

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C19-0020-SC-05-B:
APPLICATION BY LUMINANT MINING COMPANY LLC FOR REVISION NO. 34
(H-AREA RECLAMATION PLAN), PERMIT NO. 5G, MONTICELLO THERMO MINE,
HOPKINS COUNTY, TEXAS**

**ORDER OF APPROVAL OF APPLICATION FOR REVISION
TO PERMIT NO. 5G**

STATEMENT OF THE CASE

The Applicant, Luminant Mining Company LLC (Luminant), 6555 Sierra Drive, Irving, Texas 75039, has applied to the Railroad Commission of Texas (Commission), for revision (Revision No. 34) to its surface coal mining and reclamation permit for its Monticello Thermo Mine, Permit No. 5G, located in Hopkins County, Texas. In the application, Luminant proposes to revise the postmine topography of portions of the H Area; seeks approval of a revised reclamation plan for the final pit and adjoining area, including general design plans for H-03 Permanent Impoundment; and proposes updates to the mailing addresses and listing of individuals who are authorized to act on behalf of Luminant.

The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2021) (Act) and §§12.312-12.313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2021) (Regulations). Permit No. 5G currently authorizes surface coal mining operations at the Monticello Thermo Mine within a permit area of 4,506 acres. The majority of the disturbed area has been reclaimed with the exception of an area around the H-Area final pit and the facilities area. The Monticello Thermo Mine lies approximately three miles southeast of the city of Sulphur Springs, Texas, in Hopkins County. The Monticello Thermo Mine ceased removing coal in 2016. No change in status of the Monticello Thermo Mine, Permit No. 5G, as it is approved as a "Reclamation-Only Permit."

The parties to this proceeding are the Commission's Surface Mining and Reclamation Division (SMRD and/or Staff), Luminant, and the City of Sulphur Springs, Texas (City). Luminant's currently accepted reclamation performance bond is a blanket collateral bond for all of its statewide mining operations in the amount of \$975,000,000, approved by Order dated September 27, 2016 (Docket No. C16-0021-SC-00-E). Staff recommends a minimum bond amount for the Monticello Thermo Mine of \$19,683,539, which is greater than Luminant's proposed cost estimate of \$19,142,765, but is less than the currently approved reclamation bond amount of \$19,758,158. Because Luminant's currently bonded amount exceeds the sum of Staff's recommended amount for this docket, no changes to Luminant's existing blanket collateral bond are necessary as a result of this permit revision.

Based on the application, as supplemented, the evidence presented, Staff's Technical Analysis (TA) and addenda, all factual issues have been addressed as required by the Act and Regulations, with the permit provisions as set forth in the Findings of Fact and Appendix I to this Order.

FINDINGS OF FACT

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

1. By letter dated July 31, 2017, Luminant Mining Company LLC (Luminant) submitted revision application (Revision No. 34) for the Monticello Thermo Mine, Permit No. 5G to the Railroad Commission of Texas' (Commission) Surface Mining and Reclamation Division (SMRD and/or Staff) to revise the postmine topography of portions of H Area of the Monticello Thermo Mine and to request approval of a proposed H-Area reclamation plan, including general design plans for H-03 Permanent Impoundment and a Form SMRD-1C updating the mailing addresses and listing of individuals who are authorized to act on behalf of Luminant. The existing 4,506-acre permit area is located in Hopkins County, Texas. The Monticello Thermo Mine, Permit No. 5G, reclamation area, lies approximately three miles southeast of the City of Sulphur Springs (City), and is contained within the "Sulphur Springs SE," U.S. Geological Survey 7.5-minute, quadrangle maps.
 - (a). By letter dated December 5, 2017, Staff determined that the application was a significant revision to Permit No. 5G because it significantly changed the effect of the mining operation would have on either those persons impacted by the permitted operation or on the environment pursuant to §12.226(a)(1). An approximate two-year consultation period between Staff and Luminant occurred prior to Luminant formally requesting that the permit revision application be processed as a significant revision to the Monticello Thermo Mine, Permit No. 5G on June 26, 2019. The SMRD Director determined that the application was administratively complete and filed the application for docketing by letter dated July 10, 2019.
 - (b). In its Technical Analysis (TA) and addenda, Staff provided a chronology for processing Revision No. 34 as signification revision application, beginning with the filing of the revision application on July 17, 2017, to Luminant formally requesting the application be processed as a significant revision application and transferred to the Hearings Division for docketing on July 10, 2019.

DATE OF LETTER	SUBMITTAL BY STAFF AND/OR LUMINANT
July 31, 2017	Luminant filed Revision No. 34 application to request approval of a proposed H-Area reclamation plan, including general design plans for H-03 Permanent Impoundment and an updated Form SMRD-1C.

DATE OF LETTER	SUBMITTAL BY STAFF AND/OR LUMINANT
December 5, 2017	Staff determined that the revision application was a significant revision to the approved permit pursuant to §12.226(a).
January 19, 2018	Staff provided application deficiencies and non-substantive comments on the application and indicated that the application was incomplete.
February 15, 2018	Luminant provided additional information to Staff.
September 21, 2018	Staff stood by its determination that the revision application was significant.
May 6, 2019	Luminant again requested that Staff's determination be rescinded and that the application not be processed as significant.
June 6, 2019	Staff consulted with the Office of General Counsel and continued to determine that the proposed changes to the reclamation plan in the revision application, as supplemented, significantly changed the effect the mining operation would have on either those persons impacted by the permitted operation or on the environment pursuant to 12.226(a)(1).
July 10, 2019	SMRD Director declared the application administratively complete and filed it with the Hearings Division for docketing

2. The application was filed pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2021) (Act) and §§12.312-12.313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2021) (Regulations).
 - (a). The Application was filed at least 180 days before the date of anticipated need for the proposed reclamation activities, as set out in §12.106(b)(3) of the Regulations.
 - (b). The Application has met the requirements set out in §12.107 for format and content, with adoption of the Findings of Fact, Conclusions of Law, and permit provision contained in Appendix I. Form SMRD-1C was filed, and it contains information required by §§ 12.116-12.154 [§12.107(a)]. In the application, as supplemented, the information is current, presented clearly and concisely, and is supported by appropriate references [§12.107(b)]. Technical data has been submitted as required [§12.107(c) and (e)], and the data were prepared by or under the direction of professionals in the subjects analyzed [§12.107(d)]. A responsible official of the applicant verified the application, as supplemented, under oath that the information is true and correct to the best of the official's information and belief. [§12.107(g)].

