

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SMRD DOCKET NO. C18-0015-SC-50-C
LUMINANT MINING COMPANY LLC
APPLICATION FOR RENEWAL/REVISION/EXPANSION
PERMIT NO. 50B, KOSSE MINE
LIMESTONE AND ROBERTSON COUNTIES, TEXAS**

**ORDER OF APPROVAL OF APPLICATION FOR RENEWAL/REVISION/EXPANSION
AND ISSUANCE OF PERMIT NO. 50C**

The Railroad Commission of Texas ("Commission") finds that, after statutory notice in the above-numbered docket, heard on June 14 and 17, 2019, the Administrative Law Judge ("ALJ") made and circulated a Proposal for Decision on August 14, 2019 containing Findings of Fact and Conclusions of Law, which was served on all parties of record, and that this proceeding was duly submitted to the Railroad Commission of Texas at a conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the Proposal for Decision, and the Findings of Fact and Conclusions of Law contained therein, hereby adopts the Findings of Fact and Conclusions of Law set out in the Proposal for Decision, and incorporates those Findings of Fact and Conclusions of Law as if fully set out and separately stated herein, and as corrected with respect to Findings of Fact Nos. 1, 5, 14, 36, 39 and 44(h), set out below, in full, and adopted in this Order. The Commission also adopts the permit provisions set out in Appendix I and the Soil Testing Plan set out in Appendix II to Proposal for Decision and incorporates Appendix I and Appendix II as if fully set out and separately stated herein.

FINDINGS OF FACT

1. By letter dated and received by the Commission on August 6, 2018, Luminant Mining Company LLC (Luminant or Applicant), 6555 Sierra Drive, Irving, Texas, 75039, submitted its application for a surface mining and reclamation permit for renewal/revision/expansion of its Kosse Mine, Permit No. 50B. The application was filed pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ch. 134 (Vernon Supp. 2019) (Act) and the Commission's "Coal Mining Regulations," Tex. R.R. Comm'n 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) (Regulations). The existing 15,206-acre permit area is located in Limestone and Robertson Counties along State Highway (SH) 7 approximately 6 miles east of the town of Kosse, Texas and approximately 12 miles west of Marquez, Texas. Luminant's permitted Bremond Mine (formerly, Twin Oak Mine), near Bremond, Texas, Permit No. 49A, is approximately 4.9 miles south of the Kosse permit area. The permit area is bound: on the west by various property tracts and Limestone County Road (LCR) 712 and FM 2749; on the north by

various property tracts, Cox Creek and LCR 716; on the east by various property tracts and where segments of FM 1246 and FM 937 intersect near Oletha, Texas; and on the south by various property tracts and Robertson County Road (RCR) 477. Luminant operates the lignite mine. The mine supplies fuel to the Oak Grove Steam Electric Station. Permit No. 50B was issued on May 3, 2016, and contains approximately 15,206 acres. The proposed Permit No. 50B renewal/revision/expansion boundary consists of approximately 16,563 acres. Luminant requests approval of the mining of approximately 2,298 acres during the proposed five-year permit term (2019 – 2023) and proposes to mine in four of the mine areas over the term of the proposed renewal.

5. Permit No. 50B, issued May 3, 2016, has a 5-year term. In accordance with §12.106(b) of the Regulations, the application was filed on August 6, 2018, at least 180 prior to the expiration of the permit. Additionally, given that Luminant proposes an expansion of the existing permit boundary which requires the part of the application that addresses new land areas meets all standards applicable to a new permit, the application was properly filed at least eight months prior to the projected commencement of operations as set out in §12.106(b)(1). The required filing fee of \$3,000 has been paid [§12.108(b)(3)].
14. On May 1, 2019, following correspondence from the parties regarding availability, the ALJ issued a scheduling order (Docket Control Order) pursuant to §1.55 of the Commission's Practice and Procedure. In the same May 1, 2019 letter, the ALJ indicated that the Public Hearing would commence on June 14, 2019, at the Robertson County Courthouse in Franklin, Texas and the scope of the initial setting would be limited to public comment on the application and consideration of evidence with regard to standing. By letters dated May 9 and 17, 2019, after receiving correspondence from the parties regarding their availability, the ALJ informed the parties that a subsequent setting to address the merits of the application would take place on June 17, 2019, to continue, as necessary, on June 18 and 19, 2019 at the Commission's Austin Offices.
36. The information required by §12.134 of the Regulations for soil resources information is included in the application. HF & Associates prepared section 134 of the application (Soil Resources Information) for the 16,563-acre proposed permit area, including information for the existing 15,040-acre Kosse Mine Permit area, information for the 166-acre IBR (Revision No. 27) and information for the proposed expansion area in the application. The information presented includes a map delineating different soils, soil identification, soil description, and present and potential productivity of existing soils. Luminant included a soils map (Plate 134-1, Sheets 1 and 2) depicting 29 native soil mapping units of 18 soil series, sample locations, and prime farmland soils. Detailed information is included in Tables 134-1 (*Acreage and Proportionate Extent of Soils*), 134-2 (*Taxonomic Classification of Soil Series*), and 134-3 (*Prime Farmland Soils Acreage and Proportionate Extent*), and in Appendices 134-A (Natural Resources Conservation Service official soil series descriptions), 134-B (soil interpretation tables), 134-C (source data sampling results by genetic horizon), 134-D (source data sampling

