

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SMRD DOCKET NO. C13-0014-SC-32-F**

**APPLICATION OF TEXAS WESTMORELAND COAL COMPANY FOR PHASE II AND  
III RELEASE OF RECLAMATION OBLIGATIONS OF 28.6 ACRES WITHIN PERMIT  
NO. 32F**

**ORDER APPROVING RELEASE  
OF PHASE II and III RECLAMATION OBLIGATIONS FOR 28.6 ACRES**

**Statement of the Case**

Texas Westmoreland Coal Company (TWCC), applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase II, and Phase III releases of reclamation obligations for 28.6 acres in the aggregate within Permit No. 32F, Jewett Mine, Leon, Limestone, and Freestone Counties, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon 2011-2012), and “Coal Mining Regulations” Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE Ch. 12 (West 2012).

Staff approved the most recent bond-map revision (Revision No. 50) by letter dated February 25, 2013. The approved reclamation cost estimate is \$62,168,070. A \$57,500,000 self-bond with third –party guarantee and \$13,500,000 surety bond were approved by Commission Orders dates March 22, 2011 and June 12, 2012, respectively. The \$62,168,070 reclamation cost estimate is based on the “worst-case pit” bond method, which assumes that mining and reclamation operations are contemporaneous with the reclamation plan at all times.

No comments or requests for hearing were filed following public notice. The only parties to the proceeding are TWCC and the Commission’s Surface Mining and Reclamation Division (Staff). There remain no outstanding issues between the parties. Based on information provided by TWCC and its inspection of the area, the Staff recommends the following releases: Phase II reclamation obligations for the establishment of revegetation and for sediment control for 28.6 acres and Phase III release for 28.6 acres (the extended responsibility period for revegetation, and all reclamation activities related to surface water quality and quantity and groundwater protection for this acreage).

The Commission approves the release of reclamation obligations as recommended by Staff. TWCC does not request adjustment to the approved reclamation bond at this time. An eligible bond reduction amount of \$20,792.20 (\$727 per acre on 28.6 acres) may be determined.

### **FINDINGS OF FACT**

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

1. By letter dated April 3, 2013, Texas Westmoreland Coal Company (TWCC) filed its application for Phase II and Phase III release of reclamation obligations in mine area A of the permit area for the Jewett Mine, Permit No. 32F, located in portions of Leon, Limestone, and Freestone Counties. The permit area contains approximately 21,539 acres. TWCC conducted mining operations on the acreage between 1986 and 1987.
2. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, TEX. ADMIN. CODE ANN. CH. 134 (Vernon 2011-2012) (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).
3. TWCC does not request a reduction in the amount of the approved reclamation bond instruments. The existing reclamation bonds for the permit area total \$71,000,000. A \$57,500,000 self-bond with third-party guarantee and indemnity agreement by NRG Energy, Inc. and \$13,500,000 surety bond issued by Liberty Mutual Insurance Company were approved by Commission Orders dated March 22, 2011 and June 12, 2012, respectively.
4. The application was supplemented by letter dated August 12, 2013 with proof of publication of notice. Publication occurred once each week for four consecutive weeks in the *Fairfield Recorder* on June 20 and 27 and on July 4 and 11, 2013. Publication also occurred in the *Jewett Messenger* on June 26 and July 3, 10 and 17, 2013. Publication also occurred in the *Groesbeck Journal* on June 27 and on July 4, 11 and 18, 2013. This publication is sufficient. The three newspapers are papers of general circulation in the area of the proposed operations. The notice of application contains all information required by the Act and Regulations for notice of application for bond release applications. TWCC submitted affidavits of publication with clippings. 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 total 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 notice contains information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection and address to which comments should be sent.
5. 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 and in the offices of the Leon, Limestone, and Freestone County Clerks.