- (c). The required filing fee of \$500 has been paid for a revision application of the approved permit. [§12.108(a)(2)].
3. The SMRD Director declared the application administratively complete and filed it with the Hearings Division for docketing by letter dated July 10, 2019.
 - (a). The application consists of one volume and three additional volumes filed as supplements (Supplement Nos. 1, 2, and 3). The initial application was filed on July 31, 2017, Supplement No. 1 was submitted on May 6, 2019; Supplement No. 2 was submitted on March 31, 2020; and Supplement No. 3 was submitted on March 31, 2021, with corrections to Supplement No. 3 filed by letter dated April 13, 2021. All information contained in the supplements has been submitted for the purpose of supplementation, clarification, limitation, or correction of data and information addressed in sections of the administratively complete application. The application and all supplements were appropriately placed on file for public inspection. The information contained in the Supplements does not constitute a material change to an application for which additional notice must be provided pursuant to §12.212(d) of the Regulations.
 - (b). Staff filed its Technical Analysis (TA) on December 19, 2019 and two addenda. The TA was filed on December 19, 2019, TA Addendum No. 1 on June 3, 2020, and TA Addendum No. 2 on July 12, 2021. In its TA Addendum No. 2, Staff recommends approval of the application, as supplemented, with the removal of the three existing permit provisions for Permit No. 5G, as they are no longer needed, but with the addition of two new proposed permit provisions. Staff's two permit provisions proposed in TA Addendum No. 2 are modified and adopted as set out in the findings of fact and in Appendix I to this Order.
4. Proper notice of application was published once per week for four consecutive weeks in a newspaper of general circulation in the locality of the surface mining and reclamation operations on August 8, 15, 22, and 29, 2019, in the *Sulphur Springs News-Telegram*, Hopkins County, Texas. Luminant filed proof of publication of notice by letter dated October 1, 2019. The notice of application contains all information required by the Act and the Regulations. Luminant identified the location of the public offices where the application, as supplemented, was filed in accordance with §12.207 of the Regulations, and submitted an original affidavit and news clippings showing publication, in accordance with §12.123 of the Regulations. The notices contained all required information concerning the Applicant, the location and boundaries of the permit area, the availability of the application for inspection, and the address to which comments, objections, or requests for a public hearing or informal conference on the application were to be sent.
5. Luminant filed a copy of the application for public review. The application and all supplements were appropriately placed on file for public inspection at the Commission's Austin offices and at the office of the Hopkins County Clerk. Required public notice was given after the filing of the application [§12.123, Regulations]. The information contained

in the supplements are for the purposes of approval of this application as set out in this Order, do not constitute material changes to the application for which additional notice must be provided under §12.212(d) of the Regulations.

6. In accordance with its policy, on August 12, 2019, the Commission provided notice of a complete application, by first-class mail or interagency mail, as appropriate, to the Texas and federal agencies listed in §12.207 of the Regulations, and to local government agencies, including the appropriate divisions of the following: Texas Commission on Environmental Quality; Texas Historical Commission; University of Texas, Bureau of Economic Geology; Texas State Soil and Water Conservation Board; Texas Parks and Wildlife Department (TPWD); General Land Office; Natural Resources Conservation Service; USDI Fish and Wildlife Service; U.S. Environmental Protection Agency (EPA); USDI Office of Surface Mining Reclamation and Enforcement (OSM); U.S. Army Corps of Engineers (USACE); Sulphur River Basin Authority; water and sewage companies as required by §12.207(c)(4) of the Regulations; various utility companies; Texas State Soil and Water Conservation Board, Hopkins-Rains Soil and Water Conservation District; the City of Sulphur Springs; and the Hopkins County Clerk and County Judge. On September 9, 2019, the TPWD filed comments with the Commission indicating that, based on its review of the notice of application, the initial application, and Supplement No. 1, there did not appear to be any concerns regarding the proposed revision to the reclamation plan for the H Area, and that the TPWD did not intend to file further comments. No other state agencies filed comments with the Commission regarding the application.
7. The City filed a petition to intervene as a party on August 14, 2019, stating that it had a clear justiciable interest in this docket because it had entered into a Development Agreement with Luminant on October 16, 2018, to develop a multi-use site on some land that will be proposed in the future for release of reclamation obligations. On August 22, 2019, the ALJ notified the parties that the City had been named as intervening party and provided the parties an opportunity to contest the City's party status. The record does not indicate that Staff nor Luminant objected to the City's status as an intervening party. Staff, Luminant, and the City, are the only parties to the proceeding.
8. Luminant filed a request for an informal conference on June 23, 2020. An informal conference was held on August 7, 2020, for the purpose of discussing application deficiencies and other open items identified in Staff's TA Addendum No. 1.
9. No other agency or landowner comments, protests, or other timely requests for hearing were received.
10. In the application, as supplemented, Luminant has submitted information to adequately address each requirement of the applicable regulations. The revision application does not change the approved permit as relevant to §12.119 and §12.125(1) of the Regulations. Staff noted in its initial review letter that Luminant did not revise several tables in the approved permit to account for the activities/changes described in this revision application (e.g., Table 119-1 and Table 125(a)-1). In response, in Supplemental No. 1, Luminant

explained that these tables were not included in the original submittal of this revision application because the contents of the proposed reclamation application did not directly impact these components of the permit, and no changes were proposed to these tables in the application. Staff concurred in its TA that, because the mine blocks approved for mining in the previous renewal/revision of the application continued through 2011, the last year in which Luminant removed lignite in H Area, the subject tables remain accurate. The Commission finds that the approved permit and the application meets the requirements of §12.119 and §12.125(1).

11. Revisions are proposed to the following sections of the permit that correspond to the same sections of the Regulations: §12.123 (Newspaper Advertisement and Proof of Publication); §12.136 (Maps: General Requirements); §12.137 (Cross Sections, Maps and Plans); §12.139 (Operation Plan: General Requirements); §12.142 (Operation Plan: Maps and Plans); §12.144 (Reclamation Plan: Fish and Wildlife Plan); §12.145 (Reclamation Plan: General Requirements); §12.146 (Reclamation Plan: Protection of the Hydrologic Balance); §12.147 (Reclamation Plan: Postmining Land Uses); §12.148 (Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments); §12.150 (Diversions); and §12.154 (Road Systems and Support Facilities).
12. All requirements have been met in the application, as supplemented, for the submission of properly certified maps, cross-sections, and plans required by §§12.136 and 12.137 of the Regulations. Luminant provided revised tables with respect to the tables contained in approved Permit No. 5G. The revision application meets the requirements of §§12.136 and 12.137. Application section .136 (Supplement No. 2, pages 136-1 through 136-3) contains an updated table entitled "*Rule 12.136 Maps: General Requirements*", in which Luminant specifies the names and locations of maps within the application containing certain required information, as follows:

SECTION	SUBJECT	LOCATION
12.136(1)	All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area.	Plates 116-1, Appendix 116-B Appendix 116-C
12.136(2)	The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities.	Plates 116-1
12.136(3)	The boundaries of all areas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of size, sequence, and timing of the mining of sub-areas for which it is anticipated that additional permits will be sought.	Plates 125(a)-1

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SECTION	SUBJECT	LOCATION
12.136(4)	The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings.	Plates 116-1
12.136(5)	The location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to major electric transmission lines, pipelines, and agricultural drainage tile fields.	Plates 136-1-1 Figure 128-5
12.136(6)	The location and boundaries of any proposed reference areas for determining the success of revegetation.	None
12.136(7)	The locations of water supply intakes for current users of surface water flowing into, out of, and within a hydrologic area defined by the Commission, and those surface waters which will receive discharges from affected areas in the proposed permit area.	Figure 129-1 Figure 129-2 Figure 130-1
12.136(8)	Each public road located in or within 100 feet of the proposed permit area.	Plates 139-1-1 through 139-1-6
12.136(9)	The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places, and known archeological sites within the permit or adjacent areas.	On file with SMRD
12.136(10)	Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area.	Plates 125-(a)-1 Plates 139-1-1 through 139-1-6
12.136(11)	Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or Wild and Scenic River System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act.	None
12.136(12)	Other relevant information required by the Commission.	None

