

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C19-0026-SC-55-F
APPLICATION BY THE SABINE MINING COMPANY
FOR RELEASE OF PHASE I RECLAMATION OBLIGATIONS FOR 76.6 ACRES
PERMIT NO. 55A, RUSK MINE, HARRISON, PANOLA, AND RUSK COUNTIES,
TEXAS**

**ORDER APPROVING
RELEASE OF PHASE I RECLAMATION OBLIGATIONS
FOR 76.6 ACRES OF PERMIT NO 55A**

Statement of the Case

The Sabine Mining Company ("SMC"), 5501 Farm Road 968 West, Hallsville, Texas 75650-7413, applied to the Railroad Commission of Texas ("Commission"), Surface Mining and Reclamation Division ("SMRD" and/or "Staff"), for Release of Phase I Reclamation Obligations for 76.9 acres (subsequently reduced to 76.6 acres) within Permit No. 55A, Rusk Mine, located in Harrison, Panola, and Rusk Counties, 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) (Act) and §§12.312-12.313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) (Regulations).

SMC requests release from Phase I reclamation obligations for backfilling, regrading, and drainage control for 76.6 acres. Permit No. 55A currently authorizes surface and coal mining operations at The Sabine Mining Company's Rusk Mine, within its 19,691.20-acre permit area. No comments or requests for hearing were filed following public notice. The only parties to the proceeding are SMC and the Commission's Surface Mining and Reclamation Division (SMRD and/or Staff). There remain no outstanding issues between the parties. Based on information provided by SMC and the inspection of the area, Staff recommends release of Phase I reclamation obligations for 76.6 acres.

After consideration of the application and the Findings of Fact and Conclusions of Law, the Commission approves the release of reclamation obligations as recommended by Staff. SMC 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 SMC 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 2, 2019, The Sabine Mining Company ("SMC") filed an application ("Application") with the Railroad Commission of Texas ("Commission"), Surface Mining and Reclamation Division ("SMRD" and/or "Staff") for release of Phase I reclamation obligations for 76.9 acres (subsequently reduced to 76.6 acres), within Permit No. 55A, Rusk Mine, in Harrison, Panola, and Rusk Counties, Texas. The permit area encompasses approximately 19,691.20 acres. SMC conducted mining operations on the proposed 76.6-acre release area in 2012 and from 2014 to 2016.
2. The Application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann Ch. 134 (Vernon Supp. 2019) (Act), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) (Regulations). The Application was properly certified in accordance with §12.312(a)(3). No fee is required for this Application.
3. The currently accepted reclamation performance bond for SMC's Rusk Mine operations under Permit No. 55A in a total amount of \$65,000,000, is in the form of three self-bonds in the amount of \$35,000,000, accepted by Commission Order dated July 26, 2011, \$5,000,000, accepted by Commission Order dated May 8, 2012, and \$25,000,000, accepted by Commission Order dated June 19, 2018. SMC does not request a reduction in the amount of the approved reclamation bond instruments in this application.
4. The Application was filed with the Hearings Division by letter dated August 7, 2019. Public notice newspaper clippings, newspaper affidavits, and copies of letters sent to landowners were received by SMRD on October 25, 2019, and transmitted to the Hearings Division on October 30, 2019.
5. In accordance with requirements as set forth at §12.312(a)(2), copies of the application were placed on file at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas 78711, and at the office of the Rusk County Clerk, 115 North Main Street, Suite 206, Henderson, Texas 75653.
6. Notice of application was published once a week for four consecutive weeks in *The Henderson News* circulated in Rusk County, on September 18 and 25, and October 2 and 9, 2019. This newspaper is a paper of general circulation in the area of the proposed bond release requested areas in Rusk County. The notice of application contains all information required by the Act and Regulations for notice of an application requesting bond release. 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. The notice contains information on the applicant, location and boundaries of the permit area, the Application's availability for inspection, and the address to which comments should be sent.

7. SMC sent notice by letters dated September 23, 2019, to 62 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. SMC mailed notice to the County Judges/Commissioners' Court of Rusk County, the Texas General Land Office, the Natural Resources Conservation Service, the U.S. Environmental Protection Agency, the Texas Commission on Environmental Quality, the Texas Department of Transportation, Crystal Farms Water Supply Corporation, West Harrison Water Supply Corporation, Panola Harrison Electric Cooperative, the Texas Parks and Wildlife Department, the U.S. Fish and Wildlife Service, the Sabine River Authority of Texas, and the U.S. Army Corps of Engineers. 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 Staff by letter date October 24, 2019, and with Docket Services on October 30, 2019.
8. No adverse comments or written objections were filed regarding the request for release pursuant to the notification. No requests for hearing or informal conference were filed pursuant to §12.313(d).
9. The Staff provided notification of the Application by certified letters dated September 16, 2019, to the County Judges of Rusk, Panola, and Harrison Counties. 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 August 13, 2019, of the date and time of Staff's field inspection scheduled for September 3, 2019. The letter notification stated that a release had been requested and, pursuant to §12.312(b)(1), advised the recipients of the opportunity to participate in the on-site inspection. Staff provided copies of the letters sent pursuant to §12.312(b) in Appendix II within Attachment III (Inspection Report) of the TA.