6. TWCC sent notice 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). TWCC mailed notice to the County Judges and Commissioners' Courts of Freestone, Leon, and Limestone Counties, the Environmental Protection Agency, the Texas Department of Transportation, the Texas Commission on Environmental Quality, local offices of the Natural Resources Conservation Service, Texas General Land Office, Donie Water Works, U.S. Army Corps of Engineers, Concord-Robbins Water System, and the Brazos River Authority. The areas requested for release are not located within the territorial boundaries of any municipality. The Hearings Division received copies of the notification letters dated June 17, 2013 by letter dated August 12, 2013 from TWCC.
7. The application was declared administratively complete by Staff's letter dated August 21, 2013 with a notification that the Staff's technical analysis would be filed separately. The technical analysis was filed with Hearings Division on March 13, 2014 and supplemented by letter dated March 22, 2014.
8. The Staff provided notification of the application by certified letters dated June 19, 2013 to the County Judges of Leon, Limestone and Freestone Counties as required by §134.133 of the Act; these dates are at least 31 days prior to the date of consideration of the docket by the Commission. Pursuant to §12.312(b) of the Regulations, Staff notified owners of interests in lands and lessees of the application for release of the date and time of Staff's field inspection by letters dated April 9, 2013. 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. The Division also sent notice to the Office of Surface Mining Reclamation and Enforcement (OSM) (Tulsa, Oklahoma office), however, no OSM representative or land owners attended. Approximately five persons that included the Staff representative and four more representatives of TWCC or an affiliate attended the inspection. No adverse comments or written objections were filed regarding the request for release. No requests for hearing were filed pursuant to §12.313(d).
9. One Commission inspector conducted the inspection. The inspection occurred on April 26, 2013. The areas proposed for release are detailed in Staff's Technical Evaluation and Field Inspection Report filed with the Hearings Division by letter dated March 13, 2014. Figures and photographs of the proposed release areas and structures in the Staff Inspection Report and Evaluation provide depictions of the areas included with the application and the specific releases proposed. The figures provide the location of Ponds RP-A12 and RP-A13 located within the area proposed for release. Photographs from the inspection are included in Appendix IV of the Inspection Report (Attachment III to Staff's TA) and provide support for the application and the inspection report.

10. The application included ownership and tract information for owners of interests in the areas proposed for release. There are two tracts within the areas requested for release. There are approximately four owners of interest in the lands on which the proposed release areas lie. These are four owners of tracts adjacent to the proposed release areas. One company has lease interests in a pipeline.
11. Land uses within the areas requested for release are primarily pastureland (28.2 acres), with developed water resources (Pond, RP-A12 and Pond RP-A13), 0.4 acres.
12. The 28.2 acres of pastureland acreage requested for Phase II release received Phase I release of reclamation obligations as approved by Commission Order dated February 22, 2011 (Docket No. C10-0002-SC-32-F).
15. TWCC requested Phase II release on a total of 28.6 acres (28.2 acres of pastureland) and 0.4 acres of developed water resources (Pond RP-A12 and Pond RP-A13). All acreage requested for release from Phase II reclamation obligations have met applicable Phase II requirements and Phase II release is approved.
  - (a). Pond RP-A12 and Pond RP-A13 has been approved as a permanent impoundments (letter from the Director dated February 17, 2005).
  - (b). The areas requested for Phase II release are not contributing excess suspended solids to runoff or streamflow outside the permit area in excess of water quality permit requirements or in concentrations that would adversely affect streamflow outside the permit area. Sediment ponds receiving discharges from the areas requested for Phase II release (0.4 acres Pond RP-A12 and Pond RP-A13) and the 28.2 acres of pastureland meet the requirements for discharges set out in Texas Pollutant Discharge Elimination System permit (TPDES) Permit No. 02653. Based on Staff's review of long-term and quarterly pond data for the following periods: March 2010-December 2012, Pond RP-A12; : March 2010-December 2012, Pond RP-A13, values for pH were within the limitations for pH, 6-9.0 standard units. Values for total suspended solids were within the required range, 35 mg/L -70 mg/L (allowable daily average, 35mg/L; allowable daily maximum, 70mg/L). Values for total iron (Fe) were below the required allowable daily maximum of 6.0 mg/L. In addition, the water quality concentrations from stream sampling upstream of the area during the period 2010-2012 are similar to the results of water discharge sampling from the ponds. Based upon these results of sampling, the proposed release area is not contributing suspended solids to stream flow or runoff outside of the release permit area in excess of required performance standards [§12.313(a)(2)]. Phase II sediment control requirements are being met for these ponds as required by §12.313(a)(2) of the Regulations.

