

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SMRD DOCKET NO. C20-0001-SC-27-F
APPLICATION BY WALNUT CREEK MINING COMPANY
RELEASE OF PHASE I RECLAMATION OBLIGATIONS FOR 1,505.4 ACRES
PERMIT NO. 27H, CALVERT MINE, ROBERTSON COUNTY, TEXAS**

**ORDER APPROVING PHASE I RELEASE OF
RECLAMATION OBLIGATIONS FOR 1,505.4 ACRES**

Statement of the Case

Walnut Creek Mining Company (WCMC), P.O. Box H, Bremond, Texas 76629-0318, applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase I release of reclamation obligations for 1,507 acres within Permit No. 27H, Calvert Mine, Robertson 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. 2019), and "Coal Mining Regulations" Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019).

WCMC requests release from Phase I reclamation obligations for backfilling, regrading, and drainage control for the proposed acreage. Permit No. 27H currently authorizes surface coal mining operations within the 8,040-acre permit area of WCMC's Calvert Mine. No comments or requests for hearing were filed following public notice. The only parties to the proceeding are WCMC and the Commission's Surface Mining and Reclamation Division (Staff). In response to a concern noted during Staff's inspection of the proposed release areas, WCMC reduced the acreage proposed for release to 1,505.4 acres to remove a small area that had not yet met postmine soil monitoring requirements. There remain no outstanding issues between the parties. Based on information provided by WCMC and the inspection of the area, Staff recommends release of Phase I reclamation obligations for 1,505.4 acres.

After consideration of the application and the Findings of Fact and Conclusions of Law, the Commission approves the release of reclamation obligations as recommend by Staff. WCMC does not request adjustment to the approved reclamation bond at this time and no new bond has been submitted. The parties have filed waivers of preparation and circulation of a proposal for decision. The Commission approves the release as requested and finds that WCMC is eligible to reduce the amount of bond for the permit by 60% of the amount that is attributable to the subject acreage in future bond adjustments.

FINDINGS OF FACT

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

1. By letter dated August 27, 2019, Walnut Creek Mining Company (WCMC) filed an application with the Railroad Commission of Texas' (Commission) Surface Mining and Reclamation Division (SMRD and/or Staff) for release of Phase I reclamation obligations on 1,507 acres located variously within three mine areas, Pits 1, 2 and 3, at the Calvert Mine, Permit No. 27H, located in Robertson County, Texas. Replacement maps meeting application requirements of §12.107(f) were received on August 30, 2019. By letter dated November 15, 2019, WCMC submitted Supplement No. 3 to the application that removed 1.6 acres from the area requested for Phase I release, resulting in revised total acreage amount of 1,505.4 acres proposed for release in the subject application. Permit No. 27H was most recently renewed by the Commission on October 11, 2016 (Docket No. C14-0012-SC-27-C), with a permit area encompassing approximately 8,040 acres.
2. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2019) (Act), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) (Regulations). No filing fee is required. The application was properly certified in accordance with §12.312(a)(3).
3. The currently accepted reclamation performance bond for WCMC's Calvert Mine under Permit No. 27H is in the form of two surety bonds in an aggregate amount of \$43,198,583, accepted by Commission Order dated January 27, 2015 [Docket No. C15-0006-SC-27-E]. No changes to the accepted bond are proposed in the application.
4. The application was filed with the Hearings Division by letter dated September 12, 2019. WCMC supplemented the application by letter dated August 30, 2019, to provide revised maps of the proposed release areas meeting the formatting requirements at §12.107(f). By letters dated September 9, October 30, November 18, 2019, and November 20, 2019 (November dates are those dates that the supplements were filed with Hearings Division after receipt by Staff), WCMC respectively filed Supplements Nos. 1, 2, 3, and 4 addressing concerns noted by Staff by letter dated September 4, 2019, email dated October 23, 2019,

verbal consultation with Staff on or prior to November 15, 2019, and updated public notice tracking information through November 18, 2019, respectively.

