



RAILROAD COMMISSION OF TEXAS

SURFACE MINING AND RECLAMATION DIVISION

ADVISORY NOTICE

ADVISORY ID:
AD-BO-312

REVISION NO.:
2

EFFECTIVE DATE:
April 16, 2010

SUBJECT: Application for Bond or Reclamation Liability - Contents and Processing Procedures

APPROVAL

TITLE: Director

I. PURPOSE

Provide guidance to coal mining permittees regarding the content and requirements for administrative processing of an application for release of bond or reclamation liability. Failure to provide the information specified in this advisory notice may result in a determination that the application is incomplete. An incomplete application will be returned to the permittee.

II. REGULATION REFERENCE

Texas Coal Mining Regulations, TEXAS ADMIN. CODE §§12.312 and 12.313
TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon 2009)

III. TIMING OF APPLICATION FOR RELEASE OF RECLAMATION LIABILITY OR BOND

- A. An application shall be filed with the Commission requesting the release of all or part of the reclamation liability for the entire permit area or incremental area, if all of the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished.
- B. Applications may be filed only at times or during seasons authorized by the Commission in order to properly evaluate the completed reclamation operations.
 - a. Applications for Phase I release may be submitted at any time of the year, provided all of the requirements of the reclamation plan have been met for this phase of release.
 - b. Applications for Phase II or III release shall be submitted at least 30 days before the average first frost and no sooner than 30 days before the average last frost for the area unless otherwise specified in the approved reclamation timetable for that particular permit. These submittal times are based on:
 - i. average first freeze dates in the fall and last freeze dates in the spring at all mines in Texas as determined by Texas Agrilife Extension Service which can be found at the following website: <http://aggie-horticulture.tamu.edu/extension/homeguide>,
 - ii. the dormant condition of most permit-approved species during this span,
 - iii. the requirement that all interested parties be given sufficient notice (14 days minimum) prior to an inspection of the area requested for release; and
 - iv. the inspection of the area requested for release must be conducted within 30 days of receipt of an application.
- C. The boundary for all areas proposed for release must be marked in the field prior to the SMRD inspection of the area requested for release.
- D. Data submitted to demonstrate achievement of vegetative ground cover and productivity performance standards for any area requested for Phase II or III release shall be submitted at least 60 days prior to submittal of an application for release of reclamation liability. The application for release shall not include such data; rather, the respective Commission approval date(s) shall be referenced in the approved application. If it has been more than two years since the last ground cover and stem count data has been collected, the permittee must submit for review, at a minimum, a qualitative evaluation of the vegetation for the area requested for release.

IV. APPLICATION CONTENTS: CLERICAL/NOTIFICATION INFORMATION

All applications for release of reclamation liability shall identify or contain the following information:

- A. Permit number and approval date.
- B. Draft newspaper public notice (Attachment A - Template).
- C. Draft announcement letters to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the surface mining and reclamation activities took place for the area requested for release. Adjoining property owners include surface owners, owners of surface lease interests, easements and surface residents.
- D. An original signed notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan.

E. Names and addresses of surface property owners, owners of surface lease interests, and agencies with jurisdiction over or an interest in property within or adjoining the areas proposed for release (paper and digital (MS WORD or EXCEL format).

V. MAPS (scale 1" = 500' or larger provided in paper and digital format)

Maps must be provided that show the following items/features within, encompassing, or associated with the areas proposed for each phase of release as described in the following table:

Item	Phase I	Phase II	Phase III
Areas proposed for release	✓	✓	✓
Identifiers for each parcel proposed for release	✓	✓	✓
Property tracts within and adjoining	✓	✓	✓
Permanent structures/features ¹	✓	✓	✓
Bonding status (e.g., mined, disturbed, ancillary)	✓	✓	✓
Soil-testing grids	✓		
Waste-disposal areas	✓		
Sedimentation ponds	✓	✓	
Sedimentation pond watersheds		✓	
Postmine land uses		✓	✓
Extended responsibility areas (ERAs)		✓	✓
Land management unit boundaries		✓	✓
Stream-monitoring stations			✓
Long-term ground-water monitoring wells			✓

¹ Includes approved ponds, pond inlets, diversions, roads, drop structures, and small depressions

VI. SUPPORTING INFORMATION

The following supporting information is required to be included with the application for release of reclamation liability:

Item	Phase I	Phase II	Phase III
Dates the area was mined and when final grading was completed	✓		
List of soil-testing grids and copies of approval letters	✓		
List of waste-disposal areas	✓		
List of sedimentation ponds to which release-area drainage flows	✓	✓	
List of permanent structures/features and copies of approval letters (Phase I Only)	✓	✓	✓
Acreage within each bonding category (mined, disturbed, etc.) for each phase of release requested	✓	✓	✓
Copies of approval letters for current postmine land use and alternative postmine land use consultations		✓	✓
Extended responsibility period (ERP) initiation dates and copies of acknowledgement letters		✓	✓
Sedimentation-pond discharge data and an evaluation of that data and comparison to effluent limitations Texas Pollutant Discharge Elimination System discharge permit		✓	
Planting dates along with vegetative species planting list approval dates and copies of approval letters		✓	✓
List of soil-fertility sampling units and copies of approval letters			✓
List of land management units		✓	✓
Dates of vegetative cover/productivity findings and copies of approval letters		✓	✓
Ten-percent-random soil-testing data (if applicable) and copies of approval letters			✓
Long-term ground-water and surface-water monitoring data			✓
Evaluation of long-term ground-water and surface-water monitoring data and comparison of the data to baseline information, State and federal effluent standards and the approved probable hydrologic consequences (PHC) determination			✓
A demonstration that all wells and other drilled holes and exposed underground openings have either been: (1) transferred as a water well under §12.351; (2) capped, sealed, backfilled, or otherwise properly managed (§12.333); or, retained if needed for continued monitoring.			✓

