

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C18-0011-SC-59-E  
APPLICATION BY MARSHALL MINE, LLC  
ACCEPTANCE OF REPLACEMENT SURETY BOND  
PERMIT NO. 59, MARSHALL MINE  
HARRISON AND PANOLA COUNTIES, TEXAS**

**ORDER ACCEPTING REPLACEMENT SURETY BOND**

Statement of the Case

Marshall Mine, LLC, P.O. Box 790, Marshall, Texas 75671, holds Railroad Commission of Texas (Commission) Permit No. 59 for the Marshall Mine located in Harrison and Panola Counties, Texas. The permit area is currently bonded by a surety bond issued by Argonaut Insurance Company in the amount of \$20,000,000 that was accepted by Commission Order dated January 27, 2015. Marshall Mine, LLC now request acceptance of a replacement surety bond to provide reclamation performance bonding for the permit area. The proffered bond for acceptance is a surety bond issued by Argonaut Insurance Company in the amount of \$30,000,000.

The subject bond was submitted to the Commission's Surface Mining and Reclamation Division (SMRD) to provide additional bonding required for activities proposed in its application for renewal/revision of Permit No. 59 that is currently pending (Docket No. C17-0018-SC-59-C). During the pendency of the renewal/revision application, which also proposes to consolidate Marshall Mine LLC's facilities Permit No. 57 into Permit No. 59, additional permit revisions have been submitted to SMRD that request approval of activities that may result in an increase in the reclamation cost estimate. To account for the anticipated increase, Marshall Mine, LLC has requested the Commission consider the subject bond application prior to the resolution of Docket No. C17-0018-SC-59-C.

The Commission finds that the proffered replacement surety bond issued by Argonaut Insurance Company in the amount of \$30,000,000 will be sufficient in form and substance and may be accepted to replace the existing surety bond in the amount of \$20,000,000.

**FINDINGS OF FACT**

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

1. Marshall Mine, LLC, P.O. Box 790, Marshall, Texas 75671, holds Permit No. 59 for the Marshall Mine located in Harrison and Panola Counties, Texas. By letter dated November 28, 2017, Marshall Mine, LLC requests acceptance of a replacement surety bond, No. SUR0027682, by Argonaut Insurance Company in the amount of \$30,000,000 to provide required reclamation performance bonding for approved operations under the permit. The application with exhibits (Bond Package) was filed with the Railroad Commission of Texas (Commission) pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ch. 134 (Vernon Supp. 2018) (Act) and the Commission's "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch.12 (Thomson West 2018) (Regulations). By letter dated March 20, 2018, the Director

of the Commission's Surface Mining and Reclamation Division (SMRD or Staff) transferred the Bond Package, including all original bond instruments, to the Hearings Division, along with the Commission's Office of General Counsel's (OGC) legal review of the materials dated March 16, 2018.

2. The current reclamation performance bond for Permit No. 59 is a surety bond, No. SUR0026986, issued by Argonaut Insurance Company in the amount of \$20,000,000 that was accepted by Commission Order dated January 27, 2015 (Docket No. C15-0007-SC-59-E). Marshall Mine, LLC requests the existing surety bond be replaced by the subject surety bond, No. SUR0027682, in the amount of \$30,000,000; increasing the total bond amount for the permit by \$10,000,000.
3. The subject surety bond has been submitted on a Commission form for surety bond, SMRD-42C (Tab 2, Bond Package). The proffered instrument purports to replace two bonds for the Marshall Mine issued by Argonaut Insurance Company, Nos. SUR0026986 and SUR0027676. The Commission currently holds bond No. SUR0026986 for the permit (Finding of Fact No. 2, *supra*). Bond No. SUR0027676 was never filed with, or accepted by, the Commission. By letter dated February 28, 2019, Marshall Mine, LLC stated that Bond No. SUR0027676 was included on the subject bond erroneously and provided a draft of the bond. The draft instrument, in the amount of \$200,000, was issued by Argonaut Insurance Company for the Marshall Mine in October 2016 but was never executed by Marshall Mine, LLC, the Principal, as required. No permit number is identified on the instrument and there is no indication the bond was accepted by the Commission. However, the inclusion of Bond No. SUR0027676 on the proffered bond does not affect the validity of the instrument provided in the application. The Commission may accept the proffered bond, No. SUR0027682, to replace the current bond, No. SUR0026986.
4. The Act and Regulations direct that the Commission shall determine the amount of bond required based on the costs of reclamation and shall periodically adjust the amount of bond required. The current reclamation cost estimate for Permit No. 59 in the amount of \$17,636,817 was approved administratively in Revision No. 15 on February 1, 2017. The amount of the proffered surety bond, \$30,000,000, exceeds the approved estimate of reclamation costs for the permit and is sufficient for work that may be performed by a third-party at the direction of the Commission in the event of forfeiture. The subject replacement bond was originally submitted to provide additional bonding required for activities proposed in its application for renewal/revision/consolidation of Permit No. 59 that is currently pending (Docket No. C17-0018-SC-59-C; application submitted: July 31, 2017).<sup>1</sup> However, by letter dated February 19, 2019, Marshall Mine, LLC requested the Commission consider the subject bond application prior to the resolution of Docket No. C17-0018-SC-59-C due to activities proposed in separate permit revision applications that, if approved, may result in an increase in the reclamation cost estimate.
5. Argonaut Insurance Company, licensed as a surety in Texas, issued the proffered surety bond. Required licensing information from the Texas Department of Insurance has been provided. Marshall Mine, LLC submitted a copy of the Certificate of Authority from the

