

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C13-0019-SC-29-F
APPLICATION BY CABOT NORIT AMERICAS INC.
FOR APPROVAL OF RELEASE OF RECLAMATION OBLIGATIONS
PHASES II AND III, 65.9 ACRES, AND PHASE III, 371.1 ACRES,
PERMIT NO. 29C, DARCO MINE, HARRISON COUNTY, TEXAS**

**ORDER APPROVING RELEASE OF RECLAMATION OBLIGATIONS
AND TERMINATION OF PERMIT NO. 29C, DARCO MINE**

Statement of the Case

Cabot Norit Americas Inc. (formerly Norit Americas Inc.) (Norit), P.O. Box 790, Marshall, Texas 75671 (Norit) applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for a release of Phases II and III reclamation obligations for 65.9 acres and a Phase III release of reclamation obligations for 371.1 acres. The combined acreage constitutes the remaining disturbed acreage within Norit's Permit No. 29C, Darco Mine, in Harrison County, Texas. Permit No. 29C currently authorizes surface mining and reclamation operations at the mine located approximately 12 miles southwest of Marshall, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2013) (Act), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 TEX. ADMIN. CODE CH. 12 (West 2013) (Regulations).

Required mailed notice and publication of notice of the bond release application were provided. No objections or requests for hearing were filed following publication of notice. The only parties to the proceeding are Norit and the Commission's Surface Mining and Reclamation Division (SMRD) (Staff). There are no outstanding issues between the parties. Based on the information provided by the applicant and its inspection of the area, the Staff recommends the requested releases and also recommends termination of the permit with release of all bonded areas within the permit boundaries. The parties have reviewed the proposed order and have filed waivers of the preparation and circulation of a proposal for decision.

The Commission approves the requested releases, release of the bond, and termination of Permit No. 29C.

FINDINGS OF FACT

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

1. By letter dated July 24, 2013, Norit filed its application for release of Phases II and III reclamation obligations for 65.9 acres and Phase III reclamation obligations for 371.1 acres located within the permit area of Permit No. 29C, Darco Mine, made up of 510.2 acres. The Commission previously approved Phase I release of reclamation liability for the 437 acres by Order dated February 12, 2008 (Docket No. C7-0020-SC-29-F). By Order dated July 29, 2008 (Docket No. C7-0021-SC-29-F), 437 acres were requested for Phase II release; of the 437 acres, 65.9 acres did not meet the standard for revegetation success for fish and wildlife habitat; therefore, the Commission's Order included Phase II release of 371.1 acres. Norit now requests Phase II and III release for the 65.9 acres and Phase III release for the 371.1 acres. The 65.9 and 371.1 acres constitute all remaining disturbed acreage within Permit No. 29C subject to reclamation requirements. The permit area includes some additional acreage (73.2 acres) representing pre-law areas not subject to reclamation requirements and undisturbed areas; the additional acreage plus the 437 acres requested for release, make up the permit area total acreage of 510.2 acres. Based upon Commission records, the permit for the Darco Mine was originally issued by Commission Order dated July 27, 1981 as Permit No. 2 to ICI Americas, Inc. The permit was transferred to American Norit Company in 1986, and the company's name was subsequently changed to Norit Americas Inc. The permittee again changed its name in March 2013 to Cabot Norit Americas Inc. following its acquisition by Cabot Corporation. It was renewed in 1994 as Permit No. 29A. Permit No. 29A was renewed and revised by Order dated December 7, 1999 and issued as Permit No. 29B by Order dated February 24, 2000. There has been mining by these companies in the vicinity of the permit area since approximately 1959 prior to state surface mining regulation. Mining had ceased within the permit area by 2001.

2. Norit filed supplements to the application consisting of a letter dated August 14, 2013, requesting a suspension in processing until evidence of groundcover success for industrial/commercial land use was provided, a letter dated August 29, 2013, providing a revised draft notice of application, a letter dated December 5, 2013, providing an affidavit of publication and clippings, (materials received by the Hearings Division on December 6, 2013, including proof of publication and proof of notification to required agencies and landowners), and a letter dated January 20, 2014 with Supplement No. 1 providing additional surface water information. The Director, Surface Mining and Reclamation Division (Staff), declared the application administratively complete on December 11, 2013.
3. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2013) (Act), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 TEX. ADMIN. CODE CH. 12 (West 2013) (Regulations). No fee is required for this application.
4. Notice of application was published once each week for four consecutive weeks in the *Marshall News Messenger*, a newspaper of general circulation in Harrison County, Texas in the locality of the surface mining and reclamation operations on September 15, 22, and 29, 2013 and on October 6, 2013. A publisher's affidavit and copies of the notices as published were submitted to the Commission. The public notices are adequate and contain all information required by §134.129 of the Act and §12.312 of the Regulations; namely, 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 filed, 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 notices contain information concerning the applicant, the location and boundaries of the permit area, and the address to which comments should be sent.
5. By letters dated September 13, 2013, Norit mailed notification of the request for release to required property owners and owners of other interests within and adjacent to the proposed

