

RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

SURFACE MINING DOCKET NO. C14-0016-SC-01-E
Application by Alcoa Inc. for Acceptance of Replacement
Reclamation Bond, Collateral Bond and Letter of Credit, PERMIT NO. 1F
SANDOW MINE, LEE AND MILAM COUNTIES, TEXAS

ORDER ACCEPTING REPLACEMENT RECLAMATION BOND
FOR PERMIT No. 1F

Statement of the Case

The Railroad Commission of Texas issued Permit No. 1F to Alcoa Inc. (Alcoa), by Order dated August 19, 2009. The permit encompasses approximately 10,728.6 acres in Lee and Milam Counties, Texas of which 9,631.0 acres are currently covered under the reclamation bond following the approval administratively of Revision No. 40 by Staff on February 13, 2014. Alcoa requests that the Commission accept a replacement self-bond in the amount of \$27,250,000.00 to replace its currently accepted bond in the amount of \$56,000,000 accepted February 7, 2012. Despite recent releases from reclamation liability, Alcoa has not adjusted its bond since its acceptance on February 7, 2012.

The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2013) and the "Coal Mining Regulations," TEX. ADMIN. CODE Ch. 12 (West 2013). Based upon the documentation supporting the bond set out in Alcoa's application, Staff filings, including the Staff report of its reclamation cost estimate, and the Findings of Fact and Conclusions of Law set out in this order, the Commission determines that the collateral bond and letter of credit for reclamation performance meets requirements for reclamation performance bonding set out in §12.309(g) and (h) of the Regulations for collateral bond and letter of credit and that the bond in the amount of \$27,250,000 may be accepted to replace the currently accepted self-bond in the amount of \$56,000,000.

Alcoa and Intesa Sanpaolo S.p.A (“Bank”). have submitted documentation required for approval of the additional letter of credit. The Commission finds that the collateral bond and letter of credit and documentation submitted meet requirements of the Act and Regulations for acceptance.

If the Commission determines that the collateral bond and Letter of Credit No. 143095-793 is acceptable, it will provide required reclamation performance bonding for Permit No. 1F.

FINDINGS OF FACT

Based upon the evidence in the record, the Commission makes the following Findings of Fact:

1. By Commission Order dated February 7, 2012 the Railroad Commission of Texas (Commission) accepted the current reclamation self-bond for Permit No. 1F, Sandow Mine. The permit, held by Alcoa, is currently bonded in the amount of \$56,000,000 with a self-bond. By letter dated March 21, 2014, the Surface Mining and Reclamation Division of the Commission notified Alcoa that it was no longer in compliance with the self-bonding requirements of 12.309(i) and directed Alcoa to replace the existing \$56,000,000 self-bond. By letter dated April 16, 2014, Alcoa submitted a collateral bond with letter of credit issued by Intesa Sanpaolo S.p.A., (1 William St., New York, NY 10004). Acceptance of the proffered collateral bond and LOC No. 143095-793 issued by Intesa Sanpaolo S.p.A. Bank will provide reclamation performance bonding in the amount of \$27,250,000 and has an expiration date of April 14, 2015.

2. All evidence pertinent to the acceptance of the proffered bond has been filed in this docket. No notice is required other than open meeting notice and ten-day notice of the proposed order.
3. Previously in Docket No. C14-0010-SC-01-F Staff submitted an analysis and calculations for Revision No. 40 to Permit 1F. The administrative approval of Revision No. 40 resulted in an estimated cost for reclamation of \$27,091,226.
4. Legal staff of the Office of General Counsel reviewed the collateral bond and letter of credit as proffered. Based on the Staff reclamation cost, the proffered bond and LOC will ensure bonding in an amount sufficient to reclaim the permit area should a third party be required to reclaim the permit area at the direction of the Commission.
5. Authorized persons for Alcoa and for the issuing Bank signed the proffered LOC. Two Bank officers who are authorized to execute an LOC on behalf of the Bank signed the proffered LOC. Isabella Castrogiovanni, Vice President and Kenneth Leisenring, Assistant Vice President, are authorized to sign the document on behalf of Intesa Sanpaolo S.p.A.
6. The proffered amendment to LOC was submitted on the Commission's form for collateral bond and LOC (Form SMRD-44C). The proffered LOC states on its face that it will not expire until April 14, 2015 and will remain effective, unless released or replaced

through the expiration date. With acceptance of the LOC , bonding will be in a sufficient amount, unless revised activities are proposed and required to be bonded in an additional amount. Intesa Sanpaolo S.p.A with a branch in the state of New York in the is a bank authorized to do business in the United States, as required by §12.309(g)(1) of the Regulations for the issuer of an acceptable LOC (information provided by the applicant from the State of New York Nanking Department and attachments).