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<sup>1</sup> Marshall Mine, LLC proposes to consolidate its facilities Permit No. 57 into Permit No. 59 in the application that is the subject of Docket No. C17-0018-SC-59-C.

Texas Department of Insurance, Certificate No. 14321, dated April 11, 2007, certifying that Argonaut Insurance Company is authorized to transact business as a surety in Texas (Tab 7, Bond Package). The administrative law judge has taken official notice of documentation obtained from the Texas Department of Insurance's website, accessed on February 20, 2019, showing that the insurance company has an active Texas license and is currently licensed as a surety. Copies of the information were provided to the parties.

6. Marshall Mine, LLC, a Delaware corporation, is authorized to transact business in Texas. Marshall Mine, LLC submitted a "Franchise Tax Account Status" showing that it has the right to transact business in Texas as of August 27, 2014 (Tab 5, Bond Package). However, Staff's attorney's review of the application noted that Marshall Mine, LLC forfeited its existence pursuant to Section 171.309 of the Texas Tax Code, Tex. Tax Code Ch. 171, on July 28, 2017 (Attachment 3, Office of General Counsel Review Memorandum dated March 16, 2018). Following an inquiry from Staff's attorney, Marshall Mine, LLC provided a letter of reinstatement from the Office of the Secretary of State dated March 6, 2018 (Attachment 4, Office of General Counsel Review Memorandum dated March 16, 2018). Additionally, the administrative law judge has taken official notice of updated information showing Marshall Mine, LLC and Caddo Creek Resources Company, LLC, the operator of the mine, are authorized to transact business in Texas based on information obtained from the Texas Comptroller of Public Accounts website on February 20 and 26, 2019, respectively. The entities are listed as active, indicating that they are current in the payment of franchise taxes. Copies of the information were provided to the parties.
7. The bond and other documents submitted provide all required information for acceptance of the bond. Documentation has been submitted to demonstrate that the requirements for surety bond set out in the Act and Regulations have been met.
  - (a) A surety bond is an acceptable form of bond pursuant to §12.308(a)(1). The surety bond is properly executed.
    - (i) The submitted bond is signed on behalf of Argonaut Insurance Company by Kathleen M. Coen, Attorney-in-Fact. Documents demonstrating Ms. Coen's authority to bind the surety were submitted in the form of an Original Power of Attorney from Argonaut Insurance Company that was certified by the Senior Vice President of the surety, sworn before a notary, to be in full force and effect on September 7, 2017, the date the proffered bond was signed (Tab 2, Bond Package). The Original Power of Attorney contains an original corporate seal.
    - (ii) The submitted bond is signed on behalf of Marshall Mine, LLC by Marc Maloney, Manager, Marshall Mine. A person authorized to act for Marshall Mine, LLC as evidenced by an "Assistant Secretary Certificate" (Tab 3, Bond Package), provided a "Manager's Certificate" dated November 16, 2017 stating that Mr. Maloney was an acting Manager of Marshall Mine, LLC on September 7, 2017, the date that he signed the surety bond (Tab 4, Bond Package).

