

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

SURFACE MINING DOCKET NO. C13-0004-SC-04-F

**APPLICATION BY LUMINANT MINING COMPANY LLC.
FOR PHASE I RELEASE OF RECLAMATION OBLIGATIONS
FOR 491.9 ACRES OF ITS SURFACE COAL MINING OPERATIONS
FOR PERMIT NO. 4K, MARTIN LAKE MINE, RUSK AND PANOLA COUNTIES,
TEXAS**

**ORDER APPROVING PHASE I RELEASE
OF RECLAMATION OBLIGATIONS FOR 491.9 ACRES**

STATEMENT OF THE CASE

Luminant Mining Company LLC (Luminant), 1601 Bryan Street, EP28-015C, Dallas, Texas 75201, has applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase I (backfilling, regrading, and drainage control) release of reclamation obligations for 491.9 acres. Staff of the Surface Mining and Reclamation Division has reviewed the request for release of the acreage located within Permit No. 4K, Martin Lake Mine. The permit area is located directly west of the City of Beckville and east of County Road 3231. 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 Supp. 2012) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE ANN. CH. 12 (West 2012) (Regulations).

Permit No. 4K, issued by Order dated January 13, 2011 (Docket C9-0018-SC-04-C) currently authorizes surface mining operations at Luminant's Martin Lake Mine, located within Rusk and Panola Counties, Texas. The permit area includes approximately 30,905-acres. The only parties to the proceeding are Luminant and the Commission's Surface Mining and

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Reclamation Division (SMRD or Staff). Copies of the application were filed in the required Counties and Commission offices, and notices were mailed to landowners and adjoining landowners of the area requested for release. No comments were made following public notice and mailed notice, and no public hearing was requested. Additionally, only Luminant personnel attended the inspection conducted by Staff.

Based on the record in this docket including the application and Staff review, the examiner recommends the application for Phase I release should be approved for all 491.9 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

1. By letter dated September 28, 2012, Luminant Mining Company LLC (Luminant) filed its initial request for Phase I release of reclamation requirements (backfilling, regrading, and drainage control) for 491.9 acres, located in the AIV West Mine Area within the 30,905-acres permit area of the Martin Lake Mine in Rusk and Panola Counties, Texas, Permit No. 4K.
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. 2012) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (West 2012) (Regulations). The application was properly certified in accordance with §12.312(a)(3) of the Regulations.
3. Although the acreage is eligible for a bond reduction, Luminant does not at this time request an adjustment in the amount of the approved reclamation bond. The existing reclamation performance bond for the entire permit area is comprised of a self-bond with

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third-party guarantor in the amount of \$185,000,000. The existing bond was accepted by Commission Order dated January 28, 2008.

4. The area proposed for release is detailed in the Staff Evaluation, Attachment I and Appendix I (Location Map), Attachment III (Bond Release Inspection Report), Appendix IV (General Photographs and Photograph Location Map.) and Appendix V, (Permanent Structures Photographs and Photograph Location Map). The application, photographic evidence, 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 office of the Rusk County Clerk, Henderson, Texas; and in the office of the Panola Counties Clerk, Carthage, Texas.
6. Publication of notice of application occurred once each week for four consecutive weeks in the *Henderson Daily News* and *The Panola Watchman*, newspapers of general circulation in Rusk and Panola Counties, Texas, newspapers in the locality of the surface mining and reclamation operations. The publications in *Henderson Daily News* occurred on October 25, November 1, 8 and 15, 2012. The publications in *The Panola Watchman* occurred on October 28, November 4, 11 and 18, 2012 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,

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- 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 showing 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 December 13, 2012. Staff's initial evaluation document was filed with the Hearings Division by letter dated February 7, 2013. The Technical Evaluation and inspection report indicated that Staff did not recommend Phase 1 release of the 491.1-acre parcel because Pond AII-122RW had not yet been declared a permanent structure and Luminant had not demonstrated that the water quality of Pond AII-122RW was suitable for its intended use.
 8. By letter dated April 8, 2013, Luminant requested Pond AII-122RW be approved as permanent. Staff found that Luminant had addressed the concerns raised in staff's evaluation of February 7, 2013 by the submittal of a water grab-sample analysis, a specific request that the Commission acknowledge the analysis that the water quality of Pond AII-122RW was suitable for its intended use, and submitting a request that the Commission grant final approval of the pond as a permanent impoundment.
 9. The area of the permit requested for release is located in the Martin Lake Mine, in the AIV West Mine Area and is comprised of a single parcel of land within the permit area. The approved postmining land use is fish and wildlife habitat (208.1 acres), forestry

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(235.7 acres), pastureland (92.2 acres), industrial commercial (17.2 acres), and developed water resources (30.9 acres).