7. An ordering paragraph is included in this Order to ensure timely replacement of the collateral as set out in subparagraph (b) of this Finding of Fact.

(a). The Regulations at §12.309(a) require that the collateral bond itself must be in effect for the duration of the reclamation obligations on the affected lands; however, for the letter of credit collateral, the letter must be irrevocable during its term [§12.309(g)(2)]. The proffered LOC is irrevocable during its term. No specific term is prescribed for an LOC by the Regulations, other than that it be irrevocable during its term. §12.309(g)(2) further provides that an LOC used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the Commission if not replaced by another suitable bond or LOC at least 30 days before its expiration date.

(b). Specific findings and ordering paragraphs are included in this Order to require the filing of replacement collateral with sufficient time for review and acceptance by the Commission prior to the expiration of existing collateral (the LOC). Due to the presence

of a stated expiration date of the collateral and in order to maintain required bonding in a timely manner, the Commission finds that it is reasonable to require that Alcoa file any replacement bond and collateral required in a manner that will allow adequate time for review and determination by the Commission. The Commission finds that for orderly processing, review by Staff, and determination by the Commission of replacement bond instruments for the permit area to ensure reclamation, it is appropriate to require that Alcoa file an extension to the LOC or otherwise request the initiation of processing materials to replace the bond instrument and collateral no later than Thursday, January 15, 2015 (90 days prior to the expiration date) to provide for 60 days of review and adjustment of documents prior to the date the Commission must initiate forfeiture proceedings. The Commission approves a date of January 15, 2015 (90 days prior to April 14, 2015) for submittal of the bond instrument and related documents. The Commission must initiate bond forfeiture proceedings by Monday, March 16, 2015 if such documents are not submitted (30 days prior to expiration of the collateral).

8. The proffered LOC meets the three conditions set out in §12.309(g). The letter has been issued by a bank organized or authorized to do business in the United States [§12.309(g)(1)]. The letter is irrevocable during its term [§12.309(g)(2)]. The letter is payable to the Commission in part or in full upon demand and receipt of a notice of forfeiture issued in accordance with §12.314-317 of the Regulations [§12.309(g)(3)].
9. The Commission may adjust the amount of the performance bond applicable to the permit when the cost of reclamation changes [§12.307(a)].

10. Bond coverage has been continuous and with acceptance of the proffered collateral bond and LOC will continue uninterrupted. The proffered LOC when accepted will provide collateral until its expiration date for the bond for the permit area. The approved bond will remain in effect until all reclamation within the permit area has been completed and the principal released from liability or until the bond is increased, decreased, or replaced.
11. Open meeting notice of Commission consideration of this matter has been provided in accordance with the Administrative Procedure Act, GOV'T CODE §551.041 and 10-day written notice required by the APA has been provided.
12. The bond provides a mechanism for the permittee 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 bank or which could result in suspension or revocation of the bank's authority to do business. Intesa Sanpaolo S.p.A. is subject to the notice provision.
13. Alcoa, a Pennsylvania corporation, has complied with payment of corporation franchise taxes, as required by TAX CODE §§171.001 and 171.251 (Vernon Supp. 2013), with taxes paid through May 20, 2014.
14. The parties filed no exceptions to the proposed order. Staff filed comments regarding the proposed ordering paragraphs.

15. Alcoa has submitted information to address all requirements set out in the Act and Regulations for the collateral bond and LOC.

CONCLUSIONS OF LAW

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

1. All required notice for consideration of this matter has been provided. The Act at §134.121(a) provides, “After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file with the Commission, on a form prescribed and furnished by the Commission, a performance bond payable to this state and conditioned on the faithful performance of the requirements of this Chapter and the permit. The permittee has provided a bond as required by §134.121 of the Act. A collateral bond is a form of bond acceptable pursuant to §12.308(a)(2) of the Regulations. The Commission may accept the proffered collateral bond and LOC.
2. Pursuant to TEX. BUS. & COMM. CODE CH. 5 §5.106(a), a letter of credit is enforceable according to its terms against the issuer (Intesa Sanpaolo S.p.A.) for money payment when it is sent to the beneficiary (Commission). Pursuant to TEX. BUS. & COMM. CODE CH. 5, §5.103(d), the issuer of a letter of credit is not responsible for the performance or nonperformance of the

underlying contract (Alcoa's reclamation performance). The bond is an agreement between the permittee and the Commission, and the letter of credit is independent of the underlying obligation between the permittee and the Commission under Texas law. The Bank's obligation is by way of the LOC should Alcoa fail to meet its reclamation obligations to provide funds for reclamation.