VII. PUBLIC NOTICE ANNOUNCEMENT OF APPLICATION FOR RELEASE OF RECLAMATION LIABILITY OR BOND

The permittee is required to publish an announcement of the application for release of bond or reclamation liability in a local newspaper with general circulation in the locality of the surface mining operation at least once a week for four consecutive weeks. A draft announcement shall be included with the application for release. The announcement shall conform to that shown in Attachment A and shall contain the following information:

- A. Permittee's name and address.
- B. Mine name, permit number and date approved. Precise location (geographical reference) of the mine.
- C. The phase of reclamation and associated acreage being requested for release.
- D. Precise location (geographical reference or map) of the area requested for release.
- E. The type and appropriate dates that reclamation work was performed and the results achieved as they relate to the operator's approved reclamation plan.
- F. The approved bond amount and the amount of bond obligation reduction being requested, if any.

VIII. ADMINISTRATIVE PROCESSING OF APPLICATION FOR RELEASE OF RECLAMATION LIABILITY OR BOND

The following procedure shall be followed in processing the application for release of bond or reclamation liability:

- A. Within three (3) days of receipt of the application by the SMRD, the draft public notice and a draft adjoining landowner and agency application announcement letter, will be sent to the Office of General Counsel - Hearings Section (OGC-HS) for a legal sufficiency review. A hearings examiner will be assigned to review the documents as to the sufficiency of the wording and provide comments to the applicant within ten (10) days of receipt by OGC-HS.
- B. Upon being notified by OGC-HS that the public notice is satisfactory, the applicant shall have the public notice published at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The applicant's announcement letters shall also be sent to appropriate individuals and agencies at this time.
- C. The applicant shall submit, within thirty (30) days after Hearings Examiner approval of the public notice, an original publisher's affidavit of publication, the public notice "tear sheets" and copies of the application submission announcement letters, to the SMRD.
- D. Upon receipt of proof of public notice and adjoining landowner and agency letter notice by SMRD, the application will be considered administratively complete and transferred to OGC-HS for docketing. The application transfer date to OGC-HS marks the beginning of the adjudicative review process and the sixty-day (60) time period [§12.312(c)] in which the Commission will notify the applicant of its decision to release or not release all or part of the performance bond, if no public hearing is held.
- E. The SMRD will file its administrative and technical review of the application, SMRD public notice requirements and recommendation regarding the request for release, with the applicant and the hearings examiner, no later than ten (10) days after the application was transferred to OGC-HS.

IX. ATTACHMENT

Template - Public Notice of Application for Release of Reclamation Liability

**PUBLIC NOTICE OF APPLICATION RELEASE OF RECLAMATION LIABILITY (or bond)
FOR SURFACE COAL MINING AND RECLAMATION PERMIT**

PERMIT NO. (permit number), (name of applicant)'S (name of mine) MINE
DOCKET NO. (Docket No.), (number of acres) ACRES (for each phase or grouped phase of release)

Pursuant to Section 134.128 - 134.134 of the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. (Vernon 2009) (update as necessary) and Texas Coal Mining Regulations, TEXAS ADMIN. CODE §§12.312-12.313, (name of applicant) (business address of applicant) (city, state & zip code of applicant) has submitted its application to the Railroad Commission of Texas for (full)(partial) release of reclamation performance bond obligations for a portion of its (name of mine) Mine, Permit No. (permit number) in (name of county) County, Texas. The (name of mine) Mine permit area is located in (name of county) County, Texas, approximately (number of miles from the nearest major town or city) miles (geographical situation e.g. north, south, etc. from the nearest town or city) of (name of nearest major town or city). Permit No. (permit number) was approved on (date of Commission order approving permit and any applicable renewal).

The applicant requests a (full)(partial) release of (Phase I, II, or III and acreage requested for each) reclamation obligations for backfilling, regrading, drainage control (60%) and an additional amount as determined by the Commission for revegetation and/or completion of the extended responsibility period of (number of years, as applicable) on (number of acres) acres. The areas requested are located (include clear description or map depicting precise location of areas requested). Mining operations were conducted on (number of acres) acres and (number of acres) acres were disturbed by mining-related activities (describe) in (dates of disturbance). Final grading was accomplished on these areas in (applicable dates), and in (applicable dates) (names of vegetation) was planted (as applicable). (Include dates of placement into extended responsibility period). The approved postmine land use is (describe, as applicable). The acreage requested for release contains (number and type of permanent structures).

The accepted bond for Permit No. (permit number) is (amount of accepted bond). The applicant requests a bond reduction of up to (amount). (or: The applicant does not seek adjustment to the approved bond as a result of this application; however an eligible bond reduction amount may be determined.)

Interested persons are invited to submit written comments on the application within thirty days after the last date of publication of this notice in a local newspaper. All written comments, objections, or request for public hearing or informal conference on the application should be directed to:

John E. Caudle, Director
Surface Mining and Reclamation Division
(or: name, Hearings Examiner, Office of General Counsel) (if proposal is part of another docketed application for which public notice is also being made)
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711-2967

A copy of the complete application may be inspected in the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas; (at the Commission's Regional Office located 2202 Old Henderson Hwy, Tyler, TX) and in the Office of the (name of county) County Clerk, (location of county clerk's office, including street address), Texas. The application may be supplemented and should be reviewed periodically.