include an amount of eligible bond reduction requested, and Luminant has not requested an adjustment to the approved bond at this time. No replacement bond instrument has been filed.

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25. Although Luminant has not requested an adjustment to the approved bond at this time, there is an eligible bond reduction amount, based upon the Findings of Fact contained in this Order and Staff's technical evaluation report. The bond estimate for this mine was calculated on a worst-case bond scenario. The only amount retained for the bond for this acreage following release of Phase I reclamation obligations was \$847 per acre for soil preparation, revegetation, and maintenance, plus 10% administrative costs. The total acreage eligible for the Phase II and Phase III release is 201.5 acres. The acreage requested for release was mined, and Phase I release has occurred. Costs were included for soil preparation, revegetation and maintenance in the last reclamation cost estimate (\$847 per acre) and this amount was used in the calculation of amounts eligible for release. The eligible bond reduction is calculated thusly: Phase II and Phase III release of 201.5 *mined* acres at \$847 *per mined acre* equals \$170,670.50 plus 10% administrative costs of \$17,067.05 equals \$187,737.55. Luminant is therefore eligible for a bond reduction of \$187,737.55.
26. This docket has been posted for consideration by the Commission

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CONCLUSIONS OF LAW

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

1. Required public notice was provided for this request for release of reclamation obligations, and the Commission properly posted the docket for consideration.
2. A public hearing on the request is not warranted.
3. Luminant has complied with all applicable provision of the Act and the Regulations for release of Phase II and Phase III reclamation obligations for the areas requested for release as set out in the Findings of Fact.

IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS that the above Findings of Fact and Conclusions of Law are adopted; and,

IT IS FURTHER ORDERED that a release of Phase II reclamation obligations for 201.5acres is hereby approved; and

IT IS FURTHER ORDERED that a release of Phase III reclamation obligations for 201.5acres is hereby approved; and

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


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IT IS FURTHER ORDERED that the current bond remains in effect according to its terms until a replacement bond is approved by the Commission; and

IT IS FURTHER ORDERED that the Commission may vary the total amount of bond required from time to time as affected land acreages are increased or decreased or where the cost of reclamation changes.

SIGNED this 10th day of September, 2013.

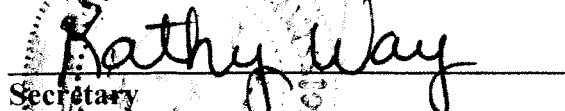
RAILROAD COMMISSION OF TEXAS


CHAIRMAN BARRY T. SMITHERMAN


COMMISSIONER DAVID PORTER


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ATTEST:


Secretary
Railroad Commission of Texas