3. The collateral bond and LOC in the amount of \$27,250,000 is sufficient to cover the costs of reclamation of the permit area should the Commission direct a third party to reclaim the permit area in the event of forfeiture based on Staff's most recent estimate of reclamation costs.
4. Pursuant to TEX. BUS. & COMM. CODE §5.106(a), the proffered LOC is enforceable between the issuer and beneficiary (Commission) according to its terms, including an expiration date of April 14, 2015. In accordance with the authority of the Commission in §134.011(4) of the Act to issue orders requiring that a permittee take actions that are necessary to comply with the Act and Regulations, the Commission may make reasonable provisions to ensure that replacement bonds are submitted in a timely manner. Alcoa must provide an extension to LOC No. 143095-793 or a replacement bond on or before January 14, 2015 to provide the Commission with sufficient time for review and action to ensure that appropriate bonding is maintained.
5. All requirements of the Act and the Regulations have been met for acceptance of the collateral bond and LOC. The Commission may accept the LOC. The Commission may

issue Permit No. 1F.

THEREFORE IT IS ORDERED that the above Findings of Fact and Conclusions of Law are adopted;

IT IS FURTHER ORDERED that the collateral bond with LOC No. 143095-793 issued by Intesa Sanpaolo S.p.A., in the amount of \$27,250,000 is sufficient to cover the costs of reclamation;

IT IS FURTHER ORDERED that the collateral bond and the irrevocable LOC No. 143095-793 issued by Intesa Sanpaolo S.p.A. are accepted;

IT IS FURTHER ORDERED that the existing requirement that Alcoa shall file an extension to the Intesa Sanpaolo S.p.A. LOC No. 143095-793 or a replacement bond in a sufficient amount on or before April 14, 2015 remains in place;


IT IS FURTHER ORDERED that the Commission may vary the total bond amount and the terms of acceptance from time to time as affected land acreages are increased or decreased or where the cost of reclamation changes.

DONE AT AUSTIN, TEXAS, this 17^h day of June, 2014.


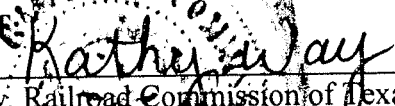
Alcoa Inc.
Docket No. C14-0016-SC-01-E
Application for Bond Acceptance

RAILROAD COMMISSION OF TEXAS


CHAIRMAN BARRY T. SMITHERMAN


COMMISSIONER DAVID PORTER


COMMISSIONER CHRISTI CRADDICK

ATTEST 

Secretary, Railroad Commission of Texas

RAILROAD COMMISSION OF TEXAS
Surface Mining and Reclamation Division
Collateral Bond for Surface Mining and Reclamation
Permit

Permit No.: 1F
Mine Name: ALCOA SANDOW MINE
Permittee: ALCOA INC.
(hereinafter referred to as the "Principal")

This instrument replaces an existing Alcoa Sandow Mine Permit 1F Self Bond instrument accepted by the Railroad Commission of Texas on February 7, 2012, in the amount of Fifty Six Million and No/100 United States Dollars (\$56,000,000.00).

KNOW ALL BY THESE PRESENTS:

WHEREAS, the above bound Principal submitted to the Railroad Commission of Texas, Surface Mining and Reclamation Division, an application for a permit to engage in surface mining, which application included a proposed reclamation plan; and

WHEREAS, the Principal's permit application (including the proposed reclamation plan) was approved on the 18th day of August, 2009; and

WHEREAS, issuance of a permit pursuant to such approved application (the "Permit") and retention of the Permit are conditioned on the Principal's posting bond to insure faithful performance of all requirements of the Principal under the Texas Surface Coal Mining and Reclamation Act, Texas Natural Resources Code, §134.001 *et seq.*, (hereinafter referred to as the "Act"); regulations adopted under the Act, 16 TAC § 12.1 *et seq.*, (hereinafter referred to as the "Coal Mining Regulations"); and the Permit as amended, renewed, revised, or replaced;

WHEREAS, the bound Principle has previously submitted to the Railroad Commission of Texas, Surface Mining and Reclamation Division, a self bond for Permit 1F (the "Existing Self Bond") in the amount of Fifty Six Million and No/100 United States Dollars (\$56,000,000.00); and