- (c). The acreage requested for release from Phase II revegetation requirements with a postmine land use of pastureland has met requirements for establishing revegetation. Vegetation was planted and consisted of various approved pastureland grasses including Bermudagrass, Switchgrass, Indiangrass, Kleingrass, Wilman Lovegrass, Sideoats grama, and Old World bluestem. The acreage proposed for Phase II release also has 0.4 acres of postmine land use developed water resources as well as pastureland. The land has been reclaimed and managed in accordance with the approved postmine land uses (§§12.147 and 12.399). The vegetation within the proposed release area is healthy and self-sustaining (§§12.390 - 12.395). Ground cover technical performance standards are not applicable to developed water resources land use, other than that vegetation is sufficient to control erosion.
  - (d). The pastureland approved for Phase II release has met revegetation requirements for ground cover. The Commission determined that vegetation met the ground cover requirements contained in its permit for compliance with §12.395(a)(2) and (b)(1), not less than 90% of the applicable success standards approved by the Commission for the permit. TWCC uses specific technical standards for various bunchgrasses and sodgrasses. Data submitted by TWCC and review by Staff indicate that the vegetation in the areas approved for Phase II release met or exceeded 90% of the technical standards for ground cover (Section 6, application and staff's technical report, p.3).
  - (e). No portions of the area proposed for Phase II release of reclamation obligations were classified as prime farmland for which additional requirements apply.
16. The 28.6 acres of the requested for release from Phase III reclamation obligations, have met Phase III requirements and are approved for Phase III release.
- (a). The 28.2 acres located in the proposed Phase III release area are classified as pastureland. The pastureland proposed for Phase III release has met the requirement of successful revegetation by completion of the extended responsibility period of five years. Ground cover, stem count, and productivity requirements have been met for the land management units making up the pastureland areas. TWCC indicates that indicates that the 28.2 acres (LMU A2-00) was accepted into the extended responsibility period beginning September 7, 2000. By letters dated July 15, 2005, November 27, 2007 and April 14, 2009, Staff determined that the 2004 and 2006 ground cover data for LMU A2-00 the ground cover and stem count requirements. The LMU was approved as in accordance with §12.395(c)(2). The 28.2 acres has completed the extended responsibility period of five years required by §12.313 (a)(3).
  - (b). Two permanent ponds (0.4 acres) are located in the areas requested for Phase III release.

