

**RAILROAD COMMISSION OF TEXAS**  
**HEARINGS DIVISION**

**SMRD DOCKET No. C15-0007-SC-59-E**

**MARSHALL MINE, LLC**

**APPLICATION FOR ACCEPTANCE OF REPLACEMENT SURETY BOND FOR PERMIT No. 59  
MARSHALL MINE, HARRISON AND PANOLA COUNTIES, TEXAS**

**ORDER ACCEPTING REPLACEMENT SURETY BOND**

**Statement of the Case**

The Railroad Commission by Order dated February 12, 2013 approved Permit No. 59 for the Marshall Mine, in Harrison and Panola Counties, Texas. A reclamation performance bond for the Marshall Mine, a surety bond No. 105820262 issued by Travelers Casualty and Surety Company of America in the amount of \$20,000,000 was accepted by the Commission for the permit also by Order dated February 12, 2013. LLC now requests acceptance of a replacement surety bond to provide reclamation performance bonding for the permit area. The proffered bond requested for acceptance is a surety bond issued by Argonaut Insurance Company in the amount of \$20,000,000.

Notice of Commission consideration of this matter has been provided. This order has been circulated to the parties with an opportunity for the filing of exceptions and replies. The parties have filed waivers of the circulation of a Proposal for Decision.

The Commission finds that the proffered bond may be accepted and the existing surety bond replaced. Based on the evidence in the record, the Commission makes the following Findings of Fact, Conclusions of Law, and Order. The Commission finds that the surety bond is sufficient in form and substance and may be accepted to provide reclamation performance bonding for Permit No. 59.

**FINDINGS OF FACT**

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

1. Marshall Mine, LLC obtained approval of Permit No. 59 for the Marshall Mine Facilities Area Permit located in Harrison and Panola Counties, Texas, and obtained acceptance of a reclamation performance bond for the permit by Commission Orders dated February 12, 2013 (Docket Nos. C12-0001-SC-00-A. and C13-0011-SC-00-D, respectively). By letter dated September 10, 2014, Marshall Mine, LLC requests acceptance of a replacement surety bond, No. SUR0026986, issued by Argonaut Insurance Company in the amount of \$20,000,000 to provide required reclamation performance bonding and to replace the accepted bond, a surety bond, No. 105820262, issued by Travelers Casualty and Surety Company of America in the amount of \$20,000,000. The application was filed pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE CH. 134 (Vernon Supp. 2014) (Act) and the Commission's "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2014) (Regulations). The approved permit term is five years. The 2,422.9-acre permit area is located nine miles south of Marshall, Texas, 1.5 miles north of FM 794 and 1 mile east of State Highway (SH) 59 in Harrison and Panola Counties.
2. A permittee must provide a bond for reclamation performance to ensure that disturbed areas within the permit are successfully reclaimed. Marshall Mine, LLC filed additional materials by letters dated November 6, 2014 and December 11, 2014. The proffered surety bond has been submitted on a Commission form for surety bond.

3. 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. In accordance with the Regulations §12.304(d), the required amount shall be based on, but not limited to, the estimate submitted by the applicant, and that the Staff of the Surface Mining and Reclamation Division (Staff) shall also prepare a reclamation cost estimate. The most recent reclamation cost estimate approved by the Commission was approved in the application and bond approval February 12, 2013. Because current equipment costs and productivity calculations would result in a lower overall estimate, neither party submitted additional cost estimates. The area proposed for disturbance contains 567 acres to be bonded at the mined rate, 283 acres to be bonded at the disturbed rate, and 120 acres to be bonded at the ancillary rate bond map, Exhibit 143-3, bond areas, application, Docket No. C12-0001-SC-00-A. Marshall Mine, LLC and Staff submitted reclamation cost estimates as a part of the application docket. In of the application approved order (Docket No. C12-0001-SC-A), the Commission adopted Marshall Mine, LLC's reclamation cost estimate, \$18,884,619, that was in a greater amount than Staff's estimate. The approved estimate included a cost per acre of \$26,004 per acre for 567 acres of mined area, \$8,309 per acre for 283 acres of disturbed area, and \$601 per acre for 120 acres of ancillary area, plus administrative costs of 10%, \$1,716,784 for a total of \$18,884,619. The amount of the proffered surety bond, \$20,000,000, is in excess of the approved reclamation costs. The proffered surety bond will provide bonding in a sufficient amount.
4. Argonaut Insurance Company, licensed as a surety in Texas, issued Marshall Mine, LLC's proffered surety bond. Required licensing information has been obtained from the Texas Department of Insurance.