release area, to local, state, and federal governmental bodies, planning agencies, and water treatment authorities. The areas requested for release are not located within the territorial boundaries of any municipality. State and Federal agencies included the Texas Commission on Environmental Quality, the USDA Natural Resources Conservation Service (Marshall Field Office), the Harrison County Judge and Commissioners' Court, the Harrison County Soil and Water Conservation District, the Environmental Protection Agency, and the U.S. Army Corps of Engineers. Gill Water Supply Corporation was also sent notice. Norit provided copies of the notification letters as required.

6. By letter dated July 31, 2013 the Commission provided notice by letters to Norit, the owner of all tracts within the proposed release areas, to all owners of lease interests and easements in the areas requested for release, and to the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM), of the opportunity to participate in the required on-site inspection August 14, 2013.
7. In accordance with §134.133 of the Act, the Commission's Surface Mining and Reclamation Division sent notice of the request for release to the Harrison County Judge by certified mail dated October 18, 2013. This date of certified mail notice is no later than 31 days prior to the proposed release as required by the Act.
8. No adverse comments, objections, or requests for public hearing have been made. A comment letter was filed with SMRD on October 8, 2013 requesting notification when the release is accomplished. The commenter will be informed by the Division upon release. No public hearing has been held.
9. The areas requested for release were inspected by Commission staff as scheduled. Three representatives of the applicant or operator also attended.
10. The Staff's technical analysis document and field inspection report were filed with the Hearings Division on December 31, 2013. Staff filed its Addendum to the analysis on February 27, 2014.

acres of fish and wildlife habitat and 0.5 acres of industrial/commercial land use. The fish and wildlife habitat is located within the 65.9-acre 2008 Extended Responsibility Area (ERA). Vegetation has been established as required by §12.395(b)(3) of the Regulations for fish and wildlife habitat and §12.395(b)(4) for industrial/commercial land use.

- (1). The industrial/commercial land use is made up of a portion of a gas well pad, a portion of the West Ramp Road, a portion of the East Ramp Road, a portion of Ditch DD-15, and a portion of Harrison County's Cave Springs Road. These structures are stable. Norit submitted groundcover data for the industrial/commercial land use by letter dated August 26, 2013 showing that Norit has met the requirement that vegetation be sufficient to control erosion in accordance with §12.395(b)(4) for the industrial/commercial land use (Staff review dated December 2, 2013).
- (2). Fish and wildlife areas (65.4 acres) are planted with a variety of trees including pine and oaks as well as herbaceous species, with Switchgrass as the dominant approved herbaceous species.
- (3). Norit submitted 2012 stem count and stocking data for the areas of fish and wildlife habitat within the Phase II requested release area by letter dated June 4, 2012 (March 24, 2008 Extended Responsibility Area). Norit has shown that the ground cover standard of 78% has been met and that the stem count standard of 100 stems per acre for the fish and wildlife habitat has been met (SMRD Director's letter dated November 12, 2012). The areas have met the required standards for the last year of the ERP as required by §12.395(b)(3) and §12.395(c)(2)(A). Staff has determined that the land has been reclaimed to the approved postmine land use as required by §12.147 and §12.399.

The evaluation and addenda considered the data presented in the application and the on-site inspection to determine whether the lands have been reclaimed in accordance with requirements of the Act and Regulations for Phase II and III release as requested. Based upon its inspection and evaluation, Staff determined that all areas requested for release meet requirements for release from reclamation obligations as requested.