- (c). Staff inspection noted no issues with erosion in the areas requested for Phase III release. The Staff Inspection Report and photographs contained in Appendix IV to the Inspection Report reflect areas that are stable with no erosion evident.
- (d). The areas are not contributing suspended solids to runoff in excess of the requirements of the TCEQ TPDES discharge permit, nor to streamflow outside the permit area. Impoundments 014 and 015 previously captured runoff from the proposed Phase II release area. Staff used final discharge data for impoundments 014 and 015 (released from sediment control requirements on May 9, 1996) and subsequently reclaimed. Final discharge data for these impoundments were provided with the request for their flow, pH, total suspended solids (TSS), total iron (Fe) and total manganese (Mn). Staff summarized the average cumulative pond water quality data (page 7, Staff memorandum dated March 13, 2014). The data indicate that the ranges reported for pH, TSS, and Fe are within the effluent limitations in the TCEQ, TPDES (Texas Pollutant Discharge Elimination System) Permit No. 02653. The proposed release area is not contributing suspended solids to stream flow or runoff outside of the release permit area in excess of required performance standards [§12.313(a)(2)]. Phase II sediment control requirements are being met for these ponds as required by §12.313(a)(2) of the Regulations.
- (e). Groundwater has been protected in accordance with §12.348 for the areas requested for Phase III release. TWCC submitted information for the overburden, spoil and underburden aquifers within and adjacent to the mine. Long-term monitoring data reviewed by Staff on a quarterly basis for the overburden and underburden hydrologic units in areas within the mine do not indicate that any significant impacts have occurred to water quantity and quality.
  - (1). The premine overburden water-bearing strata in the reclaimed area have been destroyed; however, they contained minor aquifers. The underburden aquifers are separated from the mined areas by clays of five feet or more in thickness. Below this underclay are the shallowest significant water-bearing underburden units that are interbedded sands, silts, clays, and lignite stringers located in the lower Calvert Bluff and Simsboro Formations. The application includes TWCC's groundwater assessment that includes a review of groundwater monitoring of water elevation and groundwater chemistry (Appendix B). Spoil well water levels indicate that the spoil is re-saturating; only slight rises and falls in water levels indicative of seasonal and long-term cyclic changes are evident, as evaluated by Staff (Technical Analysis memorandum dated March 13, 2014, p. 4, and Appendix B of application). Staff notes no concerns regarding overburden well and underburden well monitoring, indicating that no significant impacts have occurred to water quantity or quality. Adjacent unmined areas were also monitored through an extensive network of wells completed at various hydrostratigraphic intervals. These monitoring wells show adjacent interburden

and underburden experienced a period of water-level drawdown. All of the monitored overburden and interburden intervals show water-level recovery and no permanent adverse effects due to surface mining activities.

- (2). Reclaimed spoil area water quality appears to have followed trends expected based on prediction in the Probable Hydrologic Consequences (PHC) determination for this mine. TDS concentrations increased during dewatering operations but continue to decrease. Pre-mine, the maximum TDS was less than 300 mg/L. Staff used LTGM spoil well D7892-S1 as an example – median TDS is 902 mg/L, however the concentrations range from 580 mg/L to > 2,600 mg/L. Pre-mine overburden and postmine spoil water pH is similar – overburden pH ranged from 3.7 – 8.3 standard units; postmine spoil pH has a range of 4.9 – 8.6. The median pH for each is 6.7 standard units. Underburden water have not been affected. One LTGM well has high concentrations of TDS but Staff states that these changes do not appear to be the result of mining. Sulfate and chloride concentrations have not changed. Staff notes no groundwater concerns.
  - (f). TWCC has conducted surface mining activities in accordance with §12.313(a)(2-3) and §12.349 to protect surface water quality and quantity for the areas requested for Phase III release. Discharges from the southern permit area flow to Lake Limestone, Segment 1252 of the Navasota River and thence to the Brazos River. The northern portion drains to Buffalo Creek, thence to the Trinity River. The Proposed release area drains into the Navasota River. No long-term surfacewater monitoring (LTSM) stations monitor upstream or downstream discharges for the parcel proposed for release from reclamation liability. Staff used data provided for the release of impoundments 014 and 015 from sediment control requirements to evaluate surface water quality. No upstream monitoring stations exist in the Navasota River watershed because mining-related disturbances occurred in the headwaters of creeks that are tributaries to the Navasota River. At the time of releases from sediment control requirements for Ponds 014 and 015, TWCC provided adequate demonstration that watersheds from these ponds were sufficiently stable to minimize the contribution of suspended solids from runoff in the proposed release area. Staff concluded that the 28.6 acres proposed for Phase III release have had no deleterious effects on the surface-water hydrologic balance.
17. Based on Staff's Cumulative Hydrologic Impact Assessment (CHIA) for the Kosse Mine (Docket No. C7-0026-SC-50-C) now permit No. 50A, TA Addendum No. 2, December 16, 2011), material damage criteria are based on baseline surface water information, TCEQ stream-segment/drinking-water standards, and TPDES wastewater discharge permit standards. This CHIA contains an assessment of the cumulative effects of all anticipated mining activities in the Navasota River Basin [southwestern portion of the Jewett Mine (Permit No. 32F) and the Gibbons Creek Lignite Mines (Permit Nos. 26D and 38D)]. In this document, Staff quantified the anticipated increases to concentrations of TDS in the receiving streams, which were