Application section .137 (Supplement No. 2, pages 137-1 through 137-3) contains an updated table entitled "*Rule 12.137 Cross Sections, Maps and Plans*", in which Luminant specifies the names and locations of cross-sections, maps, and plans within the application containing certain required information as follows:

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SECTION	SUBJECT	LOCATION
12.137(a)(1)	Elevations and locations of test borings and core samples.	Figure 127-1 Plate 127-1 through Plate 127-3
12.137(a)(2)	Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of this application.	Figure 128-2 Figure 128-3 Figure 129-1 Figure 129-2 Plate 132- 2
12.137(a)(3)	Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined.	Plates 127-1 through 127-3
12.137(a)(4)	All crop lines and the strike and dip of the coal to be mined within the proposed permit area.	Plates 127-1 through 127-3
12.137(a)(5)	Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent areas.	None
12.137(a)(6)	Location and extent of subsurface water, if encountered, within the proposed permit and adjacent areas.	Figure 128-3 Figure 128-4
12.137(a)(7)	Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within and the proposed permit and adjacent areas.	Figure 129-1 Figure 129-2
12.137(a)(8)	Location and extent of existing or previous surface- mined areas within the proposed permit area.	Plate 125(a)1
12.137(a)(9)	Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water-treatment and air pollution control facilities within the proposed permit area.	Plate 148-1 Plates 139-1-1 through 139-1-6
12.137(a)(10)	Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area.	Figure 128-5
12.137(a)(11)	Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area.	Plate 137-1-1 Plate 137-2
12.137(b)	Location of certifications.	Page 137-4 (Supplement No. 2). Maps and plans not contained in Section 137 are certified individually.

13. Luminant indicates that it does not propose in the application to change the approved permit with regard to §12.139 of the Regulations, with the exception that the application, as supplemented, contains a revised, proposed reclamation plan to complete leveling and reclamation activities in the H Area. In the proposed revision application, as supplemented, Luminant has updated the information contained in Tables 139(a)-1, 139(a)-2, 139(a)-3, 139(b)-1, 139(b)-3 (Supplement No. 2), 139 E-1, and 139 E-2; Plates 139-1-1, 139-1-3, 139-1-6, 139-2-1, and 139-3-1; and, Figures E-1 and E-2 of the approved permit for existing and proposed permanent impoundments.
- (a). Luminant indicates that in its proposed reclamation plan for the H Area, activities associated with the reclamation plan will begin on April 1, 2021, and will be completed by April 30, 2022. Proposed reclamation is to be completed in three zones. Originally proposed as Zones 1 through 3, these were changed in Supplement No. 3 to Zone 1 and Highwall Zones 2 and 3. The amounts of recoverable suitable material for each zone and stockpile are listed in Table 139 E-1, as corrected by letter dated April 13, 2021. Details of the activities to occur within each zone are described in Appendix 139-E and in Table 139 E-1. The zones are depicted on Figure E-1, and additional cross-section and plan-view information that supports transitioning from the existing field conditions to the proposed postmine contours is shown on Figure 139(E)-2 (Supplement No. 3). The H-Area reclamation plan utilizes four suitable overburden stockpiles and two suitable-material borrow areas in Highwall Zones 2 and 3 to complete the top four feet of the subgrade-leveled reclamation areas.
- (b). H-Area Suitable Material Stockpile Nos. 1 and 2 serve as the storage areas for the material suitable to be placed in the top four feet of reclamation. Once backfilling and grading and suitable material placement activities in Zone 1 are complete, dozers equipped with rippers in combination with disking equipment will be used to loosen the remaining material in the suitable layer below the stockpile locations. The suitable plant growth material (SPGM) underneath the two stockpiles is undistributed native material. No material below the original ground surface will be removed during the execution of the proposed reclamation plan.
- (c). As proposed in the application, mobile equipment will move approximately 750,000 cy of material in Zone 1. Mobile equipment will likewise move approximately 29,831 and 49,255 cy of suitable material from Zone 2 and Zone 3, respectively, to be placed in the top four feet of Zone 1.
- (d). With respect to Highwall Zones 2 and 3, reclamation will occur as material is recovered for the establishment of the top four feet of reclamation in the proposed Zone 1. Reclamation of Zone 1 will require approximately 36,200 cy and 69,600 cy of suitable material to be hauled from Highwall Zones 2 and 3, respectively. Under currently approved Permit No. 5G, the suitable oxidized interval extends from the natural ground surface to the shallowest of the base of the oxidized zone or 5 feet

above the uppermost lignite seam, excluding rider seams. The data associated with continuous cores CC-01-05 and CC-02-05 located near the highwall reduction zones describe the oxidized zone to have a depth of approximately 19.8 and 48.9 feet, respectively, from the natural ground surface. The proposed depth of suitable material removal from Highwall Zones 2 and 3 will be 6 feet. The material that will remain in the top four feet of these highwall zones will be comprised of approved suitable material. Luminant will follow the approved soil- and overburden-handling plan as earthwork is conducted as contemplated in Revision No. 34. Luminant will reduce the highwall and grade the highwall zones to match the proposed postmine topography shown in Figure E-1.

- (e). After reclamation of highwall zones is complete, the approved soil preparation, soil testing plan, and revegetation plan will be implemented.
- (f). The application, as supplemented, describes the H-03 Permanent Impoundment as a permanent pond scheduled to be constructed in the H Area. During construction of the spillway, Luminant will develop H-Area Stockpile Nos. 3 and 4 to contain suitable material recovered from the proposed spillway location. Detailed design plans for this pond are scheduled for submittal to the Commission by April 30, 2022. The proposed submittal date will provide Luminant adequate time to recover engineering survey information from the completed backfilling and grading and incorporate the information into the detailed design plans. After approval of the detailed design plans and completion of the subgrade and suitable material leveling of each zone of the H-Area reclamation plan, Luminant will begin the construction of the inlet and outlet features of the H-03 Permanent Impoundment. Once final backfilling and grading is complete, each zone will be planted with permanent vegetation during the first normal period of favorable planting conditions. All disturbed runoff from the H Area will continue to be routed to the H-01 Sedimentation Pond prior to release from surface-water control.
- (g). Once the configuration of the subgrade is established, Luminant will execute an intensive sampling procedure similar to what is described on page 145-27 of existing Permit No. 5G, prior to the placement of the suitable material layer to final grade. Soil samples will be collected from the 0-1 foot, 1-2 foot, 2-3 foot, and 3-4 foot intervals at a density of one sample per acre for each affected grid (5.7 acres) without compositing by depth or horizontally. The parameters will be analyzed as identified in the initial soil testing plan, as well as for boron, cadmium, selenium and the exchangeable cations, including aluminum. In the event that testing results identify potential problem areas, liming application/removal of material will be implemented, as necessary, to the appropriate depths to correct the issue. After the subgrade is established and all remedial issues have been resolved, the area will be covered with approximately 4.3 feet of suitable material to establish the suitable layer, and the initial soil monitoring protocols will be applied.

