

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SMRD DOCKET NO. C20-0016-SC-05-F
APPLICATION BY LUMINANT MINING COMPANY LLC
RELEASE OF PHASE I RECLAMATION OBLIGATIONS ON 429.61 ACRES
PERMIT NO. 5G, MONTICELLO THERMO MINE, HOPKINS COUNTY, TEXAS**

**ORDER APPROVING PHASE I RELEASE OF
RECLAMATION OBLIGATIONS FOR 429.61 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 429.61 acres within Permit No. 5G, Monticello Thermo Mine, Hopkins 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. 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 release acreage. Permit No. 5G currently authorizes surface coal mining operations within the approximately 4,506-acre permit area of Luminant's Monticello Thermo 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 ("SMRD" or "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 the requested 429.61 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.

FINDINGS OF FACT

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

1. By letter dated January 2, 2020, Luminant Mining Company LLC ("Luminant") filed an application with the Railroad Commission of Texas' ("Commission") Surface Mining and Reclamation Division ("SMRD" or "Staff") for release of Phase I reclamation obligations on

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429.61 acres located, within the approximately 4,506-acre permit area of the Monticello Thermo Mine, Permit No. 5G, Hopkins County, Texas. Luminant modified its application to submit a revised Section II.B [Landowners (.312)], revised portions of Section III.A.3 [Covering Coal and Acid- and Toxic-Forming Materials (.386)], and a revised Section IV (SMRD approval letters), by letter dated April 6, 2020.

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 October 20, 2020, to provide proof of public notice. The application was declared administratively complete by letter dated October 26, 2020. Staff filed its Technical Analysis ("TA") and Inspection Report on November 16, 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. 5G, 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 office of the Hopkins County Clerk in Sulphur Springs, Texas.
5. Notice of application was published once per week for four consecutive weeks on July 8, 15, 22, and 29, 2020, in *The Sulphur Springs News Telegram*, a newspaper with general circulation in the area of the proposed release request in Hopkins 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 that 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 October 20, 2020.

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6. Luminant sent notice of application by letters dated July 7, 2020, 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 Hopkins County, the Hopkins-Rains Surface Water Conservation District, the Texas Commission on Environmental Quality, the Natural Resources Conservation Service, the Sabine River Authority, 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 Texas Soil and Water Conservation Board headquartered in Temple, and the Brinker Water System. Luminant sent notice of application by letters dated either July 7 or December 3, 2020, to owners of interests in the areas requested for release and adjacent lands. Copies of the July 7 notification letters were filed with the Commission by letter dated October 20, 2020. A copy of the December 3 notification letter was dated December 8, 2002, but was filed with the Commission's Docket Services on December 4, 2020. The City of Sulphur Springs ("City"), which owns all of the land tracts proposed for release, responded by letter dated December 4, 2020 (received by Docket Services on December 7, 2020), that it had no comment or objection to the proposed release. The areas requested for release are located within the territorial boundaries of the City. By letter dated December 9, 2020, Staff notified the City pursuant to §12.313(c) of the Regulations of the pending release application, at least 30 days prior to final action by the Commission on this application. A copy of Staff's notification letter to the City was filed with the Commission by letter dated December 14, 2020.
7. 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).
8. Staff provided notification of the application by certified letters dated October 29, 2020, to the County Judge of Hopkins 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. By letters dated May 1, 2020, Staff notified the City of Sulphur Springs, which is the owner of the lands within the proposed release area, Luminant, and the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM), of the application for release, providing the date and time of Staff's field inspection scheduled for May 26, 2020, all pursuant to §12.312(b) of the Regulations. The notification stated that a release had been requested and, pursuant to §12.312(b)(1), advised them of opportunity to participate in the on-site inspection. Staff provided copies of the letters in Appendix II of Attachment III (Inspection Report) to the TA. The TA was filed with the Hearings Division on November 16, 2020.
9. The inspection occurred on May 26, 2020, as notified in Staff's letters. Two Commission Inspectors, Robert MacNabb and Lindsay Lang, and one Luminant representative, Mr. Monty

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Ward, attended the pre-inspection meeting and field inspection. No representative from the City of Sulphur Springs or inspector from OSM were present. Field conditions on the date of inspection was wet but allowed for full access to the 429.61 acres requested for release. Minor erosion not requiring repair was observed by Staff within the proposed release area during the inspection along the shore of G-13 Pond, as was the pooling of water in an area of G-07 Permanent Diversion that required repair. Staff documented the pooling in Photo 15 and the minor erosion in Photo 5 in Appendix IV of the Inspection Report. Luminant indicated that the noted erosion would be repaired quickly. Staff considers the extent of the erosion to be minimal and not indicative of poor regrade or drainage issues within the proposed release area and supports that the observations made during the inspection support a finding that Luminant has met all applicable requirements for Phase I release.

