

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SMRD DOCKET NO. C20-0010-SC-50-F
APPLICATION BY LUMINANT MINING COMPANY LLC
RELEASE OF PHASE I RECLAMATION OBLIGATIONS FOR 969.7 ACRES
PERMIT NO. 50C, KOSSE MINE, LIMESTONE AND ROBERTSON COUNTIES, TEXAS**

**ORDER APPROVING PHASE I RELEASE OF
RECLAMATION OBLIGATIONS FOR 969.7 ACRES**

Statement of the Case

Luminant Mining Company LLC (Luminant), 6555 Sierra Drive, Irving, Texas 75039, applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase I release of reclamation obligations for 969.7 acres within Permit No. 50C, Kosse Mine, Limestone and Robertson 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. 2020), and "Coal Mining Regulations" Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020).

Luminant requests release from Phase I reclamation obligations for backfilling, regrading, and drainage control for the proposed acreage. Permit No. 50C currently authorizes surface coal mining operations within the approximately 16,563-acre permit area of Luminant's Mine. No comments or requests for hearing were filed following public notice. The only parties to the proceeding are Luminant and the Commission's Surface Mining and Reclamation Division (Staff). Staff has reviewed the request for release of the acreage and filed its Technical Analysis and field inspection report. There remain no outstanding issues between the parties. Based on information provided by Luminant and the inspection of the area, Staff recommends release of Phase I reclamation obligations for 969.7 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. Luminant 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 Luminant 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.

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FINDINGS OF FACT

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

1. By letter dated November 5, 2019, Luminant Mining Company LLC (Luminant) 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 969.7 acres located, within the approximately 16,563-acre permit area of the Kosse Mine, Permit No. 50C, Limestone and Robertson Counties, Texas.
2. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2020) (Act), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020) (Regulations). No filing fee is required. The application was properly certified in accordance with §12.312(a)(3). The application was supplemented by letter dated March 9, 2020 with proof of public notice. The application was declared administratively complete on March 24, 2020. Staff filed its Technical Analysis ("TA") and Inspection Report on March 27, 2020, recommending Phase I release be approved for the subject acreage with no outstanding comments.
3. Luminant's currently bonds all of its statewide mining operations, including those conducted under Permit No. 50C, with a blanket collateral bond in the amount of \$975,000,000 that was accepted by Commission Order dated September 27, 2016 [Docket No. C16-0021-SC-00-E]. No changes to the accepted bond are proposed in the application and no replacement bond instrument has been filed.
4. 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 offices of the Limestone and Robertson County Clerks, Groesbeck and Franklin, Texas, respectively.
5. Notice of application was published once a week for four consecutive weeks on January 23 and 30 and February 6 and 13, 2020 in the *Franklin Advocate* and *Robertson County News*, newspapers with general circulation in the area of the proposed release request in Robertson

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County. Notice of application was published once a week for four consecutive weeks on January 16, 23, 30 and February 6, 2020 in *The Groesbeck Journal*, a newspaper with general circulation in the area of the proposed release request in Limestone 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. Luminant submitted proof of publication, consisting of affidavits of publication with newspaper clippings, to the Commission by letter dated March 9, 2020.

6. Luminant sent notice of application by letters dated January 20, 2020 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. Luminant mailed notice to the County Judge/Commissioners' Court of Robertson County, County Judge/Commissioners' Court of Limestone, the Robertson County Water Supply Corporation, the Texas Commission on Environmental Quality, the Natural Resources Conservation Service, the Texas General Land Office, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers' District Office in Fort Worth, Texas Department of Transportation, the Brazos River Authority, the Texas Soil and Water Conservation Board headquartered in Temple, the Limestone-Falls Soil and Water Conservation District, the Robertson County Soil and Water Conservation District, and to the Ebenezer Cemetery Association, owner of a tract adjacent to the area requested for release. 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 March 9, 2020.

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proposed for release identified, is found in Appendix I of Staff's Inspection Report. The area is depicted in photographs taken during Staff's inspection. The application, photographic evidence and Staff's Inspection Report and TA provide support for Phase I release of reclamation obligations for the subject 969.7 acres.

11. The 969.7 acres proposed for Phase I release have an approved postmine land use of pastureland or developed water resources. The acreage was mined or otherwise disturbed from 2010 to 2015, final grading, including the construction of 13 permanent water-control structures and associated apparatuses, occurred from 2010 to 2018. Vegetation was planted from 2013 to 2018. Staff conducted routine monthly inspections of the proposed release area from 2010 to the present.
12. Based upon the application and Staff review in its TA, the acreages requested for release from Phase I reclamation obligations have met Phase I requirements for backfilling, regrading, and drainage control requirements as required by §12.313(a)(1) of the Regulations and may be approved for Phase I release.
13. The 969.7 acres requested for Phase I release have been backfilled and graded to approximate original contour, [§12.385(a)]. Final grading occurred from 2010-2011, and vegetation was planted from 2010-2015. All highwalls and spoil piles were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable substitute material was placed over the regraded spoil. No cut-and-fill terraces were constructed. Backfilled material was 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)]. All areas requested for release have been stabilized to control drainage and attendant potential erosion [§12.389]. The areas requested for release contain 232 full or partial 5.7-acre soil-testing grids (Table III.A.3-1), and soil data provided by Luminant on various dates from 2012 to 2018, as depicted on Plates III-A-3-1 in the application, reflect compliance with soil-sampling requirements under the applicable soil-testing plan for the permit and do not indicate the presence of acid-forming and toxic-forming materials (AFM/TFM) in the top four feet of reclaimed soils. All soil grids have received Commission approval as free of AFM/TFM. Soil-testing grid data for the acreage requested for release were approved by the Commission on various dates, ending on August 9, 2019.