11. All acreage requested for release from Phase II reclamation obligations (65.9 acres) have met the Phase II requirement for establishment of revegetation and the requirement that the areas not contribute suspended solids to streamflow outside the permit area in excess of the requirements set by TEX. NAT. RES. CODE ANN. §134.092(a)(10) and Subchapter K of 16 TEX. ADMIN. CODE Ch. 12. Drainage from the requested Phase II release areas flows to Darco Lake on the southern boundary of the areas requested for release, the only impoundment within the areas requested for release. Darco Lake has been released from sediment control requirements. A review of the water quality records indicates that the water discharge is compliant with the requirements of the water permit quality.
 - (a). No silt dams are present within the area proposed for Phase II release.
 - (b). No rills or gullies were present within the area requested for Phase II release that would require repair. The areas have been stabilized to reduce the potential for contributing suspended solids to streamflow.
 - (c). No prime farmland, for which additional requirements would be applicable, are located within the areas requested for release.
 - (d). Revegetation has been established on the areas requested for Phase II release in accordance with §12.313(a)(2) within the 65.9-acre area. Permanent vegetation was planted from 1975 through 2008. The area proposed for Phase II release consists of 65.4

- (e). Monthly inspections and Staff's inspection on August 14, 2013 demonstrate that the land has been reclaimed to and managed in accordance with the approved postmine land uses.
 - (f). As set out in Finding of Fact No. 12(c), the 65.9-acre area, as part of the 437-acre area requested for release and permit termination, is not contributing excess solids to streamflow or runoff outside the permit area in excess of effluent limitations set out in the water quality permit [Finding of Fact No. 12(c)] or in excess of stream segment standards [Finding of Fact No. 12(d)].
12. Phase III reclamation requirements have been met for the 65.9-acre area made up of fish and wildlife habitat and industrial/commercial land use for release and for the 371.1-acre area made up of 277 acres of fish and wildlife habitat, 47.8 acres of developed water resources (Darco Lake), and 46.3 acres of industrial/commercial land use requested for release. Together the 65.9-acre area and the 371.1-acre area requested for Phase III release total 437 acres. Structures requiring approval as permanent have been approved. Requirements for completion of the ERP have been met, and requirements for surface water and groundwater protection have been met.
- (a). The following structures located within the 437-acre area requested for release have been approved as permanent: gas well areas, Darco Lake, Haul Road 1, East Ramp Road, West Ramp Road, Pump Dock Road, Ditch DD-15, and three small depressions. Cave Springs Road, a Harrison County Road, is also located within the 437-acre area. All structures located within the areas requested for release are intact, and the surrounding areas are well-vegetated.
 - (b). The 437 acres that have been previously disturbed area have met Phase III requirements for successful completion of the extended responsibility period (ERP) of five years for areas that receive 26 or more inches of rainfall annually. The 65.4 acres [excluding the industrial/commercial land use not subject to the extended responsibility period (ERP)] was approved for placement into the March 24, 2008 ERA by letter from the SMRD Director dated June 2, 2008. The remaining acreage subject to the ERP (371.1 acres of

the 437 acres) was placed into the February 14, 2007 ERA by the Director's letter dated June 13, 2007. The 277 acres of fish and wildlife habitat located within the 371.1-acre area requested for Phase III release were approved for Phase II release including establishment of revegetation by Commission Order dated July 29, 2008.

- (c). Surface drainage from all areas requested for release flow into Darco Lake, then to Spring Creek, then to the Sabine River. Darco Lake is the only outfall location within the current permit area. Norit has met effluent limitations for Permit No. 29C pursuant to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. TxR05BL62 and the prior Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) Permit No. Tx0073474. Darco Lake has been released from sediment control requirements. Four quarters of sampling prior to Phase II release have not been provided for Darco Lake. This requirement came into effect by Commission letter dated August 9, 2001; this sampling is not required for Darco Lake because its approval date was prior to August 9, 2001. Based on the information contained in the application, Appendix E of Section 6, for the period of record January 1980 – September, 2010, the average concentrations of pH, total suspended solids (TSS), total iron (Fe) and manganese (Mn) were in compliance with the water quality effluent limitations for these parameters. The average pH was 7.3 standard units (s.u.) as compared to the limitation of average daily maximum, 6.0-8.5 s.u. The average TSS, 23.5, met the effluent limitation of 35 mg/L allowable daily average and met the limitation of 70 mg/L for allowable daily maximum. Average Fe (2.3 mg/L) and Mn (0.1 mg/L) also met their limitation for allowable daily maximum of 6.0 mg/L and 2.0 mg/L, respectively. None of the concentrations for pH, TSS, Fe, and Mn exceeded these standards after 1999. The areas requested for release are not contributing suspended solids from discharge routed through Darco Lake outside the permit area in excess of the requirements of the Act and Regulations.
- (d). Stream monitoring data was provided by Norit and reviewed by Staff. Long-term surface monitoring Station 12 is located on Spring Creek, downstream of Darco Lake and upstream of TCEQ Stream Segment No. 00505 of the Sabine River into which Spring