WHEREAS, in order to provide bond coverage for Permit 1F in the amount of Twenty Seven Million Two Hundred and Fifty Thousand and No/100 United States Dollars (\$27,250,000.00) and in order to replace the Existing Self Bond, the bound Principle has submitted to the Railroad Commission of Texas, Surface Mining and Reclamation Division this collateral bond (this "Collateral Bond") in the amount of Twenty Seven Million Two Hundred and Fifty Thousand and No/100 United States Dollars (\$27,250,000.00); and

THAT WE, Alcoa Inc., as Principal, are held and firmly bound to the State of Texas in the full sum of Twenty Seven Million Two Hundred and Fifty Thousand United States Dollars (\$27,250,000.00 U.S.), well and truly to be paid to the State of Texas in Austin, Travis County, Texas, and we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, the conditions of this obligation are such that if the above bound Principal shall faithfully and fully perform the requirements set forth in the Act, the Coal Mining Regulations, and the Permit, as now or hereafter amended, renewed, revised, or replaced, then this obligation shall be null and void; otherwise it shall remain in full force and effect. And the Principal, for value received, agrees that no amendment to existing law, rules, or regulations, no adoption of new laws, rules, or regulations, and no amendment, renewal, revision, or replacement of the Permit (including the reclamation plan) shall in any way alleviate its obligation on this bond.

To secure performance and payment in accordance with this bond, Principal has provided to the Railroad Commission of Texas (hereinafter referred to as the "Commission") an irrevocable Letter of Credit issued by Intesa Sanpaolo S.p.A., (hereinafter referred to as the "Bank"), in the amount of this bond. Such letter is attached (EXHIBIT "A") to this bond and fully incorporated herein.

The Principal and Bank agree that the letter of credit is irrevocable during its term and is payable in part or in full upon demand and receipt from the Commission of a notice of forfeiture issued in accordance with the Act and Regulations.

The Bank represents that it is organized or authorized to do business in the United States. Further, the Bank, agrees to give prompt notice to the Principal and to the Commission: (1) of any notice received or action filed alleging the absolving or bankruptcy of the Bank or which could result in suspension or revocation of the Bank's license to do business; or (2) if it becomes unable, or unwilling, to fulfill its obligation under the letter of credit. It is further agreed that upon the incapacity of the Bank by reason of bankruptcy, insolvency, or suspension or revocation of its license, the Principal shall be deemed to be without bond coverage in violation of the permit and shall discontinue surface mining operations until a replacement or substitute bond is approved.

If this is a replacement bond, principal further agrees that any liability which has accrued against it under the Act, the Coal Mining Regulations, or the Permit as originally issued, amended, revised, renewed, or replaced, is transferred to this Bond.

It is further agreed that if at any time the fair market value of the collateral securing this bond does not equal or exceed the amount of this bond, or, in this case of a letter of credit, the amended face of the letter, the Principal shall be deemed to be without bond coverage in violation of the Act, the Coal Mining Regulations, and the Permit, and the Principal shall discontinue surface coal mining operations until new performance bond coverage is approved. Notwithstanding the foregoing, however, nothing in this instrument shall be construed as a waiver of the Commission's ability to enforce the Act, the Coal Mining Regulations, or the Permit, or to seek bond forfeiture in accordance with the provisions of the Act, the Coal Mining Regulations, or this instrument.

It is agreed that this bond shall be in full force and effect for the duration of the reclamation obligation on the land affected by the Permit, as now hereafter amended, renewed, revised, or replaced or until the Principal is otherwise relieved of its obligation hereunder by order of the Commission.

EXHIBIT "A"

Schedule of Collateral ¹

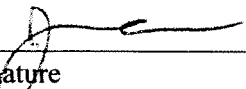
<u>Description</u>	<u>Value</u> ²
Intesa Sanpaolo S.p.A. Bank 1 William St., New York, NY 10004	\$27,250,000
Irrevocable Standby Letter of Credit Number: <u>143095-793</u> , dated <u>14</u> April, 2014	

¹ Collateral shall be cash, negotiable bonds of the United States, the State of Texas, negotiable certificates or irrevocable letters of credit.

² Value shall be fair market value.

IN WITNESS WHEREOF, the Principal has caused these presents to be duly signed and sealed
this 14TH day of April, 2014.

Alcoa Inc.
Principal
201 Isabella St., Pittsburgh, PA 15212
Address


By: 
Signature

John Kenna
Typed Name

Vice President Tax
Title

Attest: 

Accepted _____


CHAIRMAN, Railroad Commission of Texas


COMMISSIONER, Railroad Commission of Texas


COMMISSIONER, Railroad Commission of Texas

ATTEST: 

NOTE: The following documentation should be submitted with the original bond: (1) Appropriate collateral documentation; (2) for Principal, (a) original power of attorney, or (b) certified corporate resolution and certificate of incumbency for signatory; (3) for Bank, evidence of authority for signatory to bind bank under the bond.