results by the 0-12" and 12-48" intervals), and 134-E (source data sampling results by topsoil and subsoil intervals). More than 60% of soils are considered claypan soils (thin sandy or loamy topsoil overlying dense clayey subsoil); approximately 9.0% of the proposed permit area soils are a deep sand or loamy sand surface 20 inches or greater in thickness over more finely textured subsoil. There are also soils that have sandy surface intervals ranging from 20 to 40 inches thick and 40 to 80 inches thick. Prime farmland soil units comprise approximately 17.8% of the proposed permit area. Staff's TA suggests that Table II in Appendix 145-D contains discrepancies between it, Plate 134-1, and Table 134-1 in section .134 of the Permit. Therefore, Staff proposes to retain Permit Provision No. 2 as revised to require that within 60 days of permit issuance, Luminant shall correct discrepancies between Table II in Appendix 145-D, Plate 134-1, and Table 134-1 in section .134 of the Permit. The Commission adopts Staff's proposed Permit Provision No. 2. Luminant included in the application estimated crop yields for Limestone and Robertson Counties from the NRCS's Web Soil Survey website that are set out by soil map unit (if rated for crop production). Production information for crops in Limestone and Robertson Counties in 2012, except for one entry in Limestone County in 2016 as noted, is included in Table 134-5 (data provided from various United States Department of Agriculture (USDA) 2018 publications for year 2012). The proposed permit area is made up of soils that are classified as suited to cultivation or to pastureland, grazingland, or wildlife habitat. A revised native soil baseline is included to represent the lands within the proposed permit boundaries. Table 134-8 includes minimum and maximum values for pH, acid/base accounting (ABA), neutralization potential, exchangeable acidity, potential acidity, pyritic sulfur, sand, silt, clay, cation exchange capacity, electrical conductivity, sodium adsorption ratio, soluble boron, total cadmium, total selenium, and percentage of coarse fragments. Depth-weighted data do not meet the standards of the Commission suggested criteria for pH, ABA, clay, sand, sodium adsorption ratio, and selenium for the top four feet of reclaimed soils, that is, there are areas that do not meet these standards at certain depths. Laboratory source data does not meet the standards of the Commission for PH, ABA, sand, clay, exchangeable acidity, sodium adsorption ratio, and total selenium. Luminant proposes to use topsoil and subsoil substitute material in reclaiming the top four feet of reclaimed soils. Cumulative frequency distributions for the proposed permit area are included (Tables 134-9 through 134-14) for the 0-12 inch interval, the 12-48 inch interval, and for topsoil and subsoil intervals for the following geochemical parameters: pH, ABA, clay, sand, pyritic sulfur, and selenium. The information presented for the native soil baseline is sufficient to determine the suitability of topsoil and subsoil substitution proposed by Luminant.

39. Luminant has been granted a negative determination of prime farmland for all land tracts within the initial 15,040-acre Kosse Mine, Permit 50B. Luminant requests a negative determination for 1,523 acres in the Kosse Mine that are proposed to be added as part of an expansion of the DV area and contain prime farmland soil units as identified in the application and depicted and catalogued [Plates 138-1 and -2 (SD2), *Prime Farmland Assessment Map*]. If land with prime farmland soils is considered prime farmland because of a cropping history and is proposed for

