

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C17-0011-SC-01-B  
APPLICATION BY ALCOA USA CORP.  
FOR TRANSFER OF PERMIT NO. 1F FROM ALCOA INC.  
SANDOW MINE, LEE AND MILAM COUNTIES, TEXAS**

**ORDER APPROVING APPLICATION FOR TRANSFER**

Statement of the Case

Alcoa USA Corp., P.O. Box 1491, Rockdale, Texas 76567 applied to the Railroad Commission of Texas (Commission) for transfer of Surface Coal Mining and Reclamation Permit No. 1F from the current permittee, Alcoa Inc. Permit No. 1F is a surface mining and reclamation permit that authorizes surface coal mining reclamation operations at the Sandow Mine located in Lee and Milam Counties, Texas, approximately six miles southwest of Rockdale, Texas. The application is made pursuant to §134.083 of Chapter 134 of the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2017) (Act) and §12.232 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2017) (Regulations).

The Commission issued Permit No. 1F to Alcoa Inc. by Order dated August 19, 2009. No permit may be transferred prior to approval of an application for transfer and acceptance by the Commission of a performance bond in an amount sufficient to assure proper reclamation of lands disturbed by the operation if such reclamation were to be performed by a third party at the direction of the Commission. Alcoa USA Corp. has undertaken to provide a proposed surety bond in a separate proceeding. Alcoa USA Corp. requests approval of the application for transfer in this proceeding. A determination on the issuance of the permit to Alcoa USA Corp. will await Commission action on the proposed reclamation bond.

Public notice of this matter was provided. No hearing was requested or held. This order has been circulated to the parties with an opportunity for the filing of exceptions and replies. Based on the Findings of Fact and Conclusions of Law set out below, the Commission finds that the application for transfer may be approved. Issuance of Permit No. 1F, renumbered as Permit No. 1G, must await Commission consideration and acceptance of the required reclamation performance bond for the permit area.

### **FINDINGS OF FACT**

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

1. Alcoa USA Corp. (Alcoa or Applicant) applied to the Railroad Commission of Texas' (Commission) Surface Mining and Reclamation Division (SMRD and/or Staff) for transfer of Permit No. 1F for the Sandow Mine located in portions of Lee and Milam Counties, Texas. The application is made pursuant to §134.083 of the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2017) (Act), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2017) (Regulations). An application fee of \$500 (revision) was paid.
2. By Order dated August 18, 2009, the Commission issued Permit No. 1F to Alcoa Inc. and approved operations exclusive to reclamation of the permit area (Docket No. C4-0017-SC-01-C). The permit area currently consists of 8,079.7 acres (Revision No. 60; approved: July 18, 2016) approximately six miles southwest of Rockdale, Texas.
3. Alcoa USA Corp. is not organizationally related to the current permittee, Alcoa Inc. Effective October 31, 2016, Alcoa Inc. separated into two independent, publicly-traded companies. Alcoa Inc. has changed its name to Arconic Inc. and Alcoa Corporation (formerly Alcoa Upstream Corporation) is operating as an independent company. Alcoa USA Holding Company is a wholly owned subsidiary of Alcoa Corporation. Alcoa USA Corp., the Applicant, is a wholly owned subsidiary of Alcoa USA Holding Company. The separation and corporate structure of Alcoa Corporation were affirmed by affidavit dated December 20, 2016 (Supp. 1; Attachment E). An organizational structure chart titled "*Schematic Showing Separation and Also Showing Structure of Alcoa Corporation*" was provided in Supplement No. 1 (*Id.*). A copy of the organizational chart is included as Appendix I to this Order.

