

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C20-0006-SC-27-E  
APPLICATION BY WALNUT CREEK MINING COMPANY  
ACCEPTANCE OF REPLACEMENT SURETY BOND  
PERMIT NO. 27H, CALVERT MINE  
ROBERTSON COUNTY, TEXAS**

**ORDER ACCEPTING REPLACEMENT SURETY BOND**

Statement of the Case

Walnut Creek Mining Company ("WCMC"), P.O. Box H, Bremond, Texas 76629-0318, holds Railroad Commission of Texas ("Commission") Permit No. 27H for the Calvert Mine located in Robertson County, Texas. The permit area is currently bonded by two surety bonds totaling \$43,198,583. The accepted bond for the permit is comprised of a surety bond issued by Ironshore Indemnity Inc. in the amount of \$22,000,000 and a surety bond issued by Atlantic Specialty Insurance Company in the amount of \$21,198,583 that were accepted by Commission Order dated January 27, 2015. WCMC now request acceptance of a surety bond issued by Indemnity National Insurance Company to replace the bond issued by Atlantic Specialty Insurance Company. The proffered bond is in the same amount as the existing bond proposed for replacement, \$21,198,583, and the accepted bond by Ironshore Indemnity Inc. will remain in place; therefore, the total bond amount for the permit is not proposed to change.

The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ch. 134 (Vernon Supp. 2019) and the Coal Mining Regulations, Tex. Admin. Code Ch.12 (Thomson West 2019). In the docket, WCMC has filed an updated bond map for the permit and revised reclamation cost estimate in the amount of \$40,293,473. As part of its review of the application, the Commission's Surface Mining and Reclamation Division ("Staff") calculated an independent reclamation cost estimate in the amount of \$40,296,224. Staff recommends adoption of its cost estimate given it exceeds WCMC's estimate and is therefore a more conservative amount should a third-party be required to complete the approved reclamation plan at the direction of the Commission in the event of forfeiture. Staff also recommends approval of WCMC's bond map for the permit that was submitted in the application.

The Commission finds \$40,296,224 is the minimum required bond amount for the permit, the updated bond map submitted in the application is approved and that the proffered replacement surety bond issued by Indemnity National Insurance Company, together with the existing surety bond by Ironshore Indemnity Inc., will be sufficient in form and substance and may be accepted to replace the existing surety bond issued by Atlantic Specialty Insurance Company.

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 exception and replies. The parties have filed waivers of the preparation and circulation of a Proposal for Decision.

## FINDINGS OF FACT

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

1. Walnut Creek Mining Company ("WCMC"), P.O. Box H, Bremond, Texas 76629-0318, holds Railroad Commission of Texas ("Commission") Permit No. 27H for the Calvert Mine located in Robertson County, Texas. By letter dated August 28, 2019, WCMC requests acceptance of a replacement surety bond, No. N-7002431, by Indemnity National Insurance Company ("Indemnity National") in the amount of \$21,198,583 to provide required reclamation performance bonding for approved operations under the permit. The application with exhibits ("Bond Package") was filed with the Commission pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ch. 134 (Vernon Supp. 2019) ("Act") and the Commission's "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) ("Regulations"). By letter dated October 10, 2019, the Director of the Commission's Surface Mining and Reclamation Division ("SMRD" or "Staff") transferred the Bond Package, including all original bond instruments, to the Hearings Division, along with the Commission's Office of General Counsel's ("OGC") legal review of the materials dated October 7, 2019.
2. Permit No. 27H is currently bonded by the following two surety bonds that were accepted by Commission Order dated January 27, 2015, providing bonding in a total amount of \$43,198,583: Bond No. 800006518 issued by Atlantic Specialty Insurance Company ("Atlantic Specialty") in the amount of \$21,198,583 and Bond No. SUR60000217 issued by Ironshore Indemnity Inc. ("Ironshore") in the amount of \$22,000,000. WCMC requests the existing surety bond by Atlantic Specialty be replaced by the proffered bond by Indemnity National. No changes to the existing bond by Ironshore are proposed. Given the subject bond is in the same amount as the bond proposed for replacement, \$21,198,583, and the \$22,000,000 bond by Ironshore will remain in place, acceptance of the proffered bond will not result in any change to the total bond amount for the permit, \$43,198,583.
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. The amount of bond for a permit must be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Commission in the event of forfeiture pursuant to §12.304(b). In accordance with the Regulations at §12.304(d), the required bond amount shall be based on, but not limited to, the estimate submitted by the applicant. WCMC has submitted an updated reclamation cost estimate for the permit in the amount of \$40,293,473 based on remaining activities required in areas depicted on Exhibit 142-1, *Permit 27H Bond Map*, that was filed by letter dated January 22, 2020. As part of its review of the application, Staff calculated an independent reclamation cost estimate in the amount of \$40,296,224. The Commission adopts the estimate prepared by Staff as the minimum required bond amount for Permit No. 27H. As addressed in Finding of Fact No. 2, *supra*, the total bond amount for the permit will remain \$43,198,583 upon acceptance of the proffered replacement bond, an amount that exceeds the cost of reclamation for the permit adopted in this Order and is sufficient for work that may be performed by a third-party at the direction of the Commission in the event of forfeiture in accordance with §12.304(b).