expected to be minimal. Estimates of the mine's impact on surface-water quantity were also made in the CHIA; Staff predicted that the attenuation of storm runoff and increase in sustained flows is insignificant when compared to the amount of storm runoff originating from the cumulative impact drainage area (CIDA).

- (a) TWCC concluded that mining activities have caused no discernible impacts to surface-water resources based on a comparison of the sedimentation pond discharge water-quality data and LTSM downstream monitoring data with the LTSM upstream monitoring data. Staff found that release of the proposed areas from Phase II and III reclamation obligations will not affect the surface water quantity (volume or rate of flow in area watersheds) or surface water quality as described in the application.
  - (b) Based on the data provided in the application and Staff's evaluation of the information with respect to the approved PHC determination and the CHIA and its review of the application, staff determined that the surfacewater hydrologic balance has been protected as described in §12.349 and recommended release of reclamation liability obligations on the 28.6 acres requested for Phase III release.
18. The reclamation cost estimate for the currently accepted bond is based on the "worst-case" pit method of calculation that assumes that reclamation is contemporaneous. For this method, estimated costs are generally not based on a per-acre cost. The cost estimate is based on the worst-case pit and reclamation of all temporary structures. Soil preparation, revegetation, and maintenance costs, however, are retained on a per-acre basis should revegetation fail and have to be repeated. The only costs attributable to the areas requested for release that are applicable for inclusion in a calculation of eligible bond reduction are the costs for soil preparation, revegetation, and maintenance attributable to the area requested for Phase III release (28.6 acres) in the amount of \$727 per acre. The eligible bond reduction amount, based upon the Findings of Fact contained in this Order and Staff calculations, is for release of Phase III requirements for 28.6 acres. This amount is made up of the bond amounts attributable to 28.6 acres, the costs for soil preparation, revegetation and maintenance, \$727 per acre, x 28.6 acres, totaling \$20,792.20.
19. TWCC has not requested an adjustment to the approved bond at this time. No replacement bond instrument has been filed.
20. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas.
21. Open meeting notice has been posted for consideration of this application.



**CONCLUSIONS OF LAW**

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

1. Proper notice was provided for this request for release of reclamation obligations.
2. A public hearing on the request is not warranted.
3. TWCC has complied with all applicable provisions of the Act and the Regulations for release of reclamation obligations for the areas requested for release as set out in the Findings of Fact with the exceptions noted in the Findings of Fact.
4. The Commission may approve the following release of reclamation obligations: Phase II release and Phase III release for 28.6 acres (completion of the extended responsibility period and surface and groundwater protection)(eligible for a bond reduction amount for obligations for soil preparation, revegetation, and maintenance, plus administrative costs, (\$20,792.20), as set out in the Findings of Fact.
5. The eligible bond reduction amount for use in reclamation cost estimates is \$20,792.20.

**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 II and Phase III reclamation obligations for 28.6 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 Commission approves an eligible bond reduction amount for the Phase III release for the 28.6 acres in the amount of \$20,792.20;

**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 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 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 Commission action. 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** this 17th day of June, 2014.

**RAILROAD COMMISSION OF TEXAS**

  
CHAIRMAN BARRY T. SMITHERMAN

  
COMMISSIONER DAVID PORTER

  
COMMISSIONER CHRISTI CRADDICK

ATTEST:

  
Secretary, Railroad Commission of Texas