10. The inspection occurred on September 3, 2019. A Commission inspector, three representatives of SMC, one representative of lignite owner Southwestern Electric Power Company (SWEPCO), and three landowners attended the pre-inspection meeting. Two SMC representatives accompanied him during the inspection of the property. No landowners accompanied the inspector during the inspection of the property. A sign-in sheet of the meeting participants is included in Staff's TA, Appendix III of Attachment III (Inspection Report).
11. The 19,691.20-acre permit area is located south of and abutting the Sabine River, west of State Highway 43, north of Farm Road 1797, northeast of Farm Road 1716, and southward to the southeastern boundary of Gregg County. A general location map of the permit area, with those areas proposed for release distinguished, is provided in the public notice and in Staff's TA, Appendix I.
12. The Application includes ownership and tract information for owners of interests in the areas proposed for release and adjacent lands. There are 5 affected tracts within and 35 tracts adjoining the area requested for Phase I release of reclamation obligations. A list of the tract owners within and adjoining the subject acreage is found in the Application (Attachment 3-1, *Land Tracts Within and Adjoining*).
13. The subject acreage requested for release was mined or otherwise disturbed in 2012 and between 2014 to 2016, and final grading occurred from 2014 to 2018. Staff conducted routine monthly inspections of the proposed release area from 2011 to the present.
14. Based upon the Application and Staff's review, Phase I release of reclamation obligations have been met for 76.6 acres in accordance with Phase I requirements for backfilling, regrading and drainage control as required by §12.313(a)(1) of the Regulations.
 - a. The approved postmine land use within the area requested for release is fish and wildlife habitat (76.6 acres).
 - b. The soil-testing grids within the 76.6 acres proposed for Phase I release of reclamation obligations have met the soil suitability requirements. All soil grids located within the release area are represented by the 2019 initial postmine soil monitoring report. By letter dated May 6, 2019, the Commission notified SMC that the data for all sampled areas do not indicate the presence of acid or toxic forming materials in the top four feet of postmine soil. A copy of the approval letter is contained in Staff's TA within Appendix V of Attachment III.
 - c. The area has been re-graded to its approximate original contour; highwalls have been eliminated; suitable topsoil has been placed over regraded spoil; no cut-and-fill

terraces have been constructed, and; drainage control has been accomplished in accordance with the approved reclamation plan. Surface-water runoff from the proposed Phase I release area flows into V1, V5 or V6 Sedimentation Ponds.

- d. As indicated by SMC and Staff, there are no permanent structures located within the proposed Phase I release area.
 - e. No areas are approved for the disposal of non-coal waste within the area proposed for Phase I bond release [§12.375].
15. Pursuant to §12.313(a)(1) of the Regulations, the Commission may release 60% of the bond or collateral attributable to the subject 76.6 acres upon a determination that reclamation has been successfully completed in accordance with the terms of the approved permit and the requirements of the Act and the Regulations. As a result of being granted Phase I release, SMC is eligible to reduce the bond amount for Permit No. 55A. In its TA, Staff calculated an eligible bond reduction amount based on the most recently approved reclamation cost estimate for the permit that totals \$65,000,000, accepted in the form of three self-bonds in the amount of \$35,000,000, accepted by Commission Order dated July 26, 2011, \$5,000,000, accepted by Commission Order dated May 8, 2012, and \$25,000,000, accepted by Commission Order dated June 19, 2018. The amount of the eligible bond reduction specified in Staff's TA is \$900,301.25; however, as stated in Staff's TA, the specified reduction amount is only an estimate provided for illustration purposes. The actual amount of any reduction would be calculated based on the costs for reclamation at the time a bond reduction is requested by SMC; therefore, ensuring the proposed bond amount is sufficient to cover the cost of outstanding reclamation work. Given that SMC does not request an adjustment to the approved bond in the Application (Finding of Fact No. 3, *supra*), any eligible reduction any eligible reduction amount based on the current reclamation cost estimate would be superseded once the costs for reclamation are calculated at a future date when SMC requests a reduction of the bond. Additionally, since 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 states SMC is eligible to reduce the amount of bond by 60% that is attributable to the 76.6 acres granted Phase I release, but does not specify the amount of the reduction.
 16. The area requested for release was marked in the field with white PVC poles at the corners and along the proposed boundaries. (Photographs of marked area are contained in Staff's TA Attachment III, within Appendix IV, Inspection Report).
 17. SMC 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.

18. Open meeting notice has been posted for Commission consideration of this application in accordance with Tex. Gov't Code Ann. CH. 551 (Vernon Supp. 2019).

CONCLUSIONS OF LAW

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

1. Proper notice of SMC's Application and proper notice of consideration by the Commission has been provided.
2. No public hearing was requested, and none is warranted.
3. SMC has complied with all applicable provisions of the Act and the Regulations regarding notice for Commission jurisdiction to allow consideration of the matter.
4. SMC has complied with all applicable provisions of the Act and the Regulations for the acreage requested for release as set out in the Findings of Fact.
5. The Commission may approve a release of Phase I reclamation obligations for the 76.6 acres as set out in the above Findings of Fact and Conclusions of Law.
6. Pursuant to the Commission's authority for inspections and evaluation of release applications, the Commission may order that SMC continue marking the area approved for release so that Staff mapping, and tracking will be efficient.
7. SMC is eligible to reduce the amount of bond for Permit No. 55A by 60% of the amount that is attributable to the subject 76.6 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 a release of Phase I reclamation obligations for 76.6 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;

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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 SMC is eligible to reduce the amount of bond for the permit by the amount that is attributable to the 76.6 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

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The Sabine Mining Company
Permit No. 55A, Rusk Mine

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 April 21, 2020.

RAILROAD COMMISSION OF TEXAS

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