- (a) Prior to WCMC's filing of the application, the most recent reclamation cost estimate for the permit was approved administratively in Revision No. 3 by letter dated February 8, 2018. WCMC did not submit a reclamation cost estimate when it submitted the proffered replacement bond by letter dated October 10, 2019. Given the amount of time that had passed since Revision No. 3 was approved relative to the submittal of the subject replacement bond application and the requirement at §12.307(d) of the Regulations that sets out the amount of the bond shall be adjusted by the Commission as affected land acreages are increased or decreased or where the cost of future reclamation changes, the parties were instructed to submit updated estimates based on the current costs of reclamation by the administrative law judge's letter dated October 16, 2019. In the same October 16 letter, WCMC was informed it could request an informal conference in the matter – an action it took on October 21, 2019. WCMC's request was granted, and notice of the informal conference was issued to the parties on October 22, 2019, setting the meeting for October 29, 2019 after both parties waived their right to receive notices 10 days prior to the informal conference in writing. The informal conference was held as noticed and on the record, and representatives from both parties were in attendance. During the informal conference, WCMC's pending application for release of Phase I reclamation obligations for 1,505.4 acres within the permit area ("Phase I Release Application") [Docket No. C20-0001-SC-27-F] was addressed in relation to the cost estimates requested from the parties in the subject docket. Following the informal conference, by letter dated November 8, 2019, WCMC requested processing of this docket be suspended to allow for Commission consideration of the Phase I Release Application prior to submitting an updated cost estimate and bond map in the subject docket. WCMC's suspension request was granted, and processing of the docket resumed on January 3, 2020 when WCMC filed an updated estimate and map that accounted for Commission approval of the Phase I Release Application.<sup>1</sup>
- (b) On January 15, 2020, Staff filed its reclamation cost estimate in the amount of \$40,296,224 and review of WCMC's January 3, 2020 submittal. Staff noted in its review that on page 145-3-1, *Projected Reclamation Acreage and Costs*, WCMC incorrectly indicated Phase II release for various disturbance categories in Pits 1, 2 and 3 and the bond map provided in the application did not depict a 0.5-acre ancillary area in Pit 2 as having received Phase I bond release. By letter dated January 22, 2020, WCMC supplemented the application in accordance with Staff's comments, resulting in its reclamation cost estimate in the amount of \$40,293,473. By letter dated January 24, 2020, Staff recommended its estimate of \$40,296,224 be adopted as the minimum amount of bond for the permit. Staff's estimate includes a summary of reclamation costs for six work categories on a per-acre bases calculated separately for Pits 1, 2, 3 and 6. Updated equipment costs and production figures were used by Staff when determining the cost estimate of outstanding reclamation to be completed under the approved reclamation plan for Permit No. 27H.

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<sup>1</sup> The Commission issued an order granting Phase I release of the requested 1505.4 acres in Docket No. C20-0001-SC-27-F on January 14, 2020, which became final on February 10, 2020 pursuant to 16 Tex. Admin. Code § 1.130(a)(1).

