

RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

SMRD DOCKET No. C16-0016-SC-42-E
DOS REPÚBLICAS COAL PARTNERSHIP
APPLICATION FOR ACCEPTANCE OF REPLACEMENT SURETY BOND FOR PERMIT NO. 42B
EAGLE PASS MINE, MAVERICK COUNTY, TEXAS

ORDER ACCEPTING REPLACEMENT SURETY BOND

Statement of the Case

By letter dated May 26, 2016 Dos Repúblicas Coal Partnership filed its request for acceptance of a replacement surety bond (Bond No. SUR0031837 issued by Argonaut Insurance Company) with the Railroad Commission of Texas. The surety bond is proposed for reclamation performance bonding required for its Eagle Pass Mine in Maverick County, Texas. Reclamation performance bonding for the mine is currently met with two collateral bonds with letters of credit: Comerica Bank LOC SB270572 (Amendment No. 4) in the amount of \$10,478,632 set to expire October 4, 2016 and a collateral bond with Letter of Credit No. SC 8030 by Amegy Bank in the amount of \$10,000,000 that will not expire until the bonded areas are fully released. The two currently accepted bonds provide the required bonding for the Eagle Pass Mine in a total amount of \$20,478,632. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2015) and the Coal Mining Regulations, TEX. ADMIN. CODE Ch. 12 (Thomson West 2016). Dos Repúblicas now requests acceptance of a replacement surety bond to replace the two accepted collateral bonds and LOCs 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 \$29,255,188.57.

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 preparation and circulation of a Proposal for Decision.

The Commission finds that the proffered bond may be accepted and the existing collateral bonds with LOCs 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. 42B.

FINDINGS OF FACT

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

1. Dos Repúblicas Coal Partnership (DRCP) is the permittee of the Eagle Pass Mine located in Maverick County, Texas pursuant to Permit No. 42B issued by the Railroad Commission of Texas. The permit area is located in Maverick County, Texas. By letter dated May 26, 2016, DRCP requests acceptance of a replacement surety bond (No. SUR0031837), issued by Argonaut Insurance Company. The surety bond in the amount of \$29,255,188.57 is proposed for acceptance to provide required reclamation performance bonding and to replace the accepted bonds, a collateral bond with Comerica Bank Letter of Credit (LOC) SB270572 (Amendment No. 4) in the amount of \$10,478,632 and a collateral bond with LOC No. SC 8030 by Amegy Bank in the amount of \$10,000,000. The application with exhibits (bond package) was filed pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE CH. 134 (Vernon Supp. 2015) (Act) and the Commission's "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2016) (Regulations).

2. A permittee must provide a bond for reclamation performance to ensure that disturbed areas within the permit are successfully reclaimed. The proffered surety bond has been submitted on a Commission form for surety bond (Tab 2, bond package).
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. DRCP's reclamation cost estimate, \$20,101,163, was filed as a part of an administrative revision application for which Staff has determined compliance with regulatory requirements. This amount is greater than Staff's reclamation cost estimate (\$18,915,111) and was approved by Staff by letter dated January 13, 2016 in the administrative revision (Revision No. 6) as the minimum amount of bond required to reclaim the disturbed portions of the permit area. The revision application included a revised bond map approved by Staff, Exhibit 145-1, *Reclamation Area Bonding Map*, dated April 16, 2015. The amount of the proffered surety bond, \$29,255,188.57, is in excess of 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 the proffered surety bond. Required licensing information from the Texas Department of Insurance has been provided as Tab 6 in the application; an online check of the information indicates that the company is currently licensed as a surety in Texas (Tab 6, Bond Package).

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 map contained in the approved Revision No. 6.
 - (b). A surety bond is an acceptable form of bond as provided in §12.308(a)(1). The bond is properly executed.
 - (i). The submitted bond is signed by Michael J. Friedrich, Attorney-in-Fact for Argonaut Insurance Company, and by Andres Saravia Coss, President of Eagle Pass Coal Corporation, a general partner of Dos Repúblicas Coal Partnership, on behalf of Dos Repúblicas, who are each authorized to sign the instrument for the respective entities. Documents showing their authority were filed with the Commission (Original Power of Attorney for Mr. Friedrich from Argonaut Insurance Company, with corporate resolution, certified to be in full force and effect on May 25th, 2016, the date of signing and certificate of acknowledgement of signing, Tabs 4 and 5, bond package). The power of attorney contains an original corporate seal.
 - (ii). Dos Repúblicas provided a certification by Armando Sanudo Trueba, attorney on behalf of Dos Repúblicas Coal Partnership, stating that Mr. Andres Saravia Coss is President of Eagle Pass Coal Corporation, a general partner of Dos Repúblicas Coal Partnership, and that he was authorized to

act on behalf of the partnership in regard to the permit on May 25, 2016, the date that he signed the surety bond.