disturbance by mining-related activities, then special requirements for reconstruction of soils apply. The Regulations at §12.138 provide that the applicant must identify prime farmland soils. Luminant requests a negative determination for all prime farmland soils within the proposed permit area and bases its request for a negative determination of prime farmland on the 2007 prime farmland investigation, the *Prime Farmland Assessment Map* (Plates 138-1 and -2 (SD2)), and the historical use of the land, as demonstrated in the affidavits of use (Appendix 138-A, as supplemented in SD2). Plates 138-1 and -2 (SD2) identify the prime farmland soil series, the tracts on which the soils occur, and the markings showing tracts for which Luminant has not documented right-of-entry. No negative determination of prime farmland may be made for tracts for which Luminant claims no right-of-entry. A negative determination may be made for tracts for which Luminant has documented right-of-entry and has demonstrated a lack of cropping history. Tracts may be approved for a negative determination based on the presence of a mature canopy indicating that they could not have been cropped. Luminant provided affidavits of use (Appendix 138-A, as supplemented in SD2) from several persons which indicate that none of the tracts with prime farmland soils have been used as cropland for any five of the last ten years prior to acquisition or lease by Luminant. These affidavits are evidence that the persons signing the affidavits were acquainted with agricultural activities on the lands. No evidence controverting the affidavits was presented. The Commission approves a negative determination for prime farmland for all tracts within the proposed permit boundaries with prime farmland soils for which adequate affidavits have been provided and for which Luminant has documented a claimed right-of-entry and has included the tracts in Appendix 138-A (SD2). The Commission does not approve tracts for which Luminant claims no right-of-entry (and for which there are, therefore, no acquisition, lease, or option dates). A negative prime farmland determination is made for all tracts acquired by Luminant within the proposed permit area.

- 44(h). The protection plan, as supplemented in SD2, meets the requirements of §§ 12.144 and 12.380 of the Regulations. The plan includes protective measures during active mining, mining in narrow bands to lessen impacts, and enhancement measures including restoration of streams and other wetlands, and construction of ponds and impoundments. Some impacts to waters of the U.S. that were previously authorized under Luminant's USACE Nationwide Permit No. 21 are no longer authorized by that permit, as it expired on March 12, 2018. Luminant submitted an application for an Individual Permit for anticipated impacts to waters of the U.S. in the Kosse renewal/revision/expansion area to the USACE on January 10, 2018. No disturbed areas will be impacted without appropriate USACE authorization. When Luminant receives its USACE Individual Permit authorization, it will provide the Commission with a copy of the permit and comply with its conditions, including its authorization and mitigation plan. Should this permit differ from the proposed wetlands impact plan contained in the application, as supplemented, Luminant must file an application for revision with the Commission. Loss of wetlands will be mitigated. Luminant has included the following information regarding the presence of wetlands within the permit area (Section

.133, as supplemented in SD2) and will comply with mitigation in accordance with acreage and linear feet as the units of measure to quantify impacts and mitigation. Wetland acreage and stream-channel linear feet are the units of measure in all existing surface mining and reclamation permits in Texas. Within the renewal/expansion area, the total areal extent of waters of the United States, including wetlands, is 719 acres. This acreage consists of the following types of waters of the United States:

JURISDICTIONAL CATEGORY	TOTAL PREMINE ACREAGE IN THE 16,563-ACRE PERMIT AREA
FORESTED WETLANDS	497
NON-FORESTED WETLANDS	81
PONDS	59
STREAM CHANNELS	82
TOTAL	719

The projected compensatory mitigation ratios, based on ratios in the existing Kosse Mine USACE NWP 21 Authorization are: forested wetlands, 2.0:1.0; non-forested wetlands, 1.5:1.0; ponds, 1.0:1.0; and stream channels, 1.0:1.0.

IT IS THEREFORE ORDERED that Luminant Mining Company LLC's application, as supplemented, for renewal, revision and expansion of Surface Coal Mining and Reclamation Permit No. 50B is approved as set out in this Order;

IT IS FURTHER ORDERED that the permit is hereby renumbered as Surface Mining and Reclamation Permit No. 50C;

IT IS FURTHER ORDERED that Permit No. 50C is hereby issued to Luminant Mining Company LLC; and

IT IS FURTHER ORDERED that Luminant Mining Company LLC's current blanket collateral bond in the amount of \$975,000,000 remains in place. The amount of the bond is greater than reclamation costs of Luminant Mining Company LLC's permits;

IT IS FURTHER ORDERED that each exception to the Proposal for Decision not expressly granted herein is overruled and all pending motions and requests for relief not previously granted or granted herein are denied; and

IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 25 days after the Commission's order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code §2001.142, by agreement under Tex. Gov't Code §2001.147, or by written Commission Order issued pursuant to Tex. Gov't Code §2001.146(e). If a timely motion for rehearing of an application is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case is 100 days from the date the Commission Order is signed.

SIGNED on September 11, 2019.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN WAYNE CHRISTIAN



COMMISSIONER CHRISTI CRADDICK



COMMISSIONER RYAN SITTON

ATTEST:



Secretary
Railroad Commission of Texas

Deputy