

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SURFACE MINING DOCKET No. C17-0007-SC-01-E  
Application by Alcoa USA Corp. for Acceptance of Replacement  
Reclamation Performance Bond, Surety Bond, Permit No. 1F  
Sandow Mine, Lee and Milam Counties, Texas**

**ORDER ACCEPTING RECLAMATION BOND AND ISSUING PERMIT NO. 1G**

**STATEMENT OF THE CASE**

The Railroad Commission of Texas (Commission) issued Permit No. 1F to Alcoa Inc. (Alcoa), by Order dated August 19, 2009. In a proceeding held on August 1, 2017, the Commission approved the transfer of Permit No. 1F from Alcoa Inc. to a separate corporation, Alcoa USA Corp. The permit area lies in portions of Lee and Milam Counties, Texas. Alcoa requests that the Commission accept a replacement surety bond in the amount of \$14 million issued by Federal Insurance Company to replace its currently accepted self-bond in the amount of \$27,250,000 accepted April 8, 2015. Although the Commission has approved various releases of reclamation obligations since acceptance of the current bond, Alcoa has not adjusted its bond since its acceptance.

Based upon the documentation supporting the bond set out in Alcoa's application, Staff filings, including the most recent Staff reclamation cost estimate, approval of the transfer application to Alcoa USA Corp. and the Findings of Fact and Conclusions of Law set out in this order, the Commission determines that the proffered surety bond for reclamation performance meets requirements for reclamation performance bonding set out in §12.309 of the Regulations for surety bonds and that the surety bond in the amount of \$14 million may be accepted to replace the currently accepted self-bond in the amount of \$27,250,000.

**FINDINGS OF FACT**

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

1. Permit No. 1F has been transferred from Alcoa Inc. to Alcoa USA Corp. (Alcoa) in Docket No. C17-0011-SC-01-B as Permit No. 1G. Permit No. 1G, Sandow Mine, located in Lee and Milam Counties, Texas. The permit is currently bonded with a self-bond accepted by the Commission Order dated April 8, 2015 in the

amount of \$27,250,000. The permit area consists of 8,079.7 acres (Revision No. 60, approved: July 18, 2016).

2. Alcoa USA Corp., at the time not an approved permittee, applied by letter dated October 28, 2016 for acceptance of a replacement bond for Permit No. 1F (Revision No. 64) pursuant to §134.121 of the Texas Surface Mining Control and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2016) (Act) and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2016) (Regulations). The proffered surety bond, issued by Federal Insurance Company, is in the amount of \$14 million.
3. The instant application constitutes a bond adjustment for which notice is not required.
4. On November 14, 2016 Alcoa Inc. submitted its letter dated November 10, 2016 with attached Revision No. 65 to the Hearings Division. Revision No. 65 was styled Change in Corporate Structure and Name Change from Alcoa Inc. to Alcoa USA Corp. The application was filed in the name of Alcoa USA Corp., with information accompanying the application that Alcoa Inc. had separated into two independent, publicly-traded companies legally effective on November 1, 2016 and that Alcoa USA Corp, a subsidiary of Alcoa Corporation, one of the two separate entities, was the owner of all property, assets, and permits for the Sandow Mine. Based upon documents contained in the application, the Hearings Division of the Railroad Commission of Texas issued a Notice of Show Cause Hearing to Alcoa Inc. to provide sufficient information to show cause that bonding remained in place for Permit No. 1F as required by Tex. Nat. Res. Code Ch. 134.125, the "Coal Mining Regulations," 16 Tex. Admin. Code §§12.300-310. After submittal of documentation of the Separation and Distribution agreement between Alcoa Inc. and Alcoa Upstream Corporation (now Alcoa Corporation), a schematic of the affiliation of related corporations, and related documents, including an affidavit from Arconic, Inc. (formerly Alcoa Inc.) that Arconic, Inc. remained liable on the current bond posted with the Commission until acceptance of a new bond in the name of Alcoa USA Corp., the show cause proceeding, a portion of Docket No. C17-0007-SC-01-E (the instant docket), was dismissed by the Hearings Division.
5. Alcoa filed two supplements, Supplement No. 1 filed November 16, 2016, and Supplement No. 2, filed December 14, 2016. Staff filed the application with the Hearings Division after supplementation by the applicant on January 30, 2017. Staff's letter filing the application with the Hearings Division was accompanied by the surety bond, supporting information, the Office of General Counsel's legal review dated January 19, 2017, and supplemental information. Staff indicated that Revision No. 65 submitted by Alcoa had been submitted to request transfer of the permit to a new corporate entity, Alcoa USA Corp. Approval of Revision No. 65 was required prior to action on the bond and issuance of the permit to

Alcoa USA Corp. In Docket No. C17-0011-SC-01-B, the Commission approved the transfer and renumbering of the permit to Alcoa USA Corp. as Permit No. 1G.