5. The Administrative Law Judge (ALJ) approved the draft public notice for publication by letter dated September 27, 2019. Following receipt of public notice tear sheets and landowner letters in WCMC’s Supplement No. 2 dated October 30, 2019 (filed on November 1, 2019), the Director, SMRD, declared the application administratively complete by letter dated November 5, 2019. Staff filed its Technical Analysis (TA) and Inspection Report by letter dated November 21, 2019, recommending Phase I release on the proposed acreage with no outstanding comments. Staff’s response provided an analysis of the mining operations conducted under the approved permit, the completion of reclamation activities required for Phase I release, and of the administrative application content requirements, in accordance with the Regulations.

6. The approved bond map and reclamation cost estimate for Permit No. 27H were approved administratively by letter dated February 8, 2018 in Revision No. 3. Reclamation costs of \$34,426,443 were approved for the permit. In WCMC’s Supplement No. 3 to the subject application, submitted by letter dated November 15, 2019, WCMC proposed release of a slightly reduced acreage amount of 1,505.4 acres, reflecting the removal of 1.6 acres adjacent to permanent Pond SPC-27 for which it had not yet completed required postmine soil testing. For the 1,505.4 acres proposed for Phase I release, reclamation cost estimate amounts based on Revision No. 3 to the permit vary by mine area as set forth in the following table.

Mine Area	Disturbance Category	Bonded \$ Per Acre	Acres Bonded
Pit 1	Mined	\$7,208	289.1
	Disturbed	\$2,918	42.9
Pit 2	Mined	\$6,634	895.7
	Disturbed	\$2,918	178.6
	Ancillary	\$1,156	3.8
Pit 3	Mined	\$8,712	77.0
	Disturbed	\$4,422	18.3
Total			1,505.4

7. 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 Robertson County Clerk in Franklin, Texas.
8. Notice of application was published once a week for four consecutive weeks, on October 3, 10, 17 and 24, 2019, in the *Robertson County News*, a newspaper with general circulation in the area of the proposed release request in Robertson County. The notice of application contains all information required by the Act and Regulations for notice of application for release of reclamation obligations. 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 number of acres, permit number at the time of application and date approved, the amount of bond approved, the type and appropriate dates reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan and proposed phase of release. The notice contains information on the applicant, location and boundaries of the permit area, the availability of the application for inspection, and the address to which comments should be sent. WCMC submitted proof of publication, consisting of affidavits of publication with newspaper clippings, to the Commission by letter dated October 30, 2019.
9. WCMC sent notice of application by letter dated October 1, 2019 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) of the Regulations. WCMC mailed notice to the County Judge/Commissioners' Court of Robertson County, the Mayors of cities of Bremond and Calvert, Texas, the Tri-County Special Utility District, the Navasota Valley Electric CO-OP, Inc., the Brazos Electric Power Cooperative, Inc., CenturyLink, Inc., the Texas Commission on Environmental Quality, the Natural Resources Conservation Service's local office in Franklin, Texas, the Texas General Land Office, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers' District Office in Fort Worth, the Brazos River Authority, the Texas Soil and Water Conservation Board headquartered in Temple, and the Robertson County Soil and Water Conservation District, and to several lessees. The areas requested

for release are not located within the territorial boundaries of any municipality that would be notified pursuant to §12.313(c) of the Regulations. Copies of the notification letters were filed with the Commission by letter dated October 30, 2019.