- (c) All acreage figures used in Staff's reclamation cost estimate were taken from WCMC's table on page 145-3-1, *Projected Reclamation Acreage and Costs*, and Exhibit 142-1, *Permit 27H Bond Map*, that were revised in the applicant's supplemental filing dated January 22, 2020 (Staff letter dated January 22, 2020). Staff has indicated that WCMC's application, as supplemented, meets the requirements of 16 Tex. Admin. Code §§ 12.142(2)(c) and 12.145(b)(2). The reclamation cost estimate and bond map submitted in the application, as supplemented, are approved for Permit No. 27H; however, Staff's estimate is adopted by the Commission as the minimum amount of bond for the permit in accordance with §12.304(d).
4. Indemnity National, licensed as a surety in Texas, issued the proffered surety bond. Required licensing information from the Texas Department of Insurance has been provided. WCMC submitted a copy of the Certificate of Authority from the Texas Department of Insurance, Certificate No. 14127, dated June 28, 2006, certifying that Indemnity National is authorized to transact business as a surety in Texas (Tab 7, Bond Package). The administrative law judge has taken official notice of documentation obtained from the Texas Department of Insurance's website, accessed on October 10, 2019, showing that the insurance company has an active Texas license and is currently licensed as a surety. Copies of the information were provided to the parties.
5. WCMC, a Texas limited partnership, is authorized to transact business in Texas. The administrative law judge has taken official notice of information showing WCMC is authorized to transact business in Texas based on information obtained from the Texas Comptroller of Public Accounts website on October 10, 2019. The entity is listed as active, indicating that it is current in the payment of required franchise taxes. Copies of the information were provided to the parties.
6. The bond and other documents submitted provide all required information for acceptance of the bond. Documentation has been submitted to demonstrate that the requirements for surety bond set out in the Act and Regulations have been met.
- (a) A surety bond is an acceptable form of bond pursuant to §12.308(a)(1). The surety bond is submitted on a Commission form for surety bond, SMRD-42C (Tab 4, Bond Package), and is properly executed.
- (i) The submitted bond is signed on behalf of Indemnity National by Brook T. Smith, Attorney-in-Fact. Documents demonstrating Mr. Smith's authority to bind the surety were submitted in the form of an Original Power of Attorney from Indemnity National that was certified by the Secretary of the surety, sworn before a notary, to be in full force and effect on August 28, 2019, the date the proffered bond was signed (Tab 6, Bond Package). The Original Power of Attorney contains an original corporate seal and authorizes Mr. Smith to execute surety bonds on behalf of Indemnity National in a sum not to exceed \$22,000,000, an amount greater than the subject \$21,198,583 bond.
- (ii) The submitted bond is signed on behalf of WCMC by Andrew Good, Vice President, WCMC, who is authorized to sign the bond. Documentation

has been provided to show that Mr. Good holds the office of Vice President and is authorized to execute and deliver the surety bond in the amount provided. A person authorized to act for WCMC, as evidenced by an "Incumbency and Secretary's Certificate," certified that Mr. Good was an acting Vice President of WCMC and had the authority to bind the company as principal on the bond on August 28, 2019, the date that he signed the surety bond (Tab 5, Bond Package).

- (b) WCMC is authorized to transact business in the state and Indemnity National is a corporate surety licensed to do business in Texas in accordance with §12.309(f)(1) of the Regulations (Findings of Fact Nos. 4 and 5, *supra*).
  - (c) 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 the Regulations. The bond is non-cancelable during its term pursuant to §12.309(f)(2). Staff filed its Staff attorney's legal review dated October 7, 2019 of the materials submitted; the analysis indicates that WCMC has met all requirements for acceptance of a surety bond set forth in §§ 12.309(f) and 12.310(a) of the Regulations.
  - (d) The bond provides a mechanism for the surety to give prompt notice to the Commission in compliance with §12.309(e) of the Regulations of any notice received or action filed alleging the insolvency or bankruptcy of the surety company or alleging any violation which would result in suspension or revocation of the surety's license to do business in Texas.
  - (e) The bond 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 proffered bond, together with the existing bond issued by Ironshore, is in an amount that is greater than the estimated reclamation costs (Findings of Fact No. 3, *supra*).
7. The proffered surety bond will remain in effect according to its terms, unless released or replaced by Commission Order. Pursuant to §12.309(c), WCMC, as permittee, must complete the reclamation obligations for the mine as required by the Act, Regulations and conditions of the permit. If WCMC does not complete reclamation as required by the Act and Regulations, then the surety is liable on its bond.
8. The proffered replacement bond assumes any liability which has accrued against the permittee on the permit area pursuant to §12.310(a) of the Regulations.
9. WCMC'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. 2019) and §§ 12.308-12.310 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019).