- (b) Marshall Mine, LLC is authorized to transact business in the state and Argonaut Insurance Company is a corporate surety licensed to do business in Texas in accordance with §12.309(f)(1) of the Regulations (Finding of Facts Nos. 5 and 6, *supra*).
  - (c) The proffered surety bond contains all other provisions required by the Act and Regulations. The bond is conditioned upon faithful performance of all the requirements of the Act, permit, reclamation plan, and Regulations. The bond contains a provision that it shall remain in full force and effect for the duration of the reclamation obligation in accordance with the Regulations. The bond is non-cancelable during its term pursuant to §12.309(f)(2). Staff filed its Staff attorney's legal review dated March 16, 2018 of the materials submitted; the analysis indicates that Marshall Mine, LLC has met all requirements for compliance.
  - (d) The bond provides a mechanism for the surety to give prompt notice to the Commission in compliance with §12.309(e) of the Regulations of any notice received or action filed alleging the insolvency or bankruptcy of the surety company or alleging any violation which would result in suspension or revocation of the surety's license to do business in Texas.
  - (e) The bond must be in an amount sufficient to cover the costs of reclamation of disturbed lands within the permit area should a third-party complete reclamation at the direction of the Commission in the event of forfeiture. The proffered bond is in an amount that is greater than the reclamation costs (Finding of Fact No. 4, *supra*).
  - (f) The Texas Department of Insurance (TDI) is responsible for review of a surety's financial status. The Commission has no financial criteria for sureties set out in the Regulations. Financial documents must be filed with the TDI. Although not required, Tab 8 of the Bond Package consists of a notarized financial statement of Argonaut Insurance Company showing the financial condition of the company on December 31, 2016.
8. The proffered surety bond will remain in effect according to its terms, unless released or replaced by Commission Order. Pursuant to §12.309(c), Marshall Mine, LLC, as permittee, must complete the reclamation obligations for the mine as required by the Act, Regulations and conditions of the permit. If Marshall Mine, LLC does not complete reclamation as required by the Act and Regulations, then the surety is liable on its bond.
  9. The proffered replacement bond assumes any liability which has accrued against the permittee on the permit area pursuant to §12.310 of the Regulations.
  10. Marshall Mine, LLC's request for acceptance of the surety bond is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. §134.127 (Vernon Supp. 2018) (Act) and §§12.308-12.309 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2018) (Regulations).
  11. Bond coverage has been continuous and with acceptance of the proffered surety bond will continue uninterrupted.

12. Acceptance of the proffered bond is not a bond release or a release of any reclamation obligations; no public notice is required other than notice of the Commission meeting to consider the matter. The proffered bond will bond the permit area in the required amount until all reclamation within the permit area has been completed and the Principal/Permittee and surety have been released from liability or until the bonds are replaced.
13. This order was circulated to Marshall Mine, LLC, Staff and Argonaut Insurance Company. Marshall Mine, LLC and Staff, the only parties to the proceeding, submitted written waivers of preparation and distribution of a Proposal for Decision in this matter.
14. Open meeting notice of Commission consideration of this matter has been provided in accordance with the Administrative Procedure Act, Gov't Code §551.041.
15. The Commission may accept the proffered surety bond for reclamation performance for Permit No. 59.

### **CONCLUSIONS OF LAW**

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

1. All required notice for consideration of this matter has been provided.
2. The surety bond supplied by Marshall Mine, LLC and Argonaut Insurance Company, No. SUR0027682, is in proper form, and is in excess of the required amount to ensure reclamation of the permit area. The surety bond meets the requirements for an acceptable reclamation performance bond as set forth in Tex. Nat. Res. Code §§134.121 - 134.127 and §§12.308 - 12.309 of the Regulations.
3. All requirements of the Act and Regulations have been satisfied for acceptance of the surety bond.
4. The Commission is authorized by the Act and Regulations to accept the surety bond in the amount of \$30,000,000 to replace the surety bond in the amount of \$20,000,000.

**IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS** that the above Findings of Fact and Conclusions of Law are adopted;

**IT IS FURTHER ORDERED** that the surety bond, No. SUR0027682, issued by Argonaut Insurance Company in the amount of \$30,000,000 is accepted to provide reclamation performance bonding for required reclamation of approved operations under Permit No. 59, Marshall Mine;

**IT IS FURTHER ORDERED** that the surety bond, No. SUR0026986, in the amount of \$20,000,000 is hereby replaced;

**IT IS FURTHER ORDERED** that the surety bond, No. SUR0027682, issued by Argonaut Insurance Company will remain in place until released or replaced by Commission Order;

**IT IS FURTHER ORDERED** that the Commission may vary the total bond amount as affected land acreages are increased or decreased or where the cost of reclamation changes; and

**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** this March 26, 2019.

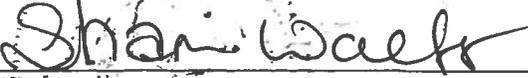
**RAILROAD COMMISSION OF TEXAS**

  
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**CHAIRMAN CHRISTI CRADDICK**

  
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**COMMISSIONER RYAN SITTON**

  
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**COMMISSIONER WAYNE CHRISTIAN**

ATTEST:

  
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deputy Secretary  
Railroad Commission of Texas