- (iii). 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 §12.309 of the Regulations. The bond is non-cancelable during its term. Staff filed its Staff attorney's legal review dated May 27, 2016 of the materials submitted; the analysis indicates that Dos Repúblicas has met all requirements for compliance.
 - (iv). 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 forfeiture of the bond.
6. The administrative law judge has taken official notice that Eagle Pass Coal Corporation and Maverick County Coal Corporation, the general partners, are each authorized to transact business in Texas based on information available on the Texas Secretary of State's website for franchise tax account status. Both 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. DRCP'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.

2015) (Act) and §12.307 - 12.308 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2016) (Regulations).

8. The surety bond contains text 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 Dos Repúblicas, Staff, and to the approved and proposed sureties. Dos Repúblicas and the Staff, the only parties to the proceeding, submitted written waivers of preparation and circulation of a Proposal for Decision in this matter.
12. The Commission may accept the surety bond for reclamation performance for Permit No. 42B.

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 Dos Repúblicas Coal Partnership and Argonaut Insurance Company, No. SUR0031837, is in proper form, and is in an amount sufficient 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 surety bond.

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

IT IS FURTHER ORDERED that surety bond No. SUR0031837, in the amount of \$29,255,188.57 is accepted to provide reclamation performance bonding for required reclamation of the approved operations under Permit No. 42B, Eagle Pass Mine;

IT IS FURTHER ORDERED that the collateral bond and Comerica Bank's LOC SB270572 (Amendment No. 4) in the amount of \$10,478,632 and the collateral bond and Amegy Bank's LOC No. SC 8030 in the amount of \$10,000,000 are hereby replaced;

IT IS FURTHER ORDERED that the surety bond provided 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 a party is notified of the Commission's order. 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. As authorized by 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 21st day of June, 2016.


RAILROAD COMMISSION OF TEXAS



CHAIRMAN DAVID PORTER

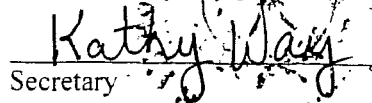


COMMISSIONER CHRISTI CRADDICK

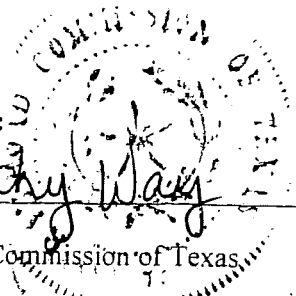


COMMISSIONER RYAN SITTON

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.: **42 B**

Mine Name: **Eagle Pass Mine**

Permittee: **Dos Republicas Coal Partnership**

(hereinafter referred to as the "Principal")

Bond No.: **SUR0031837**

This bond does does not (check appropriate response) replace an existing bond, described as:
Comerica Bank LOC SB270572 in the amount of \$10,478,652, and Amegy Bank LOC No. SC8030 in the amount of \$10,000,000.00

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 7th day of May, 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, Dos Republicas Coal Partnership as Principal, and Argonaut Insurance Company, as Surety, are held and firmly bound to the State of Texas in the full sum of Twenty Nine Million, Two Hundred And Fifty Five Thousand, One Hundred And Eighty Eight 57/100 United States Dollars (\$29,255,188.57 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.: SUR0031837

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.: SUR0031837

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be duly signed and sealed this 25th Day of May, 2016

Dos Republicas Coal Partnership

Principal

425 Madison Street, Eagle Pass, Texas 78852

Address

By: 

Signature

Andres Gonzalez Saravia Coss

Typed Name

President, Eagle Pass Coal Corporation, General Partner Of Dos Republicas Coal Partnership

Title

Attest: 

Armando Sanudo-Trueba

Accepted: June 21, 2016

Argonaut Insurance Company

Surety

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

Address

By: 

Signature

Michael J. Friedrich

Typed Name

Attorney-In-Fact

Title

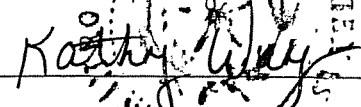
Attest: 

William A. Ballay


CHAIRMAN, Railroad Commission of Texas


COMMISSIONER, Railroad Commission of Texas


COMMISSIONER, Railroad Commission of Texas

ATTEST: 

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.