Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 1, 2011

TO: Persons on the attached mailing list.

RE: Luminant Mining Company LLC
Permit No. WQ0004122000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Hopkins County Clerk's Office, 128 Jefferson Street, Suite C, Sulphur Springs, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

(1) Your name, address, daytime telephone number, and, if possible, a fax number.

(2) If the request is made by a group or association, the request must identify:

(A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and

(B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

(3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

(4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at http://www.tceq.state.tx.us/about/comments.html or by mail to the following address:

Melissa Chao, Acting Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

Melissa Chao

Melissa Chao
Acting Chief Clerk

MC/lg

Enclosure

MAILING LIST
for
Luminant Mining Company LLC
TPDES Permit No. WQ0004122000

FOR THE APPLICANT:

Joel Palin
Luminant Mining Company LLC
500 North Akard Street, LP12-080B
Dallas, Texas 75201

PROTESTANTS/INTERESTED PERSONS:

Linda Tucker, Founder and Chairman
East Texans Coalition for Clean Air
1613 Lakeshore Drive
Sulphur Springs, Texas 75482

FOR THE EXECUTIVE DIRECTOR via electronic mail:

Anthony Tatu, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Samuel Trevino, Technical Staff
Texas Commission on Environmental Quality Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK via electronic mail:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

2011 MAY 27 PM 3:10
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TPDES PERMIT NO. WQ0004122000

APPLICATION BY	§	**BEFORE THE**
Luminant Mining Company	§	**TEXAS COMMISSION**
FOR TPDES	§	**ON**
PERMIT NO. WQ0004122000	§	**ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on **Luminant Mining Company LLC's** application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section (§) 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received faxed comments from Linda Tucker of the East Texans Coalition for Clean Air. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

Luminant Mining Company LLC, which operates Monticello-Thermo Lignite Mining Area, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0004122000 to authorize the

addition of a 286-acre Thermo A-1 Auxiliary Area located adjacent to the existing Northern Boundary of the Monticello-Thermo Lignite Mining Area.

The current permit authorizes the discharge of mine drainage and surface runoff from the active mining area, groundwater, and previously monitored effluents (surface runoff from post mining areas and previously monitored Outfall 001 effluent on an intermittent and flow variable basis via Outfall 101 and treated domestic wastewater at a daily average flow not to exceed 2,600 gallons per day via Outfall 201) on an intermittent and flow variable basis via Outfall 001.

The facility is located on State Highway 11, approximately 2.5 miles southeast of the intersection of State Highway 11 and Interstate Highway 30, Hopkins County, Texas 75482.

The effluent is discharged to an unnamed tributary; thence to Rock Creek; thence to White Oak Creek; thence to Sulphur/South Sulphur River in Segment No. 0303 of the Sulphur River Basin.

Procedural Background

The application was received on June 30, 2010, and declared administratively complete on August 16, 2010, and declared technically complete on November 2, 2010. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published in the *Sulphur Springs News Telegram* on September 14, 2010 and the *La Prensa Hispana* on September 15, 2010. The Notice of Application and Preliminary Decision (NAPD) was published in the *Sulphur Springs News Telegram* on January 20, 2011 and the *La Prensa Hispana* on January 12, 2011. The public comment period closed on February 22, 2011. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

Access to Rules, Laws and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- to access the Secretary of State website: www.sos.state.tx.us;
- for TCEQ rules in Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select "TAC Viewer" on the right, then "Title 30 Environmental Quality");
- for Texas statutes: www.capitol.state.tx.us/statutes/statutes.html;
- to access the TCEQ website: www.tceq.state.tx.us (for downloadable rules in WordPerfect or Adobe PDF formats, select "Rules, Policy, & Legislation," then "Rules and Rulemaking," then "Download TCEQ Rules");
- for Federal rules in Title 40 of the Code of Federal Regulations: www.epa.gov/epahome/cfr40.htm ; and
- for Federal environmental laws: www.epa.gov/epahome/laws.htm.

Commission records for this facility are available for viewing and copying. Those records are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Hopkins County Clerk's Office, 128 Jefferson Street, Suite C, Sulphur Springs, Texas.

COMMENTS AND RESPONSES

COMMENT 1:

Linda Tucker is concerned that lignite is a known carcinogen and it causes many health problems. Additionally she stated that if you overlay the Texas Coal Mines Map/Lignite Mines Map with Texas Coal Burning Plants Map, and the Texas Cancer Map, they are barely indistinguishable. She commented that Lignite mining is being

banned all over the world; why not here in Texas? Ms. Tucker further commented that Texas has the worst Co2 emissions in the United States and that people are sick and getting sicker; why?

RESPONSE 1:

It is the purpose of the Texas Surface Water Quality Standards (TSWQS), 30 Texas Administrative Code (TAC) Chapter 307, to maintain the quality of water in the state and to be protective of human health, terrestrial wildlife, livestock, domestic animals, and aquatic life along the discharge route. The designated uses and associated criteria in Appendix A of the TSWQS for Segment 0303, Sulphur/South Sulphur River, was used to evaluate the permit application. Segment 0303 has the following designated uses: high aquatic life use and contact recreation. The draft permit has been designed to protect human health resulting from contact recreation, consumption of aquatic organisms, and consumption of drinking water. It has also been designed to preclude adverse toxic effects on aquatic life, terrestrial wildlife, livestock, or domestic animals resulting from contact, consumption of aquatic organisms, or consumption of water. The water quality permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes and coastal waters. The wastewater permitting process does not evaluate Co2 emissions, nor the banning of Lignite mining in any area, nor the reasons that people are becoming sick. TCEQ does not have jurisdiction to address concerns such as those listed in Comment number 1 above in the wastewater permitting process.