4. Pursuant to a request made by the Hearings Division in review of Alcoa's replacement bond application (Docket No. C17-0007-SC-01-E) [Finding of Fact No. 13, *infra*], Alcoa Inc. provided a copy of its application requesting a Change in Corporate Structure and Name Change (Revision No. 65) to Permit No. 1F on November 14, 2016. Revision No. 65 was previously submitted to SMRD by letter dated November 10, 2016. Based upon documents contained in the replacement bond application and Revision No. 65, a Notice of Show Cause Hearing was issued to Alcoa Inc. to provide sufficient information to show cause that bonding remained in place for Permit No. 1F as required by the Act and Regulations. Following a prehearing conference held on November 30, 2016, SMRD requested the Commission's Office of General Counsel (OGC) review Revision No. 65 to determine if the application constituted a sale, assignment, or transfer of Permit No. 1F under §§12.231 and 12.232 of the Regulations, and advise whether the information necessary for approval of the name change (Revision No. 65) had been provided. SMRD's request was submitted to OGC by memorandum dated December 2, 2016.

By memorandums dated January 4 and 19, 2017, OGC determined the following: 1) the corporate restructuring undergone by Alcoa Inc., termed a "corporate spin-off," resulted in the formation of a new entity, Alcoa USA Corp.; 2) the change in corporate structure and terms of the SDA resulted in a "sale, assignment or transfer" of the permit for which Alcoa USA Corp. must obtain Commission approval of the transfer pursuant to §§12.231 and 12.232 of the Regulations; 3) an application requesting transfer of permit should be submitted to Commission pursuant to §12.232(a)(2) and; 4) the replacement surety bond instrument submitted by Alcoa USA Corp. (Docket No. C17-0007-SC-01-E) "may be accepted to replace the currently accepted self-bond *only upon* approval of the transfer of Permit No. 1F in accordance with §§12.231 and 12.232" (OGC, *Review of Replacement Surety Bond Instrument*, p.1; dated: January 19, 2017).

In accordance with OGC's conclusions, Alcoa USA Corp. submitted its application requesting transfer of the permit (Application) to SMRD by letter dated February 21, 2017.

A courtesy copy of the Application was filed with the Hearings Division on February 24, 2017 in order to expedite processing of the proposed transfer.

5. By letter dated April 10, 2017, Staff filed its administrative approval of Revision No. 65 along with a copy OGC's review of the transfer Application provided to SMRD by memorandum dated April 4, 2017. By letter dated April 11, 2017, Staff transmitted the application for Revision No. 65 (submitted: November 10, 2016) to the Hearings Division and requested the transfer of Permit No. 1F be docketed.
  
6. By letter dated April 13, 2017, the ALJs assigned to subject docket and the associated bond docket noted the following issues with the filings discussed in Finding of Fact No. 5: 1) Section 12.232(a)(2) of the Regulations requires a prospective transferee provide an application for transfer of the permit; 2) the transfer Application (submitted: February 21, 2017) had not been docketed; 3) the Commission must base written findings required for approval of the transfer on the Application pursuant to §12.232(c), and; 4) Staff's administrative approval of the Revision No. 65 would remove the Commission's ability to review changes in ownership and control in consideration of the transfer Application as a docketed item. Further, the preceding letter requested Staff's letters dated April 10 and 11, 2017, including administrative approval of Revision No. 65, be withdrawn, and the subject Application requesting transfer of the permit be docketed for Commission consideration. By letter dated April 17, 2017, Staff informed Alcoa Inc. that administrative approval of Revision No. 65 had been rescinded. A copy of the letter was filed in the docket on June 28, 2017 following a request from the ALJ.
  
7. Alcoa filed Supplement No. 1 to the Application on May 15, 2017. The supplemental filing constitutes a complete application for transfer of the permit and contains materials previously filed in the Application (submitted: February 21, 2017). Responses to requirements in §12.232(a)(2)(C) were revised in Supplement No. 1 to facilitate review in accordance with concerns raised in OGC's legal review of the Application dated April 4,

2017. Changes to the Application provided in Supplement No. 1 include information related to permit history [§12.116(c)], property interest information [§12.116(d)], right of entry [§12.117], relationship to areas designated unsuitable for mining [§12.118(c)], and identification of other licenses and permits [§12.121].