Creek flows. In the application, Norit provided TDS concentration data from the sampling station for the period 1986 to 2012 in Appendix E and an evaluation of the data, along with a summary. Graphing of TDS concentrations and flow for Station 12 was provided in Appendix G of Section 6, as supplemented in Supplement No. 1. The data were compared to the stream segment standard of 400 mg/L. Although the records show that TDS concentrations are somewhat higher during low-flow conditions, since 1986 the data have not exceeded the stream segment standard for TDS. The average TDS concentration for the station is lower than the maximum average annual concentration allowed for the stream segment. Flow measurements provided for 1993 to 2005 as compared to 2005 to 2011 were slightly higher; drought conditions and maturing vegetation have likely slightly decreased the flow. There are no water rights on Spring Creek between LTSM Station 12 and its confluence with the Sabine River. The areas requested for Phase III release have had no adverse effects on the hydrologic balance of the surface water. Using material damage criteria, cumulative effects of all anticipated mining activities in the following permits, all located within the Sabine River Basin in Harrison, Rusk, and Panola Counties, were assessed in addition to Permit No. 29C for the Darco Mine: Permit No. 55 (Rusk Mine), Permit Nos. 4K and 53 (Martin Lake and Martin Lake AIV South Mines), Permit No. 59 (Marshall Mine), Permit No. 57 (Marshall Mine Facilities Permit), Permit No. 33H (South Hallsville No. 1 Mine), and Permit No. 46C (Oak Hill Mine). This assessment, approved in Docket No. C11-0020-SC-00-A, determined that the anticipated increase to concentrations of TDS in the receiving streams were expected to be minimal, that effects on water quantity were insignificant due to the large dilution effects from substantial runoff within the Sabine River Basin, and that effects from TDS would not result in material damage to surface water quality. This CHIA also determined that the regional processes of dilution and dispersion will limit adverse water quality impacts, if any, to localized areas in the immediate vicinity of the mines.

- (e). Staff evaluated data provided by Norit from monitoring of spoil wells, overburden wells, and underburden wells located within and near the permit boundaries. Norit provided

groundwater level data for long-term groundwater monitoring wells in Appendix A of Section 6 of the application, water level graphs for the long-term groundwater monitoring well in Appendix B, groundwater chemistry in Appendix C, and TDS graphs for the wells in Appendix D. Monitoring of overburden and underburden aquifers shows that water quantity and quality have not been affected deleteriously. Staff's review of groundwater impacts appears in its evaluation made in the Cumulative Hydrologic Impact Assessment (CHIA) prepared for the Liberty Mine (Docket No. C11-0020-SC-00-A), Permit No. 58, TA Addendum No. 2, dated November 5, 2012. Based upon data provided by Norit and the CHIA, groundwater resources within and adjacent to the permit area have not been significantly impacted.

- (1). A mass-balance technique was used for each mine to determine the water-quality impacts of spoils area groundwater to the adjacent aquifer systems. Baseline water quality (TDS medians and ranges) for the mine areas within the Sabine River Basin Cumulative Impact Drainage Area and TDS median concentrations for mine spoil based on representative monitoring-well data available from the Oak Hill, Martin Lake and South Hallsville No. 1 Mines were used to determine the steady-state TDS concentration increases in the water for the adjacent, in-place aquifers in the unmined portions of each permit area and in adjacent areas due to outflow from the saturated spoil in each mined area. The assumptions that have been made, notably that about 60 percent of the average annual recharge to the spoil water table will migrate toward the adjacent aquifers, represent conservative values believed to represent the worst-case conditions. For unit comparison, equal areas of unmined and mined area were used in this mass balance.
- (2). Results (set out in Table 5 of the CHIA) indicate a predicted postmine increase in TDS concentration at all mass-balance points, ranging from just 0.5% to slightly more than 42% over baseline median values. Staff indicated that the lowest percent increase is predicted in portions of the existing Rusk, Martin Lake, Darco

and South Hallsville No. 1 Mine areas. For the Oak Hill Mine, Staff predicted a potential increase of about 42% for the aquifers within the permit area and in the unit area adjacent to the mine. Staff also stated that even though the large percentage increase at the Oak Hill Mine at first glance appears alarming, it represents an increase in median TDS concentrations from just 80 mg/L up to 114 mg/L, which is still considered very fresh water. Mixing outside the unit areas adjacent to the mines would further dilute the spoil groundwater effluent before it is extracted through well pumping or is discharged outside the permit area as part of surface water baseflow. Because of this dilution, the cumulative effects are expected to be small and changes will likely not be detectable. TDS concentration has been used in these analyses as the main indicator of quality-of-water material damage.