FOR LETTER OF CREDIT OPTION

Intesa Sanpaolo S.p.A.
Bank
1 William St., New York, NY 10004
Address

By: 
Signature

KENNETH LEISENRING
Typed Name

ASSISTANT VICE PRESIDENT
Title

Attest: _____

Date: April 14, 2014

Name of Issuing Bank: Intesa Sanpaolo S.p.A.

Address: One William Street, New York, NY 10004

IRREVOCABLE STANDBY LETTER OF CREDIT NO.: 143095-793

TO: RAILROAD COMMISSION OF TEXAS
Attention: Surface Mining and Reclamation Division
P. O. Box 12967
Austin, Texas 78711-2967

This letter of credit covers surface mining and reclamation operations conducted by **Alcoa Inc. on behalf of Alcoa Inc. Sandow Mine Permit 1F**, 201 Isabella St., Pittsburgh, PA 15212 (Permittee) in the area covered by Surface Mining and Reclamation Permit No. **1F**, as now or hereafter amended, revised, renewed, or replaced (hereinafter referred to as Permit).

We hereby represent to the Railroad Commission of Texas that we are a bank (we may be hereinafter referred to as the "Bank") authorized to do business in the United States of America.

We hereby issue in favor of the Railroad Commission of Texas, Austin, Texas, our irrevocable standby letter of credit at the request of and in lieu of a surety bond for Permittee for an amount or amounts not to exceed in the aggregate **Twenty Seven Million Two Hundred And Fifty Thousand** United States dollars (**\$27,250,000.00 U.S.**), available by your drafts at sight on the Bank, effective April 14, 2014 and expiring ON EITHER A)- APRIL 14, 2015 OR B)- on the date we are provided with a letter from you stating that the Permittee has fully and faithfully performed all its obligations under the Permit and the Texas Surface Coal Mining and Reclamation Act, Texas Natural Resources Code, § 134.001 *et seq.*, (the Act) and regulations adopted under the Act, 16 TAC § 12.001 *et seq.* (hereinafter referred to as the "Coal Mining Regulations"). The Bank and Permittee further agree that the letter of credit shall be irrevocable during its term.

Bank: Intesa Sanpaolo S.p.A.

Irrevocable Standby Letter of Credit No. 143095-793

The documents specified below must be presented at sight on or before the expiry date in accordance with the terms and conditions of this letter of credit:

- A. This Irrevocable Standby Letter of Credit or a copy thereof; and
- B. A copy of the written findings required under 16 TAC § 12.314.

We engage with you that drafts drawn under and in conformity with the terms of this credit will be duly honored on presentation if presented to us at our office at the address shown above on or before the expiry date.

Bank: Intesa Sanpaolo S.p.A.
Irrevocable Standby Letter of Credit No. 143095-793

This credit is subject to the Uniform Customs and Practice of Documentary Credits (2007 Revision in force as of July 1, 2007) International Chamber of Commerce - Publication 600.

Documentation from the Bank establishing the authority of the signatories to this letter to bind the Bank is attached. Also, a copy of the bank charter or other evidence of the bank's authority to do business in the U.S, is attached.



AUTHORIZED COUNTERSIGNATURE

ISABELLA CASTROGIOVANNI, V.P.

Typed Name



AUTHORIZED SIGNATURE

KENNETH LEISENRING, A.V.P.

Typed Name

State of New York
Banking Department

WHEREAS, Banca Intesa S.p.A. is a foreign banking corporation organized under the laws of Italy and has its principal office and place of business in the city of Turin, Italy; and

WHEREAS, Banca Intesa S.p.A., as a result of a change of name has made application to the Superintendent of Banks for changing the name of its New York Branch located at: 1 William Street, New York, NY 10004, to **Intesa Sanpaolo S.p.A.**; and

WHEREAS, There appears to be no reasonable objection to change the name of the said New York Branch:

NOW, THEREFORE, I, DAVID S. FREDSELL, Deputy Superintendent of Banks of the State of New York, **DO HEREBY AUTHORIZE** the aforementioned change of name on or after the 6th day of April 2007.

Witness, *my hand and official seal of the Banking Department at the City of New York,*
this 24th day of April in the year two thousand and seven .


David S. Fredsell

Deputy Superintendent of Banks