10. Bond coverage has been continuous and with acceptance of the proffered surety bond will continue uninterrupted.
11. Acceptance of the proffered 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, together with the existing bond by Ironshore, will bond the permit area in the required amount until all reclamation within the permit area has been completed and the Principal/Permittee and surety have been released from liability or until the bonds are replaced.
12. This order was circulated to WCMC, Staff and Indemnity National Insurance Company. WCMC and Staff, the only parties to the proceeding, submitted written waivers of preparation and distribution of a Proposal for Decision in this matter.
13. Open meeting notice of Commission consideration of this matter has been provided in accordance with the Administrative Procedure Act, Gov't Code §551.041.
14. The Commission may accept the proffered surety bond for reclamation performance for Permit No. 27H.

#### **CONCLUSIONS OF LAW**

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

1. All required notice for consideration of this matter has been provided.
2. Pursuant to § 12.304 of the Regulations, the Commission determines that a reclamation cost estimate in the amount of \$40,296,224 is sufficient to ensure completion of the reclamation plan if the work has to be performed by a third-party at the direction of the Commission in the event of forfeiture.
3. The surety bond supplied by Walnut Creek Mining Company and Indemnity National Insurance Company, No. N-7002431, is in proper form and, along with the currently accepted surety bond issued by Ironshore Indemnity Inc., are in required amounts so that the total will be 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.
4. All requirements of the Act and Regulations have been satisfied for acceptance of the surety bond.
5. The Commission is authorized by the Act and Regulations to accept the surety bond by Indemnity National Insurance Company in the amount of \$21,198,583 to replace the surety bond by Atlantic Specialty Insurance Company in the amount of \$21,198,583.

**IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS** that the above Findings of Fact and Conclusions of Law are hereby adopted;

**IT IS FURTHER ORDERED** that the surety bond, No. N-7002431, issued by Indemnity National Insurance Company in the amount of \$21,198,583 is accepted to provide reclamation performance bonding for required reclamation of approved operations under Permit No. 27H, Calvert Mine;

**IT IS FURTHER ORDERED** that the existing surety bond, No. 800006518, issued by Atlantic Specialty Insurance Company in the amount of \$21,198,583 is hereby replaced;

**IT IS FURTHER ORDERED** that the existing surety bond, No. SUR60000217, issued by Ironshore Indemnity Inc. will remain in place and together with the accepted surety bond issued by Indemnity National Insurance Company will provide bonding in a total amount of \$43,198,583;

**IT IS FURTHER ORDERED** that \$43,198,583 is a sufficient amount for reclamation of the permit area;

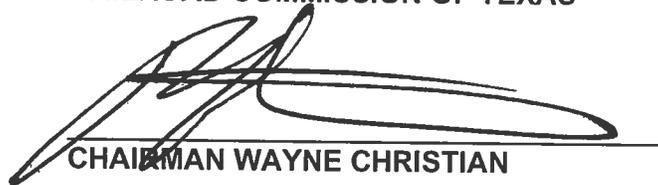
**IT IS FURTHER ORDERED** that the surety bond, No. N-7002431, issued by Indemnity National Insurance Company will remain in place until released or replaced by Commission Order;

**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 the Commission's Order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code §2001.142, by agreement under Tex. Gov't Code §2001.147, or by written Commission Order issued pursuant to Tex. Gov't Code §2001.146(e). If a timely motion for rehearing is filed by any party at 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 is 100 days from the date the Commission Order is signed.

**SIGNED** on February 11, 2020.

**RAILROAD COMMISSION OF TEXAS**

  
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CHAIRMAN WAYNE CHRISTIAN

  
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COMMISSIONER CHRISTI CRADDICK

  
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COMMISSIONER RYAN SITTON

  
ATTEST:  
  
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Secretary  
Railroad Commission of Texas