Additionally, in Supplement No. 1 Alcoa withdrew its application requesting a Change in Corporate Structure and Name Change (Revision No. 65) in accordance with a request made by SMRD on April 20, 2017 (Supp. 1; Section I, Subparagraph F). However, Alcoa also reasserted its position that approval of Revision No. 65, coupled with approval of the pending bond docket, would accomplish the “same result” as granting the Application for transfer and states Revision No. 65 was submitted because it understood SMRD “concluded Alcoa’s objectives were properly and efficiently accomplished by administrative approval of non-significant revisions to Permit No. 1F” [*Id.*].

8. Supplement No. 1 was transmitted to the Hearings Division by Staff on June 27, 2017. Staff’s review memorandum, conducted in accordance with processing procedures for non-significant revisions to a permit under §12.226 [SMRD Directive Notice PR-AP-226 Rev. 1], cited OGC’s legal review in recommending the transfer be approved. Staff’s memorandum and OGC’s review dated June 16, 2017 were attached to the letter transmitting Supplement No. 1. The transfer Application submitted on February 21, 2017 was not docketed with the Hearings Division. However, OGC’s legal review of Supplement No. 1 refers to the Application and its review thereof.
9. By letter dated July 5, 2017, the ALJ informed Alcoa and Staff of the following issues found in review of Supplement No. 1: 1) property interest information required in §12.116(d) of the Regulations was not provided [Finding of Fact No. 17(v), *infra*.]; 2) Alcoa’s response regarding right of entry for areas where the surface estate had been severed from the mineral estate was not sufficient pursuant to §12.117(b) [Finding of Fact No. 18, *infra*]; 3) claimed right of entry to various tracts did not correspond with the materials provided in the submittal [*Id.*]; 4) the certificate of liability insurance indicated that coverage had expired on July 1, 2017 [Finding of Fact 20, *infra*], and; 5) clarification was needed

regarding other licenses and permits the approved operations required the Applicant to obtain pursuant to §12.121 [Finding of Fact 21, *infra*].

Further, Alcoa was requested to independently certify that it currently has documentation of right of entry to all tracts within the current permit area that have not yet been fully released from reclamation liability. The additional certification was requested by the ALJ following an assessment of the record.

10. Supplement No. 2 was filed on July 7, 2017. Alcoa provided updated responses in the submittal and certified right of entry consistent with the ALJ's request discussed in Finding of Fact No. 9. By letter dated July 10, 2017, the ALJ requested a single tract be included in the responses to requirements in §§12.116(d)(1)-(2) and 12.117 of the Regulations [Finding of Fact Nos. 17(v) and 18, *infra*]. Staff was requested to confirm the accuracy of the information provided regarding other permits and licenses required for operations that are currently approved under Permit No. 1F [Finding of Fact No. 21, *infra*].
11. On July 11, 2017, Alcoa filed Supplement No. 3 containing revised responses to the requirements in §§12.116(d)(1)-(2) and 12.117, and materials related to right of entry that were not provided as indicated in Supplement No. 2 [Finding of Fact No. 18, *infra*]. By letter dated July 12, 2017, Staff filed its review of the information regarding other permits and licenses provided in Supplement No. 2. Staff concluded Alcoa's response meets the requirements of §12.121 [Finding of Fact No. 21, *infra*].
12. Pursuant to §134.803 of the Act and §12.231 of the Regulation, the rights granted under a permit may not be transferred, assigned or sold prior to obtaining written approval from Commission. In accordance with the terms of the document governing the restructuring [Separation and Distribution Agreement (SDA)], the permit rights under Permit No. 1F currently remain with Arconic Inc. (formerly Alcoa Inc.). Pursuant to the SDA, Alcoa Corporation, as the parent company of the Applicant, is to succeed to the rights granted under Permit No. 1F upon Commission approval of Alcoa USA Corp.'s Application to transfer the permit. A certified true and correct copy of the SDA was provided in

Supplement No. 1 as Attachment D. Alcoa has not succeeded to the rights granted under the permit prior to obtaining written approval from the Commission [§12.231].