5. The bond and other documents submitted provide all required information for acceptance of the bond. Documentation has been submitted that demonstrates that the requirements for surety bonds set out in the Act and Regulations have been met.
  - (a). Approval by the Commission of the proffered surety bond will allow for the bonding of activities as set out in the approved bond maps contained in the application for permit, Docket No. C12-0001-SC-00-A.
  - (b). A surety bond is an acceptable form of bond as provided in §12.308(a)(1). The bond is properly executed.
    - (1). The submitted bond is signed by Ms. Jessica Iannotta, Attorney-in-Fact for Argonaut Insurance Company, and by Mr. Rob Davies, Manager and Director of Global Manufacturing Operations, Marshall Mine LLC, who are each authorized to sign the instrument for the respective corporations. Documents showing their authority were filed with the Commission.
    - (2). A power of attorney containing an original seal from the surety has been submitted showing appropriate authorization of the signatory on the date that Ms. Iannotta signed the bond on behalf of the surety. A person authorized to act for Marshall Mine, LLC provided a certificate of authorization stating that Mr. Rob Davies was an officer of the corporation on the date that he signed the surety bond

- (3). The accepted 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 §12.309 of the Regulations. The bond is non-cancelable during its term. Staff prepared legal reviews dated October 8, 2014, December 3, 2014, and December 18, 2014 of materials submitted. Staff indicates that Marshall Mine, LLC has met all requirements for compliance.
  - (4). The bond will be 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 permittee forfeiture.
6. Marshall Mine, LLC, a Delaware corporation, is authorized to transact business in Texas. Caddo Creek Resources Company, LLC, a Nevada corporation, the approved operator of the facilities, is also authorized to transact business in Texas.
7. 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. 2014) (Act) and §12.307 - 12.308 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2014) (Regulations).
8. The surety bond contains text within the instrument that states that the bond shall be in full force and effect, and non-cancelable, for the duration of the reclamation obligation on the

land affected by the Permit, as amended, renewed, revised, or replaced, or land substituted therefore, or until the Principal is otherwise relieved of its obligation by Order of the Commission.

9. Acceptance of the 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, when accepted, will bond the permit area in the stated amount until all reclamation within the permit area has been completed and the principal released from liability or until the bond is replaced.
10. Required open meeting notice of Commission consideration of this matter has been provided.
11. This order was circulated to Marshall Mine, LLC, Staff, and to the approved and proposed sureties. Marshall Mine, LLC and the Staff, the only parties to the proceeding, submitted written waivers of preparation and distribution of a Proposal for Decision in this matter.
12. The Commission may accept the surety bond for reclamation performance for Permit No. 59.

#### **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.

2. The surety bond supplied by Marshall Mine, LLC and Argonaut Insurance Company, No. SUR0026986, 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 the Regulations have been satisfied for acceptance of the surety bond.
4. The Commission is authorized by the Act and Regulations to accept the bond and to issue Permit No. 59.