10. The 4,506-acre permit area is located approximately three miles southeast of Sulphur Springs, Texas within the extra-territorial jurisdiction area of that city. The 429.61 acres proposed for release is comprised of one parcel of land (composed of several land tracts) within the approved permit area and is owned by the City of Sulphur Springs. A general location map of the permit area, with the acreage proposed for release identified, is provided in Appendix I of Staff's Inspection Report. The area is depicted in photographs taken during Staff's inspection and provided in Appendix IV of the Inspection Report. The application, photographic evidence, and Staff's Inspection Report and TA provide support for Phase I release of reclamation obligations for the subject 429.61 acres.
11. For the 429.61 acres requested for Phase I release, mining operations were conducted on 408.85 acres from 2007 to 2011; 20.76 acres were disturbed by mining-related activities including roads, diversions, and ponds from 2007 to 2011. Final grading was accomplished on the requested release acreage from 2008 to 2013, and vegetation was planted from 2009 to 2017. The approved postmine land use is pastureland (153.05 acres), forestry (140.23 acres), fish and wildlife (79.41 acres), and developed water resources (DWR) (56.92 acres). Of the 429.61 acres in this requested release, the five-year extended responsibility period (ERP) was initiated on September 5, 2017. The DWR land use proposed for release in this application are contained within the ERP area; however, ERP is not required for DWR land use. Permanent structures within the requested release area include one pond, one road, three diversions, and three drop structures/inlets/spillways, one of which was omitted from the application but identified during the Staff inspection (G-03 Permanent Diversion Drop Structure No. 1). Staff conducted routine monthly inspections of the requested release area from 2007 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.

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13. The 429.61 acres requested for Phase I release have been backfilled and graded to approximate original contour, [§12.385(a)]. Final grading occurred from 2008-2013, and vegetation was planted from 2009-2017. 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 25 full or partial soil-testing grids (Table III.A.3-1) varying from 1.48 to 22.96 acres in size, for soil data collected by Luminant on various dates from 2011 to 2015, as depicted on Plate III.A.3-1 (Sheets 1 and 2) in the initial 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 data for the gridded acreage requested for release were variously approved by the Commission by letters dated June 3, 2011, July 1, 2015, and May 24, 2017.
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 A-18 and C-06.
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)].
 - (a) Three permanent diversions (G-03 Diversion, approved June 21, 2018; G-06 Diversion, approved May 15, 2009; and G-07 Diversion, approved June 21, 2018), and one associated drop structure (G-03 Drop Structure No. 1, approved June 21, 2018) are located in the area requested for Phase I release of reclamation liability. [§12.341, §12.345].
 - (b) There is one permanent impoundment, which has an associated exit spillway and inlet, within the requested release area (G-13 Permanent Impoundment, approved August 13, 2014; with associated spillway and inlet structures approved on same date). [§§12.347(b), 12.345]
 - (c) There is one permanent road associated within the requested release area (G-13 Pond Access Road, approved on August 13, 2014). [§12.400(f)]
16. The area proposed for Phase I release does not contain any areas approved for disposal of non-coal waste. [§12.375]

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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 429.61 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. 5G. In its TA, Staff calculated an eligible bond reduction amount based on reclamation costs totaling \$457,452.68, based on reclamation costs memorialized in Revision No. 36, which was approved by the SMRD Director on August 30, 2018. 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 an instant estimate provided for illustration purposes, in that 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. This ensures that any prospective bond proposed for acceptance is sufficient to cover the cost of outstanding reclamation prior to acceptance. As Staff's eligible reduction amount would be superseded once the costs for reclamation are calculated at a future date when such reduction of the bond is requested, 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 429.61 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.
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.

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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 release of Phase I reclamation obligations for the 429.61 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. 5G by 60% of the amount that is attributable to the subject 429.61 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 429.61 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 429.61 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 January 26, 2021.

RAILROAD COMMISSION OF TEXAS

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Secretary
Railroad Commission of Texas