13. The rules and procedures for transfer, assignment or sale of the rights granted under a permit are set out in §12.232 of the Regulations; these rules require that certain information be filed with the Commission for approval, including a method to provide that reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee [§12.232(a)(1)]. The currently accepted bond for Permit No. 1F is a self-bond in the name Alcoa Inc. in the amount of \$27,250,000 (Docket No. C14-0010-SC-01-E; Order dated April 8, 2015). In accordance with the terms of the SDA (Supp. 1; Attachment D), later affirmed by an affidavit executed on December 9, 2016 (*Id.*; Attachment G), Arconic (formerly Alcoa Inc.) remains liable under the self-bond until the Commission accepts a replacement bond for the permit area; and, Alcoa Corporation, Alcoa's parent company, is secondarily liable as an indemnitor. As requested in OGC's legal review dated January 4, 2017, Arconic filed a d/b/a affirming it continues to operate as "Alcoa Inc." and provided documentation it is registered to do business in Texas. Alcoa has met the requirements for approval of the transfer Application by providing a written agreement that bond coverage pursuant to the accepted self-bond from Alcoa Inc. has been continuous and will continue uninterrupted until replacement bonding is approved by the Commission [§12.232(a)(1)(B)].

Alcoa submitted an application for acceptance of a replacement surety bond for Permit No. 1F (Revision No. 64) by letter dated October 28, 2016. The application was subsequently filed with the Hearings Division on January 30, 2017 (Docket No. C17-0007-SC-01-E). The replacement surety bond in the amount of \$14,000,000 is sufficient to cover the costs associated with completing all outstanding reclamation operations under the permit according to Staff's most recent calculation of reclamation for the permit, \$13,481,862 (Revision No. 60). The replacement surety bond also satisfies bonding requirements for approval of the transfer under §12.232(a)(1)(C).

14. Alcoa provided the name and address of the existing permittee; Alcoa Inc., P.O. Box 1491, Rockdale, Texas 76567 [§12.232(2)(A)].
15. Alcoa has provided its name and its Rockdale office address (P.O. Box 1491, Rockdale, Texas 76567), and has listed CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201-3136 as its resident agent [§12.232(2)(B)].
16. Pursuant to §12.232(a)(2)(C) of the Regulations, an applicant requesting Commission approval of a transfer of a surface mining and reclamation permit must provide an application containing the following information: Identification of Interests and Compliance Information [§12.116]; Right of Entry and Operation Information [§12.117]; Relationship to Areas Designated Unsuitable for Mining [§12.118(c)]; Personal Injury and Property Damage Insurance Information [§12.120], and; Identification of Other Licenses and Permits [§12.121].
17. The Application, as supplemented, contains all required organizational and compliance information related to the transferee, and identifies property interest holders within and contiguous to the approved permit boundary [§12.116].
  - (i). Alcoa proposes to act as operator at the Sandow Mine. Alcoa is a Delaware corporation authorized to do business in Texas as of September 8, 2016 (Filing Number: 802538192) [§12.116(b)(1)]. As discussed in Finding of Fact No. 3, Alcoa is not organizationally related to the current permittee, Alcoa Inc. (Arconic). Alcoa USA Corp., the Applicant, is a wholly owned subsidiary of Alcoa USA Holding Company, who in turn, is a wholly owned subsidiary of Alcoa Corporation.
  - (ii). The Application includes Alcoa's taxpayer identification number (37-1808900) [§12.116(b)(2)].

- (iii). Alcoa's principle office is located at 201 Isabella Street, Pittsburgh, PA 15212. CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201-3136 has been designated as Alcoa's resident agent [§12.116(b)(3)]. Information regarding officers and directors of the Alcoa USA Corp., Alcoa Corporation, and Alcoa USA Holding Company was provided in Attachment K to Supplement No. 1. Contact information for all identified persons was provided as Alcoa's principle office address, 201 Isabella Street, Pittsburgh, PA 15212 [§12.116(b)(3)(d)].

By affidavit dated December 20, 2016, Alcoa certified it believes that at the time of filing of the Application that no 'person' as defined by the Regulations owns 10 percent or more of Alcoa Corporation (Supp. 1; Attachment E). Arconic (f/k/a Alcoa Inc.) had retained 19.9% of common stock in Alcoa upon separation of the entities (*Id.*). However, per a press release dated May 5, 2017, Arconic no longer has any ownership stake in the Applicant following the completion of a debt-for-equity exchange (*Id.*; Attachment L) [§§12.116(b)(3)(d) and 12.116(b)(4)].