- (h). All earth material volumes and dates of completion for each area are approximate and may fluctuate somewhat due to unanticipated weather delays. If changes to the reclamation time schedule are necessary, a request will be submitted to the Commission. The proposed reclamation plan is aligned with the long-term concept envisioned by the City, and the City fully supports the development agreement executed by the City and Luminant in a special City Council Meeting held on October 16, 2018 (a copy of which is included within the introduction section of Supplement No. 1). Once completed, this reclamation plan will result a higher and better use for the area. Depictions of the long-term concepts for the subject area and other supportive documentation provided by the City are included in Appendix 139(E) (Supplement No. 3).
- (i). Luminant provided revised Tables 139(a)-1, Plate 139-2-1, and Plate 139-3-1. Staff noted in its TA that H-03 Permanent Impoundment was not addressed in the application but is solely a part of the revision application. In Supplement No. 3, Luminant provided preliminary detailed design plans for the H-03 Permanent Impoundment in section .148 (Appendix D), satisfying this concern in meeting the requirements of §12.148(c) of the Regulations.
- (j). In its TA, Staff noted concerns that application Tables 139 E-1 and 139 E-2 indicated that Luminant would remove topsoil from beneath Suitable Material Stockpile Nos. 1 and 2 due to a shortage of SPGM in these two stockpiles. In Supplement No. 3, Luminant revised Tables 139 E-1 and 139 E-2 and confirmed that its reclamation strategy does not contemplate borrowing material underlying the stockpiles. Updated Tables 139 E-1 and 139 E-2 were provided to indicate that the recoverable material volumes for Highwall Zones 2 and 3 are 66,031 lcy and 118,855 lcy, respectively, and the required volumes for the two zones are just 29,831 lcy and 49,255 lcy, respectively. The recoverable material volumes for Stockpile Nos. 1 and 2 are 316,200 lcy and 79,000 cy, respectively, and the required suitable material for these two stockpiles are zero (0) lcy. In its TA Addendum No. 2, Staff concurred that the numbers in Table 139 E-2 match those in Table 139 E-1 and satisfied regulatory requirements. Staff further concurred as satisfactory Luminant's confirmation that the material underlying the two stockpiles is undisturbed native material and that Luminant would not remove this material.
- (k). Staff noted concerns in its TA regarding clarity of Luminant's plan for the development and storage of suitable material in Stockpile Nos. 3 and 4. Staff requested a more detailed plan, specifically the materials to be used for placement on the surface slope in Zone 1, where subgrade material would be moved within Zone 1, and clarification of the destination of material proposed to be recovered from Zone 1. In Supplement No. 2, Luminant supplemented section .139 and indicated that the overlap of Stockpile No. 1 and Stockpile No. 2 is to be stored in Stockpile Nos. 3 and 4 prior to subgrade development. Luminant also supplemented section .139 and Figure 139-E-2 to provide clarifying details on the stockpile configurations

and movement of materials, as well as plans for slope reduction in Zone 1, resulting in a ground surface approximately equal to the amount of surplus material. In its TA Addendum No. 1, Staff concurred that this component of the proposed backfilling and grading plan met regulatory requirements.

- (l). Luminant revised the proposed reclamation plan narrative in Supplement No. 3 to clarify the use of suitable material for the reclamation of Zone 1 and Highwall Zones 2 and 3 and the composition of the postmine top four feet of earth material. In TA Addendum No. 2, Staff concurred that Luminant's revised plan confirmed that the borrow areas of Zones 2 and 3 were located within the highwall areas, and that the remaining material in these two zones after the removal of suitable material from the top six feet would consist of suitable material based on the data from two continuous cores (Cores CC-01-05 and CC-02-05) located near these two zones [Finding of Fact No. 12(d), *supra*]. In Supplement No. 3, Luminant also indicates that the highwall will be reduced and graded to blend with the proposed postmine topography as shown in Figure 139-E-1.
 - (m). In response to the ALJ's inquiry letter, Luminant responded by letter dated October 1, 2021, that approved Permit No. 5G and Luminant's Application No. 34 contain overburden core data from the actual source material for the subgrade stockpile, groundwater and surface-water data, data from piezometers surrounding the subgrade stockpile which is located near H-03 Pond, runoff data from the subgrade stockpile, and data on the groundwater seeps between the subgrade stockpile and H-03 Pond.¹ This information, contained in both the approved permit and pending revision Application No. 34, demonstrates that it is unlikely that acid-forming or toxic-forming material impacts to the hydrology of the area will occur. Luminant has also assured Staff that the material in the subgrade stockpile will be graded to the proposed postmine slopes and, following an intensive subgrade sampling effort, will then be covered with suitable material stockpiled for that purpose to a minimum thickness of 4.0 feet in accordance with §12.386(a)(1) of the Regulations. By letter dated October 1, 2021, the City indicated that it fully supported Luminant's application.
14. The revision application does not propose any changes to §12.142 of the approved Permit No. 5G. Staff, in its TA, identified Application Deficiency No. 142-1, noting an absence of response in the revision application to §12.142 of the Regulations. The application, as supplemented, indicates that the requirements of §12.142 of the Regulations are addressed in section .142 of approved Permit No. 5G, and Revision No. 34 does not propose any changes to this section. In TA Addendum No. 2, Staff withdrew Application

¹ See Section .146(d) of the approved permit; *and see* Appendix 146(d)-I of the Application, contained in Supplemental Document No. 3 dated March 31, 2021, containing Golder's March 23, 2021 Technical Memorandum Regarding Updated Assessment of Hydrologic Conditions in Vicinity of Subgrade Stockpiles and H-03 Pond – Thermo Mine, Hopkins County.

Deficiency No. 142-1, finding that the proposed changes in the revision application do not impact the response contained in section .142 of approved Permit No. 5G.

15. Staff identified that the Fish and Wildlife Enhancements Map in the approved permit was incomplete and did not sufficiently meet the requirements of §12.144(3)(B), 12.380(a), and 12.142(2)(I) of the Regulations. Staff's key concern was the map only depicted general areas of enhancement, and did not depict "...locations for mitigation streams and wetlands, travel corridors, nest boxes, roosting boxes..." as specifically noted in the Regulations. Staff also raised concern regarding adequate "...identification of all land uses that provide habitat...". In section .144 of Supplement No. 3, Luminant provided a Conceptual Fish and Wildlife Enhancement Map in order to "expedite the processing of the application." Luminant stated that it was providing this map without prejudice to its position that the additional documentation was not required by the regulations. In its TA Addendum No. 2, Staff acknowledged the inclusion in the supplemented application a plan for reclamation using native grass pastureland, fish and wildlife habitat features, and several new riparian corridors connecting ponds in the H Area. Staff, however, basing its position on its interpretation of the identified Regulations, noted continuing concerns with revised Exhibit 144-1 in TA Addendum No. 2, concluding that the revised exhibit continues to not depict all of the required enhancement features, that it reveals a connectivity issue between the southeastern corner of the mine to other proposed or existing enhancement features, and that C-04 Pond and the H Area lack connectivity to the other enhancement features, and to wildlife movement across the landscape of the mine. Staff withdrew the application deficiency and instead proposed the adoption of a new permit provision regarding this issue.

- (a). In Staff's TA Addendum No. 2 dated July 12, 2021, Staff sponsored Permit Provision No. 5 that reads as follows:

Within 30 days of permit issuance, Luminant shall submit a revision to Exhibit 144-1, *Wildlife Enhancement Features*, and section .144 to update the map to reflect all of the required land-use types and enhancement measures locations with their associated descriptions, which may include mitigation of streams and wetlands, travel corridors between land-use types and the locations for nest boxes and roosting boxes as well as fringe wetland plantings, depressions, and areas that will replace streams (ephemeral and intermittent; qualifying as waters of the U.S., as well as others), as required by §12.144(3)(B) and §12.142(2)(1).