- (3). Baseline information indicates that very little differences in the concentrations of other parameters of concern (sulfate, iron, manganese, and pH) exist between the chemical quality of the overburden groundwater and the water in the spoil areas that have been monitored. Again, mixing outside the unit areas adjacent to the mines would further dilute the spoil groundwater effluent before it is extracted through well pumping or is discharged outside the permit area as part of surface-water baseflow. Because of this dilution, the cumulative effects are expected to be small and changes will likely not be detectable.

13. The areas requested for release of reclamation obligations are capable of sustaining the postmine land uses. No extended responsibility period is applicable to the industrial/commercial land use. Darco Lake, constructed in 1975 and located on Norit-owned property, has a 436.8 acre-foot capacity. It is a pre-law structure suitable for its intended use as a developed water resource.
14. All requirements for Phase II and III release of reclamation obligations have been met for the 65.9 acres requested for release, and all Phase III requirements have been met for release for 371.1 acres, for a total of 437 acres. No amount of bond remains necessary to ensure reclamation

of these areas. All other areas were not disturbed or are pre-law areas not subject to the Act and Regulations. Staff and Norit presented the amount of \$612,665 as the amount representing current bonded areas; the currently approved bond, a surety bond by Travelers Casualty and Surety Company, is in the amount of \$617,000. The eligible bond reduction amount, due to the release of all reclamation obligations for the remaining disturbed acreage within the permit area, is \$617,000, and the entire bond may be released.

15. Completion of all applications currently pending in SMRD is no longer necessary. The following applications may be deemed moot: 2012 and 2013 Certificates of Insurance and Darco Lake Annual Certification. There are no outstanding enforcement matters.
16. The areas requested for release have been clearly marked in the field to distinguish these areas that had been disturbed. No markers are required after approval of the release of reclamation obligations and the release of bond.
17. Norit and the 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. Open meeting notice of consideration by the Commission has been provided in accordance with TEX. GOV'T CODE ANN. CH. 551 (Vernon Supp. 2013).

CONCLUSIONS OF LAW

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

1. Proper notice of application and notice of consideration by the Commission has been provided for this request for release of reclamation obligations.
2. A public hearing on the request is not warranted.

3. Norit has complied with all applicable provisions of the Act and with all applicable provisions of the Regulations for the acreage requested for release, constituting all remaining disturbed areas within the permit area subject to the Act and Regulations.
4. With the approved releases, all remaining applications within SMRD are deemed moot.
5. With the approved releases, all disturbed areas within the permit boundaries will have been released from reclamation obligations, and the permit may be terminated and the surety bond in the amount of \$617,000 by Travelers Casualty and Surety Company of America may be released.

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 Phases II-III reclamation requirements for 65.9 acres is approved;

IT IS FURTHER ORDERED that a release of Phase III reclamation obligations for 371.1 acres is approved;

IT IS FURTHER ORDERED that acreage within the permit area in excess of 437 acres constitutes undisturbed and pre-law lands not subject to reclamation requirements.

IT IS FURTHER ORDERED that the surety bond in the amount of \$617,000 is hereby released in its entirety;

IT IS FURTHER ORDERED that all areas released from reclamation obligations are no longer required to be marked in the field with permanent boundary markers to distinguish the released areas from active mining and reclamation areas;

IT IS FURTHER ORDERED that Permit No. 29C, with a total acreage of 510.2 acres, is hereby terminated; 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. According 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.

DONE AT AUSTIN, TEXAS, this the 22nd day of April, 2014.

RAILROAD COMMISSION OF TEXAS


CHAIRMAN BARRY T. SMITHERMAN


COMMISSIONER DAVID PORTER


COMMISSIONER CHRISTI CRADDICK

ATTEST:


Secretary

Railroad Commission of Texas

Cabot Norit Americas Inc.
Docket No. C13-0019-SC-29-P
Permit No. 29C, Darco Mine