- (iv). With the exception of the Applicant's role in operations of the Sandow Mine since November 1, 2016, neither Alcoa or its affiliates, as described in Finding of Fact No. 3, has operated a surface coal mining operation. Other than the subject Application, neither Alcoa or its affiliates has submitted a surface mining application [§12.116(c)].
- (v). Section 12.116(d) of the Regulations requires an applicant identify and provide contact information for each owner of record in the surface and subsurface both within and contiguous to the permit area [§12.116(d)(1)-(2)]. The application must also include a statement of interests, options, or pending bids held by the applicant [§12.116(d)(3)]. The preceding information is required for "property to be mined" [§12.116(d)]. In the Application (submitted: February 21, 2017), Alcoa's stated "No Change" was proposed to Permit No. 1F in response to the requirements of §12.116(d). OGC's legal review of the Application focused on the last

renewal/revision of the permit that was approved by the Commission in 2009 [See, e.g., Finding of Fact No. 21, *infra*, discussing responses provided in the Application and OGC's review dated April 4, 2017]. The current permittee, Alcoa Inc., provided the information required in §12.116(d) in its application for Renewal/Revision approved in 2009 (Docket No. C4-0017-SC-01-C) despite mining having ceased in September 2005 (Supp. 1; Attachment C).

In Supplement No. 1 Alcoa did not provide the information required in §12.116(d). Alcoa contended that the information was not required given that "no property will be mined under this permit" as approved activities at the Sandow Mine are exclusive to reclamation of the area (Supp. 1; Table 2, pp. 11-12). OGC's legal review of Supplement No. 1, incorporated into Staff's review by reference, indicated Alcoa's response was provided in accordance with guidance from SMRD and OGC (OGC, *Review of Supplement No. 1*, p.11; dated June 16, 2017). The phrase "property to be mined" is explicitly defined in §12.3(134) of the Regulations as "*both the surface estates and mineral estates within the permit area and the area covered by underground working*" (*emphasis added*). Staff, through OGC, contends the Regulations uses the phrase "mining operations" when both mining and reclamation operations are to apply. Various citations to the Regulations are provided in support of the position that use of the verb "to mine, mined, or mining" does not include reclamation operations (*Id.*).

As stated in a letter from the ALJ dated July 5, 2017, an applicant requesting transfer of a permit is required to submit this information irrespective of the type of the operations that are proposed within a permit area. The Regulations require an applicant requesting the transfer of a permit to provide information related to organizational and interest identification and to submit proper documentation that undertakings of a legal and financial nature have been accomplished [See, §§12.232(a) and (c)]. The fact that only reclamation activities remain within the Sandow Mine Area does not determine whether landowners in the area are to be

identified within an application. Interest owners within and adjacent to a permit area do not cease to be “affected” by the operations once mining is completed. This is evident throughout the Regulations, including notification requirements for bond release and mandated consultation with landowners regarding postmining land uses. The Commission must ensure it can identify those persons who are entitled to receive notice of an application. Given the phrase “property to be mined” is explicitly defined as “both the surface estates and mineral estates within the permit area,” no further inquiry is necessary to interpret §12.116(d), especially in light of the overriding nature of the information required under §§12.116 and 12.232.

On July 7, 2017 Alcoa filed Supplement No. 2 providing the information required in §12.116(d). Alcoa stated in its submittal letter that it disagrees with ALJ’s interpretation but provided the information in hopes of concluding the matter promptly. Supplement No. 3 was filed on July 11, 2017 to correct deficiencies noted by the ALJ in review of Supplement No. 2. These two most recent filings contain the information required in §12.116(d).