10. No adverse comments or written objections were filed regarding the request for release pursuant to the effected notification. No requests for hearing or informal conference were filed pursuant to §12.313(d).
11. Staff provided notification of the application by certified letters dated September 30, 2019 to the County Judge of Robertson County. Mailing of notification was provided at least 31 days prior to the date of consideration of the docket by the Commission in accordance with §134.133 of the Act. Pursuant to §12.312(b) of the Regulations, Staff notified owners of interests in lands and lessees of the application for release and the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM) by letters dated September 13, 2019 of the date and time of Staff's field inspection scheduled for October 2, 2019. The notification stated that a release had been requested and, pursuant to §12.312(b)(1), advised them of their opportunity to participate in the on-site inspection. Staff provided copies of the letters in Appendix II within Attachment III (Inspection Report) of the TA, filed with the Hearings Division on November 21, 2019.
12. The inspection occurred on October 2, 2019. No landowners or leaseholders contacted WCMC or the Commission prior to inspection to inquire about the scheduled date referenced in Staff's notification letters dated September 13, 2019. No OSM representative or landowners were present for the scheduled pre-inspection meeting nor did any attend the field inspection. Three Commission inspectors and one representative of the mine attended the pre-inspection meeting and field inspection.
13. The location of the 8,040-acre permit area is approximately six miles south-southeast of Bremond, Texas, and approximately eight miles west-northwest of Franklin, Texas. Although it was incorrectly identified in the text of the approved and published public notice, the published notice included a general location map that accurately depicted the location of the permit area, with the areas proposed for release clearly distinguished. Appendix I of Staff's Inspection Report contains a more detailed map of the areas proposed for release.

14. The application included ownership and tract information for owners of interests in the areas proposed for release and adjacent lands. There are 29 tracts within the areas requested for Phase I release of reclamation obligations with, variously, 13 owners. Twenty-one (21) of these tracts are owned by WCMC. Similarly, there are 16 adjacent tracts with, variously, 29 landowners, of which three tracts are owned by WCMC. Luminant is listed as the mineral owner of one tract within the proposed release area (Tract 00099) for which WCMC is identified as the surface owner. The record indicates that, in total, nine certified release notification letters to landowners were returned as unclaimed or unable to deliver (no forwarding address), and that 35 notification letters were delivered.

15. The 1,505.4 acres proposed for release are detailed in Staff's Technical Analysis (TA) and Inspection Report (Attachment III to Staff's TA) filed with the Hearings Division on November 21, 2019. There are three separate mine areas containing acreage proposed for Phase I release, as depicted on Figure 1 in Attachment I to Staff's TA. Staff's analysis provided in its TA and Inspection Report [Finding of Fact No. 5, *supra*] support Phase I release for all acres requested. Although the record does not clearly reflect what postmine land uses are approved, based on the presence of ponds and county roads within the proposed release areas, portions of the subject acreage appear to be developed water resources or industrial/commercial postmine land use. The approved postmine land use of all other acreage within the proposed release areas is pastureland as indicated by Staff in its TA. Postmine land use designations are not determinative when assessing whether an area meets Phase I release requirements; therefore, WCMC did not indicate the approved postmine land uses of the proposed release areas in the application.

16. The acreage requested for release was mined or otherwise disturbed from 1991-2005, final grading, including the construction of 12 permanent water-control structures, occurred from 1998-2007. Staff conducted routine monthly inspections of the proposed release area from 1988 to the present.

Mine Area	Mining Disturbance, Backfilling & Grading	Final Grading	Drainage Control Established	Permanent Pond(s) [former sedimentation ponds]
Pit 1	1991 - 1998	1998	1988	SPC-5
Pit 2	1993 - 2007	2007	1992 - 2002	SPC-18, SPC-22, SPC-27 & SPC-29
Pit 3	1998 - 2001	2001	1997	SPC-31

17. The 1,505.4 acres requested for Phase I release have met Phase I requirements for backfilling, regrading and drainage control as required by §12.313(a)(1) of the Regulations.

(a) Final grading occurred in the areas requested for release between 1998 and 2007. The areas have been backfilled and graded to approximate original contour [§12.385(a)]. 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)]. Photographs taken during Staff’s field inspection of the areas confirm vegetation planted in all requested areas (except developed water resources). All highwalls were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable substitute material was placed over the regraded spoil so that all acid-forming and toxic-forming materials were placed to a depth greater than four feet [§12.386)]. No cut-and-fill terraces were constructed. All areas requested for Phase I release have been stabilized to control drainage and attendant potential erosion [§12.389].