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

**IT IS FURTHER ORDERED** that the surety bond, No. SUR0026986, in the amount of \$20,000,000 is accepted to provide reclamation performance bonding for required reclamation of the approved operations under Permit No. 59, Marshall Mine;

**IT IS FURTHER ORDERED** that Travelers Casualty and Surety Company of America's Bond No. 105820262 is hereby replaced;

**IT IS FURTHER ORDERED** that the surety bond 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 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is mailed. If a timely motion for rehearing is filed by any party of 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 prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

**SIGNED AT AUSTIN, TEXAS**, this 27th day of January, 2015.

**RAILROAD COMMISSION OF TEXAS**

  
\_\_\_\_\_  
CHAIRMAN CHRISTI CRADDICK

  
\_\_\_\_\_  
COMMISSIONER DAVID PORTER

  
\_\_\_\_\_  
COMMISSIONER RYAN SITTON

ATTEST

  
\_\_\_\_\_  
Secretary  
Railroad Commission of Texas



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

Permit No.: 59  
\_\_\_\_\_  
Mine Name: **Marshall Mine**  
\_\_\_\_\_  
Permittee: **Marshall Mine LLC**  
\_\_\_\_\_  
(hereinafter referred to as the "Principal")  
Bond No.: **SUR0026986**  
\_\_\_\_\_

This bond  does  does not (check appropriate response) replace an existing bond, described as:  
Travelers Casualty and Surety Company of America Bond no. 105820262

**KNOW ALL BY THESE PRESENTS** [Note: Recitals may be modified as necessary to address permits revisions, renewals, consolidations]:

**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 by the Railroad Commission of Texas on the 12th day of February, 2013; 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;

**THAT WE**, Marshall Mine LLC as Principal, and Argonaut Insurance Company as Surety, are held and firmly bound to the State of Texas in the full sum of **Twenty Million and 00/100** United States Dollars (**\$20,000,000.00** 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, revised, renewed or replaced, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Bond No.: SUR0026986

And the Surety to this bond, for value received, agrees that no amendment to existing law, rules or regulations, no adoption of new laws, rules, or regulations, and no amendment, revision, renewal, or replacement of the Permit (including the reclamation plan) shall in any way alleviate its obligation on this bond, and it does hereby waive notice of any such amendment, adoption, revision, renewal, or replacement.

The Surety further agrees to give prompt notice to the Principal and to the Railroad Commission: (1) of any notice received or action filed alleging the insolvency or bankruptcy of the Surety or which could result in suspension or revocation of the Surety's license to do business in the State of Texas; or (2) if it becomes unable, or, for any reason, unwilling, to fulfill its obligations under this bond.

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

The Surety further represents to the Railroad Commission that it is a corporate surety licensed to do business as a surety in Texas.

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

It is further agreed that upon the incapacity of the Surety by reason of bankruptcy, insolvency or suspension or revocation of its license, or for any other reason, 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.

Bond No.: SUR0026986

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be duly signed and sealed this 13th Day of August, 2014

Marshall Mine LLC

Principal

P. O. Box 790, Marshall, TX 75671

Address

By: [Signature]  
Signature

**ROB DAVIES**  
Typed Name

**DIRECTOR OF GLOBAL MANUFACTURING OPS.**  
Title

Attest: [Signature]

**KAREN ABRAMS**  
Accepted: 1-27-15

Argonaut Insurance Company

Surety

P.O. Box 469011, San Antonio, TX 78246

Address

By: [Signature]  
Signature

**Jessica Iannotta**  
Typed Name

**Attorney-in-Fact**  
Title

Attest: [Signature]

**Kelly O'Malley, Witness**

[Signature]  
CHAIRMAN, Railroad Commission of Texas

[Signature]  
COMMISSIONER, Railroad Commission of Texas

[Signature]  
COMMISSIONER, Railroad Commission of Texas

ATTEST: [Signature]

NOTE: The following documents should be provided to the Commission with the original bond instrument: Principal (1) Original power of attorney, or (2) Certified corporate resolution and certificate of incumbency for signatories; Surety - Original power of attorney for signatory and documentation that surety is licensed to do business in Texas.