- (xi). The Application, as supplemented, contains sufficient compliance history information under §12.116(e) of the Regulations and proper certification of information related to the federal database pursuant to §16.116(a).
18. Alcoa has demonstrated right of entry under §12.117 for a majority of the permit area by providing a copy of a Deed Without Warranty dated September 30, 2016 conveying, with exceptions, land and interests in land owned by Alcoa Inc. (Supp. 1; Attachment M). Exceptions to the conveyance includes all rights, obligations, and other matter arising from and existing by reason of any governmental agency or authority having jurisdiction. Pursuant to the terms of the SDA, the rights and obligations as defined by Permit No. 1F will be transferred to Alcoa Corporation and assigned to the Applicant upon Commission approval of the Application.

In response to an inquiry from the ALJ regarding tracts within the permit area that were not conveyed in the Deed referenced above, Alcoa revised responses to §12.117 of the Regulations in Supplement No. 2 that was filed on July 7, 2017. Supplement No. 2 also revised tables and maps to correspond with the right of entry documentation that was provided (Supp. 2; Attachment N). An additional map, denoted as Plate 136-S, was included as an overlay depiction of current Permit No. 1F boundary together with the Warranty Deed Survey Boundary and Tract designations. Metes and Bounds Descriptions for each large Warranty Deed Survey Tract and corresponding plat sheets were provided digitally (Supp. 2; Attachment M).

Additional acreage within the permit area not covered by the 2016 deed includes approximately 226 acres for which Alcoa claims right of entry by three separate leases executed by Alcoa Inc. All three leases are currently in effect, assignable and were distributed to the Applicant pursuant to the terms of the SDA. Copies of the three leases are provided in Supplement No. 2 as Attachments Q and R.

In response to the applicability of requirements for “property to be mined” discussed in Finding of Fact No. 17(v), Alcoa revised its response to §12.117(b) in Supplement No. 2 to indicate that no property exists within the current permit area where the private mineral estate to be mined has been severed from the private surface estate (Supp. 2; Table 2, p.8).

Additionally, Alcoa independently certified that it currently has documentation of right of entry to all tracts within the current permit area that have not yet been fully released from reclamation obligations (Supp. 2; Certification, p. 10). The additional certification was requested by the ALJ as previously discussed in Finding of Fact No. 9.

19. The requirements of §12.118(c) have been met in the approved permit. No additional activities within 100 feet of a public road or within 300 feet of an occupied dwelling are proposed in the Application.

20. By letter dated July 14, 2017, Staff concluded Supplement No. 2 contains satisfactory evidence that Alcoa has obtained public liability insurance through Chubb Global Casualty, formerly ACE American Insurance Company, in the amounts required in §12.311 of the Regulations. The certificate of insurance provided in Supplement No. 2 indicates the policy is effective from July 1, 2017 through July 1, 2018 (Supp. 2; Attachment S).
  
21. Alcoa USA Corp. provided a list of all other licenses and permits required to conduct operations as approved in Permit No. 1F (Supp. 1; Attachment T, Table .121). These include licenses, permits, or authorizations from the Texas Commission on Environmental Quality and the U.S. Army Corps of Engineers. The response provided in the Application (submitted: February 21, 2017) indicated simply that “no change” to the requirements in §12.121 were proposed. Based on this response, OGC’s memorandum dated April 4, 2017 was confined to reviewing information provided in the application for the Renewal/Revision of the Sandow Mine permit approved by Order dated August 18, 2009 (Docket No. C4-0017-SC-01-C). The basis of OGC’s review is clear throughout the memorandum as evidenced by multiple citations to various supplements to the application for Renewal/Revision and the approval Order issued in 2009 (OGC’s Legal Review, *Application for Transfer of Permit No. 1F*, pp. 9-15; dated: April 4, 2017). Every revision to Permit No. 1F, except those specific to the accepted bond, have been approved administratively; meaning, no proposed change since 2009 has been deemed a significant revision for which the Regulations require docketing of the item. Consequently, no subsequent Orders and/or applications related to operations were available for review.