6. The surety bond in the amount of \$14 million is submitted to provide bonding for reclamation if the work is performed by a third party at the direction of the Commission in the event of forfeiture.
7. The reclamation surety bond submitted by Alcoa USA Corp. proposes to reduce the currently accepted bond of \$27,250,000 due to releases of reclamation liability on various acreages approved by the Commission, as well as removal of areas from bond that were undisturbed. A reduction of the permit area boundaries and a revised estimate of the costs of reclamation were approved administratively by the Director, Surface Mining and Reclamation Division, dated July 18, 2016 (Revision No. 60, approved July 18, 2016, resulting in a reduction in the permit area boundaries within Permit No. 1F from 10,730.3 acres to 8,079.7 acres (a reduction of 2,650.6 acres), and a revised estimate of the cost of reclamation for the permit, \$13,481,862. The Director determined that the above was not a significant departure from the reclamation plan.
8. The proffered surety bond in the amount of \$14 million exceeds the estimated costs of reclamation, meeting the requirement of §12.309(a).
9. The bond and other documents submitted provide all required information for acceptance of the bonds. A surety bond is an acceptable form of bond under §12.308(a)(1). The surety bond is properly executed. Documentation has been submitted to demonstrate that the requirements for surety bond set out in the Act and Regulations have been met.
  - (a). Alcoa USA Corp. has filed documentation showing the authority of the signatory on the bond to act for Alcoa USA Corp. in this matter. A Corporate Secretary's Certificate was submitted certifying that the officer signing the bond, Mr. John Kenna, Vice President, Tax, was authorized to sign the bond on behalf of the corporation in accordance with an attached copy of a corporate resolution dated August 1, 2016. The certification included a specimen signature and stated that the resolution had not been amended, modified or rescinded and was in full force and effect as of November 8, 2016.
  - (b). Mr. Charles R. Croyle signed the bond as Attorney-in-Fact on behalf of Federal Insurance Company. A power of attorney was submitted by Federal Insurance Company naming several persons, including Mr. Charles R. Croyle as attorney in Fact to execute bonds and undertakings, and other writings obligatory in the nature thereof, as well as certain other documents. The power of attorney was executed February 10, 2012 by

the corporate secretary and included a certification that the signer, David B. Norris, Jr., Vice President, of Federal Insurance Company, was known to be the person signing, and that the signature was in accordance with the by-laws of the company. An extract of the by-laws was also included and was certified as true and correct and in effect on October 12, 2016. The insurance company's original corporate seal appeared on the document.

- (c). Both signatories were authorized to sign the bond on the date signed, October 12, 2016.
- (d). The surety bond contains all other provisions required by the Act and Regulations. The bond is payable to the State of Texas for the full amount of the obligation [§12.309(b)] and is conditioned upon faithful performance of all the requirements of the Act, permit, reclamation plan, and Regulations [§12.309(c)]. The bond contains provisions that it shall remain in full force and effect for the duration of the reclamation obligation as required [§12.309(d) and §12.306(a)]. The bond is non-cancellable during its term [§12.309(f)(2)].
- (e). The accepted surety bond by Federal Insurance Company 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 amount of the proffered bond totals an amount in excess of reclamation costs (Finding of Fact No. 7) [§12.309(a)].
- (f). Bond coverage has been continuous and with acceptance of the replacement bond will continue uninterrupted.
- (g). 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. Alcoa USA Corp. has submitted a copy of the Certificate of Authority issued by the TDI to Federal Insurance Company dated July 31, 1990 (Supplement No. 1, Tab D) that indicates that the company is authorized to transact the business of fidelity and surety.
- (h). The proffered surety bond states that the surety will give prompt notice in the event of insolvency, bankruptcy, or any event resulting in the revocation of the surety's license [§12.309(e)(1)].

10. The proffered surety bond is executed by the current operator (approval of Docket No. C17-0011-SC-01-B and a corporate surety licensed in Texas [§12.309(f)(1)]. The proffered surety bond issued by Federal Insurance Company lists Alcoa USA Corp. as Principal on the instrument. Although the Principal is responsible for completion of reclamation requirements, if Alcoa USA Corp. does not, the financial backing for the bond to ensure reclamation comes from the surety. The Regulations do not require a financial review of any kind for the principal on the surety bond, unlike self-bonds or self-bonds with third-party guarantees. The Texas Department of Insurance requires financial filings by the surety. There is a contractual relationship that exists between the surety and the principal whereby if reclamation is not completed, the surety will either complete reclamation or pay the performance bond amount so that a third party may complete reclamation at the direction of the Commission.
11. The proffered surety bond will remain in effect according to its terms, unless released or replaced by Commission Order.
12. Alcoa USA Corp., organized in Delaware and registered in Texas, is currently in good standing in the payment of franchise taxes as required by Tax Code §171.001 *et seq.* (tax code) and allowed to conduct business in Texas.
13. Alcoa USA Corp.'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. 2016) (Act) and §§12.308-12.309 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2016) (Regulations).
14. Acceptance of the replacement 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 required amount until all reclamation within the permit area has been completed and the Principal/Permittee and sureties have been released from liability or until the bond is replaced.
15. Alcoa USA Corp. and the Staff submitted written waivers of the preparation and distribution of a Proposal for Decision in this matter.