(b) In the supplemented application, WCMC submitted documentation of initial soil-testing data from the areas requested for release within two years of backfilling and grading in accordance with the approved minesoil monitoring program in Permit No. 27H. Topsoil and subsoil monitoring grids are depicted on Exhibit 2, *Phase 1 Bond Release Area, Permanent Ponds and Soil Grids*, in Supplement 3. In total, data were submitted applicable to approximately 287 full or partial 5.7-acre soil grids in two depth increments of 0-12 inches and 12-48 inches. Testing was completed as required to meet soil sampling requirements for pH, acid-base accounting, texture, and cation exchange capacity, and for plant-available nutrients in the top 12 inches of reclaimed soil. A random 10% of the grids were also analyzed for boron, cadmium,

and selenium.

- (c) WCMC employed topsoil haulback/salvage and subsoil substitution as the approved handling plan for Pits 1, 2 and 3. WCMC previously submitted initial postmine soil testing reports (IPSTR) to SMRD for data collected yearly from 1994-2012. Collectively, the reports, as identified in the supplemented application, are representative of all soil grids within the requested release areas. Initial data applicable to all soil grids within the proposed release area were provided variously in the yearly reports. Staff determined data from all soil grids within the requested release areas do not indicate the presence of acid-forming and toxic-forming materials in the top four feet of postmine soil and meet the applicable physicochemical postmine soil performance standards [§12.386]. Individual dates when data were submitted and subsequently approved for each grid, along with Staff's conclusions are stated in approval letters dated November 30, 1994 (1994 IPSTR); February 16, 1996 (1995 IPSTR); March 3, 1997 (1996 IPSTR); February 9, 1999 (1998 IPSTR); March 29, 2001 (2000 IPSTR); October 21, 2003 (2002 IPSTR); July 20, 2004 (2003 IPSTR); May 16, 2007 (2006 IPSTR); May 22, 2008 (2007 IPSTR); January 6, 2010 (two separately issued letters regarding 2008 and 2009 IPSTR submittals, respectively); and January 30, 2013 (2012 IPSTR) [Attachment 5 of initial application and Supplement 1]. The location of all soil grids within the requested release area are depicted on revised Exhibit 2 in Supplement No. 3 of the application.
- (d) Surface-water runoff from mine area Pit 1 flows into final discharge temporary sedimentation Pond SPC-5 located outside of the proposed release areas, runoff from mine area Pit 2 flows to Ponds SPC-18, SPC-22, SPC-27, and SPC-29, and runoff from mine area Pit 3 flows to Pond SPC-31 [§12.344].
- (e) There are 12 permanent impoundments within the 1,505.4 acres proposed for release. Pit 1 contains permanent Ponds AW-2 and AW-4, Pit 2 contains Ponds BP-1, BP-5, BP-7, BP-10, BW-1, SPC-18, SPC-22, SPC-27 and SPC-29, and Pit 3 contains Pond SPC-31, as listed in the table below. Copies of SMRD Staff's approval letters for all permanent impoundments, some with accompanying memoranda indicating associated structures such as inlets and spillways were also approved,

were provided by WCMC in Attachment 4 to the application. Staff indicates in its Inspection Report that all impoundments were found during the field inspection to be structurally intact and stable. Photographs of all permanent impoundments proposed for Phase I release except Ponds BP-1, BP-7, BP-10, and SPC-18 are contained in Appendix IV of the Inspection Report.