The 2009 application and approval Order upon which OGC based its review (dated: April 4, 2017) includes radioactive licenses and air monitoring permits that were not included in Supplement No. 1. Staff did not address the discrepancies or accuracy of the information provided by the Applicant in its review of Supplement No. 1. Following an inquiry from the ALJ, Alcoa responded that the air permits and radioactive licenses were not listed in Table .121 as none are “needed by the applicant to conduct the proposed surface mining

activities” (Supp. 2; Submittal Letter, p.2 *quoting* §12.121 of the Regulations). By letter dated July 12, 2017, Staff confirmed that the information provided in Supplement No. 1 identifies all permits required for those operations currently approved under Permit No. 1F.

22. Alcoa has complied with notice and comment procedures required under §12.232(b). Public notice of the Application was published on February 9, 2017 in the *Rockdale Reporter*. The initial publication did not indicate the Sandow Mine permit area is currently located in both Milam and Lee Counties. An amended public notice of the Application was published in the *Rockdale Reporter* and the *Lexington Leader* on February 23, 2017. The *Rockdale Reporter* is a newspaper of general circulation in Milam County, Texas. The *Lexington Leader* is a newspaper of general circulation in Lee County, Texas. No comments were received within the time required by the Regulations (within 30 days after the date of publication). The notice included the name and address of the applicant, the original permittee, the permit number, and the geographic location of the permit, as well as the address to which written comments were to be sent. No comments were received. Affidavits of publication were filed with SMRD on February 27, 2017. By memorandum dated March 8, 2017, OGC found the published notice meets the requirements in §12.232(b).
23. Copies of the Application were filed for public review at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas 78701, the office of the Milam County Clerk, 100 South Fannin, Cameron, Texas 75840 and the office of the Lee County Clerk, 151 East Hempstead Street, Giddings, Texas 78942.
24. Pursuant to §12.232(c) of the Regulations, when the elements listed below in subparagraphs (a) - (d) are met, the Commission may grant written approval for the transfer of a permit. Alcoa has met the requirements set out below.

- (i). The Applicant has shown it is eligible to receive a permit in accordance with the Regulations [§12.232(c)(1)]. The approved operations at the Sandow Mine under Permit No. 1 F are exclusive to reclamation of the permit area. Alcoa is not required to submit an application to renew the permit absent it propose to recommence mining operations within the permit area [§12.100]. Upon Commission acceptance of the proposed bond (Docket No. C17-0007-01-SC-E) and issuance of the permit, the permit and the obligations established therein shall continue until all surface coal mining and reclamation operations are completed.
- (ii). Alcoa will conduct the operations covered by the permit in accordance with the criteria specified in §§12.216 and 12.217 of the Regulations [relating to Criteria for Permit Approval or Denial, and to Criteria for Permit Approval or Denial: Existing Structures] as set out in the Application, as supplemented, and as approved in Permit No. 1F and the requirements of the Act and Regulations. Currently, no operations are approved under the permit for which the criteria specified in §§12.200-12.205 [relating to Requirements for Permits for Special Categories of Mining] are applicable [§12.232(c)(2)].
- (iii). The applicant has, in accordance with §12.232(a)(1) of this title [relating to Transfer, Assignment, or Sale of Permit Rights: Obtaining Approval], submitted a performance bond or other guarantee as required by Subchapter J of Chapter 12 of the Tex. Admin. Code [relating to Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations], and at least equivalent to the bond or other guarantee of the original permittee.
- (iv). Alcoa does not propose changes to reclamation operations currently approved under Permit No. 1F and will continue to conduct the operations in full compliance with the terms and conditions of Permit No. 1F [§12.232(c)(4)]. Upon Commission approval of the Application, Alcoa may continue operations according to the approved reclamation plan for the permit [§12.233(a)]. Alcoa will be required to

submit an application for a new permit or for a revised permit should it proposes changes to the approved permit [§12.233(b)].

25. Alcoa and Staff, the only parties to the proceeding, filed waivers of the preparation and circulation of a proposal for decision. The proposed order was circulated to the parties with opportunity for comments and/or exceptions and replies.
26. Alcoa has met requirements set out in the Regulations for approval of the Application. Issuance of a transferred permit will await Commission approval of the required bond.