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14. Luminant has established drainage control as required for Phase I release of the subject acreage. Surface water runoff from areas proposed for release flows to final discharge Ponds D-5, D-6, E-1, and E-3.

15. Several structures are located within the areas requested for Phase I release. Based on photographs of all structures taken during Staff's inspection of the area, all structures and surrounding areas are stable [Appendix IV of Inspection Report (Attachment III to TA); Photos 17-40].
 - (a) Six permanent diversions (D-6H Diversion No. 1, approved July 11, 2016; D-133 Diversion No. 1, approved February 25, 2015; D-143 Diversion No. 1, approved May 03, 2016; D-157 Diversion No. 1 Modification No. 1, approved February 21, 2018; E-1D Diversion, approved October 26, 2016; and E-103 Permanent Diversion No. 1, approved May 27, 2016), and three associated drop structures, (E-1D Diversion Drop Structure Nos. 1 through 3, approved October 26, 2016) are located in the area proposed for Phase I release of reclamation liability. [§§12.341, 12.345]

 - (b) There are seven permanent impoundments with associated drop structures and/or concreted inlet/spillways within the proposed release area (D-135 Permanent Impoundment Modification No. 1, approved September 16, 2013, with associated inlets/spillways D-135 Inlet Nos. 1 and 2, approved September 16, 2013, and drop structures D-135 Drop Nos. 1 through 4 approved July 18, 2012; D-121 Permanent Impoundment Modification No. 1, approved July 11, 2016, with associated inlet/spillway D-121 Pond Inlet No. 1 approved February 8, 2012; D-133 Permanent Impoundment approved February 25, 2015; D-143 Permanent Impoundment Modification No. 1 approved May 3, 2016. D-157 Permanent Impoundment Modification No. 1 approved February 21, 2018; and E-103 Permanent Impoundment and E-122 Permanent Impoundment approved May 27, 2016). [§§12.347(b), 12.345]

 - (c) There is one permanent road associated within the proposed release area – DV Access Road No. 5 approved July 2, 2014. [§12.400(f)]

16. The area proposed for Phase I release does not contain any area approved for disposal of

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non-coal waste. [§12.375]

17. There is no prime farmland located in the area proposed for Phase I release for which specific soil reconstruction standards would apply. [§12.624]
18. Pursuant to §12.313(a)(1), the Commission may release 60% of the bond or collateral attributable to the subject 969.7 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, Luminant is eligible to reduce the bond amount for Permit No. 50C. In its TA, Staff calculated an eligible bond reduction amount based on reclamation costs totaling \$202,993,110. However, Staff's eligible reduction amount (\$9,480,379.16) is inaccurate given the most recent reclamation cost estimate for the permit is in the amount of \$200,777,829 that was adopted by Commission Order dated September 11, 2019 [Docket No. C18-0015-SC-50-C; Proposal for Decision at Finding of Fact No. 45(b)(2)]. The accuracy of Staff's specified eligible reduction amount is inconsequential given Luminant does not request an adjustment to the current bond in the subject application (Finding of Fact No. 3, *supra*). The Commission considers any reduction amount specified in the current docket to be only an estimate provided for illustration purposes, as the actual amount of any bond reduction attributable to the release granted in this Order would be calculated based on the costs for reclamation at the time that a bond adjustment is requested by Luminant – thereby ensuring any prospective bond proposed for acceptance is sufficient to cover the cost of outstanding reclamation prior to acceptance. As Staff's eligible reduction amount, even if accurate, would be superseded once the costs for reclamation are calculated at a future date when Luminant requests a reduction of the bond and 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 Luminant is eligible to reduce the amount of bond by 60% of the bond attributable to the 969.7 acres granted Phase I release, but does not specify the amount of the reduction.
19. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas for aid in inspection. Clear identification of this area will assist future inspection of this area and adjacent areas.

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20. Luminant 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.
21. 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. Luminant 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. Luminant 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 969.7 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 Luminant continue marking the area approved for release so that Staff mapping and tracking will be efficient.
7. Luminant is eligible to reduce the amount of bond for Permit No. 50C by 60% of the amount that is attributable to the subject 969.7 acres in future bond adjustments.

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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 969.7 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 Luminant is eligible to reduce the amount of bond for the permit by 60% of the amount that is attributable to the 969.7 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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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 May 5, 2020.

RAILROAD COMMISSION OF TEXAS

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Secretary
Railroad Commission of Texas