Impoundment	Date of Approval as Permanent	Mine Area
AW-2	June 7, 1995	Pit 1
AW-4	August 6, 2008	Pit 1
BP-1	August 6, 2008	Pit 2
BP-5	August 6, 2008	Pit 2
BP-7	August 6, 2008	Pit 2
BP-10	August 6, 2008	Pit 2
BW-1	May 13, 2008	Pit 2
SPC-18	September 22, 2011	Pit 2
SPC-22	September 22, 2011	Pit 2
SPC-27	May 13, 2008	Pit 2
SPC-29	May 13, 2008	Pit 2
SPC-31	January 6, 2006	Pit 3

- (f) Two intermittent wetland structures without names are located west of Pond BW-1 within the proposed release areas. WCMC indicates in Supplement No. 2 that these approved wetland features will be requested for retention as small depressions prior to submittal of an application for Phase III (final) release.
- (g) There are no permanent diversions located within the areas proposed for release.
- (h) Staff noted in the Inspection Report that two apparent depressions were observed in the northern central portion and one depression in the northwestern portion of the proposed release area. Staff further indicated that these depressions will need to be evaluated and approved or reclaimed prior to Phase III (final) release.
- (i) There are no areas approved for the disposal of non-coal waste within the areas proposed for Phase I bond release [§12.375].
- (j) Portions of relocated Robertson County Roads 426, 427 and 435 are located within the areas requested for Phase I release. In Supplement No. 2, WCMC provided

documentation of acceptance by the County Commissioners of these relocated road sections. [§§12.406, 12.413, and 12.421].

- (k) There are no facilities in the proposed release area [§12.403].
18. The notice of application for release stated that an eligible bond reduction amount may be determined; however, the determined amount is solely an estimate for reference purposes, given that the actual eligible release amount is determined by the Commission when a bond adjustment is requested. The areas requested for release are currently bonded at various rates specific to the mine area, as described in the table in Finding of Fact No. 6, *supra*. WCMC is eligible for a 60% reduction of the bonded amount of Phase I released lands pursuant to §12.313(a)(1). The total eligible bond reduction amount calculated by Staff, including a 10% additional amount for administrative costs, is \$6,222,933.90 based on Revision No. 3 to the permit [see Finding of Fact No. 6, *supra*]. The Commission considers this specified reduction amount to only be an estimate provided for illustration purposes. Given the Commission is not required under the Act or the Regulations to determine an eligible bond reduction amount when approving an application for release, this Order prescribes that WCMC is eligible to reduce the amount of bond by 60% that is attributable to the 1,505.4 acres granted Phase I release but does not specify the amount of the reduction.
19. WCMC 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 for aid in inspection.
21. WCMC and 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.
22. Open meeting notice has been posted for Commission 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. No public hearing was requested, and none is warranted.
3. WCMC has complied with all applicable provisions of the Act and the Regulations regarding notice for Commission jurisdiction to attach to allow consideration of the matter.
4. WCMC has complied with all applicable provisions of the Act and the Regulations for release of Phase I reclamation obligations for the areas proposed for release as set out in the Findings of Fact.
5. The Commission may approve a release of Phase I reclamation obligations for the 1,505.4 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 WCMC continue marking the area approved for release so that Staff mapping and tracking will be efficient.
7. WCMC is eligible to reduce the amount of bond for Permit No. 27H by 60% of the amount that is attributable to the subject 1,505.4 acres in future bond adjustments.

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 release of Phase I reclamation obligations for 1,505.4 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 current bond remains in effect in accordance with its terms until a replacement bond is approved by the Commission;

IT IS FURTHER ORDERED WCMC is eligible to reduce the amount of bond for the permit by 60 % of the amount that is attributable to the 1,505.4 acres granted Phase I release in this Order;

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 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 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 January 14, 2020.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN WAYNE CHRISTIAN

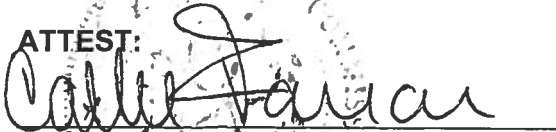


COMMISSIONER CHRISTI CRADDICK



COMMISSIONER RYAN SITTON

ATTEST:



Secretary
Railroad Commission of Texas