- (b). In response to the ALJ's inquiry letter dated August 5, 2021, Staff responded by letter dated August 18, 2021, that based on its evaluation of Exhibit 144-1, *Wildlife Enhancement Features*, as detailed in both TA Addendum No. 1 and No. 2, Luminant's submittal did not adequately depict all of the enhancements requested to be included by Staff. Also, some of the enhancements most recently submitted

would require Luminant to submit additional design plans for the ponds and riparian corridors that were included but not requested by Staff. Staff continued to support Permit Provision No. 5 as proposed due to the fact that Staff has been consistent and specific in their requests for the information from Luminant since the initial deficiency was written in the Initial TA for Revision No. 34 on December 19, 2019. Staff is simply requesting that Luminant address the connectivity issues detailed by Staff based on the approved postmine land use at the mine to ensure that fish and wildlife have adequate access to usable habitat to minimize impacts from the alteration of the landscape due to mining and reclamation activities.

- (c). For clarity the ALJ recommends that Staff sponsored Permit Provision No. 5 be modified for clarity. The Commission adopts new Permit Provision No. 5 (renumbered as Permit Provision No. 1) as follows, contained in Appendix I of this Order, which would require Luminant a time frame for submittal revisions to Exhibit 144-1.

New Permit Provision No. 1, as modified by the ALJ for clarity:

Prior to submittal of an application for Phase II release of reclamation obligations, Luminant shall submit and obtain approval of a revision to application section .144, including a revised Exhibit 144-1, *Wildlife Enhancement Features*, to update the plan and map to reflect all required land-use types and enhancement-measure locations with their associated descriptions, to include mitigation of streams and wetlands, travel corridors between land-use types, and the locations of nest boxes and roosting boxes, as well as fringe wetland plantings, depressions, and areas that will replace streams (ephemeral and intermittent) (qualifying as waters of the U.S., as well as others), as required by §12.144(3)(B). This revision application shall be processed in accordance with §12.226 of the Regulations.

16. The application, as supplemented, contains a plan for reclamation of the lands within the proposed permit area that meets the requirements of §134.092 of the Act and §12.145 of the Regulations.
- (a). A reclamation timetable for the H Area (Appendix 139-E) is contained on pages 139-E-1 and 2 of the application. The reclamation of the H Area will be completed in three zones (Finding of Fact No. 12(a), *supra*). The rough leveling and grading and SPGM placement activities in these three zones will be completed by the end of March 2022. Detailed design plans for the H-03 Permanent Impoundment will be submitted for approval in April 2022. Staff, in TA Addendum No. 2, confirms that the requirements of §12.145(b)(1) have been met.

- (b). A detailed estimate of the cost of reclamation required to be covered by the performance bond is contained in the application, as supplemented in Supplement No. 3, in accordance with §12.145(b)(2).
- (c). Luminant provided its reclamation cost estimate in Section .145, Appendix 145-H. Luminant's estimate of \$19,142,765 includes costs for mined areas, disturbed areas, and ancillary areas. Staff's reclamation cost estimate of \$19,683,539 is higher than Luminant's estimate, and the difference is primarily due to differences in the equipment and equipment rates used by Staff and Luminant. (TA Addendum No. 2, page 16).
17. The application, as supplemented, in accordance with §12.145(b)(3), includes a plan that shows the final surface configuration of the permit area. In its TA, Staff identified concerns with Luminant's proposed reclamation cost estimate (RCE). In Supplement No. 2, Luminant provided an explanation that its RCE included a worst-case-pit and worst-case backfilling estimate. Staff concurred, but noted further concerns with the revised H-Area grading plan, height (volume) of suitable material, and potential presence of acid-forming and toxic-forming materials (AFM/TFM) in the near subsurface. Luminant provided proposed slopes and confirmed that a final subgrade-soil intensive-sampling plan will be conducted. Staff compared the premine slopes with the proposed postmine slopes (shown in the following table) and determined that the increase in the steeper slope category appears to result from the areas surrounding proposed permanent ponds but nevertheless meets the character of the premine topography.

Slope	Premine Study Area		Proposed Postmine Study Area		Proposed Change	
	(Acres)	(%)	(Acres)	(%)	(Acres)	(%)
0-5	3,361	80.6	3,443	78.6	-188	-2.0
5-10	748	16.6	652	14.5	-96	-2.1
10-15	100	2.2	190	4.4	+90	+2.2
>15	27	0.6	112	2.5	+85	+1.9
	4,506	100.0	4,506	100.0		

The application, as supplemented, addressed many of Staff's concerns but continued to note an issue with respect to plans for materials proposed for placement in the postmine top four feet. In Supplement No. 3, Luminant provided a revised reclamation-plan narrative clarifying the use of suitable material for the reclamation of Zone 1 and Highwall Zones 2 and 3. In TA Addendum No. 2, Staff indicated that this issue would be adequately addressed, meeting the requirements of §12.145(b)(3), with adoption of Staff's proposed new Permit Provision No. 4. Following review of Staff's language for proposed Permit Provision No. 4 contained in TA Addendum No. 2, Luminant proposed revised language for this proposed permit provision in its proffered draft proposed order that is acceptable to SMRD. The revised, agreed wording of proposed Permit Provision No. 4. is as follows: "Luminant shall submit the analytical results from the 'Leveled Subgrade Intensive Sampling Procedure' described on pages 139-C-2 and 139-C-3 of the Permit No. 5G

Revision No. 34, and await Commission approval or further guidance if necessary to address AFM/TFM identified that might contribute to acid mine drainage, prior to placement of the top 4.3 feet of suitable material.”

- (a). Luminant has included in Supplement No. 3 a plan for the removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of §§12.334-12.338 of the Regulations, as required by §12.145(b)(4). The information presented in Appendix 145-H-8 (Supplement No. 2) demonstrates that the suitable replacement material is a viable option.
- (b). The revision application does not change the approved permit as relevant to §12.145 of the Regulations. The approved permit, together with the revised reclamation plan contained in the application, meet the general requirements of §12.145 and the revegetation requirements of §§12.390-12.393 and 12.395.
- (c). Staff confirmed in TA Addendum No. 2 that the revision application, including new Permit Provision No. 1, meets the requirements of §12.145(b)(7) of the Regulations.
- (d). Luminant will comply with the requirements of the Clean Air Act and Section 404 of the Clean Water Act.
- (e). In its TA Addendum No. 2, Staff sponsored a new permit provision to meet the requirements of §12.145(b)(3). In response to the ALJ’s inquiry letter dated August 5, 2021, Staff responded by letter dated August 18, 2021, that on July 15, 2021, it met with Luminant and modified the language of the proposed permit. Staff indicated that it agreed with the revised permit provision for the following reasons:

On pages 139-C-2 and 139-C-3 of Supplement No. 2 to Revision No. 34 application, Luminant proposed an intensive sampling plan titled “Leveled subgrade intensive sampling procedure” in which Luminant indicated that after the establishment of the subgrade material, an intensive sampling procedure would be executed before the replacement of the top 4.3 feet of suitable material. Soil samples from the subgrade material would be collected from the 0-1 ft, 1-2 ft, 2-3 ft and 3-4 ft increments at a density of one sample per acre for each affected grid (5.7 acres) and not composited by depth or horizontally. The parameters would be analyzed as identified in the initial soil testing plan as well as Boron, Cadmium, Selenium and the exchangeable cations, including Aluminum. In the event the testing results identify potential problem areas, liming or removal of material would be applied, as necessary, to the appropriate depths to correct the issue. After the subgrade was established and all remedial issues had been resolved, the area would be covered with approximately 4.3 feet of suitable material to establish the suitable layer and the Initial Soil Monitoring procedure would be applied.