#### **CONCLUSIONS OF LAW**

Based on the above 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 and opportunity for comment for this matter has been provided in accordance with §12.232 of the Regulations. The Commission has jurisdiction to consider the requested transfer pursuant to §134.083, *et seq.*, of the Texas Surface Coal Mining and Reclamation Act (Act), Chapter 134, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2017) and §§12.231-12.233 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2017).
2. Alcoa USA Corp. submitted an application requesting the Commission approve the proposed permit transfer as required by §12.232(a)(2) of the Regulations.
3. The application by Alcoa USA Corp. for transfer of Permit No. 1F from Alcoa Inc. for the Sandow Mine complies with the Act and §§12.232 and 12.233 of the Regulations.
4. The applicant provided the required application, including the name and address of the existing permittee and the proposed transferee and all the information required by §§12.116, 12.117, 12.118(c), 12.120, and 12.121 of the Regulations [§12.232(a)(2)].

5. Property interest information was provided for the both the surface estates and mineral estates within the permit area as required by §12.116(d) of the Regulations.
6. Alcoa USA Corp., as operator, will conduct the operations covered by Permit No. 1F as have been addressed and approved in the existing Permit No. 1F, including compliance with §§12.216 and 12.217 of the Coal Mining Regulations [§12.232(c)(2)].
7. Alcoa USA Corp. has submitted a reclamation performance bond and provided sufficient evidence to establish that the currently accepted \$27,250,000 self-bond in the name of Alcoa Inc. remains in effect in accordance with its terms until a replacement bond is approved by the Commission [§12.232(c)(3)].
8. Alcoa USA Corp. will continue to conduct operations involved in full compliance with the terms and conditions of the original permit, unless and until it has obtained a new or revised permit as required in §12.233 [§12.232(c)(4)].
9. Alcoa USA Corp. is eligible to receive a permit upon issuance of an approved permit [§12.232(c)(1)]. Issuance of an approved permit must await Commission consideration of the submitted surety bond (Docket No. C17-0007-01-E).

**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 application by Alcoa USA Corp. for transfer of Permit No. 1F, Sandow Mine in Milam and Lee Counties, Texas, is approved with the Findings of Fact and Conclusions of Law as set out above; and

**IT IS FURTHER ORDERED** that issuance of the transferred permit, renumbered as Permit No. 1G, must await Commission consideration and acceptance of the required reclamation performance bond for reclamation of the permit area; and

**IT IS FURTHER ORDERED** that the current self-bond for Permit No. 1F in the amount \$27,250,000 will remain in place until otherwise ordered by the Commission; and

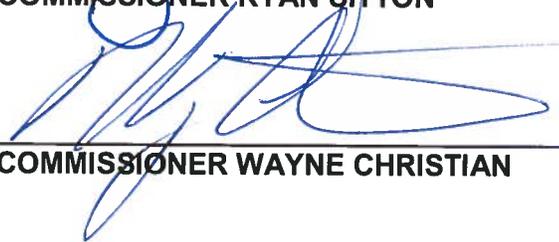
**IT IS FURTHER ORDERED** by the Commission that this Order shall not be final and effective until 25 days after a party is notified of the Commission's Order. If a timely motion for rehearing is filed by any party of interest, this Order shall not become final and effective until such motion is overruled, 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** this 1<sup>st</sup> day of August, 2017.

**RAILROAD COMMISSION OF TEXAS**

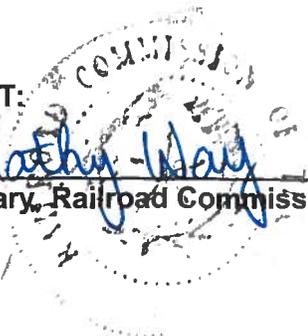
  
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**CHAIRMAN CHRISTI CRADDICK**

  
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**COMMISSIONER RYAN SITTON**

  
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**COMMISSIONER WAYNE CHRISTIAN**

**ATTEST:**

  
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**Secretary, Railroad Commission of Texas**



Docket No. C17-0011-SC-01-B  
Alcoa USA Corp.  
Permit No. 1F, Sandow Mine

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## Appendix I