### **CONCLUSIONS OF LAW**

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

1. Open meeting notice of Commission consideration of this matter has been provided in accordance with the Administrative Procedure Act, Gov't Code

§551.041. Required notice for this matter has been provided. The Commission has jurisdiction to consider acceptance of the proffered bond for Permit No. 1G pursuant to §134.121, *et seq.*, of the Act and §§12.308-12.310 of the Regulations.

2. The surety bond submitted by Alcoa USA Corp. and Federal Insurance Company is in proper form and is in the required amount so that the bond will be sufficient to ensure reclamation of the permit area. The proffered 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 to replace the self-bond.
5. Acceptance of the proffered bond will allow the existing self-bond in the amount of \$27,250,000 to be replaced upon the acceptance of the surety bond and renumbered Permit No. 1G to be issued.

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

**IT IS FURTHER ORDERED** that the surety bond in the amount of \$14 million is hereby accepted and replaces the existing self-bond with third-party guarantee in the amount of \$27,500,000; and

**IT IS FURTHER ORDERED** that the surety bond provides performance bonding of required reclamation of operations under the permit for the Sandow Mine;

**IT IS FURTHER ORDERED** that the surety bond issued by Federal 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 as acreages are increased or decreased or where the cost of reclamation changes;

**IT IS FURTHER ORDERED** that Permit No. 1G is hereby issued to Alcoa USA Corp.; and

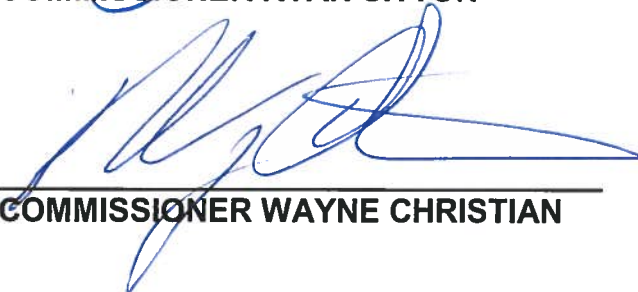
**IT IS FURTHER ORDERED** by the Commission that this order shall not be final and effective until 25 days after a party is notified of the Commission's order. If a timely motion for rehearing is filed by any party of interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further Commission action. 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.

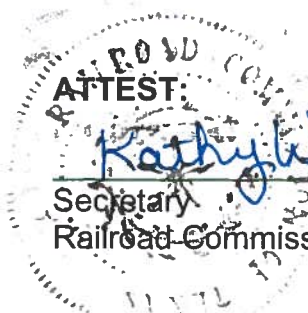
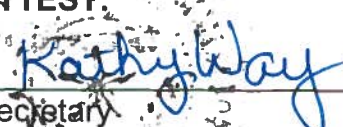
**SIGNED IN AUSTIN, TEXAS**, on August 1, 2017.

**RAILROAD COMMISSION OF TEXAS**

  
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**CHAIRMAN CHRISTI CRADDICK**

  
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**COMMISSIONER RYAN SITTON**

  
\_\_\_\_\_  
**COMMISSIONER WAYNE CHRISTIAN**

  
**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.: **RCT SMRD Permit Number 1F**

Mine Name: **Alcoa Sandow Mine**

Permittee: **Alcoa USA Corp**

(hereinafter referred to as the "Principal")

Bond No.: **82380333**

This bond  does  does not (check appropriate response) replace an existing bond, described as:  
**Alcoa Inc. Sandow Mine RCT Permit 1F \$27,250,000 Self Bond**

**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 1st day of **November, 2016**; 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**, **Alcoa Usa Corp** as Principal, and **Federal Insurance Company**, as Surety, are held and firmly bound to the State of Texas in the full sum of **Fourteen Million** United States Dollars (\$**14,000,000.00** 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.: **82380333**

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.: 82380333

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be duly signed and sealed this 12th Day of October, 2016.

**Alcoa Usa Corp**

Principal

**201 Isabella Street, Pittsburgh, PA 15212**

Address

By: ✓

Signature

**John Kenna**

Typed Name

**Vice President**

Title

Attest: ✓

Accepted:

September 1, 2017

**Federal Insurance Company**

Surety

**15 Mountain View Road, Warren, NJ 07059**

Address

By:

Signature

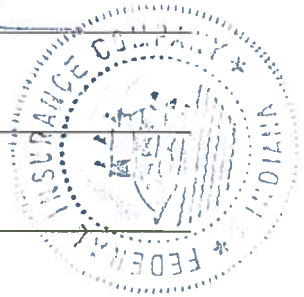
**Charles R. Croyle**

Typed Name

**Attorney-in-Fact**

Title

Attest:



**Christi Craddock**

CHAIRMAN, Railroad Commission of Texas

COMMISSIONER, Railroad Commission of Texas

COMMISSIONER, Railroad Commission of Texas

ATTEST: **Kathy Way**

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.