One of the purposes of sponsoring Permit Provision No. 4 in Staff’s TA Addendum No. 2 was to put a stop between the establishment of subgrade material and before

the placement of the 4.3 feet suitable material so that Staff has time to review and evaluate the soil testing results and ensures the quality of the subgrade material. Luminant addressed this purpose in its revised Permit Provision No. 4 by stating that Luminant would submit the soil testing results and await Commission approval or further guidance if necessary to address AFM/TFM identified that might contribute to acid mine drainage prior to placement of the top 4.3 feet of suitable material.

The other purpose of Permit Provision No. 4 in Staff's TA Addendum No. 2 was for remediation if the testing results identify AFM/TFM in the subgrade material. Luminant included the statement for remediation in its intensive soil testing procedure described on pages 139-E-2 and 139-E-3 of Revision No. 34 application. Luminant indicated that "in the event the testing results identify potential problem areas, liming or removal of material would be applied, as necessary, to the appropriate depths to correct the issue. After the subgrade was established and all remedial issues had been resolved, the area would be covered with approximately 4.3 feet of suitable material to establish the suitable layer and the Initial Soil Monitoring procedure would be applied". In addition, Luminant indicated in the revised Permit Provision No. 4 that Luminant will await Commission approval and further guidance if necessary to address AFM/TFM identified that might contribute to acid mine drainage prior to placement of the top 4.3 feet of suitable material.

- (f). By letter dated August 18, 2021, Staff indicates that the parties agreed to revise Staff's sponsored Permit Provision No. 4 to read as follows:

Luminant shall submit a report of the analytical results from the "Leveled Subgrade Intensive Sampling Procedure" described on pages 139-E-2 and 139-E-3 of Permit No. 5G, Revision No. 34, and shall obtain Commission approval, or further guidance if necessary, to address AFM/TFM identified that might contribute to acid mine drainage, prior to placement of the top 4.3 feet of suitable material.

For clarity the ALJ recommends that the agreed Permit Provision No. 4 be modified for clarity. The Commission adopts new Permit Provision No. 4 (renumbered as Permit Provision No. 2, in Appendix I to this Order), revised for increased clarity, as follows:

New Permit Provision No. 2, as modified by the ALJ, for clarity:

Luminant shall submit a report of the analytical results from the "Leveled Subgrade Intensive Sampling Procedure" described on pages 139-E-2 and 139-E-3 of Permit No. 5G, Revision No. 34 (Supplement No. 3), and shall obtain Commission approval of the data report prior to placement of the top 4.3 feet of suitable material. If acid-forming and/or toxic-forming materials (AFM/TFM) are identified, Luminant shall obtain

further direction from the SMRD Director, as necessary, to address remediation of the identified AFM/TFM.

18. Luminant proposes changes to the approved permit regarding §12.146 of the Regulations, providing updated Tables 146(d)-2 and 146(d)-3, which contain data regarding long-term groundwater monitoring wells, an updated Figure 146(d)(2) (in Supplement No. 3, as corrected), on which Luminant depicts the locations of proposed long-term groundwater monitoring wells and long-term surface-water monitoring stations, and a new Technical Memorandum, *Updated Assessment of Hydrologic Conditions in Vicinity of Subgrade Stockpile and H-03 Pond - Thermo Mine, Hopkins County*, dated March 23, 2021, in which Luminant updates a previous Technical Memorandum dated May 14, 2018.
 - (a). Luminant has provided satisfactory information to meet §12.146(b) regarding the groundwater monitoring plan and §12.146(d), the groundwater probable hydrologic consequences (PHC) determination. In TA Addendum No. 1, Staff concluded that after having received documentation on December 3, 2019, confirming that Monitoring Well TLT-14-UB-19 had been installed, existing Permit Provision No. 3 was moot and no longer needed to be retained. Staff did note a related issue, requesting the relevant well-completion information for well TLT-14-UB-19, including a lithological log, the screen size, casing type, and top of casing. Luminant responded to Staff by letter dated August 7, 2020, with receipt acknowledgment from Staff by letter dated September 9, 2020. Luminant further updated figures and tables in Supplement No. 3 to include this Supplementation. The technical memo indicates that a nearby long-term monitoring well exists near the subgrade stockpile and H-Area Final Pit. Further, Luminant committed to collecting two additional quarters of water levels from the piezometers, as documented in the technical memo. In TA Addendum No. 2, Staff states that Luminant's revised Table 146(d)-2, Figure 146(d)-2, and Appendix 146(d)-I, which contains additional quarterly period of measurement data for the piezometers, plus a commitment to conduct two more quarterly periods of such measurements, is satisfactory. Staff considers four quarters of measurements to be sufficient to characterize the groundwater conditions.
 - (b). In TA Addendum No. 1, Staff indicated that the LTGM plan need to be amended to incorporate four piezometers and H-03 Permanent Impoundment. Luminant confirmed in Supplement No. 3 that this information is currently being collected from spoil monitoring well 3-2018.
19. Staff also noted an issue in TA Addendum No. 1 that Luminant need to further document that the surface-water quality has been protected by handling earth materials, groundwater discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage, as required by §12.349(a). In Supplement No. 3, Luminant provided an update to the technical memorandum dated March 20, 2021, appropriately indicating that earth materials in the vicinity of the subgrade stockpile and H-Area Final Pit were handled in a manner that minimizes the formation of acidic toxic damage. The existing permit, as

updated in the application, meets the requirements of §12.146. The application includes a description, as required by §12.146, of measures that were or might be taken to protect the hydrologic balance of the surface-water and groundwater systems within the permit area and adjacent areas; to prevent damage outside the permit area; to meet water-quality laws; and to protect groundwater and surface-water users. Staff's supplemental response dated October 1, 2021, indicates that the current CHIA remains valid and that the operations proposed in this revision application are designed to prevent damage to the hydrological balance outside the proposed permit area. Staff affirmatively recommends that the necessary statutory and regulatory findings that are required under the Act, Section 134.006, and the Coal Mining Regulations, Section 12.216, have been met.

20. The application as proposed by Luminant contains changes to the approved permit regarding the requirements of §12.147 of the Regulations, requesting approval of updated Tables 147-1 and 147-2 and an updated Plate 147-1, on which Luminant describes and depicts postmine land uses. Staff noted in TA Addendum No. 1 that Luminant's proposed revision for the H Area was inconsistent with the Development Agreement and the City's long-term development plans for the use of the area. Staff noted the following changes in Table 147-1:

Land-Use Category	Approved Revision No. 31 Postmine Area (Acres)	Proposed Revision No. 34 Postmine Area (Acres)	Difference (Acres)
Pastureland	2,497	2,494	-3
Fish and Wildlife Habitat	777	777	0
Forestry	578	586	+8
Developed Water Resources	342	338	-4
Industrial/Commercial	2	2	0
Residential	0	0	0
Undeveloped	1	1	0
Cropland	0	0	0
Totals	4,197	4,198	+1