COMMENT 2:

Linda Tucker inquired about the waterways Monticello Mine involves or intends to involve with their disposal process.

RESPONSE 2:

The effluent from the facility is discharged to an unnamed tributary; thence to Rock Creek; thence to White Oak Creek; thence to Sulphur/South Sulphur River in Segment No. 0303 of the Sulphur River Basin. The unclassified receiving waters have limited aquatic life use for the unnamed tributary and intermediate aquatic life use for Rock Creek. The designated uses for Segment No. 0303 are high aquatic life use and contact recreation. In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Rock Creek, which has been identified as having intermediate aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

COMMENT 3:

Linda Tucker inquired about the precautions Monticello Mine intends to implement to secure clean water and air, and what their current precautions are. She also requested definitive reports on all Texas Coal Mines.

RESPONSE 3:

The permit application review for a TPDES permit is limited to the wastewater treatment or disposal operations proposed at the facility. Wastewater at the Monticello Mine is processed in the following way: Mine pit and surface water runoff from active mining areas and groundwater discharge at the Monticello Mine are routed to active mining sedimentation ponds prior to discharge via Outfall 001; a polyelectrolyte may be

added to the wastewaters to facilitate settling of solids. Mine pit and surface water runoff from post mining areas and groundwater discharge are routed to post mining sedimentation pond(s) prior to discharge via Outfall 101; a polyelectrolyte may be added to the wastewaters to facilitate settling of solids. Sanitary wastewater generated at the coal loading station is routed for treatment by extended aeration, clarification and disinfection by chlorine. Solids are aerobically digested and hauled to the City of Paris wastewater treatment facilities. The pretreated sanitary wastewaters are discharged via Outfall 201 are commingled with active mining related wastewaters for discharge via Outfall 001.

As stated in the previous response, In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Rock Creek, which has been identified as having intermediate aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Additionally, technology-based effluent limitations have been included in the draft permit at Outfall 001 to ensure compliance with 40 CFR §434.11(j)(1). New source performance standards at Subpart E apply to the post mining area discharges. 40 CFR Part 434, Subpart F - Miscellaneous Provisions also applies. To comply with 40 CFR Part 434 each individual settling pond was considered a point source for meeting the applicable effluent guidelines. Therefore, the draft requires that the permittee sample and analyze at a minimum frequency of once per two weeks for active mining area ponds and once per month for post mining area ponds. The permittee shall monitor the effluent discharge from each retention pond constructed and operated under this

permit, except for: (a) effluent discharges from retention ponds in a series, which shall be sampled at a point from the last pond in the series; and (b) effluent discharges from multiple retention ponds commingled in a pipe or a man-made conveyance structure before discharging into waters of the state, which shall be sampled at a point prior to mixing with other waters. The permittee shall submit the effluent discharge monitoring data collected for the prior calendar quarter pursuant to the monitoring and reporting requirement to the TCEQ Enforcement Division and to the TCEQ Region 5 office. The effluent discharge monitoring data reported the preceding two years shall be submitted by the permittee as an attachment to all permit renewal and amendment applications. Selenium at Outfall 001, aluminum at Outfall 101, and DO at Outfall 201 are based on BPJ and are continued in the draft permit from the existing permit.

COMMENT 4:

Linda Tucker inquired about the underground areas that are compromised by all Texas mines; including maps showing how deep and how wide they are, specifically involving communities.

RESPONSE 4:

When evaluating an application for a wastewater discharge permit, the TCEQ does not consider the underground areas involved with Texas mines. These issues are under the jurisdiction of the Texas Oil and Gas Commission.

COMMENT 5:

Linda Tucker requested up-to-date EPA readings for air, water, ground; Heavy Metals Testing; pesticides and hazardous particulates testing involved with Lignite Mining and stated that her Coalition wants these tests done on air, water, ground, animal, and human populations.

RESPONSE 5:

Any request for testing by the Environmental Protection Agency should be directed to the EPA Regional office in Dallas, Texas.

COMMENT 6:

Linda Tucker requested that the Texas Coal Mines/Luminant/TXU be investigated for illegal procedures and asked if they are following State/Federal regulated guidelines.

RESPONSE 6:

The draft permit, and previous drafts of the permit, was developed according to the applicable state and federal rules and requirements. A review of the facility's compliance history was completed as part of this permit action. This review, from June 30, 2005 to September 22, 2010 showed that the facility had no exceedence of their permit limitations. The TCEQ also received approval of the draft permit from the Environmental Protection Agency in January 2011. Therefore, the TCEQ believes the draft permit meets all applicable state and federal rules regarding wastewater discharge permitting.

COMMENT 7:

Linda Tucker inquired about Governor Rick Perry accepting money from TXU/Luminant. She also inquired about lobbyists or related entities accepting gratuities, and how many of our Texas politicians, State and or Federal agencies, hold interest in TXU/Luminant/coal mining; and what subsidiaries or entities are involved and getting a kickback.

RESPONSE 7:

As previously stated, the permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes and coastal waters. TCEQ does not have jurisdiction to address concerns such as those listed in Comment 7 above in the wastewater permitting process.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes were made to the draft permit based on the comments received.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark Vickery
Executive Director

Robert Martinez, Director
Environmental Law Division

Anthony Tatu, Staff Attorney
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REPRESENTING THE
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