10. 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 December 10, 2012, Luminant submitted to the Commission copies of the letters to landowners and/or adjoining landowners, and holders of other property interests, and the following: the Panola County Judge/ Commissioner's Court, Rusk County Judge/Commissioner's Court, Texas Department of Transportation, Natural Resources Conservation Service, Texas Commission on Environmental Quality, Rusk County Electric Co-Op, Southwestern Bell Telephone Company, And U.S. Army Corps of Engineers, 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 permit area is located within the territorial boundaries of the city of Beckville. The Mayors of Beckville and Tatum were notified of the Application For Release by certified letters dated December 18, 2012 pursuant to §12.313(c) of the Regulations.
11. 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).
12. SMRD's Inspection and Enforcement Section mailed letters dated October 8, 2012 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, October 23, 2012, and the

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opportunity to participate in the inspection in accordance with §12.312(a)(2). The Staff sent an original notice by certified mail of the application to the Rusk County Judge, The Mayor of the City of Beckville, the Mayor of the City of Tatum, and Panola County Judge Court by letter dated October 29, 2012 (Attachment II to Staff's inspection report) as required by the Act, §134.133.

13. The area requested for release was mined from 2004-2006, and final grading of the area, including construction of diversion ditches, swales, erosion and sediment control features was accomplished between 2005-2007. Routine monthly inspections of the reclamation work covering the proposed release area occurred from 2004 to the date of the inspection and have continued.
14. Based upon the application and Staff review in its Technical Evaluation Report and staff's August 2, 2013 addendum to its initial February 7, 2013 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.
15. 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 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 area request for release meet Phase I release have been stabilized to control drainage and attendant potential erosion

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[(§12.389)]. Surfacewater from the reclaimed area flows through sedimentation ponds.

- (a). The area requested for release contain 40 soil-testing grids with data provided by Luminant on December 19, 2007, December 22, 2008, July 23, 2009, April 21, 2011, and May 2, 2012. On September 24, 2012, Staff determined that the soil-testing data for all grids met the applicable physicochemical postmine soil performance standards for all grids within the proposed release area
- (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 eight permanent impoundments located in the area requested for Phase I release. All eight permanent impoundments and their appurtenances were found to be structurally intact and sound. The eight permanent impoundments within the area requested for release have been approved by Staff. [§12.347(b)]
- (d). The area proposed for Phase I release contains one permanent reclamation road. The AIV-West Access Road No. 1 is located within the area proposed for Phase I release. The road was found to be structurally intact and stable. The road was approved by staff by letter dated November 21, 2011. [§12.400(f)]
- (e). Surface water runoff from the proposed Phase I release area will flow through Sediment ponds AII-79, AIV-3, AIV-4, and AIV-7 [§12.344].
- (f). There are Sixteen (16) drainage features located within the area proposed for Phase I release or reclamation liability. All of the drainage features were found to be structurally intact and stable. The Sixteen (16) drainage features located within the area proposed for Phase I release have been approved by Staff permanent structures.

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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 areas proposed for release of Phase I reclamation obligations, if approved would be eligible for an adjustment to the required amount of 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.
19. 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 491.9 acres proposed for Phase I release of reclamation obligations are bonded at the mined rate of \$9,021 per acre. Therefore, the total eligible reduction would be \$2,928,703.73. The eligible bond reduction amount is calculated thusly: 491.9 mined acres at \$9,021 per mined acres; times 60% for Phase I completion equals \$2,662,457.94. With the addition of administrative costs of 10% (\$266,254.79), the final eligible bond reduction would be \$2,928,703.73.
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 areas. Clear identification of this area will assist future inspection of this area and adjacent areas by field office staff.
19. 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.

20. The 491.9 acres are recommended for Phase I release of reclamation obligations, which include backfilling, regrading, and drainage control by Staff.

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. Luminant 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. Luminant has met all requirements for Phase I release for 491.9 acres within the Martin Lake Mine.
5. The Commission may approve a release of Phase I reclamation obligations for the 491.9 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 effectively mark 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 Phase I release of reclamation obligations is approved for 491.9 acres as set out in the Findings of Fact and Conclusions of Law;

IT IS FURTHER ORDERED that an eligible bond reduction in the amount \$2,928,703.73 is determined;

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 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is mailed. 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 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 AT AUSTIN, TEXAS, on October 1, 2013.

RAILROAD COMMISSION OF TEXAS


CHAIRMAN BARRY T. SMITHERMAN


COMMISSIONER DAVID PORTER


COMMISSIONER CHRISTI CRADDICK

ATTEST, 2013


Secretary, Railroad Commission of Texas