In response to this issue, Luminant provided an explanation in Supplement No. 3 that it proposes to reclaim the subject area to pastureland and developed water resources, consistent with currently approved postmine land uses for Permit No. 5G and as supported by the present surface owner (City). Pastureland land use will be established using approved grass species, and cultural practices described in the permit will be utilized to manage the land for its intended use during the five-year period of extended responsibility until full release of reclamation obligations. While Luminant cannot predict how any long-term use will be executed by the current or any subsequent landowner after Phase III release, the City has documented its full support of the application throughout the docket. Luminant intends to fully demonstrate the utility and capacity of the reclaimed land to support a variety of sustainable alternative uses (in this case, pastureland and developed

water resources) as supported by the landowner and in keeping with §12.147 and §12.399 prior to release of Phase III reclamation obligations. Staff noted for the record that an area southwest of E-01 Pond contains what appears to be an unreclaimed borrow area and that Luminant had indicated in a May 28, 2020, email to Staff that this is a county quarry area that was never disturbed by mining. Staff concluded that while this is not an impediment to the approval of Luminant's proposed postmine land use plan, Luminant needed to submit a revision to the postmine land-use plan for this area to show it as undisturbed. It is noted, however, that the subject quarry area southwest of E-01 Pond is outside the footprint of the proposed revision application, and no change to it is proposed by Luminant in this docket.

21. Luminant meets the requirements of §12.148 (ponds, impoundments) of the Regulations. In its TA, Staff identified that detailed design plans for H-03 Permanent Impoundment (currently identified as the H-Area end pit, needed to be provided. In Supplement No. 3 in Appendix 148-D, Luminant provided preliminary detailed design plans for the H-03 Permanent Impoundment. In TA Addendum No. 2, Staff concurred that the plans provided meet the requirements of §12.148 of the Regulations.
22. In its TA, Staff indicated that the requested revision represents a significantly different situation with respect to surface-water control and diversions than encountered during contemporaneous mining and reclamation, as required by §12.150 of the Regulations. Staff further indicated that it therefore was unable to evaluate this section due to incomplete information in the application. Staff requested detailed information addressing the requirements of §12.150 (Diversions). This issue continued to be noted in TA Addendum No. 1. In Supplement No. 3, Luminant provided a revised application section .150, although it indicated that the reclamation plan proposed in the application did not impact the information as contained in approved Permit No. 5G. Luminant also verified that the proposed reclamation plan does not contribute additional drainage to the approved surface-water control plan and that no modification to the H-01 Permanent Impoundment surface-water control is proposed. Staff concurred in TA Addendum No. 2 that the requirements of §12.150 of the Regulations have been met.
23. Staff indicated in TA Addendum No. 1 that the reclamation-plan changes requested in this revision represent a significantly different plan with respect to road systems and support facilities than was contemplated during contemporaneous mining and reclamation under the approved permit, and requested that Luminant also address the requirements of §12.154 by describing the road systems and support facilities now contemplated in the H Area. Luminant indicated in Supplement No. 2 that no primary road detailed design plans are contained or proposed in the application. A road schedule is included in Table 154-1 of the application (Supplement No. 3) and reflects proposed reclamation dates. The system of roads is depicted on Plates 139-1-1 through 139-1-5. No conveyors or rail systems are proposed in the application. Roads that are no longer needed to support mining will be reclaimed. Certifications for primary roads not proposed in this application will be provided in detail to the Commission approximately six months prior to the desired

construction date. Culverts will be installed in drainageways along the roadway, as needed. The alteration of a natural drainageway during construction of a road is not proposed by Luminant. In TA Addendum No. 2, Staff indicated that the application, as supplemented, meets the requirements of §12.154 of the Regulations regarding road systems and support facilities.

24. The permit application, as supplemented, and as modified by the permit provisions contained in Appendix I, meets the requirements §12.216 of the Regulations as set out below and as included in the Findings of Fact.
- (a). The permit application, as amended and supplemented, is accurate and complete. All requirements of the Act and Regulations have been met as set out in these Findings of Fact with the inclusion of the permit provisions set out in Appendix I to this Order.
 - (b). Luminant has demonstrated that reclamation operations, as required by the Act and the Regulations, can be feasibly accomplished under the reclamation plan contained in the permit revision application, as supplemented, with adoption of the proposed permit provisions contained in Appendix I to this Order.
 - (c). The approved application permit area is not within an area designated as unsuitable for surface mining (§§12.74 - 12.85 of the Regulations) nor involved in a proceeding seeking to designate the area as unsuitable for surface mining (§§12.78 - 12.85 of the Regulations).
 - (d). The information provided in the application, as supplemented, is adequate to address the requirements of §12.116 of the Regulations. All required fees have been paid. Luminant is current in payment of required franchise taxes. The report from the Applicant/Violator System (AVS) database (operated by the Office of Surface Mining) is contained in Appendix VI of Staff's TA Addendum No. 2; the information in the AVS database indicates that there are no pending violations that remain uncorrected, or the violations are in the process of being corrected or are subject to a valid, good faith appeal of the alleged violation. Luminant has demonstrated compliance with §12.215(e) of the Regulations and has satisfied the requirements for submissions and demonstrations under §12.216(7) of the Regulations.
 - (e). The AVS report has been reviewed. The report included no indication that required reclamation fees have not been paid.
 - (f). The proposed operations to be performed at the Monticello Thermo Mine will not be inconsistent with other surface mining and reclamation operations in areas adjacent to the existing permit area.
 - (g). Luminant currently has a collateral bond for its statewide mining operations in place in an amount of \$975,000,000. No changes to Luminant's existing blanket collateral

bond are necessary as a result of this permit revision. The approved bond is sufficient and will remain in place. No additional bond is required.

- (h). The approved application has, with respect to prime farmland, addressed in this application the requirements of §12.201 of the Regulations.
 - (i). The postmining land uses of the permit revision area meet the requirements of the Regulations; the proposed postmining land uses are approved in accordance with this Order and the requirements of §12.339 (Regulations).
 - (j). All specific performance-standard approvals required under Subchapter K of the Regulations have been made by the Commission.
 - (k). The Monticello Thermo Mine activities will not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. §1531 *et seq.*).
 - (l). The requirements in §12.390 for a long-term, intensive agricultural postmine land use are not applicable because no postmine cropland land use is planned or required.
25. Official notice has been taken of the current franchise tax account status pages available on the Texas Comptroller of Public Accounts' website that evidence an active right to transact business in Texas. Luminant and Vistra Asset Company LLC, Luminant Mining Company LLC's corporate parent, have paid all franchise taxes due. The parties were afforded the opportunity to contest official notice of the documents prior to their admittance into the record.
26. On April 1, 2021, Luminant submitted Revision No. 44 requesting approval of an updated reclamation cost estimate and its associated bond map. By letter dated June 25, 2021, the SMRD Director approved Luminant's Revision No. 44, Bonding Information Update. In this docket, Staff revised its reclamation cost estimate for Permit No. 5G to reflect cost estimate in the amount of \$19,683,539.
27. The Commission adopts Staff's most recent cost estimate of \$19,683,539 as the amount required to reclaim the permit area should reclamation be performed by a third-party at the direction of the Commission because it is sufficient to assure the completion of the reclamation in the event of forfeiture. Staff's reclamation cost estimate is lower than the currently approved reclamation cost estimate for the Monticello Thermo Mine (\$19,758,158, approved in Revision No. 44).

- (a). Luminant's accepted bond for all of its statewide mining operations is a blanket collateral bond in the amount of \$975,000,000 [Docket No. C16-0021-SC-00-E²]. Luminant's current bond exceeds the sum of the estimated reclamation costs for its statewide mines, including the proposed decreased bond amount attributable to the Monticello Thermo Mine. The \$975,000,000 amount is in excess of the existing reclamation costs for the permitted mines. Therefore, no changes to Luminant's existing blanket collateral bond are necessary as a result of this permit revision, and the Commission may issue the revised permit upon approval of the subject application.
- (b). By letter dated August 18, 2021, Staff indicated that the total aggregate reclamation cost estimates for Luminant's Texas mines sums up to \$931,729,365. Luminant's collateral bond amount exceeds the sum of the estimated reclamation costs for its Texas mines by \$43,270,635. An increase to Luminant's collateral bond amount will not be required. Based on the information provided, the proposed bond amount is sufficient to cover the cost of reclamation. In that letter, Staff provided a table that list the current minimum required reclamation bond amount for the Luminant mines, including the Monticello Thermo Mine, as follows:

Mine Name	Permit Number	Reclamation Cost Estimate Date	Minimum Required Bond Amount/ Reclamation Cost Estimate
Monticello Thermo Mine	5G	Pending in this Order	\$19,683,539
Big Brown Mine	3F	December 6, 2017	\$16,363,718
Martin Lake Mine	4L	March 19, 2020	\$149,473,704
Monticello Winfield Mine	34F	November 6, 2019	\$126,109,272
Oak Hill Mine	46C	July 5, 2017	\$149,439,526
Three Oaks Mine	48C	March 26, 2021	\$112,968,369
Bremond Mine	49C	November 16, 2015	\$28,799,866
Kosse Mine	50C	November 18, 2020	\$192,897,214
Leesburg Mine	51	May 3, 2016	\$4,886,759
Martin Lake AIV South Mine	53	June 6, 2014	\$40,448,786
Turlington Mine	54A	January 9, 2017	\$37,952,426
Monticello Thermo A-1 Mine	56	January 6, 2016	\$3,487,626
Liberty Mine	58A	June 17, 2020	\$49,218,560
		Total Aggregate Recl. Cost	\$931,729,365
		Approved Collateral Bond	\$975,000,000

² Commissioner Order dated September 27, 2016, order accepting blanket collateral bond in the amount of \$975,000,000 for Luminant Mining Company LLC's statewide surface mining and reclamation operations for the permitted mines, consisting of: Permit Nos. 3F (Big Brown Mine), 4K (Martin Lake Mine), 5G (Monticello Thermo Mine), 34F (Monticello Winfield Mine), 46C (Oak Hill Mine), 48C (Three Oaks Mine), 49A (Bremond Mine), 50B (Kosse Mine), 51 (Leesburg Mine), 53 (Martin Lake ATV South Mine), 54A (Turlington Mine), 56 (Thermo A-1 Mine), and 58 (Martin Lake Liberty Mine).

Mine Name	Permit Number	Reclamation Cost Estimate Date	Minimum Required Bond Amount/ Reclamation Cost Estimate
		Excess Bond Amount	\$43,270,635

- (c). The Regulations at §12.306(a) state that liability under a performance bond shall continue until all reclamation, restoration and abatement work required of persons who conduct surface coal mining and reclamation operations under requirements of the Act, the Regulations, and the provisions of the permit has been completed, and the permit terminated by release of the permittee from any further liability in accordance with §§12.312 and 12.313; addressing procedures, criteria, and schedule for release of performance bond.
- 28. The proposed order was properly circulated to the parties, and the required public posting of the consideration of this application by the Commission has occurred.
- 29. This application was processed in accordance with the procedures contained in the Regulations, Act, Commission’s *Practice and Procedure*, and in accordance with the Administrative Procedure Act.

CONCLUSIONS OF LAW

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

- 1. The Commission has jurisdiction under §§134.051 and 134.075 of the Act and §12.216 of the Regulations to approve this application for permit revision as contained in this Order, and as set out in Appendix I to this Order.
- 2. Proper notice of the application was provided in accordance with the requirements of the Act, §§134.058 and 134.059; the Regulations, §12.207; the Commission’s *Practice and Procedure*, 16 TAC §1.1 et seq.; and the Administrative Procedure Act (APA), Tex. Gov’t Code Ch. 2001 (Vernon Supp. 2021). No public hearing was required. Open meeting notice has been made as required.
- 3. The application for revision of Permit No. 5G, with references to the approved permit and with the permit provisions (Appendix I), meets all requirements for approval as set out in the Act, the Regulations, the APA, and the Commission’s *Practice and Procedure*, as set forth in the Findings of Fact.
- 4. Staff’s proposed Permit Provision Nos. 4 and 5 are necessary to meet the requirements of the Regulations, are modified for clarity and appropriateness, and are renumbered as Permit Provision Nos. 2 and 1, respectively.

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5. A reclamation cost estimate for the Monticello Thermo Mine in the amount of \$19,683,539 is sufficient to ensure completion of the reclamation plan if the work has to be performed by a third-party at the direction of the Commission in the event of forfeiture.

IT IS THEREFORE ORDERED that the Findings of Fact and Conclusions of Law and permit provisions contained in this Order are hereby adopted;

IT IS FURTHER ORDERED that Luminant Mining Company LLC's application, as supplemented, for revision of Surface Mining and Reclamation Permit No. 5G is approved as set out in this Order;

IT IS FURTHER ORDERED that Permit No. 5G is hereby revised to allow commencement of the revised activities proposed by the application, as supplemented, in accordance with the permit provisions and this Order;

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 the cumulative approved and proposed reclamation costs of Luminant Mining Company LLC's permits; and

Luminant Mining Company LLC
Docket No. C19-0020-SC-05-B

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 December 7, 2021.

RAILROAD COMMISSION OF TEXAS

DocuSigned by:
Wayne Christian
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CHAIRMAN WAYNE CHRISTIAN

DocuSigned by:
Christi Craddick
15494B7DF4CC424

COMMISSIONER CHRISTI CRADDICK

DocuSigned by:
Jim Wright
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COMMISSIONER JIM WRIGHT

ATTEST:
DocuSigned by:
Callie Farrar
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SECRETARY



Luminant Mining Company LLC
Docket No. C19-0020-SC-05-B

Appendix I

APPENDIX I - PERMIT PROVISIONS

1. Prior to submittal of an application for Phase II release of reclamation obligations, Luminant shall submit and obtain approval of a revision to application section .144, including a revised Exhibit 144-1, *Wildlife Enhancement Features*, to update the plan and map to reflect all required land-use types and enhancement-measure locations with their associated descriptions, to include mitigation of streams and wetlands, travel corridors between land-use types, and the locations of nest boxes and roosting boxes, as well as fringe wetland plantings, depressions, and areas that will replace streams (ephemeral and intermittent) (qualifying as waters of the U.S., as well as others), as required by §12.144(3)(B). This revision application shall be processed in accordance with §12.226 of the Regulations.

2. Luminant shall submit a report of the analytical results from the "Leveled Subgrade Intensive Sampling Procedure" described on pages 139-E-2 and 139-E-3 of Permit No. 5G, Revision No. 34 (Supplement No. 3), and shall obtain Commission approval of the data report prior to placement of the top 4.3 feet of suitable material. If acid-forming and/or toxic-forming materials (AFM/TFM) are identified, Luminant shall obtain further direction from the SMRD Director, as necessary, to address remediation of the identified AFM/TFM.